

**IN THE HIGH COURT OF KARNATAKA
DHARWAD BENCH**

Dated this the 5th day of January 2017

Present

THE HON'BLE MR. JUSTICE RAGHVENDRA S. CHAUHAN

And

THE HON'BLE MR. JUSTICE SREENIVAS HARISH KUMAR

I.T.A. No. 100069/2016

Between

1. The Pr. Commissioner of Income Tax,
C.R. Building, Navanagar, Hubli.
2. Income Tax Officer,
Ward-1, Sirsi, AACAT 0251 D.

- Appellants

(By Sri Y.V. Raviraj, Advocate)

And:

The Totagars Co-operative Sale Society,
TSS Road, New Market Road, SIRSI.

- Respondent

This appeal is filed under Section 260A of the Income Tax Act, 1961, praying to formulate the substantial questions of law and allow the appeal and set aside the order passed by the Income Tax Appellate Tribunal, Bangalore Bench 'C' Bangalore in ITA No. 709/BANG/2015 Dated 22.01.2016 and etc.

This appeal coming on for admission this day, **RAGHVENDRA S. CHAUHAN, J**, delivered the following:

JUDGMENT

The Revenue has challenged the order dated 22.01.2016 passed by the ITAT 'C' Bench, Bangalore, whereby the learned Tribunal has dismissed six appeals filed by the Revenue against the respondent-assessee.

2. Briefly the facts of the case are that the respondent assessee is a Co-operative Credit Society providing credit facilities to its members, and marketing the agricultural produce of its members; it runs a kirana section, rice mills, van section, medical shop, Arecanut trading section, lodging in the name of Samrat Hotels in Sirsi, and is also involved in plying and hiring of goods carriage. After claiming a deduction of Rs.4,09,34,404/- under Section 80P of the Income Tax Act, ('the Act' for short), along with deduction under Section 10(34) of the Act, the assessee filed its returns. While assessing the income tax returns, the Assessing Officer disallowed the claim of deduction under Section 80P(2)(d) of the Act, to the extent of Rs.3,34,970/-. The

said deduction was disallowed ostensibly on the ground that the said amount of income was earned by the assessee in the form of interest from deposits in the Co-operative Banks. Thus it should be brought to tax under the head "other sources". Therefore, the assessee was not eligible for deduction under Section 80P(2)(d) of the Act, on this count. Therefore, the Assessing Officer made an addition of the interest earned by the assessee from the Co-operative Banks by denying deduction under Section 80P(2)(d) of the Act.

3. Since the assessee was aggrieved by the assessment order passed by the Assessing Officer, it filed an appeal before the Commissioner of Income Tax (Appeals). Before the CITA the assessee argued that it is entitled to claim deduction u/S 80P(2)(d) of the Act. By order dated 30.03.2015 the CITA allowed the appeal filed by the assessee, and deleted the additions made by the Assessing Officer.

4. Since the Revenue was aggrieved by order dated 31.03.2015, it further filed an appeal before the ITAT. However, by order dated 22.01.2015, the learned Tribunal has dismissed the appeal filed by the Revenue. Hence, the present appeal before this Court.

5. The learned counsel for the Revenue has pleaded that two substantial questions of law are raised in the present appeal, namely,

1. *Whether the learned Tribunal was justified in deleting the additions made by the Assessing Authority being the disallowed deduction claimed u/S 80P(2)(d) of the Income Tax Act and in the light of the decision of the Supreme Court with regard to the same exact assessee as the present one, namely, The Totgars Co-operative Sale Society Ltd., Vs. Income Tax Officer in Civil Appeal Nos.1622 to 1629/2010 decided by the Apex Court on 08.02.2010 or not?*

2. *Whether, in the facts and circumstances of the case, the Tribunal is justified in not following the decision rendered by the Hon'ble Supreme Court in Civil Appeal No. 1622 of 2010, wherein the Apex Court has to be held that the words used in Section 80P "the whole of the amount of profits and gains of business" emphasise that the income in respect of which deduction is sought must constitute the operational income and not the other income which accrues to the society and as such interest earned on funds which are not required for business purposes falls under the category of "other income" taxable under the Income Tax Act?*

6. According to the learned counsel, the present appeal should be admitted on these two substantial questions of law.

7. However, the contention being taken by the learned counsel is untenable. For the issue that was

before the ITAT, was a limited one, namely whether for the purpose of Section 80P(2)(d) of the Act, a Co-operative Bank should be considered as a Co-operative Society or not? For, if a Co-operative Bank is considered to be a Co-operative Society, then any interest earned by the Co-operative Society from a Co-operative Bank would necessarily be deductible under Section 80P(1) of the Act.

8. The issue whether a Co-operative Bank is considered to be a Co-operative Society is no longer **res integra**. For the said issue has been decided by the ITAT itself in different cases. Moreover the word “Co-operative Society” are the words of a large extent, and denotes a genus, whereas the word “Co-operative Bank” is a word of limited extent, which merely demarcates and identifies a particular species of the genus Co-operative Societies. Co-Operative Society can be of different nature, and can be involved in different activities; the Co-operative Society Bank is merely a

variety of the Co-operative Societies. Thus the Co-operative Bank which is a species of the genus would necessarily be covered by the word "Co-operative Society".

9. Furthermore, even according to Section 56(i)(ccv) of the Banking Regulations Act, 1949, defines a primary Co-Operative Society bank as the meaning of Co-Operative Society. Therefore, a Co-operative Society Bank would be included in the words 'Co-operative Society'.

10. Admittedly, the interest which the assessee respondent had earned was from a Co-operative Society Bank. Therefore, according to Sec. 80P(2)(d) of the I.T. Act, the said amount of interest earned from a Co-operative Society Bank would be deductible from the gross income of the Co-operative Society in order to assess its total income. Therefore, the Assessing Officer was not justified in denying the said deduction to the assessee respondent.

11. The learned counsel has relied on the case of ***The Totgars Co-operative Sale Society Ltd. Vs. Income Tax Officer***, (supra). However, the said case dealt with the interpretation, and the deduction, which would be applicable under Section 80P(2)(a)(i) of the I.T. Act. For, in the present case the interpretation that is required is of Section 80P(2)(d) of the I.T. Act and not Section 80P(2)(a)(i) of the I.T. Act. Therefore, the said judgment is inapplicable to the present case. Thus, neither of the two substantial questions of law canvassed by the learned counsel for the Revenue even arise in the present case.

12. For the reasons stated above, this Court does not find any merit in the present appeal. Hence, the appeal is dismissed.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

bvv