

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

**BEFORE SHRI N. V. VASUDEVAN, VICE PRESIDENT AND
SHRI JASON P BOAZ, ACCOUNTANT MEMBER**

I.T. A. Nos.2549 and 2550/Bang/2017
(Assessment Years : 2013-14 and 2014-15)

M/s. Universal Credit Souharda Sahakari Niyamitha,
No.BG 05, Ground Floor, Brigade Mejestic,
1st Main, Gandhinagar,
Bangalore – 560 009.
PAN AAAAU 2525 R

.... Appellant.

Vs.

Income Tax Officer,
Ward 5(2)(3), Bangalore.

..... Respondent.

Appellant By : None

Respondent By : Smt. Sri Nandini Das, Addl. CIT (DR)

Date of Hearing : 26.11.2018.

Date of Pronouncement : 19.12.2018.

ORDER

Per Shri Jason P Boaz, A.M. :

These appeals by the assessee are directed against the orders of Commissioner of Income Tax (Appeals)-5, Bangalore dt.21.08.2017 for the Assessment Years 2013-14 and 2014-15. Since none was present for the assessee when the case was called for hearing on 26.11.2018, these

appeals are disposed off with the assistance of the learned DR for Revenue and the material on record.

2.1 Briefly stated, the facts of the case, as borne out from the orders of the authorities below, are that the assessee claimed deduction under Section 80P(2)(a)(i) of the Act. The authorities below rejected the assessee's claim for the reason that the primary / principal business of the assessee is transacting in banking business, therefore the assessee is a primary co-operative bank and it does not fall under the second category of co-operative credit societies as envisaged under Section 80P of the Act. In coming to this finding the Assessing Officer also placed reliance on the decision of the Hon'ble Apex Court in the case of Totgars Co-operative Sale Society Ltd. Vs. ITO in C.A. Nos.1622 to 1629 of 2010 wherein it was held that interest earned by co-operative societies on surplus funds invested in short term deposits are not eligible for deduction under Section 80P of the Act.

2.2 Aggrieved by the orders of assessment for Assessment Years 2013-14 and 2014-15, the assessee filed appeals before the CIT (Appeals)-5, Bangalore. The learned CIT (Appeals) dismissed the assessee's appeals vide the impugned orders both dt.21.08.2017 for

Assessment Years 2013-14 and 2014-15. While disposing the aforesaid appeals, the CIT (Appeals) has also considered the judgment of the Hon'ble Apex Court in the case of Citizen Co-operative Society Ltd. Vs. ACIT 397 ITR 1 (SC).

3. Aggrieved by the orders of the CIT (Appeals)-5, Bangalore dt.21.08.2018 for Assessment Years 2013-14 and 2014-15, the assessee has preferred these appeals before the Tribunal wherein it has raised the following grounds which are similar; except for the quantum of disallowance. We, therefore, extract hereunder the grounds for Assessment Year 2013-14 only:-

1. The order of the learned CIT(A)-5 is opposed to law and facts of the case.
2. Whether on the facts and circumstances of the case, the learned CIT(A)-5 was justified in not allowing deduction u/s 80P(2)(a)(i) of the Income Tax Act, 1961 to the appellant co-operative society carrying on the business of providing credit facility to members, treating it as co-operative bank.
3. Whether the learned CIT(A)-5 was justified in upholding the additions made by learned ITO, Ward-5(2)(3) treating the appellant co-operative society as bank and disallowing the claim of deduction of Rs.32,08,278/- for the A Y 2013-14.
4. Whether the learned CIT(A)-5 was justified in not considering the observations made by the Honourable Supreme Court in the case of Citizen Co-operative Society Limited, Hyderabad Vs ACIT wherein it was held that Section 80P of the Act is benevolent provision and such a provision have to be read liberally, reasonably and in favour of the assessee.
5. Whether CIT(A)-5 was correct in treating the appellant society on par with Citizen Co-operative Society Hyderabad, without verifying the fact that Section 22 of Karnataka Souharda Sahakari Act, 1997 which prohibits collection of deposits from nominal members and non members.
6. Whether CIT(A) was correct in not following the judgment of jurisdictional Honourable High Court, Dharwad Bench in the case of Sri Bilur Gurubasava Pattina Sahakari Sangha Niyamitha, Bagalkot in IT. No. 5006/2013 and several other cases.
7. Whether CIT(A) was correct in not following the judgments of jurisdictional Honourable High Court, in th case of Tumkur Merchants Souharda Credit Co-operative Limited Vs ITO in ITA No.307 of 2014 dated 28.10.2014, in not allowing the deduction u/s 80P(2)(a)(i) of the Income Tax Act, 1961 for the interest earned on investments.
8. For these and other grounds that may be urged at the time of hearing of the appeal the Appellant prays that the appeal may be allowed.

9. The appellant craves leave to add, alter, amend and/or delete any of the grounds mentioned above.

4. The learned Departmental Representative for Revenue, in the course of hearing before us, raised serious objections questioning the very basis of the assessee's entitlement for deduction under Section 80P of the Act on the ground that the assessee is registered under the Karnataka Souharda Sahakari Act, 1997 and under the said Act, Co-operative Societies are not being registered. The learned Departmental Representative contends that in view of the above, the assessee has wrongly represented itself as a co-operative society for claiming deduction under Section 80P of the Act; since the deduction there under is allowed only to co-operative societies and not to co-operatives registered under the Karnataka Souharda Sahakari Act, 1997. The learned DR further contended that Co-operative and Co-operative Societies are 2 different entities. If the co-operative wants to convert itself into a co-operative society, it has to be converted as per the Amending Act 13/2004 which provides conversion of cooperative under the Karnataka Souharda Act, 1997 into Co-operative Society. In the Co-operative Society Act, the Co-operative has also been defined according

to which the co-operative means a co-operative registered under the Karnataka Souharda Sahakari Act, 1997 (Karnataka Act 17 of 2000) and includes union co-operative and the federal co-operatives. The learned DR further invited our attention to the Karnataka Souharda Sahakari Act also in which the co-operative word has been defined in clause 2(e) according to which co-operative means a Co-operative including a co-operative bank doing the business of banking registered or deemed to be registered under section 5 and which has the word Souharda Sahakari in its name. In Souharda Sahakari Act, the word co-operative society has also been defined in clause 2(g), according to which the co-operative society means a co-operative society registered under the Karnataka Co-operative Societies Act, 1959. If both the Acts are read jointly, it would be very clear that the co-operative and co-operative Societies are two different entities. The benefit of deduction can only be given to the co-operative societies and not to the co-operative. Therefore, it is likely that the assessee is not even eligible to claim deduction under section 80P(2) of the Act.

5.1 We have heard the rival contentions, perused and carefully considered the material on record; including the written submissions

and details filed and the judicial pronouncements cited. Though various grounds have been raised and arguments put forth, they all relate to the assessee's claim of deduction under Section 80P(2) of the Act. From a perusal of the material before us, we find that a co-ordinate bench of this Tribunal in the case of Udaya Souharda Credit Co-operative Society Ltd. in order in ITA No.2831/Bang/2017 dt.17.8.2018 has considered and addressed the identical issue and restored the matter to the file of the Assessing Officer to re-examine all aspects of the assessee's claims for deduction under Section 80P(2) of the Act for adjudication by way of a reasoned and speaking order in the light of observations made and directions issued at paras 7 to 13 thereof which are extracted hereunder :-

“ 7. Having carefully examined the orders of authorities below in the light of rival submissions, we find that while adjudicating the issue of claim of deduction under section 80P(2) of the Act, the AO confined himself to the claim of entitlement and has denied the same having observed that the assessee was engaged in transacting in banking business and thus it is a primary co-operative bank and does not form the second category of co-operative credit societies. When the matter travelled to CIT(A), the CIT(A) has also examined the claim of the assessee in the light of judgment of the Apex Court in the case of Citizen Co-operative Society Ltd., Vs. ACIT (supra), wherein it was held that where the assessee being a co-operative society advances loan to members of general public without any approval from the Registrar of Societies, the activity of the Co-operative Society is in violation of co-operative societies Act and the co-operative credit society was not entitled to deduction under section 80P(2)(i)(a) of the Act.

8. Now, during the course of hearing of the appeals, the learned DR has raised a few valid points which cannot be outrightly ignored. The learned DR has specifically raised an issue that assessee is only a co-operative registered under the Karnataka State Souharda Sahakari

Act. Since the assessee is not a co-operative society, it is not entitled/eligible for deduction under section 80P(2) of the Act. Though this argument was raised first time before the Tribunal at this stage, but when it is a legal argument and goes to the root of the case, it cannot be outrightly ignored. Therefore, we have to examine the argument raised by the learned DR in this regard. Under section 80P, the deduction is to be allowed only to the co-operative societies as per sub section 1 of the Act. In the entire section 80P, the word used is only a "cooperative societies" and no where reference was made to the co-operatives.

9. Presently we are concerned with the Karnataka and the Karnataka State has notified Karnataka Co-operative Societies Act, 1959 as well as the Karnataka Souharda Sahakari Act, 1997 and even at present both the Acts are in force simultaneously. Under the Karnataka Co-operative Societies Act, the Co-operative Societies are registered and under the Karnataka Souharda Sahakari Act, only Co-operatives are registered. The object of introducing the Karnataka Souharda Sahakari Act has been given in Act 17/2000, Amending Act 21/2004, Amending Act 16/2005, Amending Act 4/2013, Amending Act 34/2014, Amending Act 24/2016 and Amending Act 8/2017. Through various amendments, the scope of Souharda Sahakari Act was expanded but no where the co-operative societies are converted into the co-operatives. In both the Acts, co-operatives and co-operative societies are defined independently. In the Souharda Sahakari Act, the word co-operative and co-operative societies are defined in clause 2(c) and 2(g) which are extracted hereunder for the sake of reference:

"(e) "Co-operative" means a co-operative including a Co-operative bank doing the business of banking registered or deemed to be registered under section 5 and which has the words 'Souharda Sahakari' in its name.

.....

(g) "Co-operative Society" means a Co-operative society registered under the Karnataka Co-operative Societies Act, 1959 (Karnataka Act 11 of 1959);"

10. Section 4 of Souharda Sahakari Act deal with the formation of co-operatives and its members and as per section 4(2) clause b, co-operative societies can be converted into co-operative by passing a resolution and once it is converted, the registration under the Societies Act shall be cancelled by the Registrar w.e.f. the date of certificate of registration given under Souharda Act. Relevant provisions of section 6 of Souharda Act is extracted hereunder for the sake of reference:

"6. Certificate of registration.- (1) Where a Co-operative is registered or deemed to be registered, the certificate of registration duly signed and sealed by the Registrar shall be conclusive evidence that the Co-operative mentioned therein, is a Co-operative registered or deemed to be registered under this Act.

(2) Notwithstanding anything contained in the Karnataka Co-operative Societies Act, 1959, when a certificate of registration is issued to a Co-operative after conversion of a Co-operative society into a Co-operative, the registration of such Co-operative society under the Karnataka Co-operative Societies Act, 1959, shall be cancelled by the Registrar with effect from the date of issue of certificate of registration under this Act."

11. Similarly, if the co-operatives intend to convert into co-operative societies, conversion is also possible as per Amending Act 13/2004. In the co-operative societies Act, the word co-operative societies and the Co-operatives has also been defined under section 2(c) and 2(d)(2), according to which co-operative society means a society registered or deemed to be registered under the co-operative societies Act and the co-operative means co-operative registered under the Karnataka Souharda Sahakari Act, 1997. Therefore, from careful reading of both the sections, it is abundantly clear that the co-operative and the co-operative societies are 2 different entities though their conversion from one to other is possible as per provisions of the respective Act.

12. We have also carefully examined the certificate of registration granted to the assessee and we find that assessee was registered as a co-operative under the name Udaya Souhardha Pattina Co-operative Limited and not as a co-operative society. Though the registration certificate was granted by Joint Registrar, Co-operative Societies, Bengaluru but it makes no difference as a Joint Registrar may be same for co-operative societies and co-operatives. For the sake of reference, we extract the certificate of registration granted as under:

“GOVT OF KARNATAKA CO-OPERATIVE SOCIETY

SL.NO.GRB: RGN: 69:148 2003-04

DATED:13.2.2004

CERTIFICATE OF REGISTRATION

I, Basavegowda, Joint.Registrar of Co-operative Society, Bangalore Region, Bangalore register Udaya Souhardha Pattina Co-operative Ltd.,No.735, 5th Cross, 9th Main, 2nd Phase, BSK 1st Stage, Bangalore-50, under section-5 of the Karnataka Souhardha Sahakari Act-1997 and certificate of Registration is issued on 13.02.2004 as per sec 6(2) of the said Act.

Sd.

Joint.Registrar of Co-operative Society,
Bangalore Region, Bangalore.”

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.”

5.2 Respectfully following the decision of the co-ordinate bench of this Tribunal in the case of Udaya Souharda Credit Co-operative Society Ltd. in ITA No.2831/Bang/2017 dt.17.8.2018, we accordingly set aside the impugned order of the learned CIT (Appeals) for Assessment Year 2013-14 and 2014-15 and restore the matter of the eligibility of the assessee's claim for deduction under Section 80P(2) of the Act to the file of the Assessing Officer for re-examination of all aspects thereof by causing necessary enquiries to be made in the matter and to adjudicate thereon by way of a reasoned and speaking order in term of the observations and directions issued by the co-ordinate bench in the case of Udaya Souharda Credit Co-operative Society Ltd. (supra). Since the impugned order of the learned CIT (Appeals) has been set aside and the matter restored to the file of the Assessing Officer for re-examination and adjudication, we refrain from adjudicating the issues / grounds raised by the assessee on merits. The Assessing Officer is accordingly directed.

6. In the result, the assessee's appeals for Assessment Years 2013-14 and 2014-15 are allowed for statistical purposes.

Order pronounced in the open court on the 19th day of December, 2018.

Sd/-

(N. V. VASUDEVAN)
Vice President

Bangalore,
Dt. 19.12.2018.
/NS/*

Sd/-

(JASON P BOAZ)
Accountant Member

Copy to :

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

Certified True Copy

Asst. Registrar
Income Tax Appellate Tribunal
Bangalore.

1. Date of Dictation13.12.2018.....
2. Date on which the typed draft is placed
before the dictating Member13.12.2018.....
3. Date on which the approved draft comes
To Sr. P. S.13.12.2018.....
4. Date on which the fair order is placed
before the dictating Member13.12.2018.....
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
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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.