

IN THE INCOME TAX APPELLATE TRIBUNAL

“SMC-C” BENCH : BANGALORE

BEFORE SHRI ARUN KUMAR GARODIA, ACCOUNTANT MEMBER

ITA No. 22/Bang/2018
Assessment Year :2013-14

M/s. Bijapur Co-op Credit Society Ltd., Shree Siddeshwar front Road, Yaranal Building, Vijayapur. PAN: AAAAT9969J	Vs.	The Income Tax Officer, Ward – 1, Vijayapur.
APPELLANT		RESPONDENT

Appellant by	:	Shri Sandeep, C. A.
Respondent by	:	Shri Balakrishnan N. Addl. CIT (DR)

Date of hearing	:	27.02.2018
Date of Pronouncement	:	27.02.2018

ORDER

Per Shri A.K. Garodia, Accountant Member

This appeal is filed by the assessee which is directed against the order of Id. CIT(A), Belagavidedated 31.10.2017 for Assessment Year 2013-14.

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

“1. That the order of the learned Commissioner of Income Tax(Appeals) is prejudicial to the interests of the appellant, is bad and erroneous in law and against the facts and circumstances of the case.

2. That the learned Commissioner of Income Tax (Appeals) erred in law and on facts in not allowing the interest income earned from the term deposits in the banks as deduction u/s. 80P(2)(a)(i) of the Act on the ground that the same cannot be attributable to business of providing credit facilities to the members.

3. That the learned Commissioner of Income tax (Appeals) erred in law and on facts in not allowing the interest income earned from Co-operative Banks as deduction u/s. 80P(2)(d) of the Act even though the Co-operative Bank is registered as a Co-operative Society under Karnataka State Co-operative Societies Act, 1959.

Each of the above ground is without prejudice to one another and the

appellant craves the leave of the Hon'ble Income Tax Appellate Tribunal, Bangalore to add, delete, amend or modify otherwise any of the ground either before the hearing or at the time of hearing this appeal."

3. It was submitted by Id. AR of the assessee that the issue was decided by CIT(A) by following the judgment 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 judgment 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 and drawn my attention to Para no. 10 of this judgment 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 member and it was not liability and it was not shown as liability in the balance sheet. Thereafter he submitted that there is no finding of any of the authorities below in respect of these facts in the present case and these facts are not readily available before tribunal also and therefore, the matter may be restored to AO or CIT (A) for a fresh decision after examining these facts of the present case in the light of these two judgments. The Id. DR of revenue supported the orders of authorities below.

4. I have considered the rival submissions. First of all I reproduce the relevant Para from the judgment 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 as under.

"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.”

5. I also reproduce Para no. 10 from the judgment 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.**”*

6. When I go through both these judgments of Hon'ble Karnataka High Court, I find that there is no contradiction in both these judgments. Both these judgments are on 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 judgments because the facts are different in both these cases. If as per the facts of the present case, it is found that the deposit in bank are out of own funds of society then the interest on same is

eligible for deduction u/s. 80P (1) as per the judgment of Hon'ble Karnataka High Court rendered in the case of Tumkur Merchants Souharda Credit Cooperative Ltd. Vs. ITO(supra) and if it is found that 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 as per the judgment of Hon'ble Karnataka High Court rendered in the case of PCIT and Another vs. Totagars Co-operative Sale Society (supra). Hence, the facts of the present case has to be looked into and since the facts of the present case are not readily available and there is no finding of any of the authorities below in respect of these facts, I set aside the orders of CIT (A) in both years and restore the matter back to his file for a fresh decision with the direction that he should decide the issue afresh in both years as per above discussion after providing adequate opportunity of being heard in both years.

7. In the result, the appeal filed by the assessee is 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 27th February, 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.