

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“SMC-C” BENCH : BANGALORE**

**BEFORE SHRI A. K. GARODIA, ACCOUNTANT MEMBER**

ITA No.1699/Bang/2019
Assessment year : 2016-17

M/s. Sharanabasaveshwar Credit Souhard Sahakari Niyamit, Post:Halingali, Tq. Jamakhandi, Dt. Bagalkot. <b>PAN : AAEAS 6699 C</b>	Vs.	The Income Tax Officer, Ward – 2, Bagalkot.
APPELLANT		RESPONDENT

Assessee by	:	Shri. Ashok G. Mudnur, CA
Revenue by	:	Shri. Ganesh G. R, Standing Counsel to Department

Date of hearing	:	19.11.2019
Date of Pronouncement	:	03.01.2020

**ORDER**

This is an appeal filed by the assessee and the same is directed against the order of learned CIT(A), Belgaum, dated 07.06.2019, for Assessment Year 2016-17. The ground raised by the assessee in this appeal are as under:-

1. *The learned Commissioner of Income Tax (Appeals), Belgaum has erred in passing order which is opposed to law and facts of the case.*
2. *The learned Commissioner of Income Tax (Appeals), Belgaum erred in treating the appellants as not eligible for deduction as they are not registered under the Cooperative Societies Act as defined under 80P of the Income Tax Act-1961, ignoring ITAT Panaji Bench case of ITO Ward 1(5), Belgaum V/s Shri Jai Jinedra Credit Souhard Sahakari Niyamit ITA No. 151/PNJ/2015 Dt : 04.08.2015.*

3. *The learned Commissioner of Income Tax (Appeals), Belgaum erred in following ITAT "C" Bench Bangalore case of Udaya Souhard Credit Cooperative Society V/s ITO Ward 5(2)(4), Bangalore ITA No 2831/Bang/2017 dated 17.08.2018 even when ITAT Panaji Bench case of cited above favourable to the assessee where in it was held that "souhard is cooperative society within the meaning of 80P/2(19) of the Income Tax Act-1961".*
4. *The appellants craves leave to add/alter any of the grounds of appeal on or before the date of final hearing*

2. The learned AR of the assessee placed reliance on the Tribunal order rendered in the case of Siddartha Pattina Souharda Sahakari Niyamitha Vs. ITO in ITA No.1234/Bang/2019 dated 26.07.2019 and it was submitted that as per this Tribunal order, it was held by the Tribunal that Co-operatives are also one form of Co-operative Societies registered under law in force in the State of Karnataka for registration of co-operative societies and therefore the authorities below were not justified in denying the claim of the assessee only for this reason that the assessee is a Souharda Sahakari Niyamita. He pointed out that in this Tribunal order, the Tribunal has restored back the matter to the file of the AO for fresh decision on merit. At this juncture, the Bench pointed out that as per assessment order, it is noted by the AO on page 6 that the assessee was having 610 Associate Members out of total 1559 members and the percentage of associate members is 40% and as per the provisions of Karnataka Co-operative Societies Act, there is a limit of 15% of associate members and hence the assessee has violated the provisions of Karnataka Co-operative Societies Act. The Bench wanted to know as to how the judgment of the Hon'ble Apex Court rendered in the case of Citizen Co-operative Society Ltd., Vs. ACIT reported in 391 ITR 1 is not applicable in the present case because in that case, the assessee society was following the relevant provisions of Co-operative Societies Act and because of this reason, it was held by the Hon'ble Apex Court that the assessee society is not a Co-operative

Society and hence is not eligible for deduction under section 80P of the Act. In reply, the learned AR of the assessee had nothing to say. Learned DR of the Revenue supported the orders of the authorities below. He also placed reliance on the Tribunal order rendered in the case of M/s. Athmashakthi Multipurpose Co-operative Society Ltd., Vs. ITO in ITA Nos.1220 & 1221/Bang/2019 dated 18.10.2019 and he submitted a copy of this Tribunal order and pointed out that in that case also, the assessee society was having more than 15% Associated Members and under those facts by following the judgment of the Hon'ble Apex Court rendered in the case of Citizen Co-operative Society Ltd., Vs. ACIT (supra), it was held by the Tribunal that since the assessee has violated the provisions of Karnataka Co-operative Societies Act, 1959, the assessee is not eligible for deduction under section 80P of the IT Act. He also placed reliance on another Tribunal order rendered in the case of M/s. Vikasha Vividhodesha Sahakara Sangha Niyamitha Vs. ITO in ITA No.1424(Bang)2019 dated 01.11.2019. He submitted a copy of this Tribunal order also and pointed out that in this case, the Tribunal has followed earlier Tribunal order rendered in the case of /s. Athmashakthi Multipurpose Co-operative Society Ltd., Vs. ITO (supra) and decided similar issue in favour of the Revenue and in this regard our attention was drawn to para No.5 of this Tribunal order.

3. I have considered the rival submissions. I find that it is an undisputed fact that in the present case, the assessee has violated the provisions of Karnataka Co-operative Societies Act, 1959 because it is noted by the AO in para Nos.6.0 and 6.1 of the assessment order that the assessee was having 610 Associated Members with the assessee out of total 1559 Members and the percentage of Associated Members was 40% and as per the provisions of Karnataka Societies Act, 1959, a Co-operative Society can have a maximum of 15% Associated Members of total regular members prescribed under the Karnataka Societies Act, 1959. In the light of these facts, the Tribunal orders

cited by the learned DR of the Revenue are squarely applicable. For ready reference, I reproduce para No.5 of the Tribunal order cited by him having been rendered in the case of /s. Vikasha Vividhodesha Sahakara Sangha Niyamitha Vs. ITO (supra). This para reads as under:

*“5. I have considered the rival submissions. I find that the tribunal order cited by the learned DR of the revenue is squarely applicable in the present case because learned AR of the assessee could not controvert the categorical finding of CIT (A) regarding violation of the provisions of Karnataka Co Operative Societies Act, 1959 as noted above and hence, I respectfully following the tribunal order cited by the learned DR of the revenue, I decide the issue against the assessee. Regarding the tribunal order cited by the learned AR of the assessee and another tribunal order and the judgment of Hon'ble Madras High Court followed by the tribunal in that case, I find that in those three cases, this is not a finding that the assessee society is having more than prescribed number of associate members in excess of 15% of regular members and still eligible for deduction u/s 80P of I. T. Act as in the present case and in the case cited by learned DR of the revenue and because of this vital difference in facts, these judicial pronouncements are not applicable in the present case.”*

4. Respectfully following this Tribunal order, I decide the issue against the assessee and hold that the assessee is not eligible for deduction under section 80P of the IT Act in the facts of the present case because it is an undisputed fact in the present case that the assessee has violated the provisions of Karnataka Co-operative Societies Act, 1959 and therefore the judgment of Hon'ble Apex Court rendered in the case of Citizen Co-operative Society Ltd., (supra) is squarely applicable and hence I decide the issue by respectfully following the judgment of the Hon'ble Apex Court.

5. In the result, the appeal of the assessee is dismissed.

*Pronounced in the open court on the date mentioned on the caption page.*

Sd/-  
**(A. K. GARODIA)**  
**Accountant Member**

Bangalore.

Dated: 03<sup>rd</sup> January, 2020.

/NS/\*

Copy to:

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

By order

Assistant Registrar,  
ITAT, Bangalore.