

**IN THE INCOME TAX APPELLATE TRIBUNAL  
COCHIN BENCH, COCHIN**

Before Shri Sanjay Arora, Accountant Member and  
Ms. Kavitha Rajagopal, Judicial Member

**ITA Nos. 182 & 26/Coch/2015**  
(Assessment Years: 2010-11 & 2011-12)

Kerala State Co-Operative Agricultural and Rural Development Bank Ltd. Statue Junction Trivandurm [PAN: AAAAK4391F]	vs.	Asst. CIT, Circle - 1(2) Trivandrum
(Appellant)		(Respondent)

**ITA Nos. 236 & 101/Coch/2015**  
(Assessment Years: 2010-11 & 2011-12)

Asst. CIT, Circle - 1(2) Trivandrum	vs.	Kerala State Co-Operative Agricultural and Rural Development Bank Statue Junction Trivandurm [PAN: AAAAK4391F]
(Appellant)		(Respondent)

Assessee by:	Shri Jose Jacob, Advocate
Revenue by:	Smt. J.M. Jamuna Devi, Sr. DR

Date of Hearing:	11.03.2024
Date of Pronouncement:	05.06.2024

**ORDER**

Per: Bench

These are cross appeals by the Assessee and the Revenue agitating the orders dated 30.01.2015 and 28.11.2014 by the Commissioner of Income Tax (Appeals), Trivandrum [CIT(A)], partly allowing the appeals by the assessee contesting its assessments under section 143(3) of the Income Tax Act, 1961 (hereinafter "the Act") for Assessment Years (AYs.) 2010-11 and 2011-12 respectively.

2. The only issue involved in the instant appeals, Shri Jose Jacob, the learned counsel for the assessee, would, inform us is the entitlement of the assessee to deduction u/s. 80P(1) r.w.s. 80P(2)(a)(i) of the Act, claimed in the entirety of its profit for the relevant year. The same stands denied to it on account of applicability of s. 80P(4); the Revenue claiming it to be in the business of banking. The assessee, unsuccessful up to the stage of Hon'ble High Court, has finally succeeded before the Hon'ble Apex Court which, vide its order dated 14.09.2023 (in Civil Appeal No(s). 10069 of 2016 / copy on record) has clarified that the assessee is not a co-operative bank and, therefore, the prescription of s. 80P(4) of the Act, excluding co-operative banks from the purview of s. 80P, would not apply thereto. He would then take us through the relevant part of the judgement by the Hon'ble Apex Court, which is as under:

‘15.7. What is central to the controversy in this batch of cases is, whether, the appellant bank is a co-operative bank. What is of significance to know is, a state co-operative bank or central co-operative 60 bank under the NABARD Act, 1981 is essentially a principal co-operative society either in a district or in a State, respectively, the primary object of which is the financing of other co-operative societies in the district or the State respectively. Further, NABARD Act, 1981 does not define banking business. Hence, reliance is to be placed, on the definition of banking business in terms of clause (w) of Section 2 of NABARD Act, 1981 which means the RBI Act has to be seen. When the RBI Act is perused, it is noted that clause (i) of Section 2 defines “co-operative bank”, “co-operative credit society”, “director”, “primary agricultural credit society”, “primary co-operative bank” and “primary credit society” to have the meanings respectively assigned to them in Part V of the BR Act, 1949. Therefore, we have to again fall back on Part V of the BR Act, 1949 which has defined a co-operative bank in Section 56 (c)(i)(cci) to be a state co-operative bank, a central co-operative bank and a primary co-operative bank and central co-operative bank and state co-operative bank to have the same meanings as NABARD Act, 1981.

15.8. Since the words ‘bank’ and ‘banking company’ are not defined in the NABARD Act, 1981, the definition in sub-clause (i) of clause (a) of Section 56 of the BR Act, 1949 has to be relied upon. It states that a co-operative society in the context of a co-operative bank is in relation to or as a banking company. Thus, co-operative bank shall be construed as references to a banking company and when the definition of banking company in clause (c) of Section 5 of the BR Act, 1949 is seen, it means any company which transacts the business of banking in India and as already noted banking business is defined in clause (b) of Section 5 to mean the accepting, for the purpose of lending or investment, of deposits of money from the public, repayable on demand or otherwise, and withdrawal by

cheque, draft, order or otherwise. Thus, it is only when a co-operative society is conducting banking business in terms of the definition referred to above that it becomes a co-operative bank and in such a case, Section 22 of the BR Act, 1949 would apply wherein it would require a licence to run a co-operative bank. In other words, if a co-operative society is not conducting the business of banking as defined in clause (b) of Section 5 of the BR Act, 1949, it would not be a co-operative bank and not so within the meanings of a state co-operative bank, a central co-operative bank or a primary co-operative bank in terms of Section 56(c)(i)(cci). Whereas a co-operative bank is in the nature of a banking company which transacts the business of banking as defined in clause (b) of Section 5 of the BR Act, 1949. But if a co-operative society does not transact the business of banking as defined in clause (b) of Section 5 of the BR Act, 1949, it would not be a co-operative bank. Then the definitions under the NABARD Act, 1981 would not apply. If a co-operative society is not a co-operative bank, then such an entity would be entitled to deduction but on the other hand, if it is a co-operative bank within the meaning of Section 56 of BR Act, 1949 read with the provisions of NABARD Act, 1981 then it would not be entitled to the benefit of deduction under sub-section (4) of Section 80P of the Act.

15.9. Section 56 of the BR Act, 1949 begins with a non-obstante clause which states that notwithstanding anything contained in any other law for the time being in force, the provisions of the said Act, shall apply to, or in relation to, co-operative societies as they apply to, or in relation to, banking companies subject to certain modifications. The object of Section 56 is to provide a deeming fiction by equating a co-operative society to a banking company if it is a co-operative bank within the meaning of the said provision. This is because Chapter V of the BR Act, 1949, deals with application of the Chapter to co-operative societies which are co-operative banks within the meaning of the said chapter. For the purpose of these cases, what is relevant is that throughout the BR Act, 1949, unless the context otherwise requires, - references to a “banking company” or “the company” or “such company” shall be construed as references to a co-operative bank. Therefore, while considering the meaning of a co-operative bank inherently, such a co-operative society must be a banking company then only it would be construed as a co-operative bank requiring a licence under Section 22 of BR Act, 1949 in order to function as such a bank.

15.10. Further, while considering the definition of a co-operative bank under Section 56(cci) of the BR Act, 1949, to mean a state co-operative bank, a central co-operative bank and a primary co-operative bank which is defined in (ccviii) thereof, to have meanings respectively assigned to them in the NABARD Act, 1981 would imply that if a state co-operative bank is within the meaning of NABARD Act, 1981 then it would be excluded from the benefit under Section 80P of the Act. Conversely, if a co-operative society is not a co-operative bank within the meaning of Section 56 of the BR Act, 1949, it would be entitled to the benefit of deduction under Section 80P of the Act.

15.11. Looked at from another angle, a co-operative society which is not a state co-operative bank within the meaning of NABARD Act, 1981 would not be a co-operative bank within the meaning of Section 56 of the BR Act, 1949. In the instant case, as already noted in A.P. Varghese case, the Kerala State Co-operative Bank being declared as a state

co-operative bank by the Kerala State Government in terms of NABARD Act, 1981 and the appellant society not being so declared, would imply that the appellant society is not a state co-operative bank.

15.12. In fact, in *Citizen Co-operative Society Ltd.*, this Court held that the appellant therein was having both members as well as nominal members who were depositing and availing loan facilities from the appellant therein and therefore, appellant therein was not entitled to the benefit of Section 80P of the Act as it was functioning as a co-operative bank. But, the appellant herein is not a co-operative bank and neither has it been so declared under the provisions of NABARD Act, 1981 or the State Act. On the other hand, under the provisions of State 64 Act, 1969, the Kerala State Co-operative Bank has been so declared by the Government of Kerala as a co-operative bank.

15.13. Further, under the provisions of the State Act, 1984, 'agricultural and rural development bank' means the Kerala Co-operative Central Land Mortgage Bank Limited, registered under Section 10 of the Travancore-Cochin Co-operative Societies Act, 1951, which shall be known as Kerala State Co-operative Agricultural and Rural Development Bank Limited i.e. the appellant herein. Thus, from a conjoint reading of all the relevant statutory as alluded to hereinabove, it is quite clear that the appellant is not a co-operative bank within the meaning of sub-section (4) of Section 80P of the Act. The appellant is a co-operative credit society under Section 80P(2)(a)(i) of the Act whose primary object is to provide financial accommodation to its members who are all other co-operative societies and not members of the public.

15.14. Therefore, when the definition of "co-operative bank" in Section 56 of BR Act, 1949 is viewed in terms of Sections 2(u) of the NABARD Act, 1981, it is clear that only a state co-operative bank would be within the scope and meaning of a banking company under Section 2(c) of the BR Act, 1949 on obtaining licence under Section 22 of the said Act.

***Conclusion:***

In the instant case, although the appellant society is an apex co-operative society within the meaning of the State Act, 1984, it is not a co-operative bank within the meaning of Section 5(b) read with Section 56 of the BR Act, 1949.

In the result, the appeals filed by the appellant are allowed and the order(s) of the Kerala High Court and other authorities to the contrary are set aside. Consequently, we hold that the appellant is entitled to the benefit of deduction under Section 80P of the Act. The questions for consideration are answered accordingly.'

In this view of the matter, he would continue, the assessee's case is fully covered by the decision by the Hon'ble Apex Court in it's case for AY 2007-08. On a query by the Bench, it was clarified by him that the assessee is not, as it's name suggests, an agricultural and rural development bank, but only a land development bank, though that would have no bearing in-so-far as the deduction u/s. 80P is

concerned inasmuch as the assessee, as held by the Hon'ble Apex Court, is not a co-operative bank, a term defined u/s. 80P with reference to its definition in Banking Regulation Act, 1949, which has to be strictly adhered to.

4. We have heard the parties, and perused the material on record.

4.1 Without doubt, the assessee having been held by the Hon'ble Apex Court as not a co-operative bank, which was for AY 2007-08, would be eligible for deduction u/s. 80P(1) r/w s. 80P(2)(a)(i), subject of course to fulfillment of the conditions of the latter provision. The assessment years before us are AYs. 2010-11 and 2011-12. There is nothing on record to show that the bye-laws of the assessee-bank have undergone any change over the interim, i.e., post 31/3/2007, for which year the matter travelled to and stands decided by the Hon'ble Apex Court. Even as we would ordinarily have, as a matter of abundant caution, made the allowance of deduction u/s. 80P(1) r/w s. 80P(2)(a)(i) subject to no change therein impacting the assessee's claim of not being a cooperative bank, there being no reference in the assessment or the appellate orders to any clauses of the bye-laws, so that the same, as indeed the assessee's activities remain the same as for the earlier years. The matter thus gets settled in assessee's favour and we accordingly hold it to be eligible for deduction as claimed as the only reason we find in the order by the Revenue authorities, denying the said deduction is of the assessee being a co-operative bank. This decides the principal ground/s, both *qua* the assessee and Revenue's appeal for both the years.

4.2 The only other disallowance, which the subject matter of the assessee's appeal, is the payment to staff retirement benefit, disallowed with reference to ss. 36(1)(iv)/(v) are not met. The Fund/s is admittedly not approved, validating the disallowance/s. So, however, as explained by Shri Jacob during hearing, the said disallowance/s would stand subsumed in the larger deduction u/s. 80P(1) that would, on account of the disallowance/s, be available. We wholly agree inasmuch as the said deduction is with reference to the gross total income as defined u/s. 80B(5). The

disallowance/s would though stand to be upheld, even as the assessee shall be allowed deduction u/s. 80P(1) r/w s. 80P(2)(a)(i) on the profits assessed u/s. 28(i) as forming part of GTI computed upon the effecting the said disallowance/s.

4.3 The only other addition that survives is with reference to interest on income tax refund, at Rs.6,07,158 for AY 2011-12. There is no merit in the assessee's case for not confirming the same, being decidedly in the nature of income. That apart, the same falls to be assessed as income from other sources, u/s. 56 and, accordingly, would not be subject to deduction u/s. 80P.

4.4 We decide accordingly.

5. In the result, the assessee's appeals for AYs. 2010-11 & 2011-12 are allowed and partly allowed respectively, while the Revenue's appeals are dismissed.

*Order pronounced on June 05, 2024 under Rule 34 of The Income Tax (Appellate Tribunal) Rules, 1963*

Sd/-  
(Kavitha Rajagopal)  
Judicial Member

Sd/-  
(Sanjay Arora)  
Accountant Member

Cochin, Dated: June 05, 2024  
n.p.

Copy to:

1. The Appellant
2. The Respondent
3. The Pr. CIT concerned
4. The Sr. DR, ITAT, Cochin
5. Guard File

By Order

Assistant Registrar  
ITAT, Cochin