

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

Before Shri Chandra Poojari, Accountant Member

ITA No.2429/Bang/2019 : Asst.Year 2015-2016

M/s.Kanakashree House Building Co-operative Society Limited No.20:31, Basaveswaranagar Bengaluru – 560 079 PAN : AACAK3131D.	Vs.	The Dy.Commissioner of Income-tax, Circle 6(2)(1) Bangalore.
(Appellant)		(Respondent)

Appellant by : Sri.P.R.Suresh, CA
Respondent by : Dr.Ganesh R.Ghale, Standing Council for DR

Date of Hearing : 19.02.2020	Date of Pronouncement : 27.02.2020
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ORDER

This appeal filed by the assessee is directed against the order of the CIT(A), dated 11.09.2019. The relevant assessment year is 2015-2016.

2. The assessee has raised following grounds:-

“1. The order of appeal of the learned CIT(A), Bengaluru passed under section 250 of the Act in so far as it is against the appellant is opposed to law, equity, weight of evidence, facts and circumstances in the Appellant’s case.

2. The learned CIT(A) Bengaluru-6, Bengaluru has erred in law and facts of the case in holding interest earned as “other income”, in the light of introduction of RERA.

3. The learned CIT(A) Bengaluru-6, Bengaluru is not justified in law in denying the eligible deduction claimed by the appellant as per provisions of section 80P(2)(d) of the Act.

4. *The order of assessment passed by the learned Assessing Officer is bad in law in adding a sum of Rs.40,30,479, on protective basis, based on SLP filed by the Department before Hon'ble Supreme Court in CIT vs. Shri Biluru Gurubasava Pattina Sahakari Sangha Niyamita.*

5. *The learned Assessing Officer has erred in law and facts of the case, failed to appreciate that the interest income earned by the appellant out of the deposits kept in the co-operative banks are all out of the monies of the members of the appellant society, and are not out of any liability due by the society, consequently the AO ought to have allowed deduction under section 80P(2)(d), following the judgment in M/s.Tumkur Merchants Souharda Credit Co-operative decision of Hon'ble High Court of Karnataka.*

6. *The appellant craves leave to add, alter, amend, substitute or delete any or all of the grounds of appeal urged above.*

7. *For the above and other grounds to be urged during the course of hearing of the appeal the Appellant prays that the appeal be allowed in the interest of equity and justice."*

3. Briefly stated the facts of the case are that the assessee is a Co-operative Society engaged in providing / allotting housing sites to its members. For the impugned assessment year, the assessee filed its return of income on 30.03.2017 declaring a total income of Rs.Nil, after claiming deduction u/s 80P(2)(d) of the I.T.Act to the tune of Rs.40,30,479. The case of the assessee was selected for scrutiny under CASS and statutory notices were issued to the assessee. The Assessing Officer denied the deduction u/s 80P(2)(d) of the Act by holding that the interest earned by the assessee from its deposits with co-operative

banks was not eligible for deduction u/s 80P(2)(d) since co-operative banks were not co-operative societies. The A.O. based his finding on the ratio laid down by the Hon'ble Karnataka High Court in the case of CIT v. Sri Biluru Gurubasava Pattina Sahakari Sangha Niyamitha, Bagalkot, wherein the Court had distinguished between co-operative banks and co-operative credit societies.

4. Aggrieved by the order of the Assessing Officer denying the deduction u/s 80P(2)(d) of the Act, the assessee carried the matter in appeal before the CIT(A), who confirmed the view taken by the Assessing Officer. Against the above orders of the authorities below, the assessee is in appeal before the Tribunal.

5. I have heard the rival submissions and perused the material on record. I find that similar issue came up for adjudication before the Tribunal in the case of M/s.Sindhu Credit Souharda Sahakari Niyamita v. ITO in ITA No.2144/Bang/2019 – order dated 04th December, 2019, wherein it was held as under:-

“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 ld. 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 ld. CIT(A) also, no finding of ld. 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 ld. 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 Cooperative 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 (supra) and it is also noted that ld. 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 ld. 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 Cooperative 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 cooperative 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-operatives 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 Cooperative 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 Cooperative 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 Brahma Prakash 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 cooperative 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 cooperative 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 ld. 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 ordered accordingly. “*

6. Since the issue involved in this appeal is identical to that of the decision of the Tribunal in the case of Sindhu Credit Souharda Sahakari Niyamita (supra), respectfully following the same, I remit the matter to the file of the Assessing Officer for adjudication afresh, on similar line.

7. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced on this 27th day of February, 2020.

Sd/-
(Chandra Poojari)
ACCOUNTANT MEMBER

Bangalore ; Dated : 27th February, 2020.
Devadas G*

Copy to :

1. The Appellant.
2. The Respondent.
3. The CIT(A)-6, Bengaluru.
4. The Pr.CIT - 6, Bengaluru.
5. The DR, ITAT, Bengaluru.
6. Guard File.

Asst.Registrar/ITAT, Bangalore