IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH : BANGALORE

BEFORE SHRI SUNIL KUMAR YADAV, JUDICIAL MEMBER
AND SHRI JASON P. BOAZ, ACCOUNTANT MEMBER

ITA No.2831/Bang/2017
Assessment year : 2013-14

M/s. Udaya Souharda Credit Co-operative Society Limited, No. 372, 2nd Floor, 9th Main, Hanumanthanagar, Bengaluru-560019. **PAN : AAAAU 0472 H**	Vs.	The Income Tax Officer, Ward - 5(2)(4), Bengaluru.
APPELLANT		RESPONDENT

Assessee by	:	Shri. S. V. Ravishankar, Advocate
Revenue by	:	Dr. P. V. Pradeep Kumar, Addl. CIT

Date of hearing	:	20.07.2018
Date of Pronouncement	:	17.08.2018

O R D E R

Per Sunil Kumar Yadav, Judicial Member

This appeal is preferred by the assessee against the order of the CIT(A), *inter alia*, on following grounds:

1. *The order of the learned Commissioner of Income-tax [Appeals] - 5, in so far it is against the appellant is opposed to law, weight of evidence, facts and circumstances of the Appellant's case.*

2. *The appellant denies itself liable to be assessed on total income of Rs.2,85,81,740/-, as against the returned income by the appellant of Rs.NIL/- after claiming eligible deduction under section 80 P [2] of the Act, on the facts and circumstances of the case.*

3. *The learned Commissioner of Income-tax [Appeals] is not justified in law in denying the eligible deduction claimed by the appellant under section 80 P [2] of the Act amounting to Rs. 2,85,81,740/- under the provisions of section 80 P [2][a][i] of the Act and under the provisions of section 80 P L2] [d] of the Act being the interest earned by the appellant on the facts and circumstances of the case.*

4. *The learned Commissioner of Income-tax [Appeals] failed to appreciate that the appellant is not a Co-Operative Bank within the meaning of Part - V of the Banking Regulation Act, 1949, to which the Explanation to section 80 P [4] of the Act draws reference and consequently, the provisions of section 80 P [4] of the Act are not applicable to the case of the appellant.*

5. *The learned Commissioner of Income-tax [Appeals] failed to appreciate that the provisions of section 80P of the Act allows "the whole of the amount of profits and gains of business attributable to any one or more of such activities" in making a claim of deduction, on the facts and circumstances of the case.*

6. *The learned Commissioner of Income-tax [Appeals] is not justified in holding that the activities of the appellant was not restricted to its members on mere suspicion, to hold that the appellant was not eligible to*

claim deduction under section 80 P [2] of the Act on the facts and circumstances of the case.

7. *The learned Commissioner of Income-tax [Appeals] failed to appreciate that the interest income earned by the appellant out of the deposits kept in the in the Banks are all out of the monies of the members of the appellant society, consequently the learned authorities below ought to have allowed deduction under section 80 P [2] of the Act on such interest income earned by the appellant on the facts and circumstances of the case.*

8. *Without prejudice, though not conceding, the learned Commissioner of Income-tax [Appeals] ought to have allowed deduction under section 80 P [2] of the Act proportionately, in so far as the income attributable to the activities of the appellant which are not in violation of the provisions of section 80 P [2] of the Act on the facts and circumstances of the case.*

9. *Without prejudice the learned authorities below ought to have allowed the corresponding expenditures proportionately on income earned by the appellant from investments which was claimed as deduction under section 80 P [2][d] of the Act, on the facts and circumstances of the case.*

10. *Without prejudice the learned authorities below did not give the appellant a reasonable opportunity of hearing and produce the documents in support of the case of the appellant which is against the principles of natural justice and consequently the impugned orders passed requires to be cancelled on the facts and circumstances of the case.*

11. *Without prejudice to the right to seek waiver as per the parity of reasoning of the decision of the Hon'ble Apex Court in the case of Karanvir Singh 349 ITR 692, the Appellant denies itself liable to be charged to interest under section 234 A & 234 B of the Income Tax Act under the facts and circumstances of the case. Further the levy of interest under section 234 A Et 234 B of the Act is also bad in law as the period, rate, quantum and method of calculation adopted on which interest is levied are all not discernible and are wrong on the facts of the case.*

12. The appellant craves leave to add, alter, substitute and delete any or all of the grounds of appeal urged above.

13. For the above and other grounds to be urged during the hearing of the appeal the Appellant prays that the appeal be allowed in the interest of equity and justice.

2. Though various grounds are raised but they all relate to the claim of deduction under section 80P(2) of the Income Tax Act (hereinafter called as an 'Act').

3. The facts in brief borne out from the order of authorities below are that assessee raised a claim of deduction under section 80P(2) of the Act, but the same was disallowed by the AO on the ground that principal business of the assessee is transacting in banking business and its paid up capital is more than Rs.1 lakh, therefore, it is a primary co-operative bank and does not fall under the second category of co-operative credit societies as envisaged in section 80P of the Act. While holding so, the AO has also relied upon the judgment of the Apex Court in the case of Totgars Co-operative Sale Society Ltd., Vs. ITO in appeal No. 1622 to 1629 of 2010 wherein it was held that interest earned by co-operative societies on surplus funds invested in short term deposits in banks and in government securities are not eligible under section 80P of the Act.

4. The assessee preferred an appeal before the CIT(A) and CIT(A) confirmed the disallowance made by the AO. While adjudicating the grounds raised by the assessee, the CIT(A) has also considered the judgment of this Apex Court in the case of Citizen Co-operative Society Ltd., Vs. ACIT 397 ITR 1.

5. Aggrieved, the assessee preferred an appeal before the Tribunal. During the course of hearing of the appeal, the learned DR Dr. P. V. Pradeep Kumar has raised the serious objection questioning the basis of entitlement of deduction under section

80P of the Act on the ground that assessee registered under the Karnataka Souharda Sahakari Act, 1997 and under the said Act, Co-operative Societies are not being registered. He has also invited our attention to the Registration Certificate issued by the Registrar of Co-operative Societies with the submission that as per the Certificate also, assessee was registered as Uday Souharda Pattina Co-operative Ltd., and not as Udaya Souharda Credit Co-operative Society Ltd. Therefore, assessee has wrongly re-presented himself as a co-operative society for claiming deduction under section 80P of the Act. The learned DR further contended that the deduction under section 80P is only allowed to the Co-operative Societies and not the Co-operative Registered under the Karnataka Souharda Sahakari Act. The learned DR further contended that 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 Amending Act 13/2004 which provides conversion of co-operative under the Karnataka Souharda Act, 1997 into Co-operative Society. In the Co-operative Society Act, the Co-operative has also been defined according to which the co-operative means a co-operative registered under the Karnataka Souharda Sahakari Act, 1997 (Karnataka Act 17 of 2000) and includes union co-operative and the federal co-operatives. The learned DR further invited our attention to the Karnataka Souharda Sahakari Act also in which the co-operative word 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. If both the Acts are read jointly, it would be very clear that the co-operative and co-operative Societies are two different entities and as per the certificate filed by the assessee, the assessee is a co-operative and not a co-operative society. 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.

6. The learned Counsel for the assessee on the other hand has contended that this objection was never raised by the lower authorities and they have denied deductions on different aspects. Therefore, the learned DR cannot raise such ground in second appeal by challenging the entire claim of entitlement of deduction on different aspects. The learned Counsel for the assessee further contended that assessee has been assessed as a Udaya Souharda Co-operative Society, therefore it makes no difference whether it was registered under the Karnataka Co-operative Societies Act or Karnataka Souharda Sahakari's Act, 1997. He has been assessed as a co-operative society in last so many years therefore, the Revenue cannot question the identity of the assessee. The learned Counsel for the assessee further contended that the scope and object of the Karnataka Souharda Sahakari Act and the Karnataka Co-operative Societies Act are almost similar. Therefore, even if the assessee is registered under the Karnataka Souharda Societies Act as a co-operative Society, it is eligible for deduction under section 80P of the Act. It was further contended that in the Act, no separate rate of tax has been prescribed in the statute for the co-operatives. Therefore, all co-operatives are to be assessed under the category of co-operative societies. It was further contended that as per the Karnataka Souharda Sahakari Act, assessee is required to enroll the nominal members and Associate society members without having any voting rights, besides regular members. Therefore, assessee is entitled for deduction under section 80P with respect to the interest income earned from the nominal and associate members on advances given to them.

7. Having carefully examined the orders of authroites below in the light of rival submissions, we find that while adjudicating the issue of claim of deduction under section 80P(2) of the Act, the AO confined himself to the claim of entitlement and

has denied the same having observed that the assessee was engaged in transacting in banking business and thus it is a primary co-operative bank and does not form the second category of co-operative credit societies. When the matter travelled to CIT(A), the CIT(A) has also examined the claim of the assessee in the light of judgment of the Apex Court in the case of Citizen Co-operative Society Ltd., Vs. ACIT (supra), wherein it was held that where the assessee being a co-operative society advances loan to members of general public without any approval from the Registrar of Societies, the activity of the Co-operative Society is in violation of co-operative societies Act and the co-operative credit society was not entitled to deduction under section 80P(2)(i)(a) of the Act.

8. Now, during the course of hearing of the appeals, the learned DR has raised a few valid points which cannot be outrightly ignored. The learned DR has specifically raised an issue that assessee is only a co-operative registered under the Karnataka State Souharda Sahakari Act. Since the assessee is not a co-operative society, it is not entitled/eligible for deduction under section 80P(2) of the Act. Though this argument was raised first time before the Tribunal at this stage, but when it is a legal argument and goes to the root of the case, it cannot be outrightly ignored. Therefore, we have to examine the argument raised by the learned DR in this regard. Under section 80P, the deduction is to be allowed only to the co-operative societies as per sub section 1 of the Act. In the entire section 80P, the word used is only a “co-operative societies” and no where reference was made to the co-operatives.

9. Presently we are concerned with the Karnataka and the Karnataka State has notified Karnataka Co-operative Societies Act, 1959 as well as the Karnataka Souharda Sahakari Act, 1997 and even at present both the Acts are in force simultaneously. Under the Karnataka Co-operative Societies Act, the Co-operative Societies are registered and under the Karnataka Souharda Sahakari Act, only Co-operatives are registered. The object of introducing the Karnataka Souharda

Sahakari Act has been given in Act 17/2000, Amending Act 21/2004, Amending Act 16/2005, Amending Act 4/2013, Amending Act 34/2014, Amending Act 24/2016 and Amending Act 8/2017. Through various amendments, the scope of Souharda Sahakari Act was expanded but no where the co-operative societies are converted into the co-operatives. In both the Acts, co-operatives and co-operative societies are defined independently. In the Souharda Sahakari Act, the word co-operative and co-operative societies are defined in clause 2(c) and 2(g) which are extracted hereunder for the sake of reference:

"(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 ahs the words 'Souharda Sahakari' in its name.

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(g) "Co-operative Society" means a Co-operative society registered under the Karnataka Co-operative Societies Act, 1959 (Karnataka Act 11 of 1959);"

10. Section 4 of Souharda Sahakari Act deal with the formation of co-operatives and its members and as per section 4(2) clause b, co-operative societies can be converted into co-operative by passing a resolution and once it is converted, the registration under the Societies Act shall be cancelled by the Registrar w.e.f. the date of certificate of registration given under Souharda Act. Relevant provisions of section 6 of Souharda Act is extracted hereunder for the sake of reference:

*"**6. Certificate of registration.-** (1) Where a Co-operative is registered or deemed to be registered, the certificate of registration duly signed and sealed by the Registrar shall be conclusive evidence that the Co-operative mentioned therein, is a Co-operative registered or deemed to be registered under this Act.*

(2) Notwithstanding anything contained in the Karnataka Co-operative Societies Act, 1959, when a certificate of registration is issued to a Co-operative after conversion of a Co-operative society into a Co-operative, the registration of such Co-operative society under the Karnataka Co-operative Societies Act, 1959, shall be cancelled by the Registrar with effect from the date of issue of certificate of registration under this Act."

11. Similarly, if the co-operatives intend to convert into co-operative societies, conversion is also possible as per Amending Act 13/2004. In the co-operative societies Act, the word co-operative societies and the Co-operatives has also been defined under section 2(c) and 2 (d)(2), according to which co-operative society means a society registered or deemed to be registered under the co-operative societies Act and the co-operative means co-operative registered under the Karnataka Souharda Sahakari Act, 1997. Therefore, from careful reading of both the sections, it is abundantly clear that the co-operative and the co-operative societies are 2 different entities though their conversion from one to other is possible as per provisions of the respective Act.

12. We have also carefully examined the certificate of registration granted to the assessee and we find that assessee was registered as a co-operative under the name Udaya Souhardha Pattina Co-operative Limited and not as a co-operative society. Though the registration certificate was granted by Joint Registrar, Co-operative Societies, Bengaluru but it makes no difference as a Joint Registrar may be same for co-operative societies and co-operatives. For the sake of reference, we extract the certificate of registration granted as under:

"GOVT OF KARNATAKA

CO-OPERATIVE SOCIETY

SL.NO.GRB: RGN: 69:148 2003-04 *DATED:13.2.2004*

<u>CERTIFICATE OF REGISTRATION</u>

I, Basavegowda, Joint.Registrar of Co-operative Society, Bangalore Region, Bangalore register Udaya Souhardha Pattina Co-operative Ltd.,No.735, 5th Cross, 9th Main, 2nd Phase, BSK 1st Stage, Bangalore-50, under section-5 of the Karnataka Souhardha Sahakari Act-1997 and certificate of Registration is issued on 13.02.2004 as per sec 6(2) of the said Act.

Sd.
Joint.Registrar of Co-operative
Society, Bangalore Region, Bangalore."

13. We have also carefully perused the cause title in the assessment order and in the cause title of the assessment order, we find that assessment order was passed in the name of Udaya Souharda Credit Co-operative Society Ltd., whereas no certificate of registration was placed before us in the name of Udaya Souhardha Credit Co-operative Society ltd. Therefore, we are unable to understand how the assessee can claim it to be the co-operative society in the absence of proper registration under the Karnataka Co-operative Societies Act. Creation of Co-operative Society under the co-operative societies Act is doubtful. Thus the claim of deduction under section 80P cannot be allowed. As per the provisions of section 80P of the Act, deduction can only be allowed to the co-operative societies registered under the co-operative societies Act. Without a proper registration under co-operative societies Act, nobody

can claim it to be co-operative society as the activities of the co-operative societies are to be controlled under the co-operative societies Act through Registrar of the Co-operative Societies. 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 restore 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, 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.

14. In the result, appeal of the assessee stands allowed for statistical purposes.

Pronounced in the open court on 17th August, 2018.

Sd/-	Sd/-
(JASON P BOAZ)	**(SUNIL KUMAR YADAV)**
Accountant Member	**Judicial Member**

Bangalore.
Dated: 17th August, 2018.
/NS/

Copy to:

1. Appellants
2. Respondent
3. CIT
4. DR, ITAT, Bangalore.
5. Guard file

By order

Senior Private Secretary,
ITAT, Bangalore.