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**[2015] 55 taxmann.com 472 (Panaji - Trib.)/[2015] 68 SOT 228 (Panaji - Trib.)  
(URO)/[2014] 166 TTJ 174 (Panaji - Trib.)**

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**IT: Where assessee, a co-operative society did not receive deposits from public and, moreover, by-laws of society permitted admission of any other co-operative society as its members, assessee could not be regarded as primary-co-operative bank and, there being no application of section 80P(4), its claim for deduction under section 80P(2)(a)(i) was to be allowed**

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**[2015] 55 taxmann.com 472 (Panaji - Trib.)**

**IN THE ITAT PANAJI BENCH**

**Income-tax Officer**

**v.**

**Shiva Credit Souhard Sahakari Niyamit\***

P.K. BANSAL, ACCOUNTANT MEMBER  
AND D.T. GARASIA, JUDICIAL MEMBER  
IT APPEAL NOS. 418 & 419 (PNJ.) OF 2013  
[ASSESSMENT YEARS 2007-08 & 2009-10]  
AUGUST 8, 2014

**Section 80P of the Income-tax Act, 1961 - Deductions - Income of co-operative societies (Applicability of) - Assessment years 2007-08 and 2009-10 - Whether where assessee, a co-operative society, was not carrying on banking business as it was not receiving deposits from persons who were not members and, moreover, by-laws of society permitted admission of any other co-operative society as its members, assessee could not be regarded as primary-co-operative bank and, there being no application of section 80P(4), its claim for deduction under section 80P(2)(a)(i) was to be allowed - Held, yes [Paras 2.9, 2.14 & 2.15] [In favour of assessee]**

## **CASE REVIEW**

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*Citizen Co-operative Society v. Addl. CIT* [IT Appeal Nos. 1003 and 1004 of 2011, dated 2-7-2012] (para 2.14); *ITO v. Divyajyothi Credit Co-operative Society Ltd.* [IT Appeal No. 72 of 2013] (para 2.14); *Asstt. CIT v. Palhawas Primary Agriculture Co-operative Society Ltd.* [\[2013\] 23 taxmann.com 318/54 SOT 53 \(Delhi\)](#) (para 2.14); *Vyavasaya Seva Sahakara Sangha v. State of Karnataka* [1993] 76 Comp. Cas. 278 (Kar.) (para 2.14); *ITO v. Jankalyan Nagri Sahakari Pad Sanstha Ltd.* [\[2012\] 24 taxmann.com 127 \(Pune\)](#) (para 2.14) and *CIT v. Sri Biluru Gurubasava Pattana Sahakari Sangh Niyamitha* (Kar.) dated 5-2-2014 (para 2.14) distinguished.

## **CASES REFERRED TO**

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*Citizen Co-operative Society v. Addl. CIT* [IT Appeal Nos. 1003 (Hyd.) of 2011, dated 2-7-2012] (para 2.1), *ITO v. Divyajyothi Credit Co-operative Society Ltd.* [IT Appeal No. 72 of 2013] (para 2.14), *Asstt. CIT v. Bangalore Commercial Transport Credit Co-operative Society Ltd.* [IT Appeal No.1069 (Bang.) of 2010]

(para 2.14), *CIT v. Jafari Momin Viaks Co-op. Credit Society Ltd.* [2014] 362 ITR 331/49 taxmann.com 571 (Guj.) (para 2.14), *Vyavasaya Seva Sahakara Sangha v. State of Karnatka* [1993] Comp. Cas. 278 (Kar.) (2.14), *Dy CIT v. Jayalakshmi Mahila Vividodeshagala Souharda Sahakari Ltd.* [2012] 137 ITD 163/23 taxmann.com 313 (Panaji) (para 2.14), *Asstt. CIT v. Palhawas Primary Agriculture Co-operative Society Ltd.* [2012] 23 taxmann.com 318/54 SOT 53 (Delhi) (URO) (para 2.14) and *ITO v. Jankalyan Nagri Sahakari Pad Sanstha Ltd.* [2012] 24 taxmann.com 127 (Pune) (para 2.14).

**Nishant K.** for the Appellant.

## ORDER

**P.K. Bansal, Accountant Member** - Both these appeals have been filed by the Revenue against the respective orders of CIT(A), Belgaum dt 15th Oct., 2013 for asst. yrs. 2007-08 and 2009-10. The assessee (sic—Revenue) has taken the following common effective grounds of appeal :

- "(1) The learned CIT(A) erred in law and on facts in not appreciating the fact that the assessee is a co-operative society which fulfils all the three conditions of being held a Primary Co-operative Bank as given in s. 5(ccv) of the Banking Regulation Act, 1949.
- (2) The learned CIT(A) erred in relying on the bye-laws which mere provide membership to co-operative societies without specifying type of co-operative societies as for this purpose 'co-operative society' to mean a society registered or deemed to be registered under the Karnataka Co-operative Societies Act, 1959. The above definition of co-operative society appears in the Karnataka Co-operative Societies Act, 1959 and the definition of co-operative society means a society registered under that Act.
- (3) The learned CIT(A) erred in law and on facts in relying on bye-laws which is not in consonance with the provisions of the Karnataka Cooperative Societies Act, 1959 and ignoring the definition which was applicable to the Karnataka Co-operative Societies Act, 1959.
- (4) The learned CIT(A) erred in law and on facts in allowing deduction under s. 80P(2)(a)(i) to the assessee ignoring the fact that the assessee does not permit co-operative societies registered under the provisions of Karnataka Co-operative Societies Act, 1959 to become a member and as such, satisfy conditions to become primary co-operative bank.
- (5) The learned CIT(A) erred in law and on facts in not appreciating the definition of a co-operative bank which as per Explanation below s. 80P(4) 'the co-operative bank' shall have the meaning assigned to it in Part V of the Banking Regulation Act, 1949.
- (6) The learned CIT(A) erred in law and on facts in not appreciating the fact that the assessee society being a credit co-operative society engaged in banking business is a Primary Co-operative Bank within the definition of s. 5(ccv) of the Banking Regulation Act, 1949 and as such, not eligible for deduction under s. 80P(2)(a)(i) of the IT Act, 1961."

2. None appeared on behalf of the assessee, as the issue involved are duly covered, we therefore decided to dispose of both these appeals after hearing learned Departmental Representative. Since the issues involved in both the appeals are common, therefore, both these appeals are decided on the basis of the facts relating to the asst. yr. 2007-08. The brief facts of the case are that the assessee is a co-operative society registered under the Karnataka Souharda Sahakari Act, 1997. The assessee filed return declaring gross total income of Rs. 12,17,616 and claimed deduction under 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 under s. 80P(2)(a)(i) and the income was assessed at Rs. 12,17,616. The AO while denying the deduction to the assessee under s. 80P(2)(a)(i) took the view that the assessee is a primary co-operative bank and therefore, provisions of s. 80P(4) are applicable in the case of the assessee. The assessee went in appeal before the CIT(A). CIT(A) allowed the appeal of the assessee.

2.1 The learned Departmental Representative, 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 s. 80P(4) the

assessee is engaged in the business of banking. Sec. 80P(4) puts an embargo w.e.f. 1st April, 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 *The Citizen Co-operative Society v. Addl. CIT* IT Appeal Nos.1003 (Hyd.) of 2011 and 1004/Hyd./2011, dt. 2nd July, 2012.

**2.2** We heard the submissions of learned Departmental Representative and carefully considered the same along with 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 under s. 80P(2)(a)(i) and whether the assessee is hit by the provisions of s. 80P(4) which was introduced in the statute by the Finance Act, 2006 w.e.f. 1st April, 2007. The relevant provisions of both the sections are reproduced 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-s. (2), there shall be deducted, in accordance with and subject to the provisions of this section, the sums specified in sub-s. (2), in computing the total income of the assessee.

(2) The sums referred to in subs. (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."

**2.3** From the plain reading of s. 80P(2)(a)(i) it is apparent that if the co-operative society is engaged in carrying on 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 s. 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 s. 80P(4) was introduced in the statute by the Finance Act, 2006 w.e.f. 1st April, 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 s.80P(2)(a)(i) and s. 80P(4) together, we find that the provisions of s. 80P(4) mandates that the provisions of s. 80P will not apply to any co-operative bank other than a primary agricultural credit society or primary cooperative agricultural and rural development bank but as per the provisions of s. 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 s. 80P(4), the provisions of s. 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 under s. 80P(2)(a)(i). This presupposes that every co-operative society engaged in carrying on business of banking cannot be regarded to be a co-operative bank. The embargo put under s. 80P(4) is 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 s. 80P(2)(a)(i) will become redundant. Therefore, in our opinion, before deciding the issue whether the assessee is entitled for deduction under 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 under 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 s. 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 action nowhere states co-operative credit society except mentioned under proviso 2 to s. 80P which is relevant for sub-cl. 6 or 7. It has nothing to do with s. 80P(2)(a)(i).

**2.4** In our opinion, s. 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-cl. (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 presupposes 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 under 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 under s. 80P(2)(a)(i). There is no prohibition under s. 80P not to allow deduction to such co-operative societies in respect of business relating to its members.

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 Regulation Act, 1949 as under :

"Co-operative bank" means a State co-operative bank, a Central co-operative bank and a Primary co-operative bank.'

**2.5** 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 ease 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.

**2.6** The Primary Co-operative Bank is defined under s. 5, cl. (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."

**2.7** 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 principal business transacted by it is a banking business,

secondly, the paid-up share capital and reserve of which are Rs. 1 lakh or more and thirdly, bye-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 s. 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 s. 80P(4), the assessee, in our opinion, will be eligible to get deduction under 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

**2.8** 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 produced in CIT(A)'s order in this case are enumerated as under :

- "1. Encouragement to members of the sahakari and member depositors for minimization of expenses, self and mutual co-operation.
2. Arrangement of loan and advances to members of the Sahakari for their varied requirements.
3. Arrangements of services and facilities for various Government, deposits and saving schemes.
4. Service like purchase sale of Government bonds etc., on behalf of members.
5. Contacting financial institution for day to day financial and credit activities of Sahakari.
6. Transfer remittance of fund on behalf of its members.
7. Rendering of banking services except issue of cheque books etc.
8. Objectives of purchase of office premises, construction etc., for hire purchase of smooth functioning of Sahakari.
9. Lending loans for purchases of motor vehicles, machinery under hire purchase, hypothecation scheme.
10. Taking permission from members of the Sahakari at annual general meeting to opening new branches and formation of credit activities.
11. For the benefits of the staff and members of the Sahakari creating fund from profit in the management committee meeting and get approval from ASM of the Sahakari.
12. To encourage for the education purpose create fund for Sahakari members children as per the approval of ASM.
13. Funds can be transferred from Sahakari to Sahakari for common purpose as per the direction of Karnataka State Souharda Federal Ltd., Bangalore.
14. Sahakari can auction the property which is in their custody to recover part or entire arrears.
15. With an intention to fulfill the co-operation goals a union is to be formed subject to rules and regulation. The corresponding Sahakari partnership, proprietorship is to be formed."

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 under 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 accepting deposits of money from the non-members. This fact is clear as per the remand report of AO dt. 17th Oct., 2013 before the CIT(A) which states as under :

"Thus, it is clear that the assessee society accepts deposits from the members and non-members."

**2.9** 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.

**2.10** In our opinion it is not necessary that the co-operative society should have a banking licence as per the definition under the IT Act. What we have to see whether the nature of the business carried on by the assessee is a banking business or not. The IT Act 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 under s. 14 of the IT Act under the same head even if the nature of the business is illegal.

**2.11** 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 are more than Rs. 1 lac. Therefore, the assessee satisfies the second condition.

**2.12** So far as the third condition is concerned, we noted that s. 20 of the Karnataka Souharda Sahakari Act, 1997 permits admission of any other co-operative society as a member. The provisions of s. 20 are laid down as under :

"20. *Persons who may be admitted or continued as members*—(1) Subject to the provisions of this Act, no person shall be admitted as a member of a co-operative,—

- (a) unless he needs the services of the co-operative and accepts the responsibility of membership and is competent to contract under the Contract Act, 1872 (Central Act IX of 1872);
- (b) if he conducts any business, such business being in conflict or competition with the business of the co-operative as specified in the bye-laws; and
- (c) unless he fulfils such other conditions as may be specified in the bye-laws of the co-operative:

**Provided** that after the registration of a co-operative, the members shall be admitted only by the elected board.

(2) No person shall be eligible to continue as a member if such person,—

- (a) has not used the services of the co-operative for two consecutive years to the minimum level specified in the bye-laws; or
- (b) has not attended three consecutive general meetings of the co-operative and such absence has not received the consent of the general body; or
- (c) is in default regarding any payment to be made to the co-operative exceeding an amount and for a period specified in the bye-laws.

(3) If a question arises as to the eligibility or otherwise of a person to become a member or to continue as a member, the board shall decide the question after giving such person an opportunity of being heard. The decision of the board shall be final.

21. *Removed of membership.*—(1) The board may, by a resolution passed by a majority of not less than two thirds of the members present and voting, remove the membership of a person in the co-operative for acts or omissions which are detrimental to the interest of the co-operative :

**Provided** that a member shall not be removed unless a reasonable opportunity of making representation in this regard has been provided to him.

(2) Where a member has been removed by the board, an appeal shall lie to the general body and the decision of the general body shall be final.

(3) A person whose membership has been removed shall, subject to the provisions of this Act, rules and bye-laws, be ineligible for readmission as a member of that co-operative for a period of one year after the date of such removal.

(4) Notwithstanding such removal, a past member shall be liable to be proceeded against, under this Act or the rules or the bye-laws for his acts of commission or omission as such member.

21A. *Nominal and Associate Members.*—(1) Notwithstanding anything contained in s. 20, a co-operative may admit,

(a) any individual

(b) any firm, company, co-operative society, co-operative or anybody or corporation constituted by or under any law for the time being in force :

- as a nominal or associate member for any specific purpose for any specific period as may be mentioned in the bye-laws.

(2) A nominal member shall not be entitled to any share in any form whatsoever in the assets or profits of the co-operative and shall not be entitled to become an office-bearer of the co-operative

(3) An associate member may hold shares but shall not be entitled to become an officer-bearer of the co-operative.

(4) A nominal or associate member shall not have the right to participate in the management and to vote at any meetings of the co-operative including the election to the board of the co-operative.

(5) Save as provided in this section, a nominal or associate member shall have such privileges and rights of a member and be subject to such liabilities of a member as may be specified in the bye-laws of the co-operative."

The aforesaid provision of ss. 20 to 21A mandates admission of any other co-operative society as a member of the co-operative society. The word used in s. 21A is 'may'. Sec. 21A further states that the co-operative society can be admitted as nominal or associate member for any specific purpose for any specific period as may be mentioned in the 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.

**2.13** The membership admission from the bye-laws of the assessee produced in CIT(A)'s order in this case are enumerated as under :

"Admission to membership :

Types of membership :

(1) Member (2) Sub-member (3) Nominated member

Following are qualified to be the members of the co-operative :

1. (a) A person residing within the limits of area of operations of co-operative or having business or industry within such limits of cooperative, who has attained the age of 18 years, not being insolvent and unsound mind.



(b) Proprietary concern or partnership firms or society registered under Karnataka Societies Registration Act, 1960 (Karnataka 1960, s. 17)

(c) Any body constituted under the provisions of law prevailing in force. Note : Any person eligible to enter contract under s. 11 of the Indian Contract Act. 1872.

2. ...."

From this, it is apparent that the bye-laws of society does permit the admission of other co-operative society as member. Thus, the third condition for becoming primary co-operative bank is not complied with. Since the assessee society did not comply all the three conditions, therefore, in our opinion the assessee society cannot be regarded to be a primary co-operative bank as all the three conditions as discussed by us in the preceding paras are not complied with and in consequence it is not a co-operative bank and the assessee is not hit by the provision of s. 80P(4).

**2.14** We have gone through the decision of the Hyderabad Bench of this Tribunal in the case of *Citizen Co-operative Society (supra)* as cited before CIT(A). 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 under s. 80P(2)(a)(i) after the introduction of sub-s. (4) to s. 80P. In view of this finding, the assessee was denied deduction under s. 80P(2)(a)(i). We have also gone through the decision of the Bangalore Bench of the Tribunal in the case of *ITO v. Divyajyothi Credit Co-operative Society Ltd.* IT Appeal No. 72 (Bang.) of 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 *Asstt. CIT v. Bangalore Commercial Transport Credit Co-operative Society Ltd.* IT Appeal No. 1069 (Bang) of 2010 holding that s. 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' under s. 80P(2)(a)(i) or under s. 80P(4), therefore, this decision cannot assist us. We noted that the Hon'ble Gujarat High Court in the case of *CIT v. Jofari Momin Vikas Co-op. Credit Society Ltd.* [2014] 362 ITR 331/49 taxmann.com 571 took the view that s. 80P(4) will not apply to a society which is not a co-operative bank. In the case of *Vyavasaya Seva Sahakara Sangha v. State of Karnataka* [1993] 76 Comp. cas 278 (Kar.) 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 under 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 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 s. 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 s. 80P(2)(a)(i), as we have already held in the preceding paras, 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 *Dy. CIT v. Jayalakshmi Mahila Vividodeshagala Souharda Sahakari Ltd.* [2012] 137 ITD 163/23 taxmann.com 313 (Panaji), 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 co-operative 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 under s. 5(ccv) of the Banking Regulation Act, 1949 for becoming 'primary co-operative bank'. The assessee, therefore, cannot be regarded to be primary co-operative 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 s. 80P (4) r/w Explanation thereunder will not be applicable in the case of the assessee. The assessee, therefore, in our opinion will be entitled for the deduction under s. 80P(2)(a)(i). We accordingly, confirm the order of CIT(A) allowing deduction to the assessee."

We have also gone through the decision of *Asstt. CIT v. Palhawas Primary Agriculture Co-operative Society Ltd.* [2012] 23 taxmann.com 318/54 SOT 53 (Delhi) (URO). Sec. 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 v. Jankalyan Nagri Sahakari Pad Sanstha Ltd.* [2012] 24 taxmann.com 127. This we have already stated that s. 80P(2)(a)(i) nowhere talks of co-operative credit society and therefore, the distinction made under the Banking Regulation Act cannot be imported under s. 80P(2)(a)(i). This decision in our opinion will not assist the assessee. The decision of Karnataka High Court in the case of *CIT v. Biluru Gurubasava Pattana Sahakari Sangh Niyamitha* dt. 5th Feb. 2014, relates to an appeal filed against the order passed under s. 263 and the question involved was whether the revisional authority was justified in invoking his power under s. 263 without the foundational fact of the assessee being co-operative bank. Therefore, this decision is not applicable.

**2.15** 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 s. 80P(4) are not applicable in the case of the assessee and assessee is entitled for deduction under s. 80P(2)(a)(i). We, therefore, confirm the order of the CIT(A) and direct the AO to allow deduction to the assessee under s. 80P(2)(a)(i) on the income Generated for providing banking or credit facilities to its members.

**3.** In the result, both the appeals filed by the Revenue are dismissed.

JYOTI

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\*In favour of assessee.