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

BEFORE ABRAHAM P. GEORGE, ACCOUNTANT MEMBER

AND

SHRI. VIJAYPAL RAO, JUDICIAL MEMBER

I.T.A No.503/Bang/2015
(Assessment Year : 2011-12)

Income tax Officer,
Ward – 1, Bagalkot .. Appellant

v.

Shree Siddeshwar Souhardha Sahakari Niyamit,
Near Bus stand, Belagi, District Bagalkot .. Respondent
PAN : AACAS9345R

Assessee by :None
Revenue by : Shri. Sunil Kumar Agarwal, JCIT

Heard on : 22.07.2015
Pronounced on : 24 .07.2015

O R D E R

PER ABRAHAM P. GEORGE, ACCOUNTANT MEMBER :

In this appeal filed by Revenue, it is aggrieved that CIT (A) allowed the claim of assessee for deduction u/s.80P(2)(a)(i) of the Income-tax Act, 1961 ('the Act' in short), relying on the decision of Hon'ble High Court of Karnataka in CIT v. Sri Biluru Gurubasava Pattin Sahakari Sangh Niyamit, Bagalkot [ITA No.5006/2013, dt.05.02.2014].

02. Facts apropos are that assessee, a cooperative society had filed its return of income for relevant assessment year in which it had claimed deduction of

Rs.54,55,427/-, u/s.80P(2)(a)(i) of the Act. The Assessing Officer was of the opinion that the assessee fell within the definition of a cooperative bank given in clause (ccv) of Section 5 of the Banking Regulations Act, 1949. Therefore, according to him, sub-section (4) of section 80P stood attracted. The said sub-section specifically stated that the provisions of section 80P would not apply to a cooperative bank. Though the assessee argued that it had transactions only with its members and not public, this contention was not accepted. According to the Assessing Officer even a section of the public was good enough to be considered as 'service to the public'. Further, as per the Assessing Officer, the primary object of the assessee was transacting in banking business and its paid-up share capital exceeded Rs.1 lakh. Its bye laws did not have a clause permitting admission of any other cooperative society as a member. He therefore held it to be a cooperative bank. According to the Assessing Officer, assessee was not eligible for a deduction u/s.80P(2)(i) of the Act.

03. Aggrieved, assessee moved in appeal before the CIT (A). Argument of assessee was that the amounts which were placed in deposits were having direct nexus with the amounts received as deposits from members. When there were no immediate need of the funds for loan disbursements, instead of keeping the funds idle, assessee had placed it with the banks as deposits. As per assessee, it was bound to pay interest to the members. Submission of assessee was that acceptance of deposits from its members, closure of such deposits and repayments were regular and routine feature of its business. As per assessee,

unless the funds which were remaining with it were placed in banks, it would not have been possible for it to pay the interest due to its members.

04. CIT (A) was impressed by the contentions raised by assessee and relying on the judgment of Hon'ble High Court of Karnataka in CIT v. Sri Biluru Gurubasava Pattin Sahakari Sangh Niyamit, Bagalkot (supra), held that assessee was entitled to exemption u/s.80P(2)(a)(i) of the Act.

05. Ld. DR strongly assailing the order of the CIT (A) submitted that source of the interest was deposits in the bank. According to him, only the immediate source was required to be seen and not the remote source. Hon'ble Apex Court was clear in this aspect in the decision of Totgar's Cooperative Sale Society Ltd., (supra). Here in the case of assessee, only a very small amount was lent by it to its members. It was not similar to a society which was carrying on credit business. Therefore according to him, claim for deduction u/s.80P(2)(a)(i) of the Act, on such interest was unjustified.

06. Nobody appeared on behalf of the assessee.

07. We have perused the orders and heard the Ld. DR There is no dispute that one of the main object of assessee society was providing credit facility to its members. AO himself has mentioned that this was the primary object for which assessee was incorporated. Nodoubt, out of substantial sum received as deposits from the members, only small portion were given by assessee as loans to its members. Major part of the funds were parked in FDs. However, it is an

admitted position that assessee was bound to give interest to its members on the deposits received by it from them. Therefore, when there were no takers for the money, which assessee as a part of its objects wanted to lend, the only available choice for assessee, in order not to keep the funds idle, was to place it in banks for earning interest. Hon'ble jurisdictional High Court in the case of CIT v. Tumkur Merchants Souharda Credit Cooperative Ltd (ITA.307 of 2014, dt.28.10.2014), which was also in relation to a cooperative society having as its object, business of providing business credits to its members, held as under at paras 3 to 10 of the judgement dt.28.10.2014 :

> *"4. The learned counsel for the assessee assailing the impugned order contended, the interest accrued in a sum of Rs.1,77,305/- is from the deposits made by the assessee in a nationalized bank out of the amounts which was used by the assessee for providing credit facilities to its members and therefore the said interest amount is attributable to the credit facilities provided by the assesseeand forms part of profits and gains of business and therefore he submits the appellate authorities were not justified in denying the said benefit in terms of Sub-sec.(2) of Section 80P of the Act. In support of his contentions, he relied on several judgments and pointed out that the Apex Court in the aforesaid judgment has not laid down any law.*
>
> *5. Per contra, learned counsel for the Revenue strongly relied on the said judgment of the Supreme Court and submitted, the case is covered by that judgment of the Apex Court and no case for interference is made out.*
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> *6. From the aforesaid facts and rival contentions, the undisputed facts which emerges is, the sum of Rs. 1,77,305/- represents the interest earned from short-term deposits and from savings bank account. The assessee is a Cooperative Society providing credit facilities to its members. It is not carrying on any other business. The interest income earned by the assessee by providing credit facilities to its members is deposited in the banks for a short duration which has earned interest. Therefore, whether this interest is attributable to the business of providing credit facilities to its members, is the question. In this regard,*

it is necessary to notice the relevant provision of law ie., Section 80P(2)(a)(i):

"Deduction in respect of income of co-operative societies:

80P (1) Where, in the case of an assessee being a co-operative society, the gross total income includes any income referred to in sub-section (2), there shall be deducted, in accordance with and subject to the provisions of this section, the sums specified in sub- section (2), in computing the total income of the assessee.

(2) The sums referred to in sub-section (1) shall be the following, namely:
(a) in the case of co-operative society engaged in –
(i))carrying on the business of banking or providing credit facilities to its members, or

(ii) xxx
(iii) xxx
(iv) xxx
(v) xxx
(vi) xxx
(vii) xxx

the whole of the amount of profits and gains of business attributable to any one or more of such activities."

7. The word 'attributable' used in the said section is of great importance. The Apex Court had an occasion to consider the meaning of the word 'attributable' as supposed to derive from its use in various other provisions of the statute in the case of CAMBAY ELECTRIC SUPPLY INDUSTRIAL CO. LTD. VS. COMMISSIONER OF INCOME-TAX, GUJARAT-ll reported in ITR VOL. 113 (1978) PAGE 842 at page 93 as under:

"As regards the aspect emerging from the expression "attributable to" occurring in the phrase "profits and gains attributable to the business of the specified industry here generation and distribution of electricity on which the learned Solicitor-General relied, it will be pertinent to observe that the legislature has deliberately used the expression "attributable to" and not the expression "derived from". It cannot be disputed that the expression "attributable to" is certainly wider in import than the expression "derived from". Had the expression "derived from" been used, it could have with some force been

contended that a balancing charge arising from the sale of old machinery and buildings cannot be regarded as profits and gains derived from the conduct of the business of generation and distribution of electricity. In this connection, it may be pointed out that whenever the legislature wanted to give a restricted meaning in the manner suggested by the learned Solicitor General, it has used the expression "derived from", as, for instance, in section 80J. In our view, since the expression of wider import, namely, "attributable to", has been used, the legislature intended to cover receipts from sources other than the actual conduct of the business of generation and distribution of electricity."

8. Therefore, the word "attributable to" is certainly wider in import than the expression "derived from". Whenever the legislature wanted to give a restricted meaning, they have used the expression "derived from". The expression "attributable to" being of wider import, the said expression is used by the legislature whenever they intended to gather receipts from sources other than the actual conduct of the business. A Cooperative Society which is carrying on the business of providing credit facilities to its members, earns profits and gains of business by providing credit facilities to its members. The interest income so derived or the capital, if not immediately required to be lent to the members, they cannot keep the said amount idle. If they deposit this amount in bank so as to earn interest, the said interest income is attributable to the profits and gains of the business of providing credit facilities to its members only. The society is not carrying on any separate business for earning such interest income. The income so derived is the amount of profits and gains of business attributable to the activity of carrying on the business of banking or providing credit facilities to its members by a co-operative society and is liable to be deducted from the gross total income under Section 80P of the Act.

9. In this context when we look at the judgment of the Apex Court in the case of M/s. Totgars Co-operative Sale Society Ltd., on which reliance is placed, the Supreme Court was dealing with a case where the Society, apart from providing credit facilities to the members, was also in the business of marketing of agricultural produce grown by its members. The sale consideration received from marketing agricultural produce of its members was retained in many cases. The said retained amount which was payable to its members from whom produce was bought, was invested in a short-term deposit/security. 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 section 80P(2)(a)(i) of the Act or under Section 80P(2)(a)(iii) of the Act. Therefore in the facts of the said case, the Apex Court held the assessing officer was right in taxing the interest income indicated above under Section 56 of the Act. Further they made it clear that they are confining the said judgment to the facts of that case. Therefore it is clear, Supreme Court was not laying down any law.

10. In the instant case, the amount which was invested in banks to earn interest was not an amount due to any members. It was not the liability. It was not shown as liability in their account. In fact this amount which is in the nature of profits and gains, was not immediately required by the assessee for lending money to the members, as there were no takers. Therefore they had deposited the money in a bank so as to earn interest. The said interest income is attributable to carrying on the business of banking and therefore it is liable to be deducted in terms of Section 80P(1) of the Act. In fact similar view is taken by the Andhra Pradesh High Court in the case of COMMISSIONER OF INCOME-TAX III, HYDERABAD vs. ANDHRA PRADESH STATE COOPERATIVE BANK LTD., reported in (2011) 200 TAXMAN 220/12 In that view of the matter, the order passed by the appellate authorities denying the benefit of deduction of the aforesaid amount is unsustainable in law. Accordingly it is hereby set aside. The substantial question of law is answered in favour of the assessee and against the revenue. Hence, we pass the following order.

Appeal is allowed."

08. We are of the opinion that in view of the judgement of Hon'ble jurisdictional High Court reproduced above, where in at para 10, it has been clearly mentioned that the money meant for lending, remaining surplus, there being no takers, if deposited in banks for earning interest, such interest income would be attributable to the business of banking carried out by the assessee. We are of the opinion that the facts of the case here fit perfectly well with the facts in the judgment mentioned above. We, therefore, hold that assessee was eligible for claiming deduction u/s.80P(2)(a)(i) of the Act, on the interest earned

on the FDs placed by it with banks, this being a part of its business income. We do not find it necessary to interfere with the order of the CIT (A).

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

Order pronounced in the open court on 24th day of July, 2015.

Sd/-	Sd/-
(VIJAYPAL RAO) JUDICIAL MEMBER	(ABRAHAM P GEORGE) ACCOUNTANT MEMBER