

IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH : BANGALORE

BEFORE SMT. ASHA VIJAYARAGHAVAN, JUDICIAL MEMBER
AND SHRI JASON P. BOAZ, ACCOUNTANT MEMBER

ITA No.851/Bang/2015
Assessment year : 2010-11

NAL Employees Credit Cooperative Society Ltd., National Aerospace Laboratories, Old Airport Road, Bengaluru – 560 017. PAN: AAAAN 0693F	Vs.	The Principal Commissioner of Income Tax, Bengaluru-4, Bengaluru.
APPELLANT		RESPONDENT

Appellant by	:	Shri G.R. Venkatanarayana, CA
Respondent by	:	Shri G.R. Reddy, CIT-I(DR)

Date of hearing	:	27.10.2015
Date of Pronouncement	:	04.11.2015

ORDER

Per Asha Vijayaraghavan, Judicial Member

This appeal by the assessee is against the order dated 31.3.2015 passed by the Principal Commissioner of Income-tax, Bengaluru 4, Bengaluru [hereinafter referred to as the "Pr. CIT"] u/s. 263 of the Income-tax Act, 1961 ["the Act"].

2. The assessee is a cooperative credit society and derives its income from business of accepting deposit and lending loans to its members. The society derived income of Rs. 25,00,066/- and declared NIL income in its return filed on 23-09-2010 after claiming deduction of the entire profit u/s. 80P(2)(a)(i). The same was processed and assessment concluded u/s. 143(3) dated 13-12-2012 accepting NIL income.

3. The Id. Pr. CIT in the course of inspection of the case observed as follows:-

(1) Clause (viiia) of Section 2(24) of the Finance Act 2006 (w.e.f 1/4/2007) has been inserted to include the profits and gains of any business of banking (including providing credit facilities) carried on by a cooperative society with its members in the definition of income. This means that, if the business of banking is carried on by a cooperative society, even though the business may be with its members only, the profits would be considered as income and the principle of mutuality would not be attracted to the profits and gains of such cooperative society. The definition of business of banking is enlarged for the purpose of the Income Tax Act to include providing credit facilities to the members of such cooperative societies.

(2) Further, a deduction from Gross Total Income in respect of income of certain cooperative societies is provided under the Income Tax Act u/s. 80P(1). Sub clause 1 of clause (a) of sub section (2) of this section allows this deduction to a cooperative society engaged in carrying on the business of banking or providing credit facilities to its members. Sub section (4), inserted w.e.f 1-4-2007, provides that the provisions of section 80(P) 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, thus taking away, effectively, the privilege given u/s. 80P(2)(a)(i) from cooperative banks. The terms "Cooperative Bank", "Primary agricultural credit society", and "Primary co-operative agricultural and rural

development bank”, have been defined in the Explanation to sec. 80P to lend clarity to the meaning assigned to them in Sec. 56, part V of the Banking Regulation Act, 1949. The effect of the amendments brought about by the Finance Act, 2006, are applicable to assessment for the Asst. Year 2007-08 and subsequent Asst. years is that “income of a cooperative society including the profits and gains from business of providing credit facilities is exempt from tax u/s. 80P unless they are classified as cooperative banks (not being a primary agricultural credit society or a primary cooperative agricultural and rural development bank) Hence, the allowability of deduction u/s 80P (2)(a)(i) of the Income Tax Act, 1961 needs to be examined in the above context.”

4. The Pr. CIT was of the opinion that the Assessing Officer during the course of assessment proceedings did not examine the applicability of Section 80P(4) in this case in the context of Section 56 of Part V of the Banking Regulation Act, 1949. He was therefore of the view that the order passed by the Assessing Officer u/s 143(3) on 13/12/2012 was erroneous and prejudicial to the interests of revenue and action u/s .263 was initiated by issuance of a proposal to the assessee.

5. The basic issue that arose in this case before the Pr. CIT was with regard to the status of the assessee which is primarily engaged in giving financial assistance to its members and accepting deposits from them. The case of the assessee was that it is not registered under the provisions of Banking Regulation Act, 1949 but registered under the provisions of Karnataka Co-operative Societies Act, 1959. As such, it was claimed that the assessee could not be considered to be a cooperative bank, since it

does not possess a license from Reserve Bank of India to carry on business of Co-operative Bank.

6. However, the Id. Pr. CIT was of the view that the assessee is a cooperative credit society, engaged in accepting deposits from and extending credit facilities to its members. According to Sec 2(24)(viiia) the profits and gains of any "business of banking" carried on by a cooperative society with its members (which includes providing credit facilities to its members) is to be construed as income from banking. Further, the Pr. CIT observed that according to the amended provisions of the Banking Regulation Act, vide Sec. 5(ccii) and 5(ccvi), in cases where the principal business of a primary credit society is the "transaction of banking business" and its paid-up capital and reserves has attained a level of Rs. 1 lakh, the primary credit society automatically becomes a primary cooperative bank. Thus, the Pr.CIT held that there is no distinction between a cooperative credit society and a cooperative bank except for the threshold of paid-up capital and reserves placed by the Banking Regulation Act on every credit society whose primary objective of principle business is "transacting of banking business". The Pr. CIT observed that the assessee's reliance on the letter dated 09/05/2007 issued by the CBDT to argue that Co-operative Societies do not fall within the meaning of "Cooperative Bank" does not have a bearing, as can be perused from Para no.4 of the referred letter that the CBDT has not given blanket instruction that Cooperative Societies cannot be termed as Co-operative Bank. According to the Pr. CIT, a clear

reading of the statement that “If the Delhi Co-op. Urban T & C Society Ltd. does not fall within the meaning of “Co-operative Bank “ shows that the applicability of Part V of the Banking Regulation Act, 1949 is to be examined in defining a Cooperative Society as Cooperative Bank or not.

7. The Id. Pr. CIT further observed that a primary cooperative bank is defined in Sec 5 (ccv) of the Banking Regulation Act, 1949 and three conditions are set therein for a cooperative society to be considered as a cooperative bank, which is clearly a deeming provision. The Pr. CIT stated that though the issue of applicability of sec 80P (4) of the IT Act 1961 to cooperative societies has been adjudicated by the ITAT Bengaluru as well as the Hon'ble High Court of Karnataka in the case of *Sri Biluru Gurubasava Pattina Sahakari Sangha Niyamitha, Bagalkot*, both have laid down that a cooperative society should no be considered as a cooperative bank in the absence of a banking license from RBI. According to the Pr. CIT, both these judgments have not held that the definition of cooperative banks as per Part V of the Banking Regulation Act, 1949 not be followed. The Hon'ble jurisdictional High Court has also not commented on the specific applicability of the enabling conditions laid down in Part V of the Banking Regulating Act, 1949 in the above mentioned order.

8. The Pr. CIT concluded that the Assessing Officer has failed to apply the conditions set out in Part V of the Banking Regulation Act, 1949 read with Section 2(24)(viiiia) of the Income-tax Act, 1961 to the facts of the

assessee's activities which are admittedly to accept deposits from and provide credit facilities to, its members, which was the society's primary activity. He therefore held the order u/s 143(3) dated 13/12/2012 by the AO as erroneous and prejudicial to the interest of revenue therefore set aside the same with a direction to the AO to redo the assessment after applying the conditions of Part V of the Banking Regulation Act 1949 and Section 2(24)(viiia) of the Income-tax Act, 1961 to the facts of the case.

9. Aggrieved, the assessee is in appeal before us on the issue of deduction u/s. 80P(2)(a)(i) of the Act. It is the case of the assessee that it has not obtained any banking license and it cannot carry on any banking business. It is engaged in the activity of providing credit facilities to its members and section 80P(4) is not applicable as held by various High Courts and Tribunal. Reliance was placed on the judgment dated 5.2.2014 of the Hon'ble High Court in the case of *CIT Vs. Sri Biluru Gurubasava Pattina Sahakari Sangha Niyamitha, Bagalkot in ITA No.5006/2013*.

10. The Id. DR supported the order of the Pr. CIT.

11. We have heard both the parties and perused the material on record.

12. We find that identical issue has already been considered and decided 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 dt. 8.4.2011*, 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.”

13. 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 on 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 subsection(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 subsection(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 subsection, 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 subsection(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."

14. The Hon'ble High Court of Karnataka in the case of *CIT Vs. Sri Biluru Gurubasava Pattina Sahakari Sangha Niyamitha, Bagalkot* (supra) considered the following substantial question of law:-

" In the facts and circumstances of this case, whether the Revisional Authority was justified in invoking his power under Section 263 of the Act without the foundational fact of assessee being Co-operative bank was not there?"

15. The Hon'ble jurisdictional High Court held at para 9 of its order in the case of *Sri Biluru Gurubasava Pattina Sahakari Sangha Niyamitha, Bagalkot* (supra) held as under:-

“9. This Court had an occasion to consider Section 263 of the Act in the case of - COMMISSIONER OF INCOME-TAX AND ANOTHER V. DIGITAL GLOBAL SOFT LTD. [2013] 354 ITR 489 (Karn) where paragraph-18, it has held as under:

“As is clear from the wording in section 263, the Commissioner gets the jurisdiction to revise any proceedings under this Act if he considers that any order passed therein by the Assessing Officer is erroneous in so far as it is prejudicial to the interests of the Revenue. Therefore, it is clear that he cannot exercise the power of revision solely on the ground that the order passed is erroneous. He gets jurisdiction only if such erroneous order is prejudicial to the interest of the Revenue. “Prejudicial to the Revenue” means, lawful revenue due to the State has not been realized or cannot be realized. In other words, by the order of the assessing authority if the lawful revenue to the State has not been realized or cannot be realized, as the said order is prejudicial to the interests of the Revenue and also erroneous, he gets jurisdiction to interfere with the said order under section 263. Therefore, for attracting section 263, the condition precedent is (a) the order of the Assessing Officer sought to be revised is erroneous, and (b) it is prejudicial to the interests of the Revenue. If one of them is absent, i.e., if the order of the Income-tax Officer is erroneous but is not prejudicial to the Revenue, recourse cannot be had to section 263(1) of the Act. The satisfaction of both the conditions stipulated in the section is the sine qua non for the Commissioner to exercise his jurisdiction under Section 263.”

In the instant case, when the status of the assessee is a Co-operative society and is not a Co-operative bank, the order passed by the Assessing Authority extending the benefit of exemption from payment of tax under Section 80P(2)(a)(i) of the Act is correct. There is no error. When there is no error, the question of order being prejudicial would not arise. The Tribunal has rightly

entertained the appeal and set-aside the order. Therefore, the said order is in accordance with law and cannot be found fault with. The substantial question of law is answered in favour of the assessee and against the revenue.”

16. In view of the above decisions of the High Courts and following the decision of the coordinate Bench of the Tribunal in the case of *Bangalore v. M/s. Bangalore Commercial Transport Credit Co-operative Society Ltd. (supra)*, we quash the order u/s. 263 passed by the Id. Pr. CIT.

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

Pronounced in the open court on this 4th day of November, 2015.

Sd/-

(JASON P. BOAZ)
Accountant Member

Sd/-

(ASHA VIJAYARAGHAVAN)
Judicial Member

Bangalore,
Dated, the 4th November, 2015.

/D S/

Copy to:

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

By order

Assistant Registrar,
ITAT, Bangalore.