

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

BEFORE SHRI JASON P BOAZ, ACCOUNTANT MEMBER

ITA No.1030/Bang/2019
Assessment year : 2015-16

M/s. The Agricultural Service and Development Co-operative Society Ltd., 01, Society Building, Yellapur Road, Sirsi – 581 402. PAN : AADAT 9140 L	Vs.	Assistant Commissioner of Income Tax, Circle – 1[1], Hubballi.
APPELLANT		RESPONDENT

Assessee by	:	Shri. Prakash Hegde, CA
Revenue by	:	Shri. Karuppusamy S.R., Addl. CIT

Date of hearing	:	10.06.2019
Date of Pronouncement	:	12.07.2019

ORDER

This appeal by the assessee is directed against the order dated 28.03.2019 of CIT(A), Hubballi, for Assessment Year 2015-16.

2. The grounds raised in this appeal are as under:-

1. *That the learned Commissioner of Income Tax (Appeals) [CIT(A)] erred on facts and in circumstances of the case and in law by dismissing the appeal filed by the Appellant.*
2. *The learned CIT(A) erred on facts and in circumstances of the case and in law by upholding the view of the learned Assessing Officer (AO) that the interest received by the Appellant from Co-*

operative institutions is not eligible for deduction under section 80I)(2)(d) of the Act.

3. *The learned CIT(A) erred on facts and in circumstances of the case and in law by upholding the view of the learned Assessing Officer ('AO') that the interest received by the Appellant is not eligible for deduction even under section 80P(2)(a)(i) of the Act.*
4. *The learned CIT(A) erred on facts and in circumstances of the case and in law by upholding the view of the learned AO that a part of the interest received by the Appellant from Co-operative institutions for deposit of amount of General Reserve which is required to be statutorily maintained (in accordance with Section 57 of the Karnataka Co-operative Societies' Act, 1959 read with Rule 23 of the Karnataka Co-operative Societies' Rules, 1960) as not eligible for deduction even under section 80P(2)(a)(i) or 80P(2)(a)(iv) of the Act.*
5. *The learned CIT(A) erred on facts and in circumstances of the case and in law by upholding the view of the learned AO that the Appellant is not entitled for deduction under section 57 of the Act for the cost of funds proportionate to that income.*
6. *The learned CIT(A) erred on facts and in circumstances of the case and in law by upholding the view of the learned AO by ignoring the legal positions in this regard and passed the order ignoring / misinterpreting the decisions of the higher appellate authorities.*

3. The issues that arise for consideration in this appeal by the assessee are as to whether the Revenue authorities were justified in holding that the assessee was not entitled to the benefit of deduction under section 80P(2)(a)(i) of the Income Tax Act, 1961 (in short 'the Act') on interest income earned and under section 80P(2)(d) of the Act in respect of interest received from Co-operative institutions. The Assessing Officer (AO) denied the claim of the assessee on the ground that interest income earned by making investment of surplus funds has to be assessed under the head "Income from Other Sources" and not income from business and since interest income is not assessed as business income, the claim for deduction under section 57 of the Act cannot be allowed. In upholding

the above conclusions, the CIT(A), *inter alia*, relied on the decision of the Hon'ble Supreme Court in the case of The Totgar's Co-operative Sales Society Ltd., Vs. ITO 322 ITR 283 (SC) wherein the Hon'ble Supreme Court held that the benefit of deduction under section 80P(2)(a)(i) of the Act is only on income which is assessable under the head "Income from Business". Interest earned on investment of surplus funds not immediately required in short term deposits and securities by a Co-operative Society providing credit facilities to members or marketing agricultural produce to members is not business income but income from other sources and the society is not entitled to special deduction.

4. While learned AR relied on the decision of the Hon'ble Karnataka High Court in the case of Tumukur Merchants Souharda Credit Co-operative Ltd., 230 taxman 309 (Karn), the 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.). We have carefully gone through the said judgment. The facts of the case before the Hon'ble Karnataka High Court 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 Assessment Years 1991-92 to 1999-2000. The nature of interest income for all the Assessment Years 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 Cooperative 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 Tumukur 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 judgment 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 Tumukur Merchants Souharda Co-operative Ltd. (supra).

5. The AO will afford adequate opportunity of being heard to the Assessee and for filing details / evidence for the assessee to substantiate its case, before deciding the issue.

6. In the result, the assessee's appeal for Assessment Year 2015-16 is allowed for statistical purposes.

Order pronounced in the open court on this 12th day of July, 2019.

Sd/-
(JASON P BOAZ)
Accountant Member

Bangalore.

Dated: 12th July, 2019.

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

By order

Assistant Registrar,
ITAT, Bangalore.