TAXATION OF CO-OPERATIVE SOCIETIES

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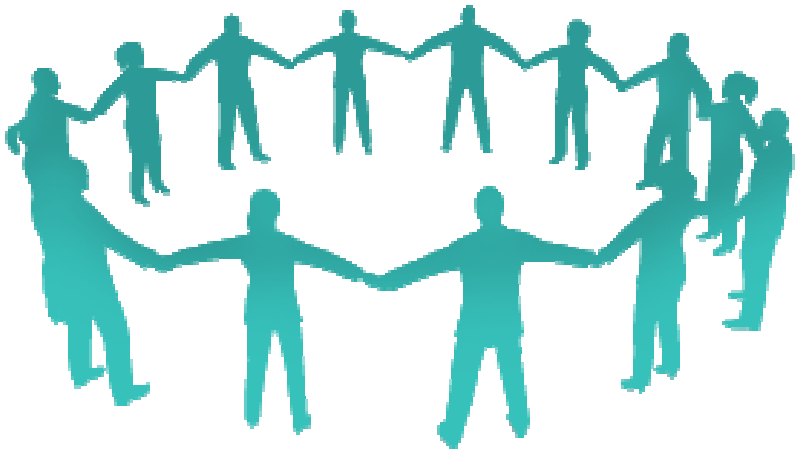
WHAT IS A CO-OPERATIVE SOCIETY?

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.”



✓ 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

Filing of Income Tax Return by Coop Societies.

- It is compulsory under proviso to section 139(1) of the Income Tax Act, 1961 to file Return for all types of societies and banks
- Due Date by 30th September
- ITR- 5 as AOP
- Failure to file the Return of income may attracts penalty of Rs.5000/- under section 271 F of IT Act
- Additional Penalty for concealment of income may go upto 300% of the tax avoided

Rate of Tax, TDS and Adv Tax for Coop Societies.

- There is no threshold limit or amount not liable for tax for cooperative societies.
- The tax slabs for a cooperative Societies are :
- For income Upto Rs10,000 @10% tax
- Between Rs.10,001 to 20,000 @20% tax
- Over Rs. 20,000 @30% tax
- The Advance Tax Provisions if tax liability after adjusting prepaid taxes and TDS is exceeding 10,000/- applicable to all types of societies.
- Societies should also apply for PAN & TAN and also file quarterly ETDS returns for the TDS deducted on various payments

Income Tax Applicability on diff. Types of Income

- The surplus resulting from the collection of the maintenance and other charges from members is not taxable as per the Concept of Mutuality.
- The interest income , rental incomes form mobile towers and any other income on case to case basis is taxable for the Co-Op.Housing society
- Certain deduction under section 80P are available to certain class of societies only and the same need to be studied and proper tax planning has to be done.
- Since Assessment year 2007-08, the cooperative Bank is liable for payment of income tax as deduction u/s80P is excluded for cooperative Bank.
- From financial year 2015-16, cooperative Banks are required to deduct income tax on the deposits kept by the shareholder members which was earlier not required

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.

- ✓ Recently, 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

Taxability of Transfer Premium

- There is a landmark **Bombay HC judgment** recently in Dec.2014 in case of **CIT c/s Darbhanga mansion CHS Ltd.** about the taxability of Transfer premium collected by the society in excess of Rs.25,000/- which is not taxable even though the Bye-law and Govt resolution provides for only Rs.25000 as transfer premium.
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- A Cooperative Housing Societies generating the surplus out of the contribution from members cannot be taxed based on the concept of mutuality . Hence , even the premium received on transfer of flats is not taxable under concept of mutuality as per the land mark judgement of Hon'ble **Bombay HC Dtd.July,209 incase of CIT V/s Sindh Co operative Housing Society Ltd.**

Taxability of Mobile Tower Rent

- Income received by a co operative society from Mobile tower rent will be taxable under House property income head and not under income from other sources. Delhi ITAT case law which allowed Mobile Tower Rent to be taxed as House Property income and accordingly standard deduction u/s 24(a) of 30% of the Annual value towards repairs and maintenance allowed out of that. Case law: **Manpreet Singh Vs. ITO (ITAT Delhi), I.T.A. No.: 3976/Del/13, Date of decision: 06.01.2015**

Allowability of the Deduction u/s 80P(2)(a)(i) for a Urban Co op Credit society

- Many assessing officers used to treat the credit societies as doing banking business and entire surplus earned by the credit societies used to taxed. A great relief is given by Hon'ble Karnataka HC –Dharwad Bench judgement dtd.21st Sept.2015 allowing the deduction u/s 80P(2)(a)(i) to an Urabn Co op Credit society . **The case law of Shri Vardhaman Urban Co op Credit society V/s CIT(Appeals)- ITA100038-14-21-09-2015**

Taxability of the TDR of the Co Operative Society :

- Many assessing officers used to assess the Corpus or capital receipt received on redevelopment, or sale of TDR as the Capital gains and demand the taxes from the societies. In a landmark judgment, Hon'ble **Bombay HC judgment Dtd.11th Sept.2014 in case of Commissioner of Income tax 18 v/s Sambhaji Nagar CHS Ltd by referring Hon'ble Supreme Court judgment in the case CIT V/s. B.C. Srinivasa Shetty, the sale of TDR does not amount to capital gains..**No Cost of Acquisition and hence no capital gain.

Taxability of Non-Occupancy Charges- Commercial society

- Non occupancy charges are held to be not taxable on the Concept of Mutuality as per Hon'ble Bombay High Court case in the matter of **Mittal Court Premises Co-operative Society Ltd. v/s Income Tax Officer dtd.July,2009**
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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

Some of these deductions are discussed with reference to the recent case laws.

i. *100% of the profits and gains attributable to the business of banking or providing credit facilities to its members. S. 80-P(2)(a)(i).*

Deduction under this section will not be allowed to any co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank w.e.f. A. Y. 2007-08.

ii. *Whole of the profits and gains of business attributable to the activities of a cottage industry.*

In C.I.T. v. Quilon Central Coir Marketing Co-operative Society Ltd., 229 ITR 349 the Kerala High Court held that the deduction u/s. 80-P(2)(a)(ii) is allowable to the assessee who is himself/itself engaged in cottage industry. The assessee was held not to be eligible for the deduction as it was engaged in marketing the products of its members.

DEDUCTIONS UNDER SECTION 80P

iii. Whole of the profits and gains from the activities of marketing the agricultural produce of its members.

It was held by the Supreme Court in Kerala State Co-operative Marketing Federation Ltd., and Others v. C.I.T. 231 ITR 814 that where the assessee was engaged in marketing agricultural produce acquired from primary societies which were its members, the assessee was eligible for deduction u/s. 80-P(2)(a)(iii).

The agricultural produce of its members has been interpreted to mean the agricultural produce belonging to its members. The same may have been acquired by the members by purchasing it from cultivators.

However, this decision will not apply now as S. 80-P(2)(a)(iii) has been amended with retrospective effect from 01.04.68 and as per the amended S. income of a society from the marketing of agricultural produce grown by its members shall be deductible under this section. The amendment has been made by the Income-tax (Second Amendment) Act, 1999.

DEDUCTIONS UNDER SECTION 80P

iv. The whole of the profits and gains from the activity of purchase of agricultural implements, seeds, livestock or other articles intended for agriculture for the purpose of supplying them to its members S. 80P(2)(a)(iv).

Where the society deals with members as well as non members, the profits attributable to this activity with members shall be eligible for deduction u/s. 80P(2)(a)(iv).

C.I.T. v. Vidarbha Co-op. Marketing Society Ltd., 212 ITR 412 (Bom.)

The profits attributable to activities with non-members shall be deductible u/s. 80P(2)(c) upto Rs. 50,000/-.

v. The whole of the profits from the processing without the aid of power of the agricultural produce of its members. S. 80P(2)(a)(v).

vi. The whole of the profits from the activity of the collective disposal of the labour of its members. S. 80P(2)(a)(vi).

DEDUCTIONS UNDER SECTION 80P

v. *The whole of the profits from the processing without the aid of power of the agricultural produce of its members. S. 80P(2)(a)(v).*

vi. *The whole of the profits from the activity of the collective disposal of the labour of its members. S. 80P(2)(a)(vi).*

vii. *The whole of the profits from fishing or allied activities, that is the catching, curing, processing, preserving, storing or marketing of fish or the purchase of materials and equipments in connection therewith for the purpose of supplying them to its members.*

In the cases of deductions u/s. 80P(2)(a)(vi) and 80P(2)(a)(vii), the rules of the society should restrict the voting rights to the following classes of its members –

a. *the individuals who contribute their labour or who carry on the fishing or allied activities*

b. *the co-operative credit societies which provide financial assistance to the society and State Government.*

DEDUCTIONS UNDER SECTION 80P

viii. The whole of the profits and gains of a primary co-op. society engaged in the business of supplying milk, oilseeds, fruits or vegetables raised or grown by its members to

a) federal co-op. society which is engaged in the business of supplying milk, oilseeds, fruits or vegetables, or
b) a Government or a local authority, or
c) a Government Company or a statutory corporation engaged in such business.S. 80P(2)(b).

ix. In the case of a co-op. society engaged in activities other than those specified in clause (a) or clause (b).

a) if the society is a consumer's co-op. society, upto Rs. 1,00,000/- and
b) in any other case Rs. 50,000/- S. 80P(2)(c)

DEDUCTIONS UNDER SECTION 80P

x. *The whole of the income by way of interest or dividends derived by the co-operative society from its investments with any other co-operative society.*

- ✓ Where a co-operative society has received interest or dividends as well as paid interest to any other co-operative, it was held that the deduction u/s. 80P(2)(d) is allowable with reference to the interest or dividend received without deducting interest paid to any co-operative. [C.I.T. v. Doaba Co-operative Sugar Mills Ltd., 230 ITR 774 (P & H)]

- ✓ Where a co-operative society made short-term deposit in another co-operative, it was held that such short term deposit is investment made with other co-operative within the meaning of S. 80P(2)(d) and interest received on such short term deposit is deductible u/s. 80P(2)(d) [C.I.T. v. Haryana State CHS 234 ITR 714 (P & H)]

DEDUCTIONS UNDER SECTION 80P

Can deduction under section 80P(2)(d) be allowed on gross income?

CIT v. Dugdh Utpadak Sahkari Sangh Ltd. 142 Taxman 611 (All.)

The High Court observed that even though section 80P(2)(d) provides deduction of the whole of interest income, it is subject to the provisions of section 80AB. Therefore, the High Court held that the Tribunal was not legally correct in holding that the deduction under section 80P(2)(d) was allowable on the gross amount of income from interest.

DEDUCTIONS UNDER SECTION 80P

xi. The whole of the income derived by the co-operative society from the letting of godowns or warehouses for storage, processing or facilitating the marketing of commodities. S. 80P(2)(e).

Can income from cold storage be exempt u/s. 80P(2)(e), by considering the cold storage as a warehouse or godown where goods are stored?

Apex Court in Delhi Cold Storage (P) Ltd. v. CIT 59 Taxman 144 Thus, by giving a liberal interpretation to the provisions of section 80P(2)(e), cold storage can be treated as a warehouse or godown where fixed temperature is maintained. Cold storage can be said to be a warehouse or godown where goods are stored, and hence, income from cold storage would be exempt.

xii. Where the gross total income of a society other than a housing society, an urban consumer's society, society engaged in transport business or in manufacturing operations with the aid of power, does not exceed Rs. 20,000/-, the whole of the income by way of interest on securities or income from house property. S. 80P(2)(f).

Interest on NPA in case of a Co op Bank-

S.43D does not apply to a co op. bank which is not a scheduled bank. Therefore, although it would not provide for interest on such advances, AO would add such interest in the income of the bank. One may take the view that under AS 9, Revenue Recognition, income can be recognized only when it is expected to be realized beyond any doubt.

Service Tax Applicabilty on Co-op Societies

- Service tax is applicable to all types of cooperative societies which are providing the services to its members or outsiders where the turnover exceeds Rs.10,00,000 per year and thereafter liable to obtain the registration, collect the service tax, pay the service tax, file the returns and liable for assessment also.

APPLICABILITY OF SERVICE-TAX TO RESIDENTIAL CO-OPERATIVE SOCIETIES

- Provision introduced on 16.06.2005 vide S.65(105)(zzze) read with S.65(25aa).
- Prior to 01.07.2012 (under positive list approach), exemption was available under Notification no.8/2007-ST dated 01.03.2007 if the total consideration received from an individual member for services does not exceed Rs. 3000/- per month.
- After 01.07.2012, under negative list approach , Notification No. 25/ 2012-ST (sl. No. 28 (c)) provides for exemption upto Rs. 5000/- per month.
- Circular No. 175/01/2014 – ST dated 10.01.2014, clarifies as under

APPLICABILITY OF SERVICE-TAX TO RESIDENTIAL CO-OPERATIVE SOCIETIES

- Service Tax is applicable to a resident cooperative society on payments made to third parties in respect of commonly used services or goods providing security service, maintenance & upkeep of common area and common facilities like lift, water sump, health & fitness center, common electricity etc.
- If monthly contribution exceeds Rs. 5000/-, the member cannot avail of the exemption granted under Notification No. 25/2012 – ST
- Threshold limit for exemption available under Notification No. 22/2012 – ST is applicable to resident societies (Rs. 10 lakh per annum) of taxable services only - does not include exempt services.

APPLICABILITY OF SERVICE-TAX TO RESIDENTIAL CO-OPERATIVE SOCIETIES

- CIT vs Darjeeling Club [1985 (153) ITR 616]
- CIT vs Bankipur Club [1997 (226) ITR 97]
- Chlemsford Club vs CIT [2000 (243) ITR 89]
- These are judgements on the principle of mutuality
- The Kolkata HC did not accept that a club is covered by the Finance Act, 1994 for imposition of Service tax to use it space as a Mandap. The entire proceeding was guarded at the Show Cause Notice stage itself by the Kolkata HC. Further, the order was accepted by the Board and no appeal was filed against the order in Supreme Court.

APPLICABILITY OF SERVICE-TAX TO RESIDENTIAL CO-OPERATIVE SOCIETIES

- The SC decision in the case of Joint Commercial Tax Officer vs the Young Man's Indian Association 1970 (1) SCC 462 is the main & leading judgement on this issue.
- Service tax on club has been set aside by the Gujarat High Court by a judgement on 25.03.2013 in the case of Sports Club of Gujarat, Rajpath Club and Kamarati Club in Spl Civil Appl. No. 13654-56 of 2005

APPLICABILITY OF SERVICE-TAX TO RESIDENTIAL CO-OPERATIVE SOCIETIES

- Residential Society may avail cenvat credit and use the same for payment of service tax.
- Rule 5(2) of the Service tax (Deterioration of Value) Rules, 2006 clarifies if any service is provided on actual reimbursement basis or without any mark-up, then that service is not a taxable service. However , common expenses would be taxable
- No clarity on contribution towards Sinking fund / Repair fund.
- Case law followed by Kolkata High Court in Saturday Club Ltd. vs Assistant Commissioner of Service tax (2005 (180) ELT 37)

Applicability of MVAT to Cooperative Societies. :

- Introduction From 1-4-2005, Value Added Tax System is brought in operation for levy of Sales Tax. VAT is State subject and different Legislation operates in respective State. Therefore, the position of VAT vis-à-vis Co-operative Society is required to be seen in relation to provisions of each State. The VAT law is generally applicable to persons who are dealing in goods. Thus all types of societies which are involved in manufacturing, processing and distribution will be liable to get registered under MVAT and comply with all the requirements of MVAT like registration, filing of returns, collection of VAT, payment thereof, filing the returns and do the assessment, carry out MVAT audit and business audit etc.

Applicability of MVAT to Cooperative Societies. :

- Further it can be seen that as per deinition of person under MVAT, a Society is also a person for MVAT Act. Society can be liable to VAT as any other dealer. Normally the Co-operative Housing Society , credit societies, Cooperative banks and other service providing societies do not deal with buying or selling of goods. Therefore MVAT is not applicable. The Co-operative Housing Society is actually allowing its immovable property to be used by the hirer and hence there is no leasing of movable goods as such, which can fall into the deinition of sale. Therefore no liability can be attracted on above activity also. This principle will apply to similar activity of allowing use of premises for putting up hoardings, etc. Therefore, it may be concluded here that, normally the Housing Society will not be liable to tax under MVAT Act. However it may be mentioned that, subject to other laws applicable to Society and subject to its bye-laws, if Society engages in trading, etc. or other business, then it may be liable for VAT and will be required to follow the law provisions as applicable to any other normal dealer.

b) TDS Liability under MVAT Act, 2002

- The more important issue is about liability of the Co-operative Housing Society to deduct tax at source (TDS). As per section 31 of MVAT Act the Commissioner of Sales Tax is empowered to notify the list of employers who will be required to Deduct Tax at Source from payment to works contractors. The provisions can be noted, in brief, as under.

- (1) The Co-operative Housing Society is notified as an employer to deduct tax at source. In other cases the threshold limit to deduct Tax at Source is Rs. 5 lakhs, in relation to Co-operative Housing Society it is Rs. 10 lakhs in previous year or current year, as per Notification under section 31 dated 28-8-2005. In other words, if a Housing Society has awarded a works contract for Rs.10 lakhs or more then it will be liable to deduct tax. Thus, in case of repair contracts, etc., the Housing Society can be liable to deduct tax if it has awarded works contract of an amount of Rs.10 lakhs or more, in a year

b) TDS Liability under MVAT Act, 2002

- (ii) The Co-operative Housing Society should deduct tax as and when the bill of works contractor is credited. However if the payment to contractor is before such credit it will be advisable to deduct tax at the time of making payment. TDS is not to be deducted from the Advance Payment. In such cases the tax is to be deducted while adjusting the advance against regular bills.

- (iii) The limit of Rs. 10 lakhs is per contractor, i.e. even if the contractor has performed separate contracts, if total sum payable to contractor exceeds ` 10 lakhs in a year, TDS will be applicable.

- (iv) The rate of TDS is 2% if the contractor is a registered dealer under MVAT Act. It will be 5% if contractor is unregistered dealer.

- (v) The tax is to be deducted on net amount of bill i.e. not to be deducted on Sales Tax or Service tax shown separately in the bills.

b) TDS Liability under MVAT Act, 2002

- (vi) The TDS amount should not exceed the tax payable by such contractor on such contract, and if the contract is inter-state works contract, no TDS is to be deducted.
- (vii) If the contractor produces a no deduction certificate, obtained from Sales Tax Department, then Society is not liable to deduct tax.
- (viii) Housing Society failing to deduct tax where applicable or failing to pay to Government after deduction, will be considered to be a dealer in arrears and all provisions of recovery will apply to it, including provisions for levy of interest.
- (ix) The TDS amount should be paid into Government treasury within 10 days from end of month in which TDS is deducted. The payment is to be made in challan Form 210.
- (x) The Housing Society should issue TDS certificate in Form 402 to the contractor after making payment in Government treasury..

b) TDS Liability under MVAT Act, 2002

- (xi) The Housing Society, deducting tax, should send statement in duplicate in Form 405 to the Joint Commissioner of Sales Tax (Returns) for Mumbai and to Joint Commissioner of Sales Tax (VAT) ADM for rest of Maharashtra within three months from the end of the respective year.

- (xii) The Housing Society should maintain a separate register in Form 404 about TDS. Thus the burden is cast on Housing Societies for tax deduction at source. Normally in relation to its repair contracts, etc. the Housing Society will be appointing contractors and application of TDS provisions be seen accordingly. If Housing Society purchases materials separately by itself and give only labour contract to contractor, then no TDS under MVAT Act, 2002 will apply

Thank You