

**IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH : BANGALORE**

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER**

ITA No. 901/Bang/2023
Assessment Year : 2016-17

M/s. Charvaka Seva Sahakari Bank Ltd., Charvaka P A C S Ltd., Post Charvaka, Puttur Taluk, D.K. Puttur – 574 210. PAN: AAAJC0136B	Vs.	The Income Tax Officer, Ward – 1, Puttur.
APPELLANT		RESPONDENT

Assessee by	:	Smt. Sheetal Borkar, Advocate
Revenue by	:	Shri Parithivel, JCIT DR

Date of Hearing	:	01-01-2024
Date of Pronouncement	:	02-01-2024

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER

Present appeal arises out of the order dated 13.09.2023 passed by NFAC, Delhi for A.Y. 2016-17 on following grounds of appeal:

“1. The learned CIT(A), Bangalore erred in passing the Order in the manner he did.

2. The learned CIT(A), erred in disallowing the claim of deduction u/s 80P(2)(a)(i) without appreciating the submission of the Appellant.

3. The learned CIT(A) failed to appreciate the ratio laid down by the Hon'ble Supreme Court in the case of Mavilayi Service Co-operative Bank Ltd. Vs Commissioner of Income Tax, Calcutta.

4. The learned CIT(A) failed to appreciate that the assessee is not involved in the business of banking and it is only a Co-operative society legislated under the Co-operative Society Act and involved in providing credit facilities only to members as provided in the act and Hence ought to have allowed the same.

5. The learned CIT(A), Bangalore has erred in relying on various case laws, which are not at all applicable to the Appellant's case.

6. The Appellant craves leave to add, amend or alter any of the foregoing grounds.

7. For these and any other grounds that may be urged before the Hon'ble ITAT, it is prayed that the Hon'ble ITAT may allow the appeal with cost."

2. At the outset, the Ld.AR submitted that there is delay of 2 days in filing of the present appeal.

2.1 The assessee has filed condonation petition vide affidavit dated 29.11.2023 seeking the delay to be condoned.

2.2 The assessee in the affidavit submitted as under:

AFFIDAVIT

I, **ASHOK GOWDA P.**, aged about 45 years, Son of Shri SESAPPA GOWDA, residing at Pulithady house, Uppinangady, Puttur DK Karnataka., do hereby solemnly affirm and state as follows:

1. That the assessee is a Primary Agriculture Co-operative Society, registered under the KARNATAKA CO-OPERATIVE SOCIETY ACT, 1959 in the name of "CHARVAKA PRIMARY AGRICULTURAL CREDIT COOPERATIVE SOCIETY LTD." We are engaged in the business of providing credit facilities to members and for this purpose, we also accept deposits from Members. Our area of operation is confined to Charvaka, Kaniyoor, and Dolpadi Village of Puttur Taluk, Dakshina Kannada Karnataka.
2. For the assessment years 2016-17, an appeal is filed against the order of CIT(A) order dated 13th September 2023. This is to inform you that there is a mere delay of 2 days due to the unavailability of the assessee due to some personal emergency, the circumstances that led to a delay in filing Form No. 36 in connection with CHARVAKA SEVA SAHAKARI BANK LTD, the undersigned, am the assessee in this matter.
3. In the circumstances, the delay is on account of bona fide circumstances and not on account of negligence on my part and the relief sought is again genuine and there was no suppression of income for justification of the impugned addition. Hence I humbly pray for condonation of the delay of 2 days in filing the appeal in view of the peculiar circumstance and facts narrated above and in the interest of justice.

Place: **Bangalore**

Date: **29/11/2023**

Identified by me:

Advocate **Sheetal Barkar**

No. of corrections:

afed
DEPONENT

NOTARY
C. VENKATAPATHY
BANGALORE
BYATARAHANAPURA
REG. NO. 8305
GOVT OF INDIA

SWORN TO BEFORE ME
Sheetal **01/12/2023**
C. VENKATAPATHY
ADVOCATE & NOTARY
002, Crescent Heights Apartment
1st Cross, Snehanagar, Amruthahalli
Sahakara Nagar (Post)
Bengaluru - 560092

2.3 The Ld.AR submitted that in view of the above, the assessee could not file the appeal before this *Tribunal* well in time and by the time the appeal papers were prepared for filing, there arose delay of about 2 days in filing these present appeal before

this *Tribunal*. The reason for the delay in filing the present appeal was due to reason beyond the control of the assessee.

He thus prayed for the delay to be condoned.

2.4 The Ld.DR though objected however could not controvert the reasoning given by the Ld.AR for the delay that was caused in filing the present appeal.

We have perused the submissions advanced by both sides in the light of records placed before us.

2.5 It is noted that there is no malafide intention on behalf of assessee in not filing the present appeal within time. It is noted that there is no malafide intention on behalf of assessee in not filing the present appeal within time. In our opinion there is a sufficient cause for condoning the delay as observed by *Hon'ble Supreme Court* in case of *Collector Land Acquisition Vs. Mst. Katiji & Ors.*, reported in (1987) 167 ITR 471 in support of his contentions, wherein, *Hon'ble Court* observed as under:-

"The Legislature has conferred the power to condone delay by enacting section 51 of the Limitation Act of 1963 in order to enable the courts to do substantial justice to parties by disposing of matters on de merits ". The expression "sufficient cause" employed by the Legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice that being the life-purpose of the existence of the institution of courts. It is common knowledge that this court has been making a justifiably liberal approach in matters instituted in this court. But the message does not appear to have percolated down to all the other courts in the hierarchy.

And such a liberal approach is adopted on principle as it is realized that :

1. Ordinarily, a litigant does not stand to benefit by lodging an appeal late.

2. Refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this, when delay is condoned, the highest that can happen is that a cause would be decided on merits after hearing the parties.

.....1.Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908, may be admitted after the prescribed period if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period.”

2.6 Considering the above observation by *Hon'ble Supreme Court*, we find it fit to condone the delay caused in filing the present appeal.

Accordingly, the delay of two days in filing the present appeal stands condoned.

3. Brief facts of the case are as under:

3.1 The assessee is a Primary Agriculture Co-operative society, engaged in the business of acceptance of deposits from members, lending loans, providing banking facility in rural village. For the A.Y.2016-17, assessee society has filed its Return of Income on 23.09.2016 declaring Total Income of Rs.71,330/- after claiming deduction of Rs.52,39,262/- u/s. 80P of the Income Tax Act. The Return of Income was processed u/s. 143(1) of the Act on 06.10.2016.

3.2 During the year under scrutiny, the Ld.AO observed that the assessee had earned Rs. 22,87,757/- as interest and

Rs.3,33,116/- as dividend on investment in South Canara District Co-op. Bank. Assessee society has claimed deduction u/s. 80P of the Income Tax Act on the interest and dividend earned through investments in South Canara District Co-op. Bank of Rs. 26,20,873/-(Rs. 22,87,757/- + Rs. 3,33,116/-). The assessee had claimed that, as the society is engaged in the business of providing credit facilities to its members, the whole of the amount of profits and gains of business attributable to such activities is deductible under section 80P and accordingly claimed exemption u/s. 80P(2)(a)(i).

3.3 The Ld.AO further observed that in the computation of income filed, the assessee had declared Total Income of Rs.71,330/-after claiming deduction of Rs.52,39,262/- u/s 80P(2)(a) of the Act. The said deduction was claimed by the assessee in respect of the amount of profits attributable to the activity of providing credit facilities to its members.

3.4 The Ld.AO disallowed the entire claim on two grounds:-

- that the assessee had not earned investments from its members of the society but also from general public
- and in respect of the interest income of co-operative society, the disallowance was made by holding that the claim of Rs.26,20,873/- is not found to be eligible for deduction u/s. 80P(2)(d) of the act and therefore treated the same as income from other sources.

3.5 Aggrieved by the order of the Ld.AO, the assessee filed appeal before the Ld.CIT(A).

3.6 The Ld.CIT(A) upheld the order of the Ld.AO by holding that the issue was covered in favour of revenue by the decision of *Hon'ble Supreme Court* in case of *Citizens Co-operative Society Ltd. v. ACIT* reported in *397 ITR 1*.

3.7 Aggrieved by the order of the Ld.CIT(A), the assessee is in appeal before this *Tribunal*.

4. It is submitted by the Ld.AR that the assessee accepted the disallowance of Rs.26,20,873/- to be income under the head income from other sources, however in respect of the balance amount that was disallowed u/s. 80P(2)(a), the assessee filed appeal before this *Tribunal*.

5. The Ld.AR submitted that the assessee was providing credit facilities to the nominal members as well as its regular members and a disallowance of Rs.26,18,389/- was made as assessee did not submit any documentary proof to support the claim that the credit facilities were provided by the assessee only to its members. The Ld.AR submitted that *Hon'ble Supreme Court* in case of *Mavilayi Service Co-operative Bank Ltd. v. CIT* reported in *431 ITR 1* has considered the eligibility of claim u/s. 80P(2)(a)(i) where nominal members are also considered to be part of co-operative society and are eligible for purpose of exemption u/s. 80P.

She thus prayed for the issue to be considered in accordance with the ratio laid down by *Hon'ble Supreme Court*.

On the contrary, the Ld.DR relied on the orders passed by authorities below.

We have perused the submissions advanced by both sides in the light of records placed before us.

6. We note that the disallowance of Rs.26,18,389/- has been made in the hands of the assessee as assessee was also having nominal members from whom deposits were taken and credit facilities were provided. In respect of associate/nominal members, *Hon'ble Supreme Court* in the case of *Mavilayi Service Cooperative Bank Ltd. v. CIT* reported in (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. (supra)*.

The ratio laid down by *Hon'ble Supreme Court* is as under:

"39. The above material would clearly indicate that the limited object of Section 80P(4) is to exclude co-operative banks that function at par with other commercial banks, i.e. which lend money to members of the public. Thus, if the Banking Regulation Act, 1949 is not to be seen, what is clear from Section 3 read with section 56 is that a primary co-operative bank cannot be a primary agricultural credit society, as such co-operative bank must be engaged in the business of banking as defined by section 5(b) of the Banking Regulation Act, 1949, which means the accepting,

for the purpose of lending or investment of deposits of money from the public. Likewise, under section 22(1)(b) of the Banking Regulation Act, 1949 as applicable to co-operative societies, no co-operative society shall carry on banking business in India, unless it is a cooperative bank and holds a license issued in that behalf by the RBI. As opposed to this, a primary agricultural credit society is a co-operative society, the primary object of which is to provide financial accommodation to its members for agricultural purposes or for purposes connected with agricultural activities.

40. As a matter of fact, some primary agricultural credit societies applied for a banking license to the RBI, as their byelaws also contain as one of the objects of the Society the carrying on of the business of banking,. This was turned down by the RBI in a letter dated 25.10.2013 as follows:

“Application for license

Please refer to your application dated April 10, 2013 requesting for a banking license. On a scrutiny of the application, we observe that you are registered as a Primary Agricultural Credit Society [PACS] .

In this connection, we have advised RCS vide letter dated UBD (T) No.401/10.00/16A/2013-14 dated October 18, 2013 that in terms of Section 3 of the Banking Regulation Act, 1949 [ARCS], PACS are not entitled for obtaining a banking license. Hence, your society does not come under the purview of the Reserve Bank of India, RCS will issue the necessary guidelines in this regard.”

7. After considering these, the *Hon'ble Supreme Court* has summed up the issue in paragraph nos.45 and 46 as under:

“45. To sum up, therefore, the ratio decidendi of Citizen Cooperative Society Limited (supra), must be given effect to Section 80P of the Income Tax Act, being a benevolent provision enacted by the Parliament to encourage and promote the credit of the cooperative sector in general must be read liberally and reasonably, and if there is ambiguity, in favour of the Assessee. A deduction that is given without any reference to any restriction or limitation cannot be restricted or limited by implication, as is sought to be done by the Revenue in the present case by adding the word "agriculture" into Section 80P(2)(a)(i) when it is not there. Further, Section 80P(4) is to be read as a proviso, which proviso now specifically excludes co-operative banks which are co-operative societies engaged in

banking business, i.e. engaged in lending money to members of the public, which have a license in this behalf from the RBI. Judged by this touchstone, it is clear that the impugned Full Bench Judgement is wholly incorrect in its reading of Citizen Co-operative Society Limited (supra). Clearly, therefore, once Section 80P(4) is out of harm's way, all the Assesseees in the present case are entitled to the benefit of the deduction contained in section 80P(2)(a)(i), notwithstanding that they may also be giving loans to their members which are not related to agriculture. Also, in case it is found that there are instances of loans being given to non-members, profits attributable to such loans obviously cannot be deducted.

46. It must also be mentioned here that unlike the Andhra Act that Citizen Co-operative Society Limited (supra) considered, 'nominal members' are 'members' as defined under the Kerala Act. This Court in U.P. Co-operative Cane Unions' Federation Limited vs. Commissioner of Income Tax [1997] 11 SCC 287 referred to section 80P of the Income Tax Act and then held:

“8. The expression "members" is not defined in the Act. Since a co-operative society has to be established under the provisions of the law made by the State Legislature in that regard, the expression "members" in section 80P(2)(a)(i) must, therefore, be construed in the context of the provisions of the law enacted by the State Legislature under which the Co-operative Society claiming exemption has been formed. It is therefore, necessary to construe the expression "members" in Section 80-P(2)(a)(i) of the Act in the light of the definition of that expression as contained in Section 2(n) of the Cooperative Societies Act. The said provision reads as under:

“2. (n). 'Member' means a person who joined in the application for registration of a Society or a person admitted to membership after such registration in accordance with the provisions of this Act, the rules and the byelaws for the time being force but a reference to 'members' anywhere in this Act in connection with the possession or exercise of any right or power or the existence or discharge of any liability or duty shall not include reference to any class of members who by reason of the provisions of this Act do not possess such right or power have no such liability or duty; “

Considering the definition of 'member' under the Kerala Act, loans given to such nominal members would qualify for the purpose of deduction under section 80P(2)(a)(i).”

The Ld.AO is directed to grant relief to the assessee in accordance with the above observations of *Hon'ble Supreme Court*.

Accordingly, the grounds raised by the assessee stands allowed.

In the result, the appeal filed by the assessee stands allowed.

Order pronounced in the open court on 02nd January, 2024.

Sd/-
(CHANDRA POOJARI)
Accountant Member

Sd/-
(BEENA PILLAI)
Judicial Member

Bangalore,
Dated, the 02nd January, 2024.
/MS /

Copy to:

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|---------------|------------------------|
| 1. Appellant | 2. Respondent |
| 3. CIT | 4. DR, ITAT, Bangalore |
| 5. Guard file | 6. CIT(A) |

By order

Assistant Registrar,
ITAT, Bangalore