

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

BEFORE SHRI B.R BASKARAN, ACCOUNTANT MEMBER

ITA No.2268/Bang/2019
Assessment year : 2016-17

University of Agricultural Employees House Building Co-op Society Ltd., University of Agriculture, Hebbal, Bengaluru North, Bengaluru. PAN – AAAAU 3878 K	Vs.	The Asst. Commissioner of Income-tax, Circle-6(3)(1), Bengaluru.
APPELLANT		RESPONDENT

Appellant by	:	Shri P.R Suresh, C.A
Respondent by	:	Shri Ganesh R Ghale, Advocate Standing Counsel to Dept.

Date of hearing	:	28.11.2019
Date of Pronouncement	:	03.12.2019

ORDER

Per B.R Baskaran, Accountant Member

The assessee has filed this appeal challenging the order dated 29-08-2019 passed by Ld CIT(A)-6, Bengaluru and it relates to the assessment year 2016-17. The grounds of appeal urged by the assessee read as under:-

“1. The Order of Appeal of the learned CIT(A), Bengaluru 6, Bengaluru passed under section 250 the Act in so far as it is against the appellant is opposed to

law, equity, weight of evidence, facts and circumstances in the Appellant's case.

2. The learned CIT(A), Bengaluru - 6 , Bengaluru has erred in law in not adjudicating on grounds 1, 2, 3&5of the appeal filed.

3. The learned CIT(A) Bengaluru - 6, Bengaluru is not justified in law in denying the eligible deduction claimed by the appellant as per provisions of section 80P(2)(d) of the Act, on merits.

4. The Order of Assessment passed by the learned Assessing Officer is bad in law in adding a sum of Rs.21,99,628 as "Income from other sources", voluntarily disclosed by the appellant in his return of income, as against his proposition to disallow deduction claimed under section 80P(2)(d) by the appellant.

5. The appellant denies itself liable to be assessed on total income of Rs. 43,99,256/- as determined by the learned assessing officer as against the returned income by the appellant of Rs. NIL!- under the facts and circumstances of the case.

6. The learned Assessing officer has erred in law and facts of the case, failed to appreciate that the interest income earned by the appellant out of the deposits kept in the co-operative banks are all out of the monies of the members of the appellant society, and are not out of any liability due by the society, consequently the AO ought to have allowed deduction under section

80P(2)(d) on such interest income earned by the appellant, per law on facts and circumstances of the case.

7. The learned Assessing officer erred in law in failing to consider Appellants submission of facts of their case being identical to M/s. Tumkur Merchants Souharda Credit Co-operative decision of Hon'ble High Court of Karnataka, consequently deduction under section 80P(2)(d) was not to be denied to the Appellant.

8. The learned Assessing Officer has erred in law in disallowing the appellants claim under section 80P(2)(d) in view of the Hon'ble Supreme Court decision in Totgars Sales Co-operative Ltd in Vs ITO reported in 322 ITR 283 been distinguished in decision of Karnataka High Court in Tumkur Merchants Souharda Credit Cooperative Ltd Vs ITO, Tumkur (ITA No.307 of 2014) and in catena of cases of this Hon'ble bench in M/s. Kanyakaparameswari Credit Cooperative Society Ltd Vs ITO in ITA No.2900/Bang/2017 dated 22.03.2018.

9. Without prejudice to the right to seek waiver as per the parity of reasoning of the decision of the Hon'ble apex Court in the case of Karanvir Singh 349 ITR 692, the appellant denies itself liable to be charged to interest under section 234A & 234 B of the Income Tax Act under the facts and circumstances of the case.

10. The appellant contends that the levy of interest under section 234A & 234 B of the Act is also bad in

law as the period, rate, quantum and method of calculation adopted by the learned assessing officer on which interest is levied are not discernible and are wrong on the facts of case.

11.The appellant craves leave to add, alter, amend, substitute or delete any or all of the grounds of appeal urged above.

12. For the above and other grounds to be urged during the course of hearing of the appeal the Appellant prays that the appeal be allowed in the interest of equity and justice.”

3. The assessee is a co-operative society. The assessment of the year under consideration was completed by the AO u/s 143(3) of the Act on 13-12-2018. The assessee had claimed deduction u/s 80P(2)(d) of the Act in its return of income in respect of interest income earned by it from deposits kept with co-operative banks. The interest income was Rs.23,14,771/- and the business loss was Rs.1,15,143/-. After setting off business loss against interest income, the Gross total income was arrived at Rs.21,99,628/-. In the Statement of total income, the assessee has shown deduction eligible u/s 80P of the Act at Rs.49,28,237/-, but restricted the same to the amount of Gross total income of Rs.21,99,628/-. Accordingly the Total income was determined at NIL. The AO, however, presumed that the assessee has claimed deduction u/s 80P of the Act at Rs.49,28,237/-. The AO, by placing reliance on the decision rendered by Hon'ble Karnataka High Court in the case of The Pr. Commissioner of Income tax Vs. The Totgars Co-operative

Sale Society, Sirsi (citation not given) and the decision rendered by Hon'ble Supreme Court in the case of Totgar's Co-operative Sale Society Ltd (citation not given), held that the assessee is not entitled for deduction u/s 80P of the Act. Though the AO has stated in paragraph 9 of its order that he is adding an amount of Rs.21,99,628/- as "income from other sources, yet while computing total income the AO determined total income at Rs.43,99,256/- (Rs.45,14,399/- less set off of current year loss of Rs.1,15,143/-)

4. Thereafter, the assessee filed a rectification petition u/s 154 of the Act before the assessing officer, wherein it was pointed out that

(a) the AO having stated that he is adding a sum of Rs.21,99,628/- has actually added Rs.45,14,399/- resulting in excess assessment of Rs.23,14,771/-.

(b) the assessee has deposited its surplus funds only by way of investments and hence interest income is deductible u/s 80P(2)(d) of the Act. It was submitted that this view is supported by the decision rendered by Bangalore bench of ITAT in the case of Kanyakaparameswari Credit co-operative society letd (ITA No.2900/Bang/2017 dated 22-03-2018).

However, the AO rejected the rectification petition filed by the assessee.

5. The assessee challenged the rectification petition filed by the assessee by filing appeal before Ld CIT(A). With regard to the first mistake stated as item (a) in the preceding paragraph, the first appellate authority directed the AO to rectify the mistake regarding

the quantum of addition made in the computation of statement. With regard to the second mistake stated as item (b) in the preceding paragraph, the Ld CIT(A) held that the same is debatable in nature and hence the same would fall outside purview of sec.154 of the Act. Accordingly, the Ld CIT(A) allowed the appeal of the assessee in part. The assessee is aggrieved by the decision rendered by Ld CIT(A) on the second issue.

6. It is pertinent to note that the assessee did not prefer separate appeal against the original assessment order passed u/s 143(3) of the Act. The Ld A.R appearing before me submitted that the grounds of appeal raised before Ld CIT(A) were related to both the orders passed u/s 143(3) as well as u/s 154 of the Act.

7. As noticed earlier, the Ld CIT(A) has considered only the order passed by the AO u/s 154 of the Act. Accordingly he has directed the AO to rectify the mistake with regard to the quantum of addition. With regard to the claim for deduction u/s 80P(2)(d) of the Act, the Ld CIT(A) has held that the said claim is debatable in nature.

8. I have considered rival submissions. In my view, there is no infirmity in the order passed by Ld CIT(A), as the second issue is debatable in nature and hence the same would fall outside the purview of sec.154 of the Act. Accordingly, I confirm the order passed by Ld CIT(A).

9. In the result, the appeal of the assessee is dismissed.

Order pronounced in the open court on **3rd December, 2019.**

Sd/-
(B.R Baskaran)
Accountant Member

Bangalore,
Dated, the 3rd December, 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
10. Date on which order goes for Xerox & endorsement.....
11. Date on which the file goes to the Head Clerk
12. The date on which the file goes to the Assistant Registrar for signature on the order
13. The date on which the file goes to dispatch section for dispatch of the Tribunal Order
14. Date of Despatch of Order.
14. Dictation note enclosed