

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

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

ITA No.648/Bang/2020
Assessment Year : 2016-17

The Income Tax Officer, Ward – 6(3)(2), Bangalore.	Vs.	M/s. The Pavagada Souharda Multi Purpose Co- operative Ltd., 2729 First Floor, 14 <sup>th</sup> Cross, Kodigehalli Gate Sahakarnagar, Bangalore – 560 092. <b>PAN : AADAT 6714 E</b>
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Revenue by	:	Shri. Priyadarshi Mishra, Addl. CIT(DR)(ITAT), Bangalore
Assessee by	:	Shri. Madhukar G. Hegde, CA

Date of hearing	:	14.09.2021
Date of Pronouncement	:	16.09.2021

**ORDER**

*Per N. V. Vasudevan, Vice President*

This appeal is by the Revenue 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.2,88,21,118/-. 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 souhardasahakari registered under the Karnataka SouhardaSahakari 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 SouhardaSahakari 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 SouhardaSahakari Act, 1997. The AO has made reference to the fact that under the Karnataka SouhardaSahakari 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 SouhardaSahakari in its name. In SouhardaSahakari 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 SouhardaSahakari 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.

5. The CIT(A) reversed the order of the AO by following the decision of the Hon'ble Karnataka High Court in the case of M/S.SwabhimaniSouhardaCredit Co-operative Ltd., Vs. Government of India & 3 others W.P.No.48414 of 2018 Judgment dated 16.1.2020 wherein it was held that the entities registered under the Karnataka SouhardaSahakari 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.

6. Aggrieved by the order of the CIT(A), the Assessee is in appeal before the Tribunal. The learned DR relied on the order of the AO. 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.”*

7. 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.

8. 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.SwabhimaniSouhardaCredit 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 SouhardaSahakari 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.

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 SwabhimaniSouharda 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 invocability of the provisions of sec.80P is dependent upon the entity seeking the benefit thereunder being a co-operative society; going by the text and context of these provisions, one can safely conclude that all entities that are registered under the enactments relating to co-operative societies, regardless of their varying nomenclatures need to be treated as co-operative societies;*

(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. 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 and the CIT(A) was justified in doing so. Except the ground that the Assessee was not a co-operative society entitled to deduction u/s.80P(2)(a)(i) of the Act, no other reasons were given for denying the benefit of the said deduction to the Assessee. Hence, the order of CIT(A) is upheld.



12. In the result, appeal by the revenue is dismissed.

*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: 16.09.2021.

/NS/\*

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

By order

Assistant Registrar,  
ITAT, Bangalore.