IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 28TH DAY OF OCTOBER 2014

PRESENT

THE HON'BLE MR.JUSTICE N. KUMAR

AND

THE HON'BLE MR. JUSTICE B. MANOHAR

I.T.A. No. 307 OF 2014

BETWEEN:

TUMKUR MERCHANTS SOUHARDA CREDIT
COOPERATIVE LIMITED
REP. BY ITS PRESIDENT
SHRI M.S.JAYAKUMAR, 1ST FLOOR
VEERASHAIVA KALYANA MANTAP BUILDING
J.C.ROAD, TUMKUR - 572101

... APPELLANT

(BY SRI. A. SHANKAR AND M. LAVA, ADVS.)

AND·

THE INCOME TAX OFFICER
WARD-1, AAYAKAR BHAVAN
RAMAKRISHNA NAGAR, KUNIGAL ROAD
TUMKUR - 572105

... RESPONDENT

(BY SRI. K.V.ARAVIND, ADV.)

THIS ITA IS FILED UNDER SECTION 260-A OF I.T.ACT, 1961, PRAYING TO FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW AND SET ASIDE THE FINDINGS TO THE EXTENT AGAINST THE APPELLANT IN THE ORDER PASSED BY THE INCOME TAX APPELLATE TRIBUNAL, BANGALORE IN ITA No.

1622/BANG/2012 DATED 21/02/2014 FOR THE ASSESSMENT YEAR 2009-10 (ANNEXURE-A); AND ETC.

THIS ITA COMING ON FOR ADMISSION THIS DAY, N. KUMAR J. DELIVERED THE FOLLOWING:

JUDGMENT

The assessee has filed the appeal challenging the order passed by the Tribunal.

2. This appeal is admitted to consider the following substantial question of law:

> *"Whether the Tribunal failed in law to appreciate that the interest earned on short-term deposits were only investment in the course of activity of providing credit facilities to members and that the same cannot be considered as investment made for the purpose of earning interest income and consequently passed a perverse order?"*

3. The assessee is a Cooperative Society registered under the provisions of Section 7 of the Karnataka Co-operative Societies Act, 1959. It is engaged in the activity of carrying on the business of

providing credit facilities to its members. It is governed by the provisions of the Karnataka Co-operative Societies Act, 1959, and the Karnataka Co-operative Societies Rules, 1960. The assessee filed its return of income for the assessment year 2009-10 on 30/09/2008 under the provisions of Section 139(1) of the Income Tax Act, 1961 (for short hereinafter referred to as the 'Act'), declaring a total income of Rs. NIL after claiming a deduction of Rs.42,02,079/- under the provisions of Section 80P of the Act. The assessee's case was selected for scrutiny and statutory notice under the provisions of Section 143(2) was issued. The assessee produced all the information to substantiate its claim. The assessing authority, taking note of the insertion of Section 80P(4) of the Act, declined to extend the benefit of deduction under Section 80P(2)(i) and passed an order of assessment, determining a total income of Rs.42,02,079/-, as against the declared income of Rs.NIL. Aggrieved by the said order, the

assessee preferred an appeal to the Commissioner of Income Tax (Appeals)-II. The appellate authority held that assessee's activity is not in the nature of banking and consequently the benefit of deduction under Section 80P of the Act cannot be denied. However, insofar as the income of the assessee consisting of interest earned from short-term deposits with M/s. Allahabad Bank of Rs.1,55,300/- and savings bank account with M/s. Axis Bank of Rs.22,005/-, totaling to Rs.1,77,305/- was held to be liable to income tax in view of the judgment of the Apex Court in the case of **M/S. TOTGARS COOPERATIVE SALE SOCIETY LTD.,** reported in **322 ITR 283 (SC)**. Aggrieved by that portion of the order, assessee preferred an appeal to the Tribunal which has dismissed the appeal following the judgment of the Apex Court in the aforesaid case. Aggrieved by the said order, this appeal is preferred by the assessee.

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 or 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

assessee-Cooperative 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.

The impugned order is hereby set aside. Parties to bear their own cost.

SD/-
JUDGE

SD/-
JUDGE

Rd/-