

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

**BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT  
and  
SHRI JASON P BOAZ, ACCOUNTANT MEMBER**

ITA No.524/Bang/2019  
(Assessment year: 2013-14)

Income-tax Officer,  
Ward-1,  
Tiptur. ... Appellant

Vs.

M/s.Netaji Credit Co-operative Ltd.,  
Vinayak Nagar Extensin,  
Tiptur. ... Respondent

Appellant by : Shri Vikas Suryavamshi, Addl.CIT(DR)  
Respondent by : Smt. Soumya, Advocate.

Date of hearing: 01/07/2019  
Date of pronouncement: 17/07/2019

**O R D E R**

**Per N.V. VASUDEVAN, VP:**

This is an appeal by the revenue against the order dated 28/01/2019 of the CIT(Appeals)-7, Bengaluru, relating to assessment year 2013-14.

2. Ground Nos.1, 7 and 8 raised by the revenue are general in nature and call for no specific adjudication. Ground Nos.2 to 5 raised by the revenue read as follows:

2. "The CIT(A) was not justified in law in allowing deduction u/s. 80P(2)(a)(i) of the Act to the co-operative society carrying on the business of baking, inspite of the fact that clause no.(4) of section 80P inserted with effect from 01.04.2007 clearly bars the co-operative society the above deduction, other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank".

3. "Whether on the facts and circumstances of the case, the CIT(A) is justified in law in placing reliance on the decision in the case of CIT vs. Biluru Gurubasava

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Pattina Sahakari Sangho Niyamitha in ITA No. 5006/2013, when the said appeal has been dismissed/withdrawn on the basis of low tax effect and CBDT Circular No. 3/2018.

4. Whether on the facts and circumstances of the case, the CIT(A) is justified in law in ignoring that the SLPs filed by the Department in the cases of CIT vs. M/s. Honnali Urban Credit Co-op Society Ltd., and CIT vs. M/s. Post & BSNL Employees' Co-operative Society Ltd., which are admitted and are pending disposal by the Hon'ble Supreme Court"?
5. "Whether on the facts and circumstances of the case, the CIT(A) was justified in law in allowing deduction u/s. 80P(2)(a)(i) of the Act to the co-operative society carrying on the business of baking, when the Hon'ble Supreme Court in its latest decision delivered on 08-08-2017 in Civil Appeal No. 10245 of 2017 in the case of The Citizen Co-operative Society Ltd. Vs. ACIT, Hyderabad has denied deduction u/s 80P(2) to the co-operative societies engaged in banking activities"?

4. These grounds relate to the claim of the assessee with regard to deduction u/s 80P(2)(a)(i) of the Income-tax Act,1961 ['the Act' for short]. It is not in dispute that the assessee is a credit co-operative society carrying on business of banking and providing credit facilities to its members. The assessee claimed deduction u/s 80P(2)(a)(i) a sum of Rs.1,10,80,435/-. Out of the aforesaid sum a sum of Rs.86,72,910/- was claimed as income from the business of providing credit facilities to its members and a sum of Rs.24,07,525/- was interest income earned on investments in co-operative and other banks. Both the aforesaid income was claimed to be eligible for deduction u/s.80P(2)(a)(i) of the Act. The AO took the view that the assessee was co-operative bank and therefore, as per provisions of section 80P(4) of the Act, the assessee was not entitled to deduction 80P(2)(a)(i) of the Act on the sum of Rs.86,72,910/-. As far as deduction claimed on interest income earned on investments in co-operative and other banks, he held that the deduction calmed by the assessee cannot be allowed by the

Revenue authorities for the reason that the income which was claimed as deduction was interest income which was earned by the assessee on deposits and in view of the decision of the Hon'ble Supreme Court in the case of PCIT Vs. Totgars Co-operative Sale Society Ltd., 83 taxmann.com 140 interest income had to be regarded as 'income from other sources'. Since interest income was not income derived from the business of co-operative society, the deduction claimed by the assessee cannot be allowed.

5. On appeal by the assessee, the CIT(Appeals) allowed the claim of the assessee. The CIT(A) held that the AO denied the benefit of deduction claimed by the Assessee because of the provisions of Sec.80P(4) of the Act which lays down that deduction u/s.80P(2) of the Act will not be available to a co-operative Bank. The Hon'ble Supreme Court in the case of Citizens Co-operative Society Ltd. Vs. ACIT 397 ITR 1 (SC), has held that for doing business of banking one has to obtain license from Reserve Bank of India(RBI) and since the Assessee in that case which was a co-operative society did not have such license and further that Assessee also produced a certificate from RBI that it was not carrying on the business of banking, the Hon'ble Supreme Court held that it cannot be said to be a co-operative Bank.

6. With regard to the deduction u/s.80P(2)(a)(i) of the Act on interest income of Rs.4,07,525, the CIT(A) allowed the claim of the Assessee by following CBDT Circular No.18/2015 wherein it has been laid down following the decision of the Hon'ble Supreme Court in the case of CIT Vs. Nawanshahar Central Co-operative Bank Ltd. (2007) 160 Taxman 48 (SC) wherein it was held that investments made by a banking concern are part of the business of banking. Therefore the income arising from such investments is attributable to the business of banking falling under the head "profits and gains of business and profession".

7. Aggrieved by the order of the CIT(A) allowing the claim of the Assessee for deduction u/s.80P(2)(a)(i) of the Act, the revenue has raised the aforesaid grounds of appeal before the Tribunal. It is clear

from the reading of Grds. 1 to 6 that the grievance of the revenue in the aforesaid grounds of appeal, is only with regard to the allowance by the CIT(A) of deduction u/s.80(P)(2)(a)(i) of the Act on income of Rs.86,72,910/-.

8. As far as the aforesaid grievance of the revenue is concerned, the submission of the revenue was that it has to be verified whether the Assessee possesses license from RBI for carrying on business from banking and that the income earned is not from providing credit facilities to its members who have no right to participate in the profits or control of the Assessee, as membership is open to any member of the public and even nominal members are admitted. According to the revenue the Hon'ble Supreme Court in the case of Citizens Co-operative Society Ltd. (supra) has also held it is also important to ascertain as to what is the nature of income which is claimed as exempt and as to how the principle of mutuality is not violated in respect of such income. According to the revenue the principle of mutuality will not be satisfied, if the person from whom income from providing credit facilities is derived is a nominal member who has no right to participate in the profits of the Assessee. Such grievance would be addressed by setting aside the issue of deduction u/s.80P(2)(a)(i) of the Act to the AO for consideration afresh, with a direction to the Assessee to produce a certificate from RBI that it does not possess license from it for doing banking business and further that the business carried on by the Assessee is not akin to business of a co-operative bank. Further the first part of Sec.80P(2)(a)(i) allows deduction in respect of income derived by a co-operative society from the business of banking. Even the claim of the Assessee for deduction requires to be examined under the first part of Sec.80P(2)(a)(i) of the Act. Further the Hon'ble Supreme Court in the case of Citizens Co-operative Society Ltd. (supra) has also held it is also important to ascertain as to what is the nature of income which is claimed as exempt and as to how the principle of mutuality is not violated in respect of such income. An examination of (i) the memorandum of association, the articles of association, (ii) the byelaws and other documents explaining

the rules and regulations of the society is necessary, so as to clearly understand the purpose and the nature of business done by it. An examination of the different categories of members of a society and what are the conditions attached to their being admitted as members and their rights as contributors of funds to the society and participants in surplus and the byelaws of the society is necessary. Deduction u/s.80P2(a)(i) is allowed only in respect of income arising out of the transactions with the members. The relevant law governing co-operative societies of the concerned State providing status of different categories of members in so far as the affairs of the co-operative society are concerned, is also required to be examined. It is only income which arises from dealing with members and which is either in the nature of banking or providing credit facilities to members that would be allowed as deduction. All these aspects also require examination. The AO will allow opportunity of being heard to the Assessee and filing appropriate evidence, if desired, by the Assessee to substantiate its case, before deciding the issue. The Assessee will also be at liberty to show that income earned is income from business of banking and some part of the income was earned by making investment in statutory reserves in fulfilment of law regarding maintenance of statutory reserves. We hold and direct accordingly.

9. Ground No.6 raised by the revenue reads as follows:

6. "Whether the CIT(A) was right in not considering that the provisions of section 40(a)(ia) of the IT Act do not provide any exception to co-operative societies for non deduction of tax for pigmy commission payments"?

10. The AO disallowed a sum of Rs.1,60,402/- for non-deduction of tax at source on expenditure debited in the Profit & Loss Account by invoking the provisions of section 40(a)(ia) of the Act. Before the CIT(Appeals), the assessee relying on CBDT circular No.37/2016 dated 2/11/2016 submitted that deduction u/s 80P(2)(a)(i) should be allowed on the enhanced income consequent to disallowance u/s 40(a)(ia) of the Act. This plea was accepted by the CIT(Appeals).

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The disallowance u/s 40(a)(ia) was made on account of non-deduction of tax at source on payment of pigmy commission and therefore, it had direct nexus with the business income of the assessee on which deduction u/s 80P(2)(a)(i) of the Act was claimed. Aggrieved by the order of the CIT(Appeals), the revenue has raised ground No.6.

6. In our view, the aforesaid ground of appeal would depend on the outcome on grounds No.1 to 6 in the set aside proceedings. If the disallowance u/s.40(a)(i) of the Act results in increase in income of the Assessee which would otherwise go to enhance the income on which the Assessee is eligible to claim deduction u/s.80P(2)(a)(i) of the Act, then the CBDT Circular referred to by CIT(A) would be applicable. Therefore this issue is also set aside to the AO to decide afresh in the light of the decision on the eligibility of Assessee for deduction u/s.80P(2)(a)(i) of the Act.

7. In the result, the appeal filed by the revenue is allowed for statistical purpose.

*Order pronounced in the open court on 17<sup>th</sup> July, 2019.*

*Sd/-*  
**(JASON P BOAZ)**  
**ACCOUNTANT MEMBER**

Place : Bengaluru  
Dated : 15/07/2019  
*srinivasulu, sps*

**Copy to :**

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

*Sd/-*  
**(N.V. VASUDEVAN)**  
**VICE PRESIDENT**

By order

Assistant Registrar  
Income-tax Appellate Tribunal  
Bangalore