

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

Before Shri Chandra Poojari, Accountant Member

ITA No.2279/Bang/2019 : Asst.Year 2011-2012

ITA No.2280/Bang/2019 : Asst.Year 2012-2013

ITA No.2281/Bang/2019 : Asst.Year 2013-2014

ITA No.2282/Bang/2019 : Asst.Year 2014-2015

ITA No.2283/Bang/2019 : Asst.Year 2015-2016

M/s.Sree Kanva Souharda Co-operative Credit Limited Mr.Harish S, No.861, Sai Complex, West of Chord Road Rajaji Nagar Bengaluru – 560 010. PAN : AAEAS0129B.	Vs.	The Asst.Commissioner of Income-tax, Central Circle-1(4) Bangalore.
(Appellant)		(Respondent)

Appellant by : Sri.Ramaraju, CA

Respondent by : Sri.Ganesh R.Ghale, Standing Council for DR

Date of Hearing : 23.01.2020	Date of Pronouncement : 28.01.2020
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ORDER

These appeals filed by the assessee are directed against separate orders of the CIT(A), all dated 16.07.2019. The relevant assessment years are 2011-2012 to 2015-2016.

2. Since common issues are raised in all these appeals, they were heard together and are being disposed of by this consolidated order, for the sake of convenience.

3. The assessee has raised identical grounds for all the assessment years, hence, we reproduce the grounds for assessment year 2011-2012, as under:-

1. The order passed by the learned Commissioner of Income-Tax (Appeals)-11 in so far is against the appellant is opposed to law, weight of evidence, natural justice, facts and circumstances of the case.

2. *The Appellant under all circumstances denies itself liable to be assessed in excess of the returned 'Nil' income under the facts and circumstances of the case.*

3. *The learned Commissioner of Income-Tax (Appeals) has erred in law in not appreciating that the Assessing Officer is not justified in invoking the provisions of section 153C under the facts and circumstances of the case.*

4. *Without prejudice the learned Commissioner of Income-Tax (Appeals) erred in law in not appreciating that pre mandated conditions under the provisions of section 153C of the Act were not satisfied and the consequential assessment framed in the instant case has not legs to stand and is liable to be quashed in toto under the facts and circumstances of the case.*

5. *The learned Commissioner of Income-Tax (Appeals) failed to appreciate that the learned Assessing Officer is not justified in denying the Appellant benevolence under the provisions of section 80P of the Act without any logical reasoning but on mere surmise, conjunctures and suspicion under the facts and circumstances of the case.*

6. *The learned Commissioner of Income-Tax (Appeals) has erred in law in holding that the Appellant has failed to furnish any documentary evidence to negate the finding of the learned Assessing Officer under the facts and circumstances of the case.*

7. *The learned Commissioner of Income-Tax (Appeals) failed to appreciate the written submission placed on record during the course of appellant proceedings under the fact and circumstances of the case.*

8. *The learned Commissioner of Income-Tax (Appeals) erred in law in not appreciating that the Appellant had transacted exclusively with the members as per the byelaws of the society under the facts and circumstances of the case.*

9. *The learned Commissioner of Income-Tax (Appeals) erred in law in holding that the Appellant was engaged in the finance business under the facts and circumstances of the case.*

10. *The learned Commissioner of Income-Tax (Appeals) is not justified in upholding the levy of interest under section 234B of the Act under the facts and circumstances of the case. The levy*

is bad both on the extent levied and the rate levied which are not discernable from the order. Without prejudice to the quantification of the extent of interest it appears to be excessive and requires to be corrected.

11. The Appellant craves to leave to add, alter, delete or substitute any of the grounds urged above.

12. In the view of the above and other grounds that may be urged at the time of the hearing of the appeal and the written submission on each of the issues above proposed to be placed during the course of hearing with the leave of this Hon'ble Tribunal, the Appellant prays that the appeal may be allowed in the interest of justice and equity.”

4. Briefly stated the facts of the case are that the assessee is a Co-operative Society engaged in the business of accepting deposits from members and giving loans to members of the society. The assessee e-filed its return of income for the assessment year 2011-2012 on 25.03.2014 declaring an income of Rs.Nil. A search and seizure operation u/s 132 of the I.T.Act was carried out at the premises of the assessee on 20.01.2016. Thereafter, a notice u/s 153C of the Act dated 02.11.2017 was issued and served on the assessee. Subsequently notice u/s 143(2) and 142(1) of the Act were issued to the assessee. In the return of income, the assessee claimed deduction u/s 80P of the I.T.Act. Not satisfied with the explanation offered by the assessee, the Assessing Officer disallowed the claim of deduction u/s 80P of the Act, at Rs.10,57,199, for assessment year 2011-2012.

5. Aggrieved by the order of assessment, the assessee carried the matter to the CIT(A), who confirmed the order of the Assessing Officer.

6. Aggrieved by the orders of the Income Tax Authorities, the assessee is in appeal before the Tribunal. At the outset, the learned AR submitted that the order of the CIT(A) is very cryptic and not addressed each grounds of appeal raised by the assessee. It was further submitted by the learned AR that the assessee has earned some interest income from bank which has been assessed by the AO as income from other sources and assessee's claim for deduction u/s. 80P of the IT Act was disallowed by the A.O and it is confirmed by CIT(A). He has submitted that the main basis of the decision of the authorities below is by following the judgment of Hon'ble Hon'ble Apex Court rendered in the case of The Citizen Co-operative Society Ltd. Vs. ACIT as reported in 397 ITR 1. He submitted that none of the authorities below has examined and compared the facts of the present case with the facts in the case of The Citizen Co-operative Society Ltd. Vs. ACIT (supra). The learned AR submitted that in the facts of present case, the 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. At this juncture, this proposition was put forward by the bench that under similar facts, the Tribunal is restoring the matter back to the file of CIT(A) for fresh decision after examining the facts of the present case in the light of the judgment rendered in the case of Tumkur Merchants Souharda Credit Cooperative Ltd. Vs. ITO (supra). The bench pointed out that in the case of Tumkur Merchants Souharda Credit Cooperative Ltd. Vs. ITO (supra),

it was found that the money deposited in bank by assessee was out of its own funds and not out of liability and therefore, the issue in that case was decided in favour of the assessee. The bench proposed that since the facts in the present case are not readily available on record and there is no finding of authorities below on this factual aspect regarding the source of funds deposited on bank on which interest income was earned, the issue should go back to the file of CIT(A), for fresh decision. The bench also proposed that regarding the judgment of Hon'ble Apex Court rendered in the case of The Citizen Co-operative Society Ltd. Vs. ACIT (supra) also, the ld. CIT(A) should pass a speaking and reasoned order after comparing the facts of present case with the facts in that case in the light of law for Cooperative society in the state of Karnataka because in that case, the state is different and cooperative law is different. In reply, the learned AR of assessee agreed with this proposition put forward by the bench.

6.1 The learned Departmental Representative submitted that clause (4) of section 80P(2) states that deduction would not be applicable to a co-operative credit bank. Since the assessee society was offering various products in the guise of credit to customers of M/s.Kanva Group of Companies, the A.O. has rightly denied the deduction claimed by the assessee. Further, the assessee during the course of appellate proceedings reiterated its claim that it is a co-operative credit society accepting deposits from its members and advancing loans to its members. However, failed to furnish any documentary

evidence to negate the findings of A.O. Further, the assessee merely stated that there were no incriminating materials and that A.O. was not justified to initiate notice u/s 153C and 143(2) and pass assessment order u/s 153C & 143(3) of the Act. The learned DR further submitted that the Hon'ble Supreme Court in the case of Citizen Co-operative Society Ltd. (supra) held that where assessee society was engaged in the activity of finance business and was also engaged in activity of granting loans to public as well, it could not be termed as co-operative society meant only for providing credit facilities to its members, thus not entitled to deduction u/s 80P. Further, it was submitted that the fact that the assessee society is engaged in the activities of finance business and also indulged in granting loans to customers of M/s.Kanva Developers and the evidence from the seized materials, it is proved that the assessee was a front for M/s.Kanva Group of companies, the deduction claimed by the assessee is rightly disallowed by the Income-tax authorities, and interest charged u/s 234B is to be calculated accordingly.

7. I have considered the rival submissions and perused the material on record. The impugned order passed by the CIT(A) is very cryptic and it is clearly violative of the express provisions of section 250(6) of the Act, which provides that the appellate orders of the CIT(A) are to state the points arising in the appeal, the decision of the authority thereon and the reasons for such decision. The underlying rationale of the provision is that such orders are subject to further appeal to the appellate Tribunal.

Speaking order would obviously enable a party to know precise points decided in his favour or against him. Absence of the formulation of the point for decision for want of clarity in a decision undoubtedly puts a party in quandary. Section 250(6) expressly embodies the principles of natural justice and such a provision is clearly mandatory in nature. The impugned order passed by the CIT(A) in violation of the provisions of section 250(6), cannot, therefore, be sustained. Therefore, in my opinion the matter should go back to the files of the CIT(A) for fresh consideration. Therefore, I set aside the order of the CIT(A) and direct him to pass a speaking and reasoned order after comparing the facts of present case with the facts in the case of *The Citizen Co-operative Society Ltd. V s. ACIT (supra)*. He is also directed to examine the facts of present case in the light of the judgment of Hon'ble Karnataka High Court rendered in the case of *Tumkur Merchants Souharda Credit Co-operative Ltd. Vs. ITO (supra)* and pass necessary order as per law in the light of above discussion after providing adequate opportunity of being heard to both sides. It is ordered accordingly.

8. As far as the other grounds raised by the assessee in these appeals are concerned, I refrain from adjudicating the same at this stage.

9. Since the facts and circumstances for assessment year 2011-2012 are similar to that of other assessment years under consideration, as well, the decision arrived at in assessment

year 2011-2012 is applicable to assessment years 2012-2013 to 2015-2016 also.

10. In the result, the all the appeals filed by the assessee are allowed for statistical purposes.

Order pronounced on this 28th day of January, 2020.

Sd/-
(Chandra Poojari)
ACCOUNTANT MEMBER

Bangalore ; Dated : 28th January, 2020.

Devadas G*

Copy to :

1. The Appellant.
2. The Respondent.
3. The CIT(A)-11, Bengaluru.
4. The Pr.CIT - Central, Bengaluru.
5. The DR, ITAT, Bengaluru.
6. Guard File.

Asst.Registrar/ITAT, Bangalore