

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

BEFORE SMT. ASHA VIJAYARAGHAVAN, JUDICIAL MEMBER
AND
SHRI. ABRAHAM P. GEORGE, ACCOUNTANT MEMBER

I.T.A No.1212/Bang/2015
(Assessment Year : 2012-13)

Income-tax Officer,
Ward -1, Bagalkot

..Appellant

v.

M/s. Shri Sangameshwar Primary Teachers' Co-op Society Ltd,
Near Lingadakatti, Hungund Dist. Bagalkot
PAN : AAAAS0767R

..Respondent

Assessee by : Shri. Sandeep C, CA
Revenue by : Shri. Sanjay Kumar, CIT - III

Heard on : 09.12.2015
Pronounced on : 11 .12.2015

ORDER

PER ABRAHAM P. GEORGE, ACCOUNTANT MEMBER :

In this appeal filed by Revenue, its grievance is that CIT (A) allowed the claim of deduction u/s.80P(2)(a)(i) of the Income-tax Act, 1961 ('the Act' in short), of a sum of Rs.26,74,624/- relying on the judgment of Hon'ble jurisdictional High Court in the case of CIT v. Sri Biluru Gurubasava Pattin Sahakari Sangh Niyamit [ITA No.5006/2013,

dt.05.02.2004], though Panaji Bench of the Tribunal had distinguished the above judgment in a number of cases.

02. Ld. DR submitted that assessee had claimed deduction u/s.80P(2)(a)(i) of the Act on the interest earned by it. Assessee is registered as a Credit Cooperative Society under the Karnataka Cooperative Societies Act. AO was of the opinion that assessee was hit by Section 80P(4) of the Act. As per the AO it was in the business of giving credits and should be considered as a cooperative bank. He disallowed the claim.

03. Assessee's appeal before the CIT (A) was successful. CIT (A) held that unless a credit cooperative society is considered as a cooperative bank, holding a licence from RBI, it would not be hit by Section 80P(4) of the Act.

04. Now before us, Ld. DR strongly assailing the order of CIT (A) submitted that assessee fell within the limitation specified in Section 80P(4) of the Act. According to the Ld. DR AO had made a detailed study of the Banking Regulations Act, 1949, and came to a conclusion that assessee was hit by definition of 'business of banking' as per Reserve Bank Regulations.

05. Per contra, Ld. AR supported the order of CIT (A).

06. We have perused the orders and heard the rival contentions. 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. No doubt, 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. After the judgment in Sri Biluru Gurubasava Pattin Sahakari Sangh Niyamit (supra), Hon'ble jurisdictional High Court had in the case of CIT v. Tumkur Merchants Souharda Credit Cooperative Ltd (ITA.307 of 2014, dt.28.10.2014), held as under in relation to a cooperative society having as its object, business of providing business credits to its members, 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 assessee and 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.

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-II** 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 on 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."

09. 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. Natural corollary is that Section 80P(4) of the Act is not attracted unless the cooperative society is recognised by RBI as a cooperative bank as per the rules made under Reserve Bank of India Act. We, therefore, hold that assessee was eligible for claiming deduction u/s.80P(2)(a)(i) of the Act. 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 11th day of December, 2015.

Sd/-

(Smt. ASHA VIJAYARAGHAVAN)
JUDICIAL MEMBER

Sd/-

(ABRAHAM P GEORGE)
ACCOUNTANT MEMBER

MCN

Copy to:

1. The assessee
2. The Assessing Officer
3. The Commissioner of Income-tax
4. Commissioner of Income-tax(A)
5. DR
6. GF, ITAT, Bangalore

By Order
Assistant Registrar