

**IN THE INCOME TAX APPELLATE TRIBUNAL  
BANGALORE BENCH 'SMC-B', BANGALORE**

**BEFORE SHRI A.K. GARODIA, ACCOUNTANT MEMBER**

**ITA No. 1183 (Bang) 2019  
(Assessment year : 2015 – 16)**

M/s. Mayura Credit Co – Operative Society Ltd., Appellant  
No. 188/39, 5<sup>th</sup> Cross, Kurubarahalli,  
Mahalakshmpura,  
Bengaluru – 560096.  
**PAN. AADAM0709N**

Vs

ITO Ward – 6 (2) (2), Respondent  
Bengaluru.

**Assessee by : Shri B. S. Balachandran, Advocate**  
**Revenue by : Shri Ganesh R. Ghale, Standing Counsel**  
**Date of hearing : 23-09-2019**  
**Date of pronouncement : 27-09-2019**

**ORDER**

**PER A. K. GARODIA, A.M.:**

This appeal is filed by the assessee and it is directed against the order of CIT (A) – 1, Bengaluru dated 26.03.2019 for A. Y. 2015 – 16.

2. The assessee has raised as many as 4 grounds but the only grievance is about disallowance of Rs. 28,99,809/- of deduction claimed by the assessee u/s 80P (2) (a) (i) of I. T. Act by applying sub section (4) of section 80P.

3. Learned AR of the assessee submitted that the lower authorities has followed the judgment of Hon'ble apex court rendered in the case of Citizen Co – Operative Society Limited vs. ACIT, 297 ITR 1. He pointed out that in Para 3.2 of his order, it is noted by CIT (A) that in that case, main reason for denial of deduction by the AO is that the assessee's activities are in violation of the provisions of Mutually Aided Co-Operative Societies Act, 1995 (MACSA). He submitted that this act is for Andhra Pradesh and the Co-operative Societies Act of Karnataka is different and there is no finding that the activities of the present assessee are in violation of the provisions of Co-Operative Societies Act of Karnataka. He submitted that hence, this judgment is not applicable in the present case. He further submitted that in Para 3.5 of his order, it is stated by CIT (A) that the assessee has earned majority of interest income from various banks but this is factually incorrect. He submitted that on page 32 of the appeal

memo is a certificate of a chartered accountant and as per the same, interest on to members is Rs. 85,52,262/- whereas interest from various banks is only Rs. 208,738/-, 458,489/- and Rs. 105,666/-. He also submitted that in Para 3 of his order, learned CIT (A) has followed a judgment of Hon'ble apex court rendered in the case of Totgars Co – Operative Sale Society Limited vs. ITO, 322 ITR 283 but this judgment is not applicable in the present case because facts are different. He pointed out that in Para 10 of this judgment, Hon'ble apex court decided the issue against the assessee on this basis that funds invested for earning interest income was out of liability and not out of own funds. He submitted that in the present case, investment is out of own funds and not out of liability. He submitted that in the facts of the present case, the judgment of Hon'ble Karnataka High Court rendered in the case of Tumkur Merchants Souhadra Credit Co operative Ltd. Vs. ITO, 230 Taxman 309. He pointed out that in this case, Hon'ble Karnataka High Court has considered this judgment of Hon'ble apex court rendered in the case of Totgars Co – Operative Sale Society Limited vs. ITO (Supra) and thereafter decided the issue in favour of the assessee because it was found that money invested was not out of liability. Learned DR of the revenue supported the order of AO & CIT (A).

4. I have considered the rival submissions. First, I reproduce the relevant paras of the judgment of Hon'ble Supreme Court decision in the case of Citizen Co – Operative Society Limited vs. ACIT (Supra). The same are as under:-

**"25. So far so good. However, it is significant to point out that the main reason for disentitling the appellant from getting the deduction provided under Section 80P of the Act is not sub-section (4) thereof. What has been noticed by the Assessing Officer, after discussing in detail the activities of the appellant, is that the activities of the appellant are in violations of the provisions of the MACSA under which it is formed. It is pointed out by the Assessing Officer that the assessee is catering to two distinct categories of people. The first category is that of resident members or ordinary members. There may not be any difficulty as far as this category is concerned. However, the assessee had carved out another category of 'nominal members'. These are those members who are making deposits with the assessee for the purpose of obtaining loans, etc. and, in fact, they are not members in real sense. Most of the business of the appellant was with this second category of persons who have been giving deposits which are kept in Fixed Deposits with a motive to earn maximum returns. A portion of these deposits is utilised to advance gold loans, etc. to the members of the first category. It is found, as a matter of fact, that he depositors and borrowers are quiet distinct. In reality, such activity of the appellant is that of finance business and cannot be termed as co-operative society. It is also found that the appellant is engaged in the activity of granting loans to general public as well. All this is done without any approval from the Registrar of the Societies. With indulgence in such kind of activity by the appellant, it is remarked by the Assessing Officer that the activity of the appellant is in violation of the Co-operative Societies Act. Moreover, it is a co-**

**operative credit society which is not entitled to deduction under Section 80P(2)(a)(i) of the Act.**

**26. It is in this background, a specific finding is also rendered that the principle of mutuality is missing in the instant case. Though there is a detailed discussion in this behalf in the order of the Assessing Officer, our purpose would be served by taking note of the following portion of the discussion:**

**"As various courts have observed that the following three conditions must exist before an activity could be brought under the concept of mutuality;**

**that no person can earn from him;**

**that there is a profit motivation;**

**and that there is no sharing of profit.**

**It is noticed that the fund invested with bank which are not member of association welfare fund, and the interest has been earned on such investment for example, ING Mutual Fund [as said by the MD vide his statement dated 20.12.2010]. [Though the bank formed the third party vis-a-vis the assessee entitled between contributor and recipient is lost in such case. The other ingredients of mutuality are also found to be missing as discussed in further paragraphs].**

**In the present case both the parties to the transaction are the contributors towards surplus, however, there are no participators in the surpluses. There is no common consent of whatsoever for participators as their identity is not established. Hence, the assessee fails to satisfy the test of mutuality at the time of making the payments the number in referred as members may not be the member of the society as such the AOP body by the society is not covered by concept of mutuality at all."**

**27. These are the findings of fact which have remained unshaken till the stage of the High Court. Once we keep the aforesaid aspects in mind, the conclusion is obvious, namely, the appellant cannot be treated as a co-operative society meant only for its members and providing credit facilities to its members. We are afraid such a society cannot claim the benefit of Section 80P of the Act.**

**28. This appeal, therefore, fails and is hereby dismissed with costs."**

5. I also reproduce the relevant para of the judgment of Hon'ble Supreme Court decision rendered in the case of Totgars Co – Operative Sale Society Limited vs. ITO (Supra). The same is as under:-

**"10.** At the outset, an important circumstance needs to be highlighted. In the present case, the interest held not eligible for deduction under s. 80P(2)(a)(i) of the Act is not the interest received from the members for providing credit facilities to them. What is sought to be taxed under s. 56 of the Act is the interest income arising on the surplus invested in short-term deposits and securities which surplus was not required for business purposes. Assessee(s) markets the produce of its members whose sale proceeds at times were retained by it. In this case, we are concerned with the tax treatment of such amount. Since the fund created by such retention was not required immediately for business purposes, it was invested in specified securities. The question, before us, is—whether interest on such deposits/securities, which strictly speaking accrues to the members' account, could be taxed as business income under s. 28 of the Act? In our view, such interest income would come in the category of "income from other sources", hence, such interest income would be taxable under s. 56 of the Act, as rightly held by the AO. In this connection, we may analyze s. 80P of the Act. This section

comes in Chapter VI-A, which, in turn, deals with "Deductions in respect of certain incomes". The headnote to s. 80P indicates that the said section deals with deductions in respect of income of co-operative societies. Sec. 80P (1), inter alia, states that where the gross total income of a co-operative society includes any income from one or more specified activities, then such income shall be deducted from the gross total income in computing the total taxable income of the assessee-society. An income, which is attributable to any of the specified activities in s. 80P (2) of the Act, would be eligible for deduction. The word "income" has been defined under s. 2(24)(i) of the Act to include profits and gains. This sub-section is an inclusive provision. The Parliament has included specifically "business profits" into the definition of the word "income". Therefore, we are required to give a precise meaning to the words "profits and gains of business" mentioned in s. 80P (2) of the Act. In the present case, as stated above, assessee-society regularly invests funds not immediately required for business purposes. Interest on such investments, therefore, cannot fall within the meaning of the expression "profits and gains of business". Such interest income cannot be said also to be attributable to the activities of the society, namely, carrying on the business of providing credit facilities to its members or marketing of the agricultural produce of its members. When the assessee-society provides credit facilities to its members, it earns interest income. As stated above, in this case, interest held as ineligible for deduction under s. 80P(2)(a)(i) is not in respect of interest received from members. In this case, we are only concerned with interest which accrues on funds not required immediately by the assessee(s) for its business purposes and which have been only invested in specified securities as "investment". Further, as stated above, assessee(s) markets the agricultural produce of its members. It retains the sale proceeds in many cases. It is this "retained amount" which was payable to its members, from whom produce was bought, which was invested in short-term deposits/securities. Such an amount, which was retained by the assessee-society, was a liability and it was shown in the balance sheet on the liability side. Therefore, to that extent, such interest income cannot be said to be attributable either to the activity mentioned in s. 80P(2)(a)(i) of the Act or in s. 80P(2)(a)(iii) of the Act. Therefore, looking to the facts and circumstances of this case, we are of the view that the AO was right in taxing the interest income, indicated above, under s. 56 of the Act."

6. I find that as per this judgment of Hon'ble Supreme Court rendered in the case of Citizen Co – Operative Society Limited vs. ACIT (Supra), this is the main basis of the decision that the activities of the appellant are in violation of the provisions of the MACSA under which it is formed. In the present case, MACSA is not applicable because MACSA is for Andhra Pradesh. In the present case, Co Operative Society Act of Karnataka is applicable and it has to be seen that whether the assessee is violating the provisions of Co-Operative Society Act of Karnataka because there is no such finding of the AO or CIT (A). Regarding the applicability of the judgment of Hon'ble apex court rendered in the case of Totgars Co – Operative Sale Society Limited vs. ITO (Supra) also, the facts are to be examined as to whether in the present case, the money advanced to earn interest income from various banks is out of liability or own funds of the assessee because if such advances are out of liability, then this judgment of Hon'ble apex court rendered in the case of Totgars Co – Operative

Sale Society Limited vs. ITO (Supra) will be applicable and the assessee will not be entitled to deduction u/s 80P with regard to interest from banks but if such advances are not out of liability but out of own funds of the assessee than the judgment of Hon'ble Karnataka High Court rendered in the case of Tumkur Merchants Souhadra Credit Cooperative Ltd. Vs. ITO(Supra) will be applicable.

7. Hence, I set aside the order of CIT (A) and restore the matter back to his file for fresh decision with the direction that he should first decide this as to whether there is any violation of Karnataka Co Operative Society Act committed by the assessee or not and as a result, the judgment of Hon'ble Supreme Court decision in the case of Citizen Co – Operative Society Limited vs. ACIT (Supra) is applicable or not. If it is found that this judgment is applicable and the assessee is not eligible for deduction u/s 80P then nothing more is required to be decided but if it is found that this judgment is not applicable than the facts of the present case should be examined in the light of the judgments of Hon'ble apex court rendered in the case of Totgars Co – Operative Sale Society Limited vs. ITO (Supra) and the judgment of Hon'ble Karnataka High Court rendered in the case of Tumkur Merchants Souhadra Credit Cooperative Ltd. Vs. ITO (Supra) to find out which judgment is applicable in the facts of the present case. If it is found that the judgment of Hon'ble apex court rendered in the case of Totgars Co – Operative Sale Society Limited vs. ITO (Supra) is applicable in the facts of the present case then it should be held that the assessee is not entitled to deduction u/s 80P in respect of interest from bank but if it is found that the judgment of Hon'ble Karnataka High Court rendered in the case of Tumkur Merchants Souhadra Credit Cooperative Ltd. Vs. ITO (Supra) is applicable then it should be held that the assessee is entitled to deduction u/s 80P in respect of interest from bank.

8. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on the date mentioned on the caption page.

**Sd/-**

**(A.K. GARODIA)**

**ACCOUNTANT MEMBER**

Bangalore

D a t e d : 27.09.2019

/MS/

**Copy to :**

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

By order,

AR, ITAT, Bangalore