

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

BEFORE SHRI B.R BASKARAN, ACCOUNTANT MEMBER

ITA No.539/Bang/2019
Assessment year : 2013-14

M/s Jamkhandi Credit Co-operative Credit Society Ltd., Opp. Post Office, Main Road, Jamkhandi Dist. Bagalkot-591 309. PAN – AAAAJ 3399 J	Vs.	The Income-tax Officer, Ward-2, Bagalkot.
APPELLANT		RESPONDENT

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

Date of hearing	:	06.11.2019
Date of Pronouncement	:	06.11.2019

ORDER

Per B.R Baskaran, Accountant Member

The assessee has filed this appeal challenging the order dated 29-11-2018 passed by Ld CIT(A), Hubballi and it relates to the assessment year 2013-14.

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 interest income derived from 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 claimed deduction u/s 80P(2)(a)(i) of the Act to the tune of Rs.16.51 lakhs. The AO disallowed the same by applying provisions of sec.80P(4) of the Act. In the appellate proceedings, the ld CIT(A) held as under:-

“6. The Hon’ble Supreme Court in its judgement in the case(s) of The Citizen Co-operative Society Ltd vs. ACIT in appeal No.10245 of 2017 dated 08-08-2017 & M/s Totgars’ Co-operative Sale Society Ltd vs. ITO in appeal no.1622 of 2010, restricted a co-operative Society’s right to claim deduction on income u/s 80P(2)(a) of the I.T Act, 1961 to income earned by the co-operative society from its regular members, who have full voting and equal dividend rights, on principle of mutuality, earned in the conduct of its business activities, as approved by its bye laws and the Registrar of Co-operative Societies.

7. Thus, income earned from persons other than its regular members would not be eligible for deduction u/s 80P(2)(a) of the Act. The income earned from business with persons other than regular members would be taxable as income from business and expenditure incurred wholly for the purpose of business would be allowed. However, despite several opportunities granted, the assessee failed to submit the details of income earned that was eligible for the claim of deduction.

The AO may allow the income of the assessee that is earned from its business activity of providing credit facilities to

its regular members, having equal voting rights and dividend rights, if any.”

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

5. At the time of hearing, both the parties submitted that the issue contested herein is covered by the decision of coordinate Bench rendered in many cases wherein it is restored to the file of AO with certain directions. 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 issue relating to interest income earned by the assessee from deposits made into the bank 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 11.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'blc 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 judgment 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. I notice that the assessee has not furnished break-up details of its income. In any case, the principles of taxing income of the assessee has been laid down by Ld CIT(A) as well as the Tribunal in the above said case. Accordingly the assessment of total income is required to be done afresh by following the said principles. In fact, the Ld CIT(A) has directed the AO to compute the income afresh

and in that connection, the principle laid down by the Tribunal is also required to be followed. Accordingly, I restore all the issues to the file of AO for examining this issue afresh in the light of discussion made supra.

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

Order pronounced in the open court on **6th November, 2019.**

**Sd/-
(B.R Baskaran)
Accountant Member**

Bangalore,
Dated, the 6th 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