

IN THE INCOME TAX APPELLATE TRIBUNAL

“SMC-B” BENCH : BANGALORE

BEFORE SHRI ARUN KUMAR GARODIA, ACCOUNTANT MEMBER

ITA No.2585/Bang/2017
Assessment Year : 2013-14

M/s. Sri Gangadhareshwar Souhardha Pattina Sahakari Niyamita, CBS Complex, Gangavathi. PAN: AABAS 2552D	vs.	The ITO, Ward – 1, Koppal.
APPELLANT		RESPONDENT

Appellant by	:	Shri R.E. Balasubramanyam, CA
Respondent by	:	Dr. G. Manojkumar, Addl. CIT (DR)

Date of hearing	:	11.01.2018
Date of Pronouncement	:	19.01.2018

ORDER

Per Shri A.K. Garodia, Accountant Member

This is an assessee's appeal directed against the order of Id. CIT(A) – Gulbarga dated 15.09.2017 for Assessment Year 2013-14.

2. The grounds raised by the assessee are as under.

“The Appellant objects to the order of the Ld. CIT (A) on the grounds:

1. That the impugned order is opposed to facts and law in so far as it is pre-judicial to the interests of the Appellant.

2. That the Ld.CIT(A) erred in denying the deduction under section 80P(2) of the Income Tax Act in respect of interest income received from various co-operative banks and in doing so

a) The Ld. CIT(A) failed to appreciate that the interest income from these banks are attributable to profits and gains of the business of extending credit facilities to Appellant's members and as such eligible for exemption under various clauses of Section 80P of the Income Tax Act.

b) The Ld. CIT(A) failed to appreciate that the business of the Appellant consist entirely of extending credit facilities to its members and the interest income from various banks arose only

on account of keeping the surplus funds for the time being in anticipation of lending the same to the members.

c) The Ld CIT(A) failed to consider the decisions of the Honourable jurisdictional High Court and the ITAT in favour of the Appellant.

The Appellant prays for leave to add, modify, delete or introduce additional Grounds of Appeal at any time before the Appeal is disposed off.

For these and such other grounds that may be adduced in time to time, it is requested that the Hon'ble ITAT to cancel the addition made by the Assessing Officer and allow deduction under Section 80P(2) of the Act.”

3. The Id. AR of assessee submitted that the issue in dispute in the present case is squarely covered in favour of the assessee by the judgement of Hon'ble Karnataka High Court rendered in the case of Tumkur Merchants Souharda Credit Cooperative Ltd. Vs. ITO as reported in 230 Taxman 309 (Karnataka), copy available on pages 51 to 56 of paper book. At this juncture, the bench pointed out that as per Para no. 10 of this judgment, various factual aspects had been considered that the amount which was invested in banks to earn interest was not an amount due to any members and it was not a liability. This fact is also noted in the said para that 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. The bench wanted to know of the position of these factual aspects in the present case. The Id. AR of assessee submitted that although all documents are made available before the AO and CIT(A), there is no finding of authorities below on these aspects. He pointed out that Id. CIT(A) has merely followed two judgements of Hon'ble Apex Court rendered in the case of Totagar's Cooperative Sale Society Ltd. Vs. ITO as reported in 322 ITR 283 and in the case of Citizen Co-operative Society as reported in TS-326-SC-2017 dated 16.08.2017 without giving any finding on factual aspects and hence, the matter may be restored back to the file of CIT(A) for fresh decision by way of a speaking and reasoned order. The Id. DR of revenue supported the order of CIT(A).
4. I have considered the rival submissions. I find that the CIT(A) has followed these two judgements of Hon'ble Apex Court rendered in the case of Totagar's

Cooperative Sale Society Ltd. Vs. ITO (supra) and Citizen Co-operative Society (supra). In the judgement of Hon'ble Karnataka High Court rendered in the case of Tumkur Merchants Souharda Credit Cooperative Ltd. vs. ITO(supra), the judgment of Hon'ble Apex Court in the case of Totagar's Cooperative Sale Society Ltd. vs. ITO(supra) was duly considered and in view of the facts of that case, relief was allowed to assessee. But for allowing such relief, the facts on various aspects has to be considered as to whether the amount which is deposited in bank is liability of the assessee or it is own fund and whether the funds was immediately required by the assessee for lending money to the members of the assessee society or not because of this reason that there is no taker as in that case. The applicability of the judgment of Hon'ble Apex Court rendered in the case of Citizen Co-operative Society (supra) is also to be examined in the light of the facts of that case and the present case. Hence I set aside the order of CIT(A) and restore the matter back to his file for fresh decision by way of a speaking and reasoned order in the light of this judgement of Hon'ble Karnataka High Court rendered in the case of Tumkur Merchants Souharda Credit Cooperative Ltd. Vs. ITO(supra) and of Hon'ble Apex Court rendered in the case of Citizen Co-operative Society (supra) in the lights of the facts of the present case and in these cases on various aspects as discussed above. Needless to say that the CIT(A) should pass necessary order as per law in the light of above discussion after providing adequate opportunity of being heard to both sides.

5. In the result, the appeal filed by the assessee stands 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 19th 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.