



TAXATION OF CO-OPERATIVE SOCIETIES

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May 25, 2018

Types Of Co-operative Societies

- Producers Co-operative Society
- Consumer's Co-operative Society
- Co-operative Housing Society
- Credit Co-operative Society
- Marketing Co-operative Society
- Labour Co-operative Society

Co-operative Society

- Sec.2(19) defines co-operative society as "co-operative society" means a co-operative society registered 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
- Regional rural bank is deemed as co-operative society (Circular 319 dated 11-1-1982)

Rate of Tax

Income	Tax Rate
Income upto Rs. 10,000	10%
Income upto Rs.10,001 upto Rs.20,000	20% of income exceeding Rs.10,000
Income upto Rs. 20,000 onwards	30% of income exceeding Rs.20,000
Surcharge: if taxable income exceeds Rs. 1 crore	12% of Income-tax
Health & Education cess	4% (Income-tax + Surcharge)

Principle of Mutuality

- No man can make profit out of himself - One cannot trade with oneself
- Identity of Contributors and Participants ~ all the contributors to the common fund are entitled to participate in surplus and all participants to the surplus are contributors.
- Income of the co-operative society to which the Doctrine of Mutuality applies is not taxable.
- A co-operative society is a mutual association. In respect of contributions from members concept of mutuality would be applicable. Surplus arising out of contributions would be covered by concept of mutuality and therefore not an income at all.

Principle of Mutuality

- **Bankipur Club Ltd. (SC) [1997] 92 Taxman 278 (SC)**
 - SC held that assessee-clubs, were entitled to exemption for the receipts or surplus arising from the sales of drinks, refreshments, etc. or amounts received by way of rent for letting out the buildings or amounts received by way of admission fees, periodical subscriptions and receipts of similar nature from its members
 - It held that receipts for the various facilities extended by the clubs to its members, as part of the usual privileges, advantages and conveniences, attached to the membership of the club, could not be said to be from “a trading activity”.

Principle of Mutuality

- **Chelmsford Club (SC) [2000] 109 Taxman 215 (SC)**
 - SC laid down three conditions, the existence of which establishes the doctrine of mutuality are
 - (i) the identify of the contributors to the fund and the recipients from the fund,
 - (ii) the treatment of the company, though incorporated as a mere entity for the convenience of the members, in other words, as an instrument obedient to their mandate, and
 - (iii) the impossibility that contributors should derive profits from contributions made by themselves to a fund which could only be expended or returned to themselves

Principle of Mutuality

- SC in the case of **CIT Vs. Royal Western India Turf Club Ltd., 24 ITR p.551 (SC)** and **CIT Vs. Kumbakonam Mutual Benefit Fund Ltd., 53 ITR p.241 (SC)** laid down the broad proposition that if the object of the assessee-company claiming to be a “mutual concern” or “club”, is to carry on a particular business and money is realised both from the members and non-members for the same consideration by providing the same and similar facilities to all alike in respect of the one and the same business carried on by it, the dealings as a whole, disclosed the same profit earning motive and are tainted with commerciality.

Deduction u/s 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.

Deduction u/s 80P(2)

(a) Profits and Gains attributable to any of following activities in case of co-operative society engaged in:

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

(ii) a cottage industry, or

(iii) the marketing of agricultural produce grown by its members, or

(iv) the purchase of agricultural implements, seeds, livestock or other articles intended for agriculture for the purpose of supplying them to its members, or

Deduction u/s 80P(2)

(v) the processing, without the aid of power, of the agricultural produce of its members, or

- The agricultural produces should be grown by the members of the society. Only in that condition the deduction can be claimed. In case the produce is bought from open market and is brought for processing, no deduction should be allowed

(vi) the collective disposal of the labour of its members, or

(vii) fishing or allied activities, that is to say, the catching, curing, processing, preserving, storing or marketing of fish or the purchase of materials and equipment in connection therewith for the purpose of supplying them to its members

Deduction u/s 80P(2)

(b) In the case of a co-operative society (primary society) engaged in supplying milk, oilseeds, fruits or vegetables raised or grown by its members to a federal co-operative society, Govt./local authority or Govt. Co

(c) Any other co-operative society

(i) co-operative society is a consumers' co-operative society – Rs.1 Lakh; and

(ii) in any other case – Rs.50,000

Deduction u/s 80P(2)

(d) Whole of interest or dividends derived by the co-operative society from its investments with any other co-operative society

(e) Any income derived by the co-operative society from the letting of godowns or warehouses for storage, processing or facilitating the marketing of commodities

(f) In the case of a co-operative society, not being a housing society or an urban consumers' society or a society carrying on transport business or a society engaged in the performance of any manufacturing operations with the aid of power, where the gross total income does not exceed Rs.20,000, the amount of any income by way of interest on securities or any income from house property chargeable under section 22.

Exclusion of bank from Sec.80P

- Sec.80P(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.

Exclusion of banks from Sec.80P

“Primary co-operative bank” means a co-operative society, other than a primary agricultural credit society-

- The primary object or principal business of which is the transaction of banking business
- The paid-up share capital and reserves of which are not less than Rs.1 Lakh and
- 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.”

Section 80P - Overview

Society engaged in business of	Amount deductible	Applicability & Conditions
Providing credit facility to members	Entire profit from such business	<ul style="list-style-type: none">• Primary co-operative agricultural & rural development bank & chit funds can claim deduction.• Providing credit facility means providing loans & other credit facilities. Does not include selling goods on credit/hire purchase.

Section 80P - Overview

Society engaged in business of	Amount deductible	Applicability & Conditions
Cottage Industry	Entire profit from such business	<ul style="list-style-type: none">• For qualifying as cottage industry –• Business is to be carried on in a small scale, with limited capital, workers & turnover.• Business is carried on by members of society (share holders) & their families.• Business must involve activity of manufacture, production or processing and not merely in trade.• It is not required to be registered under Factories Act.

Section 80P - Overview

Society engaged in business of	Amount deductible	Applicability & Conditions
Marketing of Agricultural Produce	Entire profit from such business	
Purchase of Agricultural Implements, seeds, livestock, other articles intended for agriculture	Entire profit from such	It is for the purpose of supplying them to its members.
Processing Agricultural Produce of Members (without aid of power)	Entire profit from such business	

Section 80P - Overview

Society engaged in business of	Amount deductible	Applicability & Conditions
Collective Disposal of labour of its members	Entire profit from such business	<ul style="list-style-type: none">• Deduction is available only when earning of society is through the utilisation of the actual labour of its members• Deduction is available provided the rules & bye laws of the society restrict the voting rights to following class of members – Individuals who contribute their labour• Co-op. credit societies which provide financial assistance to the society• State Government

Section 80P - Overview

Society engaged in business of	Amount deductible	Applicability & Conditions
Fishing & Allied Activities	Entire profit from such business	<ul style="list-style-type: none">• It includes catching, curing, processing, preserving, storing or marketing of fish or purchase of materials & equipment in connection therewith for supplying them to its members• Deduction is available provided the rules & bye laws of the society restrict the voting rights to following class of members –• Individuals who carry on fishing or allied activities• Co-op. credit societies which provide financial assistance to the society• State Government

Section 80P - Overview

Society engaged in business of	Amount deductible	Applicability & Conditions
Primary society engaged in supplying milk, oilseeds, fruits or vegetables raised or grown by its members	Entire profit from such business	<ul style="list-style-type: none">• Milk, oil seeds, fruits or vegetables are grown or raised by its members• Milk, oilseeds, fruits or vegetables are supplied to a federal co-op. society (engaged in similar business), Government or local authority, Government company or a statutory corporation (engaged in similar business)
Engaged in any other activity	<ul style="list-style-type: none">• Rs. 1,00,000 for consumer co-operative society• Rs. 50,000 for others	

Section 80P - Overview

Nature of Income	Amount deductible	Applicability & Conditions
Interest income/Dividend income	Entire amount of such income	<ul style="list-style-type: none">Such income is received from investment in any other co-operative society
Letting of godowns/warehouses	Entire amount of income derived from such business	<ul style="list-style-type: none">Godowns/warehouses are let for storage, processing or facilitating the marketing of commodities
Interest on securities & property income	Entire amount of such income	<ul style="list-style-type: none">Benefit not available to housing society, urban consumers society, society carrying on transport business, society engaged in manufacturing operations with aid of powerGross total income of such society does not exceed Rs.20,000.

Co-op. Societies Carrying On Banking Business –Sec. 80P(4) Applies (?)

- All Co-operative Societies other than those coming under the control of Reserve Bank of India are eligible for deduction under Section 80(P)(2)(a)
- A Co-operative society carrying on banking activities is not a Co-operative Bank licensed by Reserve Bank of India and therefore is eligible for deduction u/s 80P in the light of the clarification No.133/06/2006-07 dated 19-05-2007 issued by CBDT.

Co-op. Societies Carrying On Banking Business –Sec. 80P(4) Applies (?)

- This is also laid down in following decisions:
- ITAT, Panaji-Mercantile Credit Co-operative Society on 16-02-2017
- Karnataka HC in Bangalore Commercial Transport Credit Society Ltd [ITA NO:598/2013 dated 27-06-2014]
- Gujarat HC –Jafari Momin Vikas Co-op. Credit Society Ltd. in Tax Appeals no. 442 of 2013,443 of 2013 and 863 of 2013 on 15-01-2014
- ITAT, Ahmedabad-Sarvoday Credit cum Consumers Co-operative Society on 3 May, 2013

Co-op. Societies Carrying On Banking Business –Sec. 80P(4) Applies (?)

- Kerala HC in Eluru Cooperative House Mortgage Society Ltd [TS-488-HC-2017(AP)] has held that Including 'Bank' in co-operative society's name cannot disentitle Sec. 80P benefit
- Karnataka HC in Laxmi Credit Souhard Sahakari Ltd [TS-606-HC-2015(KAR)] held that authorities under the IT Act not competent to resolve the controversy as to whether the assessee was a co-operative society or co-operative bank under the provisions of the Banking Regulation Act.
- SC has admitted Revenue's SLP on 'credit' co-operative society's eligibility to Sec-80P deduction

Co-op. Societies Carrying On Banking Business –Sec. 80P(4) Applies (?)

- The Quepem Urban Co-operative Credit Society Ltd [TS-208-HC-2015(BOM)]
 - HC allows Sec 80P(2)(a)(i) deduction to assessee co-operative society engaged in providing credit facilities to its members - Limitation to claim Sec 80P(2) deduction contained in Sec 80P(4) inapplicable, as assessee not a co-operative bank as per Banking Regulation Act
 - HC observed that in terms of sec 80P, the meaning of the words Cooperative Bank was the meaning assigned to it in Chapter V of the Banking Regulation Act, 1949 and A cooperative bank was defined in sec 5(cci) of Banking Regulation Act to mean a State Cooperative Bank, a Central Cooperative Bank and a primary cooperative bank.

Co-op. Societies Carrying On Banking Business –Sec. 80P(4) Applies (?)

- The Quepem Urban Co-operative Credit Society Ltd [TS-208-HC-2015(BOM)]
 - HC noted Sec 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.
 - HC held that since, the three conditions as provided u/s. 5 (CVV) of the Banking Regulation Act, 1949, were to be satisfied cumulatively and except condition (2) the other two qualifying conditions were not satisfied, hence, assessee cannot be considered to be a co-operative bank for the purposes of Section 80P(4) and the assessee was entitled to the benefit of deduction available u/s. 80P(2)(a)(i).

Co-op. Societies Carrying On Banking Business –Sec. 80P(4) Applies (?)

- Chirakkal service co-operative bank [TS-183-HC-2016(KER)]
 - HC allows deduction u/s 80P to assessee registered as primary agricultural credit society under Kerala Cooperative Society Act, 1969 ('KCS')
 - Rejects Revenue's stand that assessee was a co-operative bank and not a 'primary agricultural credit society' and hence hit by embargo u/s 80P(4) (which excludes applicability of Sec 80P(2)(a)(i) to 'co-operative bank' other than 'primary agricultural credit society' or a primary co-operative agricultural and rural development bank).

Co-op. Societies Carrying On Banking Business –Sec. 80P(4) Applies (?)

- Chirakkal service co-operative bank [TS-183-HC-2016(KER)]
 - Notes that the assessee was a “primary agricultural credit society” in terms of Sec 5(cciv) of Banking Regulation Act and also as per 'KCS' Act; HC states that once assessee is held as primary agricultural credit society by the competent authority under the KCS Act, it has to necessarily be held that the principal object of such societies is to undertake agricultural credit activities
 - Remarks that “The authorities under the IT Act cannot probe into any issue or such matter relating to such applicants”, thus holds that primary agricultural credit societies registered as such under the KCS Act and classified so under that Act including the assessee are entitled to such exemption

Deduction u/s 80P on Interest on Deposits ?

- Totgars, Co-operative Sale Society Ltd. [SC] [2010] 322 ITR 283 (SC)
 - Assessee was a co-operative credit society - Its business was to provide credit facilities to its members and to market their agricultural produce - In many cases, assessee retained sale proceeds of members whose produce was marketed by it and since funds created by such retention were not required immediately for business purpose, it invested same in specified securities and earned interest thereon
 - SC noted that in the instant case, the interest held not eligible for deduction under section 80P(2)(a)(i) was not the interest received from the members for providing credit facilities to them.

Deduction u/s 80P on Interest on Deposits?

- Totgars, Co-operative Sale Society Ltd. [SC] [2010] 322 ITR 283 (SC)
 - Since the fund created by such retention was not required immediately for business purposes, it was invested in specified securities. Such interest income would come in the category of 'Income from other sources' and, hence, such interest income would be taxable under section 56
 - Such interest income could not be said to be attributable to the activities of the society, namely, carrying on the business of providing credit facilities to its members or marketing of the agricultural produce of its members.

Deduction u/s 80P on Interest on Deposits?

- Karnataka HC in Tumkur Merchants Souharda Credit Cooperative Limited [TS-750-HC-2014(KAR)] held that interest income earned by assessee (co-operative society engaged in providing credit facilities to its members) from short term deposits with banks 'attributable' to carrying on credit business, therefore, liable to be deducted u/s 80P(2).
- HC held that “the interest income so derived or the capital, if not immediately required to be lent to the members, they cannot keep the said amount idle. If they deposit this amount in bank so as to earn interest, the said interest income is attributable to the profits and gains of the business of providing credit facilities to its members only. and is liable to be deducted from the gross total income under Section 80P of the Act.”
- HC had distinguished SC ruling in Totgars as interest income in Totgars case was arising on investment in short term deposits out of surplus from marketing agricultural produce and cannot be attributable to activity mentioned in Sec. 80P(2)(a)(i)

Deduction u/s 80P on Interest on Deposits?

- Same was also held by AP HC in **Vavveru Co-Operative Rural Bank Ltd. [TS-202-HC-2017(AP)]** wherein Totgars case was distinguished and HC remarked that “The income derived from the investments made by retaining the monies belonging to the members cannot certainly be termed as profits and gains of business.”,
- HC had observed that investment in FDs made by assesseees in present case were of their own monies

Deduction u/s 80P on Interest on Deposits?

- Pune ITAT in **Maharashtra Bank Employees Co-op. Credit Society Ltd [TS-618-ITAT-2017(PUN)]** held that Interest on credit co-operative society's 'statutory deposits' eligible for Sec 80P deduction

Interest On Statutory Deposit

- Maharashtra Bank Employees Co-op. Credit Society Ltd [TS-618-ITAT-2017(PUN)]
 - ITAT allows deduction u/s 80P(2)(a)(i) to an employee credit co-operative society (engaged in providing credit facilities to employees of a nationalized bank) on interest income earned from fixed deposits, rejects Revenue's stand that interest should be assessable as income from 'other sources';
 - ITAT refers to the provisions of Maharashtra Co-operative Societies Act, 1960, holds that assessee was statutorily required to deposit 25% of its profits in reserve funds, which in turn, were kept in fixed deposits with the approved 'Scheduled Bank' as per the regulations;
 - Distinguishes Revenue's reliance on SC ruling in Totagar's Co-operative Sale Society Ltd. and Gujarat HC ruling in State Bank of India where the issue was of investing of surplus funds, notes in present case it is not a case of surplus funds, but assessee was statutorily required to invest against the statutory 'reserve' fund
 - ITAT holds that the interest income earned by the assessee was from carrying on its business activities & the assessee was entitled to claim deduction u/s 80P(2)(a)(i), however, ITAT denies deduction on Saving Account interest

Interest on Bank Deposits with Co-operative Bank

- Whether Interest Income derived by a Co-operative Society from its investments with Co-operative Bank eligible for Sec.80P deduction?
 - Karnataka HC in **The Totagars Co-Operative Sale Society [TS-233-HC-2017(KAR)]** denied Sec. 80P(2)(d) deduction to assessee co-operative society (engaged in agro-marketing) with respect to interest income earned on investments made in co-operative 'bank'. HC highlighted that the words 'Co-operative Banks' are missing in clause (d) of Sec. 80P(2) and holds that co-operative bank is distinct from co-operative society for the purposes of Sec 80P(2)(d)
 - HC follows SC ruling in assessee's own case for earlier AYs wherein it was held that interest income on idle investments earned by assessee from other banks was not business income but was income from other sources taxable u/s. 56 and hence ineligible for Sec 80P(2)(a) deduction

Interest on Bank Deposits with Co-operative Bank

- **Contrary view – Mumbai ITAT in Kaliandas Udyog Bhavan Premises Co-op Society Ltd [TS-227-ITAT-2018(Mum)] has clarified that “though the co-operative bank pursuant to the insertion of Sub-section (4) of Sec. 80P would no more be entitled for claim of deduction under Sec. 80P of the Act, but however, a co-operative bank continues to be a co-operative society registered under the Co-operative Societies Act, 1912 (2 of 1912), or under any other law for the time being enforced in any state for the registration of cooperative societies..”** Therefore, allows Sec. 80P deduction on interest income derived by a co-operative society ('assessee') from its investments held with a co-operative bank

Whether 'Gross' or 'Net' Receipts to be considered for Sec. 80P?

- Pune ITAT in **Panvel Peoples Nagri Sahakari Patsanstha Maryadit [TS-706-ITAT-2018(PUN)]** held that the eligible amount for deduction can be the 'income' and not the 'gross receipts' from the specified source
- It held that since the amount of gross receipt from commission is less than the amount of expenses incurred for earning such commission, there can be no distinct deduction u/s. 80P

Whether Sec.80P deduction available on Cash Credit u/s 68

- Kerala HC in **Mundela Service Co-operative Bank Limited [TS-494-HC-2018(KER)]** held that if no Sec.80P benefit on unexplained cash credits addition made u/s. 68. It held that if Sec.80P benefit on unexplained cash credits addition made u/s. 68 is allowed, assesseees who are entitled to the benefit of exemption u/s. 80P(2)(a)(i) can bring in illicit money into business without fear of consequences.

Co-operative Society giving loans to nominal members – Can deduction be denied u/s 80P?

- **The citizen co-operative society [TS-326-SC-2017]**
 - SC denied Sec.80P deduction to the assessee (a co-operative society carrying out business of banking) noting that the assessee's activities are in violations of the provisions of the Mutually Aided Co-operative Societies Act, 1995 (MACSA) under which it is formed and principle of mutuality is missing in assessee's case.
 - It noted that assessee is catering to two distinct categories, viz. 1) ordinary members and 2) nominal members (who make deposits with assessee for obtaining loans, for earning maximum returns on FDs etc. and are not members in real sense) and that most of assessee's business was with this second category of persons and the depositors and borrowers were quite distinct

Co-operative Society giving loans to nominal members – Can deduction be denied u/s 80P?

- **The citizen co-operative society [TS-326-SC-2017]**

- SC held that the activity of the appellant is that of finance business and cannot be termed as co-operative society. Therefore, the assessee cannot be said to be co-operative society meant only for its members and providing credit facilities to its members

Co-operative Society giving loans to nominal members – Can deduction be denied u/s 80P?

- **The Chengala Service Co-op Bank Ltd. [TS-196-ITAT-2018(COCH)]**
 - Cochin ITAT distinguished SC ruling in Citizens Co-operative Society by noting that in that case substantial deposits were from 'nominal members' who were actually non-members as per the relevant provisions, however, in this case, definition of a 'member' as provided in Sec 2(1) of the Kerala Cooperative Societies Act includes 'nominal member', therefore, holds that the term 'member' u/s 80P(2) has to be construed in terms definition under State cooperative.
 - It was further held that AO is not competent to decide issue whether assessee is a primary co-operative society or a co-operative bank.
 - Similar judgment was delivered by Madras HC in Ammapet Primary Agricultural Cooperative Bank Ltd [TS-779-HC-2018(MAD)]

Transfer Fees from Outgoing Member – Taxability

- SC in **Venkatesh Premises Cooperative Society Ltd [TS-111-SC-2018]** held that receipts by premises cooperative societies (assesseees) from its members, on account of non-occupancy charges, transfer charges, common amenity fund contribution are exempt from income tax based on the doctrine of mutuality
- Rejects Revenue's stand that the transfer fees to the extent paid by the transferee member was exigible to tax as the transferee did not have the status of a member at the time of such payment and, therefore, the principles of mutuality did not apply
- SC explains that while the transfer charges are payable by the outgoing member, “If for convenience, part of it is paid by the transferee, it would not partake the nature of profit or commerciality as the amount is appropriated only after the transferee is inducted as a member.”, holds that the moment the transferee is inducted as a member the principles of mutuality shall apply

Transfer Fees from Outgoing Member – Taxability

- Non-Occupancy Charges
- With respect to receipt of non-occupancy charges and common amenity fund received by society from its members, SC holds that the same was not taxable applying the principle of mutuality, observes that these receipts have been used for mutual benefit towards maintenance of the premises, repairs, infrastructure and provision of common amenities
- Further, SC clarifies that Government notification dated August 9, 2001 issued u/s. 79A of the Maharashtra Cooperative Societies Act (which prescribes a cap for non-occupancy charges @ 10% of the service charges/maintenance charges) is applicable to cooperative housing societies only and did not apply to a premises society which consists of non-residential premises, hence rejects Revenue's stand that non-occupancy charges beyond 10% cap were taxable

Transfer Fees from Outgoing Member – Taxability

- Premium on transfer of plot from outgoing member
- **Full bench of Gujarat HC in Prabhukunj Co op Housing Society Limited [TS-521-HC-2015(GUJ)]** rules that premium received by assessee (a co-operative housing society) upon transfer of plot by its outgoing member not taxable in the hands of society applying principles of mutuality. Rejects Revenue's stand that principle of mutuality was not applicable as the receipt would remain in the fund of society in perpetuity and even upon winding-up, it would not be distributed among members
- TDR premium received
- **Bom HC in Jai Hind CHS Ltd [TS-190-HC-2012(BOM)]** held that TDR premium received by Housing Society from members allowing use of additional FSI not taxable applying 'Principle of Mutuality'

TDS u/s 194A

- No TDS u/s 194A on interest income credited or paid by a co-operative society (**other than a co-operative bank**) to a member thereof or to interest income credited or paid by a co-operative society to any other co-operative society. [Sec.194A(3)(v)]
- to such income credited or paid in respect of,—
 - (a) deposits with a primary agricultural credit society or a primary credit society or a co-operative land mortgage bank or a co-operative and development bank;
 - (b) deposits (**other than time deposits**) with a co-operative society, other than a co-operative society or bank referred to in sub-clause (a), engaged in carrying on the business of banking [Sec.194A(3)(viiia)]
- Interest paid by co-operative bank on time as well as recurring deposits exceeding Rs.10,000 to its members shall be liable to TDS u/s 194A.

Sec.269SS/T Applicability

- Sec.269SS/T regarding loan taken/repaid in excess of Rs.20,000 by other than banking channel also applies to co-operative society.

Statutory Deduction

- Tumkur DCC Bank Ltd [TS-91-ITAT-2019(Bang)]
 - Bengaluru ITAT disallows deduction to assessee (co-operative society) for contribution towards education fund maintained as per Karnataka Co-operative Societies Act, 1959
 - Notes that the cooperative society shall contribute 2% of the balance of its net profits to the cooperative societies' education fund
 - Notes that the education fund once contributed at 2% would not become part of the assessee's assets and would not be utilized for the benefit of the members of the society, therefore, holds that it is not wholly and exclusively meant for running of the business of the assessee and not allowable u/s 37.

Other Important Issues

- SC in Rajasthan R.S.S. & Ginning Mills Fed. Ltd. [TS-241-SC-2014] denies loss carry forward to amalgamating co-operative societies absent specific IT-Act provisions. SC noted that Loss carry forward benefit not specifically provided for co-operative societies, unlike provisions of Sec 72A that allow benefit to companies & banks

Other Provisions

- Sec.36(1)(ia) – Premium paid by Federal Milk Co-operative society on cattle
- Sec.36(1)(xvii) - Co-operative society engaged in the business of manufacture of sugar for purchase of sugarcane at a price which is equal to or less than the price fixed or approved by the Government
- Sec.40(ba) – Disallowance of interest or remuneration to member – Not applicable for co-operative society
- Sec.10(27) – Exemption for - any income of a co-operative society formed for promoting the interests of the members of either the Scheduled Castes or Scheduled Tribes or both
- Sec.45(3)/(4) – Introduction of asset by partner/withdrawal of asset from firm – not applicable to co-operative society
- There is litigation on whether Transfer Pricing on SDT would apply when Sec.80P deduction is claimed. The Taxpayers should take caution for the same.

CBDT Circular On Eligibility Of Chapter VI-A Deduction On Profits

Enhanced By A0

- The CBDT has issued Circular No. 37/2016 dated 2nd November 2016 in which it has accepted the settled position that if the disallowances made under sections 32, 40(a)(ia), 40A(3), 43B, etc. of the Act and other specific disallowances, related to the business activity against which the Chapter VI-A deduction has been claimed, result in enhancement of the profits of the eligible business, the deduction under Chapter VI-A is admissible on the profits so enhanced by the disallowance

Liability of housing societies to file income tax returns

- Before 2018, there was no need to file Income Tax Return for small housing societies if their total income was less than basic exemption limit as their income was tax-free as per the Indian Income Tax Act.
- However, Vide Finance Act 2018, amendment in Section 80AC was made to include a clause in Chapter VIA under 'C-Deduction in respect of certain incomes'. It says there will be no deduction for those group/society who doesn't file the returns by the due date.
- All housing societies are required to file their ITR by the due date, which is September 30 of the year following the financial year, as the accounts of the housing society are required to be audited under the provisions of their respective cooperative society laws.

Liability of housing societies to file income tax returns

- The Section reiterates that Deduction u/s 80P is permitted only if the Society files ITR by the due date.
 - Section 80P 2(d) speaks about the deduction on interest income from Co-operative Society.
 - Section 80P 2(C) allows Standard Deduction of up to Rs 50,000 if the Society has any Business Income (like those from billboards and other advertisements).

Liability of housing societies to file income tax returns

- **Failure to file – Consequences**
 - **Interest u/s 234A/B/C**
 - **Fees u/s 234F**
 - **Rs 5,000 if the delay is up to December of AY**
 - **Rs 10,000 if the delay goes beyond December of AY.**
 - **If taxable income < Rs. 5 lakhs - Rs 1,000**
- **The society needs to pay advance tax, in case its advance tax liability exceeds Rs 10,000 for a year in four instalments on**
 - **June 15 – 15%**
 - **September 15 -30%**
 - **December 15 -30%**
 - **March 15 - 25%**

Liability of housing societies to file income tax returns

- **Housing societies are also required to deduct tax on certain payments, like salaries to its staff, payments to contractors for carrying out any activity in the society's buildings, on interest on money borrowed, etc. In order to fully comply with the TDS requirements, the society is required to obtain a Tax Deduction Account Number (TAN), so that it can deposit the TDS to the credit of the central government and also to file the TDS returns periodically.**



THANKYOU

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