

IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES “SMC-A” BENCH: BANGALORE

BEFORE SHRI N.V. VASUDEVAN, VICE-PRESIDENT

ITA. No. 453/Bang/2021
Assessment Year: 2014-15

M/s. Shri Mathaji Vividoddesha Souharda Sahakari Niyamitha, No. 126, I Main, Sheshadripuram, Bangalore – 560 020. PAN: AAGAS8784A	vs.	The Income Tax Officer, Ward 2(2)(1), Bangalore.
(Appellant)		(Respondent)

Assessee by	:	Shri Prakash Hegde, CA
Revenue by	:	Shri Ganesh R Ghale, Standing Counsel

Date of Hearing :	10.11.2021
Date of Pronouncement :	17.11.2021

ORDER

PER N.V. VASUDEVAN, VICE-PRESIDENT

This is an appeal by the assessee against the order dated 07.06.2021 passed by the National Faceless Appeal Centre (NFAC), Delhi relating to Assessment Year 2014-15.

2. The Assessee is a co-operative society registered under the Karnataka Souharda Sahakari Act, 1997. It filed return of income for AY 2014-15 on 29.11.2014 declaring Nil income after claiming deduction u/s. 80P(2)(a)(i) of the Income Tax Act, 1961 (Act) to the extent of Rs. 28,65,269/-. Vide order dated 09.11.2016, the assessment was completed by the AO u/s. 143(3) of the Act accepting the income returned by the assessee.

3. Thereafter the Pr.CIT, Bangalore in exercise of his powers u/s. 263 of the Act set aside the order of AO dated 09.11.2016, directed the AO to examine the claim of the assessee u/s. 80P of the Act afresh. Pursuant to the order of CIT(A) u/s. 263 of the Act, the AO passed an order dated 28.12.2019 u/s. 143(3) r.w.s. 263 of the Act wherein he took the view that the assessee is a souharda and therefore not entitled to deduction u/s. 80P of the Act. In doing so, the AO followed the decision of the ITAT Bangalore bench in the case of M/s. Udaya Souharda Credit Co-operative Society Ltd. Vs. ITO in ITA No. 2831/Bang/2017 wherein the ITAT took the view that a society registered under the Karnataka Souharda Sahakari Act, 1997 cannot be regarded as a co-operative society eligible to claim deduction u/s. 80P of the Act. On appeal by the assessee, the CIT(A) confirmed the order of the AO and hence the assessee has filed the present appeal before the Tribunal.
4. At the time of hearing, the Id. Counsel brought to our notice that ITAT, Bangalore bench in assessee's own case for AY 2015-16 in ITA No. 193/Bang/2021 order dated 20.09.2021, an identical issue has held that assessee is entitled to deduction u/s. 80P of the Act. The Tribunal held as follows.

“7. I have heard rival submissions and perused the material on record. The primary reason for the Assessing Officer to deny the benefit of deduction u/s 80P of the I.T.Act was that the assessee was only registered under the Karnataka Souhardha Sahakari Act, 1997, and therefore, was not a cooperative society within the purview of section 2(19) of the I.T.Act. The Hon'ble Karnataka High Court in the case of M/s.Swabhimani Souharda Credit Co-operative Ltd. (supra) had decided an identical issue and held that the entities registered under the Karnataka Souharda Sahakari Act, 1997, fit into the definite term “Co-operative Society”. The relevant finding the Hon'ble Karnataka High Court reads as follow:-

“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 “cooperative 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.”

8. *Similar view has been taken by the Tribunal in the case of Siddartha Pattina Souharda Sahakari Niyamitha v. ITO in ITA No.1234/Nang/2019 (order dated 26.07.2019). The relevant finding of the Tribunal reads as follow:-*

“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 cooperative 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 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 selfhelp, 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 cooperatives 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.

12. In the result, appeal by the Assessee is allowed for statistical purposes.”

9. The primary reason for the Assessing Officer to deny the benefit of deduction u/s 80P of the I.T.Act was that the assessee is not registered under the Co-operative Societies Act. In view of the Hon'ble jurisdictional High Court judgment in the case of Swabhimani Souharda Credit Co-operative Limited v. Government of India (supra), which has categorically held that a society registered under the Karnataka Souharda Sahakari Act, 1997 is also entitled to the benefit of section 80P of the I.T.Act, the matter is restored to the files of the A.O. The A.O. is directed to examine the claim of deduction u/s 80P of the I.T.Act afresh and decide the issue in accordance with law. It is ordered accordingly.

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

5. Respectfully following the decision of the Tribunal referred above, we set aside the order of CIT(A) and restore the issue to AO to examine the claim u/s. 80P of the Act as directed by the Tribunal in the order referred to above.
6. In the result, the appeal filed by the assessee is treated as allowed for statistical purposes.

Order pronounced in the open court on 17th November, 2021.

Sd/-
(N.V. VASUDEVAN)
VICE-PRESIDENT

Dated: 17th November, 2021.
/MS/

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