

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

BEFORE SHRI JASON P. BOAZ, ACCOUNTANT MEMBER

ITA No.1260/Bang/2019
Assessment Year : 2014-15

M/s. Shree Vijaylaxmi Urban Credit Souharda Sahakari Ltd., Malamaddi, Dharwad – 580 007. PAN : AAEAS 0544 G	Vs.	Assistant Commissioner of Income-Tax Circle -2(1), Hubballi.
APPELLANT		RESPONDENT

Assessee by	:	Shri. Ankur Pai Chungat, CA
Revenue by	:	Shri. Ganesh R. G., Standing Counsel

Date of hearing	:	08.08.2019
Date of Pronouncement	:	14.08.2019

ORDER

This appeal by the assessee is directed against the order of CIT(A), Hubballi, dated 27.03.2019 for Assessment Year 2014-15.

2. Briefly stated, the facts of the case relevant for disposal of this appeal are as under:

2.1 The assessee, an AOP, engaged in the business and providing credit facilities to its members, filed its return for Assessment Year 2014-15 on 25.09.2014 declaring NIL income, after claiming deduction of Rs.41,84,766/- under section 80P(2)(a)(i) of the Income Tax Act, 1961 (in short ‘the Act’) on account of interest earned on deposits with Banks. The case was taken up for scrutiny and the order of assessment was concluded under section 143(3) of the Act vide order dated 18.10.2016, wherein the assessee’s income was determined at Rs.11,38,269/-; in view of the AO partly disallowing the assessee’s claim for

deduction under section 80P(2)(a)(i) of the Act i.e., to the extent of interest income earned from investments other than with Co-operative Societies. On appeal, the assessee was allowed partial relief by the CIT(A), Davangere, vide the impugned order dated 27.03.2019.

3.1 Aggrieved by the order of CIT(A), Hubballi, dated 27.03.2019 for Assessment Year 2014-15, the assessee has preferred this appeal before the Tribunal; wherein it has raised the following grounds:

1. The order dated 27 March 2019 passed by the Commissioner of Income-tax (Appeals), Hubballi ["CIT(A)"] is bad and erroneous and against the facts and circumstances of the case in so far as it is against the Appellant;
2. The learned CIT(A) erred in law and on facts in not allowing exemption under section 80P(2)(a)(i) of the Income-tax Act, 1961 ("Act") in respect of the interest income earned by the Appellant from fixed deposits maintained with banks;
3. The learned CIT(A) erred denying the Appellant exemption under section 80P(2)(a)(i) of the Act by not appreciating the fact that interest earned from fixed deposits made in other banks is attributable to carrying on the business of banking;
4. The CIT(A) erred in not appreciating that the Appellant carries on its banking business only with the members of the Sahakari;
5. The CIT(A) erred in relying on the decision of the Hon'ble Supreme Court in the case of *The Citizen Co-operative Society Limited (CA No 10245/2017)* and *Totgars' Co-operative Sale Society Limited (CA No 1622/2010)* without appreciating that the case laws were not applicable to the facts of the Appellant;
6. The CIT(A) erred in not appreciating that the funds which were invested in the fixed deposits were not immediately required by the Appellant for its business activity and hence the exemption under section 80P of the Act could not be denied to the Appellant;
7. The learned CIT(A) erred in law and on facts in not allowing the interest income earned from Co-operative Banks as deduction under section 80P(2)(d) of the Act even though Co-operative Bank is registered as a Co-operative Society under Karnataka State Co-operative Societies Act, 1969;

3.2 The learned AR was heard in support of the grounds raised in respect of the assessee's claim for being allowed deduction under section 80P(2)(a)(i) of the Act in respect of interest income earned on deposits with banks.

3.3 The learned DR for Revenue supported the impugned order of the CIT(A).

3.4.1 I have heard and considered the submissions put forth and the material on record; including the judicial pronouncements cited. I find that the identical issue was considered by the ITAT-Bangalore Bench in the case of Sri Basaveshwara Swamy Pattana Pattina Sahakara Sangha Niyamitha for Assessment Years 2009-10 and 2012-13 and in its order in ITA Nos.2793 and 2794/Bang/2018 dated 25.01.2019, the Tribunal at paras 6 to 8 thereof has held as under:

“6. 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. /TO 230 Taxman 309 (Kam) 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 (Kam).

7. 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 in 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 cooperative bank is assessable under the head income from other sources 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). The AO will afford opportunity of being heard to the Assessee to file appropriate evidence, if desired by the Assessee, to substantiate its case, before deciding the issue.

8. *In the result, appeals by the assessee are treated as allowed for statistical purposes.”*

3.4.2 Following the decision of this Tribunal in the case of Sri Basaveshwara Swamy Pattana Pattina Sahakara Sangha Niyamitha Assessment Years 2009-10 and 2012-13, in ITA Nos.2793 and 2794/Bang/2018 dated 25.01.2019, the assessee's claim for deduction under section 80P(2)(a) of the Act in respect of interest income of Rs.11,38,269/- earned from out of bank deposits is restored to

the file of the AO for denovo adjudication after examining the facts in the light of the judgments of the Hon'ble Apex Court in the cases of The Totagars Co-operative Sale Society Ltd., (supra) and Citizens Co-operative Society Ltd., (397 ITR 1) (SC) and of the Hon'ble Karnataka High Court in the case of Tumkur Merchants Souharda Co-operative Ltd., (supra). Needless to add, the AO shall afford the assessee adequate opportunity of being heard and to file submissions / details required, which shall be duly considered before deciding the issue. It is accordingly ordered

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

Pronounced in the open court on 14th August, 2019.

Sd/-
(JASON P. BOAZ)
Accountant Member

Bangalore.

Dated: 14th August, 2019.

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

By order

Assistant Registrar,
ITAT, Bangalore.