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

BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER

ITA Nos.128 and 129/Bang/2020
Assessment Years : 2011-12, 2013-14

M/s. Samrudha Souharda Credit Co-operative Ltd., 518, 3rd Main, BSK I Stage, Srinagar, Bengaluru-560 019. **PAN : ABDFS 2968 A**	Vs.	Income-tax Officer, Ward-5[2][5], Bengaluru.
APPELLANT		RESPONDENT

Assessee by	:	Shri. Guruprasad, Advocate
Revenue by	:	Shri. Ganesh R. Ghale, Standing Counsel

Date of hearing	:	07.04.2021
Date of Pronouncement	:	09.04.2021

O R D E R

Per Shri. Chandra Poojari, AM:

These appeals by the assessee directed against different orders of CIT(A) for the Assessment Year 2011-12 and 2013-14. The assessee has raised the following grounds:

1. *The order of the Learned Commissioner of Income Tax (Appeals)-5 is not justified in law and on facts and circumstances of the case, in so far as it is against the Appellant.*
2. *The Ld. CIT(A)-5 is not justified in denying the deduction u/s 80P(2)(a)(i) for the Appellant. CIT(A) has erred in not considering the appellant as a Co-operative Society entitled for the deduction u/s 80P(2)(a)(i).*
3. *Without prejudice, the Ld. AO must record his reasons as per sub section (2) of section 148 before issuing any notice u/s 148. Despite formal written request by the Appellant vide letter dated 05.04.2018, the AO has not provided reasons in writing as to why*

the income chargeable to tax has escaped assessment for the year in question. As the AO has not adhered to strict procedure mandated by the law in this regard, the notice and the assessment order both have to be disregarded and set aside.

4. *Without prejudice to the above, the Learned AO has wrongfully initiated action under section 147 beyond four years from the end of the relevant assessment year, without satisfying the requirements of the first proviso thereunder. Therefore, the notice issued u/s 148 has no force of law, lacks jurisdiction and is liable to be set aside.*
5. *The appellant craves leave to add, alter, substitute and/or delete any or all of the grounds of appeal urged above.*
6. *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. With regard Common issues in these appeals are with regard to deduction under section 80P(2)(a)(i) of the Income Tax Act, 1961 (hereinafter called 'the Act'). The other ground in ITA No.128/Bang/2020 for Assessment Year 2011-12 is with regard to reopening of Assessment under section 147 of the Act beyond four years from the end of the relevant Assessment Year without satisfying the requirements of the first proviso thereunder. Being so, the notice issued under section 148 of the Act is bad in law. However, at the time of hearing, this ground is not pressed and dismissed accordingly.

3. With regard to denial of deduction under section 80P(2)(a)(i) of the Act, the assessee came in appeal before this Tribunal on earlier occasion in Assessment Year 2013-14 in ITA No.926/Bang/2018. The Tribunal vide order dated 31.07.2018 restored the matter back to the file of AO with following observation:

> *"3. It was submitted by Id. AR of assessee that the assessee's claim for deduction u/s. 80P(2) in respect of interest income should be decided in favour of the assessee because this issue is covered in favour of the assessee by the judgement of Hon'ble Karnataka High Court rendered in the case of Tumkur Merchants Souharda Credit*

Cooperative Ltd. Vs. ITO as reported in 230 Taxman 309. At this juncture, the bench pointed out that on this issue, there is one more judgment of Hon'ble Karnataka High Court rendered in the case of PCIT and Another Vs. Totagars Co-operative Sale Society as reported in 395 ITR 611 (Karn). The bench pointed out that in both these judgements, the ultimate conclusion is different because the facts are different. The bench pointed out that in the case of Tumkur Merchants Souharda Credit Cooperative Ltd. Vs. ITO (supra), it was found that the amount deposited in bank was out of assessee's own funds and not out of its liability and therefore, this issue was decided in favour of the assessee but in the case of PCIT and Another Vs. Totagars Co-operative Sale Society (supra), it was found that the amount deposited in bank was out of assessee's liability and not out of assessee's own funds and therefore, this issue was decided against the assessee. The bench observed that there is no finding of any of the authorities below on this factual aspect and therefore, it is proper to restore back the matter to the file of CIT(A) for fresh decision 'after examining the facts of present case in the light of these two judgements of Hon'ble Karnataka High Court. The Id. AR of assessee agreed to this proposition put forward by the bench. The Id. DR of revenue submitted that on this aspect, he is also in agreement with the proposition put forward by the bench but when the matter is restored back to the file of CIT(A), he Should be directed to examine the applicability of the judgement of Hon'ble Apex Court rendered in the case of The Citizen Co-operative Society Ltd. Vs. ACIT as reported in 397 ITR 1 also because as per page no. 15 of the paper book, it is shown in the Income and Expenditure Account of the assessee for the present year that assessee has received an amount of Rs. 11 700/- towards Nominal Membership Fee and therefore, it has to be seen as to whether the full amount or part amount of interest income for which deduction is claimed u/s 80P is earned by the assessee from the nominal members or not in the present year and therefore, the issue regarding the applicability of this judgement of Hon'ble Apex Court rendered in the case of The Citizen Co-operative Society Ltd. Vs. ACIT (supra) should also be examined by CIT(A). In the rejoinder, the, ld. AR of assessee also agreed that the CIT (A) may be directed to examine the facts of present case in the light of this judgement of Hon'ble Apex Court also.

4. In view of the above discussion, I set aside the order of CIT(A) and restore the matter back to the, file of CIT(A) for fresh decision after examining the facts of present case in the light of

judgement of Hon'ble Apex Court rendered in the case of The Citizen Co-operative Society Ltd. Vs. ACIT (supra) and then also examine the facts .of present case in the light of these two judgements of Hon'ble Karnataka High Court rendered in the case of Tumkur Merchants Souharda Credit Cooperative Ltd. Vs. ITO (supra) and PCIT and Another Vs. Totagars Co-operative Sale Society (supra) Thereafter the CIT(A) should pass necessary order as per law after providing adequate opportunity of being heard to both sides."

4. Consequently, the AO took up the issue once again and after examining the facts of the case, denied the deduction under section 80P(2)(a)(i) of the Act as in earlier year. For Assessment Year 2011-12, the AO reopened the Assessment passed under section 143(3) of the Act wherein the AO denied the deduction under section 80P(2)(a)(i) of the Act.

5. The facts of the case are that assessee is engaged in primary activity of banking business and it provides credit facilities to its members. The assessee earns interest income on the deposits / investments made with other banks for Co-operative Societies. The lower authority disallowed the deduction under section 80P(2)(a)(i) of the Act and the reason is that assessee being a bank is not entitled for deduction under section 80P(2)(a)(i) of the Act by placing reliance on the judgment of Hon'ble Supreme Court rendered in the case of Citizen Co-operative Society Ltd., Vs. ACIT 397 ITR 1. Against this, the assessee is in appeal before us.

6. We have heard both the parties and perused the material on record. In our opinion the issue is squarely covered by the Tribunal order of SMC, Bangalore Bench in the case of Saptagiri Pattina Souharda Sahkari Niyamitha in ITA No.2319/Bang/2019 dated 31.01.2020 relating to Assessment Year 2016-17, wherein it was held as follows:

"2. Briefly stated the facts of the case are that the assessee is a Souharda Co-operative registered under The Karnataka Souharda Sahakari Act, 1997 and provides credit facilities to its members. The assessment order u/s 143(3) of the I.T.Act for assessment year 2016-2017 was passed on 17.12.2018 raising a demand of Rs.23,45,495 with total addition of Rs.54,18,036. The assessee has claimed deduction u/s 80P of the I.T.Act, which was disallowed by the Assessing Officer by observing as under:-

> *"4.1 The AO during the course of scrutiny proceedings has observed that he claimed a deduction ofRs.54,lB,036/- u/s 80P(2).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 Sahaks registered under the Karnataka Souharda Sahakari Act, 1997 and sinnce 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) the Act. According to the AO, Cooperative and Co-operative Societies are different entities. If the cooperative wants to convert itself into a co- operative society, it has to be converted as per the amended provisions Karnataka Souharda Sahakari Act,1997 as amended by Act 13/2004. Similarly, under the Karnataka Cooperative Societies Act, 1959 'Co-operative' has been defined according to which the co-operative means 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 clause 2(e) according to which cooperative means a Co-operative including a co-operative bank doing the business of banking registered or deemed be registered under section 5 and which has the word Souharda Sahakari in its name. In Souharda Sahakari Act, the word co-operative society also been defined in clause 2(g), according to which the co-operative society means a cooperative society registered under the Karnataka Co-operative Societies Act, 1959. Thus, according to the AO, if both the Act are read jointly, it would be very clear that the co-operative and co-operative Societies are two different entities. The benefit of deduction cs only be given to the cooperative societies and not to the co- operative. Therefore, the assessee is not eligible to claim deduction under section 80P(2) of the Act."*

3. The CIT(A) confirmed this view taken by the Assessing Officer by observing that a co-operative society, which is registered under the Karnataka Co-operative Societies Act, 1959 is only entitled to claim deduction u/s 80P(2) and no other society is entitled to claim such deduction. Accordingly, he confirmed the order of the A.O.

4. Against the same, the assessee is in appeal before us. The learned AR strongly placed reliance on the judgment of the Hon'ble Karnataka High Court in th case of M/s.Swabhimani Souharda Credit Co-operative Ltd. & Ors. v. Government of India & Ors. in Writ Petition No.48414 of 2018 (T-IT) dated 16th January, 2020, wherein the following question was considered by the Hon'ble High Court of Karnataka :-

> *"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?"*

4.1 The Hon'ble High Court answered the above question as follows:-

"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 I.T. 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, LexixNexis at page 1956; '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 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; 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. 1-1 of 1959 and the Karnataka Souharda Sahakari Act, 1997 ie., Karnataka Act Nu.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, manaqed 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-functioninq of the co-operatives and the controls and interference by the Government except registration and cancellation;
3. promotion of subsidiary orqanization, 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 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; 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 and mutual 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 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."

5. The learned Departmental Representative, on the other hand, strongly opposed the granting of section 80P of the Act. The learned DR also submitted that the assessee has relied on the judgment of the Hon'ble Karnataka High Court dated 16.01.2020 (supra), however, the Hon'ble Court quoted in the last paragraph as "It is needless to mention that the other provisions of section 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." The learned DR submitted that keeping in view the above finding of Hon'ble Karnataka High Court, the matter may kindly be set aside and restored back to the file of the Assessing Officer for fresh assessment as per the provisions of section 80P of the I.T.Act, 1961, in the light of the decision of the Hon'ble Apex Court in the case of The Citizen Co-operative Society Limited and the decision of Hon'ble Karnataka High Court and Hon'ble Apex Court in the case of Totgars Co-operative Sale Society.

6. We have heard the rival submissions and perused the material on record. In view of the latest judgment of the Hon'ble jurisdictional High Court in the case of M/s.Swabhimani Souharda Credit Co-operative Ltd. & Ors. v. Government of India & Ors. in Writ Petition No.48414 of 2018 (T-IT) dated 16th January, 2020, wherein held that 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. Hence, we are inclined to hold that the assessee is entitled for deduction u/s 80P of the I.T.Act. Accordingly, the appeal filed by the assessee on this issue is allowed.

7. In the result, the appeal filed by the assessee is allowed."

7. In view of the above, taking a consistent view, we are inclined to allow grounds taken by the assessee.

8. In the result, both the appeals of the assessee are allowed.

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

Sd/-
(CHANDRA POOJARI)
Accountant Member

Bangalore,
Dated: 09.04.2021.
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Copy to:

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

By order

Assistant Registrar,
ITAT, Bangalore.