

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'E', NEW DELHI**

**Before Sh. Satbeer Singh Godara, Judicial Member
&
Sh. M. Balaganesh, Accountant Member**

ITA No. 1708/Del/2018 : Asstt. Year : 2015-16

Muzaffarnagar District Cooperative Bank Ltd., C/o Anil Deep and Company, 41/85, Sadar Bazar, Muzaffarnagar, Uttar Pradesh-251001	Vs	DCIT, Circle-1, Muzaffarnagar
(APPELLANT)		(RESPONDENT)
PAN No. AAAAM4327P		

**Assessee by : Sh. Sanjay Malik, Adv.
Revenue by : Sh. Akhilesh Kumar Yadav, Sr. DR**

Date of Hearing: 02.12.2024	Date of Pronouncement: 05.12.2024
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ORDER

Per Satbeer Singh Godara, Judicial Member:

This assessee's appeal for Assessment Year 2015-16, arises against the order of CIT(A), Muzaffarnagar dated 16.01.2018 in case No. 9258-7434-250-717, in proceedings u/s 143(3) of the Income Tax Act, 1961 (in short "The Act").

2. Heard both the parties at length. Case files perused.

3. It emerges during the course of hearing that both the learned lower authorities have treated the assessee as a cooperative bank u/s 80P(4) than a cooperative society so as to be eligible for the impugned deduction u/s 80P(2) of the Act. The assessee's deduction claim in the impugned assessment year admittedly involves dividends of Rs.20.02 lacs which have been held as not covered u/s 80P in very terms once it is sought to be treated as a cooperative bank. The learned lower

authorities have undisputedly placed reliance on legislative amendment in section 80P(4) of the Act by the Finance Act 2006 w.e.f. 01.04.2007 to reject the impugned deduction forming subject matter of our apt adjudication.

4. We have given our thoughtful consideration to the vehement rival submissions against and in support of correctness of impugned section 80P disallowance made in the assessee's hands. We find no merit in the Revenue's arguments supporting the same thereby treating the assessee as a cooperative bank. It appears that case law Mavilayi Service Co-operative Bank Ltd. vs. CIT (2021) 123 taxmann.com 161; as followed in Kerala State Co-Operative Agricultural & Rural Development Bank decision (2023) 458 ITR 384, has already rejected the Revenue's very arguments thereby holding that in absence of banking license being issued under the provisions of Banking Regulation law and dealing with general public at large; the departmental authorities could not proceed on the basis of "namesake" only to decline the impugned section 80P deduction as under:

15.1. Section 80P speaks about deduction in respect of income of co-operative societies from the gross total income referred to in sub-section (2) of the said Section. From the said income, there shall be deducted, in accordance with the provisions of Section 80P, sums specified in sub-section (2), in computing the total income of the assessee for the purpose of payment of income tax. Sub-section (2) of Section 80P enumerates various kinds of co-operative societies. Sub-section (2)(a)(i) states that if a co-operative society is engaged in carrying on the business of banking or providing credit facilities to its members, the whole of the amount of profits and gains of business attributable to any one or more of such activities shall be deducted. The sub-section makes a clear distinction between business of banking on the one hand and providing credit facilities to its members by co-operative society on the other. Thus, the definition of banking

under Section 5(b) of the BR Act must be borne in mind as opposed to providing credit facilities to its members.

15.2. Section 80P was inserted to the Act with effect from 01.04.1968, however, sub-section (4) was reinserted with effect from 01.04.2007, in the present form. Earlier sub-section (4) was omitted with effect from 01.04.1970. Sub-section (4) of Section 80P in the present form is in the nature of an exception which states that the provisions of Section 80P shall 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. The expressions co-operative bank and primary agricultural credit society as well as primary co-operative agricultural and rural development bank are defined in the Explanation as co-operative bank and primary agricultural credit society having the meanings respectively assigned to them in Part V of the BR Act, 1949.

15.3. The controversy in this case is, whether, the appellant entity is a co-operative bank and if so, it would be covered within the scope and meaning of sub-section (4) of Section 80P and therefore, would not be eligible to the benefit of deduction as provided therein.

15.4. Having regard to the Explanation to sub-section (4) of Section 80P, it is necessary to consider Chapter V of the BR Act, 1949 which states that the said Act shall apply to co-operative societies subject to modifications made thereunder. Section 56 begins with a non-obstante clause and states that notwithstanding anything contained in any other law for the time being in force, the provisions of the said Act 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, in clause (a) throughout the said 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 in clause (c), it is stated that in Section 5 as per clause (cci), "co-operative bank" means a state co-operative bank, a central co-operative bank and a primary co-operative bank clause (ccv) defines "primary co-operative bank" while clause (ccvii) defines "central co-operative bank" and "state co-operative bank" to have the meanings assigned to them in the NABARD Act, 1981. Since the expression 'banking company' is defined under the BR Act, 1949, it would be useful to consider the definition of banking company in Section 5(c) thereof which means any company which

transacts the business of banking in India. "Banking" is defined in Section 5(b) of the said Act to mean the accepting, for the purpose of lending or investment, of deposits of money from the public, repayable on demand or otherwise, and withdrawal by cheque, draft, order or otherwise. Therefore, a banking company must transact banking business vis-à-vis the public. Thus, in the first place a co-operative society must be engaged in banking business as defined in Section 5(b) of the said Act. For that, Section 22 of the BR Act, 1949, speaks about licence to be obtained by a bank to do banking business which is modified as per clause (o) of Section 56 thereof which states that no co-operative society shall carry on banking business in India unless it is a co-operative bank and holds a licence issued in that behalf by the Reserve Bank, subject to such conditions, if any, as the Reserve Bank may deem fit to impose. Secondly, a co-operative society must obtain a licence under Section 22 of the BR Act, 1949, only if it functions as a co-operative bank and not otherwise. Thus, a co-operative society including a co-operative credit society which is not a co-operative bank does not require a licence to function as such.

15.5. Further, Section 2(d) of NABARD Act, 1981 defines central co-operative bank while Section 2(u) defines a state co-operative bank to mean the principal co-operative society in a State, the primary object of which is financing of other co-operative societies in the State which means, it is in the nature of an apex co-operative bank having regard to the definition under Section 56 of the BR Act, 1949, in relation to co-operative bank. The proviso states that in addition to such principal society in a State, or where there is no such principal society in a State, the State Government may declare any one or more co-operative societies carrying on business of banking in that State to be also or to be a state co-operative bank or state co-operative banks within the meaning of the definition. Section 2(v) of NABARD Act, 1981 defines state land development bank to mean the co-operative society which is the principal land development bank (by whatever name called) in a State and which has as its primary object the providing of long-term finance for agricultural development.

15.6. Section 2(w) states that words and expressions used in the NABARD Act, 1981 which are not defined therein but defined in the RBI Act, shall have the meanings respectively assigned to them in that Act. Section 2(x) of the said Act states that words and expressions used in the NABARD Act, 1981 and not defined either in the said Act or in the RBI Act, but

defined in the BR Act, 1949, shall have the meanings respectively assigned to them in the BR Act, 1949. Therefore, we revert back to BR Act, 1949.

15.7. What is central to the controversy in this batch of cases is, whether, the appellant bank is a co-operative bank. What is of significance to know is, a state co-operative bank or central co-operative bank under the NABARD Act, 1981 is essentially a principal co-operative society either in a district or in a State, respectively, the primary object of which is the financing of other co-operative societies in the district or the State respectively. Further, NABARD Act, 1981 does not define banking business. Hence, reliance is to be placed, on the definition of banking business in terms of clause (w) of Section 2 of NABARD Act, 1981 which means the RBI Act has to be seen. When the RBI Act is perused, it is noted that clause (i) of Section 2 defines "co-operative bank", "co-operative credit society", "director", "primary agricultural credit society", "primary co-operative bank" and "primary credit society" to have the meanings respectively assigned to them in Part V of the BR Act, 1949. Therefore, we have to again fall back on Part V of the BR Act, 1949 which has defined a co-operative bank in Section 56 (c)(i)(cci) to be a state co-operative bank, a central co-operative bank and a primary co-operative bank and central co-operative bank and state co-operative bank to have the same meanings as NABARD Act, 1981.

15.8. Since the words 'bank' and 'banking company' are not defined in the NABARD Act, 1981, the definition in sub-clause (i) of clause (a) of Section 56 of the BR Act, 1949 has to be relied upon. It states that a co-operative society in the context of a co-operative bank is in relation to or as a banking company. Thus, co-operative bank shall be construed as references to a banking company and when the definition of banking company in clause (c) of Section 5 of the BR Act, 1949 is seen, it means any company which transacts the business of banking in India and as already noted banking business is defined in clause (b) of Section 5 to mean the accepting, for the purpose of lending or investment, of deposits of money from the public, repayable on demand or otherwise, and withdrawal by cheque, draft, order or otherwise. Thus, it is only when a co-operative society is conducting banking business in terms of the definition referred to above that it becomes a co-operative bank and in such a case, Section 22 of the BR Act, 1949 would apply wherein it would require a licence to run a co-operative bank. In other words, if a co-operative society is not

conducting the business of banking as defined in clause (b) of Section 5 of the BR Act, 1949, it would not be a co-operative bank and not so within the meanings of a state co-operative bank, a central co-operative bank or a primary co-operative bank in terms of Section 56(c)(i)(cci). Whereas a co-operative bank is in the nature of a banking company which transacts the business of banking as defined in clause (b) of Section 5 of the BR Act, 1949. But if a co-operative society does not transact the business of banking as defined in clause (b) of Section 5 of the BR Act, 1949, it would not be a co-operative bank. Then the definitions under the NABARD Act, 1981 would not apply. If a co-operative society is not a co-operative bank, then such an entity would be entitled to deduction but on the other hand, if it is a co-operative bank within the meaning of Section 56 of BR Act, 1949 read with the provisions of NABARD Act, 1981 then it would not be entitled to the benefit of deduction under sub-section (4) of Section 80P of the Act.

15.9. Section 56 of the BR Act, 1949 begins with a non-obstante clause which states that notwithstanding anything contained in any other law for the time being in force, the provisions of the said Act, shall apply to, or in relation to, co-operative societies as they apply to, or in relation to, banking companies subject to certain modifications. The object of Section 56 is to provide a deeming fiction by equating a co-operative society to a banking company if it is a co-operative bank within the meaning of the said provision. This is because Chapter V of the BR Act, 1949, deals with application of the Chapter to co-operative societies which are co-operative banks within the meaning of the said chapter. For the purpose of these cases, what is relevant is that throughout the BR Act, 1949, unless the context otherwise requires, - references to a "banking company" or "the company" or "such company" shall be construed as references to a co-operative bank. Therefore, while considering the meaning of a co-operative bank inherently, such a co-operative society must be a banking company then only it would be construed as a co-operative bank requiring a licence under Section 22 of BR Act, 1949 in order to function as such a bank.

15.10. Further, while considering the definition of a co-operative bank under Section 56(cci) of the BR Act, 1949, to mean a state co-operative bank, a central co-operative bank and a primary co-operative bank which is defined in (ccviii) thereof, to have meanings respectively assigned to them in the NABARD Act, 1981 would imply that if a state co-operative bank is within the meaning

of NABARD Act, 1981 then it would be excluded from the benefit under Section 80P of the Act. Conversely, if a co-operative society is not a co-operative bank within the meaning of Section 56 of the BR Act, 1949, it would be entitled to the benefit of deduction under Section 80P of the Act.

15.11. Looked at from another angle, a co-operative society which is not a state co-operative bank within the meaning of NABARD Act, 1981 would not be a co-operative bank within the meaning of Section 56 of the BR Act, 1949. In the instant case, as already noted in A.P. Varghese case, the Kerala State Co-operative Bank being declared as a state co-operative bank by the Kerala State Government in terms of NABARD Act, 1981 and the appellant society not being so declared, would imply that the appellant society is not a state co-operative bank.

15.12. In fact, in Citizen Co-operative Society Ltd., this Court held that the appellant therein was having both members as well as nominal members who were depositing and availing loan facilities from the appellant therein and therefore, appellant therein was not entitled to the benefit of Section 80P of the Act as it was functioning as a co-operative bank. But, the appellant herein is not a co-operative bank and neither has it been so declared under the provisions of NABARD Act, 1981 or the State Act. On the other hand, under the provisions of State Act, 1969, the Kerala State Co-operative Bank has been so declared by the Government of Kerala as a co-operative bank.

15.13. Further, under the provisions of the State Act, 1984, 'agricultural and rural development bank' means the Kerala Co-operative Central Land Mortgage Bank Limited, registered under Section 10 of the Travancore-Cochin Co-operative Societies Act, 1951, which shall be known as Kerala State Co-operative Agricultural and Rural Development Bank Limited i.e. the appellant herein. Thus, from a conjoint reading of all the relevant statutory as alluded to hereinabove, it is quite clear that the appellant is not a co-operative bank within the meaning of sub-section (4) of Section 80P of the Act. The appellant is a co-operative credit society under Section 80P(2)(a)(i) of the Act whose primary object is to provide financial accommodation to its members who are all other co-operative societies and not members of the public.

15.14. Therefore, when the definition of "co-operative bank" in Section 56 of BR Act, 1949 is viewed in terms

of Sections 2(u) of the NABARD Act, 1981, it is clear that only a state co-operative bank would be within the scope and meaning of a banking company under Section 2(c) of the BR Act, 1949 on obtaining licence under Section 22 of the said Act.

Conclusion:

In the instant case, although the appellant society is an apex co-operative society within the meaning of the State Act, 1984, it is not a co-operative bank within the meaning of Section 5(b) read with Section 56 of the BR Act, 1949.

In the result, the appeals filed by the appellant are allowed and the order(s) of the Kerala High Court and other authorities to the contrary are set aside. Consequently, we hold that the appellant is entitled to the benefit of deduction under Section 80P of the Act. The questions for consideration are answered accordingly."

4.1 We adopt their lordships foregoing detailed discussion *mutatis mutandis* to conclude that the lower authorities have erred in law and on facts in declining the assessee's section 80P deduction. So far as the Revenue's reliance on the very issue having got decided against the assessee in the earlier assessment year is concerned, we conclude that the same would not amount to adopting a correct approach in light of the aforesaid case law. The assessee's instant former substantive ground succeeds therefore.

5. Next comes various other disallowance of payment of gratuity to LIC etc. under the regular business heads which are found as covered under the CBDT's landmark Circular No. 37/2016 dated 02.11.2016 in assessee's favour and against the department that any such disallowance made under the regular business heads increases the business profits eligible for deduction(s) prescribed under Chapter-VIA of the Act. We reiterate that the assessee's section 80P deduction claimed stands accepted in the preceding paragraphs. We thus allow all

it's instant remaining substantive ground against the department in very terms. Necessary computation shall follow.

6. This assessee's appeal is allowed in above terms.

Order Pronounced in the Open Court on 05/12/2024.

Sd/-

(M. Balaganesh)
Accountant Member

Dated: 05/12/2024

Subodh Kumar, Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

(Satbeer Singh Godara)
Judicial Member

ASSISTANT REGISTRAR