

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES "B", BANGALORE**

Before Shri George George K, JM & Shri Jason P.Boaz, AM

ITA No.817/Bang/2017 : Asst.Year 2011-2012

ITA No.818/Bang/2017 : Asst.Year 2012-2013

ITA No.819/Bang/2017 : Asst.Year 2013-2014

The Income Tax Officer Ward – 2 Vijayapur.	Vs.	Shri Shri Revanasiddeshwar Co-op. Credit Society Limited Post : Horti, Tal.Indi, Dist : Vijayapur PAN : AABAS3319N.
(Appellant)		(Respondent)

Appellant by : Smt.Padmameenakshi, JCIT

Respondent by : --- None ---

Date of Hearing : 23.10.2017	Date of Pronouncement : 03.11.2017
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ORDER

Per George George K, JM

These appeals at the instance of Revenue are directed against three separate orders of the CIT(A), all dated 30.01.2017. The relevant assessment years are 2011-2012, 2012-2013 and 2013-2014.

2. Since common issue is raised in these appeals, they are heard together and are being disposed of by this consolidate order. Identical grounds are raised in these appeals and they read as follows:-

“1. The ld.CIT(A) failed to appreciate that as per the provisions of section 80P(2)(d) in the case of co-operative society the income by way of interest or dividends derived

by a co-operative society from its investments with any other co-operative society shall be deducted from the gross total income.

2. *The ld.CIT(A) failed to appreciate the fact that the provisions of section 80P(4) of the Income Tax Act, 1961 were inserted w.e.f. 1.4.2007 i.e. from the assessment year 2007-08. As per this sub section, the provisions of section 80P shall not apply in relation to any Co-operative Bank. As per law, a 'co-operative bank' shall not get any deduction u/s 80P. Co-operative banks having banking licence from RBI are carrying on banking business by accepting deposits, granting loans, etc. and there is no restriction to general public as in the case or Co-operative society i.e. to become a member of the bank for the purpose of obtaining loan or keeping deposits.*

3. *The interest received by the assessee co-operative society from the co-operative banks is not admissible as deduction u/s 80P(2)(d). The assessee society is not entitled to any deduction of such interest from its gross total income, as claimed u/s 80P(2)(d).*

4. *The learned CIT(A) erred in not considering the fact that the Special Leave Petition before the Hon'ble Supreme Court vide SLP No.18221 of 2015 filed on 1.5.2015 is converted to Civil Appeal No.5103/2015 which is pending for deduction on the same issue in the case of CIT Vs. Biluru Gurbasava Pattin Sahakari Sangh Niyamit."*

3. Briefly stated the facts of the case are as follows:

For the assessment years 2011-2012 to 2013-2014, assessments were completed by denying the benefit of deduction u/s 80P(2) of the Act. The reason for denying the benefit of deduction u/s 80P(2) of the Act, according to the Assessing Officer , was that the assessee was doing the business of banking and in view of introduction of Section

80P (4) of the Act with effect from 01.04.2007, the cooperative societies engaged in the business of banking are not entitled to the benefit of section 80P(2) of the Act.

4. Aggrieved by the assessments completed, assessee filed appeals before the first appellate authority. The CIT(A) following the judgment of the Hon'ble jurisdictional High Court in the case of *CIT v. Shri Bilur Gurubasava Pattin Sahakari Sangh Niyamit, Bagalkot* [(2014) 369 ITR 86 (Kar)], decided the issue in favour of the assessee. The relevant finding of the CIT(A) for assessment year 2011-2012 reads as follow:-

“9. The fact that the appellant is a cooperative society registered under the Karnataka Co-operative Societies Act, 1959 engaged in providing credit facilities to the members has been clearly mentioned by the A.O. in the aforesaid assessment order. The AR of appellant has argued and stated that the appellant is a co-operative society registered under the Karnataka Co-operative Societies Act, 1959 engaged in providing credit facilities only to its members and it does not possess any banking licence from the RBI. It is therefore, clear that the appellant's case is squarely covered by the aforesaid decisions of the jurisdictional High Court of Karnataka as facts are similar and issue involved is identical. It appears SLP filed by Department before Hon'ble Supreme Court on the similar issue is pending. Unless the decision of the jurisdictional High Court is reversed by the Hon'ble Supreme Court, the position of the law is clear that the appellant's case is not covered by section 80P(4) as it is not a 'co-operative bank' and it is entitled to the deduction u/s 80P(2)(a)(i). Hence, the appeal filed by the appellant is allowed. The appellant gets the relief or ₹39,30,133/- under section 80P(2)(a)(i) of the Income-tax Act.”

5. The Revenue being aggrieved, has filed the present appeals before the Tribunal. The learned Departmental Representative, apart from relying on the grounds raised in the memorandum of appeal, submitted that the judgement relied on by the CIT(A) in deciding the appeals in favour of the assessee, has not been accepted by the Department and SLP filed before the Hon'ble Supreme Court was converted to Civil Appeal No.5103 of 2015.

6. None was present on behalf of the assessee. However, we proceed to dispose of the matter after hearing the learned DR.

7. We have heard the learned DR and perused the material on record. Undisputedly, the assessee in the instant case, is a co-operative society, registered under the Karnataka Co-operative Societies Act, 1959. It is providing credit facilities only to its members. The assessee does not have any banking licence from the RBI to do any banking business. The Hon'ble Karnataka High Court in the case of *Shri Bilur Gurubasava Pattin Sahakari Sangh Niyamit (supra)* had categorically held that a co-operative society registered under the Karnataka Co-operative Societies Act, which is not having a banking licence from the RBI to carry on the business of banking, cannot be deemed to be a co-operative bank coming within the ambit of section 80P(4) of the Act. In the instant case, since the assessee is not having any banking licence from the RBI and it is providing credit facilities only to its members, the dictum laid down by the Hon'ble jurisdictional High Court in the case of *Shri Bilur Gurubasava Pattin Sahakari Sangh Niyamit*

(supra) is applicable to the instant case. The judgment of the Hon'ble Karnataka High Court in the case of *Shri Bilur Gurubasava Pattin Sahakari Sangh Niyamit (supra)* has not been stayed / reversed by the Hon'ble Supreme Court, hence, we follow the dictum laid by the judgment of the jurisdictional High Court and uphold the order of the CIT(A) as correct and in accordance with law. It is ordered accordingly.

8. In the result, these appeals by the Revenue are dismissed.

Order pronounced on this 03rd day of November, 2017.

Sd/-
(Jason P.Boaz)
Accountant Member

Sd/-
(George George K.)
JUDICIAL MEMBER

Bangalore ; Dated : 03rd November, 2017.

Devdas*

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Copy of the Order forwarded to :

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

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BY ORDER,

(Asstt. Registrar)
ITAT, Bangalore