

TAXATION OF CO-OPERATIVE SOCIETIES

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WHAT IS A CO-OPERATIVE SOCIETY?



WHAT IS A CO-OPERATIVE SOCIETY?

U/s. 2(27) of Maharashtra Co-operative Societies Act, 1961, “Society” means a Co-operative society registered, or deemed to be registered, under this Act; “,which is an autonomous association of persons, united voluntarily to meet their common needs and aspirations through a jointly owned and democratically controlled enterprise and adhering to the co-operative principles and values”;



✓ **W S.2(19) of Income-tax Act 1961:**

“Co-operative society registered under Co-operative Societies Act, 1912 or under any other law for the time being in force for the registration of co-operative societies.”



✓ **Legal Status :**

- Co-operative Society is assessed in the status of A.O.P.
- Normally, rate of tax on taxable income for co-operative societies are specified in Finance Act, which are different from AOP.



Residential Status



RESIDENTIAL STATUS

- ✓ A Co-operative Society is regarded as Resident, if the whole or a part of the control and management of its affairs is in India during the relevant previous year.



- ✓ It is regarded as Non-resident, only if, the entire control and management of its affairs is situated outside India during the previous year.

Income of a Co-operative Society



INCOME OF A CO-OPERATIVE SOCIETY

- ✓ Income of a co-operative society other than surplus from contributions from members is taxable subject to the deductions u/s. 80-P.
- ✓ Surplus from contributions from members is not regarded as income. No person can trade with himself or make income out of himself.



Concept of Mutuality



GENERAL PRINCIPLES OF MUTUALITY

1. No person can trade with himself or make income out of himself. A mutual association arises where persons forming a group associate together with a common object and contribute monies for achieving that object and divide the surplus amongst themselves. All the contributors to the common fund must be entitled to participate in the surplus and all the participators to the surplus must be contributor to the common trade.
2. The participation in the surplus need not be immediate but it may assume the shape of a reduction in the future contribution or a division of the surplus on dissolution.
3. It does not make any difference whether the persons joining together form an association or incorporate a company.



GENERAL PRINCIPLES OF MUTUALITY

4. The fact that some members alone take advantage of the mutual enterprise would not affect the mutual character of the association.
5. Nothing in law prohibits a mutual association from carrying on a trade so long as it is confined to its own members.
6. It is not necessary that the surplus should be returned to every member of the association pro-rata. The identification between contributors and participators should be regarded in one whole, and not in relation to each individual.
7. It is not necessary that all the activities of such an association should be mutual. There may be activities of a non-mutual character but the tax exemption will apply to the surplus arising out of the mutual enterprise.



Exceptions to the concept of Mutuality



EXCEPTIONS

1. Where the mutual concern is a mutual insurance society and the income is derived from the carrying on of any business of insurance.
2. Where the mutual concern is a trade, professional or similar association and the income in question is derived from specific service performed for its members.



Transfer Fees received by a Co-operative Society



TRANSFER FEES RECEIVED BY A CO-OPERATIVE SOCIETY

- ✓ Calcutta High Court in C.I.T. v. Apsara CHS. 204 ITR 662 and the Gujarat High Court in Adarsh CHS, 213 ITR 677 held that transfer fee received by the CHS is not taxable in the hands of the society on the grounds of mutuality. It is not necessary that the individual identify of contributors and participators to the common funds should be established.
- ✓ Such identity should be established between the class of contributors and the class of participators. This principle is confirmed by Supreme Court's judgement in the case of C.I.T. v. Bankipur Club Ltd., 226 ITR 97.
- ✓ The Special Bench of ITAT, Mumbai held in Walkeshwar Triveni CHS, v. I.T.O. ITA No. 4397/MUM/2001 that the society can raise fund only for achieving the objects of the society and not for any other purpose. So long the society is charging the amount of premium within the framework of law, no profit motive can be attributed to the society.
- ✓ Bombay High Court held in Sind CHS Vs ITO - ITA no. 931 of 2004 that transfer fee received from a outgoing member or in coming member is covered by the concept of mutuality



Other Income and the Concept of Mutuality



OTHER INCOME AND THE CONCEPT OF MUTUALITY

- a. Rental income from parking place allotted to outsiders.
- b. Rent from hoardings / Cable Operators Tower.



Deductions



DEDUCTIONS UNDER SECTION 80P

80P

(1) Where, in the case of an assessee being a co-operative society, the gross total income includes any income referred to in sub-section (2), there shall be deducted, in accordance with and subject to the provisions of this section, the sums specified in sub-section (2), in computing the total income of the assessee.

(2) The sums referred to in sub-section (1) shall be the following, namely :—

(a) in the case of a co-operative society engaged in—

(i) carrying on the business of banking or providing credit facilities to its members,

the whole of the amount of profits and gains of business attributable to any one or more of such activities :

(d) in respect of any income by way of interest or dividends derived by the cooperative society from its investments with any other co-operative society, the whole of such income;



SELECT CASE LAW - SUPREME COURT - CITIZEN CO-OPERATIVE SOCIETY LTD. V. ACIT - [2017] 397 ITR 1 (SC)

Section 80P not to apply in case of co-operative society carrying on Banking Business

The assessee was a co-operative society. It claimed deduction under section 80P(2)(a) of the Act, which was denied on the ground that it 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 operations were not confined to its members but to outsiders as well. On appeal to Supreme Court, the Apex court observed 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. Therefore, such a provision has to be read liberally, reasonably and in favour of the assessee. Section 80P(2)(a)(i) 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.



CITIZEN CO-OPERATIVE SOCIETY LTD. V. ACIT

With the insertion of sub-section (4) by the Finance Act, 2006, which is in the nature of a proviso to the provision of 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. In order to do the business of a co-operative bank, it is imperative to have a license from the Reserve Bank of India, which the appellant does not possess. Therefore, the appellant does not get covered by the definition of 'co-operative bank'.



CITIZEN CO-OPERATIVE SOCIETY LTD. V. ACIT

However, it is significant to point out that the main reason for disentitling the appellant from getting the deduction provided under section 80P was the fact that it is carrying on its activities in violations of the provisions of the Mutually Aided Co-operative Societies Act, 1995.

It is pointed out by the Assessing Officer that the appellant is catering to two distinct categories of people. The first category is that of resident members or ordinary members and there is another category of **'nominal members'**.



CITIZEN CO-OPERATIVE SOCIETY LTD. v. ACIT

Nominal members 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. 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 utilized 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 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.



CITIZEN CO-OPERATIVE SOCIETY LTD. V. ACIT

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). Further, the principle of mutuality is missing in the Appellant's case. The following three conditions must exist before an activity could be brought under the concept of mutuality; (i) that no person can earn from him; (ii) that there a profit motivation; and (iii) that there is no sharing of profit. In the instant case both the parties to the transaction are the contributors towards surplus, however, there are no participators in the surpluses. 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 section 80P.**



DEDUCTIONS UNDER SECTION 80P

80P(2)(a)

- 1) Quepem Co-operative society Ltd vs Income tax Officer 278 CTR (Bom) 48
- 2) Mumbai Teleworkers Co-operative Credit Society Ltd ITAT Mumbai B Bench
- 3) Shri Vardhaman Urban Co-op Credit Society Ltd - Karnataka High Court
- 4) CIT vs Bangalore Credit Co-operative Society Ltd - Karnataka High Court (ITA No. 598 of 2013)
- 5) CIT Vs Mysore University Employees Co-operative Credit Society Ltd - Karnataka High Court (ITA No. 298 of 2013)
- 6) Jafri Momin Vikas Co-op Credit Society Ltd - Gujrat High Court (ITA No.1491/Ahd/2012)

80P(2)(a)

- 1) PCIT vs. Totagars Co-operative Sale Society 392 ITR 74 (Kar)



Deductions

Provision of Section 80A(5) & 80AC



AVAILABILITY OF DEDUCTION

80A(5)

From A.Y.2003-04 onwards the deduction under Section 80P is not available unless it is claimed in the return of income by virtue of amended provision of Section 80A(5).

80AC

Where in computing the total income of an assessee of any previous year relevant to the assessment year commencing on or after—

- (i) the 1st day of April, 2006 but before the 1st day of April, 2018, any deduction is admissible under section 80-IA or section 80-IAB or section 80-IB or section 80-IC or section 80-ID or section 80-IE;
- (ii) the 1st day of April, 2018, any deduction is admissible under any provision of this Chapter under the heading "C.—Deductions in respect of certain incomes",

no such deduction shall be allowed to him unless he furnishes a return of his income for such assessment year on or before the due date specified under sub-section (1) of section 139.



Rates of Income Tax



Rates of Income Tax

The tax slabs for a cooperative Societies are :

10 to 10,000 @10%

10,001 to 20,000 @20%

Over 20,000 @30%

Plus Cess and Surcharge (if applicable)



Amendments in Union Budget 2020-21



Amendments in Union Budget 2020-21

**Option of concessional tax scheme to resident cooperative societies - Section 115BAD A new Section 115BAD is inserted for resident co-operative societies who have the option to pay tax at the rate of 22% (plus surcharge @ 10%) instead of 30%.



Amendments in Union Budget 2020-21

The conditions under section 115BAD(2) mention that the total income of a co-operative housing society shall be computed:-

1. without deduction under provisions of section 10AA, section 32(1)(ia), section 32AD, section 33AB, section 33ABA, section 35(1)(ii), section 35(1)(ia), section 35(1)(iii), section 35(2AA), section 35AD, section 35CCC or any provisions of Chapter VI-A (including section 80P) other than section 80JJAA;
2. without set off of any carried forward losses or depreciation from earlier assessment year in case such a loss or depreciation is attributable to deductions referred in paragraph 1 above; and
3. by claiming depreciation if any under section 32 except section 32(1)(ia) determined in the manner prescribed.



Tax Deduction at Source (TDS)



Tax Deduction at Source (TDS)

All the TDS provisions are applicable except few.

No tax shall be deducted from any interest payable on debentures issued by any cooperative society u/s 193.

TDS provision for dividends u/s 194 is not applicable.

Compliances of other TDS provisions like time limit for deposit of TDS, electronic filing TDS returns, issuance of NSDL generated Form 16A etc. are all applicable for cooperatives.



Prior to Amendments in Union Budget 2020-21

The existing provision of section 194A exempts a co-operative society from the requirement to deduct tax at source on interest other than interest on securities in the following cases -

- i) Interest credited or paid by a co-operative society (other than a co-operative bank) to its members.
- ii) Interest credited or paid by a co-operative society to any other co-operative society
- iii) Interest credited or paid in respect of deposits with a primary agricultural credit society or a primary credit society or a cooperative land mortgage bank or a cooperative land development bank
- iv) Interest credited or paid in respect of deposits (other than time deposits) with a co-operative society (other than those societies which are referred to in (iii) above) engaged in the business of banking



Amendments in Union Budget 2020-21

Under the amended provisions, the aforesaid exemption from the requirement to deduct tax at source shall not apply and the co-operative society shall be liable to deduct tax at source in all the cases as mentioned above if -

- i) the total sales, gross receipts or turnover of the co-operative society exceeds Rs. 50 crore during the financial year immediately preceding the financial year in which the interest is credited or paid; and
- ii) the amount of interest, or the aggregate of the amounts of such interest, credited or paid, or is likely to be credited or paid, during the financial year is more than Rs. 50,000 in case of payee being a senior citizen (resident individual having age of 60 years or more) and Rs. 40,000 in any other case.

This amendment is effective from 1st April, 2020.



Tax Audit



Tax Audit

A cooperative society u/s 44AA, is required to maintain books of accounts and other documents as may enable the Assessing Officer to compute its total income in accordance with the provisions of the Income Tax Act.

Further, its accounts are required to be audited by a Chartered Accountant u/s 44AB notwithstanding the fact that its accounts are subjected to audit by the administrative department (Directorate of Cooperative Audit) as provided in the State Cooperative Laws.

Tax audit provisions are generally not applicable to societies which do not carry on any business.



Thank You



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