

**IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC-A” BENCH : BANGALORE**

BEFORE SHRI N. V. VASUDEVAN, VICE PRESIDENT

ITA Nos.1292 and 1293/Bang/2019
Assessment years :2010-11 and 2012-13

M/s. Siddapur Taluka Agricultural Produce Co-operative Marketing Society Ltd., Siddapur – 581 355, Dist. Uttara Kannada. PAN : AADAS 8652 G	Vs.	Income Tax Officer, Ward - 1, Sirsi.
APPELLANT		RESPONDENT

Assesseeby	:	Shri. Pranav Krishna and Shri. S. V. Ravi Shankar, Advocates
Revenue by	:	Shri. Ganesh R. Ghali, Advocate Standing Counsel to Department

Date of hearing	:	13.11.2019
Date of Pronouncement	:	20.11.2019

ORDER

These are appeals by the Assessee against two orders both dated 28.03.2019 and 27.03.2019 by CIT(A), Hubballi, relating to Assessment Year 2010-11 and 2012-13 respectively.

2. The only issue that arises for consideration in these appeals is as to whether the Revenue authorities were justified in not allowing the claim of the assessee for deduction of a sum of Rs.11,46,531/- and Rs.16,50,130/- in Assessment Years 2010-11 and 2012-13 respectively which was a deduction claimed under section 80P(2)(d) of the Income Tax Act, 1961 (Act). Under section 80P(2)(d) of the Act, a deduction is allowed from the income of a Co-operative Society in

respect of income by way of interest and dividend derived from investment with other Co-operative Societies. The AO denied the benefit of deduction for the reason that the interest income and dividend income which was claimed as exempt by the assessee was received from Karnataka District Central Co-operative Bank (KDCC) and since KDCC cannot be considered as a Co-operative Society, the deduction was denied by the AO. On appeal by the assessee, the CIT(A) confirmed the order of the AO for the following reasons:-

“5. Section 80P(2)(d) of the I.T Act, 1961, provides for deduction of income earned by a co-operative society from co-operative societies, not being cooperative banks, scheduled banks and private banks, based on the principles of mutuality. The hon'ble High Court of Karnataka, Dharwad Bench, vide order No. ITA.100066/2016, Dt.16.06.2017, in the in the case of The Totagar Co-operative Sale Society, Sirsi, held that interest income derived on deposits from co-operative banks are not eligible for deduction u/s 80P(2)(d) of the I.T. Act, 1961. The Hon'ble Apex court in the cases of The Citizen Co-operative Society Ltd. Vs. ACTT in appeal No.10245 of 2017, Dt.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), to interest income earned by the co-operative society from its regular members, on the principle of mutuality.

6. *The hon'ble jurisdictional High Court of Karnataka, in its judgement in the case of Tumkur Merchants Souharda Credit Co-operative Ltd. Vs ITO in I.T.A.No.307 of 2014, Dt.28.10.2014, dealt at length on the interest earned that is "attributable" to the business of the co-operative society, of rendering credit facilities, as follows :*

".... 10. In the instant case, the amount which was invested in Banks to earn interest was not an amount due to any member. It was not liability. It was not shown as liability in their account. In fact this amount which is in the nature of profits and gains, was not immediately required by the assessee for lending money to the members, as there was no takers...."

7. *The assessee failed to produce a cash flow statement, etc, showing sources of funds, or details of deposits / investments, in*

banks other than Cooperative societies and the interest accrued & earned on the same. The assessee had failed to submit the rate of interest earned on deposits and the amount balance/dates concerned. The assessee failed to make submissions on its claim for deduction U/s.80G or details of 154 application filed.

3. Aggrieved by the orders of the CIT(A), the assessee is in appeals before the Tribunal.

4. I have heard the rival submission and perused the stand taken by the assessee before the CIT(A). The assessee has taken a specific stand that the Assessee is a society registered under the Co-operative Societies Act, 1959 and therefore the deduction under section 80P(2)(d) of the Act ought not to have been denied to the assessee. Another aspect which was argued was that to the extent interest income is relatable to investment, the deduction should have been given proportionately. Another argument was that alternatively the income should be regarded as eligible for deduction under section 80P(2)(d) of the Act because it is the only funds received from the members which are not immediately required or surplus funds generated in the past that are invested and therefore such interest income should also be regarded as income derived from the business of the assessee. The learned DR relied on the order of the CIT(A).

5. I have considered the rival submissions. In identical situation, this Tribunal in the case of Bharati Credit Co-operative Society Vs. ITO in ITA 1023/Bang/2019, remanded the issue to the AO for fresh consideration. I am of the view that all the issues raised by the assessee have not been adjudicated in the right perspective by the Revenue authorities. I therefore set aside the orders of the CIT(A) and remand the issue to the AO for fresh consideration with a liberty to the assessee to show as to how the funds that were invested with KDCC have to be regarded as investments and also liberty to substantiate its claim for deduction under section 80P(2)(a)(i) of the Act. I therefore allow both these appeals for statistical purposes.

6. In the result, the appeals by the Assessee are allowed for statistical purposes.

Order pronounced in the open court on this 20th day of November, 2019.

Sd/-
(N. V. VASUDEVAN)
Vice President

Bangalore.

Dated: 20th November, 2019.

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| 1. Appellants | 2. Respondent |
| 3. CIT | 4. CIT(A) |
| 5. DR | 6. Guard file |

By order

Assistant Registrar,
ITAT, Bangalore.