

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

BEFORE SHRI SUNIL KUMAR YADAV, JUDICIAL MEMBER

ITA No.1037/Bang/2017
Assessment year : 2007-08

The Coffee Board Employees Co-operative Society Ltd., No.1, Dr. Ambedkar Veedhi, Coffee Board Building, Bengaluru – 560 001. <b>PAN: AABAT 3006B</b>	Vs.	The Income Tax Officer (Exemptions), Ward 2, Bengaluru.
APPELLANT		RESPONDENT

Appellant by	:	Shri Chaitanya V. Mudrabetu, Advocate
Respondent by	:	Shri Kumar Ajit, Addl. CIT(DR)(ITAT), Bengaluru

Date of hearing	:	14.12.2017
Date of Pronouncement	:	22.12.2017

**ORDER**

1. This appeal is preferred by the assessee against the order of the CIT(Appeals) *inter alia* on the following grounds:-

“1. The order passed by the authorities below to the extent which is against the appellant is bad in law and contrary to the settled principles of law.

2. The appellant denies himself liable to be taxed on a total income of Rs. 8,71,009/- as assessed by the learned assessing officer as against the return income of Rs. NIL under the facts and circumstances of the case of the appellant.

3. The Assessing Officer has erred in disallowing the claim of deduction of an amount of Rs.8,71,009/- u/s.80P(2)(a)(i) of the Act on the fact and circumstances of the case.

4. The Assessing Officer and CIT(A) erred in not holding that the Appellant is not a primary co-op bank as referred in Section 5(ccv) of the Banking Regulation Act, 1949 on the facts and circumstances of the case.

5. The Assessing Officer and CIT(A) erred in coming to the conclusion that, the Appellant is engaged in the Banking as defined in Section 5 of the Banking regulation Act in the facts and circumstances of the case.

6. The CIT(A) failed to appreciate that, insertion of clause (viiia) in Section 2(24) of the Act does not alter the position so far as exemption u/s.80P(2)(a)(i) of the Act is concerned to a co-op credit society which is engaged in providing credit facilities to its members.

7. The Appellant craves leave to add, alter, delete or substitute any of the grounds urged above.

8. In view of the above and the other grounds that may be urged at the time of hearing of the appeal, your Appellant prays that the appeal may be allowed in the interest of equity and justice.”

2. There is a delay of 58 days in filing the appeal and application for condonation of the same has been filed by the assessee wherein it is stated that the assessee was wrongly advised by the counsel for the assessee that there was no merit in the case for filing an appeal. However, on the professional advice of another counsel suggesting for filing of an appeal, soon thereafter an appeal was filed before the Tribunal which led to a delay of 58 days. I am satisfied that there was reasonable cause for the delay in filing the appeal and therefore the delay in filing of the appeal is condoned.

3. During the course of hearing, the Id. Counsel for the assessee submitted that the assessee is engaged in the activity of collecting funds by way of deposits from its members and others raising loans. He further submitted that the assessee has claimed deduction u/s. 80P(2)(a)(i) of the Act which was denied by the lower authorities. In support of his

contentions, reliance was placed upon the judgment of the jurisdictional High Court in the case of Sri Biluru Gurubasava Pattina Sahakari Sangha Niyamitha, Bagalkot in ITA No.5006/2013.

4. The Id. DR relied upon the orders of the lower authorities.

5. We have carefully examined the material on record in the light of rival submissions and we find that the Hon'ble Apex Court in the case of *The Citizen Co-operative Society Ltd., Hyderabad v. ACIT in Civil Appeal No.10245 of 2017 dated 08.08.2017*, considered identical issue in which the matter was restored back to the Assessing Officer to verify whether credit facilities were given by the assessee cooperative bank to outsiders also. Since the Hon'ble Supreme Court has clarified the legal position in this regard, the impugned issue is to be adjudicated in the light of the judgment of the Hon'ble Supreme Court. Accordingly, I set aside the order of the CIT(Appeals) on this issue and remand the matter to the Assessing Officer with a direction to readjudicate the issue in the light of judgment of Hon'ble Apex Court in the case of *Citizen Co-operative Society Ltd. (supra)*.

6. In the result, the appeal by the assessee is allowed for statistical purposes.

Pronounced in the open court on this 22<sup>nd</sup> day of December, 2017.

Sd/-

( SUNIL KUMAR YADAV )  
Judicial Member

Bangalore,  
Dated, the 22<sup>nd</sup> December, 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.