**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, 1961declaring 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 retuned income of Rs. Nil/-. While doing so, the assessing officer has made the following additions/disallowances.
   1. Disallowance of deduction claimed under section 80P(2)(a)(i) of the Income Tax Act, 1961 of Rs. 11,83,002.
   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. 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.
   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.
      1. The first condition states that primary objective of the society should be that of the banking business.
      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.”*
   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.
   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.
      1. **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.
8. It is also relevant to note that a co-operative Bank requires a specific license from the Reserve Bank of India. 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.
9. 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: -
   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.
   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.
10. The above said viewpoints were expressed by various appellate authorities all over the country. Some of these decisions are mentioned below.

**Latest case Law**

* 1. **ACIT vs Buldana Urban Co-operative Credit Society Ltd.** [2013] 32 taxmann.com 69 (Nagpur - Trib.)
  2. **CIT vs Jafari Momin Vikas Co-op. Credit Society Ltd** [2014] 49 taxmann.com 571 (Gujarat)
  3. **Tararani Mahila Co-Op credit society Ltd. vs ITO**, Ward (1)(2), Belgaum [2014] 44 taxmann.com 123 (Panaji - Trib.)
  4. **Chandraprabhu Urban Co-Op Credit Society v. ITO**, Ward -1, Nipani [2015] 64 taxmann.com 336 (Karnataka)
  5. **Income-tax Officer, Ward 1(4) v. Jankalyan Nagri Sahakari Pat Sanstha Ltd.** [2012] 24 taxmann.com 127 (Pune)
  6. **Commissioner of Income-tax, Belgaum v. Shri Laxmi Credit Souhard Sahakari Ltd**, [2015] 65 taxmann.com 96 (Karnataka)
  7. **Belgaum Merchants Co-op Credit Society Ltd. v. Commissioner of Income-tax (Appeals), Belgaum**, [2015] 64 taxmann.com 274 (Karnataka)
  8. **ITO v. Shiva Credit Souhard Sahakari Niyamit**, [2015] 55 taxmann.com 472 (Panaji - Trib.)

1. 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