

IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC – A" BENCH : BANGALORE

BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT

ITA No.1712/Bang/2019
Assessment year : 2016-17

M/s. Manjunatheshwara Credit Co-operative Society Ltd., No.20, 3 rd Main, 2 nd Block, Ring Road, Nandini Layout, Bengaluru – 560 096. PAN: AAKAS 1721M	Vs.	The Income Tax Officer, Ward 6(2)(2), Bangalore.
APPELLANT		RESPONDENT

Appellant by	:	Shri Chaitanya V. Mudrabettu, Advocate
Respondent by	:	Shri Ganesh R.G., Standing Counsel

Date of hearing	:	04.09.2019
Date of Pronouncement	:	06.09.2019

ORDER

This appeal by the assessee is against the order dated 23.05.2019 of the CIT(Appeals), Bengaluru-6, Bengaluru relating to assessment year 2016-17.

2. The assessee is a credit co-operative society. The assessee earned interest on investment of surplus funds of Rs.9,16,743 comprising of the following:-

Sl. No.	Name of the Bank	Amount of interest
1	BR&BDCC Bank	1,97,459
2.	Janata Seva Cooperative Bank	2,74,341
3.	Citizen Cooperative Bank	3,41,777
4	Apex Cooperative Bank	1,03,166
	Total	9,16,743

3. The assessee claimed that the aforesaid sum was eligible for deduction u/s. 80P(2)(a) or 80P2(d) of the Income-Tax Act, 1961 [“the Act”]. The AO took the view that the aforesaid interest income is in the nature of income from other sources and therefore the deduction claimed cannot be allowed. In doing so, the AO followed the decision of the Hon'ble Supreme Court in the case of *PCIT Vs. Totgars Co-operative Sale Society Ltd.*, 83 taxmann.com 140 wherein it was held that interest income earned on deposits 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 was not allowed.

4. On appeal, the CIT(Appeals) confirmed the order of AO. Hence this appeal by the assessee before the Tribunal.

5. 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 for a fresh decision by following this judgment. At this juncture, the Bench put forth a query regarding the facts of the present case because the decisions of Hon'ble Karnataka High Court rendered in both these cases cited above are on the same lines, but the conclusion is different on different facts. 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. Therefore, if the facts of 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.

6. I have considered the rival submissions and I feel it proper that the matter should go back to the file of CIT(Appeals) 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)*. If it is found that the facts of the present case are in line with the facts of the *PCIT and Another Vs. Totagars Co-operative Sale Society(supra)* then the issue may be decided against the assessee and if the facts of the present case are in line with the facts of the case of *Tumkur Merchants Souharda Credit Cooperative Ltd. Vs. ITO(supra)* then the issue may be decided in favour of the assessee. Accordingly, I set aside the order of the CIT(Appeals) and restore the issue back to the CIT(A) for fresh decision in accordance with the law in the light of above discussion after providing adequate opportunity of being heard to both sides.

7. In the result, the appeal by the assessee is allowed for statistical purposes.

Pronounced in the open court on this 6th day of September, 2019.

Sd/-

(N.V. VASUDEVAN)
VICE PRESIDENT

Bangalore,
Dated, the 6th September, 2019.

/ Desai Smurthy /

Copy to:

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

By order

Assistant Registrar,
ITAT, Bangalore.