

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCH “ B ”**

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

I.T.A. No.617/Bang/2014 (Assessment Year : 2009-10)		
Shri Marikamba Mahila Co-operative Credit Society Ltd., G.P. Centre, Court Road, Sirsi-581 401 PAN AAAAS 6480M	Vs.	Income Tax Officer, Ward 1, Sirsi.
Appellant		Respondent.

Appellant By : Shri P.C. Chadaga, C.A.
Respondent By : Dr. P.K. Srihari, Addl. CIT.

Date of Hearing : 5.3.2015.
Date of Pronouncement : 20.3.2015.

O R D E R

Per Shri Jason P. Boaz, A.M. :

This appeal by the assessee is directed against the order of the CIT under section 263 of the Income-tax Act, 1961 (in short ‘The Act’) for Assessment Year 2009-10 dt.12.3.2014 whereby he held the order of assessment for this year passed under section 143(3) of the Act, dt.12.10.2011 to be erroneous in so far as it was prejudicial to the interest of revenue.

2. The reason for which the CIT invoked his revisionary powers under section 263 of the Act, was that assessee had claimed deduction under section 80P(2)(d) of the Act on interest of

Rs.4,41,262 received by it on its deposits with Cooperative Banks. As per the learned CIT this claim ought not have been accepted, by the Assessing Officer. The learned CIT held that Section 80P(2)(d) could not be so liberally interpreted so as to construe a Co-operative bank also as a Cooperative Society. Though the assessee argued that M/s Kanara District Co-operative Bank, wherein it had placed its deposits was registered as a Co-operative Society under section 9 of the Co-operative Societies Act, 1912 (Act No.2 of 1912), the averments did not find favour with the CIT. He held the assessments done to be erroneous and prejudicial to the interest of the revenue, on this count.

3. Aggrieved by the order under Section 263 of the Act passed by the CIT, Hubli vide order dt.12.3.2014, the assessee has preferred this appeal raising the following grounds :-

“1. On the facts and in the circumstances of the case the ld. CIT, Hubli has erred in considering the assessment order passed by the ld. ITO. Ward-1, Sirsi as erroneous and prejudicial to the interest of revenue.

2. On the facts and in the circumstances of the case the ld. A.O. has erred in law in denying the deduction under Section 80P(2)(d) of the Income Tax Act in respect of interest earned form investment in a co-operative bank holding that deduction under the said section is allowable only in respect of interest earned form investment with other co-operative society.

3. On the facts and in the circumstances of the case the ld. A.O. has erred in law ignoring the fact that a co-operative bank is also a co-operative society as defined in sub-section (19) of section (2) of the Income Tax Act.

4. *For the above and other grounds that may be urged at the time of hearing of the appeal, the appellant humbly prays that the appeal may be allowed in entirety.”*

4. Now when the matter came up before us, learned counsel for the assessee, submitted that the Tribunal in the case of Bagalkot District Central Co-operative Bank Vs JCIT (ITA No.1572/Bang/2013 dated 30- 05-2014) had unequivocally held that it was not possible to exclude a Cooperative Society engaged in business of banking from being considered as a Co-operative Society, perse. As per the learned AR, though the said decision was given in the context of section 194A(3)(v) it would squarely apply here also. Reliance was also placed on judgments of Hon'ble jurisdictional High Court in the case of Tumkur Merchants's Souharda Credit Co-operative Society Vs ITO (ITA No.307(B)/2014 dated 28-10- 2014) and of a co-ordinate bench of this Tribunal in the case of Menasi Seemeya Group Gramagala Seva Sahakari Sanga Niyamitha, Sirsi Vs. CIT in ITA No.609 & 610/Bang/2014 dt.6.2.2015.

5. Per contra, learned DR strongly supported the order of the CIT and also submitted that the AO had not applied or considered section 80P(2)(d), in accordance with the wordings of the said section. Hence, according to him there was an error which was prejudicial to the interest of the revenue.

6. We have heard the rival contentions and perused and carefully considered the material on record; including the judicial pronouncements cited (supra). The question for our consideration

and adjudication is as to whether the interest on deposits earned by a Co-operative Society, where such deposits were with a Co-operative Bank, are allowable as a deduction under Section 80P(2)(d) of the Act. We are of the opinion that restrictive interpretation given by the learned CIT(A) to section 80P(2)(d) was not warranted, by its wordings.

The provisions of Section 80P(2)(d) are reproduced hereunder:

“ in respect of any income by way of interest or dividends derived by the C-operative Society from its investments with any other Co-operative society, the whole of such income”.

7. A co-ordinate bench of this Tribunal in the case of Bagalkot District Central Co-operative Bank (supra) had held that a Co-operative bank which is also a Co-operative Society cannot be excluded from the purview of benefits available to a Cooperative Society , unless the provisions of the Act so stipulate. No doubt in the said decision, the Tribunal was considering the application of Section 194A(3)(v) of the Act, wherein it was mandated that a Cooperative Society was not required to deduct tax at source if the interest credit were paid to any Co-operative Society. It had unequivocally held that the said provision applied to all Co-operative Societies including a Cooperative Society engaged in the business of the bank or in other words, a Co-operative Bank. Therefore, the view taken by the AO that income by way of interest or dividends earned by the assessee society from the Cooperative bank namely Kanara Dist. Central Co-operative bank which was

also a Co-operative Society was eligible for deduction cannot be faulted. We cannot say that the order of the AO was erroneous and prejudicial to the interest of the revenue. In this view of the matter, we cancel the impugned order of the learned CIT, and consequently the appeal of the assessee is allowed.

8. In the result, the assessee's appeal for Assessment Year 2009-10 is allowed.

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

Sd/-
(N.V.VASUDEVAN)
Judicial Member

Sd/-
(JASON P BOAZ)
Accountant Member

*Reddy gp

Copy to :

1. Appellant
2. Respondent
3. C.I.T.
4. CIT(A)
5. DR, - Bench.
6. Guard File.

(True copy)

By Order

Asst. Registrar, ITAT, Bangalore