IN THE HIGH COURT OF KARNATAKA
DHARWAD BENCH

DATED THIS THE 21ST DAY OF FEBRUARY, 2018

PRESENT

THE HON'BLE MRS. JUSTICE S. SUJATHA

AND

THE HON'BLE MR. JUSTICE JOHN MICHAEL CUNHA

ITA NO.100048/2014

C/W ITA NO.100049 & ITA NO.100050/2014

ITA NO.100048/2014:

BETWEEN

BELLAD BAGEWADI KRISHI SEVA
SAHAKARI BANK LTD.,
BELLADA BAGEWADI,
TQ.HUKKERI, DIST: BELGAUM
R/BY ITS MANAGER

... APPELLANT

(BY SRI.M.V.SHESHACHAL, SENIOR COUNSEL FOR SRI.GANGADHAR J.M. AND SRI.P.P.TARIKAR, ADVS.)

AND

THE INCOME TAX OFFICER
WARD 1 (3), BELGAUM
OPP. CIVIL HOSPITAL
DR.B.R.AMBEDKAR ROAD
BELGAUM

... RESPONDENT

(BY SRI.Y.V.RAVIRAJ, ADV.)

THIS ITA IS FILED U/SEC.260A OF THE INCOME-TAX ACT, 1961 PRAYING TO ALLOW THE APPEAL AND SET ASIDE THE IMPUGNED ORDER OF THE INCOME TAX

APPELLATE TRIBUNAL, PANAJI BENCH, PANAJI PASSED IN ITA NO.102/PNJ/2013 RELATING TO ASSESSMENT YEAR 2007-08 (ANNEXURE – A) AND CONFIRM THE ORDER PASSED BY THE COMMISSIONER OF INCOME TAX BELGAUM (A).

ITA NO.100049/2014:

BETWEEN

BELLADBAGEWADIKRISHISEVA
SAHAKARI BANK LTD.,
BELLADA BAGEWADI,
TQ.HUKKERI, DIST: BELGAUM
R/BY ITS MANAGER

... APPELLANT

(BY SRI.M.V.SHESHACHAL, SENIOR COUNSEL FOR SRI.GANGADHAR J.M. AND SRI.P.P.TARIKAR, ADVS.)

AND

THE INCOME TAX OFFICER
WARD 1 (3), BELGAUM
OPP. CIVIL HOSPITAL
DR.B.R.AMBEDKAR ROAD
BELGAUM

... RESPONDENT

(BY SRI.Y.V.RAVIRAJ, ADV.)

THIS ITA IS FILED U/SEC.260A OF THE INCOME-TAX ACT, 1961 PRAYING TO ALLOW THE APPEAL AND SET ASIDE THE IMPUGNED ORDER OF THE INCOME TAX APPELLATE TRIBUNAL, PANAJI BENCH, PANAJI PASSED IN ITA NO.103/PNJ/2013 RELATING TO ASSESSMENT YEAR 2008-09 (ANNEXURE – A) AND CONFIRM THE ORDER PASSED BY THE COMMISSIONER OF INCOME TAX BELGAUM (A).

ITA NO.100050/2014:

BETWEEN

BELLADBAGEWADIKRISHISEVA
SAHAKARI BANK LTD.,
BELLADA BAGEWADI,
TQ.HUKKERI, DIST: BELGAUM
R/BY ITS MANAGER

... APPELLANT

(BY SRI.M.V.SHESHACHAL, SENIOR COUNSEL FOR SRI.GANGADHAR J.M. AND SRI.P.P.TARIKAR, ADVS.)

AND

THE INCOME TAX OFFICER
WARD 1 (3), BELGAUM
OPP. CIVIL HOSPITAL
DR B R AMBEDKAR ROAD
BELGAUM

... RESPONDENT

(BY SRI.Y.V.RAVIRAJ, ADV.)

THIS ITA IS FILED U/SEC.260A OF THE INCOME-TAX ACT, 1961 PRAYING TO ALLOW THE APPEAL AND SET ASIDE THE IMPUGNED ORDER OF THE INCOME TAX APPELLATE TRIBUNAL, PANAJI BENCH, PANAJI PASSED IN ITA NO.104/PNJ/2013 RELATING TO ASSESSMENT YEAR 2009-10 (ANNEXURE – A) AND CONFIRM THE ORDER PASSED BY THE COMMISSIONER OF INCOME TAX BELGAUM (A).

THESE APPEALS COMING ON FOR FINAL HEARING THIS DAY, S.SUJATHA J., DELIVERED THE FOLLOWING:

JUDGMENT

These appeals are filed by the assessee challenging the order of the Income Tax Appellate Tribunal (Tribunal for short) Panaji Bench, Panaji in ITA Nos.102, 103, 104 of 2013, relating to the assessment years 2007-08, 2008-09 and 2009-10, whereby the appeals filed by the revenue are allowed and the cross-objections filed by the assessee has been dismissed.

2. The assessee is a Primary Agricultural Credit Society said to have been registered under the Karnataka Co-operative Societies Act, 1959. It is submitted that the membership of the appellant society is for the agriculturists engaged in agricultural work and other nominal members as per the bye laws of the society. It is contended that the appellant society does not have membership of other co-operative society as members of the appellant cooperative society. It is the case of the appellant that the status of the Primary Agricultural Credit Society which is engaged in the co-operative functioning of providing credit facilities or

accepting the deposit from its members in addition to supply of agricultural goods like seeds, fertilizers, pesticides etc., to its members. It is the contention of the appellant society that as per the Government order dated 11.12.1996, the appellant society changed its name into Bellad Bagewadi Krishi Seva Sahakari Bank and again as per the Government direction the name was changed as Bellad Bagewadi Krishi Seva Sahakari Sangha Limited.

3. The primary function of the appellant society being as aforesaid, it has been recognized as primary co-operative credit society as per the registrar of the co-operative societies. For the assessment year relating to 2007-08, 2008-09 and 2009-10, the appellant society has advanced the short loans to the Vishwanath Sugars Limited, a nominal member for its temporary need for the sugar plant project, wherein the appellant society has earned the interest income from its nominal member and consequently claimed the deduction under Section 80P(2)(a)(i) of the Income Tax Act (Act for short).

Assessing Officer has treated the interest earned from Vishwanath Sugars Limited as income from other sources and denied proportionate expenses including interest cost and also deductions under Section 80P(2)(a)(i) of the Act, on the ground that the said interest earned is not out of regular business activities of the Society i.e., providing credit facilities to the members. The appellant society aggrieved by the same filed appeal before the Appellate Authority – Commissioner of Income Tax (Appeals), whereby the Appellate Authority allowed the appeals.

4. Aggrieved by the same, revenue preferred appeals before the Tribunal. The Tribunal after hearing both the sides, set aside the order and remanded the matter to the Appellate Authority, i.e., Commissioner of Income Tax Appeals and the first Appellate Authority after examining the various factual aspects came to a conclusion that the interest earned by the appellant i.e., the investment in Vishwanath Sugars Limited be considered as interest earned in the course of banking

activities and eligible for exemptions under Section 80P(2)(a)(i) of the Act. The revenue, being aggrieved by the said order of the Commissioner of Income Tax (Appeals), preferred appeal before the Tribunal which came to be allowed. Hence, these appeals by the Assessee under Section 260A of the Act. The relevant substantial questions of law raised are as under:

> *"1. Whether on facts and circumstances of the case, the Appellate Tribunal was justified in coming to the conclusion that the Appellant is not a Primary Agricultural Credit Society when the same is not disputed by the Revenue before the 1st Appellate Authority or before the Assessment Officer?*
>
> *2. Whether on facts and circumstances of the case, the Appellate Tribunal was justified in applying provision of section 80P(4) and disallowing the claim of the Appellant under section 80P(2)(a)(i)?"*

5. Learned Senior counsel Sri.M.V.Sheshachala representing of Sri Gangadhar J.M. and Sri Praveen Tarikar for the assessee would submit that the assessee

is a Primary Co-operative Agricultural and Rural Development Bank. The Tribunal while considering the issue whether the appellant assessee is entitled to deduction under Section 80P(2)(a)(i) of the Act, suddenly shifted to Section 80P(4) of the Act and without providing an opportunity to the assessee to establish whether the assessee is falling under the definition of Primary Co-operative Agricultural and Rural Development Bank, as explained under Section 80P(4) of the Act proceeded to arrive at a decision that the assessee is not falling under the clause Primary Co-operative Agricultural and Rural Development Bank or under the Primary Agricultural Credit Society and held that appellant is not entitled for the benefit of Section 80P(4) of the Act which is wholly unjustifiable and the same calls for interference by this Court.

6. Inviting the attention of this Court to Section 80P(4) of the Act, it was submitted that the provisions of Section 80P(4) of the Act is not applicable in relation to any Co-operative Bank other than the Primary

Agricultural Credit Society or a Primary Co-operative Agricultural and Rural Development Bank. Explanation for the purpose of this Section contemplates that:

> *"a) ....*
>
> *b) "primary co-operative agricultural and rural development bank" means a society having its area of operation confined to a taluk and the principal object of which is to provide for long term credit for agricultural and rural development activities."*

7. The Central Government has notified in the official gazettee, directing a sugarcane grower or sugarcane growers' co-operative society, supplying sugarcane to a factory, and a factory concerned to enter into an agreement to supply or purchase, as the case may be, the quantity of sugarcane fixed under paragraph (c) and in terms of clause 6(a). Notwithstanding anything contained in clause 6, no new sugarcane factory shall be set up within the radius of 15 kms. of any existing sugarcane factory or another new sugar factory in a State or two or more States.

Thus, no outsider can purchase sugarcane or sell sugarcane except as per the control order.

8. Even as per the Section 60 of the Karnataka Co-operative Societies Act, 1959, Co-operative Society was not to make loan to any person other than a member.

9. Member as defined under Section 2(f) of the Act, 1959 provides that a Member is a person registered in the Society including nominal member, as such Vishwanath Sugars is a nominal member.

10. It is also contended that the area of operation is to Kadahatti and Bellad Bagewadi Villages. As such, all the criteria qualifying for a Primary Co-operative Agricultural and Rural Development Bank is fulfilled by the appellant society. Had the Tribunal provided opportunity to the appellant society before passing of the order denying the benefit of deduction under Section 80P(4) of the Act, these vital aspects would have been brought to the notice of the tribunal,

the same having denied assessee is compelled to approach this Court. Accordingly, learned Senior counsel seeks for a remand to the Assessing Officer to putforth their case inasmuch as the exception clause permitted under Section 80P(4) and the explanation thereof.

11. Learned counsel Shri Y.V.Raviraj appearing for the revenue placing reliance on the Circular No.6/2010 dated 20.09.2010 issued by the CBDT submits that the assessee is not entitled for any benefit even under Section 80P(4) of the Act in terms of the said circular. Reliance is also placed on the judgment of the Hon'ble Apex Court in the case of M/s. Totgars Co-operative Sale Society Ltd., vs. The Income Tax Officer in ITA No.1568/2005 disposed of on 30.09.2008. It is contended that the Tribunal being the last fact finding authority has given a finding on facts and the same does not call for any interference by this Court, muchless remand to the Assessing officer.

12. We have given our thoughtful consideration to the arguments advanced by the learned counsel appearing for the respective parties and perused the material on record.

13. On analyzing the facts of the case, vis-à-vis, the provision of the Act, more particularly Section 80P(4) of the Act and the explanation thereof, we find some force in the arguments at the hands of the learned Senior counsel, that an opportunity ought to have been provided by the Tribunal before taking a decision in respect of the application under Section 80P(4) of the Act. In the present set of facts of the case, more particularly, when the authorities under the first round as well as the second round proceeded on the applicability of Section 80P(2)(a)(i) of the Act to the assessee and suddenly the Tribunal shifting the case to Section 80P(4) is without any basis.

14. Having regard to the nature of the facts and circumstances of the case, we find it appropriate to remand the matters to the Assessing Officer to reconsider the issue afresh, providing an opportunity to the assessee to putforth its case, as regards the applicability of Section 80P(4) of the Act and the explanation thereof.

15. Accordingly, these appeals are allowed. The impugned orders are set aside. The matters are remanded to the Assessing Officer to examine the case in the light of observations made as aforesaid coupled with the judgment of the Hon'ble Apex Court in M/s. Totgars Co-operative Sale Society Ltd., vs. The Income Tax Officer in ITA No.1568/2005 disposed of on 30.09.2008 as well as the CBDT Circular No.6/2010 dated 20.09.2010 and shall take a decision in accordance with law in an expedite manner. All the rights and contentions of the parties are left open.

16. In view of the order of remand passed by us, setting aside the impugned judgment and order of the Tribunal, there is no necessity for us to answer the substantial questions of law.

Appeals stand disposed of accordingly.

[Sd/-]
JUDGE

[Sd/-]
JUDGE

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