

6 May 2015

To,
The Chief Commissioner of Income Tax
PANAJI, GOA

Respected Sir,

Subject: Disallowance made by Assessing Officers on the decided issues U/s 80P (2)(a)(i).

With reference to the above, we would like to respectfully submit that:

The Co-operative societies carrying on the business of providing credit facilities to its members are eligible deduction U/S 80P(2)(a)(i). The same has been decided by our Jurisdictional Hon'ble High Court of Karnataka in the case of CIT Vs. Biluru Gurubasav Pattin Sahakari Sangha Niyamith Bagalkot in ITA No. 5006/2013 dt. 05/02/2014. Even the Hon'ble High Court of Gujarat in the case of Jafari Momin Vikas Cooperative Credit Society Ltd.,

Based on the above judgment the Jurisdictional Hon'ble Income Tax Appellate Tribunal Bangalore Bench has given number of decisions in favour of the assessee allowing deduction under the above section.

Our professional colleagues observed that, Assessing Officers(AO) in Belgaum are repeatedly disallowing benefit under the above section for assessee whose case has been already decided in the previous years in his favour by CIT (Appeals) Belgaum and ITAT, Bangalore Bench. It was also observed that, the Bagalkot and Vijayapura Income Tax Offices are also following the same practice.

The Assessee/Representatives when bring this to notice of the AO's at the time of assessment, officers are giving standard answers such as they are following instructions from their higher ups or department has filed the case in the Hon'ble Supreme Court. However mere filing of appeal to High Courts or Supreme Court does not make department not to follow the ITAT's or CIT (Appeals) order. This has been decided in number of cases.

Sir, this practice shows that decisions given by the higher authorities are not binding on Assessing Officers and we feel not following the doctrine of judicial discipline by following the decisions of the jurisdictional Appellate Tribunal as they are the decisions are binding in nature and is an act of contempt of court. In this context, we bring your kind attention on the observations by the Hon'ble Supreme Court in the case of *Union of India vs. Kamalakshi Finance Corporation Ltd.* AIR 1992 SC 711 where in it is observed:

“that judicial discipline requires that decision of higher authority should to be followed in the case of quasi-judicial authority and, therefore, a lower officer is bound to follow

the decision of the higher authority e.g. Assessing Officer is bound to follow the decision of the Tribunal particularly so in the case of the same assessee. This principle requires that decisions of higher authorities such as Tribunal should be followed by lower officers, viz., CIT(A) and Assessing Officer. Even decision of the Tribunal, not a jurisdictional tribunal, is required to be followed by the lower authority. Sometimes, an argument is made and also put on record that the Department has not accepted the decision of the Tribunal and Appeal has been preferred to the High Court. However, courts have repeatedly held that phraseology of not accepting the decision is obnoxious and unparliamentary in respect of the order of the higher authority. Unless, in Appeal the order of the higher authority is stayed, it operates as a valid binding decision to the lower authority not only in the case of the same assessee but also in other cases where the same law point is involved. If the Statute is an All India Statute, decisions of benches of the Tribunal at various places are considered as binding on the law point decided on the principle of judicial discipline”

Sir, in view of the above, we humbly submit that, this practice creates an unnecessary hardship on assesses who are working for the benefit of larger portions civil society. Further, the small societies which have filed their Return of Income, they have to pay higher fees to their Consultants for filing repetitive appeals on the same issue.

Sir, due to this, the tax has to be paid by the society upfront and same will be refunded after the appeal. However societies are paying interest on member deposits @ 13% p.a. and receiving interest from department @ 6%. This result in financial loss to the smaller societies, otherwise the AO's are sending attachment letter to DCC banks for recovery.

Hence, we earnestly request you to kindly consider the matter and give suitable instructions to Assessing Officers for carrying out assessments following natural justice as decided in the ITAT and CIT (Appeals) in cases of Co-operative Societies.

Thanking You Sir,

Yours Sincerely,



Ravindra Kore
President, KSCAA
Bengaluru

Copy to: -

1. The Commissioner of Income Tax,
Khimajibhai Complex, Opp Civil Hospital, BELGAUM.
2. The Joint Commissioner of Income Tax,
Aayakar Bhavan, Near All India Radio, Athani Road, VIJAYAPURA.