

IN THE INCOME TAX APPELLATE TRIBUNAL

“SMC-A” BENCH : BANGALORE

BEFORE SHRI ARUN KUMAR GARODIA, ACCOUNTANT MEMBER

ITA No.739/Bang/2018
Assessment Year :2013-14

M/s. Kavour Vyavasaya Seva Sahakari Bank Niyamitha, 2-5[2], Sahakari Soudha, Kavour, Mangaluru – 575 015. PAN: AAAAK0919R	Vs.	The Income Tax Officer, Ward – 1 [2], Mangaluru.
APPELLANT		RESPONDENT

Appellant by	:	Shri Suresh Muthukrishnan, CA
Respondent by	:	Smt. Padma Meenakshi, JCIT (DR)

Date of hearing	:	08.05.2018
Date of Pronouncement	:	11.05.2018

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)-10, Bangalore dated 22.12.2017 for Assessment Year 2013-14.

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

“1. The orders of the authorities below in so far as they are against the appellant are opposed to law, equity, weight of evidence, probabilities, facts and circumstances of the case.

2. The learned CIT[A] is not justified in upholding the disallowance of deduction claimed u/s.80P[2][a][i] of the Act amounting to Rs.2,78,500/- in respect of the interest earned by the appellant from IDBI Bank under the facts and in the circumstances of the appellant's case.

3. Without prejudice to the right to seek waiver with the Hon'ble CCIT/DG, the appellant denies itself liable to be charged to interest u/s 234-B and 234-C of the Act, which under the facts and in the circumstances of the appellant's case deserves to be cancelled.

4. For the above and other grounds that may be urged at the time of

hearing of the appeal, your appellant humbly prays that the appeal may be allowed and Justice rendered and the appellant may be awarded costs in prosecuting the appeal and also order for the refund of the institution fees as part of the costs.”

3. It was submitted by Id. AR of assessee that the Id. CIT(A) has followed the judgment of Hon'ble Karnataka High Court dated 16.06.2017 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 this case are different and therefore, this judgment is not applicable in the present case. He submitted that in the present case, 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 is applicable and therefore, the matter should be restored back to AO or CIT (A) for a fresh decision by following this judgment of Hon'ble Karnataka High Court rendered in the case of Tumkur Merchants Souharda Credit Cooperative Ltd. Vs. ITO (supra). At this juncture, the bench wanted to know regarding the facts of the present case because the decision of Hon'ble Karnataka High Court rendered in both these cases i.e. PCIT and Another Vs. Totagars Co-operative Sale Society (supra) and Tumkur Merchants Souharda Credit Cooperative Ltd. Vs. ITO (supra) are on the same line but the conclusion is different because the facts are different. The bench pointed out that in the case of PCIT and Another Vs. Totagars Co-operative Sale Society(supra), the money deposited in bank was out of liability of the assessee and 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 funds and therefore this decision is in favour of the assessee. The bench pointed out that if the facts in the present case are similar to that of the facts in the case of PCIT and Another Vs. Totagars Co-operative Sale Society (supra) then the issue should be decided against the assessee but if the facts of the assessee are similar to that of Tumkur Merchants Souharda Credit Cooperative Ltd. Vs. ITO(supra) then the issue is to be decided in favour of the assessee. In reply, it was submitted by Id. AR of assessee that the facts are not readily available and therefore, the matter may be restored back to the file of CIT(A) for fresh decision after examining the facts

of the present case in the light of these two judgments of Hon'ble Karnataka High Court. The Id. DR of revenue also agreed to this proposition put forward by the Id. AR of assessee.

4. I have considered the rival submissions and I feel it proper that the matter should go back to the file of CIT(A) for fresh decision after examining the facts of the present case in the light of these two judgments 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 of the 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 inline with the facts of 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 11th 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.