

IN THE INCOME TAX APPELLATE TRIBUNAL

“SMC-A” BENCH : BANGALORE

BEFORE SHRI ARUN KUMAR GARODIA, ACCOUNTANT MEMBER

ITA No.799/Bang/2018
Assessment Year :2014-15

M/s. Divya Jyothi Credit Co-operative Society Ltd., 39, 8 th F Main, Jayanagar 3 rd Block, Bangalore – 560 011. PAN: AAAAD2194B	Vs.	The Income Tax Officer, Ward – 7 (2) (1), Bangalore.
APPELLANT		RESPONDENT

Appellant by	:	None
Respondent by	:	Shri Abdul Hakeem .M, JCIT (DR)

Date of hearing	:	23.04.2018
Date of Pronouncement	:	04.05.2018

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)-7, Bangalore dated 12.01.2018 for Assessment Year 2014-15.

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

“The Learned Assessing Officer and the CIT (A) -7 was not justified in disallowing the deduction u/s.80P on the ground that the appellant is a Co-operative bank on the wrong interpretation of the provision of the section 80P (4) and 80P (2)(a)(i) of the Act and on the assumptions inter alia that:

1. Nothing in the bye laws of the co-operative society that prevents the society from accepting deposit from public.

2. The membership of the co-operative society is open and not restricted by any classification or covenant.

3. The nominal members do not carry any right in the society vis-à-vis permanent members who alone have the power to participate in election and voting. And

4. The interest income earned by the society is on deposit of idle and surplus funds.

The appellant is registered under Karnataka Co-operative Society Act 1959 and the provisions of the Karnataka Souharda Sahakari Act, 1997 is not applicable.”

3. This appeal was first fixed for hearing on 09.04.2018. On this date, none appeared on behalf of the assessee and in the interest of natural justice, hearing was adjourned to 23.04.2018 and the notice of hearing was sent to assessee by RPAD which has been duly served on assessee as per acknowledgement available on record. In spite of this, none appeared on behalf of the assessee on this date also i.e. 23.04.2018 and there is no request for adjournment and therefore, the appeal of the assessee was heard ex-parte qua the assessee. The Id. DR of revenue supported the order of CIT(A).

4. I have considered the submissions of Id. DR of revenue and gone through the orders of authorities below. I find that CIT (A) has decided the issue against the assessee by following the judgement 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 there is no discussion about the facts of the present case as to whether the same are in line with facts in this case i.e. PCIT and Another Vs. Totagars Co-operative Sale Society. There is another 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 and both these judgements are in same line but the ultimate conclusion is different because the facts are different. In the case of PCIT and Another Vs. Totagars Co-operative Sale Society (supra), the issue is decided against the assessee for this reason that the amount deposited in bank was liability of the assessee whereas in the case of Tumkur Merchants Souharda Credit Cooperative Ltd. Vs. ITO (supra), the issue was decided in favour of the assessee because in that case, the money deposited in bank was assessee's own fund and not out of liability of the assessee. Since these facts are not available on record, I feel it fit and proper to restore the matter back to the file of CIT(A) for fresh decision after examining the facts of the present case in the

light of these two judgements 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). If the facts of the present case are in line with the facts 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 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 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 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 04th May, 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.