

आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
“D” BENCH, CHENNAI

डॉ. ओ. के. नारायणन, उपाध्यक्ष एवं
श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष

BEFORE Dr. O.K. NARAYANAN, VICE PRESIDENT &
SHRI VIKAS AWASTHY, JUDICIAL MEMBER

आयकर अपील सं./ I.T.A. No. 197/Mds/2013
निर्धारण वर्ष / Assessment Year : 2009-10

Income Tax Officer,
Ward-II(3),
COIMBATORE

Vs

M/s. Veerakeralam Primary
Agricultural Co operative Credit
Society,
No.17, Peria Thottam Colony,
COIMBATORE-641 007

[PAN: AAAAV 3131 G]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Shri S.Dasgupta, JCIT

प्रत्यर्थी की ओर से / Respondent by : Shri S.Ramachandran, CA

सुनवाई की तारीख/Date of hearing : 04-02-2014

घोषणा की तारीख /Date of Pronouncement : 11-02-2014

आदेश / O R D E R

PER VIKAS AWASTHY, JUDICIAL MEMBER:

The appeal of the Revenue is directed against the order of the Commissioner of Income Tax(Appeals)-I, Coimbatore dated 01-11-2012 relevant to the Assessment Year (AY) 2009-10.

2. The assessee is a primary Agricultural Credit Co-operative Society engaged in the business of providing credit and banking facilities to its Members. The assessee filed its return of income for the AY. 2009-10 on 30-03-2010 declaring 'NIL' income. The assessee has claimed deduction u/s.80P(2) of the Income Tax Act, 1961 (herein after referred to as 'the Act'). The case of the assessee was selected for scrutiny and notice u/s. 143(2) was issued to the assessee. During the course of assessment proceedings, the Assessing Officer after examining the activities of the assessee held that the assessee is carrying banking activities. The assessee is providing loan facilities under various heads viz. Jewel Loan, KCC Jewel Loan, Crop Loan, Housing Loan, Non-forming Sector Loan etc. The assessee is not only providing agricultural credit facilities but is also advancing consumer durable loans to any borrower/person on personal guarantee. The Assessing Officer further observed that the assessee had made investment to the tune of ₹14,12,52,428/- with Coimbatore District Credit Co-operative Bank. The assessee has given loans and advances to the tune of ₹61.86 Crores, out of which, loans and advances for the purposes other than agriculture amounts to ₹60.50 Crores. It is approximately 97.8% of the total advances. Similarly, the major source of income of the assessee is interest

income from banking operations. Out of the total interest received i.e., ₹6.37 Crores, the assessee has received interest of ₹6.28 Crores from loans granted for non-agricultural activities. Thus, nearly 98.5% of the interest income is arising from advancing of loans for other than agricultural activities. The Assessing Officer dis-allowed the deduction claimed by the assessee under the provisions of section 80P.

Aggrieved against the assessment order dated 27-12-2011, the assessee preferred an appeal before the CIT(Appeals). The CIT(Appeals) followed the order of the Bangalore Bench of the Tribunal in the case of *ACIT Vs. M/s.Balgalore Commercial Transport Credit Co-operative Society Ltd., in ITA No.1069/Bang/2010 relevant to the AY.2007-08 decided on 08-04-2011* and allowed the appeal of the assessee.

Aggrieved against the order of the CIT(Appeals), the Revenue has come in appeal before the Tribunal.

3. Shri S.Dasgupta, appearing on behalf of the Revenue vehemently opposed the order of the CIT(Appeals) and submitted that earlier the name of the assessee was Veerakeralam Primary Agricultural Co-operative Credit Society and after the amendment to Section 80P by insertion of sub-section 4 by the Finance Act,

2006, w.e.f. 01-04-2007, the assessee changed its name to Veerakeralam Primary Agricultural Co-operative Credit Society. However, the nature of activities and business of the assessee remains the same. The Id.DR pointed out that, in letter dt.08-11-2012 submitted by the assessee before Assessing Officer, the assessee has admitted the fact that the main source of income of the assessee is from the business of Banking. In view of the nature of activities being carried out by the assessee as listed by the Assessing Officer in his detailed and well reasoned order, there is no doubt that the assessee is carrying on banking activities and is thus in-eligible for claiming deduction u/s.80P of the Act. The Id.DR prayed for setting aside the impugned order of the CIT(Appeals).

4. On the other hand, Shri S.Ramachandran, appearing on behalf of the assessee strongly supported the order of the CIT(Appeals) and submitted that the name of the assessee was changed after the ordinance dated 21-10-2008 of Govt. of Tamil Nadu directed all agricultural co-operative banks to drop the word 'co-operative bank' from their names. The Id.AR submitted that the activities carried on by the assessee are not akin to the activities carried out by the banking companies or co-operative

banks. The assessee is providing credit facilities to its Members only and not to public at large. Further, its geographical area of operation is restricted to Veerakeralam village and certain other adjacent villages in the district of Coimbatore. All members of the assessee are agriculturists and loans are provided to the members under various schemes as per the requirement of each and every individual member. As regards the deposits made in Coimbatore District Credit Co-operative Bank, the amount has been deposited under statutory obligation. The Id.AR of the assessee contended that the assessee is not carrying any regular banking activity, for which approval from RBI is required. The assessee is registered as a co-operative society under the Tamil Nadu Co-operative Societies Act, 1961 and is carrying on its activities as per the bye-laws registered with the Registrar of the Co-operative Societies. The amendment brought in by the Finance Act, 2006 with the insertion of sub-section 4 to Section 80P of the Act does not debar Primary Agricultural Credit Societies from claiming deduction u/s.80P of the Act. The Id.AR in order to support his submissions relied on the following decisions of the Tribunal:

- I. *ACIT Vs. M/s.Balgalore Commercial Transport Credit Co-operative Society Ltd., in ITA No.1069/Bang/2010 (AY.2007-08) decided on 08-04-2011.*
- II. *ITO Vs. M/s. Yeswanthpur Credit Co-operative Society Ltd., in ITA No.737/Bang/2011 (AY.2007-08) decided on 11-04-2012.*
- III. *ITO Vs.The Kasipalayam Primary Agricultural Co-operative Bank Ltd., in ITA No.174/Mds/2013 decided on 23-08-2013.*

The Id.AR apart from the above decision of the Tribunal also placed reliance on the recent judgment of the Hon'ble Gujarat High Court in the case of *CIT Vs. Jafari Momin Vikas Co-op. Credit Society Ltd., decided on 15-01-2014* reported as *2014(2) TMI 28*.

5. We have heard the submissions made by the representatives of both the sides. We have also perused the orders of the authorities below as well as the decisions on which the Id.AR has placed reliance. The assessee is an agricultural co-operative credit society registered under the Tamil Nadu Co-operative Societies Act, 1961. The assessee-society was

established in the year 1968 and the members of the society are agriculturists. The primary activity of the society is accepting deposits from its members and advancing loans to its members. The assessee has been enjoying the benefit of deduction u/s.80P till the amendment was brought in by the Finance Act, 2006 vide which sub-clause 4 was inserted in section 80P. After the amendment, the benefit of 80P was denied to the co-operative banks. The sub-section 4 of section 80P is re-produced herein below:

“(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 to section 80P further defines Co-operative Bank, Primary Agricultural Credit Society and Primary Co-operative Agricultural and Rural Development Bank. The same reads as under:

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.]

From the provisions of sub-section 4 of section 80P and the Explanation to section 80P, it is evident that the benefit of section 80P is not available to co-operative banks whereas the Primary Agricultural Credit Societies are entitled for the same. For the purpose of sub-section 4, ‘co-operative bank’ and ‘Primary Agricultural Credit Society’ shall have the meanings assigned to them under the Banking Regulation Act, 1949. We find that the issue whether credit co-operative societies are same as co-operative banks has been dealt in detail by the Bangalore Bench of the Tribunal in the case of *ACIT Vs. M/s.Balgalore Commercial Transport Credit Co-operative Society Ltd.*, (supra). After comparative analysis of the ‘co-operative banks’ and ‘co-operative societies’ on various parameters, the Tribunal came to the conclusion that the activities of both the organizations and the compliances to be made under various Acts for both the organizations are varied. The sub-section 4 to section 80P is applicable only to co-operative banks and not to credit

co-operative societies. The decision of the Bangalore Bench of the Tribunal in the case of *ACIT Vs. M/s.Balgalore Commercial Transport Credit Co-operative Society Ltd.*, (supra) has subsequently been followed by the co-ordinate bench of the Tribunal in the cases of *ITO Vs.The Kasipalayam Primary Agricultural Co-operative Bank Ltd.*, (supra) and *ITO Vs. M/s. Yeswanthpur Credit Credit Co-operative Society Ltd.*, (supra). The assessee has also placed reliance on the recent judgment of the Hon'ble Gujarat High Court in the case of *CIT Vs. Jafari Momin Vikas Co-op. Credit Society Ltd.*,(supra) wherein the Hon'ble High Court after taking into consideration the CBDT Circular No.133/07 has held that sub-section 4 section 80P will not apply to assessee which is not a co-operative bank. The relevant extract of the order of the Hon'ble High Court is reproduced herein below:

"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 admissibility of deduction under section 80P of the Income-Tax Act, 1961.

1. Please refer to your letter No. DCUS/30688/2007, dated 28.03.2007 addressed to Chairman, Central Board of Direct Taxes, on the above given subject.

2. In this regard, I have been directed to state that subsection(4) of section 80P provides that deduction under the said section shall not be allowable to any co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank. For the purpose of the said 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".

The Revenue has tried to establish that the assessee although a credit co-operative society is carrying banking business and is thus not eligible. In our opinion, the assessee is not a co-operative bank. The activities in the nature of accepting deposits, advancing loans etc., carried on by the assessee are confined to its members

only and that too in a particular geographical area. The activities of the assessee are not regulated by the RBI or the provisions of the Banking Regulation Act. Thus, in view of the above stated facts and various decisions considered above, we do not find any infirmity in the order of the CIT(Appeals).

The appeal of the Revenue is dismissed being devoid of merit.

Order pronounced on Tuesday, the 11th February, 2014 at Chennai.

Sd/-
(Dr. O.K. NARAYANAN)
VICE PRESIDENT

Sd/-
(VIKAS AWASTHY)
JUDICIAL MEMBER

Dated: 11th February, 2014

TNMM

Copy to: Appellant/Respondent/CIT(A)/CIT/DR