

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

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

ITA No.1145/Bang/2015
Assessment year : 2012-13

The Income Tax Officer, Ward 2, Bagalkot.	Vs.	Shrinidhi Urban Co-operative Credit Society Ltd., Main Road, Rabkavi 587 314. Jamkhandi Tq. Bagalkot Dist. PAN: AAAAS 7029Q
APPELLANT		RESPONDENT

Appellant by	:	Shri Sunil Kumar Agarwala, Jt. CIT(DR)
Respondent by	:	None

Date of hearing	:	03.12.2015
Date of Pronouncement	:	28.12.2105

ORDER

Per Asha Vijayaraghavan, Judicial Member

This appeal by the Revenue is against the order dated 1.5.2015 of the CIT(Appeals), Belgavi for the assessment year 2012-13.

2. The only issue involved in this appeal is with regard to allowability of deduction u/s. 80P(2)(a)(i) of the Act to the assessee. The assessee is a credit co-operative society registered under the Karnataka Co-operative

Societies, Act, 1959. It is engaged in providing credit facilities to its members. The assessee claimed a deduction of Rs.32,28,593 u/s. 80P(2)(a)(i) of the Act, which was disallowed by the AO holding the assessee to be a primary co-operative bank within the meaning of section 5(ccv) of the Banking Regulations Act, 1949 to which section 80P(4) of the Act was applicable.

3. Aggrieved, the assessee preferred appeal before the CIT(Appeals). It was submitted that the assessee is a co-operative society registered under the Karnataka Co-operative Societies Act, 1959 and is involved in providing credit facilities to its members. It was further contended that section 80P(4) invoked by the AO was applicable only to co-operative banks, and not to co-operative society as in the case of the assessee. Placing reliance on the decision of the Hon'ble jurisdictional High Court in the case of *CIT Vs. Sri Biluru Gurubasava Pattina Sahakari Sangha Niyamitha, Bagalkot, 369 ITR 86 (Karn)* and other decisions of the Tribunal, the assessee contended that it was entitled to deduction u/s. 80P(2)(a)(i) of the Act.

4. The CIT(Appeals) observed that the assessee society does not have banking as its objects nor its activities could be termed as banking business and it is not the case of the AO that the assessee is registered with RBI as a bank. The CIT(A) held that the assessee was not a co-operative bank and the provisions of section 80P(4) shall not apply to its

case. Therefore, the CIT(A) held that the assessee is entitled to deduction u/s. 80P(2)(a)(i) of the Act and allowed the appeal of the assessee, relying on the Hon'ble jurisdictional High Court in the case of *CIT Vs. Sri Biluru Gurubasava Pattina Sahakari Sangha Niyamitha, Bagalkot* , 369 ITR 86 (Karn) and other decisions of the Hon'ble High Court.

5. Aggrieved, the Revenue is in appeal before us.

6. We have heard both the parties and perused the material on record. We find that identical issue 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 dt. 8.4.2011*, 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	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	1. As per the bye laws of the cooperative society. 2. Society cannot open savings bank account, current account, issue letter of credit,

	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).	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.”

7. 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 on 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 subsection(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 subsection(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 subsection, 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 subsection(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.”

8. The Hon'ble High Court of Karnataka in the case of *CIT Vs. Sri Biluru Gurubasava Pattina Sahakari Sangha Niyamitha, Bagalkot*, 369 ITR 86 (Karn) considered the following substantial question of law:-

“ In the facts and circumstances of this case, whether the Revisional Authority was justified in invoking his power under Section 263 of the Act without the foundational fact of assessee being Co-operative bank was not there?”

9. On the above substantial question of law, the Hon'ble jurisdictional High Court held at para 9 of its as under:-

“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.”

10. In view of the above decisions of the High Courts and following the decision of the coordinate Bench of the Tribunal in the case of *Bangalore v. M/s. Bangalore Commercial Transport Credit Co-operative Society Ltd. (supra)*, we find no infirmity in the impugned order of the CIT(Appeals) in holding that the assessee is entitled to deduction u/s. 80P(2)(a)(i) of the Act. Accordingly, we dismiss the grounds of appeal raised by the Revenue on this issue.

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.