

IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC – C” BENCH : BANGALORE

BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT

ITA No.1852/Bang/2019
Assessment year : 2016-17

M/s. Sri Krishna Credit Co-operative Society Ltd., Kumbalgodu, Bangalore South Taluk, Bangalore – 560 074. PAN: AALAS 7658E	Vs.	The Income Tax Officer, Ward 3(2)(3), Bangalore.
APPELLANT		RESPONDENT

Appellant by	:	Shri S.V. Ravishankar, Advocate
Respondent by	:	Shri Ganesh R. Ghale, Standing Counsel for Dept.

Date of hearing	:	09.10.2019
Date of Pronouncement	:	16.10.2019

ORDER

This appeal by the assessee is against the order dated 26.06.2019 of the CIT(Appeals)-3, Bengaluru relating to assessment year 2016-17.

2. The issue to be adjudicated in this appeal is as to whether the revenue authorities were justified in denying the claim of assessee for deduction u/s. 80P(2)(a)(i) of the Income-Tax Act, 1961 [“the Act”] of a sum of Rs.13,53,036.

3. The aforesaid sum was claimed as deduction u/s. 80P(2)(a)(i) of the Act by the assessee. The assessee is a co-operative society. The

aforesaid sum also includes a sum of Rs.5,22,088 being interest on investments with Apex Bank and another sum of Rs.5,535 being interest on SB Account with Apex Bank. The interest income was claimed as deduction u/s. 80P(2)(a)(i) of the Act or alternatively u/s. 80P(2)(d) of the Act.

4. As far as deduction u/s. 80P(2)(a)(i) is concerned, the AO was of the view that as per the bye-laws of the society nominal members and associated members were also eligible for becoming members of the assessee, besides regular members. The AO was of the view that there was nothing in the bye-laws which prevented the assessee from accepting deposits from the public. In the aforesaid circumstances, the AO was of the view that income in question did not satisfy the requirements of principles of mutuality laid down by the Hon'ble Supreme Court in the case of *Citizen C-operative Society Ltd. v. ACIT [2017] 86 taxmann.com 114 (SC)*. The AO therefore denied the deduction u/s. 80P(2)(a)(i) of the Act.

5. As far as deduction u/s. 80P(2)(d) is concerned, the AO was of the view that the interest income earned by the assessee was to be regarded as income from other sources and therefore deduction cannot be allowed as it was not in the nature of business income. In doing so, he relied upon the decision of the Hon'ble High Court of Karnataka in the case of *Totgars Co-operative Sales Society, 83 taxman.com 140 (Kar)*.

6. On appeal by the assessee, the CIT(Appeals) confirmed the order of the AO.

7. At the time of hearing of the appeal, my attention was drawn to the decision of ITAT Bangalore Bench in the case of *M/s. Manjunatheshwara Credit Co-operative Society Ltd. v. ITO, ITA No.1712/Bang/2019* for the AY

2016-17, order dated 6.9.2019, wherein the principles for deciding such cases i.e., in the context of section 80P(2)(d) was laid down as follows:-

“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.”

8. Following the aforesaid order of the Tribunal, the order of the CIT(Appeals) is set aside on this issue and the matter restored to the AO for fresh consideration and decision with similar directions as contained in the case of *M/s. Manjunatheshwara Credit Co-operative Society Ltd. (supra)* after affording opportunity of being heard to assessee.

9. As far as deduction u/s. 80P(2)(a)(i) of the Act is concerned, I am of the view that the issue as to whether the principles of mutuality is satisfied in the case of assessee, should be decided keeping in mind the following distinguishing features brought out by the assessee between the case of assessee and case decided by the Hon'ble Apex Court in the case of *Citizen C-operative Society Ltd. (supra)*:-

Ratio laid down by the Supreme Court	Facts of the impugned case
Para 24: Undoubtedly, if one has to go by the aforesaid definition of "Co-Operative bank, the Appellant does not get covered thereby. It is also a matter of common knowledge that in order to do the business	The learned Commissioner of Income Tax (Appeals) has failed appreciate the matter of common knowledge. The legal position of the entity in the cited case and that of the Appellant in the instant case is one and the same leading to an inference

<p>of a Co-Operative Bank, it is imperative to have a licence from the Reserve Bank of India, which the Appellant does not possess. Not only has this, as noticed above, the Reserve Bank of India itself clarified that the business of the Appellant does not amount to that of a co-operative bank. The Appellant, therefore, would not come within the mischief of sub-section [4] of Section 80P.</p>	<p>that the Appellant is not a Co-Operative Bank, but a society.</p>
<p>Para 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 80I' 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 violation 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 has carved out another category of 'nominal members'.</p>	<p>The entire ratio of Para cannot be applied to the appellant's case due to the following reasons:-</p> <p>a) There are no violations recorded by the Assessing officer in the assessment order. At Para 7 of the assessment order, the AO only states that interest income earned are not eligible for deduction u/s 80P. There is no finding as to whether the interest was earned from the deposits of members or general public. Further, the learned Commissioner of Income Tax (Appeals) has not brought out any new fact apart from what the AO has done. The fact is that there is no such distinction made by the Karnataka Societies Registration Act, 1959 between the ordinary members and associate members and the advances received from such class of members are alike.</p>

<p>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 the second category who has been giving deposits which are kept in Fixed Deposits with a motive to earn maximum returns. A portion of these deposits is utilized to advance gold loans, etc to the members of the first category. It is found, as a matter of fact, that the depositors and borrowers are quite distinct. 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 societies. With indulgence in such kind of activity of the Appellant is in violation of the Co-Operative Societies Act.</p>	<p>b) There is no hint of evidence brought out by the revenue disproving the above narrated facts. There is no distinction drawn between the depositors and borrowers nor there exists a mention to that effect in the assessment order.</p> <p>c) There is no finding that the appellant is involved in granting loans to general public.</p> <p>d) There are no proceedings / lacunas identified by the Registrar of Societies on the Appellant.</p>
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10. I am of the view that the issue needs to be decided keeping in mind the provisions of the Karnataka Societies Registration Act, 1959, which lays down the rights of various categories of members. Besides the above, it is also to be seen whether the income earned which was claimed as deduction u/s. 80P(2)(a)(i) to the extent it relates to provide credit facilities to the members of the assessee, who are permanent members or regular members cannot be denied. Since these aspects have not been looked into either by the AO or the CIT(Appeals), I deem it proper to set aside the order of CIT(Appeals) and remand the issue to the AO fresh consideration

in the light of directions given above, after due opportunity to the assessee. It is ordered accordingly.

11. In the result, this appeal of the assessee is accordingly treated as allowed for statistical purposes.

Pronounced in the open court on this 16th day of October, 2019.

Sd/-

(N.V. VASUDEVAN)
VICE PRESIDENT

Bangalore,
Dated, the 16th October, 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.