

IN THE INCOME TAX APPELLATE TRIBUNAL

“SMC-B” BENCH : BANGALORE

BEFORE SHRI ARUN KUMAR GARODIA, ACCOUNTANT MEMBER

ITA No. 2143/Bang/2019
Assessment Year : 2016-17

M/s. Siri Sanjeevini Pattina Souharda Sahakari Niyamitha, Yag Complex, Main Road, Sirwar, Tq. Devudurga, Dist: Raichur – 584 129. PAN: AAJAS8119A	Vs.	The Income Tax Officer, Ward – 5, Raichur.
APPELLANT		RESPONDENT
Assessee by	:	Shri Veeranna M Murgod, CA
Revenue by	:	Shri Ganesh R. Ghale, Standing Counsel for Dept.
Date of hearing	:	11.11.2019
Date of Pronouncement	:	04.12.2019

O R D E R

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), Kalaburagi dated 23.08.2019 for Assessment Year 2016-17.

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

<i>Grounds of Appeal</i>		<i>Tax effect relating to each ground of appeal (see note below)</i>
1.	<i>The learned Assessing Officer's order is opposed to the Facts of the case and law.</i>	-
2.	<i>Because, the learned Commissioner of Income Tax (Appeals) erred in law as well as on facts while deciding, the assessee as ineligible to claim deduction claimed under section 80P(2)(a)(i) of the Income Tax Act, 1961.</i>	Rs. 12,25,718/-
3.	<i>Because, the learned lower authorities have erred in denying the deduction claimed under section 80P(2)(a)(i) of Income Tax Act, 1961.</i>	-
4.	<i>The assessee craves leave to add / alter any of the grounds of appeal before or at the time of hearing.</i>	-
<i>Total tax effect (see note below)</i>		Rs. 12,25,718/-

3. It was submitted by Id. AR of assessee that as per para no. 4.4 of the order of Id. CIT(A), the issue was decided by Id. CIT(A) on this basis that in preference to the order of the SMC bench of the Tribunal rendered in the case of Siddartha Pattina and Halapur, the Tribunal order by the Division Bench of the Tribunal rendered in the case of Udaya Souharda Credit Co-operative Society should be followed. He submitted a copy of the Tribunal order by the SMC bench of the Tribunal rendered in the case of Siddartha Pattina Souharda Sahakari Niyamitha Vs. ITO in ITA No. 1234/Bang/2019 dated 26.07.2019 and he pointed out that in para no. 5 of this Tribunal order, the Tribunal has duly considered the said decision of the Division Bench of the Tribunal rendered in the case of M/s. Udaya Souharda Credit Co-operative Society Ltd. in ITA No. 2831/Bang/2017 dated 17.08.2018 and it is observed by the Tribunal in this para that in the case of M/s. Udaya Souharda Credit Co-operative Society Ltd. (supra), the matter was restored back to the AO for fresh decision. It is further noted by the Tribunal in the same para that in that case, the AO and Id. CIT(A) have already considered this issue in the light of Karnataka Souharda Sahakari Act, 1997 and therefore, the Tribunal held that it has to decide the issue on merit instead of remanding the same to the AO as was canvassed by the Revenue. He also drawn my attention to para 11 of the order of SMC bench of the Tribunal and pointed out that in this para, it is held by the Tribunal that this view is not sustainable that co-operative registered as Souharda Sahakari cannot be regarded as co-operative societies. The Tribunal held that the ground on which the assessee's claim for deduction u/s. 80P(2)(a)(i) was disallowed by the AO is not correct and after holding so, the Tribunal restored the matter back to the AO for fresh decision regarding allowability of deduction u/s. 80P(2)(a)(i) of the IT Act after examining the other conditions in respect of allowability of such deduction. He submitted that in the present case also, this issue should be restored back to the AO with similar directions. As against this, the Id. DR of revenue supported the order of Id. CIT(A). He also submitted that in preference to the decision of the SMC bench of the Tribunal, the earlier decision of the Division Bench of the Tribunal should be followed and in this regard, he placed reliance on the judgment of Hon'ble Allahabad High Court rendered in the case of CIT Vs. Hari Nath and Co. as reported in 168 ITR 440. He also placed

reliance on the judgment of Hon'ble Karnataka High Court Dharwad Bench dated 23.10.2017 rendered in the case of Pr. CIT Vs. Vijay Souharda Credit Sahakari Ltd. in ITA No. 100056/2016 and pointed out that in this case, it was held by Hon'ble Karnataka High Court that no finding is forthcoming regarding the aspect of the activities carried out by the assessee, whether as a co-operative society or not and the matter was restored back to the AO for fresh decision after examining this aspect as to whether the assessee comes within the realm of co-operative society to get entitlement of deduction u/s. 80P(2)(a)(i) of the IT Act and it is also directed that the AO should examine the applicability of the judgment of Hon'ble Apex Court rendered in the case of The Citizen Co-operative Society Ltd. Vs. ACIT as reported in 397 ITR 1.

4. I have considered the rival submissions. Regarding the judgment of Hon'ble Karnataka High Court rendered in the case of Pr. CIT Vs. Vijay Souharda Credit Sahakari Ltd. (supra) on which reliance was placed by Id. DR of revenue as per which the matter was restored back to AO to examine the applicability of the judgment of Hon'ble Apex Court rendered in the case of The Citizen Co-operative Society Ltd. Vs. ACIT (supra), I find that in the present case, this is not the case of the AO as per the assessment order that this judgment of Hon'ble Apex Court rendered in the case of The Citizen Co-operative Society Ltd. Vs. ACIT (supra) is applicable in the present case. As per the impugned order of Id. CIT(A) also, no finding of Id. CIT(A) is there that this judgment rendered in the case of The Citizen Co-operative Society Ltd. Vs. ACIT (supra) is applicable in the present case. Hence, I hold that this judgment of Hon'ble Karnataka High Court has no applicability in the present case in view of the facts discussed above. Regarding the argument of Id. DR of revenue that the earlier Tribunal order rendered by the Division Bench of the Tribunal in the case of M/s. Udaya Souharda Credit Co-operative Society Ltd. (supra) should be followed in preference to the later decision of SMC bench of the Tribunal rendered in the case of Siddartha Pattina Souharda Sahakari Niyamitha Vs. ITO (supra), I find that in this later case, the SMC bench of the Tribunal has duly considered the earlier decision of the Division Bench of the Tribunal rendered in the case of M/s. Udaya Souharda Credit Co-operative Society Ltd. (supra) and it is also noted that Id. CIT(A) and AO in that case has examined the whole issue in the light of Karnataka Souharda

Sahakari Act, 1997. Because of this reason, it was held by the SMC bench of the Tribunal that issue has to be decided by the Tribunal and it cannot be remanded to the AO as was canvassed by the Revenue and hence, this argument has not merit that even now, the matter should be restored back to the AO for fresh decision although the SMC bench of the Tribunal has decided the issue. Regarding the judgment of Hon'ble Allahabad High Court rendered in the case of CIT Vs. Hari Nath and Co. (supra) on which reliance was placed by Id. DR of revenue, I find that in this case, it was held by Hon'ble Allahabad High Court that decision of Division Bench given in an earlier case is binding on its subsequent bench of the same High Court. There is no quarrel on this aspect but this is not the case of the SMC bench of the Tribunal as per the subsequent order that the decision of the Division Bench of the Tribunal in the case of M/s. Udaya Souharda Credit Co-operative Society Ltd. (supra) is not binding on the Tribunal whether SMC Bench or Division Bench. As per the subsequent decision of the SMC Bench of the Tribunal, it was held that as per the earlier decision of the Division Bench of the Tribunal, the matter was restored back to the AO for a fresh decision in the light of Karnataka Souharda Sahakari Act, 1997 and this was done by CIT (A) and AO as directed by the tribunal and because of this reason, SMC bench of the Tribunal held that now the issue has to be decided by the Tribunal at its own level instead of again restoring the matter back to the file of AO and after considering the various provisions of Karnataka Souharda Sahakari Act, 1997, the SMC Bench of the Tribunal came to the conclusion 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 and 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. After holding so, the Tribunal restored back the matter to the AO for fresh decision regarding allowability of deduction u/s. 80P of the IT Act after examining the fulfilment of other conditions in that regard. For ready reference, we reproduce para nos. 5 to 11 of this Tribunal order rendered in the case of Siddartha Pattina Souharda Sahakari Niyamitha Vs. ITO (supra) by SMC bench of the Tribunal on 26.07.2019. 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. Co-operative 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 Brahmaprakash 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.”

5. Respectfully following this Tribunal order, I hold that the assessee's claim regarding deduction u/s. 80P(2)(a)(i) cannot be rejected on this basis that assessee is a Souharda Sahakari and therefore, cannot be regarded as a co-operative society. But after holding so, I set aside the order of Id. CIT(A) and restore the matter back to the AO for fresh decision regarding allowability of deduction u/s. 80P(2)(a)(i) of the IT Act after examining other conditions for allowing such deduction because those conditions are not examined by the AO till now. I order accordingly.
6. 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 04th December, 2019.

/MS/

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| 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.