

**IN THE INCOME TAX APPELLATE TRIBUNAL,
BANGALORE BENCH 'B'**

**BEFORE SMT. ASHA VIJAYARAGHAVAN, JUDICIAL MEMBER
AND
SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER**

ITA No.1028/Bang/2015
(Asst. Year 2010-11)

M/s Bajpe Vyavasaya Seva Sahakari
Bank Niyamitha,
D No.3-67, Bajpe,
Mangalore.

. Appellant

Vs.

The Income-tax Officer,
Ward - 1(3),
Mangalore.

. Respondent

Appellant by : Shri Suresh Muthukrishnan

Respondent by : Smt. Neera Malhotra, CIT

Date of Hearing : 17-11-2015

Date of Pronouncement : 20-11 -2015

ORDER

PER SMT. ASHA VIJAYARAGHAVAN, JUDICIAL MEMBER

This appeal is directed against the order of Commissioner of
Income-tax (Appeals), Mangalore dated 27.8.2014 for the assessment
year 2010-11.

2. The assessee is a primary agricultural credit co-operative society in the business of lending money primarily to agriculturists and marketing agricultural produce grown by its member agriculturists.

3. The solitary issue involved in this appeal is on denial of deduction claimed u/s 80P(2)(a)(i) on the interest income earned on the deposits with Karnataka Bank Limited. As seen from the order in this case the original assessment was concluded u/s 143(3) on 26.11.2012. Subsequently, the same was reopened to bring to tax this interest income on the ground that the same falls under 'Income from other sources' not eligible for deduction u/s 80P which was not considered in the original assessment.

4. Notice u/s 148 was issued on 9.1.2014. Subsequently, the case was selected for scrutiny and notice u/s 143(2) was served on the assessee. The assessment was completed u/s 143(3) r.w.s 147 of the IT Act, 1961.

5. It is noticed by the AO that the appellant earned interest income of Rs.25 lakhs on deposits kept with M/s Karnataka Bank Ltd. Relying on M/s Totgars Co-op. Sales Society Ltd. Vs. ITO 188 Taxman 282 (SC) 32 ITR 283. The AO proposed to assess this income under 'other sources'. The AO gathered information from Karnataka Bank and found that the actual interest earned on the FD's is Rs.28,75,000/-. The AO analysed the objections of the appellant on reopening by relying on Ess Kay Engineering Co. Pvt. Ltd. Vs. CIT (SC) 247 ITR 818 and Revathy CP Equipments Ltd. Vs. DCIT & Ors. (Mad) 241 ITR 856. Accordingly, AO assessed the interest income of Rs.28,75,000/- and denied deduction u/s 80P on the same.

6. On appeal the CIT(A) observed that in the case of Tumkur Merchants Souharda Credit Co-op Ltd., Hon'ble Karnataka High Court analysed the case of M/s Totgars Co-op Sales Society Ltd., and observed that in that case apart from providing credit facilities to the members it was also in the business of marketing of agricultural produces grown by its members. Under these circumstances, the facts were distinguished and in the case of Tumkur Merchants Souharda Credit Co-op Ltd., the claim was allowed. Per contra, in the case of

the assessee as in the case of Totgars, the assessee's business is similar to that of Totgars case because it is also involved in marketing agricultural produces grown by its members besides financing agriculturalists.

7. The CIT(A) held as follows :

“I find that this is a covered issue in the decision of Hon’ble Supreme Court in the case of Totgars Co-operative Sales Society Ltd. Vs. ITO 188 Taxman 282 (SC). In fact, on similar issue, Hon’ble jurisdictional ITAT ‘C’ Bench, Bangalore in ITA No.1526/Bang/2013 vide their order dt. 19.9.2014 in the case of M/s Guttigedarara Credit Co-op Society Ltd. Vs. ITO, relying on the decision of the Hon’ble ITAT, Bangalore in the case of M/s Tumkur Merchants Souhardha Credit Co-op Society Ltd. Vs. ITO in ITA No.1622/Bang/2012, this view was upheld relying on the decision of the Hon’ble Supreme Court in the case of Totgars Co-operative Society Ltd., cited supra. Under these circumstances, the AO is directed to exclude this interest income from the claim of exemption u/s 80P(2)(a)(i) and tax it under the head ‘other sources’. This addition is confirmed.”

8. Aggrieved, the assessee has preferred an appeal before us.
9. The grounds of appeal raised by the assessee are as under:

“(1) The orders of the authorities below in so far as they are against the appellant, are opposed to law, equity, weight of evidence, probabilities, facts and circumstances of the case.

(2) The learned CIT(A) is not justified in holding that the income earned by the assessee on Fixed Deposits requires to be assessed under the head ‘OTHER SOURCES’ and not as part of the business of providing credit facilities and thereby holding that the appellant is not entitled to deduction u/s 80P[2][a][i] of the Act as claimed by the appellant in the return of income under the facts and in the circumstances of the assessee’s case.

(3) For the above and other grounds that may be urged at the time of hearing of the appeal, your appellant humbly prays that the appeal may be allowed and justice rendered and the appellant may be awarded costs in prosecuting the appeal and also order for the refund of the institution fees as part of the costs.

10. The learned AR on the other hand, produced copy of the decision of the Co-ordinate Bench of the Bangalore Bench Tribunal

in ITA No.727(B)2015 A.Y 2009-10 in the case of M/s Farmers Agricultural Credit Co-Op Society Ltd., Vs. ITO. The relevant portion of the order has been extracted herein below;

“9. In this context when we look at the judgment of the Apex Court in the case of M/s.Totagars Co-operative Sale Society Ltd, on which reliance is placed, the Supreme Court was dealing with a case where the assessee-Co-operative Society, apart from providing credit facilities to the members, was also in the business of marketing of agricultural produce grown by its members. The sale consideration received from marketing agricultural produce of its members was retained in many cases. The said retained amount which was payable to its members from whom produce was bought, was invested in a short-term deposit / security. Such an amount which was retained by the assessee - Society was a liability and it was shown in the balance sheet on the liability side. Therefore, to that extent, such interest income cannot be said to be attributable - either to the activity mentioned in section 80P(2)(a)(i) of the Act or under section 80P(2)(a){!ii} of the Act. Therefore in the facts of the said case, the Apex Court held the Assessing Officer was right in taxing the interest income indicated above under Section 56 of the Act. Further they made it clear that they are confining the said judgment to the

facts of that case. Therefore, it is clear, Supreme Court was not laying down any law.

10. In the instant case, the amount which was invested in banks to earn interest was not an amount due to any members. It was not the liability. It was not shown as liability in their account. In fact this amount which is in the nature of profits and gains, was not immediately required by the assessee for lending money to the members, as there were no takers. Therefore they had deposited the money in a bank so as to earn interest.,. the said interest income is attributable to carrying on the business of banking and therefore it is liable to be deducted in terms of section 80P(J) of the Act. In fact similar view is taken by the Andhra Pradesh High Court in the case of CIT III, Hyderabad Vs. Andhra Pradesh State Co-operative Bank Ltd., reported in (2011) 200 Taxman 220112. In that view of the matter, the order passed by the appellate authorities denying the benefit of deduction of the aforesaid amount is unsustainable in law. Accordingly it is hereby set aside. The substantial question of law is answered in favour of the assessee and against the revenue. Hence, we pass the following order.

Appeal is allowed”.

6.3.2 *Respectfully following the decision of the Hon’ble High Court of Karnataka in the case of Tumkur Merchants Souharda Credit Co-operative Society*

Ltd.(Supra), we hold that the learned CIT(A) was not correct in denying the assessee the deduction claimed under section 80P(2)(a)(i) of the Act in respect of Rs.26.16,800/- earned by the assessee. The judgment of the Hon'ble Apex Court in the case of Totgar's Co-operative

Sale Society Ltd (Supra) relied upon by the learned CIT(A) has been considered and distinguished by the Hon'ble High Court on Karnataka in the case of Tumkur Merchants Souharda Credit Co-operative Society Ltd(Supra). We find that the facts of the case on hand are similar to the facts of the aforesaid case decided by the Hon'ble High Court of Karnataka, since in both cases the assessee was a credit co-operative society and invested in fixed deposits out of the surplus funds of business. Applying the ratio of the judgment of the Hon'ble High Court of Karnataka in the case of Tumkur Merchants Souharda Credit Co-operative Society Ltd (Supra), we hold that the assessee is entitled to deduction under section 80P(2)(a)(i) of the Act, in respect of interest income earned on fixed deposits, as well as that the said interest income forms part of the business income earned by the assessee and the same is not to be taxed under the head "Other Sources". In view of the matter, the deduction claimed by the assessee under section 80P(2)(a)(i) of the Act in respect of interest of Rs.26,16,800/- earned from investments in fixed deposits and Govt. Securities out of surplus funds from business, is

allowed. Consequently, the grounds raised by the assessee on this issue are allowed.

7. In the result, the assessee's appeal for assessment year :2010-11 is allowed".

11. Since the facts in the present case before us is identical to that of the case which is decided by the Co-ordinate Bench in ITA No.727(Bang.)/2015 for the assessment year : 2009-10, which follows the decision of the Hon'ble High Court of Karnataka in the case of CIT Vs Grain Merchants Co-operative Bank Ltd., 267 ITR 742 and Tumkur Merchants Souharda Credit Co-operative Ltd., Vs ITO 55 Taxmann.com 447 (Kar.) and we hold that the learned CIT(A) was not correct in denying the assessee's claim of deduction u/s 80P(2)(a)(i) of the IT Act, 1961 amounting to Rs.28,75,000/-.

12. In the result, the appeal of assessee is allowed.

Order pronounced in the open court on **20th Nov, 2015.**

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

Sd/-
(ASHA VIJAYARAGHAVAN)
JUDICIAL MEMBER

Bangalore

Dated : 20/11/2015

Vms

Copy to :1. The Assessee
2. The Revenue
3.The CIT concerned.
4.The CIT(A) concerned.
5.DR
6.GF

By order

Asst. Registrar, ITAT, Bangalore.