

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

BEFORE SHRI SUNIL KUMAR YADAV, JUDICIAL MEMBER
AND SHRI A. K. GARODIA, ACCOUNTANT MEMBER

ITA No.34/Bang/2017
Assessment year : 2012-13

The Income Tax Officer, Ward 6(3)(2), Bengaluru.	Vs.	M/s. Pavagada Souharda Multipurpose Co-op. Ltd., No.2729, 14 th Cross, E-Block, Kodigehalli Gate, Sahakarnagar, Bengaluru – 560 092. PAN: AAAAT 7737L
APPELLANT		RESPONDENT

Appellant by	:	Smt. H.L. Soumya, Addl. CIT(DR)
Respondent by	:	Shri Madhukar G. Hegde, CA

Date of hearing	:	19.09.2017
Date of Pronouncement	:	22.09.2017

ORDER

Per Sunil Kumar Yadav, Judicial Member

This appeal is filed by the revenue against the order of the
CIT(Appeals) *inter alia* on the following grounds:-

- “1. The order of the CIT (Appeals) is opposed to law and the facts and circumstances of the case.
2. On the facts and in the circumstances of the case, the learned CIT(A) erred in deleting the disallowance of deduction u/s 80P(2)(a)(i) made by the AO, without appreciating the fact that the assessee society was carrying on banking business, by fulfilling all the conditions laid down in Section 5(cci) of

the Banking Regulation Act, 1949 referred to in Explanation to sub-section (4) of Section 80P, thereby qualifying it as a primary Co-operative Bank.

3. On the facts and in the circumstances of the case, the learned CIT(A) erred in placing reliance upon the decision of the Hon'ble High Court of Karnataka in the case of *Shri Biluru Gurbasappa Pattina Sahakari Sangha Niyamitha* without appreciating the fact that the SLP filed by the Department before the Hon'ble Apex Court is still pending judgment.
4. For these and such other grounds that may be urged at the time of hearing, it is humbly prayed that the order of the CIT(A), in so far as it relates to the above grounds may be reversed and that of the Assessing Officer be restored.
5. The appellant craves leave to add, to alter, to amend or delete any of the grounds that may be urged at the time of hearing of the appeal.”

2. The brief facts borne out from the record are that the AO during the assessment proceedings noted that the assessee has deposited the surplus funds in the Bank and interest out of the surplus funds invested amounting to Rs.1,90,05,335 was claimed as exemption u/s. 80P(2)(a)(i). The AO in view of the amended provisions of section 80P(4) of the Act held that societies carrying on the business of banking are not entitled to claim deduction u/s. 80P(2)(a)(i) of the Act.

3. On appeal by the assessee, the CIT(Appeals) allowed the appeal of the assessee following the judgment of Hon'ble jurisdictional High Court in the case of *Shri Biluru Gurubasappa Pattina Sahakari Sangha Niyamita (369 ITR 86)*.

4. Aggrieved, the revenue is in appeal before us. The Id. DR placed reliance on the assessment order with the submission that a SLP has been filed against the judgment of Hon'ble jurisdictional High Court in the case of *Shri Biluru Gurubasappa Pattina Sahakari Sangha Niyamita (supra)*.

5. On the other hand, the Id. counsel for the assessee submitted that the assessee is a co-operative society registered under the Karnataka Co-operative Societies Act, 1959 and carrying on business of credit co-operative society. The surplus funds are deposited in bank and interest earned is claimed as exempt u/s. 80P. The Id. counsel for the assessee submitted that this issue is now covered by the judgment of the Hon'ble jurisdictional High Court in the case of *Tumkur Merchants Souharda Credit Co-operative Ltd. v. ITO in ITA No.307 of 2014 dated 28.10.2014* wherein the Hon'ble High Court allowed the claim after considering the judgment of the Hon'ble Supreme Court in the case of *The Totgars Co-operative Sale Society, 322 ITR 272 (SC)*.

6. We have carefully examined the orders of lower authorities in the light of rival submissions. We find that the issue is squarely covered by the judgment of Hon'ble jurisdictional High in the case of *Tumkur Merchants Souharda Credit Co-operative Ltd. (supra)* wherein after considering the judgment of the Hon'ble Supreme Court in the case of *The Totgars Co-operative Sale Society (supra)*, it was held that the said interest income is attributable to carrying on the business of banking or providing credit

facilities and therefore assessee is entitled to the deduction. The relevant paragraphs of the judgment of the Hon'ble High Court is extracted hereunder for the sake of reference:-

“8. Therefore, the word “attributable to” is certainly wider in import than the expression “derived from”. Whenever the legislature wanted to give a restricted meaning, they have used the expression “derived from”. The expression “attributable to” being of wider import, the said expression is used by the legislature whenever they intended to gather receipts from sources other than the actual conduct of the business. A Cooperative Society which is carrying on the business of providing credit facilities to its members, earns profits and gains of business by providing credit facilities to its members. The interest income so derived or the capital, if not immediately required to be lent to the members, they cannot keep the said amount idle. If they deposit this amount in bank so as to earn interest, the said interest income is attributable to the profits and gains of the business of providing credit facilities to its members only. The society is not carrying on any separate business for earning such interest income. The income so derived is the amount of profits and gains of business attributable to the activity of carrying on the business of banking or providing credit facilities to its members by a co-operative society and is liable to be deducted from the gross total income under Section 80P of the Act.

9. In this context when we look at the judgment of the Apex Court in the case of M/s. Totgars Co-operative Sale Society Ltd., on which reliance is placed, the Supreme Court was dealing with a case where the assessee-Cooperative 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)(iii) 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(1) of the Act. In fact similar view is taken by the Andhra Pradesh High Court in the case of COMMISSIONER OF INCOME-TAX III, HYDERABAD VS. ANDHRA PRADESH STATE COOPERATIVE BANK LTD., reported in (2011) 200 TAXMAN 220/12. 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.

The impugned order is hereby set aside. Parties to bear their own cost.”

7. Respectfully following the judgment of Hon'ble jurisdictional High Court in the case of *Tumkur Merchants Souharda Credit Co-operative Ltd. (supra)*, we decide this issue in favour of the assessee and find no infirmity

in the order of CIT(Appeals) allowing the benefit of deduction u/s. 80P to the assessee.

8. In the result, the appeal of revenue is dismissed.

Pronounced in the open court on this 22nd day of September, 2017.

Sd/-
(A. K. GARODIA)
Accountant Member

Sd/-
(SUNIL KUMAR YADAV)
Judicial Member

Bangalore,
Dated, the 22nd September, 2017.
/ Desai Smurthy /

Copy to:

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

By order

Senior Private Secretary
ITAT, Bangalore.