

IN THE INCOME TAX APPELLATE TRIBUNAL

“SMC-B” BENCH : BANGALORE

BEFORE SHRI ARUN KUMAR GARODIA, ACCOUNTANT MEMBER

ITA Nos. 2099 & 2100/Bang/2017
Assessment Years :2012-13 & 2013-14

M/s. Chikkerur Pattina Souharda Sahakari Niyamitha, Main Road, Nr. Bus Stand, Chikkerur, Haveri District. PAN: AAAAC 9264H	Vs.	The Income Tax Officer, Ward – 2, Haveri.
APPELLANT		RESPONDENT

Appellant by	:	Shri Siddharth Baburao, Advocate
Respondent by	:	Shri Vimal Anand, Addl. CIT (DR)

Date of hearing	:	18.01.2018
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 29.06.2017 for Assessment Years 2012-13 and 2013-14. Both these appeals were heard together and are being disposed of by way of this common order for the sake of convenience.

2. The grounds of appeal raised by the assessee for Assessment Year 2012-13 are as under.

“1. The Order of the Hon"ble Commissioner of Income Tax (Appeals) Davanagere is opposed to the law and facts and circumstances of the case.

2. Whether Hon"ble CIT (Appeals) is right in holding that the assessee is not eligible to claim adeduction under Section 80P(2)(1)(a) of the Income-Tax Act 1961.

3. Whether the CIT(Appeals) is rightin treating Interest Income from Investment as income from other sources under Section 56 of the

Income Tax Act. similarly whether the CIT(Appeals) is right in rejecting the assessee's claim of Interest Income to be taxed under Income from business head.

4. The Appellant craves leave to add, alter, amend or delete any other grounds on or before hearing of the appeal.”

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

“1. The Order of the Hon"ble Commissioner of Income Tax (Appeals) Davanagere is opposed to the law and facts and circumstances of the case.

2. Whether Hon"ble CIT (Appeals) is right in holding that the assessee is not eligible to claim adeduction under Section 80P(2)(1)(a) of the Income-Tax Act 1961.

3. Whether the CIT(Appeals) is right in treating Interest Income from Investment as income from other sources under Section 56 of the Income Tax Act. similarly whether the CIT(Appeals) is right in rejecting the assessee's claim of Interest Income to be taxed under Income from business head.

4. The Appellant craves leave to add, alter, amend or delete any other grounds on or before hearing of the appeal.”

4. The Id. AR of assessee submitted that CIT(A) has followed the judgement of Hon'ble Karnataka High Court rendered in the case of PCIT Vs. The Totagars Co-Operative Sale Society in ITA No. 100066 of 2016 Connected with ITA Nos. 100064, 100065, 100067, 100068 & 100051-100054 of 2016 dated 16.06.2017. He submitted copy of this judgement and drawn my attention to page nos. 14 and 15 of the judgement and pointed out that as per the facts of that case, the assessee was marketing agriculture produce of its members and it used to retain the sale proceeds and this retained amount which was payable to its members, from whom produce was bought which was invested in short-term deposits / securities and it was a liability and it was shown in the balance sheet on the liability side. Under these facts, it was held that 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. He submitted that in the present case, the facts are different and therefore, this

judgment is not applicable. He placed reliance on judgement of Hon'ble Karnataka High Court rendered in the case of Guttigedarara Credit Co-operative Society Ltd. Vs. ITO in ITA No. 29/2015 dated 09.06.2015. He submitted copy of this judgement also and drawn my attention to para 12 of this judgment and pointed out that in that case, it was noted by Hon'ble Karnataka High Court that the amount which was invested in banks to earn interest was not an amount due to any member and it was not the liability and it was not shown as liability in the accounts of the assessee. It is also noted that this amount which is in the nature of profits and gains, was not immediately required by the assessee for lending money to its members, as there were no takers. Under these facts, it was held that 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. He submitted that the issue involved in the present case may be restored back to the file of AO / CIT(A) for fresh decision after examining the facts of the present case in the light of these two judgements of Hon'ble Karnataka High Court.

5. The Id. DR of revenue supported the order of CIT(A) and he also submitted that in the present case, the judgement of Hon'ble Karnataka High Court rendered in the case of PCIT Vs. The Totagars Co-Operative Sale Society(supra) should be followed.
6. I have considered the rival submissions. I find that there is no conflict in these two judgments of Hon'ble Karnataka High Court and the final conclusion is different in these two judgements because the facts are different in these two cases. In the case of PCIT Vs. The Totagars Co-Operative Sale Society(supra), the amount deposited in bank was liability payable to the members of the assessee society whereas in the case of Guttigedarara Credit Co-operative Society Ltd. Vs. ITO (supra), it is noted by Hon'ble Karnataka High Court that the amount deposited in bank to earn interest was assessee's own funds and not liability and these funds were not immediately required by the assessee for lending money to its members, as there were no takers.

7. In my considered opinion, this issue should go back to the file of AO for fresh decision after examining the facts of the present case in the light of these two judgements of Hon'ble Karnataka High Court because necessary facts are not available on record as to whether the fund invested in bank was a liability of the assessee or its own fund. Accordingly I set aside the order of CIT(A) in both the years and restore the entire matter for both years to the file of AO for a fresh decision in the light of above discussion after providing adequate opportunity of being heard to the assessee.
8. In the result, the appeals filed by the assessee for both the years are allowed for statistical purposes.

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.