

IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH : BANGALORE

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

ITA No.544/Bang/2019
Assessment year : 2013-14

Bapooji Pattin Souharda Sahakari Niyamit, 7/8, Sector No.25, Navanagar, Bagalkot. PAN: AAAAB 6930F	Vs.	The Income Tax Officer, Ward 1, Bagalkot.
APPELLANT		RESPONDENT

Appellant by	:	Shri Ishwar Yanni, CA
Respondent by	:	Shri Kannan Narayanan, Jt. CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	10.08.2021
Date of Pronouncement	:	24.08.2021

ORDER

Per Chandra Poojari, Accountant Member

This appeal by the assessee is directed against the order of CIT(Appeals), Belgaum dated 28.01.2019 for the assessment year 2013-14.

2. The assessee has raised the following grounds of appeal:-

“1. The Ld. Commissioner of Income Tax (Appeals) erred in law as well as on facts in rejecting the genuine claim of the appellant in respect of deduction u/s 80P(2)(a)(i) to the extent of Rs.86,60,540.00 as claimed by the appellant. The appellant prays for grant of the deduction as claimed.

2. The Ld. Commissioner of Income Tax (Appeals) erred in law as well as on facts in applying the Judgment of Hon. Supreme Court of India in the case of Citizen Co Operative Society, Hyderabad. As the facts of Citizen society & the assessee society is totally different. Difference in facts of the case are as under :

- i. Citizen Society is basically registered under Andhra Pradesh Mutually Aided Co - Operative Societies Act, 1995 & subsequently registered under Multi State Co-Operative Societies Act, 2002. But the provisions of APMACS Act is applied, while passing an order. Where as our society is registered under Karnataka Souharda Sahakari Act, 1997. Therefore this judgment is not applicable to our society case.
- ii. Sec 2(r) of the KSS Act, 1997, 'member' means a person who has contributed towards the share capital of co - operative before its registration and includes a person admitted to membership after such registration in accordance with the Act, rules and the bye - laws (and includes a nominal member). Where as Sec 2(p) of APMACS Act, 1995 'member' means a member of a co - operative society. This Act does not say member includes a nominal and associate member. Therefore any member other than regular member is a non member. But here in KSS Act, it includes nominal and associate members.
- iii. Para 15(iii) & (iv) of Supreme Court judgment, second category of persons is neither members nor nominal/associate members. That means deposits are accepted from non — members. Where as in our case deposits are accepted from members of the society. Therefore this case is not applicable.
- iv. Para 15 (v) & (vi) of Supreme Court judgment, the assessee accepts deposits mostly from the second category these deposits are mostly kept in FDs. Investment with banks to earn maximum returns, a portion of these deposits are utilized to advance gold loans etc. to members of the first category. It means

majority of the deposits accepted from non members and invested in other banks with an intention to earn the interest income. A portion of deposits which are accepted from non members are used to advance the gold loan to members. Where as our society has accepted the deposits from members and used to advance the loans to members and portion of deposit is kept in banks & societies.

- v. Para 15 (ix) of Supreme Court judgment, the assessee society is engaged in the activity of granting loans to general public. Where as in our society, we have sanctioned the loans to members only. As per the KSS Act, to obtain the loan, a person shall be a member of the society. Therefore our society has complied the KSS Act. This judgment is not applicable as loans are not sanctioned to other than members.
- vi. Para 15(xi) of the judgment, the society both in form and substance, the activity is in violation of the Co operative Societies Act and co operative society rules. Where as our society has complied both the KSS Act & Rules.
- vii. Para 16 of the judgment, that provisions of Section 80P(2)(a)(i) were grossly violated as the appellant society was found not dealing with its members only but also with general public as well. On that basis, further submission of AR of Dept. was that the principle of mutuality was missing in this case. Where as in our case the Principle of Mutuality is very much exist. Therefore this case is not applicable.
- viii. Para 18 of the judgment, that Section 80P of the Act is a benevolent provision which is enacted by the Parliament in order to encourage and promote growth of co — operative sector in the economic life of the country. It was done pursuant to declared policy of the Government. Therefore, such a provision has to be read liberally, reasonably and in favour of the assessee (Bajaj Tempo Limited, Bombay Vs. CIT, Bombay City —III, Bombay) Supreme Court judgment. It is also

treat that such a provision has to be construed as to effectuate the object of the Legislature and not to defeat it (CIT, Bombay & Ors Vs Mahindra and Mahindra Limited & Ors) Supreme Court judgment. Therefore the same may be applied in our case by considering the main objects & substance of the activities done by the society.

ix. Para 27 of the judgment, the appellant cannot be treated as a co — operative society meant only for its members and providing credit facilities to its members. Where as our society has accepted the deposits from members & loans given to members only. Therefore in totality this judgment of Hon. Supreme Court of India is not applicable to our society as the facts & objectives of the society are completely different. On plain reading of the Citizen society judgment, the society is running to earn the profit & not to pay the income tax by taking the shelter under the Income Tax Act through Section 80P(2)(a)(i). Where as our society's main objective is to promote the savings among the members & uplift the financial condition of members by granting the loans on their need basis.

3. The Ld. Commissioner of Income Tax (Appeals) erred in law and on facts that the souharda sahakari is not a co-operative society registered under Karnataka Co-Operative Societies Act, 1959. In this regard we would like to convey that in the state of Karnataka, there are two Acts in existence to promote the co-operative principles. For that we will bring to your kind consideration the preface to Karnataka Souharda Sahakari Act, 1997.

Realizing the vital role of the cooperative movement in the progress of the society, the Central Planning Commission set up a committee by appointing Shri Chaudari Brahmaprakash as its head & with a task of drafting a 'Model Cooperative Act' which will prevent interference of the governments. This committee, after a detailed study of the Cooperative Acts of various states, drafted a 'Model Cooperative Act' in 1991 and Central Government recommended the state governments to adopt this.

Accordingly, in 1997 a bill on parallel cooperative act was tabled in the state legislature of Karnataka. Demanding an early approval of this bill by both the houses of Karnataka Legislature, a committee 'Souharda Samvardhana Samithi' under the chairmanship of Justice Rama Jois came into existence. It was due to the combined efforts of Sahakara Bharathi Karnataka and Souharda Samvardhana Samithi, "The Karnataka Souharda Sahakari Act-1997 (KSSA, 1997)" was passed in the legislature. With the consent of The President of India, it was enforced from January 2001.

4. The Ld. Commissioner of Income Tax (Appeals) erred in law and on facts in not following the Hon'ble High Court of Karnataka, Dharwad Bench in the case of Tumkur Merchants Souharda Credit Co — Operative Ltd V/s ITO and Guttugedara Credit Co-Operative Society Ltd., Vs. ITO. The High Court of Karnataka is the jurisdictional high court to the Ld. CIT (Appeal). The Assessee society has made deposits with BDCC Bank & others as a short term deposit. These deposits are made up out of idle funds which are required for lending purpose. As & when the society requires money, it withdraws the deposit. Therefore investment is attributable to the main activity of the assessee society.

5. Each of the above grounds is without prejudice to one another and the appellant craves leave to add, delete, amend or otherwise modify or withdraw one or more of the above grounds either before or at the time of hearing of this appeal.”

3. The issue that arises for consideration is, as to whether the revenue authorities were justified in denying the claim of the assessee for reduction u/s 80P(2)(a)(i) of the Act. Originally the issue had come up before the Tribunal in ITA No. 827/B/17 and by its order dated 31.10.2017 remanded the matter back to the AO with a direction to apply the principles laid down by the Hon'ble Supreme Court in the case of *Citizens Cooperative Society Ltd in Civil appeal No. 10245/2017* dated 08.08.2017.

4. In the remand proceedings, the AO came to the conclusion that the assessee had admitted nominal members and provided credit facilities to

nominal members and therefore the principle of mutuality was not satisfied. He came to the conclusion that as per the decision of Hon'ble Supreme Court in the case of *Citizens Co-op Society (Supra)*, if the principle of mutuality is not satisfied, then the assessee is not entitled to deduction u/s 80P(2)(a)(i) of the Act. Accordingly the AO confirmed the disallowance of deduction of Rs. 87,10,540/- claimed by the assessee. On an appeal the CIT (Appeals) confirmed the order of AO.

5. On further appeal by the assessee before the Tribunal in ITA No.544/Bang/2019, the Tribunal decided the issue vide para 4 of its order dated 4.9.2019 in which the discussion is on the provisions of Sec 80P(2)(d) of the Act, which decision is on the point whether, interest income is eligible for deduction u/s 80P(2)(d) of the Act, whereas the deduction is one claimed u/s 80P(2)(a)(i) of the Act. In these circumstances, the order of Tribunal dated 04.09.2019 was recalled by the Tribunal in MP No.34/Bang/2020 dated 23.11.2020. Accordingly, this appeal in ITA No.544/Bang/2019 is taken up for hearing.

6. The assessee is a Souharda Co-operative Society registered under Karnataka Souharda Sahakari Act, 1997 but assessed to tax in the status of Co-operative Society. It filed return of income 23.09.2013 declaring total income at Rs.87,10,540/- after claiming deduction under Chapter VIA of Rs.87,10,540/- the total income declared is NIL. Pursuant to the ITAT directions, the Assessing Officer re-examined the issues of the case by taking into cognizance the ratio of decision of Hon'ble Supreme Court decision, in the case of *Citizen Co-op Society Ltd, Hyderabad v. ACIT, C-9(1), Hyderabad in Civil Appeal No.10245 of 2017 dated 8.08.2017* and passed an elaborate assessment order on 15.03.2018 denying the deduction claimed u/s. 80P by giving a finding that the appellant society has provided credit facilities to three categories of members viz., i) Regular member ii) Associate members and iii) Nominal members. In the instant

case, it was noticed by the AO during assessment proceedings, that the assessee society was earning income not only from the members but majority of the income from the nominal/ Associate members. Hence, AO disallowed the deduction of Rs.87,10,540/-claimed u/s.80P(2)(a)(i) of the Act.

7. The AO while concluding the assessment had noticed from the balance sheet of the assessee society that the assessee had share capital of regular members at Rs.37,14,700 and that of nominal members at Rs.3,54,44,035/- . The assessee had not issued any share certificates to the associate/nominal members which proved that the assessee is not dealing with members only. Further the assessee had made investments with SS Sahakari Sulibhavi which is a sugar Industry, Tata Equity P/E fund, Reliance Growth Fund, Tata MIP Plus Fund which are non-members and thus against the bye-laws of the society. The assessee had earned income from e-stamping of Rs.4,71,572 which is earned from General public. In view of the above, the AO disallowed the deduction of Rs.87,10,540/- claimed u/s.80P(2)(a)(i) of the Act.

8. On appeal, the CIT(Appeals) noticed from the Bye laws of the society, that the assessee society also recognizes members as General members, Associate members and nominal members. The society is accepting deposits and also lending loans to nominal/associate members, the details of which are as follows:-

	No. of members	Share capital
Regular members	2980	Rs.37,14,700
Nominal Members	29327	Rs.3,54,44,035
Associate members	32307	Rs.3,91,58,735

9. In respect of admitting members, the CIT(A) observed that the assessee society has admitted excess nominal/associate members which is more than 15% of

the total members when compared to regular members which is in violation of Karnataka Co-operative Society Act, 1959. In view of the violation of the Karnataka Co-operative Society Act, CIT(A) observed that the society is not eligible for deduction u/s 80P and as such ratio of the decision of Hon`ble Supreme Court decision in the case of *Citizen Co-op Society Ltd, Hyderabad v. ACIT, C-9(1), Hyderabad in Civil Appeal No.10245 of 2017 dated 8.08.2017* is applicable to the facts of the assessee society.

10. Further, the CIT(A) was of the view that the assessee society has been registered as Souharda Co-operative Society under Karnataka Souharda Sahakari Act, 1997. Under the said Act, Co-operative Societies are not registered. The assessee has wrongly re-presented itself as a co-operative society for claiming deduction under section 80P of the Act. According to him, deduction u/s 80P is allowed only to the Co-operative Societies and not the Co-operatives Registered under the Karnataka Souharda Sahakari Act. The assessee has neither obtained a certification of registration in the name of 'Co-operative Society' to claim deduction. Neither the assessee has got itself converted into a co-operative society as per the Amending Act 13/2004 which provides conversion of co-operatives under the Karnataka Souharda Act, 1997 into Co-operative Society.

11. Placing reliance on the Tribunal's order in ITA No. 2831/Bang/2017 dt. 17.08.2018 in the case of M/s. Udaya Souharda Credit Cooperative Society Limited wherein it was held that 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, the CIT(A) noted that 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 Cooperative Societies.

12. The CIT(Appeals) held that, in the assessee's case, mutuality principles have failed as substantial business is being carried out with the general public or nominal members and also in view of the assessee being registered as Souharda Co-operative Society and not as Co-operative Society and taking into account the byelaws and the nature of business carried out by the assessee, the society is *not eligible* for deduction u/s 80P of the Income tax Act, 1961. As against this, the assessee is in appeal before us.

13. We have heard both the parties and perused the material on record. The Hon'ble Supreme Court in the case of *Mavilayi Service Cooperative Bank Ltd. v. CIT (2021) 123 taxmann.com 161 (SC)* has held that the expression "Members" is not defined in the Income-tax Act. Hence, it is necessary to construe the expression "Members" in section 80P(2)(a)(i) of the Act in the light of definition of that expression as contained in the concerned co-operative societies Act. In view of this, the facts are to be examined in the light of principles laid down by the Hon'ble Supreme Court in *Mavilayi Service Cooperative Bank Ltd. (supra)*. Accordingly, we remit this issue of deduction u/s. 80P(2)(a)(i) of the Act to the file of Assessing Officer to examine the same afresh in the light of the above judgment.

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

Pronounced in the open court on this 24th day of August, 2021.

Sd/-

(N V VASUDEVAN)
VICE PRESIDENT

Bangalore,
Dated, the 24th August, 2021.

/Desai S Murthy /

Sd/-

(CHANDRA POOJARI)
ACCOUNTANT MEMBER

Copy to:

- 1. Appellant
- 2. Respondent
- 3. CIT
- 4. CIT(A)
- 5. DR, ITAT, Bangalore.

By order

Assistant Registrar
ITAT, Bangalore.