

**IN THE INCOME TAX APPELLATE TRIBUNAL  
BANGALORE “SMC-B” BENCH, BANGALORE**

**Before Shri George George K, Judicial Member**

ITA No.193/Bang/2021: Asst.Year 2015-2016

Shri Mathaji Vividoddesha Souharda Sahakari Niyamitha No.126, I Main, Sheshadripuram Bangalore – 560 020. <b>PAN : AAGAS8784A.</b>	v.	The Income Tax Officer Ward 2(2)(1) Bangalore.
(Appellant)		(Respondent)

Appellant by : Sri.Prakash Hegde, CA

Respondent by : Sri.Ganesh R.Ghale, Standing Counsel

<b>Date of Hearing : 14.09.2021</b>	<b>Date of Pronouncement : 20.09.2021</b>
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**ORDER**

This appeal at the instance of the assessee is directed against the CIT(A)'s order dated 26.03.2021. The relevant assessment year is 2015-2016.

2. The grounds raised read as follows:-

*“The grounds mentioned hereinafter are without prejudice to one another.*

1. *That the learned Commissioner of Income Tax (Appeals) [CIT(A)] erred on facts and circumstances of the case and in law by confirming the Assessment order passed by the learned Assessing Officer (AO).*

2. *The learned CIT(A) has erred in confirming the order of the learned AO who has made the disallowance of deduction under section 80P of the Income Tax Act, of Rs.25,10,956 treating the Appellant as a co-operative bank though the Appellant is only a co-operative society.*

3. *The learned CIT(A) has erred in confirming the order of the learned AO who has levied interest under section 234B and 234C of the Act though the same should not have been levied in the present situation.*

*That the Appellant craves to leave to add to and / or to alter, amend, rescind, modify the grounds herein above or produce further documents before or at the time of hearing of this appeal.”*

3. The brief facts of the case are as follows:-

The assessee is a credit co-operative society engaged in providing credit facilities to its members. For the assessment year 2015-2016, the return of income was filed after claiming deduction of Rs.25,17,420 u/s 80P of the I.T.Act. Later on the assessee filed revised return on 28.12.2015 declaring total income at Rs.11,94,000 after claiming the amount of Rs.25,10,956 u/s 80P of the I.T.Act. The assessment was completed u/s 143(3) of the I.T.Act vide order dated 18.12.2017. The Assessing Officer made the following additions / disallowance –

- (i) interest income of Rs.1,31,555, and
- (ii) disallowance of exemption claimed u/s 80P of the I.T.Act amounting to Rs.25,10,956.

3.1 The Assessing Officer added interest income of Rs.1,31,555 on account of difference in interest income earned by the assessee and declared in the return of income. As regards the denial of deduction u/s 80P(2) of the I.T.Act amounting to Rs.25,10,956, the Assessing Officer stated that in view of section 80P(4) of the I.T.Act, the assessee is not entitled to the benefit of deduction u/s 80P of the I.T.Act since it is a co-operative bank. The assessee's plea that it is a co-operative society in view of the Hon'ble jurisdictional High Court judgment in the case of CIT v. Sri. Biluru Gurubasava Pattina Sahakri Sangha Niyamitha in ITA No.5006/2013

(judgment dated 05.02.2014), was rejected by the Assessing Officer by observing as under:-

*“4. In response to the above, the AR appeared on 28.11.2017 and relied on the Hon’ble jurisdictional high Court’s decision in the case of CIT vs. Sri Biluru Gurubasava Pattina Sahakari Sangha Niyamitha, Bagalkot in ITA No.5006/2013 decided on 05.02.2014.*

*4.1 However, with due respect to the higher judicial forum it is submitted that the decision of jurisdictional Hon’ble High Court of Karnataka showing the deduction claimed u/s 80P in the case of Sri Biluru Gurubasava Pattina Sahakari Sangha Niyamitha, Bagalkot (supra) has not been accepted by the revenue and an SLP has been filed before the Hon’ble Supreme Court. Since the matter is pending before the Hon’ble Apex Court, it may be mentioned here that logical conclusion at this juncture in the instant case cannot be considered at par with judicial decision on the issue under question.”*

4. Aggrieved by the assessment completed, the assessee preferred an appeal to the first appellate authority. The CIT(A) confirmed the view taken by the Assessing Officer.

5. Aggrieved, the assessee preferred an appeal to the ITAT. The learned AR submitted that the assessee though it is registered under the Karnataka Souhardha Sahakari Act, 1997, it is still a co-operative society entitled to the benefit of section 80P of the I.T.Act. In this context, the learned AR relied on the judgment of the Hon’ble jurisdictional High Court in the case of Swabhimani Souharda Credit Co-operative Limited v. Government of India reported in (2020) 421 ITR 670 (Kar.).

6. The learned Departmental Representative had submitted that the assessee is not entitled to the benefit of deduction u/s 80P(2)(a)(i) of the I.T.Act in respect of interest earned from co-operative banks. In this context, the learned DR relied on

the order of the ITAT in the case of M/s.Jyothi Pattin Souharda Sahakari Niyamati v. Pr.CIT in ITA No.650/Bang/2020 (order dated 13.08.2021).

7. I have heard rival submissions and perused the material on record. The primary reason for the Assessing Officer to deny the benefit of deduction u/s 80P of the I.T.Act was that the assessee was only registered under the Karnataka Souhardha Sahakari Act, 1997, and therefore, was not a co-operative society within the purview of section 2(19) of the I.T.Act. The Hon'ble Karnataka High Court in the case of M/s.Swabhimani Souharda Credit Co-operative Ltd. (supra) had decided an identical issue and held that the entities registered under the Karnataka Souharda Sahakari Act, 1997, fit into the definite term "Co-operative Society". The relevant finding the Hon'ble Karnataka High Court reads as follow:-

*"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 "cooperative 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."*

8. Similar view has been taken by the Tribunal in the case of Siddartha Pattina Souharda Sahakari Niyamitha v. ITO in ITA No.1234/Nang/2019 (order dated 26.07.2019). The relevant finding of the Tribunal reads as follow:-

*"6. I have considered the rival submissions. Sec.2(19) defines cooperative 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 ;"*

*7. As can be seen from the aforesaid definition of 'Co-operative society' under the Act, any co-operative society registered under any other law of any State for registration of co-operative society is also regarded as cooperative society under the Act. Souhardas' also operate on the principle of co-operation and adopt the principles of co-operation. Cooperative Societies and Co-operatives are all founded on the principle of cooperation.*

*8. Since the beginning of mankind the concept of 'co-operation' has been the foundation for harmonious existence In India, the Co-operative Societies Act 1912 regulated formation, management, winding up and other supervision by the Government etc. This Act became the model for the provincial governments to form their own Cooperative Acts. Post Independence, various state governments framed their own independent Cooperative Acts and the Central Government its Multi-State Cooperative Act. Accordingly, Karnataka State Cooperative Societies Act, 1959 (KSCS Act, 1959) regulates Co-operative societies in the state of Karnataka. A Panchayat, a Cooperative society and a School for every village were considered as the three pillars of the integrated community development. As time passed by, other aspects were included into the Cooperative act thus heralding the resurgence of a new era in cooperative movement. The state and the central governments were investing millions of rupees in the form of shares, grants, subsidy, contributions, government support, etc., but the expected results couldn't be achieved in cooperative movements. This condition continued almost until early 1980s.*

*9. Keeping this in mind, the Central Government setup a committee under the Chairmanship of Shri Ardhanarishwaran, which submitted its report in 1987. It attributed the failure of the cooperative movement to the excessive interference of the governments. It is also true that the unabated party politics in the co-operative movement is also a big hindrance to its progress. 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. Preamble to the Act reads thus:-*

*“An Act 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 matters connected therewith; WHEREAS it is expedient to provide for recognition encouragement and voluntary formation of co-operatives based on selfhelp, 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:-*

*“10. The Souharda Cooperatives enjoy functional autonomy in design and implementation of their Business plans, customer service activities, etc., based on the needs of their members. Unlike other forms of cooperatives in India, the interference of State / Central in day-to-day operations of Souharda Cooperatives is almost minimal. \*

*11. The above discussion would show that souharda co-operatives are also one form of co-operative societies registered under a law in force in the State of Karnataka for registration of co-operative societies. Therefore the conclusion of the revenue authorities that co-operative societies and cooperatives are different and that co-operative registered as Souharda Sahakari cannot be regarded as co-operative societies is unsustainable. We therefore hold that the Assessee should be allowed deduction u/s.80P(2)(a)(i) of the Act, as the ground on which the same was denied to the Assessee is held to be incorrect. However, the other conditions for allowing deduction u/s. 80P(2)(a)(i) of the Act needs to be examined by the AO. I, therefore, remand the question of allowing deduction u/s. 80P(2)(a)(i) of the Act to the AO, except the issue already decided above.*

*12. In the result, appeal by the Assessee is allowed for statistical purposes.”*

9. The primary reason for the Assessing Officer to deny the benefit of deduction u/s 80P of the I.T.Act was that the assessee is not registered under the Co-operative Societies Act. In view of the Hon'ble jurisdictional High Court judgment in the case of Swabhimani Souharda Credit Co-operative Limited v. Government of India (supra), which has categorically held that a society registered under the Karnataka Souharda Sahakari Act, 1997 is also entitled to the benefit of section 80P of the I.T.Act, the matter is restored to the files of the A.O. The A.O. is directed to examine the

claim of deduction u/s 80P of the I.T.Act afresh and decide the issue in accordance with law. It is ordered accordingly.

10. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced on this 20<sup>th</sup> day of September, 2021.

**Sd/-**  
**(George George K)**  
**JUDICIAL MEMBER**

Bangalore; Dated : 20<sup>th</sup> September, 2021.  
Devadas G\*

Copy to :

1. The Appellant.
2. The Respondent.
3. The CIT(A)-NFC, Delhi
4. The Pr.CIT Bangalore.
5. The DR, ITAT, Bengaluru.
6. Guard File.

Asst.Registrar/ITAT, Bangalore