

IN THE HIGH COURT OF BOMBAY AT GOA**TAX APPEALS No.2,9, 23, AND 26 of 2018****TAX APPEAL NO.2 OF 2018**

The Pr. Commissioner of Income Tax,

Aayakar Bhavan, Patto Plaza,

Panaji, Goa.

.... Appellant

Versus

M/s. The Quepem Urban Co-operative

Credit Society Ltd., Ground Floor,

Cindios apartment, Quepem, Salcete, Goa.

... Respondent

Ms. Susan Linhares, Standing Counsel for the Appellant.

Mr. Chythanya K.K. with Mr. Tata Krishna & Mr. S. Redkar, Advocates
for the Respondent.

WITH**TAX APPEALS No.9, 23 & 26 of 2018**

The Pr. Commissioner of Income Tax,

Aayakar Bhavan, Patto Plaza,

Panaji, Goa.

.... Appellant

Versus

M/s. VPK Urban Cooperative Credit Society Ltd.

Mahalasa Apartments, Near Post Office,

Mardol, Ponda-Goa.

... Respondent

Ms. Amira Razaq, Standing Counsel for the Appellant.

Mr. D.J. Pangam with Mr. P. Sawant, Advocates for the Respondent.

**Coram: - M.S. SONAK &
DAMA SESHADRI NAIDU, JJ.**

Reserved on: 8 JANUARY 2021

Pronounced on: 7 MAY 2021

JUDGMENT: (*Per Dama Seshadri Naidu, J.*)**Introduction:**

A cooperative credit society, registered under the Goa Cooperative Societies Act, 2001, claims deductions under section 80P(2)(a) (i) of the Income-Tax Act, 1961 ("IT Act"). It is in the face of section 80P(4) of the same Act, effective from 01.04.2007. The question is, with its lending and borrowing involving non-members, whether the society still retains its character as cooperative society or whether it should be treated as a cooperative bank, disentitled to the benefits under section 80P(2)(a)(i) of the IT Act.

Facts:

2. There are four appeals. In all those appeals, the facts are similar and the issues, too, are identical. The learned counsel on both sides have advanced common arguments. So we dispose of all the appeals through this common judgment. For the narrative convenience, we will refer to the facts in Tax Appeal No.2 of 2018.

3. The Respondent ("the Assessee") is a Co-operative credit society said to be engaged in the activity of providing credit facilities to its members and carrying on the business of Banking. On 31 March 2013, the Assessee filed its e-return of income for the Assessment Year 2012-13 declaring total income as Nil after claiming deduction under section 80P of the Act. On 8 August 2013, the Assessee's return was processed under section 143(1) of the IT Act, and subsequently the case was selected for scrutiny under CASS and notice dated 08.08.2013 was issued under section 143(2).

4. Through Assessment Order, dated 10.03.2015, passed under section 143(3) of the Act, the Assessment Officer (AO) held that the Assessee is not a co-operative credit society but a Primary Co-operative Bank. As a result, it was declared ineligible for deductions under section

80P(2)(a)(i) and 80P(2)(c)(ii) of the Act. Besides, the AO has also held that because of section 40a(ia) of the IT Act, the entire expenditure of ₹ 94,38,864/- is liable to be disallowed for the Assessee's failure to comply with section 194A of the IT Act. The Audit Fee of ₹2,34,222/- was also disallowed for the Assessee's failing to comply with section 194J. The AO has assessed the Assessee's total income at ₹3,69,82,101/-.

5. Aggrieved, the Assessee appealed to the Commissioner of Income Tax (Appeals), Panaji-1 (CIT). Through Order, dated 29.11.2016, the CIT(A) held that the issue of disallowance made under section 80P(2)(a)(i) of the IT Act stands precedentially established in the Assessee's favour. That is, the previous year, in Assessee's own case, this Court has ruled in Assessee's favour. The addition of ₹ 94,38,864/- under section 40(a)(ia) of the IT Act was deleted because the assessee's case is covered by clause (v) to section 194A(3) of the IT Act. But CIT(A) has upheld the disallowance of audit fees of ₹2,34,222/-.

6. Aggrieved by the CIT (A)'s Order, dated 29.11.2016, the Revenue appealed under section 253 of the IT Act to the Income Tax Appellate Tribunal (Tribunal). The Tribunal by Order, dated 10.07.2017, dismissed the Revenue's appeal. Further aggrieved, in November 2017, the Revenue has preferred this appeal under section 260A of the IT Act, 1961.

7. On 26 February 2018, this Court admitted the appeal after framing these substantial questions of law:

Substantial Questions of Law:

- I. Is the Income Tax Appellate Tribunal right in not appreciating the fact that the assessee is a co-operative society which fulfills all the three conditions of being held a Primary Co-operative Bank, as given in Section 5(ccv) of Banking Regulation Act, 1949?
- II. Is the Tribunal right in not appreciating the definition of a co-operative bank, which, as per explanation below Section 80P(4) "The

Co-operative bank”, shall have the meaning assigned to it in part-V of the Banking Regulation Act, 1949?

III. Is the Tribunal right in not appreciating the facts that the assessee Society being a credit cooperative society engaged in banking business is a Primary Co-operative Bank within the definition of Section 5(ccv) of the Banking Regulation Act, 1949 and, as such, is not eligible for deduction under Section 80P(2)(a)(i) of the Income Tax Act, 1961?

IV. Has the Tribunal exercised its power as contemplated and conferred under the provisions of the Income Tax Act, 1961?

Submissions:

8. Given the clear precedential position, we need not set out the rival contentions in detail; it will suffice if we extract the core of contentions, especially, by the Revenue.

9. The learned Advocate General has raised these issues: (1) the Assessee is a co-operative society in the name, but it carries on its full-blown banking operations with nonmembers; and (2) this position having been admitted, it ought to be treated as a co-operative bank, rather than as a co-operative society. To support his contentions, the learned Advocate General has taken us through the statutory position: Section 80P(2)(a)(i) & (ii) and section 80P(4) of the IT Act; sections 3, 5(b), 22(1)(b), and section 56 of the Banking Regulation Act, 1949, the provisions of the Goa State Cooperative Societies Act, 2001, as well as the Assessee’s bye-laws.

10. On the other hand, all the learned counsel for the Assesseees have defended the impugned judgments. The learned counsel have submitted that the main object of the societies is to accept the deposits and provide financial accommodation to their members. So, they have asserted that the Assesseees’ core activity continues to be that of a cooperative credit society. They have pointed out that even the AO has accepted that for the earlier assessment years, the jurisdictional High Court (this Court)

has ruled that the Assessee is entitled to the deductions under section 80P of the IT Act. The AO has also acknowledged that this Assessment Year, too, the Assessee has not changed character, much less its activities. As there are no changed circumstances, the ruling on the jurisdictional High Court for the previous years must be applied with all vigour and vitality.

Discussion:

11. The assessment concerns AY 2012-13. Under section 143 (3) of the IT Act, the AO held that the Assessee is not a co-operative credit society, but a primary co-operative bank. As a consequence, he ruled that the Assessee was ineligible for deductions under section 80P(2)(a)(i) and 80P(2)(a)(ii) of the IT Act. Invoking section 40 a (ia) of the IT Act, the AO also held that the entire expenditure of ₹94,38,864/- is liable to be disallowed for the Assessee's failure to comply with section 194A of the IT Act. Besides, The AO is disallowed the audit fee of over ₹2 lakh for the assessee's failure to comply with section 194J of the IT Act. Thus, the AO assessed to tax a total income of ₹3,69,82,101/-.

12. To put the issue in perspective, we must appreciate the previous litigation involving the same Assessee. Indisputably, the appellant is Co-operative society registered under the Goa Co-operative Societies Act, 2001 ('Cooperative Act'). Earlier, there was a common order, dated 26 November 2014, passed by the Tribunal relating to assessment years 2008-09, 2009-10 and 2011-12.

The Quepem Urban Co-operative Credit Society Ltd. (2015):

13. First, the AO disallowed the Assessee's claim for deduction under Section 80P(2)(a)(i) of the IT Act. This was on the ground that the Assessee was a primary Co-operative Bank and, therefore, was hit by section 80P(4) of the IT Act, which excludes the benefit of section 80P of the IT Act to cooperative banks.

14. On appeal, the Commissioner of Income Tax (Appeals) ("CIT(A)") accepted the Assessee's contention and held that the Assessee

is not a Cooperative Bank but a Co-operative Credit Society. It is, thus, not hit by the exclusion provided under section 80P(4) of the Act. Then, it was the Revenue's turn to appeal. The Tribunal allowed the Revenue's appeal. It has held that the Assessee is a Cooperative Bank and, therefore, not entitled to the benefit of Section 80P(2)(a)(i) of the Act. It has brought in the statutory exclusion under section 80P(4) of the IT Act. It has, thus, restored the AO's order.

15. Eventually, the Assessee came to this Court. This Court framed this substantial question of law: Was the Tribunal right in holding that the Assessee is a Co-operative Bank and, hence, is not entitled to deduction under Section 80P(2)(a)(i) by virtue of Section 80P(4) of the Act?

16. This Court, through its judgment, dated 17 April 2015, in TXA Nos.22, 23, and 24 of 2015, has examined the statutory scheme under section 80P of the IT Act. In paragraph 9 of the judgment, this Court has held that indisputably, the Assessee is a cooperative society as the same is registered under the Co-operative Societies Act. The Assessee is claiming deduction of income earned on providing credit facilities to its members as provided under Section 80P(2)(a)(i) of the Act. It is Assessee's case that it is not carrying on the business of the banking. In other words, not being a co-operative bank, it faces no hurdle through section 80P(4) of the Act to claim the benefit of deduction under Section 80P(2)(a)(i) of the Act.

17. This Court has further observed that in terms of Section 80P of the Act, the meaning of the words Cooperative Bank is as assigned in Chapter V of the Banking Regulation Act, 1949. A cooperative bank is defined in Section 5(cci) of Banking Regulation Act to mean a State Cooperative Bank, a Central Cooperative Bank, and a primary cooperative bank. Admittedly, the Assessee is not a State Cooperative Bank or a Central Cooperative Bank. Thus what has to be examined, according this

Court, is whether the Assessee is a primary Cooperative Bank as defined in Para V of the Banking Regulation Act.

18. As we may note, section 5(ccv) of the Banking Regulation Act defines a primary cooperative bank to mean a cooperative society which cumulatively satisfies the following three conditions:

- (1) Its principal business or primary object should be banking business of Banking;
- (2) Its paid up share capital and reserves should not be less than rupees one lakh.
- (3) Its bye-laws do not permit admission of any other cooperative society as its member.

19. It is an accepted position that condition No.(2) is satisfied as the share capital is in excess of one lakh rupees. But, as the Assessee has contended, the conditions Nos. (1) and (3) have not been satisfied.

20. That apart, the fact remains that the Assessee does deal with non-members in a few cases; it accepts deposits from them. This activity, taken with its Bye law 43, allowed the Revenue to conclude that the Assessee is carrying on banking business. Before the Tribunal also the Assessee did not dispute that in a few cases it had dealt with non-members. That said, the Assessee contended that the Bye-law 43 only permits the society to accept deposits from its members. In other words, Bye-law 43 does not permit deposits from persons other than members; the word “any person”, the Assessee asserted, is a gloss the Tribunal added in the impugned order, though it is not found in Bye-law 43.

21. Then, this Court has held that indisputably the transactions with non-members are insignificant or miniscule. So it has refused to conclude that the Assessee’s principal business is of accepting deposits from public and that it is in banking business. At any rate, the Assessee’s principal business is not banking.

22. In the end, this Court has noted that Section 80P(1) of the Act restricts the benefits of deduction of Co-operative Society's income to the extent it earns by providing credit facilities to its members. On the converse, to the extent of the income it earns by its dealings with the nonmembers, the benefit of Section 80P of the Act would not be available. So, the Court has concluded that the authorities under the IT Act would restrict the benefit of deduction under Section 80P of the Act only to the extent that the same is earned by the Asseesee by carrying on its business of providing credit facilities to its members, but not non-members.

23. Here, too, for the Appeasement Year 2012-13, the contentions and counter-contentions are identical. But we need not labour further on this point. Recently, the Apex Court, speaking through a three-Judge Bench, put paid to any controversy on whether a cooperative credit society can be regarded as a cooperative bank given its activities.

Mavilayi Service Co-operative Bank Ltd:

24. In *Mavilayi Service Co-operative Bank Ltd. v. Commissioner of Income Tax* (SC), the question concerns the deductions a primary agricultural credit society can claim under section 80P(2)(a) (i) of the Income-Tax Act, 1961 ("IT Act") after the introduction of section 80P(4) of that Act.

25. To provide the background for *Mavilayi* (SC), we may examine how the dispute reached the Supreme Court. To begin with, a Division Bench of the Kerala High Court has answered the above issue in *Chirakkal Service Co-operative Bank td. v. CIT* (2016) 384 ITR 490 (Ker.). It has held that once a Co-operative Society is classified by the Registrar of Co-operative Societies under the Kerala Act as being a primary agricultural credit society, the authorities under the IT Act cannot go behind the certificate so granted. That is, the certified credit society can claim the benefit under section 80P(2)(a) (i) of the IT Act.

26. But *Chirakkal Service Co-operative Bank* was said to be in ignorance of *Perinthalmanna Service Co-operative Bank Ltd. v. ITO*, (2014) 363 ITR 268 (Ker.), a co-equal Bench decision. This judgment, on the contrary, permits an inquiry by the IT authorities into the factual situation: whether a society is in fact conducting business as a co-operative bank but not as a primary agricultural credit society.

27. In fact, these divergent views compelled the Kerala High Court to refer the matter to a Full Bench. Then, in *Mavilayi Service Co-operative Bank Ltd. v. Commissioner of Income Tax, Calicut*, 2019 (2) KHC 287, (“Mavilayi HC”) the Full Bench has endorsed *Perinthalmanna Service Co-operative Bank’s* view: that the IT Authority can go behind the certificate granted by the Registrar of Co-operative Societies. To hold thus, the Full Bench has relied on the Supreme Court’s *Citizen Cooperative Society Ltd. v. Asst. CIT, Hyderabad* (2017) 9 SCC 364. The Full Bench decision taken in further appeal, the Supreme Court, finally, in *Mavilayi SC* considered the controversy threadbare and reversed the Kerala High Court’s Full Bench decision. It has, thus, endorsed *Chirakkal Service Co-operative Bank’s* view.

28. Here, before us, an identical question of law has arisen. It will suffice if we examine the case holding of *Mavilayi SC* and see whether it applies on all four. For here, too, the Revenue relies on *Citizen Cooperative Society*, as did *Mavilayi (HC)*.

29. To begin with, a three-Judge Bench of the Apex Court in *Mavilayi (SC)* has noted that though the main object of the primary agricultural society is to provide financial assistance in the form of loans to its members for agricultural and related purposes, yet some of the objects go well beyond, and include banking operations ‘as per rules prevailing from time to time’. Then, *Mavilayi SC* has examined the case holding of *Citizen Cooperative Society*. In fact, *Mavilayi SC* underlines the

fact that even *Citizen Cooperative Society* acknowledges that section 80-P of the IT Act is a benevolent provision; it was enacted by Parliament to encourage and promote growth of cooperative sector in the country. *Citizen Cooperative Society*, as noticed by *Mavilayi SC*, has further accepted that once the assessee is entitled to avail itself of deduction, the entire amount of profits and gains of business that are attributable to any one or more activities mentioned in subsection (2) of section 80P must be given by way of deduction. Further, *Citizen Cooperative Society* also accepts that section 80P(4) is in the nature of a proviso to the main provision contained in section 80P(1) and (2). This proviso specifically excludes only co-operative banks which are cooperative societies that must possess a licence from the RBI to do banking business. In this backdrop, on facts, *Citizen Cooperative Society* concludes that the appellant assessee did not have RBI licence; so it would “not fall within the mischief of section 80P(4)”.

30. *Mavilayi SC* points out that in *Citizen Cooperative Society* the counsel for the assessee advanced no argument that “the assessing officer and other authorities under the IT Act could not go behind the registration of the co-operative society” to discover whether it was conducting business in accordance with its bye-laws. Without that question in the Court’s contemplation, *Citizen Cooperative Society*, according to *Mavilayi SC*, stands robbed of its precedential on a point that has never been raised and, thus, never discussed. For a decision binds not because of its conclusion but because of the ratio and the principle it lays down. In other words, a decision is only an authority for what it actually decides. What matters in a decision is its ratio and not every observation found in it or what logically follows from the various observations made in it.

31. Then, *Mavilayi SC* turns to the proper interpretation of Section 80P of the IT Act. In interpreting that provision, it refers, among other

things, to (a) the marginal note to Section 80P to ascertain the general “drift” of the provision; to the Finance Minister’s speech, dated 28.02.2006, on the floor of Parliament; to a Circular dated 28.12.2006, explaining the provision as found in the Finance Act, 2006. Eventually, *Mavilayi SC* holds that to earn eligibility for deduction, the assessee must be a “co-operative society”; it is unnecessary to probe any further whether the co-operative society is classified as X or Y. Besides, the gross total income must include income that is referred to in sub-section (2) of section 80P of IT Act.

32. *Mavilayi (SC)* has referred to sub-section (4) of section 80P, which, according to it, is in the nature of a proviso to that section. This sub-section clarifies that no deduction shall be admissible for a cooperative bank. But, if it is a primary agricultural credit society or a primary cooperative agricultural and rural development bank, the deduction will still be provided. Thus, only cooperative banks now specifically stand excluded from the ambit of Section 80-P of the Act.

33. On the facts, *Mavilayi (SC)* has noted that the appellant cannot be termed a cooperative bank. It is also a matter of common knowledge that in order to do the business of a cooperative bank, it is imperative for that bank to have a licence from Reserve Bank of India. And, admittedly, the appellant does not have it. In *Mavilayi (SC)*, as is the case here, the main reason for the Revenue to disentitle the appellant from getting the deduction under Section 80-P of the Act is not sub-section (4). It is the appellant’s alleged activities in violation of the Cooperative Societies Act, under which it is formed. The AO has pointed out that the appellant has been catering to two distinct categories of people: the first category is the resident members or ordinary members; the second category is the “nominal members”. These are those members who are making deposits

with the assessee for the purpose of obtaining loans, etc. And, in fact, they are not members in real sense.

34. As *Mavilayi* (SC) has noted, most of the appellant's business 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 matter of fact, that the depositors and borrowers are quite distinct.

35. In reality, the appellant's activity, *Mavilayi* (SC) agrees, is that of finance business and cannot be termed as cooperative 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. With indulgence in such kind of activity by the appellant, the AO has concluded that the appellant's activity violates the Cooperative Societies Act. Moreover, it is a cooperative credit society which is not entitled to deduction under Section 80-P(2)(a)(i) of the Act.

36. The appellant in *Mavilayi* (SC) has argued that the assessing officer and other authorities under the IT Act could not go behind the registration of the co-operative society in order to discover as to whether it was conducting business in accordance with its bye-laws. Accepting this contention, *Mavilayi* (SC) observes:

Nor can it be said that it would logically follow from the finding on facts that the assessing officer can go behind the registration of a society and arrive at a conclusion that the society in question is carrying on illegal activities.

* * *

Secondly, for purposes of eligibility for deduction, the assessee must be a "co-operative society". A co-operative society is defined in Section 2(19) of the IT Act, as being a co-operative society registered either under the Co-operative Societies Act, 1912 or

under any other law for the time being in force in any State for the registration of co-operative societies. *This, therefore, refers only to the factum of a co-operative society being registered under the 1912 Act or under the State law. For purposes of eligibility, it is unnecessary to probe any further as to whether the co-operative society is classified as X or Y.*

(Italics supplied)

37. Section 80P being a beneficial provision, according to *Mavilayi* (SC), must be construed with the object of furthering the co-operative movement generally. And section 80P(2)(a) (i) must be contrasted with section 80P(2)(a)(iii) to (v), which expressly speaks of agriculture. It must also further be contrasted with sub-clause (b), which speaks only of a "primary" society engaged in supplying milk etc. thereby defining which kind of society is entitled to deduction, unlike the provisions contained in section 80P(2)(a)(i). Also, the proviso to section 80P(2), when it speaks of subclauses (vi) and (vii), further restricts the type of society which can get the deductions contained in those two sub-clauses, unlike any such restrictive language in Section 80P(2)(a)(i).

38. *Mavilayi* (SC) emphasises that once a co-operative society is providing credit facilities to its members, the fact that it is providing credit facilities to non-members does not disentitle the society from availing itself of the deduction. The distinction between eligibility for deduction and attributability of amount of profits and gains to an activity is a real one. Since profits and gains from credit facilities given to nonmembers cannot be said to be attributable to the activity of providing credit facilities to its members, such amount cannot be deducted.

39. To sum up, *Mavilayi* (SC) has held that the ratio decidendi of *Citizen Cooperative Society Ltd.*, must be given effect to. Section 80P of the IT Act, being a benevolent provision enacted by Parliament to encourage and promote the credit of the co-operative sector in general must be read liberally and reasonably. And if there is ambiguity, it must be resolved the

Assessee's favour. A deduction given without any reference to any restriction or limitation cannot be restricted or limited by implication.

Conclusion:

40. First, the Assessee has all these years continued with the same set of activities. And this has been accepted by AO. On earlier occasions, until the Assessment Year we are considering (2012-13), this Court has consistently declared that the Assessee continues to be a cooperative credit society entitled to the benefits under section 80P of the IT Act. We see no reason for the AO to take a different stand this Assessment Year.

41. That apart, the Apex Court has put a quietus to the controversy whether the Revenue could go behind the registration certificate of co-operative society and examine its activities to determine its true nature, if any. In *Mavilayi* (SC), the enunciation of law is emphatic: the authorities under the IT Act cannot go behind the certificate. Here, indisputably, all the Assesseees have been registered as cooperative credit societies. Banking, as understood by the Revenue, has never been its core activity. Their accepting deposits from nonmembers does not disqualify them from claiming benefits under section 80P of the IT Act.

Result:

So all the substantial questions of law are answered against the Revenue and for the Assesseees.

DAMA SESHADRI NAIDU, J.

M.S. SONAK, J.

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