

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

BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT

ITA No.205/Bang/2019
(Assessment year: 2015-16)

Sree Saraswati Co-operative Credit Ltd.,
No.6, Sharadamba Complex,
2nd Floor, Coen Road,
Hubballi-580 020. ... Appellant
PAN:AABAS 1237 R

Vs.

Income-tax Officer,
Ward 3(3),
Hubballi. ... Respondent

Appellant by : Shri Pranav Krishnan, Advocate.
Respondent by : Shri Ganesh R Ghale, Standing Counsel for
Dept.

Date of hearing: 25 /07/2019
Date of pronouncement: 26/07/2019

ORDER

This is an appeal filed by the assessee against the order dated 28.11.2018 of CIT(A)-Hubballi, relating to asst. year 2015-16.

2. Grounds No.1 to 4, 9 to 11 before the Tribunal are general grounds and do not need any specific adjudication. The assessee which is a co-operative society has challenged the action of the Revenue authorities in not allowing deduction claimed by the assessee u/s 80P(2)(a)(i) of the Act on a sum of Rs.15,60,240/- which was claimed by the Assessee to be income from providing credit facilities to its members which also interest income of Rs.2,51,159 being interest income derived from deposit of surplus funds in various deposits in banks.

3. The deduction calmed by the assessee u/s.80P(2)(a)(i) of the Act was not allowed by the AO for the reason that the Assessee was not a Primary Agricultural credit society. The AO in doing so relied on the provisions of

Sec.80P(2)(a)(i) of the Act and Sec.80P(4) of the Act, which reads as follows:

“Section 80P – Deduction in respect of income of Co-operative Societies:

80P. (1) Where, in the case of an assessee being a co-operative society, the gross total income includes any income referred to in sub-section (2), there shall be deducted, in accordance with and subject to the provisions of this section, the sums specified in sub-section (2), in computing the total income of the assessee.

(2) The sums referred to in sub-section (1) shall be the following, namely :—

(a) in the case of a co-operative society engaged in—

(i) carrying on the business of banking or providing credit facilities to its members, or

(ii) to (vii).....

the whole of the amount of profits and gains of business attributable to any one or more of such activities :

4. Sec.80P(4) inserted by Finance Act, 2006 (w.e.f. 1-4-2007) withdrew deduction u/s.80P(2)(a)(i) of the Act to co-operative banks. These provisions reads as follows:

“(4) The provisions of this section shall not apply in relation to any co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank.

Explanation.—For the purposes of this sub-section,—

(a) "co-operative bank" and "primary agricultural credit society" shall have the meanings respectively assigned to them in Part V of the Banking Regulation Act, 1949 (10 of 1949);

(b) "primary co-operative agricultural and rural development bank" means a society having its area of operation confined to a taluk and the principal object of which is to provide for long-term credit for agricultural and rural development activities.”

5. The AO held that the Assessee was not a primary Agricultural credit society and therefore was hit by the prohibition contained in Sec.80P(4) of the Act. The approach of the AO was wrong because Sec.80P(4) does not apply to primary Agricultural society and therefore such societies can claim

deduction u/s.80P(2)(a)(i) of the Act. The Assessee was a credit co-operative society and therefore the provisions of Sec.80P(4) were not applicable to it. The CIT(A) held that the Assessee would be entitled to deduction u/s.80P(2)(a)(i) of the Act only from income earned from providing credit facilities to regular members and directed the AO to verify facts and allow deduction accordingly. The following were the relevant observations of the CIT(A):

“The Hon'ble Supreme Court in its judgements in the case(s) of The Citizen Co-operative Society Ltd_ Vs. ACIT in appeal No.10245 of 2017,Dt.08.08.2017 & M/s.Totgar's Co-operative Sale Society Ltd. Vs. ITO in appeal No.1622 of 2010, restricted a co-operative society's right to claim deduction on income U/s.80P(2)(a) of the I.T. Act,1961, to income earned by the co-operative society from its regular members, who have full voting and equal dividend rights. on the principle of mutuality, earned in the conduct of its business activities, as approved by its bye laws and the Registrar of Cooperative Societies.

7. Thus, income earned from persons other than its regular members would not be eligible for deduction U/s.80P(2)(a) of the Act. The income earned from business with persons other than regular members would be taxable as income from business and expenditure incurred wholly for the purpose of business would be allowed. However, despite several opportunities granted, the assessee failed to submit the details of income earned that was eligible for the claim of deduction.

The AO may allow the income of the assessee that is earned from its business activity of providing credit facilities to its regular members, having equal voting rights and dividend rights, if any.

The appeal of the assessee on this ground is partly allowed.”

6. In ground No. 5 before the Tribunal the Assessee has challenged this direction of the CIT(A). I am of the view that the directions of the CIT(A) in this regard is in accordance with law and the decision of Hon'ble Supreme Court in the case of Citizen Co-operative Society Ltd. (supra) and hence no interference is called for.

7. As far as Ground Nos.7 & 8 raised by the Assessee are concerned, the same relates to not allowing deduction u/s.80P(2)(a)(i) on interest income

of Rs.2,51,195/. The claim of the Assessee was not allowed by the Revenue authorities for the reason that the income which was claimed as deduction was interest income which was earned by the assessee on deposits and in view of the decision of the Hon'ble Supreme Court in the case of *PCIT Vs. Totgars Co-operative Sale Society Ltd.*, 83 taxmann.com 140 interest income had to be regarded as 'income from other sources'. Since interest income was not income derived from the business of co-operative society, the deduction claimed by the assessee cannot be allowed. On appeal by the assessee, the CIT(A) confirmed the action of the AO.

8. Aggrieved by the order of the CIT(A), the assessee has raised Gr.No.6, 7 & 8 before the Tribunal filed the present appeal before the Tribunal raising the following grounds of appeal.

6. "The learned Commissioner of Income-tax [Appeals] failed to appreciate that the interest income earned by the Appellant out of the deposits kept in the Banks were in the course of activity of providing credit facilities to members, consequently the learned authorities below ought to have allowed deduction under section 80 P [2] of the Act on such interest income earned by the appellant on the facts and circumstances of the case.
7. The learned Commissioner of Income-tax [Appeals] failed to appreciate that the interest income earned by the appellant out of the deposits kept in the Banks are all out of the monies of the members of the appellant society, consequently the learned authorities below ought to have allowed deduction under section 80 P [2] of the Act on such interest income earned by the appellant on the facts and circumstances of the case.
8. The learned Commissioner of Income-tax [Appeals] erred in holding that the income interest earned by the Appellant from investments or deposits, other than Saving Bank accounts or co-operative society is liable to be taxed as income from other sources and not eligible for deduction u/s. 80P of the Act."

9. I 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.).

10. I 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 2007-2008 to 2011- 2012. 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 *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).

11. 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. The Assessee has also filed an application for filing additional evidence regarding its membership to show that no nominal members existed in the society. I give liberty to the Assessee to file these documents before the AO in the set aside proceedings.

12. In the result, the appeal by the Assessee is allowed for statistical purpose.

Order pronounced in the open court on 26th July, 2019.

Sd/-
(N.V. VASUDEVAN)
VICE PRESIDENT

Place : Bengaluru
Dated : 26/07/2019

srinivasulu, sps

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