# THE MAVILAYI SERVICE COOPERATIVE BANK LTD. & ORS.
**v.**
# COMMISSIONER OF INCOME TAX, CALICUT & ANR.

(Civil Appeal Nos.7343-7350 of 2019)

JANUARY 12, 2021

**[R. F. NARIMAN,* NAVIN SINHA AND K. M. JOSEPH, JJ.]**

*Income Tax Act, 1961: s.80P(2) – Deduction for Cooperative Societies – Assessees registered as 'Primary Agriculture Credit Societies' under Kerala Cooperative Societies Act, 1969 – They are stated to be providing credit facilities to their members for agricultural and allied purposes – Claim for deduction under s.80P(2)(a) – Whether assessees are entitled to such deductions after introduction of s.80P(4) by s.19 of Finance Act, 2006 w.e.f. 1.4.2007 – Held: Assessees are entitled to benefit of deduction contained in s.80P(2)(a)(i), notwithstanding that they may also be giving loans to their members which are not related to agriculture – In case it is found that there are instances of loans given to non-members, profits attributable to such loans are not deductible.*

*Income Tax Act, 1961: s.80P(2) – Beneficial provision – Held: s.80P must be construed with the object of furthering the co-operative movement generally – s.80P, being a benevolent provision enacted by Parliament to encourage and promote the credit of the co-operative sector in general must be read liberally and reasonably, and if there is ambiguity, in favour of the assessee – A deduction that is given without any reference to any restriction or limitation cannot be restricted or limited by implication, as is sought to be done by the Revenue in the present case by adding the word "agriculture" into s.80P(2)(a)(i) when it is not there – Further, s.80P(4) is to be read as a proviso, which proviso now specifically excludes co-operative banks which are co-operative societies engaged in banking business – Considering the definition of 'member' under the Kerala Act, loans given to such nominal members would qualify*

* Author

*for the purpose of deduction under s.80P(2)(a)(i) – Thus, giving of loans by a primary agricultural credit society to non-members is not illegal – Interpretation of statutes.*

**Disposing of the appeals, the Court Held :**

**1. Interpretation of Section 80P of the IT Act.**

**The marginal note to Section 80P which reads "Deduction in respect of income of co-operative societies" indicates the general "drift" of the provision. *Secondly*, for purposes of eligibility for deduction, the assessee must be a "co-operative society". A co-operative society is defined in Section 2(19) of the IT Act, as being a co-operative society registered either 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. This, therefore, refers only to the factum of a co-operative society being registered under the 1912 Act or under the State law. For purposes of eligibility, it is unnecessary to probe any further as to whether the co-operative society is classified as X or Y. *Thirdly*, the gross total income must include income that is referred to in sub-section (2). *Fourthly*, sub-clause (2)(a)(i) then speaks of a co-operative society being "engaged in" carrying on the business of banking or providing credit facilities to its members. What is important qua sub-clause (2)(a)(i) is the fact that the co-operative society must be "engaged in" the providing credit facilities to its members. *Fifthly*, the burden is on the assessee to show, by adducing facts, that it is entitled to claim the deduction under Section 80P. Therefore, the assessing officer under the IT Act cannot be said to be going behind any registration certificate when he engages in a fact-finding enquiry as to whether the co-operative society concerned is in fact providing credit facilities to its members. Such fact finding enquiry (see section 133(6) of the IT Act) would entail examining all relevant facts of the co-operative society in question to find out whether it is, as a matter of fact, providing credit facilities to its members, whatever be its nomenclature. Once this task is fulfilled by the assessee, by placing reliance on such facts as would show that it is**

**engaged in providing credit facilities to its members, the assessing officer must then scrutinize the same, and arrive at a conclusion as to whether this is, in fact, so. *Sixthly,* the expression "providing credit facilities to its members" does not necessarily mean agricultural credit alone. Section 80P being a beneficial provision must be construed with the object of furthering the co-operative movement generally, and section 80P(2)(a)(i) must be contrasted with section 80P(2)(a)(iii) to (v), which expressly speaks of agriculture. It must also further be contrasted with sub-clause (b), which speaks only of a "primary" society engaged in supplying milk etc. thereby defining which kind of society is entitled to deduction, unlike the provisions contained in section 80P(2)(a)(i). Also, the proviso to section 80P(2), when it speaks of sub-clauses (vi) and (vii), further restricts the type of society which can avail of the deductions contained in those two sub-clauses, unlike any such restrictive language in Section 80P(2)(a)(i). Once it is clear that the co-operative society in question is providing credit facilities to its members, the fact that it is providing credit facilities to non-members does not disentitle the society in question from availing of the deduction. The distinction between eligibility for deduction and attributability of amount of profits and gains to an activity is a real one. Since profits and gains from credit facilities given to non-members cannot be said to be attributable to the activity of providing credit facilities to its members, such amount cannot be deducted. *Seventhly*, section 80P(2)(c) also makes it clear that section 80P is concerned with the co-operative movement generally and, therefore, the moment a co-operative society is registered under the 1912 Act, or a State Act, and is engaged in activities which may be termed as residuary activities i.e. activities not covered by sub-clauses (a) and (b), either independently of or in addition to those activities, then profits and gains attributable to such activity are also liable to be deducted, but subject to the cap specified in sub-clause (c). The reach of sub-clause (c) is extremely wide, and would include co-operative societies engaged in any activity, completely independent of the activities mentioned in sub-clauses (a) and (b), subject to**

**the cap of INR 50,000/- to be found in sub-clause (c)(ii). This puts paid to any argument that in order to avail of a benefit under Section 80P, a co-operative society once classified as a particular type of society, must continue to fulfil those objects alone. If such objects are only partially carried out, and the society conducts any other legitimate type of activity, such co-operative society would only be entitled to a maximum deduction of Rs.50,000/- under sub-clause (c).*Eighthly*, sub-clause (d) also points in the same direction, in that interest or dividend income derived by a co-operative society from investments with other co-operative societies, are also entitled to deduct the whole of such income, the object of the provision being furtherance of the co-operative movement as a whole. [Paras 27, 28, 29, 30, 32-35]**

*Kerala State Cooperative Marketing Federation Ltd. and Ors. v. CIT* **(1998) 5 SCC 48 : [1998] 3 SCR 443;** *K.P. Varghese v. Income Tax Officer, Ernakulam and Anr.* **(1981) 4 SCC 173 : [1982] 1 SCR 629 ;** *Commissioner of Income Tax, Madras v. Ponni Sugars and Chemicals Ltd.* **(2008) 9 SCC 337 : [2008] 13 SCR 570 ;** *Udaipur Sahkari Upbhokta Thok Bhandar Ltd. v. CIT* **(2009) 8 SCC 393 : [2009] 11 SCR 90 – relied on**.

*Assistant Commissioner of Income Tax v. A.K. Menon and Ors*. **(1995) 5 SCC 200 : [1995] 2 Suppl. SCR 181 ;** *Titan Medical Systems (P) Ltd. v. Collector of Customs, New Delhi* **(2003) 9 SCC 133 ;** *Vadilal Chemicals Ltd. v. State of A.P. and Ors.***(2005) 6 SCC 292 : [2005] 2 Suppl. SCR 1 – referred to.**

2. **The limited object of section 80P(4) is to exclude co-operative banks that function at par with other commercial banks i.e. which lend money to members of the public. Thus, if the Banking Regulation Act, 1949 is now to be seen, what is clear from section 3 read with section 56 is that a primary co-operative bank cannot be a primary agricultural credit society, as such co-operative bank must be engaged in the business of banking as defined by section 5(b) of the Banking**

**Regulation Act, 1949, which means the accepting, for the purpose of lending or investment, of deposits of money from the public. Likewise, under section 22(1)(b) of the Banking Regulation Act, 1949 as applicable to co-operative societies, no co-operative society shall carry on banking business in India, unless it is a co-operative bank and holds a licence issued in that behalf by the RBI. As opposed to this, a primary agricultural credit society is a co-operative society, the primary object of which is to provide financial accommodation to its members for agricultural purposes or for purposes connected with agricultural activities. [Para 39]**

3. **Section 80P of the IT Act, being a benevolent provision enacted by Parliament to encourage and promote the credit of the co-operative sector in general must be read liberally and reasonably, and if there is ambiguity, in favour of the assessee. A deduction that is given without any reference to any restriction or limitation cannot be restricted or limited by implication, as is sought to be done by the Revenue in the present case by adding the word "agriculture" into Section 80P(2)(a)(i) when it is not there. Further, section 80P(4) is to be read as a proviso, which proviso now specifically excludes co-operative banks which are co-operative societies engaged in banking business i.e. engaged in lending money to members of the public, which have a licence in this behalf from the RBI. [Para 45]**

4. **Once section 80P(4) is out of harm's way, all the assessees in the present case are entitled to the benefit of the deduction contained in section 80P(2)(a)(i), notwithstanding that they may also be giving loans to their members which are not related to agriculture. Also, in case it is found that there are instances of loans being given to non-members, profits attributable to such loans obviously cannot be deducted. Considering the definition of 'member' under the Kerala Act, loans given to such nominal members would qualify for the purpose of deduction under section 80P(2)(a)(i). Thus, the giving of loans by a primary agricultural credit society to non-members is not illegal unlike the facts in Citizen Cooperative Society Ltd. [Paras 45-47]**

*Citizen Cooperative Society Ltd. v. Asst. CIT, Hyderabad* **(2017) 9 SCC 364 : [2017] 9 SCR 361 – distinguished**.

*CIT, Mysore v. Indo Mercantile Bank* **[1959] Supp. (2) SCR 256 ;** *Tribhovandas Haribhai Tamboli v. Gujarat Revenue Tribunal* **(1991) 3 SCC 442 : [1991] 2 SCR 802 ;** *J.K. Industries Ltd. v. Chief Inspector of Factories and Boilers* **(1996) 6 SCC 665 : [1996] 6 Suppl. SCR 798 ;** *Union of India v. Dileep Kumar Singh* **(2015) 4 SCC 421 : [2015] 2 SCR 882 ;** *B. Shama Rao v. Union Territory, Pondicherry* **[1967] 2 SCR 650;** *State of Orissa v. Sudhanshu Sekhar Misra and Ors.* **[1968] 2 SCR 154 – relied on.**

*U.P. Cooperative Cane Unions' Federation Ltd., Lucknow v. Commissioner of Income Tax, Lucknow-I* **(1997) 11 SCC 287 ;** *Dalbir Singh v. State of Punjab* **[1979] 3 SCR 1059 ;** *Chirakkal Service Co-operative Bank Ltd. v. CIT* **(2016) 384 ITR 490 (Ker.) ;** *Perinthalmanna Service Co-operative Bank Ltd. v. ITO and Anr.* **(2014) 363 ITR 268 (Ker.) ;** *Assam Cooperative Apex Marketing Society Ltd. Assam v. Additional Commissioner ofIncome Tax, Assam* **(1994) Supp. (2) SCC 96 – referred to.**

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 7343-7350 of 2019.

From the Judgment and Order dated 19.03.2019 of the High Court of Kerala at Ernakulam in ITA Nos. 97 of 2016, 11 and 69 of 2017 and 72 to 76 of 2017.

With

Civil Appeal No. 8315 of 2019 and Civil Appeal No.____of 2021 (@ SLP(C) NO.___of 2021) (Diary No. 31268 of 2019).

Balbir Singh, ASG, Shyam Divan, Arvind P. Datar, Sr. Advs., M. Gireesh Kumar, Arun Raj S., Ankur S. Kulkarni, Renjith B. Marar,

Ms. Lakshmi N. Kaimal, Biju Vigneswar, Ms. Surabhi Santosh, Rahul Unnikrishnan, Arun Poomulli, Biju Vigneswar, Ms. Surabhi Santosh, Ms. Meera M., Ms. Gargi Khanna, P.V. Yogeshwaran, Mrs. Anil Katiyar, Advs. for the appearing parties.

The Judgment of the Court was delivered by

**R. F. NARIMAN, J.**

1. I.A. Nos.192273 and 192277 of 2019 are allowed. Leave granted in the Special Leave Petition arising out of Diary No.31268 of 2019.

2. These appeals have been filed by co-operative societies who have been registered as 'primary agricultural credit societies', together with one 'multi-State co-operative society', and raise important questions as to deductions that can be claimed under section 80P(2)(a)(i) of the Income-Tax Act, 1961 ("**IT Act**"); and in particular, whether these assessees are entitled to such deductions after the introduction of section 80P(4) of the IT Act by section 19 of the Finance Act, 2006 (21 of 2006) with effect from 01.04.2007. It may be stated at the outset that all these assessees, who are stated to be providing credit facilities to their members for agricultural and allied purposes, have been classified as primary agricultural credit societies by the Registrar of Co-operative Societies under the Kerala Co-operative Societies Act, 1969 ("**Kerala Act**"), and were claiming a deduction under section 80P(2)(a)(i) of the IT Act, which had been granted to themupto Assessment Year 2007-08.

3. However, with the introduction of section 80P(4) of the IT Act, the scenario changed. In respect of the assessees before us, the assessing officer denied their claims for deduction, relying upon section 80P(4) of the IT Act, holding that as per the Audited Receipt & Disbursal Statement furnished by the assessees in these cases, agricultural credits that were given by the assessee-societies to its members were found to be negligible – the credits given to such members being for purposes other than agricultural credit. The decisions of the assessing officers were challenged up to the Kerala High Court. Before the High Court, the assessees relied upon a

decision of a Division Bench of the Kerala High Court in **Chirakkal Service Co-operative Bank Ltd. v. CIT** (2016) 384 ITR 490 (Ker.), where in a batch of appeals challenging assessments completed under section 147 read with 143(3)/144 of the IT Act, the High Court, after considering section 80P(4) of the IT Act, various provisions of the Kerala Act, the Banking Regulation Act, 1949, the bye-laws of the Societies, etc., held that once a Co-operative Society is classified by the Registrar of Co-operative Societies under the Kerala Act as being a primary agricultural creditsociety, the authorities under the IT Act cannot probe into whether agricultural credits were in fact being given by such societies to its members, thereby going behind the certificate so granted. This being the case, the High Court in **Chirakkal** (supra) held that since all the assessees were registered as primary agricultural creditsocieties, they would be entitled to the deductions under section 80P(2)(a)(i) read with section 80P(4) of the IT Act.

4. However, the Department contended that the judgment in **Chirakkal** (supra) was rendered *per incuriam* by not having noticed the earlier decision of another Division Bench of the Kerala High Court in **Perinthalmanna Service Co-operative Bank Ltd. v. ITO and Anr.** (2014) 363 ITR 268 (Ker.), where, in an appeal challenging orders under section263 of the IT Act, it was held that the revisional authority was justified in saying that an inquiry has to be conducted into the factual situation as to whether a co-operative bank is in fact conducting business as a co-operative bank and not as aprimary agricultural creditsociety, and depending upon whether this was so for the relevant assessment year, the assessing officer would then allow or disallow deductions claimed under section 80P of the IT Act, notwithstanding that mere nomenclature or registration certificates issued under the Kerala Act would show that the assessees are primary agricultural creditsocieties. These divergent decisions led to a reference order dated 09.07.2018 to a Full Bench of the Kerala High Court.

5. The Full Bench of the Kerala High Court, by the impugned judgment dated 19.03.2019, referred to section 80P of the IT Act, various provisions of the Banking Regulation Act and the Kerala Act and held that the main object of a primary agricultural creditsociety which exists

at the time of its registration, must continue at all times including for the assessment year in question.Notwithstanding the fact that the primary agricultural creditsociety is registered as such under the Kerala Act, yet, the assessing officer must be satisfied that in the particular assessment year its main object is, in fact, being carried out. If it is found that as a matter of fact agricultural credits amount to a negligible amount, thenit would be open for the assessing officer, applying the provisions of section 80P(4) of the IT Act, to state that as the co-operative society in question – though registered as a primary agricultural creditsociety –is not, in fact, functioning as such, the deduction claimed under section 80P(2)(a)(i) of the IT Act must be refused.This conclusion was reached after referring to several judgments, but relying heavily upon the judgment of this Court in **Citizen Cooperative Society Ltd. v. Asst. CIT, Hyderabad** (2017) 9 SCC 364. Thus, the conclusion of the Full Bench was as follows:

"33. In view of the law laid down by the Apex Court in Citizen

Co-operative Society [397 ITR 1] it cannot be contended that, while considering the claim made by an assessee society for deduction under section 80P of the IT Act, after the introduction of sub-section (4) thereof, the Assessing Officer has to extend the benefits available,merely looking at the class of the society as per the certificate ofregistration issued under the Central or State Co-operative Societies Actand the Rules made thereunder. On such a claim for deduction under section 80P of the IT Act, the Assessing Officer has to conduct an enquiry into the factual situation as to the activities of the assessee society and arrive at a conclusion whether benefits can be extended ornot in the light of the provisions under sub-section (4) of section80P.

34. In Chirakkal [384 ITR 490] the Division Bench held that the appellant societies having been classified as Primary Agricultural Credit Societies by the competent authority under the KCS Act, it has necessarily to be held that the principal object of such societies is to undertake agricultural credit activities and to provide loans and advances for agricultural purposes, the rate of interest on such loans and advances to be at the rate to be fixed by the Registrar

of Co-operative Societies under the KCS Act and having its area of operation confined to a Village, Panchayat or a Municipality and as such, they are entitled for the benefit of sub-section (4) of section 80P of the IT Act to ease themselves out from the coverage of section 80P and that, the authorities under the IT Act cannot probe into any issues or such matters relating to such societies and that, Primary Agricultural Credit Societies registered as such under the KCS Act and classified so, under that Act, including the appellants are entitled to such exemption.

35. In Chirakkal [384 ITR 490] the Division Bench expressed a divergent opinion, without noticing the law laid down in Antony Pattukulangara [2012 (3) KHC 726] and Perinthalmanna [363 ITR268]. Moreover, the law laid down by the Division Bench in Chirakkal [384 ITR 490] is not good law, since, in view of the law laid down by the Apex Court in Citizen Co-operative Society [397 ITR 1], on a claim for deduction under section 80P of the Income Tax Act,by reasonof sub-section (4) thereof, the Assessing Officerhas to conduct an enquiry into the factual situation as to the activities of the assessee Society and arrive at a conclusion whether benefits can be extended or not in the light of the provisions under sub-section (4) of section 80P of the IT Act. In view of the law laid down by the Apex Court in Citizen Co-Operative Society [397 ITR 1] the law laid down by the Division Bench in Perinthalmanna [363 ITR 268] has to be affirmed and we do.

36. In view of the law laid down by the Apex Court in Ace Multi Axes Systems' case (supra), since each assessment year is a separate unit, the intention of the legislature is in no manner defeated by not allowing deduction under section 80P of the IT Act, by reason of sub-section (4) thereof, if the assessee society ceases to be the specified class of societies for which the deduction is provided, even if it was eligible in the initial years.

The question referred to the Full Bench is answered as above. Registry shall list the appeals before appropriate Bench as per roster."

6. Being aggrieved by the Full Bench judgment, the Appellant assessees are now before us.

7. Shri Shyam Divan, learned Senior Advocate leading the charge on behalf of the assessees, has argued that the advent of section 80P(4) of the IT Act has not led to any change insofar as the Appellant assessees are concerned.He read to us in copious detail the provisions of section 80P, various provisions contained in the Banking Regulation Act, 1949 and the various provisions of the Kerala Act andrules made thereunder, together with the bye-laws of some of the assessees before us.His main argument, based upon the language of section 80P(1) and (2), is that section 80P is a beneficial provision which is meant to further the co-operative movement in India. For this purpose, certain income of a co-operative society, once it is registered under a State Act, becomes deductible from its gross total income.According to him, the moment a co-operative society that is registered as such is engaged in providing credit facilities to its members, the inquiry of an assessing officer stops there. He argued thatthe Full Bench was wholly incorrect in adding credit facilities related to agriculture, as no such thing is contained in section 80P(2)(a)(i), as contrasted with sections 80P(2)(a)(iii) to (v) of the IT Act. He therefore argued that the moment a co-operative society is registered under the said Act, whatever be its classification, so long as it provides credit facilities to its members – which need not be credit facilities related to agriculture –it is entitled to a deduction contained in section 80P(2)(a)(i) of the IT Act. A distinction must be drawn, therefore, between eligibility for deduction, and whether the whole of the amounts of profits and gains of business attributable to any one or more such activities under the sub-section is to be given. He argued, stating that if credit facilities were given to non-members, for example, suchcredit facility would not be attributable to the activity of providing credit facilities to members and would, therefore, not be entitled to deduction under section 80P. He also brought to our notice the other provisions in section 80P, such as in section 80P(2)(b), where the Society must be a “primary” society engaged in supplying milk, etc. before it can claim any deduction, which is absent in section 80P(2)(a)(i). He then argued, placing reliance upon the speech of the Finance Minister dated 28.02.2006 moving the amendment to section 80P by introducing sub-section (4) thereof, that the object of the amendment was to remove co-

operative banks from section 80P(1) and (2) as such banks, like any other commercial bank, are lending amounts to members of the general public and that, therefore, merely by being co-operative banks, should not be entitled to avail of the deductions given under section 80P. According to him, since none of the assessees are co-operative banks licenced by the Reserve Bank of India ("**RBI**") to carry on banking business, section 80P(4) has no application. He argued that any inquiry into whether the assessee is a primary agricultural credit society so as to be outside section 80P(4) should not, in any manner, cut down the beneficial provision contained in section 80P(1) and (2), as section 80P(4) is in the nature of a proviso which cannot cut down the main enacting part.In any case, he argued that once a registration certificate stating that the assessee is a primary agricultural credit society is given by the Registrar under the Kerala Act, then short of such certificate being cancelled under the Kerala Act and rules thereunder, the assessing officer, who is an authority for purposes of collection of revenue, cannot possibly go into whether, in substance, the society continues to be a primary agricultural credit society.He relied upon various judgments of this Court to buttress his submissions.He also relied upon a circular, being Circular 14/2006 dated 28.12.2006 containing explanatory notes to the Finance Act, 2006, and the letter of the Central Board of Direct Taxation ("**CBDT**")dated 09.05.2008, both of which made it clear that if a co-operative society cannot be said to be a co-operative bank, then the provisions of section 80P(4) would have no application.

8. Shri Diwan's second broad submission was that the Full Bench of the Kerala High Court completely misread this Court's judgment in **Citizen Cooperative Society Ltd.** (supra). He contended that if the judgment is seen closely, all the assessees' contentions in law were answered in their favour. However, on facts, it was held that since the co-operative society in that case carried on business illegally i.e. by giving loans to nominal members who had no place under the statute under which it was registered, and was also giving loans to the members of the general public, it could not be said to be a co-operative society at all, as a result of which the findings of fact of all the authorities below were not interfered with by the Supreme

Court. There was no argument, neither was there any finding by the Court in that case, that the assessing officer is entitled to go behind a certificate given under a particular statute. Indeed, he pointed out that both under the Banking Regulation Act, 1949 and the Kerala Act, if any dispute arose as to classification of a society as being a primary agricultural credit society versus being a co-operative bank, it is the RBI alone who is to decide such dispute under the Banking Regulation Act, 1949, and the Registrar, Co-operative Societies, who is to decide on classification under Rule 15 of the Kerala Co-operative Societies Rules 1969. Thus, according to him, the judgment in **Citizen Cooperative Society Ltd.** (supra) is directly in his client's favour on the applicability of section 80P(4), which has been completely missed by the Full Bench.

9. Shri Arvind Datar, learned Senior Advocate appearing on behalf of some of the assessees, supported the submissions of Shri Divan, and argued that all co-operative societies, once they are registered under a State Act, are entitled to deductions under section 80P. The extent of the deduction would depend upon attributability and not eligibility for deduction. Once it is found, having regard to letters issued by the RBI in the present case stating that the Appellants cannot be classified as co-operative banks, and once it is found that licences have not been given to function as co-operative banks, all these societies qualify under section 80P(2)(a)(i) for deductions to be granted, section 80P(4) having no application as they are not and cannot be stated to be co-operative banks.

10. Shri Balbir Singh, learned Additional Solicitor General appearing on behalf of the Revenue, refuted all the arguments made by the learned Senior Advocates for the assessees.According to him, the Full Bench was wholly correct in stating that a mere certificate of registration as a primary agricultural credit society would not avail.For the assessment year in question, the assessing officer has to be satisfied that the assessee is "engaged in" activities as a primary agricultural credit society i.e. in giving loans for agricultural and allied purposes to its members. He read from some of the assessing officers' orders the fact that loans given for agricultural purposes by the aforesaid societies were negligible, the main business being that of banking, as such

loans were given for purposes other than agricultural credit. He also read copiously from the various Acts, rules and bye-laws to buttress his submission that in actual fact, since the Appellants were no longer doing business as primary agricultural credit societies, they would be disentitled to any deduction under Section 80P after the advent of Section 80P(4). According to him, the classification of a co-operative society under the State Act, which is expressly referred to in Section 2(19) of the IT Act,is of primary importance, and once classified as a primary agricultural credit society, it is only if activities relatable to agriculture are carried out that eligibility for deduction would arise in the first place undersection 80P(1) and (2). The whole object of section 80P would be defeated if the Division Bench in **Chirakkal** (supra) was held to be correct in law, as then, despite being engaged in activities other than agricultural credit, a society undeserving of any deduction would still get such deduction contrary to what was sought to be achieved by section 80P(4) of the IT Act. According to him, the Supreme Court judgment in **Citizen Cooperative Society Ltd.** (supra) was correctly read by the Full Bench, as permitting an assessing officer to get to the real facts of a case in order to conclude as to whether activities of a primary agricultural credit society were, in fact, being carried out in the assessment year in question. For this purpose, he referred to several provisions of the IT Act, which give very vast powers of investigation into the facts of any given case and, in particular, relied upon section 133(6) of the IT Act. He also relied upon several judgments of this Court which would show that mere registration as a primary agricultural credit society is not enough, the expression “engaged in” meaning that there must be a continuing obligation on such society to carry out its main objects from year to year, and if does not do so, it would be disentitled to any deduction under Section 80P(4). He further argued, relying upon judgments of this Court, that the burden is on the assessee to establish by facts, in every assessment year, that it is entitled to the deduction under Section 80P; and if it cannot adduce facts to show that it is in fact carrying on its business as a primary agricultural credit society in the assessment year in question, it would not discharge such burden, and would, therefore, be unable to avail of any deduction under Section 80P. He also relied upon certain RBI Press releases of the

year 2017 cautioning the public not to deal with such societies who, though unlicenced, are in fact carrying on banking business.

11. Having heard learned counsel for the assessees as well as for the Revenue, it is first important to set out sections 2(19) and 80P of the Income Tax Act, which read as follows:

"**2.** In this Act, unlessthe context otherwise requires,-

***xxx xxx xxx***

(19). "co-operative society" means a co-operative society registered under the Co-operative Societies Act, 1912 (2 of 1912), or under any law for the time being in force in any State for the registration of co-operative societies."

"**80P. Deduction in respect of income of co-operative societies.—** (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, 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

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

(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,

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

Provided that in the case of a co-operative society falling under sub-clause (vi), or sub-clause (vii), the rules and bye-laws of the society restrict the voting rights to the following classes of its members, namely:—

(1) the individuals who contribute their labour or, as the case may be, carry on the fishing or allied activities;

(2) the co-operative credit societies which provide financial assistance to the society;

(3) the State Government;

(b) in the case of a co-operative society, being a primary society engaged in supplying milk, oilseeds, fruits or vegetables raised or grown by its members to—

(i) a federal co-operative society, being a society engaged in the business of supplying milk, oilseeds, fruits, or vegetables, as the case may be; or

(ii) the Government or a local authority; or

(iii) a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956), or a corporation established by or under a Central, State or Provincial Act (being a company or corporation engaged in supplying milk, oilseeds, fruits or vegetables, as the case may be, to the public),

the whole of the amount of profits and gains of such business;

(c) in the case of a co-operative society engaged in activities other than those specified in clause (a) or clause (b) (either independently of, or in addition to, all or any of the activities so

specified), so much of its profits and gains attributable to such activities as does not exceed,—

(i) where such co-operative society is a consumers' co operative society, one hundred thousand rupees; and

(ii) in any other case, fifty thousand rupees.

*Explanation.*—In this clause, "consumers' co-operative society" means a society for the benefit of the consumers;

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

(e) in respect of any income derived by the co-operative society from the letting of go downs or warehouses for storage, processing or facilitating the marketing of commodities, the whole of such income;

(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 twenty thousand rupees, the amount of any income by way of interest on securities or any income from house property chargeable under section 22.

*Explanation.*—For the purposes of this section, an "urban consumers' co-operative society" means a society for the benefit of the consumers within the limits of a municipal corporation, municipality, municipal committee, notified area committee, town area or cantonment.

(3) In a case where the assessee is entitled also to the deduction under section 80HH or section 80HHA or section 80HHB or section 80HHC or section 80HHD or section 80-I or section 80-IA, the deduction under sub-section (1) of this section, in relation to the sums specified in clause (a) or clause (b) or clause (c) of sub-section (2), shall be allowed with reference to the income, if any, as referred to in those clauses included in the gross total income as reduced by the deductions under section 80HH, section HHA, section 80HHB, section HHC, section 80HHD, section 80-I, section 80-IA, section 80J and section 80JJ.

(4) The provisions of this section shall not apply in relation to any co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank.

*Explanation.*—For the purposes of this sub-section,—

(a) "co-operative bank" and "primary agricultural credit society" shall have the meanings respectively assigned to them in Part V of the Banking Regulation Act, 1949 (10 of 1949);

(b) "primary co-operative agricultural and rural development bank" means a society having its area of operation confined to a taluk and the principal object of which is to provide for long-term credit for agricultural and rural development activities."

12. The relevant provisions of the Banking Regulation Act, 1949, insofar asit has bearing on the facts of these cases are also set out as follows:

"**3. Act to apply to co-operative societies in certain cases.**—Nothing in this Act shall apply to—

(a) a primary agricultural credit society;

(b) a co-operative land mortgage bank; and

(c) any other co-operative society, except in the manner and to the extent specified in Part V."

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

(a) throughout this Act, unless the context otherwise requires,—

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

(ii) references to "commencement of this Act" shall be construed as references to commencement of the Banking Laws (Application to Co-operative Societies) Act, 1965 (23 of 1965);

(b) in section 2, the words and figures "the Companies Act, 1956 (1 of 1956), and" shall be omitted;

(c) in section 5,—

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

(cci) "co-operative bank" means a state co-operative bank, a central co-operative bank and a primary co-operative bank;

(ccii) "co-operative credit society" means a co-operative society, the primary object of which is to provide financial accommodation to its members and includes a co-operative land mortgage bank;

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

(cciii) "director", in relation to a co-operative society, includes a member of any committee or body for the time being vested with the management of the affairs of that society;

(cciiia) "multi-State co-operative bank" means a multi-State co-operative society which is a primary co-operative bank;

(cciiib) "multi-State co-operative society" means a multi-State co-operative society registered as such under any Central Act for the time being in force relating to the multi State co-operative societies but does not include a national co-operative society and a federal co-operative;

(cciv) "primary agricultural credit society" means a co-operative society,—

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

(2) the bye-laws of which do not permit admission of any other co-operative society as a member:

Provided that this sub-clause shall not apply to the admission of a co-operative bank as a member by reason of such co-operative bank subscribing to the share capital of such co-operative society out of funds provided by the State Government for the purpose;

(ccv) "primary co-operative bank" means a co-operative society, other than a primary agricultural credit society,—

(1) the primary object or principal business of which is the transaction of banking business;

(2) the paid-up share capital and reserves of which are not less than one lakh of rupees; and

(3) 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;

(ccvi) "primary credit society" means a co-operative society, other than a primary agricultural credit society,—

(1) the primary object or principal business of which is the transaction of banking business;

(2) the paid-up share capital and reserves of which are less than one lakh of rupees; and

(3) 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.

*Explanation.*—If any dispute arises as to the primary object or principal business of any co-operative society referred to in clauses (cciv), (ccv) and (ccvi), a determination thereof by the Reserve Bank shall be final;

(ccvii) "central co-operative bank", "primary rural credit society" and "state co-operative bank" shall have the meanings respectively assigned to them in the National Bank for Agriculture and Rural Development Act, 1981 (61 of 1981);"

13. So far as the Kerala Act and the rules framed thereunderare concerned, the following provisions are relevant:

**Act**

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

(f) "**Co-operative Society**" or "**society**" means a Co-operative society registered or deemed to be registered under this Act;

***xxx xxx xxx***

(l) "**member**" means a person joining in the application for the registration of a Co-operative society or a person admitted to membership after such registration in accordance with this Act, the rules and the bye-laws and includes a nominal or associate member;

***xxx xxx xxx***

(m) "**nominal or associate member**" means a member who possess only such privilege and rights of a member who is subject only to such liabilities of a member as may be specified in the bye-laws;

***xxx xxx xxx***

(oaa) "**Primacy Agricultural Credit Society**" means a Service Co-operative Society, a Service Co-operative Bank, a Farmers Service Co-operative Bank and a Rural Bank, the principal object of which is to undertake agricultural credit activities and to provide loans and advances for agricultural purposes, the rate of interest on such loans and advances shall be the rate fixed by the Registrar and having its area of operation confined to a Village, Panchayat or a Municipality;

Provided that the restriction regarding the area of operation shall not apply to Societies or Banks in existence at the commencement of the Kerala Co-operative Societies (Amendment) Act, 1999 (1 of 2000).

Provided further that if the above principal object is not fulfilled, such societies shall lose all characteristics of a Primary Agricultural Credit Society as specified in the Act, Rules and Bye-laws except the existing staff strength.

***xxx xxx xxx***

(ob) "**Primary Credit Society**" means a society other than an apex or central society which has as its principal object the raising of funds to be lent to its members;

(oc) "**Primary Co-operative Agricultural and Rural Development Bank**" means a society having its area of operation confined to a Taluk and the principal object of which is to provide for long term credit for agricultural and rural development activities;

Provided that no Primary Co-operative Agricultural and Rural Development Bank shall be registered without the bifurcation of assets and liabilities of the existing societies having the area of operation in more than one Taluk and the societies shall restrict their operation in the area of the respective society on such bifurcation."

"**3. Registrar.**- (1)The Government may appoint a person to be the Registrar of Co-operative Societies for the State.

(2)The Government may by general or special order confer on any person all or any of the powers of the Registrar under this Act.

**4. Societies which may be registered.**- Subject to the provisions of this Act, a co-operative society which has as its object the promotion of the economic interests of its members or of the interests of the public in accordance with co-operative principles, or a society established with the object of facilitating the operations of such a society, may be registered under this Act:

Provided that no co-operative society shall be registered if it is likely to be economically unsound, or the registration of which have an adverse effect on development of co-operative movement.

***xxx xxx xxx***

**7. Registration.**- (1)If the Registrar is satisfied within a period of ninety days from the date of the application —

(a) that the application complies with the provisions of this Act and the rules;

(b) that the objects of the proposed society are in accordance with section 4;

(c) that the area of operation of the proposed society and the area of operation of another society of similar type do not overlap;

(d) that the proposed bye-laws are not contrary to the provisions of this Act and the rules; and

(e) that the proposed society complies with the requirements of sound business, he may register the society and its bye laws within a period of ninety days from the date of receipt of the application.

(2) Where the Registrar refuses to register a society, he shall communicate the order of refusal together with the reasons therefore within seven days of such order to such of the applicants as may be prescribed.

(3) An application for registration of a society shall be disposed of by the Registrar within ninety days from the date of receipt of the application.

(4) Where an application for registration of a society is not disposed of within the time specified in sub-section (3), the applicant may make a representation,—

(a) before the Registrar, if the application for registration is made to a person on whom the powers of the Registrar is conferred under subsection (2) of section 3; or

(b) before the Government, if the application for registration is made before Registrar,

and the Registrar or the Government, as the case may be, shall, within sixty days from the date of receipt of such representation, issue directions to the authority concerned to take appropriate decision on the application for registration and the authority concerned shall comply with such directions.

**8.Registration certificate.-** (1)Where a co-operative society is registered under this Act, the Registrar shall issue a certificate of registration signed and sealed by him, which shall be conclusive evidence that the said society is duly registered under this Act.

(2)Notwithstanding anything contained in subsection (1), where the Registrar is satisfied that the original registration certificate is irrecoverably lost and the duplicate certificate could not be issued as the files or records regarding the registration of the co-operative society was lost, after registration, the Registrar shall issue a certificate stating the registration number and date of registration of a co-operative society, on the basis of the details available in the audit certificate and the records available with the Registrar, signed and sealed by him, which shall be conclusive proof that the said society is duly registered and it shall be treated as a certificate of registration."

**Rules**

"**15. Classification of societies according to types.**- After the registration of a society the Registrar shall classify the society into one or other of the following types according to the principal object provided in the bye-laws:

| **TYPES** | **EXAMPLES** |
|---|---|
| **Credit Societies** | |
| **Short term/Medium term** | |
| (1)Apex | Kerala State Co-operative Bank Limited |
| (2)Central | District Co-operative Banks |
| (3)Primary | (a) Primary Agricultural Credit Societies, Service Cooperative Banks, Regional Co-operative Banks, Rural Banks, Farmers Service Co-operative Banks, Urban Co-operative Societies, Agricultural Improvement Societies<br>(b) Employees Credit Societies |

***xxx xxx xxx***

*Note:-* (i) If any question arises as to the classification of a society, it shall be referred to the Registrar for decision and his decision thereon shall be final.

(ii) If the Registrar alters the classification of a society from one class of society to another or from the sub class thereof to another, he shall issue to the society and the financing Bank a copy of his order and the society shall fall under that category with effect from the date of that order."

14. The bye-laws of some of the Societies before us were also referred to in the course of arguments. A sample set of the bye-laws of Mavilayi Service Co-operative Bank Ltd., in particular bye-law 5, which refers to the objects of the aforesaid Society, provides as follows:

"**Byelaw 5.**

**Objects.**

1. The main aim of this Primary Agricultural Credit Society is to providefinancial assistance in the form of loans to members for agriculturalpurposes, marketing of agricultural produce and promotion ofagriculture.
2. Act as an agent for supply of seeds, fertilizers, pesticides, implementsfor agricultural purposes and an agent for procurement of agriculturalproduce.
3. Provide loans for necessities of priority sector.
4. Provide loans for the development of agriculture, trade, small scaleIndustries etc.
5. Provide loans for agriculture related purposes.
6. Procurement and supply of seeds, fertilizers, pesticides, implements.
7. Facilitate the sale of fertilizers and industrial products either through marketing societies or directly for the benefit members.
8. To construct or let out godowns or warehouse buildings for keeping agricultural products of members.

9. Provide assistance to members for producing new types seedlings.

10. Purchase and maintenance of newly innovated machines and Implements like power tillers, tractors etc for letting out to members orothers.

11. Purchase and distribution of better breeds of cattle, goats, poultry etc to members

12. Formation and functioning of Farmers Club for farmers.

13. Provide short-term, medium-term, long-term loans and loans approvedas per special scheme of Registrar, NABARD or such agencies tomembers of society.

14. To promote the habit of thrift, self-sufficiency, mutual help etc. among members and formulation and implementation of schemes relating toit. Mobilisation of various types of deposits from members.

15. Provide financial and technical help for self-employed to do the business profitably.

16. Perform all the banking operations as per the rules prevailing from time to time.

17. To construct or hire and receive rent in advance for any building andmaterial alteration for the smooth functioning of bank. Purchase of assets with the prior approval of Registrar.

18. To let out own buildings of bank to others.

19. Act as an agent for procurement and supply of essential articles to the public at reasonable prices, opening of fair shops and consumer storestrading of articles directed by the Registrar from time to time.

20. Opening of medical stores for supply of essential medicines at reasonable prices to the public.

21. Running of showrooms for supply of home appliances, furnitures, construction materials, textiles etc. at reasonable prices to members.

22. Act as an agent in collection of premium of LIC, rent of electricity board, telecom and other public sector undertakings.

23. To associate more people to the cooperative institutions by organising cooperative education and campaigns.

24. To borrow funds from District Cooperative Banks, Govt and other institutions approved by Registrar.

25. To render services like collection of cheques, bills or drafts or deposit receipts

26. To discount cheques, bills or drafts as per the conditions laid down by Registrar and to lend for a fixed period.

27. To create and implement welfare funds for members and employees.To collect and deposit normal subscription amount for members and employees and an amount allocated by General Body from annual profits each year to that fund. Approval of Registrar for implementing the rule is mandatory.

28. To provide Overdraft facility, vehicle loan, loan for purchase of home appliances or furniture or for construction of houses, repair of houses,or for purchase of property. Sub rule should be created and approval of Registrar is mandatory for these purposes.

29. To open branches within area of operation of bank with prior approval of Registrar for growth and expansion.

30. To provide safe deposit locker for customers.

31. To implement new facilities for the convenience of staff, customers and members.

32. To render agency services like supply of construction material, LPG, other petroleum products.

33. Any other activities instituted by Central Govt, State Govt or SCB or DCB or other concerns to be carried out in accordance with the Act.

34. To undertake and carry out developmental activities formulated by local bodies and self-help groups to provide loans for them.

35. To let out auditoriums.

36. To provide loans for members for constructing houses or purchase, renovate houses or for acquiring land.

37. To formulate and implement new schemes like aquariums, children's park, resorts etc and to take new initiatives to attract tourist.

38. To construct godowns for various purposes of banks and collection of agricultural products.

39. To accept financial assistance for Central Government, State Government, NCDC and other governmental or semi-governmental agencies.

40. To establish a library in the society.

41. To set up small scale industries unit.

42. To be a partner or leader in the consortium scheme or other schemes suggested by Central or State Government or Co-Operative Department or to formulate complete other schemes with their approval.

43. To provide micro finance loans like Linkage loans, cash credits and other short term loans like Muttathe Mulla etc to self-help groups and Kudumbasrees."

15. It is important to note that though the main object of the primary agricultural society in question is to provide financial assistance in the form of loans to its members for agricultural and related purposes, yet, some of the objects go well beyond, and include performing of banking operations "as per rules prevailing from time to time", opening of medical stores, running of showrooms and providing loans to members for purposes other than agriculture.

16. At this juncture, it is important to refer to some of the decisions of this Court on the provisions contained in section 80P. This Court began on the wrong foot in **Assam Cooperative Apex Marketing Society Ltd. Assam v. Additional Commissioner of Income Tax, Assam** (1994) Supp. (2) SCC 96. In this case, the question before the Court was as to whether the Assam Cooperative Apex Marketing Society Ltd. was entitled to exemption under section 81(i)(c) of the IT Act, as it then stood, in respect of income arising out of procurement of paddy and other agricultural produce. Section 81 is set out in paragraph 6 of the judgment as follows:

"81. *Income of cooperative societies.*— Income tax shall not be payable by a cooperative society —

(i) in respect of the profits and gains of business carried on by it, if it is —

*(a)* a society engaged in carrying on the business of banking or providing credit facilities to its members; or

*(b)* a society engaged in a cottage industry; or

*(c)* a society engaged in the marketing of the agricultural produce of its members; or

*(d)* a society engaged in the purchase of agricultural implements, seeds, livestock or other articles intended for agriculture for the purpose of supplying them to its members; or

*(e)* a society engaged in the processing without the aid of power of the agricultural produce of its members; or

*(f)* a primary society engaged in supplying milk raised by its members to a federal milk cooperative society:

Provided that, in the case of a cooperative society which is also engaged in activities other than those mentioned in this clause, nothing contained herein shall apply to that part of its profits and gains as is attributable to such activities and as exceeds fifteen thousand rupees;"

17. The expression "engaged in the marketing of the agricultural produce of its members" came up for decision before the Court. The Court held that the object of this provision is that the agricultural produce that is produced by members alone would be entitled to such deduction. It further held thatthis object cannot extend to traders dealing in agricultural produce, so that if agricultural produce is bought from other agriculturists by members but not produced by such member itself, such produce would not qualify for deduction.

18. Shortly after this judgment, a three-Judge Bench in **Kerala State Cooperative Marketing Federation Ltd. and Ors. v. CIT** (1998) 5 SCC 48 overruled the aforesaid judgment. The question which

arose before the Court in this case was the identical question that arose in **Assam Cooperative Apex Marketing Society Ltd. Assam** (supra), the avatar of the provision, however, having changed to section 80P(2)(a)(iii) of the IT Act. This Court, after setting out the classes of societies covered by section 80P, then held:

"**7.** We may notice that the provision is introduced with a view to encouraging and promoting growth of cooperative sector in the economic life of the country and in pursuance of the declared policy of the Government. The correct way of reading the different heads of exemption enumerated in the section would be to treat each as a separate and distinct head of exemption. Whenever a question arises as to whether any particular category of an income of a cooperative society is exempt from tax what has to be seen is whether income fell within any of the several heads of exemption. If it fell within any one head of exemption, it would be free from tax notwithstanding that the conditions of another head of exemption are not satisfied and such income is not free from tax under that head of exemption. The expression "marketing" is an expression of wide import. It involves exchange functions such as buying and selling, physical functions such as storage, transportation, processing and other commercial activities such as standardisation, financing, marketing intelligence etc. Such activities can be carried on by an apex society rather than a primary society.

**8.** So long as agricultural produce handled by the assessee belonged to its members it was entitled to exemption in respect of the profits derived from the marketing of the same. Whether the members came by the produce because of their own agricultural activities or whether they acquired it by purchasing it from cultivators was of no consequence for the purpose of determining whether the assessee was entitled to the exemption. The only condition required for qualifying the assessee's income for exemption was that the assessee's business must be that of marketing, the marketing must be of agricultural produce and that agricultural produce must have belonged to the members of the assessee-Society before they came up for marketing by it, whether on its own account or on account of the members themselves. Thus there is no scope to limit the

exemption. The cooperative societies are engaged in marketing of an agricultural produce both of its members as well as of non-members. In the latter case, there is no difference between a cooperative society or any other business organisation and so will not be entitled to exemption. The exemption is intended to cover all cases where a cooperative society is engaged in marketing agricultural produce of its members. Section 80-P(2)(*a*)(*iii*) does not in effect limit the scope of the exemption to agricultural produce raised by members alone but includes agricultural produce raised by others but belonging to cooperative societies. The contrast in the said provision is with reference to the marketing of agricultural produce of the members of the society or that purchased from non-members.

**9.** A reading of the provisions of Section 80-P of the Act would indicate the manner in which the exemptions under the said provisions are sought to be extended. Whenever the legislature wanted to restrict the exemption to a primary cooperative society it was so made clear as is evident from clause (*f*) referred to above with reference to a milk cooperative society that a primary society engaged in supplying milk is entitled to such exemption while denying the same to a federal milk cooperative society, but no such distinction is made with reference to a banking business which provides trade facilities to its members. It is clear, therefore, that the legislature did not intend to limit the scope of exemption only to those which are primary societies. If a small agricultural cooperative society does not have any marketing facilities it can certainly become a member of an apex society which may market the produce of its members. It was submitted on behalf of the Department that the member societies themselves do not raise the agricultural produce. The societies only market the produce raised by their members and do not themselves raise agricultural produce. The language adopted in Section 80-P(2)(*a*)(*iii*) with which we are concerned will admit the interpretation that the society engaged in marketing of agricultural produce of its members as agricultural produce "belonging to" its members which is not necessarily raised by such member. Thus, when the provisions of Section 80-P of the Act admit of a wider exemption there is no reason to cut down the scope of the provision as indicated in *Assam Coop. Apex Marketing Society case* [1994 Supp (2) SCC 96].

19. It was therefore held that the expression "agricultural produce of its members" would really mean agricultural produce belonging to its members, which would include agricultural produce purchased by members from other agriculturists. Thus, the Court declared:

"**17.** The attention of this Court does not seem to have been drawn to the aforesaid decisions while deciding *Assam Coop. Society case* [1994 Supp (2) SCC 96]. With respect, we, therefore, hold that the view taken therein requires reconsideration as stated earlier by us. In the result, the order of the Kerala High Court following the decision of this Court in *Assam Coop. Society* is reversed. We hold that the society engaged in the marketing of agricultural produce of its members would mean not only such societies which deal with the produce raised by the members who are individuals or societies which are members thereof who may have purchased such goods from the agriculturists. Thus, we allow the civil appeal by setting aside the order made by the High Court and answering the question referred to us in the affirmative in favour of the assessee and against the Revenue. There shall be no order as to costs."

20. We now come to the judgment of this Court in **Citizen Cooperative Society Ltd.** (supra). This judgment was concerned with an assessee who was established initially as a mutually aided cooperative credit society, having been registered under section 5 of the Andhra Pradesh Mutually Aided Cooperative Societies Act, 1995. As operations of the assessee began to spread over States outside the State of Andhra Pradesh, the assessee got registered under the Multi-State Cooperative Societies Act, 2002 as well. The question that the Court posed to itself was as to whether the appellant was barred from claiming deduction in view of Section 80P(4) of the IT Act – see paragraph 5. After setting out the findings of fact in that case, and the income tax authorities concurrent holding that the society is carrying on banking business and for all practical purposes acts like a co-operative bank, this Court then held as follows:

"**18.** We may mention at the outset that there cannot be any dispute to the proposition that Section 80-P of the Act is a benevolent provision which is enacted by Parliament in order to encourage and promote

growth of cooperative sector in the economic life of the country. It was done pursuant to the declared policy of the Government. Therefore, such a provision has to be read liberally, reasonably and in favour of the assessee (see *Bajaj Tempo Ltd.* v. *CIT* [(1992) 3 SCC 78]). It is also trite that such a provision has to be construed as to effectuate the object of the legislature and not to defeat it (see *CIT* v. *Mahindra and Mahindra Ltd.* [(1983) 4 SCC 392]). Therefore, it hardly needs to be emphasised that all those cooperative societies which fall within the purview of Section 80-P of the Act are entitled to deduction in respect of any income referred to in sub-section (2) thereof. Clause (*a*) of sub-section (2) gives exemption of whole of the amount of profits and gains of business attributable to any one or more of such activities which are mentioned in sub-section (2).

**19.** Since we are concerned here with sub-clause (*i*) of clause (*a*) of sub-section (2), it recognises two kinds of cooperative societies, namely: (*i*) those carrying on the business of banking and; (*ii*) those providing credit facilities to its members.

**20.** In *Kerala State Coop. Mktg. Federation Ltd.* v. *CIT* [(1998) 5 SCC 48], this Court, while dealing with classes of societies covered by Section 80-P of the Act, held as follows:

"*6*. The classes of societies covered by Section 80-P of the Act are as follows:

(*a*) engaged in business of banking and providing credit facilities to its members;

***

*7*. We may notice that the provision is introduced with a view to encouraging and promoting growth of cooperative sector in the economic life of the country and in pursuance of the declared policy of the Government. The correct way of reading the different heads of exemption enumerated in the section would be to treat each as a separate and distinct head of exemption. Whenever a question arises as to whether any particular category of an income of a cooperative society is exempt from tax what has to be seen is whether income fell within any of the several heads of exemption. If it fell within any one head of exemption, it would be free from tax notwithstanding

that the conditions of another head of exemption are not satisfied and such income is not free from tax under that head of exemption."

**21.** In *CIT* v. *Punjab State Coop. Bank Ltd.* [2008 SCC OnLine P&H 2042], while dealing with an identical issue, the High Court of Punjab and Haryana held as follows:

"*8*. The provisions of Section 80-P were introduced with a view to encouraging and promoting the growth of the cooperative sector in the economic life of the country and in pursuance of the declared policy of the Government. The different heads of exemption enumerated in the section are separate and distinct heads of exemption and are to be treated as such. Whenever a question arises as to whether any particular category of an income of a cooperative society is exempt from tax, then it has to be seen whether such income fell within any of the several heads of exemption. If it fell within any one head of exemption…It means that a cooperative society engaged in carrying on the business of banking and a cooperative society providing credit facilities to its members will be entitled for exemption under this sub-clause. The carrying on the business of banking by a cooperative society or providing credit facilities to its members are two different types of activities which are covered under this sub-clause.

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*13*. So, in our view, if the income of a society is falling within any one head of exemption, it has to be exempted from tax notwithstanding that the condition of other heads of exemption are not satisfied. A reading of the provisions of Section 80-P of the Act would indicate the manner in which the exemption under the said provisions is sought to be extended. Whenever the legislature wanted to restrict the exemption to a primary cooperative society, it was so made clear as is evident from clause (*f*) with reference to a milk cooperative society that a primary society engaged in supplying milk is entitled to such exemption while denying the same to a federal milk cooperative society."

The aforesaid judgment of the High Court correctly analyses the provisions of Section 80-P of the Act and it is in tune with the judgment of this Court in *Kerala State Coop. Mktg. Federation Ltd.* [(1998) 5 SCC 48]

**22.** With the insertion of sub-section (4) by the Finance Act, 2006, which is in the nature of a proviso to the aforesaid provision, it is made clear that such a deduction shall not be admissible to a cooperative bank. However, if it is a primary agricultural credit society or a primary cooperative agricultural and rural development bank, the deduction would still be provided. Thus, cooperative banks are now specifically excluded from the ambit of Section 80-P of the Act.

**23.** Undoubtedly, if one has to go by the aforesaid definition of "cooperative bank", the appellant does not get covered thereby. It is also a matter of common knowledge that in order to do the business of a cooperative bank, it is imperative to have a licence from Reserve Bank of India, which the appellant does not possess. Not only this, as noticed above, Reserve Bank of India has itself clarified that the business of the appellant does not amount to that of a cooperative bank. The appellant, therefore, would not come within the mischief of sub-section (4) of Section 80-P.

**24.** So far so good. However, it is significant to point out that the main reason for disentitling the appellant from getting the deduction provided under Section 80-P of the Act is not sub-section (4) thereof. What has been noticed by the assessing officer, after discussing in detail the activities of the appellant, is that the activities of the appellant are in violation of the provisions of MACSA under which it is formed. It is pointed out by the assessing officer that the assessee is catering to two distinct categories of people. The first category is that of resident members or ordinary members. There may not be any difficulty as far as this category is concerned. However, the assessee had carved out another category of "nominal members". These 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 utilised 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 quite distinct. In reality, such activity of the appellant is that of finance business and cannot be termed as cooperative 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. 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 Cooperative Societies Act. Moreover, it is a cooperative credit society which is not entitled to deduction under Section 80-P(2)(*a*)(*i*) of the Act.

**25.** It is in this background, a specific finding is also rendered that the principle of mutuality is missing in the instant case. Though there is a detailed discussion in this behalf in the order of the assessing officer, our purpose would be served by taking note of the following portion of the discussion:

"As various courts have observed that 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;

*(iii)* and that there is no sharing of profit.

It is noticed that the fund invested with bank which are not member of association welfare fund, and the interest has been earned on such investment for example, ING Mutual Fund [as said by the MD vide his statement dated 20-12-2010]. [Though the bank formed the third party vis-à-vis the assessee entitled between contributor and recipient is lost in such case. The other ingredients of mutuality are also found to be missing as discussed in further paragraphs.]

In the present case both the parties to the transaction are the contributors towards surplus, however, there are no participators in the surpluses. There is no common consent of whatsoever for participators as their identity is not established. Hence, the assessee fails to satisfy the test of mutuality at the time of making the payments the number in referred as members may not be the member of the Society as such the AOP body by the Society is not covered by concept of mutuality at all."

**26.** These are the findings of fact which have remained unshaken till the stage of the High Court. Once we keep the aforesaid aspects in mind, the conclusion is obvious, namely, the appellant cannot be

treated as a cooperative society meant only for its members and providing credit facilities to its members. We are afraid such a society cannot claim the benefit of Section 80-P of the Act."

21. An analysis of this judgment would show that the question of law that was reflected in paragraph 5 of the judgment was answered in favour of the assessee.The following propositions may be culled out from the judgment:

(I) That section 80P of the IT Act is a benevolent provision, which was enacted by Parliament in order to encourage and promote the growth of the co-operative sector generally in the economic life of the country and must, therefore, be read liberally and in favour of the assessee;

(II) That once the assessee is entitled to avail of deduction, the entire amount of profits and gains of business that are attributable to any one or more activities mentioned in sub section (2) of section 80P must be given by way of deduction;

(III) That this Court in **Kerala State Cooperative Marketing Federation Ltd. and Ors.** (supra) has construed section 80P widely and liberally, holding that if a society were to avail of several heads of deduction, and if it fell within any one head of deduction, it would be free from tax notwithstanding that the conditions of another head of deduction are not satisfied;

(IV) This is for the reason that when the legislature wanted to restrict the deduction to a particular type of co-operative society, such as is evident from section 80P(2)(b) qua milk co-operative societies, the legislature expressly says so which is not the case with section 80P(2)(a)(i);

(V) That section 80P(4) is in the nature of a proviso to the main provision contained in section 80P(1) and (2).This proviso specifically excludes only co-operative banks, which are co operative societies who must possess a licence from the RBI to do banking business. Given the fact that the assessee in that case was not so licenced, the assessee would not fall within the mischief of section 80P(4).

22. However, considering that the learned Senior Advocate appearing for the Revenue argued that the concurrent findings of fact in that case were that most of the business of the assesseewas conducted illegally with nominal members, who could not be members of such society under the Andhra Pradesh Act, and considering also that,as the assessee engaged in granting loans to the general public, it could not be treated as a co-operative society meant only for its members and providing credit facilities to its members, the appeal by the assessee would fail. It is important to note that no argument was made by the counsel for the assessee in **Citizen Cooperative Society Ltd.** (supra) that the assessing officer and other authorities under the IT Act could not go behind the registration of the co-operative society in order to discover as to whether it was conducting business in accordance with its bye-laws.

23. It is settled law that it is only the ratio decidendi of a judgment that is binding as a precedent. Thus, in **B. Shama Rao v. Union Territory, Pondicherry** (1967) 2 SCR 650, the majority judgment of Shelat J., speaking for himself and other two learned Judges held:

> "It is trite to say that a decision is binding not because of its conclusion but in regard to its ratio and the principle laid down therein."
>
> (at page 657)

24. In **State of Orissa v. Sudhanshu Sekhar Misra and Ors.** (1968) 2 SCR 154, this Court held:

> "A decision is only an authority for what it actually decides. What is of the essence in a decision is its ratio and not every observation found therein nor what logically follows from the various observations made in it. On this topic this is what Earl of Halsbury L.C. said in *Quinn* v. *Leathem* [[1901] AC 495]:
>
> "Now before discussing the case of *Allen* v. *Flood*, [1898] AC 1 and what was decided therein, there are two observations of a general character which I wish to make, and one is to repeat what I have very often said before, that every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but governed

and qualified by the particular facts of the case in which such expressions are to be found. The other is that a case is only an authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may seem to follow logically from it. Such a mode of reasoning assumes that the law is necessarily a logical code, whereas every lawyer must acknowledge that the law is not always logical at all."

(at pages 162-163)

25. An illuminating discussion is to be found in the dissenting judgment of Justice A.P. Sen in **Dalbir Singh v. State of Punjab**, (1979) 3 SCR 1059. Since the dissenting judgment refers to a principle of general application, not refuted by the majority, it is worth setting out this part of the judgment as follows:

"With greatest respect, the majority decision in *Rajendra Prasad case* does not lay down any legal principle of general applicability. A decision on a question of sentence depending upon the facts and circumstances of a particular case, can never be regarded as a binding precedent, much less "law declared" within the meaning of Article 141 of the Constitution so as to bind all courts within the territory of India. According to the well-settled theory of precedents every decision contains three basic ingredients:

"(*i*) findings of material facts, direct and inferential. An inferential finding of facts is the inference which the Judge draws from the direct or perceptible facts;

(*ii*) statements of the principles of law applicable to the legal problems disclosed by the facts; and

(*iii*) judgment based on the combined effect of (*i*) and (*ii*) above."

For the purposes of the parties themselves and their privies, ingredient (*iii*) is the material element in the decision for it determines finally their rights and liabilities in relation to the subject-matter of the action. It is the judgment that estops the parties from reopening the dispute. However, for the purpose of the doctrine of precedents, ingredient (*ii*) is the vital element in the decision. This indeed is the ratio decidendi. [R.J. Walker & M.G. Walker: The English Legal System.

Butterworths, 1972, 3rd Edn., pp. 123-24] It is not everything said by a judge when giving judgment that constitutes a precedent. The only thing in a judge's decision binding a party is the principle upon which the case is decided and for this reason it is important to analyse a decision and isolate from it the ratio decidendi. In the leading case of *Qualcast (Wolverhampton) Ltd*. v. *Haynes* [LR 1959 AC 743] it was laid down that the ratio decidendi may be defined as a statement of law applied to the legal problems raised by the facts as found, upon which the decision is based. The other two elements in the decision are not precedents. The judgment is not binding (except directly on the parties themselves), nor are the findings of facts. This means that even where the direct facts of an earlier case appear to be identical to those of the case before the court, the judge is not bound to draw the same inference as drawn in the earlier case."

(at pages 1073-1074)

26. Applying the aforesaid decisions, it is clear that the ratio decidendi in **Citizen Cooperative Society Ltd.** (supra) would not depend upon the conclusion arrived at on facts in that case, the case being an authority for what it actually decides in law and not for what may seem to logically follow from it. Thus, the statement of the principles of law applicable to the legal problems disclosed by the facts alone is the binding ratio of the case, which as has been stated hereinabove, is contained in paragraphs 18 to 23 of the judgment. Paragraphs 24 to 26, being the judgment based on the combined effect of the statements of the principle of law applicable to the material facts of the case cannot be described as the ratio decidendi of the judgment. Nor can it be said that it would logically follow from the finding on facts that the assessing officer can go behind the registration of a society and arrive at a conclusion that the society in question is carrying on illegal activities. On this score alone, theFull Bench's understanding of this judgment has to be faulted and is set aside.

27. However, this does not conclude the issue in the present case. We now turn to the proper interpretation of Section 80P of the IT Act. *Firstly*, the marginal note to Section 80P which reads "Deduction in respect of income of co-operative societies" is important, in that

it indicates the general "drift" of the provision. This was so held by this Court in **K.P. Varghese v. Income Tax Officer, Ernakulam and Anr.** (1981) 4 SCC 173 as follows:

"**9.** This interpretation of sub-section (2) is strongly supported by the marginal note to Section 52 which reads "Consideration for transfer in cases of understatement". It is undoubtedly true that the marginal note to a section cannot be referred to for the purpose of construing the section but it can certainly be relied upon as indicating the drift of the section or, to use the words of Collins, M.R. in *Bushel* v. *Hammond* [(1904) 2 KB 563] to show what the section is dealing with. It cannot control the interpretation of the words of a section particularly when the language of the section is clear and unambiguous but, being part of the statute, it prima facie furnishes some clue as to the meaning and purpose of the section (vide *Bengal Immunity Company Limited* v. *State of Bihar* [(1955) 2 SCR 603])."

28. *Secondly*, for purposes of eligibility for deduction, the assessee must be a "co-operative society". A co-operative society is defined in Section 2(19) of the IT Act, as being a co-operative society registered either 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.This, therefore, refers only to the factum of a co-operative society being registered under the 1912 Act or under the State law. For purposes of eligibility, it is unnecessary to probe any further as to whether the co-operative society is classified as X or Y.

29. *Thirdly*, the gross total income must include income that is referred to in sub-section (2).

30. *Fourthly*, sub-clause (2)(a)(i) with which we are directly concerned, then speaks of a co-operative society being "engaged in" carrying on the business of banking or providing credit facilities to its members. What is important qua sub-clause (2)(a)(i) is the fact that the co-operative society must be "engaged in" the providing credit facilities to its members. As has been rightly pointed out by the learned Additional Solicitor General, the expression "engaged in", as has been held in **Commissioner of Income Tax, Madras v. Ponni Sugars and Chemicals Ltd.** (2008) 9 SCC 337, would necessarily entail an examination of all the facts of the case. This Court in **Ponni Sugars and Chemicals Ltd.** (supra) held:

"**20.** In order to earn exemption under Section 80-P(2) a cooperative society must prove that it had engaged itself in carrying on any of the several businesses referred to in sub-section (2). In that connection, it is important to note that under sub-section (2), in the context of cooperative society, Parliament has stipulated that the society must be engaged in carrying on the business of banking or providing credit facilities to its members. Therefore, in each case, the Tribunal was required to examine the memorandum of association, the articles of association, the returns of income filed with the Department, the status of business indicated in such returns, etc. This exercise had not been undertaken at all."

31. The learned Additional Solicitor General relied upon the second proviso to section 2(oaa) of the Kerala Act, and argued that given the fact that the principal object in most, if not all, of the Appellants before us has not been fulfilled, these Appellants have lost all characteristics of being primary agricultural credit societies. In answer to this submission, learned counsel for the Appellants cited the following judgments, namely, **Assistant Commissioner of Income Tax v. A.K. Menon and Ors.** (1995) 5 SCC 200 (paragraph 4); **Titan Medical Systems (P) Ltd. v. Collector of Customs, New Delhi** (2003) 9 SCC 133 (paragraph 12); and **Vadilal Chemicals Ltd. v. State of A.P. and Ors.** (2005) 6 SCC 292 (paragraphs 20 to 23), for the proposition that it is the RBI alone under the Banking Regulation Act, 1949, and the Registrar alone under the Kerala Act who can look into questions as to whether a primary agricultural credit society is, or is not, a co-operative bank, and whether a society's classification as primary agricultural credit society ought to continue or be re-classified as a co-operative bank. Neither argument applies to the facts of these cases, given that the statutory provision involved does not require the Appellants to be primary agricultural credit societies to claim a deduction under section 80P(2)(a)(i) in the first place.

32. *Fifthly*, as has been held in **Udaipur Sahkari Upbhokta Thok Bhandar Ltd. v. CIT** (2009) 8 SCC 393 at paragraph 23, the burden is on the assessee to show, by adducing facts, that it is entitled to claim the deduction under Section 80P.Therefore, the assessing officer under the IT Act cannot be said to be going behind any

registration certificate when he engages in a fact-finding enquiry as to whether the co-operative society concerned is in fact providing credit facilities to its members. Such fact finding enquiry (see section 133(6) of the IT Act) would entail examining all relevant facts of the co-operative society in question to find out whether it is, as a matter of fact, providing credit facilities to its members, whatever be its nomenclature. Once this task is fulfilled by the assessee, by placing reliance on such facts as would show that it is engaged in providing credit facilities to its members, the assessing officer must then scrutinize the same, and arrive at a conclusion as to whether this is, in fact, so.

33. *Sixthly,* what is important to note is that, as has been held in **Kerala State Cooperative Marketing Federation Ltd. and Ors.** (supra) the expression "providing credit facilities to its members" does not necessarily mean agricultural credit alone. Section 80P being a beneficial provision must be construed with the object of furthering the co-operative movement generally, and section 80P(2)(a)(i) must be contrasted with section 80P(2)(a)(iii) to (v), which expressly speaks of agriculture.It must also further be contrasted with sub-clause (b), which speaks only of a "primary" society engaged in supplying milk etc. thereby defining which kind of society is entitled to deduction, unlike the provisions contained in section 80P(2)(a)(i). Also, the proviso to section 80P(2), when it speaks of sub-clauses (vi) and (vii), further restricts the type of society which can avail of the deductions contained in those two sub-clauses, unlike any such restrictive language in Section 80P(2)(a)(i).Once it is clear that the co-operative society in question is providing credit facilities to its members, the fact that it is providing credit facilities to non-members does not disentitle the society in question from availing of the deduction. The distinction between eligibility for deduction and attributability of amount of profits and gains to an activity is a real one. Since profits and gains from credit facilities given to non-members cannot be said to be attributable to the activity of providing credit facilities to its members, such amount cannot be deducted.

34. *Seventhly*, section 80P(1)(c) also makes it clear that section 80P is concerned with the co-operative movement generally and, therefore, the moment a co-operative society is registered under the 1912 Act,

or a State Act, and is engaged in activities which may be termed as residuary activities i.e. activities not covered by sub-clauses (a) and (b), either independently of or in addition to those activities, then profits and gains attributable to such activity are also liable to be deducted, but subject to the cap specified in sub-clause (c). The reach of sub-clause (c) is extremely wide, and would include co-operative societies engaged in any activity, completely independent of the activities mentioned in sub-clauses (a) and (b), subject to the cap of INR 50,000/- to be found in sub-clause (c)(ii). This puts paid to any argument that in order to avail of a benefit under Section 80P, a co-operative society once classified as a particular type of society, must continue to fulfil those objects alone. If such objects are only partially carried out, and the society conducts any other legitimate type of activity, such co-operative society would only be entitled to a maximum deduction of Rs.50,000/- under sub-clause (c).

35. *Eighthly*, sub-clause (d) also points in the same direction, in that interest or dividend income derived by a co-operative society from investments with other co-operative societies, are also entitled to deduct the whole of such income, the object of the provision being furtherance of the co-operative movement as a whole.

36. Coming to the provisions of section 80P(4), it is important to advert to speech of the Finance Minister dated 28.02.2006, which reflects the need for introducing section 80P(4). Shri P. Chidambaram specifically stated:

"**166.** Cooperative Banks, like any other bank, are lending institutions and should pay tax on their profits. Primary Agricultural Credit Societies (PACS) and Primary Cooperative Agricultural and Rural Development Banks (PCARDB) stand on a special footing and will continue to be exempt from tax under section 80P of the Income Tax Act. However, I propose to exclude all other cooperative banks from the scope of that section."

37. Likewise, a Circular dated 28.12.2006, containing explanatory notes on provisions contained in the Finance Act, 2006, is also important, and reads as follows:

"Withdrawal of tax benefits available to certain cooperative banks

***xxx xxx xxx***

**22.2.** The cooperative banks are functioning at par with other commercial banks, which do not enjoy any tax benefit. Therefore section 80P has been amended and a new sub-section (4) has been inserted to provide that the provisions of the said 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. The expressions 'co-operative bank', 'primary agricultural credit society' and 'primary co-operative agricultural and rural development bank' have also been defined to lend clarity to them."

38. A clarification by the CBDT,in a letter dated 09.05.2008, is also important, and states as follows:

"Subject: Clarification regarding admissibility of deduction under section 80P of the Income Tax Act, 1961.

***xxx xxx xxx***

2. In this regard, I have been directed to state that sub-section(4) of section 80P provides that deduction under the said section shall not be allowable to any co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank. For the purpose of the said sub-section, co-operative bank shall have the meaning assigned to it in part V of the Banking Regulation Act, 1949.

3. In part V of the Banking Regulation Act, "Co-operative Bank" means a State Co-operative bank, a Central Co-operative Bank and a primary Co-operative bank.

4. Thus, if the Delhi Co-op Urban T & C Society Ltd. does not fall within the meaning of "Co-operative Bank" as defined in part V of the Banking Regulation Act, 1949, subsection(4) of section 80P will not apply in this case.

5. Issued with the approval of Chairman, Central Board of Direct Taxes."

39. The above material would clearly indicate that the limited object of section 80P(4) is to exclude co-operative banks that function at par with other commercial banks i.e. which lend money to members of

the public. Thus, if the Banking Regulation Act, 1949 is now to be seen, what is clear from section 3 read with section 56 is that a primary co-operative bank cannot be a primary agricultural credit society, as such co-operative bank must be engaged in the business of banking as defined by section 5(b) of the Banking Regulation Act, 1949, which means the accepting, for the purpose of lending or investment, of deposits of money from the public. Likewise, under section 22(1)(b) of the Banking Regulation Act, 1949 as applicable to co-operative societies, no co-operative society shall carry on banking business in India, unless it is a co-operative bank and holds a licence issued in that behalf by the RBI. As opposed to this, a primary agricultural credit society is a co-operative society, the primary object of which is to provide financial accommodation to its members for agricultural purposes or for purposes connected with agricultural activities.

40. As a matter of fact, some primary agricultural credit societies applied for a banking licence to the RBI, as their bye-laws also contain as one of the objects of the Society the carrying on of the business of banking. This was turned down by the RBI in a letter dated 25.10.2013 as follows:

"**Application for license**

Please refer to your application dated April 10, 2013 requesting for a banking license. On a scrutiny of the application, we observe that you are registered as a Primary Agricultural Credit Society (PACS).

In this connection, we have advised RCS vide letter dated UBD (T) No. 401/10.00/16A/2013-14 dated October 18, 2013 that in terms of Section 3 of the Banking Regulation Act, 1949 (AACS), PACS are not entitled for obtaining a banking license. Hence, your society does not come under the purview of Reserve Bank of India. RCS will issue the necessary guidelines in this regard."

41. A number of judgments have held that a proviso cannot be used to cut down the language of the main enactment where such language is clear, or to exclude by implication what the main enactment clearly states. Thus, in **CIT, Mysore v. Indo Mercantile Bank** 1959 Supp. (2) SCR 256, this Court held:

"The proper function of a proviso is that it qualifies the generality of the main enactment by providing an exception and taking out as it were, from the main enactment, a portion which, but for the proviso would fall within the main enactment. Ordinarily it is foreign to the proper function of a proviso to read it as providing something by way of an addendum or dealing with a subject which is foreign to the main enactment. "It is a fundamental rule of construction that a proviso must be considered with relation to the principal matter to which it stands as a proviso". Therefore it is to be construed harmoniously with the main enactment. (Per Das, C.J.) in *Abdul Jabar Butt* v. *State of Jammu & Kashmir* [(1957) SCR 51, 59] . Bhagwati, J., in *Ram Narain Sons Ltd.* v. *Assistant Commissioner of Sales Tax* [(1955) 2 SCR 483, 493] said:

"It is a cardinal rule of interpretation that a proviso to a particular provision of a statute only embraces the field which is covered by the main provision. It carves out an exception to the main provision to which it has been enacted as a proviso and to no other."

Lord Macmillan in *Madras & Southern Maharatta Railway Co.* v. *Bezwada Municipality* [(1944) LR 71 IA 113, 122] laid down the sphere of a proviso as follows:

"The proper function of a proviso is to except and deal with a case which would otherwise fall within the general language of the main enactment, and its effect is confined to that case. Where, as in the present case, the language of the main enactment is clear and unambiguous, a proviso can have no repercussion on the interpretation of the main enactment, so as to exclude from it by implication what clearly falls within its express terms."

The territory of a proviso therefore is to carve out an exception to the main enactment and exclude something which otherwise would have been within the section. It has to operate in the same field and if the language of the main enactment is clear it cannot be used for the purpose of interpreting the main enactment or to exclude by implication what the enactment clearly says unless the words of the proviso are such that that is its necessary effect. (Vide also *Corporation of City of Toronto* v. *Attorney-General for Canada* [(1946) AC 32, 37]."

(at page 266-267)

42. To similar effect, a two-Judge Bench of this Court in **Tribhovandas Haribhai Tamboli v. Gujarat Revenue Tribunal** (1991) 3 SCC 442 held:

"**6.** It is a cardinal rule of interpretation that a proviso to a particular provision of a statute only embraces the field, which is covered by the main provision. It carves out an exception to the main provision to which it has been enacted by the proviso and to no other. The proper function of a proviso is to except and deal with a case which would otherwise fall within the general language of the main enactment, and its effect is to confine to that case. Where the language of the main enactment is explicit and unambiguous, the proviso can have no repercussion on the interpretation of the main enactment, so as to exclude from it, by implication what clearly falls within its express terms. The scope of the proviso, therefore, is to carve out an exception to the main enactment and it excludes something which otherwise would have been within the rule. It has to operate in the same field and if the language of the main enactment is clear, the proviso cannot be torn apart from the main enactment nor can it be used to nullify by implication what the enactment clearly says nor set at naught the real object of the main enactment, unless the words of the proviso are such that it is its necessary effect."

43. Another two-Judge Bench in **J.K. Industries Ltd. v. Chief Inspector of Factories and Boilers** (1996) 6 SCC 665 then declared:

"**33.** A proviso to a provision in a statute has several functions and while interpreting a provision of the statute, the court is required to carefully scrutinise and find out the real object of the proviso appended to that provision. It is not a proper rule of interpretation of a proviso that the enacting part or the main part of the section be construed first without reference to the proviso and if the same is found to be ambiguous only then recourse may be had to examine the proviso as has been canvassed before us. On the other hand an accepted rule of interpretation is that a section and the proviso thereto must be construed as a whole, each portion throwing light, if need be, on the rest. A proviso is normally used to remove special cases from the general enactment and provide for them specially.

**34.** A proviso qualifies the generality of the main enactment by providing an exception and taking out from the main provision, a portion, which, but for the proviso would be a part of the main provision. A proviso must, therefore, be considered in relation to the principal matter to which it stands as a proviso. A proviso should not be read as if providing something by way of *addition* to the main provision which is *foreign* to the main provision itself.

**35.** Indeed, in some cases, a proviso, may be an exception to the main provision though it cannot be inconsistent with what is expressed in the main provision and if it is so, it would be ultra vires of the main provision and struck down. As a general rule in construing an enactment containing a proviso, it is proper to construe the provisions together without making either of them redundant or otiose. Even where the enacting part is clear, it is desirable to make an effort to give meaning to the proviso with a view to justify its necessity.

**36.** While dealing with proper function of a proviso, this Court in *CIT* v. *Indo Mercantile Bank Ltd.* [AIR 1959 SC 713: (1959) 36 ITR 1] opined:

"The proper function of a proviso is that it qualifies the generality of the main enactment by providing an exception and taking out as it were, from the main enactment, a portion which, but for the proviso would fall within the main enactment. Ordinarily it is foreign to the proper function of a proviso to read it as providing something by way of an addendum or dealing with a subject which is foreign to the main enactment."

This view has held the field till date."

44. More recently, in **Union of India v. Dileep Kumar Singh** (2015) 4 SCC 421, this Court held as follows:

"**20.** Equally, it is settled law that a proviso does not travel beyond the provision to which it is a proviso. Therefore, the golden rule is to read the whole section, inclusive of the proviso, in such manner that they mutually throw light on each other and result in a harmonious construction. This is laid down in *Dwarka Prasad* v. *Dwarka Das Saraf* [(1976) 1 SCC 128], as follows:

"*18*. We may mention in fairness to counsel that the following, among other decisions, were cited at the Bar bearing on the uses of provisos in statutes: *CIT* v. *Indo-Mercantile Bank Ltd.* [AIR 1959 SC 713]; *Ram Narain Sons Ltd.* v. *CST* [AIR 1955 SC 765]; *Thompson* v. *Dibdin* [1912 AC 533], AC p. 541; *R.* v. *Dibdin* [1910 P 57 (CA)], and *Tahsildar Singh* v. *State of U.P.* [AIR 1959 SC 1012]. The law is trite. A proviso must be limited to the subject-matter of the enacting clause. It is a settled rule of construction that a proviso must prima facie be read and considered in relation to the principal matter to which it is a proviso. It is not a separate or independent enactment. 'Words are dependent on the principal enacting words to which they are tacked as a proviso. They cannot be read as divorced from their context' (*Thompson* v. *Dibdin* [1912 AC 533]). If the rule of construction is that prima facie a proviso should be limited in its operation to the subject-matter of the enacting clause, the stand we have taken is sound. To expand the enacting clause, inflated by the proviso, sins against the fundamental rule of construction that a proviso must be considered in relation to the principal matter to which it stands as a proviso. A proviso ordinarily is but a proviso, although the golden rule is to read the whole section, inclusive of the proviso, in such manner that they mutually throw light on each other and result in a harmonious construction."

45. To sum up, therefore, the ratio decidendi of **Citizen Cooperative Society Ltd.** (supra), must be given effect to. Section 80P of the IT Act, being a benevolent provision enacted by Parliament to encourage and promote the credit of the co-operative sector in general must be read liberally and reasonably, and if there is ambiguity, in favour of the assessee. A deduction that is given without any reference to any restriction or limitation cannot be restricted or limited by implication, as is sought to be done by the Revenue in the present case by adding the word "agriculture" into Section 80P(2)(a)(i) when it is not there. Further, section 80P(4) is to be read as a proviso, which proviso now specifically excludes co-operative banks which are co-operative societies engaged in banking business i.e. engaged in lending money to members of the public, which have a licence in this behalf from the RBI. Judged by this touchstone, it is clear that the impugned Full Bench judgment is wholly incorrect in its reading

of **Citizen Cooperative Society Ltd.** (supra).Clearly, therefore, once section 80P(4) is out of harm's way, all the assessees in the present case are entitled to the benefit of the deduction contained in section 80P(2)(a)(i), notwithstanding that they may also be giving loans to their members which are not related to agriculture. Also, in case it is found that there are instances of loans being given to non-members, profits attributable to such loans obviously cannot be deducted.

46. It must also be mentioned here that unlike the Andhra Act that **Citizen Cooperative Society Ltd.** (supra) considered, 'nominal members' are 'members' as defined under the Kerala Act. This Court in **U.P. Cooperative Cane Unions' Federation Ltd., Lucknow v. Commissioner of Income Tax, Lucknow-I**(1997) 11 SCC 287 referred to section 80P of the IT Act and then held:

"**8.** The expression "members" is not defined in the Act. Since a cooperative society has to be established under the provisions of the law made by the State Legislature in that regard, the expression "members" in Section 80-P(2)(*a*)(*i*) must, therefore, be construed in the context of the provisions of the law enacted by the State Legislature under which the cooperative society claiming exemption has been formed. It is, therefore, necessary to construe the expression "members" in Section 80-P(2)(*a*)(*i*) of the Act in the light of the definition of that expression as contained in Section 2(*n*) of the Cooperative Societies Act. The said provision reads as under:

"2. (*n*) 'Member' means a person who joined in the application for registration of a society or a person admitted to membership after such registration in accordance with the provisions of this Act, the rules and the bye-laws for the time being in force but a reference to 'members' anywhere in this Act in connection with the possession or exercise of any right or power or the existence or discharge of any liability or duty shall not include reference to any class of members who by reason of the provisions of this Act do not possess such right or power or have no such liability or duty;""

Considering the definition of 'member' under the Kerala Act, loans given to such nominal members would qualify for the purpose of deduction under section 80P(2)(a)(i).

47. Further, unlike the facts in **Citizen Cooperative Society Ltd.** (supra), the Kerala Act expressly permits loans to non-members under section 59(2) and (3), which reads as follows:

"**59. Restrictions on loans.**- (1) A society shall not make a loan to any person or a society other than a member:

Provided that the above restriction shall not be applicable to the Kerala State Co-operative Bank.

Provided further that, with the general or special sanction of the Registrar, a society may make loans to another society.

(2) Notwithstanding anything contained in sub-section (1), a society may make a loan to a depositor on the security of his deposit.

(3) Granting of loans to members or to non-members under sub-section (2) and recovery thereof shall be in the manner as may be specified by the Registrar."

Thus, the giving of loans by a primary agricultural credit society to non-members is not illegal, unlike the facts in **Citizen Cooperative Society Ltd. (supra).**

48. Resultantly, the impugned Full Bench judgment is set aside.The appeals and all pending applications are disposed of accordingly. These appeals are directed to be placed before appropriate benches of the Kerala High Court for disposal on merits in the light of this judgment.

*Headnotes prepared by:* Devika Gujral

*Result of the case:*
Appeals dispoed of.