

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE 'C' BENCH, BANGALORE**

**BEFORE SMT ASHA VIJAYARAGHAVAN, JUDICIAL MEMBER
AND
SHRI JASON P BOAZ, ACCOUNTANT MEMBER**

**ITA No.1033(BNG.)/2014
(Assessment year : 2010-11)**

The Deputy Commissioner of Income-tax
Circle-5(1), 6th Floor,
Unity Building Annexe,
Kalinga Rao Road,
Bangalore

Appellant

PAN No.AABAS7092Q

Vs

M/s Sri Jihveshwara Credit Co-operative Society Ltd.
No.125, Swakula Sali Sangha Building,
Huriopet Main Road, BVK Iyengar Road,
Bangalore-560 053

Respondent

**Revenue by : Shri Sunil Kumar Agarwala, JCIT
Assessee by : Shi Sidda Reddy, Advocate**

**Date of hearing : 06-10-2015
Date of pronouncement : 09-10-2015**

ORDER

PER SMT ASHA VIJAYARAGHAVAN, JM:

This appeal by the revenue is directed against the order of the CIT(A)-II, Bangalore dated 24-04-2014 for the assessment year 2010-11.

2. The assessee is a Co-operative Society registered under the provisions of Karnataka State Co-operative Act, which renders financial services to its members had filed its return of income for the assessment

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year 2010-11 on 28-09-2010, wherein it had declared the total income at 'NIL' after claiming deduction in a sum of Rs.15,86,079/- u/s 80P(2)(a)(i) of the Act. In the assessment concluded u/s 143(3) of the Act, vide order dated 23-11-2012, the AO had disallowed the assessee's claim for deduction u/s 80P(2)(a)(i) of the Act and determined the total income at Rs.15,86,079/-.

2.1 Subsequently, the AO noticed that the assessee's claim for deduction for the provision of Rs.10.00 Lakhs for bad debts and vide order u/s 154 of the Act, dated 01-07-2013 the AO had disallowed the same and re-determined the total income at Rs.10.00 Lakhs and raised an additional demand of Rs.4,11,959/-. Aggrieved, the assessee preferred appeal before the CIT(A).

2.2 In the grounds of appeal, before the CIT(A) it is contended that the order is opposed to the provisions of the IT Act, since the assessee was not given an opportunity of being heard and the disallowance of bad debts is not justified as it is debatable issue.

2.4 In the written submissions, the assessee contended that even if the disallowance of provisions for bad debts is justified, the income enhanced is also eligible for deduction u/s 80P(2)(a)(i) of the Act, as the

amount represents interest due from credits given to the members of the assessee.

3. The CIT(A held as under;

“I have carefully considered the assessee’s submissions. In my appellate order in ITA No.68/DC-5(2)CIT(A)-II/12-13 dated 02-12-2013 on the assessee’s appeal against the assessment order for the assessment year 2010-11, I had deleted the disallowance of Rs.15,86,079/- brought to tax by the AO on the ground that the said amount represented interest earned by it from credits given to its members and, consequently, qualified for deduction u/s 80P(2)(a)(i) of the Act. Keeping aside grounds raised by the assessee against the validity of the order u/s 154 of the Act, under appeal, I hold that the amount of Rs.10.00 Lakhs brought to tax by the AO by disallowing the provision for bad debts also represents interest earned by the assessee from credits given to its members and is, therefore, eligible for deduction u/s 80P(2)(a)(i) of the Act. I, therefore, direct the AO to give the assessee the benefit of deduction u/s 80P(2)(a)(i) of the Act, in respect of the amount of Rs.10.00 Lakhs brought to tax in the rectification order u/s 154 under appeal”.

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4. Aggrieved the department is in appeal before us and had raised the following grounds;

“1. The order of the learned CIT(A) is clearly opposed to law as far as the findings are perverse, contrary to the facts and circumstances of the case and hence not sustainable.

2. The CIT(A) erred in deleting the additions of Rs.10.00 Lakhs made by the AO by disallowing the provision for bad debts and holding that it represents interest earned by the assessee from credits given to its members and therefore eligible for deduction u/s 80P(2)(a)(i) of the IT Act.

3. The CIT(A) erred in allowing relief to the assessee based on the fresh evidence produced by the assessee without giving an opportunity to the AO for cross examination as per Rule 46A”.

5. We find that for the assessment year 2010-11, revenue had come up on appeal against the order of the CIT(A)-II, Bangalore dated 02-12-2013 in ITA No.347(B)/2014. The Tribunal had passed the order and while doing so held at para-4 as follows;

“ 4. Having regard to the rival contentions and the material on record, we find that the assessee is a credit co-operative society carrying on banking activity only for its members. This is also evident from the corrigendum issued

by the CIT(A) cited supra. The Hon'ble High Court of Karnataka in a number of cases, including the case of M/s Vasavi Credit Co-operative Society Ltd., cited supra, has held that if the assessee is not a co-operative bank carrying exclusively banking business and it does not possess a license from the Reserve Bank of India to carry on banking business, then it is not a co-operative bank but a co-operative society which carries on business of money lending to its members who is covered u/s 80P(2)(a)(i) of the Act and therefore, is eligible for deduction u/s 80P(2)(a)(i) of the Act. The facts and circumstances of the case before us, being similar, we hold that there is no merit in the appeal of the revenue. Accordingly, the revenue's appeal is dismissed".

6. In the present appeal before us, the AO subsequent to passing of the order u/s 143(3) dated 23-11-2012, noticed that assessee had claimed deduction for the provisions of Rs.10.00 Lakhs for bad debts which was not taken into account and vide order u/s 154 of the Act, dated 01-07-2013, the AO disallowed the same and re-determined the total income at Rs.10.00 Lakhs and raised an additional demand of Rs.4,11,959/-.

7. In appeal, assessee's contention was that even if disallowance provision for bad debts is justified, the income enhanced is also eligible

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for deduction u/s 80P(2)(a)(i) of the Act, as the amount represents interest due from creditors given to the members of the assessee's society. The CIT(A) therefore, directed the AO to give the assessee benefit of deduction u/s 80P(a)(i) of the Act, in respect of Rs.10.00 Lakhs brought to tax in the rectification order u/s 154 of the IT Act, 1961.

8. We have heard both parties.

9. We are in conformity with the order of the CIT(A) in holding that the amount of Rs.10.00 Lakhs represents interest earned by the assessee from credit given to its members and therefore, eligible for deduction u/s 80P(2)(a)(i) of the Act, 1961.

10. In the result, the appeal of the revenue is dismissed.

Order pronounced in the open court on the 9TH October, 2015.

Sd/-
(JASON P BOAZ)
ACCOUNTANT MEMBER

Place: Bangalore:

D a t e d : 09-10-2015

am*

Copy to :

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

Sd/-
(ASHA VIJAYARAGHAVAN)
JUDICIAL MEMBER

By order,
AR, ITAT, Bangalore