



Taxation of Co-op Societies

Direct Taxes

BASIC BACKGROUND

- Co-op. Society is defined u/s 2(19) in exhaustive manner.
- It means a Co-op Society registered under the Co-op Soc. Act 1912 OR under any other law, for the time being in force in any state for registration of Co-op Societies.
- In India Co-operation is a state subject.
- Generally Co-op Societies are intra state
- State is defined in general clauses Act to include Union Territory
- Some Co-op. Societies are Multi state Co-op Societies
- Will they be covered by this definition?

Basic BackgroundContd.

- Assesse (Sec2(7)) means a person by whom any tax / other sum is payable under this act & includes.....
- Which type of person the Co-op Societies are?
- Sec. 2(31) defines person in inclusive manner.
- A.O.P (whether incorporated or not)
- A.O.P. / A.J.P are deemed to be persons whether or not formed with the object of deriving income, profits or gains.
- Status as per ITR-5 is A.O.P. & Sub Status is a) Primary Agri Credit Soc. b) Primary Co-op Agri Bank c) Other Co-op Bank d) Other Co-op Society

General Observations

- Some co-op societies do not file their returns, (ITR5) though they are supposed to file. There is no basic exemptions limit (non taxable slab) for them & they may often have profit / surplus before claiming deduction u/s 80P etc. (Refer 6th proviso to 139(1))
- From A.Y. 2020-21 I.T.R. is to be filed even if yearly expense incurred on electricity consumption is more than 01 lakh?
- Some of them believe that their income is entirely exempt or they need not pay tax, any time, relying on the principle of mutuality.
- Some of them have not even obtained PAN, even when required
- Many of them have not obtained TAN & don't make TDS, even when required.
- Co-op Credit Societies are, being attempted to be taxed by I.T. Dept., as Co-op Banks
- 80P is being denied to Co-op Soc., on many other grounds as well
- Compliance of 269SS, 269T, 269ST is not examined properly.

Mutuality

- A person can't make profit from himself.
- This concept gets extended even to the defined group of people who contribute to common fund, controlled by that group. These Contributions are for common benefit & not for earning profits. The surplus, if any, results only in increase in common fund.
- Participants don't have property rights to their share in common fund.
- Commonality of the contributors & the participants who are also the beneficiaries.
- Complete identity of both of these two sets of persons.
- They can neither sell their share in common fund nor receive it back, on cessation of membership.
- Income from dealings with third parties are not covered by this.
- I.T.O Vs Venkatesh premises Co-op Hsg Soc 91Taxman.com 137 (SC) 12/3/18
- CIT vs C.E.T.P. (Thane Belapur) Association (2010) 328 ITR 362(Bom)
- Bangalore club VS C.I.T (2013) 350 ITR 509 (S.C.)

Tax Rates for co-op societies

(X) Regular I. Tax

Up to Total (net taxable) Income of Rs. 10,000/-	Tax 10% + HEC @4%
On Total Income of Rs.10,001 to 20,000	Tax 20% + HEC @4%
On Total Income of Rs.20,001 to 1 Cr.	30% + HEC @4%

If it exceeds 1Cr then Surcharge @12% is also applicable & 4% HEC will be on (I.T. + S.C.)

(Marginal Relief available for 'marginally above 1cr' situation)

OR ALTERNATE MIN TAX

(Y) If the society is covered by Sec 115JC then A.M.T.
u/s 115 JC is attracted

@18.5% of Adjusted Total Income +HEC 4% ,S.C.12%
applicable if ATI exceeds 01Cr.

And then the tax payable is X(Regular Tax) OR
Y(A.M.T.), whichever is more

Note : This scheme of A.M.T won't be applicable if the
optional Alternate Tax Regime is opted for
u/s115BAD (from A.Y. 2021-22)

Sec 115 JC : Special Provision for payment of tax by certain persons other than Company

- Applicable to Co-Op Societies since A.Y. 2013-14
- I. Tax is to be calculated @ 18.5% (A.M.T.) of Adj. Total Income, HEC is 4%.
Surcharge of 12% if Adj. T. Income is above 01 Cr

Note :

- 1) A.M.T. is 9% for units located in International Fin. Ser. Centre
- 2) These provisions are not applicable if Adjusted Total Income is not exceeding 20 Lakhs.

Compliance :-

- 3) Every person to whom this section applies (see 115JEE) shall furnish the report before the specified date referred to in 44AB (1 month prior to due date u/s 139(1)) in form 29C (Rule 40BA)

How to calculate Adjusted Total Income

Total Income

- Add: 1) Deductions claimed under the heading 'C' of chapter VI –A, other than 80P
(These are deductions in respect of certain incomes, u/s Sec80HH to 80RRB e.g. 80 JJAA, 80Q etc)
- 2) Deduction(exemption) claimed u/s 10AA
- 3) Deductions claimed u/s 35AD as reduced by depreciation allowable u/s 32 (as if no deduction u/s 35AD was allowed on the concerned assets)

Note : Form 29C has no mention of 35AD & 9% rate for IFSC units?

Sec. 115JC....Contd

Note : Tax credit for A.M.T. is available u/s 115JD. It can be carried forward and set off against regular tax if it exceeds A.M.T in that year, to the extent of such excess.

The c/f isn't allowed beyond next 15 A.Y.s
No interest is payable on this c/f Tax Credit
Tax Credit will lapse if option u/s 115BAD is exercised (From A.Y.21-22).

Even the Section 115JC itself will be N.A. if 115BAD is opted for

New Optional Tax Regime (Sec.115BAD) from A.Y. 2021 – 22

Tax at reduced rate of 22% on total Income of certain Resident Co-op Societies. S.C. 10% & HEC 4% to attract irrespective of income

- This is at the option of the co-op society
- Conditions to be satisfied, as specified in sub-section (2) are as follows

Total Income shall be computed

- i) Without any deduction u/s 10AA, 32(1)(iia), 32AD, 33ABA, 35AD, 35CCC or 35 (2AA) or 35(1) sub clauses (i) (iia) (iii) or under ANY provisions (other than 80JJAA) of chapter VIA
- ii) Without set off of any b/f loss or b/f depreciation attributable to deductions mentioned in (i) above
- iii) By claiming depreciation u/s 32 (except 32(1)(iia)) determined in the prescribed manner

Sec 115BADContd.

- Loss / Depreciation referred to in (ii) above shall be deemed to have given full effect to
If unabsorbed depreciation is b/f, then opening W.D.V. as on 1/4/20 is to be adjusted in the prescribed manner, if option under this section is exercised for A.Y.2021-22
- Option is to be exercised on or before due date specified u/s 139(1) for A.Y, 2021-22 or any subsequent year.
- Option once exercised for any P.Y. can't be withdrawn subsequently for the same P.Y. or any other P.Y.
- If any of the three conditions of sub section(2) aren't satisfied in computing income in any P.Y., the option shall become invalid for that P.Y. & subsequent P.Y.s (Exit Route?)

Sec. 80 P : Deduction in respect of income of co-op societies

- A) Entire profit of any co-op society attributable to the following 07 activities is deductible
- i) Banking or providing cr. facilities to members ii) Cottage industry
 - iii) Marketing of agri produce grown by members
 - iv) Purchase of agri implements, seeds, livestock or agri intended articles for supplying to members.
 - v) Powerless processing of agri produce of members.
 - vi) Collective disposal of labour of it's members (Bye-laws to restrict voting only to laborers)
 - vii) Fishing or allied activities i.e. catching processing, preserving, marketing of fish or purchase of materials connected therewith for supply to members.(Bye-laws to restrict voting only to individuals carrying these activities)

Note : - for (vi) & (vii) voting can also be allowed to State Govt and co-op credit Soc financing the assessee

Section 80P ...Continued

- B) Entire profit of Primary Society engaged in supplying milk, oilseeds, fruits or vegetables grown by it's members, to any of the below mentioned entities
- a) Federal co-op society engaged in supplying these items
 - b) Government or local authority
 - c) Govt. Co or Govt. Corporation engaged in supplying these items to public

Section 80P Continued

- C) Restricted Deduction for Profit & Gains of Co-op Society attributable to other activities.
- i) For Consumer Co-op Society up to 01 lakh
 - ii) Others, upto Rs.50,000/-
- D) Entire amount of interest/dividend derived by co-op society from investment with other co-op society.
- E) Entire income from letting of godowns / warehouses for storage / processing/ marketing of commodities.
- F) Int on Securities or income from House Property, is entirely deductible if G.T.I. is upto Rs. 20,000/ for Co-operatives (other than Housing, urban consumers, transport, power aided manufacturing societies)

Section 80P Continued

Note : -

- i) For situations covered by (A) & (B) & C above deductions u/s 80 HH, HHA, HHB, HHC, HHD, I, IA, J or JJ are to be deducted first and thereafter deduction u/s 80P is allowed for balance amount
- ii) 80P deduction is not available to Co-op Banks (other than Primary Agri Credit Societies or Primary Co-op Agri & Rural Development Bank)

Co-op Bank & Primary Agri Credit Society means as defined in part V of B.R. Act 1949 and Primary Co-op Agri & Rural Devp Bank means a society operating as confined to a Taluka & providing long term finance for agri & rural development)

Some points related to T.D.S. provisions in the context of co-op societies

- Sec192 : TDS from salary. It is applicable.
- Sec194 : TDS from Dividend. It isn't applicable though they pay dividend.
- Sec 194C: Payments to contractors. It is applicable
- Sec 194I : Payment of Rent. It is applicable
- Sec194IA : Purchase of immovable property. It is applicable
- Sec 194H : Commission / Brokerage. It is applicable.
- Sec 194J : Fees for Prof/Tech services. It is applicable.

TDSContd.

Sec194A : TDS from Interest. It has been applicable to interest payable on Time Deposits by co-op Banks. (except when payable to other banks & few others as mentioned therein)....(T.D. means deposits, including R.D., repayable on expiry of fixed period)

For other co-op societies it is not applicable in following situations

- a) It is paid to their members
- b) It is paid to other co-op society
- c) It is paid to anybody on deposits with Primary agricultural credit society / Primary credit society/ Co-op land mortgage bank/Co-op land development bank

Section 194A ...continued

Notes :

- (1) TDS is to be made by Co-op Banks if yearly int on T.D., payable to a particular payee, is more than 40,000 (for Sr. Citizens it is 50,000/-)
- (2) For other co-op societies, if TDS is to be made, the threshold limit is only 5000/-
- 3) For interest on T.D., limit of 40,000/- is w.r.t each branch if CBS is not adopted.(for co-op banks)

Changes from A.Y. 2021-22 : -

In situation of (a) to (C) above, now TDS is to be made by Co-op Society if it's total sales / gross receipts / turnover exceeds 50 Cr in preceding F.Y. & yearly interest payable to the payee is more than Rs. 40,000 (Rs.50,000 for Sr. citizens).

'Per branch' rule if No CBS, does not seem to have been mentioned here.

TDSContd

Sec 194N (New section) : Applicable to Co-op Banks

W.E.F 01/09/2019

General Prov. : If any amounts paid in the P.Y., in cash, to any payee, from one/more a/c s with it, exceeds 01 Cr., then TDS was to be made @2% on 'sum exceeding' 1Cr.

W.E.F. 01/07/2020 the scope is extended as follows :

Special provision for non filers of ITR :- If the recipient has not filed ITR for all of the 3 P.Y.s(preceding the P.Y. of withdrawal) for which due date u/s 139(1) has expired, the basic threshold will be 20L for 2% TDS & it will be 5% if such cash payment exceeds 01Cr. But the wording 'on sum exceeding...' is missing.

Exclusions : Amounts paid to Govt. / Banks/ B.C. of bank/ white label ATM operators of banks

T.C.S.

Sec 206C : Provisions of T.C.S. are also applicable to Co-op Societies, as mentioned in the explanation of the word 'seller ' at the end of that section.

T.C.S. to be collected on sale of mfg. scrap, forest products, minerals etc. or transfer of rights w.r.t. parking lots, toll plaza, mining etc.

Sale of a motor vehicle for value exceeding 10 L

Receipt of sale price of any goods, for aggregate value exceeding 50 L in the P.Y., from a buyer(from 1/10/20)

Note :- 1) Penalty for not collecting whole / part of T.C.S (271CA) is equal to the amount of T.C.S. not done

2) Penalty for not making whole / part of the TDS (Sec. 271C) is equal to the amt under deducted / under paid to Govt.

- **269SS** : Any Co-op society (except Co-op Bank) shall NOT accept any deposit / loan/ consideration for transfer of immovable property in cash / by bearer cheques etc. if aggregate of such amounts is 20,000 or more

Exclusions : Amounts received from Govt. / banks / Govt. Cos/ Govt. Corporation etc.

Note : - Penalty for non compliance (271D) is 100% of the amount so accepted.

269T: No branch of any co-op bank & no other co-op society shall repay any deposit / loan / advance recd for transfer of immovable property, in cash / bearer cheques etc. if aggregate of such amounts held by it for the payee is 20,000 or more.

Repayment by crediting the amount of loan / deposit to SB/current a/c of payee, maintained with it, is allowed if it is made by branch of Bank

For counting Rs.20,000/ interest portion is also to be considered & such amounts held by the payee in own name as well as joint names are to be considered together

Exclusions : same as for 269SS

Note : Penalty for non-compliance (sec 271E) is 100% of amount so repaid.

- **269ST:** No person shall receive amt of 2 Lakhs or more
 - a) in aggregate, from the person, in a day
 - b) in respect of single transaction
 - c) in res of trans relating to 1 event/ocassion

Otherwise than by a/c payee cheques /DD/ECS.

Section is not applicable for amounts received by Co-op Bank / Banking Cos / Govt./Post office saving Bank & five other notified entities.

Not applicable for withdrawals from Co-op Banks

(Notification no. 1057 of 5/4/17)

Note : Penalty for non-compliance (271DA) is 100% of the amount so received, if there was no good & sufficient reason for contravention.

Sec 285BA read with Rule 114E

Furnishing of statement of financial transactions / reportable a/cs, in Form 61A

- 1) Co-op banks have to report
 - a) Payments received in cash for D.D. / pay order if the aggregate amount \geq 10L in F.Y.
 - b) Cash deposits / withdrawals in / form one / more current a/cs of the payee if the aggregate amount \geq 50L in F.Y.
 - c) Cash deposits in one / more A/Cs, other than current A/Cs & Time Deposits(e.g. S/B A/Cs & even CC, OD, Loan A/Cs ?) if aggregate amount \geq 10L in F.Y,
 - d) Fresh Time deposits made by a person if aggregate amount \geq 10L in F.Y.
- 2) Co-op Societies liable for Tax audit u/s 44AB to report about cash received by them against sale of goods / services to any person if the amount $>$ 2L in F.Y.

Sec 43D read with Rule 6EA

- Interest on Bad & Doubtful debts to be chargeable to tax on credit to P&L A/C or receipt thereof, whichever is earlier
- 43D mentions only Co-op Banks, but not other Co-op Societies
- Rule 6EA has no reference to non-scheduled Co-op Banks?
- Rule 6EA refers to certain irregularities for not less than 6 months OR reflection of usual signs of sickness. The 14 signs illustrated include T.L. installments overdue for 6 months (& not 3 months)
- It refers to all recalled, suit filed, & decreed A/Cs.
- Last category(category 'e')includes all doubtful loans/debts

A Few IMP Case Laws on 80P

- 1) Deduction can't be claimed without filing ITR
Kuthnparamba Range Kallnchethu Vyavasaya Thozulali
Sahakarana Sangham Ltd vs C.I.T S.L.P of assessee dismissed
by S.C. 26/11/18.
- 2) Interest earned on deposit of surplus funds generated out of
activities specified in 80P(2) becomes 'attributable to' the said
activities & hence deductible u/s 80P, even if deposits are
made with nationalized banks.
Vavveru Co-op Rural Bank (A.P.High court) 2017
- 3) Interest income is taxable as 'Income from other sources' &
hence not deductible u/s 80P. It was also earned from Co-op
bank which is held to be not a Co-op society 80P denied even on
this ground
Pr. C.I.T. V The Totagars Co-op sale Society (Karnataka H.C.)
dt. 16/6/17

A Few IMP Case Laws on 80P

- 4) Deduction denied where society carried business for public at large without approval from Registrar of Societies
In the case of citizen Co-op Society, S.C. dt. 08/08/17
- 5) Nominal members can not be treated as non- members
Sai Datta Mutual Aided Co-op Cr. Soc V ACIT (Hyd Tribunal)
18/5/18
Simillar view was taken by Bombay H.C. in the matter of
Jalgaon District Co-op Bank
- 6) Totagars case is distinguished in case of Tumkur Merchants
Souharda Cr. Co-op Soc. Holding that interest on inv. Of surplus
funds is deductible u/s 80P(2)(a)(i)

A Few IMP Case Laws on 80P

- 7) Quepem Urban Co-op Credit Society Ltd Vs ACIT(2015)58 taxmann.com (Bombay High Court).
The benefits of sec.80P cannot be denied. In this case, deduction of sec. 80P was held to be admissible even when the said society has accepted deposits from some non members.
- 8) CIT Vs. Shri Biluru Gurubasava Pattina Sahakari Sangha Niyamitha, Bagalkot (2014) (Karnataka High Court)
80P deduction allowed as the Co-op credit society does not have banking License given by RBI
- 9) CIT Vs. Jafari Momin Vikas Co-op Credit Society Ltd. (2014) (Gujrat High Court)
Co-op Credit Societies not covered by exclusion u/s 80P (4), referring to CBDT instruction no. 133 dated 09/05/2007



THANK YOU