

IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES “ B ” BENCH: BANGALORE

BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER

ITA Nos.263, 264 & 265/Bang/2020
(Assessment Years : 2014-15 to 2016-17)

M/s. Sri Varun Souharda Credit Co-operative Limited,
No.617, 4thCross, 5th Main Road, Hanumanthanagar,
Bangalore.
PAN AAAAS 4932Q

....Appellant

Vs.

Income Tax Officer,
Ward 5(2)(4), Bangalore.

.....Respondent.

Assessee By:	Shri S.V. Ravi Shankar, Advocate.
Revenue By:	Shri Ganesh Ghale, Standing Counsel for Department.

Date of Hearing :	31.08.2020.
Date of Pronouncement :	31.08.2020.

ORDER

These three appeals filed by the assessee are directed against the different orders of Commissioner of Income Tax (Appeals)-5, Bangalore dt.30.12.2019 for the Assessment Years 2014-15 to 2016-17. The effective ground in these appeals is common and identical, for the sake of convenience, they are heard together and consolidated order is passed.

2. We take up the Appeal in ITA No.263/Bang/2020. The assessee has argued Ground No.3 regarding disallowance of claim of deduction under Section 80P(2)(a)(i) of the Income Tax Act, 1961 (the Act). The other grounds and additional grounds are not relevant at this stage and are only academic in nature which are not argued before us, accordingly these grounds are dismissed. The effective ground No.3 is as under :

“ 3. The Id. CIT (Appeals) was not justified in law in confirming the disallowance of Rs.20,43,170 under the provision of Section 80P(2)(a)(i) of the Act on the facts and circumstances of the case.”

3. The Assessing Officer has disallowed the claim of deduction made under Section 80P(2)(a)(i) of the Act on the reason that the assessee is in the business of Banking. The CIT (Appeals) has confirmed the order of the Assessing Officer. Hence the assessee is in appeal before us.

4. I have heard both the parties and perused the material on record. Similar issue has been dealt by the Hon'ble High Court in Writ Petition No.48414 of 2018 in the case of M/s. Swabhimani Souharda Credit Co-operative Ltd. Vs. Govt. of India, Min. of Finance and Others Dt.16.01.2020 observed as under :

5. Having heard the learned counsel for the parties and having perused the petition papers, this Court is of a considered opinion that the answer to the above question needs to be in the affirmative for the following reasons:

(a) sec.80P of the 1961 Act provides for deduction in respect of income of Co-operative Societies is obvious going by its very text; sub-section (1) of said section reads as under:

“80P. (1) Where, in the case of an assessee being a co-operative society, the gross total income includes any income referred to in sub-section (2), there shall be deducted, in accordance with and subject to the provisions of this section, the sums specified in sub-section (2) in computing the total income of the assessee.”

The other provisions of this section being not of much relevance to the question being treated, are not reproduced, although they too have been looked into.

Sec. 2(19) which finds a place in the Dictionary Clause of the 1961 Act reads as under:

‘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;’

The provisions of sec.80P are enacted by the Parliament for promoting the co-operative movement in the Country in tune with what Father of the Nation Mahatma Gandhi preached to the countrymen; this Section needs to be liberally construed to effectuate the legislative object of encouraging & promoting the growth of co-operative movement vide **Kanga & Falakhivala's The Law and Practice of Income Tax**, 10th Edition, LexisNexis at page 1656; it is more so because the right to form a co-operative society itself is made a Fundamental Right, now enshrining in Article 19(1)(i) by virtue of 97th Amendment to the Constitution of India w.e.f. 15.10.2013;

(b) the object of enacting sec.80P of the 1961 Act may be defeated if a restrictive meaning is assigned to the definition of "co-operative society" as given u/s.2(19) inasmuch as the invocability of the provisions of sec.80P is dependent upon the entity seeking the benefit thereunder being a co-operative society; going by the text and context

of these provisions, one can safely conclude that all entities that are registered under the enactments relating to co-operative societies, regardless of their varying nomenclatures need to be treated as co-operative societies; this view accords with the purposive construction of sec.80P r/w sec.2(19) of the 1961 Act;

(c) in the State of Karnataka, there have been two statutes enacted by the State Legislature that relate to registration & regulation of co-operative societies viz., the Karnataka Co-operative Societies Act, 1959 ie., Karnataka Act No.11 of 1959 and the Karnataka Souharda Sahakari Act,1997 ie., Karnataka Act No.17 of 2000; both these Acts are enacted pursuant to Article 246(3) r/w Entry 32, List-II of Schedule VII of the Constitution of India; there is no other Entry to which this Act is relatable; the Legislative Entries being only the fields of legislation need to be very broadly interpreted, is the settled position of constitutional jurisprudence vide **UJAGAR PRINTS, ETC. vs. UNION OF INDIA, AIR 1989 SC 516**; Chapter X of 1997 Act containing sec.67 enacts important co-operative principles that animate and brood through almost all the provisions of this Act;

(d) the Karnataka Souharda Sahakari Bill, 1997

has the following as the Statement of Objects & Reasons:

“1. the 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 specified therein;

2. removing all kinds of restrictions that have come to clog the free-functioning of the co-operatives and the controls and interference by the Government except registration and cancellation;

3. promotion of subsidiary organization, partnership between co-operatives and also collaboration between co-operatives and other institutions;

4. registration of co-operatives, union co-operatives and Federal Co-operative in furtherance of the objectives specified above;

5. Conversion of co-operative societies registered under the Karnataka Co-operative Societies Act, 1959 as a co-operative under the proposed legislation. Hence the Bill.”

(e) the **preamble to the 1959 Act** reads as under:

“Whereas it is expedient (to promote voluntary formation, autonomous functioning, democratic control and professional management of co-operative societies) in the State of Karnataka;

Be it enacted by the Karnataka State Legislature in the Tenth Year of the Republic of India as follows-”

Similarly, the **preamble to the 1997 Act** reads as follows:

*“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-”.

A perusal of these two preambles and various provisions of these two Acts leads one to an irresistible conclusion that both these Acts are cognate statutes that deal with co-operative societies, regardless of some difference in their nomenclature and functionality, the subject matter being the same;

(e) the word ‘co-operative’ is defined by sec.2(d-2) of 1959 Act as under:

“2(d-2): ‘Co-operative’ means a Co-operative registered under the Karnataka Souharda Sahakari Act, 1997 (Karnataka Act 17 of 2000), and includes the Union Co-operative and the Federal Co-operative”

Similarly, the word ‘co-operative’ is defined by Sec. 2(e) of 1997 Act as follows:

“2(e): “Co-operative” means a co-operative including a co-operative bank doing the business of banking registered or deemed to be registered under Section 5 and which has the

words ‘Souharda Sahakari’ in its name (and for the purposes of the Banking Regulation Act, 1949 (Central Act 10 of 1949), the Reserve Bank of India Act, 1934 (Central Act 2 of 1934), the Deposit Insurance and Credit Guarantee Corporation Act, 1961 (Central Act 47 of 1961) and the National Bank for Agriculture and Rural Development Act, 1981 (Central Act 67 of 1981), it shall be deemed to be a Co-operative Society”.

A close examination of these two definitions shows that they have abundant proximity with each other in terms of content and contours; it hardly needs to be stated that in both these definitions the word ‘co-operative’ is employed not as an adjective but as a noun; the definition of other relative concepts in the dictionary clauses of these Acts strengthens this view: this apart, sec.7 of the 1997 Act provides that the entity registered as a ‘co-operative’ shall be a body corporate, notwithstanding the conspicuous absence of the word ‘society’ as a postfix; sec.9 of the 1959 Act makes the entity once registered u/s.8 thereof a body corporate; both the entities have perpetual succession by operation of law; thus on registration be it under the 1959 Act or the 1997 Act, a *legal personality* is donned by them, so that *inter alia* they can own and possess the property;

(f) the employment of the word “Sahakari” in the very title of the 1997 Act is also not sans any significance;

'Sahakaar' in Sanskrit is the equivalent of 'sahakaara' in Kannada which means 'co-operation'; as already mentioned above both the 1959 Act and the 1997 Act employ this terminology; the 1997 Act is woven with the principles of co-operation; sec.4 of this Act bars registration of an entity unless its main objects are to serve the interest of the members in the area of co-operation and its bye-laws provide for economic and social betterment of its members through self-help & mutual aid in accordance with the co-operative principles; this apart, even sub-section (2) of sec.4 is heavily loaded with co-operative substance.

In the above circumstances, these writ petitions succeed; a declaration is made to the effect that the entities registered under the Karnataka Souharda Sahakari Act, 1997 fit into the definition of "co-operative society" as enacted in sec.2(19) of the Income Tax Act, 1961 and therefore subject to all just exceptions, petitioners are entitled to stake their claim for the benefit of sec.80P of the said Act; a Writ of Certiorari issues quashing the impugned notice dated 30.03.2018 at Annexure-D in W.P.No.48414/2018; other legal consequences accordingly do follow.

It is needless to mention that the other provisions of sec. 80P of 1961 Act and their effect on the claim of the petitioner-like-societies have been left to be addressed by the concerned authorities.

Therefore respectfully following the above judgment, I remit the issue in dispute to the file of Assessing Officer to decide afresh in the light of above judgement after giving an opportunity of hearing to the assessee. Further we make it clear that the assessee is at liberty to raise any other issue as deem it fit if so advised. Similarly, in the other two appeals in ITA Nos.264 & 265/Bang/2020 shall equally apply the above decision and remit to the file of Assessing Officer with similar directions given above.

5. In the result, appeals of the assessee are partly allowed for statistical purposes.

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

Sd/-

(CHANDRA POOJARI)
ACCOUNTANT MEMBER

Dated: 31.08.2020.

*Reddy GP

Copy to

1. The appellant
2. The Respondent
3. CIT (A)
4. Pr. CIT
5. DR, ITAT, Bangalore.
6. Guard File

By order

Assistant Registrar
Income-tax Appellate Tribunal
Bangalore