

**IN THE INCOME TAX APPELLATE TRIBUNAL  
BANGALORE BENCHES "B", BANGALORE**

**Before Shri N.V.Vasudevan, VP & Shri B.R.Baskaran, AM**

ITA No.824/Bang/2018 : Asst.Year 2011-2012

ITA No.825/Bang/2018 : Asst.Year 2009-2010

M/s.Bajpe Vyavasaya Seva Sahakari Bank Niyamitha C/o.M/s.S.Venkatesan & Co Chartered Accountants 31-33, IInd Floor, SNS Plaza Kumarakrupa Road Bangalore – 560 001. <b>PAN : AABAB1620R.</b>	Vs.	The Income Tax Officer Ward 2(4) Mangaluru.
(Appellant)		(Respondent)

Appellant by : Shri Ravi Shankar, Advocate

Respondent by : Shri R.N.Siddappaji, Addl.CIT

<b>Date of Hearing : 12.02.2019</b>	<b>Date of Pronouncement : 15.02.2019</b>
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**ORDER**

**Per B.R.Baskaran, AM :**

Both the appeals filed by the assessee are directed against the orders passed by the learned CIT(A), Mangaluru and they pertain to assessment years 2009-2010 and 2011-2012.

2. Even though the assessee has raised many grounds, the learned AR confined his argument with regard to the disallowance of deduction claimed u/s 80P(2)(a)(i) of the Act in respect of interest income earned by the assessee form Karnataka Bank Limited.

3. The facts relating to the above said issue are stated in brief. The assessee is a co-operative society engaged with the business of lending money primarily to agriculturists offering various types of loan facilities. The assessee also provided their customers with normal banking facilities like safety lockers etc. During the years under consideration, the assessee received interest income from deposits kept with Karnataka Bank Limited. The assessee claimed deduction u/s 80P(2)(a)(i) of the Act treating the same as its business income. The A.O., however, took the view that the interest income earned by the assessee from Karnataka Bank Limited has to be treated as income under the head 'income from other sources'. Accordingly, he assessed the same as income under the head 'income from other sources'. Consequently, the deduction claimed by the assessee u/s 80P of the Act in respect of the above income was rejected by the A.O. The learned CIT(A) confirmed the decision taken by the Assessing Officer in both the years, and hence, the assessee has filed these appeals before us.

4. At the time of hearing, both the parties have agreed that the issue under consideration is covered by the decision dated 4<sup>th</sup> January, 2019 rendered in ITA No.821/Bang/2017 in the case of M/s.Primary Co-operative Agriculture & Rural Development Bank.

5. We have gone through the order passed by the co-ordinate bench in the above said case. For the sake of convenience, we

extract below the decision taken by the co-ordinate bench in the above said case.

*“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 2007-08 to 2011-12. 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 Tumkur 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 judgments 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 Tumkur 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."*

6. We noticed that the co-ordinate bench has restored the issue to the file of the Assessing Officer for taking a fresh decision on this issue in the light of the discussion made by the Tribunal. Consistent with the view taken in the above said case, we set aside the orders passed by the learned CIT(A) for both the years under consideration and restore the same to the file of the Assessing Officer with similar direction given by the co-ordinate bench.

7. In the result, both the appeals filed by the assessee are treated as allowed for statistical purposes.

Order pronounced on this 15<sup>th</sup> day of February, 2019.

Sd/-  
**(N.V.Vasudevan)**  
**Vice-President**

Sd/-  
**(B.R.Baskaran)**  
**ACCOUNTANT MEMBER**

Bangalore ; Dated : 15<sup>th</sup> February, 2019.  
Devdas\*

**Copy of the Order forwarded to :**

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

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BY ORDER,

(Asstt. Registrar)  
**ITAT, Bangalore**