

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

BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT

ITA Nos.1992 & 2596/Bang/2018
Assessment years : 2013-14 & 2014-15

Raithara Seva Sahakara Sangha Niyamitha, Hosahalli, Tq. Kudligi. Bellari Dist. PAN: AABAR 3283N	Vs.	The Income Tax Officer, Ward 2, Hospet.
APPELLANT		RESPONDENT

Appellant by	:	Shri S. Ramasubramanian, CA
Respondent by	:	Shri Karuppuswamy, S.R., Addl.CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	18.12.2018
Date of Pronouncement	:	02.01.2019

ORDER

These are appeals by the assessee against the two orders dated 23.3.2018 and 31.7.2018 of CIT(Appeals), Gulbarga, relating to asst. years 2013-14 and 2014-15.

2. There is a delay of 4 days in filing appeal for AY 2013-14 which has been explained as owing to confusion in reckoning the date of receipt of order of CIT(A). The delay is not inordinate and the reasons for the delay in filing the appeal is accepted as reasonable and genuine. The delay in filing the appeal is accordingly condoned.

3. One common issue involved in both these appeals are with regard to the claim for deduction u/s.80P(2)(a)(i) of the Income Tax Act, 1961 (Act) which was denied by the Revenue authorities. The assessee which is a co-operative society claimed deduction u/s 80P(2)(d) or 80P(2)(a)(i) of the Act on a sum of Rs.21,58,239/- in asst. year 2013-14 and Rs.8,02,633/- in asst. year 2014-15. The sum on which deduction was claimed was interest income earned on deposits by the Assessee with other banks. The deduction claimed by the assessee was not allowed by the Revenue authorities for the reason that the income which was claimed as deduction was interest income which was earned by the assessee on deposits and in view of the decision of the Hon'ble Supreme Court in the case of *PCIT Vs. Totgars Co-operative Sale Society Ltd.*, 83 taxmann.com 140 interest income had to be regarded as 'income from other sources'. Since interest income was not income derived from the business of co-operative society, the deduction claimed by the assessee cannot be allowed. The plea of the Assessee was the fixed deposits on which interest income was earned were made in compliance with the legal requirements of maintaining statutory reserves as mandated in the law relating to co-operative societies applicable to the Assessee. This plea was also not dealt with specifically by the revenue authorities. The claim for deduction u/s.80P(2)(a)(i) of the Act made as an alternative claim was also not allowed by the AO.

4. On appeal by the assessee, the CIT(A) confirmed the action of the AO. Aggrieved by the orders of the CIT(A), the assessee has filed the present appeals before the Tribunal.

5. 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 Credit 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.).

6. 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)*.

7. 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. The Assessee has also filed an application for filing additional evidence regarding its membership to show that no nominal members existed in the society. We give liberty to the Assessee to file these documents before the AO in the set aside proceedings.

8. The other issue which arises for consideration in the appeal of the Assessee for AY 2014-15 is with regard to claim for deduction on a sum of Rs.9,34,798/- u/s.80P(2)(a)(iv) of the Act, which lays down that income derived from purchase of agricultural implements, seeds, livestock or other articles intended for agriculture for the purpose of supplying them to its members, will be eligible for deduction. The CIT(A) did not allow the claim of the Assessee for the reason that the supply of food grain seeds was done under Public Distribution System (PDS) and not to its members and

therefore the deduction claimed cannot be allowed. The learned counsel for the Assessee made a prayer for remand to the AO and submitted that not all income that was claimed as deduction u/s.80P(2)(a)(iv) of the Act was income from public distribution system and to the extent it was trading with members, the deduction claimed should be allowed. The learned DR submitted that in any event the deduction claimed cannot be over and above what is allowed u/s.80P(2)(c) of the Act. We are of the view that the prayer made is reasonable and accordingly, we set aside the order of CIT(A) on this issue for the limited purpose of examining the claim of the Assessee u/s.80P(2)(a)(iv) of the Act to the extent of profits derived from dealing with members alone.

8. In the result, appeals by the assessee are treated as allowed for statistical purpose.

Pronounced in the open court on this 02nd day of January, 2019.

Sd/-

(N.V. VASUDEVAN)
VICE PRESIDENT

Bangalore,
Dated, the 02nd January, 2019.

/ Desai Smurthy /

Copy to:

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

By order

Assistant Registrar,
ITAT, Bangalore.