

Income Tax Appellate Tribunal - Pune

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Vardhman Nagari Sahakari Path ... vs Department Of Income Tax on 22 November, 2012

IN THE INCOME TAX APPELLATE TRIBUNAL

Pune Bench "B" , Pune

Before Shri G.S. Pannu, Accountant Member

and Shri R.S. Padvekar, Judicial Member

ITA No. 1142/PN/2011

(Asstt. Year : 2008-09)

Income Tax Officer, Ward 1(1), ... Appellant "Jeevan Suman" 2nd floor,

LIC Building, N-5, CIDCO,

Aurangabad 431 003

v.

Vardhman Nagari Sahakari Patsanstha Ltd. ... Respondent M.G. Road, Vaijapur,

Dist. Aurangabad.

PAN: AABCV4217E

Appellant by : Shri. Nikhil Pathak

Respondent by : Smt. Vinita Menon

Date of Hearing : 20/11/12

Date of Pronouncement : 22-11-12

ORDER

Per R.S. Padvekar, JM

This appeal is filed by the Revenue challenging the impugned order of the Ld. CIT(A) - Aurangabad dated 29/06/2011 for the A.Y. 2008-09.

2. The Revenue has taken multiple Grounds and most of the Grounds are argumentative. The solitary issue which arises for our consideration is whether the present assessee Co-Operative Society is hit by the amendment by insertion of Sub-sec. 4 to Sec. 80P by the Finance Act 2006 and hence, is not entitled for deduction u/s. 80P of the Act as held by the A.O.

3. The facts which reveal from the record are as under. The assessee is a Co-operative Society engaged in providing credit facilities to its member. The assessment of the assessee Society was completed by the A.O. u/s. 143(3) of the Act determining total income at Rs. 50,43,534/-. The A.O disallowed the deduction of Rs.

50,43,534/- claimed by the assessee u/s. 80P(2)(a)(i) of the Act. The A.O. rejected the claim of the assessee u/s. 80P by giving the following reasons : 2 ITA No. 1142/PN/2011

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"(1) The appellant credit co-operative is a primary co-operative bank as per explanation below sub-section 4 of section 80P and hence not eligible to claim deduction u/s. 80P(2)(a)(i) of the I.T. Act.

(2) The clause (viiia) inserted in section 2(24) by the Finance Act, 2006 to provide that the profits and gains of business of banking includes income of credit co-operative societies from providing credit facilities to its members.

(3) The amendment to section 80(4) by Finance Act, 2006 provides that the provisions of section 80P shall not apply in relation to co-operative bank other than primary agricultural credit society and primary co-operative agricultural and rural development bank.

(4) The explanation to section 80P(4) laid down that a "co-operative bank" shall have the meaning assigned to it in part-V of the Banking Regulation Act, 1949.

(5) As per clarification issued by CBDT in F.No.133/06/2007-TPL vide letter dated 09/05/2008, co-operative bank shall have the meaning assigned to it in part-V of the Banking Regulation Act, 1949. As per part- V of the Banking Regulation Act, "Co-operative Banks" means a State Co-operative Bank, a Central Co-operative Bank and Primary Co-operative Bank.

(6) Clause (cci) of section -5 defines a Co-operative Bank to include a Primary Co-operative Bank and clause (ccii) defines a co-operative credit society to mean co-operative society the primary object of which is to provide financial accommodation to its members. Clause (ccv) defines a primary co-operative bank is a co-operative society whose primary objective or principal business is transacting in banking business whose paid-up capital and reserve is more than Rs.1,00,000/- etc.

(7) The report of Madhavarao Committee 1999 formed by RBI supports the view that the primary credit co-operative societies automatically becomes a primary co-operative bank and hence it has to apply to RBI for a licence to carry on banking business but it can carry on banking business until it is granted a licence or notified that a licence cannot be granted to it.

(8) The appellant is carrying on the banking activity as defined in section-5 of the Banking Regulation Act as per which "Banking means the accepting for the purpose of lending or investment of deposits of money from the public repayable on demand or otherwise and withdrawal by cheque, draft order or otherwise." However, the term transaction in banking business will include not only the business enumerated in section 5B of Banking Regulation Act, 1949 but also those activities. This view is supported by the decisions in the case of CIT Vs. Ahmednagar District Central Co-operative Bank Ltd. (2003) 264 ITR 38, CIT Vs. Baroda Peoples Co-operative Bank Ltd. 280 ITR 282 (Guj.)."

4. Aggrieved, the assessee carried the issue before the Ld CIT(A), who allowed the claim of the assessee. The reasons given by the Ld CIT(A) for allowing the claim of the assessee are as under : 3 ITA No. 1142/PN/2011

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"7. I have carefully considered the assessment order of the A.O. and submissions of the appellant. The issue to be decided is whether the "credit co-operative societies" are "co-operative banks" as the deduction u/s 80P(2)(a)(i) is available to credit co-operative societies providing credit facilities to its members. The co-operative banks are not entitled to deduction u/s 80P(2)(a)(i) in view of amendment to section 80P(4) by Finance Act, 2006 w.e.f. 01/04/2007. The relevant portion of amended section 80P(4) reads as under -

"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 (30 of 1949)

(b) ...."

7.1 In view of the above explanation, the co-operative bank shall have the meaning stated in part V of the Banking Regulation Act, -"co-operative bank" means a State Co-operative Bank, a Central Co- operative and a Primary Co-operative Bank.

7.2 In view of the above provision in part-V of the Banking Regulation Act, 1949 it is clear that co-operative society is not regarded as "co- operative bank". Further, it has also been laid down in section 56(ccii) in part-5 of Banking Regulation Act, that "Co-operative Credit Society" means a co-operative society, the primary object of which is to provide financial accommodation to its members and includes a co-operative land mortgage bank. In view of this provision, it is clear that the meaning of co-operative credit society is separately given and it does not include co- operative bank other than co-operative land mortgage bank.

7.3 Further, CBDT circular bearing No.3/2008 dated 12/03/2008 also makes it clear that the amendment to section 80P(4) has withdrawn the deduction u/s 80P in respect of co-operative banks. Further, the amendment to section 36(1)(viii) by Finance Act, 2007 w.e.f. 01/04/2007 also provides that the deduction in respect of bad debts shall be allowable also to co-operative banks. This amendment also suggest that the deduction u/s 80P has been withdrawn by Finance Act, 2006 w.e.f. 01/04/2007 in respect of co-operative banks only.

7.4 It is also to be noted here that the Central Board of Direct Taxes vide clarification bearing F.No.133/06/2007-TPL vide letter dated 09/05/2008 has clarified that the Delhi Co-operative Urban Thrift & Credit Society Ltd., does not fall within the meaning of co-operative banks as defined in part-V of the Banking Regulation Act, 1949. Sub-section-4 of section 80P will not apply in its case. The CBDT has also clarified that in part-V of the Banking Regulation Act, 1949 "Co-operative Banks" means a State Co-operative Bank, a Central Co-operative Bank and Primary Co- operative Bank. From the clarification, it is evident that credit co- operative societies are not covered by the meaning of Co-operative Banks 4 ITA No. 1142/PN/2011

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as defined in part-V of the Banking Regulation Act, 1949 and are entitled to deduction u/s 80P(2)(a)(i) of the Act.

7.5 The contentions raised by the A.O are not in accordance with the provisions of the Income Tax Act and circular and clarification issued by the CBDT. The decisions relied on by the A.O. are not applicable to the facts of the case of the appellant.

7.6 In view of the above discussion, I am of the considered view that the co-operative society is not a co-operative bank and therefore, the appellant credit co-operative society is entitled to deduction u/s 80P(2)(a)(i) of the Act. The A.O is not justified in disallowing the deduction u/s. 80P(2)(a)(i). The A.O. is directed to allow deduction u/s 80P(2)(a)(i) on gross total income of the society. The grounds raised by the appellant are allowed.

Now the Revenue is in appeal before us.

5. We have heard the parties. We find that the issue arising in this appeal is squarely covered in favour of the assessee by the decision of ITAT "B" Bench, Pune in the case of ITO Vs. Jan Kalyan Nagari Sahakari Pat Sanstha Ltd., Order dated 26th June 2012.

6. In the case of Jan Kalyan Nagari Sahakari Pat Sanstha Ltd. (Supra), the Tribunal has considered the implication of insertion of Sub-sec. (4) to Sec. 80-P on the Credit Co-operative Societies and has held as under :

"4. We have heard the rival submissions of the parties and perused the records. In this case, as per the facts on record, the assessee is a Co- operative Credit Society. Section 80P has undergone an amendment w.e.f. 1.4.2007 by insertion of Sub-sec. (4) which reads as under : "(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 purpose 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 taluk and the principal object of which is to provide for long-term credit for agricultural and rural development activities."

5. It is to be mention here that up to A.Y. 2006-07, any Co-operative Society which was engaged in the business of carrying on banking was eligible for deduction in respect of the whole of the amount of profit attributable to its banking activities. For the benefit of deciding the present issue, it is necessary to consider the legal position as applicable up-to the A.Y. 2006-07, more particularly in view of Sub-Section (2) of Sec. 80-P. Section 80 P (2) reads 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 5 ITA No. 1142/PN/2011

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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

(ii) a cottage industry, or

(iii) the marketing of agricultural produce grown by its members, or (iv) the purchase of agricultural implements, seeds, livestock or other articles intended for agriculture for the purpose of supplying them to its members, or

(v) .....

(vi) .....

6. Sub-section (4) was introduced for withdrawing the deduction to the Co- operative Bank other than Primary Agriculture Credit Society or Primary Co- operative Agriculture and Rural Development Bank. In view of Explanation below Sub-sec.(4) of Sec. 80P, the definition of the Co-operative Bank as assigned in Para 5 of the Banking Regulation Act is to be considered. In the opinion of the A.O, as the nature of the activities of the assessee Credit Society are analogous to the banking activities, which are more specifically describe in the Banking Regulation Act and hence, assessee partakes the character of 'Primary Co-operative Bank' as defined in clause (ccii ) of the Banking Regulation Act 1949. Clause (cci ) of Sec 5 of BR Act defines the Co-operative Bank means State Co-operative Bank, Central Co-operative Bank and Primary Co-operative Bank.

7. The primary co-operative Bank is treated as Co-Operative Bank in view of Cl. (cci) of sec 5 of the B. R. Act, 1949. Definition of 'Primary Co-operative Bank' is given in cl. (ccv) of sec. 5 of B. R. Act, 1949, which reads as under;

' Primary co-operative bank means a co-operative society other than a primary agricultural credit society -

(i) The primary object or principal business of which is the transactions of banking business;

(ii) The paid-up share capital and reserves of which are not less than one lack of rupees; and

a. The by-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 co- operative bank as a member by reason of such co-operative bank subscribing to share capital of such co-operative society out of funds provided by State Government for the purpose."

On careful perusal of above definition it is seen that basic mandate any co-operative society to cover in definition of ' Primary Co-Operative Bank' is that it's primary object or principal business should be transactions of banking business. The term 'banking' is defined in B. R. 6 ITA No. 1142/PN/2011

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Act and as per said definition there is no restriction that depositor should be member of said society but it is public at large with whom business transactions can be carried out. Other two conditions as

mentioned in cls.(ii) &(iii) are on fulfilling first condition given in cl.(i). In present case nothing is on record to suggest that all three conditions are fulfilled to hold that assessee which is a co-operative society is a "Primary Co-Operative Bank

8. It is pertinent to note here that the definition of the Co-operative Credit Society is given in Clause (ccii) of Sec. 5 which reads as under : "co-operative credit society" means a Co-operative Society, the primary object

of which is to provide financial accommodation to its members and includes a co-operative land mortgage bank; "

9. The Banking Regulation Act, 1949 defines of Co-operative bank in cl.(cci) of sec. 5 (as inserted by sec. 56 of the said Act) and Co-operative Credit Society is not included but its identity is kept separate by way of independent definition in view of Clause (ccii) of Sec. 5 of the Banking Regulation Act which defines what is meaning of 'Credit Co-operative Society'. On plain reading of the Banking Regulation Act, 1949, nowhere it is suggested that the term "Co- operative Bank" also includes 'Co-Operative Credit Society" also. Meaning of any term or expression is to be ascertained in the context of provisions of referred Act. As per Sub-sec. (4) of Sec. 80P of the I. T. Act, Co-operative Bank means State Co-operative Bank, a Central Co-operative Bank and a Primary Co-operative Bank. It is seen that Co-operative Bank is deprived of the benefit of the deduction u/s. 80P(2)(a)(i) of the Act. As per the interpretation given by the AO, assessee Co-Operative Credit Society partakes the character of the Primary Co-operative Bank and as the Primary Co-operative Bank is included in the definition of the Co-operative Bank and hence, is not entitled to the benefits of Sec. 80P(2)(a)(i) of I. T. Act. In our opinion, this is not the correct interpretation. It is well settled principle in the interpretation of the 'taxing provisions' that the same are to be strictly construed and there is n room for any intendment. There is no presumption as to tax.Nothing is to be read or nothing is to be implied. One has to fairly look into language used by the Parliament. The Parliament has adopted the definition of the Co-operative Bank by refering the same as given in the Banking Regulation Act, 1949. It is called Legislation by reference and we have to give the strict interpretation while interpreting the effect of Sub-sec. (4) to Sec. 80 P. In our opinion, Co- operative Credit Society is distinct and separate from the Co-operative Bank nor it can be said as a Primary Co-operative Bank within the meaning of Banking Regulation Act, 1949. Hence, the assessee being a Co-operative Credit Society is entitled for deduction u/s. 80 P(2)(a)(i) of the Act. We accordingly uphold the order of the Ld CIT(A).

We, therefore, find no reason to take the different view, but support the order of the CIT(A). We, accordingly, confirm the order of CIT(A) and dismiss the appeal filed by the Revenue.

7. In the result, Revenue's appeal is dismissed. 7 ITA No. 1142/PN/2011

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The order is pronounced in the open Court on 22nd November 2012.

Sd/- Sd/- (G.S. PANNU) (R.S.PADVEKAR ) ACCOUNTANT MEMBER JUDICIAL MEMBER

Pune, dated the 22nd November, 2012

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Copy of the order is forwarded to :

1. The Appellant
2. The Respondent
3. The CIT, Aurangabad
4. The CIT(A)- Aurangabad

5. The D.R. "B" Bench, Pune

6. Guard File

/- true copy-/

By order

Senior Private Secretary

Income Tax Appellate Tribunal

Pune