

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

**BEFORE SHRI J. SUDHAKAR REDDY, AM  
AND  
SMT.BEENA PILLAI, JM**

**ITA No1023(Bang)/2019  
(Assessment Year : 2014-15)**

M/s Bharathi Credit Co-op. Society Ltd.,  
1718, 9<sup>th</sup> Main Road, 3<sup>rd</sup> Block,  
Jayanagar,  
Bangalore-560 011.  
PANNo.AAALT0604R

Appellant

**Vs**

The Income tax Officer,  
Ward-7(2)(1),  
Bangalore

Respondent

**Appellant by : Shri B.S.Balachandran, Advocate  
Revenue by : Shri R.N.Siddappaji, Addl.CIT**

**Date of hearing : 16-07-2019**

**Date of pronouncement :**

**ORDER**

**PER BEENA PILLAI, JUDICIAL MEMBER :**

Present appeal has been filed by assessee against order dated 11-03-2019 passed by Ld. CIT (A)-10, Bengaluru for assessment year 2014-15 on following grounds;

*"1. The order of AO is bad and unsustainable in law as the denial of deduction u/s 80P(2) is arbitrary and without proper application of mind.*

*2. The AO erred in upholding the addition by denying the benefit of deduction under section 80P(2) when the appellant had demonstrated that it is a co-operative society which had only transacted strictly with the regular members and hence it is erroneous.*

*3. The AO has grossly erred by adding interest income earned from FD made out of operational funds which*

*was the only fund available for a short period and hence eligible for deduction as per the decision of the Karnataka High Court.*

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

2. At the very beginning, it was submitted by Id 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 2014-15) : 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 on 21-09-2014 for the AY: 2014-15 declaring NIL total income after claiming deduction u/s 80P(2) of the IT Act, 1961.

3.1 During the course of scrutiny, it was noticed by the AO that the appellant society which was formed to provide credit facilities to its members out of the deposits collected and income generated thereof was into activities which are in the nature of banking. As mentioned in the Explanation to section 80P(4) of the Act, the AO examined the case of the appellant in reference to Part V of the Banking Regulation Act, 1949. He found that all the conditions mentioned in the said provisions are present in the case of the appellant. On this issue he confronted the appellant. The appellant submitted its reply to the AO but he was not satisfied and hence he disallow the claim of deduction u/s 80P of the Act made by the appellant in the return of income thereby making an addition of Rs.85,54,082/-.

3.2 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 basis of decision of authorities below is by following decision 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 an other decision on which reliance has been placed by 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*.

4. 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)*. Referring to the decision 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 facts of this decision Hon'ble Karnataka High Court is not applicable instead decision rendered by Hon'ble Karnataka High Court in the case of *Tumkur Merchants Souharda Credit Cooperative Ltd. Vs. ITO as reported in 230 Taxman 309 is applicable*.

5. 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 facts of present case in light of these two decisions being *PCIT and Another Vs. Totagars Co-operative Sale Society (supra)* and *Tumkur Merchants Souharda Credit Cooperative Ltd. Vs. ITO (supra)* with a direction that, if facts

are in line with facts in case of *PCIT and Another Vs. Totagars Co-operative Sale Society (supra)*, then the issue should be decided against the assessee. But if facts of present case are in line with facts in case of *Tumkur Merchants Souharda Credit Cooperative Ltd. Vs. ITO (supra)*, then issue should be decided in favour of assessee.

6. The Bench pointed out that in the case of *PCIT and Another Vs. Totagars Co-operative Sale Society (supra)*, 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 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.

7. As facts in 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)m for fresh decision. The Bench also proposed that regarding the applicability 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 speaking and reasoned order after comparing facts of present case with that of the Citizen Co-operative Society

Ltd Vs ACIT (Supra) under co-operative society Act, applicable in State of Karnataka.

8. 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).

9. 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 light of above discussion, by way of a speaking and reasoned order after providing adequate opportunity of being heard to both sides. 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 Co-operative 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

**(J. SUDHAKAR REDDY)**  
**ACCOUNTANT MEMBER**

Dated: the

**\*am**

**(BEENA PILLAI)**  
**JUDICIAL MEMBER**

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

		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		