

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

BEFORE SHRI JASON P. BOAZ, ACCOUNTANT MEMBER

ITA No. 214/Bang/2019
Assessment Year : 2013-14

M/s. KSFC Employees Housing Co-operative Society Ltd., No.1/1, Thimmaiah Road, Bangalore – 560 052. PAN : AABAK 6180 F	Vs.	Income-Tax Officer, Ward - 1(2)(5), Bangalore.
APPELLANT		RESPONDENT

Assessee by	:	Shri. Sandeep C, C.A.
Revenue by	:	Shri. Sumer Singh Meena, Addl. CIT

Date of hearing	:	23.04.2019
Date of Pronouncement	:	08.05.2019

ORDER

Per Jason P Boaz, Accountant Member

This appeal by the assessee is directed against the order of CIT(A)-2, Bangalore, dated 27.11.2018 for Assessment Year 2013-14.

2. Briefly stated, the facts of the cases relevant for disposal of this appeal are under:

2.1 The assessee filed its return of income for Assessment Year 2013-14 on 27.01.2014 declaring NIL income after claiming deduction of its income amounting to Rs.11,18,173/-, under section 80P(2)(d) of the Income Tax Act, 1961 (in short ‘the Act’). The case was taken up for scrutiny for this Assessment

Year and the assessment was concluded under section 143(32) of the Act vide order dated 28.03.2016; wherein the assessee's income was determined at Rs.11,18,173/-, in view of the Assessing Officer (AO) disallowing the assessee's claim for deduction under section 80P(2)(d) of the Act. The assessee's appeal on its claim for being allowed the deduction claimed under section 80P(2)(d) of the Act was dismissed by CIT(A)-2, Bangalore, vide the impugned order dated 27.11.2018.

3. Aggrieved by the order of CIT(A)-2, Bangalore, dated 27.11.2018 for Assessment Year 2012-13, the assessee has preferred this appeal before the Tribunal; wherein it has raised the following grounds / additional grounds:-

1. *That the order of the learned Commissioner of Income Tax (Appeals) in so far it is prejudicial to the interests of the appellant is bad and erroneous in law and against the facts and circumstances of the case.*
2. *That the learned Commissioner of Income Tax (Appeals) erred in law and on facts in holding that the interest income of Rs. Rs.14,23,340/- earned by the appellant is not entitled for deduction u/s. 80P(2)(d) of the Act.*
3. *That the learned Commissioner of Income Tax (Appeals) erred in law and on facts in holding that the interest earned from deposits made in co-operative banks and nationalized banks is not allowable as deduction u/s 80P(2)(d) of the Act.*

Additional Ground

4. *That the learned lower authorities ought to have allowed the deduction u/s. 80P(2)(c) of the Act.*

Each of the above grounds is without prejudice to one another and the appellant craves leave of the Hon'ble Income Tax Appellate Tribunal, Bangalore to add, delete, amend or otherwise modify one or more of the above grounds either before or at the time of hearing of this appeal.

4. **Ground No.1 (supra)** is general in nature and not having been urged in the hearings, is dismissed as infructuous.

5. **Addl. Ground No.4 – Deduction under section 80P(2)(c) of the Act**

5.1 In this ground (supra), the assessee seeks grant of deduction under section 80P(2)(c) of the Act. At the outset of the hearing, the learned AR for the assessee submitted that this ground is not being pressed by the assessee. As this ground No.4 is not pressed by the assessee, it is rendered infructuous and is accordingly dismissed.

6. **Ground Nos. 2 & 3 – Deduction under section 80P(2)(d) of the Act**

6.1 In these grounds (supra), the assessee contends that the authorities below erred in holding that the assessee was not entitled for deduction under section 80P(2)(d) of the Act in respect of interest earned from deposits in Co-operative Banks and nationalised Banks . However, at the time of hearing, the learned AR for the assessee fairly conceded that on this issue, i.e., of the assessee's claim for deduction under section 80P(2)(d) of the Act on interest income, a Co-ordinate Bench of this Tribunal in the case of Karnataka State Government House

Building Co-operative Society Ltd., Vs. ITO in its order in ITA Nos. 1500 and 1501/Bang/2018 dated 22.03.2019 has decided the matter against the assessee and in favour of Revenue.

6.2.1 We have perused and carefully considered the material on record with regard to the rejection of the assessee's claim for being granted deduction under section 90P(2)(d) of the Act in respect of interest income earned by it from out of deposits with Co-operative Banks and nationalized Banks. As fairly admitted by the learned AR for the assessee, this issue for consideration before us has been considered and decided against the assessee by a Co-ordinate Bench of this Tribunal in the case of Karnataka State Government House Building Co-operative Society Ltd., Vs. ITO (supra). In its order in ITA Nos. 1500 and 1501/Bang/2018 dated 22.03.2019, the Co-ordinate Bench at paras 5 to 7 thereof has considered and held as under:-

“05. Regarding ground 4 the Ld. AR submitted that case of the assessee is covered by the decision of jurisdictional High Court in the matter of Pr. CIT Totgars Co-op Sale Society [(2017) 392 ITR 74W], wherein at para 10, it was held as under :

10. Admittedly, the interest which the assessee-respondent had earned was from a co-operative bank. Therefore, according to section 80P(2)(d) of the Income-tax Act, the said amount of interest earned from a co-operative bank would be deductible from the gross income of the co-operative society in order to assess its total income. Therefore, the Assessing Officer was not justified in denying the said deduction to the assessee-respondent.

It was fairly conceded by the Ld AR that the issue in the present case was subsequently decided by the jurisdictional High Court in the matter of Pr. CIT Totgars Co-op Sale Society [395 UK 611] against the assessee , wherein at para 18, it was held as under :

18. *The contention of the learned counsel for the assessee that a Co-ordinate Bench of this court dismissed the Revenue's appeals by referring, but not applying the decision of the hon'ble Supreme Court, we observe with greatest respects that we do not find any detailed discussion of the facts and law pronounced by the hon'ble Supreme Court in the case of the respondent-assessee in the said order passed by the Coordinate Bench and therefore, we are unable to follow the same in the face of the binding precedent laid down by the hon'ble Supreme Court. We find in paragraph 8 of the said order passed by a Co-ordinate Bench that the learned judges 'e observed that "the issue whether a co-operative bank is considered to be a co-operative society is no longer res integra, for the said issue has been decided by the Income-tax Appellate Tribunal itself in different cases . . .". No other binding precedent was discussed in the said judgment. Of course, the Bench has observed that a co-operative bank is a specie of the genus co-operative society, with which we agree, but as far as applicability of section 80P(2) of the Act is concerned, the applicability of the Supreme Court's decision cannot be restricted only if the income was to fall under section 80P(2)(a) of the Act and not under section 80P(2)(d) of the Act.*

It was submitted that as the issue has already been decided against the assessee, the legal position may kindly be noted and the matter may be decided in accordance with law.

06. *Per contra the Ld. DR submitted that the assessee had conceded that the ground had been decided by the Hon'ble jurisdictional High Court (supra) therefore no further elaboration is required from the Revenue's side.*

07. *We have heard the rival submissions and perused the material on record. The issue pertains to eligibility of the assessee for claiming the deduction u/s.80P2(d), is squarely covered against the assessee by the categorical pronouncement in the matter of Pr. CIT versus Totgars Co-op Sale Society [395 ITR 611] , wherein after taking into account the judgment of the Hon'ble Supreme Court in the matter of Totgar's Cooperative Sale Society v. ITO [322 ITR 283] the issue was decided against the assessee. We do not find any reason to take a contrary view and accordingly the ground raised by the assessee is dismissed."*

6.2.2 Respectfully following the decision of the Hon'ble Karnataka High Court in the case of Pr. CIT Vs. Totagars Co-operative Sale Society in 395 ITR 611 (Kar) which was followed by the Co-ordinate Bench of this Tribunal in the case of Karnataka State Government House Building Co-operative Society Ltd., (supra), we hold that the assessee is not entitled for being allowed deduction under section 80P(2)(d) of the Act on interest income earned on deposits made with Co-operative Banks and nationalized Banks. Consequently, grounds 2 and 3 of the assessee's appeal are dismissed.

7. In the result, the assessee's appeal for Assessment Year 2012-13 is dismissed.

Pronounced in the open court on 8th May, 2019.

Sd/-
(JASON P. BOAZ)
Accountant Member

Bangalore.

Dated: 08th May, 2019.

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

By order

Assistant Registrar,
ITAT, Bangalore.