

IN THE INCOME TAX APPELLATE TRIBUNAL

“B” BENCH : BANGALORE

BEFORE SHRI ARUN KUMAR GARODIA, ACCOUNTANT MEMBER AND
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA Nos. 939 & 940/Bang/2019
Assessment Years : 2015-16 & 2016-17

M/s. S.K. Co-operative Employees' Co-operative Society Ltd., No. 344, Bharath Building, Mangaluru – 575 001. PAN: AADAT9654P	Vs.	The Income Tax Officer, Ward – 2 (1), Attavara, Mangaluru – 575 001.
APPELLANT		RESPONDENT
Assessee by	:	Shri Mahesh R. Uppin, Advocate
Revenue by	:	Shri K.N. Dhandapani, JCIT (DR)
Date of hearing	:	10.06.2019
Date of Pronouncement	:	14.06.2019

ORDER

Per Shri A.K. Garodia, Accountant Member

Both these appeals are filed by the assessee and the same are directed against the combined order of Id. CIT(A), Mangaluru dated 13.03.2019 for Assessment Years 2015-16 & 2016-17. Both these appeals were heard together and are being disposed of by way of this common order for the sake of convenience.

2. At the very beginning it is submitted by Id. AR of assessee that although the assessee has raised as many as 10 grounds of appeal as per the concise grounds of appeal for Assessment Year 2015-16 and 11 grounds of appeal as per concise grounds of appeal for Assessment Year 2016-17 filed by the assessee, but the only effective grievance of the assessee is regarding disallowance of assessee's claim for deduction u/s. 80P of the IT Act.

3. It was submitted by Id. AR of assessee that the assessee has earned an interest income from banks in both these years which has been assessed by the AO as income from other sources and assessee's claim for deduction u/s. 80P of the IT Act was disallowed by the AO and it is confirmed by CIT(A). He submitted that the main basis of the decision of the authorities below is by following the judgment of Hon'ble Karnataka High Court rendered in the case of PCIT and Another Vs. Totagars Co-operative Sale Society as reported in 395 ITR 611 (Karn).

He also submitted that other judgment on which reliance has been placed by the authorities below is the judgment of Hon'ble Apex Court rendered in the case of The Citizen Co-operative Society Ltd. Vs. ACIT as reported in 397 ITR 1. He submitted that none of the authorities below has examined and compared the facts of the present case with the facts in the case of The Citizen Co-operative Society Ltd. Vs. ACIT (supra). Regarding the judgment of Hon'ble Karnataka High Court rendered in the case of PCIT and Another Vs. Totagars Co-operative Sale Society (supra), it was submitted that in the facts of present case, this judgment of Hon'ble Karnataka High Court is not applicable and instead of that, another judgment of Hon'ble Karnataka High Court rendered in the case of Tumkur Merchants Souharda Credit Cooperative Ltd. Vs. ITO as reported in 230 Taxman 309 is applicable. At this juncture, this proposition was put forward by the bench that under similar facts, the Tribunal is restoring the matter back to the file of CIT(A) for fresh decision after examining the facts of the present case in the light of these two judgments rendered in the case of PCIT and Another Vs. Totagars Co-operative Sale Society (supra) and Tumkur Merchants Souharda Credit Cooperative Ltd. Vs. ITO (supra) with the direction that if the facts are in line with the facts in the case of PCIT and Another Vs. Totagars Co-operative Sale Society (supra), then the issue should be decided against the assessee. But if the facts of the present case are in line with the facts in the case of Tumkur Merchants Souharda Credit Cooperative Ltd. Vs. ITO (supra), then the issue should be decided in favour of the assessee. The bench pointed out that in the case of PCIT and Another Vs. Totagars Co-operative Sale Society (supra), the amount deposited in bank on which interest income was earned was out of the liability of the assessee society and not out of its own funds and for this reason, in that case of PCIT and Another Vs. Totagars Co-operative Sale Society (supra), the Hon'ble Karnataka High Court decided the issue against the assessee. But in the case of Tumkur Merchants Souharda Credit Cooperative Ltd. Vs. ITO (supra), it was found that the money deposited in bank by assessee was out of its own funds and not out of liability and therefore, the issue in that case was decided in favour of the assessee. The bench proposed that since the facts in the present case are not readily available on record and there is no finding of authorities below on this factual aspect regarding the source of funds deposited on bank on which interest income was earned, the issue should go back to the file of CIT(A) for fresh decision. The bench also proposed

that regarding the judgment of Hon'ble Apex Court rendered in the case of The Citizen Co-operative Society Ltd. Vs. ACIT (supra) also, the Id. CIT(A) should pass a speaking and reasoned order after comparing the facts of present case with the facts in that case in the light of law for Cooperative society in the state of Karnataka because in that case, the state is different and cooperative law is different. . In reply, the Id. AR of assessee agreed with this proposition put forward by the bench. The Id. DR of revenue supported the order of CIT(A).

4. We have considered the rival submissions and we set aside the order of CIT(A) and restore the matter back to his file for fresh decision in the light of above discussion, by way of a speaking and reasoned order after providing adequate opportunity of being heard to both sides. The Id. CIT(A) is directed to pass a speaking and reasoned order after comparing the facts of present case with the facts in the case of The Citizen Co-operative Society Ltd. Vs. ACIT (supra). He is also directed to examine the facts of present case in the light of these two judgments of Hon'ble Karnataka High Court rendered in the case of Tumkur Merchants Souharda Credit Cooperative Ltd. Vs. ITO (supra) and PCIT and Another Vs. Totagars Co-operative Sale Society (supra) and pass necessary order as per law in the light of above discussion after providing adequate opportunity of being heard to both sides.

5. In the result, both the appeals filed by the assessee are allowed for statistical purposes.

Order pronounced in the open court on the date mentioned on the caption page.

Sd/-
(PAVAN KUMAR GADALE)
Judicial Member

Sd/-
(ARUN KUMAR GARODIA)
Accountant Member

Bangalore,
Dated, the 14th June, 2019.
/MS/

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

By order

Assistant Registrar,
Income Tax Appellate Tribunal,
Bangalore.