

IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES “ A ” BENCH: BANGALORE
**BEFORE SHRI A.K. GARODIA, ACCOUNTANT MEMBER
AND
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

ITA No.1423/Bang/2019
(Assessment Year : 2016-17)

M/s. Bangady Co-operative Agricultural Society Ltd.,
Indabettu Village, Bangady Post,
Belthangady-574 214
PAN AAEFB 0377M

....Appellant

Vs.

Income Tax Officer,
Ward 1, Puttur.

.....Respondent.

Assessee By:	Shri S. Ramasubramanian, C.A.
Revenue By:	Shri Manjeet Singh, Addl. CIT (D.R)

Date of Hearing :	10.03.2020
Date of Pronouncement :	18.03.2020

ORDER

PER SHRI PAVAN KUMAR GADALE, JM :

The assessee has filed an appeal against the order of Commissioner of Income Tax (Appeals), Mangalore passed under Section 143(3) and 250 of the Income Tax Act, 1961 ('the Act').

2. The assessee has raised the following grounds of appeal as under :

1. That the order of the learned Commissioner of Income-Tax (Appeals) is bad in so far it is prejudicial to the interests of the appellant and erroneous in law and against the facts and circumstances of the case.
2. That the learned Commissioner of Income-Tax (Appeals) erred in law and on facts in confirming the disallowance of Rs.1,21,26,933/- claimed as deduction u/s. 80P(2)(a)(i) of the Act.
3. That the learned Commissioner of Income-Tax (Appeals) denied the deduction u/s. 80P(2)(a)(i) of the Act on the only ground that the appellant deals with nominal and associate members.
4. That the learned Commissioner of Income-Tax (Appeals) ought to have appreciated that the appellant is registered as Co-operative Society under Karnataka State Co-operative Societies Act, 1959 and the said Act allows the appellant to admit nominal and associate members.
5. That the learned Commissioner of Income-Tax (Appeals) erred in law and on facts in not allowing the interest income of Rs.1,11,708/- on investments as deduction u/s. 80P(2)(a)(i) of the Act.
6. That the learned Commissioner of Income-Tax (Appeals) erred in law and on facts in not allowing the interest income of Rs.1,11,708/- on investments as deduction u/s. 80P(2)(d) of the Act.

3. The Brief facts of the case are, the assessee is a Primary Agriculture Co-operative Society formed for the benefit of Members primarily engaged in the business of accepting deposits and lending of finances to Members. Further the

assessee is a co-operative society registered under Karnataka Co-operative Societies Act, 1959 and filed the return of income on 15.10.2016 with total income of Rs.40,730/- after claiming deduction u/sec 80P of the Act. The Return of Income was processed under Section 143(1) and the case was selected for scrutiny under CASS, and Notice under Section 143(2) of the Act was issued. In compliance, the Id. AR appeared from time to time and furnished the details and the case was discussed. The assessee has claimed deduction under Section 80P of the Act, as the society earns interest on deposits with South Canara Dist Co-operative Bank relying on the decision of jurisdictional High Court. But the Assessing Officer issued Show Cause Notice for disallowance of the claim relying on the decision of Hon'ble Supreme Court in the case of Citizen Co-operative Society in Civil Appeal No.10245/2017. The explanations were filed by the assessee on the two disputed issues considered at Para 07 and 8.3 of the order. The Assessing Officer dealt on the submissions, financial statements and on status of the nominal members who do not have voting rights and also not eligible for dividend, and the provisions under Section 80P of the Act. Further the assessing officer found that there are three categories of members i.e. A Class, C & D Class being the nominal members. Whereas A Class members are having voting and dividend rights, C Class members eligible only for dividend and no voting rights, whereas D Class members are nominal members with no voting rights and no dividend. The Assessing Officer observed that the assessee society has accepted

deposits from members and lend to members and, further accepts deposits from D Class nominal members and lend loans. Whereas, the D Class members does not have right to vote and no dividend is received. Accordingly, the Assessing Officer disallowed the claim of deduction under Section 80P(2)(a) of the Act and assessed the total income of Rs.1,21,26,993/- and passed the order under Section 143(3) of the Act dt.20.12.2018. Aggrieved by the order, the assessee has filed an appeal with the CIT(Appeals), whereas the CIT(Appeals) concurred with the action of the Assessing Officer and dismissed the appeal. Aggrieved by the order of CIT (Appeals), the assessee has filed an appeal with the Tribunal.

4. At the time of hearing, the Id. AR submitted that the CIT(Appeals) has erred in confirming the denial of deduction under Section 80P(2) of the Act and the decisions relied by the CIT(Appeals) are distinguishable. Further the society accepts the deposits and lends finances to its members and supported his arguments with the decision of Tribunal and jurisdictional Hon'ble High Court and prayed for allowing the appeal. Contra, the Id. DR relied on the orders of the CIT (Appeals).

5. We heard the rival submissions and perused the material on record. The sole matrix of the disputed issue is with respect to denial of deduction under Section 80P(2) of the Act by the Assessing officer, as the assessee is in the Banking business accepts the deposits from the general public being D Class nominal members and also lend the funds. Whereas, the nominal members are the contributors for earning surplus and does not participate /share the surplus of the

society, hence the concept of mutuality cease to exist. The Ld. AR supported his arguments relying on the co-ordinate bench decision of the Tribunal in the case of M/s. Kodavoor Vyavasaya Seva Sahakari Sangha Niyamitha & Others Vs. ITO (ITA No.707/Bang/2019 Dt.26.08.2019). We found the disputed issues are with respect to claim of deduction under Section 80P(2) of the Act and the criteria of nominal members. We considered the observations of the co-ordinate bench of the Tribunal in the case of M/s. Kodavoor Vyavasaya Seva Sahakari Sangha Niyamitha & Others Vs. ITO (supra) at page 5 to 12 Para 4 & 5 which is read as under :

“ 4. We heard the rival submissions and perused the material on record. Prima facie, the sole disputed issue being denial of claim of deduction under Section 80P(2)(a)(ii) of the Act. The Assessing Officer has dealt on the interest income from investment / deposits in Banks, whereas the assessee society is engaged in business of carrying on banking and providing credit facilities. In the present assessment year, the assessee has made fixed deposits with Karnataka DCC Bank and received interest income and the assessee has claimed deduction under Section 80P(2)(a)(i) of the Act further Assessing Officer found that the assessee has provided Banking facilities to the nominal members. Whereas the ld. AR has restricted his arguments to the extent of denial of deduction under Section 80P(2) of the Act and further submitted that the nominal members has been categorized as members and are eligible for benefits. Whereas CIT (Appeals) has relied on the judicial decisions, which shall apply to a society which is engaged in numerous activities but in the present case the assessee society is engaged in providing facilities of Banking business or credit facilities to its members. We found the issue of denial of deduction under Section 80P(2) and treatment of interest on deposits and also nominal members are treated as members for the purpose of benefit of section 80P(2) was dealt by the judicial forums. We consider it proper to refer to the decision of the co-ordinate Bench of the Tribunal in the case of The Jayanagar Co-operative Society Vs. ITO in ITA No.3254/Bang/2018 in respect of interest income earned by the society were the Assessing Officer denied the claim of the assessee observing that interest income earned on investment of surplus funds has to be assessed as ‘income from other sources’ and not from business at Page No.3 paras 4 & 5 held which read as under :

“ 4. The issues that arise for consideration in this appeal by the assessee are as to whether the Revenue authorities were justified in holding that the assessee was not entitled to the benefit of deduction under section 80P(2)(a)(i) of the Income Tax Act, 1961 (in short ‘the Act’) on interest income earned and under

section 80P(2)(d) of the Act in respect of interest received from Co-operative institutions. The Assessing Officer (AO) denied the claim of the assessee on the ground that interest income earned by making investment of surplus funds has to be assessed under the head "Income from Other Sources" and not income from business and since interest income is not assessed as business income, the claim for deduction under section 57 of the Act cannot be allowed. In upholding the above conclusions, the CIT(A), inter alia, relied on the decision of the Hon'ble Supreme Court in the case of The Totgar's Co-operative Sales Society Ltd., Vs. ITO 322 ITR 283 (SC) wherein the Hon'ble Supreme Court held that the benefit of deduction under section 80P(2)(a)(i) of the Act is only on income which is assessable under the head "Income from Business". Interest earned on investment of surplus funds not immediately required in short term deposits and securities by a Co-operative Society providing credit facilities to members or marketing agricultural produce to members is not business income but income from other sources and the society is not entitled to special deduction. 5. While learned AR relied on the decision of the Hon'ble Karnataka High Court in the case of Tumukur Merchants Souharda Credit Co-operative Ltd., 230 taxman 309 (Karn), the DR relied on a subsequent decision of the Hon'ble Karnataka High Court in the case of PCIT Vs. Totgars Co-operative Sale Society Ltd., 395 ITR 611 (Karn.). We have carefully gone through the said judgment. The facts of the case before the Hon'ble Karnataka High Court was that the Hon'ble Court was considering a case relating to Assessment Years 2007-08 to 2011-12. In case decided by the Hon'ble Supreme Court in the case of the very same assessee, the Assessment Years involved was Assessment Years 1991-92 to 1999-2000. The nature of interest income for all the Assessment Years was identical. The bone of contention of the Assessee in AY 2007-08 to 2011-12 was that the deduction under Section 80P(2) of the Act is claimed by the respondent assessee under Section 80P(2)(d) of the Act and not under Section 80P(2)(a) of the Act which was the claim in AY 1991-92 to 1999- 2000. The reason given by the Assessee was that in AY 2007-08 to 2011-12 investments and deposits after the Supreme Court's decision against the assessee Totgar's Co-operative Sale Society Ltd. (supra), were shifted from Schedule Banks to Cooperative Bank. U/s.80P(2)(d) of the Act, income by way of interest or dividends derived by a Co-operative Society from its investments with any other Co-operative Society is entitled to deduction of the whole of such interest or dividend income. The claim of the Assessee was that Co-operative Bank is essentially a Co-operative Society and therefore deduction has to be allowed under Clause (d) of Sec.80P(2) of the Act. The Hon'ble Karnataka High Court followed the decision of the supreme Court in The Totgars Co-operative Sales Society Ltd. (supra) and held that interest earned from Schedule bank or cooperative bank is assessable under the head income from other sources and therefore the provisions of Sec.80P(2)(d)of the Act was not applicable to such interest income. It is thus clear that the source of funds out of which investments were made remained the same in AY 2007-08 to 2011-12 and in AY 1991-92 to 1999-2000 decided by the Hon'ble Supreme Court. Therefore whether the source of funds were Assessee's own funds or out of liability was not subject matter of the decision of the Hon'ble Karnataka High Court in the decision cited by the learned DR. To this extent the decision of the Hon'ble Karnataka High Court in the case of Tumukur Merchants Souharda Co-operative Ltd. (supra) still holds good. Hence, on this aspect, the issue should be restored back to the AO for a fresh decision after examining the facts in the light of these judgment of the Hon'ble Apex Court rendered in the case of The Totgars Co-operative Sale Society Ltd. (supra) and of Hon'ble Karnataka high Court rendered in the case of Tumukur Merchants Souharda Co-operative Ltd. (supra)."

5. Similarly, on the issue of definition of the Member where Nominal Members are also eligible for benefits. The Member defined under the co-operative society Act bye-laws includes Nominal Member. We found Ahmadabad Bench of ITAT in ITA No.1328/Ahmd/2018 for Asst. Year 2015-16 in the case of Trapaj Vibhageeya Khet Udyog Mal Rupantar Food Processing Sahakari Mandali Ltd. Vs. DCIT (supra) at para 7 has held as under :

“ 7. We have heard Id.DR and gone through the record. We have also gone through case laws cited both the sides before Id.CIT(A). We find that fundamental facts which are not disputed by the Revenue authorities are that the assessee is a primary agricultural credit society registered under the Gujarat Cooperative Societies Act, 1961. It is engaged in providing credit facilities to the farmers in the region of Bhavnagar district. As per the AO, members of the assessee-society consisted of two types viz. regular member and nominal members. It is the case of the Revenue that assessee is doing more business with nominal members than the regular member in order to earn more profit, which is against the law, and therefore, there is a break-down of principle of mutuality resulting disentitlement of exemption under section 80P. The Id.AO relied upon the judgment of Hon’ble Supreme Court in the case of Citizens Cooperative Society Ltd. (supra) to support his view. While the case of the assessee is that being a primary agriculture credit society, it is entitled for exemption under sub-section (4) of section 80P. Judgment of Hon’ble Apex Court relied upon by the Revenue is distinguishable on facts. In that case assessee was a cooperative society registered under Multi State Cooperative Societies Act, 2002, while in the present case, assessee is a primary agriculture credit society registered under Gujarat State Cooperative Societies Act. The Hon’ble Supreme Court disentitled the assessee from claiming exemption under section 80P due to violation of provisions of MACSA, under which it was formed, and most of the business of the assessee was with carved out category of persons without approval of Registrar of the Societies. Weighing point of view of both sides, we find that balance tilt in favour of the assessee. We find that by virtue of sub-section (4) of section 80P, the assessee is entitled for deduction under section 80P(2). Further, Income Tax Act does not define “member”, nor has provided distinction between ‘regular member’ and ‘nominal member’ and therefore, its meaning and objects has to be understood in the context of definition given in the State Act. The Revenue authorities are trying to extrapolate the meaning of expression “Member” contrary to the spirit of the Act. It is evident from the definition of “member” provided in section 2(13) of the Gujarat Cooperative Societies Act that “Member” includes nominal, associate or sympathizer member. Therefore, in the present case, the nominal members are members as provided in the Act and that deposits received and loan advanced to the nominal cannot be treated as from non-members or from public and in the nature of banking business. That being so, then, an assessee engaged in primary agriculture activities and providing credit facilities and agriculture facilities to the farmer-members of a particular region, claim of deduction under section 80P(2) cannot be denied. It is not denied by the Revenue that the activities of the assessee society are of primary agriculture activities. Competent authority has also recognized the assessee as primary agriculture credit society. In the earlier assessment year also, Revenue has accepted this fact and allowed the claim of the assessee. Judgment of Hon’ble Supreme Court in the case of Citizens Co-operative Society Ltd. (supra) is distinguishable on facts. In that case, status of the assessee is that of co-operative bank, whereas assessee in the present case is a primary agriculture credit society and applicability of section 80P(2)(4) of the Act. Considering all these facts, we are not convinced with the reasoning and finding given by the Revenue authority in denying claim of the assessee under section 80P(2). We allow the claim of the assessee and direct the Id.AO to re-compute income of the assessee by allowing claim under section 80P(2)(4) of the Act.”

Also in Tax Case Appeal No.882 and 891 of 2018 of Hon'ble Madras High Court in the case of The Prin. Commissioner of Income Tax Vs. S-1308 Ammapet Primary Agricultural Co-operative Bank Ltd. held in paras 11 to 18 as under :

11. We have elaborately heard the learned Senior Standing Counsel for the Revenue.

12. Admittedly, the assessee society is registered under the provisions of the TNCS Act. It defines the word 'members' under Section 2(16) to mean a person joining in the application for the registration of society and a person admitted to the membership after registration in accordance with the provisions of the Act, the Rules framed thereunder and the By-laws and includes an associate member. The expression 'associate member' is defined under Section 2(6) of the TNCS Act to mean a member, who possesses only such privileges and rights of a member and who is subject only to such liabilities of a member as may be specified in this Act, the Rules and the By-law.

<http://www.judis.nic.in>

13. Thus, the definition of the word 'members' includes an associate member and therefore, the Assessing Officer fell into an error in drawing a distinction between A Class members and B Class members. For the purpose of being entitled to a relief under Section 80P of the Act, all that is required is that the cooperative society should answer the description of a society engaged in carrying on the business of providing credit facilities to its member. Once the description is answered, then automatically, the benefit of Section 80P of the Act would stand attracted subject to the provisions contained in Sub-Section (2) of Section 80P of the Act.

14. Further, it is to be pointed out that in terms of Sub-Section (4) of Section 80P of the Act, which was inserted vide the Finance Act, 2006 with effect from 01.4.2007 i.e from the assessment year 2007-08, the 'primary cooperative agricultural and rural development bank' means 'a society having its area of operation confined to a taluk, the principal object of which is to provide for long term credit for agricultural and rural development activities'. What was excluded was the 'cooperative banks' and admittedly, the assessee society is a primary agricultural cooperative credit society and therefore, would be entitled to the benefit of Section 80P of the Act.

15. Further, for the assessment year 2014-15, the decision in the case <http://www.judis.nic.in> of Citizen Cooperative Society Limited was relied upon by the Revenue before the Tribunal, which, in paragraph 6.1 of its order dated 28.2.2018 for the assessment year 2014-15, extracted the operative portion of that judgment. In that case, the Hon'ble Supreme Court found that the society carried on certain activities, which were contrary to the provisions of the Andhra Pradesh Mutually Aided Cooperative Societies Act, 1995 and that they accepted deposits from third parties, who were not members in the real sense and were using those deposits to advance gold loans. Therefore, the Hon'ble Supreme Court pointed out that such an activity of the said society was that of a finance business and could not be termed as a cooperative society and that the loans, which were disbursed, were without the approval from the Registrar of Mutually Aided Cooperative Societies, Ranga Reddy District. The Hon'ble Supreme Court found that the said society was not entitled to deduction under Section 80P of the Act.

16. It is noteworthy to point out that the Hon'ble Supreme Court in the decision in the case of Citizen Cooperative Society Limited also observed that in the light of insertion of Sub-Section (4) to Section 80P of the Act by the Finance Act, 2006, such deduction should not be admissible to a cooperative bank and that if it is a primary agricultural credit society or a primary cooperative agriculture and rural development bank, the deduction would still be provided. <http://www.judis.nic.in>

17. In the preceding paragraphs, we have pointed out the definitions of the expressions 'members' and 'associate member' under the TNCS Act and held that an 'associate member' is also a 'member' in terms of Section 2(16) of the TNCS Act. Furthermore, the Assessing Officer himself found that the associate members are also admitted as members of the society. In such circumstances, the Assessing Officer fell into an error in not granting any relief to the assessee society, which was rightly granted by the CIT (A) as confirmed by the Tribunal. In addition to that, the Assessing Officer has not pointed out that loans have been disbursed to all and sundry in terms of the provisions of the TNCS Act and in terms of Clause (b) to Sub-Section (4) of Section 80P of the Act, the society has an area of operation, operates within the taluk and will provide long term credit for agricultural and rural development activities as well. The CIT (A) rightly granted the relief to the assessee as confirmed by the Tribunal. We do not find any good ground to entertain these appeals.

18. Accordingly, the above tax case appeals are dismissed. The substantial questions of law framed are answered against the Revenue.

We found the facts of the present case are similar to the decision rendered by the co-ordinate Bench and the jurisdictional High Court in respect of “Members” definition and “chargeability of interest income under ‘income from other sources’ ”. We follow the judicial precedence and restore the entire disputed issue to the file of Assessing Officer to adjudicate afresh in the light of the decision of chargeability of interest income under the head ‘income from other sources’ and the observations of Hon'ble Supreme Court in the case of Totgar’s Co-operative Sales Society Ltd. Vs. ITO 322 ITR 283 (SC) and Hon'ble Karnataka High Court decision in the case of Tumkur Merchants Souharda Credit Co-operative Ltd. 230 Taxman 309 (Kar) as discussed in above paras. Whereas in respect of the claim of Nominal Members included in the definition of Member we find support on our view rely on the decision of Trapaj Vibhageeya Khet Udyog Mal Rupantar Food Processing Sahakari Mandali Ltd. Vs. DCIT (supra) and Prin. CIT Vs. S-1308 Ammapet Primary Agricultural Co-operative Bank Ltd. (supra) which is covered in favour of the assessee. Accordingly, we are of the substantive opinion that the nominal members are also eligible for the Benefits of credit society. Accordingly we restore entire disputed issue to the file of Assessing Officer to grant the benefit to the nominal members and the assessee should be provided adequate opportunity of hearing and co-operate in submitting the information for early disposal of the case and allow the grounds of appeal of the assessee for statistical purposes.”

We found the facts of the present case are similar to the decision of the co-ordinate bench of the Tribunal. Accordingly, we follow the judicial precedence and restore the entire disputed issues to the file of Assessing Officer to examine and verify the eligibility of nominal members under Karnataka Co-operative Societies Act, 1959. Further the assessee should be provided adequate opportunity of hearing and shall co-operate in submitting the information and allow the grounds of appeal of the assessee for statistical purposes.

6. In the result, the assessee's appeal is allowed for statistical purposes.

Pronounced in the open court on the date mentioned on the caption page.

Sd/-

(A.K. GARODIA)
ACCOUNTANT MEMBER

Sd/-

(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Dated: 18.03.2020.

*Reddy GP

Copy to :

i)The Appellant	ii)The Respondent	iii)CIT (Appeals)
iv) Pr. CIT	v)DR, ITAT, Bangalore	vi)Guard File

By order

Assistant Registrar
Income-tax Appellate Tribunal
Bangalore