

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“C” BENCH : BANGALORE**

**BEFORE SHRI JASON P BOAZ, ACCOUNTANT MEMBER AND  
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

ITA No.3254/Bang/2018
Assessment year : 2014-15

M/s. The Jayanagar Co-operative Society Ltd., No.902, 8 <sup>th</sup> Main Road, II Block, Jayanagar, Bangalore - 560 011. <b>PAN : AAAAT 8625 K</b>	Vs.	The Income Tax Officer, Ward – 7[2][1], Bangalore.
APPELLANT		RESPONDENT

Assessee by	:	Smt. Pratibha R., Advocate
Revenue by	:	Dr. P. V. Pradeep Kumar, Addl. CIT

Date of hearing	:	19.06.2019
Date of Pronouncement	:	23.07.2019

**ORDER**

*Per Jason P. Boaz, Accountant Member*

This appeal by the assessee is directed against the order of CIT(A), Bangalore, dated 10.10.2018, for Assessment Year 2014-15.

2. Briefly stated, the facts of the case are as under:-

2.1 The assessee filed the return of income for Assessment Year 2014-15 on 19.11.2014 declaring taxable income of Rs.90,790/-, after claiming deduction of Rs.45,84,907/- under section 80P(2)(a)(i) of the Income Tax Act, 1961 (in short 'the Act'). The case was taken up for scrutiny for this Assessment Year

and the assessment was concluded under section 143(3) of the Act vide order dated 21.12.2016, wherein the assessee's income was determined at Rs.83,89,256/-; in view of the Assessing Officer (AO) disallowing the assessee's claim for deduction under section 80P(2)(a)(i) of the Act and bringing to tax in the assessee's hands the interest earned on FDs with Bank amounting to Rs.82,98,469/- under the head "Income from Other Sources". On appeal, the CIT(A)-7, Bangalore, dismissed the assessee's appeal vide the impugned order dated 10.10.2018 and directed the AO to adopt the figure of interest earned on FDs by the assessee at Rs.1,00,31,837/- as against Rs.82,98,469/- adopted by the AO.

3. Aggrieved by the order of the CIT(A)-7, Bangalore, dated 10.10.2018 for Assessment Year 2014-15, the assessee has preferred this appeal before the Tribunal wherein it has raised the following grounds:-

1. *The ld. CIT (A) erred in passing the order in the manner which he did.*
2. *On the facts, the learned CIT (A) ought to have appreciated that the Appellant has made investments in Banks to maintain the SLR ratio as provided by Karnataka Co-operative Societies Act 1959 which was made in the course and purpose of business and thus the same is eligible for deduction u/s 80P(2) of the Act.*
3. *The learned CIT (A) ought to have appreciated the case laws cited by the AO in the assessment order are distinguishable and not applicable to the facts of the Appellant case in as much as, there was compulsion to invest in order to maintain SLR where in the cited decision there was surplus which was invested , just earn income by way of interest.*
4. *On the facts, the learned CIT (A) failed to appreciate that interest received by the Appellant-Society is exempt under Section 80P(2)(d) of the Act and thus the addition as made and confirmed by the CIT (A) is uncalled for and liable to be deleted.*

5. *On the facts, the learned CIT (A) erred in relying on the judgments and confirming the additions as made by the AO is totally uncalled for and further failed to appreciate that the judgments relied on by him were distinguishable on the facts of the Appellant's case.*
6. *Without prejudice, the confirming the additions are excessive, arbitrary and unreasonable and ought to be deleted.*
7. *The learned CIT (A) erred in charging the interest u/s.234 A and 234B of the Act.*
8. *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.*

4. 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.

5. 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).

6. 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.

7. In the result, the assessee's appeal for Assessment Year 2014-15 is allowed for statistical purposes.

*Order pronounced in the open court on this 23<sup>rd</sup> day of July, 2019.*

Sd/-  
**(PAVAN KUMAR GADALE)**  
**Judicial Member**

Sd/-  
**(JASON P BOAZ)**  
**Accountant Member**

Bangalore.

Dated: 23<sup>rd</sup> July, 2019.

/NS/\*

Copy to:

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

By order

Assistant Registrar,  
ITAT, Bangalore.