

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

**BEFORE SHRI VIJAYPAL RAO, JUDICIAL MEMBER  
and  
SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER**

ITA No.907/Bang/2015  
(Assessment year: 2010-11)

Income-tax Officer,  
Ward-2,  
Bagalkot.

... Appellant

Vs.

Vijay Souhard Credit Sahakari Ltd.  
Nirani Buildings, Mudhol Dist.  
Bagalkot.  
*PAN:AAHFV 0308 H*

... Respondent

Appellant by : Shri Sunil Kumar Agarwala,JCIT(DR)  
Respondent by : Shri Chaitanya V. Mudrabetu, Advocate

Date of hearing : 02/02/2016  
Date of pronouncement : 24/02/2016

**O R D E R**

**Per INTURI RAMA RAO, AM :**

This is an appeal filed by the revenue and is directed against the order of the Id.CIT(A), Belagavi, dated 01/04/2015 for the assessment year 2010-11.

2. The revenue raised the following grounds of appeal:

*" (1) The learned CIT(Appeals) erred in law and on facts in not appreciating the fact that the assessee is a co-operative society which fulfills all the three conditions of being held a Primary Co-operative Bank as*

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*given in section 5(ccv) of the Banking Regulation Act, 1949.*

*(2) The learned CIT(Appeals) erred in law and on facts in not appreciating the definition of a co-operative bank which as per Explanation below section 80P(4) "the co-operative bank" shall have the meaning assigned to it in Part-V of the Banking Regulation Act, 1949.*

*(3) The learned CIT(Appeals) erred in law and on facts in not appreciating the fact that the assessee society being a credit co-operative society engaged in banking business is a Primary Co-operative Bank within the definition of section 5(ccv) of the Banking Regulation Act, 1949 and as such, not eligible for deduction under section 80P(2)(a)(i) of the I.T.Act, 1961.*

*(4) The learned CIT(Appeals) erred in not appreciating the facts of the case and also relying upon the decision of High Court of Karnataka in CIT vs. Sri Biluru Gurubasava Pattin Sahakari Sangh Niyarnit, Bagalkot, ITA No.5006/213, dated 5.2.2014 and other decisions ignoring the fact that the ITAT, Panaji Bench, has categorically distinguished the decision of Sri Biluru Gurubasava Pattin Sahakari Sangh Niyarnit, in various cases of cooperative society and held that the decision is in regard to revisionary order u/s 263. "*

3. Briefly the facts of the case are that the respondent- assessee is a co-operative society registered under the provisions of the Karnataka Co-operative Societies Registration Act. It is engaged in the business of accepting deposits from its members and extending credit facilities to its members. Return of income for the assessment year 2010-11 was filed on 14/09/2011 after declaring nil income after claiming deduction u/s 80P(2)(a)(i) of the Income-tax Act, 1961 [‘the Act’ for short]. The said return of income was taken for scrutiny assessment and the assessment u/s 143(3) was completed by the ITO, Ward-1, Bagalkot, vide

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order dated 30/11/2012 on a total income of Rs.34,25,662/-. While doing so, the Assessing Officer (AO) denied the exemption claimed by the assessee-society u/s 80P by holding that the assessee-society is engaged in the banking business and therefore, the provisions of sec.80P(4) of the Act are applicable. The AO further held that after insertion of sec.2(24)(viiia) by the Finance Act, 2006 w.e.f. 1/4/2007, profits and gains from business of banking carried on by a co-operative society with its members are taxable.

4. Being aggrieved by this order of the AO, an appeal was preferred before the Id.CIT(A) who allowed the claim of the assessee-society by placing reliance on the following decisions:

- i. *CIT vs. Sri Biluru Gurubasava Pattina Sahakari Sangha Niyamitha* (369 ITR 86)(Kar);
- ii. *CIT vs. Bangalore Commercial Transporter Credit Society* (ITA No.351/2011 & ITA No.599/2013)(Kar);
- iii. *CIT vs. General Insurance Employees Credit Co-operative Society Ltd.*, (ITA No.273/2013)(Kar)
- iv. *CIT vs. Sri Vasavi Multipurpose Souhardha Sahakari Sangha Niyamita* (ITA No.505/2013)(Kar)
- v. *CIT vs. Jafari Mom in Vikas Coop Credit Society Ltd.*(ITA 442, 443 & 863 of 2013)(Guj)

5. Being aggrieved by the decision of the Id.CIT(A), the revenue is before us with the present appeal.

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The learned Departmental Representative vehemently contested that the Id. CIT(A) ought not to have allowed deduction u/s 80P as it is engaged in the business of banking to its members.

On the other hand, learned counsel for the assessee-society had placed reliance on the decision of the jurisdictional High Court in the case of *Sri Biluru Gurubasava Pattina Sahakari Sangha Niyamitha* (supra).

7. We heard the rival submissions and perused the material on record. The issue in appeal i.e. the allowability of deduction u/s 80P to the co-operative society which is engaged in the business of extending credit facilities to its members is no more *res integra*, as the jurisdictional High court, in the series of following decisions held that where co-operative societies are not carrying on the activity of banking as defined u/s 5(b) of the Banking Regulation Act, therefore, such societies are entitled for deduction u/s 80P of the Act:

- i. *CIT vs. Mysore University Employees Co-operative Credit Society Ltd.* (ITA No.298/2013)
- ii. *CIT vs. General Insurance Employees Credit Co-operative Society Ltd.*, (ITA No.273/2013)(Kar)
- iii. *CIT vs. Sri Vasavi Multipurpose Souhardha Sahakari Sangha Niyamita* (ITA No.505/ 2013) (Kar)

The above decision was again reiterated in the case of *CIT vs. Sri Laxmi Credit Souhard Sahakari Ltd.* (65 taxmann.com 96(Kar).

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Applying the above legal position to the facts of the present case, it is undisputed fact that the assessee-co-operative society is not engaged in the business of banking and no such permission was given by the Reserve Bank of India to carry on business of banking to the respondent co-operative society. Therefore, when the co-operative society did not satisfy all the three basic conditions mentioned in sec.5(cc), 5(ccv) of the Banking Regulation Act to become primary operative bank, this cannot be treated as a co-operative bank so as to deny deduction u/s 80P of the Act.

8. In the result, the appeal filed by the revenue is dismissed.

*Order pronounced in the open court on this 24<sup>th</sup> day of February, 2016*

sd/-  
**(VIJAY PAL RAO)**  
**JUDICIAL MEMBER**

sd/-  
**(INTURI RAMA RAO)**  
**ACCOUNTANT MEMBER**

Place : Bangalore  
D a t e d : 24/02/2016

*srinivasulu, sps*

**Copy to :**

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

By order

Assistant Registrar  
Income-tax Appellate Tribunal  
Bangalore