

IN THE INCOME TAX APPELLATE TRIBUNAL

“SMC-C” BENCH : BANGALORE

BEFORE SHRI ARUN KUMAR GARODIA, ACCOUNTANT MEMBER

ITA No. 210/Bang/2019
Assessment Year : 2012-13

M/s. Sri Shakambari Mahila Pattina Sahakari Sangha Niyamit, At Post: Kerur, Tq. Badami, Dist. Bagalkot – 587 206. PAN: AACAS8906Q	Vs.	The Income Tax Officer, Ward – 1, Bagalkot.
APPELLANT		RESPONDENT
Assessee by	:	Ms. Preethi S. Patel, Advocate
Revenue by	:	Shri Ganesh G. Ghale, Standing Counsel
Date of hearing	:	03.09.2019
Date of Pronouncement	:	20.09.2019

ORDER

Per Shri A.K. Garodia, Accountant Member

This appeal is filed by the assessee and the same is directed against the order of Id. CIT(A), Hubballi dated 26.11.2018 for Assessment Year 2012-13.

2. The grounds raised by the assessee are as under.

<i>Grounds of Appeal</i>	<i>Tax effect relating to each ground of appeal (see note below)</i>
<i>1. The order of the Hon'ble Commissioner of Income Tax (Appeals) is opposed to law and facts of the case.</i>	<i>Rs.4,52,877/-</i>
<i>2. The Hon'ble Commissioner of Income Tax (Appeals) ought to have directed the assessing officer to allow deduction u/s 80P(2)(a)(i) as claimed by the appellant.</i>	<i>Rs.4,52,877/-</i>
<i>3. The Hon'ble Commissioner of Income Tax (Appeals) erred in holding that the income earned from associate and nominal members is not eligible for deduction u/s 80P(2)(a) of the I.T. Act.</i>	<i>Rs.4,52,877/-</i>
<i>4. The Hon'ble Commissioner of Income Tax (Appeals) ought to have held that the ratio of the decisions in Citizen Co-operative Society Ltd., Vs ACIT and M/s. Totgars Co-operative Sale Society Ltd., are not applicable on the facts of the present case.</i>	<i>Rs.4,52,877/-</i>

5. <i>The Hon'ble Commissioner of Income Tax (Appeals) erred in holding that the interest received from deposits other than Savings Bank accounts or Co-operative Societies is liable to tax as income from other sources and not eligible for deduction u/s 80P(2)(a) of the Act.</i>	Rs.4,52,877/-
6. <i>The Hon'ble Commissioner of Income Tax (Appeals) ought to have held that the whole of the interest income earned from deposits including Fixed Deposits is eligible for deduction u/s 80P(2)(a) of the Act.</i>	Rs.4,52,877/-
7. <i>The Hon'ble Commissioner of Income Tax (Appeals) ought to have held that the whole of the interest paid to its members is allowable as deduction in computing the total income.</i>	Rs.4,52,877/-
8. <i>The appellant craves for leave to add to delete from or amend the grounds of appeal.</i>	Rs.4,52,877/-
<i>Total tax effect (See note below)</i>	Rs.4,52,877/-

3. The Id. AR of assessee submitted that the written submissions filed by the assessee before Id. CIT(A) are available on pages 4 and 5 of the paper book. She reiterated the same contentions. She also submitted copy of Tribunal order rendered in the case of Pavamana Credit Co-operative Society Ltd. Vs. ITO in ITA No. 3402/Bang/2018 dated 18.01.2019. She submitted that the facts in the present case are similar to that case and hence, in the present case also, the issues involved may be restored back to the file of AO for fresh decision in line with decision in that case. The Id. DR of revenue supported the orders of authorities below.
4. We have considered the rival submissions. First of all, we reproduce para no. 3.2 from the order of Id. CIT(A). This para reads as under.
- “3.2 The AO therefore disallowed the claim of exemption U/s.80P(2)(a) of the I.T. Act,1961, by holding that the assessee fulfils all conditions that are required to treat the assessee as a co-op. bank/ primary co-op. bank, and the provisions of 80P(4) of the I.T. Act, 1961, are applicable.”*
5. From the above para reproduced from the order of Id. CIT(A), it comes out that the AO has held that assessee is a co-operative bank and therefore, not eligible for deduction u/s. 80P of the IT Act but in the subsequent paras, the decision of Id. CIT(A) is not on this basis that assessee is a co-operative bank. The Id. CIT(A) has decided the issue on this basis that the assessee has total 845 regular members who have voting rights and right to share of profits and assessee is also having 393 associate members who do not have voting rights

but have the right to share of profits and assessee is also having 368 nominal members who do not have voting rights and do not have right to share of profits. The Id. CIT(A) has followed 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 and held that the income earned from regular members is eligible for deduction u/s. 80P of the IT Act whereas the income earned from persons other than its regular members is not eligible for deduction u/s. 80P(2)(a) of the IT Act and for holding so, the Id. CIT(A) has followed the judgment of the Hon'ble Apex Court rendered in the case of The Citizen Co-operative Society Ltd. Vs. ACIT (supra). When we go through this judgment of Hon'ble Apex Court, we find that in para no. 25 of this judgment, it is held by the Hon'ble Apex Court that the activities of the appellant in that case were in violation of the provisions of the MACSA (Andhra Pradesh Mutually Aided Cooperative Societies Act 1995). In the present case, the assessee is not formed under MACSA but under Karnataka Co-operative Societies Act and therefore, it has to be examined as to whether the provisions of the Karnataka Co-operative Societies Act are similar to MACSA and whether in the present case also, there is any violation of Karnataka State Co-operative Society Act or not. Without examining this aspect, this judgment of the Hon'ble Apex Court cannot be applied in the present case. Hence, we feel it proper to restore back the entire matter to the file of AO for fresh decision on two aspects. The first aspect to be decided by him is as to whether the assessee is violating the provisions of Karnataka State Co-operative Society Act under which the assessee is formed or not. If it is found that the present assessee is also violating the provisions of Karnataka State Co-operative Society Act, then this judgment of Hon'ble Apex Court rendered in the case of The Citizen Co-operative Society Ltd. Vs. ACIT (supra) has to be applied and it has to be held that in respect of income received from persons other than regular members of the assessee society, deduction is not allowable u/s. 80P of the IT Act. But if it is seen that there is no violation of Karnataka State Co-operative Society Act and the nominal members are at par with regular members and it is authorized by Karnataka State Co-operative Society Act, then for entire interest income from members/society should be considered as eligible for deduction u/s. 80P of the IT Act.

6. The second issue to be decided by the AO is this as to whether the assessee is eligible for deduction u/s. 80P (2) in respect of interest income from banks. For deciding this issue, the AO should examine the facts of the present case in the light of the two judgments 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) and in the case of Tumkur Merchants Souharda Credit Cooperative Ltd. Vs. ITO as reported in 230 Taxman 309. I would like to observe that in both these judgments, the decision is different but there is no contradiction in these two judgments. The decision is different because of difference in facts. In the case of PCIT and Another Vs. Totagars Co-operative Sale Society (supra), it was found that the money invested in bank was out of assessee's liability and not out of assessee's own funds and therefore, decided 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. In the present case, the AO should examine this factual aspect and decide in the light of these two judgments of Hon'ble Karnataka High Court.
7. In the result, the appeal filed by the assessee is allowed for statistical purposes. Order pronounced in the open court on the date mentioned on the caption page.

Sd/-
(ARUN KUMAR GARODIA)
Accountant Member

Bangalore,
Dated, the 20th September, 2019.
/MS/

Copy to:
1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore
6. Guard file

By order

Assistant Registrar,
Income Tax Appellate Tribunal,
Bangalore.