

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

BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT
AND SHRI A K GARODIA, ACCOUNTANT MEMBER

ITA No. 695/Bang/2019
Assessment year: 2014-15

Sri Ganesh Credit Co-operative Society, No.47, Ground Floor, N.S. Iyengar Street, Seshadripuram, Bangalore – 560 020. PAN: AALAS 7645G	Vs.	The Principal Commissioner of Income Tax, Bangalore-2, Bangalore.
APPELLANT		RESPONDENT

Appellant by	:	Shri C. Sandeep, CA
Respondent by	:	Smt. Vandana Sagar, CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	15.10.2020
Date of Pronouncement	:	20.10.2020

ORDER

Per N.V. Vasudevan, Vice President

This appeal by the assessee is against the order dated 31.3.2019 of the CIT(Appeals), Bangalore-2, Bangalore passed u/s. 263 of the Income-tax Act, 1961 [the Act].

2. The assessee is a credit co-operative society engaged in providing credit facilities to its members. For AY 2014-15, the assessee filed return of income on 30.9.2015 declaring total income at Nil, after claiming deduction of Rs.10,83,853 u/s.80P(2)(a)(i) of the Act. The assessment was completed accepting the claim of assessee for deduction u/s. 80P(2)(a)(i) in an order passed u/s. 143(3) of the Act date 9.12.2016.

3. The Pr.CIT in exercise of his powers u/s. 263 of the Act was of the view that the assessment order of the AO allowing deduction u/s. 80P(2)(a)(i) to the assessee was erroneous and prejudicial to the interests of the revenue for the reason that while allowing deduction, the AO followed the decision of Hon'ble High Court of Karnataka in the case of *Sri Biluru Gurubasava Sahakari Sangha Niyamitha*, 369 ITR 86 (Karn) ITA No.5006/2013 dated 5.2.2014. The Pr.CIT, however, found that in the judgment rendered by the Hon'ble Supreme Court in the case of *Citizen Co-operative Society Ltd. v. ACIT*, 397 ITR 1 (SC), the Hon'ble Apex Court took the view that income derived from providing credit facilities to members who are primary members of the society alone would be eligible for deduction u/s. 80P(2)(a)(i) of the Act and if the income is derived from providing credit facilities to nominal members, such deduction should not be allowed. According to the Pr. CIT, the AO did not make any enquires with regard to whether the assessee provided credit facilities to its members who are regular members and not nominal members and therefore the order of AO was erroneous and prejudicial to the interests of the revenue. Accordingly, a show cause notice dated 11.2.2019 was issued u/s. 263 of the Act by the Pr. CIT.

4. In reply to the show cause notice, the assessee addressed a letter dated 18.2.2019 in which the assessee took a stand that the assessee has only regular members and there are no nominal or associate members of the society. The assessee also pointed out to the byelaws of the society provides for only one type of membership. It was submitted that the members of society have a right to participate and vote in the AGM and right to participate in the dividend and election of office bearers. The assessee, therefore, brought to the notice of Pr. CIT that the decision rendered in the case of *Citizen Co-operative Society Ltd. (supra)* will not apply to the case of assessee and therefore the order of AO cannot be

treated as erroneous and prejudicial to the interests of the revenue. The assessee also explained that the facts and circumstances in the case before the Supreme Court in the case of *Citizen Co-operative Society Ltd. (supra)* and as to how the facts of the assessee's case stand on a different footing. The assessee thus submitted that the proceedings u/s. 263 of the Act were misconceived and should be dropped.

5. The Pr. CIT, however, in the impugned order has mentioned that in the course of proceedings u/s. 263 of the Act, the assessee was asked to produce all financial transactions of the assessee's society with all the persons carried out during the financial year. He also made certain observations with regard to interest from BDC Corporation Bank and the reply of the assessee that such interest was also income derived from the business of providing credit facilities and eligible to deduction u/s. 80P(2)(a)(i) and a reference to the decision of the Hon'ble High Court of Karnataka in the case of *Tumkur Merchants Souharda Credit Co-operative Society Ltd. v. ITO, 55 taxmann.com 447*. Thereafter, the Pr. CIT firstly observed that it needs to be verified as to whether the assessee has only regular members and no nominal members. He went on to hold that interest derived from BDC Corporation Bank cannot be said to be a transaction with member of the society and therefore deduction u/s. 80P(2)(a)(i) of the Act ought not to have been allowed on this interest income. Thereafter, he gave directions with regard to the manner in which the AO should conduct enquiry with regard to all the financial transactions carried out by the society. Finally, the Pr. CIT gave the following conclusion:-

“4. In view of the above discussion, I find that the assessment order is erroneous because the Assessing Officer failed to make relevant enquiry about the nature of members and other persons with whom the assessee carried out most of its business of finance which is necessary in view of the judgement of Hon'ble

Supreme Court in case of Citizen Co-operative Society Ltd. Vs ACIT, 397 ITR 1 (SC). I find that the assessment order is prejudicial to the interest of revenue on account of facts found during the 263 proceedings. I therefore set aside the assessment order to be redone afresh after giving an opportunity to the assessee, in the light of the observations in para 3 above.”

6. Aggrieved, the assessee has preferred the present appeal before the Tribunal.

7. We have heard the rival submissions. It is seen from the reply filed by the assessee to the show cause notice u/s. 263 of the Act that the assessee had given complete details of members and deposits and those details are available in pages 58 to 66 of assessee's PB. The bye laws of assessee's society have also been given and the same are at pages 70 to 118 of assessee's PB. In a reply dated 29.3.2019, the assessee has also explained the transaction with BDC Corporation Bank and as to how the same has to be allowed as a deduction in the light of the decision in *Tumkur Merchants Souharda Credit Co-operative Society Ltd. (supra)*.

8. The Pr. CIT in exercise of his powers u/s. 263 of the Act has not given any finding with regard to the claim of assessee that as per bye laws of assessee's society, there were no nominal members and all members were regular members entitled to participate in the profits of the society and have also contributed to such profits. In other words, the assessee highlighted as to how the principle of mutuality is not violated in its case. The Pr. CIT has not found fault with this plea of assessee, but has gone on to set aside the order of AO directing him to make enquiry. So also, the Pr.CIT has not commented upon the applicability of decision of *Tumkur Merchants Souharda Credit Co-operative Society Ltd. (supra)*. He has, however, gone ahead to direct the AO to conduct a roving & fishing

enquiry. In our view, though there is justification for invoking powers u/s. 263 of the Act to make verification as to whether the principle of mutuality is satisfied in the case of assessee in the light of decision of Hon'ble Supreme Court in *Citizen Co-operative Society Ltd. (supra)*, the other directions contained in para 3.3 in the impugned order, in our view, is uncalled for. When the assessment is set aside for examination of the claim of assessee u/s. 80P(2)(a)(i) of the Act in the light of the decision of Hon'ble Supreme Court in *Citizen Co-operative Society Ltd. (supra)*, the exercise to be done would be restricted to verification of nature of membership of the society as per the bye laws and as to whether the income derived by the assessee on which deduction u/s. 80P(2)(a)(i) has been claimed, is attributable to the business of providing credit facilities to its members.

9. We are, therefore, of the view that the order u/s 263 of the Act should be upheld because of the subsequent decision of the Hon'ble Supreme Court in the case of *Citizen Co-operative Society Ltd. (supra)*, but at the same time, the directions contained in para 3.3 of the impugned order should not weigh in the mind of the AO while completing the set aside assessment. In other words, the assessment vis-à-vis section 80P(2)(a)(i) would be a *de novo* assessment and the AO would be free to adopt his line of enquiry while deciding the issue in the set aside proceedings, limited to the ratio laid down by the Hon'ble Supreme Court in *Citizen Co-operative Society Ltd. (supra)* uninfluenced by the directions of the Pr.CIT as contained in the impugned order in paragraph 3.3. Accordingly, we modify the directions of the Pr. CIT in the impugned order as indicated above. The AO will afford opportunity of being heard to the assessee, before making assessment in accordance with the modified directions as contained in this order.

10. In the result, the appeal of the assessee is partly allowed.

Pronounced in the open court on this 20th day of October, 2020.

Sd/-
(A K GARODIA)
ACCOUNTANT MEMBER

Sd/-
(N V VASUDEVAN)
VICE PRESIDENT

Bangalore,
Dated, the 20th October, 2020.

/Desai S Murthy/

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar
ITAT, Bangalore.