

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

**BEFORE SHRI A. K. GARODIA, ACCOUNTANT MEMBER AND
SMT BEENA PILLAI, JUDICIAL MEMBER**

ITA No.2638/Bang/2018
Assessment year : 2015-16

Ms. Varadavinayaka Credit Sahakara Sangha Ni., No.63, 2 nd Lunk, 2 nd Cross, Parvathi Nagar, Ballari – 583 103. PAN : AABAV 1731 F	Vs.	The Income Tax Officer, Ward – 2, Ballari.
APPELLANT		RESPONDENT
Assessee by	:	Shri. Madhukar G Hegde, CA
Revenue by	:	Smt. R. Premi, JCIT (DR)(ITAT), Bengaluru
Date of hearing	:	24.09.2020
Date of Pronouncement	:	09.10.2020

ORDER

Per A. K. Garodia, Accountant Member:

This appeal is filed by the assessee and the same is directed against the order of learned CIT(A), Gulbarga, dated 20.07.2018, for Assessment Year 2015-16.

2. Although the assessee has raised as many as 8 grounds of appeal but in the course of hearing, it was submitted by learned AR of the assessee that the only issue involved is regarding allowability of deduction u/s 80P.

3. In the course of hearing, it is submitted by the learned AR of the assessee that learned CIT (A) has followed the judgment of Hon'ble apex court rendered in the case of Totgars Cooperative Sales Society Ltd. Vs. ITO

as reported in 322 ITR 283 but in the present case, this judgment is not applicable and the issue involved in the present appeal is covered in favour of the assessee by the judgment of Hon'ble Karnataka High Court rendered in the case of Tumkur Merchants Souhadra Credit Cooperative Ltd. Vs. ITO, 230 Taxman 309, in which this judgment of Hon'ble apex court rendered in the case of Totgars Co – Operative Sale Society Limited vs. ITO, 322 ITR 283 was duly considered. He further submitted that admittedly, the judgment of Hon'ble Karnataka High Court rendered in the case of The Totgars Co – Operative Sale Society Limited vs. ITO, 322 ITR 272 and of Hon'ble Apex Court rendered in the case of the same assessee as reported in 322 ITR 283 are against the assessee on this issue but this issue is covered in favour of the assessee by another judgment of Hon'ble Karnataka High Court rendered in the case of Tumkur Merchants Souhadra Credit Cooperative Ltd. Vs. ITO, 230 Taxman 309, in which this judgment of Hon'ble apex court rendered in the case of Totgars Co – Operative Sale Society Limited vs. ITO, 322 ITR 283 was duly considered. He submitted that learned CIT (A) has decided the issue against the assessee by following this judgment of Hon'ble apex court rendered in the case of Totgars Co – Operative Sale Society Limited vs. ITO (Supra) without considering the later judgment of Hon'ble Karnataka High Court rendered in the case of Tumkur Merchants Souhadra Credit Cooperative Ltd. Vs. ITO (Supra) and therefore, his order should be reversed and this issue

should be decided in favour of the assessee. Learned DR of the revenue supported the order of AO & CIT (A).

4. We find that the assessee's claim for deduction u/s 80P in respect of Bank Interest, we find that the claim of the assessee for deduction u/s 80P in respect of bank interest income was disallowed by AO and CIT (A) by following the judgment of Hon'ble Apex Court rendered in the case of Totgars Co – Operative Sale Society Limited vs. ITO (Supra). We reproduce the relevant Para 10 of this judgment and the same is as under:-

“10. At the outset, an important circumstance needs to be highlighted. In the present case, the interest held not eligible for deduction under s. 80P(2)(a)(i) of the Act is not the interest received from the members for providing credit facilities to them. What is sought to be taxed under s. 56 of the Act is the interest income arising on the surplus invested in short-term deposits and securities which surplus was not required for business purposes. Assessee(s) markets the produce of its members whose sale proceeds at times were retained by it. In this case, we are concerned with the tax treatment of such amount. Since the fund created by such retention was not required immediately for business purposes, it was invested in specified securities. The question, before us, is—whether interest on such deposits/securities, which strictly speaking accrues to the members' account, could be taxed as business

income under s. 28 of the Act ? In our view, such interest income would come in the category of "income from other sources", hence, such interest income would be taxable under s. 56 of the Act, as rightly held by the AO. In this connection, we may analyze s. 80P of the Act. This section comes in Chapter VI-A, which, in turn, deals with "Deductions in respect of certain incomes". The headnote to s. 80P indicates that the said section deals with deductions in respect of income of co-operative societies. Sec. 80P (1), inter alia, states that where the gross total income of a co-operative society includes any income from one or more specified activities, then such income shall be deducted from the gross total income in computing the total taxable income of the assessee-society. An income, which is attributable to any of the specified activities in s. 80P (2) of the Act, would be eligible for deduction. The word "income" has been defined under s. 2(24)(i) of the Act to include profits and gains. This sub-section is an inclusive provision. The Parliament has included specifically "business profits" into the definition of the word "income". Therefore, we are required to give a precise meaning to the words "profits and gains of business" mentioned in s. 80P (2) of the Act. In the present case, as stated above, assessee-society regularly invests funds not immediately required for business purposes. Interest on such investments, therefore, cannot fall within the meaning of the expression "profits and gains of business". Such interest income cannot be said also to be attributable to the activities of the

society, namely, carrying on the business of providing credit facilities to its members or marketing of the agricultural produce of its members. When the assessee-society provides credit facilities to its members, it earns interest income. As stated above, in this case, interest held as ineligible for deduction under s. 80P(2)(a)(i) is not in respect of interest received from members. In this case, we are only concerned with interest which accrues on funds not required immediately by the assessee(s) for its business purposes and which have been only invested in specified securities as "investment". Further, as stated above, assessee(s) markets the agricultural produce of its members. It retains the sale proceeds in many cases. It is this "retained amount" which was payable to its members, from whom produce was bought, which was invested in short-term deposits/securities. Such an amount, which was retained by the assessee-society, was a liability and it was shown in the balance sheet on the liability side. Therefore, to that extent, such interest income cannot be said to be attributable either to the activity mentioned in s. 80P(2)(a)(i) of the Act or in s. 80P(2)(a)(iii) of the Act. Therefore, looking to the facts and circumstances of this case, we are of the view that the AO was right in taxing the interest income, indicated above, under s. 56 of the Act.”

5. There is one judgment of Hon’ble Karnataka High Court rendered in the case of Tumkur Merchants Souhadra Credit Cooperative Ltd. Vs. ITO (Supra) in which this judgment of Hon’ble apex court rendered in the case of

Totgars Co – Operative Sale Society Limited vs. ITO (Supra) was considered but still, the issue was decided in favour of the assessee because in that case, money used to earn bank interest was out of own funds and not of out of liability. To examine the applicability of these two judgments, the facts are to be examined as to whether in the present case, the money advanced to earn interest income from various banks is out of liability or own funds of the assessee because if such advances are out of liability, then this judgment of Hon'ble apex court rendered in the case of Totgars Co – Operative Sale Society Limited vs. ITO (Supra) will be applicable and the assessee will not be entitled to deduction u/s 80P with regard to interest from banks but if such advances are not out of liability but are out of own funds of the assessee than the judgment of Hon'ble Karnataka High Court rendered in the case of Tumkur Merchants Souhadra Credit Cooperative Ltd. Vs. ITO (Supra) will be applicable.

6. Hence, We set aside the order of CIT (A) on this issue and restore this aspect of the matter back to his file for fresh decision with the direction that he should examine the facts of the present case in the light of these two judgments of Hon'ble apex court rendered in the case of Totgars Co – Operative Sale Society Limited vs. ITO (Supra) and of Hon'ble Karnataka High Court rendered in the case of Tumkur Merchants Souhadra Credit Cooperative Ltd. Vs. ITO (Supra) to find out which judgment is applicable in

the facts of the present case. If it is found that the judgment of Hon'ble apex court rendered in the case of Totgars Co – Operative Sale Society Limited vs. ITO (Supra) is applicable in the facts of the present case then it should be held that the assessee is not entitled to deduction u/s 80P in respect of interest from bank but if it is found that the judgment of Hon'ble Karnataka High Court rendered in the case of Tumkur Merchants Souhadra Credit Cooperative Ltd. Vs. ITO (Supra) is applicable then it should be held that the assessee is entitled to deduction u/s 80P in respect of interest from bank.

7. In the result, assessee's appeal is allowed for statistical purposes.

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

Sd/-

(BEENA PILLAI)

Judicial Member

Bangalore,

Dated: 9th October, 2020.

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

Sd/-

(A.K. GARODIA)

Accountant Member

By order

Assistant Registrar,
ITAT, Bangalore.