

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

**BEFORE SMT. P. MADHAVI DEVI, JUDICIAL MEMBER
and
SHRI ABRAHAM P GEORGE, ACCOUNTANT MEMBER**

ITA No.251/Bang/2015
(Assessment year: 2011-12)

Income-tax Officer,
Ward 1,
Bagalkot.

... Appellant

Vs.

M/s.Bapooji Pattin Souharda Sahakari Niyamit,
Sector No.25, Navanagar,
Bagalkot, Dist. Bagalkot.
PAN: AAAAB6930F

... Respondent

Appellant by: Shri C.H.Sundar Rao, CIT(DR).
Respondent by: Shri Sukesh S.Patil, CA.

Date of hearing : 18/06/2015
Date of pronouncement: 30/06/2015.

O R D E R

Per Smt. P.MADHAVI DEVI, JM :

This appeal by the revenue is against the order of the CIT(A), Bijapur, dated 12/12/2014 for the assessment year 2010-11. The Revenue is aggrieved by the order of the CIT(A) in holding that Explanation to section 80P(4) of the Income-tax Act, 1961 [hereinafter referred to as 'the Act' for short] shall not apply to the assessee herein and, therefore, the assessee is eligible for deduction u/s 80(2)(a)(i) of the Act.

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2. Brief facts of the case are that the assessee, a co-operative society, has filed its return of income on 29/9/2011 declaring total income of 'nil' for the assessment year 2010-11 after claiming deduction u/s 80P(2)(a)(i) of the Act. During the assessment proceedings u/s 143(3) of the Act, the Assessing Officer (AO) observed that the assessee is carrying on banking business and therefore Explanation to sec.80P(4) is attracted due to which the assessee is not eligible for deduction u/s 80P(2)(a)(i) of the Act.

3. Aggrieved, assessee preferred an appeal before the CIT(A) who allowed the same by following the judgment of the Hon'ble Gujarat High Court in the case of *CIT vs. Jafari Mom-in Vikas Co-op Credit Society* in ITA No.442, 443 & 863 of 2013 and the decision of the jurisdictional High Court in the case of *CIT vs. Sri Biluru Gurubasava Pattina Sahakari Sangha Niyamitha, Bagalkot*, ITA 5006/2013 dt.5/12/2014 and *Vasavi Multipurpose Souharda Sahakari Niyamita* in ITA No.505/2013 dated 27/06/2014. Against the relief given by the CIT(A), the revenue is in appeal before us by relying upon the decision of the ITAT, Panaji Bench wherein the Tribunal has categorically distinguished the decision in the case of *Sri Biluru Gurubasava Pattina Sahakari Sangha Niyamitha* (cited supra) and held that the said decision is in regard to the revisionary order u/s 263 of the Act. The learned Departmental Representative, supported the order of the AO and also the grounds raised by the revenue whereas the learned

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counsel for the assessee has relied upon the orders of the CIT(A) and the decisions on which the CIT(A) has placed reliance upon.

4. Having regard to the rival contentions and the material on record, we find that this issue is now decided in favour of the assessee by the decision of the Hon'ble Gujarat High Court in the case of *Jafari Mom in Vikas Co-op Credit Society* (cited supra) as well as the jurisdictional High court in the case of *Sri Biluru Gurubasava Pattina Sahakari Sangha Niyamitha* (cited supra). This Tribunal has been consistently following the said decision to hold that a co-operative society not registered with the RBI cannot be denied the exemption u/s 80P(2)(a)(i) of the Act. The relevant portion of the judgment is reproduced hereunder for ready reference:

"Therefore, the intention of the legislature is clear, If a Cooperative Bank is exclusively carrying on banking business, then the income derived from the said business cannot be deducted in computing the total income of the assessee. The said income is liable for tax. A Co-operative bank as defined under the Banking Regulation Act includes the primary agricultural credit society or a primary co-operative agricultural and rural development bank. The Legislature did not want to deny the said benefits to a primary agricultural credit society or a primary co-operative agricultural and rural development bank. They did not want to extend the said benefit to a Co-operative bank which is exclusively carrying on banking business i.e. the purport of this amendment. Therefore, as the assessee is not a Cooperative bank carrying on exclusively banking business and as it does not possess a licence from Reserve Bank of India to carry on business, it is not a Co-operative bank. It is a Co-operative society which also carries on the business of lending money to its members which is covered under Section 80P(2)(a)(i) i.e. carrying on the business of banking for providing credit facilities to its members. The object of the aforesaid amendment is not to exclude the benefit extended under Section 80P(1) to such society.In

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the instant case, when the status of the assessee is a Co-operative society and is not a Co-operative bank, the order passed by the Assessing Authority extending the benefit of exemption from payment of tax under section 80P(2)(a)(i) is correct."

We find that the CIT(A) has merely followed the decision of the jurisdictional High Court and therefore, we see no reason to interfere with the same.

5. In the result, the revenue's appeal is dismissed.

Pronounced in the open court on 30th of June, 2015.

sd/-
(Abraham P George)
ACCOUNTANT MEMBER
eksrinivasulu

sd/-
(Smt. P.Madhavi Devi)
JUDICIAL MEMBER

Copy to:

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

By order

Assistant Registrar
Income-tax Appellate Tribunal
Bangalore