

IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCH ' B '

BEFORE SHRI GEORGE GEORGE K, JUDICIAL MEMBER AND
SHRI JASON P. BOAZ, ACCOUNTANT MEMBER

I.T. A. No.1619/Bang/2014
(Assessment Year : 2009-10)

Income Tax Officer,
Ward 1(2), Mangalore.

.... Appellant.

Vs.

Post & BSNL Employees'Co-operative Society Ltd.,
No.903, Sri Devi College Road,
Ballal Bagh, Post Kodialbail,
Mangalore-575 003
PAN AAAAP 5040N

.... Respondent.

Appellant By : Dr.P.K. Srihari, Addl. CIT (D.R.)

Respondent By : Shri S.P. Mahesh Shetty, Secretary.

Date of Hearing : 7.5.2015.

Date of Pronouncement : 15.5.2015.

O R D E R

Per Shri Jason P. Boaz, A.M. :

This appeal by the Revenue is directed against the order dated 19.8.2014 of the Commissioner of Income-tax [CIT], Mysore, relating to assessment year 2009-10.

2. The assessee is a co-operative society. It is engaged in providing credit facilities to its members. The assessee had claimed deduction u/s. 80P(2)(a)(i) of the Act which was allowed by the Assessing Officer.

3. Under Sec.80P(2)(i) of the Act where the gross total income of a co-operative society includes income from carrying on the business of banking or providing credit facilities to its members, the same is allowed deduction. By the Finance Act, 2006 w.e.f. 1-4-2007, Sub-section (4) was inserted in Sec.80-P which provides as follows:

"(4) The provisions of this section shall not apply in relation to any co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank.

Explanation : For the purposes of this sub-section,—

(a) "co-operative bank" and "primary agricultural credit society" shall have the meanings respectively assigned to them in Part V of the Banking Regulation Act, 1949 (10 of 1949);

(b) "primary co-operative agricultural and rural development bank" means a society having its area of operation confined to a taluk and the principal object of which is to provide for long-term credit for agricultural and rural development activities."

4. The CIT, Mangalore in exercise of revisionary powers u/s. 263 of the Act originally issued a show cause notice dated 06.02.2013 in which she was of the view that the assessee had claimed deduction u/s. 80P(2)(a)(i) of the Act in respect of income from providing credit facilities to its members and the Assessing Officer's action in allowing deduction u/s. 80P(2)(a)(i) of the Act was erroneous and prejudicial to the interests of the revenue. After considering the assessee's reply thereto, the CIT, Mangalore passed an order under Section 263 of the Act dt.28.3.2013, directing the Assessing Officer to disallow the deduction claimed under Section 80P(2)(a)(i) of the Act.

5. The Assessing Officer subsequently passed an order of assessment under Section 143(3) of the Act rws 263 of the Act vide order dt.31.10.2013 determining the income of the assessee at Rs.41,37,860 as against the returned income at NIL. In doing so, the Assessing Officer denied the assessee the deduction of Rs.41,39,860 claimed under Section 80P(2)(a)(i) of the Act, by invoking the provisions of section 80P(4) of the Act and held that the activities of the assessee are prima facie found to be in the nature of banking and providing credit facilities to its members, within the provisions of section 2(24)(viiia) rws 80P(4) of the Act introduced by the Finance Act, 2006 w.e.f. 1.4.2007.

6. Aggrieved by the order of assessment under Section 143(3) rws 263 of the Act dt.31.10.2013 for Assessment Year 2009-10, passed pursuant to the order of the CIT, Mangalore under Section 263 of the Act dt.28.3.2013, the assessee preferred an appeal before the CIT (Appeals), Mysore.

7. In the meanwhile, the assessee being aggrieved by the order of the CIT, Mangalore passed under Section 263 of the Act dt.28.3.2013 had already preferred an appeal before this Tribunal. The co-ordinate bench of the Tribunal in its order in ITA No.240/Bang/2014 dt.7.3.2014, following the decision of the Hon'ble Gujarat High Court in the case of CIT V Jafari Monica Vikas Co-op. Credit Society Ltd. in ITA Nos.442, 443 and 863 of 2013 dt.15.1.2014, held that the order of the CIT under Section 263 of the Act cannot be sustained because the assessee in the case on hand does not fall within the ambit of the provisions of section 809P(4) of the Act and consequently quashed order of the CIT, Mangalore passed under Section 263 of the Act dt.28.3.2013.

8. Subsequent to this, the CIT (Appeals), Mysore vide order dt.19.8.2014 allowed the assessee's appeal against the order of assessment under Section 143(3) rws 263 of the Act dt.31.10.2013 passed in pursuance of the order of the CIT, Mangalore under Section 263 of the Act dt.28.3.2013.

9. The present appeal before us has been filed by Revenue against the order of the CIT (Appeals), Mysore dt.19.8.2014 for Assessment Year 2009-10 which was passed in respect of the order of assessment under Section 143(3) rws 263 of the Act in pursuance of the order of the CIT, Mangalore under Section 263 of the Act dt.28.3.2013. As per the material on record, we find that the order of the CIT, Mangalore passed under Section 263 of the Act dt.28.3.2013 has been quashed by the order of the co-ordinate bench of this Tribunal in the assessee's own case in ITA No. 240/Bang/2014 dt.7.3.2014. The learned Departmental Representative for revenue was not able to furnish the order of the Hon'ble Karnataka High Court reversing the order of the co-ordinate bench of the Tribunal in ITA No.240/Bang/2014 dt.7.3.2014. In this view of the matter, the order of assessment for Assessment Year 2009-10 passed under Section 143(3) rws 263 of the Act on 31.10.2013, in pursuance of the CIT's order under Section 263 of the Act dt.28.3.2013, is rendered non est. Consequently, the same would be the situation with the impugned order of the CIT (Appeals), Mysore dt.19.8.2014. Therefore the order passed under Section 143(3) rws 263 of the Act dt.31.10.2013 has lost its substratum and consequently the present appeal filed by Revenue, before us, is rendered infructuous and is accordingly dismissed as infructuous.

10. In the result, Revenue's appeal for Assessment Year 2009-10 is dismissed.

Order pronounced in the open court on 15th May, 2015.

Sd/-
(GEORGE GEORGE K)
Judicial Member

Sd/-
(JASON P BOAZ)
Accountant Member

*Reddy gp

Copy to :

1. Appellant
2. Respondent
3. C.I.T.
4. CIT(A)
5. DR, ITAT, Bangalore.
6. Guard File.

(True copy)

By Order

Asst. Registrar, ITAT, Bangalore