

IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC-C” BENCH : BANGALORE

BEFORE SHRI A.K.GARODIA, ACCOUNTANT MEMBER

ITA No. 3090 (Bang) 2018
(Assessment year : 2015 – 16)

M/s. Shrinidhi Urban Coop Credit Society Ltd.
Main Road,
Rabakavi - 587311,
Tal. Jamkhandi,
Dist.:- Bagalkot.
PAN. AAAAS7029Q

Appellant

Vs

The Income Tax Officer,
Ward – 2,
Bagalkot.

Respondent

Assessee by : Shri Ashok G. Mudnur, C. A.
Revenue by : Smt. Padmameenakshi, JCIT (DR)

Date of hearing : 03-12-2018
Date of pronouncement : 21-12-2018

ORDER

PER A. K. GARODIA, A.M.:

This appeal is filed by the assessee and it is directed against the order of CIT (A) – Belgaum dated 24.08.2018 for A. Y. 2015 – 16.

2. The grounds raised by the assessee are as under:-

“1. The learned Commissioner of Income Tax (Appeals), Belgaum has erred in upholding the learned Assessing Officer order disallowing the appellant's claim u/s 80P(2)(a)(i) of the Income Tax Act 1961 which is opposed to law and facts of the case.

2. The learned Commissioner of Income Tax (Appeals), Belgaum has erred in applying Citizen Coop Society Ltd, Hyderabad (SC) case which facts are different than that of the appellant wherein there are no loans to general public but only to members eligible under the state Act.

3. The learned Commissioner of Income Tax (Appeals) erred in bringing new dimension to the meaning of "member" by drawing

distinction between General members, Associate members and Nominal members which the Income Tax Act ,1961 does not. The appellants draw support from The Jalagaon District Central Cooperative Bank Ltd & Anr Vs Union of India & Ors (2004) 265 ITR 423 (Born)

4. The learned Commissioner of Income Tax (Appeals),Belgaum has erred in upholding the learned Assessing Officer order wherein they have equated nominal members and associate members as non-members and hence violation of Karnataka Cooperative Society Act, 1959 and thereby not eligible to deduction u/s 80P(2) applying Citizen Coop Society Ltd Hyderabad Vs ACIT,9(1) Hyderabad (SC) case.

5. The appellants craves leave to add/alter any of the grounds of appeal on or before the date of final hearing.”

3. Learned AR of the assessee submitted that the AO and CIT 9A) had applied the judgment of Hon’ble Apex Court rendered in the case of Citizen Co-Operative Society limited vs. ACIT, 397 ITR 1 without comparing the facts of that case with the facts of the present case. Learned DR of the revenue supported the orders of the lower authorities and placed reliance on the judgment of Hon’ble Apex Court rendered in the case of Citizen Co-Operative Society limited vs. ACIT (Supra).

4. I have considered the rival submissions and I find that Para 25 of this judgment of Hon’ble Apex Court rendered in the case of Citizen Co-Operative Society limited vs. ACIT (Supra) is relevant and therefore, the same is reproduced herein below:-

"25. So far so good. However, it is significant to point out that the main reason for disentitling the appellant from getting the deduction provided under Section 80P of the Act is not sub-section (4) thereof. What has been noticed by the Assessing Officer, after discussing in detail the activities of the appellant, is that the activities of the appellant are in violations of the provisions of the MACSA under which it is formed. It is pointed out by the Assessing Officer that the assessee is catering to two distinct categories of people. The first category is that of resident members or ordinary members. There may not be any difficulty as far as this category is concerned. However, the assessee had carved out another category of 'nominal members'. These are those members who are making deposits with the assessee for the purpose of obtaining loans, etc. and, in fact, they are not members in real sense. Most of the business of the appellant was with this second category of persons who have been giving deposits which are kept in Fixed Deposits with a motive to earn maximum returns. A portion of these deposits is utilised to advance gold loans, etc. to the members of the first category. It is found, as a matter of fact, that he depositors and borrowers are quiet distinct. In

reality, such activity of the appellant is that of finance business and cannot be termed as co-operative society. It is also found that the appellant is engaged in the activity of granting loans to general public as well. All this is done without any approval from the Registrar of the Societies. With indulgence in such kind of activity by the appellant, it is remarked by the Assessing Officer that the activity of the appellant is in violation of the Co-operative Societies Act. Moreover, it is a co-operative credit society which is not entitled to deduction under Section 80P(2)(a)(i) of the Act."

5. It is seen that in that case, it was noted that the assessee is in finance business because it was found in that case that the depositors and borrowers are quite distinct and loan is also granted to general public. In the present case, these aspects of facts are not examined and commented upon by any of the lower authorities. Hence, I feel it proper to restore the matter back to the AO for a fresh decision after examining the facts of the present case in the light of this judgment by way of a speaking and reasoned order after providing adequate opportunity of being heard to the assessee.

6. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on the date mentioned on the caption page.

Sd/-
(A.K. GARODIA)
ACCOUNTANT MEMBER

Bangalore

D a t e d : 21.12.2018

/MS/

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|---------------|------------------------|
| 1. Appellant | 4. CIT(A) |
| 2. Respondent | 5. DR, ITAT, Bangalore |
| 3. CIT | 6. Guard file |

By order

Assistant Registrar,
Income Tax Appellate Tribunal,
Bangalore