

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

BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT

ITA No.1233/Bang/2019
Assessment year : 2016-17

Halapur Pattina Souharda Sahakari Niyamitha, Halekote Veerabhadreswara Complex, Main Road, Maski – 584 124. Tq. Lingsagur. Dist. Raichur. PAN: AABAH 2919K	Vs.	The Income Tax Officer, Ward -2, Raichur.
APPELLANT		RESPONDENT

Appellant by	:	Shri Chaitanya V. Mudrabettu, Advocate
Respondent by	:	Shri R.G. Ganesh, Standing Counsel for Dept.

Date of hearing	:	24.07.2019
Date of Pronouncement	:	26.07.2019

ORDER

This is an appeal by the Assessee against the order dated 29.03.2019 of the CIT(Appeals), Kalaburgi relating to assessment year 2016-17.

2. The assessee is a co-operative society providing a credit facilities to its member. In the return of income is filed for the asst. year 2016-17, the assessee claimed deduction of sum of Rs.28,07,930/- u/s 80P(2)(a)(i) of the Income Tax Act, 1961 (Act).

3. Under Sec.80P(2)(a)(i) of the Act, where the gross total income of a co-operative society includes income from carrying on the business of banking or providing credit facilities to its members, the same is allowed deduction. According to the AO, the benefit of deduction u/s.80P(2)(a)(i) of the Act was available only to a co-operative society and since the Assessee is only a Souharda Sahakari registered under the Karnataka Souharda Sahakari Act, 1997 and since under the said Act, Co-operative Societies are not being registered, the Assessee should not be allowed the benefit of deduction u/s.80P(2)(a)(i) of the Act. According to the AO, Co-operative and Co-operative Societies are 2 different entities. If the co-operative wants to convert itself into a co-operative society, it has to be converted as per the amended provisions of Karnataka Souharda Sahakari Act, 1997 as amended by Act 13/2004. Similarly, under the Karnataka Co-operative Societies Act, 1959 'Co-operative' has been defined according to which the co-operative means a co-operative registered under the Karnataka Souharda Sahakari Act, 1997. The AO has made reference to the fact that under the Karnataka Souharda Sahakari Act, 1997 the word co-operative has been defined in clause 2(e) according to which 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 word Souharda Sahakari in its name. In Souharda Sahakari Act, the word co-operative society has also been defined in clause 2(g), according to which the co-operative society means a co-operative society registered under the Karnataka Co-operative Societies Act, 1959. Thus, according to the AO, if both the Acts are read jointly, it would be very clear that the co-operative and co-operative Societies are two different entities. The benefit of deduction can only be given to the co-operative societies and not to the co-operative. Therefore, the assessee is not even eligible to claim deduction under section 80P(2) of the Act.

4. On appeal by the Assessee, the CIT(A) concurred with the view of the AO. Aggrieved by the order of the CIT(A), the Assessee is in appeal before the Tribunal.

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 Co-operative 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 co-operative 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. Co-operative Societies and Co-operatives are all founded on the principle of co-operation.

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 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:- ”

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.

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

Pronounced in the open court on this 26th day of July, 2019.

Sd/-

(N.V. VASUDEVAN)
VICE PRESIDENT

Bangalore,
Dated, the 26th July, 2019.

/ Desai Smurthy /

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.
6. Guard file

By order

Assistant Registrar,
ITAT, Bangalore.