

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.

#### O R D E R

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

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 underKarnataka Cooperative Society Act, 1959 Registration Under the Banking Regulation Act, 1949 Cooperative Societies Act, 1959.

and Cooperative Societies Act, 1959.

Nature of 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

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

(GEORGE GEORGE K)  
Judicial Member

Bangalore,  
Dated: 11.04.2012.

Sd/-

(JASON P BOAZ)  
Accountant Member

\*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

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