

**IN THE INCOME TAX APPELLATE TRIBUNAL  
BANGALORE BENCH 'A', BANGALORE**

**BEFORE SMT. ASHA VIJAYARAGHAVAN, JM  
AND  
SHRI ABRAHAM P GEORGE, ACCOUNTANT MEMBER**

**ITA No.843(B)/2014  
(Assessment year : 2010-11)**

Sri Revanasiddeshwar Co-Operative Credit Society, ,  
Main Road, Horti,  
Indi Taluk,  
Bijapur District  
**PAN No.AABAS3319N**

Appellant

**Vs**

The Income-tax Officer,  
Ward-2,  
Bijapur

Respondent

**Assessee by : Shri Sandeep, CA  
Revenue by : Shri Bhaskar Reddy, JCIT**

**Date of hearing : 24-08-2015  
Date of pronouncement : 31-08-2015**

**ORDER**

**PER SMT ASHA VIJAYARAGHAVAN, JM:**

This appeal by the assessee is directed against the order of CIT(A), Belgaum dated 16-04-2014 for the assessment year 2010-11.

2. The assessee is a co-operative society registered under the Karnataka State Co-operative Societies Act. The main object of the assessee was to accept deposits and to provide financial accommodation to the members of the society. It was claimed that the society is entitled to deduction u/s 890P(2)(a)(i) of the IT Act, under chapter VIA, as it is a co-

operative society. However, the claim of the assessee for deduction u/s 80P(2)(a)(i) of the Act is rejected by the AO vide his order dated 30-11-2012. The AO denied the deduction on the ground that the assessee society is a co-operative society and hence not entitled to claim deduction by virtue of Sec.80P(4) of the IT Act, 1961.

3. The AO also made disallowance u/s 43B of the IT Act, by stating as follows;

*“ Disallowance under section 43B: The balance sheet as on 31-03-2010 shows Govt. liability of audit fees at Rs.2,08,450/- for the assessment year 2010-11. The assessee has paid the above liability on 6-12-2010. The above liability was not discharged before the due date for filing the return of income u/s 139(1) of the IT Act. The same is added to total income as per 43B of the IT Act”.*

4. Aggrieved the assessee filed appeal before the CIT(A). The CIT(A) by relying on the decision of Jayalaxmi Mahila Vividodeshagala Souharda Sahakari Ltd.,(2012) 23 Taxman.com 313 (Panaji) observed that the assessee accepts deposits from public thus satisfying the first condition and it also satisfies the other two conditions laid down for co-operative society in the definition as given u/s.5(ccv) in para-v of the Banking Regulation Act, 1949 for becoming “Primary Co-operative Bank”. Hence, the CIT(A) held that the assessee is a ‘co-operative bank’ within the meaning of para-v of Banking Regulation Act, 1949. Therefore, the CIT(A) held that the

provisions of sec.80P(4) are applicable to it and it is not entitled to deduction u/s 80P(2)(a)(i) of the IT Act, 1961.

5. Further, the CIT(A) had also confirmed the order of the AO with respect to disallowance u/s 43B of the IT Act, 1961.

6. Aggrieved the assessee preferred an appeal before us raising the following grounds;

*“1. That the order of the ld.CIT(A) insofar it is prejudicial to the interest of the assessee is bad and erroneous in law and against the facts and circumstances of the case.*

*2. That the ld.CIT(A) erred in law and on facts in not granting deduction of Rs.34,04,147/- u/s 80P(2)(a)(i).*

*3. That the ld.CIT(A) erred in law and on facts in holding that the assessee is a primary co-operative bank and not a co-operative society and such a finding is perverse as being contrary to the materials on record and not being supported by any material and evidences on record.*

*4. The ld.CIT(A) erred in law and on facts in wrongly applying the provisions of sec.80P(4) to the assessee while the provisions will apply only to the banking co-operative institutions.*

*5. The ld.CIT(A) erred in law and on facts in not following the CBDT instructions No.F No.123/06/2007-TPL dated 9<sup>th</sup> May, 2008.*

*6. The ld. CIT(A) erred in law in not following the binding decision of the jurisdictional Appellate Tribunal i.e Income Tax Appellate Tribunal, Bangalore Bench.*

*7. The ld. CIT(A) erred in law in disallowing Rs.2,08,450/- u/s 43B on the ground that audit fee payable to co-operative*

*auditors was not discharged before the due date of filing return on income u/s 139(1) of the IT Act, 19161 even though it's not covered u/s 43B.*

*8 .Each of the above grounds is without prejudice t one another and the assessee craves leave of the Hon'ble Income Tax Appellate Tribunal, Bangalore to add, delete, amend or otherwise modify one or more of the above grounds either before or at the time of hearing of this appeal “.*

7. The learned counsel for the assessee submitted that both the issues which are agitated before the Hon'ble Tribunal which was covered by the decision of the Co-ordinate bench of this Tribunal in the case of M/s Jamakhandi Co-operative Credit Society Ltd., Vs ITO in ITA Nos.1358 & 1359(B)/2013 vide order dated 22-01-2015.

8. On the other hand, the learned DR did not raise any objection.

9. The learned counsel for the assessee submitted that the issue relating to deduction u/s 80P(2)(a)(i) of the OIT Act stood decided by the Hon'ble jurisdictional High Court in the case of CIT Vs Sri Biluru Gurubasava Pattina Sahakari Sangha Niyamitha, Bagalkot in ITA No.5006(B)/2013 dated 5.2.2014. According to the learned counsel the byelaws of the society did not prohibit any other society from becoming a member in so far the disallowance u/s 43B of the IT ACT is concerned, the learned counsel also submitted that the decision of the Hon'ble Bombay High Court in the case of CIT Vs Shree Warna Sahakari Sakhar Karkhana Ltd 253 ITR 226 was directly on the issue.

10. We have heard both parties and perused the material on record. Following the judgment of the jurisdictional High Court in the case of Sri Biluru GUrubasava Pattina Sahakari Sangha Niyamitha, Bagalkot and the Co-ordinate Bench of this Tribunal in the case of M/s Jamakhandi Co-Operative Credit Co-operative Society Ltd (Supra) we direct that the disallowance u/s 80P(2)(a)(i) of the IT Act for the impugned assessment year to be deleted.

11. Vis-à-vis the second issue raised with respect to 43B of the IT Act, we find that the Co-ordinate Bench of the Tribunal in the case of M/s Jamakhandi Urban Minority Co-Operative Credit Society Ltd. Vs ITO, relying on the decision of the Hon'ble Bombay High Court in the case of Sree Warna Sahakari Sakhar Karkhana Ltd in ITA No.1328(B)/2013 dated 19-09-2014 has held that the Government audit fees payable by the society was not covered by sec.43B of the Act. Therefore, the disallowance in our opinion, was not rightly done and such disallowance stands deleted.

12. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open Court on the 31<sup>st</sup> August, 2015.

**Sd/-**  
**(ABRAHAM P GEORGE)**  
**ACCOUNTANT MEMBER**  
**Place : Bangalore:**  
**D a t e d : 31-08-2015**  
**am\***

**Sd/-**  
**(ASHA VIJAYARAGHAVAN)**  
**JUDICIAL MEMBER**

D a t e d :

Place: Bangalore

**am\***

**Copy to :**

- 1 Appellant
- 2 Respondent
- 3 CIT(A) Bangalore
- 4 CIT
- 5 DR, ITAT, Bangalore.
- 6 Guard file

By order  
AR, ITAT, Bangalore