

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

**BEFORE SHRI N. V. VASUDEVAN, VICE PRESIDENT AND
SHRI A. K. GARODIA, ACCOUNTANT MEMBER**

ITA Nos.3389 and 3390 /Bang/2019
Assessment years : 2012-13 and 2013-14

M/s. The Jayanagar Co-operative Housing Society Ltd., No.902, 8 th Main Road, II Block Jayanagar, Bengaluru – 560 011. PAN : AAAAT 8625 K	Vs.	Income Tax Officer, Ward - 7(2)(1), Bengaluru.
APPELLANT		RESPONDENT

Assessee by	:	Shri. Ramesh, CA
Revenue by	:	Shri. Sunil Kumar Agarwal, Addl. CIT (DR)(ITAT), Bengaluru

Date of hearing	:	18.12.2019
Date of Pronouncement	:	07.02.2020

ORDER

Per A.K. Garodia, Accountant Member

Both these appeals are filed by the assessee which are directed against two separate orders of learned CIT(A)-7, Bengaluru both dated 23.10.2018, for the Assessment Years 2012-13 and 2013-14. Both these appeals were heard together and are being disposed of by way of this common order for the sake of convenience.

2. In both years, although several grounds are raised by the assessee but the effective grievance is only one in each of 2 years i.e., regarding

disallowance of the assessee's claim for deduction under section 80P of the Income Tax Act, 1961 in respect of interest income from fixed deposit and other income of Rs.133,35,862/- in Assessment Year 2012-13 and Rs.119,49,598/- for Assessment Year 2013-14.

3. In the course of hearing, it was submitted by learned AR of the assessee that the issue in dispute in the 2 appeals is covered by the Tribunal order rendered in the case of M/s. The Jayanagar Co-operative Society Ltd. Vs. ITO in ITA No.3254/Bang/2018 dated 23.07.2019. He submitted a copy of this Tribunal order and pointed out that as per para 5 of this Tribunal order, the matter was restored back to the file of the AO for fresh decision after examining the facts in the light of judgment of Hon'ble Apex Court rendered in the case of Totgar's Co-operative Sale Society Ltd., 322 ITR 283 and of Hon'ble Karnataka High Court rendered in the case of Tumkur Merchants Souharda Credit Co-operative Ltd., 230 Taxmann 309 (Karnataka). It was submitted that in the present case also, the matter may be restored back to the file of AO for a fresh decision with similar direction. Learned DR of the Revenue supported the orders of authorities below.

4. We have considered the rival submissions. First of all, we reproduce para 5 of the Tribunal order cited by learned AR of the assessee having been rendered in the case of M/s. The Jayanagar Co-operative Society Ltd., Vs. ITO (supra). This para reads as under:-

"5. While learned AR relied on the decision of the Hon'ble Karnataka High Court in the case of Tumukur Merchants Souharda Credit Co-operative Ltd., 230 taxman 309 (Karn), the 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 611 (Karn.). We have carefully gone through the said judgment. The facts of the case before the Hon'ble Karnataka High Court was that the Hon'ble Court was considering a case relating to Assessment

Years 2007-08 to 2011-12. In case decided by the Hon'ble Supreme Court in the case of the very same assessee, the Assessment Years involved was Assessment Years 1991-92 to 1999-2000. The nature of interest income for all the Assessment Years was identical. The bone of contention of the Assessee 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 cooperative 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 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 Tumukur 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 Tumukur Merchants Souharda Co-operative Ltd. (supra).”

5. We find that in that case, the matter was restored back to the file of AO by the Tribunal for a fresh decision after examining the facts in the light of the judgment of Hon'ble Apex Court in the case of The Totgars Co-operative Sales Society Ltd. (supra) and of Hon'ble Karnataka High Court in the case of Tumukur Merchants Souharda Co-operative Ltd. (supra). Respectfully following this Tribunal order, in the present case also, we restore the matter back to the file of AO for fresh decision, after examining the facts of the present case in the light of these two judgments after providing adequate opportunity of being heard to the assessee.

6. In the result, both appeals of the assessee are allowed for statistical purposes.

Pronounced in the open court on the date mentioned on the caption page.

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

Sd/-
(A.K. GARODIA)
Accountant Member

Bangalore,
Dated: 07th February, 2020.
/NS/*

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

By order

Assistant Registrar,
ITAT, Bangalore.