

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

**BEFORE SHRI GEORGE GEORGE K., JUDICIAL MEMBER
AND
SHRI B.R. BASKARAN, ACCOUNTANT MEMBER**

ITA No.392/Bang/2020
Assessment Year: 2015-16

M/s. Tibetan Rabgayling Primary Agricultural Credit Co-operative Society Limited Gurupura, Hunsur Taluk Gurupura-571188 Karnataka PAN NO : AAAAT3617P	Vs.	Principal Commissioner of Income Tax, Mysore
APPELLANT		RESPONDENT

Appellant by	:	Shri V. Srinivasan, A.R.
Respondent by	:	Shri S. Sundar Rao, D.R.

Date of Hearing	:	06.10.2020
Date of Pronouncement	:	08.10.2020

ORDER

PER GEORGE GEORGE K., JUDICIAL MEMBER:

This appeal at the instance of the assessee is directed against CIT order dated 19.3.2020 passed u/s 263 of the Income-tax Act, 1961 ['the Act' for short]. The relevant assessment year is 2015-16.

2. The solitary issue argued was whether Principal Commissioner of Income Tax (PCIT) was justified in holding that the assessee was not entitled to deduction u/s 80P(2)(a)(i) of the Act, in respect of interest income earned from bank, by placing reliance on judgement

of the Hon'ble Karnataka High Court in the case of PCIT Vs. Totagars Co-operative Sale Society reported in 395 ITR 611.

3. Brief facts of the case are as follows:

Assessee is a primary Agricultural Credit Society. For the assessment year 2015-16, the return of income was filed on 18.9.2015 declaring total income of Rs.2,12,090/- after claiming deduction of Rs.29,88,544/- u/s 80P of the Act. The assessee's case was selected for scrutiny and an order of assessment u/s 143(3) of the Act was passed on 30.6.2017 accepting the returned income of Rs.2,12,090/-.

3.1 A notice u/s 263 of the Act was issued by the PCIT for the following reasons:

- a. *It is seen from the records that the assessee had filed the return of income for the A.Y. 2015-16 on 18.09.2015 declaring the total income of Rs.2,12,090/- after claiming deduction u/s 80P at Rs.29,88,541/-. It is noted from the audit report furnished u/s 44AB of the IT Act, 1961 dated 4.9.2015 and the acknowledgement of ITR-V dated 18.9.2015 the assessee had claimed that the status is a co-operative bank and hence the provisions of Section 80P(4) of the I.T. Act, 1961 are applicable and the deduction claimed u/s 80P of the I.T. Act, 1961 is not allowable.*
- b. *Notwithstanding the above, as per the ratio of Karnataka High Court decision dated 16.6.2017 in the case of M/s. Totagars Co-operative Sale Society, Sirsi, interest earned from any bank not being a co-operative Society, is not deductible u/s 80P(2)(d) of the Act. Accordingly, the assessee co-operative society is not eligible for deduction u/s 80P(2)(d) of the I.T. Act, 1961.*
- c. *Therefore, the income for the year ending 31.3.2015 needs to be re-computed after disallowing incorrectly allowed deduction u/s 80P(2)(a)(i) and 80P(2)(c) of the I.T. Act, 1961.*

3.2 In response to the aforesaid notice, assessee submitted objections dated 24.2.2020, 12.3.2020 and 16.3.2020. It was pointed out by the assessee that it was primary agricultural credit

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society as per the certificate of registration and thus, it was entitled to claim deduction u/s 80P(2)(a)(i) of the Act. On the issue regarding interest income earned from banks, the assessee contended that surplus funds for which there was no immediate need were deposited with the banks and interest income earned on such investments was to be considered as “income from business” since these funds were relating to business of providing credit facilities to the members. Therefore, the assessee was eligible for deduction u/s 80P(2)(a)(i) of the Act in respect of the interest income received from banks.

4. The PCIT accepted the assessee’s contentions that it is a primary agricultural credit society and it was entitled to claim deduction u/s 80P(2)(a)(i) of the Act. However, with regard to the interest income earned by the assessee on fixed deposits with the banks, the PCIT held the interest income derived from the FDs could not be considered as business income and therefore the assessee was not entitled to claim deduction on the same u/s 80P(2)(a)(i) of the Act. In taking the above view, the PCIT relied on judgement of the Hon’ble Karnataka High Court in the case of Totagars Co-operative Sale Society reported in 395 ITR 611 (Karn). Accordingly, the PCIT directed the A.O. to assess the said income after giving the benefit of deduction u/s 57 of the Act for the interest paid to the members for deposits made and to revise the assessment order accordingly.

5. Aggrieved by the order of the PCIT, passed u/s 263 of the Act, assessee has filed this appeal before the Tribunal. The Ld. Counsel for the assessee has filed a paper book enclosing therein the notices received during the course of assessment proceedings, the details submitted during the revisionary proceedings u/s 263 of the Act, copy of the audit report, copy of the statement of accounts, etc. The Ld. A.R. relied on the judgement of the Hon’ble jurisdictional High

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Court in the case of Tumkur Merchants Souharda Credit Co-operative Ltd. reported in 236 Taxman 309 (Kar) and contended that assessee was in the business of providing credit facilities to its members and surplus funds for short periods which is not immediately required were deposited with the bank and interest income was earned. It was contended that the interest income so earned has to be necessarily considered as “income from business” and not “income from other sources”. Further, the Ld. A.R. submitted that the assessing officer had followed the principle laid down by the judgement of the Hon’ble jurisdictional High Court in the case of Tumkur Merchant Southara Crdit Co-operative Society Ltd. (supra), hence the assessment order cannot be said to be erroneous and prejudicial to the interest of the revenue. Therefore, it was prayed that the revisionary order passed u/s 263 of the Act is to be quashed.

6. The Ld. D.R. on the other hand by referring to the assessment order submitted that there has been no examination of the issue by the assessing officer in the assessment order completed u/s 143(3) of the Act (Order dated 30.6.2017). It was stated that since there was no examination of the issue by the A.O., the order is erroneous and prejudicial to the interest of the revenue and PCIT has rightly invoked his powers u/s 263 of the Act.

7. We have heard the rival submissions and perused the material available on record. The AR had strongly relied on the judgment of the Hon'ble Karnataka High Court in the case of Tumkur Merchants Souharda Credit Co-op. Society Ltd. v. ITO reported in 230 Taxman 309 [Karn] wherein the Hon'ble High Court considered the judgment of the Hon'ble Apex Court in Totagars Co-operative Sales Society reported in 322 ITR 283 (SC) and

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held that interest income in respect of temporary parking of own funds not immediately required is eligible for deduction u/s. 80P(2)(a)(i) of the I.T. Act.

8. The Id. PCIT in the impugned order had relied on the subsequent judgment of the Hon'ble Karnataka High Court in PCIT v. Totagars Co-op. Sales Society Ltd. (supra). The Hon'ble Karnataka High Court in the decision relied on by the Id. PCIT was considering a case relating to AYs 2007-08 to 2011-12. The Hon'ble High Court had relied on the judgment of the Hon'ble Apex Court in the case of same assessee reported in 322 ITR 283 (SC) wherein the assessment years involved were AYs 1991-92 to 1999-2000. The nature of interest income for all the assessment years were identical. The bone of contention of the assessee in AYs 2007-08 to 2011-12 was that deduction u/s. 80P(2)(a)(i) of the I.T. Act is claimed by the respondent-assessee u/s. 80P(2)(d) of the I.T. Act and not u/s. 80P(2)(a)(i) of the I.T. Act which was claimed in AYs 1991-92 to 1999-2000. The reason given by the assessee was that in AYs 2007-08 to 2011-12 investments in deposits, after the Supreme Court judgment went against the assessee, were shifted from scheduled banks to co-operative banks. As per section 80P(2)(d) of the I.T. Act, income by way of interest or dividend derived by a co-operative society from his investments with any other co-operative society is entitled to deduction of the whole of such interest or dividend income. The claim of assessee before the Hon'ble High Court was that co-operative bank is essentially a co-operative society and therefore deduction has to be allowed under clause (d) of section 80P(2) of the I.T. Act. The Hon'ble High Court followed the judgment of the Hon'ble Supreme Court in the case of Totagars Co-operative Sales

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Society (supra) and held interest earned from scheduled bank or co-operative bank was not entitled to deduction u/s. 80P(2)(d) of the Act.

9. 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 AYs 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 the subject matter of decision of the Hon'ble Karnataka High Court in the judgment relied on by the Id. PCIT. To this extent, the judgment of the Hon'ble Karnataka High Court in the case of Tumkur Merchants Souharda Credit Co-op. Society Ltd. (supra) [relied on by the assessee] still holds good. Hence from this aspect, the issue should be considered by the AO after examining the facts in light of the judgment of the Hon'ble Apex Court in the case of Totagars Co-operative Sales Society (supra) and the judgment of Hon'ble Karnataka High Court rendered in the case of Tumkur Merchants Souharda Credit Co-op. Society Ltd. (supra). Therefore, the directions of the PCIT to assess the interest income under the head "income from other sources" and grant permissible deduction u/s. 57 of the Act is quashed. The AO will afford adequate opportunity of being heard to the assessee for filing details/evidence to substantiate its case before deciding the issue.

10. In the result, the assessee's appeal is partly allowed.

Order pronounced in the open court on 8th Oct, 2020

Sd/-
(B.R. Baskaran)
Accountant Member

Sd/-
(George George K.)
Judicial Member

Bangalore,
Dated 8th Oct, 2020.
VG/SPS

Copy to:

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

By order

Asst. Registrar, ITAT, Bangalore.