

**IN THE INCOME TAX APPELLATE TRIBUNAL  
'C' BENCH, BENGALURU**

**BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER  
and  
SHRI LALIET KUMAR, JUDICIAL MEMBER**

ITA No.671/Bang/2017  
(Assessment year : 2013-14)

Income-tax Officer,  
Ward 2(2),  
Hubballi. ... Appellant

Vs.

M/s.KVG Bank Employees Co-operative Credit  
Co-op Society Ltd.,  
Shankar Plaza, 2<sup>nd</sup> Floor,  
Dharwad. ... Respondent  
*PAN: AAAAK 7950 N*

Appellant by : Shri M.K.Biju, JCIT(DR)  
Respondent by : Shri Balram Rao, Advocate.

Date of hearing : 08/11/2017  
Date of pronouncement : 15/11/2017

**ORDER**

**Per INTURI RAMA RAO, AM :**

This is an appeal filed by the revenue directed against the order of the Commissioner of Income-tax (Appeals), Hubli, dated 26/12/2016.

2. The revenue raised the following ground of appeal:

Whether, on fact & circumstances of the case and in law. The Ld. CIT(A), Hubballi was justified in law in holding that the assessee society is entitled to deduction under section 80P(2)(a)(i) of the Income tax Act even when the assessee-society is mainly involved in extending credit facilities to its members which is in the nature of a bank transaction, treated on par with the new clause introduced in the definition of Income in section 2(24)(viia) of the Act and comes under the purview of section 80P(4) w.e.f. 01.04.2007

3. Brief facts of the case are that the assessee is a co-operative credit society registered under the Karnataka Co-operative Societies Act. It is engaged in providing credit facilities to its members. The assessee filed return of income declaring nil taxable income after claiming deduction u/s 80P(2)(a)(i) of the Income-tax Act, 1961 [hereinafter referred to as 'the Act' for short]. The Assessing Officer in the assessment order passed u/s 143(3) of the Act, held that the assessee-society is not eligible for deduction u/s 80P of the Act and determined the total income of the assessee-society at Rs.52.02,258/-.

4. Being aggrieved, assessee-society filed an appeal before the CIT(A) who allowed the claim of the assessee following the decision of the jurisdictional High Court in the case of *CIT vs. Shri Biluru Gurubasava Pattin Sahakari Sangh Niyamit Bagalkot*.

5. Being aggrieved by the order of the CIT(A) the revenue is in appeal before us.

6. We heard rival submissions and perused the material on record. An identical issue had come up for consideration before the co-ordinate bench in the case of *ITO vs. KPTC & HESCOM Employees Credit Co-op. Society Ltd.*, in ITA Nos.687 & 688/Bang/2017 dated 08/11/2017 (to which both of us are parties) wherein it has been held as under:

õ.....We remit this issue back to the file of the Assessing Officer to examine the case in the light of the judgment of the Honøble Apex Court in the case of *The Citizen Co-operative Society Ltd. v. ACIT [2017] 397 ITR 1 (SC)* wherein it was held that though business of the society does not amount to that of co-operative bank so as to come within the mischief of sub-section (4) of section 80P, since the assessee was catering to the needs of non-members also, the principle of mutuality is tainted and therefore the benefit of section 80P was denied. The relevant portion of the judgment of the Honøble Apex Court in the said decision is as under:-

õ18) We may mention at the outset that there cannot be any dispute to the proposition that Section 80P of the Act is a benevolent provision which is enacted by the Parliament in order to encourage and promote growth of co-operative sector in the economic life of the country. It was done pursuant to declared policy of the Government. Therefore, such a provision has to be read liberally, reasonably and in favour of the assessee (*See – Bajaj Tempo Limited, Bombay v. Commissioner of Income Tax, Bombay City-III, Bombay (1992) 3*

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SCC 78; 196 ITR 188 (SC) = 2002-TIOL-763-SC-IT. It is also trite that such a provision has to be construed as to effectuate the object of the Legislature and not to defeat it (*See – Commissioner of Income Tax, Bombay & Ors. v. Mahindra and Mahindra Limited & Ors. (1983) 4 SCC 392; [1983] 144 ITR 225 (SC) = 2002-TIOL-988-SC-IT*). Therefore, it hardly needs to be emphasised that all those co-operative societies which fall within the purview of Section 80P of the Act are entitled to deduction in respect of any income referred to in sub-section (2) thereof. Clause (a) of sub-section (2) gives exemption of whole of the amount of profits and gains of business attributable to anyone or more of such activities which are mentioned in sub-section (2).

19) Since we are concerned here with sub-section (i) of clause (a) of sub-section (2), it recognises two kinds of co-operative societies, namely: (i) those carrying on the business of banking and; (ii) those providing credit facilities to its members.

20) In the case of *Kerala State Cooperative Marketing Federation Limited & Ors. v. Commissioner of Income Tax (1998) 5 SCC 48*, this Court, while dealing with classes of societies covered by Section 80P of the Act, held as follows:

ö6. The classes of societies covered by Section 80-P of the Act are as follows:

(a) Engaged in business of banking and providing credit facilities to its members;

xx xx xx

We may notice that the provision is introduced with a view to encouraging and promoting growth of cooperative 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 cooperative 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...ö

21) In the case of *Commissioner of Income Tax v. Punjab State Co-operative Bank Ltd. (2008) 300 ITR 24 (Punjab & Haryana) = 2008-TIOL-337-HC-P-H-IT* while dealing with an identical issue, the High Court of Punjab and Haryana held as follows:

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õ The provisions of section 80P were introduced with a view to encouraging and promoting the growth of the co-operative sector in the economic life of the country and in pursuance of the declared policy of the Government. The different heads of exemption enumerated in the section are separate and distinct heads of exemption and are to be treated as such. Whenever a question arises as to whether any particular category of an income of a co-operative society is exempt from tax, then it has to be seen whether such income fell within any of the several heads of exemption. If it fell within any one head of exemption,.... It means that a co-operative society engaged in carrying on the business of banking and a co-operative society providing credit facilities to its members will be entitled for exemption under this sub-clause. The carrying on the business of banking by a cooperative society or providing credit facilities to its members are two different types of activities which are covered under this sub-clause í í í í í í í .

So, in our view, if the income of a society is falling within any one head of exemption, it has to be exempted from tax notwithstanding that the condition of other heads of exemption are not satisfied. A reading of the provisions of section 80P of the Act would indicate the manner in which the exemption under the said provisions is sought to be extended. Whenever the Legislature wanted to restrict the exemption to a primary co-operative society, it was so made clear as is evident from clause (f) with reference to a milk co-operative society that a primary society engaged in supplying milk is entitled to such exemption while denying the same to a federal milk co-operative society.õ

22) The aforesaid judgment of the High Court correctly analyses the provisions of Section 80P of the Act and it is in tune with the judgment of this Court in Kerala State Cooperative Marketing Federation Limited (supra).

23) With the insertion of sub-section (4) by the Finance Act, 2006, which is in the nature of a proviso to the aforesaid provision, it is made clear that such a deduction shall not be admissible to a co-operative bank. However, if it is a primary agriculture credit society or a primary co-operative agriculture and rural development bank, the deduction would still be provided. Thus, co-operative banks are now specifically excluded from the ambit of Section 80P of the Act.

24) Undoubtedly, if one has to go by the aforesaid definition of 'co-operative bank' the appellant does not get covered thereby. It is also a matter of common knowledge that in order to do the business of a co-operative 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-

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operative bank. The appellant, therefore, would not come within the mischief of sub-section (4) of Section 80P.

25) So far so good. However, it is significant to point out that the main reason for disentitling the appellant from getting the deduction provided under Section 80P of the Act is not sub-section (4) thereof. What has been noticed by the Assessing Officer, after discussing in detail the activities of the appellant, is that the activities of the appellant are in violation of the provisions of the MACSA under which it is formed. It is pointed out by the Assessing Officer that the assessee is catering to two distinct categories of people. The first category is that of resident members or ordinary members. There may not be any difficulty as far as this category is concerned. However, the assessee had carved out another category of 'nominal members'. These are those 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. Most of the business of the appellant was with this second category of persons who have been giving deposits which are kept in Fixed Deposits with a motive to earn maximum returns. 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 co-operative society. It is also found that the appellant is engaged in the activity of granting loans to general public as well. All this is done without any approval from the Registrar of the Societies. With indulgence in such kind of activity by the appellant, it is remarked by the Assessing Officer that the activity of the appellant is in violation of the Co-operative Societies Act. Moreover, it is a co-operative credit society which is not entitled to deduction under Section 80P(2)(a)(i) of the Act.

26) It is in this background, a specific finding is also rendered that the principle of mutuality is missing in the instant case. Though there is a detailed discussion in this behalf in the order of the Assessing Officer, our purpose would be served by taking note of the following portion of the discussion:

As various courts have observed that the following three conditions must exist before an activity could be brought under the concept of mutuality;

that no person can earn from him;

that there is a profit motivation;

and that there is no sharing of profit.

It is noticed that the fund invested with bank which are not member of association welfare fund, and the interest has been earned on such investment for example, ING Mutual Fund [as said by the

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MD vide his statement dated 20.12.2010]. [Though the bank formed the third party vis-a-vis the assessee entitled between contributor and recipient is lost in such case. The other ingredients of mutuality are also found to be missing as discussed in further paragraphs].

In the present case both the parties to the transaction are the contributors towards surplus, however, there are no participators in the surpluses. There is no common consent of whatsoever for participators as their identity is not established. Hence, the assessee fails to satisfy the test of mutuality at the time of making the payments the number in referred as members may not be the member of the society as such the AOP body by the society is not covered by concept of mutuality at all.ö

27) These are the findings of fact which have remained unshaken till the stage of the High Court. 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.ö

Following the same, we remit this issue to the file of the AO to verify whether the assessee-society had any transactions with non-members. If it is so, the concept of mutually cannot be applied and the decision of the Hon'ble Apex Court in the case of *The Citizen Co-operative Society Ltd.* ( supra) shall apply with all fours.

3. In the result, the appeal filed by the revenue is treated as allowed for statistical purposes.

*Order pronounced in the open court on 15<sup>th</sup> November, 2017*

Sd/-  
**(LALIET KUMAR)**  
**JUDICIAL MEMBER**  
Place : Bengaluru  
Date : 15/11/2017  
*srinivasulu, sps*

sd/-  
**(INTURI RAMA RAO)**  
**ACCOUNTANT MEMBER**

**Copy to :**

- 1 Appellant
- 2 Respondent
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- 5 DR, ITAT, Bangalore.
- 6 Guard file

By order

Senior Private Secretary  
Income-tax Appellate Tribunal  
Bangalore