

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

BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT

ITA No.2893/Bang/2018
Assessment year : 2014-15

Herga Vyavasaya Seva Sahakari Sangha Niyamitha, 1, Sahakari Mandira, Parkala, Udupi – 7. <b>PAN: AAAAH 1234L</b>	Vs.	The Income Tax Officer, Ward III, Udupi.
APPELLANT		RESPONDENT

Appellant by	:	Shri U.B. Ajith Kumar, CA
Respondent by	:	Shri S. Venkatesh, JDIT

Date of hearing	:	23.01.2019
Date of Pronouncement	:	15.02.2019

**ORDER**

This is an appeal by the Assessee against the order dated 03.07.2018 relating to assessment year 2014-15.

2. In this appeal, the assessee which is a co-operative society, has challenged the action of the Revenue authorities in not allowing deduction claimed by the assessee u/s 80P(2)(a)(i) of the Income Tax Act, 1961 (the Act) on a sum of Rs.1,07,738/-. The deduction calmed 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.

3. On appeal by the assessee, the CIT(A) confirmed the action of the AO.

4. I 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.)*.

5. I 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)*.

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, appeal by the assessee is treated as allowed for statistical purpose.

Pronounced in the open court on this 15<sup>th</sup> day of February, 2019.

Sd/-

( N.V. VASUDEVAN )  
VICE PRESIDENT

Bangalore,  
Dated, the 15<sup>th</sup> February, 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.