

IN THE INCOME TAX APPELLATE TRIBUNAL

“B” BENCH : BANGALORE

BEFORE SHRI N.V. VASUDEVAN, JUDICIAL MEMBER AND SHRI ARUN
KUMAR GARODIA, ACCOUNTANT MEMBER

ITA No.2516/Bang/2017
Assessment Year : 2010-11

M/s. Snehasagara Souhardha Co-operative Ltd., Gangavathi Road, Sindhanur – 584 128. Dist. Raichur. PAN: AACAS0492F	Vs.	The Income Tax Officer, Ward – 2, Raichur.
APPELLANT		RESPONDENT
Assessee by	:	Smt. Jinita Chaterjee, Advocate
Revenue by	:	Smt. Sri Nandini Das, Addl. CIT (DR)
Date of hearing	:	11.10.2018
Date of Pronouncement	:	12.10.2018

ORDER

Per Shri A.K. Garodia, Accountant Member

This appeal is filed by the assessee and the same is directed against the order of Id. CIT(A), Gulbarga dated 18.09.2017 for Assessment Year 2010-11.

2. The grounds raised by the assessee are as under.

“1. On the facts and in the circumstances of the case, the learned Commissioner of Income-tax (Appeals) erred in passing the order in the manner he did.

2. The learned CIT(A) grossly erred in disallowing Rs.13,31,254/- under section 80P(2)(a)(i) of the Act without appreciating the fact that the appellant is a co-op society and not a cooperative Bank.

3. The learned CIT(A) ought to have appreciated that the Appellant was entitled to the exemption under Section 80P(2)(a)(i) of the Act since it is a society providing credit facilities to its members only and the society per se was not carrying on business of banking.

4. The learned CIT (A) ought to have appreciated that the bar provided under Section 80P (4) of the Act was only with regard to the Co-operative bank and the said bar was not applicable to the Appellant-society.

5. The learned CIT(A) erred in not considering the fact that the appellant co-op is permitted do the mutual benefit activity of

acceptance of deposit only from the member and also provides credit facilities only to the members and is not permitted to engage in full scale banking business as permitted by the provisions of Banking Regulating Act, 1949.

6. On the facts, the learned CIT(A) ought to have accepted the explanation offered by the Appellant and allowed the exemption to the Appellant-Society as claimed in the return.

7. The learned CIT(A) erred in relying on the judgment of the Hon'ble Supreme Court in the case of Citizen Co-operative Society (TS-326 SC 2017) dt.16thAugust 2016 without appreciating the facts of the present case which is completely different and the above Supreme Court judgment is distinguishable.

8. Without prejudice, the addition as confirmed by the learned CIT(A) is arbitrary, excessive, unreasonable and ought to be deleted in full.

9. The learned CIT(A) erred in confirming interest charged under Section 234B of the Act by the Assessing Officer.

10. For these and such other grounds that may be urged at the time of hearing, the Appellant prays that the appeal may be allowed.”

3. At the very outset, it was pointed out by the bench that in the present case, the assessee is a Souharda Credit Co-operative Ltd. and the Tribunal has taken a view in the case of M/s. Udaya Souharda Credit Co-operative Society Ltd. Vs. ITO in ITA No. 2831/Bang/2017 dated 17.08.2018 wherein it was held that no assessee can claim to be a co-operative society in the absence of proper registration under the Co-operative Societies Act. The Tribunal also held that if the creation of Co-operative Society under the Co-operative Societies Act is doubtful, the claim of deduction u/s. 80P cannot be allowed. In that case, the matter was restored back to the file of AO to examine various aspects after making necessary enquiry and investigation and then passing a reasoned order. Para 13 of this Tribunal order is relevant which is reproduced hereinbelow for ready reference.

“13. We have also carefully perused the cause title in the assessment order and in the cause title of the assessment order, we find that assessment order was passed in the name of Udaya Souharda Credit Co-operative Society Ltd., whereas no certificate of registration was placed before us in the name of Udaya Souhardha Credit Co-operative Society ltd. Therefore, we are unable to understand how the assessee can claim it to be the

co-operative society in the absence of proper registration under the Karnataka Co-operative Societies Act. Creation of Co-operative Society under the co-operative societies Act is doubtful. Thus the claim of deduction under section 80P cannot be allowed. As per the provisions of section 80P of the Act, deduction can only be allowed to the co-operative societies registered under the co-operative societies Act. Without a proper registration under co-operative societies Act, nobody can claim it to be co-operative society as the activities of the co-operative societies are to be controlled under the co-operative societies Act through Registrar of the Cooperative Societies. Since all these new points have been raised during the course of hearing before us and according to us all these points goes to the root of the case, we are of the view that proper adjudication of the issues is required by the AO. We accordingly set aside the order of the CIT (A) and restore the matter to the AO to reexamine all these aspects by making necessary enquiry and investigation and also by passing a reasoned order in this regard. Since we have restored the matter to the AO, we find no justification to adjudicate the issue raised on merit. Accordingly, order of the CIT (A) is set aside and matter is restored to the AO for adjudication of the impugned issue in terms indicated above.”

4. The bench pointed out that in the present case also, no certificate of registration is placed before us in the name of present assessee M/s. Snehasagara Souhardha Co-operative Ltd. and therefore, the bench put forward a proposition that respectfully following this Tribunal order, in the present case also, the matter should be restored to AO for fresh decision with similar directions. In reply, both sides agreed to this proposition put forward by the bench. Hence, we set aside the order of Id. CIT (A) and restore the matter back to the file of AO for a fresh decision with the same directions as were given by Tribunal in that case as per Para 13 of that Tribunal order reproduced above. We also hold that in view of this decision, no adjudication on merit is called for at the present stage.
5. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on the date mentioned on the caption page.

Sd/-
(N.V. VASUDEVAN)
Judicial Member

Bangalore,
Dated, the 12th October, 2018.

/MS/

Sd/-
(ARUN KUMAR GARODIA)
Accountant Member

Copy to:

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

By order

Assistant Registrar,
Income Tax Appellate Tribunal,
Bangalore.