

IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH : BANGALORE

BEFORE SHRI N.V. VASUDEVAN, JUDICIAL MEMBER
AND
SHRI.JASON P. BOAZ, ACCOUNTANT MEMBER

ITA No.1465/Bang/2012
Assessment year :2009-10

M/s. Supraja Souharda Credit Co-operative Ltd., No.658/2A, 2 nd Floor, Sri Krishna Complex, Bassetypet, A.M. Lane, Chickpet Cross, Bangalore – 560 053. PAN : AACAS 6921M	Vs.	The Income Tax Officer, Ward 5(3), Bangalore.
APPELLANT		RESPONDENT

ITA No.1575/Bang/2012
Assessment year :2009-10

The Income Tax Officer, Ward 5(3), Bangalore.	Vs.	M/s. Supraja Souharda Credit Co-operative Ltd., Bangalore – 560 053. PAN : AACAS 6921M
APPELLANT		RESPONDENT

Assessee by	:	Shri C.R. Nulvi, CA
Revenue by	:	Shri P. Dhivahar, Jt. CIT(DR)

Date of hearing	:	22.4.2015
Date of Pronouncement	:	14.05.2015

ORDER

Per N.V. Vasudevan, Judicial Member

These are cross appeals by the assessee and the Revenue directed against the order dated 24.9.2012 of the CIT(Appeals)-II, Bangalore, relating to assessment year 2009-10.

2. The assessee is a co-operative society carrying on business of acceptance of deposits and lending loans to its members. The assessee is registered under the Karnataka State Co-operative Societies Act, 1959. Under Sec.80P(2)(i) of the Act, a co-operative society engaged in carrying on the business of banking or providing credit facilities to its members is entitled to a deduction from the gross total income, the whole of the profits attributable to the aforesaid activity. The assessee during the previous year received a sum of Rs.40,07,403 which was interest income.

3. According to the AO, with the introduction of section 80P(4) of the Act w.e.f. 1.4.2007, which provides that provisions of section 80P shall not apply in relation to any co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank, the benefit of deduction u/s. 80P(2)(a)(i) of the Act is no longer available to the assessee because it is a co-operative bank, not falling within the exception in section 80P(4) of the Act.

4. The CIT(Appeals), however, found that the sum of Rs.40,07,403 comprised of interest earned by the assessee on deposits with banks or

any Government securities of Rs.12,47,648. The CIT(A) held that this amount was taxable in view of the decision of the Hon'ble Supreme Court in *Totgars Co-operative Sale Society, 322 ITR 283 (SC)*. With regard to the remaining sum of Rs.27,59,755, the CIT(A) held that the same was income earned by the assessee in carrying on the business of providing credit facilities to its members and was eligible for deduction u/s. 80P(2)(a)(i) of the Act. In so far as this factum is concerned, the CIT(A) held that assessee was a co-operative society and not a co-operative bank falling within section 80P(4) of the Act.

5. Aggrieved by the relief allowed to the assessee by the CIT(Appeals), the Revenue has preferred the appeal and aggrieved by the action of the CIT(Appeals) denying exemption of a sum of Rs.12,47,648 u/s. 80P(2)(a)(i) of the Act, the assessee has preferred the appeal before the Tribunal.

6. We have heard the rival submissions. As far as the appeal by the Revenue is concerned, the issue is no longer *res integra* and has been concluded in the decision of the Hon'ble High Court of Karnataka in the case of *CIT Vs. Sri Biluru Gurubasava Pattina Sahakari Sangha Niyamitha, Bagalkot, ITA No.5006/2013*, wherein it has been held that a credit co-operative society giving credit to its members is not hit by the provisions of Sec.80P(4) of the Act as it does not possess a licence from RBI to carry on business and is not a co-operative bank. The object of introducing Sec.80P(4) of the Act was not to exclude the benefit extended

u/s.80P(1) to co-operative society carrying on the business of providing credit facilities to its members.

7. As far as the appeal of the assessee is concerned, in the case of *Totgars Co-operative Sale Society (supra)* the Hon'ble Supreme Court held that if interest earned does not have any connection with the business of the assessee, then the same has to be assessed under the head 'income from other sources'. If so assessed, the assessee would not be entitled to deduction u/s. 80P(2)(a)(i) of the Act. The aforesaid judgment of the Hon'ble Apex Court was considered by the Hon'ble High Court of Karnataka in *Tumkur Merchants Souharda Credit Co-operative Ltd. v. ITO, ITA No.307/2014 dated 28.10.2014*. The Hon'ble High Court of Karnataka firstly held that section 80P(2)(a)(i) of the Act uses the expression "attributable to" and therefore the receipts from sources other than the actual conduct of the business are sought to be brought in the ambit of deduction. Therefore the Hon'ble High Court held that interest earned on funds invested in banks are attributable to the carrying on of business of banking and therefore eligible for deduction u/s. 80P(2)(a)(i) of the Act.

8. In the present case, though the Id. CIT(Appeals) has given a bifurcation of the interest income in para 3.6 of the impugned order, the details in this regard are not available in the order of the Assessing Officer nor has the source of funds for making the deposit analysed by the

CIT(Appeals). In these circumstances, we are of the view that it would be just and appropriate to set aside the order of the CIT(Appeals) and remand the issue to the Assessing Officer for fresh consideration by the AO, after considering the judgments of the Hon'ble Supreme Court in *Totgars Co-operative Sale Society (supra)* and the judgments of the Hon'ble jurisdictional High Court in *Tumkur Merchants Souharda Credit Co-operative Ltd. (supra)* and *Biluru Gurubasava Pattina Sahakari Sangha Niyamitha (supra)*. The assessee will give the necessary particulars of the interest income and its source and comply with the other requirements of the Assessing Officer to enable him to apply the rulings given in the cases referred to above.

9. For statistical purposes, the appeal of the assessee as well as the Revenue is treated as allowed.

Pronounced in the open court on this 14th day of May, 2015.

Sd/-

(JASON P. BOAZ)
Accountant Member

Sd/-

(N.V. VASUDEVAN)
Judicial Member

Bangalore,
Dated, the 14th May, 2015.

/D S/

Copy to:

1. Assessee
2. Revenue
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.
6. Guard file

By order

Assistant Registrar/
Senior Private Secretary
ITAT, Bangalore.