

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 27TH DAY OF JUNE, 2014

PRESENT

THE HON'BLE MR. JUSTICE N KUMAR

AND

THE HON'BLE MR. JUSTICE B MANOHAR

ITA No. 598/2013

BETWEEN:

1. The Commissioner of Income Tax
C. R. Building,
Queens Road,
Bangalore.
2. The Income Tax Officer
Ward - 4(1),
C.R. Building,
Queens Road,
Bangalore.

...Appellants

(By Sri Kamaladhar. G, Adv.)

AND:

M/s. Bangalore Credit
Co-operative Society Ltd.,
No.723, New No. 37/1,

36th Cross,
7th Main, 4th Block,
Jayanagar,
Bangalore 560 011.

...Respondent

(By Sri A. Shankar & Sri M. Lava, Advs.)

This ITA filed under Section 260-A of I.T. Act, 1961 arising out of order dated 13.06.2013 passed in ITA No.1659/Bang/2012, for the Assessment year 2009-10, praying to (i) formulate the substantial questions of law stated therein; (ii) set aside the order passed by the ITAT, Bangalore in ITA No.1659/Bang/2012 dated 13.06.2013 confirming the order of the Appellate Commissioner and confirm the order passed by the Income Tax Officer, Ward-4(1), Bangalore.

This ITA coming on for admission this day, **N. KUMAR J** delivered the following:

J U D G M E N T

This appeal is preferred by the revenue challenging the order passed by the Tribunal, wherein it is held that sub-section (4) of Section 80P of the Income Tax Act, 1961 is applicable only to co-operative banks and not to credit co-operative societies.

2. The substantial questions of law which are raised in the appeal are as under:

- (i) Whether the Tribunal was correct in upholding the CIT(A)'s order directing the assessing officer to grant deduction under Section 80P(2)(a)(i) of the Act of Rs.70,58,624/- for assessment year 2009-10 by relying on the earlier order of ITAT on identical issue without appreciating that the revenue had not accepted the said order and an appeals under Section 260A is pending before this Hon'ble Court for adjudication?
- (ii) Whether the Tribunal is correct in holding that the assessee is not a Co-operative Bank but only a Co-operative society engaged in providing credit facilities to its members?
- (iii) Whether the Tribunal was correct in not appreciating the facts that the main motto of the co-operative society is lending for its members which is in the nature of banking transaction, treated on par as per the new clause introduced in the definition of income to section 2(24)(viiia) and comes

under the purview of 80P sub-section (4) of the Act as inserted in Finance Act 2006 with effect from 01.04.2007?

- (iv) Whether the Tribunal was correct in holding that the provision of sub-section (4) of Section 80P of the Income-tax Act are applicable only to co-operative banks and not to credit co-operative societies, which are engaged in business of banking, including providing credit facilities to their members?
- (v) Whether the Tribunal was correct in holding that the assessee is a c-operative society and not a co-operative bank in terms of sub-section (4) of Section 80P of the Income Tax Act without considering the meaning of Co-operative Bank as envisaged under Part V of Banking Regulation Act, 1949 wherein it is defined that Co-operative Bank includes primary co-operative Bank, which is further defined as co-operative society with the primary object of transactions of Banking business?"

3. The Tribunal in its order has set out the difference between the co-operative bank and society as under:

| | | |
|--------------------|---|--|
| Nature | Co-operative society registered under Banking Regulation Act, 1949 | Co-operative Society registered under Karnataka Co-operative Society Act, 1959 |
| Registration | Under the Banking Regulation Act, 1949 and Co-operative Societies Act, 1959 | Co-operative Societies Act, 1959 |
| Nature of business | <ol style="list-style-type: none"> 1. As defined in Section 6 of Banking Regulation Act. 2. Can open savings bank account, current account, overdraft account, cash credit account, issue letter of credit, discounting bills of exchange, issue cheques, demand drafts (DD), Pay orders, Gift cheques, lockers, bank guarantees etc. 3. Co-operative Banks can act as clearing agent for cheques, DDs, pay orders and other forms. 4. Banks are bound to | <ol style="list-style-type: none"> 1. As per the bye laws of the co-operative society. 2. Society cannot open savings bank account, current account, issue letter of credit, discounting bills of exchange, issue cheque, demand drafts, pay orders, gift cheques, lockers, bank guarantees etc. 3. Society cannot act clearing agent, for cheques, DDs, pay orders and |

| | | |
|-------------------|--|--|
| | follow the rules, regulations and directions issued by Reserve Bank of India (RBI) | other forms. 4. Society are bound by rules and regulations as specified by in the co-operative societies act. |
| Filing of returns | Co-operative banks have to submit annual return to RBI every year | Society has to submit the annual return to Registrar of Societies. |
| Inspection | RBI has the power to inspect accounts and over all functioning of the Bank | Registrar has the power to inspect accounts and over all functioning of the bank. |
| Part V | Part V of the Banking Regulation Act is applicable to co-operative banks | Part V of the Banking Regulation Act is not applicable to co-operative banks. |
| Use of words | The word 'bank' 'banker', 'banking' can be used by a co-operative bank. | The word 'bank' 'banker', 'banking' cannot be used as a co-operative society |

4. This Court had an occasion to consider the said questions in **ITA No.5006/2013** dated **05.02.2014** in the case of **THE COMMISSIONER OF INCOME TAX vs. SRI BILURU GURUBASAVA PATTINA SAHAKARI SANGHA NIYAMITHA, BAGALKOT**, where, after referring to the

relevant provisions of the Income Tax Act, and the banking Regulation Act, held as under:

“If a Co-operative Bank is exclusively carrying banking business, then the income derived from the said business cannot be deducted in computing the total income of the assessee. The said income is liable for tax. A Co-operative bank as defined under the Banking Regulation Act includes the primary agricultural credit society or a primary co-operative agricultural rural development bank. The Legislature did not want to deny the said benefit to a primary agricultural credit society or a primary co-operative agricultural and rural development bank. They did not want to extend the said benefit to a co-operative bank which is exclusively carrying on banking business i.e., the purport of the amendment. If the assessee is not a Co-operative bank carrying on exclusively banking business and if it does not possess a license from the Reserve Bank of India to carry on business, then it is not a Co-operative bank. It is a Co-operative society which also carries on the business of lending money to its members which is covered

under Section 80P(2)(a)(i) i.e., carrying on the business of banking for providing credit facilities to its members. The object of the aforesaid amendment is not to exclude the benefit extended under Section 80P(i) to the society.”

Therefore, the said issue was held in favour of the assessee and against the revenue.

5. The said judgment answers the issues in this case also. Accordingly, we pass the following order.

The appeal is dismissed. The substantial questions of law are answered in favour of the assessee and against the revenue.

(sd/-)
JUDGE

(sd/-)
JUDGE

VP/-