

**OFFICE OF THE COMMISSIONER OF INCOME
TAX (APPEALS), BELGAUM**

ITA No.662/BGM/2010-11

Dated 28-11-2011

Instituted on the 28TH January 2011 from the order of Sri.
D.A.Pachkhande, Income tax Officer, Ward 2(1), Belgaum.

1. Assessment Year(s)	2008-09.
2. Name of the appellant	M/S. SAMARTH URBAN CO-OP. CREDIT SOCIETY LTD., BELGAUM.
3. Income assessed	Rs.32,39,625/-
4. Tax demanded	Rs.13,16,120/-
5. Section under which order Appealed against was passed	Under section 143(3) of Income tax Act, 1961.
6. Date of hearing	23.11.2011, 25.11.2011
7. Present for appellant	Sri. Sanjay V. Kulkarni, Chartered Accountant.
8. Present for Department	None.



APPELLATE ORDER AND GROUNDS OF DECISION

This appeal is instituted against the order under section 143(3) of
the Income tax Act for the assessment year 2008-09 passed by Sri.
D.A.Pachkhande, Income tax Officer, Ward 2(1) Belgaum.

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The appellant, a co-operative credit society, engaged in providing credit facilities to its members, had filed its return of income for the assessment year 2008-09 on 30.09.2008 declaring NIL income after claiming deduction under section 80P. Since the case was selected for scrutiny under CASS, the Assessing Officer issued notice u/s. 143(2) and 142(1) and called for various details. The appellant had claimed deduction under section 80P of Chapter VI-A of the Act on the ground that the primary object of the society is to provide financial accommodation to members only. It was also claimed by the appellant that there is not any control or supervision of Reserve Bank of India on the activities of he appellant. Thus it was the contention of the appellant that it is entitled to claim deduction under section 80P(1)(a)(i).

During the course of assessment proceedings, the Assessing Officer dealt with this issue at length and after detailed discussion held that the appellant fulfils all the criteria laid down ins section 5(cci) and is consequently a primary co-operative bank referred to in section 5(cci) of the Banking Regulation Act, 1949. Hence provisions of section 80P(4) will be attracted. It was further held by the Assessing Officer that the appellant is not eligible for claiming deduction under section 80P(2)(a)(i). Holding thus, the Assessing Officer disallowed the claim of the appellant u/s. 80P(1)(a) (i) amounting to Rs.32,39,625/- and added back the same to the returned income of the appellant.



Aggrieved by this order of the Assessing Officer, the appellant is now under appeal. The following are the grounds of appeal raised by the appellant -

"The order of the Income tax Officer, Ward 2(1), Belgaum is opposed to law and facts of the case and is bad in law.

2. The Learned Income tax Officer, Ward 2(1) Belgaum erred in denying the deduction claimed by the appellant of Rs 32,39,625/- u/s. 80P(2)(a)(i) of the Income tax Act, 1961 in respect of income derived by it from carrying on of its business. The reasons stated for the same are not as per law

and actual facts and circumstances of the case. Therefore, it is prayed that the deduction as claimed by the appellant u/s. 80P(2)(a)(i) of the act be allowed.

3. The learned Income tax Officer Ward 2(1) Belgaum further erred in holding that the appellant is a primary co-operative bank as referred in section 5(cci) of the Banking Regulations Act, 1949. The interpretation made are not as per law and acceptable.

4. The Learned Income tax Officer, Ward 2(1) Belgaum also erred in coming to the conclusion that the appellant is engaged in business of banking as defined in section 5 of the Banking Regulations Act. The logic extended to come to the conclusion is not as per law.

5. The learned Income tax Officer Ward 2(1) Belgaum ought to have appreciated that insertion of clause (viiia) in section 2(24) of the act does not alter the position as far as exemption u/s. 80P(2)(a)(i) is concerned to a co-operative credit society which is engaged in providing credit facilities to its members.

6. The Learned Income tax Officer, Ward 2(1) Belgaum erred in giving a finding that a co-operative credit society automatically is converted into a co-operative bank, if the own funds of the credit society exceed Rs.1 lakh and further erred in stating that it can carry on banking business till the license application is rejected by the R.B.I.

7. The learned Income tax Officer, Ward 2(1) Belgaum ought to have appreciated the primary objectives of the appellant, nature of activities carried on and the basic intention of enacting section 80P(4) before coming to a conclusion that the appellant is not entitled for deduction u/s. 80P(2)(a)(i).

8. The Learned Income tax Officer, Ward 2(1) Belgaum ought to have appreciated that the reference to the CBDT's clarifications regarding admissibility of deduction u/s. 80P(2)(a)(i) of the Income tax Act, 1961 after insertion of section 80P(4) and to the report of Madhava Rao Committee (1999) does not alter the actual position of law as applicable to a co-operative society.

9. The assessment made is excessive, arbitrary and is based on assumption and suffers from illegality."

In response to the notice of hearing, Sri. Sanjay Kulkarni, Chartered Account appeared on behalf of the appellant and was heard. He has also submitted written submissions in support of his arguments. The appellant strongly objected to the view taken by the Assessing Officer in treating that the



appellant as co-operative Bank and disallowing the claim of the appellant under section 80P(2)(a)(i). The submissions of the appellant are as under –

"The appellant is engaged in carrying on business of providing credit facilities to its members. The income from the said business was claimed as deduction u/s 80 P (2) (a) (i) of the Act. A copy of the return filed along with Computation of Income sheet is enclosed. The appellant is neither governed by the provisions of R.B.I Act nor by Banking Regulations Act, 1949, as the appellant is not carrying on banking business as defined in those acts. As stated earlier, the appellant is engaged in business of providing credit facilities to its members only. The appellant claimed a deduction U/s. 80P (2)(a)(i) in respect of its income derived from providing credit facilities to its members. During the course of assessment, the A. O. disallowed the said claim holding the appellant as a primary co-operative bank.

The A. O. has tried to derive the interpretation which is not as per law and deviates from the basic intention of the legislature in bringing section 80P into statute. The provisions of section 80P (4) are totally misinterpreted and deviates from basic intention of enacting the said provisions into the statute. The A. O. has tried to fit the appellant into the definition of primary co-operative bank as given in Banking Regulations Act, 1949. The A. O. also has tried to conclude that the appellant is engaged in business of banking. He has relied upon the report of Madhavrao Committee of 1999 formed by R.B.I. to review the performance of Urban Co-Operative Banks. Based on the said report, the A. O. concludes that a co-operative credit society can automatically become a primary co-operative bank. For the purpose various arguments have been advanced in the assessment order to deny the deduction to the appellant which otherwise appellant is entitled to.



the appellant submits as under

It is important to refer to the provisions of section 80P in the instant case. Section 80P (2)(a)(i) reads as under.

"in case of a cooperative society engaged in –

- (i) Carrying on the business of banking or providing credit facility to its members"*


If the wordings of the said section are perused carefully, it can be seen that it has two limbs. The first limb refers to carrying on the business of banking and the second limb refers to providing credit facilities to its members. Division in these two limbs denotes that these two limbs are different activities than each other. The appellant is covered by the second limb viz providing credit facilities to its members. It is not covered by the first limb viz carrying on business of Banking. It is important to note this differentiation in the instant case. To carry on business

of banking one needs a license from R.B.I. which is given by them only after fulfilling certain conditions. The license is required under the Banking regulations act and under R.B.I. Act. Contrary to this the appellant is a co-operative society governed by the Karnataka State Co-Operative Act. To carry on business of credit facilities to its members, no license is required to be obtained from R.B.I. since the appellant is governed by the State Co-Operative Act; the provisions of RBI Act and BR Act are not applicable. This explains in a very clear term that the appellant is not engaged in carrying on business of banking. A deduction U/s. 80P is available even to a co-operative society which is engaged in providing credit facilities to its members. The section does not state that it should carry on banking business also. The word 'or' used in section assumes importance and separates the business of banking from the business of providing credit facilities to its members. During the course of assessment the appellant has clearly brought on record the fact that it is engaged in providing credit facilities to its members only. The appellant had filed all the details in this regard before the A. O.

The definition of primary co-operative bank as given under the B.R. Act is reproduced below for ready reference.

Section (CCV) "primary Cooperative bank means a cooperative society, other than a primary agricultural credit society –

- (1) The primary object or principal business of which is the transaction of banking business.
- (2) The paid up capital and reserves of which are not less than one lakh rupees and
- (3) The bye-laws of which do not permit admission of any other cooperative society as a member."

 If this definition is perused carefully, it can be seen that all the conditions referred in section have to be cumulatively satisfied. If one or two conditions only get satisfied then the said definition is not attracted to such case. The main reason why the said definition is not applicable to the appellant is that the appellant's primary objects or principal business is not transactions of banking business. But it is to develop and promote economic interest thrift, saving and self help among the members and to protect the economic interest of the members.

Once a co-operative society is not carrying on any banking business, the said definition is not applicable. The A. O. has tried to explain in the order that the appellant society comes within the ambit of definition of banking business as defined in B.R. Act. An important thing to be noted in this context is that the appellant is accepting deposits from its members alone for the purpose of lending to its members only, whereas in the definition of Banking as given in Banking Regulations Act, it states that acceptance of deposit of money from the public is involved for the purpose of lending it again to the public. By any stretch of imagination members of a co-operative society cannot constitute

public. Public means a community at large who are not bounded by a covenant to anybody. Further a cooperative society has specific area restriction to operate. It cannot operate in other areas. Such restrictions are not there for a cooperative bank.

Reliance of the A.O. on the report of Madhavrao Committee is also misplaced. A recommendation in the report or an opinion of the committee mentioned in the report is not law. Nowhere under the B.R. Act or R.B.I. Act there is a provision for an automatic conversion of a co-operative credit society into a co-operative bank. It is an option to the co-operative credit society as to whether it wants to engage in banking business and thus get registered with the R.B.I. as a co-operative bank.

It is also important to note that "Bank", "Banker" or "Banking" is not used by the appellant as a part of its name. The B.R. Act in section 56 very clearly provides that no co-operative credit society other than the co-operative bank shall use as part of its name or in connection with its business any of the word 'Bank, Banker or Banking and no co-operative society shall carry on the business of banking in India unless it uses as a part of its name at least one of such words. This also proves that the appellant is not engaged in business of Banking.

Hence, it is submitted that the appellant is a co-operative credit society engaged in carrying on business of providing credit facilities to its members and therefore, the appellant is entitled for exemption U/s. 80P(2)(a)(i) and the provisions of section 80P(4) are not applicable to it.

Let us examine section 80 P (4) of the I.T. Act, as amended with effect from 01.04.2007. The said section reads as under:

"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 purpose of this sub section -

- (a) Cooperative bank and primary agricultural credit society shall have the meaning respectively assigned to them in Part V of the banking regulation act 1949.
- (b) Primary Cooperative agricultural and rural development bank means a society having its area of operation confined to a taluka and the principal object of which is to provide for long term credit for agricultural and rural development activities."

The said section clearly states that the exemption is not given to a co-operative bank only. There is no reference as to the non-applicability of exemption to co-operative credit society. It does not define what a cooperative society is but has defined other cooperative societies. By making a specific reference to Cooperative bank and excluding a primary agricultural credit society or a primary cooperative agricultural and rural development bank from the ambit

of section 80P and by keeping the provisions of section 80P (2) (a) (i) in the statute the legislation has made it clear that other cooperative societies continue to get exemption as in the past. In case if the intention of the legislature was to deny the exemption even to the co-operative credit society, then keeping in statute section 80P(2)(a)(i) will be redundant. The said amendment was brought in by the Finance Act, 2006 with a clear intention to tax the co-operative banks only. The relevant para from the Budget speech of the Finance Minister is given below:

Budget Speech Para 22(2)

"The cooperative banks are functioning at par with other commercial banks which do not enjoy tax benefits. Therefore 80P has been amended and new sub section (4) been inserted to provide that the provisions of the said section shall not apply to any cooperative bank
Under these circumstances bringing credit societies under the tax net is unjust and not as per law. The wordings contained in section 80P (2)(a)(i) and 80P(4) are very plain, clear and simple. Even section 2(19) defines a co-operative society. The explanation to section 80P (4) refers to Banking Regulations Act, part 5 only to the extent of defining co-operative bank and a primary agricultural credit society. Under such circumstances to interpret the provisions there is no need to refer to the Banking Regulations Act in general. The appellant is a co-operative credit society as defined U/s 2(19) of the Act. It is engaged in business of providing credit facilities to its members and further in section 80P (4) there is no mention of a co-operative society. Under such factual situation of law importing some foreign interpretation to tax the income under the I.T. Act is unjust and does not fit within the ambit of taxation of an income under the I.T. Act, 1961. It is a settled law that the income of an assessee is calculated based on the provisions contained in the I.T. Act. A reference to other acts is made only and only when the I.T. Act, is silent or there is a specific reference to the other acts. Therefore, holding a co-operative credit society as a primary co-operative bank based on definition given under different acts is not at all warranted. The amendment brought in to section 2(24)(viii) does not automatically bring to tax the income of co-operative society engaged in providing credit facilities to its members. It only expressly specifies that the profits and gains of such society are considered as an income under the provisions of the act. In view of the provisions contained in section 80P (2) (a)(i) such income is allowed as a deduction while computing the taxable income under the Act. Therefore, an isolated reference to section 2(24) (viii) is not going to alter the legal position applicable to the credit society engaged in providing credit facilities to its members.



The whole issue can be summed it in the following manner

1. *The Cooperative Society has been specifically defined under the Income Tax Act – section 2(19). Section 80P (4) does not define a Cooperative Society.*
2. *The Appellant is registered under Karnataka State Cooperative Society Act and is governed by its provisions only.*
3. *It is not governed by RBI Act or Banking regulation act 1949*
4. *It can do activities that are enumerated in its bye laws only where as a bank can do businesses as set out in banking regulation act 1949. A cooperative society cannot do business referred in Banking regulation act.*
5. *It cannot accept deposits or lend money to public. It can do business only with its members.*
6. *It cannot use the words "bank" banking" or "banker" as part of its name.*
7. *RBI has no power of what so ever nature to regulates its functioning.*
8. *It is carrying business of providing credit facilities to its members. It is not involved in business of banking.*
9. *There is no provision in Banking Regulation act for an automatic conversion of a credit society into Cooperative bank. A specific license is required to be obtained from the RBI by following all the procedures as set in that Act*
10. *The primary object of the appellant is not to carry on banking business but develop and promote economic interest thrift, saving and self help among the members and to protect the economic interest of the members.*
11. *Appellant cannot be regarded as primary cooperative bank for the purpose of Banking Regulation act and accordingly section 80P (4) does not apply to it, as it is not carrying on banking business.*
12. *A cooperative Society has the concept of mutuality embedded in it. It has been upheld by various Courts that income is not taxable in case of mutual concerns as "One cannot make profits from oneself. (Kikabhai Premchand 24 ITR 506 SC)*



13. The Budget speech of the finance minister while enacting section 80P (4) clearly refers to the intention of the legislature to tax Cooperative banks as they are at par with Commercial Banks. A cooperative credit Society is not at par with any Commercial bank. The explanation later given by the Finance Minister for enacting 80P (4) also is of utmost importance. (Copy enclosed)
14. If the intention of the legislature was not to allow deduction u/s 80P to cooperative societies engaged in providing credit facilities to its members then this section would have been deleted.

Recently the CIT (A) II Bangalore in the case of M/s Bangalore Commercial transport credit Cooperative Society Ltd has held that section 80P(4) is not applicable to Cooperative credit societies and that they are entitles for deduction u/s 80P(2)(a)(i) of the Act. The said decision was upheld by the Hon ITAT Bangalore in ITA no 1069/bang/2010 dated 8/04/2011. Further CIT (A) VI Bangalore also held in the similar manner in the case of M/s Dwaraka Souhard Credit Society Ltd Ankola for A Y 2007-08 to 2009-10. A copy of the said order is enclosed.

Reference is also made to following cases where is the Courts have held that taxing statutes granting incentives for promoting growth and development should be construed liberally. These provisions shall be interpreted so as to advance the objective of the provision and not to frustrate it.

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|--------------------------------------|----------------------|
| 1. CIT Vs sultan and sons rice mills | 272 ITR 181 (All) |
| 2. CIT Vs Simpson and Co | 122 ITR 283 (Madras) |

In view of the discussion above it is prayed that the disallowance of deduction claimed by the appellant be allowed as the same is claimed as per law.


In support of its contention the appellant has also relied on the decision of the Commissioner of Income tax (Appeals) II, Bangalore in the case of M/s. Bangalore Commercial Transport Credit Co-operative Society Ltd., in ITA No.130/AC 3(1)/CIT(A)-II/09,10 wherein the CIT(Appeals) has held that the Co-operative Credit Society is eligible for deduction under section 80-P.

I have carefully considered the facts of the case and oral as well as written submissions of the appellant. The only point of contention is that whether the appellant is eligible for deduction u/s. 80P(2)(a)(i) o the Act, or they fall under

sub-section 4 of 80P which was introduced for the first time from the Asst. Year 2007-08. Here it is important to note the Hon'ble Finance Minister's budget proposal in bringing the proposed amendment to the Finance Act 2006 which speaks –

"Co-operative banks or any other banks, are lending institutions and should pay tax on their profits. Primary Agriculture Credit society (PACS) and Primary Co-operative and Rural Development Banks (PCARDB) stand on a special footing and will continue to be exempt from tax under section 80P of the Income tax Act. However, I propose to exclude all other Co-operative Banks from the scope of that section."

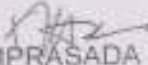
From the above it appears that only the Co-operative Banks with exceptions are brought to tax by the new Amendment. The Assessing Officer in his order has referred to Banking Regulation Act, 1949 and the Madhav Rao Committee report and has emphasized on the fact that section 5(cci) of the Banking Regulation Act, 1949 allow automatic conversion of the Co-operative Credit Society on its achieving the share capital limit of Rs.1,00,000/-. However, the RBI has by its letter dated 10.08.2011 have stated that the conversion of Co-operative Credit Society is not being considered in response to the application made by the appellant to the RBI, Bangalore for grant of banking licence u/s. 5(cci). Thus the Assessing Officer's contention that there is automatic conversion of Co-operative Credit Society to Co-operative Banks is not correct.



In its written submission the appellant also submitted that recently the Commissioner of Income tax (Appeals) II, Bangalore in the case of M/s. Bangalore Commercial transport credit co-operative society ltd., has held that section 80P(4) is not applicable to Co-Operative credit societies and that they are entitled for deduction under section 80P(2)(a)(i) of the Act. The said decision was upheld by the Hon. ITAT Bangalore in ITA No 1069/BANG/2010 dated 8th April 2011. Further the Commissioner of Income tax (Appeals) VI Bangalore has also held in the similar manner in the case of M/s. Dwaraka Souhard Credit Society Ltd., Ankola for A.Y. 2007-08 to 2009-10.

In view of the above discussion and following the ITAT's decision cited supra, I hold that that the conclusion of the Assessing Officer that the appellant is a primary co-operative bank is not correct and as such the appellant's co-operative credit society is eligible for deduction u/s. 80P(2)(a)(i) of the Income tax Act. Accordingly the Assessing Officer is directed to allow the deduction claimed by the appellant.


In the result, the appeal is allowed.


(K. HARIPRASADA RAO)
COMMISSIONER OF INCOME TAX (APPEALS)
BELGAUM.

Copy to :

- ✓ 1. The appellant
- 2. The Income tax Officer Ward 2(1) Belgaum.
- 3. The JCIT Range 2, Belgaum.
- 4 The CIT Belgaum.
- 5. The file.




(K. HARIPRASADA RAO)
COMMISSIONER OF INCOME TAX (APPEALS)
BELGAUM