

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

BEFORE SHRI B.R BASKARAN, ACCOUNTANT MEMBER

ITA No.1195/Bang/2019
Assessment year : 2014-15

M/s Shri Vedavyas Co-op. Credit Society Ltd., 2 nd Floor, Shri Laxmi Balakrishna Square, Station Road, Hubli-580 020. PAN – AAIAS 1833 N	Vs.	The Income-tax Officer, Ward-3(3), Hubballi.
APPELLANT		RESPONDENT

Appellant by	:	Smt. Sowmya, Advocate
Respondent by	:	Shri Ganesh R Ghale, Advocate Standing Counsel to Dept.

Date of hearing	:	05.11.2019
Date of Pronouncement	:	05.11.2019

ORDER

Per B.R Baskaran, Accountant Member

The appeal filed by the assessee is directed against the order dated 29/3/2019 passed by Id CIT(A), Huballi and it relates to asst. year 2014-15.

2. The issue contested in this appeal relates to disallowance of deduction claimed u/s 80P(2)(a)(i) of the Act in respect of income derived from investments by way of deposits with banks.

3. The Id AR submitted that the assessee is a credit cooperative society providing credit facilities to its members. During the year

under consideration the assessee earned interest income of Rs.9.14 lakhs on the investment made with bank. The assessee had also earned interest income of Rs.43.14 lakhs on the credit facilities provided to its members. The assessee had claimed deduction u/s 80P(2)(a)(i) of the Act to the tune of Rs.15.65 lakhs. The AO disallowed the same. In the appellate proceedings the ld CIT(A) allowed deduction u/s 80P(2)(a)(i) in respect of interest income earned on credit facilities provided to its members and confirmed the disallowance in respect of interest income earned from bank deposits.

4. Aggrieved, the assessee has filed this appeal before the Tribunal.

5. At the time of hearing both the parties submitted that this issue is covered by the decision of coordinate Bench rendered in many cases wherein this issue is restored to the file of AO with certain direction. The ld AR has placed his reliance on the decision rendered by SMC 'A' Bench in the case of The Graduates Co-operative society Ltd., Vs. ITO (ITA No.2787 to2792/Bang/2018) dated 21/12/2018.

6. The ld DR placed his reliance on the decision rendered by coordinate bench in the case of Gayathri Credit Co-operative Society Ltd., Vs. ITO (ITA No.287/Bang/2019) dated 26/7/2019.

7. I heard the parties and perused the record. I noticed that the impugned issue is covered by the decision rendered by coordinate

benches. For the sake of convenience I extract below the decision rendered in the case of Graduates Cooperative Society Ltd., (Supra).

“11. I have heard the rival submissions. The learned AR relied on the decision of the Hon'ble Karnataka High Court in the case of Tumkur Merchants Souharda Credit Co-operative Society Ltd. Vs. ITO 230 taxman 309 (Kam) wherein the Hon'ble Karnataka High Court considered the decision of the Hon'ble Apex Court in the case of The Totgars Co-operative ITA Nos.2787 - 2792/13/18 Sales Society (supra) and held that interest income in respect of temporary parking of own surplus funds not immediately required is eligible for deduction u/s.80P(2)(a)(i) of the Act. The learned DR relied on a subsequent decision of the Hon'ble Karnataka High Court in the case of PCIT Vs. Totgars Co-operative Sale Society Ltd. 395 ITR Oil (Karn.).

12. We have carefully gone through the judgment relied by the learned DR. The facts of the case before the Hon'ble Karnataka High Court in the decision cited by the learned DR was that the Hon'ble Court was considering a case relating to Assessment Years 2007-2008 to 2011- 2012. In case decided by the Honble Supreme Court in the, case of the very same Assessee, the Assessment years involved was AY 991-92 to 1999-2000. The nature of interest income for all the AYs was identical. The bone of opontention of the Assessec in AY 2007-08 to 2011-12 was that the deduction under Section 80P(2) of the Act is claimed by the respondent assessee under Section 80P(2)(d) of the Act and not under Section 80P(2)(a) of the Act which was the claim in AY 1991-92 to 1999-2000. The reason given by the Assessee was that in AY 2007-08 to 2011-12 investments and deposits after the Supreme Court's decision against the assessee Totgar's Co-operative Sale Society Ltd. (supra), were shifted from Schedule Banks to Co-operative Bank. U/s.80P(2)(d) of the Act, income by

way of interest or dividends derived by a Co-operative Society from its investments with any other Co-operative Society is entitled to deduction of the whole of such interest or dividend income. The claim of the Assessee was that Co-operative Bank is essentially a Co-operative Society and therefore deduction has to be allowed under Clause (d) of Sec.80P(2) of the Act. The Hon'ble Karnataka High Court followed the decision of the supreme Court in The Totgars Co-operative Sales Society Ltd. (supra) and held that interest earned from Schedule bank or co-operative bank is assessable under the head income from other sources and therefore the provisions of Sec.80P(2)(d) of the Act was not applicable to such ITA Nos.2787 - 2792/B/18 interest income. It is thus clear that the source of funds out of which investments were made remained the same in AY 2007-08 to 2011-12 and in AY 1991-92 to 1999-2000 decided by the Hon'ble Supreme Court. Therefore whether the source of funds were Assessee's own funds or out of liability was not subject matter of the decision of the Hon'ble Karnataka High Court in the decision cited by the learned DR. To this extent the decision of the Hon'ble Karnataka High Court in the case of Turnukur Merchants Souharda Co-operative Ltd. (supra) still holds good. Hence, on this aspect, the issue should be restored back to the AO for a fresh decision after examining the facts in the light of these judgments of the Hon'ble Apex Court rendered in the case of The Totgars Co-operative Sale Society Ltd. (supra) and of Hon'ble Karnataka High Court rendered in the case of Turnukur Merchants Souharda Co-operative Ltd. (supra).

13. The AO will afford opportunity of being heard to the Assessee and filing appropriate evidence, if desired, by the Assessee to substantiate its case, before deciding the issue."

8. Following the above said decision, I set aside the order passed by Id CIT(A) on this issue and restore the same to the file of AO for examining this issue afresh in the light of discussion made in the above said case.

9. In the result, the appeal of the assessee is treated as allowed for statistical purposes.

Order pronounced in the open court on **5th November, 2019.**

Sd/-
(B.R Baskaran)
Accountant Member

Bangalore,
Dated, the 5th November, 2019.

/Vms/

Copy to:

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

By order

Asst. Registrar, ITAT, Bangalore

1. Date of Dictation
2. Date on which the typed draft is placed before the dictating Member
3. Date on which the approved draft comes to Sr.P.S
4. Date on which the fair order is placed before the dictating Member
5. Date on which the fair order comes back to the Sr. P.S.
6. Date of uploading the order on website.....
7. If not uploaded, furnish the reason for doing so
8. Date on which the file goes to the Bench Clerk
9. Dictation note enclosed
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13. The date on which the file goes to dispatch section for dispatch of the Tribunal Order
14. Date of Despatch of Order.
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