

IN THE INCOME TAX APPELLATE TRIBUNAL

“SMC-A” BENCH : BANGALORE

BEFORE SHRI ARUN KUMAR GARODIA, ACCOUNTANT MEMBER

ITA No.936/Bang/2018
Assessment Year :2013-14

M/s. Manjunatheshwara Credit Co-operative Society Ltd., No. 20, 3 <sup>rd</sup> Main, 2 <sup>nd</sup> Block, Ring Road, Nandini Layout, Bangalore – 560 096. <b>PAN: AAKAS1721M</b>	Vs.	The Income Tax Officer, Ward – 6 (2) (2), Bangalore.
APPELLANT		RESPONDENT

Appellant by	:	Shri Chaitanya V.M., Advocate
Respondent by	:	Dr. S. Palani, Addl. CIT (DR)

Date of hearing	:	12.04.2018
Date of Pronouncement	:	20.04.2018

**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)-6, Bangalore dated 21.11.2017 for Assessment Year 2013-14.

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

*“1. The order passed by the authorities below to the extent which is against to the appellant is bad in law and contrary to the settled principles of law.*

*2. The appellant denies himself liable to be taxed on a total income of Rs. 30,51,245/- as assessed by the learned assessing officer as against the return income of Rs. NIL under the facts and circumstances of the case of the appellant.*

*3. The Assessing Officer has erred in disallowing the claim of deduction of an amount of Rs. 30,51,245/- u/s.80P(2)(a)(i) of the Act on the fact and circumstances of the case.*

*4. The CIT(A) erred in coming to the conclusion that, the 'Appellant failed to establish as to how the facts of its case differs from that of the Jurisdictional Karnataka High Court in M/s. Totgars Co-Operative*

*Sale Society Ltd case', without appreciating the facts and circumstances of the case.*

*5. The Assessing Officer and CIT(A) erred in not holding that the Appellant is not a primary co-op bank as referred in Section 5(ccv) of the Banking Regulation Act, 1949 on the facts and circumstances of the case.*

*6. The CIT(A) failed to appreciate that, insertion of clause (viii) in Section 2(24) of the Act does not alter the position so far as exemption u/s.80P(2)(a)(i) of the Act is concerned to a co-op credit society which is engaged in providing credit facilities to its members.*

*7. The Appellant craves leave to add, alter, delete or substitute any of the grounds urged above.*

*8. In view of the above and other grounds that may be urged at the time of hearing of the appeal, your Appellant prays that the appeal may be allowed in the interest of equity and justice.”*

3. It was submitted by Id. AR of assessee that the only issue involved in this case is regarding allowability of deduction u/s. 80P(2)(a)(i) of Rs. 30,51,245/- in respect of interest income from bank. He submitted that 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 the issue is decided in favour of the assessee by another 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. At this juncture, the bench pointed out that there is no conflict in these two judgments of Hon'ble Karnataka High Court but the ultimate conclusion in these two judgments is different because of the difference in facts. The bench pointed out that in case of PCIT and Another Vs. Totagars Co-operative Sale Society(supra), it was found that the investment in bank is out of liability of the assessee and therefore, the issue is decided against the assessee whereas in the case of Tumkur Merchants Souharda Credit Cooperative Ltd. Vs. ITO(supra), the money deposited in bank was not out of liability but out of assessee's own fund and therefore, the decision is in favour of the assessee. The bench wanted to know as to whether there is any finding of authorities below regarding this aspect. The Id. AR of assessee submitted that these facts

are not commented upon by any of the authorities below and the same are not readily available before the Tribunal also and hence, the matter may be restored back to the file of AO for fresh decision after examining the relevant facts. The Id. DR of revenue supported the order of CIT(A).

4. I have considered the rival submissions and I find that the issue involved in the present case is about the deduction u/s. 80P(2)(a)(i) in respect of income on account of interest from bank. This aspect should be examined whether the relevant investment in bank was out of liability of the assessee or was out of the assessee's own funds. These facts are not readily available and there is no comment of any of the authorities below on this aspect. Hence I feel it proper to restore the matter back to the file of AO for fresh decision. Accordingly, I set aside the order of CIT(A) and restore the matter back to the file of AO for fresh decision after examining the facts of the present case in the light of 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) and if it is found that the facts of the present case are in line with the facts in the case of PCIT and Another Vs. Totagars Co-operative Sale Society(supra) then the issue may be decided against the assessee and if the facts of the present case are in same line with the facts in the case of Tumkur Merchants Souharda Credit Cooperative Ltd. Vs. ITO(supra) then the issue may be decided in favour of the assessee. The AO should pass necessary order as per law as per above discussion after providing adequate opportunity of being heard to assessee.
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 20<sup>th</sup> April, 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.