
[2014] 44 taxmann.com 123 (Panaji - Trib.)/[2015] 152 ITD 621 (Panaji - Trib.)

IT : Where assessee, a co-operative society, claimed deduction under section 80P(2)(a)(i) and Assessing Officer denied deduction taking view that assessee was a primary co-operative bank and, therefore, provisions of section 80P(4) were applicable, since none of aims and objects of assessee allowed it to accept deposits of money from public for purpose of lending or investment, it could not be regarded to be a primary co-operative bank and was entitled for deduction under section 80P(2)(a)(i)

[2014] 44 taxmann.com 123 (Panaji - Trib.)

IN THE ITAT PANAJI BENCH

Tararani Mahila Co-op. Credit Society Ltd.

v.

Income-tax Officer, Ward -1(2), Belgaum*

**P.K. BANSAL, ACCOUNTANT MEMBER
AND D.T. GARASIA, JUDICIAL MEMBER
IT APPEAL NOS. 229 & 230 (PANAJI) OF 2013
[ASSESSMENT YEARS 2009-10 & 2010-11]
FEBRUARY 28, 2014**

Section 80P of the Income-tax Act, 1961 - Deductions - Income of co-operative societies (Primary co-operative bank) - Assessment years 2009-10 and 2010-11 - Assessee, a co-operative society, was registered under Karnataka State Co-operative Societies Act, 1959 - It claimed deduction under section 80P(2)(a)(i) - Assessing Officer denied deduction taking view that assessee was a primary co-operative bank and, therefore, provisions of section 80P(4) were applicable - Whether since none of aims and objects of assessee-society allowed it to accept deposits of money from public for purpose of lending or investment, it could not be regarded to be a primary co-operative bank - Held, yes - Whether, therefore, provisions of section 80P(4) were not applicable in instant case - Held, yes - Whether in given situation assessee was entitled for deduction under section 80P(2)(a)(i) - Held, yes [Paras 3.3.7 and 3.3.8] [In favour of assessee]

FACTS

The assessee, a co-operative society, was registered under the Karnataka State Co-operative Societies Act, 1959. In the returns of income filed for the assessment years 2009-10 and 2010-11, it claimed deduction under section 80P(2)(a)(i).

The Assessing Officer denied the deduction taking the view that the assessee was a primary co-operative bank and, therefore, provisions of section 80P(4) were applicable in the instant case.

On appeal, the Commissioner (Appeals) upheld the order of the Assessing Officer.

On second appeal:

HELD

From the plain reading of section 80P(2)(a)(i), it is apparent that if the co-operative society is engaged in carrying on the business of banking or providing credit facilities to its members, the co-operative society is entitled for deduction on whole of the income relating to any one or more of such business. From the reading of section 80P(4), it is apparent that this section denies deduction to a co-operative bank other than a primary agricultural credit society or primary co-operative agricultural and rural development bank. The provision of section 80P(4) was introduced in the statute by the Finance Act, 2006, with effect from 1.4.2007. The Explanation to the section defines the co-operative bank and primary agricultural credit society to have the same meaning as assigned to them in Part-V of the Banking Regulation Act, 1949.

It is not the case of either of the parties that the assessee is a primary co-operative agricultural and rural development bank. It is also not the claim of the assessee that it is a primary agricultural credit society. Therefore, before deciding the issue whether the assessee is entitled for deduction under section 80P(2)(a)(i), it is essential to decide whether it is a co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank. In case it is found that the assessee is a co-operative bank, it will not be entitled for deduction as stipulated under section 80P(2)(a)(i). [Para 3.3]

Section 80P(2)(a)(i) provides two types of activities in which the co-operative society must be engaged to be eligible for deduction under sub-clause (i). These two activities are (a) co-operative society engaged in carrying on business of banking facilities to its members or (b) co-operative society engaged in providing credit facilities to its members. Both the activities must be carried on by the co-operative society for its members. If a co-operative society is engaged in carrying on these activities/facilities for the persons other than its members, it will not be eligible for deduction under section 80P(2)(a)(i) on the income which it derives from carrying on the activities not relating to its members. Therefore, where a co-operative society is engaged in carrying on business of banking facilities to its members and to the public or providing credit facilities to its members or to the public, the income which relates to the business of banking facilities to its members or providing credit facilities to its members will only be eligible for deduction under section 80P(2)(a)(i). There is no prohibition under section 80P not to allow deduction to such co-operative societies in respect of business relating to its members. [Para 3.3.1]

The 'Co-operative Bank' is defined in Part V of the Banking Regulations Act, 1949. From the definition of Co-operative Bank, it is apparent that Co-operative Bank means State Co-operative Bank, a Central Co-operative Bank and a Primary Co-operative Bank. It is not the case of the revenue that the assessee is a State Co-operative Bank or Central Co-operative Bank. Now it is to be seen whether the assessee is a primary Co-operative Bank. [Paras 3.3.2 and 3.3.3]

The Primary Co-operative Bank is defined under section 5(ccv) of the Banking Regulation Act. From the definition of the Primary Co-operative Bank, it is apparent that if the co-operative society complied

with all the three conditions: firstly the primary object or principle business transacted by it is a banking business, secondly the paid up share capital and reserve of which are Rs. one lakh or more, and thirdly by-laws of the co-operative society do not permit admission of any other co-operative society as a member, it will be regarded to be primary co-operative bank. In case the assessee does not comply with all the three conditions, it cannot be regarded to be a co-operative bank and the provisions of section 80P(4) will not be applicable. Once the assessee will not fall within the provisions of section 80P(4), it will be eligible to get deduction under section 80P(2)(a)(i) in respect of whole of the income which it derives from carrying on the business of banking or providing credit facilities to its members. [Para 3.3.4 and 3.3.5]

The objects of the assessee are as :

- (i) To promote the economic interest of its members and to encourage thrift, savings, co-operation and self-help among themselves.
- (ii) To create funds by means of deposits and borrowings hereafter to lend to members of the society at moderate rate of interest.
- (iii) To lend money to its members on higher purchase of household articles and vehicles.
- (iv) To do such other things in furtherance of the above objects, with the prior approval of the Registrar.
- (v) To lend money to its members for their business purposes.

Further the 'Banking business' has been defined under section 5(b) of the Banking Regulation Act. From the said definition it is clear that 'banking' means accepting deposit of money from the public which is repayable on demand or otherwise and withdrawal of these deposits by cheque, draft, order or otherwise and these deposits are accepted for the purpose of lending or investment. These deposits must be accepted from the public, not only from the members. These deposits must be repayable on demand or otherwise and could be withdrawn by the depositor by cheque, draft or otherwise.

From the aforesaid objects, it is apparent that none of the aims and objects allow the assessee to accept deposits of money from the public for the purpose of lending or investment. Therefore, the assessee does not comply with the first condition as laid down in the definition as given under section 5(ccv) of the Banking Regulation Act for becoming primary co-operative bank. If the business of the assessee is limited only to the members and even if it is a banking business, the assessee will be entitled for deduction under section 80P(2)(a)(i). So far as the second condition is concerned, there is no dispute that the paid up share capital and reserves in the case of the assessee is more than Rs. 1 lakh. Therefore, the assessee satisfies the second condition. So far as the third condition is concerned, section 16 of the Karnataka State Co-operative Societies Act, 1959 permits admission of any other co-operative society as a member.

The provisions of section 16 mandate admission of any other co-operative society as a member of the co-operative society. The word used in section 16(1) is 'shall'. This fact is clarified further by sub-section (2) of section 16 that no co-operative society shall refuse admission to the membership, without sufficient reason, to any person who is qualified to become member under the provisions of this Act, rules and bye-laws. This clearly proves that in case the rules and bye-laws of the other co-operative society provides otherwise, the co-operative society may not be admitted as a member of the co-operative society. The person, as per sub-section (2), must be qualified for becoming member

not only under section 16(1) but also as per the rules and bye-laws of the co-operative society. One cannot read sub-section (2) in the manner that the rules and bye-laws cannot permit the admission of any other co-operative society as a member of the co-operative society. Had that been the intention of the legislature, it would have not used the words 'this Act, rules and bye-laws' in sub-section (2). [Para 3.3.6]

The assessee did not file copy of its by laws. Therefore, one is unable to give a finding whether the assessee complies with the third condition. Since the assessee did not comply with the first condition, it cannot be regarded to be a primary co-operative bank. [Para 3.3.7]

Since the assessee cannot be regarded to be a primary co-operative bank, it cannot be a co-operative bank. Therefore, the provisions of section 80P(4) are not applicable in the instant case. Therefore, the Assessee was entitled for deduction under section 80P(2)(a)(i). [Para 3.3.9]

CASE REVIEW

Citizen Co-op Society Ltd. v. Addl. CIT [2012] 54 SOT 196 (URO)/24 taxmann.com 347 (Hyd.) (para 3.3.8); *ITO v. Divyajyothi Credit Co-operative Society Ltd.* [IT Appeal No. 72 (Bang.) of 2013, dated 7-2-2014] (para 3.3.8) and *Vyavasaya Seva Sahakara Sangha Niyamitha v. State of Karnataka* [WP No. 5445 of 2001, dated 26-11-2002] (para 3.3.8) distinguished.

Dy. CIT v. Jayalakshmi Mahila Vividodeshagala Souharda Sahakari Ltd. [2012] 137 ITD 163/23 taxmann.com 313 (Panaji) (para 3.3.8) followed.

CASES REFERRED TO

CIT v. Jafari Momin Vikas Co.-op. Credit Society Ltd. [Tax Appeal No. 442, 443 & 863 of 2013, dated 15-1-2014] (para 3.1), *Vyavasaya Seva Sahakara Sangha Niyamitha v. State of Karnataka* [WP No. 5445 of 2001, dated 26-11-2002] (para 3.1), *ITO v. Divyajyothi Credit Co-operative Society Ltd.* [IT Appeal No. 72 (Bang.) of 2013, dated 7-2-2014] (para 3.1), *Dy. CIT v. Jayalakshmi Mahila Vividodeshagala Souharda Sahakari Ltd.* [2012] 137 ITD 163/23 taxmann.com 313 (Panaji) (para 3.1), *Citizen Co-op. Society Ltd. v. Addl. CIT* [2012] 54 SOT 196 (URO)/24 taxmann.com 347 (Hyd.) (para 3.2) and *Asstt. CIT v. Bangalore Commercial Transport Credit Co-operative Society Ltd.* [IT Appeal No. 1069 (Bang.) of 2010] (para 3.3.8).

Pramod Y. Vaidya for the Appellant. **Nishant K.** for the Respondent.

ORDER

P.K. Bansal, Accountant Member - Since common issues are involved in both these appeals filed by the Assessee against the order of CIT(A) both dt. 20.5.2013, therefore, both the appeals are decided by this common order. In both the assessment years the Assessee has taken the following common grounds of appeal :

- "1. On the facts and circumstances and in law the learned C.I.T (A) erred in confirming the addition of Rs.18,10,916/- on account of disallowance of deduction u/s 80P(2)(a)(i).
2. The learned C.I.T (A) erred in holding that the assessee is engaged in the business of banking and therefore is a primary co operative bank within the meaning of Section 5(ccv) of The Banking Regulation Act 1949.

3. The authorities failed to appreciate that the assessee is not governed by RBI Act or The Banking Regulation Act 1949, whereas it is governed by The Karnataka Co-operative Societies Act and corresponding bye laws.
4. The learned C.I.T (A) erred in holding that the assessee also accepts deposits from general public when the facts reveal that deposits are accepted only from members for the purpose of meeting financial requirements of members and to provide credit facilities to the members as per the bye laws.
5. The learned CIT (A) erred in not granting deduction u/s 80(P)(2)(a)(i) of Income Tax Act 1961 which is specifically provided to a co-operative society carrying on the business of providing credit facilities to its members.
6. The learned CIT (A) ought to have appreciated that the insertion of clause (viia) in Section 2(24) of the Act does not alter the position as far as deduction u/s 80P(2)(a)(i) is concerned for providing deduction to a co-operative credit society which is engaged in providing credit facilities to its members.
7. The learned CIT (A) erred in denying deduction u/s 80(P)(2)(a)(i) of the Act to a co operative society by applying amendment by insertion of section 80P(4) which is applicable to co-operative banks.
8. Without prejudice to the claim of deduction u/s 80P(2)(a)(i), the income of the assessee society is also exempt on the ground of mutuality."

2. Both the parties agreed that whatever view is taken for the A.Y 2009-10, the same view may be taken for the A.Y 2010-11, therefore these appeals are disposed off on the basis of the facts involved for the A.Y. 2009-10.

3. The brief facts of the case are that the Assessee is a co-operative society registered under the Karnataka State Co-operative Societies Act. The Assessee filed return declaring gross total income of Rs.18,10,916/- and claimed deduction u/s 80P(2)(a)(i) and therefore net taxable income was shown to be 'nil'. The AO did not allow the deduction to the Assessee u/s 80P(2)(a)(i) and the income was assessed at Rs. 18,10,920/-. The AO while denying the deduction to the Assessee u/s 80P(2)(a)(i) took the view that the Assessee is a primary co-operative bank and therefore provisions of Sec. 80P(4) are applicable in the case of the Assessee. The Assessee went in appeal before the CIT(A). CIT(A) dismissed the appeal of the Assessee.

3.1 The Id. AR before us vehemently contended that the provisions of Sec. 80P(4) are not applicable in the case of the Assessee. The Assessee is not a co-operative bank. The Assessee is a co-operative society duly registered under the Karnataka State Co-operative Societies Act, 1959. The primary object of the Assessee is to promote the economic interest of its members and to encourage thrift, savings, co-operative and self-help among themselves. For this, our attention was drawn towards the order of the CIT(A) which re-produces the bye-laws of the Assessee from (i) to (v). The Assessee is a credit society. The activities of the Assessee are limited to its members. The Assessee does not finance or take deposits from the public at large. The paid up capital of the Assessee, no doubt, is more than Rs. 1 lacs. It was contended that the issue is duly covered in favour of the Assessee by the decision of the Hon'ble Gujarat High Court in the case of *CIT v. Jafari Momin Vikas Co-op. Credit Society Ltd.* in Tax Appeal nos. 442 of 2013, 443 of 2013 and 863 of 2013, dated 15-1-2014. Attention was also drawn towards the decision of the Hon'ble Karnataka High Court in the case of *Vyavasaya Seva Sahakara Sangha Niyamitha v. State of Karnataka* [WP No. 5445 of 2001, dated 26-11-2002] for the proposition of law by referring to para 12 that merely

because the co-operative society is required to advance loan to its members, it does not cease to be a co-operative society governed by the Co-operative Societies Act nor can they be treated as banking companies. The activities carried out by the society cannot be regarded to be banking activities as contemplated under the Banking Regulation Act, 1949. Reliance was also placed on the decision of the Bangalore Bench of this Tribunal in ITA No. 72/Bang/2013, dated 7-2-214 in the case of *ITO v. Divyajyothi Credit Co-operative Society Ltd.* for the A.Y 2009-10 in which it was held that the provisions of Sec. 80P(4) are applicable only to credit co-operative banks and not to credit co-operative society. Reliance was also placed on the decision of the Panaji Bench in the case of *Dy. CIT v. Jayalakshmi Mahila Vividodeshagala Souharda Sahakari Ltd.* [\[2012\] 137 ITD 163/23 taxmann.com 313](#).

3.2 The Id. DR, on the other hand vehemently contended that the Assessee is a co-operative bank. In view of the definition of the co-operative bank given under explanation to Sec. 80P(4) the Assessee is engaged in the business of banking. Sec. 80P(4) puts an embargo w.e.f. 1.4.2007 that if a co-operative society is carrying on banking business, the Assessee will not be entitled for the exemption. Reliance was placed on the decision of Hyderabad Bench of the Tribunal in the case of *Citizen Co-op. Society v. Addl. CIT* [\[2012\] 54 SOT 196 \(URO\)/24 taxmann.com 347](#).

3.3 We have heard the rival submissions and carefully considered the same alongwith the order of the tax authorities below as well as the decisions and the entire material and case laws referred to before us. The question before us is whether the Assessee is entitled for deduction u/s 80P(2)(a)(i) and whether the Assessee is hit by the provisions of Sec. 80P(4) which was introduced in the statute by the Finance Act, 2006 w.e.f. 1.4.2007. The relevant provisions of both the sections are re-produced for our ready reference 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.

(2) The sums referred to in sub-section (1) shall be the following, namely :ô

(a) in the case of a co-operative society engaged inô

(i) carrying on the business of banking or providing credit facilities to its members,
or.....

the whole of the amount of profits and gains of business attributable to any one or more of such activities.

"80P(4) The provisions of this section shall not apply in relation to any co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank.

*Explanation.*ô For the purposes of this sub-section,ô

(a) "co-operative bank" and "primary agricultural credit society" shall have the meanings respectively assigned to them in Part V of the Banking Regulation Act, 1949 (10 of 1949);

(b) "primary co-operative agricultural and rural development bank" means a society having its area of operation confined to a taluk and the principal object of which is to provide for long-term credit for agricultural and rural development activities.'

From the plain reading of Sec. 80P(2)(a)(i) it is apparent that if the co-operative society is engaged in

carrying of business of banking or providing credit facilities to its members, the co-operative society is entitled for deduction on whole of the income relating to any one or more of such business. From the reading of Sec. 80P(4) it is apparent that this section denies deduction to a co-operative bank other than a primary agricultural credit society or primary co-operative agricultural and rural development bank. The provisions of Sec. 80P(4) was introduced in the statute by the Finance Act, 2006 w.e.f. 1.4.2007. The explanation to the section defines the co-operative bank and primary agricultural credit society to have the same meaning as assigned to them in Part-V of the Banking Regulation Act, 1949. It is not the case of either of the parties that the Assessee is a primary co-operative agricultural and rural development bank. It is also not the claim of the Assessee that Assessee is a primary agricultural credit society. If we read both the sections, Sec. 80P(2)(a)(i) and Sec. 80P(4) together, we find that the provisions of Sec. 80P(4) mandates that the provisions of Sec. 80P will not apply to any co-operative bank other than a primary agricultural credit society or primary co-operative agricultural and rural development bank but as per the provisions of Sec. 80P(2)(a)(i), a co-operative society engaged in carrying on the business of banking or providing credit facilities to its members is entitled for deduction. After the insertion of Sec. 80P(4), the provisions of Sec. 80P(2)(a)(i) were not amended, rather the co-operative society engaged in carrying on business of banking facilities to its members continued to be entitled for deduction u/s 80P(2)(a)(i). This pre-supposes that every co-operative society engaged in carrying on business of banking cannot be regarded to be a co-operative bank. The embargo put u/s 80P(4) are applicable only to a co-operative bank. In our opinion, it cannot be said that a co-operative society cannot carry on business of banking facilities to its members even if it is not a co-operative bank. If we read the provisions in the manner that every co-operative society engaged in carrying on business of banking even for its members is regarded to be a co-operative bank, then, the provisions of Sec. 80P(2)(a)(i) will become redundant. Therefore, in our opinion, before deciding the issue whether the Assessee is entitled for deduction u/s 80P(2)(a)(i), it is essential to decide whether the Assessee is a co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank. In case it is found that the Assessee is a co-operative bank, the Assessee will not be entitled for deduction as stipulated u/s 80P(2)(a)(i) but in case the Assessee is not a co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank, the provisions of Sec. 80P(2)(a)(i) will be applicable to the Assessee provided the Assessee is engaged in carrying on business of banking or providing credit facilities to its members.

3.3.1 In our opinion, Sec. 80P(2)(a)(i) provides two types of activities in which the co-operative society must be engaged to be eligible for deduction under sub-clause (i). These two activities are not alternate ones because the section allows deduction to the co-operative society on the whole of profits and gains of business attributable to any one or more of such activities. This pre-supposes that eligible co-operative society can carry on either one of these two businesses or can carry both these businesses for the members. If the Assessee co-operative society carries on one or both of the activities, it will be eligible for deduction. These two activities are (a) co-operative society engaged in carrying on business of banking facilities to its members or (b) co-operative society engaged in providing credit facilities to its members. Both the activities must be carried on by the co-operative society for its members. If a co-operative society is engaged in carrying on these activities/facilities for the persons other than its members, the co-operative society, in our opinion, will not be eligible for deduction u/s 80P(2)(a)(i) on the income which it derives from carrying on the activities not relating to its members. Therefore, where a co-operative society is engaged in carrying on business of banking facilities to its members and to the public or providing credit facilities to its members or to the public, the income which relates to the business of banking facilities to its members or providing credit facilities to its members will only be eligible for deduction u/s 80P(2)(a)(i). There is no prohibition u/s 80P not to allow deduction to such co-operative societies in respect of business relating to its members.

3.3.2 Now, the question before us is whether the Assessee is a co-operative bank or not. 'Co-operative Bank' is defined in Part V of the Banking Regulations Act, 1949 as under :

"Co-operative bank" means a state co-operative bank, a central co-operative bank and a primary co-operative bank:"

3.3.3 From the definition of Co-operative bank it is apparent that Co-operative bank means state co-operative bank, a Central Co-operative Bank and a Primary Co-operative bank. It is not the case of the revenue that the assessee is a state Co-operative bank or Central Co-operative bank. We have therefore to find whether the assessee is a primary Co-operative bank.

3.3.4 The Primary Co-operative bank is defined under section 5 clause (CCV) of Banking Regulation Act 1949 as under:ô

'(CCV) "primary co-operative bank" means a co-operative society, other than a primary agricultural credit societyô

- (1) the primary object or principal business of which is transaction of banking business:
- (2) the paid-up share capital and reserves of which are not less than one lakh of rupees: and
- (3) the bye-laws of which do not permit admission of any other co-operative society as a member:

Provided that this sub-clause shall not apply to the admission of a co-operative bank as a member by reason of such co-operative bank subscribing to the share capital of such Co-operative society out of funds provided by the State Government for the purpose.'

3.3.5 From the aforesaid definition, it is apparent that if the co-operative society complied with all the three conditions; firstly that the primary object or principle business transacted by it is a banking business, secondly, the paid up share capital and reserve of which are 1 lakh or more and thirdly, by laws of the co-operative society do not permit admission of any other co-operative society as a member, it will be regarded to be primary co-operative bank. If co-operative society does not fulfil any of the conditions, it cannot be regarded to be a primary co-operative bank. Therefore, in the case of the Assessee we have to examine on the basis of the facts and materials on record whether the Assessee co-operative society complies with all the three conditions. In case, it does not comply with all the three conditions, it cannot be regarded to be a co-operative bank and the provisions of Sec. 80P(4), in our opinion, will not be applicable in the case of the Assessee. Once, the Assessee will not fall within the provisions of Sec. 80P(4), the Assessee, in our opinion, will be eligible to get deduction u/s 80P(2)(a)(i) in respect of whole of the income which the Assessee derives from carrying on the business of banking or providing credit facilities to its members.

3.3.6 Whether condition no. 1 is applicable in the case of the Assessee, for this we have to look into the bye-laws of the Assessee. The objects of the Assessee in this case are enumerated as under :

- "(i) To promote the economic interest of its members and to encourage thrift, savings, co-operation and self-help among themselves.
- (ii) To create funds by means of deposits and borrowings hereafter to lend to members of the society at moderate rate of interest.
- (iii) To lend money to its members on higher purchase of household articles and vehicles.

- (iv) To do such other things in furtherance of the above objects, with the prior approval of the Registrar.
- (v) To lend money to its members for their business purposes."

On the basis of these objects whether it can be said that the primary object or principal business of the Assessee is transaction of banking business? Banking business has been defined u/s 5(b) of the Banking Regulation Act in the following manner :

"banking" means the accepting, for the purpose of lending or investment, of deposits of money from the public, repayable on demand or otherwise, and withdrawable by cheque, draft, order or otherwise.'

From the said definition it is clear that banking means accepting deposit of money from the public which is repayable on demand or otherwise and withdrawal of these deposits by cheque, draft, order or otherwise and these deposits are accepted for the purpose of lending or investment. These deposits must be accepted from the public, not only from the members. These deposits must be repayable on demand or otherwise and could be withdrawn by the depositor by cheque, draft or otherwise. From the aforesaid objects, it is apparent that none of the aims and objects allows the Assessee co-operative society to accept deposits of money from the public for the purpose of lending or investment. In our opinion, until and unless this condition is satisfied, it cannot be said that the prime object or principal business of the Assessee is banking business. Therefore, in this case, the Assessee will not comply with the first condition as laid down in the definition as given u/s 5(ccv) of the Banking Regulation Act, 1949 for becoming primary co-operative bank. We may clarify that if the business of the Assessee is limited only to the members and even if it is a banking business, the Assessee will be entitled for deduction u/s 80P(2)(a)(i). So far as the second condition is concerned, there is no dispute that the paid up share capital and reserves in the case of the Assessee is more than Rs. 1 lac. Therefore, the Assessee satisfies the second condition. So far as the third condition is concerned, we noted that Sec. 16 of The Karnataka State Co-operative Societies Act, 1959 permits admission of any other co-operative society as a member. The provisions of Sec. 16 are laid down as under :

"16. *Persons who may become members* ð (1) Subject to the provisions of Section 17, no person shall be admitted as a member of a co-operative society except the following, namely:ð

- (a) an individual who needs the services of such co-operative society and is residing in the area of the operation of the society and is competent to enter into contract under the Contract Act, 1872 (Central Act IX of 1872);
- (a-1) a depositor;
- (b) any other co-operative society;
- (c) the State Government or the Central Government;
- (d) the Life Insurance Corporation of India, State Warehousing Corporation and such other institutions as may be approved by the State Government;
- (e) a firm, a company or any other body corporate constituted under any law for the time being in force including a society registered under the Karnataka Societies Registration Act, 1960 (Karnataka Act 17 of 1960);

- (f) a Market Committee established under the Karnataka Agricultural Produce Marketing (Regulation) Act, 1966 (Karnataka Act 27 of 1966);
- (g) a local authority.

Explanation. For the purpose of this clause, local authority means, a Municipal Corporation, Municipal Council, Town Panchayat, Zilla Panchayat, Taluk Panchayat or Grama Panchayat constituted under any law for the time being in force

(2) No co-operative society shall, without sufficient cause, refuse admission to membership to any person duly qualified therefor under the provisions of this Act, rules and bye-laws."

The aforesaid provision of Sec. 16 mandates admission of any other co-operative society as a member of the co-operative society. The word used in Sec. 16(1) is 'shall'. This fact is clarified further by sub-section (2) as re-produced hereinabove that no co-operative society shall refuse admission to the membership, without sufficient reason, to any person who is qualified to become member under the provisions of this Act, rules and bye-laws. This clearly proves that in case the rules and bye-laws of the other co-operative society provides otherwise, the co-operative society may not be admitted as a member of the co-operative society. The person, as per sub-section (2), must be qualified for becoming member not only u/s 16(1) but also as per the rules and bye-laws of the co-operative society. We cannot read sub-section (2) in the manner that the rules and bye-laws cannot permit the admission of any other co-operative society as a member of the co-operative society. Had that been the intention of the legislature, they would have not used the words "this Act, rules and bye-laws" in sub-section (2).

3.3.7 The Assessee did not file copy of its bye-laws before us; neither are the provisions of Sec. 17 of The Karnataka State Co-operative Societies Act, 1959. Therefore, we are unable to give a finding whether the Assessee complies with the third condition but since the Assessee did not comply with the first condition, therefore, the assessee cannot be regarded to be a primary co-operative bank.

3.3.8 We have gone through the decision of the Hyderabad bench of this Tribunal in the case of *The Citizen Co-op. Society Ltd. (supra)*. We noted that this decision is not applicable to the facts of the case before us. In this decision, under para 23 the Tribunal has given a finding that the Assessee is carrying on banking business and for all practical purposes it acts like a co-operative bank. The Society is governed by the Banking Regulations Act. Therefore, the society being a co-operative bank providing banking facilities to members is not eligible to claim deduction u/s 80P(2)(a)(i) after the introduction of sub-section (4) to section 80P. In view of this finding, the Assessee was denied deduction u/s 80P(2)(a)(i). We have also gone through the decision of the Bangalore Bench of the Tribunal in the case of *Divyajyothi Credit Co-operative Society Ltd. (supra)*. In this case, we noted that the Hon'ble Tribunal confirmed the order of CIT(A) following the decision of the Tribunal in the case of *Asstt. v. Bangalore Commercial Transport Credit Co-operative Society Ltd.* in ITA No. 1069/Bang/2010 holding that Sec. 80P(2)(a)(i) is applicable only to a co-operative bank and not to credit co-operative society. With due regards to the Bench, we are unable to find any term 'credit co-operative society' u/s 80P(2)(a)(i) or u/s 80P(4), therefore, this decision cannot assist us. We noted that the Hon'ble Gujarat High Court in the case of *Jafari Momin Vikas Co-op. Credit Society Ltd. (supra)* vide order dt. 15.1.2014 took the view that Sec. 80P(4) will not apply to a society which is not a co-operative bank. In the case of *Iyavasaya Seva Sahakara Sangha (supra)* we noted that the issue before the Hon'ble High Court in the Writ Petition filed by the Petitioner related to the legislative competence of the State Legislature for issuing a circular. The issue does not relate to the claim of deduction u/s 80P(2)(a)(i). While dealing with this issue, the Hon'ble High Court under para 12 observed as under :

'12. It is not possible to accept this contention. The petitioners are not the banking institutions coming under the purview of the Banking Regulation Act. They are the co-operative societies registered under the Act, and as such they are governed by the provisions of the Act passed by the State Legislature. Consequently, the State Government has control over them to the extent the Act permits. Major activities of the petitioners are to finance its members. For the purpose of financing its members, they borrow money from the financing agencies and repay the same. Merely because the petitioners-the co-operative societies in question-are required to advance loans to their members, they do not cease to be co-operative societies governed by the Act nor can they be treated as banking companies. It is also not possible to hold that these activities of the petitioners amount to "banking" as contemplated under the Banking Regulation Act, 1949, inasmuch as these co-operative societies are not established for the purpose of doing "banking" as defined in section 5(b) of the Banking Regulation Act, 1949.'

This decision, in our opinion, is not applicable to the case before us because the provisions of Sec. 80P(2)(a)(i), as we have already held in the preceding paragraphs, are applicable to a co-operative society which is engaged in carrying on banking business facilities to its members if it is not a co-operative bank. We have also gone through the decision of this Bench in the case of *Jayalakshmi Mahila Vividodeshagala Souharda Sahakari Ltd. (supra)*, for which the undersigned is the author. While discussing this issue, after analysing the aims and objects of the co-operative society under para 12 of its order, this Tribunal has held as under :

'12. From the aforesaid objects, it is apparent that none of the aims and objects allows the assessee cooperative society to accept deposits of money from public for the purpose of lending or investment. In our opinion until and unless that condition is satisfied, it cannot be said that the prime object or principal business of the assessee is banking business. Therefore, the assessee will not comply with the first condition as laid down in the definition as given u/s. 5(ccv) of the Banking Regulation act, 1959 for becoming "primary cooperative bank". The assessee, therefore, cannot be regarded to be primary cooperative bank and in consequence thereof, it cannot be a co-operative bank as defined under part V of the Banking Regulation Act 1949. Accordingly, in our opinion the provisions of section 80P (4) read with explanation there under will not be applicable in the case of the assessee. The assessee, therefore, in our opinion will be entitled for the deduction u/s 80P(2)(a)(i). We accordingly confirm the order of CIT(A) allowing deduction to the assessee.'

3.3.9 We, therefore, in view of our aforesaid discussion hold that since the Assessee cannot be regarded to be a primary co-operative bank, therefore, it cannot be a co-operative bank and therefore the provisions of Sec. 80P(4) are not applicable in the case of the Assessee and Assessee shall be entitled for deduction u/s 80P(2)(a)(i). We, therefore, set aside the order of CIT(A) and allow deduction to the Assessee u/s 80P(2)(a)(i).

4. In the result, both the appeals filed by the Assessee are allowed.

S.K.J.

*In favour of assessee.