

IN THE INCOME TAX APPELLATE TRIBUNAL

“SMC-A” BENCH : BANGALORE

BEFORE SHRI ARUN KUMAR GARODIA, ACCOUNTANT MEMBER

ITA No.572/Bang/2018
Assessment Year :2013-14

M/s. Karkala Taluk Agricultural Produce Co-operative Marketing Society Ltd., D.No. 309-A/W-A, Mangalore Road, Karkala. PAN: AAAAK1129K	Vs.	The Income Tax Officer, Ward – 3, Udupi.
APPELLANT		RESPONDENT

Appellant by	:	Shri Ravishankar, Advocate
Respondent by	:	Shri Abi Rama Karthikeyan, IRS (DR)

Date of hearing	:	03.05.2018
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.5,59,100 in respect of the interest earned by the appellant from Syndicate Bank and HDFC 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 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 in the present case, the issue involved is regarding allowability of deduction to assessee u/s. 80P[2][a][i] of IT Act. He submitted that Id. CIT(A) has followed 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 in the facts of the present case, this judgement is not applicable and 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 is applicable.
4. At this juncture, the bench pointed out that in both these judgements of Hon'ble Karnataka High Court, the judgment is on same line but the ultimate conclusion is different because the facts are different. The bench also 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 assessee's liability and not out of assessee's own funds and therefore, the issue was decided against the assessee but in the case of Tumkur Merchants Souharda Credit Cooperative Ltd. Vs. ITO (supra), it was found that the money deposited in bank was out of assessee's own funds and not out of liability of assessee and therefore, the issue was decided in favour of the assessee.
5. The bench pointed out that since there is no finding in the order of CIT(A) regarding this aspect of the facts, the matter has to 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 judgements of Hon'ble Karnataka High Court. The Id. AR of assessee agreed to this proposition put forward by the bench. The Id. DR of revenue also agreed to this proposition put forward by the bench.

6. In view of above discussion, the order of CIT (A) is set aside and the matter is restored back to his file for fresh decision. He is directed that 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 should be decided against the assessee but if it is found that 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 should be decided in favour of the assessee. Needless to say, the Id. CIT(A) should provide adequate opportunity of being heard to both sides.
7. 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.