

**NOTICE UNDER SECTION 271(1)( c ) READ WITH SECTION 274 OF THE INCOME - TAX ACT, 1961.****PAN- AAEAS5258B****To,**

**SHRI OM SAI CO-OP CREDIT SOC. LTD.  
4 AC/ 1247, NEAR THE NATIONAL SARVODAYA  
HIGH SCHOOL,  
C. G. GIDWANI MARG,  
OPP. DUDHESWAR MANDIR,  
CHEMBUR, MUMBAI- 400 074.**

pen 118 IP-143  
2017-18

Whereas in the course of proceeding before me for the assessment year **2015-16**, It appears to me that you :-

- Have without reasonable cause failed to furnish me return of income which you were required to furnish by a notice given under section 22(1)/ 22(2)34 of the Indian Income- tax Act,1922 or which you were require to furnish under section 139(1) or by a notice given under section 139(2)/ 148 of the Income tax Act, 1961 or have without reasonable cause failed to furnish it within the time allowed and the manner required by the said section 139(1) or by such notice.
- Have without reasonable cause failed to comply with a notice under section 22(4)/23(2) of the Indian Income –tax Act,1922 or under section 142(1)/143(2) of the Income-tax Act,1961.
- **Have concealed the particulars of your Income or furnished inaccurate particulars of such Income.**
- You are hereby requested to appear before me at Office Addressed within **15 days** receipts of this Notice and show cause why an order imposing a penalty on you should not be made under section 271 of the Income-Tax Act,1961. If you do not wish to avail yourself of this opportunity of being heard in person or through authorized representative you may show cause in writing on or before the said date which will be considered before any such order is made **under section271(1)(c).**
- **Penalty proceeding under section 271(1)(c) initiated.**

**(SEAL)**

**Place: Mumbai.  
Date: - 30/11/2017**



  
**(UPENDRA KUMAR)**  
**Income Tax Officer -27(3)(3),**  
**Mumbai**

Notice of Demand under Section 156 of the Income-tax Act, 1961

To,

PAN: AAEAS5258B

**SHRI OM SAI CO-OP CREDIT SOC. LTD.**

**4 AC/1247, NEAR THE NATIONAL  
SARVODAYA HIGH SCHOOL,  
C. G. GIDWANI MARG,  
OPP. DUDHESWAR MANDIR,  
CHEMBUR, MUMBAI- 400 074.**

OED 181 18.18  
2017 - 18

1. This is to give you notice that for the assessment year 2015-16 a sum of Rs. 7,37,250/- details of which are given on the reverse, has been determined to be payable by you.
2. The amount should be paid to the Manager, authorized bank/state Bank of India, Reserve Bank of India at MUMBAI within 30 days of the service of the notice. The previous approval of the Additional Commissioner of Income tax has been obtained for allowing a period of less than 30 days for the payment of the above sum. A challan is enclosed for the purpose of payment.
3. If you do not pay the amount within the period specified above, you shall be liable to pay simple interest at one and one-half per cent for every month or part of month from the date commencing after end of the period aforesaid in accordance with Section 220(2).
4. If you do not pay the amount of the tax within the period specified above penalty (which may be as much as the amount of tax in arrear) may be imposed upon you after giving you a reasonable opportunity of being heard in accordance with Section 221.
5. If you do not pay the amount within the period specified above proceedings for the recovery thereof will be taken in accordance with Sections 222 to 229 231 and 232 of the Income-tax Act, 1961.
6. If you intend to appeal against the assessment/fine/ penalty, you may present an appeal under Part A of Chapter XX of the Income-tax Act 1961, to the Deputy Commissioner (Appeals) of Income-tax/Commissioner of Income-tax (Appeals)-25 within thirty days of the receipt of this notice, in Form no 35, duly stamped and verified as laid down in that form.
7. The amount has become Due as a result of the order the ITO/Dy. Commissioner (Appeals) of Income-tax Dy. Commissioner of Income-tax/Commissioner of Income-tax (Appeals)/Chief Commissioner or Commissioner of the Income-tax 26 under section 143(3) of the Income-tax Act, 1961. If you intend to appeal against the aforesaid order, you may present an appeal under Part B of Chapter XX of the said Act to the Income-tax Appellate Tribunal .....within sixty days of the receipt of that order, in Form No. 36, duly stamped and verified as laid down in that form.

Place: MUMBAI  
Date: 30/11/2017



  
**(UPENDRA KUMAR)**  
Income tax officer wd.27 (3)(3)  
Mumbai.

**NOTES:**

1. Delete inappropriate paragraphs and works.
2. If you wish to pay the amount by cheque, should be drawn in favour of the manager, authorizes bank/ State Bank of India/ Reserve Bank of India
3. If you intend to seek extension of time for payment of the amount or propose to make the payment by instalments, the application for such extension, or as the case may be, permission to pay by installments, should be made to the Assessing Officer before the expiry of the period specified in paragraph 2. Any request received after the expiry of the said period will not be entertained in view of the specific provisions of Section 220 (3).

INCOME TAX DEPARTMENT

<b>1.</b>	<b>Name &amp; Address of the Assessee</b>	:	<b>SHRI OM SAI CO-OP CREDIT SOCIETY LIMITED. 4 AC/1247, NEAR THE NATIONAL SARVODAYA HIGH SCHOOL, C.G. GIDWANI MARG, OPP. DUDHESWAR MANDIR, CHEMBUR, MUMBAI – 400074.</b>
<b>2</b>	<b>PAN</b>	:	<b>AAEAS5258B</b>
<b>3</b>	<b>District/Ward/Circle</b>	:	<b>INCOME TAX OFFICER- 27(3)(3) MUMBAI</b>
<b>4</b>	<b>Status</b>	:	<b>AOP</b>
<b>5</b>	<b>Assessment Year</b>	:	<b>2015-16</b>
<b>6</b>	<b>Whether Resident/Resident but not Ordinarily Resident/Non- Resident.</b>	:	<b>RESIDENT</b>
<b>7</b>	<b>Method of Accounting</b>	:	<b>-</b>
<b>8</b>	<b>Previous Year</b>	:	<b>2014-15</b>
<b>9</b>	<b>Nature of Business</b>	:	
<b>10</b>	<b>Date(s) of hearing</b>	:	<b>AS PER ORDER SHEET</b>
<b>11</b>	<b>Date of order</b>	:	<b>30.11.2017</b>
<b>12</b>	<b>Section and sub-section under which the Assessment is made.</b>	:	<b>143(3) OF THE INCOME TAX ACT</b>

**ASSESSMENT ORDER**

The Return of income for A.Y. 2015-16 declaring **Rs. Nil/-** income was e-filed by the assessee on 09-03-2017. The return was processed u/s.143(1) of the I T Act.

2. Subsequently, the case was selected for scrutiny and notice under section 143(2) of the I T Act dated 18-09-2017 was issued and served upon the assessee. Further, opportunity was given to the assessee by issue of notice u/s.142(1) of the I T Act , to present the case before the undersigned.

3. In response to the statutory notices issued the assessee's authorized representative: Shri Amol Chavan emailed the requisite details called for.



4. **Disallowance of deduction claimed u/s.80P of the I T Act.**

4.1 The assessee is a co-operative credit society and doing banking business. It collects deposits from members under various scheme. Its major source of income as is evident from the P&L A/c is on account of interest on loan to members and from fixed deposits. In the return of income, the assessee has shown gross total income at Rs. **11.83.002/-** and the entire amount has been claimed as deduction U/s.80P of the Act.

4.2 The assessee was requested to explain why the deduction claimed u/s.80P(2)(a)(i) should not be disallowed in view of the amended provisions of Section 80P(2)(a)(i) of the Income Tax Act 1961. In response to this, the assessee vide emailed dated 29/11/2017 stated as under:-

- *The assessee has claimed deduction u/s 80P being a co-operative society, deduction under section 80P(2)(a)(i) of the Income Tax Act, 1961 is available to the Co-operative society engaged in Carrying on the business of banking or providing credit facilities to its members. The deduction allowed is the whole of the amount of profits and gains of business attributable such activity.*
- *The assessee has been duly registered as co-operative credit society per section 9(1) of the Maharashtra Co-Operative Societies Act, 1961 vide registration No. BOM/WF-S/RSR/CR/1859/1999-2000. (Refer attached registration certificate).*
- *As evident in the registration certificate society has been classified as Resource Society (sub class- Credit Resource Society) in accordance with Rule 10(1) of the Maharashtra Co-operative Societies Rules, 1961 fulfills the conditions prescribed in the Section 80P(2)(a)(i). Hence, the deduction under Section 80P(2)(a)(i) should be allowed.*

4.3 During the course of assessment proceedings, the assessee had made a detailed submission vide his letter dated 29.11.2017, wherein the assessee tried to distinguish its activity from the activity of a co-operative bank. As the argument put forth by the assessee was not found to be acceptabl.The said contentions of the assessee are being dealt with hereunder :



4.3.1 The assessee has sought to establish that as per part V of the Banking Regulation Act, the assessee is not a cooperative bank. The relevant paras of Part V are reproduced below for purpose of brevity :-

1. Section 5(ccii) "co-operative credit society" means a co-operative society, the primary object of which is to provide financial accommodation to its members and includes a co-operative land mortgage bank
2. Section 5(ccia) "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.
3. Section 5(ccv) "primary co-operative bank" means a cooperative society, other than a primary agricultural credit society.....
4. Section 5(ccvi) "primary credit society" means a co-operative society, other than a primary agricultural credit society, ....."

4.3.2 However, what is important is the definition of "co-operative bank" mentioned in Section 80P(4) of the I.T.Act, 1961. Explanation to Section 80P(4) states that :-

"For the purpose of this sub-section, -

(a) "**co-operative bank**" and "primary agricultural credit society" shall have the meanings respectively assigned to them in part V of the Banking Regulation Act, 1949 (10 of 1949);"

4.3.3 The definition of Co-operative bank is provided in 5(cci) & (ccv) of Part V of the Banking Regulation Act, 1949 which are reproduced below:-

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

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

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

(ii) the paid up share capital and reserves of which are not less than one lakh of rupees; ....."

5(ccii-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;"



4.3.4 As per the above definition in part V of the Banking Regulation Act, a cooperative society other than a primary agricultural credit society, the primary object or principal business of which is the transaction of banking business, the paid up capital & reserves of which are not less than Rs. one lakh and is registered under relevant Central or State Act, is a co-operative bank. The assessee is co-operative society, whose principle business is banking business and its share capital and reserves exceeds Rs. one lakh and is registered under the Maharashtra State Co-operative Societies Act. Thus, the assessee squarely falls within the definition of "co-operative bank" provided in part V of the Banking Regulation Act, 1949.

4.3.5 As regards applicability of section 80P(4), there is no dispute about the fact that the assessee is carrying on the business of accepting deposits and advancing loans albeit from and to its members. Accepting deposits and advancing loans are the primary activity of any bank whether cooperative or otherwise. The assessee society is doing the business of accepting deposits and giving credit facilities to its members like all other cooperative banks and credit societies. Now, let us analyze the relevant provisions of the Income Tax Act, 1961:

Section 80P(4) reads as under:-

*"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."*

4.3.6 A plain reading of the above provisions indicates that the said provisions are applicable to all 'co-operative banks' except **a primary agricultural credit society or a primary cooperative agricultural and rural development bank**. The assessee society is **neither** a primary agricultural credit society **nor** a primary cooperative agricultural and rural development bank. This takes us to the question of definition of 'co-operative bank'.

4.3.7. Explanation to Section 80P(4) of I.T.Act, 1961 provides the answer to this question. As per the explanation, the definition provided in Part V of Banking



Regulation Act, 1949 is applicable. As per the definition given in the said part V of the Banking Regulation Act, the assessee is squarely covered in the definition of 'co-operative bank' as discussed in detail in above paras.

4.3.8. A further clarification regarding the applicability of the amended provisions of section 80P(4) is available in the explanatory notes to the Finance Act, 2006, which is reproduced below:-

**"22. Withdrawal of tax benefits available to certain co-operative banks:**

22.1 Section 80P, *inter alia*, provides for a deduction from the total income of the Co-operative societies engaged in the business of banking or providing credit facilities to its members, or business of a cottage industry, or of marketing of agricultural produce of its members, or processing, without the aid of power, of the agricultural produce of its members, etc.

22.2 The co-operative banks are functioning at par with other commercial banks, which do not enjoy any tax benefit. Therefore, section 80P has been amended and a new sub-section (4) has been inserted to provide that the provisions of the said 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. The expressions co-operative bank, primary agricultural credit society and primary cooperative agricultural and rural development bank have also been defined to lend clarity to them.

22.3 Further, a new sub-clause (viia) has been inserted in clause (24) of section 2 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.

22.4 Applicability - From assessment year 2007-08 onwards."

4.3.9. The above explanatory notes further clarifies that a new sub-clause (viia) has been inserted in clause (24) of section 2 of the Income Tax Act, 1961 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. In other words, this explanatory note clarifies that the provisions of Section 80P(4) applies to co-



operative societies carrying on business of banking including providing of credit facilities to its members. **The above explanatory note to Finance Bill makes it abundantly clear that but for two primary units i.e. primary agricultural credit society and primary cooperative agricultural and rural development bank, all other co-operative societies are no longer eligible for deduction u/s.80P w.e.f. A.Y. 2007-08.**

4.3.10 For the sake of ready reference and clarity, the newly inserted sub-clause (viia) in clause (24) of Section 2 of the Income Tax Act, 1961, is reproduced below:-

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

4.3.11 As can be seen, Section 80((4) and 2(24)(viia) have been inserted in the statute by the Finance Bill, 2006 w.e.f. 1.4.2007. Definition of a co-operative bank does not enlist the condition of the conduct of the 'business of banking' as the criterion for a co-operative society to be a cooperative bank. In fact, it is not even stated as one of the qualifying activities; the sole and defining activity that qualifies a co-operative society to be a co-operative bank, be it at the primary, district, or state level, is the financing of its members, rendering the conduct of the 'business of banking'. Clause (viia) inserted by Finance Act, 2007 in Sec.2(24) of the Act, defining 'income' inclusively, to include the profits and gains of any business of bank (including providing credit facilities) carried on by a co-operative society with its members. **Thus, the amendment only impacts co-operative societies and that too only those in the business of banking, which is construed broadly so as to include providing credit facilities to the constituents. The only purpose that the amendment therefore, serves, is to delineate such income of the specified entities (co-operative societies including providing credit facilities) separately and further clarify that for the purposes of the Act the financing of its constituents is to be considered as integral to banking i.e. as part of the business of banking.**



4.3.12. The Income Tax Act 1961 provides the definition of 'co-operative society' in clause (19) of section 2 which reads as under:-

**“(19) “co-operative society” means a co-operative society registered under the Co-operative Societies Act, 1912 (2 of 1912), or under any other law for the time being in force in any state for the registration of co-operative societies.”**

4.3.13. The assessee is a co-operative society registered under the Maharashtra State Cooperative Societies Act and, therefore, in view of the legal provisions mentioned above, the provisions of Section 80P(4) are clearly applicable to the assessee. It is not necessary to have the word 'bank' attached to the name. The explanatory note and the new sub-clause (viiia) quoted above also clearly indicates that a **cooperative society providing credit facilities to its members** is also covered by the amended provisions of the Act.

4.3.14 In the case of M/s **THE CITIZEN CO-OPERATIVE SOCIETY LIMITED** in CIVIL APPEAL NO. 10245 OF 2017 (ARISING OUT OF SLP (C) NO. 20044 OF 2015), the assessee filed an SLP before Hon'ble Supreme Court against issue of 80P disallowance. The Hon'ble Supreme Court dismissed the SLP of the assessee and decided the case in favour of the Revenue. It is in this background, a specific finding is also rendered that the principle of mutuality is missing in the instant case. *Though there is a detailed discussion in this behalf in the order of the Assessing Officer, our purpose would be served by taking note of the following portion of the discussion:* "As various courts have observed that the following three conditions must exist before an activity could be brought under the concept of mutuality;

*that no person can earn from him;*

*that there a profit motivation;*

*and that there is no sharing of profit.*

It is noticed that the fund invested with bank which are not member of association welfare fund, and the interest has been earned on such investment for example, ING Mutual Fund [as said by the MD vide his statement dated 20.12.2010]. [Though the bank formed the third party vis-à-vis the assessee entitled between contributor and recipient is lost in such case. The other



ingredients of mutuality are also found to be missing as discussed in further paragraphs]. In the present case both the parties to the transaction are the contributors towards surplus, however, there are no participators in the surpluses. There is no common consent of whatsoever for participators as their identity is not established. Hence, the assessee fails to satisfy the test of mutuality at the time of making the payments the number in referred as members may not be the member of the society as such the AOP body by the society is not covered by concept of mutuality at all

4.3.15 In view of the facts and circumstances and the legal provisions explained above, I hold that the assessee is not eligible for deduction of **Rs. 11,83,002/-** u/s.80P of the Income Tax Act 1961 and added to the total income . Prima facie, it appears that by making a wrong claim for deduction u/s.80P the assessee has concealed the income and/or concealed the particulars of income subject to tax within the meaning of Section 271(1)(c) read with explanation 1. Therefore, **penalty proceedings u/s.271(1)(c) are initiated separately.**

5. **Addition on account of House property:** During the course of assessment proceedings, it is observed that assessee has received rent of Rs. 6,60,000/-and as per computation of Income, it is stated that Income considered under other head of Income (Rental Income) and not offered for taxation. Accordingly assessee was asked to give the details of property held by you and income thereof vide notice u/s 142(1) dated 08/11/2017.

5.1 The assessee vide emailed on 29/11/2017 stated that the assessee has received Income in the form of rental receipts from the Mubai District Central Co-Operative Bnak Ltd of Rs. 6,60,000/- during the AY 2015-16. The same has been considered in the return of income as Business Income. It should have been considered as Income From House Property.

5.2 Considering the above facts and admission of the facts of the assessee, the amount of Rs. 6,60,000/- is considered as Income received as rent and it should be tax under head income from House Property after reducing 30% standard deduction of the Income Tax Act,1961. The house



property income works out to **Rs. 4,62,000/-** (Rs. 6,60,000 less 30% standard deduction of Rs. 6,60,000/-) and added to the total Income. **Penalty proceeding u/s 271(1)(c ) is separately initiated for concealment of the Income.** The income from house property is determined as under:-

Income from rent received-	Rs. 6,60,000/-
Less: Deduction u/s 24 @ 30%	<u>Rs. 1,98,000/-</u>
<b>Income from house property</b>	<b>Rs.4,62,000/-</b>

6. In view of the above facts, the total income of the assessee is computed as below:-

	Particulars	Rs.
I	<b>Business Income as per ROI</b>	Nil
	<b>Add: Disallowed u/s 80(P) as discussed above</b>	<b>11,83,002</b>
II	<b>House property Income as discussed in Para 5</b>	<b>4,62,000</b>
	<b>Total Income</b>	<b>16,45,002</b>
	<b>Total R/O</b>	<b>16,45,000</b>

7. Assessed u/s 143(3) of the Income tax Act. Charged interest u/s. 234B & 234C of the I.T. Act as applicable. **Issue penalty Notice u/s 271(1)(c) of the I.T. Act, 1961.** Credit given for taxes already paid, if any. Issued demand notice and challans accordingly.



*(UPENDRA KUMAR)*  
Income tax Officer- 27(3) (3),  
Mumbai.

~~04/10/11  
2017-18~~

PAN	AAEAS5258B	Status	Cooperative Society
Asmt Year	2015-16	Residential Status	Resident
Name	M/S SHRI OM SAI CO OPERATIVE CREDIT SOCIETY LIMITED	D&CR No	002 005

Address	4 AC 1247	Order U/s	143 (3)
	4 AC 1247	Read/With Sec	
	NEAR THE NATIONAL SARVODAYA HIGH SCHOOL C.G.GIDWANI MARG MUMBAI MAHARASHTRA 400074	Date of Order	30/11/2017
			Amount (Rs.)

1. Income from Salary	
2. Income from House Property	4,62,000
3a. Income from non-speculative business	23,66,004
3b. Income from speculative business	
3c. Profit and gains from specified business	
4a. Short term capital gains(u/s 111A)	
4b. Short term capital gains (Others)	
4c. Long term capital gains (With Indexation)	
4d. Long term capital gains (Without Indexation)	
4e. Total long term capital gains	
5a Income from other source other than from owning Race	
5b. Winning from lotteries/ crossword puzzles etc.	
5c. Income from owning race horses	
5d. Total income from other sources	
6. Total of five heads of income	28,28,004
-----Detail income after current year losses-----	
!7a. Current year loss adjusted against Salary Income	
!7b. Current year loss adjusted against House Property Income	
!7c. Current year loss adjusted against business Income	
!7d. Current year loss adjusted against Short Term Capital Gain	
!7e. Current year loss adjusted against Long Term Capital Gain	
!7f. Current year loss adjusted against Other Sources Income	
!7g. Total Current Year Loss Adjustment	
!8 Total Income remaining after Current year loss adjustment	28,28,004!
-----Detail income after Brought Forward losses-----	
!9a. Brought forward Loss Adjusted Against House property	
!9b. Brought forward Loss Adjusted Against Business Income	
!9c. Brought forward Loss Adjusted Against Short Term Capital Gain	
!9d. Brought forward Loss Adjusted Against Long Term Capital Gain	
!9e Brought forward Loss Adjusted Against Other Sources	
!9f. Total Brought Forwarded Loss Adjustment	
10. Gross Total Income	28,28,004
11. Miscellaneous Incomes	
12. Deductions under Chapter VIA	11,83,002
13. Assessed Income	16,45,000
14. Agricultural Income	
15. Aggregate Income	16,45,000
16. Deemed Income U/s 115JB (MAT INCOME)	
17. Deemed income u/s 115JC (AMT Income)	

INCOME TAX COMPUTATION FORM

TAX CALCULATION

1.Gross Tax	4, 90, 500
2.Rebate	
3.Surcharge	14, 715
4.Education Cess	
5.Tax credit u/s 115JAA/115JD	
6.Relief u/s 89(1) / u/s 90 / u/s 91	5, 05, 215
7.Net Tax	83, 448
8.Interest u/s 234A	19
8a.Delay Period	1, 44, 936
9.Interest u/s 234B	1, 44, 936
10.Interest u/s 234C	7, 33, 599
11.Gross Demand	

TAXES PAYMENT DETAILS

1.TDS/TCS	66, 000
2.Advance Tax	0
3.Self Assessment Tax	0
4.Regular Assessment Tax	-66, 000
5.Amount already refunded	66, 000
6.Total Tax paid	0

DIVIDEND DISTRIBUTION TAX DETAILS

1.Additional Income Tax And Interest Payable on Distributed Profits	0
2.Additional Income Tax And Interest Paid	0

FINAL DETAILS

1.Total tax and Interest Payable	733599
2.Interest u/s 244A	0
3.Interest made u/s 244A recovered	-
4.Delay period attributable to Assessee	330
5.Interest u/s 234D	3, 317
6.Interest u/s 220	

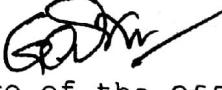
DEMAND/REFUND

1.Net amount payable/refundable	7, 37, 250
In Words Rupees:	

SEVEN LAKH THIRTY SEVEN THOUSAND TWO HUNDRED AND FIFTY ONLY.

Signature of the UDC/TA  
Name of the UDC/TA



  
Signature of the Officer  
AO Code MUMW22203  
WARD 27(3)(3), MUMBAI

**IN THE HIGH COURT OF KARNATAKA AT BANGALORE**

DATED THIS THE 27<sup>TH</sup> DAY OF JUNE, 2014

PRESENT

**THE HON'BLE MR. JUSTICE N KUMAR**

AND

**THE HON'BLE MR. JUSTICE B MANOHAR**

ITA No. 598/2013

**BETWEEN:**

1. The Commissioner of Income Tax  
C. R. Building,  
Queens Road,  
Bangalore.
2. The Income Tax Officer  
Ward – 4(1),  
C.R. Building,  
Queens Road,  
Bangalore.

**...Appellants**

**(By Sri Kamaladhar. G, Adv.)**

**AND:**

M/s. Bangalore Credit  
Co-operative Society Ltd.,  
No.723, New No. 37/1,

36<sup>th</sup> Cross,  
7<sup>th</sup> Main, 4<sup>th</sup> Block,  
Jayanagar,  
Bangalore 560 011.

...Respondent

(By Sri A. Shankar & Sri M. Lava, Advs.)

This ITA filed under Section 260-A of I.T. Act, 1961 arising out of order dated 13.06.2013 passed in ITA No.1659/Bang/2012, for the Assessment year 2009-10, praying to (i) formulate the substantial questions of law stated therein; (ii) set aside the order passed by the ITAT, Bangalore in ITA No.1659/Bang/2012 dated 13.06.2013 confirming the order of the Appellate Commissioner and confirm the order passed by the Income Tax Officer, Ward-4(1), Bangalore.

This ITA coming on for admission this day, **N. KUMAR J** delivered the following:

**J U D G M E N T**

This appeal is preferred by the revenue challenging the order passed by the Tribunal, wherein it is held that sub-section (4) of Section 80P of the Income Tax Act, 1961 is applicable only to co-operative banks and not to credit co-operative societies.

2. The substantial questions of law which are raised in the appeal are as under:

- (i) Whether the Tribunal was correct in upholding the CIT(A)'s order directing the assessing officer to grant deduction under Section 80P(2)(a)(i) of the Act of Rs.70,58,624/- for assessment year 2009-10 by relying on the earlier order of ITAT on identical issue without appreciating that the revenue had not accepted the said order and an appeals under Section 260A is pending before this Hon'ble Court for adjudication?
- (ii) Whether the Tribunal is correct in holding that the assessee is not a Co-operative Bank but only a Co-operative society engaged in providing credit facilities to its members?
- (iii) Whether the Tribunal was correct in not appreciating the facts that the main motto of the co-operative society is lending for its members which is in the nature of banking transaction, treated on par as per the new clause introduced in the definition of income to section 2(24)(viiia) and comes

under the purview of 80P sub-section (4) of the Act as inserted in Finance Act 2006 with effect from 01.04.2007?

- (iv) 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 co-operative banks and not to credit co-operative societies, which are engaged in business of banking, including providing credit facilities to their members?
- (v) Whether the Tribunal was correct in holding that the assessee is a c-operative society and not a co-operative 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 Banking Regulation Act, 1949 wherein it is defined that Co-operative Bank includes primary co-operative Bank, which is further defined as co-operative society with the primary object of transactions of Banking business?”

3. The Tribunal in its order has set out the difference between the co-operative bank and society as under:

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

	follow the rules, regulations and directions issued by Reserve Bank of India (RBI)	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	RBI has the power to inspect accounts and over all functioning of the Bank	Registrar has the power to inspect accounts and over all 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

4. This Court had an occasion to consider the said questions in **ITA No.5006/2013** dated **05.02.2014** in the case of **THE COMMISSIONER OF INCOME TAX vs. SRI BILURU GURUBASAVA PATTINA SAHAKARI SANGHA NIYAMITHA, BAGALKOT**, where, after referring to the

relevant provisions of the Income Tax Act, and the banking Regulation Act, held as under:

"If a Co-operative Bank is exclusively carrying 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 rural development bank. The Legislature did not want to deny the said benefit 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 co-operative bank which is exclusively carrying on banking business i.e., the purport of the amendment. If the assessee is not a Co-operative bank carrying on exclusively banking business and if it does not possess a license from the Reserve Bank of India to carry on business, then 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 facilitates to its members. The object of the aforesaid amendment is not to exclude the benefit extended under Section 80P(i) to the society.”

Therefore, the said issue was held in favour of the assessee and against the revenue.

5. The said judgment answers the issues in this case also. Accordingly, we pass the following order.

The appeal is dismissed. The substantial questions of law are answered in favour of the assessee and against the revenue.

(sd/-)  
**JUDGE**

(sd/-)  
**JUDGE**

VP/-

Income Tax Appellate Tribunal - Indore

Bhee Thrift & Credit Co-Operative ... vs Department Of Income Tax

1

IN THE INCOME TAX APPELLATE TRIBUNAL  
INDORE BENCH, INDORE

BEFORE SHRI JOGINDER SINGH, JUDICIAL MEMBER

And

SHRI R.C. SHARMA, ACCOUNTANT MEMBER

ITA No. 217/Ind/2012

A.Y. 2008-09

ACIT-3(1), Bhopal :: Appellant

Vs

BHEE Thrift & Credit  
Co-op. Society, Bhopal  
PAN - AAAAB-0697H

:: Respondent

Appellant by Shri Keshav Saxena  
Respondent by Shri Ajay K. Chhajed

Date of hearing 25.07.2012  
Date of pronouncement 06 .08.2012

O R D E R

PER JOGINDER SINGH , judicial member The Revenue is aggrieved by the impugned order dated 31st January, 2012, on the ground that on the facts and in the circumstances of the case, the ld. first appellate authority erred in deleting the addition of Rs.39,74,958/- made on account of credit balance outstanding as the persons or group concerns are relatives of the partners of the firm.

2. During hearing, we have heard Shri Keshave Saxena, ld. CIT(DR) and Shri Ajay K. Chhajed, ld. Counsel for the assessee. The crux of the arguments on behalf of the Revenue is that the present issue is covered against the assessee by the order of the Tribunal in the case of M/s. Vidisha Bhopal Kshetriya Gramin Bank, Vidisha (ITA Nos.215 & 216/Ind/2011, AYs 2007-08 & 2008-09, order dated 18.6.2012). The learned CIT DR also contended that after insertion of sub-section (4) of section 80P of the Act, with effect from 1.4.2007, the deduction is only available to primary agricultural credit society and primary cooperative agricultural and rural development bank by further submitting that deduction u/s 80P of the Act is not available to the assessee because the assessee is neither a primary agricultural credit society nor a primary cooperative agricultural and

rural development bank.

2.1 On the other hand, the learned counsel for the assessee strongly defended the impugned order by submitting that only employees of BHEL are the members of this credit society who deposit monthly subscriptions (thrift) with the assessee society and they are advanced loans by the credit society out of such deposits. Therefore, it was contended that the assessee society is engaged in providing credit facilities to its members only and not to the public at large, therefore, the society is entitled to deduction u/s 80P of the Act.

2.3 We have considered the rival submissions and perused the material available on record. The learned AO disallowed the claimed exemption u/s 80P and added to the total income of the assessee. On appeal, the same was directed to be deleted by the learned CIT(A) against which the Revenue is in appeal before the Tribunal. Before coming to any conclusion, we are reproducing hereunder the relevant portion from the impugned order :-

"2.3 On examination it is found that the appellant society is an duly registered cooperative society. It is providing credit to its members only. Hence is entitled for deduction u/s 80P(2). The AO's finding that the society is not in entitled for deduction u/s 80P(2) due to the reason that it is not carrying on the business of banking is ill founded. Section 80P(2) provides that a cooperative society engaged in carrying on the business of banking or providing credit facilities to its members is eligible for deduction u/s 80P(2). Its shows that a society carrying on either business of banking or providing credit facilities is entitled for deduction. Since the appellant society is providing credit facilities to its members, it is entitled deduction u/s 80P(2). The AO is directed to allow deduction u/s 80P(2) at Rs. 18435916/- This ground of appeal is allowed."

2.4 If the assertion made by the learned respective counsel, facts available on record, observations made in the assessment order and the conclusion drawn in the impugned order are kept in juxtaposition and analysed, there are certain undisputed facts which are summarised as under :-

- (a) the assessee is registered as a thrift and credit cooperative society under Madhya Pradesh Cooperative Societies Act,
- (b) The members of the society only can be from the employees of BHEL and not the public at large.
- (c) The society is engaged in providing credit facilities to its members only.
- (d) The society is forbidden to grant any loan to any person other than its members meaning thereby the object is of "mutual benefit" only.
- (e) The objects of the society are fortified by the letter of the President dated 19th January, 2012 (page 50 of the paper book) as per which it has been specifically mentioned that the society is restricted to employees of BHEL and no outsider is permitted to become a member or share holder

of depositor or lender or borrower.

(f) The assessee society is forbidden to grant any loan, advance or any kind of assistance to any person other than its members

(g) The accounts of the assessee society are duly audited from time to time on prescribed Form No. 3CB (audit report u/s 44AB) of the Act available on pages 32 to 49 of the paper book.

2.5 We have also perused the registration certificate dated 23rd April, 1993 issued by the office of the Deputy Registrar, Cooperative Societies, Bhopal (pages 7 to 31 of the paper book). At page 11 of the paper book, there is a mention of membership as per which also only the permanent employees of BHEL can become the member of the assessee society. Even on retirement of such members, there are certain restrictions. The assessee as on 31.9.2008 declared income of Rs.38,560/- after claiming deduction of Rs.1,84,35,916/- u/s 80P of the Act. Pursuant to various notices, the assessee submitted the required details, explanations, documents and evidences as is evident from the assessment order. If these facts are analysed with the provisions of section 80P(2)(a)(i) of the Act, which speaks about deduction in respect of income of cooperative societies. As per sub-section (1) of section 80P of the Act, where, in the case of an assessee, being a cooperative 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. Clause (a) speaks about cooperative societies which are engaged in carrying on the business of banking or providing credit facilities to its members. In the present appeal also, the assessee society is providing credit facilities to its members only and not to the public at large, therefore, the case of the assessee is covered by this section and not by sub-section (4) of section 80P which was inserted by the Finance Act, 2006 with effect from 1.4.2007. Earlier sub-section (4) was omitted by the Finance Act, 1969 with effect from 1.4.1970. The assessee society is neither a bank nor a rural development bank, therefore, the assertion made by the learned CIT DR is not applicable to the facts of the present appeal. The finding of the AO that the assessee society is carrying on business of banking is also contrary to the facts. Since the assessee society is providing credit facilities to its members only, therefore, clearly entitled to deduction u/s 80P(2) of the Act, consequently, we find no infirmity in the stand of the learned CIT(A). It is affirmed.

Finally, the appeal of the Revenue is dismissed. This order was pronounced in the open Court on 6.8.7.2012.

Sd

sd

(R.C.SHARMA)  
ACCOUNTANT MEMBER

(JOGINDER SINGH)  
JUDICIAL MEMBER

Dated: 6.8.2012

Copy to: Appellant, Respondent, CIT, CIT(A), DR, Guard File Dn/-2626

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.

"8oP(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. 8oP(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. 8oP(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. 8oP(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. 8oP(2)(a)(i) and Sec. 8oP(4) together, we find that the provisions of Sec. 8oP(4) mandates that the provisions of Sec. 8oP 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. 8oP(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. 8oP(4), the provisions of Sec. 8oP(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 8oP(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 8oP(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

\*A\*

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

**IT : Where assessee was not a credit co-operative bank but a credit co-operative society, its claim for deduction under section 80P(2)(a)(i) could not be rejected by invoking exclusion clause of sub-section (4) of section 80P**

■ ■ ■

[2014] 49 taxmann.com 571 (Gujarat)

**HIGH COURT OF GUJARAT**

**Commissioner of Income-tax**

v.

**Jafari Momin Vikas Co-op. Credit Society Ltd.\***

AKIL KURESHI AND MS. SONIA GOKANI, JJ.

TAX APPEAL NOS. 442, 443 & 863 OF 2013

JANUARY 15, 2014

**Section 80P of the Income-tax Act, 1961 - Deductions - Income of co-operative societies (Credit co-operative society) - Whether where assessee was not a credit co-operative bank but a credit co-operative society, its claim for deduction under section 80P(2)(a)(i) could not be rejected by invoking exclusion clause of sub-section (4) of section 80P - Held, yes [Para 7] [In favour of assessee]**

**Circulars and Notifications : Circular No. 133, dated 9-5-2007.**

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#### **FACTS**

- The assessee was a co-operative credit society. It claimed the benefit of deduction under section 80P(1) by virtue of the provisions contained in section 80P(2)(a)(i).
- The Assessing Officer held that by virtue of section 80P(4), the assessee would not be entitled to the benefits of deduction under section 80P.
- The Commissioner (Appeals) as well as the Tribunal reversed the decision of the Assessing Officer on the premise that the assessee not being a bank, exclusion provided in sub-section (4) of section 80P would not apply.
- On revenue's appeal:

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#### **HELD**

- 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 the Legislature specified primary agricultural credit societies along with primary co-operative 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 the Central Board of Direct Taxes Circular No. 133 of 2007, dated 9-5-2007.
- From the clarification given in aforesaid circular, 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 view of such clarification, one cannot entertain the revenue's contention that section

80P(4) would exclude not only the co-operative banks other than those fulfilling the description contained therein but also credit societies, which are not co-operative banks. In the present case, the assessee is admittedly not a credit co-operative bank but a credit co-operative society. The exclusion clause of sub-section (4) of section 80P, therefore, would not apply. In the result, the revenue's appeal is dismissed.

[Para 7]

**Sudhir M. Mehta**, Advocate *for the Appellant. Hardik V. Vora*, Advocate *for the Respondent.*

## JUDGMENT

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**Akil Kureshi, J** - All the assessee's tax appeals involve identical question.

2. The Revenue has challenged the judgment of the Income-tax Appellate Tribunal (for short "the Tribunal") raising the following question for our consideration :

"Whether the hon'ble Tribunal is correct in allowing the deduction under section 80P(2)(a)(i) to the assessee's society even though the same is covered under section 80P(4) read with section 2(24)(viia) being income from providing credit facilities carried on by a co-operative society with its member ?"

3. The issue pertains to the interpretation of section 80P(2) and section 80P(4) of the Income-tax Act, 1961 ("the Act" for short). The respondent-assessee is a co-operative credit society and claims the 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 the case of a co-operative 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. The Revenue, however, contends that by virtue of newly amended sub-section (4) of section 80P inserted with effect from April 1, 2007, by the 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 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."

4. As per section 80P(4), the provisions of section 80P would not apply in relation to any co-operative 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.

5. The Assessing Officer held that by virtue of section 80P(4), the respondent-assessee would not be

entitled to the benefits of deduction under section 80P. The Commissioner (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".

**6.** 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 the Legislature specified primary agricultural credit societies along with primary co-operative 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 the Central Board of Direct Taxes Circular No. 133 of 2007, dated May 9, 2007. Circular provides 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 March 28, 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 Regulation 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 co-operative bank.

4. Thus, if the Delhi Co-op. Urban Thrift and Credit Society Ltd. does not fall within the meaning of 'co-operative bank' as defined in Part V of the Banking Regulation Act, 1949, sub-section (4) of section 80P will not apply in this case.

5. This is issued with the approval of the 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 the Central Board of Direct Taxes, the Delhi Co-op. Urban Thrift and Credit Society Ltd. was under consideration. The circular clarified that the said entity not being a co-operative 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 co-operative banks other than those fulfilling the description contained therein but also credit societies, which are not co-operative banks. In the present case, the respondent-assessee is admittedly not a credit co-operative bank but a credit co-operative society. The exclusion clause of sub-section(4) of section 80P, therefore, would not apply. In the result, the tax appeals are dismissed.

SUNIL

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\*In favour of assessee.

**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD****TAX APPEAL NO. 442 of 2013****With****TAX APPEAL NO. 443 of 2013****With****TAX APPEAL NO. 863 of 2013**

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COMMISSIONER OF INCOME TAX, GANDHINAGAR....Appellant(s)

Versus

JAFARI MOMIN VIKAS CO-OP CREDIT SOCIETY LTD....Opponent(s)

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Appearance:

MR SUDHIR M MEHTA, ADVOCATE for the Appellant(s) No. 1

MR.HARDIK V VORA, ADVOCATE for the Opponent(s) No. 1

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**CORAM: HONOURABLE MR.JUSTICE AKIL KURESHI**

and

**HONOURABLE MS JUSTICE SONIA GOKANI**

**Date : 15/01/2014**

**ORAL ORDER**

**(PER : HONOURABLE MR.JUSTICE AKIL KURESHI)**

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 member?"

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 co-operative 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 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.”

4. As per section 80P(4), the provisions of section 80P would not apply in relation to any co-operative 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.

5. 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".

6. 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 co-operative 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.

1. 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.

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 Regulation 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 Co-operative bank.

4. Thus, if the Delhi Co op Urban T & C Society Ltd. does not fall within the meaning of "Co-operative Bank" 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."

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 co-operative 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 co-operative banks other than those fulfilling the description contained

therein but also credit societies, which are not co-operative 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.

**(AKIL KURESHI, J.)**

SUDHIR

**(MS SONIA GOKANI, J.)**

Income Tax Appellate Tribunal - Panji

Athani Taluka Primay Teachers ... vs Assessee on 4 July, 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. 06/PNJ/2014

(ASST. YEAR :2010-11)

Athani Taluka Primary Teachers Vs.  
Co-operative Credit Society Ltd,  
Satya Road Extn. Area,  
Athani - 591 130,  
Dist : Belgaum.  
PAN : AAAAA8665Q  
(Appellant)

The Income Tax Officer,  
Ward - 1(1),  
Belgaum, Dist : Belgaum.  
(Respondent)

Assessee by : Shri Suresh G. Sholapurmath, C.A.  
Revenue by : Shri Nishant K. Ld. D.R.  
Date of Hearing : 26/06/2014  
Date of Pronouncement : 04/07/2014

ORDER

PER P.K. BANSAL This appeal has been filed by the assessee against the order of CIT(A), Belgaum dtd. 18.11.2013 for the assessment year 2010-11 by taking the following grounds of appeal :-

"1. 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. During the course of hearing it was claimed on behalf of the society that the main object of the society was to accept the deposits and to provide financial accommodation to the members of the society. It was, therefore claimed that the society is entitled to deduction u/s 80P(2)(a)(i) of the under chapter VIA it is co-operative society, carrying on the business of banking or providing credit facilities to its members."

2. The brief facts of the case for the assessment year 2010-11 are that the Assessee is a co-operative society registered under the Karnataka State Co- operative Societies Act. The Assessee filed return declaring gross total income (Asst. Year: 2010-11) of Rs.nil 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.13,31,840/- . 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) dismissed the appeal of the Assessee.

2.1 The ld. AR before us vehemently contended that the provisions of Sec. 80P(4) are not applicable in the case of the Assessee. The main contentions of the assessee are that Assessee is not a co-operative bank. The Assessee is a co-operative society duly registered under the Karnataka State Co-operative Societies Act, 1959. The primary object of the Assessee is improvement and encouragement of members financial position and creating self help and co-operation among the members. Also explaining proper utilization of funds, making savings, cutting unproductive investments. For this, our attention was drawn towards the bye-laws of the Assessee from (a) to (h). 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 (Asst. Year: 2010-11) 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 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.

2.2 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-

(Asst. Year: 2010-11) operative society is carrying on banking business, the Assessee will not be 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.

3. We 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 :--

(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 (Asst. Year: 2010-11) 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 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 (Asst. Year: 2010-11) 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 under sub-clause (i). These two activities are not alternate 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 pre-supposes 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 can 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 (Asst. Year:

2010-11) 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 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."

(Asst. Year: 2010-11)

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 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 :-

- "a) Improvement and encouragement of members financial position and creating self help and co-operation among the members. Also explaining proper utilization of funds, making savings, cutting unproductive investments.
- b) Collecting deposits from members on any names.
- c) Payment of handsome interest on members deposit to collect more funds, deposits.
- d) Obtaining loan facilities from Belgaum District Co-op Bank for the objects and aims of the society.
- e) Distribution of surety loans on salaries members by taking two sureties and recovery of such loans.

(Asst. Year: 2010-11)

- f) Creating Reserve funds and such other funds for persons who have dependent on members, staff members with permission of register as per byelaw.
- g) Societys excess fund balance shall be invested in National Saving Certificates, Shares, Nationalization banks and doing such activities offenly.
- h) With the permission of registrar any other activities for the development of the members."

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."

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 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 not accepting deposits of money from non-members.

9. The deposits so accepted are used by the Assessee co-operative society for lending or investment. Even out of the deposits so received, the loans have been given to the members of the society in accordance with the objects as enumerated above. Thus, in our opinion, condition no.1 does not stand satisfied and it can be said that the Assessee society was not carrying on banking business as it was not accepting deposits from the persons who were not members.

(Asst. Year: 2010-11)

10. 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. If we look into the bye-laws which consists of fund of the society, we noted that the types of the deposits which the assessee has accepted as per bye-laws are the same as are being accepted during the course of the carrying out the banking activities.

11. 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 Rs. 1 lac. Therefore, the Assessee satisfies the second condition.

12. So far as the third condition is concerned, we noted that Sec. 16 of The Karnataka State Co-operative Societies Act, 1959 permits admission of any other co-operative society as a member. The provisions of Sec. 16 are laid down as under :

"16. Persons who may become members - [(1) Subject to the provisions of Section 17, no person shall be admitted as a member of a co-operative society except the following, namely:--

[(a) an individual who needs the services of such co-operative society [and is residing in the area of the operation of the society] and is competent to enter into contract under the Contract Act, 1872 (Central Act IX of 1872);] [(a-1) a depositor;]

(b) any other co-operative society;

- (c) the State Government or the Central Government;
- (d) the Life Insurance Corporation of India, State Warehousing Corporation and such other institutions as may be approved by the State Government;

(Asst. Year: 2010-11)

(e) a firm, a company or any other body corporate constituted under any law for the time being in force including a society registered under the Karnataka Societies Registration Act, 1960 (Karnataka Act 17 of 1960);

(f) a Market Committee established under the Karnataka Agricultural Produce Marketing (Regulation) Act, 1966 (Karnataka Act 27 of 1966);

(g) a local authority.

Explanation.-For the purpose of this clause, local authority means, a Municipal Corporation, Municipal Council, Town Panchayat, Zilla Panchayat, Taluk Panchayat or Grama Panchayat constituted under any law for the time being in force] (2) No co-operative society shall, without sufficient cause, refuse admission to membership to any person duly qualified therefore under the provisions of this [Act, rules and bye-laws]"

The aforesaid provision of Sec.16 mandates admission of any other co-

operative society as a member of the co-operative society. The word used in Sec. 16(1) is shall. This fact is clarified further by sub-section (2) as reproduced hereinabove that no co-operative society shall refuse admission to the membership, without sufficient reason, to any person who is qualified to become member under the provisions of this Act, rules and 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. The person, as per sub-section (2), must be qualified for becoming member not only u/s 16(1) but also as per the rules and bye-laws of the co-operative society. We cannot read sub-section (2) in the manner that the rules and bye-laws cannot permit the admission of any other co-operative society as a member of the co-operative society. Had that been the intention of the legislature, they would have not used the words "this Act, rules and bye-laws" in sub-section (2).

13. We have gone through the bye-laws which contains the membership clause. bye-laws no.16 states as under :-

"16. Admission, Qualification, Rights and liabilities of the Members Qualification of the Member:

a) Member shall be working in the society's area of operation.

1. He must be teacher in Government Primary School. OR
  2. He must be head master in Govt Secondary School. OR (Asst. Year: 2010-11)
  3. He must be teacher in Pre-University Primary School.
  4. He must be employee of the society and shall be permanent.
- b) He should not be member in any other society.
- c) He must purchase at least one share along with application fee of Rs.10 and share fee of Rs.10.
- d) He should be qualified as per rules and regulations.
- e) He should deposit every month share membership fee regularly.
- f) He should give authority letter to officials if the society to deduct his dues from his salary. Such letter will not be taken back."

From clause 16, it is apparent that the bye-laws of society does not permit the admission of any other co-operative society as member. Thus the third condition for becoming primary co-operative bank is 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).

14. 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), Bangalore vs. M/s. Bangalore Commercial Transport Credit Co-operative (Asst. Year: 2010-11) 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-operative bank. We have also gone through the decision of this Bench in the (Asst. Year: 2010-11) 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."

15. 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 question involved was whether the Revisional Authority was justified in (Asst. Year: 2010-11) invoking his power u/s 263 without the foundational fact of the assessee being co-operative bank. Therefore, this decision is not applicable.

16. 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, setaside 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 assessee is allowed.

13. Order pronounced in the open court on 04.07.2014.

Sd/-  
(D.T.Garasia)  
Judicial Member

Sd/-  
(P.K. Bansal)  
Accountant Member

Place : PANAJI / GOA  
Dated : 04.07.2014

\*A\*

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



Income Tax Appellate Tribunal - Mumbai

Ito 15(2)(4), Mumbai vs Shivraj Sahakari Patsanstha ... on 31 March, 2017

" "  
Income-tax Appellate Tribunal - "E" Bench Mumbai

Before S/Sh.Rajendra, Accountant Member and Amarjit Singh, Judicial Member  
.I.T.A./5268/Mum/2014, /Assessment Year: 2010-11

Income tax Officer-15(2)(4) M/s. Shivraj Sahakari Patsanstha Maryadit  
Matru Mandir, Room No.111, Grant S.S. Sanstha Maryadit, Omkar CHS, Bldg.  
Road(W) Vs. No.32/934, Pant Nagar, Ghatkopar (E)  
Mumbai-400 007. Mumbai.  
( /Appellant) PAN:AAAJS 2751 A  
( / Respondent)

/ Revenue by: Dr. A.K. Nayak-DR /Assessee by: None / Date of Hearing: 22/03/2017 / Date of Pronouncement: 31.03.2017 /PER RAJENDRA, AM-

Challenging the order dated 16/06/2014 of the CIT (A)-26, Mumbai, the Assessing Officer (AO) has filed the present appeal. Assessee, an AOP, filed its return of income on 13/09/2010, declaring total income at Rs. Nil, after claiming deduction u/s. 80P of the Act, amounting Rs. 44.50 lakhs. The AO completed the assessment u/s. 143 (3) of the Act, on 28/03/2013, determining its income at Rs. 44, 50, 811/-

2. Effective ground of appeal is about allowing deduction u/s. 80P of the Act. During the assessment proceedings the AO found that assessee is a registered co-operative Society, that it's object was to enable its members to obtain loans and to save their income in a safe and convenient manner and to length money, that it had passed certain bye laws in that regard, that it had paid-up capital of Rs. 95.70 lakhs, statutory reserves of Rs. 90.33 lakhs deposits of Rs.838.65 lakhs from members and other liabilities, that on the asset side it had balances with various scheduled and co-operative banks, investments in fixed deposits maintained with Co- Operative Banks and loan/advances, that it had received interest on loans of Rs. 1 59.85 lakhs (including penalty), interest on investment of Rs. 12.01 lakhs. The AO examine the function of the society in the claim made by it u/s. 80P of the Act. He held that the assessee was carrying on the business of co-operative bank, that provision of section 80P (4) were applicable, that deduction claimed by it u/s. 80P was not admissible, that it was a primary co-operative bank. He 5268/M/14(10-11) M/s. Shivraj Sahakari Patsanstha Maryadit relied upon the cases of and held that the assessee fulfilled conditions laid down u/s. 56 (c) (ccv) of part V of the Banking Regulation Act, 1949, that It was a Co-Operative Bank.

3. Aggrieved by the order of the AO, the assessee preferred an appeal before the First Appellate Authority (FAA). It made elaborate submissions and relied upon certain case laws. After considering the submission of the assessee and the assessment order, the FAA referred to section 56 of the Banking Regulation Act. He referred to section 2 (24) (viia), 80P(2)(a)(i) ,80P(4) of the Act as well as to the explanation to the section. He also analysed the meaning of Co-Operative Bank and Primary Agricultural Credit Society/Agricultural and Rural Development Bank and held that banking would

mean accepting deposits from public the payable on demand or otherwise for the purpose of lending or investment and withdrawal by check/draft/order or otherwise, that the assessee did not and could not accept deposits from anyone other than the members, that the membership of the society was limited only to permanent or quasi-permanent employees of the Department, that it did not conduct any business with public which was the essence of banking, that the primary object of the assessee could not be said to carry out the business of banking, that though the bye-laws permit admission of other Co-operative Society as member, that the other conditions of a Primary Co-Operative Bank were not fulfilled, that it was not a Primary Co-Operative Bank, that the principal object of the assessee did not include providing long-term credit for agriculture and rural development activities, that it was also not a Primary Co-Operative Agricultural and Rural Development Bank, that the provisions of section 80P (4) were not applicable. Referring to the provisions of section 80P (2) (a) of the Act, he further held that assessee was a co-operative Society, that it was not the case of the AO that it had provided credit facility to any person other than its member or that it had accepted and in deposits from a person other than its members, that the assessee was a co-operative Society providing credit facilities to its members, that it was eligible for deduction u/s. 80P read with section 80P (2) (a) (i) of the Act. Referring to the cases relied upon by the AO of the ITAT Jaipur(Kekri Sahakari Bhumi Vikas Bank Ltd.-54SOT64),ITAT Cochin(Kerala State Co- operative Agricultural Rural Development Bank Ltd.-139TTJ585),and ITAT Bangalore(Sri Laxminarayana Swamy Co-operative Society Ltd.-4 ITR (Trib.)27),he held that facts of the case under consideration were totally different from the above referred cases.He referred to the judgment of Hon'ble Gujarat High Court delivered in the case of Jafari Momin Vikas Co-

5268/M/14(10-11) M/s. Shivraj Sahakari Patsanstha Maryadit Operative Credit Society Ltd., Dated 15/01/20146 and certain orders of the Tribunal including the order of Jankalyan Nagari Sahakari Pat Sanstaha Ltd.(54SOT60),Jayalakshmi Mahila Vividodeshagal Souharda Sahakari Ltd.(137ITD163) and Buldhana Urban Co-operative Credit Society Ltd.(85DTR410).Finally, he held that assessee was eligible for deduction u/s. 80P(2) and that the provisions of section 80P(4)were not applicable in the case under consideration.

4.During the course of hearing before us, the Departmental Representative (DR) stated that in the case of Jafari Momin (supra),the Hon'ble Gujarat High Court had used the word "if" and "that", that in that case the Hon'ble Court had decided the issue considering the peculiar facts of the case, that the cases relied upon by the AO were applicable to the facts of the case, the FAA had not given any finding as to whether the society was in the banking business or not.Supporting the order of AO, he stated that assessee was a co-operative bank.None appeared on behalf of the assessee, as stated earlier. In our opinion, the matter can be decided on the basis of the available material. So, we are adjudicating the issue of allowability of deduction claimed under section 80P of the Act.

5.We have heard the submissions of the DR and perused the material before us.We find that while deciding the appeal the FAA had distinguished the cases relied upon by the AO.In the case of Kekri Sahakari (supra), the assessee itself had claimed that it was a primary co-operative Agricultural and Rural Development Bank.Clearly,the assessee was not entitled to any deduction u/s.80P(2) in light of the provisions of Section 80P(4).Similarly the Kerala State Co- operative Agricultural Rural Development Bank Ltd.(supra) was engaged in extending credit to rural sector including

agricultural and allied activities and that it was a state co-operative bank. Thus, it was not entitled to claim any deduction. As far as matter of Shri Laxminarayana (supra), is concerned, we find that it does not deal with the issue before us. The facts of the case are that the assessee is engaged in the business of banking/providing credit facilities to its members only. Therefore, such an assessee in absence of registration certificate cannot be treated as bank. We find that in the case of Jafari Momin revenue had raised the following question before the Hon'ble Gujarat High Court:

"Whether the hon'ble Tribunal is correct in allowing the deduction under section 80P(2)(a)(i) to the assessee's society even though the same is covered under section 80P(4) read with section 2(24)(viiia) being income from providing credit facilities carried on by a co-operative society with its member ?"

5268/M/14(10-11) M/s. Shivraj Sahakari Patsanstha Maryadit Deciding the matter, the Hon'ble Court held as under

3. The issue pertains to the interpretation of section 80P(2) and section 80P(4) of the Income-tax Act, 1961 ("the Act" for short). The respondent- assessee is a co-operative credit society and claims the 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 the case of a co-operative 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. The Revenue, however, contends that by virtue of newly amended sub-section (4) of section 80P inserted with effect from April 1, 2007, by the 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 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."

4. As per section 80P(4), the provisions of section 80P would not apply in relation to any co-operative 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.

5. The Assessing Officer held that by virtue of section 80P(4), the respondent-assessee would not be entitled to the benefits of deduction under section 80P. The Commissioner (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".

6. 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 the Legislature specified primary agricultural credit societies along with primary co-operative 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 the Central Board of Direct Taxes Circular No. 133 of 2007, dated May 9, 2007. Circular provides 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 March 28, 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 agri cultural credit society or a primary co-operative agricultural and rural 5268/M/14(10-11) M/s. Shivraj Sahakari Patsanstha Maryadit 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.

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 co-operative bank.

4. Thus, if the Delhi Co-op. Urban Thrift and Credit Society Ltd. does not fall within the meaning of 'co-operative bank' as defined in Part V of the Banking Regulation Act, 1949, sub- section (4) of section 80P will not apply in this case.

5. This is issued with the approval of the 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 the Central Board of Direct Taxes, the Delhi Co-op. Urban Thrift and Credit Society Ltd. was under consideration. The circular clarified that the said entity not being a co-operative 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 co-operative banks other than those fulfilling the description contained therein but also credit societies, which are not co-operative banks. In the present case, the respondent-assessee is admittedly not a credit co-operative bank but a credit co-operative society. The exclusion clause of sub-section(4) of section 80P, therefore, would not apply. In the result, the tax appeals are dismissed."

We also find that the issue has been deliberated upon by the Tribunal delivered in the case of Kulswami Co-operative Society(supra).We are reproducing the relevant portion of the order and it reads as under:

"The Revenue has raised following Ground of appeal:-

"On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition of Rs. 1,14,64,254/- by holding that the assessee being Co-operative Credit Society is not a Co-operative bank and hence is entitled for deduction u/s 80P of the I.T. Act."

3. The assessee before us is a Co-operative society, which is, inter alia, engaged in the business of providing credit facilities to its members. For the assessment year under consideration i.e. assessment year 2009-10, it filed a return of income declaring total income at Nil on account of claim of exemption u/s 80P of the Act. In the revised return of income filed by the assessee, the gross total income as per the Income and Expenditure Account was declared at Rs. 1,14,64,524/-, which was also claimed as exempt in terms of section 80P of the Act and accordingly, the returned income was declared at Nil.

4. In the course of assessment proceedings, the Assessing Officer show-caused the assessee as to why the claim of exemption u/s 80P of the Act be not disallowed in view of the provisions of sub- section (4) of section 80P of the Act, inserted w.e.f 01.04.2007. In terms of sub-section (4) of section 80P of the Act, the provisions of section 80P of the Act were made inapplicable to a Co-operative Bank other than primary agricultural credit society or primary co-operative agricultural and rural

development banks. The stand of the Assessing Officer was that since the assessee was a Co-operative Society registered under the Maharashtra State Co-operative Societies Act, 1960 and was engaged in providing credit facilities to its members, such an assessee would be covered by the provisions of sub-section (4) of section 80P of the Act. Accordingly, assessee's claim for exemption u/s 80P was denied in toto and the gross total income of Rs. 1,14,64,254/- was determined as the final taxable income.

5. In appeal before the CIT(A), the pertinent plea of the assessee was that a Co-operative Society engaged in the activity of providing credit facilities to its members is quite different from a Co-

operative Bank, which falls under the restriction placed in sub-section (4) of section 80P of the Act. Therefore, as per the assessee, the provisions of sub-section (4) of section 80P of the Act did not disentitle the assessee from claim of exemption u/s 80P of the Act. The CIT(A) found that 5268/M/14(10-11) M/s. Shivraj Sahakari Patsanstha Maryadit similar issue came up in the case of assessee for assessment year 2008-09, wherein, the predecessor CIT(A) had upheld assessee's claim for exemption u/s 80P of the Act. Following the precedent in the assessee's own case, by way of the order of predecessor CIT(A) for assessment year 2008-09, the CIT(A) held the assessee entitled for claim of exemption u/s 80P of the Act.

6. Before us, it was a common point between the parties that identical controversy has been considered by the Tribunal in the assessee's own case for assessment years 2007-08, and 2008-09 vide ITA Nos. 3223/Mum/2011 & 505/Mum/2012 dated 28.03.2014, whereby it has been held that assessee Co-operative Society does not fall within the restriction placed in sub-section (4) of section 80P of the Act. The following discussion in the order of the Tribunal dated 28.03.2014 (supra) is relevant:-

"4. Having heard both the sides and perused the material on record, it is pertinent to mention that the only issue arising out of both the appeals relate to the allowability of the exemption/deduction claimed by the assessee u/s 80P of the Income Tax Act. The allowability of exemption of the said income depends on whether the assessee/cooperative credit society is a co-operative bank or not for the purposes of section 80P(4) of the Act since according to the said provision, deduction under section 80P shall not be available to any co-operative bank other than primary agricultural society or primary co-operative agricultural and rural development bank.

4.1 It is the case of the Revenue that the assessee has been functioning as a cooperative bank and by virtue of section 80P(4), the assessee is not entitled for the benefit of section 80P and also the assessee is not coming within the purview of primary agricultural society or primary co-operative agricultural and rural development bank. It is the case of the assessee that it is not a cooperative bank but only a cooperative society to which clause (4) of section 80P is not applicable.

4.2 In this connection, it is pertinent to mention that the assessee has brought on record before the lower authorities, the letter of the CBDT bearing No. F. No. 133/06/2007-TPL dated 09.05.2008 addressed to the Delhi Urban T&C Society Ltd., stating that for the purposes of subsection 4 of section 80P, 'cooperative bank' shall have the same meaning as assigned to it in part V of the Banking Regulation Act 1949, according to which 'cooperative banks' means a State Co-operative Bank, a Central Co-operative Bank and Primary Co-operative Bank. Though the said clarification is given by the CBDT in connection with some other assessee, the crux of the matter pertains to the clarification of 'co-operative bank' for the purpose of subsection 4 of section 80P. It is observed that the said clarification has also been relied by the Tribunal in many cases. Therefore, 'cooperative banks' mentioned in the said subsection indicates only the State, Central and Primary Co-operative Banks only.

4.3 Moreover, for commencing a banking business by the co-operative society, due license has to be obtained from the Reserve Bank of India and in the assessee's case, there is no such license obtained for commencing any banking business. The mere fact that the assessee has been providing credit facilities to its members and thereby earns interest and dividend cannot make the 'society' into a 'bank' for the purposes of section 80P(4) of the Act. If the intention of the legislature was not to grant deduction to cooperative societies carrying on the business of providing credit facilities to its members, then this section would have been deleted. This proposition is supported by various decisions including the decision of the Gujarat High Court in the case of CIT Vs. Jafari Momin Vikas Cooperative Credit Society Ltd and the decision of the Tribunal in the case of DCIT Vs. Jayalakshmi Mahila Vividodeshagala Souharda Sahakari Ltd. [2012] 137 ITD 163.

4.4 In addition to the aforementioned discussion, the distinction between cooperative society registered under the Banking Regulation Act 1949 and the cooperative society registered under the Maharashtra State Cooperative Societies Act 1960 as brought out by the Ld.CIT(A) on the basis of the submission of the assessee is extracted hereunder:

5268/M/14(10-11) M/s. Shivraj Sahakari Patsanstha Maryadit XXXX The above distinction makes it very clear that the assessee is not a co-operative bank for the purposes of section 80P(4) of the Act.

4.5 As regards the claim of the revenue that for the Assessment Year 2007-08, the assessee has not claimed the deduction of the section 80P of the Act in the return of income but claimed the same only during the course of the assessment proceedings and hence the claim of the assessee is not admissible in view of the findings of the Hon'ble Apex Court in the case of Goetze India Ltd. [284 ITR 323 (SC) (2006)], it is pertinent to mention that the Hon'ble Bombay High Court in the case of the CIT Vs. Pruthvi Brokers and Shareholders P. Ltd. [(2012) 349 ITR 336 (Bom)] has held that the appellate authorities have the power to consider the claim not made in return of income. The Ho'ble Bombay High Court while deciding so, has considered the

judgment of the Hon'ble Apex Court in the case of Goetze India Ltd. (supra). In view of that matter, the Ld.CIT(A) giving relief to the assessee at the appellate stage on the claim of deduction not made in the return of income is justified. 4.6 Considering the entire facts and position of law, we are of the considered opinion that the Ld.CIT(A) is justified in directing the AO to allow the deduction claimed by the assessee u/s 80P of the Act on the reason that the assessee, a cooperative credit society is not a bank for the purposes of section 80P(4) of the Act. Thus the orders of the Ld.CIT(A) dated 11.02.2011 and 29.11.2011 for the Assessment Years 2007-08 and 2008- 09 respectively are upheld.

7.Following the aforesaid precedent, which has been rendered in assessee's own case under identical circumstances, we hereby affirm the order of CIT(A) upholding assessee's claim for exemption u/s 80P of the Act. Thus the Revenue fails in its appeal."

Considering the above discussion,we hold that the order of the FAA does not suffer from any legal or factual infirmity.All the grounds raised by the AO have been dealt by the Tribunal in its order,So,confirming the order of the FAA,we decide the issue against the AO.

As a result,appeal filed by the AO stands dismissed.

Order pronounced in the open court on 31st March, 2017.

31 , 2017

Sd/-

( / Amarjit Singh ) ( /  
/ Rajendra)

Sd/-

/ JUDICIAL MEMBER

/ ACCOUNTANT MEMBER

Mumbai; /Dated : 31.03.2017.

Jv.Sr.PS.

/Copy of the Order forwarded to :

1.Appellant / 2. Respondent /

3.The concerned CIT(A)/ , 4.The concerned CIT /

5.DR " E " Bench, ITAT, Mumbai / , ,... .

6.Guard File/ //True Copy// / BY ORDER, / Dy./Asst. Registrar , /ITAT, Mumbai.

Income Tax Appellate Tribunal - Pune

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

1

INCOME TAX APPELLATE TRIBUNAL  
PUNE BENCH "A", PUNE

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

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

Income Tax Officer,  
Ward -2(4), Adgaonkar Building,  
Dhanora Road, Beed. .. Appellant  
Vs.  
Jain Nagari Sahakari Pat Sanstha Ltd.  
Masrat Nagar, Lokasha Bhavan,  
Beed. .. Respondent  
Pan No. AAAAJ 3885H

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

ORDER

PER R.K. PANDA, AM :

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

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

section 8oP(4) will be attracted and the assessee is not eligible for deduction u/s.8oP(2)(a)(i) of the Income Tax Act.

3. In appeal the learned CIT(A) held that the cooperative society is not a cooperative bank and therefore the assessee credit cooperative society is entitled to deduction u/s.8oP(2)(a)(i) of the Act. He accordingly directed the AO to allow deduction u/s.8oP(2)(a)(i) to the society.

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

"1. On the facts and in the circumstance of the case, and considering the status and nature of business of the Appellant society, the CIT(A) Aurangabad has erred in treating assessee as cooperative society instead of Primary Cooperative bank referred into section 5(cci) of banking regulative Act, 1949 referred to explanation below sub section (4) of Section 8oP.

2. On the facts and in the circumstance of the case, and considering the status and nature of business of the Appellant society, the CIT(A) Aurangabad has erred in allowing deduction u/s.8oP(2)(a)(i) neglecting the insertion of clause viia in section 2(24) of Finance Act, 2006 w.e.f. 01-04-2007 has withdrawn the deduction allowable to the cooperative society".

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

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

"4. We have heard the rival submissions of the parties and perused the records. In this case, as per the facts on record, the assessee is a Cooperative Credit Society. Section 8oP has undergone an amendment w.e.f.1.4.2007 by insertion of Sub-sec. (4) which reads as under :

"(4) The provisions of this section shall not apply in relation to any cooperative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank.

Explanation - For the purpose of this sub-section,-

(a) "co-operative bank" and "primary agricultural credit society" shall have the meanings respectively assigned to them in Part V of the Banking Regulation Act, 1949 (10 of 1949);

(b) "primary co-operative agricultural and rural development bank" means a society having its area of operation confined to a taluk and the principal object of which is to provide for long-term credit for agricultural and rural development activities."

5. It is to be mentioned here that up to A.Y. 2006-07, any Co-operative Society which was engaged in the business of carrying on banking was eligible for deduction in respect of the whole of the amount of profit attributable to its banking activities. For the benefit of deciding the present issue, it is necessary to consider the legal position as applicable up-to the A.Y. 2006-07, more particularly in view of Sub-Section (2) of Sec. 80P. Section 80 P (2) reads as under :-

"80P. (1) Where, in the case of an assessee being a co-operative society, the gross total income includes any income referred to in subsection (2), there shall be deducted, in accordance with and subject to the provisions of this section, the sums specified in sub-section(2), in computing the total income of the assessee.

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

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

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

(ii) a cottage industry, or

(iii) the marketing of agricultural produce grown by its members, or

(iv) the purchase of agricultural implements, seeds, livestock or other articles intended for agriculture for the purpose of supplying them to its members, or

(v) .....

(vi) .....

6. Sub-section (4) was introduced for withdrawing the deduction to the Co-operative Bank other than Primary Agriculture Credit Society or Primary Co-operative Agriculture and Rural Development Bank. In view of Explanation below Sub-sec.(4) of Sec. 80P, the definition of the Co-operative Bank as assigned in Para 5 of the Banking Regulation Act is to be considered. In the opinion of the A.O, as the nature of the activities of the assessee Credit Society are analogous to the banking activities,

which are more specifically described in the Banking Regulation Act and hence, assessee partakes the character of 'Primary Co-operative Bank' as defined in clause (ccii) of the Banking Regulation Act 1949. Clause (cci) of Sec 5 of BR Act defines the Co-operative Bank means State Co-operative Bank, Central Co-operative Bank and Primary Co-operative Bank.

7. The primary co-operative Bank is treated as Co-Operative Bank in view of Cl. (cci) of sec 5 of the B. R. Act, 1949. Definition of 'Primary Co-operative Bank' is given in cl. (cci) of sec. 5 of B. R. Act, 1949, which reads as under;

' Primary co-operative bank means a co-operative society other than a primary agricultural credit society -

- (i) The primary object or principal business of which is the transactions of banking business;
- (ii) The paid-up share capital and reserves of which are not less than one lack of rupees; and
- (iii) The by-laws of which do not permit admission of any other cooperative society as a member:

Provided that this sub-clause shall not apply to the admission of co-operative bank as a member by reason of such co-operative bank subscribing to share capital of such co-operative society out of funds provided by State Government for the purpose." On careful perusal of above definition it is seen that basic mandate any cooperative society to cover in definition of ' Primary Co-Operative Bank' is that it's primary object or principal business should be transactions of banking business. The term 'banking' is defined in B. R. Act and as per said definition there is no restriction that depositor should be member of said society but it is public at large with whom business transactions can be carried out. Other two conditions as mentioned in cls.(ii) &(iii) are on fulfilling first condition given in cl.(i). In present case nothing is on record to suggest that all three conditions are fulfilled to hold that assessee which is a co-operative society is a "Primary Co-Operative Bank

8. It is pertinent to note here that the definition of the Co-operative Credit Society is given in Clause (ccii) of Sec. 5 which reads as under :

"co-operative credit society" means a Co-operative Society, the primary object of which is to provide financial accommodation to its members and includes a co-operative land mortgage bank; "

9. The Banking Regulation Act, 1949 defines of Co-operative bank in cl.(cci) of sec. 5 (as inserted by sec. 56 of the said Act) and Co-operative Credit Society is not included but its identity is kept separate by way of independent definition in view of Clause (ccii) of Sec. 5 of the Banking Regulation Act which defines what is meaning of 'Credit Co-operative Society'. On plain reading of the Banking

Regulation Act, 1949, nowhere it is suggested that the term "Co-operative Bank" also includes 'Co-Operative Credit Society' also. Meaning of any term or expression is to be ascertained in the context of provisions of referred Act. As per Sub-sec. (4) of Sec. 80P of the I. T. Act, Co-operative Bank means State Co-operative Bank, a Central Co-operative Bank and a Primary Co-operative Bank. It is seen that Cooperative Bank is deprived of the benefit of the deduction u/s. 80P(2)(a)(i) of the Act. As per the interpretation given by the AO, assessee Co-Operative Credit Society partakes the character of the Primary Co-operative Bank and as the Primary Co-operative Bank is included in the definition of the Cooperative Bank and hence, is not entitled to the benefits of Sec. 80P(2)(a)(i) of I. T. Act. In our opinion, this is not the correct interpretation. It is well settled principle in the interpretation of the 'taxing provisions' that the same are to be strictly construed and there is no room for any intendment. There is no presumption as to tax. Nothing is to be read or nothing is to be implied. One has to fairly look into language used by the Parliament. The Parliament has adopted the definition of the Co-operative Bank by referring the same as given in the Banking Regulation Act, 1949. It is called Legislation by reference and we have to give the strict interpretation while interpreting the effect of Sub-sec. (4) to Sec. 80 P. In our opinion, Co-operative Credit Society is distinct and separate from the Co-operative Bank nor it can be said as a Primary Co-operative Bank within the meaning of Banking Regulation Act, 1949. Hence, the assessee being a Co-operative Credit Society is entitled for deduction u/s. 80 P(2)(a)(i) of the Act. We accordingly uphold the order of the Ld CIT(A).

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

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

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

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

Sd/-

Sd/-

(SHAILENDRA KUMAR YADAV)

JUDICIAL MEMBER

Pune Dated: the 14th September 2012

msk

(R.K. PANDA)

ACCOUNTANT MEMBER

Copy of the order forwarded to :

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

By order

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Senior Private Secretary  
ITAT, Pune Benches, Pune

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.l1646A

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  
1" floor, Radhakrishna Lodge Bldg., K. C. Road,  
Opp. Bus Stand, Ankola, Karwar.

PAN AADFD9270C  
Appellant By  
Respondent By

o R D E R 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. 2007-08 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 collects 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 ('or' 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 chequgs 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 RBF 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 Banglore 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 ClT(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 ClT(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) readsis 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, 1994 (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 rurai 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 2 8: 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 A business of the assessee is transaction of the banking business. In case primary objects 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 lb) " 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 refer 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 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 chiidren 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 pubiic 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

Income Tax Appellate Tribunal - Bangalore

Jyoti Co-Op Credit Society Ltd., ... vs Assessee on 31 October, 2014

ITA No.1269 of 2013 Jyoti Coop Society Ltd Bagalkot

IN THE INCOME TAX APPELLATE TRIBUNAL  
Bangalore 'C' Bench, Bangalore

Before Shri Rajpal Yadav, Judicial Member  
and Shri Abraham P. George, Accountant Member

ITA No. 1269/Bang/2013  
(Assessment year:2008-09)

Jyoti Cooperative Credit                                  Vs. Income Tax Officer Ward 1  
Society Limited    Aayakar Bhavan, Sector  
Ramdurgakar Building, Main                            24, Navanagar, Bagalkot  
Road, Kamble Chawl,  
Bagalkot  
PAN: AAATJ 4804 H  
(Appellant)     (Respondent)

Assessee by: Shri M.Thirumalesh & Dinesh P  
Advocates

Department by: Dr.K.Shankar Prasad , (DR)

Date of Hearing:    30/10/2014  
Date of Pronouncement:                                    31/10/2014

ORDER

Per Rajpal Yadav, J.M.

The assessee is in appeal before us against the order of the learned CIT (A) dated 25.06.2013 passed for assessment year 2008-09. The solitary grievance of the assessee is that the learned CIT (A) has erred in confirming the denial of deduction u/s 80P(2)(a)(i) of the Income Tax Act, on the ground that the assessee is a cooperative bank and as per section 80P(4), it is not entitled for the deduction u/s 80P(2)(a)(i).

2. The brief facts of the case are that the assessee is a cooperative society. It has filed its return of income for ITA No.1269 of 2013 Jyoti Coop Society Ltd Bagalkot assessment year 2008-09 on 30.09.2008 declaring nil income after claiming deducting of entire income of Rs.18,38,548/- u/s 80P(2)(a)(i) of the I.T. Act, 1961. According to the assessee, it is a cooperative society carrying on the business of banking for providing credit facilities to its members. Therefore, it claimed its income as exempt u/s 80P(2)(a)(i). However, the claim of the assessee for deduction was rejected by the Assessing Officer, on the ground that the assessee is a cooperative bank and hence not entitled to claim deduction. Assessing Officer relied upon section 80P(4).

3. Appeal to the CIT (A) did not bring any relief to the assessee.

4. Learned Counsel for the assessee at the very outset submitted that similar issue arose in the subsequent year i.e. assessment year 2009-10 and the Tribunal has allowed the appeal of the assessee bearing ITA No.1115/Bang/2013. The assessee has been treated as a society providing credit facilities to its members and entitled for deduction u/s 80P(2)(a)(i) of the Act. He placed on record copy of the Tribunal's order.

5. The learned DR was unable to controvert the contention of the learned Counsel for the assessee.

6. We have duly considered the rival contentions and gone through the record carefully. The order of the Tribunal in assessment year 2009-10 read as under:

ITA No.1269 of 2013 Jyoti Coop Society Ltd Bagalkot "This appeal by the assessee is against the order dated 20.03.2012 of the CIT(Appeals), Belgaum, relating to assessment year 2009-10.

2. The assessee is a co-operative society. It is engaged in providing credit facilities to its members. The assessee had claimed deduction u/s. 80P(2)(a)(i) of the Act. Under Sec.80P(2)(i) of the Act where the gross total income of a co-operative society includes income from carrying on the business of banking or providing credit facilities to its members, the same was allowed as deduction prior to Assessment Year 2007-08. By the Finance Act, 2006 w.e.f. 1-4-2007, Sub-section (4) was inserted in Sec.80-P which provides as follows:

"(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."

3. The AO was of the view that after amended by the Finance Act, 2006 w.e.f. 1.4.2007 by which sub-section (4) was inserted, the Assessee which was a co-operative society carrying on banking business was not entitled to deduction u/s.80P(2)(i) of the Act. According to the AO, the assessee was a co-operative bank and therefore the deduction u/s. 80P(2)(a)(i) cannot be allowed. In coming to the above conclusion, the AO noticed that the nature of the activity of the assessee, though registered as a credit co-operative society, is that of a banking institution notwithstanding the fact that receipt of and lending money is limited to its members. The AO further noticed that clause (viiia) in section 2(24) of the Act was inserted by the Finance Act 2006 effective from 1/4/2007,

which provides that profits and gains of any business (including providing credit facilities) carried on by a co-operative society with its members the assessee's activity was also "Income". That the deduction from gross total income of ITA No.1269 of 2013 Jyoti Coop Society Ltd Bagalkot certain receipts is available only to primary agricultural credit societies or primary co-operative agricultural and rural development banks; and that the benefit of such deduction is not available to institutions like the assessee society. The AO also referred to section 5(b) of the Banking Regulation Act to hold that, if one of the two conditions of the appellant is fulfilled; i.e. its primary object should be banking or its principal business must be transaction in banking business, it is sufficient to bring the assessee into the concept of a banking institution. The AO referred to the objects of the assessee society in its bye laws that the activities of the assessee fall within the provisions of sections 5(b), 6(1)(a), 6(1)(g), 6(1)(k) and 6(1)(n) of the Banking Regulations Act and held that, broadly, they are in the nature of banking activity. According to the AO, the following features make the assessee ineligible to exemption contemplated in section 80P of the Act:

- i) Since membership is open to anyone paying a sum of Rs.10/- to Rs.100/- for membership and no other condition is imposed. In other words, membership as is available in any banking institution is available in the case of the appellant society.
  - ii) The purpose of accepting deposits from the public is for making investments and for lending to members. Confining the lending only to members makes no difference.
  - iii) Deposits collected from the depositors are repayable on demand and do not go into the corpus of the appellant.
  - iv) Though withdrawal of money is not done by cheques, drafts or pay-out slips, pay orders are issued in favour of a person on behalf of the depositor.
  - v) The assessee society came within the Explanation to sub-section (4) of section 80P of the Act as a banking institution.
4. In the light of the above-mentioned observations, the AO held that the appellant was not entitled to exemption u/s 80P(2)(a)(i) of the Act and brought the same to tax.
5. The CIT(A) confirmed the order of the AO. Hence this appeal by the Assessee before the Tribunal.
6. At the time of hearing, it was brought to our notice by the parties that the issue raised by the Assessee has already ITA No.1269 of 2013 Jyoti Coop Society Ltd Bagalkot been considered and decided by this Tribunal in the case of ACIT, Circle 3(1), Bangalore v. M/s. Bangalore Commercial Transport Credit Co-operative Society Ltd. in ITA No.1069/Bang/2010, wherein this Tribunal held that section 80P(4) is applicable only to cooperative banks and not to credit cooperative societies. The intention of the legislature of bringing in cooperative banks into the taxation structure was mainly to bring in par with commercial banks. Since the assessee is a cooperative society and not a cooperative 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. The following were the relevant observations of the Tribunal:-

"9. We have heard the rival submissions and perused the material on record. The assessee was denied the deduction u/s 80-P(2)(a)(i) of the Act for the reason of introduction of sub section 4 to section 80P. Section 80P(4) reads as follows:-

"(4) The provisions of this section shall not apply in relation to any cooperative bank other than a primary agricultural credit society or a primary 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 cooperative 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 cooperative bank other than a primary agricultural credit society or rural development bank. For the purpose of the said sub section, cooperative 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, "cooperative ITA No.1269 of 2013 Jyoti Coop Society Ltd Bagalkot bank" means a State Cooperative Bank, a Central Cooperative Bank and a Primate Cooperative Bank.

9.2 From the above section, it is clear that the provisions of section 80P(4) has got its application only to cooperative banks. Section 80P(4) does not define the word "cooperative society". The existing sub-section 80P(2)(a)(i) shall be applicable to a cooperative 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 9th May, 2007. The difference between a cooperative bank and a cooperative society are as follows:-

Nature	Cooperative society registered under Banking Regulation Act, 1949	Cooperative society registered under Karnataka Cooperative Society Act, 1959.
Registration	Under the Banking Regulation Act, 1949 and Cooperative Societies Act, 1959.	Cooperative Societies Act, 1959.
Nature of	1. As defined in section 6 of	1. As per the bye laws

business	Banking Regulation Act. 2. Can open savings bank	of the cooperative society.
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account, current account, 2. Society cannot overdraft account, cash open savings bank credit account, issue letter account, current of credit, discounting bills account, issue letter of exchange, issue cheques, of credit, discounting demand drafts (DD), Pay bills of exchange, Orders, Gift cheques, issue cheques, demand lockers, bank guarantees drafts, pay orders, etc. gift cheques, lockers,

3. Cooperative Banks can act bank guarantees etc. as clearing agent for 3. Society cannot act cheques, DDs, pay orders as clearing agent, for and other forms. cheques, DDs, pay

4. Banks are bound to follow orders and other the rules, regulations and forms.

directions issued by Reserve 4. Society are bound Bank of India (RBI). by rules and regulations as specified by in the cooperative societies act.

Filing of returns	Cooperative 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	Registrar has the

ITA No.1269 of 2013 Jyoti Coop Society Ltd Bagalkot inspect accounts and overall power to inspect functioning of the bank. 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.

9.3 If the intention of the legislature was not to grant

deduction u/s 80P(2)(a)(i) to cooperative 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 cooperative banks and not to credit cooperative societies. The intention of the legislature of bringing in cooperative banks into the

taxation structure was mainly to bring in par with commercial banks. Since the assessee is a cooperative society and not a cooperative 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."

7. The Hon'ble Gujarat High Court in the case of Tax appeal No.442 of 2013 with Tax appeal No.443 of 2013 with Tax appeal No.863 of 2013 in the case of CIT Vs. Jafari Momin Vikas Co-op Credit Society Ltd. by judgment dated 15.1.2014 had to deal with the following question of law:

"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) (viiia) being income from providing credit facilities carried on by a co-operative society with its member?"

The Hon'ble Court held as follows:

"4. As per section 80P(4), the provisions of section 80P would not apply in relation to any co-operative 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"

ITA No.1269 of 2013 Jyoti Coop Society Ltd Bagalkot shall have the meanings respectively assigned to them in Part V of the Banking Regulation Act, 1949.

5. 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".

6. 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 subsection(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.

1. 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.

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 Regulation Act, 1949.

3. In part V of the Banking Regulation Act, "Co- operative Bank" means a State Co-operative bank, a ITA No.1269 of 2013 Jyoti Coop Society Ltd Bagalkot Central Co-operative Bank and a primary Co-operative bank.

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

5. 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 co-operative 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."

8. In view of the aforesaid decisions of the Hon'ble Gujarat High Court in the case of Jafari Momin Vikas Co-op Credit Society Ltd. (supra) and of the co=ordinate bench of this Tribunal in Bangalore Transport Credit Co-operative Society Ltd. (supra), we are of the view that there is merit in this appeal by the Assessee. Consequently, the same is allowed.

9. In the result, the assessee's appeal is allowed.

Pronounced in the open court on this 21st day of February, 2014".

7. There is no disparity on facts. Respectfully following the order of the Tribunal, we allow the appeal of the assessee and ITA No.1269 of 2013 Jyoti Coop Society Ltd Bagalkot direct the Assessing Officer to grant deduction u/s 80P(2)(a)(i) of the Income Tax Act.

Order pronounced in the Open Court on 31st October, 2014.

Sd/-  
(Abraham P. George)  
Accountant Member

Sd/-  
(Rajpal Yadav)  
Judicial Member

Bangalore dated 31st October, 2014.

Vnodan/sps

Copy to:

1. The Appellant
2. The Respondent
3. The concerned CIT(A)
4. The concerned CIT
5. The DR, ITAT, Bangalore
6. Guard File

By Order

ASSISTANT REGISTRAR  
Income Tax Appellate Tribunal,  
Bangalore Benches, Bangalore

Income Tax Appellate Tribunal - Mumbai

Kulswami Co Op Credit Society , ... vs Department Of Income Tax on 21 August, 2015

IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, MUMBAI

BEFORE SHRI G.S. PANNU, ACCOUNTANT MEMBER AND  
SHRI SANJAY GARG, JUDICIAL MEMBER

ITA NO 6790/Mum/2012

Assessment year: - 2009-10)

IT0, Wd-22(3)-4,  
Vashi Rly. Station Complex,  
Tower No. 6, 3rd Floor,  
Vashi, Navi Mumbai.  
Vs. ` M/s Kulswami Co-operative  
Society, F-3/1, Central Facility  
Building,  
APMC Market, Sector - 19,  
Turbhe, Navi Mumbai - 400 705.

PAN/GIR No. AAAAS2059L  
Appellant

Respondent

CO No. 05/Mum/2014

arising out of ITA No. 6790/Mum/2012

Assessment year: - 2009-10)

M/s Kulswami Co-operative  
Society, F-3/1, Central Facility  
Building, APMC Market, Sector -  
19, Turbhe,  
Navi Mumbai - 400 705  
Vs. ` IT0, Wd-22(3)-4,  
Vashi Rly. Station Complex,  
Tower No. 6, 3rd Floor,  
Vashi, Navi Mumbai.

PAN/GIR No. AAAAS2059L  
Appellant

Respondent

Revenue By  
Assessee By

Shri E. Shridhar  
Shri R.V. Nadrekar

Date of hearing

29.07.2015

Date of pronouncement

21.08.2015

## ORDER

Per G.S. Pannu, AM These cross appeals are directed against the order of the Commissioner of Income Tax (Appeals)-33, Mumbai (hereinafter referred to as 'the CIT(A)') dated 31.08.2012 which in turn has arisen from an order passed by the Assessing Officer u/s.

ITA NO 6790/Mum/2012 and CO No. 05/Mum/2014 Assessment Year 2009-10 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') dated 16.12.2011, pertaining to the assessment year 2009-10

2. The Revenue has raised following Ground of appeal:-

"On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition of Rs. 1,14,64,254/- by holding that the assessee being Co-

operative Credit Society is not a Co-operative bank and hence is entitled for deduction u/s 80P of the I.T. Act."

3. The assessee before us is a Co-operative society, which is, inter alia, engaged in the business of providing credit facilities to its members. For the assessment year under consideration i.e. assessment year 2009-10, it filed a return of income declaring total income at Nil on account of claim of exemption u/s 80P of the Act. In the revised return of income filed by the assessee, the gross total income as per the Income and Expenditure Account was declared at Rs. 1,14,64,524/-, which was also claimed as exempt in terms of section 80P of the Act and accordingly, the returned income was declared at Nil.

4. In the course of assessment proceedings, the Assessing Officer show-caused the assessee as to why the claim of exemption u/s 80P of the Act be not disallowed in view of the provisions of sub-section (4) of section 80P of the Act, inserted w.e.f 01.04.2007. In terms of sub-section (4) of section 80P of the Act, the provisions of section 80P of the Act were made inapplicable to a Co-operative Bank other than primary agricultural credit society or primary co-operative agricultural and rural development banks. The stand of the Assessing Officer was that since the assessee was a Co-operative Society registered ITA NO 6790/Mum/2012 and CO No. 05/Mum/2014 Assessment Year 2009-10 under the Maharashtra State Co-operative Societies Act, 1960 and was engaged in providing credit facilities to its members, such an assessee would be covered by the provisions of sub-section (4) of section 80P of the Act. Accordingly, assessee's claim for exemption u/s 80P was denied in toto and the gross total income of Rs. 1,14,64,254/- was determined as the final taxable income.

5. In appeal before the CIT(A), the pertinent plea of the assessee was that a Co-operative Society engaged in the activity of providing credit facilities to its members is quite different from a Co-operative Bank, which falls under the restriction placed in sub-section (4) of section 80P of the Act. Therefore, as per the assessee, the provisions of sub-section (4) of section 80P of the Act did not disentitle the assessee from claim of exemption u/s 80P of the Act. The CIT(A) found that similar issue came up in the case of assessee for assessment year 2008-09, wherein, the predecessor CIT(A) had upheld assessee's claim for exemption u/s 80P of the Act. Following the precedent in the assessee's own case, by way of the order of predecessor CIT(A) for assessment year 2008-09, the CIT(A) held the assessee entitled for claim of exemption u/s 80P of the Act.

6. Before us, it was a common point between the parties that identical controversy has been considered by the Tribunal in the assessee's own case for assessment years 2007-08, and 2008-09 vide ITA Nos. 3223/Mum/2011 & 505/Mum/2012 dated 28.03.2014, whereby it has been held that assessee Co-operative Society does not fall within the restriction placed in sub-section (4) of section 80P of the Act. The following discussion in the order of the Tribunal dated 28.03.2014 (supra) is relevant:-

ITA NO 6790/Mum/2012 and CO No. 05/Mum/2014 Assessment Year 2009-10 "4.  
Having heard both the sides and perused the material on record, it is pertinent to mention that the only issue arising out of both the appeals relate to the allowability of

the exemption/deduction claimed by the assessee u/s 80P of the Income Tax Act. The allowability of exemption of the said income depends on whether the assessee/cooperative credit society is a co-operative bank or not for the purposes of section 80P(4) of the Act since according to the said provision, deduction under section 80P shall not be available to any co-operative bank other than primary agricultural society or primary co-operative agricultural and rural development bank.

4.1 It is the case of the Revenue that the assessee has been functioning as a cooperative bank and by virtue of section 80P(4), the assessee is not entitled for the benefit of section 80P and also the assessee is not coming within the purview of primary agricultural society or primary co-operative agricultural and rural development bank. It is the case of the assessee that it is not a cooperative bank but only a cooperative society to which clause (4) of section 80P is not applicable.

4.2 In this connection, it is pertinent to mention that the assessee has brought on record before the lower authorities, the letter of the CBDT bearing No. F. No. 133/06/2007-TPL dated 09.05.2008 addressed to the Delhi Urban T&C Society Ltd., stating that for the purposes of subsection 4 of section 80P, 'cooperative bank' shall have the same meaning as assigned to it in part V of the Banking Regulation Act 1949, according to which 'cooperative banks' means a State Co-operative Bank, a Central Co-operative Bank and Primary Co-operative Bank. Though the said clarification is given by the CBDT in connection with some other assessee, the crux of the matter pertains to the clarification of 'co-operative bank' for the purpose of subsection 4 of section 80P. It is observed that the said clarification has also been relied by the Tribunal in many cases. Therefore, 'cooperative banks' mentioned in the said subsection indicates only the State, Central and Primary Co-operative Banks only.

4.3 Moreover, for commencing a banking business by the co-operative society, due license has to be obtained from the Reserve Bank of India and in the assessee's case, there is no such license obtained for commencing any banking business. The mere fact that the assessee has been providing credit facilities to its members and thereby earns interest and dividend cannot make the 'society' into a 'bank' for the purposes of section 80P(4) of the Act. If the intention of the legislature was not to grant deduction to cooperative societies carrying on the business of providing credit facilities to its members, then this section would have been deleted. This proposition is supported by various decisions including the decision of the Gujarat High Court in the case of CIT Vs. Jafari Momin Vikas Cooperative Credit Society Ltd and the decision of the Tribunal in the case of DCIT Vs. Jayalakshmi Mahila Vividodeshagala Souharda Sahakari Ltd. [2012] 137 ITD 163.

ITA NO 6790/Mum/2012 and CO No. 05/Mum/2014 Assessment Year 2009-10 4.4 In addition to the aforementioned discussion, the distinction between cooperative society registered under the Banking Regulation Act 1949 and the cooperative society registered under the Maharashtra State Cooperative Societies Act 1960 as brought out by the Ld.CIT(A) on the basis of the submission of the assessee is extracted hereunder:

Sl. No.	Co-operative societies	Co-operative Banks
1	The Co-operative Credit Societies are Co-operative Banks are registered under	

registered under Maharashtra State Maharashtra Co-operative Societies Act, 1960 Cooperative Societies Act, 1960 and administered by Registrar of Co-operative governed, regulated, administered and Societies, Govt. Of Maharashtra. Co- supervised by the Registrar of the operative Banks are regulated and supervised Cooperative Societies, Government Of by the Reserve Bank of India. Provisions of Maharashtra. Banking Regulation Act, 1949 with modifications specified in section 56 of the Banking Regulation Act, 1949 are applicable to Co-operative Banks. Schedule 1 to Schedule V are applicable to Co-operative Bank.

2 Co-operative Societies are classified as Co-operative Banks are classified as Co-

resource/thrifts Societies in the operative Bank. certificate of registration issued by Registrar of Cooperative Society.

3 Co-operative Credit Societies can Co-operative Banks can accept deposits from public and advance loans only to the members. However, unlike Co-operative credit to the members. Hence the business societies they can advance loans to the activities are restricted to members and members only. hence it can be termed as a mutual association/self help group.

4 Co-operative Credit Societies can not Co-operative can accept deposits from public.

accept deposits from public.

5 The provisions of Banking Regulation The provisions of Banking Regulation Act 1949 are not applicable to the Co-operative Bank. Cooperative Credit Societies.

6 The Co-operative credit societies do not The Co-operative banks are required to obtain required license from Reserve Bank of India to carry on its business. its business.

7 The Co-operative credit societies do not The Co-operative have cheque facilities, have cheque facilities, clearing facilities clearing facilities and they issue demand drafts, Assessment Year order, bank pay orders etc. guarantees etc. 8 Co-operative Credit Societies cannot Co-operative Banks are mandatorily required to use work Bank/Bankers in their name to use world Bank/Bankers in their name. 9 Reserve Bank of India has no statutory Reserve Bank of India has vested with power of control and supervision of statutory powers of control and supervision of ITA NO 6790/Mum/2012 and CO No. 05/Mum/2014 Assessment Year 2009-10 Cooperative Societies. Cooperative Banks.

The above distinction makes it very clear that the assessee is not a co-operative bank for the purposes of section 80P(4) of the Act.

4.5 As regards the claim of the revenue that for the Assessment Year 2007-08, the assessee has not claimed the deduction of the section 80P of the Act in the return of income but claimed the same only during the course of the assessment proceedings and hence the claim of the assessee is not

admissible in view of the findings of the Hon'ble Apex Court in the case of Goetze India Ltd. [284 ITR 323 (SC) (2006)], it is pertinent to mention that the Hon'ble Bombay High Court in the case of the CIT Vs. Pruthvi Brokers and Shareholders P. Ltd. [(2012) 349 ITR 336 (Bom)] has held that the appellate authorities have the power to consider the claim not made in return of income. The Ho'ble Bombay High Court while deciding so, has considered the judgment of the Hon'ble Apex Court in the case of Goetze India Ltd. (supra). In view of that matter, the Ld.CIT(A) giving relief to the assessee at the appellate stage on the claim of deduction not made in the return of income is justified.

4.6 Considering the entire facts and position of law, we are of the considered opinion that the Ld.CIT(A) is justified in directing the AO to allow the deduction claimed by the assessee u/s 80P of the Act on the reason that the assessee, a cooperative credit society is not a bank for the purposes of section 80P(4) of the Act. Thus the orders of the Ld.CIT(A) dated 11.02.2011 and 29.11.2011 for the Assessment Years 2007-08 and 2008- 09 respectively are upheld.

7. Following the aforesaid precedent, which has been rendered in assessee's own case under identical circumstances, we hereby affirm the order of CIT(A) upholding assessee's claim for exemption u/s 80P of the Act. Thus the Revenue fails in its appeal.

8. Insofar as the Cross Objection raised by the assessee is concerned, it does not involve any independent issue but is primarily in support of the conclusion drawn by the CIT(A). Since we have already confirmed the order of CIT(A) in the context of the appeal of the Revenue in earlier paras, the Cross Objection raised by the assessee is rendered infructuous.

ITA NO 6790/Mum/2012 and CO No. 05/Mum/2014 Assessment Year 2009-10

9. In the result, both the captioned appeals are dismissed.

Order pronounced in the open court on this 21st day of August 2015.

Sd/-

(Sanjay Garg)  
(Judicial Member)

Sd/-

(G.S. Pannu)  
(Accountant Member)

Mumbai dated 21-08-2015  
SKS Sr. P.S.,

Copy to:

1. The Appellant
2. The Respondent
3. The concerned CIT(A)
4. The concerned CIT
5. The DR, "A" Bench, ITAT, Mumbai

By Order

Assistant Registrar

Kulswami Co Op Credit Society , ... vs Department Of Income Tax on 21 August, 2015

**Income Tax Appellate Tribunal,  
Mumbai Benches, MUMBAI**

Income Tax Appellate Tribunal - Bangalore

M/S Divyajyothi Credit ... vs Department Of Income Tax on 5 February, 2014

IN THE INCOME TAX APPELLATE TRIBUNAL  
"B" BENCH : BANGALORE

BEFORE SHRI N.V. VASUDEVAN, JUDICIAL MEMBER  
AND SHRI JASON P. BOAZ, ACCOUNTANT MEMBER

ITA No.72/Bang/2013  
Assessment year : 2009-10

The Income Tax Officer, Vs. M/s. Divyajyothi Credit Co-operative Society Ltd.,  
Ward 4(1), No.39, 8th Main,  
Bangalore. Jayanagar III Block,  
PAN: AAAAD 2194B

APPELLANT

RESPONDENT

Appellant by : Shri L.V. Bhaskara Reddy, Jt.CIT(DR)  
Respondent by : None

Date of hearing : 05.02.2014  
Date of Pronouncement : 07.02.2014

ORDER

Per N.V. Vasudevan, Judicial Member This appeal by the revenue is against the order dated 01.11.2012 of the CIT(Appeals)-II, Bangalore relating to assessment year 2009-10.

ITA No.72/Bang/2013

2. The assessee is a co-operative society. It is engaged in banking business also. The assessee had claimed deduction u/s. 80P(2)(a)(i) of the Act. Under Sec.80P(2)(i) of the Act where the gross total income of a co- operative society includes income from carrying on the business of banking or providing credit facilities to its members, the same is allowed deduction. By the Finance Act, 2006 w.e.f. 1-4-2006, Sub-section (4) was inserted in Sec.80-P which provides as follows:

"(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."

3. The AO was of the view that after amended by the Finance Act, 2006 w.e.f. 1.4.2007 by which sub-section (4) was inserted, the Assessee which was a co-operative society carrying on banking business was not entitled to deduction u/s.80P(2)(i) of the Act. According to the AO, the assessee was a co-operative bank and therefore the deduction u/s. 80P(2)(a)(i) cannot be allowed. In coming to the above conclusion, the AO noticed that the nature of the activity of the assessee, though registered as ITA No.72/Bang/2013 a credit co-operative society, is that of a banking institution notwithstanding the fact that receipt of and lending money is limited to its members. The AO further noticed that clause (viia) in section 2(24) of the Act was inserted by the Finance Act 2006 effective from 1/4/2007, which provides that profits and gains of any business (including providing credit facilities) carried on by a co-operative society with its members the assessee's activity was also "Income". That the deduction from gross total income of certain receipts is available only to primary agricultural credit societies or primary co-operative agricultural and rural development banks; and that the benefit of such deduction is not available to institutions like the assessee society. The AO also referred to section 5(b) of the Banking Regulation Act to hold that, if one of the two conditions of the appellant i.e. its primary object should be banking or its principal business must be transaction in banking business, is sufficient to bring the appellant into the concept of a banking institution. The AO referred to the objects of the assessee society in its bye laws that the activities of the assessee fall within the provisions of sections 5(b), 6(1)(a), 6(1)(g), 6(1)(k) and 6(1)(n) of the Banking Regulations Act and held that, broadly, they are in the nature of banking activity. According to the AO, the following features make the assessee ineligible to exemption contemplated in section 80P of the Act:

i) Since membership is open to anyone paying a sum of Rs.10/- to Rs.100/- for membership and no other condition is imposed. In other words, membership as is available in any banking institution is available in the case of the appellant society.

ITA No.72/Bang/2013

ii) The purpose of accepting deposits from the public is for making investments and for lending to members. Confining the lending only to members makes no difference.

iii) Deposits collected from the depositors are repayable on demand and do not go into the corpus of the appellant.

iv) Though withdrawal of money is not done by cheques, drafts or pay-out slips, pay orders are issued in favour of a person on behalf of the depositor.

v) The assessee society came within the Explanation to sub-section (4) of section 80P of the Act as a banking institution.

4. In the light of the above-mentioned observations, the AO held that the appellant was not entitled to exemption u/s 80P(2)(a)(i) of the Act and brought the same to tax.

5. On appeal by the assessee, the CIT(Appeals) allowed the claim of the assessee for deduction u/s. 80P(2)(a)(ii) of the Act by following the decision of ITAT in the following cases:-

i) ACIT, Circle-3(1), Bangalore v. M/s Bangalore Commercial Transport Credit Co-operative Society Ltd. - ITA.No.1069/Bang/2010 dated 8/4/2011 [ITAT, Bangalore Bench 'B', Bangalore]

ii) ITO, Ward-1(4) v. Jankalyan Nagri Sahakari Pat Sanstha Ltd. [(2012) 24 taxmann.com 127 (Pune-Trib) dated 26/6/2012]

iii) DCIT, Central Circle, Panaji v. Jayalakshmi Mahila Vividodeshagala Souharda Sahakari Ltd. ITA Nos. 1 to 3 (PNJ)/1012 dated 30/3/2012.

ITA No.72/Bang/2013

6. Aggrieved by the order of the CIT(Appeals), the revenue has filed the present appeal before the Tribunal.

7. At the time of hearing, it was seen that the issue raised by the revenue has already been considered and decided by this Tribunal in the case of ACIT, Circle 3(1), Bangalore v. M/s. Bangalore Commercial Transport Credit Co-operative Society Ltd. in ITA No.1069/Bang/2010, wherein this Tribunal held that section 80P(4) is applicable only to cooperative banks and not to credit cooperative societies. The intention of the legislature of bringing in cooperative banks into the taxation structure was mainly to bring in par with commercial banks. Since the assessee is a cooperative society and not a cooperative 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. The following were the relevant observations of the Tribunal:-

"9. We have heard the rival submissions and perused the material on record. The assessee was denied the deduction u/s 80-P(2)(a)(i) of the Act for the reason of introduction of sub section 4 to section 80P. Section 80P(4) reads as follows:-

"(4) The provisions of this section shall not apply in relation to any cooperative bank other than a primary agricultural credit society or a primary 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 ITA No.72/Bang/2013 respectively assigned to them in Part V of the Banking Regulation Act, 1949 (10 of 1949);

(b) "primary cooperative 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 cooperative bank other than a primary agricultural credit society or rural development bank. For the purpose of the said sub section, cooperative 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, "cooperative bank" means a State Cooperative Bank, a Central Cooperative Bank and a Primate Cooperative Bank.

9.2 From the above section, it is clear that the provisions of section 80P(4) has got its application only to cooperative banks. Section 80P(4) does not define the word "cooperative society". The existing sub-section 80P(2)(a)(i) shall be applicable to a cooperative 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 9th May, 2007. The difference between a cooperative bank and a cooperative society are as follows:-

Cooperative society registered under Cooperative society registered Nature Banking Regulation Act, 1949 under Karnataka Cooperative Society Act, 1959.

Registra Under the Banking Regulation Act, Cooperative Societies Act,

-tion 1949 and Cooperative Societies Act, 1959.

1959.

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	1. As per the bye laws of the cooperative society. 2. Society cannot open savings bank account, current account, issue letter of credit,
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credit, discounting bills of exchange, discounting bills of exchange, issue cheques, demand drafts (DD), issue cheques, demand drafts, Pay Orders, Gift cheques, lockers, pay orders, gift cheques, bank guarantees etc. lockers, bank guarantees etc. ITA No.72/Bang/2013

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

4. Banks are bound to follow the forms.

rules, regulations and directions 4. Society are bound by rules issued by Reserve Bank of India and regulations as specified by (RBI). in the cooperative societies act.

Filing of Cooperative banks have to submit Society has to submit the returns annual return to RBI every year. annual return to Registrar of Societies.

Inspec-tion	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.

### 9.3 If the intention of the legislature was not to grant

deduction u/s 80P(2)(a)(i) to cooperative 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 cooperative banks and not to credit cooperative societies. The intention of the legislature of bringing in cooperative banks into the taxation structure was mainly to bring in par with commercial banks. Since the assessee is a cooperative society and not a cooperative 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."

8. The Hon'ble Gujarat High Court in the case of Tax appeal No.442 of 2013 with Tax appeal No.443 of 2013 with Tax appeal No.863 of 2013 in the case of CIT Vs. Jafari Momin Vikas Co-op Credit Society Ltd. by judgment dated 15.1.2014 had to deal with the following question of law:

ITA No.72/Bang/2013 "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 member?"

The Hon'ble Court held as follows:

"4. As per section 80P(4), the provisions of section 80P would not apply in relation to any co-operative 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.

5. 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".

6. 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 subsection(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:-

ITA No.72/Bang/2013 "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 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 Regulation 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 Co-operative bank.

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

5. 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 co-operative 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."

ITA No.72/Bang/2013

9. In view of the aforesaid decisions, we are of the view that there is no merit in this appeal by the revenue. Consequently, the same is dismissed.

Pronounced in the open court on this 7th day of February, 2014.

Sd/-

Sd/-

( JASON P. BOAZ )  
Accountant Member

( N.V. VASUDEVAN )  
Judicial Member

Bangalore,  
Dated, the 7th February, 2014.

DS/-

Copy to:

1. Appellant    2. Respondent    3. CIT                  4. CIT(A)  
5. DR, ITAT, Bangalore. 6. Guard file

By order

Senior Private Secretary  
ITAT, Bangalore.

Income Tax Appellate Tribunal - Bangalore

M/S Yeshwantpur Credit ... vs Department Of Income Tax on 11 April, 2012

IN THE INCOME TAX APPELLATE TRIBUNAL  
BANGALORE BENCH "A"

BEFORE SHRI GEORGE GEORGE K, JUDICIAL MEMBER AND  
SHRI JASON P. BOAZ, ACCOUNTANT MEMBER

I.T.A. No.737/Bang/2011  
(Assessment Year : 2007-08)

Income Tax Officer,  
Ward 9(3), Bangalore.

.... Appellant.

Vs.  
M/s. Yeswanthpur Credit Co-operative Society Ltd.,  
61, 7th Main, 8th Cross, Gokula, 1st Stage,  
2nd Phase, Yeshwanthpur, Bengaluru-560 022.  
PAN AAAAY 0157D

.... Respondent.

Appellant By : Shri B. Saravanan.  
Respondent By : Shri S. Ranganath.

Date of Hearing : 11.04.2012.  
Date of Pronouncement : 11.04.2012.

#### ORDER

Per Shri Jason P. Boaz :

This appeal by Revenue is directed against the order of the Commissioner of Income Tax (Appeals)-V, Bangalore dated 26.05.2011 for Assessment Year 2007-08.

#### 2. The facts of the case, in brief, are as under :

2.1 The assessee, a credit co-operative society, registered under the Co-operative Society Act, filed its return of income for Assessment Year 2007-08 on 26.10.2007 declaring NIL income after claiming deduction u/ 80P(2)(a)(i) of the Income Tax Act, 1961 (herein after referred as ITA No.737/Bang/11 the Act) to the extent of Rs.51,90,360. The case was taken up for scrutiny by issue of notice u/ 143(2) on 22.9.2008 which was duly served on the assessee on 23.9.2008. The Assessing Officer completed the assessment by order u/s. 143(3) dt.23.10.2009. In doing so, the Assessing Officer denied the assessee's claim for deduction u/ 80P(2)(a)(i) of the Act to the extent of Rs.51,90,360 holding that the assessee is carrying on banking activities which was hit by the amended provisions in section 80P(4) of the Act which became applicable in the relevant period. The Assessing Officer also made a disallowance of Rs.4,37,727 under section 40a(ia) of the Act.

2.2 Aggrieved the assessee carried the matter in appeal before the CIT(A). The learned CIT(A) after examining the assessee's claim for deduction of its income u/s. 80P(2)(a)(i) of the Act, held that the

assessee was a credit co-operative society, and not a co-operative bank and was therefore entitled deduction under section 80P(2)(a)(i) of the Act. He followed the decision of ITAT, Bangalore in the case of M/s. Bangalore Commercial Transport Credit Co- operative Society Ltd in ITA No.1069/Bang/2010 dt.8.4.2011 wherein it was held that there was a clear distinction between a co-operative bank and a co-operative society and that while the provisions of section 80P(4) are applicable only to co-operative banks, credit co-operative societies, like the assessee, were entitled for deduction under section 80P(2)(a)(i) of the Act. 3.0 Aggrieved the Revenue is in appeal before us. The grounds of appeal raised by the Revenue are as under :

ITA No.737/Bang/11 " 1. The CIT(A) has erred in granting deduction under section 80P(2)(a)(i) of the Income Tax Act, as the assessee is a co-operative society carrying on banking business.

2. The CIT(A) has erred in granting deduction under section 80P(2)(a)(i) relying on the decision of the Hon'ble ITAT, Bangalore 'B' Bench in ITA No.1069/Bang/2010 dated 8/4/2011 in the case of M/s. Bangalore Commercial Transport Credit Co-operative Society Ltd., as the said case has not reached finality.

3. The CIT(A) has not appreciated the facts that the main motto of the co-operative society is lending for its members, which is in the nature of banking transaction and comes under the purview of section 80P sub-section 4 of the IT Act, as inserted in Finance Act, 2006 to be effective from 1/4/2007.

4. The CIT(A) has not appreciated the fact that the provisions of section 80P(4) is equally applicable to the assessee who is in the nature of giving others.

5. For these and such other grounds that may be urged at the time of hearing, it is prayed that the order of CIT(A) is set aside and that the order of the Assessing Officer be restored."

3.1 At the outset, the learned Authorised Representative in the course of hearing submitted that the learned CIT(A) was correct in allowing the assessee's claim for deduction. 80P(2)(a)(i) of the Act, as the issue is covered in favour of the assessee by the decision of the Tribunal in the case of M/s. Bangalore Commercial Transport Credit Co-operative Society Ltd (supra). 3.2 The learned Departmental Representative fairly conceded that this issue was covered in favour of the assessee in view of this Tribunal's order relied on by the assessee in the case of M/s. Bangalore Commercial Transport Credit Co-operative Society Ltd (supra). The Tribunal observed and held as under :

" The assessee was denied the deduction under section 80P(2)(a)(i) of the Act for the reason of introduction of sub-section 4 to section 80P. Section 80P(4) reads as follows :

ITA No.737/Bang/11 "(4) The provisions of this section shall not apply in relation to any cooperative bank other than a primary agricultural credit society or a primary

M/S Yeshwantpur Credit ... vs Department Of Income Tax on 11 April, 2012  
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 cooperative 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 cooperative bank other than a primary agricultural credit society or rural development bank. For the purpose of the said sub-section, cooperative 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, "cooperative bank" means a State Cooperative Bank, a Central Cooperative Bank and a Primate Cooperative Bank.

9.2 From the above section, it is clear that the provisions of section 80P(4) has got its application only to cooperative banks. Section 80P(4) does not define the word "cooperative society". The existing sub-section 80P(2)(a)(i) shall be applicable to a cooperative 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 9th May, 2007. The difference between a cooperative bank and a cooperative society are as follows:-

Nature Cooperative society registered under Cooperative society registered Banking Regulation Act, 1949 under Karnataka Cooperative Society Act, 1959 Registration Under the Banking Regulation Act, 1949 Cooperative Societies Act, 1959.

and Cooperative Societies Act, 1959.

Nature Business	of 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	1. As per the bye laws of the cooperative society. 2. Society cannot open savings bank account, current account, issue letter of credit, discount bills of exchange, issue cheques, demand drafts, pay orders, gift
	cheques, demand drafts (DD), Pay Orders, Gift cheques, lockers, bank guarantees etc.	cheques, lockers, bank guarantees etc. 3. Society cannot act as clearing

3. Cooperative Banks can act as clearing agent, for cheques, DDs, pay agent for cheques, DDs, pay orders and orders and other forms. 4. Society are bound by rules and

4. Banks are bound to follow the rules, regulations as specified by in the regulations and directions issued by cooperative societies act. Reserve Bank of India (RBI).

Filing of returns Cooperative banks have to submit Society has to submit the annual annual return to RBI every year. return to Registrar of Societies. Inspection RBI has the power to inspect accounts Registrar has the power to and overall functioning of the bank. 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.

9.3 If the intention of the legislature was not to grant deduction under section 80P(2)(a)(i) to cooperative 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 cooperative banks and not to credit cooperative societies. The intention of the legislature of bringing in cooperative banks into the taxation structure was mainly to bring in par with commercial banks. Since the assessee is a cooperative society and not a cooperative bank, the provisions of section 80P(4) will not have application in the assessee's case and therefore, it is entitled to deduction under section 80P(2)(a)(i) of the Act."

4. We have heard both the sides and perused the material available on record. After due consideration, we are of the considered view that the facts, observations and findings of the Tribunal in the case of M/s. Bangalore Commercial Transport Credit Co-operative Society Ltd (supra) are identical with those of the instant case and that the assessee, being a credit co-operative society is entitled to the deduction under section 80P(2)(a)(i) claimed by it. We, ITA No.737/Bang/11 therefore, hold that the order of the learned CIT(A) is in accordance with law and no interference is called for therein.

5. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced in the open court on 11th April, 2012.

Sd/-

Sd/-

(GEORGE GEORGE K)  
Judicial Member

(JASON P BOAZ)  
Accountant Member

Bangalore,  
Dated: 11.04.2012.

\*Reddy gp

Copy to :

1. Appellant
2. Respondent
3. C.I.T.
4. CIT(A)
5. DR, - A Bench.
6. Guard File.

(True copy)

By Order

Asstt. Registrar, ITAT, Bangalore

## Income Tax Appellate Tribunal - Ahmedabad

## Samarpan Co.Op.Credit Society ... vs Assessee on 5 February, 2016

IN THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD "A" BENCH AHMADABAD

11

Before: Shri Pramod Kumar, Accountant Member  
Shri Rajpal Yadav, Judicial Member

ITA Nos. 2400 & 2401/Ahd/2015  
Assessment Years :2010-11 & 2012-13

The Samarpan Co-op. V/s. The ACIT,  
Credit Society Ltd. Banaskantha Circle,  
124-125, Rajiv Gandhi Palanpur, 2 n d Floor, Shree  
Complex, Lalchali Road, Hari Complex, Abu High  
Opp. Old Bus Stand way, Palanpur, Dist. B. K.  
Deesa, Dist. B. K. 385535 385001  
PAN No. AAAAT8371A  
(Appellant) .. (Respondent)

/By Assessee Shri M. S. Thakkar, A.R.  
/By Revenue Shri R. P. Maurya, D.R.  
  
/Date of Hearing 22.12.2015  
/Date of 05.02.2015  
Pronouncement

## ORDER

PER : Rajpal Yadav, Judicial Member The present two appeals are directed at the instance of assessee against separate orders of even dated i.e. 09th June, 2015 passed by ld. CIT(A)-4, I T A N o s . 2 4 0 0 & 2 4 0 1 / A h d / 1 5 A . Ys . 1 0 - 1 1 & 1 2 - 1 3 ( T h e S a m a r p a n C o - o p . C r e d i t S o c i e t y L t d . v s . A C I T ) Page 2 Ahmedabad on the appeals of assessee for A.Ys.2010-11 & 2012-13. Since, common issues are involved, therefore, we heard both the appeals together and it may be appropriate to dispose of them by this common order.

2. First we take ITA No.2401/Ahd/2015 i.e. appeal for A.Y. 2012-13. The grounds of appeal taken by assessee are not in consonance with Rule 8 of ITAT Rules, 1963. They are descriptive and argumentative in nature. In brief, the grievance of the assessee is that ld. CIT(A) erred in denying the claim of assessee for grant of deduction u/s.80P(2)(a)(i) on a sum of Rs.3,77,515/- which was earned by the assessee as interest income on fix deposits with the banks.

3. The brief facts of the case are that the assessee is a Co-operative Society registered under Gujarat Co-operative Society Act, 1961 carrying on the business of providing credit facilities to its member. It has filed its return of income on 29th of September, 2012 declaring total income at NIL. The case of the assessee was selected for scrutiny assessment and a notice u/s.143(2) of the Income Tax Act was issued and served upon the assessee. On scrutiny of the accounts, it revealed to the Assessing Officer that assessee society has earned income by way of interest derived from its investments other than co-operative society. He worked out the total interest income of Rs.3,77,517/- . Ld. A.O. rejected the prayer of assessee to grant exemption u/s.80P(2)(a)(i) of the Income Tax Act on this amount. Accordingly, income of the assessee was determined at Rs.3,77,520/-.

4. Appeal to the ld. CIT(A) did not bring any relief to the assessee.

5. The ld. Counsel for the assessee, at the very outset, submitted that this issue is covered in favour of the assessee by the order of ITAT, Ahmedabad in the case of ITO vs. Jafari Momin Vikas Co.-op. Credit Society Ltd. in ITA No.1491/Ahd/2012. The appeal of the Revenue against this order has also been I T A N o s . 2 4 0 0 & 2 4 0 1 / A h d / 1 5 A . Y s . 1 0 - 1 1 & 1 2 - 1 3 ( T h e S a m a r p a n C o - o p . C r e d i t S o c i e t y L t d . v s . A C I T ) Page 3 dismissed by the Hon'ble Gujarat High Court and the order of the Hon'ble Gujarat High Court reported in [2014] 49 taxmann.com 571 (Gujarat). The question framed by the Hon'ble High Court in this case read as under:

"Whether the hon'ble Tribunal is correct in allowing the deduction under section 80P(2)(a)(i) to the assessee's society even though the same is covered under section 80P(4) read with section 2(24)(viiia) being income from providing credit facilities carried on by a co-operative society with its member?"

The Hon'ble High Court was answered the question against the Revenue by observing as under:

"6. 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 the Legislature specified primary agricultural credit societies along with primary co-operative 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 the Central Board of Direct Taxes Circular No. 133 of 2007, dated May 9, 2007. Circular provides 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 March 28, 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 Regulation 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 co-operative bank.

4. Thus, if the Delhi Co-op. Urban Thrift and Credit Society Ltd. does not fall within the meaning of 'co-operative bank' as defined in Part V of the Banking Regulation Act, 1949, sub-section (4) of section 80P will not apply in this case.

5. This is issued with the approval of the Chairman, Central Board of Direct Taxes."

I T A N o s . 2 4 0 0 & 2 4 0 1 / A h d / 1 5 A . Y s . 1 0 - 1 1 & 1 2 - 1 3 ( T h e S a m a r p a n C o - o p . C r e d i t S o c i e t y L t d . v s . A C I T ) Page 4

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 the Central Board of Direct Taxes, the Delhi Co-op. Urban Thrift and Credit Society Ltd. was under consideration. The circular clarified that the said entity not being a co-operative 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 co-operative banks other than those fulfilling the description contained therein but also credit societies, which are not co-operative banks. In the present case, the respondent-assessee is admittedly not a credit co-operative bank but a credit co-operative society. The exclusion clause of sub-section(4) of section 80P, therefore, would not apply. In the result, the tax appeals are dismissed."

Similarly, identical question has come before Hon'ble Karnataka High Court in the case of Guttigedarara Credit Co-operative Society Ltd. vs. ITO reported in [2015] 60 taxmann.com 215 (Karnataka). The questions framed by Hon'ble Karnataka High Court rendered as under:

"(i) Whether the Tribunal failed in law to appreciate that the interest earned on short-term deposits in banks were only investment in the course of activity of providing credit facilities to members and that the same cannot be considered as investment made for the purpose of earning interest income and consequently passed a perverse order ?

(ii) Whether the Tribunal is correct in law in holding that the interest earned on the deposits by the appellant/co-operative society does not qualify for deduction under Section 80P(2)(a)(i) of the Income Tax Act, 1961 on the facts and circumstances of

the case?

(iii) Without prejudice, whether the tribunal is justified in not holding that if at all the interest earned from deposits with scheduled banks is held to be not attributable to the activity of providing credit to members, then the whole of such income is not liable to tax but only the net income after reducing the expenditure incurred to earn such interest income would be liable to tax on the facts and circumstances of the case?"

The Hon'ble Karnataka High Court has recorded the following findings while deciding the above questions in favour of assessee:

"7. From the aforesaid facts and rival contentions, the undisputed facts which emerge are, certain sums of interest were earned from short-term deposits and from savings bank account. The assessee is a Co-operative Society providing credit facilities to its members. It is not carrying on any other business. The interest income earned by the assessee by providing credit facilities to its members is deposited in the banks for a short duration which has earned interest. Therefore, whether this interest is attributable to the business of providing credit facilities to its members, is the question.

ITANos. 2400 & 2401 / Ahd / 15 A.Ys. 10 - 11 & 12 - 13 (The Samarpan Co-op. Credit Society Ltd. vs. ACIT) Page 5

8. In this regard, it is necessary to notice the relevant provision of law i.e., Section 80P(2)(a)(i):--

"80P Deduction in respect of income of co-operative societies:-- (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:

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

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

(ii) to (vii) \*\*\* \*\*\* \*\*\* the whole of the amount of profits and gains of business attributable to any one or more of such activities."

9. The word 'attributable' used in the said Section is of great importance. The Apex Court had an occasion to consider the meaning of the word 'attributable' as supposed to derive from its use in various other provisions of the statute in the case of Cambay Electric Supply Industrial Co. Ltd. v.

CIT [1978] 113 ITR 84 (at page 93) as under:--

'As regards the aspect emerging from the expression "attributable to" occurring in the phrase "profits and gains attributable to the business of the specified industry (here generation and distribution of electricity) on which the learned Solicitor-General relied, it will be pertinent to observe that the legislature has deliberately used the expression "attributable to" and not the expression "derived from". It cannot be disputed that the expression "attributable to" is certainly wider in import than the expression "derived from". Had the expression "derived from" been used, it could have with some force been contended that a balancing charge arising from the sale of old machinery and buildings cannot be regarded as profits and gains derived from the conduct of the business of generation and distribution of electricity. In this connection, it may be pointed out that whenever the legislature wanted to give a restricted meaning in the manner suggested by the learned Solicitor-General, it has used the expression "derived from", as, for instance, in section 80J. In our view, since the expression of wider import, namely, "attributable to", has been used, the legislature intended to cover receipts from sources other than the actual conduct of the business of generation and distribution of electricity.'

10. Therefore, the word "attributable to" is certainly wider in import than the expression "derived from". Whenever the legislature wanted to give a restricted meaning, they have used the expression "derived from". The expression "attributable to" being of wider import, the said expression is used by the legislature whenever they intended to gather receipts from sources other than the actual conduct of the business. I T A N o s . 2 4 0 0 & 2 4 0 1 / A h d / 1 5 A . Ys . 1 0 - 1 1 & 1 2 - 1 3 ( The S a m a r p a n C o - o p . C r e d i t S o c i e t y L t d . v s . A C I T ) Page 6 A Co-operative Society which is carrying on the business of providing credit facilities to its members, earns profits and gains of business by providing credit facilities to its members. The interest income so derived or the capital, if not immediately required to be lent to the members, the society cannot keep the said amount idle. If they deposit this amount in bank so as to earn interest, the said interest income is attributable to the profits and gains of the business of providing credit facilities to its members only. The society is not carrying on any separate business for earning such interest income. The income so derived is the amount of profits and gains of business attributable to the activity of carrying on the business of banking or providing credit facilities to its members by a co-operative society and is liable to be deducted from the gross total income under Section 80P of the Act.

11. In this context when we look at the judgment of the Apex Court in Totgars Co-operative Sale Society's case (supra), on which reliance is placed, the Supreme Court was dealing with a case where the assessee/Co-operative Society, apart from providing credit facilities to the members, was also in the business of marketing of agricultural produce grown by its members. The sale consideration received from marketing agricultural produce of its members was retained in many cases. The said retained amount which was payable to its members from whom produce was bought, was invested in a short-term deposit/security.

Such an amount which was retained by the assessee-Society was a liability and it was shown in the balance sheet on the liability side. Therefore, to that extent, such interest income cannot be said to be attributable either to the activity mentioned in Section 80P(2)(a)(i) of the Act or under Section 80P(2)(a)(iii) of the Act. Therefore in the facts of the said case, the Apex Court held the assessing officer was right in taxing the interest income indicated above under Section 56 of the Act. Further they made it clear that they are confining the said judgment to the facts of that case. Therefore it is clear, Supreme Court was not laying down any law.

12. In the instant case, the amount which was invested in banks to earn interest was not an amount due to any members. It was not the liability. It was not shown as liability in their account. In fact this amount which is in the nature of profits and gains, was not immediately required by the assessee for lending money to its members, as there were no takers. Therefore they had deposited the money in a bank so as to earn interest. The said interest income is attributable to carrying on the business of banking and therefore it is liable to be deducted in terms of Section 80P(1) of the Act. In fact similar view is taken by the Andhra Pradesh High Court in the case of CIT v. Andhra Pradesh State Co-operative Bank Ltd. [2011] 336 ITR 516/200 Taxman 220/12 taxmann.com 66.

13. In that view of the matter, the order passed by the appellate authorities denying the benefit of deduction of the aforesaid amount is unsustainable in law. Accordingly it is hereby set aside. The substantial questions of law are answered in favour of the assessee and against the revenue. Hence, we pass the following order:--

Appeal is allowed. The impugned order dated 19.9.2014 is set aside. Parties to bear their own costs."

ITANo.s.2400&2401/Ahd/15A.Ys.10-11&12-13 (The Samarpan Co-op. Credit Society Ltd. vs. CIT) Page 7 The Hon'ble Karnataka High Court has reversed the order of the Tribunal and held that interest income earned by a Credit Co-operative Society from the deposits with scheduled bank is liable to be considered as eligible for claim of deduction u/s.80P(2)(a)(i) of the Income Tax Act.

6. On the other hand, ld. D.R. relied upon the order of Assessing Officer.

7. On due consideration of the facts and circumstances, we find that issue in dispute is purely covered in favour of the assessee partly by the decision of Hon'ble Karnataka High Court wherein it has been specifically held that interest income earned by the Credit Co-operative Society from deposits made with scheduled bank would also qualify for grant of deduction u/s.80P(2)(a)(i) of the Income Tax Act. Therefore, we allow the appeal of the assessee and direct the Assessing Officer to grant deduction u/s.80P(2)(a)(i) of the Income Tax Act and the interest income of Rs.3,77,517/-.

8. Now we take ITA No.2400/Ahd/2015 i.e. appeal for A.Y. 2010-11.

9. In this appeal, the grievance of the assessee is that ld. CIT(A) has erred in upholding the denial of deduction u/s.80P(2)(a)(i) of the Income Tax Act of Rs.56,359/- which was earned by the assessee as interest income.

10. The brief facts of the case are that assessee has filed its return of income on 08.10.2010 declaring total income at Nil. The ld. Assessing Officer has passed an assessment order u/s.143((3) of the Act on 07.12.2012. The ld. Assessing Officer has held that assessee society is carrying out business of banking and claimed deduction u/s.80P(2)(a)(i) of the Income Tax Act. He was of the opinion that in view of sub-section (4) of Section 80P inserted with effect from 01.04.2007. The assessee is not entitled for deduction u/s.80P(2)(a)(i) of I T A N o s . 2 4 0 0 & 2 4 0 1 / A h d / 1 5 A . Y s . 1 0 - 1 1 & 1 2 - 1 3 ( T h e S a m a r p a n C o - o p . C r e d i t S o c i e t y L t d . v s . A C I T ) Page 8 the Income Tax Act. The ld. Assessing Officer has determined the taxable income of the assessee at Rs.14,02,150/-.

11. Dissatisfied by this assessment order, assessee carried the matter in appeal before the ld. CIT(A). Ld. CIT(A) has partly allowed the appeal of the assessee. The ld. CIT(A) has held that interest received by the assessee on short term deposits and Government securities would be assessed as income from other sources and deduction u/s.80P(2)(a)(i) of the Income Tax Act will not be admissible to the assessee. The finding given by the ld. CIT(A) in paragraph no.4.12 read as under:

"4.12 AO is directed to verify whether any interest was received by the appellant on short-term deposits and government securities. He shall assess such interest under the head 'income from other sources' as laid down by the above mentioned decision of the Supreme Court and no deduction be allowed u/s.80P(2) on such interest income. Therefore, he shall restrict the deduction u/s.80P(2)(a)(i) accordingly."

12. The ld. Assessing Officer has given effect to this order of ld. CIT(A) dated 25th February, 2014. The ld. Assessing Officer has worked out the interest of Rs.56,359/- He denied the deduction to the assessee on this amount u/s.80P(2)(a)(i) of the Income Tax Act.

13. Dissatisfied with this order of A.O., assessee went in appeal before the ld. CIT(A). Ld. First Appellate Authority has confirmed the order of Assessing Officer and dismissed the appeal of the assessee.

14. Ld. counsel for the assessee has reiterated the contentions as were raised in A.Y. 2012-13. On the other hand, ld. D.R. relied upon the order of A.O.

15. On due consideration of the facts and circumstances, we are of the opinion that assessee cannot draw any benefit from the arguments made in A.Y. 2012-13 because the Assessing Officer while passing the order dated 16th June 2014 was giving effect to the order of ld. CIT(A). The assessee if aggrieved I T A N o s . 2 4 0 0 & 2 4 0 1 / A h d / 1 5 A . Y s . 1 0 - 1 1 & 1 2 - 1 3 ( T h e S a m a r p a n C o - o p . C r e d i t S o c i e t y L t d . v s . A C I T ) Page 9 with the directions of the ld. CIT(A) given in order dated 25th February 2014, then it should challenge that order before the Tribunal. The Assessing Officer was acting merely as an Executing Court who cannot go beyond the decree. The Assessing Officer has no jurisdiction to take a different view than that the one directed by the ld. CIT(A). The order of the ld. CIT(A) was not challenged by the assessee and therefore, under the garb of rectification, assessee cannot be permitted to challenge the order of the ld. CIT(A) which has been become final. Therefore, the appeal for A.Y. 2010-11 is dismissed.

16. In the result, the appeal of the assessee for A.Y. 2012-13 is allowed whereas appeal for A.Y. 2010-11 is dismissed.

This Order pronounced in open Court on 05.02.2016

Sd/-

(Pramod Kumar)  
Accountant Member  
Ahmedabad: Dated 05.02.2016

True Copy

S.K.Sinha

/ Copy of Order Forwarded to:-

1. / Appellant
2. / Respondent
3. \$ &  
/ Concerned CIT
4. &  
- / CIT (A)

5. ' \*\*\$, \$, / DR, ITAT, Ahmedabad

6.. / Guard file.

By order/ , / \$,

Income Tax Appellate Tribunal - Panji

The Quepem Urban Co-Op. Credit ... vs Department Of Income Tax on 26 November, 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 NOS. 335 TO 337/  
PNJ/2014 (ASST. YEARS :2008-09, 2009-10 &  
2011-12)

Asst. Commissioner of Income Vs. M/s The Quepem Urban Co-operative  
Tax, Credit Society Ltd.,  
Circle - 1, Ground Floor, Cindios Apts,  
Margao, Goa. Quepem, South Goa, Goa.  
(Appellants) PAN : AABAT3439L  
(Respondents)

Appellant by : Shri Vinay Singh Rawat, Ld. D.R.  
Respondent by : Shri Pramod Y. Vaidya, C.A.  
Date of Hearing : 26/11/2014  
Date of Pronouncement : 26/11/2014

ORDER

PER P.K. BANSAL All these three appeals has been filed by the revenue against the different orders of CIT(A), Panaji dtd. 15.07.2014 for the assessment years 2008-09, 2009-10 and 2011-12 by taking the following common grounds of appeal except change in figures, however grounds for assessment year 2008-09 are reproduced as under:-

1. The order of the learned CIT (A) is opposed to law and fact of the case.
  2. Whether on facts and in the circumstances of the case, Ld.CIT(A) has erred in allowing deduction u/s 80P amounting to Rs.1,31,21,061/- to the assessee and deleted the addition made by AO.
  3. Whether on facts and in the circumstances of the case, Ld.CIT(A) has erred in deleting the addition amounting to Rs.1,27,21,917/- made by AO on account of disallowance of section 43B. (Asst. Years: 2008-09, 2009-10 & 2011-12))
2. Since the issue involved in all these appeals are common, therefore disposed off by this common order. Ground no.1 since general does not require any adjudication. Both the parties agreed that these appeals be decided on the basis of facts for the assessment year 2008-09. The brief facts of the case for the assessment years 2008-09 for ground no.2 are that the Assessee is a co-operative society registered under the Goa Co-operative Societies Act, 2001. The Assessee filed return declaring gross total income of Rs.1,31,21,061/- 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.1,65,99,094/- . 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) partly allowed the appeal of the Assessee.

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 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 main contentions of the assessee are that Assessee is not a co-operative bank. The Assessee is a co-operative society duly registered under the Goa Co-operative Societies Act, 2001. The primary object of the Assessee is to encourage thrift, (Asst. Years: 2008-09, 2009-10 & 2011-12) self-help and co-operation among others. Also explaining proper utilization of funds, making savings, cutting unproductive investments. For this, our attention was drawn towards the bye-laws of the Assessee from (i) to (xxiv). 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. He also relied on CBDT Circular No.133 of 2007 dated 9.5.2007 for the proposition that section 80P(4) will not apply to an assessee which is not a cooperative bank. 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 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 (Asst. Years: 2008-09, 2009-10 & 2011-12) 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 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 :--

(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.

(Asst. Years: 2008-09, 2009-10 & 2011-12)) 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 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-

(Asst. Years: 2008-09, 2009-10 & 2011-12)) 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 presupposes 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 under sub-clause (i). These two activities are not alternate 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 pre-

(Asst. Years: 2008-09, 2009-10 & 2011-12)) supposes 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 can 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 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.

(Asst. Years: 2008-09, 2009-10 & 2011-12))

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 Assessee derives from carrying on the business of banking or providing credit facilities to its members.

(Asst. Years: 2008-09, 2009-10 & 2011-12))

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 others.
- ii) To accept deposit of money from the members repayable on demand or otherwise and withdrawable by cheque draft, order or otherwise, for the purpose of lending or investment.
- iii) To borrow or raise money.
- iv) To lend or to advance money either upon or without security to members and others as permitted by the Registrar.
- v) To acquire, to hold, to issue on commission, to under-write and to deal in stocks, funds, shares, debentures, debenture stocks, bonds, obligations, securities and investment of all kinds.
- vi) To purchase and to sell bonds, scrips or others forms of securities on behalf of constituents.
- vii) To receive all kinds of bonds, scrips, valuables on deposit or for safe custody or otherwise.
- viii) To provide safe deposit vaults and ancillary services.
- ix) To collect and transmit money and securities.
- x) To negotiate loans and advances.
- xi) To carry on and to transact every kind of guarantee and indemnity business on behalf of constituents.
- xii) To effect, to insure, to guarantee, to underwrite, to participate in managing

and carrying out any issue, public or private, debentures, debenture stock of any company, co-operative society, corporation or association and to lend money for the purpose if any such issue with the prior permission of the Registering Authority.

xiii) To acquire to construct , to maintain and to alter any building or works necessary or convenient for the purposes of the society.

xiv) To manage, to sell and to realise any property which may come into the possession of the society in satisfaction of any of its claims.

xv) To open branches and pay offices, with the permission of the Registering Authority within the area of operation of the society so as to provide society's services to the public.

xvi) To acquire, to manage and to undertake the whole or part of the business of any other cooperative society with the prior permission of the Registering Authority.

xvii) To establish, to support or to aid in the establishment and support of associations, institutions, funds, trusts and conveniences calculated to benefit members, employees/ ex employees of the society or the dependants or connections of such persons and to grant pensions.

(Asst. Years: 2008-09, 2009-10 & 2011-12)) xviii) To prepare and to finance schemes for amelioration of the financial condition of the members.

xix) To provide financial and technical assistance to small scale and cottage industries and to help self-employed persons for setting up their own business. xx) To enter into participation, consortium arrangements with any other society/s or bank/s, financial institution/s with the objects of making loans and advances with the permission of the registering authority/ Apex Bank/higher agency wherever necessary.

xxi) To do any other form of business as specified in the Act, Rules and Bye-laws.

xxii) To act as agents for collection of monies of various Government, Quasi-

Government and Statutory Bodies.

xxiii) To undertake any other form of business which the Central Government / State Government may specify as a form of business in which it is lawful for a co-operative institution to engage.

xxiv) To do all such other things as are incidental and conducive to the promotion or advancement of these objects and of the business of the society. 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. 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 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 CIT(A) at page 19 of its order has given a categorical finding that the other cases of dealings with non-members are very few and of extremely minuscule and insignificant amount and at the most they may be termed as minor deviations from the bye-

laws since the bye-laws of the assessee society do not permit it. Even before us (Asst. Years: 2008-09, 2009-10 & 2011-12)) the learned A.R did not deny this fact that the assessee has dealt with non-members but he contended it is not a prime object and there are only few cases where assessee has dealt with non-members.

9. We do not agree with the CIT(A) as well as ld. A.R if the assessee has accepted deposits from the public and lended the money to them. Even we noted, that under bye-laws 43 the assessee can receive the deposits from any person. This bye-law does not restrict the assessee for receiving the deposit only from members. In our opinion condition no.1 does stand satisfied and it can be said that the Assessee society was carrying on banking business as it was accepting deposits from the persons who were not members and was advancing loans to the non-members.

10. 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.

11. 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 Rs. 1 lac. Therefore, the Assessee satisfies the second condition.

(Asst. Years: 2008-09, 2009-10 & 2011-12))

12. So far as the third condition is concerned, we noted that Sec. 21 of The Goa Co-operative Societies Act, 2001 permits admission of any other co-operative society as a member. The provisions of Sec. 21 are laid down as under :-

21. Person who may become member - (1) Any person, who needs the services of the society, accepts the responsibilities of membership and fulfils such other conditions as may be specified in the bye-laws of the society, may be admitted as a member.

(2) No person shall be admitted as a member of a society except the following, that is to say :-

(a) an individual, who is a citizen of India and who is competent to contract under the Contract Act, 1872 (9 of 1872);

(b) a firm, company or any other body corporate constituted under any law for the time being in force, or a society registered under the Societies Registration Act, 1860 (XXI of 1860);

(c) a society registered, or deemed to be registered, under this Act or any other Co-operative Societies Act;

(d) a public trust registered under any law for the time being in force for the registration of such trusts.

[(e) Any Self Help Group formed by women for mutual assistance or with an objective to avail any type of assistance from the Government or any organization for their social, economic, cultural and educational improvement.] (3) Admission of members may be made only by an elected board of directors or by the general body where such a board does not exist:

12[Omitted ].

(4) A person admitted as a member may exercise the rights of membership, including the right to vote, only on fulfilment of such conditions as may be laid down from time to time in the bye-laws.

22. Open Membership. - (1) No society shall, without sufficient cause, refuse admission to membership to any person duly qualified therefore under the provisions of this Act and its bye-laws.

(2) Where a person is refused admission as a member of a society, the decision, with the reason therefore, shall be communicated to that person within fifteen days of the date of the decision, or within three months from the date of the application for admission, whichever is earlier.

(Asst. Years: 2008-09, 2009-10 & 2011-12)) (3) Any person aggrieved by the decision of a society refusing him admission of its membership, may appeal to the Co-operative Authority.

(4) Where a society refuses to accept the application from an eligible person for admission as member, or the payment made by him in respect of membership, or having accepted the membership application, a society does not convey its decision within three months from the date of receipt of application, the membership shall be deemed to have been refused and the person aggrieved may appeal to the Co-operative Authority.

(5) An appeal under sub-section (3) shall be filed within two months of the date of communication of refusal and under sub-section (4) within two months of deemed refusal. as far as possible, be disposed of by the Co-operative Authority within a period of three months from the date of its receipt.

(6) Every such appeal under sub-section (3) or (4) shall, as far as possible, be disposed of by the Co-operative Authority within a period of three months from the date of its receipt.

23. Joint Member. - (1) Subject to the provisions of section 21, a society may admit any person as a joint member. A joint member shall hold jointly a share of the society with another but his name shall not stand first in the share certificate.

(2) A member of a society may appoint not more than one joint member.

(3) When a person whose name stands first in the share certificate ceases to be a member, the person admitted as joint member shall automatically be the first member. In the event of the cessation of membership of the first member by death, the joint member shall be the first member and the nominee, if any, of the deceased member shall be the joint member.

(4) The joint member shall have equal right in the capital and property of the society with the first member.

(5) The joint member shall have the right to vote only in the absence of the members whose name stands first in the share certificate. The aforesaid provision of Sec.21 mandates admission of any other co-operative society as a member of the co-operative society. The word used in Sec. 21 (2) is shall. This fact is clarified further by section 22 as re-produced hereinabove that no co-operative society shall refuse admission to the membership, without sufficient reason, to any person who is qualified to become member under the provisions of this Act, rules and bye-laws. This clearly proves that in case the rules and bye-laws of the other co-operative (Asst. Years: 2008-09, 2009-10 & 2011-12)) society provides otherwise, the co-operative society may not be admitted as a member of the co-operative society. The person, as per section 22, must be qualified for becoming member not

only u/s 21(2) but also as per the rules and bye-laws of the co-operative society. We cannot read sub-section (2) in the manner that the rules and bye-laws cannot permit the admission of any other co-operative society as a member of the co-operative society. Had that been the intention of the legislature, they would have not used the words "under the provision of this act and bye-laws" in section 22.

13. We have gone through the bye-laws which contains the membership clause. Bye-laws no.9 and 10 states as under :-

**9. MEMBERS :**

- a) An individual may be admitted as a member of the society if he is an adult , competent to contract and resides within the area of operation of the society and /or is gainfully engaged in any occupation in the area;
- b) Any other person, as defined under bye-law No.4 (ix) having its registered office within the area of operation of the society and / or conducting business within such area may be admitted as a member, provided that :
  - i) The individual or any partner of a partnership firm is not convicted of any criminal offence involving moral turpitude.
  - ii) The individual or the person is not engaged in a business competing with or conflicting with the business of the society.
  - iii) The individual or the person has subscribed to and fully paid for at least one share of the society by the committee members.
- c) Government of Goa.
- d) Notwithstanding anything contained in bye-law No.4 (ix) and this bye-law no co-operative society registered or deemed to be registered shall be admitted to the membership of the society under the co-operative societies Act except The Goa State Co-operative Bank Ltd.
- e) No right of membership shall be exercisable until the expiry of one year from the date of admission as a member for the purpose of voting for the election to the membership of the committee of the society.
- f) No right of membership shall be exercisable until the expiry of one year from the date of admission as a member for the purpose of voting for the election to the membership of the committee of the society.

**10.NOMINAL MEMBERS :-**

i) Any person, who is co-partner or who desire to stand surety for a borrowing member of the society or who desires to borrow occasionally for a temporary period against certain tangible securities such as gold and silver ornaments and other silver articles, Life Insurance policies and Government and other trustees securities, may be enrolled as a nominal member upon his application in the prescribed form on payment of Rs.10/- as non-refundable entrance fee and upon his agreeing to the condition that he shall cease to be (Asst. Years: 2008-09, 2009-10 & 2011-12)) nominal member when all liabilities against him either as a borrower or as a surety are fully discharged.

ii) A Co-operative society registered under the Act shall not be eligible and as such, shall not be admitted to nominal membership in terms of the provisions of this bye-law.

iii) The nominal member shall not be entitled :

a) To receive a share certificate.

b) To receive audited accounts and annual report.

c) To attend, participate and to vote in the General Meeting and / or special General Meeting of the society and

d) To receive dividend.

e) From clause 9 and 10, it is apparent that the bye-laws of society does not permit the admission of any other co-operative society as member. The ld. A.R drawn our attention to page 23 of the paper book and contended that bye-laws 9(d) which deals with the membership has been amended w.e.f. 12.01.2001 by substituting following clause :-

Not notwithstanding anything contained in the bye-laws no.4(IX) and this bye-laws society registered or deemed to be registered may be admitted to the membership of the society under the Co.op. Societies Act. Even after the amendment also we noted only society registered can become the member not the co-operative society. Section 5 clause (CCV) of Banking Regulation Act, 1949 requires that the bye-laws should not permit any co-operative society to become member. The society and the co-operative societies both are different and are being registered and regulated by the different statute. We cannot treat a society to be a co-operative society. Thus the third condition for becoming primary co-operative bank is also complied with. Since the assessee society does complies with all the three conditions, therefore, in our opinion the assessee society does become a primary co-

operative bank and in view of explanation (a) of section 80P(4) it has to be regarded as a co-operative bank and is hit by section 80P(4).

14. 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).

(Asst. Years: 2008-09, 2009-10 & 2011-12)) 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), 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 :-

(Asst. Years: 2008-09, 2009-10 & 2011-12)) 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-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 (Asst. Years: 2008-09, 2009-10 & 2011-12)) 80P(2)(a)(i). We accordingly confirm the order of CIT(A) allowing deduction to the assessee.

15. 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 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.

16. We, therefore, in view of our aforesaid discussion hold that the Assessee has to be regarded to be a primary co-operative bank as all the three basic conditions are complied with, therefore, it is a primary co-operative bank and the provisions of Sec. 80P(4) are applicable in the case of the Assessee and Assessee is entitled for deduction u/s 80P(2)(a)(i). We, therefore, set aside the order

of the CIT(A) allowing deduction u/s 80P(2)(a)(i) to the assessee and direct the assessing officer not to allow the deduction to the assessee u/s 80P(2)(a)(i). Thus, the ground no.2 stands allowed in all the appeals.

(Asst. Years: 2008-09, 2009-10 & 2011-12))

17. In respect of ground no.3 we noted that the assessing officer invoked section 143B in respect of audit fee payable. After hearing the rival submissions, we noted that audit fees cannot be regarded to be a tax, duty, cess or fee or the expenditure the deduction of which is restricted u/s 43B. We accordingly, confirm the order of the CIT(A) deleting the disallowance made u/s 43B. Thus, this ground stands dismissed in all the years.

18. In the result, all the appeals filed by the revenue are partly allowed.

19. Order pronounced in the open court on 26.11.2014.

Sd/-

(D.T.Garasia)

Judicial Member

Sd/-

(P.K. Bansal)

Accountant Member

Place : PANAJI / GOA

Dated : 26.11.2014

\*A\*

Copy to :

- (1) Appellant
- (2) Respondent
- (3) CIT concerned
- (4) CIT(A) concerned
- (5) D.R
- (6) Guard file

By order

Assistant Registrar  
ITAT, Panaji, Goa

Income Tax Appellate Tribunal - Pune

Income Tax Appellate Tribunal - Pune

Vardhman Nagari Sahakari Path ... vs Department Of Income Tax on 22 November, 2012

IN THE INCOME TAX APPELLATE TRIBUNAL

Pune Bench "B" , Pune

Before Shri G.S. Pannu, Accountant Member

and Shri R.S. Padvekar, Judicial Member

ITA No. 1142/PN/2011

(Asstt. Year : 2008-09)

Income Tax Officer, Ward 1(1), ... Appellant "Jeevan Suman" 2nd floor,

LIC Building, N-5, CIDCO,

Aurangabad 431 003

v.

Vardhman Nagari Sahakari Patsansta Ltd. ... Respondent M.G. Road, Vaijapur,

Dist. Aurangabad.

PAN: AABCV4217E

Appellant by : Shri. Nikhil Pathak

Respondent by : Smt. Vinita Menon

Date of Hearing : 20/11/12

Date of Pronouncement : 22-11-12

## ORDER

Per R.S. Padvekar, JM

This appeal is filed by the Revenue challenging the impugned order of the Ld. CIT(A) - Aurangabad dated 29/06/2011 for the A.Y. 2008-09.

2. The Revenue has taken multiple Grounds and most of the Grounds are argumentative. The solitary issue which arises for our consideration is whether the present assessee Co-Operative Society is hit by the amendment by insertion of Sub-sec. 4 to Sec. 80P by the Finance Act 2006 and hence, is not entitled for deduction u/s. 80P of the Act as held by the A.O.

3. The facts which reveal from the record are as under. The assessee is a Co-operative Society engaged in providing credit facilities to its member. The assessment of the assessee Society was completed by the A.O. u/s. 143(3) of the Act determining total income at Rs. 50,43,534/- . The A.O disallowed the deduction of Rs.

50,43,534/- claimed by the assessee u/s. 80P(2)(a)(i) of the Act. The A.O. rejected the claim of the assessee u/s. 80P by giving the following reasons : 2 ITA No. 1142/PN/2011

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"(1) The appellant credit co-operative is a primary co-operative bank as per explanation below sub-section 4 of section 80P and hence not eligible to claim deduction u/s. 80P(2)(a)(i) of the I.T. Act.

(2) The clause (viia) inserted in section 2(24) by the Finance Act, 2006 to provide that the profits and gains of business of banking includes income of credit co-operative societies from providing credit facilities to its members.

(3) The amendment to section 80(4) by Finance Act, 2006 provides that the provisions of section 80P shall not apply in relation to co-operative bank other than primary agricultural credit society and primary co-operative agricultural and rural development bank.

(4) The explanation to section 80P(4) laid down that a "co-operative bank" shall have the meaning assigned to it in part-V of the Banking Regulation Act, 1949.

(5) As per clarification issued by CBDT in F.No.133/06/2007-TPL vide letter dated 09/05/2008, co-operative bank shall have the meaning assigned to it in part-V of the Banking Regulation Act, 1949. As per part- V of the Banking Regulation Act, "Co-operative Banks" means a State Co-operative Bank, a Central Co-operative Bank and Primary Co-operative Bank.

(6) Clause (cci) of section -5 defines a Co-operative Bank to include a Primary Co-operative Bank and clause (ccii) defines a co-operative credit society to mean co-operative society the primary object of which is to provide financial accommodation to its members. Clause (ccv) defines a primary co-operative bank is a co-operative society whose primary objective or principal business is transacting in banking business whose paid-up capital and reserve is more than Rs.1,00,000/- etc.

(7) The report of Madhavarao Committee 1999 formed by RBI supports the view that the primary credit co-operative societies automatically becomes a primary co-operative bank and hence it has to apply to RBI for a licence to carry on banking business but it can carry on banking business until it is granted a licence or notified that a licence cannot be granted to it.

(8) The appellant is carrying on the banking activity as defined in section-5 of the Banking Regulation Act as per which "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." However, the term transaction in banking business will include not only the business enumerated in section 5B of Banking Regulation Act, 1949 but also those activities. This view is supported by the decisions in the case of CIT Vs. Ahmednagar District Central Co-operative Bank Ltd. (2003) 264 ITR 38, CIT Vs. Baroda Peoples Co-operative Bank Ltd. 280 ITR 282 (Guj.)."

4. Aggrieved, the assessee carried the issue before the Ld CIT(A), who allowed the claim of the assessee. The reasons given by the Ld CIT(A) for allowing the claim of the assessee are as under : 3 ITA No. 1142/PN/2011

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"7. I have carefully considered the assessment order of the A.O. and submissions of the appellant. The issue to be decided is whether the "credit co-operative societies" are "co-operative banks" as the deduction u/s 80P(2)(a)(i) is available to credit co-operative societies providing credit facilities to its members. The co-operative banks are not entitled to deduction u/s 80P(2)(a)(i) in view of amendment to section 80P(4) by Finance Act, 2006 w.e.f. 01/04/2007. The relevant portion of amended section 80P(4) reads 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 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 (30 of 1949)

(b) ...."

7.1 In view of the above explanation, the co-operative bank shall have the meaning stated in part V of the Banking Regulation Act, -"co-operative bank" means a State Co-operative Bank, a Central Co-operative and a Primary Co-operative Bank.

7.2 In view of the above provision in part-V of the Banking Regulation Act, 1949 it is clear that co-operative society is not regarded as "co-operative bank". Further, it has also been laid down in section 56(ccii) in part-5 of Banking Regulation Act, that "Co-operative Credit Society" means a co-operative society, the primary object of which is to provide financial accommodation to its members and includes a co-operative land mortgage bank. In view of this provision, it is clear that the meaning of co-operative credit society is separately given and it does not include co-operative bank other than co-operative land mortgage bank.

7.3 Further, CBDT circular bearing No.3/2008 dated 12/03/2008 also makes it clear that the amendment to section 80P(4) has withdrawn the deduction u/s 80P in respect of co-operative banks. Further, the amendment to section 36(1)(viia) by Finance Act, 2007 w.e.f. 01/04/2007 also provides that the deduction in respect of bad debts shall be allowable also to co-operative banks. This amendment also suggest that the deduction u/s 80P has been withdrawn by Finance Act, 2006 w.e.f. 01/04/2007 in respect of co-operative banks only.

7.4 It is also to be noted here that the Central Board of Direct Taxes vide clarification bearing F.No.133/06/2007-TPL vide letter dated 09/05/2008 has clarified that the Delhi Co-operative Urban Thrift & Credit Society Ltd., does not fall within the meaning of co-operative banks as defined in part-V of the Banking Regulation Act, 1949. Sub-section-4 of section 80P will not apply in its case. The CBDT has also clarified that in part-V of the Banking Regulation Act, 1949 "Co-operative Banks" means a State Co-operative Bank, a Central Co-operative Bank and Primary Co-operative Bank. From the clarification, it is evident that credit co-operative societies are not covered by the meaning of Co-operative Banks 4 ITA No. 1142/PN/2011

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as defined in part-V of the Banking Regulation Act, 1949 and are entitled to deduction u/s 80P(2)(a)(i) of the Act.

7.5 The contentions raised by the A.O are not in accordance with the provisions of the Income Tax Act and circular and clarification issued by the CBDT. The decisions relied on by the A.O. are not applicable to the facts of the case of the appellant.

7.6 In view of the above discussion, I am of the considered view that the co-operative society is not a co-operative bank and therefore, the appellant credit co-operative society is entitled to deduction u/s 80P(2)(a)(i) of the Act. The A.O is not justified in disallowing the deduction u/s. 80P(2)(a)(i). The A.O. is directed to allow deduction u/s 80P(2)(a)(i) on gross total income of the society. The grounds raised by the appellant are allowed.

Now the Revenue is in appeal before us.

5. We have heard the parties. We find that the issue arising in this appeal is squarely covered in favour of the assessee by the decision of ITAT "B" Bench, Pune in the case of ITO Vs. Jan Kalyan Nagari Sahakari Pat Sanstha Ltd., Order dated 26th June 2012.

6. In the case of Jan Kalyan Nagari Sahakari Pat Sanstha Ltd. (Supra), the Tribunal has considered the implication of insertion of Sub-sec. (4) to Sec. 80-P on the Credit Co-operative Societies and has held as under :

"4. We have heard the rival submissions of the parties and perused the records. In this case, as per the facts on record, the assessee is a Co- operative Credit Society. Section 80P has undergone an amendment w.e.f. 1.4.2007 by insertion of Sub-sec. (4) which reads as under : "(4) The provisions of this section shall not apply in relation to any 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 credit society" shall have the meanings respectively assigned to them in Part V of the Banking Regulation Act, 1949 (10 of 1949);

(b) "primary co-operative agricultural and rural development bank" means a society having its area of operation confined to a taluk and the principal object of which is to provide for long-term credit for agricultural and rural development activities."

5. It is to be mention here that up to A.Y. 2006-07, any Co-operative Society which was engaged in the business of carrying on banking was eligible for deduction in respect of the whole of the amount of profit attributable to its banking activities. For the benefit of deciding the present issue, it is necessary to consider the legal position as applicable up-to the A.Y. 2006-07, more particularly in view of Sub-Section (2) of Sec. 80-P. Section 80 P (2) reads as under :-

"80P. (1) Where, in the case of an assessee being a co-operative society, the gross total income includes any income referred to in sub- section (2), there shall be deducted, in accordance with and subject to 5 ITA No. 1142/PN/2011

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

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

Namely :-

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

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

- (ii) a cottage industry, or
- (iii) the marketing of agricultural produce grown by its members, or (iv) the purchase of agricultural implements, seeds, livestock or other articles intended for agriculture for the purpose of supplying them to its members, or
- (v) .....
- (vi) .....

6. Sub-section (4) was introduced for withdrawing the deduction to the Co-operative Bank other than Primary Agriculture Credit Society or Primary Co-operative Agriculture and Rural Development Bank. In view of Explanation below Sub-sec.(4) of Sec. 80P, the definition of the Co-operative Bank as assigned in Para 5 of the Banking Regulation Act is to be considered. In the opinion of the A.O, as the nature of the activities of the assessee Credit Society are analogous to the banking activities, which are more specifically described in the Banking Regulation Act and hence, assessee partakes the character of 'Primary Co-operative Bank' as defined in clause (ccii) of the Banking Regulation Act 1949. Clause (cci) of Sec 5 of BR Act defines the Co-operative Bank means State Co-operative Bank, Central Co-operative Bank and Primary Co-operative Bank.

7. The primary co-operative Bank is treated as Co-Operative Bank in view of Cl. (cci) of sec 5 of the B. R. Act, 1949. Definition of 'Primary Co-operative Bank' is given in cl. (ccv) of sec. 5 of B. R. Act, 1949, which reads as under;

' Primary co-operative bank means a co-operative society other than a primary agricultural credit society -

(i) The primary object or principal business of which is the transactions of banking business;

(ii) The paid-up share capital and reserves of which are not less than one lack of rupees; and

a. The by-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 co-operative bank as a member by reason of such co-operative bank subscribing to share capital of such co-operative society out of funds provided by State Government for the purpose."

On careful perusal of above definition it is seen that basic mandate any co-operative society to cover in definition of ' Primary Co-Operative Bank' is that it's primary object or principal business should be transactions of banking business. The term 'banking' is defined in B. R. 6 ITA No. 1142/PN/2011

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Act and as per said definition there is no restriction that depositor should be member of said society but it is public at large with whom business transactions can be carried out. Other two conditions as

mentioned in cls.(ii) &(iii) are on fulfilling first condition given in cl.(i). In present case nothing is on record to suggest that all three conditions are fulfilled to hold that assessee which is a co-operative society is a "Primary Co-Operative Bank"

8. It is pertinent to note here that the definition of the Co-operative Credit Society is given in Clause (ccii) of Sec. 5 which reads as under : "co-operative credit society" means a Co-operative Society, the primary object

of which is to provide financial accommodation to its members and includes a co-operative land mortgage bank; "

9. The Banking Regulation Act, 1949 defines of Co-operative bank in cl.(cci) of sec. 5 (as inserted by sec. 56 of the said Act) and Co-operative Credit Society is not included but its identity is kept separate by way of independent definition in view of Clause (ccii) of Sec. 5 of the Banking Regulation Act which defines what is meaning of 'Credit Co-operative Society'. On plain reading of the Banking Regulation Act, 1949, nowhere it is suggested that the term "Co- operative Bank" also includes 'Co-Operative Credit Society' also. Meaning of any term or expression is to be ascertained in the context of provisions of referred Act. As per Sub-sec. (4) of Sec. 80P of the I. T. Act, Co-operative Bank means State Co-operative Bank, a Central Co-operative Bank and a Primary Co-operative Bank. It is seen that Co-operative Bank is deprived of the benefit of the deduction u/s. 80P(2)(a)(i) of the Act. As per the interpretation given by the AO, assessee Co-Operative Credit Society partakes the character of the Primary Co-operative Bank and as the Primary Co-operative Bank is included in the definition of the Co-operative Bank and hence, is not entitled to the benefits of Sec. 80P(2)(a)(i) of I. T. Act. In our opinion, this is not the correct interpretation. It is well settled principle in the interpretation of the 'taxing provisions' that the same are to be strictly construed and there is no room for any intendment. There is no presumption as to tax. Nothing is to be read or nothing is to be implied. One has to fairly look into language used by the Parliament. The Parliament has adopted the definition of the Co-operative Bank by referring the same as given in the Banking Regulation Act, 1949. It is called Legislation by reference and we have to give the strict interpretation while interpreting the effect of Sub-sec. (4) to Sec. 80 P. In our opinion, Co- operative Credit Society is distinct and separate from the Co-operative Bank nor it can be said as a Primary Co-operative Bank within the meaning of Banking Regulation Act, 1949. Hence, the assessee being a Co-operative Credit Society is entitled for deduction u/s. 80 P(2)(a)(i) of the Act. We accordingly uphold the order of the Ld CIT(A).

We, therefore, find no reason to take the different view, but support the order of the CIT(A). We, accordingly, confirm the order of CIT(A) and dismiss the appeal filed by the Revenue.

7. In the result, Revenue's appeal is dismissed. 7 ITA No. 1142/PN/2011

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The order is pronounced in the open Court on 22nd November 2012.

Sd/- Sd/- (G.S. PANNU) (R.S.PADVEKAR ) ACCOUNTANT MEMBER JUDICIAL MEMBER

Pune, dated the 22nd November, 2012

US

Copy of the order is forwarded to :

1. The Appellant
2. The Respondent
3. The CIT, Aurangabad
4. The CIT(A)- Aurangabad

5. The D.R. "B" Bench, Pune

6. Guard File

/- true copy-/

By order

Senior Private Secretary

Income Tax Appellate Tribunal

Pune

**REPORTABLE****IN THE SUPREME COURT OF INDIA****CIVIL APPELLATE JURISDICTION**

**CIVIL APPEAL NO. 10245 OF 2017**  
**(ARISING OUT OF SLP (C) NO. 20044 OF 2015)**

THE CITIZEN CO-OPERATIVE SOCIETY  
 LIMITED, THROUGH ITS MANAGING  
 DIRECTOR, HYDERABAD

.....APPELLANT(S)

**VERSUS**

ASSISTANT COMMISSIONER OF INCOME  
 TAX, CIRCLE -9 (1), HYDERABAD

.....RESPONDENT(S)

**JUDGMENT**

**A.K. SIKRI, J.**

Leave granted.

2) The appellant herein, after losing in all the fora below, has knocked the doors of this Court by means of the present appeal seeking the benefit of Section 80P of the Income Tax Act, 1961 (hereinafter referred to as the 'Act'). The Assessing Officer held that deduction in respect of income of co-operative societies under Section 80P of the Act is not admissible to the appellant as the benefit of deduction, as contemplated under the said provision is, inter alia, admissible to those co-operative

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societies which carry on business of banking or providing credit facilities to its members. On the contrary, the appellant society was carrying on the banking business for public at large and for all practical purposes it was acting like a co-operative bank governed by the Banking Regulation Act, 1949, and its operation was not confined to its members but outsiders as well.

3) It may be noted at this stage itself that Section 80P of the Act provides for certain deduction in respect of incomes of the co-operative societies. A co-operative society is defined by Section 2(19) of the Act. Where the gross total income of such co-operative societies includes any income referred to in sub-section (2) of Section 80P, the sums specified in sub-section (2) are allowed as deduction in accordance with and subject to the provisions of the said Section, while computing the total income of the assessee. The profit exempted is the net profit included in the total income and not the gross profit of the business. Sub-section (2) enlists those sums which are allowed as deductions. Clause (a) of sub-section (2) includes seven kinds of co-operative societies which are entitled to this benefit, and in respect of the co-operative societies engaged in the activities mentioned in those seven classes, the whole of the amount of profits and gains of business attributable to anyone or more of such activities is exempted from income by allowing the said income as deduction. We are concerned with sub-clause (i) of clause (a) of

sub-section (2) of Section 80P which enlists a co-operative society engaged in carrying on the business of banking or providing credit facilities to its members. For the sake of better understanding, we reproduce below the aforesaid portion of Section 80P:

**"80P. Deduction in respect of income of co-operative societies.** – (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:-

(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

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

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4) Section 80P was amended by the Finance Act, 2006 with effect from April 01, 2007 and sub-section (4) was inserted thereto. This sub-section (4) reads 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 sub-section, -

(a) "co-operative bank" and "primary agricultural

credit society" shall have the meanings respectively assigned to them in Part V of the Banking Regulation Act, 1949 (10 of 1949);

- (b) "primary co-operative agricultural and rural development bank" means a society having its area of operation confined to a taluk and the principal object of which is to provide for long-term credit for agricultural and rural development activities."

5) As would be seen from the facts hereafter, the appellant is a co-operative society. However, it has been denied the benefit of Section 80P on the ground that it is a co-operative society of the nature covered by sub-section (4) of Section 80P and, therefore, becomes disentitled to get the benefit. The question, therefore, is as to whether the appellant is barred from claiming deduction in view of Section 80P(4) of the Act. In order to ascertain the answer to this question, relevant facts are enumerated hereinbelow:

- (i) The assessee was established on May 31, 1997 initially as a Mutually Aided Co-operative Credit Society having been registered, under Section 5 of Andhra Pradesh Mutually Aided Co-operative Societies Act, 1995 with Registration No. AMC/RR/DCO/9714 by Registrar of Mutually Aided Co-operative Societies, Ranga Reddy. As operations of assessee over the years had increased manifold and as its operations were spread over States of erstwhile Andhra Pradesh, Maharashtra and Karnataka, the assessee got registered under the Multi State

Co-operative Societies Act, 2002 in terms of certificate dated July 26, 2005 issued by Office of Central Registrar of Co-operative Societies, Krishi Bhawan, New Delhi.

- (ii) The assessee is being assessed to income tax since its inception. It has been claiming exemption under Section 80P of the Act which was being allowed by the Income Tax Authorities. As per the assessee, in course of its operations, members deposit cash into their accounts with the society and they withdraw the same. It is claimed that earlier, none of Income Tax Authorities had pointed out that acceptance of deposits from its members in cash and withdrawal thereof by them in cash would violate the provisions of Sections 269SS and 269T of the Act. Sections 269SS and 269T of the Act relate to mode of taking or accepting certain loans and deposits and their repayment respectively.
- (iii) The assessee as Co-operative Society and assessee under PAN No. AAAAT3952F had filed return of income before Assistant Commissioner of Income Tax, Circle-9(I), Hyderabad for the Assessment Year 2009-10, for the year ending March 31, 2009 on September 30, 2009 declaring NIL income. In the return filed for the Assessment Year 2009-10, year ending with March 31, 2009, the assessee claimed a sum of Rs.4,26,37,081/- as deduction under Section 80P of the Act. Return filed by the assessee was

taken up for scrutiny under CASS (Computer Assisted Selection of Cases for Scrutiny) and notice under Section 143(2) of the Act was issued. In response thereto, books of account were produced by the assessee society and information called for was submitted. The Assessing Officer had arrived at Rs.19,57,32,920/- as the net amount of tax payable by the assessee in terms of his order dated December 19, 2011 by working out as hereunder:

Income Returned by the assessee (After claiming deduction u/s 80P)	:	Rs. Nil
Add: Disallowance u/s 68 as discussed in para no.2, 2.1 and 2.2 above	:	Rs.38,53,72,794/-
Add: Disallowance of deduction claimed u/s 80P	:	Rs.4,26,37,817/-
Total assessed income	:	Rs.42,80,09,880/-
Tax there on	:	(as per computation Form enclosed).
Tax payable	:	Rs.19,57,32,920/-

6) It may be pointed out that in the appeal before Commissioner of Income Tax (Appeals) {CIT(A)}, the order of the Assessing Officer making disallowance under Section 68 of the Act was reversed and that addition was deleted. Therefore, we are not concerned with that aspect of the matter which has attained finality.

7) Insofar as disallowance of deduction claimed under Section 80P of the Act is concerned, the CIT(A) rejected the claim for deduction thereby upholding the order of the Assessing Officer. While doing so, the CIT(A)

followed the order of the Income Tax Appellate Tribunal (ITAT) in the case of the appellant itself in respect of Assessment Years 2007-08 and 2008-09. CIT(A) quoted the following discussion from the said order of the ITAT:

“22. For Assessment Year 2007-08 and 2008-09, we have to consider the amendment brought out to the section with effect from 1.4.2007 by Finance Act, 2006 whereby section 80P(4) was inserted. The amendment clearly barred all the cooperative banks other than primary agricultural credit society or a primary cooperative agricultural and rural development banks from claiming exemption under the section. The primary activity of the society is to provide banking facilities to its members. The Society is dealing like a bank while accepting deposits from its members. This issue was examined by the ITAT in the assessee's own case while deleting the penalty u/s. 27ID and 27IE. The ITAT held as under:

“If the carrying on banking business is not approved by the RBI or the assessee is not having requisite license to carry out the banking business, the authorities could have taken action against the society or stop the society activity. Once the assessee is allowed to carry on the banking business, then the assessee is bound by the relevant provisions of the Banking Regulations Act. The bank for all its banking activities is strictly governed by the Banking Regulations Act, 1949.”

23. The Society is carrying on the banking business and for all practical purpose it acts like a co-op bank. The ITAT observed that the society is governed by the Banking Regulations Act. Therefore, the Society being a co-op bank providing banking facilities to members is not eligible to claim the deduction u/s. 80P(2)(i)(a) after the introduction of sub-section (4) to Section 80P.

24. In view of the above, we are of the opinion that the society is not eligible to claim deduction u/s. 80P(2)(a)(i). Therefore, we are of the opinion that the assessee is not entitled for deduction u/s. 80P(2)(a)(i) for Assessment Year 2006-07, 2007-08 and 2008-09 and allowed the ground raised by the Revenue and dismiss the ground taken by the

assessee on this issue.

5.2 The facts in the present appeal being identical, respectfully following the decision of the ITAT in the assessee's own case for the preceding years, the appeal of the assessee is dismissed on the issue of deduction u/s. 80P."

8) Further appeal to the ITAT met the same fate as ITAT also referred to its aforesaid order and dismissed the appeal of the appellant. Undeterred, the appellant approached the High Court in the form of appeal under Section 260A of the Act. This appeal has been dismissed by the High Court with the observations that there is no illegality or infirmity in the order passed by the ITAT.

9) Referring to the provisions of Section 80P of the Act, Mr. V. Shekhar, learned senior counsel appearing for the appellant, made a passionate plea to the effect that the entire purport and objective to enact the said provision was to encourage and promote growth of co-operative sector in the economic life of the country in pursuance of the declared policy of the Government. This is so recognised by various judgments of this Court firmly laying down the rule that a provision for direction, exemption or relief should be interpreted liberally, reasonably and in favour of the assessee and it should be so construed as to effectuate the object of the legislature and not to defeat it. He referred to the objects for which the assessee society has been established and submitted that the principal object of the society is to promote interest of all its members to attain

their social and economic betterment through self help and mutual aid in accordance with the co-operative principles and keeping in view the same the assessee society can engage in certain specified forms of business stipulated in the objective clause of the society. The purpose, therefore, was to promote the interest of its members and, therefore, it cannot be said that primary object of the assessee is transaction of banking business.

10) The learned senior counsel drew the attention of the Court to Section 5(b) of the Banking Regulation Act, 1949, which defines 'banking business' as under:

"(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 withdrawable by cheque, draft, order or otherwise."

11) Predicated on the aforesaid definition, he submitted that banking business means accepting for the purpose of lending or investment of deposits of money from the public repayable on demand or otherwise which is withdrawable by cheque, draft, order or otherwise. According to him, the assessee was not accepting any money from the public, except its members. Therefore, it was totally wrong on the part of the authorities below to come to a conclusion that assessee was doing banking business as stipulated in the Banking Regulation Act. It was also argued that in any case the assessee was not authorised and

competent to carry on any banking business without possessing a licence from the Reserve Bank of India. He, thus, sought to draw the distinction between a co-operative bank and a co-operative society in the following manner:

	CO-OPERATIVE BANK	CO-OPERATIVE SOCIETY
Nature of business	1. As defined in Section 6 of Banking Regulation Act. 2. Banks are bound to follow the rules, regulations and directions	1. As per bye laws of the cooperative society. 2. Society is bound by rules issued by Reserve Bank of India and regulations as specified by (RBI), if any applicable.
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 societies.
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.

It was also pointed out that even Central Board of Direct Taxes – CBDT – vide circular No. 133/2007 dated 9.5.2007 had clarified that Section 80P(4) of the Act provides that deduction shall not allowable to any Co-operative Bank other than Agricultural Credit Society or Primary Co-operative Agricultural and Rural Development Bank. Submission was that since the assessee does not fall within the meaning of Co-operative Bank as defined in Part-V of the Banking Regulation Act, 1949 and Section 80P(4) will not, therefore, apply to the assessee.

12) Continuing with the aforesaid line of argument, Mr. Shekhar further submitted that courts below ought to have appreciated that purpose of exemption under Section 80P is to provide employment of as much capital as possible for financing and extending the scope of fundings etc. The true test for applying deduction under Section 80P of the Act is whether income earned is attributable to the utilisation of circulating capital of the cooperative society engaged in the activity of business of banking. Once the assessee had earned income from the loans advanced to various members, the income so related to the banking activities is liable for exemption under Section 80P(2)(a)(i) of the Act. He submitted that this interpretation is supported by various decisions of this Court. For this purpose, he referred to the decision of this Court in ***Commissioner of Income Tax, Bangalore v. Bangalore Distt. Coop. Central Bank Ltd.***<sup>1</sup> wherein it was held that interest on Government securities and dividends earned by a Co-operative Society engaged in banking business is eligible for deduction under Section 80P of the Act, though said income was not earned from the credit facility provided to its members. Also, in ***Commissioner of Income Tax, Jalandhar v. Nawanshahar Central Cooperative Bank Limited***<sup>2</sup> this Court held that a Co-operative Society carrying a business of banking would be entitled for deduction under Section 80P of the Act. Plea of the appellant was

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(1998) 6 SCC 129  
(2012) 13 SCC 788

that if the intention of legislature was not to grant deduction under Section 80P(2)(a)(i) to the cooperative societies carrying on the business of providing credit facilities to its members, said provision would have been deleted from the Statute. According to the learned senior counsel, the new proviso to Section 80P(4) which was brought onto Statute Book is applicable only to cooperative banks and not to credit cooperative societies. The intention of the legislature in bringing the cooperative banks into the taxation structure was mainly to bring them on par with commercial banks.

- 13) Taking aid of the principle of mutuality, it was submitted that the assessee is a mutual concern. Income derived by it from its operations is distributed among members. The members are entitled to participate in the surplus, thereby creating an identity. Facilities are provided only to members of the society, who provide funds to it and their identity with the funds and their participation in the surplus arising from the said fund is unmistakably found and thus principles of mutuality will apply. In order to apply principle of mutuality, there must be complete identity between contributors and participators and requirement of law bring that contributors of the common fund and participators in the surplus must be an identical body. What is essential is that members of the assessee as a class must be able to participate in the surplus. It is immaterial whether surplus is paid back to the members or is put to reserve with the

society for development and for providing better amenities to the members. There is complete identity between the contributors and the participants of the assessee.

14) On the basis of the aforesaid arguments, Mr. Shekhar pleaded that the appellant be held entitled to the benefit of Section 80P of the Act.

15) In reply, Mr. Radhakrishnan, learned senior counsel appearing for the Revenue, submitted that the findings arrived at by the authorities below to the effect that the activity/business of the appellant, in essence, was that of a co-operative bank was based on the material on record and needed no interference. In this behalf he not only relied upon the findings of the Tribunal as per the discussion contained therein, but also submitted that these are findings of fact. The Assessing Officer scrutinised the bye-laws of the appellants and in particular those bye-laws which deal with the liability of membership etc. as well as provisions of Mutually Aided Co-operative Societies Act, 1995 (MACSA) under which the appellant is registered. The Assessing Officer found that the Act does not accept a person to be member of more than one co-operative for the same services. Moreover, Section 19 of MACSA does not accept every co-operative to be a panacea for all problems facing an entire population in an area and leaves it to the members to decide how big they wish to grow and how much they can handle. After

analysing these provisions, following discussion ensued in the order passed by the Assessing Officer:

"As per the above provisions governing the conduct of the assessee, the assessee cannot admit nominal members and deal with them. The main activities of the assessee are in violation of the above provisions, as seen under:

- (i) As per the information furnished, it was found that the assessee caters to two distinct categories of people.
- (ii) The first category is that of resident members or ordinary members.
- (iii) The second category is that of nominal members, who make deposits with the assessee for the purpose of obtaining loans etc.
- (iv) This category of persons is neither members nor nominal/associate members.
- (v) As noticed, the assessee accepts deposits mostly from the second category these deposits are mostly kept in FDs.
- (vi) With banks to earn maximum returns, a portion of these deposits are utilized to advance gold loans etc. to members of the first category.
- (vii) It is noticed that the assessee has fixed deposits of Rs.541699504.39 of Rs. As on 31.3.2007.

Therefore, the fixed deposits in banks are mostly out of funds received as deposits from the second category of persons referred above.

- (viii) As a class, the depositors and borrowers are quite distinct and the activity is finance business and cannot be termed as cooperative activity.
- (ix) The assessee is also engaged in the activity of granting loans to general public etc. which has nothing to do with cooperation amongst members. It is plain business and any willing buyer can utilize the services of the assessee.

- (x) As understood, the assessee has not obtained any approval from the Registrar of Societies either to accept deposits from nominal members (who are actually non-members as the provisions of law referred above) as well as for conducting the business of sale of stamps etc.
- (xi) Therefore, both in form and substance, the activity is in violation of the Cooperative Societies Act and Cooperative Society Rules.
- (xii) Apart from the above, a cooperative credit society is not entitled for deduction u/s 80P(2)(a)(i) on the income from investment of surplus funds as per decision of IT at Hyderabad Bench in ITA No. 1141/Hyd/2007 in the case of SBI Staff Mutually Aided Cooperative Society Ltd.”

16) He submitted that there was a clear finding of the Assessing Officer, which was consistently approved by the higher authorities as well, that provisions of Section 80P(2)(i)(a) were grossly violated as the appellant Society was found not dealing with its members only but also with general public as well. On that basis, further submission of Mr. Radhakrishnan was that the principle of mutuality was missing in this case, which aspect was also discussed in detail by the Assessing Officer. He, thus, contended that in view of the aforesaid findings, no case for interference was made out by the appellant.

17) We have considered the submissions of the counsel for the parties with reference to the record of this case.

18) We may mention at the outset that there cannot be any dispute to

the proposition that Section 80P of the Act is a benevolent provision which is enacted by the Parliament in order to encourage and promote growth of co-operative sector in the economic life of the country. It was done pursuant to declared policy of the Government. Therefore, such a provision has to be read liberally, reasonably and in favour of the assessee (See – ***Bajaj Tempo Limited, Bombay v. Commissioner of Income Tax, Bombay City-III, Bombay***<sup>3</sup>). It is also trite that such a provision has to be construed as to effectuate the object of the Legislature and not to defeat it (See – ***Commissioner of Income Tax, Bombay & Ors. v. Mahindra and Mahindra Limited & Ors.***<sup>4</sup>).

Therefore, it hardly needs to be emphasised that all those co-operative societies which fall within the purview of Section 80P of the Act are entitled to deduction in respect of any income referred to in sub-section (2) thereof. Clause (a) of sub-section (2) gives exemption of whole of the amount of profits and gains of business attributable to anyone or more of such activities which are mentioned in sub-section (2).

19) Since we are concerned here with sub-section (i) of clause (a) of sub-section (2), it recognises two kinds of co-operative societies, namely: (i) those carrying on the business of banking and; (ii) those providing credit facilities to its members.

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(1992) 3 SCC 78  
(1983) 4 SCC 392

20) In the case of **Kerala State Cooperative Marketing Federation Limited & Ors. v. Commissioner of Income Tax<sup>5</sup>**, this Court, while dealing with classes of societies covered by Section 80P of the Act, held as follows:

“6. The classes of societies covered by Section 80-P of the Act are as follows:

- (a) Engaged in business of banking and providing credit facilities to its members;

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7. We may notice that the provision is introduced with a view to encouraging and promoting growth of cooperative sector in the economic life of the country and in pursuance of the declared policy of the Government. The correct way of reading the different heads of exemption enumerated in the section would be to treat each as a separate and distinct head of exemption. Whenever a question arises as to whether any particular category of an income of a cooperative society is exempt from tax what has to be seen is whether income fell within any of the several heads of exemption. If it fell within any one head of exemption, it would be free from tax notwithstanding that the conditions of another head of exemption are not satisfied and such income is not free from tax under that head of exemption...”

21) In the case of **Commissioner of Income Tax v. Punjab State Co-operative Bank Ltd.<sup>6</sup>**, while dealing with an identical issue, the High Court of Punjab and Haryana held as follows:

“8. The provisions of section 80P were introduced with a view

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(1998) 5 SCC 48

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(2008) 300 ITR 24 (Punjab & Haryana H.C.)

to encouraging and promoting the growth of the co-operative sector in the economic life of the country and in pursuance of the declared policy of the Government. The different heads of exemption enumerated in the section are separate and distinct heads of exemption and are to be treated as such. Whenever a question arises as to whether any particular category of an income of a co-operative society is exempt from tax, then it has to be seen whether such income fell within any of the several heads of exemption. If it fell within any one head of exemption,... It means that a co-operative society engaged in carrying on the business of banking and a co-operative society providing credit facilities to its members will be entitled for exemption under this sub-clause. The carrying on the business of banking by a cooperative society or providing credit facilities to its members are two different types of activities which are covered under this sub-clause.

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13. So, in our view, if the income of a society is falling within any one head of exemption, it has to be exempted from tax notwithstanding that the condition of other heads of exemption are not satisfied. A reading of the provisions of section 80P of the Act would indicate the manner in which the exemption under the said provisions is sought to be extended. Whenever the Legislature wanted to restrict the exemption to a primary co-operative society, it was so made clear as is evident from clause (f) with reference to a milk co-operative society that a primary society engaged in supplying milk is entitled to such exemption while denying the same to a federal milk co-operative society.”

22) The aforesaid judgment of the High Court correctly analyses the provisions of Section 80P of the Act and it is in tune with the judgment of this Court in ***Kerala State Cooperative Marketing Federation Limited*** (supra).

23) With the insertion of sub-section (4) by the Finance Act, 2006, which is in the nature of a proviso to the aforesaid provision, it is made

clear that such a deduction shall not be admissible to a co-operative bank. However, if it is a primary agriculture credit society or a primary co-operative agriculture and rural development bank, the deduction would still be provided. Thus, co-operative banks are now specifically excluded from the ambit of Section 80P of the Act.

24) Undoubtedly, if one has to go by the aforesaid definition of 'co-operative bank', the appellant does not get covered thereby. It is also a matter of common knowledge that in order to do the business of a co-operative bank, it is imperative to have a licence from the Reserve Bank of India, which the appellant does not possess. Not only this, as noticed above, the Reserve Bank of India has itself clarified that the business of the appellant does not amount to that of a co-operative bank. The appellant, therefore, would not come within the mischief of sub-section (4) of Section 80P.

25) So far so good. However, it is significant to point out that the main reason for disentitling the appellant from getting the deduction provided under Section 80P of the Act is not sub-section (4) thereof. What has been noticed by the Assessing Officer, after discussing in detail the activities of the appellant, is that the activities of the appellant are in violations of the provisions of the MACSA under which it is formed. It is pointed out by the Assessing Officer that the assessee is catering to two

distinct categories of people. The first category is that of resident members or ordinary members. There may not be any difficulty as far as this category is concerned. However, the assessee had carved out another category of 'nominal members'. These are those members who are making deposits with the assessee for the purpose of obtaining loans, etc. and, in fact, they are not members in real sense. Most of the business of the appellant was with this second category of persons who have been giving deposits which are kept in Fixed Deposits with a motive to earn maximum returns. A portion of these deposits is utilised to advance gold loans, etc. to the members of the first category. It is found, as a matter of fact, that the depositors and borrowers are quite distinct. In reality, such activity of the appellant is that of finance business and cannot be termed as co-operative society. It is also found that the appellant is engaged in the activity of granting loans to general public as well. All this is done without any approval from the Registrar of the Societies. With indulgence in such kind of activity by the appellant, it is remarked by the Assessing Officer that the activity of the appellant is in violation of the Co-operative Societies Act. Moreover, it is a co-operative credit society which is not entitled to deduction under Section 80P(2)(a)(i) of the Act.

- 26) It is in this background, a specific finding is also rendered that the principle of mutuality is missing in the instant case. Though there is a

detailed discussion in this behalf in the order of the Assessing Officer, our purpose would be served by taking note of the following portion of the discussion:

"As various courts have observed that the following three conditions must exist before an activity could be brought under the concept of mutuality;

that no person can earn from him;  
that there a profit motivation;  
and that there is no sharing of profit.

It is noticed that the fund invested with bank which are not member of association welfare fund, and the interest has been earned on such investment for example, ING Mutual Fund [as said by the MD vide his statement dated 20.12.2010]. [Though the bank formed the third party vis-a-vis the assessee entitled between contributor and recipient is lost in such case. The other ingredients of mutuality are also found to be missing as discussed in further paragraphs].

In the present case both the parties to the transaction are the contributors towards surplus, however, there are no participators in the surpluses. There is no common consent of whatsoever for participators as their identity is not established. Hence, the assessee fails to satisfy the test of mutuality at the time of making the payments the number in referred as members may not be the member of the society as such the AOP body by the society is not covered by concept of mutuality at all."

- 27) These are the findings of fact which have remained unshaken till the stage of the High Court. Once we keep the aforesaid aspects in mind, the conclusion is obvious, namely, the appellant cannot be treated as a co-operative society meant only for its members and providing credit facilities to its members. We are afraid such a society cannot claim the benefit of Section 80P of the Act.

28) This appeal, therefore, fails and is hereby dismissed with costs.

.....J.  
(A.K. SIKRI)

.....J.  
(ASHOK BHUSHAN)

**NEW DELHI;**  
**AUGUST 8, 2017.**

ITEM NO.1502  
(FOR JUDGMENT)

COURT NO.7

SECTION XII-A

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C) No(s). 20044/2015

(Arising out of impugned final judgment and order dated 17-07-2013 in ITTA No. 292/2013 passed by the High Court Of A.P. At Hyderabad)

THE CITIZEN COOPERATIVE SOCIETY LTD.,  
REP. BY MANAGING DIRECTOR  
G.RANGA RAO. HYDERABAD

Petitioner(s)

## VERSUS

ASST. COMMISSIONER OF INCOME TAX  
CIRCLE-9(1), HYDERABAD

Respondent(s)

Date : 08-08-2017 This matter was called on for pronouncement of judgment today.

For Petitioner(s) Mr. K. Shivraj Choudhuri, AOR

For Respondent(s) Ms. Anil Katiyar, AOR

Hon'ble Mr. Justice A.K. Sikri pronounced the judgment of the Bench comprising His Lordship and Hon'ble Mr. Justice Ashok Bhushan.

Leave granted.

The appeal is dismissed in terms of the signed reportable judgment.

Pending application(s), if any, stands disposed of accordingly.

(Ashwani Thakur)  
COURT MASTER  
(Signed reportable judgment is placed on the file)

(Mala Kumari Sharma)  
COURT MASTER