

IN THE INCOME TAX APPELLATE TRIBUNAL  
"SMC-C" BENCH : BANGALORE

BEFORE SHRI ARUN KUMAR GARODIA, ACCOUNTANT MEMBER

ITA No. 747/Bang/2019
Assessment Year : 2014-15

M/s. N K K Souharda Credit Co-op. Ltd., 227/ 7, 59 <sup>th</sup> Cross, Vatal Nagaraj Road, 3 <sup>rd</sup> Block, Rajajinagar, Bangalore – 560 010. <b>PAN: AABAN5331R</b>	Vs.	The Income Tax Officer, Ward – 6 (2) (1), Bangalore.
APPELLANT		RESPONDENT
Assessee by	:	Shri Madhukar G Hegde, CA
Revenue by	:	Shri Tshering Ongda, JCIT (DR)
Date of hearing	:	15.05.2019
Date of Pronouncement	:	31.05.2019

**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)-6, Bangalore dated 28.02.2019 for Assessment Year 2014-15.

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

	Grounds of Appeal	Tax effect relating to each Ground of appeal (see note below)
1.	The order of the learned CIT(A)-6, Bengaluru is prejudicial to the interest of the Appellant, is bad and erroneous in law and against the facts and circumstances of the case.	NA
2.	The learned CIT (A)-6, Bengaluru erred in law and on facts in not allowing the deduction claimed u/s. 80P(2)(a)(i) of the Act on the ground that the same cannot be given to the cooperative registered under K S S Act, 1997, though its a cooperative institution.	4,05,760
3.	The learned CIT(A)-6, Bengaluru erred in not considering the definition of a co-operative society as per section 2(19) of Income Tax Act, 1961 which reads, "co-operative society" means a co-operative society registered under the Cooperative Societies Act, 1912 (2 of 1912), or under	Same as 2 above

	any other law for the time being in force in any state for registration of co-operative societies. The appellant is one of such cooperative institutions.	
4.	The impugned orders passed by the authorities are illegal and are liable to be set aside in view of the judgment of the Hon'ble High Court of Karnataka in ITA 29/2015 in the case of M/s. Guttigedarara Credit Co-op. Society Ltd. Mysore Vs. ITO, Ward 2(2), Mysore and ITA 307/2014 – M/s. Tumkur Merchants Souharda Credit Co-op. Ltd. Vs. ITO, Ward-1, Tumkur.	NA
5.	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.	NA
6.	The appellant craves leave to add, alter, amend and/or delete any of the grounds mentioned above.	NA
Total tax effect (see note below)		

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. N K KSouharda Credit Co-op. 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, I 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. I 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/-  
(ARUN KUMAR GARODIA)  
Accountant Member

Bangalore,  
Dated, the 31<sup>st</sup> May, 2019.  
/MS/

Copy to:

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

By order

Assistant Registrar,  
Income Tax Appellate Tribunal,  
Bangalore.