

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES : "A", BANGALORE**

**BEFORE SHRI A.K.GARODIA, ACCOUNTANT MEMBER
AND
SMT.BEENA PILLAI, JUDICIAL MEMBER**

**ITA No.774(Bang)/2019
(Assessment Year : 2016-17)**

M/s Hemmadi Fishermen's Primary Co-op. Society Ltd.
Hemmadi, Kundpura,
Udupi District-576 249
PANNo.AAAAH7295K

Appellant

Vs

The Income tax Officer,
Ward-2,
Adi Udupi Mlpe Road,
Udupi-576 103

Respondent

**Appellant by : Shri Mahesh R Uppin, Advocate
Revenue by : Smt H.L.Soumya Achar, Addl.CIT**

Date of hearing : 26-06-2019

Date of pronouncement : 28-06-2019

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER :

Present appeal has been filed by assessee against order dated 22-03-2019 passed by Ld. CIT (A), Mangaluru for assessment year 2016-07 on following grounds;

"Concise Grounds of Appeal

The Appellant above named begs to submit as follows in addition to such other grounds that may be urged at the time of hearing

1) The impugned order of both the below authorities are not speaking orders. The impugned orders have been passed mechanically, without application of mind and not sustainable in law.

2) It is submitted that only the Co-operative banks other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank have lost exemption available under Sec. 80 P (2) by virtue of the new provision Sec. 80 P (4) brought by the Finance Act, 2006 from Assessment Year 2007-08. The Appellant being a primary credit co-operative society is not in anyway disentitled from claiming the benefit of exemption available under Sec. 80P of the Act.

3) The Respondent has grossly erred in bifurcating and considering the Interest on Investments earned by the Appellant separately under Sec. 56 of the Act after segregating the same from its Business income by relying on the judgement in - Totgars' Co-operative Sale Society Ltd. Sirsi (ITA: 100066/2016) and taxing the same. The said citation of Totgars Co-op. Sale Society Ltd. relied upon by the Respondent is inapplicable to the appellant's case. It is submitted that in Totgars Co-op. Sale Society Ltd., the Hon'ble Apex Court as well as the Hon'ble High Court of Karnataka have upheld the cases of Revenue duly observing that - Totgars Co-op. Sale Society was engaged in numerous activities and the interest income derived by the said society was out of the investments of debts owed to its members (sundry creditors) which could not be considered as income attributable to its business of providing credit facilities. Therefore, it is submitted that the decision rendered in the said case relied upon by both the below authorities is clearly distinguishable and it can not be made applicable to the appellant. The Appellant submits, the interest earned Rs. 31,12,708/- happen to

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be incidental to its business of providing credit facilities to its members and attributable to its Business Income u/s. 28 of the Act and qualifies for deduction u/s. 80P (2)(a)(i) of the Act as per the observation under Para 21 of the decision in Totgars' Co-operative Sale Society Ltd. supra and also as per the ruling of ITAT, Bengaluru in ITA No. 2752 & 2753/ Bang! 2017 in Honnali Credit Co-operative Society Ltd. 1-lonnali vs. I.T.O. Ward - 2, Shivamogga.

4) Both the below authorities have erred in not accepting the returned income of the Appellant since its business income from providing of credit facilities to its members and interest on investments earned together form part of its Business income and the provision contained in section 80 P (2) (a) (i) warrants deduction of 'whole of the amount of profits and gains of business attributable to any one or more of such activities'. The Appellant being a credit co-operative society, its entire interest income derived from its investments made with co-operative societies/ co-op. banks and commercial banks is attributable to its business and

happen to be an integral part of its business income and qualifies for deduction u/s. 80 P of the Act as held in - hA 29/2015 - Ctittigedarara Credit Co-op. Society Ltd. Mysore Vs. ITO, Mysore. The action of the Respondent in allowing only a sum of Rs. 24,53,889/- as deduction u/s. 80 P of the Act as against the total interest derived of Rs. 31,12,708/- and taxing the balance interest of Rs. 6,58,819/- received from Commercial and Co-op. Banks is not only opposed to law but also contrary to the decision of the Hon'ble High Court in ITA 29/2015 stated supra.

5) The Respondent was at fault in relying on the decision of the Hon'ble Apex Court in The Citizen Co-operative Society Ltd. Hyderabad Vs. ACIT, Circle-9(1), Hyderabad in Civil Appeal No. 10245 of 2017 dated 08.08.2017 for taxing the appellant on the ground that the appellant was transacting with associate members and nominal members. The appellant is carrying on its business in strict compliance with the provisions of applicable laws, Rules and bye-laws unlike Citizen's Co-operative Society which was adjudged to be taxed by the Apex Court primarily for violations of provisions of laws. Therefore, the Respondent by citing the decision of the Hon'ble Apex Court in Civil

.. Appeal No. 10245 of 2017 can not preclude the appellant from claiming the benefit u/s. 80P of the Act since the facts of the said case are clearly distinguishable.

6) The appellant submits, the definition of a 'Member' is not given in the Income Tax Act and therefore the definition given in the State enactment will prevail. The definition of 'Member' given under Sec. 2 (f) of Karnataka Co-operative Societies Act, 1959 also includes a Nominal and an Associate Member. The Bye-laws of the appellant also provide for transacting with nominal and associate members. Therefore, the transactions of the appellant fall well within the frame work of law. Further, Income Tax Act has not drawn any distinction between regular member and nominal or associate member. Therefore, the transactions done with nominal or associate member cannot be considered as the one with non-members or public for depriving the Appellant from the benefit of exemption u/s. 80 P of the Act as held by hAT, Ahmedabad in ITA No. 1328/2018 in the case of - Trapaj Vibhageeya Khet Udyog Mal Rupantar Food Processing Sahakari Mandali Ltd. Ahmedabad Vs. DCIT, Cir. 2, Bhavnagar.

Apart from this, the case of the appellant is also covered by the decision of Hon'ble High Court of Karnataka in ITA: 5006/2013 - The Commissioner of Income Tax vs. Sri Bilur Gurubasava

Pattina Sahakara Sangha Niyamitha, Bagalkot - which is squarely

applicable to the appellant. Therefore, the impugned orders are illegal and liable to be set-aside.

7) *Both the below authorities have failed to notice that the Appellant is a Primary Credit Co-op. Society and it is not barred from availing of the benefits of deduction u/s. 80 P of the Act. The Hon'ble High Court has even observed and held in its*

judgement in Totagars' Co-operative Sale Society Ltd. Sirsi (ITA : 100066/2016) that

primary credit co-op. societies are eligible to avail the exemption benefit u/s. 80 P of the Act. Therefore, the disallowance of the benefit of full exemption u/s. 80P of the Act to the Appellant is illegal, improper, unjustifiable and as such the impugned orders are liable to be set aside.

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8) *Both the below authorities have failed to observe that there is no condition precedent as to the fulfillment of 'concept of mutuality' for allowing deduction under Sec. 80 P of the Act to co-operative societies. The judgement of the Hon'ble Apex Court in 'Citizen Co-operative Society Ltd. Hyderabad' supra has been misread, misunderstood and misinterpreted by both the below authorities for the purpose of taxing the appellant on the ground that the concept of mutuality is missing in appellant society. The action of both the below authorities amounted to carving out a separate exclusion, which will not fall in their domain, to deprive the legitimate benefit of exemption available to the appellant u/s. 80P of the Act.*

9) *The Appellant disputes the disallowance of various provisions of Rs. 5,70,164/- made in the Profit & Loss A/c of the appellant as unascertained liability and its consequent addition to the Business income by the Respondent in his impugned order. The Respondent has failed to observe that even consequent upon the addition of said provision amount, the said sum will again qualify for deduction u/s. 80P (2) (a) (i) of the Act and it will have Nil tax effect. Therefore, the addition of Rs. 5,70,164/- made in this regard to the Business income of the Appellant is improper, incorrect and unjustifiable and the same merits for deletion, the appellant submits.*

10) *The appellant craves leave of this Hon'ble Tribunal to add, amend, alter, edit, delete, modify or change all or any of the grounds of appeal at the time of or before the hearing of the appeal”.*

2. At the very beginning, it was submitted by ld AR that only grievance is regarding disallowance of assessee's claim for deduction u/s. 80P of the IT Act.

3. Brief facts of the case are as under: (AY 2016-17) : Assessee is a co-operative society registered under the Karnataka Co-operative Societies Act, 1959. The assessee is a primary credit co-operative society providing credit facilities to its members. Assessee filed return of income for the AY: 2016-17 declaring NIL total income after claiming deduction u/s 80P(2) of the IT Act, 1961.

3.1 It was submitted by ld. AR of assessee that the assessee has earned some interest income from bank 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 ld. 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 ld. AR of assessee agreed with this proposition put forward by the bench. The ld. 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 ld. 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, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on

Sd/-
(A.K.GARODIA)
ACCOUNTANT MEMBER

Dated: the 28th June, 2019.

Sd/-
(BEENA PILLAI)
JUDICIAL MEMBER

***am**

Copy of the Order forwarded to:

- 1.Appellant;
- 2.Respondent;
- 3.CIT;
- 4.CIT(A);
- 5. DR
- 6. ITO (TDS)
- 7.Guard File

By Order

Asst.Registrar

- 1. Date of Dictation
- 2. Date on which the typed draft is placed before the dictating Member
- 3. Date on which the approved draft comes to Sr.P.S
- 4. Date on which the fair order is placed before the dictating Member
- 5. Date on which the fair order comes back to the Sr. P.S.
- 6. Date of uploading the order on website.....
- 7. If not uploaded, furnish the reason for doing so
- 8. Date on which the file goes to the Bench Clerk
- 9. Date on which order goes for Xerox & endorsement.....
- 10. Date on which the file goes to the Head Clerk
- 11. The date on which the file goes to the Assistant Registrar for signature on the order
- 12. The date on which the file goes to dispatch section for dispatch of the Tribunal Order
- 13. Date of Despatch of Order.

