
[2015] 64 taxmann.com 336 (Karnataka)

IT : In event of dispute as to primary object or principal business of co-operative society referred to in clauses (cciv), (ccv) and (ccvi) of section 56 of Banking Regulation Act, determination thereof by RBI shall be final before revenue authorities can term said society as a co-operative bank for purpose of section 80P

[2015] 64 taxman n.com 336 (Karnataka)

HIGH COURT OF KARNATAKA

Chandrababhu Urban Co-Operative Credit Society Ltd.

v.

Income-tax officer Ward No. 1, Nipani*

ANAND BYRAREDDY AND MRS. S. SUJATHA, JJ.

IT APPEAL NOS. 100043 & 100045 OF 2014 [«](#)

SEPTEMBER 21, 2015

Section 80P of the Income-tax Act, 1961 - Deductions - Income of co-operative societies (Co-operative bank) - Assessment years 2009-10 and 2010-11 - Whether in event of dispute as to primary object or principal business of co-operative society referred to in clauses (cciv), (ccv) and (ccvi) of section 56 of Banking Regulation Act, determination thereof by RBI shall be final before revenue authorities can term said society as a co-operative bank for purpose of section 80P - Held, yes [Para 10] [In favour of assessee]

FACTS

The assessee was a co-operative society registered under the Karnataka State Co-operative Societies Act, 1956. It filed return of income claiming deduction under section 80P(2)(i).

The Assessing Officer noted that the by-laws of the assessee indicated that its primary object was transactions that were apparently in the nature of banking. The assessee was receiving deposits from its members and providing loans to other members and, hence, it satisfied all the three conditions contemplated under section 56(ccv) of the Banking Regulation Act. Therefore, the Assessing Officer held that the assessee society being a primary co-operative bank, was not eligible for deduction under section 80P.

The Commissioner (Appeals) as well as the Tribunal upheld the order of Assessing Officer.

On appeal:

HELD

There is a seriously disputed question of fact which the Authorities under the Act have taken upon themselves to interpret in the face of the BR Act prescribing that in the event of a dispute as to the primary object or principal business of any co-operative society referred to in clauses (cciv), (ccv) and (ccvi) of section 56 of the BR Act, a determination thereof by the Reserve Bank shall be final. The dispute would be resolved by the Reserve Bank of India, before the authorities could term the assessee as a co-operative bank, for purposes of section 80P. Any opinion expressed by the authorities therefore is tentative and is not final.

Thus, in the instant case, the view expressed by court, however, as to the assessee being a co-operative society and not a co-operative bank in terms of section 80P (4) would hold the field and shall bind the authorities unless held otherwise by the Reserve Bank of India. [Para 10]

The appeal as disposed of in aforesaid terms.

CASE REVIEW

CIT v. Bangalore Commercial Transporter Credit Society [IT Appeal Nos. 351 of 2011 & 599 of 2013] (para 10) *followed*.

Shri Chandrababhu Urban Co-operative Credit Society Ltd. v. ITO [2014] 45 taxmann.com 14 (Panji - Trib.) (para 10) *reversed*.

CASES REFERRED TO

CIT v. Sri Biluru Gurubasava Pattina Sahakari Sangha Niyamitha [2014] 369 ITR 86/[2015] 230 Taxman 557/56 taxmann.com 280 (Ker.) (para 6), *CIT v. Bangalore Commercial Transporter Credit Society* [IT Appeal Nos. 351 of 2011 & 599 of 2013] (para 6), *CIT v. Bangalore Credit Co-Operative Society Ltd.* [IT Appeal No. 598 of 2013] (para 6), *CIT v. Yeshwanthpur Credit Co-Operative Society Ltd.* [IT Appeal No. 237 of 2012] (para 6), *CIT v. Mysore University Employees Co-Operative Credit Society Ltd.* [IT Appeal No. 298 of 2013] (para 6), *CIT v. Vasavi Credit Co-operative Society Ltd.* [IT Appeal No. 118 of 2012] (para 6), *CIT v. Sri Vasavi Multi Purpose Souharda Sahakari Sangha Niyamitha* [IT Appeal No. 505 of 2013] (para 6) and *CIT v. General Insurance Employees Co-operative Society Ltd.* [IT Appeal No. 273 of 2013] (para 6).

H.R. Kambiyavar and **S. Parthasarathi**, Advs. for the Appellant. **Y.V. Raviraj**, Adv. for the Respondent.

JUDGMENT

Anand Byraredddy, J. - These appeals are by the assessee under the Income Tax Act, 1961 (Hereinafter referred to as the 'IT Act, for brevity). The assessee is said to be a Co-operative Society registered under the Karnataka State Co-operative Societies Act, 1956, (Hereinafter referred to as the 'KCS Act', for brevity).

2. The appeals pertain to the Assessment years 2009-10 & 2010-11, respectively. The appellant - Society had filed its return of income for the assessment year 2009-10, and after claiming deduction under Section 80 P(2) (a) (i) of the IT Act, the total income was declared as 'nil'.

For the assessment year 2010-11, as well, the appellant had declared 'nil' income after claiming deduction under Section 80P(2)(a)(i) of the IT Act, at 100%.

The Assessing Officer had however, opined that the assessee was not entitled to the deduction, as claimed, for the reason, *inter alia*, that the activity of the appellant was covered by Section 2 (24 (vii a) of the IT Act, which requires the inclusion of profits and gains of any business of banking (including providing credit facilities) carried on by a cooperative society.

Reference was made to the *Explanation* appended to Section 80P(4) - which lays down that a co-operative bank and a primary agricultural credit society, shall have the same meaning assigned to them in Part V of the Banking Regulation Act, 1949 (Hereinafter referred to as the 'BR Act' , for brevity.) It was held that the Bye -laws of the Assessee indicated that their primary object was transactions that were apparently in the nature of banking. In that, the assessee was receiving deposits from its members and providing loans to other members and hence it satisfied all the three conditions contemplated under Section 56(ccv) of the BR Act. For this premise, the Assessing Officer had proceeded on the basis that a primary co-operative bank, meant a Co-operative Society. Therefore, the Assessing Officer held that the appellant society being a primary cooperative bank, was not eligible for deduction under Section 80 P of the IT Act.

3. The appellant - Society had then preferred an appeal before the Commissioner of Income Tax (Appeals) challenging the above order of the Assessing Officer. The same was said to have been dismissed.

The appellant had then approached the Income Tax Appellate Tribunal. The Tribunal having affirmed the concurrent findings of the above authorities, the appellant is before this court.

4. The questions of law that arise for our consideration in these appeals are :

- i. Whether the benefit of deduction, under Section 80P(2)(a)(i) of the IT Act, could be denied to the assessee on the footing that, though the appellant was said to be a Co-operative Society, it was in fact a co-operative bank, within the meaning as assigned to such bank under Part V of the BR Act.
- ii. Whether the Authorities under the IT Act were competent and possessed the jurisdiction to resolve the controversy as to whether the assessee was a co-operative society or co-operative bank, as defined under the provisions of the BR Act?"

5. In addressing the above, it would be useful to extract the relevant provisions for ready reference.

'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 :ô

(a) in the case of a co-operative society engaged inô

(i) carrying on the business of banking or providing credit facilities to its members, or

(ii), (iii) & (3)**

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(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 cooperative 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 taluk and the principal object of which is to provide for long-term credit for agricultural and rural development activities."

"Section 56 of the BR Act:-

Act to apply to co-operative societies subject to modifications. ô The provisions of this Act, as in force for the time being, shall apply to, or in relation to, cooperative societies as they apply to, or in relation to banking companies subject to the following modifications, namely:ô

(a) throughout this Act, unless the context otherwise requires,ô

(i) references to a "banking company" or "the company" or "such company" shall be construed as references to a co-operative bank;

(ii) references to "commencement of this Act" shall be construed as references to commencement of the Banking Laws (Application to Co-operative Societies) Act, 1965 (23 of 1965);

(b) in section 2, the words and figures "the Companies Act, 1956 (1 of 1956) and" shall be omitted;

(c) in section 5,ô

(i) after clause (cc), the following clauses shall be inserted, namely:-

(cc*i*) "Co-operative bank" means a state cooperative bank, a central co-operative bank and a primary co-operative bank;

(cc*ii*) "co-operative credit society" means a cooperative society, the primary object of which is to provide financial accommodation to its members and includes a cooperative land mortgage bank;

(cc*iii*a) "co-operative society" means a society registered or deemed to have been registered under any Central Act for the time being in force relating to the multi-State co-operative societies, or any other Central or State law relating to co-operative societies for the time being in force;

(cc*iii*b) "director" in relation to a co-operative society, includes a member of any committee or body for the time being vested with the management of the affairs of that society;

(cc*iii*c) "multi-State co-operative bank" means a multi-State co-operative society which is a primary cooperative bank;

(cc*iii*d) "multi-State co-operative society" means a multi-State co-operative society registered as such under any Central Act for the time being in force relating to the multi-State co-operative societies but does not include a national co-operative society and a federal co-operative;

(cc*iv*) "primary agricultural credit society" means a co-operative society,ô

(1) the primary object or principal business of which is to provide financial accommodation to its members for agricultural purposes or for purposes connected with agricultural activities (including the marketing of crops); and

(2) the bye-laws of which do not permit admission of any other co-operative society as 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 sub-scribing to the share capital of such co-operative society out of funds provided by the State Government for the purpose;

(ccv) "primary co-operative bank" means a cooperative society, other than a primary agricultural credit society,ô

(1) the primary object or principal business of which is the 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 cooperative bank subscribing to the share capital of such co-operative society out of funds provided by the State Government for the purpose;

(ccvi) "primary credit society" means a cooperative society, other than a primary agricultural credit society,ô

(1) the primary object or principal business of which is the transaction of banking business;

(2) the paid-up share capital and reserves of which are 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.

*Explanation.*ô If any dispute arises as to the primary object or principal business of any co-operative society referred to in clauses (cciv), (ccv) and (ccvi), a determination thereof by the Reserve Bank shall be final;

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6. In so far as the first question of law is concerned, there are a series of decisions of this court wherein it has been repeatedly answered in favour of the assessee. Two of the said decisions are as follows :

1. *CIT v. Sri Biluru Gurubasava Pattina Sahakari Sangha Niyamitha* in [\[2014\] 369 ITR 86/\[2015\] 230 Taxman 557/56 taxmann.com 280 \(Kar.\)](#)

2. *CIT v. Bangalore Commercial Transporter Credit Society* in [IT Appeal Nos. 351 of 2011 & 599 of 2013]

In interpreting Section 80 P (4) in *Sri Biluru Gurubasava Pattina Sahakari Sangha Niyamitha (supra)* of the I T Act, it was held as follows :

"If a Co-operative Bank is exclusively carrying on banking business, then the income derived from the said business cannot be deducted in computing the total income of the assessee. The said income is liable for tax. A Co-operative bank as defined under the Banking Regulation Act includes the primary agricultural credit society or a primary co-operative agricultural and rural development bank. The Legislature did not want to deny the said benefits to a primary agricultural credit society or a primary co-operative agricultural and rural development bank. They did not want to extend the said benefit to a Cooperative bank which is exclusively carrying on banking business *i.e.* the purport of this amendment. Therefore, as the assessee is not a Co-operative bank carrying on exclusively banking business and as it does not possess a licence from Reserve Bank of India to carry on business, it is not a Co-operative bank. It is a Co-operative society which also carries on the business of lending money to its members which is covered under Section 80P(2)(a)(i) *i.e.* carrying on the business of

banking for providing credit facilities to its members. The object of the aforesaid amendment is not to exclude the benefit extended under Section 80P(1) to such society. Therefore, there was no error committed by the Assessing Authority."

In *Bangalore Commercial Transporter Credit Society (supra)*, this court has cited with approval the following differences between a co-operative society and a co-operative bank - as depicted by the Tribunal, in tabular form thus :

Nature	Co-operative society registered under Banking Regulation Act, 1949	Co-operative Society registered under Karnataka Cooperative Society Act, 1959
Registration	Under the Banking Regulation Act, 1949 and Co-operative Societies Act, 1959	Co-operative Societies Act, 1959
Nature of business	<ol style="list-style-type: none"> 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 orders, Gift cheques, lockers, 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). 	<ol style="list-style-type: none"> 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 cheque, demand drafts, pay orders, gift cheques, lockers, bank guarantees etc. 3. Society cannot act clearing agent, for cheques, DDs, pay orders and other forms. 4. Society are bound by rules and regulations as specified by in the cooperative 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	RBI has the power to inspect accounts and overall functioning of the Bank.	Registrar has the power to inspect accounts and overall functioning of the bank.
Part V	Part V of the Banking Regulation Act is applicable to cooperative banks.	Part V of the Banking Regulation Act is not applicable to cooperative banks.
Use of words	The word 'bank', 'banker', 'banking' can be used by a cooperative bank.	The word 'bank', 'banker', 'banking' cannot be used by a cooperative society.

And this court had dismissed the appeal of the revenue following the decision in *Sri Biluru Gurubasava Pattina Sahakari Sangha Niyamitha (supra)*. The same view has been taken in the following decisions :

1. *CIT v. Bangalore Credit Co-operative Society Ltd.* [IT Appeal No. 598 of 2013]
2. *CIT v. Yeshwanthpur Credit Co-operative Society Ltd.* [IT Appeal No. 237 of 2012]
3. *CIT v. Mysore University Employees Co-operative Credit Society Ltd.* [IT Appeal No. 298 of 2013]

4. *CIT v. Vasavi Credit Co-operative Society Ltd.* [IT Appeal No.118 of 2012]

5. *CIT v. Sri Vasavi Multi Purpose Souharda Sahakari Sangha Niyamitha* [IT Appeal No. 505 of 2013]

6. *CIT v. General Insurance Employees Co-operative Society Ltd.* [IT Appeal No. 273 of 2013].

7. The learned counsel Shri A. Shankar while drawing attention of this court to the tenor of the relevant provisions of law and the above decisions, would contend that this court has categorically held that the assessee, as a co-operative society, was entitled to the benefit of deduction under Section 80P(2)(a)(i) of the IT Act. Notwithstanding the aforesaid decisions of this court, the Tribunal which was bound by the same, has ignored the said decisions.

It is also pointed out that though other benches of the Appellate Tribunal had followed the dictum of this court, and which circumstance was brought to the attention of the Tribunal, it had not chosen to distinguish the said decisions nor has it chosen to refer the matter to a special bench, as propriety demanded.

It is hence contended that the point of law as to the entitlement of deduction under Section 80P(2)(a)(i) in so far as the assessee is concerned, would have to be held in its favour.

He would contend that all co-operative banks may be cooperative Societies, but all co-operative Societies are not necessarily co-operative banks.

It is further contended that the activity of "banking", is defined under Section 5 (b) of the BR Act as follows :

'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;'

It is asserted that the assessee did not carry on any such activity. And if they did carry on any such activity, it would be illegal and becomes subject to the rigour of Section 37 of the BR Act. It is further contended that even if there was a disputed question as to whether the assessee was indeed a cooperative bank. The authorities under the IT Act were not competent and did not have the jurisdiction to arrive at a finding in that regard and attention is drawn to the *Explanation* appended to clause (ccvi) to Section 56 of the BR Act, which reads as follows :

"*Explanation-* If any dispute arises as to the primary object or principal business of any cooperative society referred to in clauses (cciv), (ccv) and (ccvi), a determination thereof by the Reserve Bank shall be final;"

It is hence contended that the appeals be allowed and the judgment of the Tribunal be set aside.

8. On the other hand, the learned counsel Shri Y.V. Raviraj, appearing on behalf of the Revenue contends as follows :

"Section 80P(2)(a)(i) provides deduction of income of cooperative societies "carrying on the business of banking or providing credit facilities to its members".

However, an exception to this is provided under Section 80P(4) which provides that this deduction will not be available to any co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank.

For the purpose of section 80P(4), a co-operative bank has been given a meaning assigned to them in Part

V of the Banking Regulation Act, 1949.

In Part V of the Banking Regulation Act, 1949, section 5(b), a "co-operative bank" means a State Co-operative Bank, a Central Co-operative Bank and a Primary Co-operative Bank.

A Primary Co-operative Bank is defined in section 5(ccv) of the Banking Regulation Act, 1949 as the co-operative society which fulfils three conditions namely:

- (i) The primary object or principal business of which is transaction of banking business.
- (ii) The paid-up share capital and reserves of which are not less than one lakh of rupees and
- (iii) The bye-laws of which do not permit admission of any other co-operative society as a member.

If a co-operative society fulfils all the above three conditions, it is to be treated as a co-operative bank for the purpose of section 80P(4) and the benefit of deduction under Section 80P(2)(a)(i) is denied.

After insertion of Section 80P(4), the provisions of Section 80P(2)(a)(i) were not amended and the co-operative societies engaged in carrying on business in banking with its members continued to be entitled for deduction.

The embargo put under Section 80P(4) are applicable only to a co-operative society, treated as a bank by a legal fiction created under Section 80P(4) as defined in the *Explanation* to the said section with reference to Part V of the Banking Regulation Act, 1949.

However, if an assessee society does not fulfil any of the above three conditions as defined under Section 5(ccv) of Banking Regulation Act, 1949, it cannot be treated as a 'primary co-operative bank' and as such will be eligible to get the deduction under Section 80P(2)(a)(i)

Attention is also drawn to the relevant portion of the Finance Minister's Budget Speech explaining the reasons for withdrawal of tax benefits to some Societies by way of insertion of sub-section 80P(4) and insertion of new clause (viia) in clause (24) of Section 2 definition of "income" by the Finance Act, 2006, with effect from 1.4.2007, is as under:

"The Co-operative banks are functioning at par with other commercial banks, which do not enjoy any tax benefits. It is, therefore proposed to amend section 80P by inserting a new sub-section (4) so as to provide that the provisions of the said section shall not apply in relation to any co-operative bank other than primary credit society or a primary co-operative agricultural and rural development bank. It is also proposed to define the expressions "co-operative bank", "primary agricultural credit society" and "primary co-operative agricultural and rural development bank".

It is also proposed to insert a new sub-clause (viia) in clause (24) of the Section 2 so as to provide that the profits and gains of any business of banking (including providing credit facilities) carried on by a co-operative society with its members shall be included in the definition of "income".'

Section 2(24)(viia) of the Income Tax Act inserted by the Finance Act, 2006, with effect from 1.4.2007 includes the following in its definition of "income" as under:

"profits and gains of any business of banking (including providing credit facilities) carried on by a co-operative society with its members."

The relevant portion of Section 80P is 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 an

subject to the provisions of this section, the sums specified in sub-section (2), in computing the total income of the assessee.

(2) The sum referred to in sub-section (1) shall be the following, namely:-

(a) the case of a co-operative society engaged in :-

(i) Carrying on the business of banking or providing credit facilities to its members, or í í

(ii) to (vii) **

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The whole of the amount of profits and gains of business attributable to any one or more of such activities."

Section 80P(4) which came to be introduced in the statute by the Finance Act, 2006, with effect from 1.4.2007, reads as under:

'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 taluk and the principal object of which is to provide for long-term credit for agricultural and rural development activities.'

Part V of the Banking Regulation Act, 1949, section 5(cci): In order to examine in a given case of an assessee society whether it is a co-operative bank or not as defined in Part V of the Banking Regulation Act, 1949, of the said Act has to be looked into. Section 5(cci) states as under:

"Co-operative bank" means a state co-operative bank, a central co-operative bank and a primary cooperative bank.'

The primary co-operative bank is defined under Section 5(ccv) of the BR Act as under:

"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".

Section 5(cciia) of Banking Regulation Act, 1949 defines a Co-operative Society as under:

"Co-operative Society means a society registered or deemed to have been registered under any Central Act for the time being in force relating to the multi-State co-operative societies or any other Central or State law relating to co-operative societies for the time being in force;"

Section 5(b) of the Banking Regulation Act, will also have to be looked into to examine whether the primary object or principal business of the co-operative society is transaction of banking business. The section is as under:

"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.'

The learned counsel would incidentally contend that the Tribunal while taking the cue from the decisions of this Court in *Sri Biluru Gurubasava Pattina Sahakari Sangha Niyamitha (supra)* and other cases, in certain other appeals apart from the present has also formed an opinion on certain further propositions, namely:

Proposition: Assessee society has not fulfilled the third condition mentioned in Section 5(ccv) of the BR Act and as such, cannot be treated as a primary co-operative bank as defined therein:

The Tribunal has referred to section 16 of the Karnataka State Co-operative Societies Act, 1959 and held that the said provisions permit admission of any other co-operative society as a member. The Tribunal however has erred in not examining whether the bye-laws of the assessee society permits other cooperative society to become member as per Section 5(ccv) of the Banking Regulation Act, 1949. Provisions of Section 16(1) and 16(2) of the Karnataka State Co-operative Societies Act, 1959 does not help in any way to come to the conclusion that the bye-laws in the case of a particular assessee society permits admission of any other co-operative society as a member.

Proposition: The Tribunal has referred to section 20 to 21A of the Karnataka Souhardha Sahakari Co-operative Societies Act, 1997, and held that the said provisions permit admission of any other co-operative society as a member.

The Tribunal however ought to have examined into the aspect as to whether the bye-laws in the case of a particular assessee society permits admission of any other co-operative society as a member.

Proposition: Referring to the bye-laws of the assessee society, the Tribunal has observed that the Societies registered under the Karnataka Societies Registration Act, 1960 are allowed to become members.

The Tribunal had failed to appreciate that a society registered under the Karnataka Societies Registration Act, 1960 is established or created for different purposes and cannot be treated as that of the one registered under the Karnataka Cooperative Societies Act, 1959 or that registered under the Karnataka Souhardha Sahakari Co-operative Societies Act, 1997.

Proposition: The issue is covered by the decision of a Division Bench of this Hon'ble Court in the case of *Sri. Biluru Gurubasava Pattina Sahakari Sangha Niyamitha (supra)*:

The substantial question of law pleaded on behalf of the Revenue in the said case was as follows:

"In the facts and circumstances of this case, whether the Revisional Authority was justified in invoking his power under Section 263 of the Act without the foundational fact of assessee being co-operative bank was not there?"

It is pointed out that this Court, in the above case, had not examined the applicability of the provisions of the definition of a co-operative bank as per Part V of the Banking Regulation Act, 1949 by reading *Explanation* to section 80P(4). The facts of the above case are clearly distinguishable and are not applicable. However, a Review Petition was filed in the said case and subsequently, a memo had been filed to withdraw the said Review Petition, which is pending. It is submitted that the matter is being taken up by the Revenue in appeal before the Hon'ble Apex Court.

It is also stated that in some matters, the Tribunal has granted relief by holding that Section 80P(4) is not applicable, by referring to one circular of CBDT No.133 of 2007 dated 9.5.2007 which provided as under:-

"Subject: clarification regarding admissibility of deduction under Section 80P of the Income Tax Act, 1961.

1. Please refer to your letter No.DCUS/30688/2007, dated 28.03.2007 addressed to the Chairman, Central Board of Direct Taxes, on the above given subject.
2. In this regard, I have been directed to state that sub-section (4) of section 80P provides that deduction under the said section shall not be allowable to any co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and 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 Regulations Act, 1949.
3. In part V of the Banking Regulation Act, "Co-operative Bank" means a State co-operative bank, a Central Co-operative Bank and a primary Cooperative bank.
4. Thus, if the Delhi Co-op Urban T and C Society Ltd. does not fall within the meaning of "Cooperative Banks" as defined in part V of the Banking Regulation Act, 1949, sub-section (4) of Section 80P will not apply in this case.
5. The issues with the approval of Chairman, Central Board of Direct Taxes."

The learned counsel contends that the above circular has only clarified that if the societies do not fall within the meaning of the co-operative bank as per Part V of the Banking Regulation Act, 1949, then exception under Section 80P(4) will not apply.

Proposition: The assessee Society has not obtained Banking Licence from the R.B.I:

It is contended that it is also pertinent to note that it is necessary that a co-operative society should have a banking licence as per the definition under the Income Tax Act, for carrying on banking business and if the required licence is not obtained as per other laws, it can only be termed as an illegal banking business under a particular statute prescribing the same. Income Tax Act, however is concerned with the taxing of "income" as per the provisions of the Income Tax Act and "income" if any, has to be taxed whether it is from a legal or illegal business.

Hence, it is contended by the learned counsel that, by the insertion of Section 2(24(via)) and Section 80P(4), by adopting the words 'primary co-operative bank' means a co-operative society other than ' ' in clause (ccv) of BR Act, the Legislature has created a legal fiction for the purpose of taxing under certain circumstances, a Society which is to be treated as a 'bank' for the purposes of the Income Tax Act, 1961 while dealing with the issue of its claim of deduction under Section 80P.

Further, when a Statute enacts that something shall be deemed to be treated as something else, which in fact is not true, the Court shall appreciate and ascertain for what purposes the statutory fiction is resorted and then give full effect to the statutory fiction to carry it to the logical conclusion.

Therefore, in the case of an assessee - Co-operative Society claiming deductions under Section 80P, an examination of the factual aspects will have to be conducted by the Revenue authorities on the basis of the facts and materials on record to conclude whether the assessee - Society is to be treated as a 'primary co-operative bank' which fulfils the above three conditions.

9. In the light of the above contentions and on an examination of the relevant legal provisions, it is to be

noticed at the outset that this court in the appeal in *Bangalore Commercial Transporter Credit Co-operative Society Limited (supra)*, had framed the following substantial questions of law :

"(i) Whether the Tribunal was correct in holding that the provision of sub-section (4) of Section 80P of the Income Tax Act are applicable only to cooperative Banks and not to credit Co-operative Societies, which are engaged in business of banking, including providing credit facilities to their members?

(ii) Whether the Tribunal was correct in holding that the assessee is a co-operative society and not a cooperative Bank in terms of sub-section (4) of Section 80P of the Income Tax Act without considering the meaning of co-operative Bank as envisaged under Part V of the Banking Regulation Act, 1949, wherein it is defined that co-operative Bank includes primary cooperative Bank, which is further defined as cooperative Society with the primary object of transactions of Banking business?"

The said issues were answered in favour of the Assessee.

10. We are in respectful agreement with the general view taken as to the interpretation of the relevant provisions of law, by the co-ordinate bench of this court, in the above and several other judgments adopting the same view. However, it is to be noticed that there is a seriously disputed question of fact which the Authorities under the IT Act have taken upon themselves to interpret in the face of the BR Act prescribing that in the event of a dispute as to the primary object or principal business of any co-operative society referred to in clauses (cciv), (ccv) and (ccvi) of Section 56 of the BR Act, a determination thereof by the Reserve Bank shall be final, would require the dispute to be resolved by the Reserve Bank of India, before the authorities could term the assessee as a co-operative bank, for purposes of Section 80P of the IT Act. Any opinion expressed therefore is tentative and is not final. The view expressed by this court, however, as to the assessee being a co-operative society and not a co-operative bank in terms of Section 80P(4) of the IT Act, shall hold the field and shall bind the authorities unless held otherwise by the Reserve Bank of India.

In the result, the above questions are answered in favour of the assessee and the appeals are allowed as prayed for.

Sunil

*In favour of assessee.

Arising out of order of Tribunal in Shri Chandrababhu Urban Co-operative Credit Society Ltd. [2014] 45 taxmann.com 14 (Panji - Trib.).