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**GOVERNMENT OF INDIA  
MINISTRY OF FINANCE  
INCOME TAX DEPARTMENT  
OFFICE OF THE INCOME TAX OFFICER  
WARD 5(2)(5), BANGALORE**

1	Name of the assessee	Srinagara Credit Co operative Society Limited
2	Address	No-36-2/48, 15 <sup>th</sup> Main Road, Sri Ramanjaneaya Street, Srinagara, Bangalore-560050
3	Permanent account number	AAAAS9196A
4	District	Bengaluru
5	Ward/Circle	Ward-5(2)(5), Benglauru
6	Status	Individual
7	Assessment Year	A.Y. 2013-14
8	Whether resident / resident but not ordinarily resident / not resident	Resident
9	Method of accounting	Mercantile
10	Previous year	2012-13
11	Nature of Business	-
12	Dates of hearing	-
13	Date of order	20.12.2019
14	Section and Sub-section under which the order is passed	143(3) r.w.s. 254 of the Income Tax Act, 1961

**ASSESSMENT ORDER**

The assessee, Srinagara Credit Co operative Society Limited, filed its Return of Income electronically on 30.09.2013 admitting an income of Rs. NIL after claiming a deduction of Rs.51,64,483/- as per provision



*RS*

of section 80P of the Act. Assessment was completed under section 143(3) of the Act on 26.02.2016 in which the deduction claimed under section 80P(2)(a)(i) was disallowed on the ground that the assessee is a primary Co-Operative Bank referred to in section 5(cci) of the Banking Regulation Act 1949 and hence provisions of section 80P(4) is attracted.

2. Aggrieved with the additions made in the Assessment Order, the assessee preferred an appeal before the learned Commissioner of Income tax (Appeals)-5, Bangalore. The CIT(A), vide order in ITA No.94/W-5(2)(4)/ CIT(A)-5/2016-17 dated 23.08.2017 dismissed the appeal filed by the assessee.

3. The assessee carried the matter further in its second appeal before the Hon'ble Income tax Appellate Tribunal, Bangalore. The Tribunal, vide their consolidated order in ITA Nos 2603 & 2604/Bang/2017 dated 15-10-2018 have restored the matter back to the file of the assessing officer with a direction to verify that in what connection the registration No. is mentioned on the first page of bye laws, and also in the light of orders of the Tribunal in the case of M/s. Udaya Souharda Credit Co-operative Society Limited and the Apex Court in the case of Citizen Co-operative Limited.

4. In order to re-do the assessment, notices u/s 142(1) dated 22.10.2019 & 11.12.2019 were issued to the assessee calling for various details , the relevant portion of the notice issued u/s 142(1) of the I T Act 1961, dated 11.12.2019 is reproduced as under for ready reference:

*".....a) You have claimed deduction under section 80P amounting to Rs. 19,19,836/-. In this regard, you are required to furnish a detailed note supported with proper documentary evidences substantiating your aforesaid claim.*

*b) In the case of Citizen Co-op Society Ltd, Hyderabad v. ACIT, C-9(1), Hyderabad in Civil Appeal No.10245 of 2017 (Arising out of SLP (C) No.20044 of 2015) dated 08.08.2017, the Hon'ble Supreme Court of India, has decided appeal of the above society against the said society In regard to admissibility of deduction under section 80P(2)(a)(i) of the I.T. Act, 1961. In this case, the society was carrying on providing credit facilities to its nominal members and the income derived from investment made in FDs, loans etc has been held to be income from finance business and not from credit facilities to members since the majority of the contributors to the surplus is nominal member and general public. Viewed from the above decision of the Hon'ble Supreme Court, it is observed from the Balance-sheet and P&L A/c, you are also providing credit facilities to associate members and getting majority of profit from the said category of members. As per the decision of the Hon'ble Supreme Court, cited supra, the deduction claimed under section 80P is not admissible since you are getting majority of income from the non-regular members viz. associate members. Hence, it is proposed to disallow deduction under section 80P claimed by you.*

*c) Furnish the following details:*

*(i) Audit Report alongwith enclosures done by the Government Auditor under Co-op Act.*



(ii) List containing name and complete postal address of the regular members and other members viz associate members during the financial year 2012-13.

(iv) Details of interest/receipts from the regular members and other members separately.

(v) Details of funds invested in fixed deposits, sources of such funds i.e., from regular members and other members viz. associate members and details of interest earned from such investments.

(vi) Register of members to be produced for verification.

(vii) Copy of Registration Certificate/Renewal Certificate from the Registrar of the Societies, as a co-operative society.

(viii) Copy of Registration Certificate under the Karnataka Souharda Sahakari Act, 1959, if any.

(ix) Details of other income earned apart from interest and justification as regards claim of deduction u/s 80P claimed.

d) Justify the claim of deduction U/s 80P on e stamping commission. File details of Misc income credited to Profit and Loss account.

e) In the P & L account you have shown income from nominal membership fee of Rs. 20,681/-. Please furnish the complete list of nominal members, their share capital and income earned out of transactions done with them....."

5. In response to Notice u/s 142(1) referred to above, the assessee furnished details/documents as under:

".....In this connection we wish to submit that the Hon'ble ITAT has set aside these assessments with a limited issue to examine whether the society is registered under "Souharda" or "co-operative" in the light of order of Tribunal in the case of M/s. Udaya Souharda Credit Co- operative Society Limited and the judgment of the Apex Court in the case of Citizen Co-operative Ltd. Vs. ACIT. However, your authority has called for various other details. Without prejudice, we furnish the details as called for in your Notice u/s 142(1) referred to above:

a) Deduction claimed u/s 80P of the Act.

A.Y. 2013-14 Rs 51,64,483/-

A.Y. 2014-15 Rs. 70,74,953/-

Our society viz., M/s. Srinagar Credit Co-operative Society Limited is incorporated on 28.06.2000 and registered under co-operative society Act vide certificate issued under No.JRB/RGN/34/5/ 28674/2000-2001 dated 28-06-2000 by the Joint Registrar of Co-operative Societies, Bangalore Division, Bangalore. Copy of the certificate issued in Kannada language and its English version are enclosed herewith.

The activity of the society is to provide credit facility to its own members and the society has satisfied the conditions envisaged in sub-section (1) & (2) of Section 80P of the Act for claiming deduction u/s 80P of the Act. Moreover "Banking means accepting for the purpose of lending



or investment of deposits of money from the public, repayable on demand or otherwise, withdrawable by cheque, draft and order or otherwise. Which is not so in our case.

If at all the intention of the legislature was not to grant deduction u/s 80P(2)(i) & 2(d) of the IT Act to Co-Operative Societies carrying on the business of providing credit facilities to its members, then this section would have been deleted. The new proviso to Sec.80P(4) which is brought into statute is applicable only to Co operative Banks and not to co-operative Societies. Since, we are co-operative Societies, and not a Co Operative Bank, the provision of Section 80P(4) is not applicable in our case.

Under these circumstances, we are entitled to claim deduction u/s. 80P of the Act.

**b)Citizen Co-op Society Ltd, Hyderabad V. ACIT, C-9(1), Hyderabad.**

The judgment of the Hon'ble Supreme Court is distinguishable and not applicable to the facts of the case. In this case, the society was admitting nominal members and deal with them and there by violating the provisions. The violations as held by the Hon'ble SC are as under:

(i) As per the information furnished, it was found that the assessee caters to two distinct categories of people.

(ii) The first category is that of resident members or ordinary members.

(iii) The second category is that of nominal members, who make deposits with the assessee for the purpose of obtaining loans etc.

(iv) This category of persons is neither members nor nominal/associate members.

(v) As noticed, the assessee accepts deposits mostly from the second category these deposits are mostly kept in FDs.

(vi) With banks to earn maximum returns, a portion of these deposits are utilized to advance gold loans etc. to members of the first category.

(vii) It is noticed that the assessee has fixed deposits of Rs.54,16,99,504.39 of Rs. As on 31.3.2007.

Therefore, the fixed deposits in banks are mostly out of funds received as deposits from the second category of persons referred above.

(viii) As a class, the depositors and borrowers are quite distinct and the activity is finance business and cannot be termed as cooperative activity.

(ix) The assessee is also engaged in the activity of granting loans to general public etc. which has nothing to do with cooperation amongst members. It is plain business and any willing buyer can utilize the services of the assessee.

(x) As understood, the assessee has not obtained any approval from the Registrar of Societies either to accept deposits from nominal members (who are actually non-members as the provisions of law referred above) as well as for conducting the business of sale of stamps etc.

(xi) Therefore, both in form and substance, the activity is in violation of the Cooperative Societies Act and Cooperative Society Rules.



*(xii) Apart from the above, a cooperative credit society is not entitled for deduction u/s 80P(2)(a)(i) on the income from investment of surplus funds as per decision of IT at Hyderabad Bench in ITA No. 1141/Hyd/2007 in the case of SBI Staff Mutually Aided Cooperative Society Ltd."*

*Thus the provisions of Section 80P(2)(i)(a) were grossly violated as the appellant Society was found not dealing with its members only but also with general public as well and hence the principle of mutuality was missing in this case. In their order, the Hon'ble SC has clearly distinguished between Co-operative Bank and Co-operative society.*

*Under these circumstances, the Hon'ble SC held that M/s Citizen Co-op Society Ltd is not entitled to claim deduction u/s 80P of the Act. It is not so in the case of M/s. Srinagar Credit Co-operative Society Limited since the society is not providing any credit facility to associate members/nominal members and thereby there is no income to the society from such members. The role of these members is to stand surety to regular members who avail loan/credit facility from the society and these members will not be having any voting power and they are not entitled to any dividend since they will not be having any share in the society. The nominal membership will be automatically seized, when once the regular member has discharged his liability to the society. Under these circumstances, question of disallowance of deduction claimed u/s 80P, in our case, will not arise.*

*The judgment of Hon'ble ITAT as reported in ITA No.2831/Bang/ 201 in the case of M/s. Udaya Souharda Credit Co operative Society Limited is also not applicable to the facts of the case, since the Tribunal has rendered the judgment that the society is entitled for deduction u/s 80P of the Act, if the society is registered under Karnataka Co Operative Act. As our society is registered under Karnataka Co Operative Society Act, we are entitled to claim deduction u/s 80 P of the Act....."*

6. Copies of all the documents viz., Certificate issued by the Registrar of Co-operative societies, Bye law, audit report, list of regular members, nominal members etc have been verified. Facts of the case are distinguishable with that of the judgment of Hon'ble Supreme Court in the case of M/s Citizen Co-op Society Ltd.

7. After verifying all the details furnished by the assessee during the course of assessment proceedings, the assessment is completed by accepting the income at Rs. NIL and the deduction u/s 80P of the Act as claimed is allowed. Accordingly, the total income of the assessee is assessed u/s 143(3) r.w.s. 254 of the Income Tax Act as under:



S.No.	Particulars	Amount ( In Rs.)
	Total Income as per Return of Income	NIL
	<b>Total Assessed Income</b>	NIL
	Tax thereon	Nil
Less	Regular taxes paid	27,70,704
	Balance Refundable	27,70,704
Add	Interest u/s 244A	3,14,979
	<b>Total refundable</b>	<b>30,85,380</b>

8. Case is assessed under section 143(3) r.w.s. 254 of the Income Tax Act.  
a. Demand notice issued u/s 156 of the IT Act, 1961.

  
(SANDEEP KUMAR)  
Income Tax Officer,  
Ward-5(2)(5), Bengaluru