

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

Before Shri Chandra Poojari, Accountant Member

ITA No.1782/Bang/2019 : Asst.Year 2016-2017

M/s.Valsala Souharda Credit Co-operative Limited No.7, 6 th Main, Near Ellen School Meenakshinagar, Kamakshipalya Magadi Main Road Bangalore – 560 079 PAN : AACAV2089B.	Vs.	The Income Tax Officer Ward 6(2)(1) Bangalore.
(Appellant)		(Respondent)

Appellant by : --- None ---
Respondent by : Dr.Ganesh R.Ghale, Standing Council for DR

Date of Hearing : 26.02.2020	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 17.06.2019. The relevant assessment year is 2016-2017.

2. The assessee has raised following grounds:-

“1. *The Assessee is a Souharda Credit Co-Operative Limited registered with Registrar of Co-Operative Societies, under the Karnataka Souharda Sahakari Act of 1997.*

2. *Activities of the Assessee were not regulated by RBI and also Part V of Banking Regulation Act are not applicable to Co-operative Society.*

3. *Co-Operative Societies are not permitted to use the word 'bank', 'banker', 'banking' and also Co-Operative Societies are not required to submit Annual return to RBI every year.*

4. *The Assessee is carrying on the business of accepting deposits, advancing loans etc. and that was confined to its members only.*

5. *The Area of Operation of the Assessee is limited to Bangalore only, as restricted by bye law of the Society.*

6. *The Learned Assessing Officer has erred in disallowing the deduction claimed, to the conclusion that the society is not eligible for Deduction u/s 80P of Income Tax Act. While disallowing Sec.80P to the Appellant Society the Assessing Officer has stated that the provisions of Section 80P shall not apply in relation to any co-operative bank/institution treating the Assessee-society as co-operative bank. is a co-operative society. But Assessing Officer is referring modification brought about in the Banking Regulation Act of 1949, the modification which is related to Credit Co-Operative Banks.*

7. *The Learned Commissioner of Income-Tax (Appeals)-6 has erred in confirming the additions to the conclusion that the society is not eligible for Deduction u/s 80P of Income Tax Act. While disallowing 80P to the Appellant society, the CIT(A)- 6 has grossly erred in holding that the provisions of Section 80P shall not apply in relation to any cooperatives incorporated under Karnataka Souharda Sahakari Act, 1997 but only to Co-operative society registered under Karnataka Cooperative Societies Act, 1959. The IearnedCIT(A)-6has grossly erred in coming to the conclusion that the entities "Co-Operative" and "Cooperative Societies" are two different entities but he has conveniently ignored the definition of "Co-Operative Society" under Co-Operative Societies Act, 1959.*

8. *The Assessee relies on the following latest decisions rendered by the Income Tax Appellate Tribunal to contest the supposition of the learned CIT:*

A. *In this connection, the Assessee relies on the latest Income Tax Appellate Tribunal "SMC-C" Bench decision in the case of Siddartha Pattina Souharda Sahakari Niyamitha Vs The Income Tax Officer, Ward 5-Raichur (ITA No 1234/Bang/2019) dated 26th July, 2019.*

Here the Hon'ble Tribunal has held that "Co-Operative"registered under Karnataka Souharda Sahakari Act, 1997 and "Co-Operative Society" registered under Karnataka Co-operative Societies Act, 1959, are not different in view of Section 2(19) of Karnataka Co-operative Societies Act, 1959, which defines "Co-Operative Society" 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;"

As could 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 the 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 co-operation. Ultimately the Income Tax Appellate Tribunal "SMC-C" Bench has passed the order in favor of assessee and against the Revenue.

B. My assessee also relies on the latest Income Tax Appellate Tribunal "C" Bench decision in the case of Udaya Souharda Credit Co-Operative Society Ltd Vs The Income Tax Officer, Ward 5(2)(4)-Bangalore (ITA No 2831/Bang/2017) dated 17th August, 2018.

Here it has been held that it cannot be out rightly decided that the "Co-Operative"and "Co-Operative Society"registered under Karnataka Souharda Sahakari Act, 1997 and Karnataka Co-operative Societies Act, 1959 respectively are different or otherwise, and hence the matter is to be restored to the AO to ascertain the impact of registration under Souharda Act as "Co-Operative" and also to decide whether is eligible for deduction u/s 80P of the Act. Ultimately the Income Tax Appellate Tribunal "C" Bench has passed the order in favor of assessee for statistical reasons.

9. The Assessee also relies on the following judgment of the Hon'ble High Court to challenge the conjecture of the AO:

A. In this connection, the Assessee relies on the latest decision of the Division Bench of the Madras High Court, in the case of NLC Employees Co-Operative Society Vs The Commissioner of Income Tax Officer, Puducherry (Appeal No 786 to 789 of 2015) dated 10th August, 2016.

Here it has been held that Co-operative Credit Society which provides financial assistance to its members for the purposes other than agricultural activities is eligible for deduction u/s 80P. It further clarified that from the CPT Circular dated 12.03.2008, it is evident that a credit Co-Operative Society is not a co-operative Bank as defined in Part V of the banking

Regulation Act, 1949. Ultimately the High court has passed the order in favour of assessee and against the Revenue.

B. The Assessee also relies on the latest judgment rendered by the Hon'ble Karnataka High Court in the case of THE COMMISSIONER OF INCOME TAX, BELGAUM Vs SRI BILURU GURUBASAVA PATTINA SAHAKARI SANGHA NIYAMIT, BAGALKOT (appeal No.5006/2013) order dated 05.02.2014) wherein it is held that the Co-Operative Credit Society is eligible for deduction u/s 80P.

The order clarifies following points:

- i. Firstly the Tribunal's decision that the Assessee is not a Co-Operative Bank and Section 80P(4) amendment has no application,*
- ii. Secondly the action of the Commissioner of Income Tax in invoking the power u/s 263 of the Act is not correct as it is not an erroneous order prejudicial to the interest of the Revenue.*
- iii. Thirdly the High Court has held that status of the Assessee is a Co-Operative Society and is not a Co-Operative Bank and hence Co-Operative Society is eligible for 100% deduction u/s 80P(2)(a)(i)*

The above submission clearly states that the appellant assessee is eligible for deduction u/s 80P and therefore the additions made needs to be deleted.

C. To support the above view, the Appellant Assessee also relies on latest Karnataka High Court decision in the case of TUMKUR MERCHANTS SOUHARDA CREDIT CO-OPERATIVE LTD Vs THE INCOME TAX OFFICER, TUMKUR (I.T.A. NO 307 of 2014.

Here the Hon'ble High Court of Karnataka has held that Interest Income from bank deposits received by the Society is eligible for deduction u/s 80P(2)(a)(i). In the order it is clearly mentioned that interest income from bank deposits received by the society is the income attributable to carrying on the business of Society. Thus the addition made by AO needs to be deleted.

10. Any other ground of appeal which may be taken at the time of hearing with the previous approval of this Hon'ble Tribunal.

PRAYER

WHEREFORE, the Appellant Assessee most humbly prays that this Hon'ble Authority be pleased to :

(a) SET ASIDE the Order dated 28-12-2019 passed by the Assessing Officer, Ward No.6(2)(1), Bangalore, vide No.ITBA/AST/S/143(3)/2018-19/1014489468(1);

(b) SET ASIDE the Order dated 17-06-2019 passed by the learned Commissioner of Income Tax (Appeals) Bengaluru-6, in ITA No.10511/CIT(A)-6/Bangalore/2018-19;

(c) DECLARE that the Assessee is entitled for deduction under Sec.80(P)(2)(a)(i) of the Income Tax Act, 1961, and consequently delete the additions of Rs.19,15,582/- made by AO in his order dated 28-12-2019.”

3. Briefly stated the facts of the case are that the assessee is a Co-operative Society registered under the Karnataka Souharda Sahakari Act, 1997. The assessee e-filed its return of income for the assessment year 2016-2017 on 10.02.2018 declaring a total income of Rs.Nil after claiming deduction u/s 80P(2)(a)(i) of the I.T.Act, amounting to Rs.19,15,582. The case was selected for scrutiny. The Assessing Officer noted that the activities of the assessee consisted of collecting deposits and providing credit facilities to its members and held that the assessee was engaged in the business of banking, and therefore, not eligible for deduction u/s 80P of the Act. He accordingly, disallowed the claim of the assessee.

4. Aggrieved by the order of the Assessing Officer denying the deduction u/s 80P(2)(a)(i) 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. None appeared on behalf of the assessee, hence, we proceed to dispose of this appeal after hearing the learned Departmental Representative.

6. I have heard the learned DR 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