

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.

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:

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

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

*In favour of assessee.