

IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH : BANGALORE

BEFORE SMT. ASHA VIJAYARGHAVAN, JUDICIAL MEMBER
AND SHRI ABRAHAM P. GEORGE , ACCOUNTANT MEMBER

ITA No.1209Bang/2015
Assessment year : 2012-13

The Income Tax Officer, Ward 1, Bagalkot.	Vs.	M/s. Kittur Channamma Mahila Co-operative Credit Society Ltd., Ramdurg Road, Badami. Bagalkot Dist. PAN: AAAAK 1494K
APPELLANT		RESPONDENT

Appellant by	:	Shri Sanjay Kumar, CIT-III(DR)
Respondent by	:	Shri Sandeep, C., CA

Date of hearing	:	09.12.2015
Date of Pronouncement	:	28.12.2015

ORDER

Per Asha Vijayaraghavan, Judicial Member

This appeal by the Revenue is against the order dated 08.06.2015 of the CIT(Appeals), Belgavi relating to assessment year 2012-13.

2. In this appeal, the Revenue has challenged the order of CIT(Appeals), whereby the CIT(Appeals) allowed exemption to the assessee u/s. 80P(2)(a)(i) of the Act, holding that the assessee is a co-

operative society and not a co-operative bank and therefore the provisions of section 80P(4) of the Act are not applicable.

3. The assessee is a co-operative society registered under the Karnataka Cooperative Societies Act, 1959. It is engaged in the business of providing credit facilities to its members. The assessee had claimed deduction u/s. 80P(2)(a)(i) of the Act of a sum of Rs.31,06,983. Under Sec.80P(2)(i) of the Act where the gross total income of a co-operative society includes income from carrying on the business of banking or providing credit facilities to its members, the same is allowed deduction. By the Finance Act, 2006 w.e.f. 1-4-2006, Sub-section (4) was inserted in Sec.80-P which provides as follows:

“(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.”

4. The AO was of the view that after amended by the Finance Act, 2006 w.e.f. 1.4.2007 by which sub-section (4) was inserted, the Assessee which was a co-operative society carrying on banking business was not

entitled to deduction u/s.80P(2)(i) of the Act. According to the AO, the assessee was a co-operative bank and therefore the deduction u/s. 80P(2)(a)(i) cannot be allowed. In coming to the above conclusion, the AO noticed that the nature of the activity of the assessee, though registered as a credit co-operative society, is that of a banking institution notwithstanding the fact that receipt of and lending money is limited to its members. The AO further noticed that clause (viiia) in section 2(24) of the Act was inserted by the Finance Act 2006 effective from 1/4/2007, which provides that profits and gains of any business (including providing credit facilities) carried on by a co-operative society with its members the assessee's activity was also "Income". That the deduction from gross total income of certain receipts is available only to primary agricultural credit societies or primary co-operative agricultural and rural development banks; and that the benefit of such deduction is not available to institutions like the assessee society. The AO also referred to section 5(b) of the Banking Regulation Act to hold that, if one of the two conditions of the appellant i.e. its primary object should be banking or its principal business must be transaction in banking business, is sufficient to bring the appellant into the concept of a banking institution. The AO referred to the objects of the assessee society and held that accepting deposits and lending to its members are in the nature of transaction of banking activity and also that the paid-up capital & reserves as per its Balance Sheet as on 31.3.2012 is in excess of Rs.1,00,000.

According to the AO, the following features make the assessee ineligible to exemption contemplated in section 80P of the Act:

- i) Since membership is open to anyone paying a sum of Rs.10/- to Rs.100/- for membership and no other condition is imposed. In other words, membership as is available in any banking institution is available in the case of the appellant society.
- ii) The purpose of accepting deposits from the public is for making investments and for lending to members. Confining the lending only to members makes no difference.
- iii) Deposits collected from the depositors are repayable on demand and do not go into the corpus of the appellant.
- iv) The assessee society came within the Explanation to sub-section (4) of section 80P of the Act as a banking institution.

5. In the light of the above-mentioned observations, the AO held that the assessee was not entitled to exemption in respect of the amount u/s 80P(2)(a)(i) of the Act and brought the same to tax.

6. Before CIT(A), the assessee submitted that the AO erred in treating the assessee as a commercial banking institution and in denying the deduction available to it u/s 80P(2)(a)(i) of the Act in respect of income arising from the transactions only with its members. Reliance was placed on the on the judgment of the Hon'ble jurisdictional High Court in *CIT v. Sri Biluru Grubasava Pattina Sahakari Sangha Niyamitha*, ITA 5006/2013 dated 5.2.2014 and the decision of the Tribunal in the case of *Bangalore*

Commercial Transport Coop. Society Ltd., ITA No.1069/Bang/2010 as also other decisions in support of its claim that the Assessee is not a co-operative bank.

7. The CIT(A) agreed with the submissions of the Assessee and following the decision in the case of *Sri Biluru Gurubasava Pattina Sahakari Sangha Niyamitha Bagalkot (supra)* and other decisions, allowed the claim of the Assessee for deduction u/s.80(P)(2)(a)(i) of the Act.

8. Aggrieved by the order of the CIT(Appeals), the Revenue has filed the present appeal before the Tribunal.

9. We find that this Tribunal in assessee's own case for the AY 2011-12 by order dated 14.08.2015 has held that assessee society is entitled to deduction u/s. 80P(2)(a)(i) of the Act. The relevant observations of the coordinate Bench are extracted below:-

“9. At the time of hearing, it was noticed that the issue under consideration has already been considered and decided by this Tribunal in the case of *ACIT, Circle 3(1), Bangalore v. M/s. Bangalore Commercial Transport Credit Co-operative Society Ltd. in ITA No.1069/Bang/2010*, wherein this Tribunal held that section 80P(4) is applicable only to cooperative banks and not to credit cooperative societies. The intention of the legislature of bringing in cooperative banks into the taxation structure was mainly to bring in par with commercial banks. Since the assessee is a cooperative society and not a cooperative bank, the provisions of section 80P(4) will not have application in the assessee's case and therefore, it is entitled to deduction u/s 80P(2)(a)(i) of the Act. The following were the relevant observations of the Tribunal:-

“9. We have heard the rival submissions and perused the material on record. The assessee was denied the deduction u/s 80-P(2)(a)(i) of the Act for the reason of introduction of sub section 4 to section 80P. Section 80P(4) reads as follows:-

"(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) "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 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".

9.1 The above sub-section 4 of section 80P provides that deduction under the said section shall not be available to any cooperative bank other than a primary agricultural credit society or rural development bank. For the purpose of the said sub section, cooperative bank shall have the meaning assigned to it in part V of the Banking Regulation Act, 1949. In Part V of the Banking Regulation Act, “cooperative bank” means a State Cooperative Bank, a Central Cooperative Bank and a Primate Cooperative Bank.

9.2 From the above section, it is clear that the provisions of section 80P(4) has got its application only to cooperative banks. Section 80P(4) does not define the word “cooperative society”. The existing sub-section 80P(2)(a)(i) shall be applicable to a cooperative society carrying on credit facility to its members. This view is clarified by Central Board of Direct Tax vide its clarification No.133/06/2007-TPL dated 9th May, 2007. The difference between a cooperative bank and a cooperative society are as follows:-

Nature	Cooperative society registered under Banking Regulation Act, 1949	Cooperative society registered under Karnataka Cooperative Society Act, 1959.
Registration	Under the Banking Regulation Act, 1949 and Cooperative Societies Act, 1959.	Cooperative Societies Act, 1959.
Nature of business	<ol style="list-style-type: none"> 1. As defined in section 6 of Banking Regulation Act. 2. Can open savings bank account, current account, overdraft account, cash credit account, issue letter of credit, discounting bills of exchange, issue cheques, demand drafts (DD), Pay Orders, Gift cheques, lockers, bank guarantees etc. 3. Cooperative Banks can act as clearing agent for cheques, DDs, pay orders and other forms. 4. Banks are bound to follow the rules, regulations and directions issued by Reserve Bank of India (RBI). 	<ol style="list-style-type: none"> 1. As per the bye laws of the cooperative society. 2. Society cannot open savings bank account, current account, issue letter of credit, discounting bills of exchange, issue cheques, demand drafts, pay orders, gift cheques, lockers, bank guarantees etc. 3. Society cannot act as clearing agent, for cheques, DDs, pay orders and other forms. 4. Society are bound by rules and regulations as specified by in the cooperative societies act.
Filing of returns	Cooperative banks have to submit annual return to RBI every year.	Society has to submit the annual return to Registrar of Societies.
Inspection	RBI has the power to inspect accounts and overall functioning of the bank.	Registrar has the power to inspect accounts and overall functioning of the bank.
Part V	Part V of the Banking Regulation Act is applicable to cooperative banks.	Part V of the Banking Regulation Act is not applicable to cooperative banks.
Use of words	The word 'bank', 'banker', 'banking' can be used by a cooperative bank.	The word 'bank', 'banker', 'banking' cannot be used by a cooperative society.

9.3 If the intention of the legislature was not to grant deduction u/s 80P(2)(a)(i) to cooperative societies carrying on the business of providing credit facilities to its members, then this section would have been deleted. The new proviso to section 80P(4) which is brought into statute is applicable only to cooperative banks and not to credit cooperative societies. The intention of the legislature of bringing in cooperative banks into the taxation structure was mainly to bring in par with commercial banks. Since the assessee is a cooperative society

and not a cooperative bank, the provisions of section 80P(4) will not have application in the assessee's case and therefore, it is entitled to deduction u/s 80P(2)(a)(i) of the Act. Hence, we are of the view that the order of the CIT(A) is correct and in accordance with law and no interference is called for."

10. The Hon'ble Gujarat High Court in the case of Tax appeal No.442 of 2013 with Tax appeal No.443 of 2013 with Tax appeal No.863 of 2013 in the case of *CIT Vs. Jafari Momin Vikas Co-op Credit Society Ltd. by judgment dated 15.1.2014* had to deal with the following question of law:-

"Whether the Hon'ble Tribunal is correct in allowing deduction under section 80P(2)(a)(i) to assessee's society even though same is covered under section 80P(4) rws 2(24) (viiia) being income from providing credit facilities carried on by a co-operative society with its member?"

The Hon'ble Court held as follows:

4. As per section 80P(4), the provisions of section 80P would not apply in relation to any co-operative bank other than primary agricultural credit society or primary co-operative agricultural and rural development bank. As per the explanation, the terms "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.

5. Assessing Officer held that by virtue of section 80P(4), the respondent assessee would not be entitled to benefits of deduction under section 80P. CIT(Appeals) as well as the Tribunal reversed the decision of the Assessing Officer on the premise that the respondent assessee not being a bank, exclusion provided in sub-section(4) of section 80P would not apply. This, irrespective of the fact that the respondent would not fall within the expression "primary agricultural credit society".

6. Had this been the plain statutory provisions under consideration in isolation, in our opinion, the question of law could be stated to have arisen. When, as contended by the assessee, by virtue

of subsection(4) only co-operative banks other than those mentioned therein were meant to be excluded for the purpose of deduction under section 80P, a question would arise why then Legislature specified primary agricultural credit societies along with primary cooperative agricultural and rural development banks for exclusion from such exclusion and in other words, continued to hold such entity as eligible for deduction. However, the issue has been considerably simplified by virtue of CBDT circular No.133 of 2007 dated 9.5.2007. Circular provides as under:-

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

1. Please refer to your letter no.DCUS/30688/2007, dated 28.03.2007 addressed to Chairman, Central Board of Direct Taxes, on the above given subject.

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.

3. In part V of the Banking Regulation Act, “Co-operative Bank” means a State Co-operative bank, a Central Co-operative Bank and a primary Co-operative bank.

4. Thus, if the Delhi Co op Urban T & C Society Ltd. does not fall within the meaning of “Co-operative Bank” as defined in part V of the Banking Regulation Act, 1949, subsection(4) of section 80P will not apply in this case.

5. The issues with the approval of Chairman, Central Board of Direct Taxes.”

7. From the above clarification, it can be gathered that sub-section(4) of section 80P will not apply to an assessee which is not a co-operative bank. In the case clarified by CBDT, Delhi Coop Urban Thrift & Credit Society Ltd. was under consideration. Circular clarified that the said entity not being a

cooperative bank, section 80P(4) of the Act would not apply to it. In view of such clarification, we cannot entertain the Revenue's contention that section 80P(4) would exclude not only the co-operative banks other than those fulfilling the description contained therein but also credit societies, which are not cooperative banks. In the present case, respondent assessee is admittedly not a credit co-operative bank but a credit co-operative society. Exclusion clause of sub-section(4) of section 80P, therefore, would not apply. In the result, Tax Appeals are dismissed."

11. In the judgment dated 5.2.2014 of the Hon'ble High Court of Karnataka in *CIT v. Sri Biluru Gurubasava Pattina Sahakari Sangha Niyamitha Bagalkot* in ITA No.5006/2013 dated 5.2.2014, the Hon'ble jurisdictional High Court took the view that when the status of the assessee is a co-operative society and not a co-operative bank, the order passed by the AO extending the benefit of exemption from payment of tax 80P(2)(a)(i) of the Act is correct and such an order is not erroneous and therefore, jurisdiction u/s. 263 of the Act cannot be invoked.

12. In view of the aforesaid decisions and decision of the Tribunal, we are of the view that the assessee society is entitled to deduction u/s. 80P(2)(a)(i) of the Act. We uphold the order of the Id CIT(Appeals). It is ordered accordingly."

10. Respectfully following the decision of the co-ordinate Bench of this Tribunal in assessee's own case for the AY 2011-12, we hold that the assessee society is a co-operative society entitled to deduction u/s. 80P(2)(a)(i) of the Act. Therefore, no interference is called for in the impugned order of the CIT(Appeals).

11. In the result, the appeal by the Revenue is dismissed.

Pronounced in the open court on this 28th day of December, 2015.

Sd/-

(ABRAHAM P. GEORGE)
Accountant Member

Sd/-

(ASHA VIJAYARAGHAVAN)
Judicial Member

Bangalore,
Dated, the 28th December, 2015.

/D S/

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.
6. Guard file

By order

Assistant Registrar
ITAT, Bangalore.