

IN THE HIGH COURT OF KARNATAKA, DHARWAD BENCH

THE HON'BLE MR. JUSTICE RAM MOHAN REDDY

AND

THE HON'BLE MR. JUSTICE B.MANO HAR

I.T.A. No.100042 OF 2014 DATED:17-09-2014

VENUGRAM MULTIPURPOSE CO-OPERATIVE CREDIT SOCIETY LTD., BELGAUM, VS.THE INCOME-TAX OFFICER,  
WARD 1 ( 2), FK COMPLEX, B.R. AMBEDKAR ROAD, BELGAUM.

JUDGMENT

Ram Mohan Reddy, J.

The assessee has come up in appeal invoking Section 260A of the Income Tax Act, 1961 (for short ' the Act '), calling in question the assessment order dated 31.10.2012, Annexure ' B ', the order dated 07.10.2013 of the First Appellate Authority, Annexure ' C ' and order dated 17.04.2014 of the Income Tax Appellate Tribunal, Panji Branch, Panaji (for short ' Tribunal ') Annexure ' A ', declining to extend the benefit of deduction under Section 80P ( 2) ( a) ( i) of the Act.

2. The crux of the matter lies in the registration of the appellant Co-operative Credit Society under the Karnataka Co-operative Societies Act, 1959, (for short ' KCS Act ') and the core question for decision making is: " Whether the appellant- a Multi purpose Co-operative Credit Society, falling within the definition of the term " Primary Agricultural Credit Co-operative Society " under Section 2 ( h- 2) of the KCS Act ', is entitled to the benefit of deduction in respect of its income under Section 80P ( 2) ( a) ( i) of the Act regard being had to Section 80P ( 4) of the Act? "

3. The appellant a Multi-purpose Co operative Credit Society, registered under the KCS Act ' with Registration Certificate dated 23.10.2001, filed its return for the assessment year 2010-11, declaring gross total income of 11,24,117/-and claimed the entire amount as a deduction under Section 80P ( 2) ( a) ( i) and the taxable income as NIL.

4. The Assessing Authority (ITO, Ward- 1 ( 2), Belgaum), by assessment order dated 31.10.2012, Annexure ' B ', declined the deduction and assessed the income to ₹ 12,11,580/-, on the premise that the appellant is a Primary Co-operative Bank disentitled to the benefit of deduction under Section 80P ( 2) ( a) ( i), in the light of Section 80P ( 4) of the ' Act '.That order when carried in first appeal before the Commissioner of Income Tax (Appeals), Belgaum, was confirmed by dismissal of the appeal by order dated 07.10.2013, Annexure ' C '.The appellant preferred appeal before the Tribunal, whence by order dated 17.04.2014, Annexure ' A ', the appeal was dismissed.

5. Sub-section ( 4) of Section 80P of the Act reads thus:

[80P. Deduction in respect of income of Co-operative Societies.

( 1 ) X X X

( 2 ) XXX ( 3 ) X X X 2 [ ( 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.]

6. This statutory provision disentitles any ' co-operative bank ' other than a ` primary agricultural credit Society ' or ' primary CO operative agricultural and rural development bank ' to the benefits of deduction under Section 80P of the Act. Therefore, what is required to be noticed is whether the appellant Multi-purpose Co operative Credit Society falls within the definition of either ' Primary Agricultural Credit Society ' or ` Primary Co-operative Agricultural and Rural Development Bank '.The explanation to the said sub-section states that a Co-operative Bank and the primary agricultural credit Society shall have the meanings respectively assigned to them in Part V of the Banking Regulations Act, 1949 (10 of 1949).In the facts of this case, suffice it to notice explanation ( a).

7. Part V of the Banking Regulation Act, 1949, provides for application of the Act to Co operative Banks.Section 56, reads thus:

#### <sup>1</sup> [PART V

#### APPLICATION OF THE ACT TO CO-OPERATIVE BANKS

56. Act to apply to co-operative societies subject to modifications.The provisions of this Act, as in force for the time being, shall apply to, or in relation to, co-operative societies as they apply to, or in relation to banking companies subject to the following modifications, namely:

(a) Throughout this Act, unless the context otherwise requires,

(i) references to a " banking company " or " the company " or " such company " shall be construed as reference to a co-operative bank;

(ii) references to " commencement of this Act " shall be construed as references to commencement of the Banking Laws (Application to Co operative Societies) Act, 1965 (23 of 1965); ( b ) in Sec. 2, the words and figures " the Companies Act, 1956 ( 1 of 1956) and " shall be omitted; ( c ) in Sec. 5,

2 [ ( i ) after clause (cc), the following clauses shall be inserted, namely:

(cci) X X X (ccii) xxx X X X [ (cciiia) " co-operative society " means a society registered or deemed to have been registered under any Central Act for the time being in force relating to the multi-State co operative societies, or any other Central or State law relating to co-operative societies for the time being in force;]

(cciii) X X X 4 [ (cciiia) xxx;] 5 [ (cciiib) xxx;] (cciv) " primary agricultural credit society " means a co-operative society,

( 1) the primary object or principal business of which is to provide financial accommodation to its members for agricultural purposes or for purposes connected with agricultural activities (including the marketing of crops); and

( 2) 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 for the purpose;

XXXXX "

1 Part V (containing section 56) Ins. by Act 23 of 1965, Sec. 14 (w.e.f. 1-3-1966). Earlier section 56 was repealed by Act 36 of 1957, section 2 and Sch. I (w.e.f. 17-9-1957) 2 Subs. by Act 61 of 1981, Sec. 61 and the Second Schedule, Pt. II (w.e.f. 1st May, 1982). 3 Ins. by Act 24 of 2004, sec 2 ( 1) ( A) (w.r.e.f. 1-3-1966)

4 XXX 5 X X X

8. Section 2 ( f- 1) of the KCS Act defines ' Multi-purpose Co-operative Society ' thus:

" 2. Definitions. In this Act, unless the context otherwise requires.

X X X

<sup>1</sup> [ ( f- 1) ' Multipurpose Co-operative Society ' means a primary society the object of which is to provide various services including services related to credit, business, industry, consumer durables to its members;

( f- 2) XXX] "

1 Clauses ( f- 1) and ( f- 2) inserted by Act No.6 of 2010 and shall be deemed to have come into force W.E.F. 3-11-2009.

Section 2 ( h- 2) of the KCS Act defines ' Primary Agricultural Credit Co-operative Society ', thus:

" 6 [ ( h- 2) ' Primary Agricultural Credit Co-operative Society ' means a co-operative society as defined under clause (cciv) of section 5 of Banking regulation Act, 1949 (Central Act 10 of 1949) and includes a multipurpose co-operative society;] "

6 Clause ( h- 2) inserted by Act No.6 of 2010 and shall be deemed to have come into force W.E.F. 3-11-2009.

9. The bye-laws of the appellant society define ' Member ' to mean, a person who has submitted his application for membership at the time of registration as per Articles, Rules, Bye laws of the Society and given the membership. Bye-law 5 in Chapter- 2 provides for membership and reads thus:

" 5. Membership: Any person including persons employed in government and semi-government and societies and who is normally residing within the area of operation of the Society and who genuinely need the services provided by the society, and competent to enter into contract under Section 11 of the Indian Contract Act, 1872, is eligible to become the member of the society. "

10. In the light of the established fact that appellant is a Multi-purpose Co-operative Society registered under the KCS Act as evident from the Registration Certificate issued under the KCS Act, it cannot but be said that it

falls within the definition of the said term under Section 2 ( f 1) of the KCS Act and also, under the definition of the term Primary Agricultural Credit Co operative Society '. Regard being had to Section 5 (cciv) as provided under Section 56 of the Banking Regulation Act, 1949, Appellant being a Primary Agricultural Credit Co-operative Society, coupled with the fact that under its bye-laws, a co-operative society cannot become a member, complies with the requirements of the ' Act '.

11. In that view of the matter, the exception carved out in Sub-section ( 4) of Section 80P of the ' Act ' squarely applies to the appellant's Multi purpose Co-operative Credit Society, hence, entitled to the deduction under Section 80P ( 2) ( a) ( i) of the ' Act '. The authorities namely, Income Tax Officer, the First Appellate Authority and the Tribunal having missed the bus and not noticed the essential fact of constitution of the appellant's Society, concluded that the appellant assessee falls within the mischief of Sub-section ( 4) of Section 80P of the Act disentitling it to the deduction under Section 80P ( 2) ( a) ( i) of the ' Act '.

12. The question framed supra is answered accordingly.

13. In that view of the matter, orders of the authorities being illegal and unsustainable are set aside. The appeal is accordingly allowed.