

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES "B", BANGALORE**

Before Smt. Beena Pillai, JM & Shri. O. P. Meena, AM

ITA No.2226/Bang/2019 : Asst. Year 2015 – 2016

ITA No.2227/Bang/2019 : Asst. Year 2016 – 2017

M/s. Tumkur Co-operative Milk Producers Societies Union Limited, C/o. Balu & Anand Building No.46/2, Narasimha Towers, 1 st Floor, 4 th Cross Malleshwaram, Bengaluru – 560 003. PAN : AADAT7523P.	Vs.	The Asst. Commissioner of Income-tax, Circle – 1 Tumakuru.
(Appellant)		(Respondent)

Appellant by : Sri. R. E. Balasubramaniam, CA

Respondent by : Sri. S.T. Seeshadri, JCIT-DR

Date of Hearing : 22.01.2020	Date of Pronouncement : 26.02.2020
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ORDER

Per Smt.Beena Pillai, JM :

Present appeals are filed by assessee against order dated 02/09/2019 & 22/07/2019 passed by Ld. CIT(A) – 7, Bengaluru for assessment years 2015 – 16 & 2016 – 17 under consideration on following grounds. It is observed that issues raised by assessee in these appeals are similar and identical. For sake of convenience, we reproduce grounds in ITA No. 2226/B/2017:

2. The assessee has raised the following grounds:-
 - “1. That the impugned order is opposed to facts and law in so far as it is prejudicial to the interests of the Appellant.
 2. That the ld. CIT(A) erred in confirming the order of AO and denying the deduction under section 80P(2), and in doing so:
 - (a) He failed to appreciate that the business of the

Appellant consists entirely of extending credit facilities to its members as given under section 80P(2).

(b) He failed to appreciate that co-operative society defined under section 2(19) of the Income Tax Act also includes entities registered under "Karnataka Souharda Sahakari Act, 1997" inasmuch as they also operate and adopt the principle of co-operation as required under the Act.

(c) He misdirected himself in not following the decision of the jurisdictional ITAT in case of Siddartha Patina Souharda Sahakari Niyamitha (ITA No.1234/ Bang/2019) and failed to appreciate that the said decision was given after considering all other decisions on the subject and it currently hold the filed on the eligibility of Souhardas for claiming benefit under section 80P of the Income Tax Act."

Brief facts of the case are as under:

Assessee is a Co-operative Milk Producers society, registered under, The Karnataka Souharda Sahakari Act, 1997 and provides credit facilities to its members. The assessment order u/s 143(3) of the I.T.Act for assessment year 2015-16 & 2016-2017 was passed on 26/12/17 and 17/12/18 respectively, making addition of Rs.61,20,189/- and Rs.54,29,079/-. Assessee claimed deduction u/s 80P of the I.T.Act, on the interest received from Co-operative Bank on fixed deposit for the years under consideration which was disallowed by Ld. AO observing that section 80 P (2) (d) does not contain the word "bank". Ld. AO was of the opinion that the section scope of the section is only limited to co-operative societies and therefore exemption and deduction clause of the income tax cannot be interpreted liberally. He was further of the opinion that character of the income on investments deposit in co-operative banks does not change irrespective of the fact whether it is earned or received from a scheduled bank or cooperative bank.

Aggrieved by the order of Ld. AO assessee preferred appeal before Ld. CIT (A).

3. Ld. CIT(A) confirmed this view taken by Ld. AO.

3.2. It was submitted by Ld. AR of assessee 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 AO and it is confirmed by CIT(A). He submitted that basis of decision of authorities below is by following decision of Hon'ble Karnataka High Court rendered in the case of *PCIT and Another Vs. Totagtarts Co – Opertaiive Sale Society as reported in 395 ITR 611 (Karn)*. He also submitted that another decision on which reliance has been placed by authorities below, is the judgement of Hon'ble Apex Court rendered in the case of *The Citizen Co – Operative Society Ltd., Vs. ACIT as reported in 397 ITR 1*.

Aggrieved by order passed by Ld. CIT (A) assessee is in appeal before us now.

4. Ld. AR submitted that the word 'co-operative' is defined by sec.2(e) of 1959 Act as under:

“2(e): “Co-operative” means a co-operative including a co-operative bank doing the business of banking registered or deemed to be registered under Section 5 and which has the words 'Souharda Sahakari' in its name (and for the purposes of the Banking Regulation Act, 1949 (Central Act 10 of 1949), the Reserve Bank of India Act, 1934 (Central Act 2 of 1934), the Deposit Insurance and Credit Guarantee Corporation Act, 1961 (Central Act 47 of 1961) and the National Bank for Agriculture and Rural Development Act, 1981 (Central Act 67 of 1981), it shall be deemed to be a Co-operative Society”.

5. 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). Referring to the decision of Hon'ble Karnataka High Court rendered in the case of *PCIT and Another Vs. Totagtarts Co – Opertaive Sale Society (supra)*, it was submitted that facts of this decision *Hon'ble Karnataka High Court* is not applicable instead decision rendered by *Hon'ble Karnataka High Court* in the case of *Tumkur Merchants Souharda Credit Co – Operative Ltd., vs. ITO as reported in 230 Taxmann 309 is applicable*.

6. Ld. Sr. DR, on the contrary, strongly opposed granting of deduction under section 80P (2) of the Act. Ld. DR submitted that, assessee relied on judgment of the *Hon'ble Karnataka High Court dated 16.01.2020 (supra)*, however, *Hon'ble Court* quoted in the last paragraph as;

“It is needless to mention that the other provisions of section 80P of 1961 Act and their effect on the claim of the petitioner-like-societies have been left to be addressed by the concerned authorities.”

7. Ld. DR submitted that keeping in view above observation of *Hon'ble Karnataka High Court*, the issue may kindly be set aside and restored back to the file of Ld.AO for fresh assessment as per provisions of section 80P of the I.T.Act, 1961, in the light of decision of *Hon'ble Apex Court* in case of *The Citizen Co-operative Society Ltd.*, and decision of *Hon'ble Karnataka High Court* and *Hon'ble Apex Court* in the case of *Totgars Co-operative Sale Society*.

We have perused submissions advanced by both sides in light of records placed before us

8. 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 facts of present case in light of these two decisions

being *PCIT and Another Vs. Totagars Co – Operative Sale Society (supra)* and *Tumkur Merchants Souharda Credit Co – Operative Ltd., vs. ITO (supra)* with a direction that, if facts are in line with facts in case of *PCIT and Another vs. Totagars Co – Operative Sale Society (supra)*, then the issue should be decided against the assessee. But if facts of present case are in line with facts in case of *Tumkur Merchants Souharda Credit Co – Operative Ltd., vs. ITO (supra)*, then issue should be decided in favour of assessee.

9. The Bench pointed out that in the case of *PCIT and Another vs. Totagars Co – Operative Sale Society (supra)*, amount deposited in bank on which interest income was earned was out of the liability of the assessee society and not out of its own funds and for this reason, in that case of *PCIT and Another vs. Totagars Co – Operative Sale Society (supra)*, the Hon'ble Karnataka High Court decided the issue against assessee. But in the case of *Tumkur Merchants Souharda Credit Co – Operative 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.

10. As facts in 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 applicability 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 speaking and reasoned order after comparing facts of present case with that of *The Citizen Co – Operative Society Ltd., vs. ACIT (supra)* under co – operative society Act, applicable in State of Karnataka.

11. We thus set aside order of CIT(A) and restore the matter back to his file for fresh decision in light of above discussion, by way of a speaking and reasoned order after providing adequate opportunity of being heard to both sides. He is also directed to examine the facts of present case in the light of these two judgments of Hon'ble Karnataka High Court rendered in the case of *Tumkur Merchants Souharda Credit Co – Operative Ltd., vs. ITO (supra)* and *PCIT and Another vs. Totagars Co – Operative Sale Society (supra)* and pass necessary order as per law in the light of above discussion after providing adequate opportunity of being heard to both sides.

In the result, the appeal filed by the assessee is allowed for statistical purpose.

Order pronounced in open court on 26th February, 2020.

Sd/-
(O. P. Meena)
ACCOUNTANT MEMBER

Sd/-
(Smt. Beena Pillai)
JUDICIAL MEMBER

Bangalore ;
Dated : 26th February, 2020.

Copy to :

1. The Appellant.
2. The Respondent.
3. The CIT(A)-7, Bengaluru.
4. The Pr.CIT-7, Bengaluru.
5. The DR, ITAT, Bengaluru.
6. Guard File.

Asst. Registrar/ITAT, Bangalore

		Date	Initial	
1.	Draft dictated on			Sr.PS
2.	Draft placed before author			Sr.PS
3.	Draft proposed & placed before the second member			JM/AM
4.	Draft discussed/approved by Second Member.			JM/AM
5.	Approved Draft comes to the Sr.PS/PS			Sr.PS/PS
6.	Kept for pronouncement on			Sr.PS
7.	Date of uploading the order on website			
8.	If not uploaded, furnish the reason			
8.	File sent to the Bench Clerk			Sr.PS
9.	Date on which file goes to the AR			
10.	Date on which file goes to the Head Clerk.			
11.	Date of dispatch of Order.			
12.	Draft dictation sheets are attached			Sr.PS