

IN THE INCOME TAX APPELLATE TRIBUNAL

“SMC-B” BENCH : BANGALORE

BEFORE SHRI ARUN KUMAR GARODIA, ACCOUNTANT MEMBER

ITA No.2900/Bang/2017
Assessment Year :2012-13

M/s. Kanyakapameshwari Credit Co-operative Society Ltd., Nehru Circle, Hiriyyur, Chitradurga District. PAN: AAAAK3692D	Vs.	The Income Tax Officer, Ward – 2, Chitradurga.
APPELLANT		RESPONDENT

Appellant by	:	Shri S.V. Ravishankar, Advocate
Respondent by	:	Shri L.V. Bhaskar Reddy, Addl. CIT (DR)

Date of hearing	:	22.03.2018
Date of Pronouncement	:	22.03.2018

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), Davangere dated 29.06.2017 for Assessment Year 2012-13.

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

“1. The order of the learned Commissioner of Income-tax [Appeals], Davangere, in so far it is against the appellant is opposed to law, weight of evidence, facts and circumstances of the Appellant's case.

2. The appellant denies itself liable to be assessed over and above the income returned income by the appellant of Rs.NIL/- after claiming eligible deduction under section 80 P [2] of the Act, on the facts and circumstances of the case.

3. The learned Commissioner of Income-tax [Appeals] is not justified in law in denying the eligible deduction claimed by the appellant under section 80 P [2] of the Act amounting to Rs. 8,96,580/- under the provisions of section 80 P [2][d] of the Act being the interest earned by the appellant on Deposits made by the appellant on the facts and circumstances of the case.

4. The learned Commissioner of Income-tax [Appeals] failed to appreciate that the provisions of section 80P of the Act allows "the whole of the amount of profits and gains of business attributable to

any one or more of such activities" in making a claim of deduction, on the facts and circumstances of the case.

5. The learned Commissioner of Income-tax [Appeals] failed to appreciate that the interest income earned by the appellant out of the deposits kept in the Banks and Co-Operative Banks are all out of the monies of the members of the appellant society, consequently the learned authorities below ought to have allowed deduction under section 80 P [2] of the Act on such interest income earned by the appellant on the facts and circumstances of the case.

6. The learned Commissioner of Income-tax [Appeals], is not justified in confirming the additions made by the learned assessing officer and treating the said eligible receipts of interest earned from Banks and Co-Operative Banks as income under the head "Income from Other Sources" as per the provisions of section 56 of the Act, on the facts and circumstances of the case.

7. Without prejudice to the right to seek waiver as per the parity of reasoning of the decision of the Hon'ble Apex Court in the case of Karanvir Singh 349 ITR 692, the Appellant denies itself liable to be charged to interest under section 234 B of the Income Tax Act under the facts and circumstances of the case. Further the levy of interest under section 234 B of the Act is also bad in law as the period, rate, quantum and method of calculation adopted on which interest is levied are all not discernible and are wrong on the facts of the case.

8. The appellant craves Leave to add, alter, substitute and delete any or all of the grounds of appeal urged above.

9. For the above and other grounds to be urged during the hearing of the appeal the Appellant prays that the appeal be allowed in the interest of equity and justice."

3. This appeal is filed late by the assessee and the delay is of 77 days. The assessee has submitted an application for condonation of delay along with an affidavit. In the same, it is stated that the order of CIT(A) order dated 29.06.2017 was received by the assessee on 14.08.2017 and therefore, the appeal against this order was to be filed before the Tribunal on or before 13.10.2017 but the same was filed on 28.12.2017 and therefore, there is delay of 77 days in filing the appeal. Regarding the reasons for this delay, it is submitted that soon after the receipt of this appellate order in August 2017, the assessee could not file the appeal in time because the Chartered Accountant was preoccupied with the tax audit and could not guide the assessee as regard to the next course of action and later, the CA asked the assessee to approach

the present counsel and asked the assessee to prefer an appeal before the Tribunal. It is submitted that under these facts, this delay of 77 days should be condoned. The Id. DR of revenue submitted that there is no reasonable cause shown by the assessee regarding this delay of 77 days and therefore, the delay should not be condoned.

4. I have considered the rival submissions and considering the facts of the present case, I feel it proper to condone this delay of 77 days and accordingly, I condone the delay and admit the appeal.
5. It was submitted by Id. AR of assessee that as per para 4d of the order of CIT(A), the assessee society has earned interest on deposits with banks for its surplus funds. He submitted that the Id. CIT(A) has followed 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) but in the facts of the present case, the 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 is applicable and therefore, the addition made by the AO and confirmed by CIT(A) should be deleted. As against this the Id. DR of revenue supported the order of CIT(A).
6. I have considered the rival submissions. I have gone through the judgments of Hon'ble Karnataka High Court rendered in the case of PCIT and Another Vs. Totagars Co-operative Sale Society (supra) and Tumkur Merchants Souharda Credit Cooperative Ltd. Vs. ITO (supra). I find that there is no conflict in these two judgments of Hon'ble Karnataka High Court. Both these judgments are on same line but ultimate conclusion is different because the facts are different. In the case of PCIT and Another Vs. Totagars Co-operative Sale Society (supra), it was noted that the amount which was invested was not the own money of the assessee but it was liability of the assessee society and therefore, the issue was decided against the assessee whereas in the case of Tumkur Merchants Souharda Credit Cooperative Ltd. Vs. ITO (supra), it was noticed that the money deposited in bank was not liability of the assessee and it was assessee's own money and therefore, the issue was decided in favour of the

assessee. In the present case, a categorical finding was given by CIT(A) that the amount deposited in bank was surplus of the assessee and this is not the case of the revenue that amount was liability of the assessee. Hence in my considered opinion, the judgment of Hon'ble Karnataka High Court rendered in the case of Tumkur Merchants Souharda Credit Cooperative Ltd. Vs. ITO(supra) is applicable and not the judgment of Hon'ble Karnataka High Court rendered in the case of PCIT and Another Vs. Totagars Co-operative Sale Society(supra). Respectfully following this judgment of Hon'ble Karnataka High Court rendered in the case of Tumkur Merchants Souharda Credit Cooperative Ltd. Vs. ITO(supra), I decide the issue in favour of the assessee.

7. In the result, the appeal filed by the assessee is allowed.

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

Sd/-
(ARUN KUMAR GARODIA)
Accountant Member

Bangalore,
Dated, the 22nd 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.