

Income Tax Appellate Tribunal - Panji

Chikodi Taluka Shree Saraswati ... vs Department Of Income Tax on 28 May, 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. 290 /PNJ/2013	:	(ASST. YEAR : 2007-08)
Income Tax Officer,	Vs.	Chikodi Taluka Shree Saraswati
Ward - 1,		Souhard Co-op Credit Limited,
Nipani,		A/p -Bedkihal,
Belgaum District.		Tq - Chikodi,
(Appellant)		Belgaum District
		PAN : AAAAC1967H
		(Respondent)

Assessee by : Shri B. Barthakur, Ld. D.R
Revenue by : Shri Omkar S. Godbole, C.A.

Date of Hearing : 28/05/2014
Date of Pronouncement :30/05/2014

ORDER

PER P.K. BANSAL This appeal has been filed by revenue against the order of CIT(A), Belgaum dtd. 08.08.2013 for the assessment year 2007-08 by taking the following grounds of appeal :-

"(1) The learned CIT(Appeals) 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 Cooperative Bank as given in section 5(ccv) of the Banking Regulation Act, 1949.

(2) The learned CIT(Appeals) erred in relying on the provisions of the Karnataka Societies Act, 1959 which gives the definition of a "cooperative society" to mean a society registered or deemed to be registered under that Act. 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(Appeals) erred in law and on facts in relying on this definition which was applicable to the Karnataka Co-operative Societies Act, 1959 only to deem it to include co-operative societies under the Karnataka Societies Registration Act, 1960. The Karnataka Societies Registration Act, 1960 does not (Asst. Year: 2007-08) apply to a co-operative society but only applies to the Societies registered under that Act.

(4) The learned CIT(Appeals) erred in law and on facts in allowing deduction under section 80P(2)(a)(i) to the assessee ignoring the fact that the assessee does not permit co-operative societies to become a member and as such, satisfy conditions to become primary co-operative bank.

(5) The learned CIT(Appeals) erred in law and on facts in not appreciating the definition of a co-operative bank which as per Explanation below section 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(Appeals) 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 section 5(ccv) of the Banking Regulation Act, 1949 and as such, not eligible for deduction under section 80P(2)(a)(i) of the I.T. Act, 1961."

2. 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.45,83,110/- 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.45,83,110/-. 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) allowed the appeal.

2.1 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-operative society is carrying on banking business, the Assessee will not be (Asst. Year: 2007-08) 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.

2.2 The ld. AR before us vehemently contended that the provisions of Sec. 80P(4) are not applicable in the case of the Assessee. The Assessee is not a co-operative bank. The Assessee is a co-operative society duly registered under the Karnataka Souharda Sahakari Act, 1997. The primary object of the Assessee is to encourage thrift, self help and co-operation among the members and depositors of the co-operative. For this, our attention was drawn towards the bye-laws of the Assessee from (I) to (XX). 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 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 (Asst. Year: 2007-08) 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.

3. We have 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 :--

(Asst. Year: 2007-08)

(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 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 (Asst. Year: 2007-08) 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 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 (Asst. Year: 2007-08) under sub-clause (i). These two activities are not alternates 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 u/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 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 (Asst. Year: 2007-08) 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."

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 (Asst. Year: 2007-08) 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 :-

"I. To encourage thrift, self-help and co-operation among the members, and depositors of the co-operative.

II. To arrange to grant loan and advances for the various needs of members. III. To provide necessary services to the members for the utilisation and publication of savings schemes encouraged by the Govt. and the Income Tax Department among the members .

IV. To purchase, sell and accept the Govt. securities on behalf of members. V.

.....

XVII. To do all activities which are required to promote and strengthen the activities of the co-operative. To extend the business by using modern technology including internet.

XVIII. To do business of the co-operative credit societies as stipulated in the Banking Regulation Act.

XXI. As per the provision of the section 15 of the Act by a resolution passed at its general meeting by majority of members present with a right to vote, promote one or more subsidiary organisations may be registered under any law for the time being in force. The annual report and accounts of any such subsidiary organisations shall be placed before the general meeting of the co-operative every year.

XX. To lend money to its members to purchase consumer articles, machineries and vehicles on hire, purchase / hypothecation basis."

8.1 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."

8.2 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 (Asst. Year: 2007-08) 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 not only from the members but also from the general public who are non-members. This fact is clear as per the remand report of A.O dated 19.04.2013 before the CIT(A) confirms from the following :-

"Our society accepts deposits from regular members having voting rights and associate members and nominal members having no voting rights and also accepts deposits from general public."

8.3 The deposits so accepted are used by the Assessee co-operative society for lending or investment. This fact has not been denied by the assessee or by his counsel. Thus, in our opinion, condition no. 1 stands satisfied and it cannot be said that the Assessee society was not carrying on banking business as it was accepting deposits from the persons who were not members. 8.4 In the submission 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.

8.5 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 (Asst. Year: 2007-08) Rs. 1 lac. Therefore, the Assessee satisfies the second condition. So far as the third condition is concerned, we noted that Sec. 20 of The Karnataka Souharda Sahakari Act, 1997 permits admission of any other co-operative society as a member. The provisions of Sec. 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. Removal 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 re-admission 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] [21.A Nominal and Associate Members (1) Notwithstanding anything contained in section 20, a Co-operative may admit, (Asst. Year: 2007-08)

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 members 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 Sec. 20 to 21A mandates admission of any other co-operative society as a member of the co-operative society. The word used in Sec.21A is 'may'. Section 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.

9. We have gone through the bye-laws which contains the membership which is bye-laws no.6. It states as under :-

"6. Eligibility for Membership :

Following are eligible comprising of co-operative. A Class member comprising of individual men and women B Class membership to Govt. without entrance fees.

1. (A) Person residing in the area of operation of the co-operative attained the age of 18 years engaged in business or trade and not insolvent and lunatic. (B) Ownership firm, partnership firm or a society registered under the Karnataka Societies Registration Act, 1960 (Karnataka Act. 17 of 1960).

Note : An individual competent to contract under section 11 of the Indian Contract Act, 1832 and an individual who needs the services of the co-operative.

2. Person seeking admission as a member shall make an application in writing with prescribed share fee admission fee admission fee and full amount of minimum one share.

(Asst. Year: 2007-08)

3. Board of Directors are empowered to accept or reject the membership application. If membership is rejected full amount subscribed by the person should be refunded decision taken in the matter should be intimated to such person.

4. Person whose application rejected, he can appeal before the Annual general body. In this matter decision of the Annual General Body is final. Note : Any person who has submitted application as per bye-law no. 6(2) will be eligible to get the eligibility of membership only after his application is approved by the Board of management."

Condition for completing 18 years of age cannot be imposed for co-

operative society. This condition can be applied only to an individual. The learned A.R agreed that from the bye-laws, it is apparent that the bye-laws of society does permit the admission of any other co-operative society as member. Thus the third condition for becoming primary co-operative bank is not 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).

10. 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), (Asst. Year: 2007-08) Bangalore vs. M/s. Bangalore Commercial Transport Credit Co-operative Society Ltd. in ITA No. 1069/Bang/2010 holding that Sec. 80P(2)(a)(i) is applicable only to credit co-operative society 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-

(Asst. Year: 2007-08) operative bank. We have also gone through the decision of this 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 (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."

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 (Asst. Year: 2007-08) 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. Therefore, this decision is not applicable.

11. 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, confirm 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 revenue is dismissed.

13. Order pronounced in the open court on 30.05.2014.

Sd/ -

Sd/ -

(D.T.Garasia)
Judicial Member

(P.K. Bansal)
Accountant Member

Place : PANAJI / GOA

Dated : 30.05.2014

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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