

Income Tax Appellate Tribunal - Panji

Athani Taluka Primay Teachers ... vs Assessee on 4 July, 2014

IN THE INCOME TAX APPELLATE TRIBUNAL
PANAJI BENCH, PANAJI

BEFORE SHRI P.K. BANSAL, HON'BLE ACCOUNTANT MEMBER
AND SHRI D.T. GARASIA, HON'BLE JUDICIAL MEMBER

ITA NO. 06/PNJ/2014

(ASST. YEAR :2010-11)

Athani Taluka Primary Teachers Vs.
Co-operative Credit Society Ltd,
Satya Road Extn. Area,
Athani - 591 130,
Dist : Belgaum.
PAN : AAAAA8665Q
(Appellant)

The Income Tax Officer,
Ward - 1(1),
Belgaum, Dist : Belgaum.
(Respondent)

Assessee by : Shri Suresh G. Sholapurmath,C.A.
Revenue by : Shri Nishant K. Ld. D.R.
Date of Hearing : 26/06/2014
Date of Pronouncement : 04/07/2014

ORDER

PER P.K. BANSAL This appeal has been filed by the assessee against the order of CIT(A), Belgaum dtd. 18.11.2013 for the assessment year 2010-11 by taking the following grounds of appeal :-

"1. 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. During the course of hearing it was claimed on behalf of the society that the main object of the society was to accept the deposits and to provide financial accommodation to the members of the society. It was, therefore claimed that the society is entitled to deduction u/s 80P(2)(a)(i) of the under chapter VIA it is co-operative society, carrying on the business of banking or providing credit facilities to its members."

2. The brief facts of the case for the assessment year 2010-11 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 (Asst. Year: 2010-11) of Rs.nil 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.13,31,840/-. 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.

2.1 The ld. AR before us vehemently contended that the provisions of Sec. 80P(4) are not applicable in the case of the Assessee. The main contentions of the assessee are that 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 improvement and encouragement of members financial position and creating self help and co-operation among the members. Also explaining proper utilization of funds, making savings, cutting unproductive investments. For this, our attention was drawn towards the bye-laws of the Assessee from (a) to (h). The Assessee is a credit society. He contended that the word credit is of outmost important to decide the status of the assessee under the Banking Regulation Act, 1949. According to him the assessee is a co-operative credit society but when we question that section 80P does not talk of co-operative credit society, he could not reply thereto but relied on Banking Regulation Act forgetting that the section 80P only uses the word co-operative society engaged in-. The activities of the Assessee are limited to its members. 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 vs. Jafari Momin Vikas Co-op. Credit Society Ltd. in Tax Appeal Nos. 442 of 2013, 443 of 2013 and 863 of 2013. Attention was also drawn towards the decision of the Hon'ble Karnataka High Court in the (Asst. Year: 2010-11) case of Vyavasaya Seva Sahakara Sangha vs. State of Karnataka & Ors. 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 in the case of ITO vs. 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 DCIT vs. Jayalakshmi Mahila Vividodeshagala Souharda Sahakari Ltd. in ITA No. 1 to 3/PNJ/2012 dt. 30.3.2012. Reliance was also placed on the decision of Panaji Bench in ITA No. 229 & 230/PNJ/2013 in the case of Tararani Mahila Co-operative Credit Society, vs ITO. Reliance was also placed in ACIT vs Palhawas Primary Agriculture Co-operative Society Ltd, 23 Taxman.com 318 (Delhi), ITO vs Jankalyan Nagri Sahakari Pat Sanstha Ltd, 24 Taxman.com 127 (Pune). Reliance was also placed on the decision of Karnataka High Court in the case of CIT vs Sri Biluru Gurubasava Pattana Sahakari Sangh Niyamitha dated 5.2.2014, which relates to an appeal filed against the order passed u/s 263 and the question involved was whether the Revisional Authority was justified in invoking his power u/s 263 without the foundational fact of the assessee being co-operative bank.

2.2 The ld. 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-

(Asst. Year: 2010-11) 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 The Citizen Co-operative Society vs. Addl. CIT in ITA Nos. 1003/Hyd/2011 & 1004/Hyd/2011 dt. 2.7.2012.

3. We 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 :--

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

(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.--For the purposes of this sub-section,--

(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 taluka and the principal object of which is to provide for long-term credit for agricultural and rural development activities."

3.1 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 (Asst. Year: 2010-11) 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 (Asst. Year: 2010-11) 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. This section nowhere states co-operative credit society except mentioned under proviso 2 to section 80P which is relevant for sub-clause 6 or 7. It has nothing to do with section 80P(2)(a)(i).

4. 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 can 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 (Asst. Year:

2010-11) 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.

4.1 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:"

5. 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.

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

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

(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."

(Asst. Year: 2010-11)

7. 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.

8. 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 :-

"a) Improvement and encouragement of members financial position and creating self help and co-operation among the members. Also explaining proper utilization of funds, making savings, cutting unproductive investments.

- b) Collecting deposits from members on any names.
- c) Payment of handsome interest on members deposit to collect more funds, deposits.
- d) Obtaining loan facilities from Belgaum District Co-op Bank for the objects and aims of the society.
- e) Distribution of surety loans on salaries members by taking two sureties and recovery of such loans.

(Asst. Year: 2010-11)

f) Creating Reserve funds and such other funds for persons who have dependent on members, staff members with permission of register as per byelaw.

g) Societys excess fund balance shall be invested in National Saving Certificates, Shares, Nationalization banks and doing such activities offenly.

h) With the permission of registrar any other activities for the development of the members."

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. We noted that the Assessee has categorically accepted before the authorities below that the Assessee was not accepting deposits of money from non-members.

9. The deposits so accepted are used by the Assessee co-operative society for lending or investment. Even out of the deposits so received, the loans have been given to the members of the society in accordance with the objects as enumerated above. Thus, in our opinion, condition no.1 does not stand satisfied and it can be said that the Assessee society was not carrying on banking business as it was not accepting deposits from the persons who were not members.

(Asst. Year: 2010-11)

10. The authorised representative took the plea that the assessee has not obtained banking licence. In our opinion it is not necessary that the co-operative society should have a banking licence as per the definition under the Income Tax Act for carrying on banking business. If licence is not obtained it may be an illegal banking business under the other statute. What we have to see whether the nature of the business carrying on by the assessee is a banking business or not. The Income Tax in our opinion is not concerned whether the banking business carried on by the assessee is legal or illegal. The income has to be assessed u/s 14 of the Income Tax Act under the same head even if the nature of the business is illegal. If we look into the bye-laws which consists of fund of the society, we noted that the types of the deposits which the assessee has accepted as per bye-laws are the same as are being accepted during the course of the carrying out the banking activities.

11. 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.

12. 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 - [(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:--

[(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;

(Asst. Year: 2010-11)

(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 therefore 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).

13. We have gone through the bye-laws which contains the membership clause. bye-laws no.16 states as under :-

"16. Admission, Qualification, Rights and liabilities of the Members Qualification of the Member:

a) Member shall be working in the societys area of operation.

1. He must be teacher in Government Primary School. OR
 2. He must be head master in Govt Secondary School. OR (Asst. Year: 2010-11)
 3. He must be teacher in Pre-University Primary School.
 4. He must be employee of the society and shall be permanent.
- b) He should not be member in any other society.
- c) He must purchase at least one share along with application fee of Rs.10 and share fee of Rs.10.
- d) He should be qualified as per rules and regulations.
- e) He should deposit every month share membership fee regularly.
- f) He should give authority letter to officials if the society to deduct his dues from his salary. Such letter will not be taken back."

From clause 16, it is apparent that the bye-laws of society does not permit the admission of any other co-operative society as member. Thus the third condition for becoming primary co-operative bank is complied with. Since the assessee society does not comply with all the three conditions, therefore, in our opinion the assessee society does not become a primary co-operative bank and in view of explanation (a) of section 80P(4) it has not to be regarded as a co- operative bank and is not hit by section 80P(4).

14. We have gone through the decision of the Hyderabad bench of this Tribunal in the case of The Citizen Cooperative Society vs. Addl. CIT (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 ITO vs. Divyajyothi Credit Co-operative Society Ltd. (supra) in ITA No. 72/Bang/2013. 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 ACIT, Circle 3(1), Bangalore vs. M/s. Bangalore Commercial Transport Credit Co-operative (Asst. Year: 2010-11) Society Ltd. in ITA No. 1069/Bang/2010 holding that Sec. 80P(2)(a)(i) is applicable only to credit co-operative society a and not to co-operative bank. 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 CIT vs. Jafari Momin Vikas Co-op. Credit Society Ltd. in Tax Appeals no. 442 of 2013, 443 of 2013 and 863 of 2013 (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 Vyavasaya Seva Sahakara Sangha vs. State of Karnataka & Ors. (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 (Asst. Year: 2010-11) case of DCIT vs. Jayalakshmi Mahila Vividodeshagala Souharda Sahakari Ltd. In ITA No. 1 to 3/PNJ/2012 dt. 30.3.2012 (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."

15. We have also gone through the decision of ACIT vs Palhawas Primary Agriculture Co-operative Society Ltd, 23 Taxman.com 318 (Delhi). Section 80P(4) clearly excludes primary agriculture credit society from its domain. Therefore this decision will not assist the assessee. We have also gone through the decision of Pune Bench in the case of ITO vs Jankalyan Nagri Sahakari Pad Sanstha Ltd, 24 Taxman.com 127 Pune. This we have already stated that section 80P(2)(a)(i) nowhere talks of co-operative credit society and therefore the distinction made under the Banking Regulation Act cannot be imported u/s 80P(2)(a)(i). This decision in our opinion will not assist the assessee. We have also gone through the decision of Tararani Mahila Co-operative Credit Society Ltd to which the undersigned is the author similar finding as has been given in this are given in that case also. The decision of Karnataka High Court in the case of CIT vs Sri Biluru Gurubasava Pattana Sahakari Sangh Niyamitha dated 5.2.2014, relates to an appeal filed against the order passed u/s 263 and the question involved was whether the Revisional Authority was justified in (Asst. Year: 2010-11) invoking his power u/s 263 without the foundational fact of the assessee being co-operative bank. Therefore, this decision is not applicable.

16. We, therefore, in view of our aforesaid discussion hold that the Assessee has not to be regarded to be a primary co-operative bank as all the three basic conditions are not complied with, therefore, it is not a co-operative bank and the provisions of Sec. 80P(4) are not applicable in the case of the Assessee and Assessee is entitled for deduction u/s 80P(2)(a)(i). We, therefore, setaside the order of the CIT(A) not allowing deduction u/s 80P(2)(a)(i) to the assessee and direct the assessing officer to allow deduction to the assessee u/s 80P(2)(a)(i) on the income generated for providing banking or credit facilities to its members.

12. In the result, the appeal filed by the assessee is allowed.

13. Order pronounced in the open court on 04.07.2014.

Sd/-
(D.T.Garasia)
Judicial Member

Sd/-
(P.K. Bansal)
Accountant Member

Place : PANAJI / GOA

Dated : 04.07.2014

A

Copy to :

- (1) Appellant
- (2) Respondent
- (3) CIT concerned
- (4) CIT(A) concerned
- (5) D.R
- (6) Guard file

True copy,

By order

Sr. Private Secretary
ITAT, Panaji, Goa

