

IN THE INCOME TAX APPELLATE TRIBUNAL

“SMC-A” BENCH : BANGALORE

BEFORE SHRI ARUN KUMAR GARODIA, ACCOUNTANT MEMBER

ITA Nos.2698 & 2699/Bang/2017
Assessment Years :2013-14 & 2014-15

M/s. Sri Maheshwara Credit Co-operative Society Ltd., M.G. Road, Haveri – 581 110. PAN: AAAAH 1459F	Vs.	The Income Tax Officer, Ward – 2, Haveri.
APPELLANT		RESPONDENT

Appellant by	:	Shri M.R. Uppin, Advocate
Respondent by	:	Shri Vimal Anand, Addl. CIT (DR)

Date of hearing	:	19.01.2018
Date of Pronouncement	:	24.01.2018

ORDER

Per Shri A.K. Garodia, Accountant Member

Both these appeals are filed by the assessee which are directed against two separate orders of Id. CIT(A), Davangere both dated 19.07.2017 for Assessment Years 2013-14 and 2014-15. Both these appeals were heard together and are being disposed of by way of this common order for the sake of convenience.

2. The concise grounds of appeal raised by the assessee for Assessment Year 2013-14 are as under.

*“1. The Assessing Officer as well as the Appellate authority failed to consider that the petitioner in appeal is a co-operative society engaged exclusively in providing credit facilities to its members and as such invests its surplus funds as are not immediately required for use in its business in co-operative societies as well as nationalized / commercial banks. Therefore, the entire interest income of Rs. 3,28,286/- derived by the appellant forms part of its profits and gains attributable to its business and chargeable u/s. 28 of the Act and qualifies for full deduction u/s. 80P(2)(a)(i) of the Act. The citation of **Totgars Co-operative Sale Society Ltd.** relied upon by the Respondent is not applicable to the appellant's case since Totgars Co-op. Sale*

Society was engaged in numerous activities unlike the appellant.

2. The appellant submits that the impugned orders passed by the authorities below are illegal and are liable to be set aside in view of the judgment of the Hon'ble High Court of Karnataka in ITA 29/2015 - M/s. Guttigedarara Credit Co-op. Society Ltd. Mysore Vs. ITO, Ward 2(2), Mysore and ITA 307/2014 - M/s. Tumkur Merchants Souharda Credit Co-op. Ltd. Vs. ITO, Ward-1, Tumkur and also the recent judgement dated 15.12.2017 of ITAT, Hyderabad in ITA No. 673/Hyd/2017 in S.B.I. Officers Coop. Credit Society Ltd. Hyderabad Vs. ITO Ward 5(3), Hyderabad.”

3. The grounds raised by the assessee for Assessment Year 2014-15 are as under.

*“1. The Assessing Officer as well as the Appellate authority failed to consider that the petitioner in appeal is a co-operative society engaged exclusively in providing credit facilities to its members and as such invests its surplus funds as are not immediately required for use in its business in co-operative societies as well as nationalized / commercial banks. Therefore, the entire interest income of Rs. 1,81,190/- derived by the appellant forms part of its profits and gains attributable to its business and chargeable u/s. 28 of the Act and qualifies for full deduction u/s. 80P(2)(a)(i) of the Act. The citation of **Totgars Co-operative Sale Society Ltd.** relied upon by the Respondent is not applicable to the appellant's case since Totgars Co-op. Sale Society was engaged in numerous activities unlike the appellant.*

2. The appellant submits that the impugned orders passed by the authorities below are illegal and are liable to be set aside in view of the judgment of the Hon'ble High Court of Karnataka in ITA 29/2015 - M/s. Guttigedarara Credit Co-op. Society Ltd. Mysore Vs. ITO, Ward 2(2), Mysore and ITA 307/2014 - M/s. Tumkur Merchants Souharda Credit Co-op. Ltd. Vs. ITO, Ward-1, Tumkur and also the recent judgement dated 15.12.2017 of ITAT, Hyderabad in ITA No. 673/Hyd/2017 in S.B.I. Officers Coop. Credit Society Ltd. Hyderabad Vs. ITO Ward 5(3), Hyderabad.”

4. It was submitted by Id. AR of the assessee that the issue was decided by CIT(A) by following the judgement of Hon'ble Karnataka High Court rendered in the case of PCIT and Another Vs. Totagars Co-operative Sale Society as reported in 395 ITR 611 (Karn). He submitted that the facts of that case are different and therefore, this judgment is not applicable in the present case. He drawn my attention to the second para of this judgment on page 616 of 395 ITR and pointed out that as per the facts of that case noted by Hon'ble Karnataka

High Court in this para, the amount deposited by assessee in bank was payable to its members from whom produce was bought and it was a liability and it was shown by assessee in the balance sheet on the liability side. Thereafter, he placed reliance on an earlier judgement of Hon'ble Karnataka High Court rendered in the case of Tumkur Merchants Souharda Credit Cooperative Ltd. Vs. ITO in ITA No. 307/2014 dated 28.10.2014 and drawn my attention to para no. 10 of this judgement and pointed out that in that case, the facts were this that the amount which was invested in banks to earn interest was not an amount due to any members and it was not liability and it was not shown as liability in the balance sheet. Thereafter he drawn my attention to para no. 3.2 of the assessment order and it was pointed out that the AO himself has noted in this para of the assessment order that the assessee was having surplus and reserve funds created out of accumulated profits of the society and such funds are not immediately required for the business as there were no loan takers and hence, the society has invested such funds with nationalized and co-op banks. He submitted that the facts of the present case are similar to the facts in the case of Tumkur Merchants Souharda Credit Cooperative Ltd. Vs. ITO(supra) and therefore, the judgment of Hon'ble Karnataka High Court rendered in the case of Tumkur Merchants Souharda Credit Cooperative Ltd. Vs. ITO(supra) is applicable in the present case and not the later judgment of Hon'ble Karnataka High Court rendered in the case of PCIT and Another Vs. Totagars Co-operative Sale Society (supra) because the facts of that case are different. The Id. DR of revenue supported the orders of authorities below.

5. I have considered the rival submissions. First of all I reproduce para no. 3.2 of assessment order for noting down the facts of the present case. The same is as under.

“3.2The assessee is a co-op credit society, the activity of the society is "providing credit facility to its members" and it is running on the basis of "mutuality concept". The assessee has surplus and reserve funds created out of accumulated profits of the society and such funds are not immediately required for the business or as there were no loan takers and hence, the society has invested such funds with nationalized and co-op banks. The nationalized and co-op banks are not members of the society and accordingly the interest earned by the

society from its investment with non members such as Nationalised and Co-op Banks are not qualified for claiming the deduction u/s 80P(2)(a)(i) of the Act. Further, the provisions of sec. 80P(2)(a)(i) which clearly states that, deduction is allowable only where "business of banking or providing credit facility to its members". However, in the present case the society has earned interest from its investment with co-op banks which are not a members of the society and hence, the interest earned by the society of Rs.3,28,286 is required to be excluded from allowing deduction u/s 80P(2)(a)(i)."

6. I also reproduce the relevant para from the judgement of Hon'ble Karnataka High Court rendered in the case of PCIT and Another Vs. Totagars Co-operative Sale Society (supra) being second Para on page 616 of 395 ITR. The same is asunder.

"Further, as state above, the assessee(s) markets the agricultural produce of its members. It retains the sale proceeds in many cases. It is this 'retained amount' which was payable to its members, from whom produce was bought, which was invested in short-term deposits/securities. 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 in section 80P(2)(a)(iii) of the Act. Therefore, looking to the facts and circumstances of this case, we are of the view that the Assessing Officer was right in taxing the interest income, indicated above, under section 56 of the Act."

7. I also reproduce para no. 10 from the judgement of Hon'ble Karnataka High Court rendered in the case of Tumkur Merchants Souharda Credit Cooperative Ltd. Vs. ITO(supra). The same reads as under.

*"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.***

8. When I go through both these judgements of Hon'ble Karnataka High Court, I find that there is no contradiction in both these judgements. Both these judgements are in the same line that if the deposit in bank are out of own funds of society then the interest on same is eligible for deduction u/s. 80P (1) and if the deposit in bank is out of the fund available with the society in the form of liability then the same is not eligible for deduction u/s. 80P (2) of IT Act. The conclusion is different in both the judgements because the facts are different in both these cases. Hence, I have to see that in the facts of the present case, which judgement is applicable. The facts of the present case are also reproduced by me being para 3.2 of assessment order. When I compare the facts of the present case with the facts of these two judgments, I find that the facts in the case of Tumkur Merchants Souharda Credit Cooperative Ltd. Vs. ITO(supra) are tallying and not the facts in the case of judgment of Hon'ble Karnataka High Court rendered in the case of PCIT and Another Vs. Totagars Co-operative Sale Society (supra). Hence, I respectfully follow the judgement of Hon'ble Karnataka High Court rendered in the case of Tumkur Merchants Souharda Credit Cooperative Ltd. vs. ITO (supra) and decide the issue in favour of the assessee in both years.
9. In the result, both the appeals filed by the assessee are allowed.

Order pronounced in the open court on the date mentioned on the caption page.

Sd/-
(ARUN KUMAR GARODIA)
Accountant Member

Bangalore,
Dated, the 24th January, 2018.
/MS/

Copy to:

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

By order

Senior Private Secretary,
Income Tax Appellate Tribunal,
Bangalore.