

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

BEFORE SHRI A.K. GARODIA, ACCOUNTANT MEMBER

**ITA Nos. 2040 & 2041(Bang) 2019
(Assessment years : 2012 – 13 & 2016 – 17)**

M/s. Mahalakshmi Souharda Credit Co Operative Ltd., Appellant
664, Ashirwad, 4th Cross, Mahalakshmi Layout,
Bengaluru – 560 086.
PAN: AABAM2202L

Vs

The Income Tax Officer,
Ward – 6 (2) (2), Respondent
Bangalore.

**Assessee by : Shri R. E. Balasubramanyam, C. A.
Revenue by : Shri Ganesh R. Ghale, Standing Counsel
Date of hearing : 24-10-2019
Date of pronouncement : 08-11-2019**

ORDER

PER A. K. GARODIA, A.M.:

Both these appeals are filed by the assessee and these are directed against two separate orders of CIT (A) – 6, Bengaluru dated 13.06.2019 for A. Y. 2016 – 17 and dated 26.08.2019 for A. Y. 2012 – 13. Both these appeals were heard together and are being disposed of by way of this common order for the sake of convenience.

2. Identical Grounds raised by the assessee in these two years read as under:-

ITA No. 2040/Bang/2019 (Assessment Year : 2012-13):

“The Appellant objects to the order of the Ld.CIT (A) on the grounds:

| <i>Grounds Raised</i> | <i>Tax Effect in INR</i> |
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| <i>1. That the impugned order is opposed to facts and law in so far as it is pre-judicial to the interests of the</i> | <i>General Ground</i> |

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| <i>Appellant.</i> | |
| 2. That the Ld CIT(A) erred in rejecting the deduction claimed by the Assessee under section 80(P)(2)(a)(i) for reasons which are arbitrary, impermissible and beyond what is provided under law. | Rs.12,49,430/- approximately plus applicable Interest |
| 3. That the Ld CIT(A) erred in confirming the order of AO and denying the deduction under section 80(P)(2)(a)(i), and in doing so: a) She failed to appreciate that the business of the Appellant consists entirely of extending credit facilities to its members as given under section 80(P)(2)(a)(i). b) She failed to appreciate that co-operative society defined under section 2(19) of the Income Tax Act includes societies registered under "Karnataka Souharda Sahakari Act, 1997" inasmuch as they also operate and adopt the principle of co-operation as required under the Act. c) She failed to consider the decisions of Honourable Jurisdictional High Court and the ITAT in favour of Appellant. | Same as Ground 2 above since they are on the same issue |

The appellant prays for leave to add, delete, modify and/or adduce additional ground at any time before the appeal is disposed off.

For these and such other grounds that may be adduced or removed in time to time, it is requested that the Hon'ble ITAT may be pleased to examine the case in the light of justice and grant the relief sought for."

ITA No. 2041/Bang/2019 (Assessment Year : 2016-17):

"The Appellant objects to the order of the Ld.CIT (A) on the grounds:

| <i>Grounds Raised</i> | <i>Tax Effect in INR</i> |
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| 1. That the impugned order is opposed to facts and law in so far as it is prejudicial to the interests of the Appellant. | General Ground |
| 2. That the Ld CIT(A) erred in confirming the order of AO and denying the deduction under section | Rs.9,76,245 Lakhs approximately plus applicable Interest |

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| <p><i>80(P)(2)(a)(i), and in doing so:</i></p> <p>a) <i>She failed to appreciate that the business of the Appellant consists entirely of extending credit facilities to its members as given under section 80(P)(2)(a)(i).</i></p> <p>b) <i>She failed to appreciate that co-operative society defined under section 2(19) of the Income Tax Act includes societies registered under "Karnataka Souharda Sahakari Act, 1997" inasmuch as they also operate and adopt the principle of co-operation as required under the Act.</i></p> <p>c) <i>She failed to consider the decisions of Honourable Jurisdictional High Court and the ITAT in favour of Appellant.</i></p> | |
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The appellant prays for leave to add, delete, modify and/or adduce additional ground at any time before the appeal is disposed off.

For these and such other grounds that may be adduced or removed in time to time, it is requested that the Hon'ble ITAT may be pleased to examine the case in the light of justice and grant the relief sought for."

3. Learned AR of the assessee submitted that as per these two impugned orders of CIT (A) by following the tribunal order rendered in the case of Udaya Souharda Credit Co Operative Society Ltd. vs. ITO in ITA No. 2831/bang/2017 dated 17.08.2018, it was held by CIT (A) that the assessee is a co operative and not a co operative society and therefore, the claim of the assessee for deduction u/s 80P is not admissible. He submitted that the copy of this tribunal order is available on pages 49 to 60 of the paper book. Thereafter, he submitted that in a subsequent tribunal order rendered in the case of Siddartha Pattina Souharda Sahakari Niyamitha vs. ITO in ITA No. 1234/Bang/2019 dated 26.07.2019 (Copy available on pages 61 to 66 of the paper book), the earlier tribunal order

rendered in the case of Udaya Souharda Credit Co Operative Society Ltd. vs. ITO (Supra) was duly considered and thereafter, it was held that Souharda Co Operatives are also one form of Co Operative Society registered under a law in force in the State of Karnataka for registration of Co Operative Societies and therefore, denial of deduction u/s 80P to such societies on the ground on which the same was denied is incorrect but the other conditions for allowing deduction u/s 80P needs to be examined and the matter was restored to AO for a fresh decision except on the issue already decided i.e. the eligibility of Souharda Co Operative for deduction u/s 80P. He submitted that in the present case also, this issue should be decided in favour of the assessee and thereafter, the matter may be restored to AO to decide the allowability of deduction u/s 80P in view of other conditions of section 80P.

4. As against this, learned DR of the revenue submitted that the earlier tribunal order rendered in the case of Udaya Souharda Credit Co Operative Society Ltd. vs. ITO (Supra) is an order passed by the Division Bench of the tribunal but the later tribunal order rendered in the case of Siddhartha Pattina Souharda Sahakari Niyamitha vs. ITO (Supra) is an order passed by SMC Bench of the tribunal and therefore, the earlier tribunal order passed by Division Bench of the tribunal should be followed in preference to the later tribunal order passed by SMC Bench of the Tribunal. He also submitted that the SMC Bench has although noted about the earlier tribunal order of the Division Bench but

there is no discussion on this aspect that how that earlier order is not applicable and therefore, for this reason also, the earlier tribunal order should be followed.

5. I have considered the rival submissions. First, I reproduce Para No. 5 to 11 of the later tribunal order rendered in the case of Siddartha Pattina Souharda Sahakari Niyamitha vs. ITO (Supra). These paras are as under: -

“5. I have heard the rival submissions. The learned counsel for the Assessee submitted that Souharda Sahakari registered under the Karnataka Souharda Sahakari Act, 1997 are also co-operative societies within the meaning of Sec.2(19) of the Act and therefore the revenue authorities were not justified in denying the benefit of deduction to the Assessee. The learned DR relied on a decision of the ITAT Bangalore Bench in the case of M/s. Millennium Credit Co-operative Society Ltd. Vs. ITO ITA Nos. 2606 & 2607/Bang/2017 in which the Tribunal followed the decision of ITAT Bangalore Bench in the case of M/s. Udaya Souharda Credit Co-operative Society Ltd. ITA No.2831/Bang/2017 order dated 17.8.2018 in which the issue whether souharda registered under the Karnataka Souharda Sahakari Act, 1997 can be regarded as co-operative society entitled to benefit of deduction u/s.80P(2)(a)(i) of the Act was remanded to the AO for fresh consideration. We are of the view that in the present case, the AO and CIT(A) have already considered this issue in the light of the Karnataka Souharda Sahakari Act, 1997 and therefore this issue has to be decided by me and cannot be remanded to the AO as was canvassed by the Revenue.

6. I have considered the rival submissions. Sec.2(19) defines co-operative societies for the purpose of the Act and the same is as follows:

“Definitions.

2. In this Act, unless the context otherwise requires,—

(19) "co-operative society" means a co-operative society registered under the Co-operative Societies Act, 1912 (2 of 1912), or under any other law for the time being in force in any State for the registration of co-operative societies ;”

7. As can be seen from the aforesaid definition of ‘Co-operative society’ under the Act, any co-operative society registered under any other law of any State for registration of co-operative society is also regarded as co-operative society under the Act. Souhardas’ also operate on the principle of co-operation and adopt the principles of co-operation. Cooperative Societies and Co-opertives are all founded on the principle of cooperation.

8. Since the beginning of mankind the concept of 'co-operation' has been the foundation for harmonious existence. In India, the Co-operative Societies Act 1912 regulated formation, management, winding up and other supervision by the Government etc. This Act became the model for the provincial governments to form their own Cooperative Acts. Post-Independence, various state governments framed their own independent Cooperative Acts and the Central Government its Multi-State Cooperative Act. Accordingly, Karnataka State Cooperative Societies Act, 1959 (KSCS Act, 1959) regulates Co-operative societies in the state of Karnataka. A Panchayat, a Cooperative society and a School for every village were considered as the three pillars of the integrated community development. As time passed by, other aspects were included into the Cooperative act thus heralding the resurgence of a new era in cooperative movement. The state and the central governments were investing millions of rupees in the form of shares, grants, subsidy, contributions, government support, etc., but the expected results couldn't be achieved in cooperative movements. This condition continued almost until early 1980s.

9. Keeping this in mind, the Central Government setup a committee under the Chairmanship of Shri Ardhanarishwaran, which submitted its report in 1987. It attributed the failure of the cooperative movement to the excessive interference of the governments. It is also true that the unabated party politics in the co-operative movement is also a big hindrance to its progress. Realizing the vital role of the cooperative movement in the progress of the society, the Central Planning Commission set up a committee by appointing Shri Chaudari Brahmprakash as its head & with a task of drafting a 'Model Cooperative Act' which will prevent interference of the governments. This committee, after a detailed study of the Cooperative Acts of various states, drafted a 'Model Cooperative Act' in 1991 and Central Government recommended the state governments to adopt this. Accordingly, in 1997 a bill on parallel cooperative act was tabled in the state legislature of Karnataka. Demanding an early approval of this bill by both the houses of Karnataka Legislature, a committee 'Souharda Samvardhana Samithi' under the chairmanship of Justice Rama Jois came into existence. It was due to the combined efforts of Sahakara Bharathi Karnataka and Souharda Samvardhana Samithi, "The Karnataka Souharda Sahakari Act-1997 (KSSA, 1997)" was passed in the legislature. With the consent of The President of India, it was enforced from January 2001. Preamble to the Act reads thus:-

"An Act to provide for recognition, encouragement and voluntary formation of Co-operatives based on self-help, mutual aid, wholly owned, managed and controlled by members as accountable, competitive, self-reliant and economic enterprises guided by co-operative principles and matters connected therewith; WHEREAS it is expedient to provide for recognition encouragement and

voluntary formation of co-operatives based on self-help, mutual aid, wholly owned, managed and controlled by members as accountable, competitive self-reliant and economic enterprises guided by co-operative principles and for matters connected therewith; BE it enacted by the Karnataka State Legislature in the Forty-eighth Year of Republic of India as follows:- ”

10. The Souharda Cooperatives enjoy functional autonomy in design and implementation of their Business plans, customer service activities, etc., based on the needs of their members. Unlike other forms of cooperatives in India, the interference of State / Central in day-to-day operations of Souharda Cooperatives is almost minimal.

11. The above discussion would show that souharda co-operatives are also one form of co-operative societies registered under a law in force in the State of Karnataka for registration of co-operative societies. Therefore, the conclusion of the revenue authorities that co-operative societies and co-operatives are different and that co-operative registered as Souharda Sahakari cannot be regarded as co-operative societies is unsustainable. We therefore hold that the Assessee should be allowed deduction u/s.80P(2)(a)(i) of the Act, as the ground on which the same was denied to the Assessee is held to be incorrect. However, the other conditions for allowing deduction u/s. 80P(2)(a)(i) of the Act needs to be examined by the AO. I, therefore, remand the question of allowing deduction u/s. 80P(2)(a)(i) of the Act to the AO, except the issue already decided above.”

6. From Para No. 5 of this later tribunal order of SMC Bench as reproduced above, it is seen that it is noted by the tribunal that the division bench in the earlier tribunal order has remanded the issue to the AO for fresh consideration and in the subsequent case, the AO & CIT (A) had already considered this issue in the light of the Karnataka Souharda Sahakari Act, 1997 and therefore, the SMC Bench considered it proper to decide this issue at Tribunal level instead of restoring to AO. Hence, it is seen that the SMC bench has duly considered the earlier tribunal order of the division bench and given the reasons for deciding the issue at the tribunal level instead of remanding of this issue to AO as has been earlier done by the division bench. Hence, there is no merit in the

arguments of the learned DR of the revenue. Moreover, in the present case, the issue is being decided by SMC Bench and the order of SMC bench of the tribunal is also binding on the present bench and since the earlier order of Division bench is duly considered by SMC bench, I am duty bound to follow this later tribunal order of SMC Bench. I respectfully follow this later tribunal order of SMC Bench and hold that the CIT (A) is not justified in holding that the assessee is not eligible for deduction u/s 80P for the reason that the assessee is registered under Karnataka Souharda Sahakari Act, 1997. To this extent, I set aside the order of CIT (A) in both years. After holding so, I restore the issue about allowability of deduction u/s 80P in both years to the file of the AO to decide the issue about allowability of deduction u/s 80P after examining this aspect as to whether the assessee is satisfying other conditions of section 80P of I. T. Act and pass necessary order as per law after providing adequate opportunity of being heard to the assessee in both years.

7. In the result, both the appeals of the assessee are allowed in the terms indicated above.

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

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

Bangalore

D a t e d : 08.11.2019

/MS/

Copy to :

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

By order,

AR, ITAT, Bangalore