

**IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH, BENGALURU**

**BEFORE SHRI J. SUDHAKAR REDDY, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER**

ITA No.1145/Bang/2019
(Assessment year: 2011-12)

M/s.Gayatri Pattina Souharda Sahakari Niyamitha,
Hospet,
Bellary Dist. ... Appellant
PAN:AAAAG2993B

Vs.

Income-tax Officer,
Ward-1,
Hospet. ... Respondent

Appellant by : Shri Balaram R Rao, Advocate.
Respondent by : Shri R.N.Siddappaji, Addl.CIT(DR)

Date of hearing: 17/07/2019
Date of pronouncement: 19/07/2019

O R D E R

Per J. SUDHAKAR REDDY, AM:

This is an appeal by the assessee against the order of the CIT(A), Kalburgi, dated 29/03/2019 for the assessment year 2011-12.

2. After hearing rival contentions, we find that grounds No.1 to 7 are on the issue of claim of deduction of the assessee u/s 80P(2)(a)(i) of the Income-tax Act,1961 ['the Act' for short]. The Assessing Officer relied on section 80P(2)(d) of the Act.

3. At the time of hearing, both the parties have agreed that the issue under consideration is covered by the decision dated 4th January,

2019 rendered in ITA No.821/Bang/2017 in the case of *M/s.Primary Co-operative Agriculture & Rural Development Bank*.

4. We have gone through the order passed by the co-ordinate bench in the above said case. For the sake of convenience, we extract below the decision taken by the co-ordinate bench in the above said case.

“5. We have heard the rival submissions. The learned AR relied on the decision of the Hon’ble Karnataka High Court in the case of *Tumkur Merchants Souharda Credit Co-operative Society Ltd. Vs. ITO 230 taxman 309 (Karn)* wherein the Hon’ble Karnataka High Court considered the decision of the Hon’ble Apex Court in the case of *The Totgar’s Co-operative Sales Society (supra)* and held that interest income in respect of temporary parking of own surplus funds not immediately required is eligible for deduction u/s.80P(2)(a)(i) of the Act. The learned 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)*.

6. We have carefully gone through the judgment relied by the learned DR. The facts of the case before the Hon’ble Karnataka High Court in the decision cited by the learned DR 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 AY 1991-92 to 1999-2000. The nature of interest income for all the AYs 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 Co-operative 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 Tumkur 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 judgments 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 Tumkur Merchants Souharda Co-operative Ltd. (supra).

7. The AO will afford opportunity of being heard to the Assessee and filing appropriate evidence, if desired, by the Assessee to substantiate its case, before deciding the issue.”

Consistent with the view taken therein, we set aside this issue to the file of the Assessing Officer for fresh adjudication in accordance with law.

5. Grounds No.8 & 9 are on the issue of disallowance u/s 40(a)(ia) of the Act. The claim of the assessee is that interest has been paid to members and on the ground of mutuality, no tax could be deducted at source. This aspect may also be examined by the Assessing Officer in the set aside proceedings. The assessee would be free to raise any other argument, legal or otherwise on this issue.

6. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 19th July, 2019.

Sd/-
(BEENA PILLAI)
JUDICIAL MEMBER

Place : Bengaluru
Dated : 19/07/2019
srinivasulu, sps

Sd/-
(J. SUDHAKAR REDDY)
ACCOUNTANT MEMBER

Copy to :

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

By order

Assistant Registrar
Income-tax Appellate Tribunal
Bangalore