

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

**BEFORE SHRI. B. R. BASKARAN, ACCOUNTANT MEMBER  
AND SHRI AMIT SHUKLA, JUDICIAL MEMBER**

ITA No.51,52,53,54,55 & 56/VNS/2023  
Assessment Year:2009-10, 2010-11, 2011-12, 2017-18, 2018-19  
& 2019-20

The Dy. Commissioner of Income Tax Circle-1 Gorakhpur	v.	Baroda Uttar Pradesh Gramin Bank Now Amalgamated with Baroda U.P. Bank Buddh Vihar, Commercial Scheme, Taramandal Gorakhpur
		TAN/PAN:AAAJB1748G
(Appellant)		(Respondent)

C.O. No.01,02,03,04,05 & 06/VNS/2023  
[Arising out of ITA No.51,52,53,54,55 & 56/VNS/2023]  
Assessment Year:2009-10, 2010-11, 2011-12, 2017-18, 2018-19  
& 2019-20

Baroda Uttar Pradesh Gramin Bank Now Amalgamated with Baroda U.P. Bank Buddh Vihar, Commercial Scheme, Taramandal Gorakhpur	v.	The Dy. Commissioner of Income Tax Circle-1 Gorakhpur
TAN/PAN:AAAJB1748G		
(Cross Objector)		(Respondent)

Department by:	Shri Robin Chaudhary, CIT		
Assessee by:	Shri S. K. Garg, Advocate		
Date of hearing:	25	09	2023
Date of pronouncement:	26	09	2023

**ORDER**

**PER BENCH:**

The aforesaid appeals have been filed by the Revenue and the Cross Objections by the assessee against separate impugned orders of even date 10.3.2023 passed by the Id. CIT(A), NFAC, Delhi for quantum of assessments passed under section 143(3) read with section 254 of the Income Tax Act, 1961 for the Assessment Years 2009-10, 2010-11 and 2011-12, and under section 143(3) of the Act for the Assessment Years 2017-18, 2018-19 & 2019-20.

2. In all the appeals, the common ground raised by the Revenue is that the Id. CIT(A) has erred in law and facts in deleting the disallowance of claim of deduction of rs.9,91,23,980/- under section 80P(2)(a)(i) of the Income Tax Act, 1961.

3. At the outset, the Id. Counsel for the Assessee submitted that similar issue has been decided by the Tribunal in the assessee's own case, vide order dated 8.1.2021 for Assessment Years 2012-13 to 2016-17. It has also been brought on record that the Hon'ble Allahabad High Court vide its judgment dated 15.3.2022 had confirmed the order of the Tribunal. The Id. Counsel for the Assessee further pointed out that even the Id. CIT(A) has followed the order of the Tribunal.

4. From the perusal of the assessment order, it is noted that the Assessing Officer has denied deduction under section 80P(2)(a)(i) of the Act on the following grounds:

*“i) Regional Rural Banks are not a society registered under Cooperative Society Act, 1912 as prescribed under section 2(19) of the Income Tax Act, 1961.*

*ii) As per section 80P(2)(a)(i) only cooperative societies engaged in carrying on business of banking or providing credit facilities to its members is eligible for deduction. Assessee bank accepts deposits for public at large and provides credit to public at large.*

*iii) The basic composition of assessee bank is very close to composition of a company.*

*iv) Regional Rural Bank Act prohibits introduction of any other shareholder. v) Regional Rural Bank is a profit earning organization whereas a co-operative society is a non-profit entity functioning on the principles of mutuality.*

*vi) The assessee bank is functioning at par with the commercial banks.”*

5. The Id. CIT(A), after referring to the aforesaid decision of the Tribunal as well as the judgment of the Hon'ble Allahabad High Court, dated 15.3.2022, has deleted the disallowance made by the Assessing Officer under section 80P of the Act.

6. We find that a similar issue has been decided by the Tribunal by passing a detailed order and the relevant paragraph of the order of the Tribunal has also been reproduced by the Hon'ble High Court. For ready reference, the judgment of the Hon'ble High Court is reproduced as under:

*“2.Income Tax Appeal No. 28 of 2022, Income Tax Appeals (Defective) Nos. 16, 18, 19 and 20 all of 2022 arise from the Assessment Orders for Assessment Year 2012-13, 2013-14, 2015-16, 2016-17 and 2014-15 respectively, whereas the*

*Income Tax Appeal No. 23 of 2022 and Income Tax Appeals (Defective) Nos. 17, 21, 24 and 22 all of 2022 arise from the Penalty orders under Section 271 (1) (c) of the Income Tax Act, 1961 for the aforesaid assessment years.*

*3. It has been admitted before us that the respondent-assessee is a Primary Cooperative Agricultural and Rural Development Bank. It has also been admitted before us that the respondent/assessee is a Bank, established under Section 3 of the Regional Rural Banks Act 1976. The respondent/assessee claimed deduction under Section 80P of the Income Tax Act, 1961 (hereinafter referred to 'as the Act, 1961') on the ground that it is a Cooperative Society and, therefore, in terms of the provision of Section 22 of the Regional Rural Development Banks Act, 1976 (hereinafter referred to 'as the R.R.B Act, 1976'), it is entitled for deduction under Section 80P of the Act.*

*4. The assessing authority has not accepted the claim of the deduction on the ground that the respondent/assessee is not a Cooperative Society registered under the U.P. Cooperative Societies Act 1912 and, therefore, it is not entitled for deduction under Section 80P of the Act, 1961. It was further held by the Assessing Authority in paragraph 2.5 of the Assessment Order that the Regional Rural Banks are not eligible for deduction under Section 80P of the Act, 1961 from the Assessment Year 2007-08, as by Circular No. 319 dated 11.01.1982 issued by the Central Board of Direct Taxes, deeming status of the Regional Rural Banks as Cooperative Society stands withdrawn w.e.f. Assessment Year 2007-08.*

5. *In the assessment order, the assessing authority has held in para no. 4 and 5, as under:-*

*4. The stand taken by assessee on this issue is not correct due to following reason:-*

*a. Regional Rural Bank Act, 1976 has not overriding power over Income Tax Act, 1961 Circular No. 319 dated 11.01.1982 allowing deeming provision of cooperative society has been withdrawn by Board CIRCULAR NO. 6/2010 (F. No. 173 (3)/44/2009-IT (A-1) DATED 20/9/2010 w.e.f. assessment year 2007-08, And a clarification has been also given in this circular that Regional Rural Bank are not entitled for deduction u/s 80P of I. T. Act Circular has been typed in paragraph 3.1 (B) of assessment order.*

*b. A sub-section 80P(4) was introduced by Finance Act, 2006 w.e.f. 01.04.2007 withdrawing deduction u/s 80P in relation to any cooperative bank. The explanatory note to Finance Act with regard to this section is noted below:-*

*“Withdrawal of tax benefits available to certain cooperative banks:-*

*Section 80P, inter alia, provides for a deduction from the total income of the Cooperative societies engaged in the business of banking or providing credit facilities to its members, or business of a cottage industry , or of marketing of agricultural produce of its member, or processing, without the aid of power, of the agricultural produce of its members, etc.*

*The cooperative banks are functioning at par with other commercial banks, which do not enjoy any tax benefit. It is, therefore, proposed to amend section 80P by inserting a new sub-section (4) so as to provide that the provisions of the said section 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. It is also proposed the expressions “cooperative bank”, “primary agricultural credit society” and “primary cooperative agricultural and rural development bank”.*

*It is also proposed to insert a new sub-clause (viiia) in section 2 (24) so as to provide that the profits and gains of any business of banking (including credit facilities) carried on by a cooperative society with its members shall be included in the definition of ‘income’.*

*This amendment takes effect from 1st April, 2007 and apply in relation to the assessment year 2007-08 and subsequent years. (Clauses 3 and 19)”*

*From aforesaid facts, intension of Parliament is very much clear and deduction under Section 80P is not allowable to Regional Rural Bank and any cooperative bank.*

*5. However, it should be kept in mind that 80P (1) and 80P (2) (I) shall never be read in isolation rather it should always be read in association with 80P (4). The selection 80P (4) is introduced by Finance Act, 2006 w.e.f.01.04.2007 to clear any doubt while claiming*

*deduction under section 80P (1) and 80P (2) (II) FURTHER CBDT ISSUED "circular no. 6/2010 (F. NO. 173 (3)/44/2009-IT (A-1) DATED 20.09.2010 C to give more and more clarity on 80P deduction. Therefore, the assessee is assessed as status of AOP.*

*From aforesaid discussion it is held that assessee is not entitled for deduction u/s 80P (1) of LT. Act and claiming disallowed and added back to the total income. Penalty notice u/s 271(1) (c) is being issued separately.*

*6. Section 22 and 32 of the Regional Rural Banks Act, 1976 provides as under:-*

*22. Regional Rural Bank to be deemed to be a cooperative society for purpose of the Income Tax Act, 1961.- For the purpose of the Income Tax Act, 1961 (43 of 1961), or any other enactment for the time being in force relating to any tax on income, profits or gains, a Regional Rural Bank shall be deemed to be a cooperative society.*

*32. Act to override the provisions of other laws.- The provisions of this Act shall have effect notwithstanding anything to the contrary in any other law for the time being in force or in any contract, express or implied, or in any instrument having effect by virtue of any law other than this Act, and notwithstanding any custom or usage to the contrary.*

*7. Sub-section (4) of Section 80P of the Act, 1961 (incorporated by Finance Act, 2006 w.e.f. 01.04.2007 provides as under.*

*Para 1.644*

*(4) The provisions of this section 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;*

*Explanation- For the purposes of this sub-section-*

*(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 cooperative 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.*

*8. The Tribunal has passed impugned two common orders, firstly in matters arising out of the assessment orders, and secondly order in matters arising from the penalty orders.*

*9. In the Income Tax Appeals arising from the assessment order, the Income Tax Appellate Tribunal Allahabad Bench, Allahabad has recorded the following findings of the fact (paragraphs 38, 39, 41, 42, 50, 51, 54, 55, 56, 57, 58, 61):-*

*38. We have heard the contentions, put forth by the rival parties, perused the Paper Books in three volumes as had been uploaded by the appellant RRB. The central issue involved in all these appeals is whether 'appellant*

*RRB is entitled to claim exemption under section 80P(2)(a)(i) of the Act, on the ground that Regional Rural Banks in general had been notified as "Cooperative Society" by virtue of insertion of section 22 read with section 32 of Regional Rural Bank Act 1976. Further, whether such a claim is adversely affected by insertion of sub-section (4) below section 80P, by the Finance Act 2006. To find out answer for such issues, it would be useful to trace the history of section 80P as well as of Banking Regulation Act, 1949 and Part-V thereof as had been inserted to the main statute, i.e., Banking Regulation Act 1949, in the year 1965.*

39. *The section 80P of the Act' had been inserted, in substitution of section 81 of the Income tax Act 1961, by the Finance Act (No.2) of 1967, (20 of 1967), w.e.f. 01.04.1968. The purpose behind such a substitution, was to enlarge the scope of deduction as used to be permissible under erstwhile section 81 (the then) of the Act. In terms of section 81, rebate on certain types of income had been provided, whereas in terms of section 80P, full and outright deduction of income earned from the 'business of Banking' or 'providing credit facilities to its members, to various types of Cooperative Societies as mentioned in sub-clauses (i) to (vii) of clause (a) of sub section 2 of 80P had been given. It clearly meant that, while enacting sections 22 r.ws. 32 of Regional Rural Bank Act, 1976, the Parliament was fully aware of the provisions contained in the newly substituted section 80P, in place of erstwhile regime of granting rebate as had*

*been provided under section 81 of the Act. Yet the said RRB Act had granted 'Regional Rural Banks' 1961, the status of "cooperative society", for the purposes of "taxation of its income or any other enactment for the time being in force, related to any tax on its income, profits or gain as derived by specified categories of co operative societies, from Banking Business". The term Banking Business' itself is a connotation of very wide import. The said statute, namely RRB Act 1976, as a whole had been given the status of 'overriding nature, as per section 32 thereof. Therefore, as per simple rule of interpretation, the Regional Rural Bank Act, 1976, overrides the substituted section SOP of the Act Such an analogy is applicable to sub-section (4) also of section 80P also, for the reason that the said sub-section (4) had been inserted by the Finance Act, 2006 without there being any corresponding amendment in the RRB Act 1976 particularly in section 22 of Regional Rural Bank Act 1976.*

41. *In short, the effect of over-riding provisions as contained in section 22 read with section 32 of Regional Rural Bank Act 1976, had not/ could not have been taken away or whittle down their true effect, as the said provisions remain intact. Accordingly, all the Regional Rural Banks as have been constituted and incorporated under the Regional Rural Bank Act 1976, as the appellant RRB is, continue to be "cooperative society" and thereby continue to enjoy exemption under section 80P (2)(a)(i). The "appellant RRB", is no exception. Meaning thereby, that the appellant RRB', in spite of insertion of bar by virtue of*

*sub- section (4) below section 80P, by the Finance Act 2006 effective from 1.4.2007, continues to be enjoying exemption under section 80P(2)(a)(l).*

42. *Here itself, it would not be out of place to mention that status of "cooperative society" had been conferred on Regional Rural Banks, as the "appellant RRB" is, by virtue of section 22 read with section 32 of Regional Rural Bank Act 1976, and not by circular no.319 dated 11.01.1982 as had been issued by CBDT, as had been opined, by the Authorities below. Therefore, insertion of sub-section (4) below section 80P, and/or withdrawal of the said Circular no. 319 dated 11.01.1982 in the wake of insertion of bar by virtue of sub section (4) had not gone to adversely affect 'claim for exemption' from income tax as had been put forth by the "appellant RRB". The "appellant RRB" continues to be having the status of a "cooperative society" enjoying the benefit of exemption.*

50. *For taking such a view, about interpretation of Regional Rural Bank Act, vis-a-vis sub-section (4) of Income Tax Act, 1961, we are fortified by the decision rendered by Hon'ble Supreme Court in the case of Reserve Bank of India vs. Peerless General Finance and Investment Co. Ltd. reported in (1987) 1 SCC 424 wherein it has been held that:*

*"interpretation must depend on the text and the context They are the basis of interpretation. One may well say if the the text is the texture, context is what gives the colour. Neither Can be Ignored. Both are important That*

*interpretation is best which makes the textual interpretation match the Contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at in the context of its enactment, with the glasses of the statute maker provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With those glasses we must look at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place. It is by looking at the definition as a whole in the setting of the entire Act and by reference to what preceded the enactment and the reasons for it that the court construed in the expression 'Prize Chit' in Srinivasa and we find no reason to depart from the Court's construction".*

*51. Speaking further, even if it is held that the term 'Regional Rural Bank' has a different meaning in its purport, than that given in the Regional Rural Bank Act 1976, this would be the case of ambiguity in the statute. It is a law well settled that benefit of such an ambiguity has*

*to be given to the 'subject', as the 'appellant RRB ' is. It is a trite law that provisions contained in the fiscal statutes, have to be read word by word and nothing is to be subtracted therefrom and nothing is to be intended therein. Such a rule of interpretation had been laid down by the Hon'ble Jurisdictional High Court in the case of CIT Vs. Sahara India Savings and Investment Corpn. Ltd. reported in (2003) 264ITR page 646, wherein their lordships have observed and held as under:*

*“We do not agree. It is a well settled principle of interpretation of taxing statutes that while interpreting a taxing statute we have only to see the words used in the statute and not the intention or the spirit of the statutory provision. In a taxing statute the literal rule of interpretation applies, and it is well settled that if a transaction comes within the letter of the law it has to be taxed, however great the hardship, but if it does not, it cannot be taxed, however great the loss may be to the public exchequer. The view was best expressed by Lord Cairns in Partington v. Attorney General [1869] 4 LR 100 (HL) as follows (at page 122):*

*‘If the person sought to be taxed, comes within the letter of the law he must be taxed, however great the hardship may appear to the judicial mind to be. On the other hand if the Court seeking to recover the tax, cannot bring the subject within the letter of law, the subject is free, however apparently within the spirit of the law the case might otherwise appear to be.*

*The principle of strict interpretation of taxing statutes was best enunciated by Rowlatt J. in his classic statement:*

*“In a taxing statute one has to look merely at what is clearly said. There is no room for any intendment There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One must only look fairly at the language used. In A.V. Fernandez v. State of Kerala (1957 8 STC 561; AIR 1957 SC 657, the Supreme Court of India stated the principle as follows (page 661 of AIR 1957 SC): Tf the Revenue satisfies the court that the case falls strictly within the provisions of the law, the subject can be taxed. If, on the other hand, the case is not covered within the four comers of the provisions of the taxing statue no tax can be imposed by inference or by analogy or by trying to probe into the intentions of the Legislature and by considering what was the substance of the matter’*

*Where the language of a provision is plain, Courts cannot ordinarily concern themselves with the policy behind the provision, or the intention of the Legislature. As Lord Watson said in A. Salomon V A. Salomon and Co (1897) AC 22, 38 (HL) "intention of the Legislature is a common but slippery phrase". In ITO V TS Devmatha Nadar (1968r68 ITR 252; Anri968 SC 623rthe Supreme Court of India observed that the rule that (page 257):*

*"we must look to the general scope and purview of the statute, and at the remedy sought to be applied, and consider what was the former state of the law, and what it was that the Legislature contemplated' was made while construing a non-taxing statute. The said rule had only a limited application in interpreting a taxing statute. It follows from this decision that the mischief rule laid down in Heydon's case (1584) 3 Co. Rep 7a has only a limited application to taxing statutes.*

*Hence there is no question of looking into the legislative intent or spirit of the law in a taxing statute. We have only to see the actual words used. In other words, in a taxing statute we have to go by the letter of the law, and not its spirit or intent."*

*The new definition of the word "interest" in section 2 (7) is in two parts. Firstly, it says that "interest" means interest on loans and advances. Secondly, it includes two other items in the definition of the word "interest".*

*In our opinion, the only correct interpretation of this provision can be that firstly nothing is interest except interest on loans and advances. Secondly, two other categories are also included in the definition of the word "interest" as specified in clauses (a) and (b) of Section 2(7). In our opinion, the word "means can only have one meaning, that is, it is CIT Vs. Sahara India Savings and Investment Corporation Ltd reported in (2010) 321 ITR 371 an exclusive definition vide P.*

*Kasilingam V. P.S. G. College of Technology (1995/ supp 2 SCC 348. When we say that a word has a certain meaning then by implication we mean that it has no other meaning vde a Punjab Land Development and Reclamation Corporation Ltd. V Presiding Officer, Labour Court /1990] 77 FJR 17; \1990) 3 SCC 682. However, when certain other categories are added then it means that only those additional categories will be included within the definition and none others, Vide Mahalakshmi Oil Mills Vs. State of A.P |1989 1 SCC 164; 1988) 71 STC 285 (SC)"*

*The aforesaid judgment had received affirmation also, from the Hon'ble Supreme Court in the case of CIT Vs. Sahara India Savings and Investment Corporation Ltd. reported in (2010) 321 ITR 371.*

*54. So far as claim of exemption of its income is concerned, we have noted the decision of Hon'ble Supreme Court in the case of Citizen Cooperative Society Ltd. vs. Asstt. CIT (2017) 397 ITR 1, dated 08.1.2017, wherein denial of the appellant's claim for exemption, by the authorities below had been upheld, owing mainly 'to the bar contained in sub-section (4) of section 80P of the Act. The facts of the said case were, that it was a "cooperative society" registered under the Andhra Pradesh Mutually Aided Cooperative Societies Act 1955. In that case, the said cooperative society had violated the provisions of Andhra Pradesh Mutually Aided Cooperative Societies Act 1955, It was under these circumstances, that*

*the Hon'ble Supreme Court had approved the judgment, adverse to the assessee, as had earlier been delivered by Hon'ble Andhra Pradesh High Court. As against this, it is stated that this is not even the case of the revenue that the appellant had carried on the banking business, in violation of any of the provisions of Regional Rural Bank Act 1976. On the other hand, the revenue's case, had been that the appellant carried on the "business of banking", like that of any other bank Government of India. In such a situation, the claim for exemption from income-tax, gets fully fortified.*

*61. Thus, we fully concur with the view expressed by the Coordinate Bench at Allahabad in the case of 'appellant RRB1 in order dated 08.01.2018 and reverse the orders passed by the authorities below, in relation to the appellant's claim for exemption under section 80P(2)(a)(i). With such an elaboration as has been given by us, we uphold the appellant's claim for exemption under section 80P(2)(a)(i).*

*10. Income Tax Appellate Tribunal has recorded a clear finding of the fact in the afore-noted order that the appellant had come into existence for development and growth of agricultural sector. This finding of fact has not been disputed in the present appeals.*

*11. Assessing authority, in para no. 2 of the assessment order itself has recorded a finding that the respondent-assessee came into existence w.e.f. 31.03.2008, after amalgamation of the two Regional Rural Banks (RRB) i.e.*

*Baroda Eastern U.P. Gramin Bank and Baroda Western Gramin Bank. It has not been disputed that by virtue of deeming provision under Section 22 of the Regional Rural Banks Act, 1976, the respondent/assessee is deemed cooperative society.*

*12. We have perused the impugned common order of the Tribunal arising from the assessment order and we do not find any legal infirmity in it.”*

7. Respectfully following the aforesaid order of the Hon'ble Allahabad High Court, which has confirmed the order of the Tribunal, the ground raised by the Revenue is rejected and accordingly the appeals of the Revenue are dismissed.

8. Since we have dismissed the appeals of the Revenue confirming the orders of the ld. CIT(A), the Cross Objections filed by the assessee, which are in support of the orders of the ld. CIT(A), are liable to be allowed.

9. In the result, the appeals of the Revenue are dismissed and the Cross Objections of the assessee are allowed.

Order pronounced in the open court on 26.9.2023.

Sd/-  
[B. R. BASKARAN]  
ACCOUNTANT MEMBER

Sd/-  
[AMIT SHUKLA]  
JUDICIAL MEMBER

DATED: 26<sup>th</sup> SEP, 2023

JJ:

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR