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IN THE HIGH COURT OF KARNATAKA  
DHARWAD BENCH

**DATED THIS THE 19<sup>TH</sup> DAY OF FEBRUARY, 2018**

PRESENT

**THE HON'BLE MRS. JUSTICE S. SUJATHA**

AND

**THE HON'BLE MR. JUSTICE JOHN MICHAEL CUNHA**

ITA No.100004 OF 2018

BETWEEN:

LALITAMBA PATTINA SOUHARDA  
SAHAKARI NIYAMITA,  
REP. BY ITS CHIEF EXECUTIVE OFFICER  
SRI VIVEK HANUMANTHRAO KULKARNI  
VIVEKANAND ROAD, GANESH TEMPLE,  
BEHIND PRASAD NURSING HOME,  
GADAG – 582101,  
PAN:AAATL5716G

... APPELLANT

(BY SRI. A. SHANKAR, ADV.)

A N D :

THE INCOME TAX OFFICER,  
WARD-1, AAYAKAR BHAVAN,  
NEAR HATALGERI NAKA,  
GADAG - 582101

...RESPONDENT

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

THIS ITA IS FILED UNDER SECTION 260A OF THE INCOME-TAX ACT, 1961, PRAYING TO (A) TO FORMULATE THE SUBSTANTIAL QUESTION OF LAW AS STATED ABOVE AND ANSWER THE SAME IN FAVOUR OF THE APPELLANT AND (B) TO ALLOW THE APPEAL AND SET ASIDE THE ORDERS PASSED BY THE INCOME-TAX APPELLATE TRIBUNAL, "SMC-A BENCH, BANGALORE IN ITA NO.1590/BANG/2016 DATED 31.08.2017 FOR THE ASSESSMENT YEAR 2012-13 (VIDE ANNEXURE-A)

THIS APPEAL COMING ON FOR **ADMISSION** THIS DAY, **S.SUJATHA J.**, DELIVERED THE FOLLOWING:

**JUDGMENT**

This appeal is directed against the order of the Income Tax Appellate Tribunal “SMC-A” Bench : Bengaluru in ITA No.1590/Bang/2016 relating to the assessment year 2012-13, whereby, the appeal filed by the Assessee is dismissed confirming the order of the CIT (Appeals) as well as the assessment order.

2. The appellant is a Co-operative Society, registered under the Karnataka Souharda Sahakari Act, 1997 and is engaged in the business of accepting deposits from the members and providing credit facilities to its members only, as contended. In addition, it also carries on e-stamping business.

3. The appellant filed a return of income on 06.09.2012 declaring a total income of Rs.65,590/- after claiming deduction under Section 80P(2)(a)(i) of the

Income Tax Act, 1961 (for short, 'the Act') at Rs.11,01,302/-. The appellant's case was selected for scrutiny. Notice under Section 143(2) of the Act was issued and served on the appellant. After hearing the appellant, the learned Assessing Officer passed an order under Section 143(3) of the Act determining the total income at Rs.25,08,170/-, denying the deductions under Section 80P(2)(a)(i) of the Act, for interest income earned on bank fixed deposits. Aggrieved by the same, the appellant preferred an appeal before the Commissioner of Income Tax (Appeals)-Hubbaili, who partly allowed the appeal of the appellant upholding the order passed by the Assessing Officer inasmuch as denial of deductions under Section 80P(2)(a)(i). However accepted the claim of appellant of cost of fund and administrative expenses in respect of fund invested which had yielded interest income. Aggrieved by the same, to the extent it was against Assessee, the appeal was preferred before the Income Tax Appellate Tribunal, Bengaluru by the Assessee. The Tribunal after hearing

the parties, dismissed the Appeal. Hence, this appeal by the Assessee. Relevant substantial questions of law raised are as under :

1. Whether the Tribunal was justified in law in holding that the interest income from bank deposits is not business income but is income from other sources and consequently denied the appellant deduction under Section 80P(2)(a)(i) of the Act, on the facts and circumstances of the case?
2. Whether the Tribunal was justified in law in holding that the appellant is not eligible for deduction under Section 80P(2)(a)(i) of the Act in respect of the interest income of Rs.24,83,504/- on the facts and in the circumstances of the case?
4. Learned counsel appearing for the assessee/appellant firstly argued that the Co-ordinate Bench judgment of this Court in **I.T.A. No.307/2014** in the case of **Tunkur Merchants Souharda Credit Co-operative**

**Limited v. The Income Tax Officer, Tumkur**, is squarely applicable to the facts of the present case. Section 80P(1) and 80P(2)(a)(i) of the Act reads thus :

**“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 a 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.”

5. The phrase “attributable to” was considered by this Court in ***Tumkur Merchants Souharda Credit Co-operative Limited*** *supra*, placing reliance on the Hon’ble Apex Court judgment in the case of ***Cambay Electric Supply Industrial Co. Ltd. v. Commissioner of Income-Tax, Gujarat-II*** reported in ***(1978) 113 ITR Page 842***, it is held that “expression “attributable to” being is 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. 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 of a Co-operative Society and is liable to be deducted from its gross total income under Section 80P of the Act”. Thus, the learned counsel submits that the income derived from the interest is attributable to

the activity of carrying on the business of Banking or providing credit facilities to its members by Co-operative Society and has to be deducted from the gross total income under Section 80P(2)(a)(i) of the Act.

6. Secondly, learned counsel submitted that the Assessing Officer computed the income at Rs.25,08,166/- rounded off to Rs.25,08,170/-. Considering the total income (as per return of income filed) at Rs.65,590/-, it is the contention of the learned counsel that interest income on the F.D.R.s. namely F.D.R.s. Karnataka Bank Rs.11,08,505/-; F.D.R.s. Corporation Bank Rs.10,05,661/- and F.D.R.s. Ratnakar Bank Rs.3,38,647/- totaling to Rs.24,52,813/- was taken into account by the assessee, while computing the consolidated income and expenditure account wherein interest received is shown as Rs.1,21,52,715.58 ps. and the surplus for the current year being Rs.11,66,893.94 ps. In the details for interest received from the Bank on fixed deposits this amount of Rs.24,59,020.74 ps. was taken into account. The Assessing Officer, again adding this amount of Rs.24,52,813/- to determine the income at Rs.25,08,166/- is unsustainable.

7. Thirdly, it was submitted that the Tribunal proceeded to hold that the interest income is not business income and is income from other sources under Section 56 of the Act. The Tribunal failed to take note of the fact that the amounts are funded out of members deposits and consequently the same is business income in the facts and circumstances of the case.

8. Nextly, it was contended that Tribunal is not justified in not correctly determining the income from business and not giving set-off of such loss from regular business against the interest income determined under other sources. Thus, it is submitted that even not admitting, but assuming the judgment of the Hon'ble Apex Court in ***Totgar's Co-operative Sale Society Limited v. The Income Tax Officer, Sirsi***, reported in **(2010) 322 ITR 283 SC : (2010)3 SCC 223** is applicable to the facts of the case, in terms of paragraph 14 of the said judgment, the Tribunal ought to have examined whether it was right in law for the Tribunal that the income by way of interest on deposits held with Scheduled banks, bonds and other securities was

chargeable to tax under Section 56 under the head 'Income from other sources' without allowing any deduction in respect of cost of funds and proportionate administrative and other expenses under Section 57 without considering the deduction to which the assessee is entitled to under Section 57 of the Act. The Authorities as well as the Tribunal proceeded to apply the judgment of ***M/s. Totgar's Co-operative Sale Society Limited*** *supra*, which according to the learned counsel is unjustifiable. Further it is submitted that this Court on remand made by the Hon'ble Apex Court in ***Totgar's Co-operative Sale Society Limited*** *supra*, remanded the matter to the Assessing Officer to do the factual exercise in respect of ascertaining the proportionate costs, administrative expenses incurred in respect of such deposits even concluding that the interest earned by the appellant therein is an income from other sources. Such being the position, the matter requires reconsideration by the Assessing Officer on these aspects. Hence the appeal deserves to be allowed answering the substantial questions of law in favour of the assessee.

9. Learned counsel Sri Y.V. Raviraj appearing for the Revenue would contend that the issue involved herein is no more *res integra* in view of the judgment of the Hon'ble Apex Court in **Totgar's Co-operative Sale Society Limited** *supra*, whereby the Hon'ble Apex Court has held that interest received only on investment by the Co-operative Societies in the Banks cannot be said to be attributable either to the activity mentioned in Section 80P(2)(a)(i) of the Act or in Section 80P(2)(a)(iii) of the Act. Such income has to be taxed under Section 56 of the Act. In view of the judgment of the Hon'ble Apex Court in **Totgar's Co-operative Sale Society Limited** *supra*, the Division Bench judgment of this Court in **Tumkur Merchants Souharda Credit Co-operative Limited** *supra*, cannot be made applicable to the case on hand. Hence, Commissioner of Income Tax (Appeals) as well as Tribunal rightly placing reliance on **M/s. Totgar's Co-operative Sale Society Limited** *supra*, held that the assessee is not entitled to any deduction under Section 80P(2)(a)(i) of the Act.

10. Nextly, it is submitted that the Division Bench judgment of this Court in **The Pr. Commissioner of Income**

***Tax, Hubballi v. The Totgar's Co-operative Sale Society Ltd.***, in **I.T.A. No. 100066/2016** and connected matters (D.D. 16.06.2017), has held that income by way of interest earned by the assessee – Co-operative Society on the investments made in the Co-operative Bank are not eligible for deduction under Section 80P(2)(d) of the Act. The same analogy applies for Section 80P(2)(a)(i) of the Act also.

11. However, the learned counsel fairly submits that the computation made by the Assessing Officer in arriving at the income of Rs.25,08,166/- adding the interest on the fixed deposit at Rs.24,52,813/- which was already taken into account by the assessee in the consolidated income and expenditure account in reflecting the interest received at Rs.1,21,52,715.58 ps. requires to be reconsidered. Similarly it is also submitted that in terms of the judgment of the Hon'ble Apex Court in the case of ***Totgar's Co-operative Sale Society Limited*** *supra* even the matter if remanded to the Assessing Officer for reconsideration to determine the proportionate cost of funds and administrative and other expenses to be deducted under Section 57 of the Act, the same would not be of any assistance to the assessee since

the said expenditure has already been reflected in profit and loss account and has been claimed and given deduction by the Assessing Officer.

12. We have given our thoughtful consideration to the arguments advanced at the bar and perused the material on record.

13. The Co-ordinate Bench of this Court in ***Tumkur Merchants Souharda Credit Co-operative Limited*** *supra* has categorically observed that the interest earned by the society in investing in the Banks is attributable to the activity of carrying on business in the 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. The judgment of the Hon'ble Apex Court in the case of ***Totgars Co-operative Sale Society Limited*** *supra* is also considered and distinguished. The view taken by the Andhra Pradesh High Court in the ***Commissioner of Income Tax -III, Hyderabad, v. Andhra Pradesh State Co-operative Bank Limited***, reported in

**(2011) 200 Taxmann 220/12** is also considered whereby Andhra Pradesh High Court has held that the interest earned by the Co-operative Society by investing the fixed deposits in the Banks is entitled for deduction under Section 80P(2)(i)(a) of the Act. It is also pertinent to note that this judgment of the jurisdictional High Court in **Tumkur Merchants Souharda Credit Co-operative Limited** *supra*, has reached finality. As submitted by the learned counsel for the assessee, the applicability of this **Tumkur Merchants Souharda Credit Co-operative Limited** *supra* to the facts of the present case is not considered by the authorities in a right perspective. The Tribunal proceeded to hold that the Commissioner of Income Tax (Appeals) has considered the judgment of **Tumkur Merchants Souharda Credit Co-operative Limited** *supra* as well as **M/s. Totgar's Co-operative Sale Society Limited** *supra* and given the benefit of deduction under Section 80P on the interest or dividend received in respect of income by way of deposits with the Co-operative Banks from its investment. The Tribunal proceeded to consider the deduction given under Section 80P(2)(d) of the Act as the deduction under Section 80P(2)(a)(i) of the Act or in other words deduction given

under Section 80P(2)(d) of the Act would not further entitle the appellant/assessee to claim deduction under Section 80P(2)(a)(i) of the Act. These two provisions being entirely different and distinct, the Tribunal ought to have examined the applicability of Section 80P(2)(a)(i) of the Act in the facts and circumstances of the case. Deduction given under Section 80P(2)(d) of the Act would not disentitle the assessee to claim deduction under Section 80P(2)(a)(i) of the Act. Even assuming as submitted by the learned counsel for the assessee, ***M/s. Totgar's Co-operative Sale Society Limited*** *supra* is applicable to the facts and circumstances of the present case, it was obligatory on the part of the Tribunal being a last fact finding authority to examine the factual aspect in respect of the proportionate costs and administration expenses to be incurred by the appellant regarding the interest earned under Section 56 of the Act and the availability of deduction under Section 57 of the Act to the assessee. This exercise also not being done by the Tribunal merely upholding the order of the Commissioner of Income Tax as well as the Assessing Officer is wholly unsustainable.

14. The judgment relied upon by the learned counsel for the revenue in the case of **Totgar's Co-operative Sale Society Limited** *supra*, deals with Section 80P(2)(d). As aforesaid, Section 80P(2)(d) and Section 80P(2)(a)(i) of the Act being different, the said judgment is not squarely applicable to the facts of the present case. The applicability of Section 80P(2)(a)(i) of the Act has to be considered in terms of the said section. The authorities mixing up the issue of Section 80P(2)(a)(i) and Section 80P(2)(d) cannot reject the claim of the assessee under Section 80P(2)(a)(i) of the Act without giving a proper finding on the issue.

15. It is *prima facie* apparent on record that the Assessing Officer proceeded to compute the income of Rs.25,08,170/- despite the same being accounted by the assessee in the consolidated income and expenditure account for the income returned by the assessee at Rs.11,66,894/-. Income cannot be enhanced to Rs.25,00,000/- for the purpose of levying income tax without considering the actual figures arrived at by the assessee returned while declaring the taxable income. Hence, on this

ground also the computation made by the Assessing Officer requires to be reconsidered.

16. For the aforesaid reasons, the order of the Tribunal as well as the authorities are set aside and the matter is remanded to the Assessing Officer for fresh consideration. All rights and contentions of the parties are left open. The Assessing Officer shall provide an opportunity of hearing to the assessee and pass appropriate orders in the light of the judgment of the Hon'ble Apex Court as well as this Court as referred to above, in an expedite manner.

17. In the circumstances, substantial question of law is not answered.

18. Appeal stands disposed of accordingly.

**Sd/-  
JUDGE**

**Sd/-  
JUDGE**

Svh/hnn