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## A treatise on Section 80P (4) of Income Tax Act 1961



A lot of confusion is prevailing among the ITATs and Income tax authorities as well as the legal practitioners and Chartered accountants on the applicability of the provisions of Section 80P (<http://www.caclubindia.com/articles/abrief-overview-of-section-80p-9722.asp>) of

Income Tax Act 1961 (<http://www.caclubindia.com/forum/bare-acts-income-tax-act-1961-100525.asp>). The Section deals with deduction in respect of income of Co-operative Societies which is as follows:-

### "80P. Deduction in respect of income of co-operative societies

(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

.....  
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the whole of the amount of profits and gains of such business".

There had been no ambiguity in the meaning of the Section. Section 80P (4) was inserted in the Act by the Finance Act 2007-08. Sub section 4 of Section 80P is as follows:-

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"(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."

**CO-OPERATIVE SOCIETIES CARRYING ON BANKING BUSINESS WILL NOT BE HIT BY SECTION 80P (4)**

Assessing officers were of the view that primary Agricultural credit co-operative Societies only are eligible for deduction u/s 80P (2) from the AY-2007-08 onwards by virtue of Section 80P (4). A lot of litigation are still going on in this issue even after almost all High courts have held that all co-operative Societies other than those are licensed by Reserve Bank of India only would be hit by Section 80P(4) and thus would be deprived of the deduction u/s 80P(2). Various High Courts after detailed analysis of Section 80P and its sub sections along with the provisions of Banking Regulation Act 1949, had arrived into the following conclusions:-

1. All Co-operative Societies other than those coming under the control of Reserve bank of India are eligible for deduction under Section 80(P) (2) (a) of the Income Tax Act 1961.

2. A Co-operative society carrying on banking activities is not a Co-operative Bank licensed by Reserve Bank of India and therefore is eligible for deduction u/s 80P of Income Tax Act 1961 in the light of the clarification No.133/06/2006-07 dated 19-05-2007 issued by CBDT.

The above said viewpoints were expressed by various appellate authorities all over the country. Some of these decisions are mentioned below:-

(a) High Court of Karnataka in Bangalore Commercial Transport Credit Society Ltd [ITA NO: 598/2013 dated 27-06-2014]

(b) High Court of Gujarat - Jafari Momin Vikas Co-op. Credit Society Ltd. in Tax Appeals no. 442 of 2013, 443 of 2013 and 863 of 2013 on 15-01-2014

(c) ITAT, Panaji- Athani Taluka primary teachers' Co-operative Society Ltd. in Tax Appeals no. 06/PNJ/2014 on 04-07-2014

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(d) ITAT, Poona - Jankalyan Nagri Sahakari Pat Sanstha Ltd. reported in 24 Taxmann.com (Pune Tribunal) 127

(e) ITAT, Panaji- Mercantile Credit Co-operative Society on 16-02-2017

(f) ITAT, Indore - Bhee Thrift & Credit Co- operative society on 6 August, 2012

(g) ITAT, Bangalore - Yeshwantpur Credit co-operative Society on 11 April, 2012

(h) ITAT, Ahmedabad-Sarvoday Credit cum Consumers Co-operative Society on 3 May, 2013

(i) ITAT, Pune - Jain Nagri Sahkari Pat Sanstha Department Of Income Tax on 14 September, 2012



(j) ITAT, Pune - Dharasur Mardini Nagar Sahakari on 20 November, 2012

(k) ITAT, Pune - Vardhman Nagari Sahakari Path Sansta on 22 November, 2012

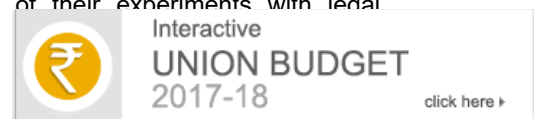
(l) High court of Karnataka - Income Tax Officer Vs Sri Biluru Gurubasava Pattina Sahakari Sangha Niyamitha Bagalkot on 5th Feb 2014

(m) High Court of Bombay at Goa - Quepem Urban Co-operative Credit Society Ltd.vs Assistant Commissioner of income-tax on 17-04-2015

(n) Madras High Court - The Commissioner of Income Tax vs Nlc Employees Co-Operative Society on 10 August, 2016

### OLD CONTROVERSIES TAKE NEW FORMS

Assessing officers came forward to interfere into the privileges allowed to the co-operative societies in the statute through new arguments. Some of their experiments with legal provisions were:-



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- (a) Disallowance of reserves and provisions;
- (b) Disallowance of interest expenses invoking Section 40a (ia) for non-compliance of TDS.
- (c) Treating interest earned from investments as "income from other sources";
- (d) Treating deposits as "unexplained cash credit" u/s 68; etc.

In fact, all these efforts had been proved futile in the past. Hon'ble Supreme Court in COMMISSIONER OF INCOME TAX vs. NAWANSHAHAR CENTRAL COOPERATIVE BANK on 08-04-2005 had held that the income arising from investments would be attributable to the business of Banking falling under the head "profits and gains of business and thus deductible under Section 80P(2)(a)(i) of the Income-tax Act 1961. None other than CBDT them self by CIRCULAR NO - 18/2015, Dated: November 2, 2015 also bring this fact into the attention of officers of the department. Regarding the disallowance of expenses and additions the CBDT has accepted the settled position of law that the disallowances related to the business activity against which the Chapter VI-A deduction has been claimed, result in enhancement of the profits of the eligible business, and that deduction under Chapter VI-A is admissible so enhanced by the disallowance. Vide Circular No.37/2016 dated 02-11-2016.

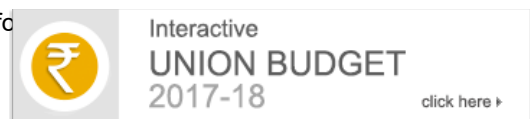
#### REVENUE HAS APPROACHED THE APEX COURT

Co-operative Societies which use the word "Bank" with its name and those carrying on banking business are considered as "Co-operative banks" and these Co-operative societies are disallowed deduction u/s 80(P) in several States. This approach is wrong for 2 reasons. Firstly, High courts and ITATs have made it clear that no co-operative Society carrying on banking business shall be treated as "Co-operative Bank" unless it holds a licence of RBI. Secondly, High courts and ITATs have examined this issue at length and opined that the revenue shall not dissect the co-operative Societies carrying on Banking business as "Co-operative banks" even if it is legal or illegal to carry on banking business without the licence of R.B.I. Kerala High court in Moolamattam Electricity Employees co-operative Bank v/s ITO and ITAT, Bangalore in Adarsh credit co-operative society v/s ITO had examined this issue at length and decided against the revenue.

Hon. High court of Kerala in the judgment dated 15-02-2016 in ITA 212 of 2013 and a batch of similar cases has held that the Assessing officer shall not treat the Primary Agricultural credit society as "Co-operative Bank" so as to deny the claim for deduction u/s 80(P) and the Court has held that a Primary Agricultural credit society classified as such by the Department of Co-operation is eligible for deduction u/s 80P (2). The Court also opined that the Income Tax authorities shall not probe into such issue and matter related to the classification of Co-operative Society which is to be done by the authority under the Co-operative Societies Act.

Now, the Revenue has filed Special Leave Petition befo

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challenging the order of the Kerala High Court. Meanwhile, assessments are being made by several assessing officers disallowing deduction u/s 80P as done earlier, as if there is no direction from the High court.

The main contention of Revenue in the case before the Apex court is that the jurisdictional High Court had held earlier in PERINTHALMANNA SERVICE CO-OPERATIVE BANK LTD vs. INCOME TAX OFFICER [ITA 4 of 2014] that the assessing officer may conduct enquiry instead of merely looking into the registration certificate, so as to find out the nature of transaction of the Co-operative Society in order to extent the benefit under Income Tax Act. Hon'ble Supreme Court has connected the case with a similar case filed by the revenue in which Gangolli Town Souhardha Co-operative Society is the respondent. Another SLP filed by the revenue against the decision of Hon'ble Bombay High Court in the case of Quepem Urban credit Co-operative Society is also pending with the Supreme Court. Thus the issue of deduction Section 80P has got a national dimension. The decision of the Apex Court, in this case, will have a far-reaching effect on the whole Co-operative Credit Sector in India.

The major task before the Hon'ble is to distinguish between "primary co-operative bank" and the "co-operative societies carrying on banking business". If the co-operative societies carrying on banking business are treated as "primary co-operative banks" then they will lose the deduction u/s 80P. In case the Apex court finds that the income tax department shall have the power to decide whether a co-operative society is a "primary co-operative bank" or not, the result will be the same.

The common key element in all the cases are the interpretation of the definition of "primary co-operative bank" provided in Part V of the Banking Regulation Act 1949 which is as given below:-

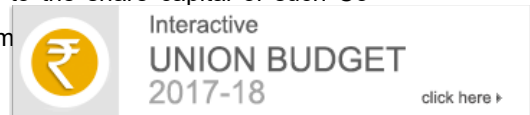
**"Section 5 (CCV) –**

"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 co-operative bank subscribing to the share capital of such Co-operative society out of funds provided by the State Government

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The Hon'ble High Court of Karnataka had considered the matter in the judgment dated 25-09-2015 in the case of Sree Renuka Co-operative Credit Society Ltd., Belgaum and held as follows:-

"10. We are in respectful agreement with the general view taken as to the interpretation of the relevant provisions of law, by the co-ordinate bench of this court, in the above and several other judgments adopting the same view. However, it is to be noticed that there is a seriously disputed question of fact which the Authorities under the IT Act have taken upon themselves to interpret in the face of the BR Act prescribing that in the event of a dispute as to the primary object or principal business of any co-operative society referred to in clauses (cciv), (ccv) and (ccvi) of Section 56 of the BR Act, a determination thereof by the Reserve Bank shall be final, would require the dispute to be resolved by the Reserve Bank of India, before the authorities could term the assessee as a co-operative bank, for purposes of Section 80 P of the IT Act. Any opinion expressed, therefore, is tentative and is not final. The view expressed by his court, however, as to the assessee being a co-operative society and not a co-operative bank in terms of Section 80P (4) of the IT Act, shall hold the field and shall bind the authorities unless held otherwise by the Reserve Bank of India. In the result, the above questions are answered in favour of the assessee and the appeal is allowed as prayed for." Similar opinion had been expressed by the other High Courts in several cases especially Hon'ble High court of Bombay in the case of Quepem Urban Credit Co-operative society (supra).

The Hon'ble Supreme Court has granted leave to the SLP filed by the revenue against High Court's order where it was held that assessee cooperative society, Quepem Urban Credit Co-operative society, could not be regarded as 'Cooperative Bank' on, mere fact that an insignificant proportion of revenue was coming from nonmembers, and thus, was entitled to deduction under section 80P (2) (a) (i).

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