

IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH : BANGALORE

BEFORE SHRI N.V. VASUDEVAN, JUDICIAL MEMBER
AND SHRI ABRAHAM P. GEORGE, ACCOUNTANT MEMBER

ITA No.659/Bang/2014
Assessment year : 2009-10

M/s. ITI Employees Cooperative Society Ltd., North Avenue, Doorvaninagar, Bangalore – 560 016. PAN: AAAAI 1033H	Vs.	The Commissioner of Income Tax, Bangalore IV, Davangere.
APPELLANT		RESPONDENT

Appellant by	:	Shri Sandeep, CA
Respondent by	:	Shri Sunil Kumar Agarwal, Jt. CIT(DR)

Date of hearing	:	06.08.2015
Date of Pronouncement	:	14.08.2015

ORDER

Per N.V. Vasudevan, Judicial Member

This appeal by the assessee is against the order dated 27.3.14 of the CIT, Bangalore IV, Bangalore passed u/s. 263 of the Act.

2. Assessment of the assessee was completed by the AO u/s. 143(3) of the Act by an order dated 30.11.2011 accepting Nil income. The CIT, in

exercise of his powers conferred u/s. 263, by the impugned order, held that the claim of assessee for deduction u/s. 80P(2)(a)(i) of the Act was not allowable, in the light of provisions of section 80P(4) of the Act. According to the CIT, the assessee was a co-operative bank and therefore provisions of section 80P(4) will apply and income of the assessee from providing credit facilities to its members will have to be considered as akin to income from business of banking, not eligible for deduction u/s. 80P(2)(a)(i) of the Act r.w.s. 80P(4) of the Act.

3. The CIT directed the AO to redo the assessment by applying provisions of section 80P(4) to the assessee's case and rejecting the exemption u/s. 80P(2)(a).

4. Aggrieved by the order of CIT, the assessee has filed the present appeal before the Tribunal, challenging the impugned order whereby the CIT held that the assessee is a co-operative bank and therefore not eligible for deduction u/s. 80P(2)(a)(i).

5. At the time of hearing, it was agreed by both the parties that similar issue has been considered by this Tribunal in the case of *ACIT, Circle 3(1), Bangalore v. M/s. Bangalore Commercial Transport Credit Co-operative Society Ltd. in ITA No.1069/Bang/2010* by order dated 11.7.2014 wherein this Tribunal held that section 80P(4) 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 u/s 80P(2)(a)(i) of the Act. The following were the relevant observations of the Tribunal:-

"9. We have heard the rival submissions and perused the material on record. The assessee was denied the deduction u/s 80-P(2)(a)(i) of the Act for the reason of introduction of sub section 4 to section 80P. Section 80P(4) reads as follows:-

"(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 Banking Regulation Act, 1949	Cooperative society registered under Karnataka Cooperative Society Act, 1959.
Registration	Under the Banking Regulation Act, 1949 and Cooperative Societies Act, 1959.	Cooperative Societies Act, 1959.
Nature of business	<ol style="list-style-type: none"> 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 cheques, demand drafts (DD), Pay Orders, Gift cheques, lockers, bank guarantees etc. 3. Cooperative Banks can act as clearing agent for cheques, DDs, pay orders and other forms. 4. Banks are bound to follow the rules, regulations and directions issued by Reserve Bank of India (RBI). 	<ol style="list-style-type: none"> 1. As per the bye laws of the cooperative society. 2. Society cannot open savings bank account, current account, issue letter of credit, discounting bills of exchange, issue cheques, demand drafts, pay orders, gift cheques, lockers, bank guarantees etc. 3. Society cannot act as clearing agent, for cheques, DDs, pay orders and other forms. 4. Society are bound by rules and regulations as specified by in the cooperative societies Act.
Filing of returns	Cooperative banks have to submit annual return to RBI every year.	Society has to submit the annual return to Registrar of Societies.
Inspection	RBI has the power to inspect accounts and overall functioning of the bank.	Registrar has the power to 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 u/s 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 u/s 80P(2)(a)(i) of the Act. Hence, we are of the view that the order of the CIT(A) is correct and in accordance with law and no interference is called for."

6. The Hon'ble Gujarat High Court in the case of Tax appeal No.442 of 2013 with Tax appeal No.443 of 2013 with Tax appeal No.863 of 2013 in the case of CIT Vs. Jafari Momin Vikas Co-op Credit Society Ltd. by judgment dated 15.1.2014 had to deal with the following question of law:-

"Whether the Hon'ble Tribunal is correct in allowing deduction under section 80P(2)(a)(i) to assessee's society even though same is covered under section 80P(4) rws 2(24) (viii) being income from providing credit facilities carried on by a co-operative society with its member?"

The Hon'ble Court held as follows:

"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. Assessing Officer held that by virtue of section 80P(4), the respondent assessee would not be entitled to benefits of deduction under section 80P. CIT(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 subsection(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 Legislature specified primary agricultural credit societies along with primary cooperative 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 CBDT circular No.133 of 2007 dated 9.5.2007. 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 28.03.2007 addressed to 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 T & C Society Ltd. does not fall within the meaning of “Co-operative Bank” as defined in part V of the Banking Regulation Act, 1949, subsection(4) of section 80P will not apply in this case.

5. The issues with the approval of 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 CBDT, Delhi Coop Urban Thrift & Credit Society Ltd. was under consideration. Circular clarified that the said entity not being a cooperative 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 cooperative banks. In the present case, respondent assessee is admittedly not a credit co-operative bank but a credit co-operative society. Exclusion clause of sub-section(4) of section 80P, therefore, would not apply. In the result, Tax Appeals are dismissed.”

7. In the recent judgment dated 5.2.2014 of the Hon’ble High Court of Karnataka in *CIT v. Sri Biluru Gurubasava Pattina Sahakari Sangha Niyamitha Bagalkot* in ITA No.5006/2013 dated 5.2.2014, the Hon’ble jurisdictional High Court took the view that when the status of the assessee is a co-operative society and not a co-operative bank, the order passed by the AO extending the benefit of exemption from payment of tax 80P(2)(a)(i) of the Act is correct and such an order is not erroneous and therefore, jurisdiction u/s. 263 of the Act cannot be invoked.

8. In view of the aforesaid decision, we are of the view that the order u/s. 263 denying the deduction u/s. 80P(2)(a)(i) of the Act holding that assessee as a co-operative bank cannot be sustained and the same is quashed.

9. In the result, the appeal by the assessee is allowed.

Pronounced in the open court on this 14th August, 2015.

Sd/-

(ABRAHAM P. GEORGE)
Accountant Member

Sd/-

(N.V. VASUDEVAN)
Judicial Member

Bangalore,
Dated, the 14th August, 2015.

/D S/

Copy to:

1. Appellant
2. Respondents
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.
6. Guard file

By order

Assistant Registrar /
Senior Private Secretary
ITAT, Bangalore.