

IN THE INCOME TAX APPELLATE TRIBUNAL

“B” BENCH : BANGALORE

BEFORESHRI ARUN KUMAR GARODIA, ACCOUNTANT MEMBER AND  
SHRI LALIET KUMAR, JUDICIAL MEMBER

ITA No.372/Bang/2017
Assessment Year : 2012-13

The Income Tax Officer, Ward – 3 (4), Hubli.	Vs.	M/s. BSNL Employees Co-operative Credit Society Ltd., Near Desai Cross, Pinto Road, Hubli. <b>PAN: AAAAT7546B</b>
APPELLANT		RESPONDENT

Assessee by	:	Shri Ravishankar, Advocate
Revenue by	:	Smt. SriNandini Das, JCIT (DR)

Date of hearing	:	19.09.2018
Date of Pronouncement	:	28.09.2018

**ORDER**

*Per Shri A.K. Garodia, Accountant Member*

This appeal is filed by the revenue and the same is directed against the order of Id. CIT(A), Hubli dated 30.11.2016 for Assessment Year 2012-13.

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

*“i) Whether Ld. CIT (A) was correct in holding that the provision of Sec 80 (P) of the IT Act is applicable to Co- operative Banks and not to Credit Co-operative Societies, which are engaged in business of banking including providing credit facilities to their members?*

*ii) Whether Id. CIT (A) was correct in holding that the assessee is a cooperative society and not a co operative bank in terms of section 80P (4) of the Income Tax Act without considering the meaning of co-operative bank as envisaged under part V of Banking Regulation Act, 1949 where in it is defined that co-operative bank includes primary co-operative bank, which further defined as co-operative society with the primary objective of transactions of Banking business?*

*iii) Whether on the fact and in the circumstances of the case and in law, the Ld. CIT (A) was justified in law in holding that the assessee -*

*society is entitled to deduction under section 80P(2)(a)(i) of the Income-Tax Act even when the assessee- society is mainly involved in extending credit facilities to its members which is in the nature of bank transaction , treated on par with the new clause introduced in the definition of income in section 2(24)(vii) of the Act and come under the purview of section 80P (4) w.e.f. 01/04/2007?"*

3. The Id. DR of revenue supported the assessment order. She also submitted that there is no finding of Id. CIT (A) on the factual aspect as to whether the assessee is a co-operative bank or not and he has allowed relief to the assessee on the basis of some judicial pronouncements without any finding on factual aspect and therefore, the order of CIT (A) should be reversed and that of AO should be restored.
4. As against this, the Id. AR of assessee supported the order of CIT(A). He also placed reliance on a judgment of Hon'ble Apex Court rendered in the case of The Citizen Co-operative Society Ltd. Vs. ACIT as reported in 397 ITR 1. Our attention was drawn to para no. 24 of this judgement and it was pointed out that as per this para of this judgement of Hon'ble Apex Court, it was held that in order to do the business of a co-operative bank, it is imperative to have a license from the Reserve Bank of India and since the assessee in that case did not possess the same, it was held that the assessee could not come within the mischief of sub-section (4) of Section 80P. He submitted that in the present case also, the assessee does not possess the required license from RBI and therefore, the assessee cannot be treated as a co-operative bank and in this view of the matter, the order of CIT (A) should be confirmed. He also placed reliance on the judgment of Hon'ble Karnataka High Court rendered in the case of Belgaum Merchants Co-op Credit Society Ltd. Vs. CIT as reported in [2016] 236 TAXMAN 351 and in particular, our attention was drawn to para 10 of this judgement. Reliance was also placed by him on a Tribunal order rendered in assessee's own case for Assessment Year 2011-12 in ITA No. 657/Bang/2015 dated 14.08.2015. He submitted a copy of this Tribunal order.
5. We have considered the rival submissions. We find that the AO has held that the assessee is a co-operative bank and therefore, sub-section (4) of section 80P is applicable and the assessee is not eligible for deduction u/s. 80P of IT Act. Against this factual finding of AO in the assessment order, Id. CIT (A) has noted in para no. 7 of his order that the assessee has relied upon 7 judicial

pronouncements. Thereafter he has referred to one more Tribunal order rendered in the case of ACIT Vs. Bangalore Commercial Transport Credit Co-operative Society Ltd. in ITA No. 1069/Bang/2010 and it is noted by him that in this case, the Tribunal has held that section 80P(4) is applicable only to co-operative banks and not to credit co-operative societies. Thereafter the CIT(A) has referred to a judgment of Hon'ble Karnataka High Court rendered in the case of CIT Vs. Sri Biluru Gurubasava Pattina Sahakari Sangha Niyamita Bagalkot in ITA No. 5006/2013 dated 05.02.2014 and it is noted by him that as per this judgment, it was held that the status of the assessee is a co-operative society and not a co-operative bank and hence, the order passed by the AO extending the benefit of exemption from payment of tax u/s. 80P(2)(a)(i) of the Act is correct and such an order is not erroneous and therefore, jurisdiction u/s. 263 of IT Act cannot be invoked. Thereafter, the CIT (A) has also referred to one Tribunal order rendered in the case of ITO Vs. Yeshwantpur Credit Co-operative Society Ltd. and it is noted by him that it is held by Tribunal in this case that assessee is a co-operative society and not a co-operative bank and the provisions of section 80P (4) will not have any application in assessee's case and therefore, it is entitled to deduction u/s. 80P (2) (a) (i) of IT Act. Thereafter in Para 8 of his order, the CIT(A) has noted the Tribunal order in assessee's own case for Assessment Year 2011-12 and thereafter, in Para 9, he has decided the issue in favour of the assessee without any finding on factual aspect as to whether in the present year, the assessee is a co-operative bank or not. When we examine the applicability of the tribunal order in assessee's own case for Assessment Year 2011-12, we find that in this year, this judgment is dated 14.08.2015 i.e. before the judgment of Hon'ble Apex Court rendered in the case of The Citizen Co-operative Society Ltd. Vs. ACIT (supra) which is dated 08.08.2017 and also before the judgement of Hon'ble Karnataka High Court rendered in the case of Belgaum Merchants Co-op Credit Society Ltd. Vs. CIT (supra) which is dated 21.09.2015. As per the judgement of Hon'ble Apex Court rendered in the case of The Citizen Co-operative Society Ltd. vs. ACIT (supra), it was held that in order to do the business of a co-operative bank, it is imperative to have a license from the Reserve Bank of India. Hence for deciding this issue in the present case as to whether the

assessee is a co-operative bank or not, it has to be seen as to whether the present assessee possesses any license from Reserve Bank of India or not in the present year. Since the orders of authorities below are silent on this factual aspect, we feel it proper that this issue should go back to the file of CIT(A) for fresh decision after examining this factual aspect and if it is found that the assessee is not possessing any license from RBI to do the banking business then the judgment of Hon'ble Apex Court rendered in the case of The Citizen Co-operative Society Ltd. Vs. ACIT (supra) will be applicable and it should be held that the assessee is not a co-operative bank and hence eligible for deduction u/s. 80P. We would also like to observe that in the present case, the AO has rejected the claim of the assessee for deduction u/s. 80P on this basis that the assessee is a co-operative bank and therefore, not eligible for deduction u/s. 80P of IT Act. But even if it is found that the assessee is not a co-operative bank because the present assessee is not possessing any license from RBI then also it has to be held that assessee is eligible for deduction u/s. 80P but whether such deduction is actually allowable to assessee or not, the issue has to be examined on the merit of the claim of the assessee for deduction u/s. 80P because the same were not examined by any of the authorities below. In this regard, we would like to observe that if any part or full amount of assessee's claim for deduction u/s. 80P of IT Act is regarding the earning of interest income from commercial banks then the facts of present case has to be examined in the light of two judgments 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 in the case of PCIT and Another Vs. Totagars Co-operative Sale Society as reported in 395 ITR 611 (Karn). In the case of Tumkur Merchants Souharda Credit Cooperative Ltd. vs. ITO (supra), the issue is decided in favour of the assessee because in that case, it was found that the amount invested in bank was out of assessee's own funds and not out of its liability. But in the case of PCIT and Another vs. Totagars Co-operative Sale Society (supra), the issue was decided against the assessee because in that case, it was found that the amount invested in bank for earning interest income was out of assessee's liability and not out of assessee's own funds. Hence even after holding that the assessee

is eligible for deduction u/s. 80P, actual allowability for this deduction should be examined in the light of the facts of the present case and in the light of these two judgments of Hon'ble Karnataka High Court rendered in the case of Tumkur Merchants Souharda Credit Cooperative Ltd. Vs. ITO (supra) and PCIT and Another Vs. Totagars Co-operative Sale Society (supra). The Id. CIT(A) should pass necessary order as per law as per above discussion after providing adequate opportunity of being heard to both sides.

6. In the result, the appeal filed by the revenue is allowed for statistical purposes.  
Order pronounced in the open court on the date mentioned on the caption page.

Sd/-  
(LALIET KUMAR)  
Judicial Member

Sd/-  
(ARUN KUMAR GARODIA)  
Accountant Member

Bangalore,  
Dated, the 28<sup>th</sup> September, 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.