

IN THE HIGH COURT OF KARNATAKA, BENGALURU

DATED THIS THE 16TH DAY OF JANUARY, 2020

BEFORE

THE HON'BLE MR. JUSTICE KRISHNA S.DIXIT

WRIT PETITION NO. 48414 OF 2018 (T-IT)

C/W

WRIT PETITION NO. 14381 OF 2019 (T-IT)

IN W.P. NO. 48414/2018:

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-560004 AND
REPRESENTED BY ITS CEO
VINAYAK M SHENOY,
PAN: AAFAS 0181 E

... PETITIONER

(BY SRI. MALLA REDDY B V, ADVOCATE)

AND:

1. GOVERNMENT OF INDIA
MINISTRY OF FINANCE,
DEPARTMENT OF REVENUE,
CENTRAL BOARD OF DIRECT TAXES (CBDT)
INCOME TAX DEPARTMENT,
ROOM NO.7008, AAYAKAR BHAVAN,
VAISHALI GHAZIABAD, UP,
PIN-201009
REPRESENTED BY ITS DIRECTOR
/PRINCIPAL SECRETARY
2. STATE OF KARNATAKA
REPRESENTED BY ITS PRINCIPAL SECRETARY,
DEPARTMENT OF CO OPERATION,
M.S.BUILDING, DR.AMBEDKAR ROAD,
BANGALORE-560001

3. PRINCIPAL COMMISSIONER OF INCOME TAX
C R BUILDING, NO.1 QUEENS ROAD,
BENGALURU-560001
4. INCOME TAX OFFICER (ITO) WARD-5(2)(3)
3RD FLOOR, ROOM NO.307, BMTc BUILDING,
COMMERCIAL COMPLEX, 80 FT.ROAD,
KORAMANGALA,
BANGALORE-560095.

... RESPONDENTS

(BY SRI. JEEVAN J NEERALGI, ADVOCATE FOR R1, R3 & R4;
SRI. T K VEDAMURTHY, AGA FOR R2)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO QUASH THE NOTICE AND THE REASONING GIVEN BY R-4 FOR ISSUING THE NOTICE UNDER SECTION 148 OF THE INCOME TAX ACT 1961, DATED 30.03.2018 VIDE ANNEX-D IN FAVOUR OF M/S SWABHIMANI SOUHARDA CREDIT CO-OPERATIVE LTD., BY THE R-4.

IN W.P. NO. 14331/2019:

BETWEEN:

KARNATAKA STATE SOUHARDA
FEDERAL CO-OPERATIVE LIMITED
BEING A REGISTERED CO-OPERATIVE
REGISTERED UNDER THE KARNATAKA SOUHARDA
SAHAKARI ACT 1997,
HAVING ITS REGISTERED OFFICE AT
NIRMANA BHAVANA, DR RAJKUMAR ROAD,
1ST BLOCK, RAJAJINAGAR,
BENGALURU-560010.
AND REPTD BY ITS MANAGING DIRECTOR.

...PETITIONER

(BY SRI. MALLA REDDY B V, ADVOCATE)

AND:

1. 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
REPTD BY ITS DIRECTOR /PRINCIPAL SECRETARLY.

2. STATE OF KARNATAKA
REPTD BY ITS PRINCIPAL SECRETARY,
DEPARTMENT OF CO OPERATION,
M S BUILDING, DR AMBEDKAR ROAD,
BANGALORE-560 001.
3. PRINCIPAL CHIEF COMMISSIONER OF INCOME TAX
C R BUILDING NO.1, QUEENS ROAD,
BENGALURU-560001.

... RESPONDENTS

(BY SRI. C I SANMATHI, ADVOCATE FOR R1 & R3;
SRI. T K VEDAMURTHY, AGA FOR R2)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO DECALRE THAT THE KARNATAKA SOUHARDA SAHAKARI ACT 1997 (KARNATAKA ACT NO.17 OF 2000) FALLS WITHIN THE MEANING OF THE WORDS “ANY OTHER LAW FOR TIME BEING IN FORCE IN ANY STATE FOR THE REGISTRATION OF CO-OPERATIVE SOCIETIES” FOUND IN SECTION 2(19) OF INCOME TAX ACT 1961 (ACT 43 OF 1961). AND ETC.,

THESE PETITIONS HAVING BEEN HEARD AND RESERVED FOR ORDER, THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

ORDER

Petitioner in W.P.No.48414/2018 is a Credit Cooperative, registered under the Karnataka Souharda Sahakari Act, 1997 (hereafter “1997 Act”); petitioner in W.P.No.14381/2019 is registered as the State Federal Cooperative, as provided under Section 33 of the said Act; they have knocked at the doors of writ court in substance for a prayer that they are entitled to seek deduction in respect of their income in terms of the scheme envisaged under section 80P of the Income Tax Act, 1961 (hereafter “1961 Act”), on the premises that they too are a

Cooperative Society, on par with those registered under the provisions of Karnataka Co-operative Societies Act, 1959.

2. After service of notice, the Respondent Nos.1 & 3 are represented by their Senior Panel Counsel and the State is represented by the learned AGA.

3. Regardless of unsatisfactory pleadings of the petitioners, their learned counsel submits that there have been two legislations relating to Cooperative Societies in the State of Karnataka viz., the Karnataka Co-operative Societies Act, 1959 & the Karnataka Souharda Sahakari Act, 1997; the entities registered under the 1997 Act also answer the definition of “cooperative society” enacted in sec. 2(19) of the Income Tax Act 1961 and therefore, they are entitled to seek the benefit of sec.80P thereof; the learned Panel Counsel for the Revenue per contra contends that the definition u/s 2(19) mentions of only a co-operative society and not a Souharda Co-operative; in the guise of judicial interpretation, the scope of the definition cannot be widened than what is prescribed by the Parliament; a stand in variance with this will have far reaching implications on the Exchequer.

4. In the light of the rival submissions half heartedly made at the Bar, the following question of law arises for consideration:

“Whether an entity registered under the Karnataka Souharda Sahakari Act, 1997 fits into the definition of “co-operative society” as enacted by sec. 2(19) of the Income Tax Act, 1961 for the purpose of Section 80P thereof?”

5. Having heard the learned counsel for the parties and having perused the petition papers, this Court is of a considered opinion that the answer to the above question needs to be in the affirmative for the following reasons:

(a) sec.80P of the 1961 Act provides for deduction in respect of income of Co-operative Societies is obvious going by its very text; sub-section (1) of said section reads as under:

“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.”

The other provisions of this section being not of much relevance to the question being treated, are not reproduced, although they too have been looked into.

Sec. 2(19) which finds a place in the Dictionary Clause of the 1961 Act reads as under:

‘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;’

The provisions of sec.80P are enacted by the Parliament for promoting the co-operative movement in the Country in tune with what Father of the Nation Mahatma Gandhi preached to the countrymen; this Section needs to be liberally construed to effectuate the legislative object of encouraging & promoting the growth of co-operative movement vide **Kanga & Palkhivala’s The Law and Practice of Income Tax**, 10th Edition, LexisNexis at page 1656; it is more so because the right to form a co-operative society itself is made a Fundamental Right, now enshrining in Article 19(1)(i) by virtue of 97th Amendment to the Constitution of India w.e.f. 15.10.2013;

(b) 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; this view accords with the purposive construction of sec.80P r/w sec.2(19) of the 1961 Act;

(c) 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;

(d) the Karnataka Souharda Sahakari Bill, 1997

has the following as the Statement of Objects & Reasons:

- “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 organization, 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.”*

(e) the **preamble to the 1959 Act** reads as under:

“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-”

Similarly, the **preamble to the 1997 Act** reads as follows:

*“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-”.

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 registerd 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.

No costs.

**Sd/-
JUDGE**

Snb/