

**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.3326(Bang)/2018
(Assessment Year : 2013-14)**

M/s LRDE Employees Housing
Co-operative Society Ltd..
C/o LRDE C.V.Raman Nagar,
Bangalor-560 093
PANNo.AAAA8274E

Appellant

Vs

The Income tax Officer,
Ward-4(2)(2),
Bangalore

**Appellant by : Smt. Sheetal Borkar, 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 26-09-2018 passed by Ld. CIT (A)-4, Bengaluru for assessment year 2013-14 on following grounds;

"1. On the facts and circumstances of the case, the id. CIT (A) erred in upholding the disallowance made towards interest income earned by the Appellant as Income assessable under the head "Income from other sources".

2. The learned CIT(A) erred in confirming the order of the AO by not considering the judgment of the High Court of Karnataka wherein it is clearly held that the interest earned by credit co-operative societies on deposits with banks is an income attributable to business and hence eligible for claim of deduction u/s 80P(2)(d) of the Act.

3. *The learned CIT (A) ought to have appreciated that the Assessee is a Housing Cooperative Society which purchases land and allots the same to its members. During such course, the appellant has received advance money from its members and parked such funds in a time deposits with M/s. Bangalore Rural and Ramanagara District Co-operative Bank Ltd earning an interest.*

4. *The learned CIT (A) ought to have appreciated that, the Assessee is not providing any credit facilities to its members and therefore the Assessee cannot be constructed a "Co-operative Bank" to deny exemption u/s 80P(2)(d) of the Act.*

5. *The learned CIT (A) erred in charging the interest u/s.234 A and 234B of the Act.*

6. *For these and other grounds that may be urged at the time of hearing of the appeal the appellant prays that the appeal may be allowed”.*

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.

***am**

Copy of the Order forwarded to:

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

Sd/-
(BEENA PILLAI)
JUDICIAL MEMBER

By Order

Asst.Registrar

		Date	
1.	Draft dictated directly on computer system		
2.	Draft placed before author		
3.	Draft proposed & placed before the second member		
4.	Draft discussed/approved by Second Member.		
5.	Approved Draft comes to the Sr.PS/PS		
6.	Kept for pronouncement on		
7.	File sent to the Bench Clerk		
8.	Date on which file goes to the AR		
9.	Date on which file goes to the Head Clerk.		
10.	Date of dispatch of Order.		
11.	Draft dictation sheets are attached		