

Grounds of appeal

1. The assessing officer has erred in ignoring the various documents and facts provided during the assessment, and therefore going against the law of natural justice have unwarranted in not accepting the return of income filed by the appellant.
2. The Assessing Officer erred in law and on the facts by disallowing the deduction, claimed by the Appellant of Rs. 11,83,002/- under section 80P(2)(a)(i) of the Income Tax Act, 1961 by
 - 2.1. Ignoring the Hon. CBDT Instructions for the same, as well as Hon. Supreme Court and Jurisdictional ITAT/ High Court decisions on this issue.
 - 2.2. Ignoring the fact that as per section 80P(4) of the Income Tax Act, 1961 deduction under section 80P(2)(a)(i) is not allowed in the case of Co-operative Banks and not in the case of Co-operative Credit Society.
 - 2.3. Not considering complete definition of Primary Co-operative Bank given in section 5(ccv) of the Banking Regulation Act, 1949.
 - 2.4. Ignoring the fact that that assessee does not satisfy all of the three clauses given in section 5(ccv) of the Banking Regulation Act, 1949.
 - 2.5. Ignoring the fact that there is a substantive distinction between activities of a Co-operative Credit Society and that a Co-operative Bank.
3. The Assessing Officer erred in law and on the facts in interpreting the explanatory note no. 22 to the Finance Act, 2006 which withdrew the benefits available to certain Co-Operative Banks and not to Co-Operative Credit Societies.
4. The Appellant, therefore, pray that the appeal may be admitted and orders may be passed rendering justice to the appellant.
5. The appellant craves leave to add, amend, alter, vary and/or withdraw any or all the above Grounds of Appeal before or during the course of the appeal being heard and/ or disposed of.

Statement of facts

1. The Appellant **Shri Om Sai Co-Operative Credit Society Ltd (PAN- AAEAS5258B)** is a Co-Operative Credit Society engaged in the business of providing credit facilities to its members and assessed by ITO- Ward 27(3)(3), Mumbai for A.Y. 2015-16.
2. During the relevant AY, the Appellant filed its return of Income on 9th March 2017 under section 139(4) of the Income Tax Act, 1961 declaring net total income of **Rs. Nil/-**. The return was processed under section 143(1) of the Income Tax Act, 1961.
3. The return was selected for scrutiny assessment. The assessment has been completed determining the net total income at Rs.16,45,000/- against the returned income of Rs. Nil/-. While doing so, the assessing officer has made the following additions/disallowances.
 - 3.1. Disallowance of deduction claimed under section 80P(2)(a)(i) of the Income Tax Act, 1961 of Rs. 11,83,002.
 - 3.2. Additions of Rs. 4,62,000 on account of Rent received under the head Income from house property.
4. During the course of assessment proceedings, the appellant filed copies of bye-laws, annual report, financials, details of members, Bank statements, rent agreement with the tenant and also filed submission providing reasons regarding the claim for such amount as deduction u/s 80P(2)(a)(i) of the Income Tax Act, 1961. In spite of the same, the Assessing Officer has ignored the same and disallowed the claim of deduction and added an amount of Rs 11,83,002/- to the Total Income of the appellant.
5. It is against this order of assessment this appeal is being preferred with a request to delete the addition made on account of disallowance of deduction claimed under section 80P(2)(a)(i) and allow the expenditure/ deductions as claimed.
6. Additions were made as per Para 4.3.4 of the assessment order dated 30th November, 2017 by stating that assessee squarely falls within the definition of the co-operative Bank as per Chapter IV of the Banking Regulation Act, 1949. We would like to point out that Assessing Officer **has not considered the complete definition** of the Primary Co-Operative Bank as per section 5(ccv) of the Banking Regulation Act, 1949. Para 4.3.3. of the assessment order only, states clause (i) and (ii) of the section 5(ccv). Whereas section 5(ccv) has three clauses which are reproduced below for the purpose of brevity:

“(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;

(ii) the paid-up share capital and reserves of which are not less than one lakh of rupees; and
 (iii) the bye-laws of which do not permit admission of any other co-operative society as a member.”

6.1. It is clearly evident from the above that for a co-operative society to fall under the definition of the Primary Co-operative Bank all of the above three conditions should be satisfied.

6.1.1. The first condition states that primary objective of the society should be that of the banking business. The term ‘Banking’ has been defined under section 5(b) of the Banking Regulation Act, 1949 which reproduced below.

*“5(b) ‘banking’ means the accepting, for the purpose of lending or investment, of deposits of money **from the public**, repayable on demand or otherwise, and withdrawal by cheque, draft, order or otherwise;”*

6.1.2. The principal object of the society as per Para 5 of the bye laws is as follows: -
*“Principal Object of the society will be to promote the 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.”*

6.1.3. One may also point out that principal object of the Primary Co-Operative Bank as per the model bye-laws enclosed is similar to that of the bye-laws of assessee society. However, sub-object no. 2 and 4 of the Primary Co-Operative Bank and sub-object no. 2 and 13 of the assessee society clearly makes the distinction between the activities of the Co-operative Bank and Co-Operative credit societies. Assessee society can give loan only to members whereas primary co-operative Bank can give loans to members and non-members as well. **Also, definition of Banking u/s 5(b) of the Banking Regulation Act, 1949 is embodied in the bye-laws of Primary Co-Op Bank and not in the bye-laws of Credit Society.**

Bye Laws of Assessee Society	Bye laws of Primary Co-op Bank
<u>Sub-Object 2</u> <i>Accept deposits from members for the purpose of lending or investment.</i>	<u>Sub-Object 2</u> <i>To accept deposits of money from the public, repayable on demand or otherwise and withdrawable by cheque, draft, order or otherwise for the purpose of lending or investment.</i>

<u>Sub-Object 13</u> <i>“Providing loans to members to improve their financial condition.”</i>	<u>Sub-Object 4</u> <i>“To lend or to advance fund based or non-fund based facility either with or without security to members and others as permitted by the Registrar/Reserve Bank of India.”</i>
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- 6.1.4. We do not accept the explanation given in the para 4.3.5 of the assessment order u/s 143 that *“as regards to 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 is a primary objective of any Bank, co-operative or otherwise and the assessee society is engaged in the business of lending money and accepting deposits like all other Co-operative Bank and credit societies.”*
- 6.1.5. Section 80P in the Income Tax Act 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 co-operative sector is based on the principle of mutuality which derives its meaning from the activities carried on for the benefits of members. **Making no distinction between activities carried among members and activities carried for general public would defeat the purpose of the law for which it was enacted.**
- 6.1.6. Banks (Both Co-operative or otherwise) have the freedom to **provide there facilitates to the general public**. The intention of the legislature introducing the section 80P(4) of the Income Tax Act, 1961 was to bring the co-operative Banks on par with the other commercial Banks. As both of them were providing services to the general public and it would have been unfair to other commercial Banks to be taxed for profits while co-operative Banks enjoy immunity from the same.
- 6.1.7. Also, facts of the case law relied upon by the Assessing Officer of the Citizen Co-Op credit society are clearly different from the case of the assessee. If we were to examine para 25 of the said order passed by the Hon. Supreme Court. **The main reason behind not allowing the deduction to the Citizen Co-op society was that it was in violation of the Mutually aided co-operative societies Act under which it was formed by giving loans to general public as well.** This is clearly not the case here. The assessee is only providing credit facilities to its members and not to the general public. The Bye-law of the assessee society does not permit it to provide loans to anyone other than a qualified share member. **We would also**

like you to refer page no. 15 of the enclosed Statutory Audit Report dated 29th June 2015, which has not made any qualification as to society has violated the bye laws and provided loans to the non-members.

6.2. As for the second condition there is no doubt that share capital and reserves of the society exceed rupees one lakh. This condition is satisfied.

6.3. The third condition provides that bye laws of the society should not allow any other co-operative society as a member. **This condition is clearly not satisfied as “para 10(e) – membership” of the bye-laws of the assessee permits admission of other co-operative societies.** Except for those which are in the same business as of the assessee. Hence, except for other credit society assessee can admit all of the other types of co-operative societies as member.

6.3.1. Here, we would also like you to refer to the Model Bye-laws of the primary co-operative Bank given by Registrar of Co-Operative Societies, Maharashtra which clearly has a condition in the membership para 10(v) that any other co-operative society cannot be admitted as a member. (engaged in the same business or otherwise). This condition is in conformity with the Section 5(ccv) of the Banking Regulation Act, 1949. If the intent of the legislature was to also include the credit societies in the definition of the Primary Co-operative Bank the same condition would have been given in the bye-laws of credit society as well.

6.3.2. Hence, the third condition is clearly not satisfied in the case of the assessee. If the AO had considered the full and complete definition of the Primary Co-operative Bank as per Section 5(ccv) of the Banking Regulation Act, 1949 in the assessment order, it would have been clear that assessee is not covered under the said definition.

7. Conclusion arrived at by the Assessing officer regarding the Interpretation of the explanatory note No. 22 to the Finance Act, 2006 in para 4.3.11 is clearly erroneous and contradictory with the para 4.3.3 of the Assessment Order itself. Extract of the Para 4.3.11 of the Assessment Order is reproduced for the purpose of the brevity.

“4.3.11 As can be seen, section 80P(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 ‘business of banking’ as the criterion for a co-operative society to be a co-operative bank. In fact, it is not even stated as one of the qualifying activities; the sole defining activity that qualifies a co-operative society to be a co-operative bank, be it at the primary, district or at the state level, is the financing of its members, rendering the conduct of the ‘business of banking’.”

7.1. Explanation to Section 80P(4) of the Income Tax Act, 1961 states that Primary Co-operative Bank shall have the same meaning respectively assigned to them as per Part V of the Banking Regulation Act, 1949. In Para 4.3.3. Of the Assessment Order Assessing Officer has reproduced the definition of the Primary Bank given in Section 5(ccv) of the Banking Regulation Act, 1949. Which clearly has three conditions to be satisfied by a Co-operative society to fall under the definition of a Primary Co-Operative Bank and the first most condition of the three is that the primary object or principle business should be that of the Banking. Further two more conditions needs to be satisfied by a Co-Operative society to be considered as a Co-Operative Bank.

7.2. Hence, claim made by the Assessing Officer in the Para 4.3.11 that -definition of a Co-Operative Bank does not enlist the condition of the -business of bankingø as the criterion for a co-operative society to be a co-operative bankø is clearly erroneous and contradictory with the definition of the Primary Co-operative Bank given in Section 5(ccv) of the Banking Regulation Act, 1949.

8. In this context, it is necessary to examine the provisions of section 80P(2)(a)(i) which envisagetwo categories of co-operative societies one that is carrying on the business of banking and anotherthat is providing credit facilities to its members.

Section 80P of the Income Tax Act, 1961 reads asunder:

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

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

(a) in the case of aco-operative society engaged in - (i) carrying on the business of banking or providing credit facilitiesto its members

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

Thus, it is clear that as per section 80P(2)(a)(i) two categories of co-operative societies are contemplated one that carries on the business of banking and the other that provides credit facilities toits members. These are distinct and separate as is evident from the disjunctive clause "or" used toidentify the two categories. It is, therefore, worthwhile to examine the definitions of co-operativecredit society and co-operative bank as per Part-V of the Banking Regulation Act, which is as follows: -

Section 56 of the Banking Regulation Act: Act to apply to co-operative societies subject to modifications: -

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

(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 mortgaged bank;

Thus, it is seen that a co-operative credit society and co-operative bank are categorized separately.

9. It is also relevant to note that a co-operative Bank requires a specific license from the Reserve Bank of India. The relevant provision of the Banking Regulation Act is as follows:

"22. Licensing of banking companies - Save as hereinafter provided, no co-operative society shall carry on banking in India unless;

(a) it is a primary credit society or;

(b) it is a co-operative Bank and holds a license issued in that behalf by the Reserve Bank, subject to such conditions if any, as the Reserve Bank may deem fit to impose."

Thus, it is mandatory to obtain a license from RBI to work as bank or banker. The Appellant has not obtained such license from RBI hence it is not bank or banker within the meaning of Banking Regulation Act, 1949. Further it is clear that co-operative banks have to fulfill the conditions of Registrar of Societies and also RBI to transact the business of banking. However, credit co-operative societies are not required to submit such returns with the Reserve Bank of India. It is evident that every co-operative society cannot be equated with a co-operative bank and more importantly no co-operative society can usurp the status of a bank without the regulator's approval.

10. The Assessing Officer has erred in fact and law by not considering the instructions given by Hon. CBDT on the said matter in the clarification No.133/06/2006-07 dated 19-05-2007. Various High Courts after detailed analysis of Section 80P and its sub sections along with the provisions of Banking Regulation Act 1949, had arrived into the following conclusions: -

- 10.1. All Co-operative Societies other than those coming under the control of Reserve bank of India are eligible for deduction under Section 80(P) (2) (a) of the Income Tax Act 1961.

- 10.2. A Co-operative society carrying on banking activities is not a Co-operative Bank licensed by Reserve Bank of India and therefore is eligible for deduction u/s 80P of Income Tax Act 1961 in the light of the clarification No.133/06/2006-07 dated 19-05-2007 issued by CBDT.

11. The above said viewpoints were expressed by various appellate authorities all over the country. Some of these decisions are mentioned below.

Latest case Law

- 11.1. In the case of the **ACIT vs Buldana Urban Co-operative Credit Society Ltd.** [2013] 32 taxmann.com 69 (Nagpur - Trib.)/ [2013] 23 ITR(T) 411 (Nagpur - Trib.)/ [2013] 57 SOT 76 (Nagpur - Trib.)/[2013] 153 TTJ 728 (Nagpur - Trib.) ITAT Nagpur has held as follows:

*Deductions - Income of co-operative societies [Cooperative banks] - Assessment year 2007-08 to 2009-10 - Assessee had income from banking and non-banking activities - Assessing Officer took a view that assessee was not a credit co-operative society and therefore not eligible for deduction under section 80P(2)(a)(i) - It was undisputed that assessee was neither a State Co-operative bank nor a Central co-operative bank - **Further bye-laws of assessee permitted admission of any co-operative society to be member of assessee indicating that assessee could not be regarded as a primary co-operative bank under section 5 (ccv) of Banking Regulation Act, 1949, and, thus, it would not be hit by section 80P(4)** - Whether in view of above, assessee's claim for deduction under section 80P(2)(a)(i) was to be allowed - Held, yes [Para 11] [In favour of assessee]*

- 11.2. In the case of **CIT v. Jafari Momin Vikas Co-op. Credit Society Ltd** [2014] 49 taxmann.com 571 (Gujarat)/[2014] 227 Taxman 59 (Gujarat)(MAG.)/ [2014] 362 ITR 331 (Gujarat)/ [2015] 274 CTR 153 (Gujarat), Honøble High Court of Gujrat held as follows:

*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]*

- 11.3. In the case of **Tararani Mahila Co-Op credit society Ltd. vs ITO**, Ward (1)(2), Belgaum [2014] 44 taxmann.com 123 (Panaji - Trib.)/ [2015] 152 ITD 621 (Panaji - Trib.) ITAT Panajai held as follows :

Section 80P of the Income-tax Act, 1961 - Deductions - Income of co-operative societies (Primary co-operative bank) - Assessment years 2009-10 and 2010-11 - Assessee, a co-operative society, was registered under Karnataka State Co-operative

*Societies Act, 1959 - It claimed deduction under section 80P(2)(a)(i) - Assessing Officer denied deduction taking view that assessee was a primary co-operative bank and, therefore, provisions of section 80P(4) were applicable - **Whether since none of aims and objects of assessee-society allowed it to accept deposits of money from public for purpose of lending or investment, it could not be regarded to be a primary co-operative bank - Held, yes - Whether, therefore, provisions of section 80P(4) were not applicable in instant case - Held, yes - Whether in given situation assessee was entitled for deduction under section 80P(2)(a)(i) - Held, yes [Paras 3.3.7 and 3.3.8] [In favour of assessee]***

- 11.4.** In the case of **Chandraprabhu Urban Co-Op Credit Society v. ITO, Ward -1, Nipani**[2015] 64 taxmann.com 336 (Karnataka) Honøble High Court of Karnataka held as follows:

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

- 11.5.** In the case of **Income-tax Officer, Ward 1(4) v. Jankalyan Nagri Sahakari Pat Sanstha Ltd.** [2012] 24 taxmann.com 127 (Pune)/[2012] 54 SOT 60 (Pune)(URO) ITAT Pune held as follows:

*Section 80P of the Income-tax Act, 1961 - Deduction - Income of co-operative societies - **Whether co-operative credit society is distinct and separate from co-operative bank nor can it be said as a primary co-operative bank within meaning of Banking Regulation Act, 1949 - Held, yes - Whether, therefore, a co-operative credit society Is entitled for deduction under section 80P(2)(a)(i) - Held, yes [In favour of assessee]***

- 11.6.** In the case of **Commissioner of Income-tax, Belgaum v. Shri Laxmi Credit Souhard Sahakari Ltd,** [2015] 65 taxmann.com 96 (Karnataka) Honøble High Court of Karnataka held as follows:

Section 80P of the Income-tax Act, 1961 - Deductions - Income of co-operative societies (Primary co-operative bank) - Assessment year 2009-10 - Assessee, a co-operative society, registered under Karnataka State Co-operative Societies Act, 1956,

*claimed deduction under section 80P(2)(a)(i) in respect of its income - Assessing Officer held that assessee, having primary object of transaction in banking business, was a primary co-operative bank and, thus, not eligible for deduction in terms of section 80P(4) - **Whether since all three basic conditions mentioned in section 5(ccv) of Banking Regulation Act, 1949 to become primary co-operative bank, were not complied with, assessee was not a co-operative bank in terms of section 80P(4) and, therefore, was eligible for deduction - Held, yes - Whether in face of Banking Regulation Act, 1949 prescribing that in event of a dispute as to primary object of any co-operative society, a determination thereof by Reserve Bank of India shall be final such dispute was required to be resolved by Reserve Bank of India before authorities could term assessee as a co-operative bank, for purposes of section 80P - Held, yes - Whether, however, view taken by High Court as to assessee being a co-operative society and not a co-operative bank would hold field and bind authorities unless held otherwise by Reserve Bank of India - Held, yes [Para 10] [In favour of assessee]***

- 11.7. In the case of Belgaum Merchants Co-op Credit Society Ltd. v. Commissioner of Income-tax (Appeals), Belgaum, [2015] 64 taxmann.com 274 (Karnataka) Hon'ble High Court of Karnataka held as follows:**

*Section 80P of the Income-tax Act, 1961, read with section 56 of the Banking Regulation Act, 1949 - Deductions - Income of co-operative societies (Credit societies) - Assessment year 2009-10 - **Whether authorities under Income-tax Act are neither competent nor do they possess any jurisdiction to resolve controversy as to whether assessee was a co-operative society or a co-operative bank, as defined under provisions of Banking Regulation Act - Held, yes [Para 10] [In favour of assessee]***
Circulars and Notifications : Circular No. 133 of 2007, dated 9-5-2007.

- 11.8. In the case of ITO v. Shiva Credit Souhard Sahakari Niyamit, [2015] 55 taxmann.com 472 (Panaji - Trib.)/[2015] 68 SOT 228 (Panaji - Trib.)(URO)/[2014] 166 TTJ 174 (Panaji - Trib.) ITAT Panajai held as follows:**

*Section 80P of the Income-tax Act, 1961 - Deductions - Income of co-operative societies (Applicability of) - Assessment years 2007-08 and 2009-10 - **Whether where assessee, a co-operative society, was not carrying on banking business as it was not receiving deposits from persons who were not members and, moreover, by-laws of society permitted admission of any other co-operative society as its members, assessee could not be regarded as primary-co-operative bank and, there being no application of section 80P(4), its claim for deduction under section 80P(2)(a)(i) was to be allowed - Held, yes [Paras 2.9, 2.14 & 2.15] [In favour of assessee]***

12.The appellant craves leave to add, amend, alter, vary and/or withdraw any or all the above statement of facts before or during the course of the appeal being heard and/ or disposed of