

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
BANGALORE BENCH 'A'**

**BEFORE SHRI N.V VASUDEVAN, VICE PRESIDENT  
AND  
SHRI JASON P BOAZ, ACCOUNTANT MEMBER**

ITA No.49/Bang/2018
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Assessment year : 2012-13
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M/s Malnad Areca Marketing Co-operative Society Ltd., APMC Yard, Shivamogga. <b>PAN -AAAJM 0788P.</b>	Vs.	The Asst. Commissioner of Income-tax, Circle-1, Shivamogga.
APPLICANT		RESPONDENT

Appellant by	:	Shri Rakesh U.R, C.A
Respondent by	:	Smt. Sri Nandini Das, Addl. CIT

Date of hearing	:	26.11.2018
Date of Pronouncement	:	07.12.2018

**ORDER**

**PER SHRI N.V VASUDEVAN, VICE PRESIDENT :**

This is an appeal by the Assessee against the order dated 20.6.2017 of CIT(A), Davangere relating to AY 12-13.

2. The only issue for consideration in this appeal is as to whether the revenue authorities were justified in denying the benefit of deduction on interest income of Rs.1,49,51,464 received on deposits with Co-operative banks u/s.80P(2)(d) of the Income Tax Act, 1961 (Act) and deduction on interest income of Rs.46,74,662/- being interest on deposits other than co-operative banks, u/s.80P(2)(a)(i) of the Act.

3. The AO denied the benefit of deduction as claimed by the Assessee for the reason that principle of mutuality was not satisfied in as much as there was no identity between the contributors and participants of surplus generated. The AO in this regard referred to decision of Hon'ble Supreme Court in the case of M/s.Bangalore Club Vs. CIT Civil Appeal No.124 of 2007.

4. On appeal by the Assessee, the The CIT(A) was of the view that interest income earned by making investment of surplus funds has to be assessed under the head "Income from other Sources" and not income from business and since interest income is not assessed as business income, the claim for deduction cannot be allowed. In coming to the above conclusion, the CIT(A) relied on the decision of the Hon'ble Supreme Court in the case of The Togar's Co-operative Sales Society Ltd. Vs. ITO 322 ITR 283(SC) wherein the Hon'ble Supreme Court held that the benefit of deduction u/s.80P(2)(a)(i) of the Act is only on income which is assessable under the head income

from business. Interest earned on Investment of surplus funds not immediately required in short term deposits and securities by a co-operative society providing credit facilities to members or marketing agricultural produce to members is not business income but income from other sources and the society is not entitled to special deduction. The CIT(A) also relied on a subsequent decision of the Hon'ble Karnataka High Court in the case of PCIT Vs. Totgars Co-operative Sale Society Ltd. 395 ITR 611 (Karn.) in which the proposition laid down by Hon'ble Supreme Court in the case of The Togar's Co-operative Sales Society Ltd. (supra) was reiterated.

5. Aggrieved by the order of the CIT(A), the Assessee is in appeal before the Tribunal. The sum and substance of the grounds of appeal and the revised grounds of appeal filed by the Assessee is that it is entitled to the benefit of deduction on interest income of Rs.1,49,51,464 received on deposits with Co-operative banks u/s.80P(2)(d) of the Act and deduction on interest income of Rs.46,74,662/- being interest on deposits other than co-operative banks, u/s.80P(2)(a)(i) of the Act.

6. We have heard the rival submissions. The learned AR relied on the decision of the Hon'ble Karnataka High Court in the case of Tumkur Merchants Souharda Cred Co-operative Society Ltd. Vs. ITO 230 taxman 309 (Karn) wherein the Hon'ble Karnataka High Court considered the decision of the Hon'ble Apex Court in the case of The

Totgar's Co-operative Sales Society (supra) and held that interest income in respect of temporary parking of own surplus funds not immediately required is eligible for deduction u/s.80P(2)(a)(i) of the Act. The learned DR relied on a subsequent decision of the Hon'ble Karnataka High Court in the case of PCIT Vs. Totgars Co-operative Sale Society Ltd. 395 ITR 611 (Karn.).

7. We have carefully gone through the judgment relied by the learned DR. The facts of the case before the Hon'ble Karnataka High Court in the decision cited by the learned DR was that the Hon'ble Court was considering a case relating to Assessment Years 2007-2008 to 2011- 2012. In case decided by the Hon'ble Supreme Court in the case of the very same Assessee, the Assessment years involved was AY 1991-92 to 1999-2000. The nature of interest income for all the AYs was identical. The bone of contention of the Assessee in AY 2007-08 to 2011-12 was that the deduction under Section 80P(2) of the Act is claimed by the respondent assessee under Section 80P(2)(d) of the Act and not under Section 80P(2)(a) of the Act which was the claim in AY 1991-92 to 1999-2000. The reason given by the Assessee was that in AY 2007-08 to 2011-12 investments and deposits after the Supreme Court's decision against the assessee Totgar's Co-operative Sale Society Ltd. (supra), were shifted from Schedule Banks to Co-operative Bank. U/s.80P(2)(d) of the Act, income by way of interest or dividends derived by a Co-operative Society from its investments with any other Co-operative Society is entitled to deduction of the whole of such interest or dividend income. The claim of the Assessee

was that Co-operative Bank is essentially a Co-operative Society and therefore deduction has to be allowed under Clause (d) of Sec.80P(2) of the Act. The Hon'ble Karnataka High Court followed the decision of the supreme Court in The Totgars Co-operative Sales Society Ltd. (supra) and held that interest earned from Schedule bank or co-operative bank is assessable under the head income from other sources and therefore the provisions of Sec.80P(2)(d)of the Act was not applicable to such interest income. It is thus clear that the source of funds out of which investments were made remained the same in AY 2007-08 to 2011-12 and in AY 1991-92 to 1999-2000 decided by the Hon'ble Supreme Court. Therefore whether the source of funds were Assessee's own funds or out of liability was not subject matter of the decision of the Hon'ble Karnataka High Court in the decision cited by the learned DR. To this extent the decision of the Hon'ble Karnataka High Court in the case of Tumukur Merchants Souharda Co-operative Ltd. (supra) still holds good. Hence, on this aspect, the issue should be restored back to the AO for a fresh decision after examing the facts in the light of these judgment of the Hon'ble Apex Court rendered in the case of The Totgars Co-operative Sale Society Ltd. (supra) and of Hon'ble Karnataka high Court rendered in the case of Tumukur Merchnts Souharda Co-operative Ltd. (supra). We also make it clear that the examination of claim for deduction in respect of interest income of Rs.1,49,51,464 received on deposits with Co-operative banks and deduction on interest income of Rs.46,74,662/- being interest on deposits other than co-operative banks, will be made only

u/s.80P(2)(a)(i) of the Act and in so far as deduction u/s.80P(2)(d) of the Act is concerned, the same becomes not allowable in view of the decision of Karnataka High Court in the case of PCIT Vs. Totgars Co-operative Sale Society Ltd. 395 ITR 611 (Karn.).

8. The AO will afford opportunity of being heard to the Assessee and filing appropriate evidence, if desired, by the Assessee to substantiate its case, before deciding the issue.

9. In the result, appeal by the revenue is treated as allowed for statistical purpose.

Order pronounced in the open court on **7<sup>th</sup> December, 2018.**

**Sd/-**  
**(JASON P BOAZ)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(N.V VASUDEVAN)**  
**VICE PRESIDENT**

Bangalore

Dated : 7/12/2018

Vms

Copy to : 1. The Assessee  
2. The Revenue  
3. The CIT concerned.  
4. The CIT(A) concerned.  
5. DR  
6. GF

By order

Asst. Registrar, ITAT, Bangalore

1. Date of Dictation .....
2. Date on which the typed draft is placed before the dictating Member .....
3. Date on which the approved draft comes to Sr. P. S .....
4. Date on which the fair order is placed before the dictating Member .....
5. Date on which the fair order comes back to the Sr. P.S. ....
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12. The date on which the file goes to dispatch section for dispatch of the Tribunal Order .....
13. Date of Despatch of Order. ....