

**IN THE INCOME TAX APPELLATE TRIBUNAL  
BANGALORE “SMC-C” BENCH, BANGALORE**

**Before Shri George George K, Judicial Member**

ITA No.410/Bang/2021 : Asst.Year 2012-2013

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| Shri Shankarling Co-operative<br>Credit Souharda Sahakari<br>Niyamit, Subhas Road,<br>Sankeshwar<br>Dist : Belagavi – 591 313.<br><b>PAN : AADAS3568D.</b> | v. | The Income Tax Officer<br>Ward 1(3)<br>Belagavi. |
| (Appellant)  |    | (Respondent)                                     |

Appellant by : Miss.Preethi S.Patel, Advocate  
Respondent by : Sri.Ganesh R.Ghale, Standing Counsel

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| <b>Date of Hearing : 11.10.2021</b> | <b>Date of<br/>Pronouncement : 12.10.2021</b> |
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**ORDER**

This appeal at the instance of the assessee is directed against CIT(A)'s order dated 02.12.2019. The relevant assessment year is 2012-2013.

2. There is a delay of 207 days in filing this appeal. The assessee has filed a petition for condonation of delay. I have perused the reasons stated for belated filing of the appeal. No latches can be attributed to the assessee and there is sufficient cause in filing this appeal belatedly. Accordingly, I condone the delay in filing this appeal and proceeded to dispose of the case on merits.

3. The grounds raised read as follows:-

- “1. The order of the Hon’ble Commissioner of Income Tax (Appeals) is opposed to law and facts of the case.
2. The Hon’ble Commissioner of Income Tax (Appeals) ought to have appreciated that the appellant is a Co-operative Society registered under the Karnataka Souharda Sahakari Act, 1997 and the appellant is eligible for deduction u/s 80P(2)(a)(i) of the Act.
3. The Hon’ble Commissioner of Income Tax (Appeals) ought to have granted the deduction u/s 80P(2)(a)(i) as claimed by the Appellant.
4. The Hon’ble Commissioner of Income Tax (Appeals) ought to have held t hat the interest earned / accrued on the deposits / investments is attributable to business.
5. The Hon’ble Commissioner of Income Tax (Appeals) ought to have held that the interest on investments / deposits is not to be taxed under the head income from other sources.
6. The directions issued to verify the details of the tax deducted at source on the payments of above Rs.10,000/- is in violation of the principles of natural justice.
7. The Hon’ble Commissioner of Income Tax (Appeals) exceeded his jurisdiction in issuing directions to the assessing officer to verify the TDS on the payments made and the same is opposed to the provisions of the Income tax Act.
8. The appellant prays for leave toad to delete from or amend the grounds of appeal.”

4. The brief facts of the case are as follows:

The assessee is a co-operative society providing credit facilities to its members. For the assessment year 2012-2013, the return of income was filed on 28.09.2012 declaring `NIL' income after claiming deduction u/s 80P(2) of the I.T.Act amounting to Rs.36,87,999. The assessment u/s 143(3) of the I.T.Act was completed vide order dated 11.11.2014, wherein

the entire claim of deduction u/s 80P of the I.T.Act was denied for the reason that the assessee is a co-operative bank and not a co-operative society. The A.O. also denied the alternative claim of deduction u/s 80P(2)(d) of the I.T.Act stating that since section 80P(4) of the I.T.Act is invoked, the assessee is not entitled to any deduction u/s 80P of the I.T.Act.

5. Aggrieved, the assessee preferred an appeal to the first appellate authority. The CIT(A) partly allowed the appeal of the assessee. As regards the claim of deduction u/s 80P(2)(a)(i) of the I.T.Act is concerned, the CIT(A) directed the A.O. to verify and allow the deduction u/s 80P(2)(a)(i) of the I.T.Act in respect of income earned by providing credit facilities to its regular members (regular members means members having equal voting and dividend rights). In giving the above direction, the CIT(A) followed the judgment of the Hon'ble Apex Court in the case of *The Citizen Co-operative Society Ltd. v. ACIT reported in 397 ITR 1 (SC)*. As regards the interest income earned from saving banks, fixed deposits and investments, the CIT(A) held that the same is not entitled for deduction u/s 80P(2)(d) of the I.T.Act since the said income was not received from co-operative societies but from co-operative banks. Further, the CIT(A) held that interest income not attributable to investment of idle funds would be taxed u/s 56 of the I.T.Act (income from other sources) and directed that the expenditure for earning such interest income to be allowed as deduction. The CIT(A) further directed the A.O. to

verify whether the assessee has deducted TDS on interest payment of Rs.10,000 per annum to the non-members.

6. Aggrieved by the order of the CIT(A), the assessee has filed this appeal before the Tribunal. The learned Counsel for the assessee reiterated the submissions made before the Income Tax Authorities. The learned AR, apart from reiterating the submission, relied on the judgment of the Hon'ble Apex Court in the case of *Mavilayi Service Co-operative Bank Ltd. & Ors. v. CIT & Anr. reported in (2021) 431 ITR 1 (SC)*.

7. The learned Standing Counsel strongly supported the findings of the CIT(A).

8. I have heard rival submissions and perused the material on record. The Hon'ble Apex Court in the case of *Mavilayi Service Co-operative Bank Ltd. & Ors. v. CIT & Anr. (supra)* had held that the co-operative societies providing credit facilities to its members is entitled to deduction u/s 80P(2)(a)(i) of the I.T.Act. The Hon'ble Apex Court after considering the judicial pronouncements on the subject, had stated the term "member" has not been defined under the Income-tax Act. It was, therefore, stated by the Hon'ble Apex Court that the term "member" in the respective State Co-operative Societies Acts under which the societies are registered have to be taken into consideration. The Hon'ble Apex Court held that if nominal / associate member is not prohibited under the said Act, for being taken as a member, the income earned on account of providing credit facilities to such member also qualify for deduction u/s 80P(2)(a)(i) of the I.T.Act. It was further held by

the Hon'ble Apex Court that section 80P(4) of the I.T.Act is to be read as a proviso. It was stated by the Hon'ble Apex Court that section 80P(4) of the I.T.Act now specifically excludes only co-operative banks which are co-operative societies engaged in the business of banking i.e. engaged in lending money to members of the public, which have a licence in this behalf from the RBI. The Hon'ble Apex Court had enunciated various principles in regard to deduction u/s 80P of the I.T.Act. On identical factual situation, the Bangalore Bench of the Tribunal in the case of M/s.Ravindra Multipurpose Co-operative Society Ltd. v. ITO in ITA No.1262/Bang/2019 (order dated 31.08.2021) had remanded the issue to the files of the A.O. for *de novo* consideration. The Tribunal directed the A.O. to follow the dictum laid down by the Hon'ble Apex Court in the case of *Mavilayi Service Co-operative Bank Ltd. & Ors. v. CIT & Anr. (supra)*. The relevant finding of the Co-ordinate Bench of the Tribunal in the case of M/s.Ravindra Multipurpose Co-operative Society Ltd. v. ITO (*supra*), reads as follows:-

“6. Grounds 2-4 & additional Ground No.1:

*In respect of associate / nominal members, Hon'ble Supreme Court in the case of Mavilay Service Co-operative Bank Ltd. v. CIT (2021) 123 taxmann.com 161 (SC) has held that the expression “Members” is not defined in the Income-tax Act. Hence, it is necessary to construe the expression “Members” in section 80P(2)(a)(i) of the Act in the light of definition of that expression as contained in the concerned co-operative societies Act. In view of this, the facts are to be examined in the light of principles laid down by the Hon'ble Supreme Court in Mavilayi Service Cooperative Bank Ltd. (surpa). Accordingly, we remit this issue of deduction u/s 80P(2)(a)(i) of the Act to the files of Ld.AO to examine the same de novo in the light of the above judgment. Needless to say that proper opportunity of being heard is to be granted to assess in accordance with law.”*

8.1 In view of the order of the ITAT, which is identical to the facts of the case, I restore the issue of claim of deduction u/s 80P of the I.T.Act to the files of the A.O. for *de novo* consideration.

8.2 As regards the claim of deduction u/s 80P(2)(d) of the I.T.Act, I direct the A.O. to verify whether interest / dividend is received by the assessee out of investments made with Co-operative Societies. If the assessee earns interest / dividend income out of investments with co-operative society, the same is entitled to deduction u/s 80P(2)(d) of the I.T.Act. With these observations, I restore the issue to the files of the A.O.

8.3 Further, the CIT(A) has also directed the A.O. to verify whether the assessee has deducted TDS on interest payment to non-members (interest payment exceeding Rs.10,000 per annum). The direction of the CIT(A) is in accordance with law, since the assessee ought to have deducted TDS on interest payment to non-members when the payment exceeds Rs.10,000 per annum. Therefore, the direction of the CIT(A) is upheld.

9. In the result, the appeal filed by the assessee is partly allowed for statistical purposes.

Order pronounced on this 12<sup>th</sup> day of October, 2021.

**Sd/-**  
**(George George K)**  
**JUDICIAL MEMBER**

Bangalore; Dated : 12<sup>th</sup> October, 2021.  
Devadas G\*

Copy to :

1. The Appellant.
2. The Respondent.
3. The CIT(A)- Hubballi.
4. The Pr.CIT, Belgaum.
5. The DR, ITAT, Bengaluru.
6. Guard File.

Asst.Registrar/ITAT, Bangalore