

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

BEFORE SHRI A.K. GARODIA, ACCOUNTANT MEMBER

**ITA No. 1826 (Bang) 2019
(Assessment year : 2016 – 17)**

M/s. Primary Agricultural Credit Co – Operative Society Ltd., Appellant
PKPS Building, Main Road,
Huvin, Hippargi, Tq. Bagewadi,
Dist. Vijayapura.
PAN. ABTPG6461F

Vs

ITO, Ward – 3, Respondent
Vijayapur.

Assessee by : None

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), Belgaum dated 19.06.2019 for A. Y. 2016 – 17.

2. The assessee has raised two grounds but the only grievance is about disallowance of Rs. 176,991/- of deduction claimed by the assessee u/s 80P (2) (a) (i) of I. T. Act.

3. Hearing was fixed on 23.09.2019 and notice of hearing was sent by RPAD and it is duly served on the assessee as per Acknowledgement available on record. In spite of this, none appeared and there is no request for adjournment. Hence, the appeal was heard ex parte qua the assessee. Learned DR of the revenue supported the order of AO & CIT (A).

4. I have considered the submissions of the learned DR of the revenue and gone through the orders of the lower authorities. I find that the claim of the assessee for deduction u/s 80P in respect of interest income of Rs. 99,766/- earned from VDCC and other banks was disallowed by AO and CIT (A) by following the judgment of Hon'ble Karnataka High Court rendered in the case of Totgars Co – Operative Sale Society Limited vs. ITO in ITA No. 100066/2016 dated 16.06.2017. I find that there is a judgment of Hon'ble Supreme Court rendered in the case of Totgars Co – Operative Sale Society

Limited vs. ITO (Supra). I reproduce the relevant Para 10 of this judgment and 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."

5. There is one judgment of Hon'ble Karnataka High Court rendered in the case of Tumkur Merchants Souhadra Credit Cooperative Ltd. Vs. ITO, 230 Taxman 309, in which this judgment of Hon'ble apex court rendered in the case of Totgars Co – Operative Sale Society Limited vs. ITO (Supra) was considered but still, the issue was decided in favour of the assessee because in that case, money used to earn bank interest was out of own funds and not of out of liability. To examine the applicability of these two judgments, 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.

6. 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 examine the facts of the present case in the light of these two judgments of Hon'ble apex court rendered in the case of Totgars Co – Operative Sale Society Limited vs. ITO (Supra) and 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.

7. 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