

IN THE INCOME TAX APPELLATE TRIBUNAL

“SMC-A” BENCH : BANGALORE

BEFORE SHRI ARUN KUMAR GARODIA, ACCOUNTANT MEMBER

ITA No.1481/Bang/2017
Assessment Year : 2013-14

The Income Tax Officer, Ward – 5 (2) (4), Bangalore.	Vs.	M/s. The Karnataka State Apex Bank Employee Co-operative Society Ltd., No. 1, Apex Bank Building, Pampa Mahakavi Road, Chamarajpet, Bangalore – 560 018. PAN: AAAAK2843E
APPELLANT		RESPONDENT

Appellant by	:	Shri L.V. Bhaskar Reddy, Addl. CIT (DR)
Respondent by	:	Shri Sandeep, CA

Date of hearing	:	21.03.2018
Date of Pronouncement	:	23.03.2018

ORDER

Per Shri A.K. Garodia, Accountant Member

This appeal is filed by the revenue which is directed against the order of Id. CIT (A)-5, Bangalore dated 22.03.2017 for Assessment Year 2013-14.

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

“1. The order of the Commissioner of Income Tax(Appeals)-5, Bangalore, is opposed to the law and not on the facts and circumstances of the case.

2. Whether the Ld.CIT(A) is justified in not appreciating the fact that the assessee society is carrying on the banking business.

*3. Whether on facts and in the circumstances of the case and in law, the **Ld. CIT (A)** was right in holding that the assessee society is not a cooperative bank ignoring the fact that the nature of its business and functioning has all the trappings and attributes of a bank.*

*4. Whether on facts and in the circumstances of the case and in law, the **Ld.CIT(A)** was right in holding that the assessee society is not a*

cooperative bank ignoring the fact of insertion of clause (Viiia) in section 2(24) of the Income Tax Act,1961 by the Finance Act,2006.

*5. Whether on facts and in the circumstances of the case and in law, the **Ld.CIT(A)** was right in holding that the assessee is eligible for deduction of U/s 80P(2) ignoring the fact that with effect from 01.04.20007, subsection (4) of section 80P provides that the provisions of section 80P shall not apply in relation to any Co-operative bank other than Primary Agricultural Credit society or Primary Cooperative Agricultural and Rural Development Bank.*

6. For these and other grounds that may be urged upon, the order of the CIT(A) may be reversed and that assessment order be restored.

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

3. It was submitted by Id. DR of revenue that in the present case, the judgment of Hon'ble Apex Court rendered in the case of The Citizen Co-operative Society Ltd. Vs. ACIT as reported in 397 ITR 1 is applicable and therefore, order of CIT(A) should be reversed and that of AO should be restored. As against this, it was submitted by Id. AR of assessee that as per Para 24 of the same judgment of Hon'ble Apex Court rendered in the case of The Citizen Co-operative Society Ltd. Vs. ACIT (supra), this issue is covered in favour of the assessee. He drawn my attention to Para 24 of the judgment and pointed out that as per this Para of the judgment, it was held by Hon'ble Apex Court that in order to do the business of a co-operative bank, it is imperative to have a licence from the Reserve Bank of India and therefore, the business of the assessee does not amount to that of a co-operative bank and hence it will not come within the mischief of sub-section (4) of section 80P of the IT Act.

4. I have considered the rival submissions. First of all I reproduce Para 24 of this judgment of Hon'ble Apex Court rendered in the case of The Citizen Co-operative Society Ltd. Vs. ACIT (supra). The same reads as under.

“24) Undoubtedly, if one has to go by the aforesaid definition of ‘co-operative bank’, the appellant does not get covered thereby. It is also a matter of common knowledge that in order to do the business of a co-operative bank, it is imperative to have a licence from the Reserve Bank of India, which the appellant does not possess. Not only this, as noticed above, the Reserve Bank of India has itself clarified that the

business of the appellant does not amount to that of a co-operative bank. The appellant, therefore, would not come within the mischief of sub-section (4) of Section 80P.”

5. I also find that on page no. 7 of the assessment order, it is noted by the AO that the assessee is a co-operative bank being a Primary co-operative bank as per section 56 r.w.s. 5 of the Banking Regulation Act, 1949, which defines Co-operative bank. But this is not the case of the AO that the assessee is having a licence from Reserve Bank of India to do banking business and therefore, as per this judgment of Hon'ble Apex Court of which Para 24 is reproduced above, it cannot be said that assessee is a co-operative bank and hence, I find no reason to interfere in the order of CIT(A).
6. In the result, the appeal filed by the revenue is dismissed.

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

Sd/-
(ARUN KUMAR GARODIA)
Accountant Member

Bangalore,
Dated, the 23rd March, 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.