

**IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH : BANGALORE**

**BEFORE SHRI ABRAHAM P GEORGE, ACCOUNTANT MEMBER
and
SHRI VIJAY PAL RAO, JUDICIAL MEMBER**

ITA No.1088/Bang/2015
(Assessment year: 2012-13)

Income-tax Officer,
Ward 6(2)(2),
Bangalore. ... Appellant

Vs.

M/s.Mahalaksh mipura Sri Vasavi Credit Co-op.
Society Ltd.,
No.88G, 3rd cross, Mahalakshmi Layout,
Bangalore. ... Respondent
PAN:AAAJM0409K

Appellant by: Shri M.Vijaykumar, ACIT(DR).
Respondent by: Shri Madhukar G.Hegde, CA.

Date of hearing : 23/11/2015
Date of pronouncement: 29/12/2015

O R D E R

Per VIJAY PAL RAO, JM:

This appeal by the revenue is directed against the order dated 26/05/2015 of CIT(A) for the assessment year 2012-13.

2. The revenue has raised the following grounds:

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1. The order of the CIT (Appeals) is opposed to law and the facts and circumstances of the case.
2. On the facts and in circumstances of the case, the CIT(A) erred in allowing relief to the assessee by treating it as a credit co-operative society, without appreciating that the assessee was engaged in the business of banking and extending credit facilities to its members. Further, in the instant case, the paid-up capital and reserves of the assessee society exceeds the threshold limit of Rupees One Lakh, thereby fulfilling the criteria laid down in Section 4(cci) of the Banking Regulations Act, 1949. The assessee's activities definitely attract the provisions of Section 80P(4)
3. For these and such other grounds that may be urged at the time of hearing, it is humbly prayed that the order of the CIT(A) in so far as it relates to the above grounds may be reversed and that of the Assessing Officer be restored.
4. The appellant craves leave to add, to alter, to amend or delete any of the grounds that may be urged at the time of hearing of the appeal.+

3. The assessee is a credit co-operative society registered under the Souhardha Act and is engaged in the activity of providing credit facilities to its members. The primary object is stated to be promotion of self-help co-operative attitude providing credit facility and other facilities for members of the society. The

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assessee claimed deduction u/s 80P(2)(a)(i) of the IT Act. The AO denied the claim of deduction u/s 80P(2)(a)(i) by holding that the assessee society is not eligible for deduction in view of CBDT circular No.6/2010 dated 20/9/2010.

4. The assessee challenged the action of the AO before the CIT(A) and submitted that the assessee is entitled for deduction u/s 80P. The CIT(A) allowed the claim of the assessee while passing the impugned order.

5. We have heard learned DR as well as learned AR of the assessee and considered relevant material on record. At the outset we note that this issue whether the assessee-co-operative society is eligible for deduction u/s 80P is covered by the judgment of Hon'ble jurisdictional High Court in case of *CIT vs. Sri Biluru Gurubasappa Pattina Sahakari Sangha Niyamita* (369 ITR 86) wherein the Hon'ble jurisdictional High Court has held as under:

"5. The Tribunal held that as the assessee is not a Cooperative Bank, Section 80P(4) has no application. Moreover, the power under Section 263 of the Act could be invoked by the Revisional Authority only, if the order is erroneous and thereby is prejudicial to the interest of revenue, In the instant case as the assessee is not a Co-operative Bank i.e. there is no error committed by the Assessing authority much less, the said order was prejudicial to the interest of revenue and therefore, the order passed by the Revisional Authority was set-aside.

6. Aggrieved by the said order, the Revenue has preferred this appeal.

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7. *The only substantial question of law which arises for our consideration in this appeal is:-*

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?

8. *In the assessment order, the Assessing authority has clearly stated that the assessee is a Cooperative society and has not obtained any banking license. The business of the assessee is to provide credit facilities to its members. Since the assessee cannot carry on any banking business, the interest on investment is taxable as income from other source. Therefore the aforesaid facts, which is not in dispute clearly establishes that it is not a Co-operative Bank. In fact, the Revisional Authority also in its order has categorically stated that the assessee is a Co-operative society, which provides credit facilities. Section 80P of the Act deals with the deduction of income of a society. In the case of any assessee being a Co-operative society, the whole of the amounts of profits and gains of business attributable to any of other activities referred to sub-section (2) of Section 80P shall be deducted in computing the total income of the assessee. In other words, the said income is not taxable. It is a benefit given to the Co-operative society. Section 80P(4) was introduced by Finance Act, 2006 with effect from 01.04.2007 excluding the said benefit to a Co-operative Bank. The said provision reads 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.

(a) "cooperative 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."

Therefore, the intention of the legislature is clear, If a Cooperative Bank is exclusively carrying on banking business, then the income derived from the said business cannot be deducted in computing the total income of the assessee. The said income is liable for tax. A Co-operative bank as defined under the Banking Regulation Act includes the primary agricultural credit society or a primary co-operative agricultural and rural development bank. The Legislature did not want to deny the said benefits to a primary agricultural credit society or a primary co-operative agricultural and rural development bank. They did not want to extend the said benefit to a Co-operative bank which is exclusively carrying on banking business i.e. the purport of this amendment. Therefore, as the assessee is not a Cooperative bank carrying on exclusively banking business and as it does not possess a licence from Reserve Bank of India to carry on business, it is not a Co-operative bank. It is a Co-operative society which also carries on the business of lending money to its members which is covered under Section 80P(2)(a)(i) i.e. carrying on the business of banking for providing credit facilities to its members. The object of the aforesaid amendment is not to exclude the benefit extended under Section 80P(1) to such society. Therefore, there was no error committed by the Assessing Authority. The said order was not prejudicial to the interest of the Revenue. The condition precedent for the commissioner to invoke the power under Section 263 is that the twin condition should be satisfied. The order should be erroneous and it should be prejudicial to the interest of the revenue."

6. We further note that the Hon'ble High Court has reiterated the view in case of *CIT vs. Bangalore Commercial Transport Credit Co-operative Society Ltd.* and again in the recent judgment dated 21/09/2015 in the case of *Shri Chandrababhu Urban Co-operative Credit Society Ltd. vs. ITO* in ITA No.100043 & 100045 of 2014 in paragraphs 9 and 10 as under:

"9. In the light of the above contentions and on an examination of the relevant legal provisions, it is to

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be noticed at the outset that this court in the appeal in ITA 351/2011, CIT vs. Bangalore Commercial Transport Credit Co-operative Society Ltd., on 27.6.2014 had framed the following substantial questions of law:

(i) Whether the Tribunal was correct in holding that the provision of sub-section (4) of section 80P of the Income Tax Act are applicable only to co-operative Banks and not to credit Co-operative Societies, which are engaged in business of banking, including providing credit facilities to their members?

(ii) Whether the Tribunal was correct in holding that the assessee is a co-operative society and not a co-operative Bank in terms of sub-section (4) of Section 80P of the Income Tax Act without considering the meaning of co-operative Bank as envisaged under Part V of the Banking Regulation Act, 1949, wherein it is defined that co-operative Bank includes primary cooperative Bank, which is further defined as cooperative Society with the primary object of transactions of Banking business?"

The said issues were answered in favour of the Assessee.

10. We are in respectful agreement with the general view taken as to the interpretation of the relevant provisions of law, by the co-ordinate bench of this court, in the above and several other judgments adopting the same view. However, it is to be noticed that there is a seriously disputed question of fact which the Authorities under the IT Act have taken upon themselves to interpret in the face of the BR Act prescribing that in the event of a dispute as to the primary object or principal business of any co-operative society referred to in clauses (cciv), (ccv) and (ccvi) of Section 56 of the BR Act, a determination thereof by the Reserve Bank shall, be final, would require the dispute to be resolved by the Reserve Bank of India, before the authorities could term the assessee as a co-operative bank, for purposes of Section 80 P of the IT Act. Any opinion expressed therefore is tentative and is not final. The view expressed by this court, however, as to the assessee being a co-operative society and not a co-operative bank in terms of Section 80P (4) of the IT

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Act, shall hold the field and shall bind the authorities unless held otherwise by the Reserve Bank of India.”

Thus in view of the consistent law laid down by the Hon'ble jurisdictional High Court in the above said cases, we do not find any reason to interfere with the impugned order of the CIT(A).

7. In the result, the appeal of the revenue is dismissed.

Pronounced in the open court on 29th December, 2015.

sd/-
(Abraham P George)
ACCOUNTANT MEMBER

sd/-
(Vijay Pal Rao)
JUDICIAL MEMBER

eksrinivasulu
Copy to:

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

By order

Assistant Registrar
Income-tax Appellate Tribunal
Bangalore