THE CITIZEN CO-OPERATIVE SOCIETY LIMITED, THROUGH ITS MANAGING DIRECTOR, HYDERABAD

v.

ASSISTANT COMMISSIONER OF INCOME TAX, CIRCLE-9(1), HYDERABAD

(Civil Appeal No. 10245 of 2017)

AUGUST 08, 2017

[A. K. SIKRI AND ASHOK BHUSHAN, JJ.]

Co-operative Societies – Income Tax Act, 1961 – s. 80P(2)(a)(i) – Deduction under – When not available – Appellant-society claiming to be a co-operative society, sought deduction in respect of its income – Assessing Officer held that deduction u/s. 80P was not admissible to the appellant as the benefit of deduction was admissible to those co-operative societies that carry on business of banking or providing credit facilities to its members, however, the appellant was carrying on the banking business for public at large and its operation was not confined to its members only – Appeal thereagainst rejected by CIT (A) upholding the order of Assessing Officer – Further appeal to ITAT and High Court, dismissed – On appeal, held: Appellant was catering to two distinct categories of people, the first was that of 'resident members' and the other category was of 'nominal members' who were making deposits with the assessee for the purpose of obtaining loans, etc. and were not members in real sense – Thus, the activity of the appellant was that of finance business and cannot be termed as co-operative society – Further, the appellant was engaged in the activity of granting loans to general public as well – Therefore, the appellant cannot be treated as a co-operative society meant only for its members and providing credit facilities to its members – Such a society cannot claim the benefit of s. 80P – Mutually Aided Co-operative Societies Act, 1995 – Banking.

Income Tax Act, 1961 – s. 80P – Interpretation of – Held: Section 80P is a benevolent provision enacted by the Parliament to encourage and promote growth of co-operative sector in the economic life of the country – Therefore, such a provision has to be read liberally, reasonably and in favour of the assessee – Interpretation of Statutes – Benevolent/Beneficial provision.

A *Income Tax Act, 1961 – s. 80P(4) – 'Co-operative Bank' – When not – Whether activity/business of the appellant was that of a co-operative bank governed by Banking Regulation Act, 1949 and hence it was not entitled to benefit of deduction u/s. 80P – Held: Sub-sec.(4) to s. 80P is in the nature of a proviso and provides that deduction u/s. 80P shall not be admissible to a co-operative bank – However, in the instant case, the appellant does not get covered under the definition of 'co-operative bank' – Further, RBI itself had clarified that the business of appellant does not amount to that of a co-operative bank – Therefore, appellant would not come within the mischief of sub-sec.(4) of s. 80P – Finance Act, 2006 – Banking Regulation Act, 1949.*

Dismissing the appeal, the Court

HELD: 1.1 Section 80P of the Income Tax Act, 1961 is a benevolent provision which is enacted by the Parliament in order to encourage and promote growth of co-operative sector in the economic life of the country. It was done pursuant to declared policy of the Government. Therefore, such a provision has to be read liberally, reasonably and in favour of the assessee. It is also trite that such a provision has to be construed as to effectuate the object of the Legislature and not to defeat it. Therefore, all those co-operative societies which fall within the purview of Section 80P of the 1961 Act are entitled to deduction in respect of any income referred to in sub-section (2) thereof. Clause(a) of sub-section (2) gives exemption of whole of the amount of profits and gains of business attributable to any one or more of such activities which are mentioned in sub-section (2).[Para 18][375-C-F]

1.2 Sub-section (i) of clause (a) of sub-section (2) recognises two kinds of co-operative societies, namely: (i) those carrying on the business of banking and; (ii) those providing credit facilities to its members. [Para 19][375-F-G]

1.3 With the insertion of sub-section (4) by the Finance Act, 2006, which is in the nature of a proviso to Section 80P, it is made clear that such a deduction shall not be admissible to a co-operative bank. However, if it is a primary agriculture credit society or a primary co-operative agriculture and rural

development bank, the deduction would still be provided. Thus, co-operative banks are now specifically excluded from the ambit of Section 80P of the Act. [Para 23][377-E-F]

2. However, the appellant does not get covered by the definition of 'co-operative bank'. It is also a matter of common knowledge that in order to do the business of a co-operative bank, it is imperative to have a licence from the Reserve Bank of India, which the appellant does not possess. Not only this, as noticed, the Reserve Bank of India had itself clarified that the business of the appellant does not amount to that of a co-operative bank. The appellant, therefore, would not come within the mischief of sub-section (4) of Section 80P. [Para 24][377-G-H]

3. However, it is pointed out that the main reason for disentitling the appellant from getting the deduction provided under Section 80P of the Act is not sub-section (4) thereof. The Assessing Officer, after discussing in detail the activities of the appellant, noticed that the activities of the appellant were in violations of the provisions of the Mutually Aided Co-operative Societies Act, 1995 (MACSA) under which it was formed. It was pointed out by the Assessing Officer that the assessee was catering to two distinct categories of people. The first category was that of resident members or ordinary members. There is no any difficulty as far as this category is concerned. However, the assessee had carved out another category of 'nominal members'. These are those members who were making deposits with the assessee for the purpose of obtaining loans, etc. and, in fact, they were not members in real sense. Most of the business of the appellant was with this second category of persons who were giving deposits which are kept in Fixed Deposits with a motive to earn maximum returns. A portion of these deposits was utilised to advance gold loans, etc. to the members of the first category. As a matter of fact, the depositors and borrowers were quite distinct. In reality, such activity of the appellant was that of finance business and cannot be termed as co-operative society. The appellant was engaged in the activity of granting loans to general public as well. All this was done without any approval from the Registrar of the Societies. With indulgence in such kind of activity by the appellant, it was remarked by the Assessing Officer that

A **the activity of the appellant was in violation of the Co-operative Societies Act. Moreover, it was a co-operative credit society which was not entitled to deduction under Section 80P(2)(a)(i) of the Act. [Para 25][378-A-E]**

4. Keeping the aforesaid aspects in mind, the conclusion is B **obvious, namely, the appellant cannot be treated as a co-operative society meant only for its members and providing credit facilities to its members. Such a society cannot claim the benefit of Section 80P of the Act. [Para 27][379-D-E]**

Commissioner of Income Tax v. Punjab State Co-
C *operative Bank Ltd.* **(2008) 300 ITR 24 (Punjab & Haryana H.C.) – approved.**

Bajaj Tempo Limited, Bombay v. Commissioner of Income Tax, Bombay City-III, Bombay **(1992) 3 SCC 78;** *Commissioner of Income Tax, Bombay & Ors. v.*
D *Mahindra and Mahindra Limited & Ors.* **(1983) 4 SCC 392 : [1983] 3 SCR 773:** *Kerala State Cooperative Marketing Federation Limited & Ors. v. Commissioner of Income Tax* **(1998) 5 SCC 48 : [1998] 3 SCR 443 – relied on.**

E *Commissioner of Income Tax, Bangalore v. Bangalore Distt. Coop. Central Bank Ltd.* **(1998) 6 SCC 129;** *Commissioner of Income Tax, Jalandhar v. Nawanshahar Central Cooperative Bank Limited* **(2012) 13 SCC 788 – referred to.**

F **Case Law Reference**

(1998) 6 SCC 129	**referred to**	**Para 12**
(2012) 13 SCC 788	**referred to**	**Para 12**
(1992) 3 SCC 78	**relied on**	**Para 18**
G **[1983] 3 SCR 773**	**relied on**	**Para 18**
[1998] 3 SCR 443	**relied on**	**Para 20**
(2008) 300 ITR 24	**approved**	**Para 21**

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 10245
H of 2017.

From the Judgment and Order dated 17.07.2013 of the High Court of Judicature of Andhra Pradesh at Hyderabad in Income Tax Tribunal Appeal No. ITTA No. 292 of 2013.

V. Shekhar, Sr. Adv., K. Shivraj Choudhuri, G. V. R. Choudary, K. Shivraj Choudhuri, A. Chandra Sekhar, D. L. Narasimha Rao, Advs. for the Appellant.

K. Radhakrishnan, Sr. Adv., Ms. Purnima Bhat Kale, Ms. Bhakti Pasrija Sethi, Anil Katiyar, Advs. for the Respondent.

The Judgment of the Court was delivered by

A. K. SIKRI, J. 1. Leave granted.

2. The appellant herein, after losing in all the fora below, has knocked the doors of this Court by means of the present appeal seeking the benefit of Section 80P of the Income Tax Act, 1961 (hereinafter referred to as the 'Act'). The Assessing Officer held that deduction in respect of income of co-operative societies under Section 80P of the Act is not admissible to the appellant as the benefit of deduction, as contemplated under the said provision is, inter alia, admissible to those co-operative societies which carry on business of banking or providing credit facilities to its members. On the contrary, the appellant society was carrying on the banking business for public at large and for all practical purposes it was acting like a co-operative bank governed by the Banking Regulation Act, 1949, and its operation was not confined to its members but outsiders as well.

3. It may be noted at this stage itself that Section 80P of the Act provides for certain deduction in respect of incomes of the co-operative societies. A co-operative society is defined by Section 2(19) of the Act. Where the gross total income of such co-operative societies includes any income referred to in sub-section (2) of Section 80P, the sums specified in sub-section (2) are allowed as deduction in accordance with and subject to the provisions of the said Section, while computing the total income of the assessee. The profit exempted is the net profit included in the total income and not the gross profit of the business. Sub-section (2) enlists those sums which are allowed as deductions. Clause (a) of sub-section (2) includes seven kinds of co-operative societies which are entitled to this benefit, and in respect of the co-operative societies engaged in the activities mentioned in those seven classes, the whole of the amount

A of profits and gains of business attributable to anyone or more of such activities is exempted from income by allowing the said income as deduction. We are concerned with sub-clause (i) of clause (a) of sub-section (2) of Section 80P which enlists a co-operative society engaged in carrying on the business of banking or providing credit facilities to its members. For the sake of better understanding, we reproduce below the aforesaid portion of Section 80P:

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> "**80P. Deduction in respect of income of co-operative societies.** – (1) Where, in the case of an assesee 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
>
> xx xx xx
>
> the whole of the amount of profits and gains of business attributable to any one or more of such activities:
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> xx xx xx"

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4. Section 80P was amended by the Finance Act, 2006 with effect from April 01, 2007 and sub-section (4) was inserted thereto. This sub-section (4) reads as under:

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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

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taluk and the principal object of which is to provide for long-term credit for agricultural and rural development activities."

5. As would be seen from the facts hereafter, the appellant is a co-operative society. However, it has been denied the benefit of Section 80P on the ground that it is a co-operative society of the nature covered by sub-section (4) of Section 80P and, therefore, becomes disentitled to get the benefit. The question, therefore, is as to whether the appellant is barred from claiming deduction in view of Section 80P(4) of the Act. In order to ascertain the answer to this question, relevant facts are enumerated hereinbelow:

(i) The assessee was established on May 31, 1997 initially as a Mutually Aided Co-operative Credit Society having been registered, under Section 5 of Andhra Pradesh Mutually Aided Co-operative Societies Act, 1995 with Registration No. AMC/RR/DCO/9714 by Registrar of Mutually Aided Co-operative Societies, Ranga Reddy. As operations of assessee over the years had increased manifold and as its operations were spread over States of erstwhile Andhra Pradesh, Maharashtra and Karnataka, the assessee got registered under the Multi State Co-operative Societies Act, 2002 in terms of certificate dated July 26, 2005 issued by Office of Central Registrar of Co-operative Societies, Krishi Bhawan, New Delhi.

(ii) The assessee is being assessed to income tax since its inception. It has been claiming exemption under Section 80P of the Act which was being allowed by the Income Tax Authorities. As per the assessee, in course of its operations, members deposit cash into their accounts with the society and they withdraw the same. It is claimed that earlier, none of Income Tax Authorities had pointed out that acceptance of deposits from its members in cash and withdrawal thereof by them in cash would violate the provisions of Sections 269SS and 269T of the Act. Sections 269SS and 269T of the Act relate to mode of taking or accepting certain loans and deposits and their repayment respectively.

(iii) The assessee as Co-operative Society and assessee under PAN No. AAAAT3952F had filed return of income before Assistant Commissioner of Income Tax, Circle-9(I),

A Hyderabad for the Assessment Year 2009-10, for the year ending March 31, 2009 on September 30, 2009 declaring NIL income. In the return filed for the Assessment Year 2009-10, year ending with March 31, 2009, the assessee claimed a sum of Rs.4,26.37,081/- as deduction under Section 80P of the Act. Return filed by the assessee was taken up for scrutiny under CASS (Computer Assisted Selection of Cases for Scrutiny) and notice under Section 143(2) of the Act was issued. In response thereto, books of account were produced by the assessee society and information called for was submitted. The Assessing Officer had arrived at Rs.19,57,32,920/- as the net amount of tax payable by the assessee in terms of his order dated December 19, 2011 by working out as hereunder:

Income Returned by the assesee (After claiming deduction u/s 80P)	:	Rs. Nil
Add: Disallowance u/s 68 as discussed in para no.2, 2.1 and 2.2 above	:	Rs.38,53,72,794/-
Add: Disallowance of deduction claimed u/s 80P	:	Rs.4,26,37,817/-
Total assessed income	:	Rs.42,80,09,880/-
Tax there on	:	(as per computation Form enclosed).
Tax payable	:	Rs.19,57,32,920/-

F 6. It may be pointed out that in the appeal before Commissioner of Income Tax (Appeals) {CIT(A)}, the order of the Assessing Officer making disallowance under Section 68 of the Act was reversed and that addition was deleted. Therefore, we are not concerned with that aspect of the mater which has attained finality.

G 7. Insofar as disallowance of deduction claimed under Section 80P of the Act is concerned, the CIT(A) rejected the claim for deduction thereby upholding the order of the Assessing Officer. While doing so, the CIT(A) followed the order of the Income Tax Appellate Tribunal (ITAT) in the case of the appellant itself in respect of Assessment Years 2007-08 and 2008-09. CIT(A) quoted the following discussion from the H said order of the ITAT:

"22. For Assessment Year 2007-08 and 2008-09, we have to consider the amendment brought out to the section with effect from 1.4.2007 by Finance Act, 2006 whereby section 80P(4) was inserted. The amendment clearly barred all the cooperative banks other than primary agricultural credit society or a primary cooperative agricultural and rural development banks from claiming exemption under the section. The primary activity of the society is to provide banking facilities to its members. The Society is dealing like a bank while accepting deposits from its members. This issue was examined by the ITAT in the assessee's own case while deleting the penalty u/s. 27ID and 27IE. The ITAT held as under:

> "If the carrying on baking business is not approved by the RBI or the assessee is not having requisite license to carry out the banking business, the authorities could have taken action against the society or stop the society activity. Once the assessee is allowed to carry on the banking business, then the assessee is bound by the relevant provisions of the Banking Regulations Act. The bank for all its banking activities is strictly governed by the Banking Regulations Act, 1949."

23. The Society is carrying on the banking business and for all practical purpose it acts like a co-op bank. The ITAT observed that the society is governed by the Banking Regulations Act. Therefore, the Society being a co-op bank providing banking facilities to members is not eligible to claim the deduction u/s. 80P(2)(i)(a) after the introduction of sub-section (4) to Section 80P.

24. In view of the above, we are of the opinion that the society is not eligible to claim deduction u/s. 80P(2)(a)(i). Therefore, we are of the opinion that the assessee is not entitled for deduction u/s. 80P(2)(a)(i) for Assessment Year 2006-07, 2007-08 and 2008-09 and allowed the ground raised by the Revenue and dismiss the ground taken by the assessee on this issue.

5.2 The facts in the present appeal being identical, respectfully following the decision of the ITAT in the assessee's own case for the preceding years, the appeal of the assessee is dismissed on the issue of deduction u/s. 80P."

A 8. Further appeal to the ITAT met the same fate as ITAT also referred to its aforesaid order and dismissed the appeal of the appellant. Undeterred, the appellant approached the High Court in the form of appeal under Section 260A of the Act. This appeal has been dismissed by the High Court with the observations that there is no illegality or infirmity in the order passed by the ITAT.

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9. Referring to the provisions of Section 80P of the Act, Mr. V. Shekhar, learned senior counsel appearing for the appellant, made a passionate plea to the effect that the entire purport and objective to enact the said provision was to encourage and promote growth of co-operative sector in the economic life of the country in pursuance of the C declared policy of the Government. This is so recognised by various judgments of this Court firmly laying down the rule that a provision for direction, exemption or relief should be interpreted liberally, reasonably and in favour of the assessee and it should be so construed as to effectuate the object of the legislature and not to defeat it. He referred to the D objects for which the assessee society has been established and submitted that the principal object of the society is to promote interest of all its members to attain their social and economic betterment through self help and mutual aid in accordance with the co-operative principles and keeping in view the same the assessee society can engage in certain specified forms of business stipulated in the objective clause of the society. E The purpose, therefore, was to promote the interest of its members and, therefore, it cannot be said that primary object of the assessee is transaction of banking business.

10. The learned senior counsel drew the attention of the Court to Section 5(b) of the Banking Regulation Act, 1949, which defines 'banking F business' 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."

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11. Predicated on the aforesaid definition, he submitted that banking business means accepting for the purpose of lending or investment of deposits of money from the public repayable on demand or otherwise which is withdrawable by cheque, draft, order or otherwise. According to him, the assessee was not accepting any money from the public, except

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its members. Therefore, it was totally wrong on the part of the authorities below to come to a conclusion that assessee was doing banking business as stipulated in the Banking Regulation Act. It was also argued that in any case the assessee was not authorised and competent to carry on any banking business without possessing a licence from the Reserve Bank of India. He, thus, sought to draw the distinction between a co-operative bank and a co-operative society in the following manner:

	CO-OPERATIVE BANK	CO-OPERATIVE SOCIETY
Nature of business	1. As defined in Section 6 of Banking Regulation Act. 2. Banks are bound to follow the rules, regulations and directions	1. As per bye laws of the cooperative society. 2. Society is bound by rules issued by Reserve Bank of India and regulations as specified by (RBI), if any applicable.
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 societies.
Use of words	The word 'bank', 'banker', 'banking' can be used by a cooperative bank.	The word 'bank', 'banker', 'banking' cannot be used by a cooperative society.

It was also pointed out that even Central Board of Direct Taxes – CBDT – vide circular No. 133/2007 dated 9.5.2007 had clarified that Section 80P(4) of the Act provides that deduction shall not allowable to any Co-operative Bank other than Agricultural Credit Society or Primary Co-operative Agricultural and Rural Development Bank. Submission was that since the assessee does not fall within the meaning of Co-operative Bank as defined in Part-V of the Banking Regulation Act, 1949 and Section 80P(4) will not, therefore, apply to the assessee.

A 12. Continuing with the aforesaid line of argument, Mr. Shekhar further submitted that courts below ought to have appreciated that purpose of exemption under Section 80P is to provide employment of as much capital as possible for financing and extending the scope of fundings etc. The true test for applying deduction under Section 80P of the Act is whether income earned is attributable to the utilisation of circulating B capital of the cooperative society engaged in the activity of business of banking. Once the assessee had earned income from the loans advanced to various members, the income so related to the banking activities is liable for exemption under Section 80P(2)(a)(i) of the Act. He submitted that this interpretation is supported by various decisions of this Court. C For this purpose, he referred to the decision of this Court in ***Commissioner of Income Tax, Bangalore*** v. ***Bangalore Distt. Coop. Central Bank Ltd.***[1] wherein it was held that interest on Government securities and dividends earned by a Co-operative Society engaged in banking business is eligible for deduction under Section 80P of the Act, though said income was not earned from the credit facility provided to its members. Also, in D ***Commissioner of Income Tax, Jalandhar*** v. ***Nawanshahar Central Cooperative Bank Limited***[2] this Court held that a Co-operative Society carrying a business of banking would be entitled for deduction under Section 80P of the Act. Plea of the appellant was that if the intention of legislature was not to grant deduction under Section 80P(2)(a)(i) to the E cooperative societies carrying on the business of providing credit facilities to its members, said provision would have been deleted from the Statute. According to the learned senior counsel, the new proviso to Section 80P(4) which was brought onto Statute Book is applicable only to cooperative banks and not to credit cooperative societies. The intention of the legislature in bringing the cooperative banks into the taxation F structure was mainly to bring them on par with commercial banks.

13. Taking aid of the principle of mutuality, it was submitted that the assessee is a mutual concern. Income derived by it from its operations is distributed among members. The members are entitled to participate in the surplus, thereby creating an identity. Facilities are provided only G to members of the society, who provide funds to it and their identity with the funds and their participation in the surplus arising from the said fund is unmistakably found and thus principles of mutuality will apply. In order to apply principle of mutuality, there must be complete identity

[1] (1998) 6 SCC 129

H [2] (2012) 13 SCC 788

between contributors and participators and requirement of law bring that contributors of the common fund and participators in the surplus must be an identical body. What is essential is that members of the assessee as a class must be able to participate in the surplus. It is immaterial whether surplus is paid back to the members or is put to reserve with the society for development and for providing better amenities to the members. There is complete identity between the contributors and the participators of the assessee.

14. On the basis of the aforesaid arguments, Mr. Shekhar pleaded that the appellant be held entitled to the benefit of Section 80P of the Act.

15. In reply, Mr. Radhakrishnan, learned senior counsel appearing for the Revenue, submitted that the findings arrived at by the authorities below to the effect that the activity/business of the appellant, in essence, was that of a co-operative bank was based on the material on record and needed no interference. In this behalf he not only relied upon the findings of the Tribunal as per the discussion contained therein, but also submitted that these are findings of fact. The Assessing Officer scrutinised the bye-laws of the appellants and in particular those bye-laws which deal with the liability of membership etc. as well as provisions of Mutually Aided Co-operative Societies Act, 1995 (MACSA) under which the appellant is registered. The Assessing Officer found that the Act does not accept a person to be member of more than one co-operative for the same services. Moreover, Section 19 of MACSA does not accept every co-operative to be a panacea for all problems facing an entire population in an area and leaves it to the members to decide how big they wish to grow and how much they can handle. After analysing these provisions, following discussion ensued in the order passed by the Assessing Officer:

> "As per the above provisions governing the conduct of the assessee, the assessee cannot admit nominal members and deal with them. The main activities of the assessee are in violation of the above provisions, as seen under:
>
> (i) As per the information furnished, it was found that the assessee caters to two distinct categories of people.
>
> (ii) The first category is that of resident members or ordinary members.

A (iii) The second category is that of nominal members, who make deposits with the assessee for the purpose of obtaining loans etc.

(iv) This category of persons is neither members nor nominal/ associate members.

B (v) As noticed, the assessee accepts deposits mostly from the second category these deposits are mostly kept in FDs.

(vi) With banks to earn maximum returns, a portion of these deposits are utilized to advance gold loans etc. to members of the first category.

C (vii)It is noticed that the assessee has fixed deposits of Rs.541699504.39 of Rs. As on 31.3.2007.

Therefore, the fixed deposits in banks are mostly out of funds received as deposits from the second category of persons referred above.

D (viii) As a class, the depositors and borrowers are quite distinct and the activity is finance business and cannot be termed as cooperative activity.

(ix) The assessee is also engaged in the activity of granting loans E to general public etc. which has nothing to do with cooperation amongst members. It is plain business and any willing buyer can utilize the services of the assessee.

(x) As understood, the assesse has not obtained any approval from the Registrar of Societies either to accept deposits from F nominal members (who are actually non-members as the provisions of law referred above) as well as for conducting the business of sale of stamps etc.

(xi) Therefore, both in form and substance, the activity is in violation of the Cooperative Societies Act and Cooperative Society G Rules.

(xii) Apart from the above, a cooperative credit society is not entitled for deduction u/s 80P(2)(a)(i) on the income from investment of surplus funds as per decision of IT at Hyderabad Bench in ITA No. 1141/Hyd/2007 in the case of SBI Staff H Mutually Aided Cooperative Society Ltd."

16. He submitted that there was a clear finding of the Assessing Officer, which was consistently approved by the higher authorities as well, that provisions of Section 80P(2)(i)(a) were grossly violated as the appellant Society was found not dealing with its members only but also with general public as well. On that basis, further submission of Mr. Radhakrishnan was that the principle of mutuality was missing in this case, which aspect was also discussed in detail by the Assessing Officer. He, thus, contended that in view of the aforesaid findings, no case for interference was made out by the appellant.

17. We have considered the submissions of the counsel for the parties with reference to the record of this case.

18. We may mention at the outset that there cannot be any dispute to the proposition that Section 80P of the Act is a benevolent provision which is enacted by the Parliament in order to encourage and promote growth of co-operative sector in the economic life of the country. It was done pursuant to declared policy of the Government. Therefore, such a provision has to be read liberally, reasonably and in favour of the assessee (See – ***Bajaj Tempo Limited, Bombay*** v. ***Commissioner of Income Tax, Bombay City-III, Bombay***[3]). It is also trite that such a provision has to be construed as to effectuate the object of the Legislature and not to defeat it (See – ***Commissioner of Income Tax, Bombay & Ors.*** v. ***Mahindra and Mahindra Limited & Ors.***[4]). Therefore, it hardly needs to be emphasised that all those co-operative societies which fall within the purview of Section 80P of the Act are entitled to deduction in respect of any income referred to in sub-section (2) thereof. Clause (a) of sub-section (2) gives exemption of whole of the amount of profits and gains of business attributable to anyone or more of such activities which are mentioned in sub-section (2).

19. Since we are concerned here with sub-section (i) of clause (a) of sub-section (2), it recognises two kinds of co-operative societies, namely: (i) those carrying on the business of banking and; (ii) those providing credit facilities to its members.

20. In the case of ***Kerala State Cooperative Marketing Federation Limited & Ors.*** v. ***Commissioner of Income Tax***[5], this

[3] (1992) 3 SCC 78
[4] (1983) 4 SCC 392
[5] (1998) 5 SCC 48

A Court, while dealing with classes of societies covered by Section 80P of the Act, held as follows:

> "6. The classes of societies covered by Section 80-P of the Act are as follows:
>
> (a) Engaged in business of banking and providing credit facilities B to its members;
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> xx xx xx
>
> 7. We may notice that the provision is introduced with a view to encouraging and promoting growth of cooperative sector in C the economic life of the country and in pursuance of the declared policy of the Government. The correct way of reading the different heads of exemption enumerated in the section would be to treat each as a separate and distinct head of exemption. Whenever a question arises as to whether any particular category of an income of a cooperative society is D exempt from tax what has to be seen is whether income fell within any of the several heads of exemption. If it fell within any one head of exemption, it would be free from tax notwithstanding that the conditions of another head of exemption are not satisfied and such income is not free from tax under that head of exemption..." E

21. In the case of ***Commissioner of Income Tax*** v. ***Punjab State Co-operative Bank Ltd.***[6], while dealing with an identical issue, the High Court of Punjab and Haryana held as follows:

> "8. The provisions of section 80P were introduced with a view to F encouraging and promoting the growth of the co-operative sector in the economic life of the country and in pursuance of the declared policy of the Government. The different heads of exemption enumerated in the section are separate and distinct heads of exemption and are to be treated as such. Whenever a question arises as to whether any particular category of an income of a G co-operative society is exempt from tax, then it has to be seen whether such income fell within any of the several heads of exemption. If it fell within any one head of exemption,.... It means that a co-operative society engaged in carrying on the business of

[6](2008) 300 ITR 24 (Punjab & Haryana H.C.)

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banking and a co-operative society providing credit facilities to its members will be entitled for exemption under this sub-clause. The carrying on the business of banking by a cooperative society or providing credit facilities to its members are two different types of activities which are covered under this sub-clause.

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13. So, in our view, if the income of a society is falling within any one head of exemption, it has to be exempted from tax notwithstanding that the condition of other heads of exemption are not satisfied. A reading of the provisions of section 80P of the Act would indicate the manner in which the exemption under the said provisions is sought to be extended. Whenever the Legislature wanted to restrict the exemption to a primary co-operative society, it was so made clear as is evident from clause (f) with reference to a milk co-operative society that a primary society engaged in supplying milk is entitled to such exemption while denying the same to a federal milk co-operative society."

22. The aforesaid judgment of the High Court correctly analyses the provisions of Section 80P of the Act and it is in tune with the judgment of this Court in ***Kerala State Cooperative Marketing Federation Limited*** (supra).

23. With the insertion of sub-section (4) by the Finance Act, 2006, which is in the nature of a proviso to the aforesaid provision, it is made clear that such a deduction shall not be admissible to a co-operative bank. However, if it is a primary agriculture credit society or a primary co-operative agriculture and rural development bank, the deduction would still be provided. Thus, co-operative banks are now specifically excluded from the ambit of Section 80P of the Act.

24. Undoubtedly, if one has to go by the aforesaid definition of 'co-operative bank', the appellant does not get covered thereby. It is also a matter of common knowledge that in order to do the business of a co-operative bank, it is imperative to have a licence from the Reserve Bank of India, which the appellant does not possess. Not only this, as noticed above, the Reserve Bank of India has itself clarified that the business of the appellant does not amount to that of a co-operative bank. The appellant, therefore, would not come within the mischief of sub-section (4) of Section 80P.

A 25. So far so good. However, it is significant to point out that the main reason for disentitling the appellant from getting the deduction provided under Section 80P of the Act is not sub-section (4) thereof. What has been noticed by the Assessing Officer, after discussing in detail the activities of the appellant, is that the activities of the appellant are in violations of the provisions of the MACSA under which it is formed. B It is pointed out by the Assessing Officer that the assessee is catering to two distinct categories of people. The first category is that of resident members or ordinary members. There may not be any difficulty as far as this category is concerned. However, the assessee had carved out another category of 'nominal members'. These are those members C who are making deposits with the assessee for the purpose of obtaining loans, etc. and, in fact, they are not members in real sense. Most of the business of the appellant was with this second category of persons who have been giving deposits which are kept in Fixed Deposits with a motive to earn maximum returns. A portion of these deposits is utilised to advance gold loans, etc. to the members of the first category. It is found, as a D matter of fact, that he depositors and borrowers are quiet distinct. In reality, such activity of the appellant is that of finance business and cannot be termed as co-operative society. It is also found that the appellant is engaged in the activity of granting loans to general public as well. All this is done without any approval from the Registrar of the Societies. E With indulgence in such kind of activity by the appellant, it is remarked by the Assessing Officer that the activity of the appellant is in violation of the Co-operative Societies Act. Moreover, it is a co-operative credit society which is not entitled to deduction under Section 80P(2)(a)(i) of the Act.

F 26. It is in this background, a specific finding is also rendered that the principle of mutuality is missing in the instant case. Though there is a detailed discussion in this behalf in the order of the Assessing Officer, our purpose would be served by taking note of the following portion of the discussion:

G "As various courts have observed that the following three conditions must exist before an activity could be brought under the concept of mutuality;

that no person can earn from him;

that there a profit motivation;

H and that there is no sharing of profit.

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.

28. This appeal, therefore, fails and is hereby dismissed with costs.

Divya Pandey

Appeal dismissed.