

**IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC-B” BENCH : BANGALORE**

BEFORE SHRI JASON P BOAZ, ACCOUNTANT MEMBER

ITA No.1401/Bang/2019
Assessment Year : 2016-17

M/s. Savanoor Primary Agriculture Credit Co-operative Society Ltd., 01, Savanoor – 574 202. PAN : AAEAT 1118 M	Vs.	The Income Tax Officer, Ward – 1, Puttur.
APPELLANT		RESPONDENT

Assessee by	:	Shri. G. S. Prashanth, CA
Revenue by	:	Shri. Ganesh R. G, Standing Counsel

Date of hearing	:	08.08.2019
Date of Pronouncement	:	14.08.2019

ORDER

Per Jason P. Boaz, Accountant Member

This appeal by the assessee is directed against the order of CIT(A), Mangaluru, dated 30.03.2019.

2.0 The grounds raised by the assessee in this appeal are as under:-

Sl. No.	GROUNDS OF APPEAL	Tax Effect in Rs.
1	a) The orders of the authorities below in so far as these are against the appellant is opposed to law, weight of evidence, natural justice, probabilities, facts and circumstances of the appellant's case.	-

	<p>b) The appellant denies itself liable to be assessed on a total income of Rs.43,22,850/- as against the returned income of Rs.Nil under the facts and circumstances of the case.</p>	
2	<p>a) The learned assessing officer erred in denying the deduction claimed by the appellant under section 80P(2) of the Income-Tax Act, 1961 (the Act) of Rs.43,22,850/- under the facts and circumstances of the case.</p> <p>b) The authorities below erred in following the decision of Supreme Court in the case of Citizen Co-operative Society Ltd. vs. ACIT, reported in 397 ITR 1 though the facts of the appellant's case are totally different and thus the addition made needs to be deleted on the facts of the case.</p> <p>c) The learned assessing officer is not justified in holding that the nominal/associate members of the society are not members in real sense and consequently erred in not allowing the deduction under section 80P(2) of the Act under the facts and circumstances of the case.</p> <p>d) The assessing officer erred in not appreciating the fact that interest earned from deposits made in Co-operative Banks and other banks, is attributable to carrying on the business activities of the appellant and therefore the appellant is eligible for deduction under section</p>	13,35,761/-
	<p>80P(2) of the Act under the facts of the case.</p> <p>e) The authorities below failed to appreciate that the appellant is a Primary Agricultural Credit Co-operative Society as per section 80P(4) of the Act and therefore, the ratio of the decision of the Karnataka High Court in the case of PCIT vs. Totgars Co-operative Sales Society Limited, reported in 395 ITR 611 does not apply to the appellant under the facts and circumstances of the case.</p>	

	<p>f) The learned assessing officer failed to appreciate that the surplus funds which is not immediately required for business activity is invested and the interest on such deposits is eligible for deduction under section 80P of the Act under the facts and circumstances of the case.</p> <p>g) Without prejudice, if the interest income earned from deposits is considered as income from other sources, then the learned assessing officer ought to have allowed the deduction towards the incidental expenses incurred under section 57 of the Act under the facts of the case.</p>	
3	The appellant denies itself liable to be levied to interest under section 234B of the Act and further the computation of interest was not provided to the appellant as regard to the rate, period and method of calculation of interest under the facts and circumstances of the case. The appellant expressly urges that the period of levy of interest is not in accordance with section 234B of the Act.	4,39,758/-
4	The appellant craves leave to add, alter, delete or substitute any of the grounds urged above.	-
5	In view of the above and other grounds that may be urged at the time of the hearing of the appeal, the appellant prays that the appeal may be allowed in the interest of justice and equity.	-

3. Vide letter dated 25.06.2019, the assessee raised **Additional Grounds of appeal**. However, in the course of appellate hearings, the learned AR submitted that the assessee is not pressing the Additional Grounds of appeal raised. These Additional Grounds raised are accordingly rendered infructuous and dismissed as not pressed.

4. It was submitted by Id. AR of assessee that the Id. CIT(A) has followed the judgment of Hon'ble Karnataka High Court dated 16.06.2017 rendered in the case of PCIT and Another Vs. Totagars Co-operative Sale Society as reported in 395 ITR 611 (Karn). He submitted that the facts of this case are

different and therefore, this judgment is not applicable in the present case. He submitted that in the present case, 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 and therefore, the matter should be restored back to AO or CIT (A) for a fresh decision by following this judgment of Hon'ble Karnataka High Court rendered in the case of Tumkur Merchants Souharda Credit Cooperative Ltd. Vs. ITO (supra). At this juncture, the bench wanted to know regarding the facts of the present case because the decision of Hon'ble Karnataka High Court rendered in both these cases i.e. PCIT and Another Vs. Totagars Co-operative Sale Society (supra) and Tumkur Merchants Souharda Credit Cooperative Ltd. Vs. ITO (supra) are on the same line but the conclusion is different because the facts are different. The bench pointed out that in the case of PCIT and Another Vs. Totagars Co-operative Sale Society(supra), the money deposited in bank was out of liability of the assessee and in the case of Tumkur Merchants Souharda Credit Cooperative Ltd. Vs. ITO(supra), the money deposited in bank was not out of liability but out of assessee's own funds and therefore this decision is in favour of the assessee. The bench pointed out that if the facts in the present case are similar to that of 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 assessee are similar to that of Tumkur Merchants Souharda Credit Cooperative Ltd. Vs. ITO(supra) then the issue is to be decided in favour of the assessee. In reply, it was submitted by Id. AR of assessee that the facts are not readily available and therefore, the matter may be restored 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 of Hon'ble Karnataka High Court. The Id. DR of revenue also agreed to this proposition put forward by the Id. AR of assessee.

5. I have considered the rival submissions and 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 Id. 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.

6. In the result, the appeal filed by the assessee for Assessment Year 2016-17 is allowed for statistical purposes.

Order pronounced in the open court on this 14th day of August, 2019.

Sd/-
(JASON P BOAZ)
Accountant Member

Bangalore.
Dated: 14th August, 2019.
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Copy to:

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

By order

Assistant Registrar,
ITAT, Bangalore.