

**IN THE INCOME TAX APPELLATE TRIBUNAL,
BANGALORE BENCH 'B', SMC**

BEFORE SHRI N.V VASUDEVAN, VICE PRESIDENT

ITA No.3275/Bang/2018

Assessment year : 2014-15

Chikkerur Pattina Souharda Sahakari Niyamitha, Main Road, Nr. Bus Stand, Chikkerur, Haveri Dist. PAN – AAAAC 9264H.	Vs.	The Income-tax Officer, Ward – 2, Haveri.
APPELLANT		RESPONDENT

Appellant by	:	None
Respondent by	:	Shri D Kiran, JCIT

Date of hearing	:	26.12.2018
Date of Pronouncement	:	02.01.2019

ORDER

PER SHRI N.V VASUDEVAN, VICE PRESIDENT

This is an appeal by the assessee against the order dated 27/9/2018 of CIT(A), Davangere relating to asst. year 2014-15.

2. The grounds of appeal raised by the assessee reads as follows:-

*“1) That Order of the Hon'ble Commissioner of Income (Appeals) Davangere is opposed to the law and *facts and circumstances of the case.*

2) That the Learned CIT (Appeals) Davangere is not justified in rejecting grounds summarily which is opposed to the principles of Natural Justice.

3) That the Learned CIT (Appeals) Davangere has erred in upholding the disallowance of Rs. 19,24,014/- U/s 80(2)(A)(1) without appreciating the legal provisions as applicable.

4) That the Learned CIT (Appeals) Davangere has erred in confirming an addition of Rs. 20,77,789/- being income earned from liquid deposit made in nationalised banks without perusing the case and the same is opposed to the principles of Natural Justice.

5) That the Learned CIT (Appeals) Davangere has erred in sustaining and addition of Rs. 39,830/- being Rental income.”

2. During the course of hearing our attention was invited to the fact that the assessee was registered under Souhardha Sahakari Act as co-operative but the assessee claimed it to be co-operative society registered under Karnataka Souhardha Sahakari Act 1977 for claiming deduction u/s 80P of the Act.

3. The Id DR further contended that in the case of M/s Udaya Souharda Credit Co-operative Society Limited Vs. ITO in ITA No.2831/Bang/2017, the Tribunal has restored the matter to the AO for verification of the impact of registration under Karnataka Souhardha Sahakari Act, 1977 as co-operative. Since in the instant case, the assessee is registered under Karnataka Souhardha Sahakari Act, 1977 as it appears to be by name, the matter to be restored to the AO to ascertain the impact of registration under the registration of Souhardha Act as co-operative and also to decide whether the assessee is eligible for deduction u/s 80P of the Act.

4. Notice was sent to the Assessee to the address given in Form No.36 but none appeared for the Assessee.

5. Having carefully examined the orders of the authorities below in the light of the Tribunal order in the case of Udaya Souharda Credit Co-operative Society Limited (Supra), we find that though argument was not raised earlier but it goes to the root of the case as it is to be ascertained whether the assessee is entitled for deduction u/s 80P and in the similar circumstance, the Tribunal has restored the matter back to the file of the AO in the case of Udaya Souharda Credit Co-operative Society Limited (Supra) in which the undersigned is the party. Relevant portion of that order is extracted hereunder for the sake of reference.

“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 "co-operative 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 Souharda 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 Co-operative 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 re-examine 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.”

6. Following the aforesaid order of the Tribunal, We set aside the order of the CIT(A) and restore the matter to the file of the AO to re-adjudicate the claim of the assessee in the light of aforesaid order of the Tribunal to ascertain as to whether the assessee is entitled for deduction u/s 80P or not before going on merit.

7. In the result, appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 2nd **JANUARY, 2019.**

**Sd/-
(N.V VASUDEVAN)
VICE PRESIDENT**

Bangalore
Dated : 2/1/2019
Vms

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

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.