

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

**BEFORE SHRI B.R.BASKARAN, ACCOUNTANT MEMBER  
AND  
SMT.BEENA PILLAI, JUDICIAL MEMBER**

**ITA No.287(Bang)/2019  
(Assessment Year : 2014-15)**

M/s Gayathri Credit Co-op. Society Ltd.,  
No.40 & 51, 5<sup>th</sup> Cross,  
Malleshwaram,  
Bangalore-560 003.  
PANNo.AAAAG7473J

Appellant

**Vs**

The Income tax Officer,  
Ward-2(2)(3),  
Bangalore

Respondent

**Appellant by : Shri Shree Harikutsa, CA  
Revenue by : Shri R.N.Siddappaji, Addl.CIT**

**Date of hearing : 24-07-2019**

**Date of pronouncement :**

**ORDER**

**PER BEENA PILLAI, JUDICIAL MEMBER :**

Present appeal has been filed by assessee against order dated 28-11-2018 passed by Ld. CIT (A)-2, Bengaluru for assessment year 2014-15 on following grounds;

- "1. The order of the ld. CT(A) passed under section 250 of the Act insofar as I I against the appellant, is opposed to law, equity, weight of evidence, probabilities and the facts and circumstances in the appellant's case.*
- 2. The CIT(A) failed to appreciate that the appellant is entitled to the deduction u/s80P(2)(a) of the Act of Rs.75,00,870/- on the facts and circumstances of the case.*

3. *The CIT(A) failed to appreciate that the appellant is entitled to the deduction u/s 80P(2)(c) of the Act of Rs.1,00,000/- on the facts and circumstances of the case.*

4. *The CIT(A) failed to appreciate that the appellant is not engaged in the business of banking and consequently failed to hold that the denial of deduction u/s 80P(2) is unjustified on the facts and circumstances of the case.*

5. *The CIT(A) failed to appreciate that the appellant is engaged in giving credit facilities only to its members and not to the general public and consequently denial of deduction u/s 80P(2) is unsustainable on the facts and circumstances of the case.*

6. *The CIT(A) failed to appreciate that the appellant is engaged in giving credit facilities only to its members and not to the general public and consequently the denial of deduction u/s 80P(2) is unsustainable on the facts and circumstances of the case.*

7. *The appellant craves leave to add, alter, delete or substitute any of the grounds urged above.*

6. *In view of the above and other grounds that may be urged t the time of the hearing of the appeal, the appellant prays that the appeal may be allowed in the interest of justice and equity”..*

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

3.1 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 the main basis of the decision of the authorities below is by following the judgment 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 other judgment on which reliance has been placed by the 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. 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). Regarding the judgment 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 in the facts of present case, this judgment of Hon'ble Karnataka High Court is not applicable and instead of that, another judgment of Hon'ble Karnataka High Court rendered in the case of Tumkur Merchants Souharda Credit Cooperative Ltd. Vs. ITO as reported in 230 Taxman 309 is applicable. 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 the facts of the present case in the light of these two judgments rendered in the case of PCIT and Another Vs. Totagars Co-operative Sale Society (supra) and Tumkur Merchants Souharda Credit Cooperative Ltd. Vs. ITO (supra) with the direction that if the facts are in line with the facts in the case of PCIT and Another Vs. Totagars Co-operative Sale Society (supra), then the issue should be decided against the assessee. But if the facts of the present case are in

line with the facts in the case of Tumkur Merchants Souharda Credit Cooperative Ltd. Vs. ITO (supra), then the issue should be decided in favour of the assessee. The bench pointed out that in the case of PCIT and Another Vs. Totagars Co-operative Sale Society (supra), the 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 the 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. The bench proposed that since the facts in the 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 judgment 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 a speaking and reasoned order after comparing the facts of present case with the facts in that case in the light of law for Cooperative society in the state of Karnataka because in that case, the state is different and cooperative law is different. 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).

4. 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 the light of above discussion, by way of a speaking and reasoned order after providing adequate opportunity of being heard to both sides. The ld. CIT(A) is directed to pass a speaking and reasoned order after comparing the facts of present case with the facts in the case of The Citizen Co-operative Society Ltd. Vs. ACIT (supra). 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 26-07-2019

Sd/-

**(B.R.BASKARN)**  
**ACCOUNTANT MEMBER**

Dated: the 26<sup>th</sup> July, 2019.

**\*am**

Copy of the Order forwarded to:

- 1.Appellant;
- 2.Respondent;
- 3.CIT;
- 4.CIT(A);
5. DR
6. ITO (TDS)
- 7.Guard File

Sd/-

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

By Order  
Asst.Registrar

