

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

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

ITA No. and Assessment Year	APPELLANT	RESPONDENT
1752/Bang/2016 2010-11 and 2013-14	M/s. ING Vysya Officers Credit Co-operative Society Ltd., # 99, Ground Floor, 2 nd Main, 10 th Cross, 1 st Block, Thyagarajnar, Bangalore – 560 028. PAN : AAAAV 1019 R	The Commissioner of Income Tax (Appeals-V), Bangalore.
1203/Bang/2017 2013-14	-do-	The Income Tax Officer, Ward – 5(2)(5), Bangalore.

Assessee by	:	Shri. Srinivasan V, Advocate
Revenue by	:	Smt. Sri Nandini Das, Addl. CIT

Date of hearing	:	26.11.2018
Date of Pronouncement	:	2.1.2019

ORDER

Per Shri Jason P Boaz, A.M. :

These appeals by the Assessee are directed against the orders of CIT (A)-5, Bangalore dated 27.07.2016, for Assessment Years 2010-11 and 2013-14.

2. The only issue that arises for consideration in these appeals by the Assessee is as to whether the Revenue authorities were justified in not allowing the benefit of deduction u/s 80P(2)(a)(i) of the Income Tax Act, 1961 (in short ‘the Act’) to the Assessee on interest income of Rs.10,76,140/- for Assessment Year 2010-11 and

Rs.19,96,430/- for Assessment Year 2013-14 which interest income was received by the Assessee on investment of their surplus funds. The Assessing Officer ('AO') denied the claim of the Assessee on the ground 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 AO relied on the decision of the Hon'ble Supreme Court in the case of The Totgar'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. On appeal by the Assessee, the CIT(A) upheld the order of the AO.

3. The similar grounds raised by the Assessee in their appeals (viz., only grounds for Assessment Year 2013-14 are extracted) reads as under:

- 1. The order of the learned Appellate Authority in so far as it is against the appellant is opposed to law, equity, weight of evidence, probabilities, facts and circumstances of the case.*
- 2. The impugned order of appellate authority is bad in law and void-ab-initio placing reliance on Totagars case which is given and confined to the facts of the case which are different from the facts of the assessee society. The learned Appellate Authority has erred in judgment by not following the jurisdictional High court decision in case of CIT Vs Sri Beluru Guru Basava Pathina Sahakari Sangha Niyamitha, Bagalokot dated 05/12/2014.*
- 3. The Learned Appellate Authority has erred in treating the interest received on bank deposits u/s 56 of the IT Act and not as income earned from carrying on the business of credit cooperative.*

4. *For the above and other grounds that may be urged at the time of hearing of the appeal, your appellant humbly prays that the appeal may be allowed and Justice rendered.*

5. As far as Ground Nos. 2 and 3 are concerned, the learned AR, *inter alia*, also relied on the decision of the Hon'ble Karnataka High Court in the case of Tumukur Merchants Souharda Credit Co-operative Ltd. (supra). The 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 (Kam.). We have carefully gone through the said judgment. The facts of the case before the Hon'ble Karnataka High Court 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 Cooperative Sale Society Ltd. (supra) and of Hon'ble Karnataka high Court rendered in the case of Tumukur Merchnts Souharda Cooperative Ltd. (supra).

6. 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.

7. In the result, the assessee's appeals for Assessment Years 2010-11 and 2013-14 are treated as allowed for statistical purposes.

Order pronounced in the open court on this 2nd day of January, 2019.

Sd/-

(N. V. VASUDEVAN)
Vice President

Bangalore.

Dated: 2nd January, 2019.

/NS/*

Sd/-

(JASON P BOAZ)
Accountant Member

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| 1. Appellants | 2. Respondent |
| 3. CIT | 4. CIT(A) |
| 5. DR | 6. Guard file |

By order

Assistant Registrar,
ITAT, Bangalore.