

IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH : BANGALORE
BEFORE SHRI CHANDRA POOJARI , ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER

ITA No.286/BANG/2020
Assessment Year : 2016 - 17

Vijaya Pathina Souhardha Sahakari Niyamitha, No.5, 4 th Floor, No.5 S.J Elegance, Income Tax Layout, Vijayanagar, Bengaluru-560 040. PAN - AABAV 5040 R	Vs.	The Income Tax Officer, Ward-3(2)(2), Bengaluru.
APPELLANT		RESPONDENT

Appellant by	:	Shri Sandeep C, C.A
Respondent by	:	Smt. R Premi, JCIT (DR)

Date of Hearing	:	17-11-2020
Date of Pronouncement	:	19-11-2020

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER

Present appeal has been filed by assessee against order dated 08/01/2020 passed by Ld.CIT (A)-3, Bangalore for assessment year 2016-17 on following grounds of appeal:

"1. That the order of the learned Commissioner Income Tax (Appeals), in so far it is prejudicial to the interests of the appellant, is bad and erroneous in law and against the facts and circumstances of the case.

2. *That the learned Commissioner Income Tax (Appeals) erred in law and on facts in not allowing the deduction of Rs. 64,40,358/- claimed u/s. 80P(2)(a)(i) on the ground that the appellant is not a Co-operative Society.*
3. *That the learned Commissioner Income Tax (Appeals) erred in law and on facts in holding that the appellant is registered under the Karnataka Souhardha Act, 1997 therefore, not a Co-operative society and not eligible for deduction u/s 80P(2)(a)(i) of the Act.*
4. *That the learned lower authorities erred in law and on facts in not allowing the interest income as deduction u/s 80P(2)(a)(i) of the Act even though the investments were made out of surplus fund and attributable to the business activity of the appellant.*
5. *That the learned lower authorities erred in law and on facts in not allowing the interest income of Rs.40,633/- earned from investments as deduction u/s 80P(2)(a)(i) of the Act.*
6. *That the learned lower authorities erred in law and on facts in not allowing the interest income earned from Co-operative Banks as deduction u/s 80P(2)(d) of the Act.*
7. *That the learned lower authorities erred in law and on facts in not allowing expenditure incurred for earning the interest income from the investments.”*

Brief facts of the case are as under:

2. Assessee filed its return of income on 06/09/2016 declaring an income of rupees nil, after claiming deduction of Rs.64,40,358/- under section 80 P of the Act. The case was selected for scrutiny, and notice under section 143(2) along with notice under section 142(1) was issued to assessee. In response to statutory notices, representative of assessee appeared before Ld.AO and filed requisite details as called for.

3. Ld.AO observed that assessee is a Co-operative, registered under section 6 (1) of Karnataka Souhardha Co-operative Act 1997. Ld.AO upon verifying the details filed noted that assessee has earned interest income of Rs.3,08,793/- from the

nationalized/Co-Operative Banks, and claimed as deduction under section 80P. Ld.AO was of the view that assessee was not eligible for the claim under section 80 P (2) (d) of the Act. He placed reliance on decision of *Hon'ble Karnataka High Court* in case of *Pr.CIT vs Totgars Co-operative Sale society* reported in 395 ITR 611.

4. Ld.AO also noted that assessee is registered as co-operative under Karnataka Souhardha Co-operative Act 1997 and not under Karnataka Co-operative Societies Act 1959. Ld.AO thus held that assessee is not a co-operative society and hence was not eligible for claim of deduction under section 80 P of the Act. He placed reliance on decision of coordinate bench of this *Tribunal* in case of *M/s.Udaya Souhardha Credit Co-operative Society Ltd., dated 17/08/2018*.

5. Ld.AO thus denied, entire deduction claimed by assessee under section 80 P and added back to the income of assessee.

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

7. Ld.CIT(A) after going through the submissions filed by assessee and the assessment order. Ld.CIT(A) upheld disallowance of interest income earned by assessee from nationalised/other co-operative banks by holding that, deduction can only be allowed to co-operative societies registered under co-operative societies Act. He also placed reliance on decision of

coordinate bench of this *Tribunal* in case of *M/s.Udaya Souhardha Credit Co-operative Society Ltd., (supra)*.

8. Ld.CIT(A) upheld disallowance of deduction claimed under section 80 P in toto by relying on coordinate bench of this tribunal in case of *M/s.Udaya Souhardha Credit Co-operative Society Ltd., (supra)*.

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

10. At the outset Ld.AR submitted that, assessee is a co-operative and not a co-operative society. And that assessee is registered under Karnataka Souhardha Co-operative Act 1997. He submitted that *Hon'ble Karnataka High Court* in in case of *Swabhimana Souhardha credit Co-operative Ltd vs DCIT in WP No. 48414 of 2018 by order dated 16/01/2020*, held that, an entity registered under Karnataka Souhardha Co-operative Act 1997, fit into the definition of co-operative society as defined under section 2 (19) of Income tax Act, 1961. Referring to the bye laws of assessee it was submitted that every member shall have one vote, irrespective of number of shares held by them and that, assessee only admits regular members. Ld.AR however submitted that, assessee is registered even under Karnataka co-operative societies act 1959. He placed reliance on the certificate placed at page 3 and 4 of paper book filed before us today.

11. In respect of interest income received from deposits made in nationalised/co-operative banks, Ld.AR submitted that the issue

needs to be considered afresh, as previous decision in case of *Pr.CIT vs Totgars co-operative Sale Society reported in 392 ITR 74* by *Hon'ble Karnataka High Court* has not been followed in the subsequent decision relied by authorities below to deny assessee's claim.

12. On the contrary, the Ld.Sr.DR placed reliance on orders passed by authorities below.

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

14. We note that, certificates relied by Ld. AO placed in the paper book has not been looked into by authorities below. It is also an admitted position by virtue of ratio laid down by *Hon'ble Karnataka High Court* in case of *Swabhimana Souhardha credit Co-operative Ltd vs DCIT (supra)* that, it is not a necessary requirement for assessee to be registered under the co-operative societies act 1959 in order to be eligible to claim deduction under section 80 P of the Act. However as assessee is also registered under Karnataka Co-operative Societies Act 1959, there should not be any objection left in respect of the same by authorities below.

15. As regards the interest income earned by assessee from deposits made in nationalised/co-operative banks, disallowed by Ld. AO under section 80 P (2) (d) of the Act, we note that the same was denied as assessee was not registered with Karnataka Co-operative societies act 1959. Ld. AO placed reliance on

decision of *Hon'ble Karnataka High Court* in case of *DCIT vs Totgars co-operative society (supra)*. On perusal of the said decision we note that *Hon'ble court* has held that interest on investments retained the character of income from other sources and therefore deduction under section 80 P (2) (a) (i) of the act will not be available because the income was not attributable to business of providing credit facilities to members. *Hon'ble court* thus denied the deduction under section 80 P (2) (a) (i) of the act.

16. *Ld.AR* before us has placed reliance on following decisions by coordinate bench of this *Tribunal* wherein, the issue was restored to *Ld.AO* for fresh consideration:

- *Nagpur Credit Co-operative Society vs ITO in ITA No.2405/Bang/2019 by order dated 31/08/2020;*
- *Banashankari Credit Co-operative Society Ltd vs ITO in ITA No. 2874/be/2017 by order dated 12/03/2018*

17. This *Tribunal* observed as under:

"10. We have heard the rival submissions and we find that there are contrary judgments of Hon'ble High Court of Karnataka on this issue. This aspect has been discussed by the ITAT "A" Bench in ITA No.3389 & 3390IBang/2019 in the case of The Jayangar Co-operative Society Ltd. V. /TO, order dated 07.02.2020 wherein this Tribunal restored the issue to the AO for fresh consideration with the following observations :-

4. We have considered the rival submissions. First of all, we repro& 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., V. 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'bie 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 Cooperative 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 Cooperative 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 Honbie 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."

11. *We also find that the Hon'ble High Court of Karnataka in the case of Pr. CIT v. Totgars Co-operative Sales Society, 392 ITR 74 (Karn) confirmed the order of Tribunal allowing deduction u/s. 80P(2)(d) of the Act on interest received from investments made in co-operative bank. This decision was, however, not followed in a subsequent DB judgment in the case of Pr. CIT v. Totgars Co-operative Sales Society, 395 ITR 611 [Karn]. In the later decision, the Hon'ble High Court held that interest income earned on deposits will be assessed under the head income from 'other sources' and therefore the entire deduction u/s. 80P(2)(a)(i) or 80P(2)(d) of the Act would not be available to the assessee."*

18. We note that, facts and circumstances of the present case are similar and identical and therefore needs to be reconsidered based on the above referred decisions by Ld.AO. Before us, assessee has not provided the details of interest earned from nationalised/co-operative banks. In our view the issue needs to be revisited by Ld.AO for fresh decision after examining the facts and the light of decision of *Hon'ble Karnataka High Court* in case of *Tumkur Merchants Souharda Credit Co-operative Ltd vs ITO*, reported in *230 Taxmann 309*, wherein decision by *Hon'ble Supreme Court* in case of *Totgars Co-Coperative Sale Society Ltd.*, reported in *322 ITR 283* has been duly considered. The Ld.AR has also brought to our notice that *Hon'ble Karnataka High Court* in case of *Pr.CIT vs Totgars co-operative Sale Society* reported in *392 ITR 74* confirmed the order of this tribunal allowing deduction under section 80P(2)(d) of the Act on interest received on investments made in co-operative bank. This decision was however not followed in the subsequent judgment in case of

Pr.CIT vs Totgars Co-operative Sale society reported in 395 ITR 611.

19. We therefore restore the issue back to Ld.AO for fresh consideration in the light of above decisions after providing order quit opportunity of being heard to assessee in accordance with law.

Accordingly grounds raised by assessee stands allowed for statistical purposes.

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

Order pronounced in the open court on 19th Nov, 2020

Sd/-
(CHANDRA POOJARI)
Accountant Member

Sd/-
(BEENA PILLAI)
Judicial Member

Bangalore,
Dated, the 19th Nov, 2020.

/Vms/

Copy to:

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

By order

Assistant Registrar, ITAT, Bangalore

		Date	Initial	
1.	Draft dictated on	On Dragon		Sr.PS
2.	Draft placed before author	-11-2020		Sr.PS
3.	Draft proposed & placed before the second member	-11-2020		JM/AM
4.	Draft discussed/approved by Second Member.	-11-2020		JM/AM
5.	Approved Draft comes to the Sr.PS/PS	-11-2020		Sr.PS/PS
6.	Kept for pronouncement on	-11-2020		Sr.PS
7.	Date of uploading the order on Website	-11-2020		Sr.PS
8.	If not uploaded, furnish the reason	--		Sr.PS
9.	File sent to the Bench Clerk	-11-2020		Sr.PS
10.	Date on which file goes to the AR			
11.	Date on which file goes to the Head Clerk.			
12.	Date of dispatch of Order.			
13.	Draft dictation sheets are attached	No		Sr.PS