

Income Tax Appellate Tribunal - Pune

Jain Nagri Sahkari Pat Sanstha ... vs Department Of Income Tax on 11 September, 2012

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INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "A", PUNE

Before Shri Shailendra Kumar Yadav Judicial Member
and Shri R.K. Panda Accountant Member

ITA No. 1029/PN/2011
(Assessment Year 2008-09)

Income Tax Officer,
Ward -2(4), Adgaonkar Building,
Dhanora Road, Beed.

.. Appellant

Vs.

Jain Nagari Sahakari Pat Sanstha Ltd.
Masrat Nagar, Lokasha Bhavan,
Beed.
Pan No. AAAAJ 3885H

.. Respondent

Assessee by	:	Sri Sunil Ganoo
Department by	:	Mrs. Ann kapthuama
Date of Hearing	:	11-09-2012
Date of Pronouncement	:	14-09-2012

ORDER

PER R.K. PANDA, AM :

This appeal filed by the revenue is directed against the order dated 31-05- 2011 of the CIT(A)-Aurangabad relating to Assessment Year 2008-09.

2. Facts of the case, in brief, are that the assessee is a cooperative society and derives income from providing credit facilities to its members. The assessee filed its return of income declaring total income at NIL after claiming deduction u/s.80P(2)(a)(i) of the Income Tax Act 1961. The assessee claimed that the primary object of the society is to provide finance, accommodation to members only and since there is no control or supervision of the RBI they are entitled to claim deduction u/s.80P(2)(a)(i). However, the AO was of the opinion that if a cooperative society conducts any business which comes within the ambit of the definition of banking business in section 5(b) of the Banking Regulation Act or the extended meaning of Banking business in section 6(1), clause (a) to (o), it can be safely inferred that the cooperative credit society is transacting in banking business and is a primary cooperative bank. Referring to various provisions of the Banking Regulation Act, 1949 the AO held that the assessee fulfils all the criteria laid down in section 5(ccv) and is consequently a primary cooperative bank referred to in section 5(ccv) of the Banking Regulation Act, 1949 referred to in explanation below sub section 4 of section 80P as well as the provisions of

section 80P(4) will be attracted and the assessee is not eligible for deduction u/s.80P(2)(a)(i) of the Income Tax Act.

3. In appeal the learned CIT(A) held that the cooperative society is not a cooperative bank and therefore the assessee credit cooperative society is entitled to deduction u/s.80P(2)(a)(i) of the Act. He accordingly directed the AO to allow deduction u/s.80P(2)(a)(i) to the society.

3.1 Aggrieved with such order the CIT(A) the revenue is in appeal before with the following grounds :

"1. On the facts and in the circumstance of the case, and considering the status and nature of business of the Appellant society, the CIT(A) Aurangabad has erred in treating assessee as cooperative society instead of Primary Cooperative bank referred into section 5(cci) of banking regulative Act, 1949 referred to explanation below sub section (4) of Section 80P.

2. On the facts and in the circumstance of the case, and considering the status and nature of business of the Appellant society, the CIT(A) Aurangabad has erred in allowing deduction u/s.80P(2)(a)(i) neglecting the insertion of clause viia in section 2(24) of Finance Act, 2006 w.e.f. 01-04-2007 has withdrawn the deduction allowable to the cooperative society".

4. The learned counsel for the assessee at the outset filed a copy of the decision of the Tribunal in the case of ITO Vs. Jankalyan Nagri Sahakari Pat Sanstha Ltd. reported in 24 Taxmann.com (Pune Tribunal) 127 and submitted that the issue stands covered in favour of the assessee by the decision of the Tribunal. The learned DR on the other hand fairly agreed that the issue has been decided by the tribunal in favour of the assessee and against the revenue.

5. After hearing both the sides, we find the coordinate Bench of the Tribunal in the case of ITO Vs. Jankalyan Nagri Sahakari Pat Sanstha Ltd. (Supra) while upholding the order of the CIT(A) and dismissing the appeal filed by the revenue 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 Cooperative 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 cooperative 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 subsection (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

(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. (cci) 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

(iii) The by-laws of which do not permit admission of any other cooperative 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 cooperative 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. 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 Cooperative 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 Cooperative 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 no 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 referring 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).

10. In result, revenue's appeal is dismissed."

6. Respectfully following the decision of the coordinate Bench of the Tribunal cited (Supra) and in absence of any contrary material brought to our notice against the order of the Tribunal we hold that the cooperative society is distinct and separate from the cooperative bank and cannot be said as a primary cooperative bank within the meaning of Banking Regulation Act, 1949. Therefore, the assessee cooperative credit society is entitled to deduction u/s.80P(2)(a)(i) of the Income Tax Act. We accordingly uphold the order of the CIT(A) and the grounds raised by the revenue are dismissed.

7. In the result, the appeal filed by the revenue is dismissed.

Pronounced in the open court on this the 14th day of September, 2012.

Sd/-

Sd/-

(SHAILENDRA KUMAR YADAV)

JUDICIAL MEMBER

Pune Dated: the 14th September 2012

msk

(R.K. PANDA)

ACCOUNTANT MEMBER

Copy of the order forwarded to :

1. Assessee
2. Department
3. CIT, Aurangabad
4. The D.R, "A" Pune Bench
5. Guard File

By order

// True Copy //

Senior Private Secretary
ITAT, Pune Benches, Pune