

The Chamber of Tax Consultants

Webinar
on

Deduction u/s 80P – in respect of income of co-
operative societies

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Introduction

Position under Income-tax Act.

- Definition – Sec. 2(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
- Whether a person? - U/s 2(31)(e) of the Income Tax Act, 1961, 'person' includes "association of persons". Co-operative Society is basically an AOP.

Introduction

Position under Income-tax Act.

- Tax rates for AY 2017-18
- Surcharge is 12% of income tax if net income exceeds Rs. 1 crore.
- Ed. Cess is 2% and SHEC is 1% of tax and surcharge

<u>Net income range</u>	<u>Rate of income tax(%)</u>
Up to Rs. 10,000/-	10
Rs. 10,000/- to Rs. 20,000/-	20
Rs. 20,000 & above	30

Taxation Aspects

Head of income:

- Income from House property,
 - Profits and gains of business or profession,
 - Capital gains and
 - Income from other sources
-
- Section 145(2) – income under the head ‘business income’ and ‘income from other sources’ to be computed in accordance with ICDS, if the Society follows mercantile system of accounting.
 - Examples: interest income to be taxed on accrual basis.

Introduction

- There are various types of co-operative societies registered under Co-operative Societies Act, 1912. Some of them are as follows:-
 - Housing society.
 - Producer's society.
 - Agricultural marketing society.
 - Consumer's society.
 - Cooperative Bank
 - Federal Society.

80P – Deduction in respect of income of co-operative societies

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.

Why deduction u/s 80P?

Promotion of co-operative movement -Object was to encourage and promote the growth of co-operative societies. - 177 ITR 418(SC) BROACH DISTRICT CO-OPERATIVE COTTON SALES, GINNING & PRESSING SOCIETY LTD. vs. CIT

The provision in s. 80P is introduced with a view to encouraging and promoting growth of co-operative sector in the economic life of the country and in pursuance of the declared policy of the Government - (1998) 231 ITR 0814 (SC) -KERALA STATE CO-OPERATIVE MARKETING FEDERATION LTD. & ORS. ETC. vs. CIT

80P

Structure of section 80P:

- Section 80P(1) – main section allowing deduction from income of co-operative societies
- Section 80P(2) – prescribes
 - the categories of cooperative societies eligible for deduction
 - Types of income of co-operative societies eligible for deduction
 - Quantum of deduction
 - Certain ancillary conditions for claiming deductions.
- Section 80P(3) – where deduction is claimed under certain prescribed sections of Chapter VI-A (part C), deduction u/s 80P to be allowed from gross total income as reduced by the said deductions claimed
- 80P(4) – exclusion of application of section 80P to co-operative banks other than primary agricultural credit society or a primary co-operative agricultural and rural development bank.

80P

Structure of section 80P(2):

- 80P(2)(a) – profits and gains of business attributable to certain activities in which the co-operative societies are engaged.
- 80P(2)(b) - profits and gains of business in the case of a co-operative society, being a primary society engaged in supplying milk, oilseeds, fruits or vegetables raised or grown by its members to a federal cooperative society, government or local authority, government company or corporations.
- 80P(2)(c) - profits and gains of business attributable to activities other than those specified in clause (a) or clause (b) above
- 80P(2)(d) - interest or dividends derived by the co-operative society from its investments with any other co-operative society
- 80P(2)(e)- income derived by the co-operative society from the letting of godowns or warehouses for storage, processing or facilitating the marketing of commodities
- 80P(2)(f) - in the case of a co-operative society, not being a housing society or an urban consumers' society or a society carrying on transport business or a society engaged in the performance of any manufacturing operations with the aid of power, where the gross total income does not exceed twenty thousand rupees, the amount of any income by way of interest on securities or any income from house property

80P(2)(a)

80P(2)(a) - whole of the amount of **profits and gains of business attributable to** any one or more of following activities of a co-operative societies:

- i. carrying on the business of banking or providing credit facilities to its members,
- ii. a cottage industry
- iii. marketing of agricultural produce grown by its members
- iv. purchase of agricultural implements, seeds, livestock or other articles intended for agriculture for the purpose of supplying them to its members
- v. processing, without the aid of power, of the agricultural produce of its members
- vi. collective disposal of the labour of its members
- vii. fishing or allied activities, that is to say, the catching, curing, processing, preserving, storing or marketing of fish or the purchase of materials and equipment in connection therewith for the purpose of supplying them to its members

- **Meaning of the term profits and gains of business?**
- **Meaning of the term attributable to ? `**

80P(2)(a)

Meaning of the term profits and gains of business?

- (2010) 322 ITR 0283 (SC) THE TOTGARS CO-OPERATIVE SALE SOCIETY LTD. vs. ITO
 - The Parliament has included specifically "business profits" into the definition of the word "income". Therefore, we are required to give a precise meaning to the words "profits and gains of business" mentioned in s. 80P(2) of the Act.
 - income taxable under other heads of income cannot be taken as profits and gains of business.
- (2009) 318 ITR 0062 (Utt) CIT vs. NAINITAL DISTRICT CO-OPERATIVE BANK
 - Income from banking business alone is eligible for deduction under s. 80P(2)(a)(i) and not income from house property

Meaning of the term attributable to ?

- (1978) 113 ITR 84 (SC) Cambay Electric Supply Industrial Co. Ltd. vs. CIT
 - expression "attributable to" is much wider than the expression "derived from"
- (1979) 118 ITR 0770 (All) CIT vs. CO-OPERATIVE CANE DEVELOPMENT UNION LTD.
 - The expression "attributable to" suggests that the legislature intended to cover receipts from sources other than the actual conduct of the business of the assessee.

80P(2)(a)(i) – Banking business

- What is allowable as deduction?

profits and gains of business of a co-operative society engaged in

- a. carrying on the business of banking or
- b. providing credit facilities to its members.

attributable to such activity.

- Exceptions

80P(4) – W.e.f. 1.4.2007, 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.

Further, as per circular No. 6/2010, dt 20.9.10, Regional Rural Banks are not eligible for deduction u/s 80P.

80P(2)(a)(i) – Banking business

Meaning of the term:

- Co-operative Bank

5(cci) "Co-operative Bank" means a State Co-operative Bank, a Central Co-operative Bank and a primary Co-operative Bank

- Primary agricultural credit society

5(cciv) "primary agricultural credit society" means a co-operative society-

- (1) the primary object or principal business of which is to provide financial accommodation to its members for agricultural purposes or for purposes connected with agricultural activities (including the marketing of crops); and
- (2) 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;

- 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.

80P(2)(a)(i) – Banking business

Part A : Profits and gains of business of a co-operative society engaged in carrying on the business of banking attributable to such banking activity.

It shall include the following:

- Income from investment in government securities - (1998) 233 ITR 0282 (SC) CIT vs. BANGALORE DISTT. CO-OPERATIVE CENTRAL BANK LTD./ (2002) 255 ITR 0423 (SC) CIT vs. RAMANATHAPURAM DISTT. CO-OP. CENTRAL BANK LTD.
- Dividends on shares of Industrial Financial Corporation - (1998) 233 ITR 0282(SC) CIT vs. BANGALORE DISTT. CO-OPERATIVE CENTRAL BANK LTD./ (2002) 255 ITR 0423 (SC) CIT vs. RAMANATHAPURAM DISTT. CO-OP. CENTRAL BANK LTD.
- Income from investment in compliance with statutory provision/ investment with RBI and SBI - (2001) 251 ITR 0194(SC) CIT vs. KARNATAKA STATE COOPERATIVE APEX BANK
- Income from commission and brokerage by dealing in bills of exchange, hundies, promissory notes, etc., and income from in connection with opening of new branches - (1988) 169 ITR 0573(MP) BHOPAL CO-OPERATIVE CENTRAL BANK vs. CIT
- Admission fee, incidental charges, financial penalties and miscellaneous income - (1984) 149 ITR 438 (MP) Dhar Central Co-operative Bank
- Locker rent - (2001) 251 ITR 0522 (SC) MEHSANA DISTRICT CENTRAL CO-OPERATIVE BANK LTD. vs ITO
- Interest from investment in IVP/ KVP/ NSC - 254 ITR 697(Bom) CIT vs. RATNAGIRI DISTRICT CENTRAL CO-OPERATIVE BANK LTD)/ 328 ITR 292(Bom) CIT vs. SOLAPUR NAGARI AUDYOGIC SAHAKARI BANK LTD. & ORS.

80P(2)(a)(i) – Banking business

Part A : Profits and gains of business of a co-operative society engaged in carrying on the business of banking attributable to such banking activity.

It shall include the following:

- income from letting out surplus space since the same is assessed as business income as the same is treated as leasing out of commercial asset - (1999) 239 ITR 0700(Mad) CIT vs. MADURAI DISTRICT CO-OPERATIVE BANK LTD.
- income derived by the assessee co-operative bank from lease of immovable property is banking business as per section Sec. 6(1) of the Banking Regulation Act, 1949 which incorporates 'leasing' - (2010) 328 ITR 0139 (Pat) BIHAR STATE CO-OPERATIVE BANK LTD. vs. CIT/ (2004) 267 ITR 0742 (Kar) CIT vs. THE GRAIN MERCHANTS CO-OPERATIVE BANK LTD –Underwriting commission - (2012) 349 ITR 0689 (SC) CIT vs. NAWANSHAHAR CENTRAL CO-OP. BANK LTD.
- Interest on refund of income tax - (2010) 322 ITR 0404 (P&H) CIT vs. HARYANA STATE CO-OPERATIVE APEX BANK LTD
- Commission for collecting electricity - (2003) 264 ITR 0038 CIT vs. AHMEDNAGAR DISTRICT CENTRAL CO-OPERATIVE BANK LTD.

80P(2)(a)(i) – Banking business

Part A : Profits and gains of business of a co-operative society engaged in carrying on the business of banking attributable to such banking activity.

It shall not include the following:

- Interest on loans extended to employees—Advancing of loans against PF and housing loans to the employees - (2010) 321 ITR 0533 (Raj) CIT vs. SIROHI S.B.V. BANK LTD.
- Interest from investments of the employees' provident fund - (2009) 313 ITR 0247 (Pat) BIHAR RAJYA SAHKARI BHOOMI VIKAS CO-OPERATIVE BANK LTD. vs. CIT
- Rental income from house property- (2009) 318 ITR 0062 (Utt) – CIT vs. NAINITAL DISTRICT CO-OPERATIVE BANK/ 2009) 313 ITR 0247 (Pat) BIHAR RAJYA SAHKARI BHOOMI VIKAS CO-OPERATIVE BANK LTD. vs. CIT

80P(2)(a)(i) – Banking business

Part B : Profits and gains of business of a co-operative society engaged in providing credit facilities to its members attributable to such activity.

Whether co-operative Banks or credit co-operative societies?

- (2016) 242 TAXMAN 0422 (Bombay) PCIT vs. GOA PWD STAFF CO-OP CREDIT SOCIETY LTD.
 - There was no material on record that the respondents were giving any such credit facilities to the non members
 - Held, not a co-operative Bank
- (2017) 293 CTR 367(Mad) CIT vs. Nilgiris Co-operative Marketing Society Ltd.
 - Co-operative credit society is different from co-operative society carrying on the business of banking/ co-operative banks. When one provides credit facilities to its members alone and not to general public at large and also doesn't receive money from general public, then the same does not answer the description of co-operative bank.
- [2015] 64 taxmann.com 274 (Karnataka) Belgaum Merchants Co-op Credit Society Ltd. vs. CIT
 - Income-tax Authorities possess no jurisdiction to resolve controversy as to whether co-operative society is a co-operative bank and, this issue is to be resolved by RBI.

80P(2)(a)(i) – Banking business

Part B : Profits and gains of business of a co-operative society engaged in providing credit facilities to its members attributable to such activity.

Whether co-operative Banks or credit co-operative societies?

- (2015) 377 ITR 272(Bom) THE QUEPEM URBAN CO-OPERATIVE CREDIT SOCIETY LTD. vs. ACIT
 - Held transactions with non members are insignificant/miniscule and therefore, it cannot be concluded that the appellant's principal business is of accepting deposits from public and therefore it is in banking business.
 - Held, thus, the three conditions as provided under Section 5 (CVV) of the Banking Regulation Act, 1949, are to be satisfied cumulatively and except condition (2) the other two qualifying conditions are not satisfied. Ergo, appellant cannot be considered to be a co-operative bank for the purposes of Section 80P(4) of the Act. Thus, the appellant is entitled to the benefit of deduction available under Section 80P(2)(a)(i) of the Act.
 - Held, to the extent the income earned is attributable to dealings with the non- members are concerned the benefit of Section 80P of the Act would not be available.

80P(2)(a)(i) – Banking business

Part B : Profits and gains of business of a co-operative society engaged in providing credit facilities to its members attributable to such activity.

Whether co-operative Banks or credit co-operative societies?

- [2017] 84 taxmann.com 114 (SC) Citizen Co-operative Society Ltd. vs. ACIT
 - In order to do the business of a cooperative 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.
 - 2 categories of members - resident members or ordinary members and nominal 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. 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 cooperative society. It is also found that the appellant is engaged in the activity of granting loans to general public as well. 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.

Whether correct law?

80P(2)(a)(i) – Banking business

Part B : Profits and gains of business of a co-operative society engaged in providing credit facilities to its members attributable to such activity.

Where co-operative societies engaged in other activities and the object clause also includes granting of loans to members, interest is eligible for deduction u/s 80P(2)(a)(i)

- (2008) 306 ITR 0151 (Mad) CIT vs. ATTUR AGRICULTURAL PRODUCERS CO-OPERATIVE MARKETING SOCIETY LTD.
- (2002) 258 ITR 0594(All) CIT vs. KRISHAK SAHKARI GANNA SAMITI LTD.
- (2006) 286 ITR 0635 (Mad) CIT vs. SALEM CO-OPERATIVE SUGAR MILLS LTD.
- (1991) 188 ITR 0671 (Mad) CIT vs. PONDICHERRY CO-OPERATIVE HOUSING SOCIETY LTD.
- (2009) 311 ITR 0224 (Mad) CIT vs. TAMIL NADU CO-OPERATIVE SILK PRODUCERS LTD.

80P(2)(a)(i) – Banking business

Part B : Profits and gains of business of a co-operative society engaged in providing credit facilities to its members attributable to such activity.

Income attributable to the activity of providing credit facilities to the members?

- Income from utilisation of surplus funds taxable under the head income from other sources, and therefore not eligible for deduction u/s 80P - (2010) 322 ITR 0283 (SC) THE TOTGARS CO-OPERATIVE SALE SOCIETY LTD. vs. ITO/ 229 Taxman 68 (Delhi)(HC) Mantola Co-Operative Thrift & Credit Society Ltd. vs. CIT/ [2016] 389 ITR 578 (Gujarat) State Bank of India (SBI) vs. CIT
- Interest from investment in reserve funds, from call deposits with various banks not eligible – (2017) 389 ITR 607(P&H) CIT vs. Punjab State Co-operative Agricultural Development Bank
- A credit co-operative society, was not entitled to deduction under section 80P(2)(a)(i) relating to dividend received from UTI Mutual Funds - [2017] 83 taxmann.com 67 (Pune - Trib.) ITO vs. Kundalika Nagari Sahakari Patsanstha Maryadit
- Interest from savings bank account and other receipts are not eligible for deduction -[2017] 83 taxmann.com 67 (Pune - Trib.) ITO vs. Kundalika Nagari Sahakari Patsanstha Maryadit

80P(2)(a)(i) – Banking business

Income attributable to the activity of providing credit facilities to the members?

Interest on amount deposited out of idle funds

- However, the Karnataka High Court in case of Tumkur Merchants Souharda Credit Cooperative Ltd. vs. ITO (230 Taxman 309), has after considering SC judgment in case of Totgars held that *'the interest income so derived or the capital, if not immediately required to be lent to the members, they 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.'*
- Similar view taken in [2015] 377 ITR 464 (Karnataka) Guttigedarara Credit Co-operative Society Ltd. vs. ITO
- Followed by [2015] 43 ITR(T) 138 (Mumbai - Trib.) Jaoli Taluka Sahakari Patpedhi Maryadit vs. ITO, [2017] 83 taxmann.com 67 (Pune - Trib.) ITO vs. Kundalika Nagari Sahakari Patsanstha Maryadit, [2015] 61 taxmann.com 371 (Bangalore - Trib.) Syndicate Rythara Sahakara Bank Ltd. Vs. ITO

80P(2)(a)(i) – Banking business

Part B : Profits and gains of business of a co-operative society engaged in providing credit facilities to its members attributable to such activity.

What do you mean by the term credit facilities?

- Society which provides loan and not the one who sells goods on credit—1977) 106 ITR 0868 (Mad) CIT vs. CORAL MILLS WORKERS CO- OPERATIVE STORES LTD.
- Assessee a co-operative society, purchasing auto-rickshaws and reselling them to its members on hire-purchase terms. This activity cannot be said to provide "credit facilities" to its members - (2001) 249 ITR 0330 (SC) MADRAS AUTO RICKSHAW DRIVERS vs. CIT
- Income of assessee co-operative bank from chit fund business—Is from providing credit facilities to members, hence entitled to exemption under s. 80P(2)(a)(i)— (1974) 96 ITR 0181 (Ker) CIT vs. KOTTAYAM CO-OPERATIVE BANK LTD

80P(2)(a)(i) – Banking business

Part B : Profits and gains of business of a co-operative society engaged in providing credit facilities to its members attributable to such activity.

Provision of credit facilities to members of members?

- Meaning of the expression "members" cannot be extended to include the members of a primary co-operative society which is a member of the federated co-operative society seeking exemption- (1999) 237 ITR 0574 (SC) U.P. CO-OPERATIVE CANE UNION FEDERATION LTD. vs. CIT

80P(2)(d)- interest or dividends derived by the co-operative society from its investments with any other co-operative society

Important points:

- Not used the term profits and gains of business.
- Further, exclusively used the term investment and income from investment is generally not income from business.

Interest or dividends – whether net or gross?

- Only net receipts and not the entire the gross interest – (1995) 215 ITR 0448 (Raj) CIT vs. RAJASTHAN RAJYA SAHKARI UPBHOKTA SANGH LTD/ (2005) 277 ITR 35(All) CIT vs. DUGDH UTPADAK SAHKARI SANGH LTD.
- Interest received from bank cannot be net off against interest paid to that bank - (1998) 230 ITR 0774 CIT vs. DOABA CO-OPERATIVE SUGAR MILLS LTD

Whether 14A applicable?

- s. 14A is not applicable as far as deductions, which are permissible and allowed under Chapter VIA are concerned—S. 14A is applicable only if an income is not included in the total income as per the provisions of Chapter III of the Act - (2012) 349 ITR 0618 (Del) CIT vs. KRIBHCO
- 14A applicable - (2011) 336 ITR 495(P&H) PUNJAB STATE COOPERATIVE MILK PRODUCER'S FEDERATION LTD. vs. CIT/ (2016) 238 TAXMAN 0207 (P&H) PUNJAB STATE COOPERATIVE MILK PRODUCERS FEDERATION LTD. vs CIT

80P(2)(d)- interest or dividends derived by the co-operative society from its investments with any other co-operative society

What do you mean by the term ‘investment’?

- Investment term is of a very wide import. Various advances also get covered – 1978 CTR 293(All)
- Temporary loans given to other co-operative societies for financing their business was investment - (1989) 176 ITR 0435 (SC) CIT vs. U.P. CO-OPERATIVE FEDERATION LTD.
- Call deposits are said to be investments - (1989) 180 ITR 0631 (P&H) CIT vs. HARYANA CO-OPERATIVE SUGAR MILLS LTD.

Against

- security deposit for due compliance of the terms of agency agreement is not investment - (1989) 176 ITR 0435 (SC) CIT vs. U.P. CO-OPERATIVE FEDERATION LTD.

80P(2)(d)- interest or dividends derived by the co-operative society from its investments with any other co-operative society

What do you mean by the term co-operative society? Does it include Co-operative Banks?

- Definition of co-operative Banks – As per the definition of the term co-operative bank under the Banking Regulation Act, 1949 read with the NABARD Act, 1981, co-operative banks are co-operative societies.
- Further, section 80P(4) specifically excludes the applicaiton of this section to co-operative banks implies that co-operative banks are co-opertaive societies since, section 80P(4) was applicable only to co-operative societies.
- Further, even the Hon'ble Karnataka High Court in case of PCIT vs. Totgars Co-operative Sale Society (395 ITR 611) and (392 ITR 74), has held that co-operative banks are co-operative societies.

80P(2)(d)- interest or dividends derived by the co-operative society from its investments with any other co-operative society

Section 80P(2)(a)(i) vs. 80P(2)(d)

Interest income from investment in other co-operative banks is deductible u/s 80P(2)(d)

- (2017)392 ITR 74(kar)(HC) CIT vs. Totagars Co-operative Sale Ltd.
 - 80P(2)(d) applies to interest receivable from co-operative Bank
 - Considered SC judgment in case of 322 ITR 283 and distinguished it on the ground that the same is in context of s.80P(2)(a)(i) and not 80P(2)(d)
- (2017) 389 ITR 578(Guj) SBI vs. CIT
 - Para 14 -Thus, in the light of the principles enunciated by the Supreme Court in Totgars Co-operative Sale Society (supra), in case of a society engaged in providing credit facilities to its members, income from investments made in banks does not fall within any of the categories mentioned in section 80P(2)(a) of the Act. However, section 80P(2)(d) of the Act specifically exempts interest earned from funds invested in co-operative societies. Therefore, to the extent of the interest earned from investments made by it with any co-operative society, a co-operative society is entitled to deduction of the whole of such income under section 80P(2)(d) of the Act. However, interest earned from investments made in any bank, not being a co-operative society, is not deductible under section 80P(2)(d) of the Act
- (2016) 46 CCH 0052 MumTrib LANDS END CO-OPERATIVE HOUSING SOCIETY LTD. vs. ITO

80P(2)(d)- interest or dividends derived by the co-operative society from its investments with any other co-operative society

Contrary judgment:

- (2017) 395 ITR 611 (Kar) PCIT vs. Totgars Co-operative Sale Society
 - Character and nature of income viz. interest on investment remains same as in case of 322 ITR 283(SC)
 - 80P entire section applies only when the income is from business or operational income and not assessable under some other head
 - Section 80P(4) excludes the applicability of section 80P altogether to any co-operative bank and the term used is 'in relation to'
 - 194A(3)(v) also amended to make TDS provisions applicable to co-operative banks, thus it made the legislative intent very clear that co-operative bank are not a specie of co-operative society.
 - Deduction provision need to be strictly construed.
 - Merely because the investments have been shifted to co-operative bank, does not mean the SC decision would not apply
 - Distinguished the judgment of the earlier Kar HC judgment on the ground that they failed to consider the SC decision

80P(2)(d)- interest or dividends derived by the co-operative society from its investments with any other co-operative society

Is the judgment, with respect correct? No on the following grounds –

- Main reliance on SC decision in case of Totagar fails as the same dealt with 80P(2)(a)(i) in which case they have specifically used the words ,profits and gains of the business attributable to'. No such words are used in s. 80P(2)(d) and they have in fact specifically used the term ,interest from investment' which may not necessarily be income from business. Therefore, change in the depositor bank would make the SC decision inapplicable. This is also held by the Kar HC and Guj HC in cases referred earlier.
- 80P(2), clause (a), (b), and (c) deals with income under the head ,profit and gains of business and profession'. Section 80P in its entirety is not applicable only to business income or operational income. In fact clause (f) deals with income from house property.
- Section 80P(4) excludes the applicability of section 80P to co-operative banks only to compute income of such banks. However, when the assessee who is claiming deduction is not a co-operative bank, then provision of section 80P(4) cannot apply. In fact Circular 14/2006 dt. 28/12/2006 dealing with the said amendment specifies that *"The co-operative banks are functioning at par with other commercial banks, which do not enjoy any tax benefit. Therefore, 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 cooperative bank"*.
- Amendment in section 194A shall have no impact while dealing with the provisions of section 80P
- Deduction provisions have to be liberally construed as held by various courts including the Apex Court.
- The earlier HC judgment was dealing with an identical controversy and therefore, the HC in the present case has erred in not following the same and not even referring to a larger bench. In any case there are judgments to the effect that earlier law shall prevail, unless overruled by larger bench or higher forum.

80P(2)(a)(ii)- cottage industry

What do you mean by cottage industry?

Circular No. 722 dt. 19/9/1998 - (1995) 128 CTR (St) 5

Based on the ratio of the decisions, a co-operative society engaged in cottage industry is required to satisfy following criteria for availing benefits under section 80P(2)(a)(ii) of the Income-tax Act, 1961 :

- (a) a cottage industry is one which is carried out on small scale with a small amount of capital and a small number of workers and has a turnover which is correspondingly limited;
- (b) it should not be required to be registered under the Factories Act;
- (c) it should be owned and managed by the co-operative society;
- (d) the activities should be carried on by the members of the society and their families. For this purpose, a family would include self, spouse, parents, children, spouses of the children and any other relative who customarily lives with such a member. Outsiders (i.e., persons other than members and their families) should not work for the society. In other words, the co-operative society should not engage outside hired labour;
- (e) a member of co-operative society means a shareholder of the society;
- (f) the place of work could be an artisan shareholder's residence or it could be a common place provided by the co-operative society;
- (g) the cottage industry must carry on activity of manufacture, production or processing; it should not be engaged merely in trade, i.e., purchase and sale of the same commodity.

80P(2)(a)(ii)- cottage industry

What do you mean by the term 'industry'?

- Mere trading is not industry – (1982) 134 ITR 108(Del) Addl. CIT vs. INDIAN CO-OPERATIVE UNION LTD
- Society servicing typewriters at customer's place is not a industry as well as same is not carried on at home- (1979) 118 ITR 0512 (Bom) CO-OPERATIVE TYPEWRITER SERVICES LTD. vs. CIT

Apex society eligible?

- The apex society supplied the material to the primary co-operative societies and those primary co-operative societies at the gross root level, prepared the goods and then passed on to the apex society and the apex society sold it at fair price in the market – Held cottage industry - (1998) 231 ITR 0243 (MP) CIT vs. M.P. STATE HANDLOOM WEAVERS CO-OPERATIVE SOCIETY LTD
- Apex society engaged in manufacturing of cloth—Assessee, an apex co-operative society, purchasing yarn and giving it to weavers for weaving—Weaving charges paid to weavers through primary societies which are members of assessee-society—Whole production process monitored/ supervised by the assessee and the cloth is sold by it – Held, Assessee-society being engaged in the cottage industry, though through the primary societies eligible for deduction - (2002) 258 ITR 0088 (Raj) CIT vs. RAJASTHAN RAJYA BUNKER SAHAKARI SANGH LTD.

80P(2)(a)(iii) -Profits and gains of business of a society engaged in the marketing of agricultural produce grown by its members attributable to such activity.

Marketing

- The expression "marketing" is an expression of wide import. It involves exchange functions such as buying and selling, physical functions such as storage, transportation, processing and other commercial activities such as standardisation, financing, marketing intelligence etc. - (1998) 231 ITR 0814 (SC) KERALA STATE CO-OPERATIVE MARKETING FEDERATION LTD. & ORS. ETC. vs. CIT
- Ginning and pressing was part of the integral process of marketing. It was an activity incidental or ancillary to the marketing of the produce of its members. The ginning and pressing of the raw cotton was never regarded as a distinct process. When they delivered the raw cotton to the assessee for marketing, ginning and pressing was regarded as part of that process. The members did not take back the cotton after it was ginned and pressed - (1989) 177 ITR 0418 (SC) BROACH DISTRICT CO-OPERATIVE COTTON SALES, GINNING & PRESSING SOCIETY LTD. vs. CIT
- Includes all business activities directed towards the flow of goods and services from producer to consumer—The term could not be restricted only to buying and selling activity—If the narrow meaning were accepted, the whole purpose of the legislature would be frustrated – (1981) 129 ITR 0821 (Guj) CIT vs. KARJAN CO-OPERATIVE COTTON SALE GINNING & PRESSING SOCIETY LTD.
- purchasing latex from members, processing the same by centrifugal method and selling the same amounts to marketing the agricultural produce of members – selling of product in same condition is not required - (1992) 193 ITR 0108 (Ker) MEENACHIL RUBBER MARKETING & PROCESSING CO-OPERATIVE SOCIETY LTD. vs. CIT

80P(2)(a)(iii) -Profits and gains of business of a society engaged in the marketing of agricultural produce grown by its members attributable to such activity.

Marketing

- The assessee(s) buys sugarcane grown by its Members. It undertakes a particular operation whose outcome is a final product in the form of sugar. Held, If an operation/process renders a commodity or article fit for use for which it is otherwise not fit, the operation/process falls within the meaning of the word 'manufacture'. Matter set aside to CIT(A) to decide whether manufacturing or not. (2013) 354 ITR 0230 (SC) MORINDA COOPERATIVE SUGAR MILLS LTD. vs. CIT
- the activity of purchasing paddy from the members, milling it and selling the same did not amount to the marketing of the agricultural produce of the members - (1987) 165 ITR 0437 (MP) KESHKAL CO-OPERATIVE MARKETING SOCIETY LTD. vs. CIT
- Where the assessee-co-operative society purchases paddy and sells rice milled therefrom on its own account, it cannot be said to be engaged in marketing an agricultural produce - (1976) 103 ITR 499 (MP) CIT vs. Mahasamund Kissan Co- operative Rice Mills & Marketing Society Ltd.

Profits and gains attributable to

- Subsidy relates to the business of marketing agricultural produce of members, it is eligible for relief (1990) 182 ITR 0058 (P&H) CIT vs. PUNJAB STATE CO-OPERATIVE SUPPLY & MARKETING FEDERATION LTD.
- Interest charges, godown charges, insurance charges from purchasers who purchase are attributable to the marketing of cotton of its members - (1981) 129 ITR 0821 CIT vs. KARJAN CO-OPERATIVE COTTON SALE GINNING & PRESSING SOCIETY LTD.

80P(2)(a)(iii) -Profits and gains of business of a society engaged in the marketing of agricultural produce grown by its members attributable to such activity.

Other issues:

- Assessee being an apex society whose members are other co-operative societies it cannot claim deduction under s. 80P(2)(a)(iii) in respect of marketing of agricultural produce since the member societies have not grown the agricultural produce but it has been grown by member of member societies. - (2001) 252 ITR 0668 (Ker) CIT vs. LAKSHADWEEP CO-OPERATIVE MARKETING FEDERATION LTD.
- Assessee entitled to the benefit of s. 80P(2)(a)(iii) only in respect of income earned from the marketing of agricultural produce of its members and not in respect of income earned from marketing of agricultural produce of non-members - (2003) 262 ITR 0452 (Raj) CIT vs. KOTA CO-OPERATIVE MARKETING SOCIETY

80P(2)(a)(iv) -Profits and gains of business of a society engaged in purchase of agricultural implements, seeds, livestock or other articles intended for agriculture for the purpose of supplying them to its members attributable to such activity.

Issues:

- Other articles – ejusdem generis – directly required in connection with the process of agriculture. 84 ITR 317(All) U.P. CO-OPERATIVE FEDERATION LTD. vs. CIT / 143 CTR 362(Mad) CIT vs. THUDIALUR CO-OPERATIVE AGRICULTURAL SERVICES LTD.
- Income from supply of lift irrigation water– eligible for deduction - 238 ITR 983(Bom) CIT vs. SHETKARI SAHAKARI SAKHAR KARKHANA LTD.
- There should be purchase and sale – mere agency commission not eligible – 128 ITR 189(P&H) PUNJAB STATE CO-OPERATIVE SUPPLY & MARKETING FEDERATION LTD. vs. CIT / 156 ITR 422(Bom) VIDARBHA CO-OPERATIVE MARKETING SOCIETY LTD. vs. CIT
- Sale to members and non-members – only eligible in respect of sale to members -209 ITR 481(Bom) CIT vs. NAGPUR ZILLA KRISHI AUDYOGIK SAHAKARI SANGH LTD. / 227 ITR 458(Bom) / 154 ITR 799(AP) / 212 ITR 412(Bom)
- Sale of fertiliser by apex to primary – eligible – 144 ITR 74(Mad) CIT vs. TAMIL NADU CO-OPERATIVE MARKETING FEDERATION LTD.
- Profits should be on net basis – 203 ITR 1027(SC) SABARKANTHA ZILLA KHARID V. SANGH LTD. vs. CIT / 209 ITR 481(Bom) . However, in case of 283 ITR 116(Guj)CIT vs. JAMNAGAR JILLA SAHAKARI KHARID VECHAN SANGH LTD, the court held that Business of the assessee-society being an indivisible business, common expenditure which has no direct nexus with the activities specified in s. 80P(2)(a)(iv) cannot be apportioned for deducting the same from the income from such specified activities, and, therefore, deduction under s. 80P(2)(a)(iv) is to be allowed on the gross income

Also see DISTRIBUTORS (BARODA) P. LTD. vs. UOI – 155 ITR 120(SC) – (only net dividend eligible for deduction)

80P(2)(a)(v) -

Deals with :

Profits and gains of business of a society engaged in the processing, without the aid of power, of the agricultural produce of its members, attributable to such activity.

Issues:

- Manufacture of sugar from sugarcane grown by members—Expression "marketing" occurring in sub-cl. (iii) has been used in its wide import and it generally means the performance of all business activities involved in the flow of goods and services from the point of initial production till they are in the hands of the ultimate consumer - Thus, "marketing" includes "processing" which may be necessary for making the agricultural produce marketable—deduction under s. 80P(2)(a)(iii) is available even if the agricultural produce is marketed without further processing or even if it is processed with the use of power – (2009) 315 ITR 0351 (P&H)(FB) THE BUDHEWAL CO-OPERATIVE SUGAR MILLS LTD. vs. CIT

Matter set aside by SC to decide whether the process amounts to manufacture or not? (2015) 373 ITR 35 (SC) Dy.CIT v. Budhewal Co-Operative Sugar Mills Ltd

- The expression “agricultural produce of its members” does not necessarily mean ‘cultivated by members’. It means ‘belonging to the members’. – (2009) 315 ITR 0351 (P&H)(FB) THE BUDHEWAL CO-OPERATIVE SUGAR MILLS LTD. vs. CIT

80P(2)(a)(vi) - Profits and gains of business of a society engaged in collective disposal of the labour of its members attributable to such activity

Issues:

- Proviso to section 80P(2)(a) allows deduction under this clause, if the voting rights are restricted to individuals who contribute their labour, co-operative credit societies which provide financial assistance to the society and the State Government.

In case where voting rights are provided to persons other than the specified persons like social workers, the society would not be eligible for deduction - 161 ITR 658(Guj) GORA VIBHAG JUNGLE KAMDAR MANDALI vs. CIT

- Where assessee was a co-operative society of diploma holders and graduate engineers undertaking labour contracts and actual supervision was done by paid employees of the society and Members did not exert their own labour in execution of work but only confined themselves to overall supervision mostly at office like any other prudent businessman, deduction u/s 80P(2)(a)(vi) was not available - 208 ITR 326(Ori) -NILAGIRI ENGINEERING CO-OPERATIVE SOCIETY LTD. vs. CIT
- assessee-society is a registered society and its purpose is collective disposal of labour for discharge of financial and social interest of the labourers of that particular area who are its members. Held to be eligible for deduction – 303 ITR 145(P&H) CIT vs. GURDASPUR HARDOCHHANNI CO-OP. L/C SOCIETY

80P(2)(a)(vii)

Deals with: Profits and gains of business of a society engaged in fishing or allied activities, that is to say, the catching, curing, processing, preserving, storing or marketing of fish or the purchase of materials and equipment in connection therewith for the purpose of supplying them to its members, attributable to such activity

Proviso to section 80P(2)(a) allows deduction under this clause, if the voting rights are restricted to individuals who carry on the fishing or allied activities, co-operative credit societies which provide financial assistance to the society and the State Government

80P(2)(b)

Following conditions to be fulfilled to get deduction under this clause.

- a. co-operative society, being a primary society engaged in supplying milk, oilseeds, fruits or vegetables raised or grown by its members
- b. supply to
 - i. a federal co-operative society, being a society engaged in the business of supplying milk, oilseeds, fruits, or vegetables, as the case may be; or
 - ii. the Government or a local authority; or
 - iii. a Government company or a corporation
- c. whole of the amount of profits and gains of such business

80P(2)(c)

In the case of a co-operative society engaged in activities other than those specified in clause (a) or clause (b) (either independently of, or in addition to, all or any of the activities so specified), so much of its profits and gains attributable to such activities as does not exceed

- i. where such co-operative society is a consumers' co-operative society, one hundred thousand rupees; and
(means a society for the benefit of the consumers)
- ii. in any other case, fifty thousand rupees.

Issues:

- Wherever the other clauses provide activities or transactions with members and there are transactions with non-members, benefit of this clause can be taken.
 - Supply of agricultural produce to non-members not eligible u/s 80P(2)(a)(iv) is eligible for deduction - 154 ITR 799(AP) CIT vs. GUNTUR DISTRICT CO- OPERATIVE MARKETING SOCIETY LTD.
- Dividend from shares in companies not eligible u/s 80P(2)(a)(i) is eligible for deduction – 224 ITR 226(Mad) CIT vs. RAMANATHAPURAM DISTRICT, CENTRAL CO-OPERATIVE BANK LTD.
- Pre-operative income- the income earned by the assessee-respondent on the deposits with the banks and post offices during the relevant assessment year, when the sugar factory itself was under construction is the income earned by it from investment in fixed deposits is attributable to the activities of the society eligible for deduction u/s. 80P(2)(c).—(2005) 273 ITR 0042 (All) CCIT vs. KISAN SAHKARI CHINI MILLS LTD. See contra [1998]233 ITR 531 (P&H)] Karnal Co-operative Sugar Mills Ltd. V. CIT
- Rental income cannot be construed as business income and therefore not eligible for deduction - 188 ITR 568(Ker) KOTTAYAM DISTRICT CO-OPERATIVE BANK LTD. vs. CIT

80P(2)(e)

Deals with: any income derived by the co-operative society from the letting of godowns or warehouses for storage, processing or facilitating the marketing of commodities

Issues:

- Derived from - Words "derived from" are narrower in connotation as compared to the words "attributable to"—By using the expression "derived from", Parliament intended to cover sources not beyond the first degree – (2009) 317 ITR 0218 (SC) LIBERTY INDIA vs. CIT
- incidental services – Where the assessee co-operative society used to stock ammonium sulphate on behalf of the Government in its godowns, other services in connection therewith like taking delivery and transportation were merely incidental and, therefore, deduction under s. 80P(2)(e) was available - (1989) 176 ITR 0117 (SC) CIT vs. SOUTH ARCOT DISTRICT CO- OPERATIVE MARKETING SOCIETY LTD.
- Composite income
 - For purposes of qualifying for relief under s. 80P(2)(e)/81(iv), income must be from letting out of godowns or warehouses for the purposes mentioned in the sections, storage of fertilisers being an integral part of chain of activities undertaken by the assessee, viz, import, carriage and distribution, income relatable to storage activities only would be entitled to relief under s. 80P(2)(e)/81(iv). - (1993) 204 ITR 0289 (JK) CIT vs. J&K CO-OPERATIVE SUPPLY & MARKETING FEDERATION LTD/ - (2001) 248 ITR 0289 (J&K) CIT vs. J&K CO-OPERATIVE SUPPLY & MARKETING FEDERATION LTD
 - Under paddy agreement, assessee was not only to store the paddy but also mill it—So far as milling was concerned, it was not entitled to benefit of s. 80P(2)(e)—Matter restored on this score and Tribunal directed to make appropriate apportionment - (1995) 212 ITR 0124 (Bom) CIT vs. BHANDARA ZILLA SAHAKARI KHAREDI VIKRI SANGH LTD
- Cold storage - Giving a liberal interpretation to the provisions of s. 80P(2)(e), a cold storage can be treated as a warehouse or godown where goods are stored and thus it falls under the aforesaid section - (2004) 271 ITR 0022 (All) CIT vs. DISTRICT CO-OPERATIVE FEDERATION

80P(2)(f)

If the following conditions are fulfilled, then the person shall be eligible for deduction under this clause.

- a. in the case of a co-operative society, not being a
 - i. housing society or
 - ii. an urban consumers' society or (means a society for the benefit of the consumers within the limits of a municipal corporation, municipality, municipal committee, notified area committee, town area or cantonment.)
 - iii. a society carrying on transport business or
 - iv. a society engaged in the performance of any manufacturing operations with the aid of power,
- b. where the gross total income does not exceed twenty thousand rupees,
- c. the amount of any income by way of interest on securities or any income from house property chargeable under section 22.

80P(3)

Provision of section

- In a case where the assessee is entitled also to the deduction under section 80HH or section 80HHA or section 80HHB or section 80HHC or section 80HHD or section 80-I or section 80-IA or section 80J,
- the deduction under sub-section (1) of this section, in relation to the sums specified in clause (a) or clause (b) or clause (c) of sub-section (2),
- shall be allowed with reference to the income, if any, as referred to in those clauses included in the gross total income as reduced by the deductions under section 80HH, section 80HHA, section 80HHB, section 80HHC, section 80HHD, section 80-I, section 80-IA, section 80J and section 80JJ.

In case of ASSOCIATED CAPSULES (P) LTD. vs. DCIT (332 ITR 42)(Bom), the Court held that Sec. 80-IA(9) does not affect the computability of deduction under various provisions under heading 'C' of Chapter VI-A and only affects the allowability of such deductions under other provisions so that the aggregate deduction under s. 80-IA and other provisions under heading 'C' of Chapter VI-A do not exceed 100 per cent of the profits of the business.

80P – Other issues/ General points

Issues:

- Each clause should be treated as separate and distinct head -The provision in s. 80P is introduced with a view to encouraging and promoting growth of co-operative 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 co-operative 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 – (1998) 231 ITR 0814 (SC) -KERALA STATE CO-OPERATIVE MARKETING FEDERATION LTD. & ORS. ETC. vs. CIT
- Net vs. gross - Only net receipts and not the entire gross receipt is eligible for deduction – In case of Composite activities, proportionate expenditure should be reduced - 203 ITR 1027(SC) SABARKANTHA ZILLA KHARID V. SANGH LTD. vs. CIT
- Set off of losses –
 - Deduction under s. 80P cannot be allowed before set off of unabsorbed losses of earlier years under s.72 - (1997) 224 ITR 0604 (SC) CIT vs. KOTAGIRI INDUSTRIAL CO-OPERATIVE TEA FACTORY LTD.
 - The expression "whole of the amount of profits and gains of business attributable to any one or more of such activities" indicates that the deduction under s. 80P(2)(a) is to be given to the extent of whole of the profit attributable to the cottage industry without deducting therefrom any loss arising in any other activity. It would not be proper to deduct loss incurred in any such activity from the net profit of another activity - (1993) 201 ITR 0881(Ori) CIT vs. AGENCY MARKETING CO-OPERATIVE SOCIETY LTD

Other incentives available to co-operative societies

- Other than S. 80P which is applicable only in case of a co-operative society, there are other incentives applicable to co-operative society (S. 80IA to 80IE) like any other category of person.
- Investment linked incentives u/s. 35AD are also available to co-operative societies – where 100% of the capital expenditure incurred in specified businesses are allowed as deduction.
- S. 115JEE- Alternate Minimum Tax (AMT) does not apply to deduction u/s. 80P

QUESTIONS, IF ANY?

THANK YOU

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