

**IN THE INCOME TAX APPELLATE TRIBUNAL
CIRCUIT BENCH, VARANASI**

**BEFORE HON'BLE SH. VIJAY PAL RAO, JUDICIAL MEMBER
AND
HON'BLE SH. RAMIT KOCHAR, ACCOUNTANT MEMBER**

ITA No.80/VNS/2018

AY: 2009-10

ITA No.81/VNS/2018

AY: 2013-14

ITA No.82/VNS/2018

AY: 2014-15

N.E. Railway Employees Multi State Primary Co-operative Bank Ltd., Railway Colony, Mohaddipur Road, Gorakhpur, U.P. PAN-AAAJN0595P	v.	ACIT, Range-1, Gorakhpur
(Appellant)		(Respondent)

Appellant by:	Anil Kumar Pandey, Advocate
Respondent by:	Sh. A.K. Singh, Sr. D.R.
Date of hearing:	24.05.2022
Date of pronouncement:	09.06.2022

ORDER

SHRI VIJAY PAL RAO, JUDICIAL MEMBER:

These three appeals are directed against the three separate orders of the CIT(A) all dated 13th August, 2018 for the assessment years 2009-10, 2013-14 and 2014-15 respectively. The assessee has raised common grounds in the appeals for the three assessment years except the quantum of disallowance. For the purpose of recording the facts, the appeal for the assessment year 2009-10 is taken as a lead case with the consent of the parties. The grounds raised for the assessment year 2009-10 are reproduced as under:-

"1. Because the appellate order in question has been passed without considering the relevant material and evidences as available on record and the same is not liable to be maintained.

2. Because the honorable C.I.T. (Appeals) has erroneously upheld disallowance of Rs. 37,28,310/- made by the Assessing Officer u/s 80P of the Income Tax Act, 1961.

3. Because in preceding year assessment of the appellant has been completed u/s 143(3) of Income Tax Act, 1961 and deduction claimed u/s 80P of the Income Tax Act, 1961 has been allowed.

4. Because deduction claimed u/s 80P is liable to be allowed in the case of the appellant society.

5. Because the main object of Co-operative Credit Societies is to encourage habit of thrift among members rather than provide loans to them at reasonable rate of interest. To facilitate the organization, administration and functioning of Co-operative societies with the objects not confined to one state serving the interest of members of such societies from more than one state, the multi unit Co-operative societies act was enacted. No tax is payable on the profits and gains of business carried by Railwaymen's Co-operative credit Societies/Banks as they engaged in providing credit facilities to their members.

6. Because the assessment was completed for A.Y. 2009-10 and notice of demand u/s 156 of Income Tax Act, 1961 was issued for A.Y. 2014-15 alongwith assessment order of A.Y. 2009-10 which is not liable to be maintained and for which assessment order passed by the Assessing Officer is not liable to be sustained in the eyes of law and is liable to be quashed. The honorable C.I.T. (Appeals) has not considered this point of grounds of appeal and stated in his appellate order "this point of grounds of appeal is routine and general which do not require separate adjudication."

7. In view of all these and other reasons which may be produce during the process of hearing of appeal, the appeal may please be allow and justice rendered."

2. The solitary issue arises in these three appeals of the assessee is whether in the facts and circumstances of the case, the CIT(A) is justified in upholding the disallowance of deduction claimed under section 80P of the Income Tax Act. The assessee is a primary Cooperative Bank / Credit Society established under Indian Railway Establishment Manual with the object to increase habit of thrift among its member who are employees of Indian Railways. The assessee filed its return of income declaring nil income after claiming deduction under section 80P of the Income Tax Act. The Assessing Officer noted that section 80P does not apply to any Cooperative Bank other than a primary agriculture credit society or a primary Cooperative Agriculture and Rural Development Bank. Accordingly, the AO issued a notice under section 142(1) on 14.10.2016 alongwith the questionnaire. In compliance of the said notice, the assessee filed its reply. The AO made reference to sub section 4 of section 80P which was inserted by Finance

Act, 2006 w.e.f. assessment year 2007-08. The AO observed that the assessee is neither a primary agriculture cooperative society nor a primary cooperative agriculture and rural development bank but only a Cooperative Bank as per meaning assigned in para v of the Banking Regulation Act, 1949 as such the deduction under section 80P of the Act is not available to the assessee. The assessee objected to the denial of benefit of section 80P(2)(a)(i) of the Act. The assessee contended that the assessee Cooperative Bank was formed only for the employees of the Indian Railway and it is being run by the employees of N.E. & E.C. Railway employees. The assessee reiterated that it is primary cooperative bank for the benefit / interest of its member who are railway employees and therefore, sub section 4 of section 80P is not applicable in the case of the assessee. The AO did not accept the contention of the assessee and held that the assessee is a Cooperative Bank as per Banking Regulation Act, 1949. The assessee was granted banking license by the Reserve Bank of India vide license dated 20.11.2007 therefore, deduction under section 80P is not available to the assessee as per the provisions of section 80P(4) of the Act. The AO accordingly disallowed the claim of deduction under section 80P to the assessee. The assessee challenged the action of the AO before the CIT(A) but could not succeeded as the CIT(A) has upheld the order of the AO denying the claim of deduction under section 80P.

3. Before the Tribunal, the learned AR of the assessee has submitted that the assessee is a Cooperative Credit Society carrying on Finance / banking business i.e. financing only their members who are employees of Indian Railway and collecting deposits. The assessee filed its return of income under section 139 of the Act declaring nil income after claiming deduction under section 80P of the Income Tax Act. The main object of the assessee Cooperative Credit Society is to increase the habit of thrift amount members rather than providing loan to them at reasonable rate of interest. The main source of income of the assessee society

is subscription from the member, interest on the subscription, withdrawal of sum from compulsory thrift deposits, readmission of members of society, penal rate of interest in case of default in compulsory monthly subscription. The assessee society engaged in the activity of recovery of loans, bank deposits and compulsory thrift deposits through the salary bill of staff concerned. It also facilitates privilege passes and privilege ticket order for the employees of the societies available over both home and foreign lines as per scale laid down in Railway Servant (Pass) Rules, 1986. As per Railway Establishment Manual No. 2345, no tax is payable on the profit and gains of business carried by the Railwaymen's Cooperative Societies / Banks as they are engaged in providing credit facility to their members. Therefore, as per Railway Establishment Manual page 56 serial no. 2345 of Staff Manual of Railway, the assessee society is exempted from tax. It is based on the Railway Board's Letter No. 87/E (Co-op) 25/2 dated 5.1.89. Thus the learned AR has given more thrust to the Railway Establishment Manual and serial no. 2345 of Staff Manual of Railway regarding levy of Income Tax on the profit of the Cooperative Society / Bank. The assessee is registered under Multi State Co-operative Societies Act, 2002. The Reserve Bank of India gave the license to the assessee under the Banking Regulation Act, 1949 to commence and the carry on banking business. He has referred to section 64 of Chapter VII of Multi-State Cooperative Societies Act Act, 2002 (Properties and Funds of Multi State Cooperative Societies) which provides the investment and deposits made by the Multi State Co-operative Society. The learned AR has submitted that as per the explanation, the definition of bank means any banking as defined in Clause (c) of sub section 5 of Banking Regulation Act, 1949. Thus, the assessee bank does not fall in any definition of the bank as per the Banking Regulation Act, 1949. The learned AR has submitted that the assessee cooperative society is only a credit society and not a primary cooperative bank and therefore, the provisions of section 80P(4) are not attracted. It is mandatory

for a cooperative society to seek license from Reserve Bank of India to form and operate as cooperative bank. The assessee being a cooperative society was neither authorized nor had undertaken any of the banking business as are carried out by the primary cooperative bank but had only provided financial societies / credits to its members. He has thus contended that all cooperative societies other than thus coming under the control of Reserve Bank of India are eligible for deduction under section 80P. The cooperative society conducting banking activity is not a cooperative bank licensed by the Reserve Bank of India and therefore eligible for deduction under section 80P(2) of the Income Tax Act. In support of his contention, he has relied upon the decision of Delhi Benches of the Tribunal in the case of ***M/s The Veer Co-operative Group Housing Society Ltd. vs. Income Tax Officer in ITA.Nos.2787 & 2788/Del/2018***. He has also relied upon the decision of Hon'ble Allahabad High Court in the case of ***CIT v. M/s Muzaffar Nagar Kshetriya Gramin Bank Ltd., in ITA No. 86 of 2007***. The issue involved in the present appeal is also covered by the decisions of Bangalore Benches of the Tribunal in the case of ***M/s Samrudha Souharda Credit Co-operative Ltd. vs. The ITO, Bengaluru in ITA Nos. 128 and 129/Bang/2020*** and ***CIT vs. Nawanshahar Central Cooperative Bank Ltd in Civil Appeal Nos. 2499 & 2500 of 2005***.

4. He has further contended that for the assessment year 2011-12, the AO allowed the claim of deduction under section 80P while framing the assessment under section 143(3). The Assessing Officer also asked the assessee to explain the claim of deduction under section 80P and after considering the facts and circumstances of the case and various case laws on the point, the AO allowed the deduction claimed by the assessee under section 80P(2)(a)(i).

5. On the other hand, the learned DR has submitted that after insertion of provisions of section 80P(4), the deduction under section 80P(2) is not allowable

to a cooperative bank other than a primary agriculture credit society or a primary co-operative agriculture and rural development bank. The definition of co-operative bank and primary agriculture credit society is provided in part v of the Banking Regulation Act, 1949 which is adopted for the purpose of section 80P of the Income Tax Act. Primary cooperative agriculture and rural development bank are defined as societies whose area of operation is confined to *Taluka* and primary object is to provide long term credit for agriculture and rural development activity. The assessee is neither a primary agriculture society nor a primary cooperative agriculture and rural development bank. He has referred to the impugned order of the CIT(A) and submitted that the assessee is listed as non schedule urban cooperative bank as per the website of Reserve Bank of India. The learned DR has also referred to the CBDT Circular No. 6/2010 dated 20th September, 2010 which clarifies that 80P does not apply to any cooperative bank other than those specifically mentioned in sub section 4 of section 80P. He has relied upon the orders of the authorities below.

6. We have considered the rival submissions as well as relevant material on record. The assessee is a Multi-State Primary Cooperative Bank and registered under Multi-State Cooperative Societies Act, 2002. As per byelaw of the assessee, the objects and functions provided in Clause 5 as under:-

"A. OBJECTS:

The principal object of the Bank will be to promote the interest of all the members to attain their social and economic betterment through self-help and mutual aid in accordance with Co-operative principles.

B. OBJECTS:

(1) To prevent members from falling into permanent indebtedness and to assist them in the time of difficulty.

(2) To raise funds by means of issue of shares, borrowing money, accepting money on deposits at interest or otherwise.

(3) To lend money to its members at interest with or without security.

(4) To invest the money or funds of the Bank upon such securities and in such manners as may be from time to time determined by the Board in accordance with the Act, Rules and Bye-laws of the Bank.

(5) To encourage thrift and self-help and Co-operation among the shareholders.

(6) To raise the moral and economic standard of the shareholders.

(7) Generally to do all or such other things as are incidental and conducive to the attainment of the above objects.”

7. The assessee filed its return of income for the assessment year 2009-10 on 30th September, 2009 declaring total income at nil after claiming deduction /exemption under section 80P(2)(a)(i) of the Income Tax Act at Rs. 37,28,310/-. The Assessing Officer issued notice under section 148 to initiate the proceedings under section 147 of the Income Tax Act. The Assessing Officer was of the view that after insertion of sub section 4 to section 80P, a Co-operative Bank other than a primary Agricultural Credit Societies or primary Cooperative Agricultural and Rural Development Bank is not eligible for exemption under section 80P of the Act. Accordingly, the Assessing Officer issued a show cause to the assessee under section 142(1) to show cause as to why the claim of deduction under section 80P should not be disallowed. In reply, the assessee referred relevant portion of the Railways Establishment Rule Nos. 2345 and submitted that the income tax is not chargeable on the income of the Railways Cooperative Credit Societies or Cooperative Bank because they are providing the facility of loan to its members who are the employees of railway. The Assessing Officer did not accept this contention of the assessee and held that the assessee is a Cooperative Bank as per Banking Regulation Act, 1949 and as per the provisions of section 80P(4) of the Income Tax Act deduction under section 80P is not available to the assessee. The Assessing Officer consequently disallowed the claim of deduction under section 80P and added the amount of Rs. 37,28,310/- to the total income of the assessee. Though the Assessing Officer has also made an addition of Rs. 5,56,855/- on account of a provision for bad and doubtful dates made by the

assessee which was deleted by the CIT(A) and therefore, the said issue is not involved in the present appeal. The assessee challenged the action of the Assessing Officer before the CIT(A) and reiterated its contention that the assessee society is engaged in providing banking facility to its members and the object of which does not confine to one State therefore, the deduction under section 80P(2)(a)(i) is available to the assessee. The CIT(A) has concur with the order of the Assessing Officer as under:-

“The appellant has claimed deduction u/s 80P(2)(a)(i) of the Act. According to which income of a cooperative society engaged in business of banking or providing credit facilities to its member is exempt from tax. However, with the insertion of section 80P(4) it has been clarified that the provisions of section 80P of the Act 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. The definition of cooperative bank and primary agricultural credit society is as per the meaning assigned to them in part V of the banking regulation Act 1949. Whereas the primary cooperative agricultural and rural development bank has defined as a society whose areas of operation is confined to a taluk and the principal object is to provide long term credit for agricultural and rural development activity. The appellant society is neither a primary agricultural credit society nor a primary cooperative agricultural and rural development bank. The appellant society is listed as non-scheduled urban cooperative bank in the list as per the Reserve Bank of India website. Further as clarified in the CBDT circular no. 6/2010 dated 20.09.2010 section 80P does not apply to any cooperative bank other than those specifically mentioned in the sub section of the section 80P.

In view of the above, I find that the appellant is not eligible for exemption for u/s 80P(2)(a)(i) of the Act. Accordingly, addition made by the Assessing Officer is upheld and the ground of appeal is dismissed.”

8. The CIT(A) has held that the assessee is not eligible for exemption under section 80P(2)(a)(i) and therefore, the addition made by the Assessing Officer was upheld. The assessee has not disputed the fact that the assessee is a primary Cooperative Bank though a Multi-State primary Cooperative Bank and was also granted license by the Reserve Bank of India originally on 11th May, 2002 and thereafter on 20th November 2007. A copy of the license issued by the Reserve Bank of India scanned as under:

Issued on Lion of
Licence no. UBD UP 0012
dt. 11 May 2002



भारतीय रिज़र्व बैंक

शहरी बैंक विभाग
क्षेत्रीय कार्यालय, लखनऊ

RESERVE BANK OF INDIA
URBAN BANKS DEPARTMENT
REGIONAL OFFICE, LUCKNOW

लाइसेंस सं. यूबीडी. उत्तर प्रदेश 0012
LICENCE No. UBD. U. P. 0012

दिनांक 20 नवम्बर 2007
Dated : 20 November 2007

भारतीय रिज़र्व बैंक को बैंककारी विनियमन अधिनियम, 1949 की धारा 56 (ण) के साथ पढ़ी जानेवाली धारा 22 (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए

द्वि नार्थ ईस्टर्न एण्ड ईस्ट सेंट्रल रेल्वे इम्प्लॉयज़ मल्टीस्टेट प्राइमरी को-ऑपरेटिव बैंक लि.
को एतद्वारा निम्नलिखित शर्तों के अधीन बैंकिंग कारोबार प्रारंभ करने और उसे चालू रखने का लाइसेंस प्रदान किया जाता है:

- बैंक के परिचालन का क्षेत्र केवल निबंधक, सहकारी समितियों द्वारा सम्यक रूप से अनुमोदित उपविधियों में उल्लिखित क्षेत्र तक सीमित होगा।
- बैंक अपने पंजीकृत कार्यालय में लाइसेंस अथवा उसकी प्रमाणित प्रतिलिपि अपना कारोबार शुरू करने के दिन / लाइसेंस प्राप्त होने के बाद की तारीख से प्रदर्शित करेगा।

In exercise of the powers conferred on the Reserve Bank of India by Section 22 (1) read with Section 56 (o) of the Banking Regulation Act, 1949,

THE NORTH EASTERN AND EAST CENTRAL RAILWAY EMPLOYEE'S
MULTI STATE PRIMARY COOPERATIVE BANK LTD. GORAKHPUR (U.P.)

is hereby granted a licence to commence and carry on banking business, subject to the following conditions :

- The area of operation of the bank shall be confined only to the area as indicated in the bye - laws duly approved by the Registrar of Co-operative Societies.
- This licence or a certified copy thereof shall be displayed at the registered office of the bank from the day on which it commences business / date following the receipt thereof.

6 अगस्त 2012
(डॉ. पी. एस. शर्मा)
क्षेत्रीय निदेशक
उ.प्र. एवं उत्तराखण्ड
REGIONAL DIRECTOR,
U.P. & Uttarakhand

9. From time to time, the Reserve Bank of India has permitted the assessee to open the offices at various Railway Divisions and also enhanced the limit of advances / loan to its members. The assessee was also allowed to accept the deposits, issued the draft, travels check, discounting of bills etc.,. The assessee is also accepting deposits from public /non-members. Prior to the amendment and insertion of sub section 4 by Finance Act, 2006 which is in the nature of proviso to section 80P(1)(2) a Cooperative Society was eligible for deduction of the income *inter alia* from the business of banking or providing credit facilities to its members. For ready reference, section 80P is quoted as under:-

Deduction in respect of income of co-operative societies.

80P. (1) *Where, in the case of an assessee being a co-operative society, the gross total income includes any income referred to in sub-section (2), there shall be deducted, in accordance with and subject to the provisions of this section, the sums specified in sub-section (2), in computing the total income of the assessee.*

(2) *The sums referred to in sub-section (1) shall be the following, namely:—*

(a) in the case of a co-operative society engaged in—

(i) carrying on the business of banking or providing credit facilities⁶⁹ to its members, or

(ii) a cottage industry, or

[(iii) the marketing of agricultural produce grown by its members, or

(iv) the purchase of agricultural implements, seeds, livestock or other articles intended for agriculture for the purpose of supplying them to its members, or

(v) the processing, without the aid of power, of the agricultural produce of its members, [or]

(vi) the collective disposal of the labour of its members, or

(vii) fishing or allied activities, that is to say, the catching, curing, processing, preserving, storing or marketing of fish or the purchase of materials and equipment in connection therewith for the purpose of supplying them to its members,]

the whole of the amount of profits and gains of business attributable to any one or more of such activities:

Provided *that in the case of a co-operative society falling under sub-clause (vi), or sub-clause (vii), the rules and bye-laws of the society restrict the voting rights to the following classes of its members, namely:—*

(1) the individuals⁷⁴ who contribute their labour or, as the case may be, carry on the fishing or allied activities;

(2) the co-operative credit societies which provide financial assistance to the society;

(3) the State Government;] (b) in the case of a co-operative society, being a primary society engaged in supplying milk, oilseeds, fruits or vegetables raised or grown by its members to—

(i) a federal co-operative society, being a society engaged in the business of supplying milk, oilseeds, fruits, or vegetables, as the case may be; or

(ii) the Government or a local authority; or

(iii) a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956), or a corporation established by or under a Central, State or Provincial Act (being a company or corporation engaged in supplying milk, oilseeds, fruits or vegetables, as the case may be, to the public), the whole of the amount of profits and gains of such business;]

(c) in the case of a co-operative society engaged in activities⁷⁸ other than those specified in clause (a) or clause (b) (either independently of, or in addition to, all or any of the activities so specified), so much of its profits and gains attributable to such activities as does not exceed,—

(i) where such co-operative society is a consumers' cooperative society, 80[one hundred] thousand rupees; and

(ii) in any other case, [fifty] thousand rupees.

Explanation.—In this clause, "consumers' co-operative society" means a society for the benefit of the consumers;]

(d) in respect of any income by way of interest or dividends derived by the co-operative society from its investments with any other co-operative society, the whole of such income;

(e) in respect of any income derived by the co-operative society from the letting of godowns or warehouses⁸² for storage, processing or facilitating the marketing of commodities⁸², the whole of such income;

(f) in the case of a co-operative society, not being a housing society or an urban consumers' society or a society carrying on transport business or a society engaged in the performance of any manufacturing operations with the aid of power, where the gross total income⁸² does not exceed twenty thousand rupees, the amount of any income by way of interest on securities [***] or any income from house property chargeable under section 22.

Explanation.—For the purposes of this section, an "urban consumers' co-operative society" means a society for the benefit of the consumers within the limits of a municipal corporation, municipality, municipal committee, notified area committee, town area or cantonment.

(3) In a case where the assessee is entitled also to the deduction under [***] [section 80HH] [or section 80HHA] [or section 80HHB] [or section 80HHC] [or section 80HHD] [or section 80-I] [or section 80-IA] or section 80][***][***], the deduction under sub-section (1) of this section, in relation to the sums specified in clause (a) or clause (b) or clause (c) of subsection (2), shall be allowed with reference to the

*income, if any, as referred to in those clauses included in the gross total income as reduced by the deductions under [***] [section 80HH,] [section 80HHA,] [section 80HHB,] [section 80HHC,] [section 80HHD,] [section 80-I,] [section 80-IA,] [section 80J and section 80JJ].]*

(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.

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 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.]”

10. A Cooperative Society qualifies for exemption under section 80P(1) subject to the income from the activity or business activity as provided under sub section (2) of section 80P. The eligibility of the society to claim the exemption under section 80P does not mean that if entire income is exempted as the income from the business activities as provided under various Clause of sub section (2) are only exempted from tax. Therefore, if a society satisfy the condition as provided under sub section (2) under any Clause or sub Clause of Sub Section (2) the deduction is available to it in respect to the income which falls under any of the head provided under this sub section and other income which does not fall in the ambit of sub section (2) would effect the eligibility of the assessee society to claim the deduction so far as the it falls in the ambit of sub section (2). After the insertion of sub section (4) by Finance Act, 2006, deduction under section 80P(1) and (2) shall not be admissible to a Cooperative Bank other than a primary agriculture credit society or a primary Cooperative Agriculture and Rural Development Bank. As per the explanation to sub section (4) of section 80P, a Cooperative Bank is defined as per the meaning assigned to it in Part V of

(1) the primary object or principal business of which is to provide financial accommodation to its members for agricultural purposes or for purposes connected with agricultural activities (including the marketing of crops); and

(2) the bye-laws of which do not permit admission of any other co-operative society as a member:

Provided that this sub-clause shall not apply to the admission of a co-operative bank as a member by reason of such co-operative bank subscribing to the share capital of such co-operative society out of funds provided by the State Government for the purpose;

(ccv) "primary co-operative bank" means a co-operative society, other than a primary agricultural credit society,— (1) the primary object or principal business of which is the transaction of banking business;

(2) the paid-up share capital and reserves of which are not less than one lakh of rupees; and

(3) the bye-laws of which do not permit admission of any other co-operative society as a member:

Provided that this sub-clause shall not apply to the admission of a co-operative bank as a member by reason of such co-operative bank subscribing to the share capital of such co-operative society out of funds provided by the State Government for the purpose;

(ccvi) "primary credit society" means a co-operative society, other than a primary agricultural credit society,—

(1) the primary object or principal business of which is the transaction of banking business;

(2) the paid-up share capital and reserves of which are less than one lakh of rupees; and

(3) the bye-laws of which do not permit admission of any other co-operative society as a member:

Provided that this sub-clause shall not apply to the admission of a co-operative bank as a member by reason of such co-operative bank subscribing to the share capital of such co-operative society out of funds provided by the State Government for the purpose.

Explanation.—If any dispute arises as to the primary object or principal business of any co-operative society referred to in clauses (cciv), (ccv) and (ccvi), a determination thereof by the Reserve Bank shall be final;

(ccvii) "central co-operative bank", "primary rural credit society" and "state co-operative bank" shall have the meanings respectively assigned to them in the National Bank for Agriculture and Rural Development Act, 1981 (61 of 1981);"

11. A Cooperative Bank means a State Cooperative bank, a Central Cooperative Bank and a primary Cooperative Bank. The Cooperative Banks are now excluded from the scope of exemption under section 80P by considering them as a lending institutions and they are treated distinctly from primary

Agriculture Credit Societies and primary Agriculture and Rural Development Banks. Therefore, the Legislature intended to tax their profits. The CBDT Circular dated 28.12.2006 containing explanatory note on the insertion of sub section 4 vide Finance Act, 2006 reads as under:-

“Withdrawal of tax benefits available to certain co-operative banks

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22.2 The co-operative banks are functioning at par with other commercial banks, which do not enjoy any tax benefit. Therefore, section 80P has been amended and a new sub-section (4) has been inserted to provide that the provisions of the said 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. The expressions "co-operative bank", "primary agricultural credit society" and "primary co-operative agricultural and rural development bank" have also been defined to lend clarity to them.

11.1 It was explained that Cooperative Banks are functioning at par with other commercial banks which do not enjoy any tax benefit therefore, in view of insertion sub section (4) the provisions of section 80P shall not apply in relation to any Cooperative Bank other than the primary Agricultural Society or primary Agricultural and Rural Development Bank. Further clarification was also issued by the CBDT vide letter dated 9.5.2008 as under:-

“Subject: Clarification regarding admissibility of deduction under section 80P of the Income-tax Act, 1961.

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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.”

12. The above clarification reiterated that deduction under section 80P shall not be allowable to a Cooperative Bank other than the primary agricultural credit society or a primary co-operative agricultural and rural development bank. The definition of Cooperative Bank is adopted as provided in part V of Banking

Regulation Act, 1949 therefore, there is no ambiguity on the point that a Cooperative Bank which is functioning at par with commercial Bank as per the license issued by the Reserve Bank of India it is not eligible for deduction under section 80P of the Income Tax Act because it falls in the mischief of sub section 4 of section 80P. If the definition of Cooperative Bank as provided in Part (V) of Banking Regulation Act, 1949 is taken into consideration then the assessee being a Multi-State Primary Cooperative Bank and not a primary agricultural credit society or a primary co-operative agricultural and rural development bank will fall within the mischief of sub section 4 of section 80P.

13. As it is clear from the byelaws and particularly primary objects and principle business of the assessee that the assessee is not doing any activity falling in the purview of primary agricultural credit society or a primary co-operative agricultural and rural development bank. The assessee is neither providing any agriculture credit facility nor providing any service of rural development bank. The other conditions as provided under Banking Regulation Act, 1949 for the primary Cooperative Bank are also satisfied in case of the assessee and hence, once the assessee falls in the definition of Cooperative Bank, the benefit of deduction under section 80P is not available to the assessee. The decisions relied upon by the assessee are not on the point of Cooperative Bank not eligible for deduction under section 80P but the issue and dispute in those cases were either regarding exemption of interest income under section 80P(2)(a)(i) or the dispute of eligibility of the Cooperative Society for deduction under section 80P but prior to the insertion of sub section (4) by Finance Act, 2006 w.e.f. assessment year 2007-08. Therefore, those decisions would not help the case of the assessee. Section 80P is a benevolent provision enacted by the Parliament to increase and promote the growth of cooperative sector in the country. Once a cooperative society is entitled to avail the deduction under section 80P, the amount of profit and gain of business that are attributable to

anyone or more activities mentioned in sub section (2) of section 80P shall not be part of the total income of the society. Sub Section 4 is in the nature of proviso to the main provisions contained in section 80P (1) and (2) which specifically excludes cooperative banks; which means a cooperative society having a license from RBI to do a banking business would fall within the mischief of Sub Section (4) section 80(4) and consequently the deduction under section 80P (1) and (2) is not available. Hence, in the facts and circumstances of the case when the assessee is a cooperative society bank as defined as per part V of the Banking Regulation Act, 1949, it is not eligible for deduction under section 80P of the Act. Accordingly, we uphold the impugned order of the CIT(A).

14. For the assessment years 2013-14 and 2014-15, the assessee has raised identical grounds except the quantum of deduction claimed under section 80P which was disallowed by the Assessing Officer. Our finding for the assessment year 2009-10 is applicable for the assessment years 2013-14 and 2014-15 and consequently the impugned orders of the CIT(A) are upheld.

15. In the result, the appeals of the assessee for the assessment years 2009-10, 2013-14 and 2014-15 are dismissed.

Order pronounced on 09/06/2022 at Allahabad, U.P., in accordance with Rule 34(4) of Income Tax (Appellate Tribunal) Rules, 1963.

Sd/-
[RAMIT KOCHAR]
ACCOUNTANT MEMBER

DATED: 09/06/2022
Varanasi/Allahabad
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Copy forwarded to:

1. Appellant- N.E. Railway Employees Multi State Primary Co-operative Bank Ltd.
2. Respondent- ACIT, Range-1, Gorakhpur
3. CIT(A), Varanasi
4. CIT-
5. DR-

Sd/-
[VIJAY PAL RAO]
JUDICIAL MEMBER

By order
Sr. P.S.