

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

BEFORE SHRI A.K.GARODIA, ACCOUNTANT MEMBER

ITA No. 3081 (Bang) 2018
(Assessment year : 2015 – 16)

M/s. Shri Parvati Parameshwar Pattin Sahakari Sangha Niyamit, Appellant
Near Jumma Masjid Building,
Kamatagi, Dist. Bagalkot.
PAN. AAKAS5692K

Vs

The ITO, Ward – 1, Respondent
Bagalkot.

Assessee by : Shri Mallah Rao, Advocate
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 17.09.2018 for A. Y. 2015 – 16.

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

“1. The Ld. Commissioner of Income Tax (Appeals) erred in law as well as on facts in rejecting the claim of the appellant in respect of grant of deduction u/s 80P(2)(a)(i) to the extent of Rs.8,56,930.00 as claimed by the appellant. The appellant prays for grant of the deduction as claimed.

2. The Ld. Commissioner of Income Tax (Appeals) erred in law as well as on facts in applying the Judgement of Hon. Supreme Court of India in the case of Citizen Co-Operative Society, Hyderabad. As the facts of Citizen society & the assessee society is totally different.

3. The Ld. Commissioner of Income Tax (Appeals) erred in law and on facts in not following the Hon'ble High Court of Karnataka, Dharwad Bench in the case of Tumkur Merchants Souharda Credit Co-Operative Ltd V/s ITO and Guttugedarara Credit Co-Operative Society Ltd., Vs. ITO. The High Court of Karnataka is the jurisdictional high court to the Ld. CIT (Appeal). The Assessee society has made deposits with BDCC Bank & others as a short term deposit.

These deposits are made up out of idle funds which are required for lending purpose. As & when the society requires money, it withdraws the deposit. Therefore investment is attributable to the main activity of the assessee society.

4. Each of the above grounds is without prejudice to one another and the appellant craves leave to add, delete, amend or otherwise modify or withdraw one or more of the above grounds either before or at the time of hearing of this appeal.”

3. Learned AR of the assessee submitted that the AO and CIT (A) 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 violation 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 the depositors and borrowers are quite 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

Dated : 21.12.2018

/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.