INCOME TAX JUDGEMENTS

Related to Karnataka co-operative sector

Karnataka State Souharda Federal co-operative Ltd.,

Souharda Sahakari Soudha, No.68, Between 17th & 18th Cross,
Margosa Road, Malleswaram, Bengaluru-560 055
Ph : 080 23378375-80 email : souharda@souharda.coop
website : www. souharda.coop

ಕರ್ನಾಟಕ ರಾಜ್ಯ ಸೌಹಾರ್ದ ಸಂಯುಕ್ತ ಸಹಕಾರಿ ನಿ., ಬೆಂಗಳೂರು

ಕರ್ನಾಟಕ ಆದಾಯ ತೆರಿಗೆ ತೀರ್ಪುಗಳು

ಪ್ರಕಾಶಕರು : ವ್ಯವಸ್ಥಾಪಕ ನಿರ್ದೇಶಕರು,
ಕರ್ನಾಟಕ ರಾಜ್ಯ ಸೌಹಾರ್ದ ಸಂಯುಕ್ತ ಸಹಕಾರಿ ನಿ.,
ಸೌಹಾರ್ದ ಸಹಕಾರಿ ಸೌಧ, ನಂ.68, 17&18ನೇ ಅಡ್ಡರಸ್ತೆ ಮಧ್ಯೆ,
ಮಾಗ್ರೋಸಾ ರಸ್ತೆ, ಮಲ್ಲೇಶ್ವರಂ, ಬೆಂಗಳೂರು–560055
ದೂರವಾಣಿ: 080–23378375–80
ಇ–ಮೇಲ್: souharda@souharda.coop
ವೆಬ್‌ಸೈಟ್: www.souharda.coop

ಮುದ್ರಣ ವರ್ಷ : ಸೆಪ್ಟೆಂಬರ್ 2022

ಪುಟಗಳು : 112

ಪ್ರತಿಗಳು : 500

ಬೆಲೆ : 80/–

ವಿನ್ಯಾಸ : ಶಂಕರ್ ಎಸ್

ಮುದ್ರಕರು :

KARNATAKA INCOME TAX JUDGEMENTS

RELETED TO CO-OPERATIVE SECTOR

Collected, compiled and edited

By

C.N Parashivamurthy

and

Dr. C.P Dayanandamurthy

* C.N.Parashivamurthy is a Retired Additional Registrar of Co-operative Societies, Govt. of Karnataka

** Dr. C.P.Dayanandamurthy is an Associate Professor in Law of Damodaram Sanjeevaiah National Law University, Vishaka Pattana, Andrapradesh.

Authors Acknowledgement

This book is are in continuation of the first publications in August 2015 by the Karnataka State Souhardha Federal Cooperative, titled "Karnataka High Court Judgment – related to Co-operation sector. These judgments will be useful to the department of cooperation, cooperatives, cooperative societies and general public. This is an attempt, that all cooperative related cases in compiled form, so that there is no need to search for cooperative decisions in Air, ILR, KLJ etc.

This work has no originality. The compilation is to provides important paras of the judgments, where in major observation are made by the Honorable judges. An attempt is also made to collect some supreme court decisions in addition to Karnataka High Court and other High Courts in India.

We are very greatful to the Karnataka States Souhardha Federal Cooperative for taking the initiatives in publishing this books. Personally we are thankful to the Sri. G. Nanjanagouda, Vice-president Sri. A. R. Prasanna Kumar, Managing Director Sri.Sharanagowda G Patil. We are specially thankful for justice M.Rama Jois for his appriciation wards. We are also thankful to justice Shivaraj Patil, former supreme court judge for his fore ward for earlier books.

We also thank Smt/Dr. C.P.Kathyayini and Smt/Dr. C.P.Nandini for their wishes.

C.N.Parashivamurthy
C.P.Dayanandamurthy

In memory of
Smt. Saroja Parashivamurthy

ಮುನ್ನುಡಿ

ಶ್ರೀಯುತ ಸಿ.ಎನ್. ಪರಶಿವಮೂರ್ತಿಯವರು ಸಹಕಾರಿ ಇಲಾಖೆಯ ಹಿರಿಯ ನಿವೃತ್ತ ಅಪರ ನಿಬಂಧಕರು. ಮೈಸೂರಿನಲ್ಲಿ ವಾಸವಾಗಿದ್ದಾರೆ. ಸಹಕಾರಿ ಕಾಯ್ದೆಗಳ ರಚನೆಗೆ ವಿಶೇಷವಾಗಿ ಸೌಹಾರ್ದ ಸಹಕಾರಿ ಕಾಯ್ದೆ ರಚನೆ ಹಾಗೂ ಕಾಯ್ದೆಯು ಜಾರಿಗೆ ಬರುವಲ್ಲಿ ಪ್ರಮುಖ ಪಾತ್ರವನ್ನು ನಿರ್ವಹಿಸಿದ್ದಾರೆ. ಸಹಕಾರ ಕಾಯ್ದೆಗಳು ಹಳೆಯದಾಗಿರಲಿ ಹೊಸದಾಗಿರಲಿ ಯಾವುದೇ ಕಲಂನ ನಿರ್ವಹಣೆಯಲ್ಲಿ ವಿವರಣೆಗಳನ್ನು ನೀಡಿ ಕಾನೂನಿನ ಸಮಸ್ಯೆಗಳಿಗೆ ಪರಿಹಾರ ನೀಡುತ್ತಲಿರುವುದು ಮತ್ತು ಸಹಕಾರಿ ಕಾನೂನುಗಳ ಕಲಂನ ವ್ಯಾಖ್ಯಾನಗಳು ಸೇರಿದಂತೆ ಸಹಕಾರಿ ಕ್ಷೇತ್ರದ ಅನೇಕ ವಿಷಯಗಳ ಬಗ್ಗೆ ನಿರಂತರ ಲೇಖನಗಳನ್ನು ಬರೆದು ಸಹಕಾರಿಗಳಿಗೆ ಮಾರ್ಗದರ್ಶನ ಮಾಡುತ್ತಿರುವುದು ಸಹಕಾರಿಗಳಿಗೆಲ್ಲ ಸಂತೋಷ ಹಾಗೂ ಹೆಮ್ಮೆಯ ವಿಷಯವಾಗಿದೆ.

ಕರ್ನಾಟಕ ರಾಜ್ಯ ಸೌಹಾರ್ದ ಸಂಯುಕ್ತ ಸಹಕಾರಿಯು ಹಿರಿಯ ಸಹಕಾರಿಗಳು ನಿವೃತ್ತ ಸಹಕಾರಿ ಇಲಾಖಾಧಿಕಾರಿಗಳು ಬರೆದಿರುವ ಸಹಕಾರಿ ಕ್ಷೇತ್ರದ ಬಗ್ಗೆ ಮತ್ತು ಸಹಕಾರ ಕ್ಷೇತ್ರಕ್ಕೆ ಸಂಬಂಧಿಸಿದ ಪುಸ್ತಕಗಳನ್ನು ಆಯ್ಕೆ ಮಾಡಿ ಪ್ರತಿ ವರ್ಷ ವಾರ್ಷಿಕ ಸಾಮಾನ್ಯ ಸಭೆಯ ದಿನದಂದು ಬಿಡುಗಡೆ ಮಾಡುತ್ತ ಬಂದಿದೆ. ಸಹಕಾರಿಗಳಿಗೆ ಈ ಪುಸ್ತಕಗಳ ಮೂಲಕ ಸಹಕಾರ ಕ್ಷೇತದ್ರ ಬಗ್ಗೆ ಜ್ಞಾನವನ್ನು ಹೆಚ್ಚಿಸುವ ಕಾರ್ಯ ಮಾಡುತ್ತಿದೆ. ಈ ಕಾರ್ಯವನ್ನು ಅನೇಕ ಸಹಕಾರಿಗಳು ಹಾಗೂ ಅಧಿಕಾರಿಗಳು ಕೂಡ ಮೆಚ್ಚಿರುವುದು ಸ್ವಾಗತಾರ್ಹ ಹಾಗು ಸಂಯುಕ್ತ ಸಹಕಾರಿಗೆ ಹೆಮ್ಮೆ ತಂದಿದೆ.

ಪ್ರಸ್ತುತ ಕರ್ನಾಟಕ ಆದಾಯ ತೆರಿಗೆ ತೀರ್ಪುಗಳ ಸಂಗ್ರಹ ಇಂಗ್ಲೀಷ ಭಾಷೆ, ಕರ್ನಾಟಕ ಹೈಕೋರ್ಟ ತೀರ್ಪುಗಳ ಸಂಗ್ರಹ, (ಇಂಗ್ಲೀಷ ಭಾಷೆ) ಸೌಹಾರ್ದ ಸಹಕಾರಿ ಕಾಯ್ದೆ ಆಡಳಿತ ಕೈಪಿಡಿ ಕನ್ನಡ, ಸಹಕಾರ ಕ್ಷೇತ್ರಕ್ಕೆ ಸಂಬಂಧಿಸಿದ ಶ್ರೇಷ್ಠ ಹಾಗೂ ಉಚ್ಚ ನ್ಯಾಯಾಲಯಗಳ ತೀರ್ಪುಗಳ ಸಂಗ್ರಹ, ಕನ್ನಡ ಭಾಷೆ ಪುಸ್ತಕಗಳನ್ನು ಅತ್ಯಂತ ಶ್ರದ್ಧೆಯಿಂದ ಸಿದ್ಧಪಡಿಸಿದ್ದಾರೆ.

ಸಹಕಾರ ಕ್ಷೇತ್ರದ ಅಭಿವೃದ್ಧಿಗೆ ಸಹಕಾರ ತತ್ವಗಳಲ್ಲಿ ಪ್ರಮುಖವಾಗಿರುವ ಸಹಕಾರ ಶಿಕ್ಷಣ ಹಾಗೂ ಪ್ರಚಾರ ಮತ್ತು ಸಾಮಾಜಿಕ ಕಳಕಳಿ ಎಂಬ ತತ್ವಗಳ ಅನುಷ್ಠಾನದಲ್ಲಿ ಶ್ರೀ ಸಿ.ಎನ್.ಪರಶಿವಮೂರ್ತಿಯವರು ಈ ನಾಲ್ಕು ಪುಸ್ತಕಗಳನ್ನು ಸಿದ್ಧಪಡಿಸಿ ಸಂಯುಕ್ತ ಸಹಕಾರಿಗೆ ಮುದ್ರಣ ಹಾಗೂ ಪ್ರಕಾಶನಕ್ಕಾಗಿ ಒದಗಿಸಿರುವುದಕ್ಕಾಗಿ ಸಂಯುಕ್ತ ಸಹಕಾರಿಯ ಆಡಳಿತ ಮಂಡಳಿಯ ಪರವಾಗಿ ಹಾಗೂ ವೈಯಕ್ತಿಕವಾಗಿ ಮತ್ತು ರಾಜ್ಯದ ಸೌಹಾರ್ದ ಸಹಕಾರಿಗಳ ಪರವಾಗಿ ಹೃದಯಪೂರ್ವಕ ಕೃತಜ್ಞತೆಗಳನ್ನು ಸಲ್ಲಿಸುತ್ತೇನೆ.

ಸಹಕಾರಿ ಕ್ಷೇತ್ರದ ಆಸಕ್ತ ಸಹಕಾರಿಗಳು ಸಹಕಾರಿ ಇಲಾಖಾಧಿಕಾರಿಗಳು ಸಹಕಾರಿ ಕಾರ್ಯಕರ್ತರು, ಈ ಎಲ್ಲ ಪುಸ್ತಕಗಳ ಪ್ರಯೋಜನವನ್ನು ಪಡೆದು ಸಹಕಾರ ಕ್ಷೇತ್ರದ ಬಗ್ಗೆ ತಮ್ಮ ಜ್ಞಾನವನ್ನು ಹೆಚ್ಚಿಸಿಕೊಳ್ಳಲು ಸಾಧ್ಯವಾಗುತ್ತದೆ. ಸಂಯುಕ್ತ ಸಹಕಾರಿಯ ಹಾಗೂ ಶ್ರೀ ಸಿ.ಎನ್.ಪರಶಿವಮೂರ್ತಿಯವರ ಪ್ರಯತ್ನವೂ ಸಾರ್ಥಕವಾಗುತ್ತದೆ.

– ಜಿ. ನಂಜನಗೌಡ
ಅಧ್ಯಕ್ಷರು

INCOME TAX RELATED CASES

8		Belgaum Merchants Co-operative Credit Society Limited v Income Tax Officer, 2014 Indlaw ITAT 63	P. K. Bansal (Accountant Member), D. T. Garasia (Judicial Member)	33-37
9		Brahmanath Co-operative Credit Society Limited, Belgaum v Income Tax Officer, Belgaum, 2014 Indlaw ITAT 3377; [2015] 152 ITD 615	P. K. Bansal (Accountant Member), D. T. Garasia (Judicial Member)	37-39
10	142 & 143/ PNJ/2013	Chandraprabhu Urban Co-opera tive Credit Society Limited, Nipani v Income Tax Officer, Nipani, 2014 Indlaw ITAT 3375; [2015] 152 ITD 477	P. K. Bansal (Accountant Member), D. T. Garasia (Judicial Member)	40-42
11	1210/Bang/2013	Commissioner of Income Tax v Sree Seetharama Mandiram Souharda Sahakari Limited, Bangalore, 2014 Indlaw ITAT 2909	Rajpal Yadav (Judicial Member), Jason P. Boaz (Accountant Member)	43-45
12	250/PNJ/2013	Gomatesh Co-operative Credit Society Limited v Income Tax Officer, 2014 Indlaw ITAT 45	P. K. Bansal (Accountant Member), D. T. Garasia (Judicial Member)	46-49
13	165 & 166/PNJ/2014	Hukkeri Taluka Primary Teachers Credit Co-operative Society Limited, Hukkeri v Income Tax Officer, Belgaum, 2014 Indlaw ITAT 3343; [2015] 153 ITD 615	P. K. Bansal (Accountant Member), D. T. Garasia (Judicial Member)	50-53
14	1288 to 1290/ Bang/2013	Hungund Taluka Teachers Co-operative Credit Society Limited, Hungund v Income Tax Officer, Bagalkot, 2014 Indlaw ITAT 3142	N. V. Vasudevan (Judicial Member) & Jason P. Boaz (Accountant Member)	53-55
15	98/Bang/2014	Jamkhandi Taluka School Teachers Co-operative Society Limited, Bagalkot v Income Tax Officer, Bijapur, 2014 Indlaw ITAT 2784	N. V. Vasudevan (Judicial Member) & Abraham P. George (Accountant Member)	56-58
16	1269/Bang/2013	Jyoti Cooperative Credit Society Limited, Bagalkot v Income Tax Officer, Ward 1, Bagalkot, 2014 Indlaw ITAT 2357	Rajpal Yadav (Judicial Member) & Abraham P. George (Accountant Member)	58-60
17	318/PNJ/2013	Kalloli Urban Co-operative Credit Society v Income Tax Officer, 2014 Indlaw ITAT 62; [2014] 63 SOT 119	P. K. Bansal (Accountant Member), D. T. Garasia (Judicial Member)	60-62

18	1284/Bang/2013	Kittur Channamma Mahila Co-operative Society Limited v The Income Tax Officer, 2014 Indlaw ITAT 2529	N. V. Vasudevan (Judicial Member) & Jason P. Boaz (Accountant Member)	63-66
19	443 & 444/PNJ/ 2013	Kuruhinshetty Urban Co-operative Credit Society v Income Tax Officer, 2014 Indlaw ITAT 64	P. K. Bansal (Accountant Member), D. T. Garasia (Judicial Member)	66-69
20		Laxmananda Multipurpose Co-operative Society Limited v Income Tax Officer, 2014 Indlaw ITAT 1112; [2015] 152 ITD 318; [2014] 34 ITR (Trib) 472	Jason P. Boaz (Accountant Member) & Rajpal Yadav (Judicial Member)	69-71
21	02/PNJ/2014	Lokmanya Multipurpose Co-operative Society Limited, Belgaum v Income Tax Officer, Ward - 2(2), Belgaum, 2014 Indlaw ITAT 1535	P. K. Bansal (Accountant Member), D. T. Garasia (Judicial Member)	72-76
22		Tararani Mahila Co-operate Credit Society Limited, Belgaum v Income Tax Officer, Belgaum, 2014 Indlaw ITAT 3369; [2015] 152 ITD 621	P. K. Bansal (Accountant Member), D. T. Garasia (Judicial Member)	76-79
23	302/Bang/2014	Chitradurga City Multi Purpose Co-operative Society, Chitradurga v Income-tax Officer, Chitradurga, 2015 Indlaw ITAT 2038; [2015] 44 ITR (Trib) 61	Abraham P. George (Accountant Member) & N. V. Vasudevan (Judicial Members)	79-83

24	Revision Petition No. 3005 of 2008, Revision Petition No. 2613 of 2015, Revision Petition No. 2614 of 2015, Revision Petition No. 2615 of 2015, Revision Petition No. 2616 of 2015, Revision Petition No. 2617 of 2015, Revision Petition No. 2618 of 2015, Revision Petition No. 2619 of 2015, Revision Petition No. 2620 of 2015, Revision Petition No. 2621 of 2015, Revision Petition No. 2622 of 2015, Revision Petition No. 2623 of 2015, Revision Petition No. 2624 of 2015, Revision Petition No. 2625 of 2015, Revision Petition No. 2626 of 2015, Revision Petition No. 2627 of 2015, Revision Petition No. 2628 of 2015, Revision Petition No. 2629 of 2015, Revision Petition No. 2631 of 2015, Revision Petition No. 2632 of 2015, Revision Petition No. 2633 of 2015	Hanuman Sahakari Pani Pruvatha Sanstha Maryadit Through Secretary, Shivram Bhauso Bhandigare, Maharastra and others v Ramchandra Bapuso Khade and others, 2015 Indlaw NCDRC 706; 2016 (2) CPJ(NC) 42	K.S. Chaudhari	83-87
25	1504/Bang/2014	Income Tax Officer, Bijapur v Jamkhandi Taluka School Teachers Co-operative Credit Society Limited, Jamkhandi, 2015 Indlaw ITAT 2103; [2015] 43 ITR (Trib) 365	N.V. Vasudevan (Judicial Member) & Abraham P. George (Accountant Member)	87-88
26	666/Bang/2015	Income-Tax Officer, Hubli v KPTC & Hescom Employees Co-operative Credit Society Limited, Hubli, 2015 Indlaw ITAT 502	Abraham P. George (Accountant Member) & N. V. Vasudevan (Judicial Member)	89-90

27	344 to 347/PNJ/2015, C. O. No. 70/PNJ/2015	ITO, Belagavi and another v Basaveshwar Souhard and others, 2015 Indlaw ITAT 1617	N. S. Saini (Accountant Member), George Mathan (Judicial Member)	90-92
28	1504/Bang/2014	Income Tax Officer, Bijapur v Jamkhandi Taluka School Teachers Co-operative Credit Society Limited, Jamkhandi, 2015 Indlaw ITAT 2103; [2015] 43 ITR (Trib) 365	N.V. Vasudevan (Judicial Member) & Abraham P. George (Accountant Member)	92-93
29	I.T.A Nos. 348 and 349/ PNJ/2014, I.T.A Nos. 350/PNJ/2014, I.T.A Nos. 351/PNJ/2014, I.T.A Nos. 352/ PNJ/2014, I.T.A Nos. 353/PNJ/2014, I.T.A Nos. 354/PNJ/2014, I.T.A Nos. 355/ PNJ/2014, I.T.A Nos. 356/PNJ/2014, I.T.A Nos. 357/PNJ/2014	Ryatar Sahakari Sakkare v ACIT, Bijapur and others, 2015 Indlaw ITAT 27	D. T. Garasia (Judicial Member) & P. K. Bansal (Accountant Member)	93-95
30	21/Bang/2015	Syndicate Rythara Sahakara Bank Limited, Kopa v Income Tax Officer, Mysore, 2015 Indlaw ITAT 1856; [2015] 41 ITR (Trib) 476	Jason P. Boaz (Accountant Member) & P. Madhavi Devi (Judicial Member)	95-97
31	1183 & 1184/ Bang/2015	Assistant Commissioner of Income-tax, Circle 3(1), Hubli v Regional Oild Seeds Growers Co-Operative Union Limited, Hubli, 2016 Indlaw ITAT 2291	Inturi Rama Rao (Accountant Member) & Asha Vijayaraghavan (Judicial Member)	97-98
32	1324 to 1337/ Bang/2015	Income-Tax Officer, Bangalore v Kautilya House Bldg. Co-operative Society Limited, Bangalore, 2016 Indlaw ITAT 1037	George George K. (Judicial Member) & I. P. Bansal (Judicial Member)	98-100
33	1372/Bang/2014	Karnataka State Co-operative Apex Bank Limited v Deputy Commissioner of Income-Tax, Circle 3(1), Bangalore, 2016 Indlaw ITAT 4742; [2016] 46 ITR (Trib) 728	Inturi Rama Rao (Accountant Member) & Vijay Pal Rao (Judicial Member)	101-102

34	671/Bang/2017	Income-tax Officer, Ward 2(2), Hubballi v KVG Bank Employees Co-operative Credit Co-operative Society Limited, Dharwad, 2017 Indlaw ITAT 1124	Inturi Rama Rao (Accountant Member), Lalit Kumar (Judicial Member)	103-104
35		Karnataka State Co-operative Apex Bank Limited, Bangalore v Deputy Commissioner of Income-tax, Bangalore, 2016 Indlaw ITAT 2170	Inturi Rama Rao (Accountant Member) & Vijay Pal Rao (Judicial Member)	104-106
36	1384/Bang/2018	Chikmagalur Jilla Mahila Sahakara Bank Niyamitha, Chikmagalur v Assistant Commissioner of Income Tax, Hassan, 2018 Indlaw ITAT 3363	Laliet Kumar (Judicial Member), Inturi Rama Rao (Accountant Member)	107-107
37	1957/Bang/2018	Prathmik Krushi Pattina Sahakar Sangh Niyamita v Income Tax Officer, Hospet, 2018 Indlaw ITAT 9708	Arun Kumar Garodia (Accountant Member)	108-109

Authorised Officer, Basaveshwar Co-Operative Bank Limited, Belgaum and Another v Umesh and Others, 2008 Indlaw DRAT 36; 2009 (1) DRTC 123

Case No: R.A. (S.A.) No. 31 of 2008

Debt Recovery Appellate Tribunal, Chennai

T.V. Masilamani

Head Note

Karnataka Cooperative Societies Act,1959, s.118(3) – Recovery proceeding – Maintainability of – Setting aside of order - Appellant-bank initiated recovery proceedings - Whether proceedings initiated by appellant no.1 is maintainable in law and impugned order passed by DRT is liable to be set aside.

Proper remedy to respondent no.1 is that he may be initiate a proceedings before Appellate Authority, prescribed under 1959 Act or else to file a petition before HC for quashing impugned order passed by Authorized Officer of appellant and it is apparent from records of case that respondent no.1 had not chosen to follow either of said courses open to him under law. Therefore, proceedings initiated by respondent no.1 before DRT is not maintainable in law. Thus, DRT has no jurisdiction to entertain application filed by respondent no.1 challenging action taken by appellant under 2002 Act and it follows necessarily that impugned order has to be set aside. Appeal allowed.

Ratio – Any order passed by Concerned Authority in lack of jurisdiction is liable to be set aside.

The Judgment was delivered by T. V. Masilamani (Chairperson)

This appeal is preferred by the appellant bank challenging the impugned order passed by DRT, Bangalore in A.S.A.-16/2006 on 12th February, 2008.

2. The fact of the case leading to the filing of this appeal may be set out briefly as under.

The appellant bank initiated the proceedings under Sec. 13 (4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter called as SRFAESI Act) against the respondent No. 1 and his guarantors for recovery of loan amount of Rs. 4, 92, 000/-, availed by the respondent No.1 Consequently, auction was conducted on 10th January, 2006 and the secured asset was sold on the same day to the respondent Nos. 2 and 3 herein. The said sale was confirmed saw certificate also issued by the appellant bank. The respondent No. 1 resisted the proceedings by filing the appeal before the DRT, Bangalore, challenging the action initiated by the appellant bank, on various grounds. The appellant bank and the auction purchasers (i.e.) the respondent Nos. 2 and 3 herein had also filed their objections in the said proceedings. After hearing the arguments of both sides and after considering the materials placed before the Tribunal, the learned Presiding Officer, disposed the appeal without costs, holding that in view of the decision rendered in "I.L.R. 2007 Knt. 4740", the appellant bank are not entitled to initiate the proceedings under Secs. 13 (2) and 13 (4) of the SRFAESI Act and the said proceedings are void.

A fair reading of the said provision of law and the principle laid down in the decision would indicate clearly that the provisions under SRFAESI Act have to be read in addition to the provisions under the RDDBFI Act, 1993 and therefore, as per the ratio of the decision cited above, it goes without saying that the appellant bank had no power or authority to invoke the provisions under SRFAESI Act and that the respondent No. 1 application filed before the D.R.T. is not maintainable in law.

8. Further, it is evident from the provisions in the Karnataka Cooperative Societies Act, 1959 (Karnataka Act 11 of 1959), that it is a self-contained enactment, which provides for recovery of the amount due from the member of the co-operative bank like the appellant bank herein. Section 2(b-1) defines "Co-operative bank" as meaning a co-operative society which is doing the business of banking and Sec. 2 (c) defines "Cooperative Society" as a society registered or deemed to be registered under this Act (Karnataka Act 11 of 1959). Section 2 (f) defines a "member" as a person admitted to membership in accordance with the said Act, the rules and the bye-laws. Sections 99 to 101 of the Karnataka Act 11 of 1959 prescribe the procedure for execution of award, decrees, orders and decisions made by the authorities empowered thereunder so as to recover the amount due under secured loan from the member of the bank.

9. It is relevant to note that under Sec. 118 (3) of the Karnataka Act 11 of 1959, no order, decision or award made under that Act shall be questioned in any Court on any ground whatsoever and the said provision of law reads as follows :

"118. Bar of jurisdiction of Courts.-(3) Save as provided in this Act, no order, decision or award made under this Act shall be questioned in any Court on any ground whatsoever."

In this context, a fair reading of the provisions under Sec. 17 of the SRFAESI Act, 2002 would indicate that respondent No. 1 being aggrieved by the measures taken by the appellant bank could have initiated the proceedings before the D.R.T., only if there is no bar of jurisdiction under any law for the time being in force. As has been referred to above, Sec. 118 (3) of the Karnataka Act, 11 of 1959 clearly bars the jurisdiction of not only Courts but also Tribunals from entertaining any proceeding challenging the decision or award made by the Co-operative Society or bank, as the case may be, governed by the provisions contained thereunder. The proper remedy to the respondent No. 1 is that he may be initiate a proceedings before the appellate authority, prescribed under the Karnataka Act 11 of 1959 or else to file a writ petition before the High Court for quashing the impugned order passed by the Authorized Officer of the appellant bank and it is apparent from the records of the case that the respondent No. 1 had not chosen to follow either of the said courses open to him under law. Hence, this Tribunal is of the considered opinion that the proceedings initiated by the respondent No. 1 before the D.R.T., Bangalore is not maintainable in law.

10. Having regard to the facts and circumstances of the matter as narrated above in the light of the ratio laid down by the Hon'ble Supreme Court in the said decision, this Tribunal has no other option except to hold that the D.R.T., has no jurisdiction to entertain the application filed by the respondent No. 1 challenging the action taken by the appellant bank under the said Act and it follows necessarily that the impugned order has to be set aside and accordingly, the same is set aside.

11. For the aforesaid reasons, this appeal is allowed by setting aside the impugned order passed by the D.R.T., Bangalore is A.S.A-16/2006 on 12th February 2008 and consequently, the said application filed by the respondent No. 1 dismissed with costs. Further, the appellant bank is at liberty to proceed against the respondents under the provisions of the Karnataka Co-operative Societies Act, 1959 and the Rules made thereunder. However, there will be no order as to costs in this appeal.

****

Narayanappa S/o Late Pillappa, Veterinary Inspector, Bangalore, Karnataka v NTI Employees Housing Co-operative Society Limited, Bangalore, 2010 Indlaw NCDRC 278; 2011 (2) CPJ(NC) 21

Case No: Revision Petition No. 3095 of 2006

National Consumer Disputes Redressal Commission, New Delhi Bench

Vinay Kumar (Member) & R. K. Batta (Presiding Member)

Head Note :

The scheme of the nature and stages of relief to a consumer under the Consumer Protection Act, 1986 is very clear and does not leave any scope for such confusion. If the complaint could take recourse to the provisions of this Act for invoking the jurisdiction of the District Consumer Forum, he would have certainly known that the appeal against the order of the consumer forum would lie to the State Commission.

The Judgment was delivered by Vinay Kumar (Member)

1. The Revision Petitioner was a member of NTI Employees Housing Corporation Society Bangalore, who had applied for allotment of house site in 1986. In several instalments between 1986 and 1994, he had reportedly paid in all Rs.75,443/- to the society. Yet, no house-site was allotted to him. His complaint was considered favourably by the District Consumer Disputes Redressal Forum, Bangalore (Urban) on 20.4.2005 and a refund of Rs.75,443/- was ordered in his favour, with 9% interest and compensation of Rs.5000/-.

2. The complainant apparently wanted a site and not refund of the sital value. Therefore, he chose to move Joint Registrar Cooperative Societies, Bangalore, seeking such a direction to the NTI Society under Section 70 of Karnataka Cooperative Societies Act. It is difficult to understand why he chose this route when under the Consumer Protection Act, 1986 the appellate authority against the order of the District Forum is the Consumer Disputes Redressal Commission of the State.

3. Eventually, he did prefer an appeal before the Karnataka State Consumer Disputes Redressal Commission, but only with a delay of 374 days. The State Commission in its order 6.6.2006, did not accept time spent before the Joint Registry of Cooperative Societies as a valid reason to justify the delay. His appeal was, therefore, dismissed on the ground of delay.

4. The present revision petition is against the above order of Karnataka State Commission dismissing the appeal of the Complainant. This revision petition was taken up on 1.09.2010 and the counsels for the two parties were heard. The case of the Revision Petitioner/Complainant is that he did not know the procedure of law and was wrongly advised to seek remedy before the Joint Registrar under the Karnataka Cooperative Societies Act. This explanation cannot be accepted and has rightly been rejected by the Karnataka State Commission. The scheme of the nature and stages of relief to a consumer under the Consumer Protection Act, 1986 is very clear and does not leave any scope for such confusion. If the complaint could take recourse to the provisions of this Act for invoking the jurisdiction of the District Consumer Forum, he would have certainly known that the appeal against the order of the consumer forum would lie to the State Commission.

5. In view of the above, we find absolutely no ground to interfere with the order of the Karnataka State Consumer Disputes Redressal Commission in appeal No.1045 of 2006. The revision petition is consequently dismissed with no order as to costs.

****

S. Parameshwar v Chief Post Master, 2012 Indlaw NCDRC 128

Case No: Revision Petition No. 4603 of 2010

National Consumer Disputes Redressal Commission, New Delhi Bench

Suresh Chandra (Member), K. S. Chaudhari (Presiding Member)

Cases Citing this Case

Branch Manager, State Bank of India, Kolkata v Shoba Mohan, 2015 Indlaw SCDRC 869

Head note

KCS Act 1959 - Consumer Protection Act, 1986 - Deficiency in service

District Forum dismissed said complaint on the ground that the petitioner had not made any allegation of fraud against the respondent hence, relief claimed by the petitioner could not be granted - State Commission dismissed appeal filed against said order - Hence, instant revision petition - Whether order of the District Forum as affirmed by the State Commission could be upheld –

There was no allegation that the article was lost by any fraudulent or willful act or default of any of the official of the Post Office - Unless these were alleged and proved by the petitioner, he was not entitled to claim relief by way of compensation for loss, misdelivery or delay or damage to any postal article in the course of its transmission - Revision petition dismissed.

The Judgment was delivered by Suresh Chandra (Member)

1. Petitioner in this case was the complainant before the District Forum and the respondent was the opposite party. The petitioner retired from State Government's Service on 30.11.2006 and requested his employer to make arrangement for the payment of Rs.50,127/- being the loan amount due to the Bangalore Zilla Padavidhara Co-operative Society Ltd., Bangalore out of his pensionery benefits. The employer, i.e., the Commissioner for

Sericulture in turn wrote to the Accountant General who authorized the District Treasury Officer to prepare the cheque in favour of the concerned Society on behalf of the petitioner from out of his pension payment. Accordingly a cheque for Rs.50,127/- was dispatched on 16.8.2007 vide speed post by the District Treasury Officer. However, the Society did not receive the cheque and hence the Society called upon the petitioner to settle his outstanding loan immediately. The petitioner after obtaining the details of the dispatch of the cheque from the Treasury Office, went to the post office and lodged a written complaint on 15.11.20087.

According to him the complaint was not accepted. The petitioner again gave a written complaint on 13.5.2008 but the opposite party informed the petitioner that the speed post cover was lost in transit. Thereupon the petitioner requested the Treasury Officer, Bangalore to prepare a fresh cheque for Rs.50,127/-. However, since the loan amount had not been repaid, the aforesaid Society passed an order under rule 36 of the Karnataka Co-operative Society Act 1959 and confiscated all the valuables from the complainant's house. The fresh cheque as per the request of the petitioner was prepared by the Treasury Officer, Bangalore on 25.5.2009 and was handed over to the Society on 26.5.2009. In the meanwhile, the petitioner was made to pay a total amount of Rs.67,611/- instead of Rs.50,127/- to the Society for retrieving the valuables confiscated earlier by the Society. The petitioner, therefore, filed a consumer complaint praying for award of damages on account of deficiency in service on the part of opposite party/respondent and also for payment of Rs.17,484/- being the excess amount which he had been made to pay to the Society on account of default of his dues for no fault on his part.

2. On being noticed, the opposite party resisted the complaint and filed his written objections denying the allegations and deficiency in service. While accepting the fact that the speed post cover was lost in transit, it was pleaded by the opposite party/respondent that either the sender of the cheque or the addressee could claim eligible compensation as permissible under the rules of the department beyond which the respondent authority was not liable for any damages in view of the exemption provided for u/s. 6 of the Indian Post Office Act, 1898.

The OP also denied any deficiency in service on the part of the department. After hearing the parties and considering the evidence placed before it, the District Forum vide its order dated 9.2.2010 dismissed the complaint on the ground that the complainant/petitioner had not made any allegation of fraud against the OP/ respondent and hence in view of the protection provided to the OP/respondent u/s. 6 of the Act of 1898, the relief claimed by the complainant/petitioner could not be granted.

3. Aggrieved by the aforesaid order of the District Forum, the petitioner filed an appeal before the Karnataka State Consumer Disputes Redressal Commission, Bangalore ('State Commission' in short) which was dismissed by the State Commission vide its impugned order dated 26.8.2010. It is in these circumstances that the petitioner has filed the present revision petition challenging the order of the State Commission.

S. 6 of the Indian Post Office Act, which reads as follows:

"The Government shall not incur any liability by reasons of the loss, misdelivery or delay or damage to any postal article in course of transmission by post except in so far as such liability may in express be undertaken by the central government as here in above provided and no officer of the Post Office shall incur any liability

by reason of any such loss, misdelivery, delay of damage, unless he has caused the same fraudulently or by his willful act or default"

6. Admittedly, in the instant case, there is no allegation that the article was lost by any fraudulent or willful act or default of any of the official of the Post Office. Unless these are alleged and proved by the Appellant/ Complainant, he is not entitled to claim relief by way of compensation for loss, misdelivery or delay or damage to any postal article in the course of its transmission.

7. In view of the above decision of the National commission, we are of the opinion that the decision rendered by the DF as per its Impugned order is proper and correct. It does not call for interference. This appeal is liable to be dismissed."

8. We agree with the view taken by the State Commission and the District Forum and do not see any merit in the revision petition which would justify our interference with the impugned orders. The revision petition, therefore, stands dismissed in limine with no order as to costs.

Revision dismissed

****

Income Tax Officer Ward I(1), Erode v Kasipalayam Primary Agricultural Co-operative Bank Limited, Erode, 2013 Indlaw ITAT 128; [2014] 147 ITD 70

Income Tax Appellate Tribunal, Chennai Bench 'C'

N. S. Saini (Accountant Member), V. Durga Rao (Judicial Member)

Head Note

KCS Act 1959 – Income Tax and Direct Taxes – Sec.80P of 1961 Act

No material could be brought before Tribunal to show that assessee was co-operative bank within meaning of s.80P(4) of Act and not co-operative Credit society. No material was brought Tribunal to show that provision of accepting nominal members was not in accordance with 1959 Act or Rules or persons who were made nominal members were, in fact, not members of assessee- society. In above circumstances, Court do not find any good reason to interfere with order of CIT(A) which has been passed following order of Tribunal as stated in his order and quoted. Appeal dismissed

The Judgment was delivered by N. S. Saini (Accountant Member)

The assessee claimed deduction u/s 80P of the Act of Rs. 36,76,329/-. According to the Assessing Officer, the assessee's main activity was only banking business and income from banking business was taxable from assessment year 2007-08 onwards by amending section 80P(2)(a)(i) of the Act. Hence, the provisions of section 80P are not applicable to any co-operative bank other than Primary Agricultural Credit Society with effect from 1.4.2007. According to the Assessing Officer, the intention of the legislature was to extend the benefit of deduction u/s 80P(4) only when the activities of the society are in connection with agricultural purposes and

activities for which it was started. The totality of the circumstances clearly indicates that the activities of the society are never intended for any agricultural activities or purposes. Mere naming of a society as ' Primary Agricultural Co- operative Society' was not sufficient for claiming deduction under the above section, but the principal or predominant activities of the bank should be in connection with agricultural purposes or for purposes connected with agricultural activities. He, therefore, held that in the light of the factual position, the assessee was not eligible for deduction of Rs. 36,76,329/- u/s 80P(2)(a)(i) of the Act.

5. The assessee carried the matter in appeal before the ld. CIT(A). The assessee submitted that the Assessing Officer has treated the assessee as 'Primary Agricultural Credit Society'. It was submitted that section 80P(4) does not deal with Primary Agricultural Credit Society. In fact, section 80P(4) in the Explanation, defines in cl.(a) 'Co-operative Bank' and ' Primary Agricultural Credit Society' and in cl. (b) 'Primary Co-operative and Rural Development Bank'. Further, in the Explanation to section 80P(4), in clause (a), it has been mentioned that both the terms shall have the meanings assigned to them in Part V of the Banking Regulation Act, 1949 (BR Act). Thus, the assessee does not fall within the meaning of 'Co-operative Bank' or ' Primary Co-operative and Rural Development Bank' so as to fall within cl.(b) to the Explanation. Hence, what is left for consideration is as to under what definition the assessee falls. In other words, whether the assessee falls within the meaning of 'Co- operative Bank' or Primary Agricultural Credit' Society'. It was submitted that under the BR Act, s. 5(cci), Co-operative Bank means "a State Co-operative Bank, a Central Co-operative Bank and a Primary Co-operative Bank". Further s. 5(ccv), a Co-operative Bank means -

(1) The primary object or principal business of which is to provide financial accommodation to its members for agricultural purposes or for purposes connected with agricultural activities(including the marketing of crops) and

(2) The bye-laws of which do not permit admission of any other co-operative society as a member. PROVIDED THAT this sub-clause shall not apply to the admission of a co-operative bank as a member by reason of such Co-operative Bank subscribing to the share capital of such co-operative society out of funds provided by the State Government for the purpose.

14. The ld. CIT(A), after considering the above arguments of the assessee, allowed the claim of the assessee by observing as under:

"6. I have gone through the submissions made by the appellant and the order of the Assessing Officer. The main motto of the appellant is lending for its members. Subs. (4) of Section 80P provides that deduction under the said section shall not be available to any cooperative bank other than a Primary Agricultural Cooperative Credit Society or rural development bank. For the purpose of the said subsection, cooperative bank shall have the meaning assigned to it in Part 5 of the Banking Regulation Act, 1949. *In Part 5 of the* Banking Regulation Act*, cooperative credit means a State Cooperative Bank, a Central Cooperative Bank and a Primary Cooperative bank. From the above section, it is clear that the provisions of Section 80P(4) as 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 cooperative society carrying on credit facility to its members. This view is clarified by Central Board of Direct Taxes vide its clarification No.133/06/07/TPL*

dated 9th May 2007. The difference between Cooperative bank and 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 S. 6 of Banking Regulation Act.	1. As per the bye laws of the cooperative society.
	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 order, gift cheques, lockers, bank guarantees, etc.	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. Cooperative banks can act as clearing agent for cheques, DDs, pay orders and other forms.	3. Society cannot 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)	4. Society is bound to follow the 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 bank.
Use of words	The word 'bank', banking' can be used by a cooperative bank.	The word 'bank' 'banker', 'banking' cannot be used by a cooperative society.

New proviso to Section 80P(4) is brought into the statute for application only to cooperative banks and not to credit cooperative societies. The intention of legislature of bringing in cooperative bank into taxation structure was mainly to bring in par with commercial banks. The Hon'ble ITAT, 'B' Bench, Bangalore in the case of the ACIT, Circle-3(1), Bangalore Vs M/s Bangalore Commercial Transport Credit Cooperative Society Limited held that "the provisions of Section 80P(4) are applicable only to cooperative banks and not to credit cooperative societies". Further, the ITAT, Bangalore 'A' Bench in the case of M/s Yeshwantpur Credit in ITA No.737/Bang/2011 relied on the decision of the ITAT in the case of the ACIT, Circle-3(1), Bangalore Vs M/s Bangalore Commercial Transport Credit Cooperative Society Limited and held that if the assessee is a credit cooperative society, it is entitled to deduction u/s 80P(2)(a)(i). As seen from the facts of the case,

they are identical with those of the observations and findings of the Bangalore Tribunal in the case of the M/s Bangalore Commercial Transport Credit Cooperative Society Limited and is entitled to deduction u/s 80P(2)(a)(i).”

16. We have heard the rival submissions and perused the orders of the lower authorities and materials available on record. In the instant case, deduction claimed u/s 80P of the Act by the assessee was denied by the Assessing Officer on the grounds that firstly, with effect from 1.4.2007 sub-s. (4) of section 80P was inserted to provide that deduction u/s 80P shall not be allowed in case of a Co-operative Bank and secondly, that the assessee has two sets of members (i) normal members who became members by paying Rs. 10/- and Rs. 1/- with voting rights; and (ii) nominal members who became members by paying a nominal amount of Rs. 5/- and Rs. 2/- without voting rights and are the assessee’s customers.

17. On appeal, the ld. CIT(A) allowed the deduction u/s 80P of the Act to the assessee by observing that new sub-s.(4) was brought into the statute for prohibiting deduction to Co-operative Banks only and not to Co-operative Credit Societies. He listed out difference between a Co-operative Society registered under the Banking Regulation Act, 1949 and a Co-operative Society registered under the Karnataka Co-operative Society Act, 1959. The ld. CIT(A) opined that the facts of the instant case were similar to the facts of the case before the Bangalore Bench of the Tribunal in the case of ACIT vs M/s Bangalore Commercial Transport Credit Cooperative Society Ltd and therefore, following the same, he allowed the appeal of the assessee.

18. Before us, the ld.D.R could not point out any specific error in the order of the ld. CIT(A). No material could be brought before us to show that the assessee was a Co-operative Bank within the meaning of sub-s. (4) of section 80P and not a Co-operative Credit Society. No material was brought before us to show that the provision of accepting nominal members was not in accordance with the Co- operative Societies Act or Rules or the persons who were made nominal members were, in fact, not the members of the assessee- society. In the above circumstances, we do not find any good reason to interfere with the order of the ld. CIT(A) which has been passed following the order of the Tribunal as stated in his order and quoted above. Thus, the grounds of appeal of the Revenue are dismissed.

19. The cross objection filed by the assessee is simply in support of the order of the CIT(A). Thus, there being no grievance of the assessee against the order of the CIT(A), the cross objection filed is infructuous and hence, dismissed.

20. In the result, both, the appeal of the Revenue and the cross objection of the assessee are dismissed.

Order pronounced on Friday, the 23rd of August, 2013, at Chennai.

Appeal dismissed

****

ACIT, Belgaum and another v Belgaum District Central Co-operative Bank Limited, Belgaum and another, 2014 Indlaw ITAT 2756

Case No: I. T. A. No. 324/Pnj/2013, I. T. A. No. 378/Pnj/2013, C. O. No. 56/Pnj/2013

Income Tax Appellate Tribunal, Panaji Bench

D. T. Garasia (Judicial Member) & P. K. Bansal (Accountant Member)

Head Note

KCS Act 1959 - (A) Income Tax & Direct Taxes - Income-Tax Act, 1961, Whether, CIT(A) has erred in disallowing interest paid on term deposits in excess of Rs. 10,000/- without making TDS thereby adding Rs. 22,65,75,356/- to income, though same is claimed as exempt u/s. 194A(v) being interest paid to members.

Once the interest payment exceeds that amount the TDS is to be made. Neither in cl. (viia) nor in cl. (i) there is anything to restrict their applicability only to non members and therefore they apply to all depositors. In terms cl. (v) which is general in nature will not apply to the co op bank. The provisions of s. 194A (1)(viia) of the Act is clearly applicable and therefore the 'assessee' has to deduct T.D.S. on income credited or paid in respect of deposits except which falls under that provisions. Appeals dismissed.

Therefore, both the revenue authorities are justified in holding that provisions of s. 80P(4) of the Act is not applicable to co operative bank. Therefore, the addition of Rs. 60,12,920/- is con-firmed. Appeals dismissed.

The Judgment was delivered by D. T. Garasia (Judicial Member)

3. Brief facts of the case are that the assessee is a co-operative bank engaged in carrying on the business of banking. It had obtained necessary license from the Reserve Bank of India for carrying on its banking operations as a District Central Co-operative Bank. The assessee filed its return of income for the year under consideration on 29.9.2010 declaring total income of Rs.13,78,82,700/-. The assessment was completed under section 143(3) of the Act determining the taxable income of Rs.64,63,35,343/-, inter alia, making the following disallowances:

(i) Interest on term deposit in excess of Rs.10,000/- u/s.40(a)(ia) :Rs.22,65,75,356/-

(ii) Int. On receivable on loans & investment but not credited to : Rs.27,58,64,367/-

P & L account

(iii) Dividend income claimed as exempt : Rs. 60,12,920/-

"5.1.3 It is an undisputed fact that the appellant has paid interest on term to the tune of Rs.226575356/- to depositors without deducting tax at sour appellant contended that the provisions of TDS are not attracted in

view of clause (v) of sub-section (3) of section 194A as the interest payments to the extent of Rs,22,65,75,356/- have been made to the members of the bank. In this regard, the AO has interpreted word 'co-operative society' as employed in sec.194A(3)v) to mean co-operative so other than co-operative bank as decided by the TAT, Pune Bench, in Bhagani Nivedt Sahakari bank Ltd v. ACIT 87 TO 569 wherein, the Hon'ble ITAT has held that the term cooperative society' mentioned in section 194A(3)(v) to be interpreted as co-operative soc{et other than co-operative bank. Thus, the AO disallowed the entire interest payments exceeding Rs.20,000/- made to the members and non-members by the appellant bank for the reasons mentioned above.

51.4 On going through the provisions of section 194A(3), it is seen that the Assessing Officer is justified in disallowing the interest payments above the threshold limit of Rs.10,000/- paid to the depositors as the appellant bank had failed to deduct tax at source thereby rendering itself liable for disallowance under section 40(a)(ia) of the IT. Act, 1961. *The submissions of the appellant are not acceptable in view of the decision of Hon'ble Pune ITAT in the case of Bhagani Nivedita Sahakari bank Ltd* 2002 Indlaw ITAT 255 *cited supra wherein, it is clearly held that section 194A(3)(via)(b) makes no distinction between members and non-members of co- operative bank for purpose of deduction of tax at source on interest on time deposits paid/ credited and therefore, co-operative bank would be liable to deduct tax at source under section 194A(1) on interest on time deposits paid/credit to its depositors, it such interest amount exceeded the limit prescribed in proviso to section 194A(3}(i}. Further, the Hon'be Kerala High Court in the case of Mootamattom Clectricity Board Employees Co-op Bank Ltd 238 ITR 630* 1998 Indlaw KER 225 *has made a clear distinction between primary credit society and a coop society engaged in banking business. Thus, section 194A deals with co-op societies engaged in the business of banking, co-operative societies engaged in providing credit facilities to the members, etc. As has been rightly held by the Assessing Officer that the moment the amount paid/credited to any depositor during the year exceeds Rs.10,000, the provisions of section 194A(1) shall apply and the co-operative society engaged in the banking business shall have to deduct tax on such payments. From the facts of the case, it is seen that the Assessing Officer categorically brought out the material on record to prove that the appellant bank is covered by the provisions of sub-clause (b) of clause (i) of Sec.194A(3) as well as the provisions of clause (viia) of Sec.194A(3) which are specific in nature and the appellant cannot put forth its claim under section 194(3)(v) which are general in nature. As the appellant is co-operative society engaged in the business of banking, it is covered under these specific clauses and as has been held by the Hon'ble ITAT, Pune Bench, Pune in Bhagani Nivedita Sahakari bank Ltd v. ACIT (2003)87 lTD 569* 2002 Indlaw ITAT 255 *that the term 'co-op society' in sub-clause (v) to be interpreted as 'co-op society other than cooperative bank, the appellant is liable for TDS provisions under section 194A.*

5.1.5 The appellant's argument that clause(v) to sec.194A(3) may be taken as applying to members and other clauses to the said section may be taken to apply to non members is without any basis in as much as clauses (i) and (viia) apply to both the members as well as non members. Where ever the legislature intends to apply a particular provision to member or to a non member, it has done so expressly.

51.6 Now coming to the circular No.9 of 2002 issued by the CBDT relied upon by the appellant, the Board vide said circular had sought to interpret the definition of word 'member' clarifying that the word 'member does

not include word 'nominal member'. It was held by the Bombay High Court in the case of Jalgaon District Central Co-op Bank Ltd & nr v. Union of India 265 1W 423 (Born), that the Board has no power to interpret the provisions of law by way of circular. The issue at hand of the Bombay High Court was the definition of the word 'member' as appearing in clause (v) of section 194(3) and the powers of the Central Board of Direct Taxes to issue circulars u/s 119 which would override or detract from the provisions of the Income tax Act*, The circular No.9 of 2002 dated 11-09- 2002 issued by the CBDT has been quashed and set aside by the Hon'ble High Court.*

Therefore the circular No.9 of 2002 dated 11-09-2002 issued by the DOPT does not help the case of the appellant. The appellant's reliance on the said circular found to be ill-founded.

9. The short question before us for adjudication, whether or not, the assessee co-operative bank engaged in the banking business is liable for TDS or not. We find that the assessee's case falls under the ambit of sub-clause (b) of clause (i) of sub-section(3) of section 194A and, hence, TDS provisions are attracted. As per the said provisions of sub-clause (b) of clause (i) of section 194A(3) of the Income tax Act, 1961, any co-operative society which is engaged in the business of banking shall have to deduct tax on interest paid or payable to any person on time deposits, if the amounts of said interest exceeds Rs.10,000/-. The status of the assessee is co-operative bank vis-a-vis other co-operative societies. This has become important due to the fact that the assessee had claimed to be an ordinary co- operative society within the meaning of clause (v) of Section 194A(3) of the Act. The co- operative society includes different types of co-operative society in different type of activities. Wherever, the reference is made to any co-operative society, the Income tax Act, 1961 has clearly distinguished and specified the type of co-operative society based on the type of activity carried out. Such a distinction was required as the legislation intends to extend different benefits to different types of co-operative societies through the Income tax Act. The assessee claimed the benefit of sections 36(1)(viia), 269 SS and 269T on the ground that it is a co-operative bank but for availing exemption from TDS under section 194A, it is claiming itself as an ordinary 'co-operative society' within the meaning of section 194A(3)(v) of the Act. We find that this distinguishes the co-operative society and the cooperative society carrying on business of banking. The Hon'ble Kerala High Court in the case of Moolamatom Electricity Board Employees Co-operative Bank Ltd., 238 ITR 630 1998 Indlaw KER 225 has distinguished this. We also rely upon the decision of Hon'ble Jurisdictional Karanataka High Court in the case of CIT vs. Yeshwanthpur Credit Co-operative Society Limited in Income Tax Appeal No.2372012, wherein, the Hon'ble High Court has interpreted the co-operative bank by observing as under:

Nature	Co-operative society registered under Banking Regulation Act, 1949
Co-operative Society registered under Karnataka CO-operative Society Act, 1959	

Registration	Under the Banking Regulation Act, 1949 and Co-operative Societies Act, 1959	Co-operative Societies Act, 1959
Nature of business	1. As defined in Section 6 of Banking Regulation Act.	1. As per the bye laws of the cooperative society.
	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.	2. Society cannot open savings bank account, current account, issue letter of credit, discounting bills of exchange, issue cheque, demand drafts, payorders, gift cheques,lockers, bank guarantees etc.
	3. Co-operative Banks can act as clearing agent for cheques, DDs, pay -orders and other forms.	3. Society cannot act 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)	4. Society are bound by rules and regulations as specified by in the co- operative societies act.
Filing of returns.	Co-operative 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 over all functioning of the Bank	Registrar has the power to inspect accounts and over all functioning of the bank. Part V of the Part V
Part V of the Banking Regulation Act is applicable to co-operative bank		
Part V of the Banking Regulation Act is not applicable to co-operative banks.		
Use of words	The word 'bank' 'banker', 'banking' can be used by a co-operative bank.	The word 'bank' 'banker', 'banking cannot be used by a co-operative society

10. We find also support from the decision of Hon'ble High Court, wherein, it has been held as under:

"If a Co-operative Bank is exclusively carrying 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 rural development bank. The Legislature did not want to deny the said benefit to a primary agricultural credit society or a primary cooperative 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 the amendment. If the assessee is not a Co-operative bank carrying on exclusively banking business and if it does not possess a license from the Reserve Bank of India to carry on business, then 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 facilitates to its members. The object of the aforesaid amendment is not to exclude the benefit extended under Section 80P(i) to the society."*

12. From the judgements of Hon'ble Jurisdictional Karnataka High Court in the case of Yeshwanthpur Credit Co-operative Society Limited (supra) and Hon'ble Kerala High Court in the case of Moolamatom Electricity Board Employees Co-operative Bank Ltd 1998 Indlaw KER 225 (supra), we are of the view that the co-operative society and co-operative society carrying on business of banking are on different footing. The AO has also referred the explanatory notes to Finance (No.2) Act, 1991 given in the circular No.621 dated 19.12.1991 which among others, provides that "with a view to improving tax compliance, Section 194A of the Act has been amended to secure deduction of tax at source from interest on time deposits with the aforesaid banking companies and co-operative societies engaged in carrying on the business of banking" . Since the assessee bank is covered by the provisions of said clause (b) of clause (i) of section 194A(3) as well as provisions of clause (a) of said section, which are specific in nature, we hold that the assessee is not entitled for benefit by arguing that section 194A(3) is specific in nature. We find that wherever there is specific provision, it override the general provision. For this proposition, we rely upon the decision of the Jurisdictional Karnataka High Court in the case of M.L.Vasudeva Murthy and Sons and others vs.Joint Commissioner of Agricultural Income tax, 198 ITR 426(KAR) 1991 Indlaw KAR 176. The Hon'ble Supreme Court in the case of South Indian Corpn. (P) Ltd. vs. Secretary, Board of Revenue AIR 1964 SC 207 1963 Indlaw SC 357 has held that "a special provision should be given to the extent of its scope leaving the general provision to control cases where the special provision does not apply" Therefore, we are of the view that in this case, assessee's case is covered by the provisions of clause (i) and (va) which are the general provisions of clause (v) of Section 194A(3) of the Act.

16. The Assessing Officer noticed that the assessee had credited gross dividend receipts of Rs. 60,12,920/- to the P & L account and claimed the said income as exempt from tax in the statement of computation of income. The assessee did not give any reason for claiming the dividend income of Rs. 60,12,920/-as exempt. As per the provision of Sec. 80P(4) were inserted w.e.f. 01.03.2007 i.e. from AY 2007-08, which state that the provisions of Sec. 80P shall not apply in relation to any cooperative bank. Thus as per the law, a Co-operative bank shall not get any deduction u/s 8OP. Before the AO, the Authorised Representative has contended that these dividends received from another Co-operative Society are exempt u/s 80P(2)(d). The AO was of the view that since the assessee is a Co-operative bank, in view of the overriding provisions of Sec.(4), deduction u/s 80P is not available to the assessee and for that reason it is not entitled to any deduction of dividend income

from its gross total income u/s 80P(2)(d). The AO observed that the assessee had without any basis claimed the dividend income of Rs. 60,12,920/- was exempt from tax and, accordingly, he taxed the income of Rs. 60,12,920/- and added the same to the total income of the assessee. On appeal, ld CIT (A) confirmed the AO's action.

17. During the course of hearing, ld A.R. has not given any submission on this issue. Therefore, we are of the view that both the revenue authorities are justified in holding that provisions of section 80-P(4) is not applicable to co-operative bank. Therefore, the addition of Rs. 60,12,920/- is confirmed.

18. The revenue in its appeal is aggrieved by the decision of ld CIT(A) in deleting the addition of Rs.27,58,64,367/- on account of accrued interest on loans.

19. Facts are that the AO noticed that assessee bank was following hybrid system or mixed system of accounting to compute the net income from the banking business but the AO observed that the audit report in Form No.3CD at column No.11(a) highlights this point as "mercantile system". In view of this, the assessee was asked to clarify on the method of accounting. In reply thereto, assessee submitted that as per RBI guidelines, the assessee was not following the accrual system of accounting in respect of standard assets, bad and doubtful assets. However, the AO rejected the contention of the assessee and disallowed the addition of Rs.27,58,64,357/-. On appeal, ld CIT(A) following the judgement of Hon'ble Apex Court in the case of UCO Bank vs CIT,237 ITR 889(SC) 1999 Indlaw SC 107 deleted the disallowance made by the AO. Hence, this appeal by the revenue.

20. After hearing both the sides, we find that this issue is squarely covered by the decision of Hon'ble Supreme Court in the case of Uco Bank 1999 Indlaw SC 107 (supra), wherein, the Hon'ble apex Court has held that interest accrued on sticky advances which was not brought in profit and loss account but taken to separate suspense account should be added as income only when actually received, which is in the case of the assessee. Therefore, respectfully following the decision of Hon'ble Supreme Court in the case of Uco Bank 1999 Indlaw SC 107 (supra), we uphold the order of ld CIT(A) in deleting the addition of Rs. Rs.27,58,64,357/-.

21. The cross objection of the assessee is in support of the order of ld CIT(A) in respect of deletion of Rs.27,58,64,357/- on account of accrued interest on loans. Since, we have uphold the order of ld CIT(A) on this issue, the cross objection is rendered infructuous.

22. In the result, appeal filed by the assessee and revenue are dismissed. The cross objection filed by the assessee is also dismissed.

Pronounced in the open court on 14/11/2014 -

Appeals dismissed

****

Andhra Pradesh Mahesh Coop. Urban Bank Limited, Hyderabad v D. C. I. T., Circle 2(3) Hyderabad, 2014 Indlaw ITAT 2229

Case No: ITA No. 1957/Bang/2018

Income Tax Appellate Tribunal, Hyderabad Bench

B Ramakotaiah (Accountant Member) & Asha Vijayaraghavan (Judicial Member)

Head Note :

KCS Act 1959 – Direct and Indirect Tax

The issue should go back the CIT (A) for fresh decision in the light of the discussion in the order and hence the CIT(A) was set aside for fresh decision – the assessee as to obtain and produce the certificate from the Reserve Bank India regarding the nature of business of assessee. If it is found that as per the said certificate of RBI, the assessee's business is of a co-operative bank then the assessee is not eligible for deduction under Sec.80P – appeal allowed – remanded

The Judgment was delivered by Arun Kumar Garodia (Accountant Member)

2. The grounds raised by the assessee as per concise grounds of appeal are as under.

"1. On the facts and circumstances of the case and in law, order of the learned Commissioner of Income Tax (Appeals), Gulbarga ('CIT-A') is prejudicial to the interests of the Appellant, is bad and erroneous in law and against the facts and circumstances of the case.

2. On the facts and circumstances of the case, the learned CIT-A, failed to consider the submissions dated 11.11.2014 filed by the Appellant before the Assessing Officer on 19.11.2014 and resorted to pass the impugned order, therefore, the order passed is without affording the Appellant a reasonable opportunity of being heard and thereby violated the principles of natural justice.

3. On the facts and circumstance of the case, the learned CIT-A had failed to appreciate that the Appellant is a Primary Agricultural Credit Society and was dealing only with its members by providing the credit facilities to them. Therefore, in the facts of the case, the decision of Hon'ble jurisdictional High Court passed in the case of Tumkur Merchants Souharda Credit Cooperative Ltd. v. ITO reported in [TS-5931-HC-2014 (Karnataka)-O] is applicable.

4. The learned CIT-A has erred in upholding the judgment relied upon by the learned AO which are distinguishable from the facts of the Appellant case on hand. Thus, it is respectfully submitted that the ratios of judgment of the Hon'ble Apex Court in the case of Totgars Cooperative Sale Society Limited v. ITO reported in [TS-5012-SC-2010-O] and The Citizens Cooperative Limited v. ACIT reported in [TS-5136-SC-2017-O] is not applicable to the facts of the present case on hand. Therefore, the impugned order is not legally not sustainable and liable to be set aside as void.

5. The learned CIT-A erred in holding that the interest earned on term deposits held with Bank is liable to be taxed under the act. Without appreciating the nature of the transaction of the Appellant and fact of the case,

the order levying of tax by the authority is against the settled principles of law and is in gross violation of the following decisions of the Hon'ble Jurisdictional High Court and therefore, liable to be quashed:

a. Tumkur Merchants Souharda Credit Cooperative Ltd. v. ITO [TS-5931-HC-2014 (Karnataka)-O];

b. CIT v. Shree Mahila Credit Souharda Sahakari Limited [TS-5541-HC-2017(Karnataka)-O];

c. CIT v. Sri Biluru Gurubasava Pattina Sahakari Sangha Niyamitha, Bagalkot [TS-393-HC-2014(Karnataka)-O];

d. PCIT and Another v. Totgars Co-operative Sale Society [TS-5548-HC-2017(Karnataka)-O]; and

e. Shree Siddeshwar Souhardhana Sahakari Niyamit v. ITO, Bagalkot [TS-5361-HC-2015(Karnataka)-O]

6. It is submitted that the Hon'ble Bangalore Bench of ITAT in the case of Basavaraj CEO, Primary Agriculture Credit Cooperative Society Ltd v. CIT reported in [TS-6073-ITAT-2017(Bangalore)-O] by relying on the judgment passed by the Hon'ble Apex Court in the case of Cambay Electric Supply Industrial Co. Ltd. v. CIT reported in [TS-5004-SC-1978-O] has held that the word "attributable to" is certainly wider in import than the expression "derived from". The Hon'ble Bench has further held that if a Cooperative Society earns interest by depositing the income earned from providing credit facilities to its members or the capital, if not immediately required for lending, the said interest income earned is liable to be deducted under Section 80P of the Act. Similar view is upheld by the Hon'ble High Court of Andhra Pradesh in CIT v. Andhra Pradesh State Cooperative Bank Ltd reported in [TS-294-HC-2011(AP)-O].

7. The Hon'ble Cochin Bench of the ITAT in the case of ITO v. Edanad Kannur SCB Ltd. reported in [TS-5009-ITAT-2018(Cochin)- O] followed the decision of Hon'ble High Court of Kerala in Chirakkal Service Co-operative Bank Limited reported in TS-5269-HC-2016(Kerala)-O and distinguished the decision of Hon'ble Apex Court passed in the case of Citizen Cooperative Society Ltd reported in [TS-5136-SC-2017-O] and observed that section 3 of the Banking Regulation Act, 1949 *shall not apply to Primary Agricultural Societies and rejected the Revenue's contention of relying on the ratio laid down by the Hon'ble Apex Court in Citizens case.*

8. In this connection reference may also be made to the decision of the Hon'ble Bangalore Bench of ITAT in the case of Primary Agricultural Credit Coop. Bank Ltd v. ITO reported in [TS-5782-ITAT-2018(Bangalore)-O] has categorically held that the Hon'ble jurisdictional High Court in its recent judgment passed in the case of PCIT and Another v. Totgars Co-operative Sale Society as reported in [TS-5548-HC-2017(Karnataka)-O] has distinguished the facts as held in the Totgars recent judgment. Therefore, the judgment is not applicable in the present case as there are dissimilarities in the facts of the case. Thus, the present impugned order suffers from factual and legal infirmities and therefore, it is liable to quashed.

3. Brief facts are that as per para no. 7 of the order of CIT(A), the revenue has decided the issue against the assessee following the judgement of Hon'ble Apex Court rendered in the case of Totagars' Co-operative Sales Society Ltd. Vs. ITO as reported in 322 ITR 283(SC). In the same Para of his order on page no. 11, he has also referred to another judgement of Hon'ble Apex Court rendered in the case of Citizen Co-operative Society as

reported in TS-326-SC-2017 dated 16.08.2017 and thereafter, in Para 7.1 of his order, ld. CIT(A) has given finding that considering these two judgements of Hon'ble Apex Court rendered in the case of Totagars' Co-operative Sales Society Ltd. Vs. ITO (supra) and Citizen Co-operative Society (supra), the assessee is not eligible for deduction u/s. 80P(2)(d) of IT Act. The ld. AR of assessee submitted that in the present case, another judgment of Hon'ble Karnataka High Court rendered in the case of Tumkur Merchants Souharda Credit Cooperative Ltd. Vvs ITO as reported in 230 Taxman 309 is applicable. Regarding this aspect that whether the assessee is a co-operative bank or not, he submitted that as per para 24 of this judgement of Hon'ble Apex Court in the case of Citizen Co-operative Society (supra), it was held that in order to hold that the assessee society is a co-operative bank, it should be established that such assessee co-operative society is holding license from Reserve Bank of India. At this juncture, it was pointed out by the bench that in the same para of this judgement of Hon'ble Apex Court, it is also noted that in that case, the assessee does not possess license from RBI and the RBI has itself clarified that the business of the assessee does not amount to that of a co-operative bank. It was pointed out that in the facts of present case also, the assessee should obtain certificate from RBI regarding the nature of business carried on by the assessee. It was also observed by the bench that before following the judgement of Hon'ble Karnataka High Court rendered in the case of Tumkur Merchants Souharda Credit Cooperative Ltd. Vs. ITO (supra), it has to be ascertained as to whether facts of the present case are in line with the facts in that case or the facts of the present case are in line with the facts in the case of Totagars' Co-operative Sales Society Ltd. Vs. ITO (supra) as per the judgement of Hon'ble Apex Court rendered in that case. In reply, it was submitted by ld. AR of assessee that the matter may be restored back to the file of CIT (A) for fresh decision and if this is done then the assessee will produce the certificate from RBI regarding the nature of business activity of the assessee and also submit the facts before CIT (A) to establish that the facts of present case are in line with the facts in the case of Tumkur Merchants Souharda Credit Cooperative Ltd. Vs. ITO (supra). The ld. DR of revenue supported the orders of authorities below.

4. I have considered the rival submissions. In my considered opinion, this issue should go back to the file of CIT (A) for fresh decision in the light of above discussion and hence, I set aside the order of CIT (A) and restore the matter back to his file for fresh decision with the direction that on this issue whether the assessee is a co-operative bank or not, the assessee has to obtain and produce the certificate from Reserve Bank of India regarding the nature of business of the assessee. If it is found that as per the said certificate of RBI, the assessee's business is of a co-operative bank then the assessee is not eligible for deduction u/s. 80P. If the assessee is not a co-operative bank as per this certificate of RBI then regarding the claim of the assessee for deduction u/s. 80P(2)(d), the facts of present case should be examined in the light of these two judgements of Hon'ble Karnataka High Court rendered in the case of Tumkur Merchants Souharda Credit Cooperative Ltd. Vs. ITO (supra) and the judgement of Hon'ble Apex Court rendered in the case of Totagars' Co-operative Sales Society Ltd. Vs. ITO (supra) and if it is found that the facts of the present case are in line with the facts in the case of Tumkur Merchants Souharda Credit Cooperative Ltd. Vs. ITO (supra), then the issue should be decided in favour of the assessee and if the facts of the present case are in line with the facts in the case of Totagars' Co-operative Sales Society Ltd. Vs. ITO (supra), then the issue should be decided against the assessee. Needless to say, ld. CIT(A) should pass necessary order as per law as per above discussion after

providing adequate opportunity of being heard to both sides. In view of this decision, no separate adjudication on any other ground is called for.

5. In the result, the appeal filed by the assessee stands allowed for statistical purposes.

Appeal allowed

****

Bagalkot District State Government Employees Co-operative Credit Society Limited, Sector No.21, Navanagar, Bagalkot v Income Tax Officer, Ward 1, Bagalkot, 2014 Indlaw ITAT 1980; [2014] 36 ITR (Trib) 248

Case No: ITA No. 1355/Bang/2013

Income Tax Appellate Tribunal, Bangalore Bench "C"

N. V. Vasudevan (Judicial Member) & Abraham P. George (Accountant Member)

Head Note

KCS Act 1959 - Income Tax & Direct Taxes - Income Tax Act,1961, ss.80P(4),80P(2)(a)(i),(ii) - Claim of deduction - Entitlement - Assessee-co-operative society was engaged in providing credit facility to its members and it had claimed deduction u/s.80P(2)(a)(i) of the Act - Whether assessee is entitled to claim deduction u/s.80P(2)(a)(i) of the Act.

Sec.80P(4) of the Act is applicable only to cooperative banks and not to credit cooperative societies. 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 s.80P(4) of the Act will not have application in the assessee's case. Therefore, assessee is entitled to deduction u/s.80P(2)(a)(i) of the Act. Appeal allowed.

Ratio - When assessee is lawfully entitled to claim deduction, then no authority is justified in denying same.

The Judgment was delivered by N. V. Vasudevan (Judicial Member)

2. The assessee is a co-operative society registered under the Karnataka State Co-operative Societies Act, 1959. It is engaged in providing credit facility to its members. The assessee had claimed deduction u/s. 80P(2)(a)(i) of the Act. 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-s. (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."

7. At the time of hearing, it was noticed that the issue raised by the assessee in these appeals 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.

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."

8. 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) (viia) 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 "cooperative 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-s. (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".

9. Our attention was invited to a recent 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, wherein 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.

10. In view of the aforesaid decisions, we set aside the order of the CIT(Appeals) and hold that the assessee is a co-operative society entitled to claim deduction u/s. 80P(2)(a)(i) of the Act. It is ordered accordingly.

11. In the result, the appeal by the assessee is allowed.

Appeal allowed

****

Belgaum Merchants Co-operative Credit Society Limited v Income Tax Officer, 2014 Indlaw ITAT 63

Income Tax Appellate Tribunal, Panaji Bench

P. K. Bansal (Accountant Member), D. T. Garasia (Judicial Member)

Head Note

Karnataka Co-operative Societies Act, 1959 - Income Tax & Direct Taxes - ss. 80P(2)(a)(i), 80P(4) - - Co-operative society - Taxable Income - Determination - Assessee was co-operative society registered 1959 Act and had filed return, AO did not allow deduction to assessee u/s. 80P(2)(a)(i) of 2006 Act and income was assessed - Whether order passed by appellant authority was justified and in accordance with law –

The paid up share capital and reserves of assessee was more than Rs. 1 lac - Further, HC noted that bye law 13 to 20 dealt with membership and None of bye laws permitted admission of any other cooperative society to be member of impugned society - Hence, all three conditions in case of assessee for becoming primary cooperative bank stood complied with - Appeal dismissed.

The Judgment was delivered by : P. K. Bansal (Accountant Member)

2. The brief facts of the case are that the Assessee is a co-operative society registered under the Karnataka State Co-operative Societies Act. The Assessee filed return declaring gross total income of Rs.11,22,267/- and claimed deduction u/s 80P(2)(a)(i) and therefore net taxable income was shown to be "nil?. The AO did not allow the deduction to the Assessee u/s 80P(2)(a)(i) and the income was assessed at Rs.11,47,260/-. The AO while denying the deduction to the Assessee u/s 80P(2)(a)(i) took the view that the Assessee is a primary co-operative bank and therefore provisions of Sec. 80P(4) are applicable in the case of the Assessee. The Assessee went in appeal before the CIT(A). CIT(A) dismissed the appeal of the Assessee.

From the plain reading of Sec. 80P(2)(a)(i) it is apparent that if the co-operative society is engaged in carrying

of business of banking or providing credit facilities to its members, the co-operative society is entitled for deduction on whole of the income relating to any one or more of such business. From the reading of Sec. 80P(4) it is apparent that this section denies deduction to a co- operative bank other than a primary agricultural credit society or primary co- operative agricultural and rural development bank. The provisions of Sec. 80P(4) was introduced in the statute by the Finance Act, 2006 w.e.f. 1.4.2007. The explanation to the section defines the co-operative bank and primary agricultural credit society to have the same meaning as assigned to them in Part- V of the Banking Regulation Act, 1949. It is not the case of either of the parties that the Assessee is a primary co-operative agricultural and rural development bank. It is also not the claim of the Assessee that Assessee is a primary agricultural credit society. If we read both the sections, Sec. 80P(2)(a)(i) and Sec. 80P(4) together, we find that the provisions of Sec. 80P(4) mandates that the provisions of Sec. 80P will not apply to any co-operative bank other than a primary agricultural credit society or primary co-operative agricultural and rural development bank but as per the provisions of Sec. 80P(2)(a)(i), a co-operative society engaged in carrying on the business of banking or providing credit facilities to its members is entitled for deduction. After the insertion of Sec. 80P(4), the provisions of Sec. 80P(2)(a)(i) were not amended, rather the co- operative society engaged in carrying on business of banking facilities to its members continued to be entitled for deduction u/s 80P(2)(a)(i). This pre- supposes that every co-operative society engaged in carrying on business of banking cannot be regarded to be a co-operative bank. The embargo put u/s 80P(4) are applicable only to a co-operative bank. In our opinion, it cannot be said that a co-operative society cannot carry on business of banking facilities to its members even if it is not a co-operative bank. If we read the provisions in the manner that every co-operative society engaged in carrying on business of banking even for its members is regarded to be a co-operative bank, then, the provisions of Sec. 80P(2)(a)(i) will become redundant. Therefore, in our opinion, before deciding the issue whether the Assessee is entitled for deduction u/s 80P(2)(a)(i), it is essential to decide whether the Assessee is a co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank.

In case it is found that the Assessee is a co-operative bank, the Assessee will not be entitled for deduction as stipulated u/s 80P(2)(a)(i) but in case the Assessee is not a co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank, the provisions of Sec. 80P(2)(a)(i) will be applicable to the Assessee provided the Assessee is engaged in carrying on business of banking or providing credit facilities to its members.

2.3.1 In our opinion, Sec. 80P(2)(a)(i) provides two types of activities in which the co-operative society must be engaged to be eligible for deduction under sub- cl. (i). These two activities are not alternate ones because the section allows deduction to the co-operative society on the whole of profits and gains of business attributable to any one or more of such activities. This pre-supposes that eligible co-operative society can carry on either one of these two businesses or can carry both these businesses for the members. If the Assessee co-operative society carries on one or both of the activities, it will be eligible for deduction. These two activities are (a) co-operative society engaged in carrying on business of banking facilities to its members or (b) co-operative society engaged in providing credit facilities to its members. Both the activities must be carried on by the co-operative society for its members. If a co-operative society is engaged in carrying on these activities/

facilities for the persons other than its members, the co-operative society, in our opinion, will not be eligible for deduction u/s 80P(2)(a)(i) on the income which it derives from carrying on the activities not relating to its members. Therefore, where a co-operative society is engaged in carrying on business of banking facilities to its members and to the public or providing credit facilities to its members or to the public, the income which relates to the business of banking facilities to its members or providing credit facilities to its members will only be eligible for deduction u/s 80P(2)(a)(i). There is no prohibition u/s 80P not to allow deduction to such co- operative societies in respect of business relating to its members.

The relevant portion of the remand report reads as under :

"Thus, it is clear that the assessee society accepts deposits from other members i.e. non-members."

The deposits so accepted are used by the Assessee co-operative society for lending or investment. This fact has not been denied. Even out of the deposits so received, the loans have been given to the members of the society in accordance with the objects as enumerated above. Thus, in our opinion, condition no. 1 stands satisfied and it cannot be said that the Assessee society was not carrying on banking business as it was accepting deposits from the persons who were not members. So far as the second condition is concerned, there is no dispute that the paid up share capital and reserves in the case of the Assessee is more than Rs. 1 lac. Therefore, the Assessee satisfies the second condition. So far as the third condition is concerned, we noted that Sec. 16 of The Karnataka State Co-operative Societies Act, 1959 permits admission of any other co-operative society as a member.

(2) No co-operative society shall, without sufficient cause, refuse admission to membership to any person duly qualified therefor under the provisions of this [Act, rules and bye-laws]"

The aforesaid provision of Sec. 16 mandates admission of any other co- operative society as a member of the co-operative society. The word used in Sec. 16(1) is "shall?. This fact is clarified further by sub-s. (2) as re- produced hereinabove that no co-operative society shall refuse admission to the membership, without sufficient reason, to any person who is qualified to become member under the provisions of this Act, rules and bye-laws. This clearly proves that in case the rules and bye-laws of the other co-operative society provides otherwise, the co-operative society may not be admitted as a member of the co-operative society. The person, as per sub-section (2), must be qualified for becoming member not only u/s 16(1) but also as per the rules and bye-laws of the co-operative society. We cannot read sub-s. (2) in the manner that the rules and bye-laws cannot permit the admission of any other co- operative society as a member of the co-operative society. Had that been the intention of the legislature, they would have not used the words "this Act, rules and bye-laws" in sub-s. (2).

2.3.8 We have gone through the decision of the Hyderabad bench of this Tribunal in the case of The Citizen Cooperative Society vs. Addl. CIT (supra). We noted that this decision is not applicable to the facts of the case before us. In this decision, under para 23 the Tribunal has given a finding that the Assessee is carrying on banking business and for all practical purposes it acts like a co-operative bank. The Society is governed by the Banking Regulations Act. Therefore, the society being a co-operative bank providing banking facilities

to members is not eligible to claim deduction u/s 80P(2)(a)(i) after the introduction of sub-s. (4) to section 80P. In view of this finding, the Assessee was denied deduction u/s 80P(2)(a)(i). We have also gone through the decision of the Bangalore Bench of the Tribunal in the case of ITO vs. Divyajyothi Credit Co-operative Society Ltd. (supra) in ITA No. 72/Bang/2013. In this case, we noted that the Hon'ble Tribunal confirmed the order of CIT(A) following the decision of the Tribunal in the case of ACIT, Circle 3(1), Bangalore vs. M/s. Bangalore Commercial Transport Credit Co-operative Society Ltd. in ITA No. 1069/Bang/2010 holding that Sec. 80P(2)(a)(i) is applicable only to a co-operative bank and not to credit co-operative society. With due regards to the Bench, we are unable to find any term "credit co- operative society? u/s 80P(2)(a)(i) or u/s 80P(4), therefore, this decision cannot assist us. We noted that the Hon'ble Gujarat High Court in the case of CIT vs. Jafari Momin Vikas Co-op. Credit Society Ltd. in Tax Appeals no. 442 of 2013, 443 of 2013 and 863 of 2013 (supra) vide order dt. 15.1.2014 took the view that Sec. 80P(4) will not apply to a society which is not a co-operative bank. In the case of Vyavasaya Seva Sahakara Sangha vs. State of Karnataka & Ors. 1990 Indlaw KAR 166 (supra) we noted that the issue before the Hon'ble High Court in the Writ Petition filed by the Petitioner related to the legislative competence of the State Legislature for issuing a circular. The issue does not relate to the claim of deduction u/s 80P(2)(a)(i). While dealing with this issue, the Hon'ble High Court under para 12 observed as under :

"12. It is not possible to accept this contention. The petitioners are not the banking institutions coming under the purview of the Banking Regulation Act*. They are the co-operative societies registered under the Act, and as such they are governed by the provisions of the Act passed by the State Legislature. Consequently, the State Government has control over them to the extent the Act permits. Major activities of the petitioners are to finance its members. For the purpose of financing its members, they borrow money from the financing agencies and repay the same. Merely because the petitioners-the co-operative societies in question-are required to advance loans to their members, they do not cease to be co-operative societies governed by the Act nor can they be treated as banking companies. It is also not possible to hold that these activities of the petitioners amount to "banking" as contemplated under the* Banking Regulation Act, 1949*, inasmuch as these co- operative societies are not established for the purpose of doing "banking" as defined in s. 5(b) of the* Banking Regulation Act, 1949*."*

This decision, in our opinion, is not applicable to the case before us because the provisions of Sec. 80P(2)(a)(i), as we have already held in the preceding paragraphs, are applicable to a co-operative society which is engaged in carrying on banking business facilities to its members if it is not a co-operative bank. We have also gone through the decision of this Bench in the case of DCIT vs. Jayalakshmi Mahila Vividodeshagala Souharda Sahakari Ltd. in ITA No. 1 to 3/PNJ/2012 dt. 30.3.2012 (supra), for which the undersigned is the author. While discussing this issue, after analysing the aims and objects of the co-operative society under para 12 of its order, this Tribunal has held as under :

"12. From the aforesaid objects, it is apparent that none of the aims and objects allows the assessee cooperative society to accept deposits of money "from public for the purpose of lending or investment. In our opinion until and unless that condition is satisfied, it cannot be said that the prime object or principal business of the

assessee is banking business. Therefore, the assessee will not comply with the first condition as laid down in the definition as given u/s. 5(ccv) of the Banking Regulation Act, 1959 *for becoming "primary cooperative bank". The assessee, therefore, cannot be regarded to be primary cooperative bank and in consequence thereof, it cannot be a co-operative bank as defined under part V of the* Banking Regulation Act 1949. *Accordingly, in our opinion the provisions of section 80P (4) read with explanation there under will not be applicable in the case of the assessee. The assessee, therefore, in our opinion will be entitled for the deduction u/s 80P(2)(a)(i). We accordingly confirm the order of CIT(A) allowing deduction to the assessee."*

2.3.9 The other decisions as relied on by Ld. AR are also not applicable on the facts of the case before us.

3. In the result, the appeal filed by the Assessee is dismissed.

Appeal dismissed

****

Brahmanath Co-operative Credit Society Limited, Belgaum v Income Tax Officer, Belgaum, 2014 Indlaw ITAT 3377; [2015] 152 ITD 615

Income Tax Appellate Tribunal, Panaji Bench

P. K. Bansal (Accountant Member), D. T. Garasia (Judicial Member)

Head Note

KCS Act 1959 - Income Tax & Direct Taxes - Income Tax Act,1961, s.80P(2)(a)(i), 80P(4) - Determination of status - Denial of deduction - Whether Assessee is co-operative bank and denial of deduction u/s.80P(2)(a)(i) of the Act is valid.

Assessee has to be regarded to be primary co-operative bank as all three basic conditions are complied with, it is co-operative bank and provisions of s.80P(4) of the Act are applicable in the case of Assessee and thus, assessee is not entitled for deduction u/s.80P(2)(a)(i). Appeal dismissed.

Ratio - Deduction u/s.80P(2)(a)(i) of the Act is allowable to co-operative society which is engaged in carrying on banking business facilities to its members but not co-operative bank.

The Judgment was delivered by P. K. Bansal (Accountant Member)

2. The brief facts of the case for the assessment year 2009-10 are that the Assessee is a co-operative society registered under the Karnataka State Co- operative Societies Act. The Assessee filed return declaring gross total income of Rs.10,70,982/- and claimed deduction u/s 80P(2)(a)(i) and therefore net taxable income was shown to be "nil". The AO did not allow the deduction to the Assessee u/s 80P(2)(a)(i) and the income was assessed at Rs.10,70,982/-. The AO while denying the deduction to the Assessee u/s 80P(2)(a)(i) took the view that the Assessee is a primary co-operative bank and therefore provisions of Sec. 80P(4) are applicable in the case of the Assessee. The Assessee went in appeal before the CIT(A). CIT(A) dismissed the appeal of the Assessee but did not allow deduction u/s 80P (2) (a) (i).

2.3.1. In our opinion, Sec. 80P(2)(a)(i) provides two types of activities in which the co-operative society must be engaged to be eligible for deduction under sub- clause (i). These two activities are not alternate ones because the section allows deduction to the co-operative society on the whole of profits and gains of business attributable to any one or more of such activities. This pre-supposes that eligible co-operative society can carry on either one of these two businesses or can carry both these businesses for the members. If the Assessee co-operative society carries on one or both of the activities, it will be eligible for deduction. These two activities are (a) co-operative society engaged in carrying on business of banking facilities to its members or (b) co-operative society engaged in providing credit facilities to its members. Both the activities must be carried on by the co-operative society for its members. If a co-operative society is engaged in carrying on these activities/facilities for the persons other than its members, the co-operative society, in our opinion, will not be eligible for deduction u/s 80P(2)(a)(i) on the income which it derives from carrying on the activities not relating to its members. Therefore, where a co-operative society is engaged in carrying on business of banking facilities to its members and to the public or providing credit facilities to its members or to the public, the income which relates to the business of banking facilities to its members or providing credit facilities to its members will only be eligible for deduction u/s 80P(2)(a)(i). There is no prohibition u/s 80P not to allow deduction to such co- operative societies in respect of business relating to its members.

2.3.8. We have gone through the decision of the Hyderabad bench of this Tribunal in the case of The Citizen Cooperative Society vs. Addl. CIT (supra). We noted that this decision is not applicable to the facts of the case before us. In this decision, under para 23 the Tribunal has given a finding that the Assessee is carrying on banking business and for all practical purposes it acts like a co-operative bank. The Society is governed by the Banking Regulations Act. Therefore, the society being a co-operative bank providing banking facilities to members is not eligible to claim deduction u/s 80P(2)(a)(i) after the introduction of sub-section (4) to section 80P. In view of this finding, the Assessee was denied deduction u/s 80P(2)(a)(i). We have also gone through the decision of the Bangalore Bench of the Tribunal in the case of ITO vs. Divyajyothi Credit Co-operative Society Ltd. (supra) in ITA No. 72/Bang/2013. In this case, we noted that the Hon'ble Tribunal confirmed the order of CIT(A) following the decision of the Tribunal in the case of ACIT, Circle 3(1), Bangalore vs. M/s. Bangalore Commercial Transport Credit Co-operative Society Ltd. in ITA No. 1069/Bang/2010 holding that Sec. 80P(2)(a)(i) is applicable only to credit co-operative society a and not to co-operative bank. With due regards to the Bench, we are unable to find any term 'credit co- operative society' u/s 80P(2)(a)(i) or u/s 80P(4), therefore, this decision cannot assist us. We noted that the Hon'ble Gujarat High Court in the case of CIT vs. Jafari Momin Vikas Co-op. Credit Society Ltd. 2014 Indlaw GUJ 639 in Tax Appeals no. 442 of 2013, 443 of 2013 and 863 of 2013 (supra) vide order dt. 15.1.2014 took the view that Sec. 80P(4) will not apply to a society which is not a co-operative bank. In the case of Vyavasaya Seva Sahakara Sangha vs. State of Karnataka & Ors. (supra) we noted that the issue before the Hon'ble High Court in the Writ Petition filed by the Petitioner related to the legislative competence of the State Legislature for issuing a circular. The issue does not relate to the claim of deduction u/s 80P(2)(a)(i). While dealing with this issue, the Hon'ble High Court under para 12 observed as under :

"12. It is not possible to accept this contention. The petitioners are not the banking institutions coming under

the purview of the Banking Regulation Act*. They are the co-operative societies registered under the Act, and as such they are governed by the provisions of the Act passed by the State Legislature. Consequently, the State Government has control over them to the extent the Act permits. Major activities of the petitioners are to finance its members. For the purpose of financing its members, they borrow money from the financing agencies and repay the same. Merely because the petitioners-the co-operative societies in question-are required to advance loans to their members, they do not cease to be co-operative societies governed by the Act nor can they be treated as banking companies. It is also not possible to hold that these activities of the petitioners amount to "banking" as contemplated under the* Banking Regulation Act, 1949*, inasmuch as these co- operative societies are not established for the purpose of doing "banking" as defined in section 5(b) of the* Banking Regulation Act, 1949*."*

This decision, in our opinion, is not applicable to the case before us because the provisions of Sec. 80P(2)(a)(i), as we have already held in the preceding paragraphs, are applicable to a co-operative society which is engaged in carrying on banking business facilities to its members if it is not a co-operative bank. We have also gone through the decision of this Bench in the case of DCIT vs. Jayalakshmi Mahila Vividodeshagala Souharda Sahakari Ltd. in ITA No. 1 to 3/PNJ/2012 dt. 30.3.2012 (supra), for which the undersigned is the author. While discussing this issue, after analysing the aims and objects of the co-operative society under para 12 of its order, this Tribunal has held as under :

"12. From the aforesaid objects, it is apparent that none of the aims and objects allows the assessee cooperative society to accept deposits of money 'from public for the purpose of lending or investment. In our opinion until and unless that condition is satisfied, it cannot be said that the prime object or principal business of the assessee is banking business. Therefore, the assessee will not comply with the first condition as laid down in the definition as given u/s. 5(ccv) of the Banking Regulation Act, 1959 *for becoming "primary cooperative bank". The assessee, therefore, cannot be regarded to be primary cooperative bank and in consequence thereof, it cannot be a co-operative bank as defined under part V of the* Banking Regulation Act 1949*. Accordingly, in our opinion the provisions of section 80P (4) read with explanation there under will not be applicable in the case of the assessee. The assessee, therefore, in our opinion will be entitled for the deduction u/s 80P(2)(a)(i). We accordingly confirm the order of CIT(A) allowing deduction to the assessee."*

We have also gone through the decision of ACIT vs Palhawas Primary Agriculture Co-operative Society Ltd, 23 Taxman.com 318 (Delhi). Section 80P(4) clearly excludes primary agriculture credit society from its domain. Therefore this decision will not assist the assessee. We have also gone through the decision of Pune Bench in the case of ITO vs Jankalyan Nagri Sahakari Pad Sanstha Ltd, 24 Taxman.com 127 Pune. This we have already stated that section 80P(2)(a)(i) no where talks of co-operative credit society and therefore the distinction made under the Banking Regulation Act cannot be imported u/s 80P(2)(a)(i). This decision in our opinion will not assist the assessee.

2.3.9. We, therefore, in view of our aforesaid discussion hold that the Assessee has to be regarded to be a primary co-operative bank as all the three basic conditions are complied with, therefore, it is a co-operative bank and the provisions of Sec. 80P(4) are applicable in the case of the Assessee and Assessee is not entitled

for deduction u/s 80P(2)(a)(i). We, therefore, confirm the order of the CIT(A) not allowing deduction u/s 80P(2)(a)(i) to the assessee.

4. In the result, the appeal filed by the Assessee is dismissed.

Appeal dismissed

****

Chandraprabhu Urban Co-operative Credit Society Limited, Nipani v Income Tax Officer, Nipani, 2014 Indlaw ITAT 3375; [2015] 152 ITD 477

Case No: ITA No. 142 & 143/PNJ/2013

Income Tax Appellate Tribunal, Panaji Bench

P. K. Bansal (Accountant Member), D. T. Garasia (Judicial Member)

Head Note

KCS Act 1959 - Income Tax & Direct Taxes - Practice & Procedure - Income Tax Act,1961, s.80P(4) - Deduction - Entitlement for - Applicability of provision - Whether assessee is entitled for deduction u/s.80P(2)(a)(i) of the Act and is hit by provisions of s.80P(4) of the Act which was introduced in statute by Finance Act, 2006 and assessee is co-operative bank.

Assessee will not fall within provisions of s.80P(4) of the Act assessee will be eligible to get deduction u/s 80P(2)(a)(i) of the Act in respect of whole of income which assessee derives from carrying on the business of banking or providing credit facilities to its members. S.80P(2)(a)(i), of the Act are applicable to co-operative society which is engaged in carrying on banking business facilities to its members if it is not co-operative bank. Thus, assessee is primary cooperative bank and hit by provisions of s.80P(4) of the Act. Appeals dismissed.

Ratio - Provisions of s.80P(2)(a)(i) of the Act, are applicable to co-operative society which is engaged in carrying on banking business facilities to its members if it is not co-operative bank.

The Judgment was delivered by : P. K. Bansal (Accountant Member)

3. The brief facts of the case for A.Y.2009-10 are that the Assessee is a co-operative society registered under the Karnataka State Co-operative Societies Act. The Assessee filed return declaring gross total income of Rs.30,94,493/- and claimed deduction u/s 80P(2)(a)(i) and therefore net taxable income was shown to be 'nil'. The AO did not allow the deduction to the Assessee u/s 80P(2)(a)(i) and the income was assessed at Rs.30,94,500/-. The AO while denying the deduction to the Assessee u/s 80P(2)(a)(i) took the view that the Assessee is a primary co-operative bank and therefore provisions of Sec. 80P(4) are applicable in the case of the Assessee. The Assessee went in appeal before the CIT(A). CIT(A) dismissed the appeal of the Assessee.

3.1. The ld. AR before us vehemently contended that the provisions of Sec. 80P(4) are not applicable in the case of the Assessee. The Assessee is not a co- operative bank. The Assessee is a co-operative society duly

registered under the Karnataka State Co-operative Societies Act, 1959. The primary object of the Assessee is to promote the economic interest of its members and to encourage thrift, savings, co-operation and self help among themselves. For this, our attention was drawn towards the order of the CIT(A) which re- produces the bye-laws of the Assessee from (i) to (vii). The Assessee is a credit society. The activities of the Assessee are limited to its members. The Assessee does not finance or take deposits from the public at large. The paid up capital of the Assessee, no doubt, is more than Rs. 1 lacs. It was contended that the issue is duly covered in favour of the Assessee by the decision of the Hon'ble Gujarat High Court in the case of CIT vs. Jafari Momin Vikas Co-op. Credit Society Ltd. 2014 Indlaw GUJ 639 in Tax Appeal nos. 442 of 2013, 443 of 2013 and 863 of 2013. Attention was also drawn towards the decision of the Hon'ble Karnataka High Court in the case of Vyavasaya Seva Sahakara Sangha vs. State of Karnataka & Ors. for the proposition of law by referring to para 12 that merely because the co-operative society is required to advance loan to its members, it does not cease to be a co-operative society governed by the Co-operative Societies Act nor can they be treated as banking companies. The activities carried out by the society cannot be regarded to be banking activities as contemplated under the Banking Regulation Act, 1949. Reliance was also placed on the decision of the Bangalore Bench of this Tribunal in ITA No. 72/Bang/2013 in the case of ITO vs. Divyajyothi Credit Co-operative Society Ltd. for the A.Y 2009-10 in which it was held that the provisions of Sec. 80P(4) are applicable only to credit co-operative banks and not to credit co-operative society. Reliance was also placed on the decision of the Panaji Bench in the case of DCIT vs. Jayalakshmi Mahila Vividodeshagala Souharda Sahakari Ltd. in ITA No. 1 to 3/PNJ/2012 dt. 30.3.2012.

3.2. The ld. DR, on the other hand vehemently contended that the Assessee is a co-operative bank. In view of the definition of the co-operative bank given under explanation to Sec. 80P(4) the Assessee is engaged in the business of banking. Sec. 80P(4) puts an embargo w.e.f. 1.4.2007 that if a co-operative society is carrying on banking business, the Assessee will not be entitled for the exemption. Reliance was placed on the decision of Hyderabad Bench of the Tribunal in the case of The Citizen Co-operative Society vs. Addl. CIT in ITA Nos. 1003/Hyd/2011 & 1004/Hyd/2011 dt. 2.7.2012.

3.3.1. In our opinion, Sec. 80P(2)(a)(i) provides two types of activities in which the co-operative society must be engaged to be eligible for deduction under sub- clause (i). These two activities are not alternate ones because the section allows deduction to the co-operative society on the whole of profits and gains of business attributable to any one or more of such activities. This pre-supposes that eligible co-operative society can carry on either one of these two businesses or can carry both these businesses for the members. If the Assessee co-operative society carries on one or both of the activities, it will be eligible for deduction. These two activities are (a) co-operative society engaged in carrying on business of banking facilities to its members or (b) co-operative society engaged in providing credit facilities to its members. Both the activities must be carried on by the co-operative society for its members. If a co-operative society is engaged in carrying on these activities/facilities for the persons other than its members, the co-operative society, in our opinion, will not be eligible for deduction u/s 80P(2)(a)(i) on the income which it derives from carrying on the activities not relating to its members. Therefore, where a co-operative society is engaged in carrying on business of banking facilities to its members and to the public or providing credit facilities to its members or to the public,

the income which relates to the business of banking facilities to its members or providing credit facilties to its members will only be eligible for deduction u/s 80P(2)(a)(i). There is no prohibition u/s 80P not to allow deduction to such co- operative societies in respect of business relating to its members.

The relevant portion of the remand report reads as under :

"The society accepts deposits from Debtors who are regular members having "A" class members having voting rights and also depositors who are nominal members who are not voting rights. We also accept deposits from general public who are Non-members of the society."

The deposits so accepted are used by the Assessee co-operative society for lending or investment. This fact has not been denied. Even out of the deposits so received, the loans have been given to the members of the society in accordance with the objects as enumerated above. Thus, in our opinion, condition no. 1 stands satisfied and it cannot be said that the Assessee society was not carrying on banking business as it was accepting deposits from the persons who were not members. So far as the second condition is concerned, there is no dispute that the paid up share capital and reserves in the case of the Assessee is more than Rs. 1 lac. Therefore, the Assessee satisfies the second condition. So far as the third condition is concerned, we noted that Sec. 16 of The Karnataka State Co-operative Societies Act, 1959 permits admission of any other co-operative society as a member.

This decision, in our opinion, is not applicable to the case before us because the provisions of Sec. 80P(2)(a)(i), as we have already held in the preceding paragraphs, are applicable to a co-operative society which is engaged in carrying on banking business facilities to its members if it is not a co-operative bank. We have also gone through the decision of this Bench in the case of DCIT vs. Jayalakshmi Mahila Vividodeshagala Souharda Sahakari Ltd. in ITA No. 1 to 3/PNJ/2012 dt. 30.3.2012 (supra), for which the undersigned is the author. While discussing this issue, after analysing the aims and objects of the co-operative society under para 12 of its order, this Tribunal has held as under :

"12. From the aforesaid objects, it is apparent that none of the aims and objects allows the assessee cooperative society to accept deposits of money 'from public for the purpose of lending or investment. In our opinion until and unless that condition is satisfied, it cannot be said that the prime object or principal business of the assessee is banking business. Therefore, the assessee will not comply with the first condition as laid down in the definition as given u/s. 5(ccv) of the Banking Regulation Act, 1959 *for becoming "primary cooperative bank". The assessee, therefore, cannot be regarded to be primary cooperative bank and in consequence thereof, it cannot be a co-operative bank as defined under part V of the* Banking Regulation Act 1949. *Accordingly, in our opinion the provisions of section 80P (4) read with explanation there under will not be applicable in the case of the assessee. The assessee, therefore, in our opinion will be entitled for the deduction u/s 80P(2)(a)(i). We accordingly confirm the order of CIT(A) allowing deduction to the assessee."*

The other decisions also relied on are not applicable to the facts of the case of the assessee.

3.3.9. In view of our aforesaid discussion, we hold that the assessee is a primary cooperative bank and therefore hit by the provisions of section 80P(4).

4. In the result, both the appeals filed by the Assessee are dismissed.

Appeals dismissed

Commissioner of Income Tax v Sree Seetharama Mandiram Souharda Sahakari Limited, Bangalore, 2014 Indlaw ITAT 2909

Case No: ITA No. 1210/Bang/2013

Income Tax Appellate Tribunal, Bangalore Bench

Rajpal Yadav (Judicial Member), Jason P. Boaz (Accountant Member)

Head Note

Karnataka Sourhardha Co-operative Act 1997 - Income Tax & Direct Taxes - Income-tax Act, 1961, ss. 80P(2)(a)(i), 80P(2)(d) –

Intention of legislature of bringing in cooperative banks into taxation structure was mainly to bring in par with commercial banks. Since assessee is cooperative society and not cooperative bank, s. 80P (4) of 1961 Act will not have application in assessee's case and it is entitled to deduction u/s. 80P (2) (a)(i) of 1961 Act. Tribunal is of opinion that CIT (A) is correct and in accordance with law. Tribunal did not find any merit in appeal. Appeal dismissed.

Ratio - It is well determined law that when assessee providing credit facilities carried on by co- operative society with its member then said credit facilities is liable to be deducted under 1961 Act.

The Judgment was delivered by Rajpal Yadav (Judicial Member)

2. The brief facts of the case are that the assessee is a primary agricultural society. It has filed its return of income on 31.10.2007 declaring total income of Rs.68,590/- after claiming deduction of Rs.20,06,454/- u/s 80P(2)(a)(i) and 80P(2)(d) of the Act. According to the Assessing Officer, the assessee has earned interest income from various loans namely gold loan, over draft account, staff loan etc., He contended that the activity of the assessee is of a cooperative bank and therefore, it is not entitled for deduction u/s 80P(2)(a)(i). On the other hand, stand of the assessee is that it is a cooperative society providing credit facilities to its members. The Assessing Officer did not accept this contention of the assessee and held that it is a cooperative bank and therefore, not entitled for the deduction.

4. With the assistance of the learned representatives, we have gone through the record carefully. The dispute is, whether the assessee is a cooperative bank which will disentitle from claiming deduction u/s 80P(2)(a)(i) or it is a cooperative credit society extending benefit to its members only?. According to the Assessing Officer, cooperative society even if extending benefit of credit facility to its members would fall within the ambit of cooperative bank and they are not entitled for deduction u/s 80P. Assessing Officer has nowhere brought any evidence on the record to indicate that the assessee is engaged in banking activity. He merely classified the interest income earned by the assessee but, whether this income was earned from non members, he has nowhere shown. Apart from the, nature of interest income, he has not brought any other material. On the other hand, the assessee has pointed out that it has not availed any bank license from the RBI and it is not issuing cheque book etc. to non members.

6. At the time of hearing, it was brought to our notice by the parties that the issue raised by the Assessee 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.

9.3 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."

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.

8. In view of the aforesaid decisions of the Hon'ble Gujarat High Court in the case of Jafari Momin Vikas Co-op Credit Society Ltd. 2014 Indlaw GUJ 639 (supra) and of the co=ordinate bench of this Tribunal in Bangalore Transport Credit Co-operative Society Ltd. (supra), we are of the view that there is merit in this appeal by the Assessee. Consequently, the same is allowed.

9. In the result, the assessee's appeal is allowed.

Pronounced in the open court on this 21st day of February, 2014".

In view of the above discussion, we do not find any merit in the appeal. The learned CIT (A) has appreciated the controversy in right perspective. Hence, the appeal of the Revenue is dismissed.

Order pronounced in the Open Court on 19th November, 2014.

Appeal dismissed

****

Gomatesh Co-operative Credit Society Limited v Income Tax Officer, 2014 Indlaw ITAT 45

Case No: ITA No. 250/PNJ/2013

Income Tax Appellate Tribunal, Panaji Bench

P. K. Bansal (Accountant Member), D. T. Garasia (Judicial Member)

Head Note

Karnataka Co-operative Societies Act, 1959 - Income Tax & Direct Taxes - Finance Act, 2006, ss.80P(2)(a)(i), 80P(4) -, s.17 - Co-operative society - Taxable Income - Determination - Assessee was co-operative society registered under 1959 Act –

It could not held that Assessee society was not carrying on banking business - Further, paid up share capital and reserves of assessee was more than Rs. 1 lac - HC held that assessee did not file copy of its bye-laws before HC; neither were provisions of s. 17 of 1959 Act, hence, in interest of justice and fair play to both parties HC restored issue to file of AO with direction that AO would look into rules and bye-laws of Assessee co-operative society and in case AO found that bye-laws did not permit admission of any other co-operative society, it be treated that Assessee complied with all three conditions for becoming primary co-operative bank and in case of contrary finding, assessee would not be treated as co-operative bank and provisions of s. 80P(4) of 2006 Act would not apply to assessee and assessee would be entitled in that case for deduction as stipulated u/s 80P(1) read with s. 80P(2)(a)(i) of 2006 Act - Appeal disposed of.

The Judgment was delivered by P. K. Bansal (Accountant Member)

2. The brief facts of the case are that the Assessee is a co-operative society registered under the Karnataka State Co-operative Societies Act. The Assessee filed return declaring gross total income of Rs.8,80,128/- and claimed deduction u/s 80P(2)(a)(i) and therefore net taxable income was shown at „nil?. The AO did not allow the deduction to the Assessee u/s 80P(2)(a)(i) and the income was assessed at Rs.8,80,130/-. The AO while denying the deduction to the Assessee u/s 80P(2)(a)(i) took the view that the Assessee is a primary co-operative bank and therefore provisions of Sec. 80P(4) are applicable in the case of the Assessee. The Assessee went in appeal before the CIT(A). CIT(A) dismissed the appeal of the Assessee.

2.1 The ld. AR before us vehemently contended that the provisions of Sec. 80P(4) are not applicable in the case of the Assessee. The Assessee is not a co- operative bank. The Assessee is a co-operative society duly registered under the Karnataka State Co-operative Societies Act, 1959. The primary object of the Assessee is to encourage the members of the organization to be economic and to follow the principles of cooperation while making savings. For this, our attention was drawn towards the order of the CIT(A) which re-produces the bye-laws of the Assessee from 1 to 17. The Assessee is a credit society. The activities of the Assessee are limited to its members. The Assessee does not finance or take deposits from the public at large. The paid up capital of the Assessee, no doubt, is more than Rs. 1 lacs. It was contended that the issue is duly covered in favour of the Assessee by the decision of the Hon'ble Gujarat High Court in the case of CIT vs. Jafari Momin Vikas Co-op. Credit Society Ltd. in Tax Appeal nos. 442 of 2013, 443 of 2013 and 863 of 2013. Attention was

also drawn towards the decision of the Hon'ble Karnataka High Court in the case of Vyavasaya Seva Sahakara Sangha vs. State of Karnataka & Ors 1990 Indlaw KAR 166. for the proposition of law by referring to para 12 that merely because the co-operative society is required to advance loan to its members, it does not cease to be a co- operative society governed by the Co-operative Societies Act nor can they be treated as banking companies.

The activities carried out by the society cannot be regarded to be banking activities as contemplated under the Banking Regulation Act, 1949. Reliance was also placed on the decision of the Bangalore Bench of this Tribunal in ITA No. 72/Bang/2013 in the case of ITO vs. Divyajyothi Credit Co-operative Society Ltd. for the A.Y 2009-10 in which it was held that the provisions of Sec. 80P(4) are applicable only to credit co-operative banks and not to credit co-operative society. Reliance was also placed on the decision of the Panaji Bench in the case of DCIT vs. Jayalakshmi Mahila Vividodeshagala Souharda Sahakari Ltd. in ITA No. 1 to 3/PNJ/2012 dt. 30.3.2012.

2.2 The ld. DR, on the other hand vehemently contended that the Assessee is a co-operative bank. In view of the definition of the co-operative bank given under explanation to Sec. 80P(4) the Assessee is engaged in the business of banking. Sec. 80P(4) puts an embargo w.e.f. 1.4.2007 that if a co-operative society is carrying on banking business, the Assessee will not be entitled for the exemption. Reliance was placed on the decision of Hyderabad Bench of the Tribunal in the case of The Citizen Co-operative Society vs. Addl. CIT 2008 Indlaw ITAT 276 in ITA Nos. 1003/Hyd/2011 & 1004/Hyd/2011 dt. 2.7.2012.

Therefore, in our opinion, before deciding the issue whether the Assessee is entitled for deduction u/s 80P(2)(a)(i), it is essential to decide whether the Assessee is a co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank. In case it is found that the Assessee is a co-operative bank, the Assessee will not be entitled for deduction as stipulated u/s 80P(2)(a)(i) but in case the Assessee is not a co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank, the provisions of Sec. 80P(2)(a)(i) will be applicable to the Assessee provided the Assessee is engaged in carrying on business of banking or providing credit facilities to its members.

2.3.1 In our opinion, Sec. 80P(2)(a)(i) provides two types of activities in which the co-operative society must be engaged to be eligible for deduction under sub- cl. (i). These two activities are not alternate ones because the section allows deduction to the co-operative society on the whole of profits and gains of business attributable to any one or more of such activities. This pre-supposes that eligible co-operative society can carry on either one of these two businesses or can carry both these businesses for the members. If the Assessee co-operative society carries on one or both of the activities, it will be eligible for deduction. These two activities are (a) co-operative society engaged in carrying on business of banking facilities to its members or (b) co-operative society engaged in providing credit facilities to its members. Both the activities must be carried on by the co-operative society for its members. If a co-operative society is engaged in carrying on these activities/ facilities for the persons other than its members, the co-operative society, in our opinion, will not be eligible for deduction u/s 80P(2)(a)(i) on the income which it derives from carrying on the activities not relating to its members. Therefore, where a co-operative society is engaged in carrying on business of banking facilities to its members and to the public or providing credit facilities to its members or to the public, the income which

relates to the business of banking facilities to its members or providing credit facilties to its members will only be eligible for deduction u/s 80P(2)(a)(i). There is no prohibition u/s 80P not to allow deduction to such co- operative societies in respect of business relating to its members.

2.3.7 The Assessee did not file copy of its bye-laws before us; neither are the provisions of Sec. 17 of The Karnataka State Co-operative Societies Act, 1959. Therefore, in the interest of justice and fair play to both the parties we restore this issue to the file of the AO with the direction that the AO shall look into the rules and bye-laws of the Assessee co-operative society and in case the AO finds that the bye-laws did not permit admission of any other co-operative society, it be treated that the Assessee complies with all the three conditions for becoming a primary co-operative bank. In case the bye-laws permit for the admission of any other co-operative society as a member, the Assessee will not be treated as a co-operative bank and the provisions of Sec. 80P(4) will not apply to the Assessee. The Assessee will be entitled in that case, in our opinion, for the deduction as stipulated u/s 80P(1) r.w.s. 80P(2)(a)(i).

2.3.8 We have gone through the decision of the Hyderabad bench of this Tribunal in the case of The Citizen Cooperative Society vs. Addl. CIT (supra).

We noted that this decision is not applicable to the facts of the case before us. In this decision, under para 23 the Tribunal has given a finding that the Assessee is carrying on banking business and for all practical purposes it acts like a co-operative bank. The Society is governed by the Banking Regulations Act. Therefore, the society being a co-operative bank providing banking facilities to members is not eligible to claim deduction u/s 80P(2)(a)(i) after the introduction of sub-s. (4) to section 80P. In view of this finding, the Assessee was denied deduction u/s 80P(2)(a)(i). We have also gone through the decision of the Bangalore Bench of the Tribunal in the case of ITO vs. Divyajyothi Credit Co-operative Society Ltd. (supra) in ITA No. 72/Bang/2013. In this case, we noted that the Hon'ble Tribunal confirmed the order of CIT(A) following the decision of the Tribunal in the case of ACIT, Circle 3(1), Bangalore vs. M/s. Bangalore Commercial Transport Credit Co-operative Society Ltd. in ITA No. 1069/Bang/2010 holding that Sec. 80P(2)(a)(i) is applicable only to a co-operative bank and not to credit co-operative society. With due regards to the Bench, we are unable to find any term „credit co- operative society? u/s 80P(2)(a)(i) or u/s 80P(4), therefore, this decision cannot assist us. We noted that the Hon'ble Gujarat High Court in the case of CIT vs. Jafari Momin Vikas Co-op. Credit Society Ltd. in Tax Appeals no. 442 of 2013, 443 of 2013 and 863 of 2013 (supra) vide order dt. 15.1.2014 took the view that Sec. 80P(4) will not apply to a society which is not a co-operative bank. In the case of Vyavasaya Seva Sahakara Sangha vs. State of Karnataka & Ors 1990 Indlaw KAR 166. (supra) we noted that the issue before the Hon'ble High Court in the Writ Petition filed by the Petitioner related to the legislative competence of the State Legislature for issuing a circular. The issue does not relate to the claim of deduction u/s 80P(2)(a)(i). While dealing with this issue, the Hon'ble High Court under para

12 observed as under :

"12. It is not possible to accept this contention. The petitioners are not the banking institutions coming under the purview of the Banking Regulation Act*. They are the co-operative societies registered under the Act, and as such they are governed by the provisions of the Act passed by the State Legislature. Consequently, the State Government has control over them to the extent the Act permits. Major activities of the petitioners*

are to finance its members. For the purpose of financing its members, they borrow money from the financing agencies and repay the same. Merely because the petitioners-the co-operative societies in question-are required to advance loans to their members, they do not cease to be co-operative societies governed by the Act nor can they be treated as banking companies. It is also not possible to hold that these activities of the petitioners amount to "banking" as contemplated under the Banking Regulation Act, 1949*, inasmuch as these co- operative societies are not established for the purpose of doing "banking" as defined in s. 5(b) of the* Banking Regulation Act, 1949*."*

This decision, in our opinion, is not applicable to the case before us because the provisions of Sec. 80P(2)(a)(i), as we have already held in the preceding paragraphs, are applicable to a co-operative society which is engaged in carrying on banking business facilities to its members if it is not a co-operative bank. We have also gone through the decision of this Bench in the case of DCIT vs. Jayalakshmi Mahila Vividodeshagala Souharda Sahakari Ltd. in ITA No. 1 to 3/PNJ/2012 dt. 30.3.2012 (supra), for which the undersigned is the author. While discussing this issue, after analysing the aims and objects of the co-operative society under para 12 of its order, this Tribunal has held as under :

"12. From the aforesaid objects, it is apparent that none of the aims and objects allows the assessee cooperative society to accept deposits of money „from public for the purpose of lending or investment. In our opinion until and unless that condition is satisfied, it cannot be said that the prime object or principal business of the assessee is banking business. Therefore, the assessee will not comply with the first condition as laid down in the definition as given u/s. 5(ccv) of the Banking Regulation Act, 1959 for becoming "primary cooperative bank". The assessee, therefore, cannot be regarded to be primary cooperative bank and in consequence thereof, it cannot be a co-operative bank as defined under part V of the Banking Regulation Act 1949. *Accordingly, in our opinion the provisions of section 80P (4) read with explanation there under will not be applicable in the case of the assessee. The assessee, therefore, in our opinion will be entitled for the deduction u/s 80P(2)(a)(i). We accordingly confirm the order of CIT(A) allowing deduction to the assessee."*

2.3.9 We, therefore, in view of our aforesaid discussion set aside the order of the CIT(A) and restore the issue whether the Assessee is entitled for deduction u/s 80P(2)(a)(i) to the file of the AO for ascertaining from the copy of the rules and bye-laws of the co-operative society whether the bye-laws of the Assessee permit admission of any other co-operative society. In case the AO finds that the bye-laws permit admission of any other co-operative society, the Assessee be allowed deduction u/s 80P(2)(a)(i). In case the AO finds that the bye-laws do not permit the admission of any other co-operative society, in our opinion, the Assessee will be regarded as a primary co-operative bank and will not be entitled for deduction u/s 80P(2)(a)(i).

3. In the result, the appeal filed by the Assessee is allowed for statistical purpose.

Appeal allowed

****

Hukkeri Taluka Primary Teachers Credit Co-operative Society Limited, Hukkeri v Income Tax Officer, Belgaum, 2014 Indlaw ITAT 3343; [2015] 153 ITD 615

Case No: ITA Nos. 165 & 166/PNJ/2014

Income Tax Appellate Tribunal, Panaji Bench

P. K. Bansal (Accountant Member), D. T. Garasia (Judicial Member)

Head Note

KCS Act 1959 - Income Tax & Direct Taxes - Income-tax Act, 1961, ss. 43B, 80P (2) (a) (i), 80P (4) - Co-operative society - Banking business - On appeal, CIT(A) upheld order of AO and dismissed appeal of assessee - Hence instant appeals.

If co-operative society complied with three conditions, firstly that primary object or principle business transacted by it is banking business, secondly, paid up share capital and reserve of which are 1 lakh or more. Thirdly, by laws of co-operative society do not permit admission of any other co-operative society as member it will be regarded to be primary co-operative bank. Assessee has not to be regarded to be primary co-operative bank as all three basic conditions are not complied with, it is not co-operative bank and provisions of s. 80P(4) of Act are not applicable to assessee and he is entitled for deduction u/s. 80P(2)(a)(i) of Act. Tribunal sets aside order of CIT(A) not allowing deduction u/s. 80P(2)(a)(i) of Act to assessee and direct AO to allow deduction to assessee u/s. 80P(2)(a)(i) of Act in both assessment years on income as is generated by carrying on activities of cash/credit and banking business relating to its members. In result, both appeals filed by assessee are allowed. Appeals disposed of.

Ratio - U/s. 80P (2) (a) (i) of Act, co-operative society engaged in carrying on business of banking or providing credit facilities to its members is entitled for deduction.

The Judgment was delivered by P. K. Bansal (Accountant Member)

3. The brief facts of the case for the assessment year 2009-10 are that the Assessee is a co-operative society registered under the Karnataka State Co-operative Societies Act. The Assessee filed return declaring gross total income of Rs.23,26,313/- and claimed deduction u/s 80P(2)(a)(i) and therefore net taxable income was shown to be "nil". The AO did not allow the deduction to the Assessee u/s 80P(2)(a)(i) and also made disallowance u/s 43B for audit fees and the income was assessed at Rs.24,16,580/-. The AO while denying the deduction to the Assessee u/s 80P(2)(a)(i) took the view that the Assessee is a primary co-operative bank and therefore provisions of Sec.80P(4) are applicable in the case of the Assessee. The Assessee went in appeal before the CIT(A). CIT(A) dismissed the appeal of the Assessee.

Attention was also drawn towards the decision of the Hon'ble Karnataka High Court in the case of Vyavasaya Seva Sahakara Sangha vs. State of Karnataka & Ors. for the proposition of law by referring to para 12 that merely because the co-operative society is required to advance loan to its members, it does not cease to be a co-operative society governed by the Co- operative Societies Act nor can they be treated as banking companies.

The activities carried out by the society cannot be regarded to be banking activities as contemplated under the Banking Regulation Act, 1949. Reliance was also placed on the decision of the Bangalore Bench of this Tribunal in ITA No. 72/Bang/2013 in the case of ITO vs. Divyajyothi Credit Co-operative Society Ltd. for the A.Y 2009-10 in which it was held that the provisions of Sec. 80P(4) are applicable only to credit co-operative banks and not to credit co-operative society. Reliance was also placed on the decision of the Panaji Bench in the case of DCIT vs. Jayalakshmi Mahila Vividodeshagala Souharda Sahakari Ltd. in ITA No. 1 to 3/PNJ/2012 dt. 30.3.2012. Reliance was also placed on the decision of Panaji Bench in ITA No. 229 & 230/PNJ/2013 in the case of Tararani Mahila Co-operative Credit Society, vs ITO. Reliance was also placed in ACIT vs Palhawas Primary Agriculture Co-operative Society Ltd, 23 Taxman.com 318 (Delhi), ITO vs Jankalyan Nagri Sahakari Pat Sanstha Ltd, 24 Taxman.com 127 (Pune). Reliance was also placed on the decision of Karnataka High Court in the case of CIT vs Sri Biluru Gurubasava Pattana Sahakari Sangh Niyamitha 2014 Indlaw KAR 2105 dated 5.2.2014, which relates to an appeal filed against the order passed u/s 263 and the question involved was whether the Revisional Authority was justified in invoking his power u/s 263 without the foundational fact of the assessee being co-operative bank.

7. From the plain reading of Sec. 80P(2)(a)(i) it is apparent that if the co-operative society is engaged in carrying of business of banking or providing credit facilities to its members, the co-operative society is entitled for deduction on whole of the income relating to any one or more of such business. From the reading of Sec. 80P(4) it is apparent that this section denies deduction to a co- operative bank other than a primary agricultural credit society or primary co- operative agricultural and rural development bank. The provisions of Sec. 80P(4) was introduced in the statute by the Finance Act, 2006 w.e.f. 1.4.2007. The explanation to the section defines the co-operative bank and primary agricultural credit society to have the same meaning as assigned to them in Part-V of the Banking Regulation Act, 1949. It is not the case of either of the parties that the Assessee is a primary co-operative agricultural and rural development bank. It is also not the claim of the Assessee that Assessee is a primary agricultural credit society. If we read both the sections, Sec. 80P(2)(a)(i) and Sec. 80P(4) together, we find that the provisions of Sec. 80P(4) mandates that the provisions of Sec. 80P will not apply to any co-operative bank other than a primary agricultural credit society or primary co-operative agricultural and rural development bank but as per the provisions of Sec. 80P(2)(a)(i), a co-operative society engaged in carrying on the business of banking or providing credit facilities to its members is entitled for deduction. After the insertion of Sec. 80P(4), the provisions of Sec. 80P(2)(a)(i) were not amended, rather the co- operative society engaged in carrying on business of banking facilities to its members continued to be entitled for deduction u/s 80P(2)(a)(i).

This pre- supposes that every co-operative society engaged in carrying on business of banking cannot be regarded to be a co-operative bank. The embargo put u/s 80P(4) are applicable only to a co-operative bank. In our opinion, it cannot be said that a co-operative society cannot carry on business of banking facilities to its members even if it is not a co-operative bank. If we read the provisions in the manner that every co-operative society engaged in carrying on business of banking even for its members is regarded to be a co-operative bank, then, the provisions of Sec. 80P(2)(a)(i)will become redundant. Therefore, in our opinion, before deciding the issue whether the Assessee is entitled for deduction u/s 80P(2)(a)(i), it is essential to decide whether the

Assessee is a co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank. In case it is found that the Assessee is a co-operative bank, the Assessee will not be entitled for deduction as stipulated u/s 80P(2)(a)(i) but in case the Assessee is not a co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank, the provisions of Sec. 80P(2)(a)(i) will be applicable to the Assessee provided the Assessee is engaged in carrying on business of banking or providing credit facilities to its members. This section nowhere states co-operative credit society except mentioned under proviso 2 to section 80P which is relevant for sub-clause 6 or 7. It has nothing to do with section 80P(2)(a)(i).

If a co-operative society is engaged in carrying on these activities/facilities for the persons other than its members, the co-operative society, in our opinion, will not be eligible for deduction u/s 80P(2)(a)(i) on the income which it derives from carrying on the activities not relating to its members. Therefore, where a co-operative society is engaged in carrying on business of banking facilities to its members and to the public or providing credit facilities to its members or to the public, the income which relates to the business of banking facilities to its members or providing credit facilities to its members will only be eligible for deduction u/s 80P(2)(a)(i). There is no prohibition u/s 80P not to allow deduction to such co- operative societies in respect of business relating to its members.

15. The deposits so accepted are used by the Assessee co-operative society for lending or investment. This fact has been denied by the assessee or by his counsel in the submission made before us. Even out of the deposits so received, the loans have been given to the members of the society in accordance with the objects as enumerated above. Thus, in our opinion, condition no.1 does not stand satisfied and it can be said that the Assessee society was not carrying on banking business.

16. The authorised representative took the plea that the assessee has not obtained banking licence. In our opinion it is not necessary that the co- operative society should have a banking licence as per the definition under the Income Tax Act for carrying on banking business. If licence is not obtained it may be an illegal banking business under the other statute. What we have to see whether the nature of the business carrying on by the assessee is a banking business or not. The Income Tax in our opinion is not concerned whether the banking business carried on by the assessee is legal or illegal. The income has to be assessed u/s 14 of the Income Tax Act under the same head even if the nature of the business is illegal. If we look into the bye-laws which consists of fund of the society, we noted that the types of the deposits which the assessee has accepted as per bye-laws are the same as are being accepted during the course of the carrying out the banking activities.

We have also gone through the decision of ACIT vs Palhawas Primary Agriculture Co-operative Society Ltd, 23 Taxman.com 318 (Delhi). Section 80P(4) clearly excludes primary agriculture credit society from its domain. Therefore this decision will not assist the assessee. We have also gone through the decision of Pune Bench in the case of ITO vs Jankalyan Nagri Sahakari Pad Sanstha Ltd, 24 Taxman.com 127 Pune. This we have already stated that section 80P(2)(a)(i) nowhere talks of co-operative credit society and therefore the distinction made under the Banking Regulation Act cannot be imported u/s 80P(2)(a)(i). This decision in our opinion will not assist the assessee. We have also gone through the decision of Tararani Mahila Co-operative

Credit Society Ltd to which the undersigned is the author similar finding as has been given in this are given in that case also. The decision of Karnataka High Court in the case of CIT vs Sri Biluru Gurubasava Pattana Sahakari Sangh Niyamitha 2014 Indlaw KAR 2105 dated 5.2.2014, relates to an appeal filed against the order passed u/s 263 and the question involved was whether the Revisional Authority was justified in invoking his power u/s 263 without the foundational fact of the assessee being co-operative bank. Therefore, this decision is not applicable.

21. We, therefore, in view of our aforesaid discussion hold that the Assessee has not to be regarded to be a primary co-operative bank as all the three basic conditions are not complied with, therefore, it is not a co-operative bank and the provisions of Sec. 80P(4) are not applicable in the case of the Assessee and Assessee is entitled for deduction u/s 80P(2)(a)(i). We, therefore, set aside the order of the CIT(A) not allowing deduction u/s 80P(2)(a)(i) to the assesse and direct the assessing officer to allow deduction to the assesse u/s 80P(2)(a)(i) in both the assessment years on the income as is generated by carrying on the activities of cash / credit and banking business relating to its members. Thus the ground no. 1 to 3 in both the years are allowed.

22. Ground No. 4 relates to the disallowance u/s 43B in respect of the audit fees. After hearing the rival submission we are of the view that the provision of section 44B are not applicable to the audit fees we accordingly delete the disallowance by allowing ground no. 4 in assessment year 2009-10.

23. In the result, both the appeals filed by the assessee is allowed.

24. Order pronounced in the open court on 08.08.2014.

Appeals allowed

****

Hungund Taluka Teachers Co-operative Credit Society Limited, Hungund v Income Tax Officer, Bagalkot, 2014 Indlaw ITAT 3142

Case No: I. T. A. Nos. 1288 to 1290/Bang/2013

Income Tax Appellate Tribunal, Bangalore Bench

N. V. Vasudevan (Judicial Member) & Jason P. Boaz (Accountant Member)

Head Note

KCS Act 1959 - Income Tax & Direct Taxes - Income-tax Act, 1961, ss. 80P, 80P(2)(i), 80P(2)(a)(i) - Finance Act, 2006 Credit facilities - Deductions - Additions - Appellant/Assessee was co-operative society engaged in providing credit facility to its members - Assessee filed his return for relevant assessment year and claimed for deduction u/s. 80P(2)(a)(i) of 1961 Act - AO passed order as per amendment made under 2006 Act in which assessee was co-operative society carrying on banking business was not entitled to deduction u/s.80P(2)(i) of 1961 Act - On appeal CIT(A) confirmed same order passed by AO - Ag-grieved assessee preferred appeals and challenged order passed by CIT (A) - Hence instant appeals.

When was co-operative banks other than those mentioned therein were meant to be excluded for

purpose of deduction u/s. 80Pof 1961 Act, 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. It can be gathered that s. 80P (4) of 1961 Act will not apply to assessee which is not co-operative bank. In case clarified by CBDT circular clarified that said entity not being a cooperative bank, s. 80P (4) of 1961 Act would not apply to it. Assessee is admittedly not credit co-operative bank but credit co- operative society so s. 80P (4) of 1961 Act would not apply. Tribunal set aside order of CIT (A) and hold that assessee is co-operative society entitled to clam deduction u/s. 80P(2)(a)(i) of 1961 Act. Appeals disposed of.

Ratio - It is well settled law that when status of assessee is co-operative society then assessee is entitled for benefit of exemption from payment of tax u/s.80P (2) (a) (i) of 1961 Act.

The Order of the Court was as follows:

2. The assessee is a co-operative society registered under the Karnataka State Co-operative Societies Act, 1959. It is engaged in providing credit facility to its members. The assessee had claimed deduction u/s. 80P(2)(a)(i) of the Act. 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:

7. At the time of hearing, it was noticed that the issue raised by the assessee in these appeals 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.

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."

8. 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 2014 Indlaw GUJ 639. 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) (viia) 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.

7. 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."

9. In a recent judgment dated 5.2.2014 of the Hon'ble High Court of Karnataka in CIT v. Sri Biluru Gurubasava Pattina Sahakari Sangha Niyamitha Bagalkot 2014 Indlaw KAR 2105 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.

10. In view of the aforesaid decisions, we set aside the order of the CIT(Appeals) and hold that the assessee is a co-operative society entitled to clam deduction u/s. 80P(2)(a)(i) of the Act. It is ordered accordingly.

11. In the result, the appeals by the assessee are allowed.

Pronounced in the open court on this 12th day of September, 2014.

Appeals allowed

****

Jamkhandi Taluka School Teachers Co-operative Society Limited, Bagalkot v Income Tax Officer, Bijapur, 2014 Indlaw ITAT 2784

Case No: ITA No.98/Bang/2014

Income Tax Appellate Tribunal, Bangalore Bench

N. V. Vasudevan (Judicial Member) & Abraham P. George (Accountant Member)

Head Note :

The intension of the legislature of bringing in co-operative banks into the taxation structure was mainly to bring in par with commercial banks. Since the assessee a co-operative society and not a co-operative bank, provisions of sec.80P(4) will not have application in assessees case and therefore, it is entitled to deduction under sec.80P(2)(a)(i) of the act – appeal allowed.

The Judgment was delivered by N. V. Vasudevan (Judicial Member)

2. None appeared on behalf of the assessee at the time of hearing. However, we proceed to dispose of the case on merits considering the material on record and after hearing the ld. DR.

3. There is a delay of 65 days in filing the appeal by the assessee. Application for condonation of delay along with affidavit has been filed by the assessee. In the affidavit, the Hon. Secretary of the assessee, one Shri Nagappa, has explained the reasons for the delay. It has been stated therein that the Hon. Secretary was looking after all the income tax affairs of the assessee society. The impugned order of the CIT(Appeals) was received by the assessee on 17.9.2013 and the appeal ought to have been filed on or before 18.11.2013. It appears that on 11.11.13, Shri Nagappa planned to visit the tax consultant, Shri Ashok Mudnur at Belgaum to file appeal before the ITAT, Bangalore. However, on 10.11.2013, he was unwell and was advised by Doctor not to travel. On 22.11.13, he was hospitalized and operated on 30.12.13 for heart problems. Copy of the discharge summary of KLES Heart Foundation, Belgaum has also been filed in support of the averments in the affidavit. Thus, reasons for the delay have been explained to be due to ill-health of the Hon. Secretary of the assessee.

4. On perusal of the reasons given in the affidavit in support of the application for condonation of delay in filing the appeal, we are satisfied that delay in fling the appeal was occasioned due to a reasonable cause. Accordingly, delay in filing the appeal is condoned.

5. The only issue involved in this appeal by the assessee is denial of deduction u/s. 80P(2)(a)(i) of the Income-tax Act, 1961 [hereinafter referred to as "the Act" in short"] by the revenue authorities.

6. The assessee is a co-operative society registered under the Karnataka State Co-operative Societies Act, 1959. It is engaged in providing credit facility to its members. The assessee had claimed deduction u/s. 80P(2)(a)(i) of the Act. 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."

11. At the time of hearing, it was noticed that the issue raised by the assessee in these appeals 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.

12. 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. 2014 Indlaw GUJ 639 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) (viia) 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.

13. Our attention was invited to a recent judgment dated 5.2.2014 of the Hon'ble High Court of Karnataka in CIT v. Sri Biluru Gurubasava Pattina Sahakari Sangha Niyamitha Bagalkot 2014 Indlaw KAR 2105 in ITA No.5006/2013 dated 5.2.2014, wherein 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.

14. In view of the aforesaid decisions, we hold that the assessee society is entitled to deduction u/s. 80P(2)(a)(i) of the Act. It is ordered accordingly.

15. In the result, the appeal by the assessee is allowed.

Pronounced in the open court on this 14th day of November, 2014.

Appeal allowed

****

Jyoti Cooperative Credit Society Limited, Bagalkot v Income Tax Officer, Ward 1, Bagalkot, 2014 Indlaw ITAT 2357

Case No: I. T. A. No. 1269/Bang/2013

Income Tax Appellate Tribunal, Bangalore Bench

Rajpal Yadav (Judicial Member) & Abraham P. George (Accountant Member)

Head Note

KCS Act 1959 - Income Tax & Direct Taxes - Income Tax Act,1961, s.80P - Deduction - Entitlement to – Assessee being a cooperative society - claiming deducting of entire income u/s 80P(2)(a)(i) of the Act - Claim of assessee for deduction was rejected by Assessing Officer(AO) - CIT(A) confirmed denial of deduction - Hence, instant Appeal - Whether CIT(A) was justified in holding that assessee is cooperative bank and as per s.80P(4) of the Act, it is not entitled for deduction u/s 80P(2)(a)(i) of the Act.

Intention of legislature of bringing in cooperative banks into taxation structure was mainly to bring in par with commercial banks. Since assessee is cooperative society and not cooperative bank, provisions of s.80P(4) of the Act will not have application in assessee's case and it is entitled to deduction u/s.80P(2)(a)(i) of the Act. Hence, AP is directed to grant deduction u/s.80P(2)(a)(i) of the Act. Appeal allowed.

Ratio - Benefit of provision of the law shall be granted in accordance with intention of legislature in granting such benefit.

The Order of the Court was as follows:

2. The brief facts of the case are that the assessee is a cooperative society. It has filed its return of income for assessment year 2008-09 on 30.09.2008 declaring nil income after claiming deducting of entire income of Rs.18,38,548/- u/s 80P(2)(a)(i) of the I.T. Act, 1961. According to the assessee, it is a cooperative society carrying on the business of banking for providing credit facilities to its members. Therefore, it claimed its income as exempt u/s 80P(2)(a)(i). However, the claim of the assessee for deduction was rejected by the Assessing Officer, on the ground that the assessee is a cooperative bank and hence not entitled to claim deduction. Assessing Officer relied upon section 80P(4).

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. 2014 Indlaw GUJ 639 *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) (viia) 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-s. (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 subs.(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 admissibly 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-s.(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*, subs.(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-s.(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-s.(4) of section 80P, therefore, would not apply. In the result, Tax Appeals are dismissed."

8. In view of the aforesaid decisions of the Hon'ble Gujarat High Court in the case of Jafari Momin Vikas Co-op Credit Society Ltd. 2014 Indlaw GUJ 639 *(supra) and of the co=ordinate bench of this Tribunal in Bangalore Transport Credit Co-operative Society Ltd. (supra), we are of the view that there is merit in this appeal by the Assessee. Consequently, the same is allowed.*

9. In the result, the assessee's appeal is allowed.

Pronounced in the open court on this 21st day of February, 2014".

7. There is no disparity on facts. Respectfully following the order of the Tribunal, we allow the appeal of the assessee and direct the Assessing Officer to grant deduction u/s 80P(2)(a)(i) of the Income Tax Act.

Appeal allowed

****

Kalloli Urban Co-operative Credit Society v Income Tax Officer, 2014 Indlaw ITAT 62; [2014] 63 SOT 119

Case No: ITA No. 318/PNJ/2013

Income Tax Appellate Tribunal, Panaji Bench

P. K. Bansal (Accountant Member), D. T. Garasia (Judicial Member)

Head Note

Karnataka Co-operative Societies Act, 1959 - Income Tax & Direct Taxes - Practice & Procedure - Finance Act, 2006, ss. 80P(2)(a)(i), 80P(4) -, s. 17 - Co-operative society - Taxable Income - Determination - Assessee was co-operative society registered under 1959 Act

Held, assessee had received deposit from non-members for advancing loan to members - Further, if deposits were accepted from public, it could not be denied that society had carried out banking business and banking business was not limited in that case to members – In the interest of justice and fair play to both parties HC restored issue to file of AO with direction that AO would look into rules and bye-laws of assessee co-operative society and in case AO found that bye-laws did not permit admission of any other co-operative society, it be treated that assessee complied with all three conditions for becoming primary co-operative bank and in case of contrary view, assessee would not be not treated as co-operative bank and provisions of s. 80P(4) of 2006 Act would not apply to assessee and assessee would be entitled for deduction as stipulated u/s. 80P(1) read with s. 80P(2)(a)(i) of 2006 Act - Appeal disposed of.

The Judgment was delivered by P. K. Bansal (Accountant Member)

2. The brief facts of the case are that the Assessee is a co-operative society registered under the Karnataka State Co-operative Societies Act. The Assessee filed return declaring gross total income of Rs.23,65,850/- and claimed deduction u/s 80P(2)(a)(i) and therefore net taxable income was shown to be "nil". The AO did not allow the deduction to the Assessee u/s 80P(2)(a)(i) and the income was assessed at Rs.23,65,850/-. The AO while denying the deduction to the Assessee u/s 80P(2)(a)(i) took the view that the Assessee is a primary co-operative bank and therefore provisions of Sec. 80P(4) are applicable in the case of the Assessee. The Assessee went in appeal before the CIT(A). CIT(A) dismissed the appeal of the Assessee.

If we read the provisions in the manner that every co-operative society engaged in carrying on business of banking even for its members is regarded to be a co-operative bank, then, the provisions of Sec. 80P(2)(a)(i) will become redundant. Therefore, in our opinion, before deciding the issue whether the Assessee is entitled for deduction u/s 80P(2)(a)(i), it is essential to decide whether the Assessee is a co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank. In case it is found that the Assessee is a co-operative bank, the Assessee will not be entitled for deduction as stipulated u/s 80P(2)(a)(i) but in case the Assessee is not a co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank, the provisions of Sec. 80P(2)(a)(i) will be applicable to the Assessee provided the Assessee is engaged in carrying on business of banking or providing credit facilities to its members.

2.3.1 In our opinion, Sec. 80P(2)(a)(i) provides two types of activities in which the co-operative society must be engaged to be eligible for deduction under sub- cl. (i). These two activities are not alternate ones because the section allows deduction to the co-operative society on the whole of profits and gains of business attributable to any one or more of such activities. This pre-supposes that eligible co-operative society can carry on either one of these two businesses or can carry both these businesses for the members. If the Assessee co-operative society carries on one or both of the activities, it will be eligible for deduction. These two activities are (a) co-operative society engaged in carrying on business of banking facilities to its members or (b) co-operative society engaged in providing credit facilities to its members. Both the activities must be carried on by the co-operative society for its members. If a co-operative society is engaged in carrying on these activities/ facilities for the persons other than its members, the co-operative society, in our opinion, will not be eligible

for deduction u/s 80P(2)(a)(i) on the income which it derives from carrying on the activities not relating to its members.

Therefore, where a co-operative society is engaged in carrying on business of banking facilities to its members and to the public or providing credit facilities to its members or to the public, the income which relates to the business of banking facilities to its members or providing credit facilties to its members will only be eligible for deduction u/s 80P(2)(a)(i). There is no prohibition u/s 80P not to allow deduction to such co- operative societies in respect of business relating to its members.

2.3.5 It is apparent that if the co-operative society complied with all the three conditions; firstly that the primary object or principle business transacted by it is a banking business, secondly, the paid up share capital and reserve of which are 1 lakh or more and thirdly, by laws of the co-operative society do not permit admission of any other co-operative society as a member, it will be regarded to be primary co-operative bank. If co- operative society does not fulfil any of the conditions, it cannot be regarded to be a primary co-operative bank. Therefore, in the case of the Assessee we have to examine on the basis of the facts and materials on record whether the Assessee co-operative society complies with all the three conditions. In case, it does not comply with all the three conditions, it cannot be regarded to be a co- operative bank and the provisions of Sec. 80P(4), in our opinion, will not be applicable in the case of the Assessee. Once, the Assessee will not fall within the provisions of Sec. 80P(4), the Assessee, in our opinion, will be eligible to get deduction u/s 80P(2)(a)(i) in respect of whole of the income which the Assessee derives from carrying on the business of banking or providing credit facilities to its members.

2.3.9 We, therefore, in view of our aforesaid discussion set aside the order of the CIT(A) and restore the issue whether the Assessee is entitled for deduction u/s 80P(2)(a)(i) to the file of the AO for ascertaining from the copy of the rules and bye-laws of the co-operative society whether the bye-laws of the Assessee permit admission of any other co-operative society. In case the AO finds that the bye-laws permit admission of any other co-operative society, the Assessee be allowed deduction u/s 80P(2)(a)(i).

In case the AO finds that the bye-laws do not permit the admission of any other co-operative society, in our opinion, the Assessee will be regarded as a primary co-operative bank and will not be entitled for deduction u/s 80P(2)(a)(i).

3. In the result, the appeal filed by the Assessee is allowed for statistical purpose.

Appeal allowed

****

Kittur Channamma Mahila Co-operative Society Limited v The Income Tax Officer, 2014 Indlaw ITAT 2529

Case No: ITA No. 1284/Bang/2013

Income Tax Appellate Tribunal, Bangalore Bench

N. V. Vasudevan (Judicial Member) & Jason P. Boaz (Accountant Member)

Head Note

KCS Act 1959 - Income Tax & Direct Taxes - Income-Tax Act, 1961, s. 80(P)(2)(a)(i),(4) - Banking Regulation Act, 1949, - Claim for Deduction - AO disallowed deduction claimed u/s. 80(P)(2)(a)(i) of 1961 Act on grounds that assessee society was carrying on banking business by providing credit facilities to its member - Commissioner (Appeals) [CIT(A)] held assessee cooperative bank within meaning of Part V of 1949 Act and provisions of s. 80(P)(4) of 1961 Act applied, confirmed orders passed by AO - Hence, instant appeal - Whether, order passed by (CIT(A)) disallowing deduction claimed by cooperative society u/s. 80(P)(2)(i) of 1961 Act sustainable.

S.80P(4) of 1961 Act provides that deduction under the said section shall not be allowable to any cooperative bank other than a primary agricultural credit society or a primary cooperative agricultural and rural development bank. The order of [CIT (A)] that assessee is a cooperative society entitled to claim deduction u/s. 80P(2)(a)(i) of 1961 Act is set aside. Appeal allowed.

The Judgment was delivered by N. V. Vasudevan (Judicial Member)

2. The assessee is a co-operative society registered under the Karnataka State Co-operative Societies Act, 1959. It is engaged in providing credit facility to its members. The assessee had claimed deduction u/s. 80P(2)(a)(i) of the Act. 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:

3. The AO was of the view that after amendment 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 (viia) 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 in its bye laws that the activities of the assessee fall within the provisions of clause (cci), (ccv) & (ccvi) of section 5 of the Banking Regulations Act and held that, broadly, they are in the nature of banking activity.

7. At the time of hearing, it was noticed that the issue raised by the assessee in these appeals 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.

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."

8. 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) (viia) 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 admissibly 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."

9. Our attention was invited to a recent judgment dated 5.2.2014 of the Hon'ble High Court of Karnataka in CIT v. Sri Biluru Gurubasava Pattina Sahakari Sangha Niyamitha Bagalkot 2014 Indlaw KAR 2105 in

ITA No.5006/2013 dated 5.2.2014, wherein 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.

10. In view of the aforesaid decisions, we set aside the order of the CIT(Appeals) and hold that the assessee is a co-operative society entitled to clam deduction u/s. 80P(2)(a)(i) of the Act. It is ordered accordingly.

11. In the result, the appeal by the assessee is allowed.

Pronounced in the open court on this 12th day of September, 2014.

Appeal allowed

****

Kuruhinshetty Urban Co-operative Credit Society v Income Tax Officer, 2014 Indlaw ITAT 64

Case No: ITA No. 443 & 444/PNJ/2013

Income Tax Appellate Tribunal, Panaji Bench

P. K. Bansal (Accountant Member), D. T. Garasia (Judicial Member)

Head Note

KCS Act 1959 - Income Tax & Direct Taxes - Income Tax Act, 1961, ss. 80P(2)(a)(i), 80P(4) - Disallowance of Deduction - Assessment of Income Challenged - CIT(A) partly allowed appeal of assessee and denied deduction u/s. 80P(s)(a)(i) - Hence, instant appeals.

There is no prohibition u/s 80P not to allow deduction to such co- operative societies in respect of business relating to its members. Further, if the co-operative society complied with all the three conditions; firstly that the primary object or principle business transacted by it is a banking business, secondly, the paid up share capital and reserve of which are 1 lakh or more and thirdly, by laws of the co-operative society do not permit admission of any other co-operative society as a member, it will be regarded to be primary co-operative bank. If co- operative society does not fulfill any of the conditions, it cannot be regarded to be a primary co-operative bank. In instant case, assessee has not to be regarded to be a primary co-operative bank as all the three basic conditions are not complied with, therefore, it is not a co-operative bank and the provisions of s. 80P(4) are not applicable. Hence, order of CIT(A) is set aside and direct AO to allow deduction u/s 80P(2)(a)(i) to the assessee. Appeals allowed.

The Judgment was delivered by P. K. Bansal (Accountant Member)

3. The brief facts of the case for the assessment year 2009-10 are that the Assessee is a co-operative society registered under the Karnataka State Co- operative Societies Act. The Assessee filed return declaring gross total income of Rs.37,07,382/- and claimed deduction u/s 80P(2)(a)(i) and therefore net taxable income was

shown to be "nil". The AO did not allow the deduction to the Assessee u/s 80P(2)(a)(i) and the income was assessed at Rs.41,03,978/-. The AO while denying the deduction to the Assessee u/s 80P(2)(a)(i) took the view that the Assessee is a primary co-operative bank and therefore provisions of Sec. 80P(4) are applicable in the case of the Assessee. The Assessee went in appeal before the CIT(A). CIT(A) partly allowed the appeal of the Assessee but did not allow deduction u/s 80P (2) (a) (i).

3.1 The ld. AR before us vehemently contended that the provisions of Sec. 80P(4) are not applicable in the case of the Assessee. The Assessee is not a co- operative bank. The Assessee is a co-operative society duly registered under the Karnataka State Co-operative Societies Act, 1959. The primary object of the Assessee is to develop self help. Economy and co-operative attitude among members and co member. For this, our attention was drawn towards the bye- laws of the Assessee from (1) to (18). The Assessee is a credit society. The activities of the Assessee are limited to its members. The Assessee does not finance or take deposits from the public at large. The paid up capital of the Assessee, no doubt, is more than Rs. 1 lacs. It was contended that the issue is duly covered in favour of the Assessee by the decision of the Hon'ble Gujarat High Court in the case of CIT vs. Jafari Momin Vikas Co-op. Credit Society Ltd. in Tax Appeal nos. 442 of 2013, 443 of 2013 and 863 of 2013. Attention was also drawn towards the decision of the Hon'ble Karnataka High Court in the case of Vyavasaya Seva Sahakara Sangha vs. State of Karnataka & Ors 1990 Indlaw KAR 166. for the proposition of law by referring to para 12 that merely because the co-operative society is required to advance loan to its members, it does not cease to be a co- operative society governed by the Co-operative Societies Act nor can they be treated as banking companies.

In our opinion, before deciding the issue whether the Assessee is entitled for deduction u/s 80P(2)(a)(i), it is essential to decide whether the Assessee is a co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank. In case it is found that the Assessee is a co-operative bank, the Assessee will not be entitled for deduction as stipulated u/s 80P(2)(a)(i) but in case the Assessee is not a co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank, the provisions of Sec. 80P(2)(a)(i) will be applicable to the Assessee provided the Assessee is engaged in carrying on business of banking or providing credit facilities to its members.

3.3.1 In our opinion, Sec. 80P(2)(a)(i) provides two types of activities in which the co-operative society must be engaged to be eligible for deduction under sub- cl. (i). These two activities are not alternate ones because the section allows deduction to the co-operative society on the whole of profits and gains of business attributable to any one or more of such activities. This pre-supposes that eligible co-operative society can carry on either one of these two businesses or can carry both these businesses for the members. If the Assessee co-operative society carries on one or both of the activities, it will be eligible for deduction. These two activities are (a) co-operative society engaged in carrying on business of banking facilities to its members or (b) co-operative society engaged in providing credit facilities to its members. Both the activities must be carried on by the co-operative society for its members. If a co-operative society is engaged in carrying on these activities/ facilities for the persons other than its members, the co-operative society, in our opinion, will not be eligible

for deduction u/s 80P(2)(a)(i) on the income which it derives from carrying on the activities not relating to its members. Therefore, where a co-operative society is engaged in carrying on business of banking facilities to its members and to the public or providing credit facilities to its members or to the public, the income which relates to the business of banking facilities to its members or providing credit facilties to its members will only be eligible for deduction u/s 80P(2)(a)(i). There is no prohibition u/s 80P not to allow deduction to such co- operative societies in respect of business relating to its members.

These deposits must be accepted from the public, not only from the members. These deposits must be repayable on demand or otherwise and could be withdrawn by the depositor by cheque, draft or otherwise. We noted that the Assessee has categorically accepted before the authorities below that the Assessee was accepting deposits of money not only from the members but also from the general public who are non-members. This fact as per the remand report of A.O dated 13.6.2013 before the CIT(A) confirms from the following :-

"Hence, it is clear from the above that the assessee society is not only dealing with members but also from the general public for acceptance of deposit, and thus doing banking business."

The deposits so accepted are used by the Assessee co-operative society for lending or investment. This fact has not been denied. Even out of the deposits so received, the loans have been given to the members of the society in accordance with the objects as enumerated above. Thus, in our opinion, condition no. 1 stands satisfied and it cannot be said that the Assessee society was not carrying on banking business as it was accepting deposits from the persons who were not members. So far as the second condition is concerned, there is no dispute that the paid up share capital and reserves in the case of the Assessee is more than Rs. 1 lac. Therefore, the Assessee satisfies the second condition. So far as the third condition is concerned, we noted that Sec. 16 of The Karnataka State Co-operative Societies Act, 1959 permits admission of any other co-operative society as a member.

3.3.8 We have gone through the decision of the Hyderabad bench of this Tribunal in the case of The Citizen Cooperative Society vs. Addl. CIT (supra). We noted that this decision is not applicable to the facts of the case before us. In this decision, under para 23 the Tribunal has given a finding that the Assessee is carrying on banking business and for all practical purposes it acts like a co-operative bank. The Society is governed by the Banking Regulations Act. Therefore, the society being a co-operative bank providing banking facilities to members is not eligible to claim deduction u/s 80P(2)(a)(i) after the introduction of sub-s. (4) to section 80P. In view of this finding, the Assessee was denied deduction u/s 80P(2)(a)(i). We have also gone through the decision of the Bangalore Bench of the Tribunal in the case of ITO vs. Divyajyothi Credit Co-operative Society Ltd. (supra) in ITA No. 72/Bang/2013. In this case, we noted that the Hon'ble Tribunal confirmed the order of CIT(A) following the decision of the Tribunal in the case of ACIT, Circle 3(1), Bangalore vs. M/s. Bangalore Commercial Transport Credit Co-operative Society Ltd. in ITA No. 1069/Bang/2010 holding that Sec. 80P(2)(a)(i) is applicable only to a co-operative bank and not to credit co-operative society. With due regards to the Bench, we are unable to find any term "credit co- operative society" u/s 80P(2)(a)(i) or u/s 80P(4), therefore, this decision cannot assist us. We noted that the Hon'ble Gujarat High Court in the case of CIT vs. Jafari Momin Vikas Co-op. Credit Society Ltd. in Tax Appeals no. 442 of 2013, 443 of 2013 and 863

of 2013 (supra) vide order dt. 15.1.2014 took the view that Sec. 80P(4) will not apply to a society which is not a co-operative bank. In the case of Vyavasaya Seva Sahakara Sangha vs. State of Karnataka & Ors 1990 Indlaw KAR 166. (supra) we noted that the issue before the Hon'ble High Court in the Writ Petition filed by the Petitioner related to the legislative competence of the State Legislature for issuing a circular.

3.3.9 We, therefore, in view of our aforesaid discussion hold that the Assessee has not to be regarded to be a primary co-operative bank as all the three basic conditions are not complied with, therefore, it is not a co-operative bank and the provisions of Sec. 80P(4) are not applicable in the case of the Assessee and Assessee is entitled for deduction u/s 80P(2)(a)(i). We, therefore, set aside the order of the CIT(A) and direct AO to allow deduction u/s 80P(2)(a)(i) to the assessee.

4. In the result, both the appeals filed by the Assessee are allowed.

Appeals allowed

****

Laxmananda Multipurpose Co-operative Society Limited v Income Tax Officer, 2014 Indlaw ITAT 1112; [2015] 152 ITD 318; [2014] 34 ITR (Trib) 472

Income Tax Appellate Tribunal, Bangalore Bench "A"

Jason P. Boaz (Accountant Member) & Rajpal Yadav (Judicial Member)

Head Note

KCS Act 1959 - Income Tax & Direct Taxes - Income Tax Act, 1961, s. 80P(2)(a)(i)

If the intention of the legislature was not to grant deduction u/s 80P(2)(a)(i) of the Act, 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. Hence, there is merit in appeal and the same is allowed and stay petition is dismissed. Appeal allowed.

The Judgment was delivered by Jason P. Boaz (Accountant Member)

1. This appeal by the assessee is directed against the order dated 30.01.2014 of the CIT(Appeals), Mysore, relating to assessment year 2010-11. The assessee has also separately filed a Stay Petition (S.P) seeking stay on recovery of demand for A.Y.2010-11

2. The assessee is a co-operative society, engaged in providing credit facilities to its members. The assessee had claimed deduction u/s. 80P(2)(a)(i) of the Act. 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 upto Assessment Year 2007-08. By the Finance Act, 2006 w.e.f. 1-4-2007, Sub-s. (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."

5. At the time of hearing, it was brought to our notice by the parties that the issue raised by the Assessee 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.

6. 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) (viia) 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-s. (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 subs.(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 admissibly 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- s.(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*, subs.(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-s.(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-s.(4) of section 80P, therefore, would not apply. In the result, Tax Appeals are dismissed."

7. In view of the aforesaid decisions, we are of the view that there is merit in this appeal by the Assessee. Consequently, the same is allowed.

8. In view of our allowing this appeal of the assessee, the assessee's stay petition in S.P. No.172/Bang/2014 is rendered infructuous and is accordingly dismissed as infructuous.

Appeal allowed

****

Lokmanya Multipurpose Co-operative Society Limited, Belgaum v Income Tax Officer, Ward - 2(2), Belgaum, 2014 Indlaw ITAT 1535

Case No: ITA NO. 02/PNJ/2014

Income Tax Appellate Tribunal, Panaji Bench

P. K. Bansal (Accountant Member), D. T. Garasia (Judicial Member)

Head Note

KCS Act 1959 - Income Tax & Direct Taxes - Banking & Finance - Income Tax Act,1961, ss.80P(4),80P(2)(a)(i) - Entitle to deduction - Whether assessee is entitled for deduction u/s.80P(2)(a)(i) of the Act and assessee is hit by provisions of s.80P(4) of the Act.

There is no prohibition u/s.80P of the Act not to allow deduction to such co-operative societies in respect of business relating to its members. It is not necessary that co-operative society should have a banking license as per definition under the Act for carrying on banking business. If licence is not obtained it may be an illegal banking business under other statute. Further, it is clearly proves that in case rules and bye-laws of other co-operative society provides otherwise, co-operative society may not be admitted as a member of co-operative society. Therefore, it is apparent that bye-laws of society does not permit admission of any other co-operative society as member. Since, assessee does comply with all three conditions of s.80P(4) of the Act has regarded to be primary co-operative bank as all three basic conditions are not complied with, it is a co-operative bank and s.80P(4) of the Act are applicable in case of assessee and assessee is not entitled for deduction u/s.80P(2)(a)(i) of the Act. Hence, order of CIT not allowing deduction to assessee u/s.80P(2)(a)(i) of the Act is confirmed. Appeal dismissed.

Ratio - If there non-compliance of provision by assessee of the Act then it cannot be entitle for the benefit provided under the Act.

The Order of the Court was as follows:

2. The brief facts of the case for the assessment year 2010-11 are that the Assessee is a co-operative society registered under the Karnataka State Co- operative Societies Act. The Assessee filed return declaring gross total income of Rs.30,99,595/- and claimed deduction u/s 80P(2)(a)(i) and therefore net taxable income was shown to be ,,nil?. The AO did not allow the deduction to the Assessee u/s 80P(2)(a)(i) and the income was assessed at Rs.30,99,595/-. The AO while denying the deduction to the Assessee u/s 80P(2)(a)(i) took the view that the Assessee is a primary co-operative bank and therefore provisions of Sec.80P(4) are applicable in the case of the Assessee. The Assessee went in appeal before the CIT(A). CIT(A) dismissed the appeal of the Assessee.

2.1 The ld. AR before us vehemently contended that the provisions of Sec. 80P(4) are not applicable in the

case of the Assessee. The main contentions of the assessee are that Assessee is not a co-operative bank but a co- operative credit society. The Assessee is a co-operative society duly registered under the Karnataka State Co-operative Societies Act, 1959.The primary object of the Assessee is to promote social and economic betterment of members through self-help and mutual aid in accordance with co-operative principles as specified in first schedule of the Act. For this, our attention was drawn towards the bye-laws of the Assessee from (a) to (j). The Assessee is a credit society. He contended that the word credit is of outmost important to decide the status of the assessee under the Banking Regulation Act, 1949. According to him the assessee is a co-operative credit society but when we question that section 80P does not talk of co-operative credit society, he could not reply thereto but relied on Banking Regulation Act forgetting that the section 80P only uses the word „co-operative society engaged in-?. The activities of the Assessee are limited to its members. He also relied on CBDT Circular No.133 of 2007 dated 9.5.2007 for the proposition that section 80P(4) will not apply to an assessee which is not a cooperative bank. The paid up capital of the Assessee, no doubt, is more than Rs. 1 lacs. It was contended that the issue is duly covered in favour of the Assessee by the decision of the Hon'ble Gujarat High Court in the case of CIT vs. Jafari Momin Vikas Co-op. Credit Society Ltd. in Tax Appeal Nos. 442 of 2013, 443 of 2013 and 863 of 2013. Attention was also drawn towards the decision of the Hon'ble Karnataka High Court in the case of Vyavasaya Seva Sahakara Sangha vs. State of Karnataka & Ors. for the proposition of law by referring to para 12 that merely because the co-operative society is required to advance loan to its members, it does not cease to be a co-operative society governed by the Co-operative Societies Act nor can they be treated as banking companies. The activities carried out by the society cannot be regarded to be banking activities as contemplated under the Banking Regulation Act, 1949. Reliance was also placed on the decision of the Bangalore Bench of this Tribunal in ITA No.72/Bang/2013 in the case of ITO vs. Divyajyothi Credit Co- operative Society Ltd. for the A.Y 2009-10 in which it was held that the provisions of Sec. 80P(4) are applicable only to credit co-operative banks and not to credit co-operative society. Reliance was also placed on the decision of the Panaji Bench in the case of DCIT vs. Jayalakshmi Mahila Vividodeshagala Souharda Sahakari Ltd. in ITA No. 1 to 3/PNJ/2012 dt. 30.3.2012. Reliance was also placed on the decision of Panaji Bench in ITA No. 229 & 230/PNJ/2013 in the case of Tararani Mahila Co-operative Credit Society, vs ITO. Reliance was also placed in ACIT vs Palhawas Primary Agriculture Co-operative Society Ltd, 23 TAXMAN 318 (Delhi), ITO vs Jankalyan Nagri Sahakari Pat Sanstha Ltd, 24 TAXMAN 127 (Pune). Reliance was also placed on the decision of Karnataka High Court in the case of CIT vs Sri Biluru Gurubasava Pattana Sahakari Sangh Niyamitha dated 5.2.2014, which relates to an appeal filed against the order passed u/s 263 and the question involved was whether the Revisional Authority was justified in invoking his power u/s 263 without the foundational fact of the assessee being co-operative bank.

4. In our opinion, Sec. 80P(2)(a)(i) provides two types of activities in which the co-operative society must be engaged to be eligible for deduction under sub-cl. (i). These two activities are not alternate ones because the section allows deduction to the co-operative society on the whole of profits and gains of business attributable to any one or more of such activities. This pre- supposes that eligible co-operative society can carry on either one of these two businesses or can carry both these businesses for the members. If the Assessee co-operative society carries on one or both of the activities, it will be eligible for deduction. These two activities are (a)

co-operative society engaged in carrying on business of banking facilities to its members or (b) co-operative society engaged in providing credit facilities to its members. Both the activities can be carried on by the co-operative society for its members. If a co-operative society is engaged in carrying on these activities/ facilities for the persons other than its members, the co-operative society, in our opinion, will not be eligible for deduction u/s 80P(2)(a)(i) on the income which it derives from carrying on the activities not relating to its members. Therefore, where a co-operative society is engaged in carrying on business of banking facilities to its members and to the public or providing credit facilities to its members or to the public, the income which relates to the business of banking facilities to its members or providing credit facilities to its members will only be eligible for deduction u/s 80P(2)(a)(i). There is no prohibition u/s 80P not to allow deduction to such co- operative societies in respect of business relating to its members.

9. Even we noted that when the matter went before the CIT(A), the CIT(A) asked for the remand report. In the remand report dated 14.8.2013, the assessing officer confirmed that the asseessee acceptsd eposits from the general public who are not members. The relevant portion of the remand report as reproduced by CIT(A) at page 38 -39 read as under :-

"Thus it is clear from the above that the assessee society is not dealing with members but also with the non-members i.e., general public for acceptance of deposits."

In view of this finding of fact which remain uncontroverted by the assessee as the onus remains on the assessee we hold that the assessee is carrying on the banking business that the first condition stand complied with for becoming primary co-operative bank. We may also hold that there is no term used co-operative credit society eligible for exemption u/s 80P(2)(a)(i).

14. We have gone through the decision of the Hyderabad bench of this Tribunal in the case of The Citizen Cooperative Society vs. Addl. CIT (supra). We noted that this decision is not applicable to the facts of the case before us. In this decision, under para 23 the Tribunal has given a finding that the Assessee is carrying on banking business and for all practical purposes it acts like a co-operative bank. The Society is governed by the Banking Regulations Act. Therefore, the society being a co-operative bank providing banking facilities to members is not eligible to claim deduction u/s 80P(2)(a)(i) after the introduction of sub-s. (4) to section 80P. In view of this finding, the Assessee was denied deduction u/s 80P(2)(a)(i). We have also gone through the decision of the Bangalore Bench of the Tribunal in the case of ITO vs. Divyajyothi Credit Co-operative Society Ltd. (supra) in ITA No. 72/Bang/2013. In this case, we noted that the Hon'ble Tribunal confirmed the order of CIT(A) following the decision of the Tribunal in the case of ACIT, Circle 3(1), Bangalore vs. M/s. Bangalore Commercial Transport Credit Co-operative Society Ltd. in ITA No. 1069/Bang/2010 holding that Sec. 80P(2)(a)(i) is applicable only to credit co-operative society a and not to co-operative bank. With due regards to the Bench, we are unable to find any term „credit co- operative society? u/s 80P(2)(a)(i) or u/s 80P(4), therefore, this decision cannot assist us. We noted that the Hon'ble Gujarat High Court in the case of CIT vs. Jafari Momin Vikas Co-op. Credit Society Ltd. in Tax Appeals no. 442 of 2013, 443 of 2013 and 863 of 2013 (supra) vide order dt. 15.1.2014 took the view that Sec. 80P(4) will not apply to a society which is not a co-operative bank. In the case of Vyavasaya Seva Sahakara Sangha vs. State of Karnataka & Ors. (supra)

we noted that the issue before the Hon'ble High Court in the Writ Petition filed by the Petitioner related to the legislative competence of the State Legislature for issuing a circular. The issue does not relate to the claim of deduction u/s 80P(2)(a)(i). While dealing with this issue, the Hon'ble High Court under para 12 observed as under :-

"12. It is not possible to accept this contention. The petitioners are not the banking institutions coming under the purview of the Banking Regulation Act*. They are the co-operative societies registered under the Act, and as such they are governed by the provisions of the Act passed by the State Legislature. Consequently, the State Government has control over them to the extent the Act permits. Major activities of the petitioners are to finance its members. For the purpose of financing its members, they borrow money from the financing agencies and repay the same. Merely because the petitioners-the co-operative societies in question-are required to advance loans to their members, they do not cease to be co-operative societies governed by the Act nor can they be treated as banking companies. It is also not possible to hold that these activities of the petitioners amount to "banking" as contemplated under the* Banking Regulation Act, 1949*, inasmuch as these co- operative societies are not established for the purpose of doing "banking" as defined in s. 5(b) of the* Banking Regulation Act, 1949*."*

This decision, in our opinion, is not applicable to the case before us because the provisions of Sec. 80P(2)(a)(i), as we have already held in the preceding paragraphs, are applicable to a co-operative society which is engaged in carrying on banking business facilities to its members if it is not a co- operative bank. We have also gone through the decision of this Bench in the case of DCIT vs. Jayalakshmi Mahila Vividodeshagala Souharda Sahakari Ltd. In ITA No. 1 to 3/PNJ/2012 dt. 30.3.2012 (supra), for which the undersigned is the author.

15. We have also gone through the decision of ACIT vs Palhawas Primary Agriculture Co-operative Society Ltd, 23 TAXMAN 318 (Delhi). Section 80P(4) clearly excludes primary agriculture credit society from its domain. Therefore this decision will not assist the assessee. We have also gone through the decision of Pune Bench in the case of ITO vs Jankalyan Nagri Sahakari Pad Sanstha Ltd, 24 TAXMAN 127 Pune. This we have already stated that section 80P(2)(a)(i) nowhere talks of co-operative credit society and therefore the distinction made under the Banking Regulation Act cannot be imported u/s 80P(2)(a)(i). This decision in our opinion will not assist the assessee. We have also gone through the decision of Tararani Mahila Co- operative Credit Society Ltd to which the undersigned is the author similar finding as has been given in this are given in that case also. The decision of Karnataka High Court in the case of CIT vs Sri Biluru Gurubasava Pattana Sahakari Sangh Niyamitha dated 5.2.2014, relates to an appeal filed against the order passed u/s 263 and the question involved was whether the Revisional Authority was justified in invoking his power u/s 263 without the foundational fact of the assessee being co-operative bank. Therefore, this decision is not applicable.

16. We, therefore, in view of our aforesaid discussion hold that the Assessee has to be regarded to be a primary co-operative bank as all the three basic conditions are not complied with, therefore, it is a co-operative bank and the provisions of Sec. 80P(4) are applicable in the case of the Assessee and Assessee is not entitled for deduction u/s 80P(2)(a)(i). We, therefore, confirm the order of the CIT(A) not allowing deduction to the

assessee u/s 80P(2)(a)(i) on the income generated for providing banking or credit facilities to its members.

17. In the result, the appeal filed by the assessee is dismissed.

18. Order pronounced in the open court on 26.09.2014.

Appeal dismissed

****

Tararani Mahila Co-operate Credit Society Limited, Belgaum v Income Tax Officer, Belgaum, 2014 Indlaw ITAT 3369; [2015] 152 ITD 621

Income Tax Appellate Tribunal, Panaji Bench

P. K. Bansal (Accountant Member), D. T. Garasia (Judicial Member)

Head Note

KCS Act 1959 - Income Tax & Direct Taxes - Income tax Act,1961, s.80P(2)(a)(i),(4) - Determination of status - Entitlement of deduction - Whether assessee is entitled for deduction u/s.80P(2)(a)(i) of the Act.

None of aims and objects allows assessee co-operative society to accept deposits of money from public for purpose of lending or investment. Paid up share capital and reserves in case of assessee is more than rs.1 lac. None of the condition is fulfilled by assessee to become co-operative bank. Further, s.80P(2)(a)(i) of the Act are applicable to co-operative society which is engaged in carrying on banking business facilities to its members. Thus, assessee cannot be regarded to be primary co-operative bank and s.80P(4) of the Act are not applicable and assessee is entitled for deduction u/s.80P(2)(a)(i) of the Act. Appeals allowed.

Ratio - Society which is not cooperative bank is entitled for deduction u/s.80P(2)(a)(i) of the Act.

The Judgment was delivered by : P. K. Bansal (Accountant Member)

3. The brief facts of the case are that the Assessee is a co-operative society registered under the Karnataka State Co-operative Societies Act. The Assessee filed return declaring gross total income of Rs.18,10,916/- and claimed deduction u/s 80P(2)(a)(i) and therefore net taxable income was shown to be 'nil'. The AO did not allow the deduction to the Assessee u/s 80P(2)(a)(i) and the income was assessed at Rs.18,10,920/-. The AO while denying the deduction to the Assessee u/s 80P(2)(a)(i) took the view that the Assessee is a primary co-operative bank and therefore provisions of Sec. 80P(4) are applicable in the case of the Assessee. The Assessee went in appeal before the CIT(A). CIT(A) dismissed the appeal of the Assessee.

3.1. The ld. AR before us vehemently contended that the provisions of Sec. 80P(4) are not applicable in the case of the Assessee. The Assessee is not a co- operative bank. The Assessee is a co-operative society duly registered under the Karnataka State Co-operative Societies Act, 1959. The primary object of the Assessee is to promote the economic interest of its members and to encourage thrift, savings, co-operative and self-help among themselves. For this, our attention was drawn towards the order of the CIT(A) which re- produces the

bye-laws of the Assessee from (i) to (v). The Assessee is a credit society. The activities of the Assessee are limited to its members. The Assessee does not finance or take deposits from the public at large. The paid up capital of the Assessee, no doubt, is more than Rs. 1 lacs. It was contended that the issue is duly covered in favour of the Assessee by the decision of the Hon'ble Gujarat High Court in the case of CIT vs. Jafari Momin Vikas Co-op. Credit Society Ltd. 2014 Indlaw GUJ 639 in Tax Appeal nos. 442 of 2013, 443 of 2013 and 863 of 2013. Attention was also drawn towards the decision of the Hon'ble Karnataka High Court in the case of Vyavasaya Seva Sahakara Sangha vs. State of Karnataka & Ors. for the proposition of law by referring to para 12 that merely because the co-operative society is required to advance loan to its members, it does not cease to be a co-operative society governed by the Co-operative Societies Act nor can they be treated as banking companies. The activities carried out by the society cannot be regarded to be banking activities as contemplated under the Banking Regulation Act, 1949. Reliance was also placed on the decision of the Bangalore Bench of this Tribunal in ITA No. 72/Bang/2013 in the case of ITO vs. Divyajyothi Credit Co-operative Society Ltd. for the A.Y 2009-10 in which it was held that the provisions of Sec. 80P(4) are applicable only to credit co-operative banks and not to credit co-operative society. Reliance was also placed on the decision of the Panaji Bench in the case of DCIT vs. Jayalakshmi Mahila Vividodeshagala Souharda Sahakari Ltd. in ITA No. 1 to 3/PNJ/2012 dt. 30.3.2012.

3.3.1. In our opinion, Sec. 80P(2)(a)(i) provides two types of activities in which the co-operative society must be engaged to be eligible for deduction under sub- clause (i). These two activities are not alternate ones because the section allows deduction to the co-operative society on the whole of profits and gains of business attributable to any one or more of such activities. This pre-supposes that eligible co-operative society can carry on either one of these two businesses or can carry both these businesses for the members. If the Assessee co-operative society carries on one or both of the activities, it will be eligible for deduction. These two activities are (a) co-operative society engaged in carrying on business of banking facilities to its members or (b) co-operative society engaged in providing credit facilities to its members. Both the activities must be carried on by the co-operative society for its members. If a co-operative society is engaged in carrying on these activities/facilities for the persons other than its members, the co-operative society, in our opinion, will not be eligible for deduction u/s 80P(2)(a)(i) on the income which it derives from carrying on the activities not relating to its members. Therefore, where a co-operative society is engaged in carrying on business of banking facilities to its members and to the public or providing credit facilities to its members or to the public, the income which relates to the business of banking facilities to its members or providing credit facilties to its members will only be eligible for deduction u/s 80P(2)(a)(i). There is no prohibition u/s 80P not to allow deduction to such co- operative societies in respect of business relating to its members.

These deposits must be accepted from the public, not only from the members. These deposits must be repayable on demand or otherwise and could be withdrawn by the depositor by cheque, draft or otherwise. From the aforesaid objects, it is apparent that none of the aims and objects allows the Assessee co-operative society to accept deposits of money from the public for the purpose of lending or investment. In our opinion, until and unless this condition is satisfied, it cannot be said that the prime object or principal business of the Assessee is banking business. Therefore, in this case, the Assessee will not comply with the first condition as laid down

in the definition as given u/s 5(ccv) of the Banking Regulation Act, 1949 for becoming primary co-operative bank. We may clarify that if the business of the Assessee is limited only to the members and even if it is a banking business, the Assessee will be entitled for deduction u/s 80P(2)(a)(i). So far as the second condition is concerned, there is no dispute that the paid up share capital and reserves in the case of the Assessee is more than Rs. 1 lac. Therefore, the Assessee satisfies the second condition. So far as the third condition is concerned, we noted that Sec. 16 of The Karnataka State Co-operative Societies Act, 1959 permits admission of any other co-operative society as a member.

The word used in Sec. 16(1) is 'shall'. This fact is clarified further by sub-section (2) as re- produced hereinabove that no co-operative society shall refuse admission to the membership, without sufficient reason, to any person who is qualified to become member under the provisions of this Act, rules and bye-laws. This clearly proves that in case the rules and bye-laws of the other co-operative society provides otherwise, the co-operative society may not be admitted as a member of the co-operative society. The person, as per sub-section (2), must be qualified for becoming member not only u/s 16(1) but also as per the rules and bye-laws of the co-operative society. We cannot read sub-section (2) in the manner that the rules and bye-laws cannot permit the admission of any other co- operative society as a member of the co-operative society. Had that been the intention of the legislature, they would have not used the words "this Act, rules and bye-laws" in sub-section (2).

3.3.8. We have gone through the decision of the Hyderabad bench of this Tribunal in the case of The Citizen Cooperative Society vs. Addl. CIT (supra). We noted that this decision is not applicable to the facts of the case before us. In this decision, under para 23 the Tribunal has given a finding that the Assessee is carrying on banking business and for all practical purposes it acts like a co-operative bank. The Society is governed by the Banking Regulations Act. Therefore, the society being a co-operative bank providing banking facilities to members is not eligible to claim deduction u/s 80P(2)(a)(i) after the introduction of sub-section (4) to section 80P. In view of this finding, the Assessee was denied deduction u/s 80P(2)(a)(i). We have also gone through the decision of the Bangalore Bench of the Tribunal in the case of ITO vs. Divyajyothi Credit Co-operative Society Ltd. (supra) in ITA No. 72/Bang/2013. In this case, we noted that the Hon'ble Tribunal confirmed the order of CIT(A) following the decision of the Tribunal in the case of ACIT, Circle 3(1), Bangalore vs. M/s. Bangalore Commercial Transport Credit Co-operative Society Ltd. in ITA No. 1069/Bang/2010 holding that Sec. 80P(2)(a)(i) is applicable only to a co-operative bank and not to credit co-operative society. With due regards to the Bench, we are unable to find any term 'credit co- operative society' u/s 80P(2)(a)(i) or u/s 80P(4), therefore, this decision cannot assist us. We noted that the Hon'ble Gujarat High Court in the case of CIT vs. Jafari Momin Vikas Co-op. Credit Society Ltd. in Tax Appeals no. 442 of 2013, 443 of 2013 and 863 of 2013 2014 Indlaw GUJ 639 (supra) vide order dt. 15.1.2014 took the view that Sec. 80P(4) will not apply to a society which is not a co-operative bank. In the case of Vyavasaya Seva Sahakara Sangha vs. State of Karnataka & Ors. (supra) we noted that the issue before the Hon'ble High Court in the Writ Petition filed by the Petitioner related to the legislative competence of the State Legislature for issuing a circular. The issue does not relate to the claim of deduction u/s 80P(2)(a)(i). While dealing with this issue, the Hon'ble High Court under para 12 observed as under :

"12. It is not possible to accept this contention. The petitioners are not the banking institutions coming under the purview of the Banking Regulation Act*. They are the co-operative societies registered under the Act, and as such they are governed by the provisions of the Act passed by the State Legislature. Consequently, the State Government has control over them to the extent the Act permits. Major activities of the petitioners are to finance its members. For the purpose of financing its members, they borrow money from the financing agencies and repay the same. Merely because the petitioners-the co-operative societies in question-are required to advance loans to their members, they do not cease to be co-operative societies governed by the Act nor can they be treated as banking companies. It is also not possible to hold that these activities of the petitioners amount to "banking" as contemplated under the* Banking Regulation Act, 1949*, inasmuch as these co- operative societies are not established for the purpose of doing "banking" as defined in section 5(b) of the* Banking Regulation Act, 1949*."*

This decision, in our opinion, is not applicable to the case before us because the provisions of Sec. 80P(2)(a)(i), as we have already held in the preceding paragraphs, are applicable to a co-operative society which is engaged in carrying on banking business facilities to its members if it is not a co-operative bank. We have also gone through the decision of this Bench in the case of DCIT vs. Jayalakshmi Mahila Vividodeshagala Souharda Sahakari Ltd. in ITA No. 1 to 3/PNJ/2012 dt. 30.3.2012 (supra), for which the undersigned is the author.

3.3.9. We, therefore, in view of our aforesaid discussion hold that since the Assessee cannot be regarded to be a primary co-operative bank, therefore, it cannot be a co-operative bank and therefore the provisions of Sec. 80P(4) are not applicable in the case of the Assessee and Assessee shall be entitled for deduction u/s 80P(2)(a)(i). We, therefore, set aside the order of CIT(A) and allow deduction to the Assessee u/s 80P(2)(a)(i).

4. In the result, both the appeals filed by the Assessee are allowed.

Appeals allowed

****

Chitradurga City Multi Purpose Co-operative Society, Chitradurga v Income-tax Officer, Chitradurga, 2015 Indlaw ITAT 2038; [2015] 44 ITR (Trib) 61

Case No: I. T. A No. 302/Bang/2014

Income Tax Appellate Tribunal, Bangalore Bench

Abraham P. George (Accountant Member) & N. V. Vasudevan (Judicial Members)

Head Note

KCS Act 1959 - Income Tax & Direct Taxes – Income Tax Act,1961, ss.80P(2)(a)(i),80P(2)(d) - Deduction – Whether CIT fell in error in construing order of AO as erroneous and prejudicial to interests of Revenue.

Assessee had claimed deduction u/s.80P(2)(a)(i) of the Act for interest on bank deposit and also for rental from building. Therefore, assessee's property income could only be construed as profits and gains attributable to business of banking. If that be so such amounts would also be eligible for claim of deduction u/s.80P(2)(a)(i) of the Act. Thus, CIT(A) was justified in considering assessment order as erroneous and prejudicial to interests of Revenue. Hence, order of CIT is modified and directed AO to do assessment afresh in accordance with law. Appeal partly allowed.

Ratio – Commissioner have power to revise assessment if same is prejudicial to interests of Revenue.

The Judgment was delivered by Abraham P. George (Accountant Member)

5. Now before us, Ld. AR strongly assailing the order of CIT submitted that interest earned on deposits with a cooperative bank was also eligible for deduction u/s.80P(2)(d). As per the Ld. AR, a cooperative bank was also a cooperative society and therefore eligible for claiming the benefit of the said section. Reliance was placed on the decision of coordinate bench in the case of Menasi Seemeya Group Gramagala Seva Sahakari Sangha Niyamitha V. CIT [ITA Nos.609 & 610/Bang/2014, dt.06.02.2015]. Vis-a-vis the rental income, Ld. AR submitted that Hon'ble jurisdictional High Court in the case of CIT v. The Grain Merchants Co-operative Bank Ltd [(2004) 267 ITR 742 2003 Indlaw KAR 78], had held that income received from letting out of premises was a part of the income from the business of banking. As per the Ld. AR, banking business as per clause ((b) of Section 6 of the Banking Regulation Act, 1949, took into its ambit various types of business referred in clause (a) to (o) of sub-section (1) of section 6, as well. According to him, clause (b) covers rental income. Thus according to him assessee was justified in treating rental from building as a part of its business income. Once the rental income is treated as attributable to the banking business, such amounts have to be considered as profits and gains of business attributable to carrying on the business of banking or providing credit facilities. Hence according to him, deduction u/s.80P(2)(a)(i) was available on such sum also. Ld. AR submitted that assessee was not hit by the limitation set out u/s.80P(4) of the Act because it was not a cooperative bank as recognised by RBI and the judgment of Hon'ble jurisdictional High Court in the case of Hon'ble High Court of Karnataka in CIT v. Sri Biluru Gurubasava Pattin Sahakari Sangh Niyamit, Bagalkot [ITA No.5006/2013, dt.05.02.2014], would come to its aid. Reliance was also placed on the judgment of Hon'ble jurisdictional High Court in the case of Venugram Multipurpose Cooperative Credit Society Ltd v. ITO [ITA No.100042 of 2014, dt.17.09.2014] in support of his contention that even a multi purpose cooperative society would also fall under the definition of primary agricultural credit cooperative society given in Karnataka Cooperative Societies Act, 1959. Thus according to him, CIT fell in error in construing the order of AO, as erroneous and prejudicial to the interests of Revenue.

7. We have perused the orders and heard the rival contentions. There is no doubt that assessment order is very cryptic. Nothing whatsoever is mentioned with regard to the claim of the assessee for deduction u/s.80P(2)(a)(i) or 80P(2)(d) in the order. Assessee has also not been able to place on record any correspondence that might have been there between it and the AO during the course of assessment proceedings. Lack of enquiry into the aspect of the claim made by assessee for deduction u/s.80P(2)(a)(i) is therefore glaring on record. However, what we find is that assessee had claimed deduction u/s.80P(2)(a)(i) of the Act for interest on bank deposit

and also for rental from building. Vis-a- vis interest from bank deposits, claim of the assessee is that such deposits were out of funds kept as statutory reserves. Hon'ble jurisdictional High Court in the case of Tumkur Merchants Souharda Credit Cooperative Ltd, (supra) had held that interest earned on short-term deposits out of funds which were not due to its members would not be hit by the restrictions placed by Hon'ble Apex Court in Totgars Cooperative Sale Society Ltd 2010 Indlaw SC 91 (supra). Relevant para 10 of the judgment dt.20.09.2014 is reproduced hereunder :

10. In the instant case, the amount which was invested in banks to earn interest was not an amount due to any members. It was not the liability. It was not shown as liability in their account. In fact this amount which is in the nature of profits and gains, was not immediately required by the assessee for lending money to the members, as there were no takers. Therefore they had deposited the money in a bank so as to earn interest. The said interest income is attributable to carrying on the business of banking and therefore it is liable to be deducted in terms of Section 80P(1) of the Act. *In fact similar view is taken by the Andhra Pradesh High Court in the case of COMMISSIONER OF INCOME- TAX III, HYDERABAD vs. ANDHRA PRADESH STATE COOPERATIVE BANK LTD., reported in (2011) 200 TAXMAN 220/12 In that view of the matter, the order passed by the appellate authorities denying the benefit of deduction of the aforesaid amount is unsustainable in law. Accordingly it is hereby set aside. The substantial question of law is answered in favour of the assessee and against the revenue. Hence, we pass the following order.*

Appeal is allowed."

8. Vis-a-vis the rental income what we find is that in the case of Grain Merchants Cooperative Bank Ltd 2003 Indlaw KAR 78 (supra), an issue had arose as to whether income received from letting out of premises could be deemed as income from business of banking. Their Lordships after assimilating the facts held as under from para 2 to 10 of the judgment :

"2. The respondent is the Grain Merchants Co-operative Bank (hereinafter referred to as "the assessee"), engaged in banking activity. The assessee filed its return for the assessment years 1989-90, 1990-91 and 1991-92. The Assessing Officer, while completing the assessment, took the view that the rental income received by the assessee in letting out the portion of the building partly occupied by it and the interest received from setting apart certain funds as reserve fund, does not come within the purview of section 80P(2)(a)(i) of the Act *and as such are not deductible while computing the income of the assessee. Aggrieved by the said assessment order, the assessee preferred an appeal to the Commissioner of Income-tax (Appeals)-II (hereinafter referred to as "the Appellate Commissioner"). The Appellate Commissioner, by means of his order dated March 16, 1993, allowed the appeals accepting the contention of the assessee that the rental income received by it as well as the interest received on reserve fund are exempted from payment of tax under section 80P(2)(a)(i) of* the Act. *Aggrieved by the said order of the Appellate Commissioner, the Revenue took up the matter in appeal to the Tribunal. The Tribunal, as noticed by us earlier, in the impugned order affirmed the order passed by the Appellate Commissioner.*

3. Sri M. V. Sesachala, learned counsel appearing for the Revenue, challenging the correctness of the orders impugned, made two submissions. Firstly, he submitted that the Tribunal as well as the Appellate Commissioner

have seriously erred in law in taking the view that the interest derived out of the income from funds maintained as reserve funds is also an income derived by the assessee on account of the banking activities carried on by the assessee and as such the same is deductible under section 80P(2)(a)(i) of the Act *while computing the income of the assessee. Elaborating this submission, learned counsel pointed out that the Tribunal as well as the Appellate Commissioner have failed to consider that the funds maintained as reserve funds have not been utilised by the assessee for its business activities. Secondly, he submitted that the Tribunal as well as the Appellate Commissioner have also seriously erred in law in taking the view that the rental income received by the assessee is an income received by it in carrying on the business of banking and as such is entitled for exemption under section 80P(2)(a)(i) of* the Act. *It is also his submission that the letting out of premises by the assessee and receiving rent out of it cannot be considered as carrying on the business of banking activity or providing credit facilities by the assessee to its members; and hence the income received by the assessee by way of rent in respect of the premises let out must be treated as an income which is liable for payment of tax under section 22 of* the Act. *In support of this submission, he referred to us clauses (a) to (f) of sub-section (2) of section 80P of* the Act. *It is also pointed out by him that clause (f) of sub-section (2) of section 80P of* the Act *clearly spells out that in the case of a co-operative society, not being a housing society or an urban consumers society or a society carrying on transport business or a society engaged in the performance of any manufacturing operations with the aid of power, wherein the gross total income does not exceed Rs. 20,000, the amount earned by way of interest on securities on any income from certain property is chargeable under section 22 of* the Act. *He pointed out that clause (f) of sub-section (2) of section 80P of* the Act *should be understood as making an exception to clause (a)(i) of sub-section (2) of section 80P of* the Act *wherein it is provided that if a co-operative society carrying on banking business receives income from house property, such an income is liable to be taxed under section 22 of* the Act. *It is his submission that when Parliament had made a distinction between the income received from banking business and the income received from non-banking business by way of rental income on account of letting out of premises belonging to the assessee, it is not permissible for the assessee to claim exemption relying upon clause (a)(i) of sub- section (2) of section 80P of* the Act. *It is also his submission that the assessee cannot derive any assistance from clauses (k) and (l) of sub-section (1) of section 6 of the* Banking Regulation Act, 1949 *(hereinafter referred to as "*the Regulation Act*"), as according to learned counsel the said provision only empowers the banking institution to carry on certain activities which are not considered as a banking business. In this connection, he referred to us the language employed in section 6 of* the Regulation Act *wherein it is referred that in addition to the business of banking, a banking company may engage in any of the businesses referred to in the said section.*

9. No doubt for A. Ys. 1989-90 and 1991-92 for which the above judgment was rendered, sub-section 4 of section 80P was not in the statute book. Sub- section 4 of section 80P which disables a cooperative bank from claiming the benefit u/s.80P(2)(a)(i) came into the statute through Finance Act 2006 w.e.f.2007. Nevertheless the issue as to whether income from letting out of premises could be considered as income from business of banking has been dealt with by their Lordships in the case of Grain Merchants Cooperative Society 2003 Indlaw KAR 78 (supra) relevant paras of which we have reproduced above.

10. Thus in so far as construing the meaning of the words carrying on the business of banking by providing

credit facilities to its members, is concerned, judgment of jurisdictional High Court in the case of Grain Merchants Cooperative Society mentioned 2003 Indlaw KAR 78 supra will apply on all four squares. If that be so, assessee has a good case that its property income could only be construed as profits and gains attributable to the business of banking. If that be so such amounts would also be eligible for claim of deduction u/s.80P(2)(a)(i) of the Act. The CIT had directed the AO to make the disallowances mentioned at para four above, without giving him any room for taking the submissions and pleading of the assessee into consideration which in our opinion was not proper. At the same time it is also true that AO had made no enquiries on these vital issues at the time of assessment. Hence we are of the opinion that Ld. CIT (A) was justified in considering the assessment order as erroneous and prejudicial to the interests of Revenue. However in the circumstances of the case, direction of the CIT to assess the incomes mentioned at para four above is not correct. Therefore, while upholding the order of CIT u/s.263 of the Act, we modify it and direct the AO to do the assessment afresh in accordance with law, untrammelled by the observation of the CIT on merits regard.

11. In the result, appeal of the assessee is partly allowed for statistical purpose.

Appeal partly allowed

****

Hanuman Sahakari Pani Pruvatha Sanstha Maryadit Through Secretary, Shivram Bhauso Bhandigare, Maharastra and others v Ramchandra Bapuso Khade and others, 2015 Indlaw NCDRC 706; 2016 (2) CPJ(NC) 42

Case No : Revision Petition No. 3005 of 2008, Revision Petition No. 2613 of 2015, Revision Petition No. 2614 of 2015, Revision Petition No. 2615 of 2015, Revision Petition No. 2616 of 2015, Revision Petition No. 2617 of 2015, Revision Petition No. 2618 of 2015, Revision Petition No. 2619 of 2015, Revision Petition No. 2620 of 2015, Revision Petition No. 2621 of 2015, Revision Petition No. 2622 of 2015, Revision Petition No. 2623 of 2015, Revision Petition No. 2624 of 2015, Revision Petition No. 2625 of 2015, Revision Petition No. 2626 of 2015, Revision Petition No. 2627 of 2015, Revision Petition No. 2628 of 2015, Revision Petition No. 2629 of 2015, Revision Petition No. 2631 of 2015, Revision Petition No. 2632 of 2015, Revision Petition No. 2633 of 2015

National Consumer Disputes Redressal Commission, New Delhi Bench

K.S. Chaudhari

Head Note

KCS Act 1959 - Consumer Protection - Consumer Protection Act, 1986, s.2(1) (d) - Non-supply of water - Deficiency of service - Compensation - Respondents/complainants became members of society - Opposite parties did not provided water supply to complainants land so that they suffered loss and unable to refund loan installments to bank- Respondents filed complaint before District Forum was allowed for opposite party nos. 1 to 12 and dismissed against opposite party no. 13 which was confirmed

by State Commission - Aggrieved opposite parties filed revision petition against order passed by State Commission - Hence instant petitions.

District Forum while allowing complaint directed opposite party to supply water if complainants comply with Rules and Regulations of Society which clearly proves that complainants did not comply with necessary formalities for supply of water and in such circumstances, complainants were not entitled to supply of water and claim for compensation for loss caused due to non- supply of water. Petitioners submitted that petitioner is ready to supply water even today if necessary formalities are complying with by complainants. As far as compensation is concerned, District Forum while granting compensation, observed, it appears that without any cogent evidence only on basis of certificate issued by Assistant Agriculture Officer which was not provided to opposite party for rebuttal, compensation has been allowed which could not have been allowed. Petitions disposed of.

Ratio - It is true that Revisional Court has limited jurisdiction and can exercise limited jurisdiction only if State Commission has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested, or has acted in exercise of its jurisdiction illegally or with material irregularity.

The Judgment was delivered by K. S. Chaudhari (Presiding Member)

3. Brief facts of the case are that complainants/respondents became members of Society-Opposite Party No. 1/Petitioner No. 1 for getting water supply for their land. Opposite Party No. 2/Petitioner No. 2 is Chairman, Opposite party No. 3-Vice Chairman and Opposite Party Nos. 4 to 12/ Petitioner Nos. 3 to 11 are Directors and Opposite Party No. 13 is Secretary of the said Society. Complainants mortgaged their lands to the land development Bank for raising loan for the formation of society and execution commissioning, and erection of irrigation Scheme for the purpose of providing water supply and accordingly the land development Bank have given finance for making the irrigations scheme operational in the form of loan to the Respondent Society. The said Scheme became operational in the year 2000 and despite the complainant made repeated oral as well as written request to the OP, they did not provide water supply to the complainants land, and therefore complainants could not take sugarcane crop in their respective land as the result of which they have suffered financial loss. The complainants mortgaged their lands and raised loans for the irrigations scheme of the OP to get water supply and due to non- supply of the water by the OP society, the complainant have suffered financial loss and therefore they are unable to refund the loan instalments to the land development Bank. Alleging deficiency on the part of opposite parties, complainants filed separate complaints before District Forum. Opposite Parties resisted complaints and submitted that complainants have mortgaged their lands to land development Bank for raising loan for the execution commissioning and erection of the water irrigation scheme. They have also stated that the complainants are the members of the Respondents society. However, they have harped on the non-compliance of the rules and bylaws of the society for the water supply by the complainants and hence due to such a non-compliance water supply could not made to them. They have also stated that OP society had sent intimation letter to the complainants on 26.7.2002 informing them to fill-up the printed form and comply with the rules and bylaws of the society and then only they shall be entitled to get the water. Similarly, the OP in their submission have stated that the complainants in the year 1998 had

submitted written complaints to the D.D.R. Cooperative Society Kolhapur that since they have not received water supply on that date and hence do not wish to take the water supply from the OP and hence their lands be made emcumbrance free from any mortgage. The same Application given to the OP society and hence the complainants cannot claim the water supply. The OP(s) have further stated that due to political rivalry between the complainant and the OP and with view to cause harassment to the OP, the complainants have not taken the water supply from the irrigations scheme. On the contrary the complainants have tried to create problems in the functioning of the OP society. The OP(s) have also raised the point of maintainability of the complaint before these Forums. The Cooperative Court and similarly situated offices are the only competent Forums to decide the dispute between the parties as it is dispute touching the business of the society and they have submitted that this Forum have no jurisdiction to try the dispute. They have also stated that the complaint is expressly barred by the other law. It was further submitted that if complainants are ready to comply with terms & conditions, Rules & Regulations of the Society, Society is ready and willing to supply water to the complainants even today. Complainants have not impleaded all necessary parties and prayed for dismissal of complaints. Learned District Forum after hearing both the parties, dismissed complaints against Opposite Party No. 13 and allowed complaint against Opposite Party Nos. 1 to 12 and directed them to pay each complainant Rs. 20,000/- as compensation, Rs. 300/- towards cost of the complaint, Rs. 1,000/- as lawyer's fee and Rs. 500/- for mental agony and it was further observed that if complainants comply with Rules & Regulations of the Society, they will be entitled to receive water from Opposite party within three days from such compliance. Appeals filed by Opposite Parties were dismissed by State Commission vide impugned order against which these revision petitions have been filed.

7. Admittedly, complainants are members of opposite party-Society which was formed for supply of water to complainant's land and for that purpose, loan was obtained by complainants by mortgaging their land. Opposite Party specifically pleaded that consumer fora has no jurisdiction to entertain complaints regarding disputes between Members of the Society and for redressal of their grievances, they could have approached to Cooperative Court under Maharashtra Co-operative Societies Act. Learned District Forum observed that there was relationship of consumer and service provider between complainants and opposite party-Society. This observation is not correct as it was a clear dispute between complainants and opposite party(s) touching business of the Society. Learned Karnataka State Commission in III (1994) CPJ 500- The Kulve Gram Seva Shahakari Sangha Ltd. Vs. Mahabaleshwar Ramakrishna Bhat; has held that as per Section 70 of Karnataka Cooperative Societies Act, dispute was to be settled only by Registrar of the Cooperative Societies and complaint before Consumer Fora was not maintainable. Similar view was expressed by State Commission, Maharashtra, Mumbai, in 1998 (1) CPR 630- Indrapuri Nagari Sahakari Pat Sanstha Ltd. & Ors. Vs. Shri Suryakant Ramchandra Gomase; in which it was observed that Consumer Fora was barred from entertaining any dispute between the Members and Society. This Commission in 1-1993(1) CPR 174- Dilip Bapat & Anr. Vs. Panchvati Co-op. Housing Society Ltd.; held that complainants being Members of Cooperative Housing Society cannot raise dispute regarding payment of escalation in cost of construction before Consumer Fora and right forum for Members of Society to agitate their grievances is Cooperative Court under Co-operative Societies Act.

8. In the light of aforesaid judgments, it becomes clear that dispute among complainants and their Society regarding loss due to non-supply of water for irrigation of land could have been decided only under the Cooperative Societies Act and Consumer Fora has no jurisdiction to entertain the complaint and in such circumstances, as Fora below have exercised jurisdiction not vested in it by law, this Commission has power to set aside impugned order under revisional jurisdiction.

9. Perusal of record reveals that complainants by letter dated 1.11.1998 intimated to the Opposite Party -Society that they do not want to take water from the Society. They also gave similar intimation on 15.4.1998 to Branch Manager, Maharashtra State Co-operative Land Development and on 27.4.1998 to Assistant Registrar, Cooperative Societies which shows that complainants in the year 1998 intimated that they are not willing to take water from Opposite Party-Society. In such circumstances, opposite party-Society was not under any obligation to supply water to the complainants.

10. Perusal of record further reveals that opposite party specifically pleaded that complainants were required to make application in writing as per bylaws for supply of water and complainants have not complied with necessary formalities. It appears that as complainants were reluctant in taking water from OP/Society, they did not fill up requisite forms for taking water and in such circumstances, OP has not committed any deficiency in not providing irrigation facility to the complainants. Learned District Forum while allowing complaint directed Opposite Party to supply water within three days if complainants comply with Rules & Regulations of the Society which clearly proves that complainants did not comply with necessary formalities for supply of water and in such circumstances, complainants were not entitled to supply of water and claim for compensation for loss caused due to non- supply of water. Petitioners submitted that petitioner is ready to supply water even today if necessary formalities are complied with by complainants.

11. As far as compensation is concerned, Learned District Forum while granting compensation, observed as under:-"in these complaints the respondents have not laid adequate evidence substantiating the claim made by them hence the claim made by them cannot be allowed and hence forum has reached to the conclusion that the grant of such a relief would neither be just nor the proper. However, in the matter the complainants have submitted the certificate issued by the Assistant Agriculture Officer, stating approximately what would have been the income had the sugarcane cultivating the land." It appears that without any cogent evidence only on the basis of certificate issued by Assistant Agriculture Officer which was not provided to OP for rebuttal, compensation has been allowed which could not have been allowed.

12. In the light of aforesaid discussion, it becomes clear that Learned District Forum committed error in allowing complaint and Learned State Commission further committed error in dismissing appeals and impugned order is liable to set aside.

13. Consequently, revision petitions filed by petitioners are allowed and impugned order dated 4.6.2008 passed by Learned State Commission in FA No. 1265 of 2003- Hanuman Sahakari Pani Purvatha Sanstha Maryadit & Ors. VS. Ramchandra Bapuso Khade & Ors. and order of District Forum dated 23.7.2003 in Consumer Complaint Nos. 430-450 of 2002- Ramchandra Bapuso Khade & Ors. VS. Hanuman Sahakari Pani Purvatha Sanstha Maryadit & Ors., is set aside and complaints stand dismissed.

Parties to bear their own cost.

Revisions allowed

****

Income Tax Officer, Bijapur v Jamkhandi Taluka School Teachers Co-operative Credit Society Limited, Jamkhandi, 2015 Indlaw ITAT 2103; [2015] 43 ITR (Trib) 365

Case No: ITA. No. 1504/Bang/2014

Income Tax Appellate Tribunal, Bangalore Bench

N.V. Vasudevan (Judicial Member) & Abraham P. George (Accountant Member)

Head Note

KCS Act 1959 - Income Tax & Direct Taxes - Practice & Procedure - Income Tax Act, 1961, s.80P(2)(a)(i) - Grant of deduction - Applicability of provision - Assessee claimed deduction u/s.80P(2)(a)(i) of Act - Assessing Officer-AO held that assessee was co-operative society carrying on banking business was not entitled to deduction u/s. 80P(2)(a)(i) of Act - Commissioner of Income Tax (Appeals)-CIT(A) allowed claim of assessee - Hence, instant Appeal - Whether assessee is entitled for deduction u/s. 80P(2)(a)(ii) of Act.

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 s. 80P(4) of the Act 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, the order of the CIT(A) is correct and in accordance with law and no interference is called for. Appeal dismissed.

Ratio - Assessee shall entitle to deduction if he fulfilled the condition laid down by provision of statutes to claim deduction.

The Judgment was delivered by N.V. Vasudevan (Judicial Member)

3. The only issue involved in this appeal by the assessee is denial of deduction u/s. 80P(2)(a)(i) of the Income-tax Act, 1961 [hereinafter referred to as "the Act" in short"] by the revenue authorities.

4. The assessee is a co-operative society registered under the Karnataka State Co-operative Societies Act, 1959. It is engaged in providing credit facility to its members. The assessee had claimed deduction u/s. 80P(2)(a)(i) of the Act. 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.

5. In the course of scrutiny assessment proceedings u/s. 143(3), the AO was of the view that after amendment 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. 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 since it was situated in urban area and having urban members to whom credit facilities were provided. The AO also referred to the provisions of the Banking Regulation Act to bring the assessee into the concept of a banking institution. The AO referred to the objects of the assessee society in its bye laws that the Activities of the assessee fall within the Banking Regulations Act and held that its activities are in the nature of banking activity. According to the AO, none of the criteria contemplated in sub-section (4) were fulfilled in the case of the assessee.

7. 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. We find that in assessee's own case for the A.Y. 2010-11 on identical facts, the issue was decided in favour of the assessee, following the decision of the Tribunal cited supra and the judgments of the Hon'ble High Court of Karnataka and Hon'ble Gujarat High Court cited supra. Therefore, we uphold the order of the ld. CIT(Appeals) on the issue allowing deduction u/s. 80P(2)(a)(i) of the Act to the assessee. It is ordered accordingly.

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

Appeal dismissed

****

Income-Tax Officer, Hubli v KPTC & Hescom Employees Co-operative Credit Society Limited, Hubli, 2015 Indlaw ITAT 502

Case No**:** I. T(TP). A No. 666/Bang/2015

Income Tax Appellate Tribunal, Bangalore Bench

Abraham P. George (Accountant Member) & N. V. Vasudevan (Judicial Member)

Head Note

KCS Act 1959 - Income Tax & Direct Taxes - Income Tax Act, 1961, s. 80P - Depreciation - Deduction - Addition - Appellant/Assessee credit cooperative society was providing credit facility to its members filed its return on income for relevant assessment year and claimed deduction u/s.80P(2)(a)(i) of 1961 Act - AO found that assessee was hit by s. 80P(4) of 1961 Act and it was in business of giving credits and should be considered as cooperative bank - On appeal CIT(A) reversed findings of AO - Aggrieved Revenue filed appeal against order passed by CIT(A) - Hence instant appeal.

Natural corollary is that s.80P (4) of 1961 Act is not attracted unless cooperative society is recognized by RBI as a cooperative bank as per rules made under RBI. Tribunal, therefore, hold that assessee was eligible for claiming deduction u/s.80P (2) (a) (i) of 1961 Act. Tribunal does not find it necessary to interfere with order of CIT (A).Appeal dismissed.

Ratio - As per s.80P of 1961 Act, income so derived is amount of profits and gains of business attributable to activity of carrying on business of banking or providing credit facilities to its members by co-operative society and is liable to be deduct from gross total income.

The Judgment was delivered by Abraham P. George (Accountant Member)

6. We have perused the orders and heard the rival contentions. There is no dispute that one of the main object of assessee society was providing credit facility to its members. AO himself has mentioned that this was the primary object for which assessee was incorporated. No doubt, out of substantial sum received as deposits from the members, only small portion were given by assessee as loans to its members. Major part of the funds were parked in FDs. However, it is an admitted position that assessee was bound to give interest to its members on the deposits received by it from them. Therefore, when there were no takers for the money, which assessee as a part of its objects wanted to lend, the only available choice for assessee, in order not to keep the funds idle, was to place it in banks for earning interest. After the judgment in Sri Biluru Gurubasava Pattin Sahakari Sangh Niyamit (supra), Hon'ble jurisdictional High Court had in the case of CIT v. Tumkur Merchants Souharda Credit Cooperative Ltd (ITA.307 of 2014, dt.28.10.2014), held as under in relation to a cooperative society having as its object, business of providing business credits to its members, at paras 3 to 10 of the judgement dt.28.10.2014

10. In the instant case, the amount which was invested in banks to earn interest was not an amount due to any members. It was not the liability. It was not shown as liability in their account. In fact this amount which is in the nature of profits and gains, was not immediately required by the assessee for lending money to the members, as there were no takers. Therefore they had deposited the money in a bank so as to earn interest. The said interest income is attributable to carrying on the business of banking and therefore it is liable to be deducted in terms of Section 80P(1) of the Act*. In fact similar view is taken by the Andhra Pradesh High Court in the case of COMMISSIONER OF INCOME- TAX III, HYDERABAD vs. ANDHRA PRADESH STATE*

COOPERATIVE BANK LTD., reported in (2011) 200 TAXMAN 220/12 In that view of the matter, the order passed by the appellate authorities denying the benefit of deduction of the aforesaid amount is unsustainable in law. Accordingly it is hereby set aside. The substantial question of law is answered in favour of the assessee and against the revenue. Hence, we pass the following order.

Appeal is allowed."

9. We are of the opinion that in view of the judgement of Hon'ble jurisdictional High Court reproduced above, where in at it has been clearly mentioned that the money meant for lending, remaining surplus, there being no takers, if deposited in banks for earning interest, such interest income would be attributable to the business of banking carried out by the assessee. Natural corollary is that Section 80P(4) of the Act is not attracted unless the cooperative society is recognised by RBI as a cooperative bank as per the rules made under Reserve Bank of India Act. We, therefore, hold that assessee was eligible for claiming deduction u/s.80P(2)(a)(i) of the Act. We do not find it necessary to interfere with the order of the CIT (A).

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

Order pronounced in the open court on 1st day of October, 2015.

Appeal dismissed

****

ITO, Belagavi and another v Basaveshwar Souhard and others, 2015 Indlaw ITAT 1617

Case No: ITA Nos. 344 to 347/PNJ/2015, C. O. No. 70/PNJ/2015

Income Tax Appellate Tribunal, Panaji Bench

N. S. Saini (Accountant Member), George Mathan (Judicial Member)

Head Note

Karnataka Co operative Societies Act,1959 - Income Tax & Direct Taxes - Income Tax Act,1961, s. 80P(2)(a)(i) - Claim for deduction - Entitlement to - Assessees filed return of income after claiming deduction u/s.80P(2)(a)(i) of 1961 Act - Assessing Officer rejected claim of assessee on ground that assessee was co-operative bank and not entitled to claim deduction - Commissioner of Income Tax (Appeals) allowed claim of assesses - Hence, instant Appeal - Whether CIT(Appeals) has justified in allowing claim of deduction.

CIT(A) in its order observed that appellant is a cooperative society registered under 1959 Act, engaged in providing credit facilities to its members. It is also not the case of AO that assessee is registered with RBI as bank. Revenue could not point out any specific error in order of CIT(A). Therefore, there was no good and justifiable reason to interfere with orders of CIT(A). Appeal dismissed.

Ratio - If a Co- operative Bank is exclusively carrying on banking business, then income derived from business cannot be deducted in computing total income of assessee.

The Judgment was delivered by N. S. Saini (Accountant Member)

3. The facts of the case are that the assessees filed return of income after claiming deduction under sec. 80P(2)(a)(i) of the Act at NIL. It was claimed that the society is entitled to deduction under sec.80P(2)(a)(i) as it was a Cooperative Society carrying on the business of banking or providing credit facilities to its members. However, the claim of the assessee for deduction under sec.80P(2)(a)(i) was rejected by the Assessing Officer in the order passed under sec. 143(3) of the Act on the ground that the assessee was a cooperative bank, and hence, not entitled to claim deduction by virtue of sec.80P(4).

4. On appeal, Commissioner of Income Tax (Appeals) allowed the claim of the assessees by observing as under:-

"6. I have carefully perused and considered the aforesaid submission made by the appellant and the contents of the Assessment Order passed by the Assessing Officer. I have also perused the case laws relied upon by the appellant and the Assessing Officer. The main plank of argument of the Assessing Officer has been that after careful analysis of Section 80P(4) read with section 2(24)(viia) of the Income- tax Act, 1961 *and Part V of the* Banking Regulation Act *and the facts of the case, the appellant assessee co-operative credit society is held to be a 'Primary Co-operative Bank' hence is not eligible for deduction under sec.80P(2)(a)(i) in view of the newly inserted provisions of section 80P(4). The assessing Officer has arrived at a conclusion that if a cooperative society satisfies all the three conditions as laid down in the definition as given u/s 5(ccv) in Part V of the* Banking Regulation Act, 1949*, then it becomes a "primary co-operative bank", and therefore deduction u/s 80P(2)(a)(i) can be denied by virtue of Sec.80P(4).*

7. We have heard rival submissions of both the parties and perused the orders of the lower authorities and the material available on record. The Assessing Officer observed that the assessee has debited pigmy commission of Rs. 7,78,247/- in the case of the assessee - Shri Basaveshwar Souhard Sahakari Niyamit and Rs. 6,26,901/- in the case of the assessee - Sunadholi Mahila Pattin Souhard Sahakari Niyamit. In the case of the assessee - Shri Neminath Urban Credit Souhard Sahakari Niyamit Ltd., the Assessing Officer observed that the assessee has paid interest in excess of Rs. 10,000/- without making TDS and, therefore, he made disallowance of Rs. 12,188/- by invoking the provisions of sec. 40(a)(ia). Similarly, in the case of Sunadholi Mahila Pattin Souhard Sahakari Niyamit, the Assessing Officer made disallowance of interest expenditure of Rs. 3,59,602/-.

8. On appeal, Commissioner of Income Tax (Appeals) deleted the disallowance made under sec. 40(a)(ia) of the Act on account of pigmi commission by observing that since the entire amount of profit of the society is itself eligible for deduction under sec. 80P, disallowance under sec. 40(a)(ia) would not make any difference. He also observed that the assessee-society is not held to be a cooperative bank, the provisions of sec. 194A(3)(v) would be applicable and it would not be required to deduct TDS. Therefore, he deleted the addition made under sec.40(a)(ia) of the Act. By making similar observations, the Commissioner of Income Tax (Appeals) deleted the disallowance of interest expenditure made under sec. 40(a)(ia) of the Act of Rs. 12,188/- in the case of Shri Neminath Urban Credit Souhard Sahakari Niyamit Ltd. and Rs. 3,59,602/- in the case of Sunadholi Mahila Pattin Souhard Sahakari Ltd.

9. The Departmental Representative during the course of hearing did not make any submissions on the above ground of appeal taken by the Revenue. Hence, we dismiss this ground of appeal of the Revenue.

10. In regard to Cross Objection No. 70/PNJ/2015 filed by the assessee-Shri Neminath Urban Credit Souhard Sahakari Niyamit, the Authorized Representative of the assessee, at the time of hearing submitted that he wants to withdraw the Cross Objection filed by the assessee and sought permission of the Bench and also made an endorsement to this effect on the ground of Cross Objections filed before the Tribunal along with the Cross Objection memo in Form No.36A.

11. Departmental Representative had no objection to the same. Therefore, we dismiss the Cross Objection of the assessee as withdrawn.

12. In the result, appeals of the Revenue and the Cross Objection of the assessee are dismissed.

Order Pronounced in the Court at the close of the hearing on Tuesday, the 17th day of November, 2015 at Goa.

Appeals dismissed

****

Income Tax Officer, Bijapur v Jamkhandi Taluka School Teachers Co-operative Credit Society Limited, Jamkhandi, 2015 Indlaw ITAT 2103; [2015] 43 ITR (Trib) 365

Case No: ITA. No. 1504/Bang/2014

Income Tax Appellate Tribunal, Bangalore Bench

N.V. Vasudevan (Judicial Member) & Abraham P. George (Accountant Member)

Head Note

KCS Act 1959 - Income Tax & Direct Taxes - Income Tax Act, 1961, s.80P(2)(a)(i) - Grant of deduction - Applicability of provision - Assessee claimed deduction u/s.80P(2)(a)(i) of Act - Assessing Officer-AO held that assessee was co-operative society carrying on banking business was not entitled to deduction u/s. 80P(2)(a)(i) of Act - Commissioner of Income Tax (Appeals)-CIT(A) allowed claim of assessee - Hence, instant Appeal - Whether assessee is entitled for deduction u/s. 80P(2)(a)(ii) of Act.

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 s. 80P(4) of the Act 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, the order of the CIT(A) is correct and in accordance with law and no interference is called for. Appeal dismissed.

Ratio - Assessee shall entitle to deduction if he fulfilled the condition laid down by provision of statutes to claim deduction.

The Judgment was delivered by N.V. Vasudevan (Judicial Member)

9. The issue raised by the assessee in these appeals 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.

7. 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. We find that in assessee's own case for the A.Y. 2010-11 on identical facts, the issue was decided in favour of the assessee, following the decision of the Tribunal cited supra and the judgments of the Hon'ble High Court of Karnataka and Hon'ble Gujarat High Court cited supra. Therefore, we uphold the order of the ld. CIT(Appeals) on the issue allowing deduction u/s. 80P(2)(a)(i) of the Act to the assessee. It is ordered accordingly.

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

Appeal dismissed

****

Ryatar Sahakari Sakkare v ACIT, Bijapur and others, 2015 Indlaw ITAT 27

Case No: I.T.A Nos. 348 and 349/PNJ/2014, I.T.A Nos. 350/PNJ/2014, I.T.A Nos. 351/PNJ/2014, I.T.A Nos. 352/PNJ/2014, I.T.A Nos. 353/PNJ/2014, I.T.A Nos. 354/PNJ/2014, I.T.A Nos. 355/PNJ/2014, I.T.A Nos. 356/PNJ/2014, I.T.A Nos. 357/PNJ/2014

Income Tax Appellate Tribunal Panaji Bench

D. T. Garasia (Judicial Member) & P. K. Bansal (Accountant Member)

Head Note

KCS Act 1959 - Income Tax & Direct Taxes - Practice & Procedure - Income Tax Act, 1961, ss.40(a)(ia), 201(1)/201(1A) - Addition - Period of limitation - Condonation of delay - Assessee/co-operative society carried on activities of manufacturing of sugar and its by-products - Assessee filed its return of income, wherein assessee paid above Rs.20,000/- in respect of harvesting charges, transportation charges and law and consultancy charges for all assessment years under consideration - AO disallowed

above payments u/s 40(a)(ia) of 1961 Act - Type of additions were made by AO u/ss.201(1)/201(1A) of 1961 Act - Action of AO was upheld by CIT(A) by not admitting appeal on ground that assessee's appeal was barred by limitation - Hence ,instant appeals.

Appeal may not be decided on technical ground, but it must be decided on merit in interest of public. Assessee society has huge money of public. Therefore, in interest of justice and fair play, Court condone aforesaid delay in filing all appeals for all assessment years under consideration and restore matter to file of CIT(A) to decide appeal on merits after giving assessee adequate opportunity of hearing. In result, all appeals of assessee are allowed for statistical purpose. Appeals disposed of.

Ratio - The Tribunal has power to condone the delay and remit the matter to the file of the CIT(A) to decide the matter on merit if reasonable causes exist in not filing cases within reasonable time

The Judgment was delivered by D. T. Garasia (Judicial Member)

3. Common short facts of the case are that the assessee is co-operative society registered under the Karnataka Co-operative Societies Act, 1959 carrying on the activities of manufacturing of sugar and its by-products. The assessee has filed its return of income for assessment years 2005-06 to 2012-13, wherein the assessee has paid above Rs.20,000/- in respect of harvesting charges, transportation charges and law and consultancy charges for all the assessment years under consideration. In respect of A.Y 2005-06 in ITA No.348/PNJ/2014 wherein the assessee has paid above Rs.20,000/- of Rs.60,75,515 towards harvesting charges, Rs.49,74,309/- towards transportation charges and Rs.4,27,626/- on Law and consultancy charges.

5. During the course of hearing before us the ld.AR has drawn our attention under the application under Rule 11 of the I.T.A.T. Rules 1963. The assessee seeks main relief against the denial of admission of appeal. The assessee has come in appeal before the tribunal for admission of the appeal by condoning the delay. During the course of hearing before us he has also filed an affidavit. In the affidavit the claimed that the assessee is a co-operative society registered under the Karnataka Co-operative Societies Act 1959 comprising of 20,000 members from the surrounding area of Timmapur village.

5.1 The assessee contended that the assessee has sought an opinion or advice from a Chartered Accountant in the matter of writing/deducting of TDS particularly with regard to the disallowance made u/s40(a)(ia) r.w.s 194C and TDS amount of interest u/s201(1/A) of the Act. The assessee got legal opinion from one Professor S.S Gupta, Ex-Principal, K.G Law College, Hubli. As per his opinion/advice the huge demand made by the AO is not tenable. The ld.AR submitted that there is delay from assessment 2005-06 in filing the appeal by six years 3 months and so on. But the assessee took the legal opinion. The ld.CIT(A) on merit has not admitted the appeal. Thus, he prayed before us the delay in filing the appeal may be condoned and matter may be restored to the file of the ld.CIT(A) to decide the appeal on merits.

The Tribunal has to exercise the power with reasonable cause where the delay was properly explained. Such misplacement occurred because continuous illness of the ld. counsel of the assessee. Such reason must be supported by an affidavit. We find that in the instant case the assessee society is registered under the Karnatka Co-operative Societies Act 1959. The assessee society's main object is to manufacture of sugars by procuring

cane from members and non-members. Thus, the society runs on co-operative basis. The assessee could not obtain the legal advice. Moreover, the assessee's sugar factory was running in loss for so many years. Therefore, the assessee could not file appeal in time before the ld.CIT(A). The assessee has obtained legal opinion from an ex-principal, G.K.Law College, Hubli. The assessee has filed the appeal. The assessee has understood the legal position.

We are of the view that the assessee had reasonable cause in not filing the appeal in time before the ld.CIT(A). The appeal may not be decided on technical ground, but it must be decided on merit in the interest of public. We find that the assessee society has huge money of the public. Therefore, in the interest of justice and fair play, we condone the aforesaid delay in filing all the appeals for all the assessment years under consideration and restore the matter to the file of the ld.CIT(A) to decide the appeal on merits after giving the assessee adequate opportunity of hearing.

8. In the result, all the appeals of the assessee are allowed for statistical purpose. Order is pronounced in the open court on 22-01-2015.

Appeals allowed

****

Syndicate Rythara Sahakara Bank Limited, Kopa v Income Tax Officer, Mysore, 2015 Indlaw ITAT 1856; [2015] 41 ITR (Trib) 476

Case No: I. T. A. No. 21/Bang/2015

Income Tax Appellate Tribunal, Bangalore Bench

Jason P. Boaz (Accountant Member) & P. Madhavi Devi (Judicial Member)

Head Note

KCS Act 1959 - Income Tax & Direct Taxes - Income Tax Act, 1961, ss. 80P, 80P(2), 80P(2)(a)(i), 80P (2) (a) (iii) - Interest income - Claim of deduction - Disallowance - Assessee was co-operative society engaged in business of providing credit facilities to its members, facilitating purchase and supply of agricultural implements.

A co-operative society which is carrying on business of providing credit facilities to its members, earns profits and gains of business by providing credit facilities to its members. Interest income so derived, if not immediately required to be lent to members, they cannot keep aid amount idle. If they deposit this amount in bank so as to earn interest, said interest income is attributable to profits and gains of business of providing credit facilities to its members only. Society is not carrying on any separate business for earning such interest income. Income so derived is amount of profits and gains of business attributable to activity of carrying on business of banking or providing credit facilities to its members by co-operative society and is liable to be deducted from gross total income u/s.80P of Act. Interest

income cannot be said to be attributable either to activity mentioned in s.80P (2) (a) (i) of Act or u/s.80P (2) (a) (iii) of Act. Tribunal holds that CIT (A) was not correct in denying assessee deduction claimed u/s.80P (2) (a) (i) of Act Appeal allowed.

Ratio - Interest earned by co-operative society engaged in business of providing credit facilities to its members has to be regarded as income eligible for deduction u/s.80P(2) of Act.

The Judgment was delivered by Jason P. Boaz (Accountant Member)

2. The facts of the case, briefly, are as under:-

2.1. The assessee is a co-operative society registered under the Co-operative Societies Act, 1959 and is engaged in the business of providing credit facilities to its members, facilitating the purchase and supply of agricultural implements, seeds, live-stock and marketing of agricultural products grown by its members. For Assessment Year 2010-11, the assessee filed its return of income on 28.9.2010 declaring income of Rs.88,170 after claiming deduction under Section 80P(2) of the Income Tax Act, 1961 (herein after referred to as 'the Act'). The case was selected for scrutiny and the assessment was concluded under Section 143(3) of the Act vide order dt.5.3.2013, wherein the income of the assessee was determined at Rs.18,48,220. While doing so, the Assessing Officer observed that the assessee had earned interest income of Rs.26,16,800 from banks on fixed deposits that were kept out of surplus funds, brought the same to tax under the head 'Income from Other Sources' and denied the assessee's claim for deduction under Section 80P(2)(a)(i) of the Act. In this regard, the Assessing Officer placed reliance on the decision of the Hon'ble Apex Court in Totagars Co-op Sales Society 322 ITR 283 (SC) 2010 Indlaw SC 91. The Assessing Officer allowed NIL deduction under Section 80P(2) of the Act as the assessee's business income assessed by him was a loss. In this manner, the total income of the assessee was determined at Rs.18,48,200 after setting of losses under the head 'Business'.

2.2. Aggrieved by the order of assessment for Assessment Year 2010-11 dt.5.3.2013, the assessee preferred an appeal before the CIT (Appeals), Mysore. The learned CIT(A) observed that the assessee is a credit co-operative society that carries on the business of providing credit facilities to its members and it was entitled to deduction under Section 80P(2)(a)(i) of the Act as per the decision of the Hon'ble High Court of Karnataka in the case of Sri Biluru Gurubasava Pattina Sahakari Sangha Niyamitha in ITA No.5006/2013 dt.5.2.2014. The learned CIT(A) further observed that the assessee had interest income of Rs.26,16,800 on fixed deposits kept with banks and not from members to whom loans were advanced. The learned CIT(A) held that the assessee cannot be allowed deduction in respect of the interest income earned from the banks as the same has to be assessed under the head 'Other Sources' and since the assessee's case was covered by the judgement of the Hon'ble Apex Court in the case of Totagars Co-operative Sales Society Ltd. 2010 Indlaw SC 91 (supra). The learned CIT(A) disposed off the assessee's appeal vide order dt.16.10.2014 allowing the assessee partial relief.

6.3.1. We have heard the rival submissions on the issue before us and perused and carefully considered the material on record; including the judicial pronouncements cited and placed reliance upon. We find that both the authorities below have placed reliance on the judgment of the Hon'ble Apex Court in the case of Totagars Co-operative Sale Society Ltd. (supra) and held that the interest income earned by co-operative societies from bank deposits cannot be regarded as income earned from the business of providing credit facilities to its members and thereby, are not entitled to deduction under Section 80P(2)(a)(i) of the Act. However, the Hon'ble High Court of Karnataka in the case of Tumkur Merchants Souharda Credit Co-operative Society

Ltd. (supra), has observed that the judgment of the Hon'ble Apex Court in the case of Totagars Co-operative Sale Society Ltd. (supra) was confined to the facts of that case and that there was no law laid down by the Hon'ble Apex Court that interest income has to be assessed under the head 'Other Sources'.

6.3.2. Respectfully following the decision of the Hon'ble High Court of Karnataka in the case of Tumkur Merchants Souharda Credit Co-operative Society Ltd. (supra), we hold that the learned CIT(A) was not correct in denying the assessee the deduction claimed under Section 80P(2)(a)(i) of the Act in respect of Rs.26,16,800 earned by the assessee. The judgment of the Hon'ble Apex Court in the case of Totagars Co-operative Sale Society Ltd. (supra) relied upon by the learned CIT(A) has been considered and distinguished by the Hon'ble High Court of Karnataka in the case of Tumkur Merchants Souharda Credit Co-operative Society Ltd. (supra). We find that the facts of the case on hand are similar to the facts of the aforesaid case decided by the Hon'ble High Court of Karnataka, since in both cases the assessee was a credit co-operative society and invested in fixed deposits out of the surplus funds of business. Applying the ratio of the judgment of the Hon'ble High Court of Karnataka in the case of Tumkur Merchants Souharda Credit Co-operative Society Ltd. (supra), we hold that the assessee is entitled to deduction under Section 80P(2)(a)(i) of the Act in respect of interest income earned on fixed deposits, as well as that the said interest income forms part of the business income earned by the assessee and the same is not to be taxed under the head 'Other Sources'. In this view of the matter, the deduction claimed by the assessee under Section 80P(2)(a)(i) of the Act in respect of interest of Rs.26,16,800 earned from investments in fixed deposits and Govt. Securities out of surplus funds from business, is allowed. Consequently the grounds raised by the assessee on this issue are allowed.

7. In the result, the assessee's appeal for Assessment Year 2010-11 is allowed.

Appeal allowed.

****

Assistant Commissioner of Income-tax, Circle 3(1), Hubli v Regional Oild Seeds Growers Co-Operative Union Limited, Hubli, 2016 Indlaw ITAT 2291

Case No: ITA Nos. 1183 & 1184/Bang/2015

Income Tax Appellate Tribunal, Bangalore Bench

Inturi Rama Rao (Accountant Member) & Asha Vijayaraghavan (Judicial Member)

Head Note :

KCS Act 1959 – deduction of sec.80P(2) under Income Tax Act

There is no dispute about the eligibility of the assessee co-operative society for deduction under sec.80P(2)(a)(iv) of the Act. The dispute is only with regard to method of arriving at profit from the activities which is eligible for under sec.80P(2) the activity of the society can be arrived at from the book of accounts maintained by the assessee under this tally system. This finding remains uncontroverted by the revenue. Hence do not find any reason to interfere with the order of CIT(A) – appeal dismissed

The Judgment was delivered by Inturi Rama Rao (Accountant Member)

3. Briefly facts of the case are that the respondent-assessee is a co-operative society registered under the Karnataka Co-operative Societies Act. It is engaged in the business of distribution of oil seeds among the members of the society and trading in edible oils. In the return of income filed, assessee-co-operative society claimed deduction u/s 80P(2)(a)(iv) of the Income-tax Act, 1961 [hereinafter referred to as 'the Act' for short] in respect of income earned from sale of seeds to its members. While arriving at the income attributable to activity of sale of seeds, assessee-co-operative society had allocated common expenditure in proportion of the turnover whereas the AO arrived at the income by apportioning the net income in the proportion of turnover. As a result of this, it resulted in short- allowance of deduction under the provisions of section 80P(2)(a) of the Act.

4. On appeal, before the contention, contention of the assessee-co-operative society was accepted by holding that from the books of account maintained under tally system, gross profit from each activity can be arrived at and the method of apportionment of common expenditure between two activities was accepted by the CIT(A).

5.3. We heard the rival submissions and perused the material on record. There is no dispute about eligibility of the assessee co-operative society for deduction u/s 80P(2)(a)(iv) of the Act. The dispute is only with regard to method of arriving at profit from the Activity which is eligible for deduction u/s 80P. The bone of contention between the assessee co-operative society and the Revenue is only with regard to the method to be adopted for arriving at profit eligible for deduction u/s 80P(2). The ld.CIT(A) recorded a finding that GP in respect of each activity can be arrived at from the books of account maintained by the assessee under tally system. This finding remains uncontroverted by the revenue. Once GP is arrived at, question of apportionment of common overheads among the eligible activity and non-eligible activity. In our considered opinion, method of apportionment of common expenditure among the two activities adopted by the assessee co-operative society is acceptable and reasonable having regard to the ratio laid down by the Hon'ble Apex Court in the case of Consolidated Coffee Ltd. 2000 Indlaw SC 3659 (supra) wherein it was held that adoption of method of apportioning common expenditure on the basis of gross receipts could not be said to be perverse method and it is a reasonable method. Therefore, the view taken by the ld.CIT(A) cannot be found fault with. Hence, we do not find any reason to interfere with the order of the ld.CIT(A).

4. In the result, the appeals of the revenue are dismissed.

Order pronounced in the open court on this 07th day of March, 2016.

Appeals dismissed

****

Income-Tax Officer, Bangalore v Kautilya House Bldg. Co-operative Society Limited, Bangalore, 2016 Indlaw ITAT 1037

Case No: ITA Nos. 1324 to 1337/Bang/2015

Income Tax Appellate Tribunal, Bangalore Bench

George George K. (Judicial Member) & I. P. Bansal (Judicial Member)

Head Note

KCS Act 1959 - Income Tax & Direct Taxes - Practice & Procedure - Income-tax Act,1961, ss.194C,201(1),201(1A) – Nature of payment – Chargeability - Applicability of provision - To determine character of payments, it is essential to look into terms of contract. Perusal of clauses of agreements reveals that it is case of sale of developed sites of developer to individual members of co-operative society. Society was only acting as facilitator. Therefore, it does not involve any works contract. It is case of sale of plots to members of society. In such circumstances, provisions of s.194C of the Act are not applicable. Hence, no reason is found to interfere with order of CIT(A). Appeals dismissed.

Ratio – Assessee is not liable to pay tax on services conducted by him on which relevant provision of tax has no applicability.

The Order of the Court was as follows :

3. Brief facts of the case are that the respondent-assessee is a co-operative society registered under the provisions of Karnataka Co-operative Societies Act. The object for which the respondent-co-operative society was set up was to provide housing sites to its members. In order to achieve this object, various activities are required to be undertaken like acquisition of lands, getting necessary approvals, development of lands into sites etc. As the laws governing the lands in State of Karnataka do not permit a co-operative society to acquire lands on its own, it is stated that, the respondent-co-operative society had identified one person who would acquire lands and also develop lands as per requirements of the society after duly complying with the rules and regulations of local bodies. In this direction, the society approached a person by nameShri Lakshman to undertake these activities. Shri Lakshman, in turn, acquired lands, developed lands into sites as per norms prescribed by local bodies and thereafter sites were sold to members of the respondent-co- operative society. The society was acting as a facilitator.

In support of this contention, respondent-co-operative society relied upon the decision of the Hon'ble jurisdictional High Court in the case of CIT vs. Karnataka State Judicial Department Employees House Bldg. Co-operative Society in ITA No.1260/2006. The ITO, TDS, Ward 2(1) has not accepted this contention of the respondent-co-operative society and held that the agreement entered into by the respondent-co- operative society is in the nature of works contract and therefore, the provisions of section 194C are applicable and the assessee is held to be in default for not deducting tax at source under the provisions of sec.194C and accordingly he passed orders u/s 201(1) of the Act demanding TDS on payments made and orders u/s 201(1A)

demanding interest on such TDS amounts.

6. Being aggrieved by the orders of the CIT(A), the revenue is in present appeals before us.

7. At the outset, there is a delay in filing present appeals. The ITO(TDS), Ward 2(1), Bangalore, prayed for condonation of delay as the delay had occurred on account of the fact that the ITO was under bona fide belief that the decision of the Hon'ble High Court of Karnataka in the case of Karnataka State Judicial Department Employees House Bldg. Co-operative Society (cited supra) was accepted by the revenue on merits. However, on verification of records, he found that the revenue had not preferred further appeal before the Hon'ble Supreme Court only account of low tax effect. On coming to know of this fact, the ITO(TDS), Ward 2(1), Bangalore initiated steps for filing of appeals. In the process, there was a delay of 144 days. It is prayed that the delay may be condoned in view of the decision of the Hon'ble Supreme Court in the case of Collector, Land Acquisition vs. Mst. Khatiji & Others (167 ITR 471 1987 Indlaw SC 28811) wherein it was held that delay should be condoned liberally in order to advance the cause of substantive justice.

7.1. On the other hand, learned AR of the assessee has no serious objection for condonation of delay.

7.2. Therefore, we are of the opinion that it is a fit case for condonation of delay as the delay had occurred on account of mistaken impression that appeal was not filed against the decision of the Hon'ble High Court of Karnataka in the case of Karnataka State Judicial Department Employees House Bldg. Co-operative Society (cited supra) on merit of case. Keeping in view the ratio laid down by the Hon'ble Apex Court in the case of Mst. Khatiji & Others 1987 Indlaw SC 28811 (cited supra), we condone the delay of 144 days in filing the appeals and admit the appeal filed by the revenue.

8. The issue in the present appeals is whether the payments made by the respondent-co-operative society to Shri Lakshman, stated to have been paid to acquire lands are in the nature of payment made for any work contract or consideration paid for purchase of sites. It is needless to mention that the provisions of sec.194C are applicable only to works contract. Once it is established that payments made to Shri Lakshman are not in the nature of works contract, question of deducting tax at source under the provisions of sec.194C does not arise. To determine the character of payments, it is essential to look into terms of the contract.

The society was only acting as a facilitator. Therefore, it does not involve any works contract. It is a case of sale of plots to members of society. In such circumstances, it is settled law by now that the provisions of sec.194C are not applicable. We do not find any reason to interfere with the orders of the CIT(A) and accordingly, uphold the same.

9. In the result, the appeals filed by the revenue are dismissed.

Appeals dismissed

****

Karnataka State Co-operative Apex Bank Limited v Deputy Commissioner of Income-Tax, Circle 3(1), Bangalore, 2016 Indlaw ITAT 4742; [2016] 46 ITR (Trib) 728

Case No: ITA No. 1372/Bang/2014

Income Tax Appellate Tribunal, Bangalore Bench

Inturi Rama Rao (Accountant Member) & Vijay Pal Rao (Judicial Member)

Head Note :

KCS Act 1959 – Income Tax Act 1961 – claiming of deduction under sec.140 of the Act for creation for funds like, common funds, special fund, PACS/DCCB funds, rural formers economic funds, were assesses through reopening by the assesses officer.

The approached the lower authorities cannot stand laid down by the privy council in the case of Indian radio communication company limited v/s CIT(5 ITR 270) 1937 Indlaw PC 7 wherein it is laid down that when the assessee makes payment which computed in relation to profits, it is still on item of expenditure though certain by reference to the profits.

Sec.57 of the KCS Act 1959 stipulates that 2% of its net profit be contributed towards co-operative education funds and it also further stipulates that the net profit of a co-operative society shall be determined only a according rules and regulation as may be prescribed for any class of the co-operative society.

It is clear that the fund contributed neither remains with the Apex co-operative banks nor come back to the assessee co-operative banks in other form. The amounts are spent only out of statutory fund – appeal filed by the assessee partly allowed

The Judgment was delivered by Inturi Rama Rao (Accountant Member)

3. Brief facts of the case are that the assessee is a co-operative society registered under the provisions of the Karnataka State Co-operative Societies Act, 1959 and under the Banking Regulation Act, 1939. It is engaged in the business of banking. The main object for which the assessee-co-operative bank was established was to serve as a State Co-operative Bank. Return of income for the assessment year 2007-08 was filed on 31/10/2007 declaring income of Rs.40,77,27,150/-. The said return of income was processed u/s 143(1) of the Income-tax Act, 1961 ['the Act' for short]. There was no scrutiny assessment against the original return of income. However, subsequently, the Assessing Officer [AO] after noticing that the assessee-co-operative bank claimed deduction of contribution made to certain funds viz., Common Good Fund [CGF], Special Assistance Fund, PACS/DCCB Fund, Rural Farmers Social Economic Fund, reopened the assessment by issuing notice u/s 148.

6.1. During the course of hearing, it was submitted on behalf of the assessee-co-operative bank that during the previous year relevant to assessment year under consideration, while adding back the provisions of contribution made to (a) Common Good Fund, (b) Special Assistance Fund, (c) Payment to PACS/DCCB Fund and (d) Rural Farmers Socio Economic Development Fund, the assessee-co-operative bank had claimed deduction of actual amounts spent out of provision created. It was submitted that it was a statutory obligation to spend

money for the above purposes as the provisions of the Karnataka Co-operative Societies Act stipulates that certain percentage of profits should be spent towards the specified purposes. The amounts are spent only as a statutory obligation and it was also further submitted that the amounts were spent only to promote the business interest of the assessee-co-operative bank and therefore, they should be allowed as deduction under the provisions of sec.37(1) of the Act. As regards the additional claim of deduction on account of loss of securities of Rs.8,28,65,052/- it was submitted that it was not a fresh claim but only re-adjustment of the already made claim in the original proceedings. Therefore, the ratio of the decision of the Hon'ble Supreme Court in the case of Sun Engineering Works 1992 Indlaw SC 611 (supra) is not applicable.

It is not the case of the revenue that the above expenditure is capital in nature. The lower authorities had disallowed the above expenditure solely on the ground that it is only appropriation out of profits and not expenditure. The approach of the lower authorities cannot stand the test of law laid down by the Privy Council in the case of Indian Radio Cable Communications Co. Ltd. Vs. CIT (5 ITR 270) 1937 Indlaw PC 7 wherein it is laid down that when the assessee makes a payment which is computed in relation to profits, it is still an item of expenditure though ascertained by reference to the profits. The payment is not allowable as deduction only in the case of division of profits.

8.5. The reliance placed by the ld.CIT(DR) on the decision of the Hyderabad bench of Tribunal in the case of A.P.Mahesh Co-operative Urban Bank Ltd 2014 Indlaw ITAT 2229 (supra) rests on the decision of the Hon'ble Supreme Court in the case of Vellore Electric Corporation Ltd. Vs. CIT (227 ITR 557) 1997 Indlaw SC 3267. On perusal of the said decision, it is clear that the decision is relating to creation of reserve fund which always remained with the assessee-corporation. Therefore, the ratio of decision in teh case of A P Mahesh Co-operative Urban Bank Ltd 2014 Indlaw ITAT 2229 (supra) is not applicable to the facts of the case. We, direct the AO to allow the amount spent on the above fund of Rs.10,86,43,782/- as deduction while computing income of the assessee-co-operative bank.

9. In the result, grounds of appeal Nos.2 to 4 are allowed.

10. As regards ground No.5 about allowance of additional claim on account of loss on sale of securities of Rs.8,28,65,052/- it is undisputed fact that this claim was made only in the return of income filed in response to notice u/s 148. The issue is whether the assessee is entitled to agitate the issues which were concluded in the original assessment proceedings? This additional claim was obviously not made in the original assessment proceedings nor this issue is one of those issues which is sought to be reconsidered by the AO during the course of re-assessment proceedings. Therefore, concluded issue in the original assessment proceedings cannot be re-agitated during the course of re-assessment proceedings. The ratio laid down by the Hon'ble Supreme Court in the case of Sun Engineering 1992 Indlaw SC 611 (supra) is squarely applicable to the facts of the case. Even assuming that it is only re-adjustment of claim already made, such re-adjustment is not possible in the proceedings of re-assessment. The assessee can have recourse to any other provisions of the Income-tax Act, 1961. Hence, this ground of appeal is dismissed.

11. In the result, the appeal filed by the assessee is partly allowed.

Order accordingly

****

Income-tax Officer, Ward 2(2), Hubballi v KVG Bank Employees Co-operative Credit Co-operative Society Limited, Dharwad, 2017 Indlaw ITAT 1124

Income Tax Appellate Tribunal, Bengaluru Bench

Inturi Rama Rao (Accountant Member), Lalit Kumar (Judicial Member)

Head Note :

KCS Act 1959 – exemption under sec.80P

In the present case both the parties to the transaction are contributors towards surplus, however, there are no participators in the surpluses. There is no common consent for participators as their identity is not establish – the assessee fails to satisfy the test of mutuality at the time of the making the payments - the appellant cannot be treated as a co-operative society meant only for its members and providing credit facilities to its members – the society cannot claim the benefit of sec.80P of the Act – the appeal filed by the revenue is allowed by the statistical purposes.

Case No: ITA No. 671/Bang/2017

The Judgment was delivered by Inturi Rama Rao (Accountant Member)

2. The revenue raised the following ground of appeal:

Whether, on fact & circumstances of the case and in law. The Ld. CIT(A), Hubballi was justified in law in holding that the assessee society is entitled to deduction under section 80P(2)(a)(i) of the Income tax Act even when the assessee-society is mainly involved in extending credit facilities to its members which is in the nature of a bank transaction, treated on par with the new clause introduced in the definition of Income in section 2(24)(viia) of the Act and comes under the purview of section 80P(4) w.e.f. 01.04.2007

3. Brief facts of the case are that the assessee is a co-operative credit society registered under the Karnataka Co-operative Societies Act. It is engaged in providing credit facilities to its members. The assessee filed return of income declaring nil taxable income after claiming deduction u/s 80P(2)(a)(i) of the Income-tax Act, 1961 [hereinafter referred to as 'the Act' for short]. The Assessing Officer in the assessment order passed u/s 143(3) of the Act, held that the assessee-society is not eligible for deduction u/s 80P of the Act and determined the total income of the assessee-society at Rs.52.02,258/-.

It is noticed that the fund invested with bank which are not member of association welfare fund, and the interest has been earned on such investment for example, ING Mutual Fund [as said by the MD vide his statement dated 20.12.2010]. [Though the bank formed the third party vis-a-vis the assessee entitled between contributor and recipient is lost in such case. The other ingredients of mutuality are also found to be missing as discussed in further paragraphs].

In the present case both the parties to the transaction are the contributors towards surplus, however, there are

no participators in the surpluses. There is no common consent of whatsoever for participators as their identity is not established. Hence, the assessee fails to satisfy the test of mutuality at the time of making the payments the number in referred as members may not be the member of the society as such the AOP body by the society is not covered by concept of mutuality at all."

(27) These are the findings of fact which have remained unshaken till the stage of the High Court. Once we keep the aforesaid aspects in mind, the conclusion is obvious, namely, the appellant cannot be treated as a co-operative society meant only for its members and providing credit facilities to its members. We are afraid such a society cannot claim the benefit of Section 80P of the Act*."*

Following the same, we remit this issue to the file of the AO to verify whether the assessee-society had any transactions with non-members. If it is so, the concept of mutually cannot be applied and the decision of the Hon'ble Apex Court in the case of The Citizen Co-operative Society Ltd. (supra) shall apply with all fours.

3. In the result, the appeal filed by the revenue is treated as allowed for statistical purposes.

Appeal allowed

****

Karnataka State Co-operative Apex Bank Limited, Bangalore v Deputy Commissioner of Income-tax, Bangalore, 2016 Indlaw ITAT 2170

Income Tax Appellate Tribunal, Bangalore Bench

Inturi Rama Rao (Accountant Member) & Vijay Pal Rao (Judicial Member)

Head Note

KCS Act 1959 - Income Tax & Direct Taxes - Income Tax Act, 1961, s. 148 - A/Y 2007-2008 - Re opening assessment - Disallowance of expenditure - Challenged - Assessee co operative bank claimed deduction of contribution made to certain funds - AO reopened assessment by issuing notice u/s. 148 of Act and disallowed expenditure claimed on account of said funds holding that amounts were expended only after appropriation of profits and therefore not allowable as deduction - CIT(A) upheld same - Hence, instant appeal - Whether, CIT (A) is justified in reopening assessment by issuing notice u/s. 148 of Act and disallowing expenditure claimed on account of funds.

It is statutory obligation of assessee co operative bank to contribute to Co opreative Education fund. For allowance of expenditure, it is settled proposition of law that expenditure should result in profit. It may be further stated that one of objects of assessee co operative bank is to develop or assist and co operative member district central co operative banks and other co operative societies and contribution was only made in further pursuance of objects of bank for which it was established and it cannot be said that there is business interest in incurring those expenditure. By grant of subsidies it has got business advantage and allowed deduction. Amounts spent cannot be disallowed. AO directed to allow amount spent on education fund as deduction while computing income of assessee co operative bank. Appeal

partly allowed.

The Judgment was delivered by Inturi Rama Rao (Accountant Member)

3. Brief facts of the case are that the assessee is a co-operative society registered under the provisions of the Karnataka State Co- operative Societies Act, 1959 and under the Banking Regulation Act, 1939. It is engaged in the business of banking. The main object for which the assessee-co-operative bank was established was to serve as a State Co-operative Bank. Return of income for the assessment year 2007-08 was filed on 31/10/2007 declaring income of Rs.40,77,27,150/-. The said return of income was processed u/s 143(1) of the Income-tax Act, 1961 ['the Act' for short]. There was no scrutiny assessment against the original return of income. However, subsequently, the Assessing Officer [AO] after noticing that the assessee-co-operative bank claimed deduction of contribution made to certain funds viz., Common Good Fund [CGF], Special Assistance Fund, PACS/DCCB Fund, Rural Farmers Social Economic Fund, reopened the assessment by issuing notice u/s 148.

4. The assessee-co-operative bank filed return of income in response to notice u/s 148 on 13/9/2012 declaring a total income of Rs.36,19,77,100/-. After issuing notice u/s 143(2), the assessment was completed by the AO u/s 143(3) r.w.s. 147 vide order dated 30/3/2013 at a total income of Rs.51,71,70,670/-. While doing so, the AO has disallowed expenditure claimed on account of the following funds holding that the amounts are expended only after appropriation of profits and therefore not allowable as deduction.

5. Being aggrieved by the above order, an appeal was filed before the ld. CIT(A) who, vide impugned order, confirmed the additions made by the AO. The ld. CIT(A) concurred with the reasoning of the AO and upheld the additions made on account of amounts spent on contribution to various funds. In respect of deduction in respect of additional claim on account of loss on sale of securities, the ld. CIT(A) totally concurred with the views of the AO.

6. Being aggrieved by the order of the ld. CIT(A), the assessee-co- operative bank is before us with the present appeal.

6.1. During the course of hearing, it was submitted on behalf of the assessee-co-operative bank that during the previous year relevant to assessment year under consideration, while adding back the provisions of contribution made to (a)Common Good Fund, (b)Special Assistance Fund, (c)Payment to PACS/DCCB Fund and (d)Rural Farmers Socio Economic Development Fund, the assessee-co-operative bank had claimed deduction of actual amounts spent out of provision created. It was submitted that it was a statutory obligation to spend money for the above purposes as the provisions of the Karnataka Co-operative Societies Act stipulates that certain percentage of profits should be spent towards the specified purposes. The amounts are spent only as a statutory obligation and it was also further submitted that the amounts were spent only to promote the business interest of the assessee-co-operative bank and therefore, they should be allowed as deduction under the provisions of sec.37(1) of the Act. As regards the additional claim of deduction on account of loss of securities of Rs.8,28,65,052/- it was submitted that it was not a fresh claim but only re-adjustment of the already made claim in the original proceedings. Therefore, the ratio of the decision of the Hon'ble Supreme Court in the case of Sun Engineering Works 1992 Indlaw SC 611 (supra) is not applicable.

8.3. The Hon'ble Bombay High Court in the case of CIT vs. State Bank of India (261 ITR 82) 2003 Indlaw MUM 5, while dealing with the issue of allowability of subsidy granted by it to its subsidiary banks, held that by grant of subsidies it has got the business advantage and therefore, allowed deduction by holding as under:

"Lastly, by giving subsidy to the State Bank of Patiala, the State Bank of Saurashtra, etc., for opening branches,

assets were created, but these assets belonged to the subsidiaries. The assets did not belong to the State Bank of India. Similarly, profits were earned by the subsidiaries and not the State Bank of India. At the highest, by giving subsidy under section 48(1) of the Act*, the State Bank of India got a business advantage. In the circumstances, we hold that the expenditure incurred by the State Bank of India in giving subsidies to the State Bank of Saurashtra, the State Bank of Patiala, etc., under section 48(1) of the said Act of 1959, represented revenue expenditure. Lastly, we may mention that in the case of Empire Jute Company Ltd. v. CIT [1980] 124 ITR 1* 1980 Indlaw SC 301*, it has been held by the Supreme Court that what may be a capital receipt in the hands of the payee, need not necessarily be capital expenditure in relation to a payer. In the circumstances, there is no merit in the argument of the Department that because the subsidy is not income in the hands of the payee, it cannot be revenue expenditure in relation to the payer.*

8.4. Thus viewed from this angle, the amounts spent cannot be disallowed. The reliance placed by the ld.CIT(DR) on the decision of the Hyderabad bench of Tribunal in the case of A.P.Mahesh Co- operative Urban Bank Ltd (supra) rests on the decision of the Hon'ble Supreme Court in the case of Vellore Electric Corporation Ltd. Vs. CIT (227 ITR 557 1997 Indlaw SC 2601). On perusal of the said decision, it is clear that the decision is relating to creation of reserve fund which always remained with the assessee-corporation. Therefore, the ratio of decision in teh case of A P Mahesh Co-operative Urban Bank Ltd (supra) is not applicable to the facts of the case. We, direct the AO to allow the amount spent on the above fund of Rs.10,86,43,782/- as deduction while computing income of the assessee-co-operative bank.

9. In the result, grounds of appeal Nos.2 to 4 are allowed.

10. As regards ground No.5 about allowance of additional claim on account of loss on sale of securities of Rs.8,28,65,052/- it is undisputed fact that this claim was made only in the return of income filed in response to notice u/s 148. The issue is whether the assessee is entitled to agitate the issues which were concluded in the original assessment proceedings? This additional claim was obviously not made in the original assessment proceedings nor this issue is one of those issues which is sought to be reconsidered by the AO during the course of re-assessment proceedings. Therefore, concluded issue in the original assessment proceedings cannot be re-agitated during the course of re-assessment proceedings. The ratio laid down by the Hon'ble Supreme Court in the case of Sun Engineering 1992 Indlaw SC 611 (supra) is squarely applicable to the facts of the case. Even assuming that it is only re-adjustment of claim already made, such re-adjustment is not possible in the proceedings of re-assessment. The assessee can have recourse to any other provisions of the Income-tax Act, 1961. Hence, this ground of appeal is dismissed.

11. In the result, the appeal filed by the assessee is partly allowed.

Order accordingly

****

Chikmagalur Jilla Mahila Sahakara Bank Niyamitha, Chikmagalur v Assistant Commissioner of Income Tax, Hassan, 2018 Indlaw ITAT 3363

Case No: I. T. A. No. 1384/Bang/2018

Income Tax Appellate Tribunal, Bengaluru Bench

Laliet Kumar (Judicial Member), Inturi Rama Rao (Accountant Member)

Head Note :

KCS Act 1959 - Income Tax & Direct Taxes - Income Tax Act, 1961, ss. 194A(3)(i)(b), 194A(3)(v) - Assessment - Validity - Appellant was cooperative society - Whether, passing of assessment order against appellant was justified.

Looking into language used in above provisions more particularly 194A(3)(v), then it is clear that case of Appellant shall squarely fall within this provision, being specific provision, irrespective or more is paid by assessee to its member or not and therefore in considered opinion of bench other provision i.e., 194A(3)(i)(b) shall not be applicable being general in nature. It is settled proposition of law that specific provision {i.e 194A(3)(v)}, shall override general provision, {i.e 194A(3)(i) (b)}, in case of over lapping or conflict, hence s. 194A(3)(v)} is applicable to facts of present case. Therefore contention of ld DR is not correct. Appeal allowed.

The Judgment was delivered by: Laliet Kumar (Judicial Member)

2. Brief facts are, the assessee is a cooperative society registered as a cooperative bank and is also registered under the Karnataka Cooperative Societies Act, 1959 and has obtained licence from the RBI to carry out banking operations as a cooperative bank. The assessee filed return of income for AY 2012-13 declaring total income of Rs. 59,86,750/-. However case of the assessee was selected for scrutiny and the AO passed an assessment order determining the total income at Rs. 1,05,46,100/-. Aggrieved the assessee filed an appeal before the CIT (A).

3. On appeal the CIT (A) had decided the issue against the assesse.

7. The present case before us pertains to the payments made by way of interest by the assessee society to its members would attracts the deduction of tax or not. In this regard, if we look into the language used in the above provisions more particularly 194A(3)(v), then it is clear that the case of assessee shall squarely fall within this provision, being specific provision, irrespective whether Rs. 10,000/- or more is paid by the assessee to its member or not and therefore in the considered opinion of the bench the other provision relied upon by the Ld. DR i.e., 194A(3)(i)(b) shall not be applicable being general in nature. It is settled proposition of law that the specific provision {i.e 194A(3)(v)}, shall override the general provision, { i.e 194A(3)(i) (b)}, in case of over lapping or conflict, hence the section 194A(3)(v)} is applicable to the facts of the present case. Therefore the contention of ld DR is not correct. Further the case is also covered in favour of assessee by the decision of the coordinate bench in the matter of Vasavamba Cooperative Bank Ltd (supra), further there is no reason for this bench to take a contrary view, as the facts are similar to the facts of present case. Following the same we allow the appeal of the assessee.

8. In the result, appeal of the assessee is allowed.

Appeal allowed

****

Prathmik Krushi Pattina Sahakar Sangh Niyamita v Income Tax Officer, Hospet, 2018 Indlaw ITAT 9708

Case No: ITA No. 1957/Bang/2018

Income Tax Appellate Tribunal, Bangalore Bench

Arun Kumar Garodia (Accountant Member)

Head Note :

KCS Act 1959 – Income Tax Act sec.80P

Weather the assessee is a co-operative bank are not, for which the assessee are obtain and produce the certificate and the bank of India regarding the nature of business of assessee. If it is found as per the said certificate of RBI, the assessee's business is of a co-operative bank then the assessee is not eligible for deduction under sec.80P. If the assessee is not a co-operative bank as per this certificate of RBI than regarding the claim of the assessee for deduction under sec.80P(2)(d), the facts of present case should be examine in the light of the two judgments of the Karnataka high court in the case of Tumkur Merchants Souhardha Co-operative limited v/s ITO (TS-5931-HC-2014 (Karnataka)-O and Totagars co-operative sale society v/s ITO (TS-5548-HC-2017 (Karnataka)-O the appeal was allowed for statistical purposes.

The Judgment was delivered by Arun Kumar Garodia (Accountant Member)

2. On the facts and circumstances of the case, the learned CIT-A, failed to consider the submissions dated 11.11.2014 filed by the Appellant before the Assessing Officer on 19.11.2014 and resorted to pass the impugned order, therefore, the order passed is without affording the Appellant a reasonable opportunity of being heard and thereby violated the principles of natural justice.

3. On the facts and circumstance of the case, the learned CIT-A had failed to appreciate that the Appellant is a Primary Agricultural Credit Society and was dealing only with its members by providing the credit facilities to them. Therefore, in the facts of the case, the decision of Hon'ble jurisdictional High Court passed in the case of Tumkur Merchants Souharda Credit Cooperative Ltd. v. ITO reported in [TS-5931-HC-2014 (Karnataka)-O] is applicable.

11. That each of the above ground is without prejudice to one another and theAppellant craves leave to add, alter, amend or modify any of the grounds of appeal and prays to be allowed the permission to submit further evidence / judgment / written submissions at the time of hearing before the Hon'ble Tribunal."

3. Brief facts are that as per para no. 7 of the order of CIT(A), the revenue has decided the issue against the assessee following the judgement of Hon'ble Apex Court rendered in the case of Totagars' Co-operative Sales Society Ltd. Vs. ITO as reported in 322 ITR 283(SC). In the same Para of his order on page no. 11, he has also referred to another judgement of Hon'ble Apex Court rendered in the case of Citizen Co-operative Society as reported in TS-326-SC-2017 dated 16.08.2017 and thereafter, in Para 7.1 of his order, ld. CIT(A) has given finding that considering these two judgements of Hon'ble Apex Court rendered in the case of Totagars' Co-operative Sales Society Ltd. Vs. ITO (supra) and Citizen Co-operative Society (supra), the assessee is not eligible for deduction u/s. 80P(2)(d) of IT Act. The ld. AR of assessee

submitted that in the present case, another judgment of Hon'ble Karnataka High Court rendered in the case of Tumkur Merchants Souharda Credit Cooperative Ltd. Vvs ITO as reported in 230 Taxman 309 is applicable. Regarding this aspect that whether the assessee is a co-operative bank or not, he submitted that as per para 24 of this judgement of Hon'ble Apex Court in the case of Citizen Co-operative Society (supra), it was held that in order to hold that the assessee society is a co-operative bank, it should be established that such assessee co-operative society is holding license from Reserve Bank of India. At this juncture, it was pointed out by the bench that in the same para of this judgement of Hon'ble Apex Court, it is also noted that in that case, the assessee does not possess license from RBI and the RBI has itself clarified that the business of the assessee does not amount to that of a co-operative bank. It was pointed out that in the facts of present case also, the assessee should obtain certificate from RBI regarding the nature of business carried on by the assessee. It was also observed by the bench that before following the judgement of Hon'ble Karnataka High Court rendered in the case of Tumkur Merchants Souharda Credit Cooperative Ltd. Vs. ITO (supra), it has to be ascertained as to whether facts of the present case are in line with the facts in that case or the facts of the present case are in line with the facts in the case of Totagars' Co-operative Sales Society Ltd. Vs. ITO (supra) as per the judgement of Hon'ble Apex Court rendered in that case. In reply, it was submitted by ld. AR of assessee that the matter may be restored back to the file of CIT (A) for fresh decision and if this is done then the assessee will produce the certificate from RBI regarding the nature of business activity of the assessee and also submit the facts before CIT (A) to establish that the facts of present case are in line with the facts in the case of Tumkur Merchants Souharda Credit Cooperative Ltd. Vs. ITO (supra). The ld. DR of revenue supported the orders of authorities below.

4. I have considered the rival submissions. In my considered opinion, this issue should go back to the file of CIT (A) for fresh decision in the light of above discussion and hence, I set aside the order of CIT (A) and restore the matter back to his file for fresh decision with the direction that on this issue whether the assessee is a co-operative bank or not, the assessee has to obtain and produce the certificate from Reserve Bank of India regarding the nature of business of the assessee. If it is found that as per the said certificate of RBI, the assessee's business is of a co-operative bank then the assessee is not eligible for deduction u/s. 80P. If the assessee is not a co-operative bank as per this certificate of RBI then regarding the claim of the assessee for deduction u/s. 80P(2)(d), the facts of present case should be examined in the light of these two judgements of Hon'ble Karnataka High Court rendered in the case of Tumkur Merchants Souharda Credit Cooperative Ltd. Vs. ITO (supra) and the judgement of Hon'ble Apex Court rendered in the case of Totagars' Co-operative Sales Society Ltd. Vs. ITO (supra) and if it is found that the facts of the present case are in line with the facts in the case of Tumkur Merchants Souharda Credit Cooperative Ltd. Vs. ITO (supra), then the issue should be decided in favour of the assessee and if the facts of the present case are in line with the facts in the case of Totagars' Co-operative Sales Society Ltd. Vs. ITO (supra), then the issue should be decided against the assessee. Needless to say, ld. CIT(A) should pass necessary order as per law as per above discussion after providing adequate opportunity of being heard to both sides. In view of this decision, no separate adjudication on any other ground is called for.

5. In the result, the appeal filed by the assessee stands allowed for statistical purposes.

Appeal allowed

ಸಹಕಾರಿ ತತ್ವಗಳು

(1) ಸಹಕಾರಿಗಳು, ತಮ್ಮ ಸೇವೆಯನ್ನು ಬಳಸಿಕೊಳ್ಳಬಲ್ಲ ಹಾಗೂ ಸದಸ್ಯತ್ವದ ಜವಾಬ್ದಾರಿಗಳನ್ನು ತೆಗೆದುಕೊಳ್ಳಲು ಇಚ್ಛೆಯಿರುವ ಎಲ್ಲಾ ವ್ಯಕ್ತಿಗಳಿಗೆ, ಲಿಂಗಬೇಧವಿಲ್ಲದೆ, ಸಾಮಾಜಿಕ, ಜನಾಂಗೀಯ, ರಾಜಕೀಯ ಅಥವಾ ಧಾರ್ಮಿಕ ತಾರತಮ್ಯವಿಲ್ಲದೆ ಮುಕ್ತವಾಗಿರುವ ಸ್ವಯಂಸೇವಾ ಸಂಸ್ಥೆಗಳಾಗಿರುತ್ತವೆ.

(2) ಸಹಕಾರಿಗಳು ಪ್ರಜಾಸತ್ತಾತ್ಮಕ ಸಂಸ್ಥೆಗಳಾಗಿದ್ದು, ಅವುಗಳ ಕಾರ್ಯನೀತಿಯನ್ನು ರೂಪಿಸುವ ಹಾಗೂ ನಿರ್ಧಾರಗಳನ್ನು ಕೈಗೊಳ್ಳುವ ಕಾರ್ಯದಲ್ಲಿ ಕ್ರಿಯಾತ್ಮಕವಾಗಿ ಪಾಲ್ಗೊಳ್ಳುವ ಸದಸ್ಯರಿಂದ ನಿಯಂತ್ರಿತವಾದ ಸಂಸ್ಥೆಗಳಾಗಿರುತ್ತವೆ. ಚುನಾಯಿತ ಪ್ರತಿನಿಧಿಗಳಾಗಿ ಸೇವೆ ಸಲ್ಲಿಸುವ ಪುರುಷರು ಮತ್ತು ಮಹಿಳೆಯರು ಸದಸ್ಯತ್ವಕ್ಕೆ ಜವಾಬ್ದಾರರಾಗಿರುತ್ತಾರೆ. ಪ್ರಾಥಮಿಕ ಸಹಕಾರಿಗಳ ಸದಸ್ಯರು ಸಮನಾದ ಮತಚಲಾವಣೆ ಹಕ್ಕನ್ನು ಹೊಂದಿರುತ್ತಾರೆ (ಒಬ್ಬ ಸದಸ್ಯ, ಒಂದು ಮತ) ಮತ್ತು ಇತರ ಹಂತಗಳಲ್ಲಿ ಸಹಕಾರಿಗಳನ್ನು ಪ್ರಜಾಸತ್ತಾತ್ಮಕ ರೀತಿಯಲ್ಲಿ ಸಂಘಟಿಸಲಾಗಿದೆ.

(3) ಸದಸ್ಯರು ತಮ್ಮ ಸಹಕಾರಿಗೆ ನ್ಯಾಯಸಮ್ಮತವಾಗಿ ವಂತಿಗೆ ನೀಡುತ್ತಾರೆ ಮತ್ತು ಅದರ ಬಂಡವಾಳವನ್ನು ಪ್ರಜಾಸತ್ತಾತ್ಮಕವಾಗಿ ನಿಯಂತ್ರಿಸುತ್ತಾರೆ. ಆ ಬಂಡವಾಳದ ಕಡೇ ಪಕ್ಷ ಒಂದು ಭಾಗ ಸಾಮಾನ್ಯವಾಗಿ ಸಹಕಾರಿಯ ಸಾಮಾನ್ಯ ಸ್ವತ್ತಾಗಿರುತ್ತದೆ. ಸದಸ್ಯತ್ವದ ಷರತ್ತಾಗಿ ಚಂದಾ ನೀಡಲಾದ ಬಂಡವಾಳದ ಮೇಲೆ ಸಾಮಾನ್ಯವಾಗಿ ಅವು ಸೀಮಿತ ಪರಿಹಾರವನ್ನು ಪಡೆಯುತ್ತವೆ. ಸದಸ್ಯರು, ಹೆಚ್ಚುವರಿ ಹಣವನ್ನು ಈ ಮುಂದಿನ ಯಾವುದೇ ಅಥವಾ ಎಲ್ಲ ಉದ್ದೇಶಗಳಿಗೆ ಹಂಚಿಕೆ ಮಾಡುತ್ತಾರೆ; ಕಡೆಯ ಪಕ್ಷ ಮೀಸಲು ನಿಧಿಯ ಒಂದು ಭಾಗ ಅವಿಭಾಜ್ಯವಾಗಿರುವಂತೆ ಅದನ್ನು ಸ್ಥಾಪಿಸುವ ಮೂಲಕ ಸಹಕಾರಿಯ ಅಭಿವೃದ್ಧಿ, ಸಹಕಾರಿಯೊಡನೆ ಸದಸ್ಯರಿಗಿರುವ ವ್ಯವಹಾರಗಳ ಪ್ರಮಾಣಕ್ಕನುಗುಣವಾಗಿ ಸದಸ್ಯರಿಗೆ ಅನುಕೂಲ ಕಲ್ಪಿಸುವುದು ಮತ್ತು ಸದಸ್ಯರಿಂದ ಅನುಮೋದನೆಯಾದ ಇತರ ಚಟುವಟಿಕೆಗಳನ್ನು ಬೆಂಬಲಿಸುವುದು.

(4) ಎಲ್ಲ ಸಹಕಾರಿಗಳು ಅವುಗಳ ಸದಸ್ಯರಿಂದ ನಿಯಂತ್ರಿತವಾದ ಸ್ವಾಯತ್ತ ಸ್ವ–ಸಹಾಯ ಸಂಸ್ಥೆಗಳಾಗಿವೆ. ಸರ್ಕಾರವೂ ಸೇರಿದಂತೆ ಇತರ ಸಂಘ–ಸಂಸ್ಥೆಗಳೊಡನೆ ಸಹಕಾರಿಗಳು ಒಪ್ಪಂದ ಮಾಡಿಕೊಂಡರೆ ಅಥವಾ ಹೊರಗಿನ ಮೂಲಗಳಿಂದ ಬಂಡವಾಳ ಸಂಗ್ರಹಿಸಿದರೆ ಅವು ಅವುಗಳ ಸದಸ್ಯರಿಂದ ಪ್ರಜಾಸತ್ತಾತ್ಮಕ ನಿಯಂತ್ರಣಕ್ಕೊಳಪಡುತ್ತದೆಂಬ ಹಾಗೂ ಅವು ತಮ್ಮ ಸಹಕಾರಿ ಸ್ವಾಯತ್ತತೆಯನ್ನು ಉಳಿಸಿಕೊಂಡು ಬರುತ್ತದೆಂಬ ನಿಬಂಧನೆಗಳ ಮೇಲೆ ಹಾಗೆ ಮಾಡುತ್ತವೆ.

(5) ಸಹಕಾರಿಗಳ ಅಭಿವೃದ್ಧಿಗೆ ತಮ್ಮ ಪರಿಣಾಮಕಾರಿಯಾದ ಕೊಡುಗೆಯನ್ನು ನೀಡಲನುವಾಗುವಂತೆ ಸಹಕಾರಿಗಳು, ತಮ್ಮ ಸದಸ್ಯರಿಗೆ, ಚುನಾಯಿತ ಪ್ರತಿನಿಧಿಗಳಿಗೆ, ವ್ಯವಸ್ಥಾಪಕರಿಗೆ ಮತ್ತು ನೌಕರರಿಗೆ ಶಿಕ್ಷಣ ಮತ್ತು ತರಬೇತಿಯನ್ನು ನೀಡುತ್ತವೆ. ಇದರಿಂದ ಅವರು ಸಹಕಾರಿಯ ಸ್ವರೂಪ ಮತ್ತು ಪ್ರಯೋಜನಗಳ ಬಗ್ಗೆ ಅವು ಸಾರ್ವಜನಿಕರಿಗೆ ಅದರಲ್ಲೂ ವಿಶೇಷವಾಗಿ ಯುವಜನರಿಗೆ ಮತ್ತು ಮುಖಂಡರುಗಳಿಗೆ ತಿಳಿಸುತ್ತವೆ.

(6) ಸಹಕಾರಿಗಳು ತಮ್ಮ ಸದಸ್ಯರಿಗೆ ಹೆಚ್ಚು ಪರಿಣಾಮಕಾರಿ ಸೇವೆಯನ್ನು ಸಲ್ಲಿಸುತ್ತವೆ ಮತ್ತು ಸ್ಥಳೀಯ, ಪ್ರಾದೇಶಿಕ, ರಾಷ್ಟ್ರೀಯ ಮತ್ತು ಅಂತರರಾಷ್ಟ್ರೀಯ ಘಟಕಗಳ ಮೂಲಕ ಜೊತೆಗೂಡಿ ಕೆಲಸ ಮಾಡುವುದರಿಂದ ಸಹಕಾರಿ ಆಂದೋಲನವನ್ನು ಬಲಪಡಿಸುತ್ತವೆ.

(7) ಸದಸ್ಯರ ಅವಶ್ಯಕತೆಗಳಿಗೆ ಗಮನ ನೀಡುವುದರ ಜೊತೆ ಸಹಕಾರಿಗಳು ಅವುಗಳ ಸದಸ್ಯರು ಒಪ್ಪಿದ ಕಾರ್ಯನೀತಿಗಳ ಮೂಲಕ ಅವರವರ ಕೋಮುಗಳ ಸಮುದಾಯ ಸತತ ಅಭಿವೃದ್ಧಿಗೆ ಶ್ರಮಿಸುತ್ತವೆ.

ಸಹಕಾರಿ ಕಾನೂನುಗಳ ಜ್ವಲಂತ ನಿಘಂಟು ಶ್ರೀ ಸಿ.ಎನ್.ಪರಶಿವಮೂರ್ತಿ

ಸಹಕಾರಿ ಕಾನೂನುಗಳು, ನಿಯಮಗಳು, ಅವುಗಳಿಗೆ ಸಂಬಂಧಿಸಿದ ನ್ಯಾಯಾಲಯಗಳ ತೀರ್ಪುಗಳು ಅವುಗಳ ಪರಿಭಾಷೆ ಅವುಗಳ ವಿವರಣೆ ಎಲ್ಲವನ್ನು ಸರಾಗವಾಗಿ ವಿವರಿಸುವ ವ್ಯಕ್ತಿತ್ವ ಶ್ರೀ ಸಿ.ಎನ್ ಪರಶಿವಮೂರ್ತಿಯವರದು. ಅವರು ಆ ವಿಷಯದಲ್ಲಿ ಅಥಾರಿಟಿ. ಕಾನೂನು ಸಮಸ್ಯೆಗಳಿಗೆ ತ್ವರಿತ ಪರಿಹಾರ ಒದಗಿಸುವ ನಿಘಂಟು. ಶ್ರೀ ಸಿ.ಎನ್.ಪರಶಿವಮೂರ್ತಿಯವರು ಸಂಯುಕ್ತ ಸಹಕಾರಿಯ ವಿನಂತಿಯ ಮೇರೆಗೆ 2015 ರಲ್ಲಿ ಸಹಕಾರ ಕ್ಷೇತ್ರಕ್ಕೆ ಸಂಬಂಧಿಸಿದ ತೀರ್ಪುಗಳ ಸಾರಾಂಶ, 2018 ರಲ್ಲಿ ಭಾಗ –2, ಸಹಕಾರ ಕ್ಷೇತ್ರಕ್ಕೆ ಸಂಬಂಧಿಸಿದ ಮಾಹಿತಿ ಹಕ್ಕು ಕಾಯ್ದೆಯನ್ವಯ ನೀಡಲಾದ ನ್ಯಾಯಾಲಯಗಳ ತೀರ್ಪುಗಳ ಸಾರಾಂಶ 2018, ಕರ್ನಾಟಕ ಹೈಕೋರ್ಟ ಜಡ್ಜಮೆಂಟ್ಸ 2015, 2017 ಮತ್ತೆ 2018 ರಲ್ಲಿ ಭಾಗ–2, ಸುಪ್ರೀಮ್ ಕೋರ್ಟ ಜಡ್ಜಮೆಂಟ್ಸ 2018 ಮತ್ತು 2018 ಭಾಗ–2 ಗಳನ್ನು ಸಂಗ್ರಹಿಸಿ ಬರೆದು ಕೊಟ್ಟಿರುವುದನ್ನು ಸಂಯುಕ್ತ ಸಹಕಾರಿಯು ಮುದ್ರಣ ಹಾಗೂ ಪ್ರಕಾಶನ ಮಾಡಲಾಗಿತ್ತು ಈ ಎಲ್ಲ ಪುಸ್ತಕಗಳ ಬಗ್ಗೆ ಕಾನೂನು ಕ್ಷೇತ್ರದ ಪರಿಣಿತಿರಾದ ದಿಂ ಜಸ್ಟೀಸ್ ರಾಮಾ ಜೋಯಿಸ್, ಸುಪ್ರೀಮ್ ಕೋರ್ಟನ ವಿಶ್ರಾಂತ ನ್ಯಾಯಾಧೀಶ ಶ್ರೀ ಶಿವರಾಜ ಪಾಟೀಲ್, ಶ್ರೀ ಕೆ.ಎಮ್. ನಟರಾಜ ಸಾಲಿಸಿಟರ್ ಜನರಲ್ ಆಫ್ ಇಂಡಿಯಾ ಇವರುಗಳು ಈ ಪುಸ್ತಕಗಳಿಗೆ ಮುನ್ನುಡಿಯನ್ನು ಬರೆದಿರುವುದು ಈ ಎಲ್ಲ ಪುಸ್ತಕಗಳ ಘನತೆಯನ್ನು ಸಂಯುಕ್ತ ಸಹಕಾರಿಯ ಕ್ರೀಯಾಶೀಲತೆಯನ್ನು ಎತ್ತಿ ಹಿಡಿದಿದೆ.

ಪ್ರಸ್ತುತ ಕರ್ನಾಟಕ ಆದಾಯ ತೆರಿಗೆ ತೀರ್ಪುಗಳ ಸಂಗ್ರಹ ಇಂಗ್ಲೀಷ ಭಾಷೆ 110 ಪುಟಗಳು, ಕರ್ನಾಟಕ ಹೈಕೋರ್ಟ ತೀರ್ಪುಗಳ ಸಂಗ್ರಹ 528 ಪುಟಗಳು (ಇಂಗ್ಲೀಷ ಭಾಷೆ) ಸೌಹಾರ್ದ ಸಹಕಾರಿ ಕಾಯ್ದೆ ಆಡಳಿತ ಕೈಪಿಡಿ ಕನ್ನಡ 344 ಪುಟಗಳು ಸಹಕಾರ ಕ್ಷೇತ್ರಕ್ಕೆ ಸಂಬಂಧಿಸಿದ ಶ್ರೇಷ್ಠ ಹಾಗೂ ಉಚ್ಚ ನ್ಯಾಯಾಲಯಗಳ ತೀರ್ಪುಗಳ ಸಂಗ್ರಹ ಕನ್ನಡ ಭಾಷೆ 170 ಪುಟಗಳ ಪುಸ್ತಕಗಳನ್ನು ಅತ್ಯಂತ ಶ್ರದ್ಧೆಯಿಂದ ಬರೆದು ಒದಗಿಸಿದ್ದಾರೆ. ಈ ಪುಸ್ತಕಗಳು ಬೇರೆ ಯಾವುದೇ ಸಹಕಾರ ಸಂಸ್ಥೆಯಲ್ಲಿ ಈ ರೀತಿ ಕ್ರೋಢೀಕೃತ ವ್ಯವಸ್ಥೆಯಲ್ಲಿ ಸಿಗುವುದು ಕಷ್ಟ. ಮಾನ್ಯ ಶ್ರೀ ಸಿ.ಎನ್. ಪರಶಿವಮೂರ್ತಿಯವರು ಸಹಕಾರ ಕ್ಷೇತ್ರದ ಮೇಲೆ ಸಹಕಾರಿಗಳ ಮೇಲೆ ಸಹಕಾರಿ ಇಲಾಖೆ ಕಾರ್ಯನಿರ್ವಹಣೆಯ ಮೇಲಿನ ಅಪಾರ ಶ್ರದ್ಧೆಯಿಂದ ಈ ಪುಸ್ತಕಗಳನ್ನು ಸಿದ್ಧಪಡಿಸಿರುವುದು ಸಹಕಾರಿಗಳೆಲ್ಲರ ಸೌಭಾಗ್ಯ. ಸಹಕಾರಿ ಕ್ಷೇತ್ರ ಎಲ್ಲರಿಗೂ ಈ ಪುಸ್ತಕಗಳು ಹೆಚ್ಚು ಪ್ರಯೋಜನವಾಗುತ್ತದೆ ಎಂದು ಆಶಿಸುತ್ತೇನೆ.

ಎ.ಆರ್ ಪ್ರಸನ್ನಕುಮಾರ
ಉಪಾಧ್ಯಕ್ಷರು

ಸಹಕಾರ ಗೀತೆ

ಸಮಾಜ ಹೈ ಆರಾಧ್ಯ ಹಮಾರಾ, ಸೇವಾ ಹೈ ಆರಾಧನಾ !
ಭಾರತ ಮಾತಾ ಕೆ ವೈಭವ ಹಿತ, ಸಹಕಾರಿತಾ ಕೀ ಸಾಧನಾ !!
ಸಹಕಾರಿತಾ ಕೀ ಸಾಧನಾ !!ಪ!!
ಸಮಾಜ ಸೆ ಹೀ ಸಂಸ್ಕೃತಿ ಕೀ ಯಹ್, ಶ್ರೇಷ್ಠ ಧರೋಹರ್ ಹಮೆ ಮಿಲೀ !
ಧನ ಸಾಮರ್ಥ್ಯ, ಜ್ಞಾನ ಕೀ ಪೂಂಜೀ, ಸಮಾಜ ಸೆ ಹೀ ಹಮೆ ಮಿಲೀ !
ಯಹ ಸಮಾಜ್ ಋಣ್ ಪೂರ್ಣ್ ಚುಕಾನೆ, ಜೊ ಪಾಯಾ ಸೊ ಬಾಂಟನಾ
!!
ಭಾರತ ಮಾತಾ ಕೆ ವೈಭವ ಹಿತ, ಸಹಕಾರಿತಾ ಕೀ ಸಾಧನಾ !!
ಸಹಕಾರಿತಾ ಕೀ ಸಾಧನಾ !!ಪ!!
ಸಮಾನ್ ಅವಸರ್ ಮಿಲೆ ಸಭೀ ಕೋ, ಕೊಯಿಭೀ ನ ಉಪೇಕ್ಷಿತ್ ಹೋ !
ಸಭೀ ಸ್ವಸ್ಥ ಶಿಕ್ಷಿತ್, ಸಂಸ್ಕಾರಿತ್, ಸಮರ್ಥ ಔರ್ ಸುರಕ್ಷಿತ್ ಹೋ !
ದಯಾ ನಹೀ, ಉಪಕಾರ ನಹೀ ಯಹ್, ಅಪನೆಪನ್ ಕಿ ಭಾವನಾ !!
ಭಾರತ ಮಾತಾ ಕೆ ವೈಭವ ಹಿತ, ಸಹಕಾರಿತಾ ಕೀ ಸಾಧನಾ !!
ಸಹಕಾರಿತಾ ಕೀ ಸಾಧನಾ !!ಪ!!
ಭಾಷಾ, ಪ್ರಾಂತ್, ಜಾತಿ ಜೊ ಭೀ ಹೋ, ಭಾರತ ಮಾ ಕೆ ಪುತ್ರ ಸಭೀ !
ಗ್ರಾಮ್, ನಗರ್, ವನವಾಸಿ ಗಿರಿಜನ್, ಅಪನೆ ತೊ ಹೈ ಬಂಧು ಸಭೀ !
ಜನತಾ ಕೆ ಸುಖ ಮೆ ಹೀ ತೊ ಹೈ, ಸಮಾಜ–ಸುಖ್ ಕೀ ಧಾರಣಾ !!
ಭಾರತ ಮಾತಾ ಕೆ ವೈಭವ ಹಿತ, ಸಹಕಾರಿತಾ ಕೀ ಸಾಧನಾ !!
ಸಹಕಾರಿತಾ ಕೀ ಸಾಧನಾ !!ಪ!!

ಶಾಂತಿ ಮಂತ್ರ

ಸರ್ವೇ ಭವಂತು ಸುಖಿನಃ ಸರ್ವೇ ಸಂತು ನಿರಾಮಯಾ !
ಸರ್ವೇ ಭದ್ರಾಣಿ ಪಶ್ಯಂತು, ಮಾ ಕಶ್ಚಿತ್ ದುಃಖಭಾಗ್ ಭವೆತು !!

Karnataka State Souharda Federal co-operative Ltd.,
Souharda Sahakari Soudha ,No.68, Between 17th & 18th Cross,
Margosa Road, Malleswaram, Bengaluru-560 055.
Ph : 080 23378375-80 email : souharda@souharda.coop
website : www.souhara.coop