

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

**BEFORE SHRI N. V. VASUDEVAN, VICE PRESIDENT AND
SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER**

ITA No.225/Bang/2020
Assessment Year : 2016-17

M/s. Spandana Credit Souhardha Sahakari Niyamita, 1587, Punyakoti, 3 rd Main Road, Chandra Layout, Vijayanagar, Bangalore – 560 040. PAN : AAGAS 7780 Q	Vs.	The Income Tax Officer, Ward – 3(2)(2), Bangalore.
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Assessee by	:	Shri. Sukesh S. Patil, CA
Revenue by	:	Shri. Priyadarshi Mishra, JCIT(DR)(ITAT), Bangalore

Date of hearing	:	15.12.2020
Date of Pronouncement	:	17.12.2020

ORDER

Per N. V. Vasudevan, Vice President

This appeal is by the assessee directed against the order dated 31.12.2019 of CIT(A)-3, Bangalore, relating to AY 2016-17.

2. The Assessee in this case is a Co-operative registered under section 6(1) of the Karnataka Souharda Co-operative Act, 1997. The assessee claimed deduction under section 80P(2)(a)(i) of the Income Tax Act, 1961 (hereinafter called ‘the Act’), on a sum of Rs.1,11,83,924/-. The relevant provisions of Sec.80P(2)(a)(i) of the Act, provides for the following deduction:

“Section 80P – 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 :—

(a) in the case of a co-operative society engaged in—

(i) carrying on the business of banking or providing credit facilities to its members,”

3. 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. In coming to the above conclusion, the AO placed reliance on the decisions rendered by the ITAT Bangalore Division Bench, in the case of 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. The CIT(A) confirmed the order of the AO.

5. Aggrieved by the order of the CIT(A), the Assessee is in appeal before the Tribunal. The learned counsel for the Assessee drew my attention to the fact that in the case of Udaya Souhardha Credit Co-operative Society Ltd. (Supra), on which the Revenue authorities placed principal reliance, the Tribunal has in paragraph-8 has specifically observed that the learned DR has raised a few valid points which cannot be outrightly ignored. The tribunal has also observed that the arguments so raised were the arguments on the issue for the first time before the Tribunal and observed that these legal arguments goes to the root of the case. In paragraph 13 of the said order, the Tribunal has further observed as follows:

“Since all these new points have been raised during the course of hearing before us and according to us all these points goes to the root of the case, we are of the view that proper adjudication of the issues is required by the AO. We accordingly set aside the order of the CIT(A) and resotore the matter to the AO to re-examine all these aspects by making necessary enquiry and investigation and also by passing a reasoned order in this regard. Since we have restored the matter to the AO, we find no justification to adjudicate the issue raised on merit. Accordingly, the order of the CIT(A) is set aside and matter is restored to the AO for adjudication of the impugned issue in terms indicated above.”

6. Thus the issue whether a 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 raised for the first time before the Tribunal and hence the tribunal remanded the issue for fresh consideration by the AO. There was therefore no view taken by the tribunal that Souharda's are not entitled to claim benefit of deduction u/s.80P of the Act.

7. It was also submitted by him that the decision in the case of Udaya Souharda Credit Co-operative Society Ltd. (supra) did not consider the provisions of Sec.2(19) of the Act, which were very crucial to a decision on the issue in question. It was therefore submitted by him that there was no view on the issue expressed by the Udaya Souhardha Credit Co-operative Society Ltd., which can be said to be a binding precedent nor were the provisions of Sec.2(19) of the Act considered by the Division Bench, rendering it per incurium. It was submitted that the Hon'ble Karnataka High Court in the case of M/S.Swabhimani Souharda Credit Co-operative Ltd., Vs. Government of India & 3 others W.P.No.48414 of 2018 Judgment dated 16.1.2020, in which the Principal Commissioner of Income Tax, Bengaluru and the ITO Ward-5(2)(3), Bengaluru were also parties and after considering the provisions of

Sec.2(19) of the Act declared 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 Act and therefore subject to all just exceptions, are entitled to stake their claim for the benefit of Sec.80P of the Act.

8. The learned DR relied on the orders of the revenue authorities and the decision of the ITAT Bangalore Bench in the case of Udaya Souhardha Credit Co-operative Society Ltd. (supra).

9. We 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 ;”

10. The Hon’ble Karnataka High Court in the case of Swabhimani Souharda Credit Co-operative Ltd.(supra) after considering the aforesaid definition of Co-operative society made the following observations:

(i) 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 invokability 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;

*(ii) 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;*

(ii) After noticing the statement and objects and reasons for introducing The Karnataka Souharda Sahakari Bill, 1997 has the following as the Statement of Objects & Reasons and preamble to the the Karnataka Co-operative Societies Act, 1959 and the Karnataka Souharda Sahakari Act,1997, concluded 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.

11. The CIT(A), while confirming the order of the AO, primarily relied on the decision of the ITAT, Bangalore Bench, in the case of Udaya Souharda Credit Co-operative Society Limited in ITA No.2831/Bang/2017 dated 17.08.2018. In the light of the decision of the Hon'ble Karnataka High Court, we are of the view that the assessee should be allowed deduction under section 80P(2)(a)(i) of the Act.

12. We however find that out of the sum of Rs.1,11,83,924/- claimed by the Assessee as deduction u/s.80P(2)(a)(i) of the Act, a sum of Rs.9,47,434/- which was interest received by the Assessee from Apex Co-operative Bank was claimed as deduction u/s.80P(2)(a)(i) or (d) of the Act. u/s.80P(2)(d) of the Act, a deduction is allowed in respect of interest income earned on deposits by a co-operative society from investments with any other co-operative society. The AO relied on the decision of the Hon'ble Supreme Court in the case of PCIT Vs. Totgars Co-operative Sale Society Ltd., 83 taxmann.com 140 interest

income had to be regarded as 'income from other sources'. Since interest income was not income derived from the business of co-operative society, the deduction claimed by the assessee cannot be allowed. We may add that no other grounds were urged by the Revenue authorities for denying the claim of deduction on the sum of Rs.1,11,83,924/- less the interest income of Rs.9,47,434/- by the assessee. Hence, the claim of deduction u/s.80P(2)(a)(i) of the Act on income other than interest income of Rs.9,47,434/- is directed to be allowed.

13. We have heard the rival submissions with regard a sum of Rs.9,47,434/- which was interest received by the Assessee from Apex Co-operative Bank was claimed as deduction u/s.80P(2)(a)(i) or (d) of the Act. u/s.80P(2)(d) of the Act, a deduction is allowed in respect of interest income earned on deposits by a co-operative society from investments with any other co-operative society. The learned AR relied on the decision of the Hon'ble Karnataka High Court in the case of Tumkur Merchants Souharda Credit Co-operative Society Ltd. Vs. ITO 230 taxman 309 (Karn) wherein the Hon'ble Karnataka High Court considered the decision of the Hon'ble Apex Court in the case of The Totgar's Co-operative Sales Society (supra) and held that interest income in respect of temporary parking of own surplus funds not immediately required is eligible for deduction u/s.80P(2)(a)(i) of the Act. The learned DR relied on a subsequent decision of the Hon'ble Karnataka High Court in the case of PCIT Vs. Totgars Co-operative Sale Society Ltd. 395 ITR 611 (Karn.).

14. We have carefully gone through the judgment relied by the learned DR. The facts of the case before the Hon'ble Karnataka High Court in the decision cited by the learned DR was that the Hon'ble Court was considering a case

relating to Assessment Years 2007-2008 to 2011- 2012. In case decided by the Hon'ble Supreme Court in the case of the very same Assessee, the Assessment years involved was AY 1991-92 to 1999-2000. The nature of interest income for all the AYs was identical. The bone of contention of the Assessee in AY 2007-08 to 2011-12 was that the deduction under Section 80P(2) of the Act is claimed by the respondent assessee under Section 80P(2)(d) of the Act and not under Section 80P(2)(a) of the Act which was the claim in AY 1991-92 to 1999-2000. The reason given by the Assessee was that in AY 2007-08 to 2011-12 investments and deposits after the Supreme Court's decision against the assessee Totgar's Co-operative Sale Society Ltd. (supra), were shifted from Schedule Banks to Co-operative Bank. U/s.80P(2)(d) of the Act, income by way of interest or dividends derived by a Co-operative Society from its investments with any other Co-operative Society is entitled to deduction of the whole of such interest or dividend income. The claim of the Assessee was that Co-operative Bank is essentially a Co-operative Society and therefore deduction has to be allowed under Clause (d) of Sec.80P(2) of the Act. The Hon'ble Karnataka High Court followed the decision of the supreme Court in The Totgars Co-operative Sales Society Ltd. (supra) and held that interest earned from Schedule bank or co-operative bank is assessable under the head income from other sources and therefore the provisions of Sec.80P(2)(d)of the Act was not applicable to such interest income. It is thus clear that the source of funds out of which investments were made remained the same in AY 2007-08 to 2011-12 and in AY 1991-92 to 1999-2000 decided by the Hon'ble Supreme Court. Therefore whether the source of funds were Assessee's own funds or out of liability was not subject matter of the decision of the Hon'ble Karnataka High Court in the decision cited by the learned DR. To this extent the decision of the Hon'ble Karnataka High Court in the case of Tumukur

Merchants Souharda Co-operative Ltd. (supra) still holds good. Hence, on this aspect, the issue should be restored back to the AO for a fresh decision after examining the facts in the light of these judgment of the Hon'ble Apex Court rendered in the case of The Totgars Co-operative Sale Society Ltd. (supra) and of Hon'ble Karnataka high Court rendered in the case of Tumukur Merchnts Souharda Co-operative Ltd. (supra).

15. The AO will afford opportunity of being heard to the Assessee and filing appropriate evidence, if desired, by the Assessee to substantiate its case, before deciding the issue of deduction on a sum of Rs.9,47,434/- which was interest received by the Assessee from Apex Co-operative Bank and which was claimed as deduction u/s.80P(2)(a)(i) or (d) of the Act.

16. In the result, appeal by the assessee is partly allowed.

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

Sd/-

(CHANDRA POOJARI)
Accountant Member

Sd/-

(N. V. VASUDEVAN)
Vice President

Bangalore.

Dated: 17.12.2020.

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| 1. Appellants | 2. Respondent |
| 3. CIT | 4. CIT(A) |
| 5. DR | 6. Guard file |

By order

Assistant Registrar,
ITAT, Bangalore.