आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
BENCH 'C', CHENNAI

श्री संजय अरोड़ा, लेखा सदस्य एवं
श्री धुव्वुरु आर.एल रेड्डी, न्यायिक सदस्य के समक्ष ।
BEFORE SHRI SANJAY ARORA, ACCOUNTANT MEMBER
AND SHRI DUVVURU RL REDDY, JUDICIAL MEMBER

आयकर अपील सं./ITA Nos.634/Mds/2016 & 295/Mds/2017
निर्धारण वर्ष / Assessment Year : 2009-10

Income Tax Officer, Ward-4, D.P. Thottam, Muthialpet, Puducherry – 605 003.	Vs.	Kalapet Primary Agricultural Co-operative Bank Ltd., Kalapet Post, Pondicherry – 605 014. [PAN: AAAAK 1570G]
(**अपीलार्थी /Appellant**)		(**प्रत्यर्थी/Respondent**)

अपीलार्थी की ओर से / Appellant by	:	Shri A.V.Sreekanth, Jt. CIT
प्रत्यर्थी की ओर से/Respondent by	:	Shri G.Baskar, Advocate
सुनवाई की तारीख/ Date of hearing	:	19.04.2017
घोषणा की तारीख /Date of Pronouncement	:	19.05.2017

आदेश /ORDER

Per Sanjay Arora, AM:

This is a set of two appeals by the Revenue arising out of the common order dated 31.12.2015 by the Commissioner of Income Tax (Appeals), Puducherry ('CIT(A)' for short), disposing the assessee's appeals contesting it's assessments u/s. 143(3) and s. 143(3) r/w s. 147 of the Income Tax Act, 1961 ('the Act' hereinafter) for assessment year (AY) 2009-10 dated 26.12.2011 and 10.03.2015 respectively.

2. There is a delay of 313 days in filing the later appeal by the Revenue. The facts on record bear out that a single appeal was filed by it in time (i.e., on 18.03.2016). Subsequently, on being informed by the registry of the Tribunal that the course adopted was not proper and that two appeals would be required to be preferred in-as-much as the impugned order decides two separate appeals (by the assessee), *qua* separate assessments, the Revenue has filed a separate appeal. A condonation petition dated 30.01.2017, accompanying the subsequent appeal, enumerates the same, praying for condonation of the delay under the circumstances. We find the delay as satisfactorily explained even as the ld. counsel for the assessee did not fairly raise any objection. The Revenue's appeal (in ITA No.295 of 2017) was accordingly admitted, and the hearing in the matter proceeded with. We shall take up both the appeals separately.

ITA No.634/Mds/2016

3. The only issue arising in this appeal is the sustainability in law, and in the facts and circumstances of the case, of the impugned order. The bone of contention between the assessee and the Revenue is the assessee's eligibility for deduction u/s. 80P of the Act, which in its relevant part reads as under:

> **'Deduction in respect of income of co-operative societies.**
> **80P.** (1) Where, in the case of an assessee being a co-operative society, the gross total income includes any income referred to in sub-section (2), there shall be deducted, in accordance with and subject to the provisions of this section, the sums specified in sub-section (2), in computing the total income of the assessee.
> (2) The sums referred to in sub-section (1) shall be the following, namely :—
> (*a*) in the case of a co-operative society engaged in—
> (*i*) carrying on the business of banking or providing credit facilities to its members, or
> (*ii*) - (*vii*) …….
>
> **Provided** that in the case of a co-operative society falling under sub-clause (*vi*), or sub-clause (*vii*), the rules and bye-laws of the society restrict the voting rights to the following classes of its members, namely:—
> (*1*) the individuals who contribute their labour or, as the case may be, carry on the fishing or allied activities;

(*2*) the co-operative credit societies which provide financial assistance to the society;
(*3*) the State Government;
(b) to (f) ……..
Explanation…….
(3) ……....

(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.'

The assessee, a co-operative society, registered under the Puducherry Co-operative Societies Act, 1972, furnished it's return for the year, claiming deduction 80P(2)(a) on its entire income, returning nil income. The same was denied in assessment as the assessee is a primary co-operative bank, since excluded u/s. 80P(4), i.e., by Finance Act, 2006, w.e.f. 01.4.2007. In appeal, the ld. CIT(A) was of the view that the assessee, nevertheless, is a primary agricultural credit society, which stands excepted u/s. 80-P(4) and, therefore, is eligible for deduction u/s. 80P(1), i.e., even under the amended law. He, accordingly, directed deletion in full. Aggrieved, the Revenue is in appeal.

The ld. CIT(A) vide the impugned order issues two findings in the matter:

a) the assessee is <u>not</u> a primary co-operative agricultural and rural development bank, which is for the reason that its principal object is not the provision of, as *Explanation (b)* to s. 80P(4) stipulates, provision of long term credit for agricultural and rural development activities, and for which he refers to provision 6(2) of the bye-laws, reproducing the same, and which provides for provision of short/medium term loans for agricultural and allied purposes.

(*emphasis, by underlining, ours*)

b) the assessee is a primary agricultural credit society in-as-much as it satisfies the condition of the defining provision - s.5 (cciv) r/w. s. 56(c)

of the Bank Regulation Act, 1949 ('the BR Act' hereinafter), reading as under:

> '5(*cciv*) "primary agricultural credit society" means a Co-operative Society,—
>
> (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 Cooperative Bank subscribing to the share capital of such Cooperative Society out of funds provided by the State Government for the purpose;'

The definition of a primary agricultural credit society, thus, provides two conditions, finding *qua* both of which stands, as is required to be, rendered by the ld. CIT(A), again with reference to the assessee's bye-laws, the relevant parts of which stand reproduced in his order. Clause-16 of the bye-laws (Chapter-6) is in respect of membership, and which stands reproduced at para 6.5.5 (pgs. 11-12) of the order. Of the three classes of members, class 'A' and 'C' are individual persons, while class 'B' provides for admission of Government of Puducherry as member. Clearly, therefore, the bye-laws do not permit admission of any other co-operative society as a member. Clause-6 (falling in Chapter-3) of the bye-laws, defining the assessee's main objects, which stands also reproduced in the impugned order, is extracted hereunder:

'CHAPTER – 3
OBJECTIVES

6. Main objectives of the society:-

(1) Receipt of Deposits:-
Receipts of all kinds of deposits from the members and non-members.

(2) Agricultural Loan:-
Issue of short/medium loans to the class 'A' members of the society for the following purposes:-

(a) Agricultural farming;
(b) Purchase of agricultural inputs, implements, machinery; and

(c) Establishment of cattle farms, orchards.

(3) MortgageLoan.-

Issue of mortgage loan to class' A' members on their agricultural produce.

(4) Jewel Loan:-

Issue of jewel loan to class 'A' and 'C' members on pledging their jewels.

(5) Consumer Loan:-

Issue of consumer loan to class' A' members.

(6) Sale of consumer goods:-

Purchase and sale of groceries, cloth, stationery, vegetables, household articles; Setting up of sale centers with in the area of operation of the society with the prior approval of the Registrar for retail sales.

(7) Running of Fair Price Shops

(8) Purchase and sale of agricultural inputs, implements. machi:neries, etc.,

(9) Small-scale Industry Loan:-

Issue of short/medium terms loans to class 'A' members of the society for starting/expansion of small scale industries with in the area of operation of the society.

(10) Providing the services required for the welfare of the members and to achieve the aforesaid objectives.'

On that basis the ld. CIT(A) has issued a finding that the assessee is providing financial accommodation to it's members for agricultural purposes only (para 6.5.5/pg.11 of the impugned order). *We are clearly unable to agree with the said finding by the ld. CIT(A).* The objects under reference are the main objects of the assessee-society, so that all of them qualify as it's principal objects for which it is formed. There is nothing to suggest that any one object is more basic or predominant than the other. Further, sub-clauses (4), (5), (6), (7) & (9) of Q.6, i.e., 5 out of 9 objects, relate to non-agricultural purposes. On being confronted with this during hearing, the ld. counsel for the assessee would submit that 'jewellery loans' *could be* for agricultural purposes/ activities as well, as the nomenclature does not indicate their end-use, i.e., the purpose for which the loan is/is to be utilized; the name only referring to the manner of it's grant, i.e., on pledge of jewellery. *True, but then it could equally be for non-agricultural purposes.* This is rather all the more probable as being subject to a higher rate of interest, i.e., vis-a-vis agricultural loans, would ordinarily stand to be availed only for non-agricultural purposes. *This, in fact, could be so for*

mortgage loans as well, which again does not indicate the purpose of the loan, being stated only in terms of the security provided therefor. The matter, in any case, is one of fact, on which therefore a finding, one way or the other, would have to be issued, and only on the basis of material, viz. loan and related documents. Further, even so, excluding 'jewellery loans' – for the sake of argument, would yet imply that 4 (5, including mortgage loans) out of 8 objects as being, or possibly, for non-agricultural purposes. Though not indicative of the volumes, which shall be relevant to determine the assessee's predominant activity, it cannot, at any rate, be said, on that basis, that the assessee's primary object is to finance agricultural (and related) activities, as the ld. CIT(A) holds. *Why, it may well be that jewellery loans itself constitute a substantial part of the total loan portfolio*. The same, as shall be seen, are eligible for being provided to class C members, i.e., as against only class A members for the other categories (of loans). On this being observed by the Bench during hearing, the ld. AR would, alluding to *Aditanar Educational Institution & Othrs. v. Addl. CIT* [1997] 224 ITR 310 (SC), argue that there is a difference between 'objects' and 'powers' (of the concerned entity). In our view, admitting the said difference, reference thereto and, therefore, to the said decision, is misplaced. The observations by the Hon'ble Apex Court therein stand made in the context of the requirement of the relevant provision (s. 10(22)) that an institution to be eligible there-under should exist *solely for the purpose of education, and not for the purpose of profit*, explaining that the object (of the said society) being not to make profit, it shall not cease to exist solely for educational purposes, if in a particular year a surplus incidentally arises. That is, it gives primacy to the object (clause), so that the actual working, unless shown to be otherwise, would presumably be only in pursuance and furtherance of its' objects. The question in fact does not arise in the present case, again for the reason that there is no inconsistency between the assessee's objects and the corresponding powers. The

assessee, as a part of its' regular business, accepts deposits as well as grants loans. *While the former is from the members of the public at large, the latter is restricted to its' members*. The different purposes for which loans could be granted are listed separately in its charter under the head 'Main Objects'. The same is clearly only in exercise of the power to grant loans for various purposes, i.e., as long as it is to, firstly, members and, two, confined to the area of operation as specified under Clause-4 'area of operation' of Chapter-1 of it's bye-laws. Where, then, is the distinction, i.e., between objects and powers, in the instant case; the two being in complete harmony. Rather, the very fact that the assessee has the power, and which is only in pursuance of its' objects, to lend for non agricultural purposes, is itself sufficient, and it is not necessary, to regard it as set up/formed equally for non agricultural purposes, that non agricultural loans to any extent are actually granted, i.e., as long as the assessee-society has the power to do so, being in fact a defined object and purpose per it's constitution. Even as pointed out by the Bench during hearing, the Hon'ble Apex Court in *Delhi Stock Exchange Association Ltd. v. CIT* [1997] 225 ITR 235 (SC), clarified likewise. In the facts of that case, the claim of the assessee, a company limited by shares, established to promote and regulate the business in stocks, shares, debentures and other securities, admittedly an object of general public utility, running a stock exchange, for exemption u/s. 11 of the Act was denied by the Tribunal in the absence of any prohibition (in it's Articles of Association) for distribution of dividend to the shareholders and, rather, specific provisions for creating funds for the benefit of the shareholders, employees or their relations. This was confirmed by both the Hon'ble High Court and the Hon'ble Apex Court, holding that the mere fact that the assessee was at liberty to distribute income or create funds for that purpose was sufficient, and not an actual exercise of that power. There must be, it explained, a legal obligation to spend the money exclusively and essentially on charity, and which was absent

during the relevant period, so that it was permissible for the assessee (by its' charter) to distribute the whole or part of it's income by way of dividend to its' share-holders. Reference in this context may also be drawn to the decision in, inter alia, *CIT vs. Palghat Shadi Mahal Trust* [2002] 254 ITR 212 (SC);*Upper Ganges Sugar Mills Ltd. vs. CIT* [1997] 227 ITR 578 (SC); *CIT vs. K.R. Chenni Krishna Chetty* [1997] 225 ITR 234 (Mad). In the facts of the present case, one cannot, without reference to the record – being a matter of fact, state that no loans had been granted for non-agricultural purposes, so that the statement by the ld. AR in this regard must be taken as a plea *de hors* the record. Contrast this with the specific plea as to non distribution of dividend and non-creation of any funds in the cited case, and which was considered as of no moment. The finding by the ld. CIT(A), stating the assessee's primary object as providing financial accommodation for agricultural purposes cannot therefore be approved.

At the same time, the words in the defining provision of a primary agricultural credit society (s. 5 (cciv) r/w s. 56 (c) of the BR Act) includes 'or the principal business', i.e., apart from 'the primary object', so that it may well be that even a co-operative society with mixed objects, as the assessee, could engage principally in the business of providing loans (to its members) for agricultural and related purposes. That is, though empowered by it's objects to lend for non-agricultural purposes to any extent, the society yet lends principally for agricultural and related activities. *The matter is thus essential factual*, i.e., whether the assessee's principal business during the relevant year/s – inasmuch the same could vary from year to year, is provision of financial accommodation to it's members for agricultural purposes, including purposes connected thereto, would require being determined (refer object clauses 6(2) and 6(8) of the Main Objects). And for which therefore the matter shall require being restored to the file of the assessing authority. The ld. AR would, upon this, express concern, stating that this would put the assessee to harassment. We are afraid to say that

this is, with respect, unfortunate. The burden to prove its' return, and the claims preferred thereby, is on the assessee (*CIT v. R. Venkataswamy Naidu* [1956] 29 ITR 529 (SC); *CIT v. Calcutta Agency Ltd*. [1951] 19 ITR 191 (SC)), and which it has singularly failed to. *The assessee, apart from raising a plea, which, without substantiation, is of no consequence, does precious little, except furnishing the copy of it's bye-laws, which in fact disproves its' case*. Why, it does not even specify the (exempt) category (of the cooperative society) it falls under, much less stating the basis there-for, and merely makes a bald claim for deduction. *In fact, even here we observe a contradiction*. While in the assessment proceedings, the assessee claims to be a 'primary agricultural credit society,' extending credit facilities to its' members (refer pg.2 of the assessment order), before the ld. CIT(A) it, changing stand, claims to be a 'primary co-operative agricultural and rural development bank' in-as-much as it is a society with its' operations confined to a taluk, with the primary object of providing long-term credit for agricultural development (refer *Explanation* (b) to s. 80-P(4)) - a claim rejected by him. And which the assessee does not dispute, either by way of an appeal or even in the present proceedings before us; rather, could not, in-as-much as the same stands made contrary to and *de hors* its' object clause (cl. 6(2)) as well as its' business. *The whole purport, as it appears, is to somehow claim to be entitled to deduction u/s. 80-P*. It changes it's stand in the appellate proceedings, claiming to be engaged in the banking business, in rural areas, so that it is admittedly a co-operative society engaged in banking business, i.e., a primary co-operative bank, as held by the AO. That it serves in rural areas, which is again disputed by the Revenue, claiming the areas it serves to be falling within the Municipal limits, would have no bearing in the matter, as would be the fact of it operating, assuming so, in a taluk, in-as-much as the said requirement is only *qua* a 'primary co-operative agricultural and rural development bank' (refer *Explanation (b)* to s. 80-P(4)), which the assessee is

decidedly not. Here it may also be pertinent to clarify that the assessee is *accepting deposits* from the both members and non-members, i.e., *from the public at large* and, further, also *provides other banking services*, i.e., apart from financial intermediation; its' miscellaneous incomes include a number of charges (refer pg. 2 of the assessment order). It, accordingly, is engaged in the business of 'banking', as defined in s. 5(b) of the Banking Regulation Act, 1949, as under:

> "(b) "banking" means the accepting, for the purpose of lending or investment, of deposits of money from the public, repayable on demand or otherwise, and withdrawable by cheque, draft, order or otherwise."

It is clear that the ld. CIT(A) has omitted to peruse the assessee's stated stand before him, i.e., by way of 'statement of facts', filed along with the memo of appeal before him, and which corresponds with the material on record. It is therefore the assessee who has taken an inconsistent and ambivalent stand in the matter, with the ld. CIT(A) in fact issuing a finding contradictory to the assessee's own stated decision.

So however, it could also be that its' principal business is restricted to providing financial accommodation to it's members for agricultural and related purposes. We say so as the said activity also is a sub set of activity of lending, a business the assessee is definitely engaged in. The matter would therefore require being examined on facts. And the assessee allowed deduction if its principal business found to be so, so that it is a primary agricultural credit society, even as held by the ld. CIT(A), even though in contradiction to the assessee's claim before him. This is as the matter is principally of fact, on which no examination has taken place; the Assessing Officer (AO) also resting content on finding, and not incorrectly, that the assessee is a primary co-operative bank, i.e., save for it being a primary agricultural credit society, which stands excepted in the definition of the former and, in any case, is excepted u/s. 80-P(4) and, therefore, is entitled to deduction u/s. 80-P(1). Where so, and which would only

be on the basis of a positive finding to that effect, the assesseee, irrespective of its' name, which is apposite, is eligible for deduction u/s. 80-P. The matter is accordingly restored to the file of the AO, who shall decide per a speaking order, issuing definite finding/s of fact, after allowing the assessee a reasonable opportunity of being heard, and on whom the burden to establish its claim/s, leading evidence in the matter, lies. Further, the deduction, in any case, shall be restricted to the sums specified in s. 80-P(2)(a)(i); the assessee having other incomes, or incomes from other activities, as well.

ITA 295/Mds/2017

4. The only issue in this appeal is the obligation in law or otherwise of the assessee to deduct tax at source under section 194A on the interest allowed by it on the time deposits maintained with it by it's depositors, members or non-members. The assessee having not deducted the said tax, in the view of the AO, the provision of section 40(a)(ia) stood attracted and, accordingly, disallowed the said interest, which would, accordingly, in terms of the said provision, be allowed only in the year in which the said tax is deposited to the credit of the central government. The ld. CIT(A) has allowed relief to the assessee in view of the provision of section 194A(3)(viia)(a), which reads as under, excluding the interest allowed by a primary agricultural credit society from the purview of s. 194A(1):

> **'Interest other than "Interest on securities".**
>
> **194A.** (1) Any person, not being an individual or a Hindu undivided family, who is responsible for paying to a resident any income by way of interest other than income by way of interest on securities, shall, at the time of credit of such income to the account of the payee or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon at the rates in force:
>
> (3) The provisions of sub-section (1) shall not apply—
>
> (*viia*) to such income credited or paid in respect of,—

> (*a*) deposits with a primary agricultural credit society or a primary credit society or a co-operative land mortgage bank or a cooperative land development bank;
> (*b*) deposits (other than time deposits made on or after the 1st day of July, 1995) with a co-operative society, other than a co-operative society or bank referred to in sub-clause (*a*), engaged in carrying on the business of banking;'

We've, setting aside the impugned order, already restored the matter back to the file of the AO for factual determination as to whether the assessee could, in view of its' principal business, where so, be regarded as a 'primary agricultural credit society'. This thus has a direct bearing on the application or otherwise of section 194A and, thus, section 40(a)(ia), to the assessee for the relevant year and, consequently, the maintainability of the assessee's claim of being not liable to deduct tax at source on the said interest. This issue is, therefore, also restored to the file of the AO to decide in light of its findings in the Revenue's appeal in ITA No. 634 of 2016. In this regard, we may also clarify that the higher courts of law have regarded the amendments to section 40(a)(ia) by Finance Act, 2012 w.e.f. 01/7/2012 as retrospective, so that where (and to the extent) the assessee is not deemed to be in default under the first *proviso* to s. 201, inserted simultaneously, for which the AO shall allow opportunity to the assessee to exhibit, s. 40(a)(ia) shall not apply.

5. *In summation*

The assessee, a co-operative society, claimed deduction under section 80-P of the Act on it's entire income/profit for the year. Section 80P of the Act is in respect of deduction on the incomes specified there-under of a co-operative society. Sub-section (1) spells out the contours of the deduction, i.e., to an assessee, being a co-operative society, the gross total income of which includes any income referred to in sub-section (2), allowing deduction in accordance with and subject to the provisions of the said section. With regard to a co-operative society carrying on the business of banking or providing credit

facilities to its members, it is the whole amount of profits or gains of the business attributable to such activity. Sub-section (4), inserted by Finance Act, 2006 w.e.f. 01.4.2007, provides that the provisions of sec. 80P shall not apply in relation to a 'co-operative bank' other than a 'primary agricultural credit society' or a 'primary co-operative agricultural and rural development bank'. While the former two terms are to have the same meaning as respectively assigned to them in Part V of the Bank Regulation Act, 1949 ('BR Act' for short), a 'primary co-operative agricultural and rural development bank' stands defined vide *Explanation (b)* thereto. The assessee's claim was disallowed by the AO in assessment on the ground that the assessee-society is a primary co-operative bank, a term defined under the BR Act, as a co-operative-society, other than a primary agricultural credit society, whose primary object or principal business is the transaction of banking business. Further qualifications (for it to be so regarded), and which are satisfied in the present case, is that it's paid-up capital is not less than one lakh of rupees and, further, that its bye-laws do not permit admission of any other co-operative society as a member. At this stage, it may be clarified that in view of the Banking Laws (Application to Co-operative Societies) Act, 1965, the BR Act, to the extent specified there-under, applies to co-operative societies. Sec. 56 (falling under Part-V) of the BR Act, is relevant in this regard and is extracted as under in its relevant part:

'PART V OF BANKING REGULATION ACT, 1949:
APPLICATION OF THE ACT TO CO-OPERATIVE BANKS

Act to apply to co-operative societies subject to modifications.
56. The provisions of this Act, as in force for the time being, shall apply to, or in relation to, Co-operative Societies as they apply to, or in relation to, banking companies subject to the following modifications, namely :—

(*a*) throughout this Act, unless the context otherwise requires,—
(*i*) references to a "banking company" or "the company" or "such company" shall be construed as references to a Co-operative Bank,

(*ii*) references to "commencement of this Act" shall be construed as references to commencement of the Banking Laws (Application to Cooperative Societies) Act, 1965 (23 of 1965) ;

(*b*) in section 2, the words and figures "the Companies Act, 1956 (1 of 1956), and" shall be omitted ;

(*c*) in section 5,—

(*i*) after clause (*cc*), the following clauses shall be inserted, namely:-

'(*cci*) "Co-operative Bank" means a state Co-operative Bank, a central Cooperative Bank and a primary Co-operative Bank;

(*ccii*) ……;

(*cciia*) 'co-operative society' means a society registered or deemed to have been registered under any Central Act for the time being in force relating to the multi-State co-operative societies, or any other Central or State law relating to co-operative societies for the time being in force;

(*cciv*) (extracted earlier)

(*ccv*) "primary Co-operative Bank" means a Co-operative Society, other than a primary agricultural credit society,—

(*1*) the primary object or principal business of which is the transaction of banking business ;

(*2*) the paid-up share capital and reserves of which are not less than one lakh of rupees ; and

(*3*) 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 Cooperative Bank subscribing to the share capital of such Cooperative Society out of funds provided by the State Government for the purpose;

(*ccvi*) "primary credit society" means a Co-operative Society, other than a primary agricultural credit society,-'

In appeal, the assessee claimed to be a primary co-operative agricultural and rural development bank, a species of a primary co-operative bank, defined in section 80-P, which excepts such a bank from the operation of section 80-P(4), which sub-section, inserted by Finance Act, 2006, w.e.f. 01.4.2007, excludes a co-operative bank from the purview of section 80-P(1). Reference here may also be drawn to s. 2(24)(viia), also inserted along with, including the profits and gains of any business of banking, or provision of credit facilities to its members, by a co-operative society, in the definition of income, inclusively defined u/s. 2(24). The ld. CIT(A), with reference to the assessee's bye-laws,

found it to be not so in-as-much as the assessee is engaged in, among others, providing short-term and medium-term credit for agricultural purposes. The assessee, however, was found by him to be a primary agricultural credit society, i.e., a co-operative society whose primary object or principal business is to provide financial accommodation to its members for agricultural and allied purposes, excepted u/s. 80-P(4). In further appeal by the Revenue, while it challenges the finding on the basis of which the assessee stands allowed relief, the assessee supports the impugned order. Without doubt, upon amendment by Finance Act, 2006, a co-operative society engaged in the business of banking or provision of credit facilities to its members, *which (businesses) are thus regarded at par* (also refer s. 2(24)(viia)), only societies excepted u/s. 80-P(4) would qualify for deduction u/s. 80-P(1). The law in the matter is amply clear, with the Hon'ble jurisdictional High Court in *CIT v. Madras Autorickshaw Driver's Cooperative Society Ltd*. [1983] 143 ITR 981 (Mad) (affirmed in [2001] 249 ITR 330 (SC)), clarifying that deduction u/s. 80-P is assessee specific, so that the same shall extend to eligible societies only. Taxing statutes, it is well settled, are to be strictly construed (viz. *UOI vs. Bombay Elphinstone Spinning & Weaving Co. Ltd. & Ors*. 2001(1) SC 536;); more so an exemption provision, cast as it does an exception from the general rule and natural tenor of the statute (*Orissa State Warehousing Corpn. vs. CIT* [1999] 237 ITR 589 (SC); *Novapan India Ltd. v. CCE* 1994 (73) ELT 769 (SC)), and is accordingly to be interpreted only in terms of the language used by the statue (*Bombay Elphinstone Spinning & Weaving Co. Ltd.* (supra); *IPCA Laboratory Ltd. v. Dy. CIT* [2004] 266 ITR 521 (SC)). Not to do so, i.e., to take cognizance of the same, interpreting it by applying the recognized interpretative processes, amounts to legislating, which the courts of law, cannot, even as clarified by the Apex Court time and again, further clarifying in *CBI vs. Keshub Mahindra & Others* [in Curative Petition Nos. 39-42 of 2010 in Criminal Appeal Nos. 1672-

1675 of 1996] that no Court, including itself, could read the law in a manner so as to nullify the express provisions of an Act or Code (para 4 of the decision).

Coming back to the facts of the case, we observe that while the finding of the assessee being a primary co-operative bank, i.e., by the assessing authority, has not been disputed, the finding as to it being a primary agricultural credit society cannot be said to be correct on facts on record, as its' bye-laws clearly provide, and in no small measure, for extension of credit to its members by the assessee for non-agricultural purposes. In-as-much as, however, the assessee's principal business, *in pursuance to some of its' objects*, could yet be to finance agricultural and allied activities, it, nevertheless and despite its' objects, *may be* a primary agricultural credit society, eligible for deduction u/s. 80-P(1) r/w s. 80-P(4); it admittedly being not a primary cooperative agricultural and rural development bank. In other words, it being a primary co-operative bank, one of the three cooperative banks, shall not be a limiting factor, or shall become an irrelevant consideration where the assessee is shown to be a primary agricultural credit society; rather, the definition of the former excludes the latter (s.5(ccv) of the BR Act). The only option available for the assessee is of its' claim being examined on this aspect, and the issue determined on the basis of a finding in the matter, a question of fact, allowing it an opportunity to exhibit its' case in the matter, with reference to its principal or dominant business.

We are conscious that the assessee has at no stage claimed to be so, i.e., to be a primary agricultural credit society; rather, stating of its' claim to have been erroneously so regarded by the AO (refer 'statement of facts' forming part of the Memo of Appeal before the ld. CIT(A)). And, further, of the claim by its' counsel before us as without reference to and *de hors* any material on record; nay, contrary thereto. The question, however, is one of fact, on which we find no examination at any stage, so that the claim may well be true and, in any case, remains to be determined. It needs to be appreciated that it is the correct legal

position that is relevant, and not the view that the parties may take of their rights in the matter (*CIT v. C. Parakh & Co. (India) Ltd*. [1956] 29 ITR 661 (SC); *Kedarnath Jute Mfg. Co. Ltd. v. CIT* [1971] 82 ITR 363 (SC)). Finally, even where the assessee succeeds, it being only on the basis of its' 'principal business', which, could vary in it's composition from year to year, i.e., in response to the market (supply and demand) forces, the assessee-bank's claim would necessarily require being reviewed on a year to year basis, and decided on the basis of facts found. Two, the deduction u/s. 80P(1) shall be necessarily restricted to the income from the activities, as well as the income/s, specified u/s. 80P(2). The matter, accordingly, is restored to the file of the AO to determine the assessee's claim as made before us, i.e., of its' principal business being to provide financial accommodation to its members for agricultural (and allied) activities. The word 'principal', a word of common usage, is well understood both in law and in common parlance. Its use, in conjunction with the words 'primary object', as explained in *Madras Autorickshaw Driver's Cooperative Society Ltd*. (supra), *is to ascertain the character of the business being actually carried out by the society in terms of its' objects*. The maintainability of section 194A(3)(viia), on the basis of which relief stands allowed to the assessee by the ld. CIT(A) in the Revenue's second appeal, is consequential, though the assessee, a co-operative society in the business of banking, is at liberty to advance its' case, i.e., as to the non-application of section 194A(1), alternatively, on any other ground/basis in the set-aside proceedings. The AO shall decide per a speaking order, allowing the assessee a reasonable opportunity to state and present its' case before him. The onus to establish its claim/s, we may though clarify, would be strictly on the assessee. We decide accordingly.

6. In the result, the Revenue's appeals are allowed for statistical purposes.

Order pronounced on May 19, 2017 at Chennai.

Sd/-	Sd/-
(धुव्वुरु आर.एल रेड्डी)	(संजय अरोड़ा)
(Duvvuru RL Reddy)	(Sanjay Arora)
न्यायिक सदस्य/Judicial Member	लेखा सदस्य/Accountant Member

न्नई/Chennai,
दिनांक/Dated, May 19, 2017
EDN

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant 2. प्रत्यर्थी/Respondent 3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT 5. विभागीय प्रतिनिधि/DR 6. गार्ड फाईल/GF