

IN THE INCOME TAX APPELLATE TRIBUNAL

“SMC-B” BENCH : BANGALORE

BEFORE SHRI ARUN KUMAR GARODIA, ACCOUNTANT MEMBER

ITA No. 1957/Bang/2018
Assessment Year : 2012-13

M/s. Prathmik Krushi Pattina Sahakar Sangh Niyamita, Above GP Office, Market Area, Kinnal Village, Tq. & Dist. Koppal – 583 230. PAN: AACAP0154F	vs.	The ITO, Ward – 1, Hospet.
APPELLANT		RESPONDENT
Appellant by	:	Shri Shivprasad S. Parnatti, CA
Respondent by	:	Smt. Padma Meenakshi, JCIT (DR)
Date of hearing	:	04.12.2018
Date of Pronouncement	:	07.12.2018

ORDER

Per Shri A.K. Garodia, Accountant Member

This appeal is filed by the assessee and the same is directed against the order of Id. CIT (A), Gulbarga dated 29.03.2018 for Assessment Year 2012-13.

2. The grounds raised by the assessee as per concise grounds of appeal are as under.

“1. On the facts and circumstances of the case and in law, order of the learned Commissioner of Income Tax (Appeals), Gulbarga (‘CIT-A’) is prejudicial to the interests of the Appellant, is bad and erroneous in law and against the facts and circumstances of the case.

2. On the facts and circumstances of the case, the learned CIT-A, failed to consider the submissions dated 11.11.2014 filed by the Appellant before the Assessing Officer on 19.11.2014 and resorted to pass the impugned order, therefore, the order passed is without affording the Appellant a reasonable opportunity of being heard and thereby violated the principles of natural justice.

3. On the facts and circumstance of the case, the learned CIT-A had failed to appreciate that the Appellant is a Primary Agricultural Credit Society and was dealing only with its members by providing the credit facilities to them. Therefore, in the facts of the case, the decision of Hon'ble jurisdictional High Court passed in the case of Tumkur Merchants Souharda Credit Cooperative Ltd. v. ITO reported in [TS-5931-HC-2014 (Karnataka)-O] is applicable.

4. *The learned CIT-A has erred in upholding the judgment relied upon by the learned AO which are distinguishable from the facts of the Appellant case on hand. Thus, it is respectfully submitted that the ratios of judgment of the Hon'ble Apex Court in the case of Totgars Cooperative Sale Society Limited v. ITO reported in [TS-5012-SC-2010-O] and The Citizens Cooperative Limited v. ACIT reported in [TS-5136-SC-2017-O] is not applicable to the facts of the present case on hand. Therefore, the impugned order is not legally not sustainable and liable to be set aside as void.*

5. *The learned CIT-A erred in holding that the interest earned on term deposits held with Bank is liable to be taxed under the act. Without appreciating the nature of the transaction of the Appellant and fact of the case, the order levying of tax by the authority is against the settled principles of law and is in gross violation of the following decisions of the Hon'ble Jurisdictional High Court and therefore, liable to be quashed:*

- a. *Tumkur Merchants Souharda Credit Cooperative Ltd. v. ITO [TS-5931-HC-2014 (Karnataka)-O];*
- b. *CIT v. Shree Mahila Credit Souharda Sahakari Limited [TS-5541-HC-2017(Karnataka)-O];*
- c. *CIT v. Sri Biluru Gurubasava Pattina Sahakari Sangha Niyamitha, Bagalkot [TS-393-HC-2014(Karnataka)-O];*
- d. *PCIT and Another v. Totgars Co-operative Sale Society [TS-5548-HC-2017(Karnataka)-O]; and*
- e. *Shree Siddeshwar Souhardhana Sahakari Niyamit v. ITO, Bagalkot [TS-5361-HC-2015(Karnataka)-O]*

6. *It is submitted that the Hon'ble Bangalore Bench of ITAT in the case of Basavaraj CEO, Primary Agriculture Credit Cooperative Society Ltd v. CIT reported in [TS-6073-ITAT-2017(Bangalore)-O] by relying on the judgment passed by the Hon'ble Apex Court in the case of Cambay Electric Supply Industrial Co. Ltd. v. CIT reported in [TS-5004-SC-1978-O] has held that the word "attributable to" is certainly wider in import than the expression "derived from". The Hon'ble Bench has further held that if a Cooperative Society earns interest by depositing the income earned from providing credit facilities to its members or the capital, if not immediately required for lending, the said interest income earned is liable to be deducted under Section 80P of the Act. Similar view is upheld by the Hon'ble High Court of Andhra Pradesh in CIT v. Andhra Pradesh State Cooperative Bank Ltd reported in [TS-294-HC-2011(AP)-O].*

7. *The Hon'ble Cochin Bench of the ITAT in the case of ITO v. Edanad Kannur SCB Ltd. reported in [TS-5009-ITAT-2018(Cochin)-O] followed the decision of Hon'ble High Court of Kerala in Chirakkal Service Co-operative Bank Limited reported in TS-5269-HC-2016(Kerala)-O and distinguished the decision of Hon'ble Apex Court passed in the case of Citizen Cooperative Society Ltd reported in [TS-5136-SC-2017-O] and observed that section 3 of the Banking Regulation Act, 1949 shall not apply to Primary Agricultural Societies and rejected the Revenue's contention of relying on the ratio laid down by the Hon'ble Apex Court in Citizens case.*

8. *In this connection reference may also be made to the decision of the Hon'ble Bangalore Bench of ITAT in the case of Primary Agricultural Credit Coop. Bank Ltd v. ITO reported in [TS-5782-ITAT-2018(Bangalore)-O] has categorically held that the Hon'ble jurisdictional High Court in its recent judgment passed in the case of PCIT and Another v. Totgars Co-operative Sale Society as reported in [TS-5548-HC-2017(Karnataka)-O] has distinguished the facts as held in the Totgars recent judgment. Therefore, the judgment is not applicable in the present case as there are dissimilarities in the facts of the case. Thus, the present impugned order suffers from factual and legal infirmities and therefore, it is liable to quashed.*

9. *The learned CIT-A erred in not appreciating the fact that the Appellant has deposited the money immediately not required for lending apart from reserves which have been deposited with Cooperative Bank as per the norms of the Karnataka Cooperative Societies Act, 1959 and is eligible for deduction under section 80P(2)(a)(i) of the Act and that the provisions of section 80P(2)(d) are not applicable to the Appellant society and thereby contravened the judgment of the Hon'ble Hyderabad Bench of ITAT in SBI Officers Coop. Credit Society Ltd v. ITO reported in [TS-7973-ITAT-2017(Hyderabad)-O].*

10. *The CIT- A has failed to note that a literal and mechanical reading of the provision of section 80P would defeat the purpose of the law in cases where the assessee is a primary agricultural society and is eligible for deduction under section 80P of the Act. The Hon'ble Apex Court has held in K.P. Verghese v. ITO reported in [TS-11-SC-1981-O] that where the plain literal interpretation of a statutory provision would produce a manifestly absurd and unjust result which could never have been intended by the Legislature, the court may modify the language used by the Legislature or even do "violence" to it so as to achieve the obvious intention of the Legislature.*

11. *That each of the above ground is without prejudice to one another and theAppellant craves leave to add, alter, amend or modify any of the grounds of appeal and prays to be allowed the permission to submit further evidence / judgment / written submissions at the time of hearing before the Hon'ble Tribunal."*

3. Brief facts are that as per para no. 7 of the order of CIT(A), the revenue has decided the issue against the assessee following the judgement of Hon'ble Apex Court rendered in the case of Totagars' Co-operative Sales Society Ltd. Vs. ITO as reported in 322 ITR 283(SC). In the same Para of his order on page no. 11, he has also referred to another judgement of Hon'ble Apex Court rendered in the case of Citizen Co-operative Society as reported in TS-326-SC-2017 dated 16.08.2017 and thereafter, in Para 7.1 of his order, Id. CIT(A) has given finding that considering these two judgements of Hon'ble Apex Court rendered in the case of Totagars' Co-operative Sales Society Ltd.

Vs. ITO (supra) and Citizen Co-operative Society (supra), the assessee is not eligible for deduction u/s. 80P(2)(d) of IT Act. The Id. AR of assessee 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. Vvs ITO as reported in 230 Taxman 309 is applicable. Regarding this aspect that whether the assessee is a co-operative bank or not, he submitted that as per para 24 of this judgement of Hon'ble Apex Court in the case of Citizen Co-operative Society (supra), it was held that in order to hold that the assessee society is a co-operative bank, it should be established that such assessee co-operative society is holding license from Reserve Bank of India. At this juncture, it was pointed out by the bench that in the same para of this judgement of Hon'ble Apex Court, it is also noted that in that case, the assessee does not possess license from RBI and the RBI has itself clarified that the business of the assessee does not amount to that of a co-operative bank. It was pointed out that in the facts of present case also, the assessee should obtain certificate from RBI regarding the nature of business carried on by the assessee. It was also observed by the bench that before following the judgement of Hon'ble Karnataka High Court rendered in the case of Tumkur Merchants Souharda Credit Cooperative Ltd. Vs. ITO (supra), it has to be ascertained as to whether facts of the present case are in line with the facts in that case or the facts of the present case are in line with the facts in the case of Totagars' Co-operative Sales Society Ltd. Vs. ITO (supra) as per the judgement of Hon'ble Apex Court rendered in that case. In reply, it was submitted by Id. AR of assessee that the matter may be restored back to the file of CIT (A) for fresh decision and if this is done then the assessee will produce the certificate from RBI regarding the nature of business activity of the assessee and also submit the facts before CIT (A) to establish that the facts of present case are in line with the facts in the case of Tumkur Merchants Souharda Credit Cooperative Ltd. Vs. ITO (supra). The Id. DR of revenue supported the orders of authorities below.

4. I have considered the rival submissions. In my considered opinion, this issue should go back to the file of CIT (A) for fresh decision in the light of above discussion and hence, I set aside the order of CIT (A) and restore the matter

back to his file for fresh decision with the direction that on this issue whether the assessee is a co-operative bank or not, the assessee has to obtain and produce the certificate from Reserve Bank of India regarding the nature of business of the assessee. If it is found that as per the said certificate of RBI, the assessee's business is of a co-operative bank then the assessee is not eligible for deduction u/s. 80P. If the assessee is not a co-operative bank as per this certificate of RBI then regarding the claim of the assessee for deduction u/s. 80P(2)(d), the facts of present case should be examined in the light of these two judgements of Hon'ble Karnataka High Court rendered in the case of Tumkur Merchants Souharda Credit Cooperative Ltd. Vs. ITO (supra) and the judgement of Hon'ble Apex Court rendered in the case of Totagars' Co-operative Sales Society 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 Tumkur Merchants Souharda Credit Cooperative Ltd. Vs. ITO (supra), then the issue should be decided in favour of the assessee and if the facts of the present case are in line with the facts in the case of Totagars' Co-operative Sales Society Ltd. Vs. ITO (supra), then the issue should be decided against the assessee. Needless to say, Id. CIT(A) should pass necessary order as per law as per above discussion after providing adequate opportunity of being heard to both sides. In view of this decision, no separate adjudication on any other ground is called for.

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 07th December, 2018.
/MS/

Copy to:

1. Appellant
2. Respondent
3. CIT

4. CIT(A)
5. DR, ITAT, Bangalore
6. Guard file

By order

Assistant Registrar,
Income Tax Appellate Tribunal,
Bangalore.