

IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH : BANGALORE

BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT
AND SHRI B R BASKARAN, ACCOUNTANT MEMBER

ITA No.534/Bang/2016
Assessment year : 2012-13

The Income Tax Officer, Ward 5(2)(4), Bangalore.	Vs.	The Karnataka State Co-operative Agriculture & Rural Development Bank Ltd., P.B. No.1811, Fort Tipu Sultan Palace Road, Chamarajpet, Bangalore – 560 018. PAN: AAAAT 7773N
APPELLANT		RESPONDENT

Appellant by	:	Shri Dilip Reddy, Advocate, Stdg. Counsel for Dept.
Respondent by	:	Shri B.S. Balachandran, Advocate

Date of hearing	:	30.09.2020
Date of Pronouncement	:	05.10.2020

ORDER

Per N.V. Vasudevan, Vice President

This is an appeal by the revenue against the order dated 31.12.2015 of the CIT(Appeals)-5, Bengaluru relating to assessment year 2012-13.

2. The only issue that arises for consideration in this appeal is as to, whether the CIT(Appeals) was justified in allowing the claim of assessee for deduction u/s. 80P(2)(a)(i) of the Income-tax Act, 1961 [the Act].

3. The assessee is a co-operative society which has as its objectives, advancing loans to agriculturists. In the return of income for AY 2012-13,

the assessee claimed deduction of a sum of Rs.11,24,62,612 u/s. 80P(2)(a)(i) of the Act, which provides for the following deduction:

“Section 80P – Deduction in respect of income of Co-operative Societies:

80P. (1) Where, in the case of an assessee being a co-operative society, the gross total income includes any income referred to in sub-section (2), there shall be deducted, in accordance with and subject to the provisions of this section, the sums specified in sub-section (2), in computing the total income of the assessee.

(2) The sums referred to in sub-section (1) shall be the following, namely :—

(a) in the case of a co-operative society engaged in—

(i) carrying on the business of banking or providing credit facilities to its members, or

(ii) to (vii).....

the whole of the amount of profits and gains of business attributable to any one or more of such activities :”

4. The AO denied the claim of assessee for deduction on the ground that the assessee was a co-operative bank and in view of the provisions of section 80P(4) of the Act, deduction u/s. 80P(2)(a)(i) is not available to a co-operative bank. The deduction under Section 80P is not available for Co-operative banks from A.Y. 2007-08. Section 80P was amended by the Finance Act, 2006, with effect from 1 -4-2007 introducing sub-section (4) to provide that the provisions of the said section shall not apply in relation to any co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank. The expressions ‘co-operative bank’, ‘primary agricultural credit society’ have been taken as per the definition given in Part V of the Banking Regulation Act, 1949 (10 of 1949). The ‘primary co-operative agricultural and rural development bank’ have also been defined in the act to bring clarity. Further, by the aforesaid amendment, a new sub-section (viiia) has also been inserted in clause (24) of Section 2 to provide that the profits and gains of any business of banking (including providing credit facilities)

carried on by a co-operative society with its members shall be included in the definition of 'income'.

5. On appeal by the assessee, the CIT(Appeals) following his own order in assessee's own case for AY 2010-11, allowed the appeal of assessee by following the decision of the ITAT Bangalore Bench in the case of *ITO Vs. Janapragathi Credit Co-operative Society Ltd.*, Bangalore in *ITA No.1663/Bang/2012 dated 14.2.2014* wherein it was held that income derived by a co-operative society from providing credit facilities to its members is eligible for deduction u/s.80P(2)(a)(i) of the Act. The CIT(A) did not address the issue of applicability of Sec.80P(4) of the Act to the Assessee which was the basis of disallowance of deduction by the AO.

6. Aggrieved by the order of CIT(Appeals), the revenue is in appeal before the Tribunal.

7. At the time of hearing, it was brought to our notice that identical issue had come up for consideration in assessee's own case for AYs 2013-14 & 2014-15 in ITA Nos. 1226/Bang/2017 & 2801/Bang/2017 respectively. The Tribunal by its two orders both dated 6.4.2018 has remanded the issue to the AO for fresh consideration in the light of decision of the Hon'ble Supreme Court in the case of *Citizen Co-operative Society Ltd. v. ACI, 397 ITR 1 (SC)*. The following were the relevant observations of the Tribunal :-

“3. It was submitted by Id. DR of revenue that Id. CIT(A) has not considered the later judgment of Hon'ble Apex Court rendered in the case of *The Citizen Co-operative Society Ltd. Vs. ACIT* as reported in 397 ITR 1 and therefore, the order of CIT(A) should be reversed and that of the AO should be restored. As against this, it was submitted by Id. AR of assessee that the matter may be restored back to the file of AO/CIT(A) to decide the issue afresh after considering this judgment of Hon'ble Apex Court.

4. We have considered the rival submissions and this is true that Id. CIT (A) has not considered the latest judgment of Hon'ble Apex Court rendered in the case of *The Citizen Co-operative Society Ltd. Vs. ACIT (supra)*, in fact, the order of CIT (A) is dated 14.02.2017 and this judgment of Hon'ble Apex Court is dated 08.08.2017 and hence, this judgment was not available on 14.02.2017. Hence we feel it proper that the matter should go back to the file of CIT (A) for fresh decision after considering this judgment of Hon'ble Apex Court. We set aside the order of CIT 9A) and restore the matter back to his file for a fresh decision with the direction that he should examine and compare the facts of the present case and the facts of this case and thereafter, decide the issue afresh and pass necessary order as per law after providing adequate opportunity of being heard to both sides.”

8. The Hon'ble Supreme Court in the case of *The Citizens Co-operative Society Ltd., (supra)* held that in order to do the business of a cooperative bank, it is imperative to have a licence from the Reserve Bank of India. It can therefore be said that a co-operative society which does not possess a license from RBI cannot be equated to a co-operative Bank, even though it might indulge in the business of banking. Co-operative Societies carrying on business of banking are therefore entitled to claim deduction u/s.80P(2)(a)(i). The CIT(A)'s order was passed prior to the decision of the Hon'ble Supreme Court in the case of *The Citizens Co-operative Society Ltd., (supra)* and hence the CIT(A) did not have the benefit of looking into the same.

9. Since the facts and circumstances of the case in the present assessment year are identical to aforesaid case adjudicated by the Tribunal for AYs 2013-14 & 2014-15 and since the impugned order of the CIT(A) was passed prior to the decision of the Hon'ble Supreme Court in the case of *The Citizens Co-operative Society Ltd., (supra)*, we are of the view that the issue should be set aside to the AO fresh consideration as per the

directions in the order of the Tribunal referred to above. We hold and direct accordingly.

10. In the result, the appeal of the revenue is allowed for statistical purposes.

Pronounced in the open court on this 5th day of October, 2020.

Sd/-

(B R BASKARAN)
ACCOUNTANT MEMBER

Sd/-

(N V VASUDEVAN)
VICE PRESIDENT

Bangalore,
Dated, the 5th October, 2020.

/Desai S Murthy/

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar
ITAT, Bangalore.