IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" "C''BENCH: BANGALORE

BEFORE SHRI B. R. BASKARAN, ACCOUNTANT MEMBER

ITA No.646/Bang/2021
Assessment Year: 2017-18

Sri BhageerathaPattinaSahakara Sangha Niyamitha TakukUppara Sanga Building Gandhi Circle Hosadurga Karnataka 577 527 **PAN NO :AAKAS5926Q**	**Vs.**	ITO Ward-3 Davanagere
APPELLANT		**RESPONDENT**

Appellant by	:	Shri Sandeep Chalapathy, A.R.
Respondent by	:	Shri Ganesh R. Ghale, Standing counsel for dept.

Date of Hearing	:	17.02.2022
Date of Pronouncement	:	18.02.2022

O R D E R

PER B.R. BASKARAN, ACCOUNTANT MEMBER:

The assessee has filed this appeal challenging the order dated 20.9.2021 passed by Ld. CIT(A), National Faceless Appeal Centre, Delhi and it relates to the assessment year 2017-18.

2. The grounds of appeal urged by the assessee give rise to the following 3 issues:-

a) Disallowance of claim made u/s 80P(2)(a)(i) of the Income-tax Act,1961 ['the Act' for short].
b) Disallowance of claim made u/s 80P(2)(d) of the Act.

c) Addition made u/s 68 of the Act.

3. The facts relating to the case are stated in brief. The assessee is a Souharda Credit Co-operative Society engaged in providing credit facilities to its members. It filed its return of income for the year under consideration admitting Nil income after claiming deduction u/s 80P of the Act. The A.O. however denied deduction u/s 80P of the Act and also made addition u/s 68 of the Act. Accordingly the AO determined the total income at Rs.30,66,060/-. The assessee challenged the assessment order by filing appeal before Ld. CIT(A), but could not succeed. Hence, the assessee has filed this appeal before the Tribunal.

4. The first issue relates to disallowance of claim made u/s 80P(2)(a)(i) of the Act. The A.O. noticed that the assessee has declared business income of Rs.6,18,558/-, which included interest income of Rs.4,61,848/-. The A.O. took the view that the above said interest income is chargeable under the head "income from other sources" u/s 56 of the Act. Accordingly, he held that the amount of Rs.1,56,710/- only falls under the head "Income from business". The assessee had claimed deduction u/s 80P(2)(a)(i) of the Act in respect of above said entire income. The A.O. took the view that the applicability of deduction u/s 80P(2)(a)(i) of the Act can be considered only in respect of business income of Rs.1,56,710/-. He noticed that the assessee has admitted nominal members also as its members and they are not eligible to vote in elections. Accordingly, he took the view that the Principle of mutuality is hit in the case of the assessee. Accordingly, following the decision rendered by Hon'ble Supreme Court in the case of Citizens Co-operative Society Ltd. Vs. ACIT 397 ITR 1, the A.O. held that the assessee is not eligible for deduction u/s 80P(2)(a)(i) of the

Act. Accordingly, he assessed the business income of Rs.1,56,701/- without granting deduction u/s 80P(2)(a)(i) of the Act. The Ld. CIT(A) also confirmed the same.

5. I heard the parties on this issue and perused the record. The Ld. A.R. submitted that the law on deduction u/s 80P(2)(a)(i) of the Act, including the interpretation of the term "Members" has since been explained by the Hon'ble Supreme Court in the case of "The Mavilayi Service Co-operative Bank Ltd. & Others (431 ITR 1). Accordingly, he submitted that the claim of deduction u/s 80P(2)(a)(i) of the Act requires examination afresh in the light of decision rendered by Hon'ble Supreme Court in the case of The Mavilayi Service Co-operative Bank Ltd. (supra).

6. I heard Ld. D.R. on this issue and perused the record. I agree with the submissions made by Ld. A.R, since the assessment order has been passed prior to the decision rendered by Hon'ble Supreme Court in the case of Mavilayi Service Co-operative Bank Ltd (supra), wherein many legal principles have been settled by Hon'ble Apex Court. Hence, the issue of deduction u/s 80P(2)(a)(i) requires to be examined afresh by following the above said decision rendered by Hon'ble Supreme Court. Accordingly, I set aside the order passed by ld. CIT(A) on this issue and restore the same to the file of the A.O. with the direction to examine the claim of deduction u/s 80P(2)(a)(i) of the Act following the decision rendered by Hon'ble Supreme Court in the case of The Mavilayi Service Co-operative Bank Ltd. (supra).

7. The next issue relates to disallowance of claim of deduction u/s 80P(2)(d) of the Act. I noticed earlier that the A.O. has assessed the interest income earned by the assessee from deposits kept with

bank amounting to Rs.4,61,848/- under the head "Income from other sources". He also did not allow deduction u/s 80P(2)(d) of the Act. The Ld. CIT(A) also confirmed the order of the A.O. on this issue.

8. The Ld. A.R. submitted that the coordinate bench in the case of M/s. Vasavamba Co-operative Society Ltd. Vs. Principal CIT (ITA No.453/Bang/2020 dated 13.8.2021) has considered the contentions of the assessee that interest earned from deposits made with Co-operative banks in compliance with the Karnataka Co-operative Societies rules constituted its income under the head "income from business" and accordingly claimed that the same is eligible for deduction u/s 80P(2)(a)(i) of the Act. The Tribunal took the view that this claim of the assessee requires examination at the end of AO, since it was not raised before lower authorities. The Ld. A.R. submitted that a part of the interest income earned by the assessee is from deposits kept with banks is related to the deposits made by it under statutory compulsion. Accordingly, he submitted that interest income earned from those deposits is exempt u/s 80P(2)(a)(i) of the Act.

9. I heard Ld. D.R. on this issue. I notice that the assessee is raising this issue for the first time before the Tribunal. In the case of M/s Vasavamba Co-operative Society Ltd (supra), the division bench of Tribunal has restored this issue to the file of the AO. Accordingly, following the above said decision of the division bench, I restore this issue to the file of the A.O. for examining the claim of the assessee in accordance with law.

10. The Ld. A.R. also raised a contention that if interest income is assessed under the head "income from other sources", then the

corresponding expenditure incurred in earning interest income should be allowed as deduction. In support of this proposition, the Ld. A.R. placed his reliance on the decision rendered by Hon'ble jurisdictional Karnataka High Court in the case of Totagars Co-operative Sales Society Ltd. Vs. ITO (2015) 58 Taxmann.com 35.

11. I heard Ld. D.R. on this issue. Since this contention is also a new contention, I restore this issue also to the file of the A.O. for examining it in the light of decision rendered by Hon'ble jurisdictional High Court in the above cited case.

12. The last issue relates to addition made u/s 68 of the Act. The A.O. noticed that the assessee society has deposited "Specified bank notes" (demonetized notes) in the account maintained by it with CDCC Bank, Hosadurga as detailed below:-

Date of deposit	*No. of notes of Rs.1000*	*No. of old notes of Rs.500*	*SBN deposit*
10.11.16	*700*	*600*	*10,00,000*
11.11.16	*463*	*1150*	*10,38,000*
12.11.16	*38*	*137*	*1,06,500*
13.11.16	*138*	*330*	*3,03,000*
Total	*1339*	*2217*	*24,47,500*

When enquired about the sources for making the above deposits, the assessee submitted that they represent cash received by it from its members towards repayment of loan, Pigmy collection, etc. The A.O. noticed that the Government has announced demonetization on 8.11.2016, whereby then existing Rs.1000/- & Rs.500/- currency notes were declared not to be legal tender. The A.O. took the view that the assessee has collected the above said amount after 8.11.2016, which is not permitted. Accordingly, the A.O. took the view that the above said amount represents unexplained money of

the assessee and assessed the same u/s 68 of the Act. The A.O. also charged income tax on the above said deposit as per provisions of section 115BBE of the Act. The Ld. CIT(A) also confirmed the same.

13. The Ld. A.R. submitted that, under the provisions of section 68 of the Act, the assessee's liability is to explain the nature and sources of the money. He submitted that the assessee has explained the nature as well as sources i.e. the above said deposit was made out of its collections in the ordinary course of carrying on business, i.e., it represented money deposited by its members towards repayment of loans, pigmy deposits, etc. Accordingly, he submitted that the assessee has discharged its responsibility u/s 68 of the Act. Further, the collections and deposits have been duly recorded in the books of account and hence, there is no reason to treat the same as unexplained money of assessee. The Ld. A.R. further submitted that merely because demonetized notes ceased to be legal tender, it does not mean that the amount collected by the assessee from its members would become unexplained money of the assessee. The Ld. A.R. also submitted that the Reserve Bank of India issued a series of notifications with regard to the deposit of demonetized notes from 8.11.2016 onwards. He submitted that the RBI, vide notification dated 14.11.2016, clarified that District Central Co-operative Banks can allow their existing customers to withdraw money from their accounts up to Rs.24,000/- per week. It further clarified that no exchange facility against demonetized notes or deposit of such notes should be entertained by them. In view of the above said notification, the assessee has stopped collecting the demonetized notes from 14.11.2016 onwards. Accordingly, the Ld. A.R. submitted that the above said deposits were collected by the assessee prior to 14.11.2016 and it cannot be

considered as violation of any of the Provisions of the Act. Accordingly, he submitted that the A.O. was not justified in invoking the provisions of section 68 of the Act.

14. I heard Ld. D.R. on this issue and perused the record. I notice that the A.O. has not doubted the submissions of the assessee that the above said amount of Rs.24,47,500/- represents collection of money in the normal course of carrying on of business of the assessee, i.e., it represents money remitted by the members of the assessee society towards repayment of the loan taken by them and also towards pigmy deposits, etc. The Ld A.R submitted that the assessee has duly recorded in its books of account the transactions of collections of money as well as deposits made into bank account. Thus, I notice that the assessee has explained the nature and source of the above said amount of Rs.24,47,500/-, which was in-turn deposited by the assessee society in its bank account and further, all these transactions have been duly recorded in the books of account. Hence, the above said deposits cannot be considered as "unexplained money" in the hands of the assessee.

15. The case of the A.O is that the assessee has collected the demonetized notes after 8.11.2016 in violation of the notifications issued by RBI. Accordingly, he has taken the view that the above said amounts represents unexplained money of the assessee. I am unable to understand the rationale in the view taken by A.O. I noticed that the AO has invoked the provisions of sec.68 of the Act for making this addition. I also noticed that the assessee has also complied with the requirements of sec.68 of the Act. The AO has also not stated that the assessee has not discharged the responsibility placed on it u/s 68 of the Act. Peculiarly, the AO is taking the view that the assessee was not entitled to collect the

demonized notes and accordingly invoked sec.68 of the Act. I am unable to understand as to how the contraventions, if any, of the notification issued by RBI would attract the provisions of sec. 68 of the Income tax Act. In any case, I notice that the assessee has also explained as to why it has collected demonetized notes after the prescribed date of 8.11.2016. The assessee has explained that it has stopped collection after the receipt of notification dated 14.11.2016 issued by RBI, which has clearly clarified that the assessee society should not collect the demonetized notes. Accordingly, I am of the view that the deposit of demonetized notes collected by the assessee from its members would not be hit by the provisions of section 68 of the Act in the facts and circumstances of the case. Accordingly, I set aside the order passed by Ld. CIT(A) on this issue and direct the A.O. to delete this disallowance.

16. In the result, the appeal filed by the assessee is treated as allowed for statistical purposes.

Order pronounced in the open court on 18th Feb, 2022

Sd/-
(B.R. Baskaran)
Accountant Member

Bangalore,
Dated 18th Feb, 2022.
VG/SPS

Copy to:
1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar,
ITAT, Bangalore.