

IN THE INCOME TAX APPELLATE TRIBUNAL
BENGALURU BENCH 'B', BENGALURU

BEFORE SHRI. A. K. GARODIA, ACCOUNTANT MEMBER

AND

SHRI. LALIET KUMAR, JUDICIAL MEMBER

I.T.A No.748/Bang/2018
(Assessment Year : 2009-10)

Income-tax Officer,
Ward -1, Vijayapura .. Appellant

v.

M/s. Siddasiri Pattin Souharda Sahakari Niyamit,
S. S. Temple Campus, S. S. Road,
Vijayapura .. Respondent
PAN : AAAJS3372F

Assessee by : Shri. Sukesh Patil, CA
Revenue by : Ms. Kapila H, JCIT

Heard on : 26.03.2019
Pronounced on : 29.03.2019

ORDER

PER LALIET KUMAR, JUDICIAL MEMBER :

The present appeal is filed by the Revenue against the order of the CIT (A), Belagavi, dt.18.12.2017, for the assessment year 2009-10.

02. The Revenue has raised the following grounds :

- (1) In the facts and circumstances of the case, the CIT(Appeals) erred in admitting additional evidence in the form of Affidavit in contravention of Rule 46A since the Assessing Officer was not provided with an opportunity to examine the contents of the Affidavit filed by the assessee.
- (2) In the facts and circumstances of the case, the CIT(Appeals) erred in accepting as correct the affidavit of the assessee without examining the Balance-sheet wherein, the category of members dealt with by the assessee society clearly indicated that the assessee is not doing business with members alone.
- (3) The Id. CIT(A) failed to consider the remand report dated 24/05/2013 submitted by the AO wherein it was submitted that though opportunity was given to the assessee vide his letter dated 29.04.2013 the assessee has not complied to substantiate its claim regarding deduction u/s 80P(2)(a)(i).
- (4) The Id CIT(A) in the facts and circumstances of the case of Hon'ble Apex Court ought to have called for remand report in regard to whether the assessee is a co-operative society meant for its members only and whether any income was earned by way of investment/loans etc to non-members
- (5) The Id.CIT(A) erred in not applying the ratio of the decision of Hon'ble Supreme Court in the case of **Citizen Co-op Society Ltd, Hyderabad v. ACIT, C-9(1), Hyderabad in Civil Appeal No.10245 of 2017 (Arising out of SLP (C) No.20044 of 2015) dated 8.08.2017** since the assessee is also catering to the category of members called associate members which is not akin to regular member.
- (6) The Id.CIT(A) erred in coming to the conclusion that the assessee society is a co-operative society meant only for its members and eligible for deduction under section 80P(2)(a)(i) ignoring the ratio laid down by the Hon'ble Apex Court in the case of Citizen Co-op Society Ltd.
- (7) The learned CIT(Appeals) erred in not considering the fact that the Special Leave Petition filed by the Department before the Hon'ble Supreme Court, vide SLP No. 18221 of 2015 has been converted to Civil Appeal No. 5103./2015 which is pending for a final decision on the same issue, in the case of CIT Vs. Biluru Gurbasava Pattin Sahakari Sangh Niyamit.

03. At the outset, it was submitted by the Ld. DR that the CIT (A) had not considered the binding decision of the Hon'ble Supreme Court in the matter of Citizen Cooperative Society v. ACIT [397 ITR 1], wherein at para 24, it was held as under :

24) Undoubtedly, if one has to go by the aforesaid definition of 'co-operative bank', the appellant does not get covered thereby. It is also a matter of common knowledge that in order to do the business of a co-operative bank, it is imperative to have a

licence from the Reserve Bank of India, which the appellant does not possess. Not only this, as noticed above, the Reserve Bank of India has itself clarified that the business of the appellant does not amount to that of a co-operative bank. The appellant, therefore, would not come within the mischief of sub-section (4) of Section 80P.

It was the case of the Ld. DR that the assessee is involved into giving funds to the non-members. For that purposes, our attention was drawn to assessment order wherein the AO had examined the status of the assessee and came to the conclusion that the assessee is not entitled for deduction u/s.80P(2)(a)(i) because the principle of mutuality is not followed.

04. Per contra, the Ld. AR relies on the decision of the Tribunal in the matter of M/s. Udaya Souharda Credit Co operative Society Ltd [ITA No.2831/Bang/2017, dt.17.08.2018. The Ld. AR submitted that the assessee is not into banking business and therefore no licence is required from the RBI. Further it was submitted that the assessee is registered under the Karnataka Cooperative Societies' Act, 1959, and therefore the assessee is entitled to deduction u/s.80P(2)(a)(i) of the Act.

05. We have heard the rival contentions and perused the material on record. We have reproduced hereinabove, para 24 of the order of the Hon'ble Supreme Court in the matter of Citizen Cooperative Society (supra), which is relevant here. In a recent order in the matter of M/s. Udaya Souharda Credit Co operative Society Ltd [ITA No.2831/Bang/2017, dt.17.08.2018], it was noted by the Tribunal that Karnataka State has notified Karnataka Co –

Operative Societies Act, 1959 as well as the Karnataka Souharda Sahakari Act, 1997 and both Acts are in force. Therefore, conversion from one into another is possible. Thereafter the Tribunal held that the deduction u/s.80P can only be applied to a cooperative society registered under the Karnataka Co- Operative Societies Act, 1959 and thereafter the matter was restored back to the AO for fresh decision after making necessary enquiry and investigation. In the present case, the facts are identical and one more plea was raised pertaining to mutuality.

06. In view of the above, respectfully following the decision of the Hon'ble Supreme Court in Citizen Cooperative Society (supra) and Udaya Souharda Cooperative Society (supra), we remand the appeal to the file of the CIT (A) to decide the issue afresh in the light of the observations made hereinabove. Needless to say the CIT (A) shall give opportunity of hearing to the assessee and shall also consider the submissions, if any made by the assessee in this regard and also seek a remand report from the AO, and thereafter decide the matter in accordance with law.

07. In the result, appeal of the Revenue is allowed for statistical purpose.

Order pronounced in the open court on 29th day of March, 2019.

Sd/-
(A. K. GARODIA)
ACCOUNTANT MEMBER

Sd/-
(LALIET KUMAR)
JUDICIAL MEMBER

Bengaluru

Dated : 29.03.2019

MCN*

Copy to:

1. The assessee
2. The Assessing Officer
3. The Commissioner of Income-tax
4. Commissioner of Income-tax(A)
5. DR
6. GF, ITAT, Bangalore

By order

Assistant Registrar
Income Tax Appellate Tribunal,
Bangalore.