

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

**BEFORE SHRI SUNIL KUMAR YADAV, JUDICIAL MEMBER
AND
SHRI A.K GARODIA, ACCOUNTANT MEMBER**

ITA Nos.2603 & 2604/Bang/2017
(Asst. Year – 2013-14 & 2014-15)

M/s Srinagara Credit Co-operative Society Ltd.,
No.36-2/48, Sapthasri, 15th Main Road,
Sri Ramanjenaya Street Sriranga,
Bengaluru.
PAN – AAAA59196A.

. Appellant

Vs.

The Income-tax Officer,
Ward-5(2)(4),
Bengaluru.

. Respondent

Appellant by : Shri S.V Ravishankar, Advocate
Respondent by : Dr. P.V Pradeepkumar, Addl. CIT

Date of Hearing : 04-10-2018
Date of Pronouncement : 15-10-2018

ORDER

PER SHRI SUNIL KUMAR YADAV, JUDICIAL MEMBER :

These appeals are preferred by the assessee against the order of the CIT(A), *inter alia*, on following grounds:

“1. The order of the learned Commissioner of Income-tax [Appeals] - 5 in so far it is against the appellant is opposed to law, weight of evidence, facts and circumstances of the Appellant's case.

2. The appellant denies itself liable to be assessed on total income of Rs.51,64,480/- as against the returned

income by the appellant of Rs.NIL/- after claiming eligible deduction under section 80 P [2] of the Act, on the facts and circumstances of the case.

3. *The learned Commissioner of Income-tax [Appeals] is not justified in law in confirming the denial of eligible deduction made by the learned assessing officer claimed by the appellant of Rs. 19,19,836/- under the provisions of section 80 P [2][a][i] of the Act as income from business and Rs. 32,44,647/- being the interest received by the appellant from its investment and claimed deduction under the provisions of section 80 P [2][d] of the Act on the facts and circumstances of the case.*

4. *The learned Commissioner of Income-tax [Appeals] failed to appreciate that the appellant is not a Co-Operative Bank within the meaning of Part - V of the Banking Regulation Act, 1949, to which the Explanation to section 80 P [4] of the Act draws reference and consequently, the provisions of section 80 P [4] of the Act are not applicable to the case of the appellant.*

5. *The learned Commissioner of Income-tax [Appeals] is not justified in holding that the Appellant has violated the bye-laws and the Karnataka Societies Registrations Act, 1959 without even properly verifying the facts of the appellant and erroneously denied the eligible claim of deduction by the appellant under section 80 P [2][a][i] of the Act, on the facts and circumstances of the case.*

6. *Without prejudice, though not conceding, the learned Commissioner of income-tax [Appeals] ought to have allowed deduction under section 80 P [2] of the Act proportionately, in so far as the income attributable to the activities of the appellant which are not in violation of the provisions of section 80 P [2] of the Act on the facts and circumstances of the case.*

7. *Without prejudice the learned authorities below ought to have allowed the corresponding expenditures proportionately on income earned by the appellant from investments which was claimed as deduction under section 80 P [2][d] of the Act, on the facts and circumstances of the case.*

8. *Without prejudice the learned authorities below did not give the appellant a reasonable opportunity of hearing and produce the documents in support of the case of the appellant which is against the principles of natural justice and consequently the impugned orders passed requires to be cancelled on the facts and circumstances of the case.*

9. *Without prejudice to the right to seek waiver as per the parity of reasoning of the decision of the Hon'ble Apex Court in the case of Karanvir Singh 349 ITR 692, the Appellant denies itself liable to be charged to interest under section 234 B of the Income Tax Act under the facts and circumstances of the case. Further the levy of interest under section 234 B of the Act is also bad in law as the period, rate, quantum and method of calculation adopted on which interest is levied are all not discernible and are wrong on the facts of the case.*

10. *The appellant craves leave to add, alter, substitute and delete any or all of the grounds of appeal urged above.*

11. *For the above and other grounds to be urged during the hearing of the appeal the Appellant prays that the appeal be allowed in the interest of equity and justice.”*

2. During the course of hearing, the learned DR has invited our attention to the order of the AO with the submission that AO has

recorded that the assessee was registered under the Karnataka Karnataka Souhardha Sahakari Act 1977, therefore, the assessee is not entitled for any deduction u/s 80P of the Act as it is not a cooperative society. Whereas, the Id counsel for the assessee has strongly contended that it was registered under cooperative society Act and in support of its contention, he placed registration certificate and the copy of the bye laws. The documents filed by the assessee were disputed by the Id DR with the submission that on the first page of bye laws appeared at page No.25, there is reference of one registration no at page 6. It is also pointed that as to how the registration No. was mentioned. It was also contended that it is not clear as to whether the assessee got registered itself under the Souhardha Act on its conversion. These facts are required proper verification.

3. The Id DR further placed reliance upon the order of the Tribunal in the case of M/s Udaya Souharda Credit Co-operative Society Limited Vs. ITO in ITA No.2831/Bang/201, in which Tribunal has restored the matter to the AO in order to verify whether any cooperative registered under the Karnataka Souhardha Sahakari Act 1977 is eligible for deduction u/s 80P of the Act. Therefore, in the light of these facts this matter should go back to AO for re-consideration of the entire issue.

4. The Id counsel for the assessee on the other hand has strongly

contended that assessee is registered as cooperative society under the Karnataka Co-operative Society Act. The ld counsel for the assessee however agreed that let the matter be sent back to AO for re-adjudication of the issue in the light of the judgment of the Apex Court in the case of the Citizen Co-operative Ltd. Vs. ACIT, 397 ITR 1.

5. Having carefully examined the order of the authorities below and the documents filed before us and also in the light of rival submissions, we find that assessee has placed registration certificate dated 28/6/2000 in order to demonstrate that it was registered under the Karnataka Souhardha Sahakari Act 1959 Act as Cooperative Society but side by side AO has categorically observed in its order that assessee has registered under the Karnataka Souhardha Sahakari Act 1977 and in the asst. order assessee itself has admitted that it is covered under Karnataka Souhardha Sahakari Act 1977. The scope of registration under the Karnataka Souhardha Sahakari Act 1977 has been examined by Tribunal in the case of M/s Udaya Souharda Credit Co-operative Society Limited (Supra) in which it has been held that a Society has to be registered under the Karnataka Society Act 1977 as Cooperative society for claiming deduction under 80P of the Act. In any case, the matter was to be referred to the AO to examine whether the assessee was registered under the Karnataka Cooperative Souhardha Act or Karnataka Cooperative Society Act to make eligible for deduction under sec. 80P of the Act. In the instant case

undisputedly there is a reference of registration No. on the 1st page of bye laws. Therefore it becomes necessary to verify that in what connection the registration No. is mentioned on the first page of bye laws. All these issues requires proper adjudication after making necessary verification. Under these circumstance, we are of the view that the matter should be examined by the AO afresh in the light of the order of the Tribunal in the case of M/s Udaya Souharda Credit Co-operative Society Limited (Supra) and the judgment of the Apex Court in the case of Citizen Co-operative Ltd. Vs. ACIT (Supra). Accordingly, order of CIT(A) is set aside and matter is restored to the file of the AO for re-adjudication after affording opportunity of being heard to the assessee.

6. In the result, appeals of the assessee are allowed for statistical purposes.

Order pronounced in the open court on 15th OCT, 2018.

Sd/-

(A.K GARODIA)

ACCOUNTANT MEMBER

Bangalore

Dated : 15/10/2018

Vms

Copy to :1. The Assessee
2. The Revenue
3.The CIT concerned.
4.The CIT(A) concerned
5.DR
6.GF

Sd/-

(SUNIL KUMAR YADAV)

JUDICIAL MEMBER

By order

Asst. Registrar, ITAT, Bangalore

1. Date of Dictation
2. Date on which the typed draft is placed before the dictating Member
3. Date on which the approved draft comes to Sr.P.S
4. Date on which the fair order is placed before the dictating Member
5. Date on which the fair order comes back to the Sr. P.S.
6. Date of uploading the order on website.....
7. If not uploaded, furnish the reason for doing so
8. Date on which the file goes to the Bench Clerk
9. Date on which order goes for Xerox & endorsement.....
10. Date on which the file goes to the Head Clerk
11. The date on which the file goes to the Assistant Registrar for signature on the order
12. The date on which the file goes to dispatch section for dispatch of the Tribunal Order
13. Date of Despatch of Order.