

**IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC - A” BENCH : BANGALORE**

BEFORE SHRI N. V. VASUDEVAN, VICE PRESIDENT

ITA Nos.146 and 147/Bang/2022
Assessment Years :2013-14 and 2014-15

M/s. Sahyadri Vividdhodesha Areca Belagararamarata Sahakari Sangha, B5/B6, APMC Yard, Theerthahalli – 577 432, Karnataka. PAN : AABAS 9240 E	Vs.	ITO, Ward – 5, Shivamogga.
APPELLANT		RESPONDENT

Assessee by	:	Shri. G. Sathyanarayan, CA
Revenue by	:	Shri. Ganesh R. Ghale, Standing Counsel

Date of hearing	:	25.07.2022
Date of Pronouncement	:	26.07.2022

ORDER

Per N. V. Vasudevan, Vice President :

These are appeals by the Assessee against two orders both dated 15.03.2019 of CIT(A), Davangere, in relation to AYs 2013-14 and 2014-15.

2. The only issue that arises for consideration in these two appeals is as to whether the Revenue authorities were justified in denying the benefit of deduction u/s.80P(2)(a)(i) of the Act to the Assessee. The Assessee is a society registered under the Karnataka Co-operative Societies Act, 1959. In the return of income filed for the relevant AYs, the Assessee claimed deduction u/s.80P(2)(a)(i) of the Act. According to the Assessee it did not have license to carry on any banking business under the Banking Regulation Act, 1949. It was engaged in marketing agricultural produce of its members, providing credit facility to its members, sale and distribution of fertilizers, pesticides,

agricultural equipment, farm products, providing warehousing facilities for storing agricultural produce.

3. The AO denied the benefit of deduction to the Assessee by applying the provisions of Sec.80P(4) of the Act and the CIT(A) confirmed the order of the AO.

4. The deduction under Section 80P is not available for Co-operative banks from A.Y. 2007-08. Section 80P was amended by the Finance Act, 2006, with effect from 1-4-2007 introducing sub-section (4) 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' have been taken as per the definition given in Part V of the Banking Regulation Act, 1949 (10 of 1949). The 'primary co-operative agricultural and rural development bank' have also been defined in the act to bring clarity.

5. Further, a new sub-section (viiia) has also been inserted in clause (24) of Section 2 to provide that the profits and gains of any business of banking (including providing credit facilities) carried on by a co-operative society with its members shall be included in the definition of 'income'.

6. The CBDT vide Circular No. 6/2010 [F.No. 173(3)/44/2009-IT (A-I)] dated 20-9-2010 has also issued a circular for the sake of clarity the circular is reproduced as under

“Section 80P of the Income-tax Act, 1961 provides for a deduction from the income of co-operative societies referred to in that section.

*As Regional Rural Banks (RRB) are basically corporate entities (and not co-operative societies), they were considered to be not eligible for deduction under Section 80P when the section was originally introduced. However, as Section 22 of the Regional Rural Bank Act provides that a RRB shall be deemed to be co-operative society for the purposes of the Income-tax Act, 1961, in order to make such banks eligible for deduction under Section 80P, CBDT issued a beneficial **Circular No. 319 dated 11-1-1982**, which stated that for the purpose of Section 80P, a Regional Rural Bank shall be deemed to be a co-operative society.*

Section 80P was amended by the Finance Act, 2006, with effect from 1-4-2007 introducing sub-section (4), which laid down specifically that the provisions of Section 80P will not apply to any co-operative bank other than a Primary Agricultural Credit Society or a Primary Co-operative Agricultural and Rural Development Bank. Accordingly, deduction under Section 80P was no more available to any Regional Rural Bank from assessment year 2007-08 onwards.

An OM dated 25-8-2006 addressed to RBI was issued by the Board clarifying that Regional Rural Banks would not be eligible for deduction under Section 80P of the Income-tax Act, 1961 from the assessment year 2007-08 onwards.

*It has been brought to the notice of the Board that despite the amended provisions, some Regional Rural Banks continue to claim deduction under Section 80P on the ground that they are co-operative societies covered by Section 80P(1) read with Boards **Circular No. 319 dated 11-1-1982**.*

*It is, therefore, reiterated that Regional Rural Banks are not eligible for deduction under Section 80P of the Income-tax Act, 1961 from the assessment year 2007-08 onwards. Further more, the **Circular No. 319 dated 11-1-1982** deeming any Regional Rural Bank to be co-operative society stands withdrawn for application with effect from assessment year 2007-08.*

The field officers may take note of this position and take remedial action, if required.”

7. The first aspect to be seen is as to whether the Assessee can be said to be a co-operative Bank. In [2017] 84 taxmann.com 114 (SC) Citizen Co-operative Society Ltd. vs. ACIT, the Hon'ble Supreme Court held that in order to do the business of a cooperative bank, it is imperative to have a licence from the Reserve Bank of India. It can therefore be said that a co-operative society which does not possess a license from RBI cannot be equated to a co-operative Bank, even though it might indulge in the business of banking. In this case the AO adopted the definition of co-operative Bank as given in the Banking Regulation

Act, 1949, ignoring the specific exclusions given in Sec.80P(4) of the Act. The CBDT circular referred to above is also not applicable to the Assessee as it cannot be said to be a Regional Rural Bank.

8. In COMMISSIONER OF INCOME TAX AND ANOTHER vs. SRI BILURU GURUBASAVA PATTINA SAHAKARI SANGHA NIYAMITHA BAGALKOT(2014) 369 ITR 0086 (Karn), the Hon'ble Karnataka High Court held:

“8. In the assessment order, the Assessing authority has clearly stated that the assessee is a Co-operative 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. Infact, 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) “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."

Therefore, the intention of the legislature is clear. If a Co-operative 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 of deduction u/s.80P 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 only 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."

9. Co-operative Societies carrying on business of banking are therefore entitled to claim deduction u/s.80P(2)(a)(i). The AO/CIT(A) refused to follow the aforesaid decision of the Hon'ble Karnataka High Court on the ground that SLP has been filed before the Hon'ble Supreme Court against the said decision of High Court.

10. I am of the view that in the light of the decision of Hon'ble High Court of Karnataka referred to above, the deduction u/s.80P(2)(a)(i) of the Act cannot be denied to the Assessee. The latest verdict by the Hon'ble Supreme Court in

the case of **Mavilayi Service Co-operative Bank Ltd. v. CIT 2021 TaxPub(DT) 273 (SC) : (2021) 431 ITR 1 (SC)** while delivering the judgment in favour held:

*“Section 80P being a benevolent provision enacted by Parliament to encourage and promote credit of co-operative sector in general must be read liberally and reasonably, and if there is ambiguity, in favour of assessee. A deduction that is given without any reference to any restriction or limitation cannot be restricted or limited by implication, as is sought to be done by revenue by adding the word 'agriculture' into section 80P(2) (a) (i) when it is not there. Further, section 80P(4) is to be read as a proviso, limited object of which is to exclude co-operative banks that function at par with other commercial banks, i.e., which lend money to members of public. Thus, if Banking Regulation Act, 1949 is to be seen, what is clear from section 3 read with section 56 is that a primary co-operative bank cannot be a primary agricultural credit society, as such co-operative bank must be engaged in the business of banking as defined by section 5(b) of the said Act, which means accepting, for the purpose of lending or investment, of deposits of money from public. Likewise, under section 22(1)(b) of Banking Regulation Act, 1949 as applicable to co-operative societies, no co-operative society would carry on banking business in India, unless it is a cooperative bank and holds a licence issued in that behalf by RBI. As opposed to this, a primary agricultural credit society is a co-operative society, primary object of which is provide financial accommodation to its members for agricultural purposes or for purposes connected with agricultural activities. As a matter of fact, some primary agricultural credit societies applied for a banking licence to the RBI, as their bye-laws also contain as one of the objects of the Society the carrying on of business of banking. This was turned down by RBI. **Clearly, therefore, once section 80P(4) was out of harm's way, all the assessee's entitled to the benefit of deduction under section 80P(2)(a)(i), notwithstanding that they might also be giving loans to their members which were not related to agriculture. Also, in case it is found that there were instances of loans being given to non-members, profits attributable to such loans obviously could not be deducted.**”*

11. The Hon'ble Supreme Court held that section 80P being a benevolent provision must be read liberally and reasonably and in case of any ambiguity it must be interpreted in favour of the assessee. Supreme Court observed that section 80P(2)(a)(i) which covers a co-operative society engaged in the business

of banking or providing credit facilities to its members does not require that the assessee has to be a primary agricultural credit society. The Hon'ble Supreme Court noted that section 80P(2)(a)(i) does not require that the society has to give agricultural credit only. It further observed that once the co-operative society provides credit facility to its members, the fact that it also provides credit facility to non-members does not disentitle the society from availing of deduction. Supreme Court observed that the object of section 80P(4) was to exclude co-operative banks that function at par with other commercial banks and noted that as primary agricultural credit societies are not entitled for obtaining a banking license would not be hit by this provision. In the light of the law on the issue discussed above, I am of the view that the Assessee is entitled to deduction u/s.80P(2)(a)(i) of the Act as claimed and the same is directed to be allowed.

12. In the result, the appeals of the Assessee are allowed.

Pronounced in the open court on the date mentioned on the caption page.

Sd/-

(N. V. VASUDEVAN)
Vice President

Bangalore.
Dated: 26.07.2022.
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| 1. Appellants | 2. Respondent |
| 3. CIT | 4. CIT(A) |
| 5. DR | 6. Guard file |

By order

Assistant Registrar,
ITAT, Bangalore.