

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

**BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI INTURI RAMARAO, ACCOUNTANT MEMBER**

**ITA No.1191(Bang) 2015
(Assessment year : 2012-13)**

The Income-tax Officer,
Ward-3,
Viyayapur
Pan No.AAAAB5594K

Appellant

Vs

M/s Basawan Bagewai Taluka Primary Teachers Co-
Operative Credit Society,
Telagi Road, Tal.B.Bagewadi,
Dist. Vijayapur.

Respondent

**CO.No.217(Bang)/2015
(In ITA No.1191(Bang)/2015)
(Assessment year: 2012-13)
(By assessee)**

**Revenue by : Shri Naresh Saka, Addl.CIT
Assessee by : Shri G.S.Budyal, CA**

**Date of hearing : 03-12-2015
Date of pronouncement : 11-12-2015**

ORDER

PER SHRI INTURI RAMA RAO, AM:

This appeal by the revenue and the cross objection by the assessee are directed against the order dated 03-12-2014 of CIT(A), Belgavi for the assessment year 2012-13.

2. The learned counsel for the assessee submitted that the issue in the revenue's appeal is covered by the jurisdictional High Court of Karnataka in the case of CIT Vs Sri Biluru Gurubasava Pattin Sahakari Sangh Niyamit, Bagalkot in ITA No.5006/2013 dated 05-02-2014, we therefore, propose to hear and dispose of the appeal and the cross objection filed by the assessee.

3. We have heard the learned DR and carefully perused the material available on record. The assessee is a Co-operative Society registered under the Karnataka State Co-Operative Societies Act, 1959. The assessee claimed deduction u/s 80P(2)(a)(i) of the IT Act and declared the total income at Rs.Nil. The AO rejected the claim of the assessee on the ground that the assessee is a Co-operative Society Bank and hence, not entitled to claim deduction by virtue of Sec.80P(2)(a)(i) of the Act. The CIT(A) allowed the claim of the assessee by following various judgments including the judgment of the Hon'ble jurisdictional High Court in the case of CIT Vs Sri Biluru Gurubasava Pattin Sahakari Sangh Niyamit, Bagalkot in ITA No.5006/2013 dated 05-02-2014 as well as in the case of ACIT Vs M/s Bangalore Commercial Transport Credit Co-Operative Society Limited. Para 8.1 & 8.2 of the impugned order of the CIT(A) is reproduced here under;

“8.1. The Hon'ble High Court of Karnataka in the case of Sri Biluru Gurubasava Pattina Sahakari Sangha

Niyamitha, supra which was followed in the cases of General Insurance Employees Co-operative Credit Society Ltd. and Karnataka High Court decision in the case of Vasavi Multipurpose Souharda Sahakari Niyamitha, ITA NO.505/2013 dated 27/06/2014, supra, has clearly held that a co-operative society registered as co-operative society, providing credit facilities to members and not registered with the RBI cannot be denied the exemption under section 80P(1)(i) of the IT Act. The operative part of the judgment reads as follows;

“Therefore, the intention of the legislature is clear, if a co-operative bank is exclusively carrying on banking business, then the income derived from the said business cannot be deducted in computing the total income of the assessee. The said income is liable for tax. A co-operative bank as defined under the Banking regulation Act includes the primary agricultural credit society or a primary co-operative agricultural and rural development bank. The legislature did not want to deny the said benefits to a primary agricultural credit society or a primary co-operative agricultural and rural development bank. They did not want to extend the said benefit to a co-operative bank which is exclusively carrying on banking business i.e the purpose of this amendment. Therefore, as the assessee is not a Co-operative bank carrying on exclusively banking business and as it does not possess a licence from Reserve Bank of India to carry on business, it is not a co-operative bank. It is a co-operative society which also carries on the business of lending money to its members which is covered under section 80P(2)(a)(i) i.e carrying on the business of banking for

providing credit facilities to its members. The object of the aforesaid amendment is not to exclude the benefit extended under section 80P(1) to such society.....in the instant case, when the status of the assessee is a co-operative society and is not a co-operative bank, the order passed by the Assessing authority extending the benefit of exemption from payment of tax under section 80P(2)(a)(i) of the Act is correct”.

8.2 The fact that the appellant is a co-operative society registered under the Karnataka Co-operative Societies Act, 1959 engaged in providing credit facilities to its members has been clearly mentioned by the AO in para-3 of his aforesaid assessment order. It is also not the case of the AO that the assessee is registered with the RBI as a bank. In its aforesaid submissions dated 18-11-2014 the appellant has clearly stated with the help of necessary evidence and an affidavit dated 02-9-2014 to this effect that the appellant is a co-operative society registered under the Karnataka Co-operative Societies Act, 1959 engaged in providing credit facilities only to its members and it does not possess any banking licence from the RBI. It is therefore, clear that the appellant’s case is squarely covered by the aforesaid decisions of the jurisdictional High Court of Karnataka in the cases of Sri Biluru Gurubasava Pattina Sahakari Sangha Niyamitha, supra which was followed in the case of General Insurance Employees Co-operative Credit Society Ltd, and Karnataka High Court decision in the case of Vasavi Multipurpose Souharda Sahakari Niyamitha ITA NO.505/2013 dated 7-06-2014, supra. Therefore, in view of

the foregoing discussion and respectfully following the aforesaid decisions of the jurisdictional High Court of Karnataka. It is held that the appellant case is not covered by section 80P(4) as it is not a 'co-operative bank' and therefore, it is entitled to the exemption u/s 80P(2)(a)(i) of the IT Act".

4. Since the income earned by the assessee is only from providing credit facility to its members therefore, the issue is squarely covered by the judgment of the Hon'ble High Court in the case of CIT Vs Biluru Gurubasava Pattina Sahakari Sangha Niyamitha, Bagalkot(Supra). We further note that an identical issue has been decided by this Tribunal in assessee's own case for AY: 2009-10 in favour of assessee, vide order dated 23-02-2015 in ITA No.1248/Bang/2013 dated 23-05-2015. Accordingly, following the decision of the Hon'ble High Court (Supra) as well as the decision of the Co-ordinate Bench of this Tribunal in the assessee's own case, we do not find any error or illegality in the impugned order of the CIT(A).

5. In the cross objection the assessee has raised the following grounds;

"1) The order of the learned CIT(A) Belgaum allowing deduction u/s 80p(2)(a)(i) in respect of Net income from interest on advances to members may kindly be upheld. Your kind attention is invited to decision of the Hon'ble ITAT C Bench in ITA No.1503/Bang/2014 for AY: 2011-12 decided in favour of the assessee.

2. The ld.CIT(A) deleting the addition of Rs.161441/- for disallowance u/s 40(a)(ia) may kindly be upheld.

3) The ld. CIT(A) Belagavi is not justified in confirming the addition of Rs.702728 being interest on deposit with banks. In view of the decision of Hon'ble ITAT C Bench in ITA No.1503/Bang/2014 for AY: 2011-12 decided in favour of respondent may kindly be considered.

4) The ld. CIT(A) is not justified in confirming the addition of Rs.175500/- being dividend on shared of DCC Bank, Vijayapur. This dividend income being eligible for deduction u/s 80P(2)(d), which may kindly be considered.

5) Appellant prays leave to add, alter, modify or raise any ground of appeal at the time of hearing.

6. As it is clear from the grounds of the cross objection, the assessee has supported the order of the CIT(A) and not raised any new issue. Therefore, in view of our finding on the issue raised in the department's appeal, the cross objection of the assessee becomes infructuous.

7. In the result, the revenue's appeal and the cross objection by the assessee are dismissed.

Pronounced in the open Court on the 11th December, 2015.

Sd/-
(VIJAYPAL RAO)
JUDICIAL MEMBER

Bangalore:
D a t e d : 11-12-2015

am*

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

Copy to :

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

By order

AR, ITAT, Bangalore