

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.1485/Bang/2019
Assessment year : 2015-16

M/s The Government Employees Co-Operative Bank Limited, Court Circle, Kosmos Club Road, Dharwad – 585 001, PAN: AAAAT 4827D	Vs.	The Assistant Commissioner of Income-tax, Circle 2(1), Hubballi.
APPELLANT		RESPONDENT

Appellant by	:	Shri K. Mallaha Rao, Advocate
Respondent by	:	Smt R. Premi, Jt.CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	02.12.2020
Date of Pronouncement	:	31.12.2020

ORDER

Per N.V. Vasudevan, Vice President

This appeal by the assessee is against the order dated 25.03.2019 of the CIT(Appeals), Hubballi, in relation to assessment year 2015-16.

2. The society is a Co-operative Society engaged in the business of banking. In the course of assessment proceedings, the AO noticed that the society had paid interest on deposits to the extent of 1,47,84,915/-. The AO called upon the assessee to furnish evidence regarding deduction of tax at source on the interest paid u/s 194A of the Act.

3. The AO also called upon the society to explain as to, whether any interest was paid to members less than Rs.10,000/- so that the provisions of section 194A of the Act will not apply to such payments.

4. A perusal of the order of AO shows that the society did not furnish the required details. The following are the relevant observations of AO in this regard:-

“Opportunity has been given to the assessee for the submission of the details of members and non-members to whom the interest on deposits of Rs.10,000/- and above totalling of Rs.1,47,84,915/- has been paid during the year 2014-15, copy of the share applications and share holdings of the members and non members. Failure to deduct taxes on interest paid of Rs.10,000/- and above attracts provisions of sections of 194A of the I.T. Act,1961.

During the course of assessment proceedings opportunity has been given to the assessee for the submission of documentary evidence about the share holding and share application of member and non-members to whom interest paid of Rs.10,000/- and above have been paid totalling of Rs. 1,47,84,915/- but till date the assessee has not submitted the same. Hence I am constraint to hold that Rs. 14,47,84,915/- is the interest paid to non members in contravention with the provisions section of 194A of the I.T. Act,1961, therefore the interest paid of Rs. 1,47,84,915/- which is debited in the P & L amount of the assessee as at 31.03.2015 is disallowed u/s 40(a)(ia) of the I.T. Act 1961 and added to the total income of the assessee.”

5. Before the CIT(Appeals), the Assessee gave details where payment made was less than Rs.10,000/- to each member. The Assessee submitted a list of 158 members to whom interest more than Rs.10,000/- was paid and the details showed that a sum of Rs.7,22,336/- was paid to regular members and Rs.93,33,928/- was paid to associate members.

6. The CIT(A) held that a sum of Rs.93,36,928/- which was paid to associate members was a payment made to non-members and therefore to

this extent the addition should be upheld. The following were the relevant observations of the CIT(A) in this regard:-

“6. Therefore, as discussed above, the assessee has admittedly failed to deduct tax at source on the payment of interest, of above Rs.10,000/-, made to non-members of Rs.93,36,928/-, as required by the provisions of section 194A of the I.T. Act, 1961. The assessee has also failed to submit any details, proof, or evidence, as to whether Form 15G/15H were submitted, or if the income was declared in their ITRs.

I, therefore, uphold the disallowance made by the AO u/s. 40(a)(ia) of the I.T. Act,1961, of the expenditure on interest paid/credited to non-members, to the extent of Rs. 93,36,928/-, for failure to deduct tax at source, as required by section 194A of the I.T. Act, 1961.”

7. With regard to the remaining interest payments out of a sum of Rs.1,47,84,915/- the CIT(A) gave following directions to the AO:-

“6.3 The AO is therefore, asked to examine and verify the claims of the assessee that tax was not deducted at source on interest paid to members of Rs.7,22,336/- and on interest paid of Rs. 47,25,651/-, consisting of payment of interest below Rs.10,000/-, to members/non-members, including, interest paid on, Cumulative deposits, S.B. a/cs, Small Savings deposits, Staff FWF deposits, Staff Service Sec deposit, Fixed deposit & DJCC interest. The AO should allow the assessee adequate opportunity to make its submissions and opportunity for rebuttal in case of any adverse findings. After due examination and verification, the AO may allow the claims of the assessee pertaining to expenditure on interest, paid without deduction of tax at source, on payments below 10,000/-, and payment to members”.

8. The AO has given effect to the order of CIT(A) and allowed relief in respect of interest paid to members of Rs. 7,22,336/- and interest paid of Rs.47,25,651/- being interest payment below Rs.10,000/- to members/non-members including interest paid on cumulative deposits, SB account, Small Saving Deposits, etc. The Assessee is aggrieved by the action of CIT(A) in upholding disallowance u/s. 40(a)(ia) for failure to the deduct tax at source

u/s. 194A of the Act in respect of payments of interest to the extent of Rs.93,36,928/-.

9. The Id. Counsel for the Assessee submitted that for AY 2015-16, there was no obligation to deduct tax at source by a Co-operative Society on payment for interest to its members in view of the provisions of Sec.194A(3)(v) of the Act. In this regard he drew our attention to a decision of *Hon'ble Karnataka High Court in the case of CIT Vs Karnataka State Apex Co-operative Bank Ltd., in ITA No.526/2015*, judgement dated 27.06.2016.

10. The Id. DR, however, relied on the order of CIT(A).

11. We have considered the rival submissions. We find that a sum of Rs. 93,36,928/- is interest paid to Associate Members. The CIT(A) has, however, made a reference to the decision of Hon'ble Supreme Court in the case of *Citizens Co-operative Society Ltd., Vs. ACIT in appeal No.10245 of 2017 Dt. 08.08.2017* which was a decision referred in the context of allowing deduction u/s. 80P(2)(a)(i) of the Act.

12. We are of the view that the analogy so drawn by the CIT(A) is erroneous. The provisions of Sec.194A which are in relation to deduction of tax at source cannot be equated with the provisions of Sec. 80P(2)(a)(i) of the Act, which deals with deduction while computing total income. The admitted position is that the sum of Rs.93,36,928/- has been paid to Associate Members and CIT(A) has equated it and named them as non-members. In our view this approach is erroneous.

13. For the AY 2015-16, there is no obligation to deduct tax at source by a Co-operative Society u/s.194A of the Act as laid down by the *Hon'ble Karnataka High Court in the case of CIT Vs Karnataka State Apex Co-*

operative Bank Ltd. (supra). We therefore delete the addition sustained by the CIT(A).

14. In the result, the appeal by the assessee is allowed.

Pronounced in the open court on this 31st day of December, 2020.

Sd/-
(B.R. BASKARAN)
ACCOUNTANT MEMBER

Sd/-
(N V VASUDEVAN)
VICE PRESIDENT

Bangalore,
Dated, the 31st December, 2020.

/Desai S Murthy /Dwk

Copy to:

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

By order

Assistant Registrar
ITAT, Bangalore.