

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

BEFORE SHRI ABRAHAM P. GEORGE, ACCOUNTANT MEMBER
AND SHRI VIJAY PAL RAO, JUDICIAL MEMBER

ITA No. 813/Bang/2015
Assessment year : 2010-11

The Income Tax Officer, Ward 2(2)(1), Bangalore.	Vs.	Sri Praja Co-operative Credit Society Ltd., No.1567/50, New No.69/3-1, 3 rd Main, Nagappa Block, Sriramapuram, Bangalore – 560 021. PAN: AAAJS 1557Q
APPELLANT		RESPONDENT

Appellant by	:	Shri Sunil Kumar Agarwala, Jt. CIT(DR)
Respondent by	:	Shri Srinivas Bharath N.K., C.A.

Date of hearing	:	27.10.2015
Date of Pronouncement	:	10.11.2015

ORDER

Per Vijay Pal Rao,, Judicial Member

This appeal by the Revenue is directed against the order dated
09.02.2015 of the CIT(Appeals) for the assessment year 2010-11.

2. The Revenue has raised the following grounds:-

“1) The order of the CIT(A) is clearly opposed to law as far as the findings are perverse, contrary to the facts and circumstances of the case and hence not sustainable.

2) The CIT(A) erred in granting deduction u/s 80P(2)(a)(i) of the IT Act, as the assessee is a Co-operative Society carrying on banking business.

3) The CIT(A) erred in granting deduction u/s 80P(2)(a)(i) relying on the decision of the ITAT in the case of M/s Bangalore Commercial Transport Credit Co-operative Society Ltd.

4) The CIT(A) erred in not appreciating the facts that the main motto of the Co-operative Society is lending for its members, which is in the nature of banking transaction and comes under the purview of section 80P subsection 4 of the IT Act.

5) The Ld.CIT(A) erred in not appreciating the fact that the provisions of section 80P(4) is equally applicable to the assessee.

6) For these and such other grounds that may be urged at the time of hearing, it is prayed that the order of the CIT(A) is set aside and the order of the Assessing Officer be restored.”

3. The assessee is a co-operative society registered under the Karnataka Co-operative Societies Act. The assessee renders financial services to its members and filed its return of income declaring NIL income, after claiming deduction u/s. 80P of the Income-tax Act, 1961 [“the Act”].

4. The Assessing Officer denied the claim of deduction u/s. 80P on the ground that the activities of the assessee society are that of a banking institution and therefore in view of insertion of section 80P(4) by the Finance Act, 2006 w.e.f. 1.4.2007, the assessee is covered by the said

amendment and clearly is not entitled for deduction u/s. 80P(2)(a)(i) of the Act.

5. On appeal, the CIT(Appeals) has accepted the claim of the assessee by following the decisions of this Tribunal and held that the income to the extent of interest earned by the assessee from its activity of lending money out of deposits received from the public or its members shall be eligible for deduction u/s. 80P(2)(a)(i) of the Act.

6. We have heard the Id. DR as well as the Id. AR and considered the relevant material on record. At the outset, we note that this issue is now covered by the judgment of the Hon'ble jurisdictional High Court in the case of *CIT v. Sri Biluru Gurubasava Pattina Sahakari Sangha Niyamitha, Bagalkot*, 369 ITR 86 (Kar), wherein the Hon'ble High Court held in paras 8 & 9 as under:-

“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. In fact, the revisional authority also in his 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 the Finance Act, 2006, with effect from April 1, 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 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 which is exclusively carrying on banking business, i.e., the purport of this amendment. Therefore, as the assessee is not a co-operative bank carrying on exclusively banking business and as it does not possess a licence from the 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. Therefore, there was no error committed by the assessing authority. The said order was not prejudicial to the interests of the Revenue. The condition precedent for the Commissioner to invoke the power under section 263 is that the twin conditions

should be satisfied. The order should be erroneous and it should be prejudicial to the interests of the revenue.

9. This Court had an occasion to consider Section 263 of the Act in the case of - COMMISSIONER OF INCOME-TAX AND ANOTHER V. DIGITAL GLOBAL SOFT LTD. [2013] 354 ITR 489 (Karn) where paragraph-18, it has held as under:

“As is clear from the wording in section 263, the Commissioner gets the jurisdiction to revise any proceedings under this Act if he considers that any order passed therein by the Assessing Officer is erroneous in so far as it is prejudicial to the interests of the Revenue. Therefore, it is clear that he cannot exercise the power of revision solely on the ground that the order passed is erroneous. He gets jurisdiction only if such erroneous order is prejudicial to the interest of the Revenue. “Prejudicial to the Revenue” means, lawful revenue due to the State has not been realized or cannot be realized. In other words, by the order of the assessing authority if the lawful revenue to the State has not been realized or cannot be realized, as the said order is prejudicial to the interests of the Revenue and also erroneous, he gets jurisdiction to interfere with the said order under section 263. Therefore, for attracting section 263, the condition precedent is (a) the order of the Assessing Officer sought to be revised is erroneous, and (b) it is prejudicial to the interests of the Revenue. If one of them is absent, i.e., if the order of the Income-tax Officer is erroneous but is not prejudicial to the Revenue, recourse cannot be had to section 263(1) of the Act. The satisfaction of both the conditions stipulated in the section is the sine qua non for the Commissioner to exercise his jurisdiction under Section 263.”

In the instant case, when the status of the assessee is a Co-operative society and is not a Co-operative bank, the order passed by the Assessing Authority extending the benefit of exemption from payment of tax under Section 80P(2)(a)(i) of the Act is correct. There is no error. When there is no error, the question of order being prejudicial would not arise. The Tribunal has rightly entertained the appeal and set-aside the order. Therefore, the said order is in accordance with law and cannot be found fault with. The substantial question of law is answered in favour of the assessee and against the revenue.”

7. By following the judgment of the Hon'ble jurisdictional High Court in the case of *CIT v. Sri Biluru Gurubasava Pattina Sahakari Sangha Niyamitha, Bagalkot (supra)*, we do not find any error or illegality in the impugned order of the CIT(Appeals) allowing the claim of deduction u/s. 80P(2)(a)(i) of the Act.

8. In the result, the appeal of the Revenue is dismissed.

Pronounced in the open court on this 10th day of November, 2015.

Sd/-

(ABRAHAM P. GEORGE)
Accountant Member

Sd/-

(VIJAY PAL RAO)
Judicial Member

Bangalore,
Dated, the 10th November, 2015.

/D S/

Copy to:

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

By order

Assistant Registrar,
ITAT, Bangalore.