

Income Tax Appellate Tribunal - Panji
Jayalakshmi Mahila ... vs Department Of Income Tax
IN THE INCOME TAX APPELLATE TRIBUNAL

PANAJI BENCH, PANAJI

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

ITA No. 01 to 03/PNJ/2012
(Asst. Year: 2007-08, 2008-09, 2009-10)

Dy. Commissioner of Income Tax,
Central Circle,
Panaji, Goa
Vs '

M/s Jayalakshmi Mahila Vividodeshagala
Souharda Sahakari Ltd., Ganapathi Temple Road,
Ankola, Karwar

PAN AAAA.11646A

And

ITA No. 04 to 06/PNJ/2012
(Asst. Year; 2007-08, 2008-09, 2009-10)

Dy. Commissioner of Income Tax,
Central Circle,

Panaji, Goa
Vs

M/s Dwarka Souharda Credit Sahakari Ltd
1st floor, Radhakrishna Lodge Bldg., K. C. Road,
Opp. Bus Stand, Ankola, Karwar.

PAN AADFD9270C
Appellant By
Respondent By

ORDER PER BENCH o ...Appellant ...Respondent ...Appellant ...Respondent Shri T. N. C. Shridhar Shri V. Srinivasan All these appeals since involved common issue are being disposed by this common order at the outset both Ld.AR and DR agreed that the facts involved and the issue involved in all these appeals relating to both the assesses namely Jayalaxmi Mahila Vividodeshagala Souharda Sahakari Ltd., Karwar and Dwarka Souharda Credit Sahakari Ltd, Karwar. The common affective grounds taken in all these appeals are reproduced as under: -

"1. Whether on the facts and circumstances of the case, the CIT(A) was correct in holding that the provisions of sub-section(4) of section 80P are applicable only to cooperative banks and not to credit cooperative societies, which are engaged in business of banking, including providing credit facilities to their members.

2. Whether on the facts and circumstance of the case, that CIT(A) was correct in holding that the assessee is a cooperative society and not a cooperative bank in terms of sub-section (4) of section 80P -without considering the meaning of cooperative bank as envisaged under Part V of Banking Regulation Act 1949 wherein it is defined that cooperative bank includes primary cooperative bank, which is further defined as cooperative society with the primary object of transactions of banking business."

2. We are taking the brief facts relating to the A. Y. 2007-03 in the case of Jayalaxmi Mahila Vividodeshagala Souharda Sahakari Ltd., Karwar as the facts involved in all these appeals are common in the case of both the assesses in all the assessment years involved except the change in figures. The brief facts are that the assessee is involved in the business of providing credit facilities to its member by granting loans for various purposes like business, housing, vehicles, personal purposes etc to its members. It also collect fixed deposits, short term deposits, recurring deposits, and pigmy deposit up to A.Y. 2006-07. The society was allowed deduction for interest income on such loans U/s 80P (2) (a) (i). The provisions of section 80P were amended w.e.f. 01/04/2007 where in sub section 4 which read as under: -

"The provision 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 society" shall have the meanings respectively assigned to them in Part V of the Banking Regulation Act, 1949. 'A'

(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."

3. Both the assesses claimed deduction U/s 80P (2) (a) (i) for the impugned Assessment Years in respect of interest income earned from its members on the loans advanced to them. The A.O. did not allow the deduction to each of the assessee in each of the Assessment Years and did not agree with the plea of the assessee that even after the amendment made in section 80P by insertion of section 80P(4) therein, they are eligible for deduction U/s 80P(2)(a)

(i) as the assessee is not a co-operative bank as defined under part V of the Banking Regulation Act, 1949. The assesses went in appeal before the CIT (A). The CIT (A) allowed the deduction U/s 80P by holding as under: --

"After considering the appellant's arguments on this' issue, it is held as under: --

Hon'ble Tribunal in the case of ACIT, Circle --3(1), Bangalore Vs M/s Bangalore Commercial Transport Credit Co-operative Society Ltd in ITA No. 1069/Bang/2010 for A.Y. 2007-08 dt. 08/04/2011 has held as under:

"9. We have heard _the rival submissions and perused the material on record. The assessee was denied the deduction u/s 80P (2) (a)

(i) of the Act for the reason of introduction of sub section (4) to \$QCl_'lol'l 8UP. Section QOPM) reads as under: --

"T he 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 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."

9.1 The above sub section 4 of section 80P provides that deduction under the said section shall not be available to any Co- operative bank other than a primary agricultural credit society or rural development bank. For the purpose of the said sub section, Co-operative bank shall have the meaning assigned to it in part V of the Banking Regulation Act, 1949. In Part V of the Banking Regulation Act, "co-operative bank" means a State Co-operative Bank, a Central'Co-operative bank and a Primate Co-operative Bank.

\ 9.2. ' From the above section, it is clear that the provisions of section '80P(4) has got its application only to co-operative banks. Section 80P(4) does not define the word "Co-operative society". The existing sub-section 80P (2)(a)(i) shall be applicable to a co-operative society carrying on credit facility to its members. This view is clarified by Central Board of Direct Tax vide its clarification No. 133/06/2007-TPL dated 9"" May 2007. The difference between a co-operative bank and a co-operative society are as follows: -

Nature Co-operative Society Co-operative society registered under Banking registered under Regulation Act, 1949 Karnataka Co-operative Societies Act, 1959 Registration Under the Banking Regulation Act, 1949 and Co-operative Societies Act, 1959 Co-operative Societies Ac Nature of Business

1. As defined in section 6 of Banking Regulation Act.

2. Can open savings bank account, current account, overdraft account, cash credit account, issue letter of credit, discounting bills of exchange, issue cheques, demand drafts(DD), Pay Order, Gift cheques, ' lockers, 4 bank guarantees etc.

3. Co-operative Banks can act as clearing agent for cheques, DDs, pay orders and other forms.

4. Banks are bound to follow the rules, regulations and directions issued by Reserve Bank of India (RBI)

1. As per the bye laws of the co-operative society.

2. Society cannot open savings bank account, current account, issue letter of credit, discounting bills of exchange, issue cheques demand drafts, pay orders, gift cheques, lockers, bank guarantees etc.,

3. Society cannot act as clearing agent for cheques, DDs, pay orders and other forms.

4. Society are bound by rules and regulations as specified by in the co-

operative societies act.

Filing of returns * Co-operative banks have to submit annual return to RBI every year.

Society has to submit the annual return to Registrar of Societies.

Inspection RBE has the power to inspect accounts and overall functioning of the bank Registrar has the power to inspect accounts and overali functioning of the bank Part V Part V of the banking Regulation Act is applicable to co-operative banks Part V of the Banking Regulation Act is not applicable to co-operative banks.

Use of words The word 'bank', 'banker', 'banking' can be used by a co~ operative bank.

The word 'bank', 'banker', 'banking' cannot be used by a co-operative society.

9.3 if the intention of the legislature was not to grant deduction u/s 80P [2]{a)(i) to co-operative societies carrying on the business of providing credit facilities to its members, then this section would have been deleted. The new proviso to section 80P(4) which is brought into statute is applicable only to co-operative banks and not to credit co-operative societies. The intention of the legislature of brining in co-operative banks into the taxation structure was mainly to bring in par with commercial banks. Since the assessee is a co-operative society and not a co-operative bank, the provisions of section 80P(4) will not have application in the assessee's case and therefore, it is entitled to deduction u/s 80P(2)(a)(i) of the Act.' Hence, we are of the view that the order of the CIT(A) is correct and in accordance with law and no interference is called for." a Following the judgement of the Hon'ble Jurisdictional Tribunal on this issue, it is held that the appellant is entitled for deduction u/s 80P(2)(a)(i) and the A.O. is directed to allow the same."

4. The Ld DR relied on the order of the AD. and vehemently contended that the assessee is not entitled for the deduction u/s 80P after the amendment made w.e.f. 01/04/2007 in sub section ---- 4 of section 80P. He . submitted that the assessee is a co-operative bank engaged in banking business, therefore, in view of section 80P(4), the assessee willnot be entitled for the deduction under the provision of section 80P(2)(a)(i). He draws our attention to the tax audit report as per which the tax auditor hasstated that the nature of the business of the assessee is that of banking and in other case it is that of rendering financial services. A cooperative society carrying on the banking business is a primary cooperative bank as per banking regulation act ' and thereby, the assessing officer has rightly disallowed the deduction. The CIT(A) has not discussed the relevant provisions of the Act along with the objective and the audit report of the assessee in each of the cases and simply followed the decision of the Bangalore Bench of the Tribunal.

5. The Ld. AR on the other hand submitted that assessee is a cooperative society registered under the Co--operative Society Act. Assessee is not aco- operative bank. The assessee can advance the loans only to its members and interest had been earned on the loan advanced to its members. He carried us to section 80P(2)(a)(i). He referred to section 80P(4) and contended that the provisions of 80P(2)(a)(i) are not applicable to a Co--operative bank. Assessee is not a co--operative bank. Co-Operative bank has been defined under explanation (a) as per which it will have same meaning as is assigned to it in Part V of the Banking Regulation Act. He brought our attention to Part V of the Banking Regulation Act 1949 and vehemently contended that assessee is not a co--operative bank as per Banking Regulation Act. By referring to the aims and objects and the income and expenditure account, It was stressed that the assessee is not engaged in the banking business. He is not giving any loan to the public. He is advancing loan only to the members, for this attention was drawn to section-5(b) of the Banking Regulation Act. So far the Tax Audit . Report is concerned; he submitted it is not binding. The Tax Auditor simply expresses his opinion. If some income is taxable and the Tax Auditor expresses income is not taxable, the A.o. will not allow the exemption. The Judiciary is bound to give correct interpretation which will be binding on both the parties. He also relied on the decision of Bangalore Bench of the Tribunal in the case of ACIT V/s Bangalore Commercial Credit Co--operative Society as has been reproduced by CIT(A). He agreed that the Bangalore Bench has not looked into the definition of the co--operative bank as given under Part V of the Banking Regulation Act. He submitted that the order of the CIT(A) be confirmed.

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6. We have carefully considered the rival submissions along with order of the tax authority below as well as the decision and the entire material cited before us. The question before us is whether the assessee is entitled for the deduction u/s 80P(2)(a)(i). According to this section, if a co-operative society is engaged in carrying on the business of banking or providing credit facilities to its members and its gross total income includes any income therefrom, the co- operative society is entitled for the deduction. Section 80P(2)(a)(i) is explicitly clear that if the co-operative society is engaged in the business of banking or providing credit facilities to its members the co-operative society is entitled for the deduction. There is an embargo put by section 80P(4) which was introduced in to the statute by the Finance Act 2006 w.e.f. 01/04/2007. This section denies the deduction to a co-operative society even if the co-operative society is carrying on the business of banking or the coo-operative

society is providing credit facilities to its members provided co-operative society caught within the ambit of section 80P(4). This is a fact that prior to the insertion of section 80P(4), the assessee was getting the deduction' u/s 80P(2)(a)(i). Section 80P (4) reads as under : -

"The provision 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 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." '

7. The above sub section 4 of section SOP provides that deduction under the said section shall not be available to any co--operative bank other than a primary agricultural Credit society or rural development bank. For the purpose of the said sub section, co--operative bank shall have the meaning as assigned to it in Part V of the Banking Regulation Act, 1949.

8. In view of this definition the question before us is whether the assessee is a Co-operative Bank or not. Clause (b) of the explanation to section 80P(4) in any case is not applicable in the case -of assessee. In case assessee is a Co- operative Bank, the assessee will be hit by Section 80 P(4) but in case assessee is not a Co--operative Bank, it will not hit by Section 80 P(4)_ and the assessee will be entitled for the deduction U/s P(2)(a)(i). The Co-operative bank is defined in Part V of the Banking Regulation Act, 1949 as under: -

" Section 5(cci) "Co-operative bank" means a state co-operative bank, a central co- operative bank and a primary co-operative bank:"

9. 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. 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

10. From the aforesaid definition, it is apparent that if the co-operative society complied with all the three conditions namely that Firstly the primary object or principle business transacted by it is a banking business, Secondly, the paid up share capital and reserve of which are 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. The condition number 28: 3, no doubt are applicable in the case of the assessee to which Ld AR did not dispute in the Court when the bylaws of the assessee were brought to his knowledge. Now the question, before us remains whether the primary object or principle business of the assessee is transaction of the banking business. In case primary object or principle business is transaction of banking business, the assessee will be primary co-operative bank. In case it is not so the assessee will not be a primary co-operative bank consequently assessee will not be co-operative bank as defined in Part V of the Banking Regulation Act 1949. The banking business has been defined u/s 5(b) of the Banking Regulation Act as under: - "Sec. 5(b) "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:"

11. From the said definition, it is clear that the banking means accepting the deposits of money from the public which is repayable on demand or otherwise and withdrawal of these deposits by cheque, draft or otherwise and these deposits are accepted for the purpose of lending or investment. This clearly states that the deposits must be accepted from the public for the purpose of lending or investment. These deposits must be repayable on demand or otherwise and could be withdrawn by the depositor by cheque, draft or otherwise. For deciding whether the assessee is carrying on the banking business as defined above, we have referred to the aims and objects of the assessee as well as the profit and loss account. The aims and objects as given in the bylaws (as per English translation filed before us) are reproduced for our ready reference as under:-

"5. Aims and Objects as follows.

1. To encourage the necessary to provide self help and contribute among the members of the co-operatives and share holders of the co-operative.
2. To all loans and advances to meet various requirements of the T members.
3. To educate the members about the saving schemes included by the Income Tax Department, the Government and to provide necessary services to utilize the same.
4. To purchase, sell and collect Govt. Securities on behalf of the members.
5. To purchase, sell and on behalf of the members.
6. To undertake all the claims with their to concentrate transactions of the co-operatives.

7. To hold and acquire sites, buildings, properties and to construct, renovate and demolish constructions or structures and to undertake such other activities for the benefit of the co-operatives.

8. Provide loans and advances for purchase of motor vehicle on hire purchase or hypothecation basis.

12.

9. To open branches and_ sub branches, remittance or offices by whatever name with all firm rules regarding their business prior of the general body whenever necessary.

10. To encourage co--operative education and to establish fund for promoting co--operative education by the Sahakari.

11. The board of directors authorised to established funds from profit earned by the Sahakari for welfare of members and employees with the previous permission of Federal Souharda Sahakari.

12. To establish a fund from contribution by the Sahakari with the approval of general body by the Board of Directors for education of members and their children of the Sahakari.

13. To have an understanding with other Souharda Sahakari pursuing similar objectives on co-operative- basis with in the direction-s issued by the Samyukata Souharda Sahakari for transfer of money, funds and information's between them.

14. To sell, dispose of any assets acquired for recovery of loans of the Sahakari from time to time.

15. To arrangements with the other co-operatives objectives for or to provide reconciliation under the guidelines and Directors of the Federal Co-Operative, To constitute a joint venture, forums and for being the of the co--operative and such of the act and rules made therein. To undertake all such activities which for promoting the objectives."

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 a 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.

13. In the result, all the appeals filed by the revenue in the case of both the cases are dismissed.

Order pronounced in the open court on 30/03/2012 Sd/- Sd/-

(D. T. GARASIA) (P. K. BANSAL) JUDICIAL MEMBER ACCOUNTANT MEMBER PANAJI / GOA
DATED: 30.03.2012 *nanu* Copy to:

Appellant Respondent CIT, Panaji CIT(A), Panaji D.R Guard file ' P'?"-""PS'~'!'!"

By order ASSISTANT REGISTRAR Income Tax Appellate Tribunal Panaji Bench, Panaji, Goa