

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 20<sup>TH</sup> DAY OF DECEMBER, 2021

PRESENT

THE HON'BLE MRS.JUSTICE S.SUJATHA

AND

THE HON'BLE MR. JUSTICE S.RACHAIAH

**W.A.No.378/2020 (T - IT) C/w W.A.No.406/2020 (T - IT)**  
**& I.T.A.No.832/2018 c/w**  
**I.T.A.No.833/2018, I.T.A.No.869/2018,**  
**I.T.A.No.295/2019 & I.T.A.No.330/2019**

**IN W.A.No378/2020:**

**BETWEEN :**

- 1 . THE GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
DEPARTMENT OF REVENUE  
CENTRAL BOARD OF DIRECT TAXES (CBDT)  
INCOME TAX DEPARTMENT,  
NORTH BLOCK, GATE NO.2,  
NEW DELHI-110001  
REP BY ITS DIRECTOR/PRINCIPAL SECRETARY
- 2 . THE PR. CHIEF COMMISSIONER  
OF INCOME TAX, C.R.BUILDING,  
NO.1, QUEEN'S ROAD  
BENGALURU-560001.

...APPELLANTS

(BY SRI K.V.ARAVIND, ADV.)

**AND :**

- 1 . KARNATAKA STATE SOUHARDA  
FEDERAL CO-OPERATIVE LTD.,  
BEING A REGISTERED CO-OPERATIVE  
REGISTERED UNDER THE KARNATAKA

SOUHARDA SAHAKARI ACT, 1997,  
HAVING ITS REGISTERED OFFICE  
AT NIRMANA BHAVAN,  
Dr. RAJKUMAR ROAD, 1<sup>ST</sup> BLOCK  
RAJAJINAGAR, BENGALURU-560010  
& REP BY ITS MANAGING DIRECTOR

- 2 . STATE OF KARNATAKA  
REP. BY ITS PRINCIPAL SECRETARY  
DEPARTMENT OF CO-OPERATION,  
M.S.BUILDING, Dr. AMBEDKAR ROAD  
BENGALURU-560001. ...RESPONDENTS

(BY SRI A.SHANKAR, SENIOR ADV. FOR SRI B.V.MALLA REDDY,  
ADV. FOR C/R- 1;  
SRI B.RAJENDRA PRASAD, HCGP FOR R-2.)

THIS WRIT APPEAL, FILED UNDER SECTION 4 OF THE  
KARNATAKA HIGH COURT ACT, PRAYING TO SET ASIDE THE  
ORDER DATED 16.01.2020 IN W.P.NO.14381/2019 (T-IT)  
PASSED BY THE LEARNED SINGLE JUDGE AND ALLOW THE  
WRIT PETITION.

**IN W.A.No.406/2020:**

**BETWEEN :**

- 1 . THE GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
DEPARTMENT OF REVENUE  
CENTRAL BOARD OF DIRECT TAXES (CBDT)  
INCOME TAX DEPARTMENT,  
ROON NO.7008, AAYAKAR BHAVAN,  
VAISHAL GHAZIABAD, U.P.-201009  
REP BY ITS DIRECTOR/PRINCIPAL SECRETARY
- 2 . THE PR. COMMISSIONER OF INCOME TAX,  
C.R.BUILDING, NO.1, QUEEN'S ROAD  
BENGALURU-560001.
- 3 . THE INCOME TAX OFFICER (ITO)  
WARD-5(2)(3), 3<sup>RD</sup> FLOOR,  
ROOM NO.307, BMTC BUILDING

COMMERCIAL COMPLEX,  
80 FEET ROAD, KORAMANGALA  
BENGALURU-560 095.

...APPELLANTS

(BY SRI K.V.ARAVIND, ADV.)

**AND :**

1 . M/s SWABHIMANI SOUHARDA  
CREDIT CO-OPERATIVE LTD.,  
BEING A REGISTERED CO-OPERATIVE  
REGISTERED UNDER THE KARNATAKA  
SOUHARDA SAHAKARI ACT 1997,  
HAVING ITS REGISTERED OFFICE AT NO.125,  
DIAGONAL ROAD, V.V.PURAM,  
BENGALURU-560 004 &  
REP BY ITS CEO VINAYAK M. SHENOY  
PAN: AAFAS 0181E

2 . STATE OF KARNATAKA  
REP. BY ITS PRINCIPAL SECRETARY  
DEPARTMENT OF CO-OPERATION,  
M.S.BUILDING, Dr. AMBEDKAR ROAD  
BENGALURU-560001.

...RESPONDENTS

(BY SRI A.SHANKAR, SENIOR ADV. FOR SRI B.V.MALLA REDDY,  
ADV. FOR R-1;  
SRI B.RAJENDRA PRASAD, HCGP FOR R-2.)

THIS WRIT APPEAL FILED UNDER SECTION 4 OF THE  
KARNATAKA HIGH COURT ACT PRAYING TO SET ASIDE THE  
ORDER PASSED BY THE LEARNED SINGLE JUDGE IN  
W.P.NO.48414/2018 (T-IT) DATED 16.01.2020.

**IN I.T.A.No.832/2018:**

**BETWEEN :**

M/s SWABHIMANI SOUHARDA  
CREDIT CO-OPERATIVE LTD.,  
BEING A REGISTERED CO-OPERATIVE,  
REGISTERED UNDER THE KARNATAKA  
SOUHARDA SAHAKARI ACT, 1997,

HAVING ITS REGISTERED OFFICE AT NO.125,  
DIAGONAL ROAD, V.V.PURAM  
BANGALORE-560 004  
AND REP. BY ITS CEO  
VINAYAK M. SHENOY  
PAN:AAFAS 0181 E

...APPELLANT

(BY SRI B.V.MALLA REDDY, ADV.)

**AND :**

INCOME TAX OFFICER (ITO)  
WARD-5(2)(3), 3<sup>RD</sup> FLOOR,  
ROOM NO.307, BMTc BUILDING,  
COMMERCIAL COMPLEX,  
80 FT. ROAD, KORAMANGALA,  
BANGALORE - 560095.

...RESPONDENT

(BY SRI K.V.ARAVIND, ADV.)

THIS INCOME TAX APPEAL IS FILED UNDER SECTION 260-A OF INCOME TAX ACT 1961, ARISING OUT OF ORDER DATED 14.09.2018 PASSED IN ITA NO.2876/BANG/2017 PASSED BY THE INCOME TAX APPELLATE TRIBUNAL VIDE ORDER DATED 14.09.2013, IN ITA NO.88/W-5(2)(3)/CIT(A)-5-2016-17 PASSED BY THE COMMISSIONER OF INCOME TAX (APPEALS)-5 BY ITS ORDER DATED 29.09.2017 AND IN ORDER OF THE INCOME TAX OFFICER (ITO) WARD-5(2)(3), BANGALORE/RESPONDENT, ASSESSMENT ORDER DATED 24.03.2016 UNDER SECTION 143(3) OF I.T.ACT., FOR THE ASSESSMENT YEAR 2013-2014.

**IN I.T.A.No.833/2018:**

**BETWEEN :**

M/s SWABHIMANI SOUHARDA  
CREDIT CO-OPERATIVE LTD.,  
BEING A REGISTERED CO-OPERATIVE,  
REGISTERED UNDER THE KARNATAKA  
SOUHARDA SAHAKARI ACT, 1997,  
HAVING ITS REGISTERED OFFICE AT NO.125,  
DIAGONAL ROAD, V.V.PURAM

BANGALORE-560 004  
AND REP. BY ITS CEO VINAYAK M. SHENOY  
PAN:AAFAS 0181 E

...APPELLANT

(BY SRI B.V.MALLA REDDY, ADV.)

**AND :**

INCOME TAX OFFICER (ITO)  
WARD-5(2)(3), 3<sup>RD</sup> FLOOR,  
ROOM NO.307, BMTc BUILDING,  
COMMERCIAL COMPLEX,  
80 FT. ROAD, KORAMANGALA,  
BANGALORE - 560095.

...RESPONDENT

(BY SRI K.V.ARAVIND, ADV.)

THIS INCOME TAX APPEAL IS FILED UNDER SECTION 260-A OF INCOME TAX ACT 1961, ARISING OUT OF ORDER DATED 14.09.2018 PASSED IN ITA NO.2631/BANG/2017 PASSED BY THE 2<sup>ND</sup> RESPONDENT VIDE ORDER DATED 14.09.2018, IN ITA NO.235/W-5(2)(3)/CIT(A)-5-2016-17 PASSED BY THE 3<sup>RD</sup> RESPONDENT BY ITS ORDER DATED 23.08.2017 AND IN ORDER OF THE INCOME TAX OFFICER (ITO) WARD-5(2)(3), BANGALORE/RESPONDENT NO.4, ASSESSMENT ORDER DATED 19.12.2016 UNDER SECTION 143(3) OF I.T.ACT., FOR THE ASSESSMENT YEAR 2014-2015, VIDE ANNEXURE-A.

**IN I.T.A.No.869/2018:**

**BETWEEN :**

M/s UDAYA SOUHARDA CREDIT  
CO-OP. SOCIETY LTD.,  
REP BY ITS PRESIDENT  
SRI B.S.GUNDU RAO  
# 372, 2<sup>ND</sup> FLOOR, 9<sup>TH</sup> MAIN,  
HANUMANTHANAGAR  
BENGALURU-560 019  
PAN: AAAAU0472H

...APPELLANT

(BY SRI A.SHANKAR, SENIOR ADV. FOR SRI M.LAVA, ADV.)

**AND :**

THE INCOME TAX OFFICER  
WARD-5(2)(4), BMTC BUILDING  
6<sup>TH</sup> BLOCK, KORAMANGALA  
BENGALURU-560095

...RESPONDENT

(BY SRI K.V.ARAVIND, ADV.)

THIS INCOME TAX APPEAL IS FILED UNDER SECTION 260-A OF INCOME TAX ACT 1961, ARISING OUT OF ORDER DATED 17.08.2017 PASSED IN ITA NO.2831/BANG/2017, FOR THE ASSESSMENT YEAR 2013-2014, PRAYING TO A) TO FORMULATE THE SUBSTANTIAL QUESTION OF LAW AS STATED ABOVE AND ANSWER THE SAME IN FAVOUR OF THE APPELLANT. B) TO ALLOW THE APPEAL AND SET ASIDE THE FINDINGS TO THE EXTENT AGAINST THE APPELLANT IN THE ORDER PASSED BY THE INCOME TAX APPELLANT TRIBUNAL, BANGALORE 'C' BENCH IN ITA NO.2831/BANG/2017 DATED 17.08.2017 FOR THE ASSESSMENT YEAR 2013-2014 ANNEXURE-A.

**IN I.T.A.No.295/2019:**

**BETWEEN :**

M/s SRI VARUN SOUHARDA  
CREDIT CO-OP LTD.,  
REP BY ITS SECRETARY  
SRI NAGENDRA KUMAR S.J.,  
NG.617, 4<sup>TH</sup> CROSS, 5<sup>TH</sup> MAIN ROAD  
HANUMANTHANAGAR  
BENGALURU-560019  
PAN:AAAAS4932Q

...APPELLANT

(BY SRI A.SHANKAR, SENIOR ADV. FOR  
SRI V.CHANDRASEKHAR, SRI S.V.RAVISHANKAR &  
SRI BHAIKAV KUTTAIAH, ADVS.)

**AND :**

THE INCOME TAX OFFICER  
WARD-5(2)(4), BMTC BUILDING

6<sup>TH</sup> BLOCK, KORAMANGALA  
BENGALURU-560095

...RESPONDENT

(BY SRI K.V.ARAVIND, ADV.)

THIS INCOME TAX APPEAL IS FILED UNDER SECTION 260-A OF INCOME TAX ACT 1961, ARISING OUT OF ORDER DATED 13.12.2018 PASSED IN ITA NO.446/BANG/2018, FOR THE ASSESSMENT YEAR 2013-2014, PRAYING TO A) TO FORMULATE THE SUBSTANTIAL QUESTION OF LAW AS STATED ABOVE AND ANSWER THE SAME IN FAVOUR OF THE APPELLANT. B) TO ALLOW THE APPEAL AND SET ASIDE THE FINDINGS TO THE EXTENT AGAINST THE APPELLANT IN THE ORDER PASSED BY THE INCOME TAX APPELLANT TRIBUNAL, BANGALORE 'C' BENCH IN ITA NO.446/BANG/2018 DATED 13.12.2018 FOR THE ASSESSMENT YEAR 2013-2014 ANNEXURE-A.

**IN I.T.A.No.330/2019:**

**BETWEEN :**

M/s UDAYA SOUHARDA CREDIT  
CO-OP. SOCIETY LTD.,  
REP BY ITS PRESIDENT  
SRI B.S.GUNDU RAO  
# 372, 2<sup>ND</sup> FLOOR, 9<sup>TH</sup> MAIN,  
HANUMANTHANAGAR  
BENGALURU-560 019  
PAN: AAAAU0472H

...APPELLANT

(BY SRI A.SHANKAR, SENIOR ADV. FOR  
SRI V.CHANDRASEKHAR, SRI S.V.RAVISHANKAR &  
SRI BHAIKAV KUTTAIAH, ADVS.)

**AND :**

THE INCOME TAX OFFICER  
WARD-5(2)(4), BMTC BUILDING  
6<sup>TH</sup> BLOCK, KORAMANGALA  
BENGALURU-560095

...RESPONDENT

(BY SRI E.I.SANMATHI, ADV.)

THIS INCOME TAX APPEAL IS FILED UNDER SECTION 260-A OF INCOME TAX ACT 1961, ARISING OUT OF ORDER DATED 11.01.2019 PASSED IN ITA NO.206/BANG/2018, FOR THE ASSESSMENT YEAR 2014-2015, PRAYING TO A) TO FORMULATE THE SUBSTANTIAL QUESTION OF LAW AS STATED ABOVE AND ANSWER THE SAME IN FAVOUR OF THE APPELLANT. B) TO ALLOW THE APPEAL AND SET ASIDE THE FINDINGS TO THE EXTENT AGAINST THE APPELLANT IN THE ORDER PASSED BY THE INCOME TAX APPELLANT TRIBUNAL, BANGALORE 'B' BENCH IN ITA NO.206/BANG/2018 DATED 11.01.2019 FOR THE ASSESSMENT YEAR 2014-2015 ANNEXURE-A.

THESE APPEALS HAVING BEEN HEARD AND RESERVED, COMING ON FOR PRONOUNCEMENT OF JUDGMENT, THIS DAY, **S. SUJATHA, J.**, DELIVERED THE FOLLOWING:

### **J U D G M E N T**

Since common and akin issues are involved in these appeals, they are taken up together, heard and disposed of by this common judgment.

2. The intra Court appeals are filed by the Revenue under Section 4 of the Karnataka High Court Act, 1961 assailing the common order dated 16.01.2020 passed in W.P.No.48414/2018 and W.P.No.14381/2019.



3. The Income Tax Appeals are filed by the assesses under Section 260A of the Income Tax Act, 1961 ('Act' for short) challenging the orders passed by the Income Tax Appellate Tribunal, Bengaluru ('Tribunal' for short).

4. The appeals were admitted by this Court to consider the following substantial questions of law:-

**In ITA Nos.832/2018 and 833/2018:**

*i. Whether the definition of 'co-operative' in Section-2[e] of the Karnataka Souharda Sahakari Act, 1997, enacted by the Government of Karnataka, deeming to be "Co-operative Society" for the purpose of the enactments mentioned in the said society is only illustrative or exhaustive and not restricted to the enactments mentioned in the said Section?*

*ii. Whether the Appellant Co-operative registered under the Karnataka Souharda Sahakari Act 1997 enacted by the Government of Karnataka, do not fall under the definition of Section 2[19] of I.T. Act, for the purpose of Section 80P of the I.T. Act, though in the definition under Section 2[19] of the I.T Act it is categorically stated as – "registered under any other law for the time*

*being in force in any state for the registration of Cooperative Societies?”*

*iii. Whether the Income Tax Appellate Tribunal is right in entertaining for the first time before it, the question of law as to whether the appellate cooperative is not a cooperative society since it is registered under the Karnataka Souharda Sahakari Act, 1997 and not under the Karnataka Co-operative Societies Act and thereby remanding the case to Assessing Officer/respondent for the purpose of deciding the pure questions of law, instead of deciding the same by the Tribunal itself?*

*iv. Whether the Tribunal erred in law in not holding that the proceeding could be made on the appellant, pursuant to the denial of status of co-operative society and consequently gave a perverse direction, on the facts and circumstances of the case?*

**In ITA No.869/2018:**

*i. Whether the Tribunal was justified in not adjudicating any of the grounds raised by the appellant and have thus passed a perverse order on the facts and circumstances of the case?*

*ii. Whether the Tribunal was justified in law, in not adjudicating the ground raised by the appellant, more so in relation to the denial of deduction under section – 80P of the Act, that the appellant is*

*not a co-operative Bank, on the facts and circumstances of the case.*

*iii. Whether the Tribunal was justified in adjudicating an argument of the respondent revenue and holding that the appellant was not a co-operative society which was not the case of the Assessing Officer, n or the CIT[A], thus has passed a perverse order on the facts and circumstances?*

*iv. Whether the Tribunal erred in law in not holding that the proceeding could be made on the appellant, pursuant to the denial of status of co-operative society and consequently gave a perverse direction, on the facts and circumstances of the case?*

**In ITA No.295/2019:**

*(i) Whether the Tribunal was justified in not adjudicating any of the grounds raised by the appellant and have thus passed a perverse order on the facts and circumstances of the case?*

*(ii) Whether the Tribunal was justified in law, in not adjudicating the ground raised by the appellant, more so in relation to the denial of deduction under Section 80P of the Act, that the appellant is not a Co-operative Bank, on the facts and circumstances of the case?*

*(iii) Whether the Tribunal was justified in adjudicating an argument of the respondent revenue and holding that the*

*appellant was not a co-operative society which was not the case of the AO, nor the CIT(A), thus has passed a perverse order on the facts and circumstances of the case?*

*(iv) Whether the Tribunal was justified in remanding the matter to the file of the AO to ascertain whether the appellant was a society, while holding in the order that the appellant was not a society and not eligible to claim deduction under Section 80P of the Act, thereby passing a perverse order on the facts and circumstances of the case?*

*(v) Whether the Tribunal erred in law in not holding that no proceeding could be made on the appellant, pursuant to the denial of status of society and consequently gave a perverse direction, on the facts and circumstances of the case?*

**In ITA No.330/2019:**

*“1. Whether the Tribunal was justified in not adjudicating any of the grounds raised by the Appellant and mechanically following the ratio of its earlier decision in the appellant's own case for AY 2013-14 and have thus passed a perverse order on the facts and circumstances of the case.*

*2. Whether the Tribunal was justified in holding that the deduction under section 80P of the Act is not eligible in the absence of registration under the Karnataka Co-operative Societies Act, 1957, thus have*

*passed a perverse order on the facts and circumstances of the case.*

3. *Whether the Tribunal was justified in appreciating a ground taken by the respondent revenue that the Appellant was not a co-operative society, the ground which was neither contended by the Assessing Officer nor the Commissioner of Income Tax (Appeals), thus has passed a perverse order on the facts and circumstances of the case.*

4. *Whether the Tribunal was justified in not holding that the order of assessment was to be quashed as bad in law as the appellant's claim for deduction under section 80P of the Act was in accordance with law on the facts and circumstances of the case.*

5. *Whether the Tribunal was justified in remanding the matter to the file of the AO to ascertain whether the Appellant was a co-operative society, while holding in the order that societies registered under Karnataka Souharda Sahakari Act, 1997 are not eligible to claim deduction under section sop of the Act, thereby passing a perverse order on the facts and circumstances of the case.*

6. *Whether the Tribunal erred in law in not holding that no proceeding could be made on the Appellant, pursuant to the denial of status of society as there were no status of co-operative and no rates of taxes prescribed*

*in the scheme of the Act and consequently gave a perverse direction, on the facts and circumstances of the case.”*

5. The assessee claim to be Co-operatives registered under the provisions of the Karnataka Souharda Sahakari Act, 1997 [‘Souharda Act’ for short] and engaged in the business of promoting interest of all its members. The assessee approached the Writ Court seeking declaration that the Souharda Act would fall within the meaning of the phrase ‘any other law for the time being in force in any state for the registration of Co-operative Societies’ *inter alia* seeking a direction that Income Tax Act, 1961 [‘Act’ for short] is not excluded from the definition clause of 2[e] of the Souharda Act. The petitioner in W.P.No.48414/2018 [W.A.No.406/2020] has also challenged the notice issued under Section 148 of the Act. Thus, in substance, the prayer was that the petitioners are entitled to seek deduction in respect of their income in terms of the scheme envisaged under Section 80P of the

Act. Writ Court after hearing both the parties, allowed the writ petitions holding that the entities registered under the Souharda Act fit into the definition of “Co-operative Society” as enacted under Section 2[19] of the Act and therefore, subject to all just exceptions, assesseees are entitled to stake their claim for the benefit of Section 80P of the Act. The impugned notice dated 30.03.2018 [Annexure-D] in W.P.No.48414/2018 has been quashed. Being aggrieved by the said common order, the Revenue has preferred the present appeal.

6. Learned counsel Sri.K.V.Aravind appearing for the appellant/Revenue argued that the definition of Co-operative Societies defined under Section 2[19] of the Act means a Co-operative Society registered under the provisions of the Cooperative Societies Act, 1912. The institution registered under the Souharda Act is not a Co-operative Society to fit into the definition of Section 2[19] of the Act. It was argued that the learned Single

Judge failed to appreciate the definition clause of Co-operative Society under the Souharda Act which mandates registration of such Co-operative Societies under the Co-operative Societies Act, 1959; the interpretation given by the learned Single Judge would amount to re-writing the definition of Co-operative Society under the Act as well as Souharda Act. Inviting the attention of the Court to the preamble of the Souharda Act, it was argued that the manner of functioning and control of the Government on the Co-operative institution registered under the Souharda Act is very minimal, compared to the Co-operative Society wherein the State Government would monitor the affairs of the Co-operative Society. Such benefits cannot be conferred where the affairs of the institution are not supervised or controlled by the State Government. Learned counsel further argued that Section 2[e] of the Souharda Act cannot override Section 2[19] of the provisions of the Income Tax Act, 1961. The only



entities registered under the Karnataka Co-operative Societies Act, 1959 would fall within the definition of section 2[19] of the Act and thus, assesseees are not entitled to claim deduction under Section 80P of the Act. The entities registered under the Souharda Act could not be considered as Co-operative Societies for the purpose of the Act. Article 254 of the Constitution was also referred, in support of the contention that the Central Act prevails over the State Act, in case of any inconsistency between the Central Act and the State Act.

7. Learned Senior Counsel Sri.A.Shankar representing the assesseees justifying the impugned order submitted that no rate of tax has been prescribed for 'Co-operative' under the provisions of the Income Tax Act, 1961. If the arguments of the Revenue are accepted that the assesseees-institutions are coming within the ambit of 'Co-operative' as defined under Section 2[e] of

the Souharda Act and not Co-operative Society as per Section 2[g] of the Souharda Act, it will lead to the consequences beyond comprehension which would result in absurdity. Reference was made to the judgment of the Hon'ble Apex Court in ***Govind Saran Ganga Saran V/s. Commissioner of Sales Tax and Others [1985 (Supp) SCC 205]***. Secondly, it was argued that the definition clause of Souharda Act opens with the phrase 'unless the context which other requires' as such the assessee-institutions cannot be termed as not Co-operative Societies. Thirdly, it was submitted that 'all purposes' mentioned in Section 2[e] of the Souharda Act assumes significance.

8. Learned senior counsel argued that there is no cavil on the proposition relating to Article 254[2] but the same is not applicable to the facts of the present case. Learned counsel has referred to the Karnataka Souharda [Amendment] Act, 2021 wherein Section 2[e]

has been substituted defining 'Co-operative' means a Souharda Co-operative Society including a Cooperative bank doing the business of banking registered or deemed to be registered under Section 5 and which has the words 'Souharda Co-operative Society' in its name and for the purposes of the Income Tax Act, 1961 (Central Act 43 of 1961), including other enactments specified therein and for all purposes mentioned in all Central and State legislation, it shall be deemed to be a Co-operative Society. Thus, it was argued that by virtue of this Amendment Act, which was not available at the time of passing of the order by the learned Single Judge, the view taken by the learned Single Judge is fortified, which requires to be confirmed by this Court.

9. Learned counsel appearing for both the sides have referred to catena of judgments which will be discussed infra.

10. The relevant provisions of law are quoted here under for ready reference:

Section 2[e] of the Souharda Act reads thus:

*“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, 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.”*

Section 2[g] of the Souharda Act reads thus:

*“2(g) “Co-operative Society” means a co-operative society registered under the Karnataka Co-operative Societies Act, 1959 (Karnataka Act 11 of 1959)”*

Section 2[19] of the Income Tax Act reads thus:

*“2(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.”*

Section 80P of the Income Tax Act, 1961 reads thus:

***“Deduction in respect of income of co-operative societies.***

***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.*

(2) *The sums referred to in sub-section (1) shall be the following, namely :—*

.....

*Provided ....”*

11. In the case of **Delhi Cloth & General Mills Co. Ltd., V/s. State of Rajasthan and Others [(1995) 2 SCC 449]**, the Hon’ble Apex Court has held thus:

*“16. The Validating Act provides that, notwithstanding anything contained in Sections 4 to 7 of the 1959 Act or in any judgment, decree, order or direction of any court, the villages of Raipura and Ummedganj should be deemed always to have continued to exist and they continue to exist within the limits of the Kota municipality, to all intents and for all purposes. This provision requires the deeming of the legal position that the villages of Raipura and Ummedganj fall within the limits of the Kota municipality, not the deeming of facts from which this legal consequence would flow. A legal consequence cannot be deemed nor, therefrom, can the events that should have preceded it. Facts may be deemed and, therefrom, the legal consequences that follow.”*

12. In the case of **Apex Co-operative Bank of Urban Bank of Maharashtra & Goa Ltd., V/s. Maharashtra State Co-operative Bank Ltd., and Others [(2003) 11 SCC 66]**, the Hon'ble Apex Court has held thus:

*“8. The questions which arise for considerations are: (a) whether a co-operative society registered under the Multi State Act can be granted a license by the RBI to commence and carry on banking business, (b) whether a co-operative society registered under the Multi State Act can be recognized and notified by the State Government as a State Co-operative Bank and (c) whether a co-operative society registered under the Multi State Act, which has been recognized and notified by one State Government as a State Co-operative Bank for that State, can be granted a License by the RBI to commence and carry on banking activities in other States in which it has not been recognized as a State Co-operative Bank.*

**17.** *We are unable to accept these submissions also. The portion extracted above does not detract from what is provided in Section 22(1). Under Section 22(1) a primary credit society can carry on banking business. However if a co-operative society is not a primary credit society then to carry on banking business it must be a co-operative bank and hold a license issued by the RBI. The above extracted portion of Section 22(2) merely emphasizes that a co-operative society, other than a primary credit society, has to apply to the RBI for license before it can commence banking business. However, this does not mean that RBI can give to any or all co-operative societies, a banking license. RBI can only give a license as provided in Section 22(1) i.e. to a co-operative bank. The term "Co-operative Bank" has been defined in the Banking Regulation Act and only includes a state co-operative bank or a central co-operative bank or a primary co-operative bank. Reference to the term "co-operative bank" in the Multi State Act is of no assistance. When a term is specifically*



*defined in a statute then for purposes of that statute that term cannot bear a meaning assigned to it in another statute. One cannot ignore the specific definition given in the Banking Regulation Act and apply some other definition set out in some other statute. Thus, so far as the Banking Regulation Act is concerned the term "co-operative bank" must have the meaning assigned to it in Section 5(cci). RBI cannot go by any other meaning given to the term "co-operative bank" for purposes of licencing under the Banking Regulation Act. The RBI has to go by the meaning given to this term in the Banking Regulation Act."*

13. In the case of **Commissioner of Income-tax V/s. Mother India Refrigeration Industris [P.] Ltd., [(1985) 23 Taxman 8 (SC)]**, the Hon'ble Apex Court has held thus:

**"10.** *It is true that proviso (b) to Section 10(2)(vi) creates a legal fiction and under that fiction unabsorbed depreciation either with or without current year's depreciation is deemed*

*to be the current year's depreciation but it is well settled, as has been observed by this Court in Bengal Immunity Company Limited v The State of Bihar (1955) 2 SCR 603 at p. 606 that legal fictions are created only for some definite purpose and these must be limited to that purpose and should not be extended beyond that legitimate field. Clearly, the avowed purpose of the legal fiction created by the deeming provision contained in proviso (b) to Section 10(2)(vi) is to make the unabsorbed carried forward depreciation partake of the same character as the current depreciation in the following year, so that it is available, unlike unabsorbed carried forward business loss, for being set off against other heads of income of that year. That that is so becomes clear from this court's observations in Jaipuria China Clay Mines (P) Ltd. case (supra) appearing at p. 561 of the Report which run thus :*

*“The unabsorbed depreciation allowance is carried forward under proviso (b) to Section 10(2)(vi) and the method of carrying it forward is to add it to the amount of the allowance or*

*depreciation in the following year and deeming it to be part of that allowance ; the effect of deeming it to be part of that allowance is that it falls in the following year within Clause (vi) and has to be deducted as allowance.””*

14. In the case of **State of Maharashtra V/s. Laljit Rajshi Shah and Others [(2000) 2 SCC 699]**, the Hon'ble Apex Court has held thus:

*“6. In view of the rival submission at the Bar, the sole question that arises for consideration is, as to what is the effect of the provisions of Section 161 of the Maharashtra Co-operative Societies Act in interpreting the provisions of Section 21 of the Indian Penal Code. It is undoubtedly true that the Co-operative Societies Act has been enacted by the State Legislature and their powers to make such legislation is derived from Entry 32 of List II of the Seventh Schedule to the Constitution. The legislature no-doubt in Section 161 has referred to the provisions of Section 21 of the Indian Penal Code but such reference would not make the officers concerned public servants within the ambit of*

*Section 21. The State Legislature had the powers to amend Section 21 of the Indian Penal Code, the same being referable to a legislation under Entry 1 of List III of the Seventh Schedule, subject to Article 254(2) of the Constitution as, otherwise, inclusion of the persons who are public servants under Section 161 of the Co-operative Societies Act would be repugnant to the definition of public servant under Section 21 of the Indian Penal Code. That not having been done, it is difficult to accept the contention of the learned counsel, appearing for the State that by virtue of deeming definition in Section 161 of the Co-operative Societies Act by reference to Section 21 of the Indian Penal Code, the persons concerned could be prosecuted for the offences under the Indian Penal Code. The Indian Penal Code and the Maharashtra Co-operative Societies Act are not Statutes in pari materia. The Co-operative Societies Act is a completely self-contained Statute with its own provisions and has created specific offences quite different from the offences in the Indian Penal Code. Both Statutes have different*

*objects and created offences with separate ingredients. They cannot thus be taken to be Statutes in pari materia, so as to form one system. This being the position, even though the Legislatures had incorporated the provisions of Section 21 of the Indian Penal Code into the Co-operative Societies Act, in order to define a public servant but those public servants cannot be prosecuted for having committed the offence under the Indian Penal Code. It is a well known principle of construction that in interpreting a provision creating a legal fiction, the Court is to ascertain for what purpose the fiction is created, and after ascertaining this, the Court is to assume all those facts and consequences which are incidental or inevitable corollaries to giving effect to the fiction. But in so construing the fiction it is not to be extended beyond the purpose for which it is created, or beyond the language of the Section by which it is created. A legal fiction in terms enacted for the purposes of one Act is normally restricted to that Act and cannot be extended to cover another Act. When the State*

*Legislatures make the Registrar, a person exercising the power of the Registrar, a person authorised to audit the accounts of a society under Section 81 or a person to hold an inquiry under Section 83 or to make an inspection under Section 84 and a person appointed as an Administrator under Section 78 or as a Liquidator under Section 103 shall be deemed to be public servant within the meaning of Section 21 of the Indian Penal Code. Obviously, they would not otherwise come within the ambit of Section 21, the legislative intent is clear that a specific category of officers while exercising powers under specific sections have by legal fiction become public servant and it is only for the purposes of the co-operative Societies Act. That by itself does not make those persons public servants under the Indian Penal Code, so as to be prosecuted for having committed the offence under the Penal Code. When a person is deemed to be something, the only meaning possible is that whereas he is not in reality that something, the Act of legislature requires him to be treated as if obviously for*

*the purposes of the said Act and not otherwise. In a somewhat similar situation in Ramesh Balkrishna Kulkarni vs. State of Maharashtra, 1985(3) SCC 606, the question for consideration was whether a Municipal Councillor can be prosecuted for having committed an offence under the Indian Penal Code, since under Section 302 of the Municipalities Act, a Councillor shall be deemed to be a public servant within the meaning of Section 21 of the Indian Penal Code. Section 302 of the Maharashtra Municipalities Act, 1965 is quoted herein below in extenso:*

*.....”*

These judgments were cited by the Revenue to contend that the legal fiction created by the deemed provision cannot be expanded to read ‘Co-operative’ as ‘Co-operative Society’ under the Souharda Act. This argument would not come to the assistance of the Revenue in view of the amendment brought to Section 2[e] of the Souharda Act.

15. In the case of **Kalyani Mathivanan V/s. K.V.Jeyaraj and Others [(2015) 6 SCC 363]**, the Hon'ble Apex Court has held thus:

**“46.** Article 246 demarcates the matters in respect of which Parliament and State Legislature may make laws. The legislative powers of the Central and State Governments are governed by the relevant entries in the three lists given in 7th Schedule.

**47.** Entry 66 in List I provides for Co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions. Prior to 42nd Amendment, education including Universities subject to the provisions of the Entries 63, 64, 65, 66 of List-I and Entry 25 of List III was shown in Entry 11 of the List II - State List. By 42nd Amendment of Constitution w.e.f. 3rd January, 1977 Entry 11 of List II-State List was omitted and was added as Entry 25 of List-III. At present the aforesaid provisions read as follows:



**"SEVENTH SCHEDULE**

*List I - Union List*

**66.** *Co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions.*

*List III - CONCURRENT LIST*

**25.** *Education, including technical education, medical education and universities, subject to the provisions of entries 63, 64, 65 and 66 of List I; vocational and technical training of labour."*

This judgment would be of little assistance to the Revenue as there is no cavil on this proposition.

16. In the case of **Commissioner of Income-tax, Rajkot V/s. Govindbhai Mamaiya [(2014) 52 taxmann.com 270 (SC)]**, the Hon'ble Apex Court has held thus:

*“19. In the case of CIT v. Indira Balkrishna, AIR 1960 SC 1172, this Court held that "association of persons" meant an association in which two or more persons joined in a common purpose or common action. As the words occurred in a section which imposed a tax on income, the association must be one the object of which was to produce income, profits or gains. In that case, the co-widows of a Hindu governed by Mitakshara law inherited his estate which consisted of immovable properties, shares, money lying in deposit and a share in a registered firm. The Appellate Tribunal found that they had not exercised their right to separate enjoyment and that except for jointly receiving the dividends from the shares and the interest from the deposits, they had done no act which had helped to produce income. This Court held that the co-widows succeeded as co-heirs to the estate of the deceased husband. It was held that since the widows had an equal share in the income from immovable properties, Section 9(3) of the Indian Income Tax Act, 1922 will apply. So*

*far as other incomes were concerned, it was held:*

*.....”*

17. In the case of **Commissioner of Income-tax V/s. K.Adinarayana Murty [(1967) 65 ITR 607 (SC)]**,

the Hon'ble Apex Court has held thus:

*“The question presented for determination in this appeal is whether it was competent for the Income-tax Officer to issue the second notice dated February 12, 1958 and continue proceedings thereon ignoring the return already filed by the assessee in pursuance of the first notice under the same section. It was pointed out by Mr.S. T. Desai on behalf of the assessee that both the notices under s.34 of the Act were in identical terms and were addressed to the assessee in his name and the issue of the second notice made no difference in its contents to the knowledge of the assessee. It was also contended that the assessee filed his return in the status of 'Hindu Undivided Family' in response to the first notice and the Income-tax Officer ought not to have ignored that return.*

*We are unable to accept the argument put forward on behalf of the assessee as correct. The Income-tax Officer could not have validly acted on the return filed by the assessee in the status of 'Hindu Undivided Family' and assessment made by the Income-tax Officer on such a return would have been invalid in law because the notice under s. 34 had been issued in the status of 'individual' and sanction of the Commissioner for the issue of a notice under s. 34 was also obtained on that basis. We therefore consider that the Income-tax Officer was entitled to ignore the return filed by the assessee as non est in law. It is not disputed that the Income-tax Officer issued the first notice under s. 34 of the Act on March 22, 1957 to the assessee in the status of 'individual'. The Appellate Tribunal has stated in para 3 of the statement of the case that the Income-tax Officer had taken the view that the correct status of the assessee was 'individual' and in accordance with that view "a notice under s. 34 was issued to the assessee as above for making an assessment in the status of 'individual' ". As there was*

*some ambiguity in the statement of the case on this point, we referred to the original file of the income-tax proceedings and satisfied ourselves that the assertion of fact made in the statement of the case is correct. It appears that on February 13, 1957 the Income-tax Officer had applied for the sanction of the Commissioner for instituting proceedings under s. 34(1)(a) of the Act against the assessee to make an assessment in the status of an 'individual' with regard to the procurement agency business. Sanction of the Commissioner was given to the proposal of the Income-tax Officer and thereafter the first notice under s. 34 of the Act was issued on March 22, 1957. In this state of facts we are of opinion that the proceeding taken under the first notice under s. 34 of the Act was invalid and ultra vires. The correct status of the assessee was that of 'Hindu Undivided Family' as was held by the Appellate Assistant Commissioner in the assessment for the year 1954-55 and since the first notice under s. 34 was issued to the assessee as an 'individual' for making assessment in that*

*status, it is manifest that the proceedings taken under that notice were illegal and without jurisdiction. Under the scheme of the Income-tax Act the 'Individual' and the 'Hindu Undivided Family' are treated as separate units of assessment and if a notice under s. 34 of the Act is wrongly issued to the assessee in the status of an 'individual' and not in the correct status of 'Hindu Undivided Family' the notice is illegal and all proceedings taken under that notice are ultra vires and without jurisdiction. It was contended by Mr. S. T. Desai on behalf of the assessee that the return was filed by the assessee in response to the first notice in the character of 'Hindu Undivided Family'. But the submission of the return by the assessee will not make any difference to the character of the proceedings in pursuance of the first notice which must be held to be illegal and ultra vires for the reasons already stated. We are therefore of the opinion that the Income-tax Officer was legally justified in ignoring the first notice issued under s. 34 of the Act and the return filed by the assessee in response to*

*that notice and consequently the assessment made by the Income-tax Officer in pursuance of the second notice issued on February 12, 1958 was a valid assessment.*

*We accordingly allow this appeal, set aside, the judgment of the High Court of Andhra Pradesh dated April 14, 1964 and hold that the question of law referred to the High Court should be answered in the affirmative and against the assessee. There will be no order as to costs in this appeal.”*

18. In the case of **Gutta Anjaneyalu V/s. Commissioner of Income-tax [(2013) 30 taxmann.com 66 (Andhra Pradesh)]**, while considering the Full Bench decision of the Hon'ble High Court of Andhra Pradesh in **Pannabai V/s. CIT [(1985) 153 ITR 608/23 Taxman 517]**, has held thus:

*"To sum up, the Tribunal having held that Smt.Panna Bai could not be assessed to tax in the status of an individual" on the income derived from the firm erred in*

*modifying the assessment in the status of a “body of individuals” consisting of Smt. Panna Bai and her minor children. The Tribunal should have annulled the assessment with liberty to the ITO to assess the income in the status of a body of individuals, if permitted by law, after issuing notice to that body of individuals to submit a return as required by s.139(2) of the I.T. Act.”*

Thus, modifying the assessment changing the status of the assessee as co-operative is not permissible.

19. Statement of objects and reasons to Karnataka Act No.17/2000 [Souharda Act] reads thus:

*“The Karnataka Souhardha Sahakari Bill, 1997 among other things provide for.–*

*(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 organisation, 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.”*

20. The objects and reasons for the amended Act No.21/2004 [Souharda Act] reads as under:

***“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 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.”*

21. Preamble to the Souharda Act reads thus:

*“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-”*

22. Preamble to the Co-operative Societies Act, 1959 reads thus:

*“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-”*

23. A comprehensive reading of the Preambles of the aforesaid Acts vis-à-vis objects and reasons would indicate that both the Statutes support and promote

Co-operative movement. No hyper technical view can be taken to exclude the entities registered under the Souharda Act as not falling under the definition of 'Co-operative Society' as defined in Section 2[19] of the Act. Now, it is further clarified by the Amendment Act No.35/2021 brought out to Section 2[e] of the Souharda Act by substitution whereby 'Co-operative' means a Souharda Co-operative Society including a Co-operative bank during the business of banking registered or deemed to be registered under Section 5 and which has the words 'Souharda Co-operative Society' in its name and for the purposes of the Income Tax Act, 1961 also amongst other enactment specified therein. By substituting amongst the others "The Income Tax Act, 1961" it has been clarified that for the purpose of the Income Tax Act, Co-operative under Souharda Act is a Co-operative Society as such, the assesses are entitled for the benefit of Section 80P of the Income Tax Act, 1961. It cannot be gainsaid that the amendment by

substitution relates back to the date of original enactment unless specified from a particular date. In the absence of any specified date mentioned, the Amended Act certainly relates back to the date of enactment.

24. In the case of **Mavilayi Service Co-operative Bank Ltd., V/s. Commissioner of Income Tax, Calicut [(2021) 123 taxmann.com 161 (SC)]**, the Hon'ble Apex Court has held thus:

*“11. Having heard learned counsel for the assesseees as well as for the Revenue, it is first important to set out sections 2(19) and 80P of the Income Tax Act, which read as follows:*

*“2. In this Act, unless the context otherwise requires,-*

*xxx xxx xxx*

*(19). “co-operative society” means a co-operative society registered under the Co-operative Societies Act, 1912 (2 of 1912), or under any law for the time being in force in*

*any State for the registration of co-operative societies.”*

*“80P. Deduction in respect of income of co-operative societies.—(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.*

*(2) The sums referred to in sub-section (1) shall be the following, namely:—*

.....

*We now turn to the proper interpretation of Section 80P of the IT Act. Firstly, the marginal note to Section 80P which reads “Deduction in respect of income of co-operative societies” is important, in that it indicates the general “drift” of the provision. This was so held by this Court in K.P. Varghese v. Income Tax Officer, Ernakulam and Anr. (1981) 4 SCC 173 as follows:*

“9. This interpretation of subsection (2) is strongly supported by the marginal note to Section 52 which reads “Consideration for transfer in cases of understatement”. It is undoubtedly true that the marginal note to a section cannot be referred to for the purpose of construing the section but it can certainly be relied upon as indicating the drift of the section or, to use the words of Collins, M.R. in *Bushel v. Hammond* [(1904) 2 KB 563] to show what the section is dealing with. It cannot control the interpretation of the words of a section particularly when the language of the section is clear and unambiguous but, being part of the statute, it *prima facie* furnishes some clue as to the meaning and purpose of the section (*vide Bengal Immunity Company Limited v. State of Bihar* [(1955) 2 SCR 603]).”

28. Secondly, for purposes of eligibility for deduction, the assessee must be a “co-operative society”. A co-operative society is defined in Section 2(19) of the IT Act, as being a co-operative society registered either under the Co-operative Societies Act, 1912 or under any other law for the time being in force in any State for the registration of co-operative societies. This, therefore, refers only to the *factum* of a co-operative society being

*registered under the 1912 Act or under the State law. For purposes of eligibility, it is unnecessary to probe any further as to whether the co-operative society is classified as X or Y.*

*29. Thirdly, the gross total income must include income that is referred to in sub-section (2).*

*30. Fourthly, sub-clause (2)(a)(i) with which we are directly concerned, then speaks of a co-operative society being “engaged in” carrying on the business of banking or providing credit facilities to its members. What is important qua sub-clause (2)(a)(i) is the fact that the co-operative society must be “engaged in” the providing credit facilities to its members. As has been rightly pointed out by the learned Additional Solicitor General, the expression “engaged in”, as has been held in Commissioner of Income Tax, Madras v. Ponni Sugars and Chemicals Ltd. (2008) 9 SCC 337, would necessarily entail an examination of all the facts of the case. This Court in Ponni Sugars and Chemicals Ltd. (supra) held:*

*“20. In order to earn exemption under Section 80-P(2) a cooperative*



*society must prove that it had engaged itself in carrying on any of the several businesses referred to in sub-section (2). In that connection, it is important to note that under sub-section (2), in the context of cooperative society, Parliament has stipulated that the society must be engaged in carrying on the business of banking or providing credit facilities to its members. Therefore, in each case, the Tribunal was required to examine the memorandum of association, the articles of association, the returns of income filed with the Department, the status of business indicated in such returns, etc. This exercise had not been undertaken at all.”*

In terms of this recent judgment of the Hon’ble Apex Court, it is unnecessary to probe as to whether the Co-operative Society is classified further. In this recent judgment, the Hon’ble Apex Court has observed that the provision is introduced with a view to encourage and promote the growth of Co-operative Society in the economic life of Country and in pursuance of the declared policy of the Government. The factum of a Co-operative Society being registered under the 1912 Act or

under the State law is the test. Co-operatives being registered under the Souharda Act, a State law, certainly comes within the ambit of Co-operative Society.

25. The Constitution of India has been amended by incorporation of Part-IX-B. On 15.02.2012 vide S.O.265[E], dated 08.02.2012 under the heading “The Co-operative Societies”, Article 243-ZH[c] of the Constitution of India defines “Co-operative Societies” as under:-

*“[c] “Co-operative Society” means a society registered or deemed to be registered under any law relating to co-operative societies for the time being in force in any State”,*

*Article 243-ZI of the Constitution of India authorizes formation of co-operative societies by the State Legislature. Article 243-ZI of the Constitution of India reads as under:-*

*“243-ZI. Incorporation of co-operative societies. Subject to the provisions of this Part, the Legislature of a State may, by law, make provisions with respect to the incorporation, regulation and winding up of co-operative societies based on the principles of voluntary formation, democratic member-control, member-economic participation and autonomous functioning.”*

It appears, it was thought fit to encourage co-operative movement by formation of co-operative societies by incorporating the same in Part-IV i.e., directive principles of State policy in the Constitution of India. The amendment incorporated as Article – 43-B by the Constitution [ninety seventh amendment] Act, 2011, S-3 with effect from 15.02.2012 reads as under:-

*“43.B. Promotion of co-operative societies, - The State shall Endeavour to promote voluntary formation, autonomous functioning, democratic control and professional management of co-operative societies.”*

26. The fallout of the object and reasons and the subsequent amendment which takes the forefront by this 97<sup>th</sup> Constitution Amendment is appreciating “Co-operative movement.” By incorporating part IX-B in the Constitution under the head “The Co-operative Society” and making it part of directive principles of the state policy, it becomes explicit that the co-operative movement is top priority of the Central Government’s Policy and its implementation.

27. Merely, because separate definitions are provided for the words “Co-operative” and “Co-operative Society” under Section 2[e] and [g] respectively of Sec.2 of Souharda Act, it cannot be construed as their characteristic is different, since their nomenclature is different. Importance has to be given to the word “Co-operative” which is found in both the enactments i.e., Act No.11 of 1959 and Act No.17 of 1997, as adjective pre-fixed to the noun that means the characteristic of

the organization/institution while applying the principle of harmonious construction and interpretation of the laws, especially the laws which are intended to promote the organization of that character.

28. The Souharda Act and the Karnataka Co-operative Societies Act, 1959 are both in force in the State of Karnataka and are regulated by the State Registrar of Co-operatives Karnataka. Registrar of Cooperative Societies governs all Co-operatives while being formed, alteration of bylaws and closure of the Co-operative Societies. Though the aforesaid two Acts are parallel but are in respect of Co-operatives in the State as the name suggests.

29. It could be inferred that once the entities are governed by the Co-operative Principles under the law in force and registered under the State enactment, which by implication or otherwise shall only have a same meaning of Co-operative Society.

30. Both these Acts [Souharda Act and Cooperative Societies Act, 1959] would come within the ambit of Article 246[3] read with Entry 32 of the List-II of Schedule – VII of the Constitution of India.

31. The provisions of Section 47 of the Co-operative Societies Act, 1912 imposes a bar on the use of the Co-operative, which is extracted hereunder:

***“47. Prohibition of the use of the word “co-operative”.—***

*(1) No person other than a registered society shall trade or carry on business under any name or title of which the word “co-operative” is part without the sanction of the State Government:*

*Provided that nothing in this section shall apply to the use by any person or his successor-in-interest of any name or title under which he traded or carried on business at the date on which this Act comes into operation.*

*(2) Whoever contravenes the provisions of this section shall be punishable*

*with fine which may extend to fifty rupees, and in the case of a continuing offence with further fine of five rupees for each day on which the offence is continued after conviction therefor.”*

32. At this juncture, the arguments advanced by the learned counsel for the Revenue that the Karnataka Act No.35/2021 – the State Amendment Act runs contrary to the Central enactment of Co-operative Societies Act, 1912 resulting in repugnancy with the Central enactment cannot be countenanced for the reason that we are not adjudicating upon the Constitutional validity of the Karnataka Act No.35/2021, Amended Souharda Act. Hence, the amended Section 2[e] of the Souharda Act is applicable to the facts of the case. The judgments cited by the learned counsel for the Revenue inasmuch as Articles 246 and 254 would be of no assistance in adjudicating the dispute in the case on hand. If a strict literal interpretation is given to the word ‘Co-operative’ as

canvassed by the learned counsel for the Revenue, in the absence of rate of tax fixed for such 'Co-operative', no tax liability would arise in the light of the judgment of the Hon'ble Apex Court in the case of **Govind Saran Ganga Saran** supra. Hence, the said arguments are negated.

33. The provisions of Section 80P offers tax deduction in respect of income of Co-operative Societies which is enacted with a laudable object of promoting Co-operating moment. Such benefit cannot be denied to the so called Co-operatives under the Souharda Act merely on hyper technicalities. The interpretation given by the Revenue to Section 2[19] of the Act is untenable. A harmonious reading of the said provisions would indicate that Co-operative Society registered under the Co-operative Societies Act, 1959 alone is not the Co-operative Society for the purposes of the Income Tax Act, as the phrase 'or' employed with the following



words 'under any other law for the time being in force in any State for the registration of Co-operative Society' if read, Co-operative Societies registered under the Souharda Act which is a State enactment would certainly be construed as Co-operative Society coming within the ambit of Section 2[19].

34. Thus, for the reasons aforesaid, we find no jurisdictional error in the order passed by the learned Single Judge in extending the benefit of Section 80P to the entities registered under the Souharda Act.

In the result, Writ appeals stand dismissed.

In view of the decision taken by us as aforesaid, the substantial questions of law raised in the Income Tax Appeals are answered in favour of the assessee and against the Revenue.

Income Tax Appeals stand disposed of accordingly.

**SD/-  
JUDGE**

**SD/-  
JUDGE**

NC.