

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH: BANGALORE**

**BEFORE SHRI B. R. BASKARAN, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER**

ITA Nos.1288 & 1289/Bang/2019
Assessment Year: 2015-16 & 2016-17

Karkala Co-op S. Bank Ltd. No.409/2, Ward-III, Town Bank Ananthashayana Road Karkala 574 104 PAN NO : AAAAK3861G	Vs.	ITO Ward-3 Udupi
APPELLANT		RESPONDENT

Appellant by	:	Shri Ravishankar S.V., A.R.
Respondent by	:	Shri Kannan Narayanan, D.R.

Date of Hearing	:	18.02.2021
Date of Pronouncement	:	18.02.2021

O R D E R

PER B.R. BASKARAN, ACCOUNTANT MEMBER:

Both the appeals filed by the assessee are directed against the common order dated 12.06.2019 passed by Ld CIT(A), Mangaluru and they relate to the assessment year 2015-16 and 2016-17. Since certain common issues are urged in these two appeals, both the appeals were heard together and are being disposed of by this common order, for the sake of convenience.

2. The first common issue urged by the assessee in both the years relate to rejection of claim of deduction under 80P(2)(a)(i) of the Income-tax Act,1961 [‘the Act’ for short].

Page 2 of 6

3. The facts relating to the above said issues are stated in brief. The assessee is a cooperative society providing credit facilities to its members. The assessee claimed deduction u/s 80P of the Act in both the years under consideration. The A.O. noticed that the assessee has extended credit facilities to nominal members who have no role in the management of the society and also does not have any right to vote. He also observed that many nominal members did not possess any share certificate. Accordingly, the A.O. took the view that the nominal members are “non-members”. He also observed that the assessee has received deposits and lent loan to general public and nominal members. Accordingly, he took the view that the assessee is not entitled for deduction u/s 80P(2)(a)(i) of the Act as per the decision rendered by Hon’ble Supreme Court in the case of Citizen Co-operative Society Ltd. (2017) 397 ITR 1. The A.O. also observed in AY 2015-16 that the interest income received by the assessee from deposits kept with banks is not eligible for deduction u/s 80P(2)(c) & 80P(2)(d) of the Act since the assessee is not eligible for deduction u/s 80P(2)(a)(i) of the Act. Accordingly, the A.O. denied deduction u/s 80P(2)(a)(i) of the Act in both the years. The Ld. CIT(A) also confirmed the same.

4. The Ld. A.R. submitted that the law on deduction of 80P(2)(a)(i) of the Act available to credit co-operative societies has since been settled by Hon’ble Supreme Court in the case of Mavilayi Service Co-operative Bank Ltd. Vs.CIT (2021) 123 taxmann.com 161 (SC). He submitted that the Hon’ble Supreme Court has held that the expression “Members” is not defined in the Income-tax Act. Hence, it is necessary to construe the expression “Members” in section 80P(2)(a)(i) of the Act in the light of definition of that expression as contained in the concerned co-operative societies Act. The Ld. A.R. submitted that the Hon’ble Supreme Court has considered the

Page 3 of 6

decision rendered by it in the case of Citizen Co-operative Society Ltd. (supra) and observed that the ratio decidendi of Citizen Co-operative Society Ltd. must be given effect to. Accordingly, he submitted that the assessee should be allowed deduction u/s 80P(2)(a)(i) of the Act.

5. The Ld. D.R., on the contrary, submitted that the issue of deduction needs to be examined afresh in the light of decision rendered by Hon'ble Supreme Court in the case of Mavilayi Service Co-operative Bank Ltd. (supra). Accordingly, he submitted that this issue may be restored to the file of the A.O.

6. We heard the parties on this issue and perused the record. We find merit in the submission made by Ld. D.R. Since the Hon'ble Supreme Court has settled many issues in the decision rendered by it in the case of Mavilayi Service Co-operative Bank Ltd. (supra) and since the facts prevailing in the instant case needs to be examined afresh in the light of the principles enunciated by Hon'ble Supreme Court in the above said case, we are of the view that the issue of deduction u/s 80P(2)(a)(i) of the Act requires fresh examination at the end of the A.O. Accordingly, we set aside the order passed by Ld. CIT(A) on this issue in both the years under consideration and restore them to the file of the A.O. in both the years for examining it afresh as discussed above.

7. The next common issue relates to rejection of deduction claimed u/s 80P(2)(d) of the Act in respect of interest income earned from fixed deposits kept with bank. We noticed earlier that the A.O. has observed in Assessment Year 2015-16 that the interest income received by the assessee from deposits kept with banks is not eligible for deduction u/s 80P(2)(c) & 80P(2)(d) of the Act since the assessee is not eligible for deduction u/s 80P(2)(a)(i) of the Act. In AY 2016-

Page 4 of 6

17, the AO assessed the interest income received on bank deposits under the head "Income from other sources" and denied deduction claimed u/s 80P(2)(d) of the Act. The Ld CIT(A) confirmed the action of the AO on this issue.

8. The Ld. A.R. submitted that the assessee is entitled to claim deduction allowable u/s 57 of the Act in respect of cost of funds and proportionate administrative and other expenses. In support of this submission, the Ld. A.R. placed reliance on the decision rendered by Hon'ble High Court of Karnataka in the case of Totgars Co-operative Sale Society Ltd. Vs. ITO (2015) 58 taxmann.com 35 (Karn). The Ld. A.R. submitted that the assessee in the above said case had put forth identical claim claim before Hon'ble Supreme Court in the case reported as Totgars Co-operative Sale Society Ltd. Vs. ITO (2010) 188 taxmann.com 282 and the Hon'ble Supreme Court, vide 14 of its order, had restored the question raised by the assessee to the file of Hon'ble High Court of Karnataka. Consequent thereto, the Hon'ble High Court of Karnataka has passed the order in the case reported in 58 taxmann.com 35 and held that the Tribunal was not right in coming to the conclusion that the interest earned by the appellant is an income from other sources without allowing deduction in respect of proportionate cost, administrative expenses incurred in respect of such deposits. Accordingly, the Ld. A.R. prayed that the A.O. may be directed to allow deduction of proportionate cost, administrative and other expenses, if the A.O. proposes to assess the interest income earned from bank deposits as income under the head "other sources".

9. We heard Ld. D.R. on this issue. We find merit in the prayer of the assessee, since it is supported by the decision rendered by Hon'ble High Court of Karnataka in the case of Totgars Co-operative

Page 5 of 6

Sale Society Ltd. Vs. ITO (2015) 58 taxmann.com 35 (Karn). Accordingly, we direct the A.O. to allow deduction of proportionate cost, administrative and other expenses, if the A.O. proposes to assess the interest income earned from bank deposits as income under the head "other sources".

10. The assessee has raised additional grounds in assessment year 2015-16 in respect of disallowance of provision for bad debts of Rs.1 lakh and provision for centenary fund Rs.3 lakhs. We notice that the A.O. had made the above said disallowances in assessment year 2015-16, but the assessee had omitted to challenge the above said additions before Ld. CIT(A). Hence the assessee has raised the above said issues before us by way of additional grounds. We are of the view that both the above said issues require fresh consideration at the end of the A.O., since the main issues have been restored to the file of the A.O. and the decision taken on them may have impact on the above said two additions. Accordingly, we restore both the above said issues to the file of the A.O. for examining them afresh.

11. In the result, both the appeals of the assessee are treated as allowed for statistical purposes.

Order pronounced in the open court on 18th Feb, 2021

Sd/-
(Beena Pillai)
Judicial Member

Sd/-
(B.R. Baskaran)
Accountant Member

Bangalore,
Dated 18th Feb, 2021.
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

**Asst. Registrar,
ITAT, Bangalore.**