

COMMISSIONER OF INCOME TAX vs. JAFARI MOMIN VIKAS CO-OPERATIVE CREDIT SOCIETY LTD.

HIGH COURT OF GUJARAT

AKIL KURESHI & SONIA GOKANI, JJ.

Tax Appeal No. 442 of 2013 With Tax Appeal No. 443 of 2013 With Tax Appeal No. 863 of 2013

15th January, 2014

(2014) 100 DTR (Guj) 421 : (2014) 362 ITR 331 (Guj)

Legislation referred to

Section 80P(2)

Decision in favour of

Assessee

Counsel appeared:

Sudhir M Mehta for the Petitioner. : Hardik V Vora for the Respondent.

AKIL KURESHI, J.

1. All the assessee's Tax Appeals involve identical question.

2. Revenue has challenged the judgment of the Income Tax Appellate Tribunal (for short "the Tribunal") raising following question for our consideration: "Whether the Hon'ble Tribunal is correct in allowing deduction under section 80P(2)(a)(i) to assessee's society even though same is covered under section 80P(4) rws 2(24) (viia) being income from providing credit facilities carried on by a co-operative society with its members?"

3. Issue pertains to interpretation of section 80P (2) and 80P(4) of the Income Tax Act, 1964 ("the Act" for short). Respondent assessee is a Cooperative Credit Society and claims benefit of deduction under section 80P(1) of the Act by virtue of the provisions contained in section 80P(2)

(a) (i) of the Act. As is well known under sub-section (1) of section 80P certain co-operative societies are granted deductions of the sum specified in sub-section (2) in computing the total income. As per section 80P(2)(a)(i), the sums referred in sub-section (1) would be in case of a cooperative society engaged in carrying on the business of banking or providing credit facilities to its members the whole of the amount of profits and gains of business attributable to any one or more of such activities. Revenue, however, contends that by virtue of newly amended sub-section (4) of section 80P inserted with effect from 1.4.2007 by Finance Act, 2006, section 80P would not apply to the respondent assessee. Section 80P(4) in the present form refers as under:

"(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 subsection,

(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."

4. As per section 80P(4), the provisions of section 80P would not apply in relation to any cooperative bank other than primary agricultural credit society or primary co-operative agricultural and rural development bank. As per the explanation, the terms "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.

Assessing Officer held that by virtue of section 80P(4), the respondent assessee would not be entitled to benefits of deduction under section 80P. CIT(Appeals) as well as the Tribunal reversed the decision of the Assessing Officer on the premise that the respondent assessee not being a bank, exclusion provided in sub-section(4) of section 80P would not apply. This, irrespective of the fact that the respondent would not fall within the expression "primary agricultural credit society".

Had this been the plain statutory provisions under consideration in isolation, in our opinion, the question of law could be stated to have arisen. When, as contended by the assessee, by virtue of sub-section(4) only co-operative banks other than those mentioned therein were meant to be excluded for the purpose of deduction under section 80P, a question would arise why then Legislature specified primary agricultural credit societies along with primary cooperative agricultural and rural development banks for exclusion from such exclusion and in other words, continued to hold such entity as eligible for deduction. However, the issue has been considerably simplified by virtue of CBDT Circular No.133 of 2007 dated 9.5.2007. Circular provides as under:

"Subject: Clarification regarding admissibility of deduction under section 80P of the Income-Tax Act, 1961.

Please refer to your letter No. DCUS/30688/2007, dated 28.03.2007 addressed to Chairman, Central Board of Direct Taxes, on the above given subject.

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 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 primary Co-operative bank.

Thus, if the Delhi Co-op Urban T & C Society Ltd. does not fall within the meaning of "Cooperative Bank" as defined in part V of the Banking Regulation Act, 1949, sub-section(4) of section 80P will not apply in this case.

The issues with the approval of Chairman, Central Board of Direct Taxes."

7. From the above clarification, it can be gathered that sub-section (4) of section 80P will not apply to an assessee which is not a co-operative bank. In the case clarified by CBDT, Delhi Coop Urban Thrift & Credit Society Ltd. was under consideration. Circular clarified that the said entity not being a cooperative bank, section 80P(4) of the Act would not apply to it. In view of such clarification, we cannot entertain the Revenue's contention that section 80P(4) would exclude not only the cooperative banks other than those fulfilling the description contained therein but also credit societies, which are not cooperative banks. In the present case, respondent assessee is admittedly not a credit co-operative bank but a credit

co-operative society. Exclusion clause of sub-section (4) of section 80P, therefore, would not apply. In the result, Tax Appeals are dismissed.

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