

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

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

ITA Nos.2651, 2654 & 2655/Bang/2018
Assessment years : 2011-12, 2012-13 & 2014-15

The Income-tax Officer, Ward – 6(2)(4), Bengaluru.	Vs.	M/s BEL Employees Co- operative House Building Society Ltd., C-92, BEL Colony, Jalahalli Post, Bengaluru. PAN – AAAAH 8615 H.
APPLICANT		RESPONDENT

Appellant by	:	Dr. P.V Pradeep Kumar, Addl. CIT
Respondent by	:	Shri Chythanya V Mudrabetu, Advocate

Date of hearing	:	10.12.2018
Date of Pronouncement	:	.12.2018

ORDER

PER SHRI N.V VASUDEVAN, VICE PRESIDENT :

These are appeals by the Revenue against common order dated 20/6/2018 of CIT(A), Bangalore-6 relating to asst. year 2011-2, 2012-13 and 2014-15.

2. The grounds of appeal raised by the Revenue for all these appeals are identical except for the change in the quantum on deduction that was allowed by the CIT(A) u/s 80P(2)(d) of the Income-tax Act 1961 (the Act).

3. For the sake of ready reference grounds of appeal in asst. year 2011-12 is reproduced here under:-

“1. The order of the CIT (Appeals) is opposed to law and the facts and circumstances of the case.

2. On the facts and circumstances of the case, whether the Ld CIT(A) is justified in allowing deduction of Rs. 20,01,469/- u/s 80P(2)(d) in respect of the interest earned by the assessee on deposits kept with co-operative banks?

3. on the facts and circumstances of the case, whether the Ld CIT(A) is justified in not following the judicial precedent laid down by the jurisdictional Hon'ble High Court in its judgement dated 16th June 2017 in ITA Nos. 100066 & Others of 2016 in the case of Pr. CIT vs The Totgars Co-operative Sale Society wherein, particularly in paras 14 to 16, the Hon'ble High Court has held that interest earned by a co-operative society from a co-operative bank is not deductible u/s 80P(2)(d) of the IT Act?

4. On the facts and circumstances of the case, whether the Ld CIT(A) is justified in relying upon the decision of the jurisdictional Hon'ble High Court in the case of CIT vs Sri Biluru Gurubasava Pattina Sahakari Sangha Niyamitha Bagalkot which deals with deduction u/s 801D(2)(a)(i) and not section 80P(2)(d)?

5. For these and such other grounds that may be urged at the time of hearing, it is humbly prayed that the order of the CIT(A), in so far as it relates to the above grounds may be reversed and that of the Assessing Officer be restored.

6. The appellant craves leave to add, to alter, to amend or delete any of the grounds that may be urged at the time of hearing of the appeal.”

4. As can be seen from the grounds of appeal, the assessee had claimed deduction on interest received on fixed deposits with co-operative banks. The AO took the view that u/s 80P(2)(d) of the Act interest derived by the cooperative society from its investments with any other co-operative society would only be allowable as a deduction subject to the

condition that such interest income should be attributable to the business of the society. The AO was of the view that the deposits were made by the assessee with cooperative societies which were engaged in banking business and, therefore, were to be regarded as cooperative banks and, therefore, deduction u/s 80P(2)(d) should not be allowed as laid down by the provision of sec. 80P(4) of the Act.

5. On appeal by the assessee, the CIT(A) following the decision of Hon'ble Karnataka High Court in the of CIT Vs. Biluru Gurubasava Pattina Sahakari Sangh Niyamit (ITA No.5006/2013) held that the cooperative society carrying on banking business cannot be regarded as cooperative bank and, therefore, provision of sec. 80P(4) of the Act are not applicable in that view of the matter, the CIT(A) following the decision of Karnataka High Court allowed the claim of the assessee.

6. Aggrieved by the order of the CIT(A) Revenue has preferred present appeal before the Tribunal.

7. 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.).

8. 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 examining 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 Merchants Souharda Co-operative Ltd. (supra).

9. 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.

10. In the result, appeal by the Revenue are treated as allowed for statistical purpose.

Order pronounced in the open court on **December, 2018.**

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

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

Bangalore

Dated : /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.
6. Date of uploading the order on website.....
7. If not uploaded, furnish the reason for doing so
8. Date on which the file goes to the Bench Clerk
9. Date on which order goes for Xerox & endorsement.....
10. Date on which the file goes to the Head Clerk
11. The date on which the file goes to the Assistant Registrar for signature on the order
12. The date on which the file goes to dispatch section for dispatch of the Tribunal Order
13. Date of Despatch of Order.