



**TAXATION**

**OF**

**CO-OPERATIVE SOCIETIES**

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## STATUS AS ASSESSEE

- Registration as a Co-operative Society.
- Section 2(31) Definition of '**Person**' does not include co-operative society as a separate category of assessee.
- Hence considered as an '**AOP**'
- Return of Income is thus required to be filed in Form **ITR5** which is a common form for Firms, AOPs and BOIs.

## STATUS AS ASSESSEE contd...

- Finance Act prescribes separate tax structure for Co-operative Societies
- Section 2 (19) defines co-operative society as a Co-operative Society registered under the Co-operative Societies Act, 1912 and under the relevant state act.
- Present Tax Structure :

0-10000	10%
10001-20000	20%
20001 and Above	30%

- Education Cess 4 % applies
- Surcharge of 12% applies for Income Above Rs.1 Crore



# Deduction u/s 80P

## Section 80 P(2)(a)

- (i) carrying on the business of **banking** or providing credit facilities to its members, or
- (ii) a **cottage industry**, or Deduction allowable to the society engaged in the manufacturing itself:  
CIT vs Quilon Central Coir Marketing Co- op Scty Ltd 229 ITR 349
- (iii) **the marketing** of agricultural produce grown by its members,



## Deduction u/s 80P

### Section 80 P(2)(a)(i)

- (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



# Deduction u/s 80P

## Section 80 P(2)(b)

(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;



# Deduction u/s 80P

## Section 80 P(2)(c)

Co-op societies engaged in activities other than those specified in clause (a) or (b)

- i) Consumer Co-op Society Rs.1,00,000/-
- ii) Other Rs.50,000/-

## Section 80 P(2)(d)

Interest /Dividend from other co-op societies

- Co-operative society received interest or dividends as well as paid interest to any other co-operative: Deduction u/s. 80P(2)(d) is allowable with reference to the interest or dividend received without deducting interest paid to any co-operative.

**[C.I.T. v. Doaba Co-operative Sugar Mills Ltd., 230 ITR 774 (P & H)]**

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

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

No- Section 80AB will apply- Only Net Income



# Deduction u/s 80P

## Section 80 P(2)(e)

- Income from letting of godowns or warehouses for storage, processing or facilitating the marketing of commodities.

Income of Cold Storage is eligible.

Delhi Cold Storage (P) Ltd. v. CIT 59 Taxman 144 (SC)

## Section 80 P(2)(e)

Income from HP/Interest on securities if GTI does not exceed Rs.20,000/-

(Other than Housing, Transport, manufacturing, urban consumer society)





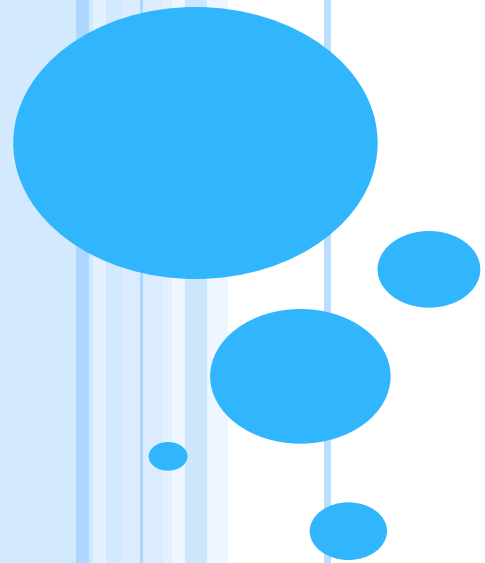
# FINANCE ACT-2020-INCENTIVES TO RESIDENT CO-OPERATIVE SOCIETIES-SECTION 115BAD

- **Section 115BAD** provides for **reduced tax rate of 22%** in case of a Resident Co-operative Societies.
- With effect from Assessment Year 2021-22
- Optional ( for Resident Co-op societies only)
- Plus applicable surcharge and cess.
- Co-operative Banks vs Co-op Societies

# Conditions

- I. Option to be exercised before due date as per Section 139(1).Form 10IF.
- II. Option **once exercised cannot be withdrawn subsequently.**
- III. The total income of the **society to be** computed **without claiming specified deduction, exemption or incentives**
- IV. No **set-off of brought forward loss** attributable to the prescribed deductions.
- V. **Corresponding adjustment of B/f Depreciation** to be made to WDV of respective block as on 1.4.2020, if the option exercised for A Y 2021-22;
- VI. **Claim of additional depreciation** on plant and machinery- to be foregone.
- VII. **Surcharge of 10 %** without threshold exemption.
- VIII. Provisions of Section 115JC (AMT) and S.115JD ( Carry Forward of AMT) will not be applicable.

# URBAN CO-OPERATIVE BANKS



## SECTION 80P AND CO-OPERATIVE BANKS

- **Effective 01.04.2007 i.e. from A Y 2007-08 benefit of deduction u/s 80P was withdrawn only for Co-operative banks retaining it for all other Co-operative societies.**

80P(2)(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.

- **Hence all Co-operative banks are now at par with nationalized and private banks vis-à-vis Income Tax**

# DEDUCTIONS SPECIFIC TO CO-OP BANKS

- BDDR DEDUCTION S.36(1)(vii a)
- SPECIAL RESERVE S. 36(1)(viii)
- INTEREST ON NPA S.43D
- INVESTMENTS AND DEDUCTIONS
- OTHER DEDUCTIONS



## BDDR- Section 36(1)(viiia)

- Deduction is allowed at the aggregate of the following:
  1. 8.50% (7.50% till AY 2017-18 ) of the Total Income (computed before allowing any deduction under this section and Chapter VI-A

**AND**

  2. 10% of Aggregate Average Rural Advances
- The Bank is required to make provision in Profit and Loss A/c for claiming the deduction under this section



## Section 36(1)(viiia): Issues

- Is the deduction to be restricted to the extent of provision made in the Profit & Loss A/c ?

*S.36 (viiia) In respect of any provision for bad and doubtful debts made by—*

*(a) a scheduled bank [not being a bank in.....*

- 1. Pune ITAT consistently holding against the assessee- since its decision in Mahalaxmi Co-op Bank Ltd. ( Based on P & H HC judgment in State Bank of Patiala)*
- 2. Recently in 2017 Delhi High Court in the case of Prathma Bank 88 taxmann.com 572 has held the issue in favour of the banks.*

- Is the deduction allowable only for provision in respect of Rural Advances ? ( *Pune ITAT in Bhagini Nivedita Co-op Bank*)




## Section 36(1)(vii): Issues

- Can the provision for BDDR be made through Profit and Loss Appropriation A/c ? (*Pune ITAT in Ganesh Bank of Kurundwad*)
- Can the requirement of the section be met technically by crediting excess BDDR to P & L A/c and simultaneously debiting the Current Year's provision to Profit and Loss A/c ?





## Section 36(1)(viia): Issues

- Whether reversal of excess BDDR provision will be liable to Tax as Income?
    - S.41(1)- Taxability of **loss, expenditure or trading liability** deduction of which is taken earlier. Whether provision u/s 36(1)(viia) can be called as – loss, expenditure or a trading liability ?
    - Wherever legislature intended to tax reversal/recovery-specific provisions are made. S.41(4) for recovery of bad debts allowed as deduction u/s36(1)(vii) and S.41(4A) for bringing to tax deduction u/s 36(1)(viii) re. Special Reserve on breach of conditions.
    - No such specific provision for taxing reversal of BDDR provision.
- 

## Section 36(1)(viiia): Issues

- Deductibility of Provision for Standard Assets
- Section 36(2)(v)- No deduction for Bad Debts written off is allowed unless the bad debt amount is debited to BDDR.- Effect of the words- ‘where such debts relate to advances to which Section 36(1)(viiia) applies..’
- **Accounting for provision made under Section 36(1)(viiia)-  
Provision vs Reserve**



## Section 36(1)(viia): Case Study

Rs in Lakhs

<b>Opening Balance in BDDR</b>	<b>76</b>
Gross Bad Debts written off during the year	1412
Deduction claimed U/s 36 (1)(vii) ( 1412-76)	1336
Deduction claimed u/s 36(1)(viia) by making provision at year end	136
Deduction u/s 36(1)(vii) allowed by A O (1336-136)	1200

- While arriving at the deductible amount u/s 36 (1)(vii) – Whether only the opening Balance in BDDR is to be considered or even the provision made for BDDR during the year is also to be considered ?
- Circular 17/2008 : Para 2(ii)



# Section 36(1)(viii)

1. 20% of the Profits of the ELIGIBLE BUSINESS allowed as deduction.
2. **Special Reserve** to be created of equivalent amount.
3. **‘Eligible Business:**  
Long Term (5 Years and Above) Finance for any of the following:
  - \* Industrial or Agri. Development
  - \* Development of Infra. Facility
  - \* Development of Housing
4. Special Reserve **not to Exceed twice** of Paid Up Capital and General Reserve
5. ‘Development of Housing’ – South Indian Bank vs ACIT 104 taxmann.com 452 (Cochin ITAT)

## SECTION 43D: INTEREST ON NPA ADVANCES

- Section 43D of the Act allows – taxation of interest on NPA advances on realization basis irrespective of ‘Accrual System of Accounting’ followed.
- However the benefit was so far available only to ‘Scheduled Banks’ among others and there was no mention of unscheduled or Co-operative Banks in Section 43D till A Y 2018-19.
- Implication- OIR interest was being taxed under ‘Accrual’ concept even if not credited to Profit and Loss A/c.
- Amendment in Budget 2017- Welcome for Co-op Non Scheduled Banks. With simultaneous amendment to S 43B



# INVESTMENTS BY BANKS AND INCOME TAX

- Amortization of Premium on Securities- Deductibility w.r.t. Held Till Maturity (HTM) category investments. HDFC Bank Vs CIT (366 ITR 505) (MUM HC)
- CBDT Circular No.17/2008: Para (vii) : Allows deduction for treatment as per RBI Guidelines.
- Depreciation / Reduction in AFS (Available for Sale) and HFT ( Held for Trading) Category Investment.
- Interest of 'Pre-Acquisition' period. **Vijaya Bank v/s CIT 187 ITR 541.**  
Circular No.17/2008 Para 2(vi)



# Business Income-Other Issues-

- Taxability of 'Unclaimed Dividends'
- Taxability of 'Penal Interest' credited to Reserve Fund
- Building Fund Collected and credited to Building Fund Account.
- ~~Applicability of Section 14A Expenses relatable to earning of Exempt Income. [ Dividend from Mutual Fund Investments- Pune ITAT- Dharmavir- Sambhaji Co-op Bank- HDFC Bank- 366 ITR 505]~~
- Whether provisions of Section 40A(2)(b) apply to Co-operative Banks/Society 301 ITR 191 (BOM)



# Business Income-Other Issues- Contd..

- Taxability of Excess Cash received – Transferred to Reserve Fund.  
Vaidyanath Co-op Bank Ltd (Pune ITAT)
- Provision for Audit Fees – Applicability of Section 43B. Vaidyanath Co-op Bank Ltd (Pune ITAT)
- Loss on Merger : Excess of Liabilities over the Assets. Pune ITAT in The Cosmos Co-op Bank. To be treated as an intangible asset u/s 32(1)(ii) eligible for depreciation @ 25%





# **RECENT AMENDMENTS**

**TDS**

**SECTION 194A & SECTION 194 N**



## TDS ON INTEREST CONTD....

- Section 206A

**Form 26 QA – Filing of Quarterly return of interest below threshold of Rs. 10000 by banks Co.op Banks, etc. – Prescribed mode. (~~on a floppy, diskette, magnetic cartridge tape, CD-ROM or any other computer readable media~~)**



# TDS ON CASH WITHDRAWALS –SECTION 194N

- TDS @ 2 %
- On Cash withdrawals exceeding Rs.1 Crore in a year
- Deductors to be:
  - Banks
  - Co-op Society engaged in carrying on the business of banking
  - Post Office
- From an (any) account maintained by the recipient with it
- **Not applicable for payments to- Government, Banking company or Co-op Society engaged in carrying on the business of banking, any business correspondent of a bank, any white label automated teller machine operator of a bank.**

# SECTION 194 N AND THE FINANCE ACT 2020

- A new proviso inserted
- Threshold Limit for non-filer reduced to Rs.20 Lakhs.
- Two Slabs of TDS rates for such a person-

Between Rs.20 Lakhs to Rs.1 Crore	-----	2%
Above Rs.1 Crore	-----	5%

The proviso reads as under:

Provided that in case of a recipient who has not filed the returns of income for all of the three assessment years relevant to the three previous years, for which the time limit of file return of income under sub-section (1) of section 139 has expired.....

# SECTION 194 N AND THE FINANCE ACT 2020

## ○ Exemption-Whether available to Co-operative Credit Society-Patsanstha ?

## ○ Proviso to Section 194 N

Provided also that nothing contained in this sub-section shall apply to any payment made to,—

- i. ....;
- ii. any banking company or **co-operative society engaged in carrying on the business of banking** or a post office;
- iii. ....;
- iv. ....

**Can Patsanstha be said to be engaged in carrying on the business of banking?**



# TDS CHANGES RELATING TO CO-OPERATIVE SECTOR

- Finance Act 2020 withdrew exemptions u/s **194A(3)(iii)(v)** in case of a payer-deductor co-operative society **whose gross receipts** in the preceding year exceed **Rs.50 Crore**:
  1. Interest paid **by a co-operative society** (other than a co-operative bank) **to its member** . **AND**
  2. Interest paid **by a co-operative society to any other co-operative society**.

# IMPLICATIONS-

## Co-operative Banks - with Gross Receipts/Turnover above Rs.50 Crore –

- Section 194A(3)(iii) (a)- Exemption for TDS on interest paid to any co-operative society engaged in carrying on the business of banking is continued.
- Section 194A(3)(v) exemption is withdrawn i.e. interest paid by such a co-operative to society to its member or other co-operative society is NOW liable to TDS.
- In respect of interest payable to co-operative credit society (Patsanstha)- whether exemption available on the ground that Patsanstha are engaged in carrying on business of banking?



# CAN PATSANSTHA BE CLAIMED TO BE ENGAGED IN CARRYING ON BUSINESS OF BANKING

- Definition of Banking-

"banking" means the accepting, for the purpose of lending or investment, of deposits of money **from the public**, repayable on demand or otherwise, and withdrawable by cheque, draft, order or otherwise.

- Bombay HC – Nagpur Bench in **Buldana Urban Co-op Credit Society** 32 taxmann.com 69

*11. From the aforesaid objects, it is apparent that none of the aims and objects allows the assessee co-operative society to accept deposits of money from public for the purpose of lending or investment. In our opinion until and unless that condition is satisfied, it cannot be said that the prime object or principal business of the assessee is banking business.*



# CAN PATSANSTHA BE CLAIMED TO BE ENGAGED IN CARRYING ON BUSINESS OF BANKING

- Bombay HC-Panaji Bench in **Quepem Co-op Credit Society 377 ITR 272**
  - It is undisputed that the transactions with non-members are insignificant /miniscule. **On the above basis it cannot be concluded that the appellant's principal business is of accepting deposits from public and therefore it is in banking business.**
- Pune ITAT in Jankalyan Patsanstha **24 taxmann.com 127** and in Maharashtra Arogya Mandal vs ITO **28 SOT 26**



# CAN PATSANSTHA BE CLAIMED TO BE ENGAGED IN CARRYING ON BUSINESS OF BANKING

- Kerala HC in **112 taxmann.com 272** Chirayinkeezhu Service Co-operative Bank Ltd vs CBDT
  - On such an interpretation, the benefit of exemption under section 194A(3)(iii)(a) would apply only when the interest income in respect of deposit made with the treasury accrues/arises to a co-operative society engaged in carrying on the business of banking, which in turn involves acceptance of deposits from the public, and not merely from its own members.
- Issue presently before Supreme Court – regarding Deduction u/s 80P(2)(a)(i) vs 80P(4).
  - SLP is admitted in Quepem Co-op Credit Society and many other cases.
  - Argument on behalf of the Revenue- Since the Patsanstha also deal with non-members / nominal members they are engaged in carrying on banking business and thus are primary co-operative Banks hit by provisions of Section 80P(4). Patsanstha are contesting this claim.

# IMPLICATIONS-

## **Co-operative Banks- with Gross Receipts/ Turnover up to / less than Rs.50 Crore**

- ❖ TDS by them on interest paid to members- **Yes**
- ❖ TDS by them on interest paid to other co-operative societies- **NO**



# **IMPLICATIONS-**

## **Co-operative Societies- with Gross Receipts/Turnover above Rs.50 Crore**

- ❖ TDS by them on interest paid to members- **YES**
- ❖ TDS by them on interest paid to other co-operative societies-**YES**

## **Co-operative Societies- with Gross Receipts/ Turnover up to / less than Rs.50 Crore**

- ❖ TDS by them on interest paid to members- **NO**
- ❖ TDS by them on interest paid to other co-operative societies- **NO**



## SECTION 194A- AMENDMENTS AT A GLANCE

Nature of DEDUCTOR Co-op Society	TDS on Interest to Members	TDS on Interest paid to Co-operative Societies
<b>CO-OP BANK</b>		
Turnover/Gross Receipts <b>above Rs.50 Cr</b> in the preceding year	YES	YES
Other	YES	NO
<b>CO-OP SOCIETY</b>		
Turnover/Gross Receipts <b>above Rs.50 Cr</b> in the preceding year	YES	YES
Other	NO	NO

# IMPLICATIONS-

- ❖ Can Patsanstha give Form 15 G to deductor co-operative banks to avoid TDS ?

## Section 197A(1B)

The provisions of this section **shall not apply** where the amount of any income of the nature referred to in sub-section (1) or sub-section (1A), as the case may be, or the aggregate of the amounts of such incomes credited or paid or likely to be credited or paid during the previous year in which such income is to be included **exceeds the maximum amount** which is **not chargeable to income-tax**.

- ❖ TDS in respect of NOMINAL MEMBERS



## Co-op Banks and Business Re-organization

- **Section 44 DB:** Deductions u/s 32, 35D and 35DDA to be allowed to 'Predecessor' and 'Successor' co-op banks in proportion of the number of days.
- Balance eligible period under these sections to be reckoned as if there is no merger-demerger.
- **Section 72AB** allows carry forward and set off unabsorbed business loss and unabsorbed depreciation of predecessor bank in the hands of Successor bank- subject to various conditions.







**CO-OPERATIVE CREDIT SOCIETIES-**  
**PATSANSTHA**

# Filing of Return- Precautions

- ▶ Filing of ITR-5
- ▶ Selection of Status; Main Status : AOP/BOI- Sub-status- Other Co-operative Society

3.	AOP/BOI	<ul style="list-style-type: none"> <li>➤ Society registered under Society Registration Act, 1860 or any other Law corresponding to that State</li> <li>➤ Primary Agricultural Credit Society</li> <li>➤ Co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank</li> <li>➤ Other cooperative society</li> <li>➤ Primary Co-operative</li> </ul>
		<ul style="list-style-type: none"> <li>➤ Agricultural and Rural Development bank</li> <li>➤ Trust other than trust eligible to file return in Form ITR-7</li> </ul>

## For Co-op Banks

- All co-operative Banks to opt for Section 15BAD: Eligible for concessional tax rate of 22% ( effective rate is 25.17%) as against the traditional 31.20% or 34.944%
- Filing of Form 10-IF on or before the due date for filing the return.
- Once exercised- applies to all subsequent years.
- Can not be withdrawn in subsequent years.
- Claims lost: Deduction under Chapter VI-A, Additional depreciation etc

(d) Are you opting for new tax regime u/s 115BAD?  Yes  No

If you are opting for new tax regime u/s 115BAD

Please provide date of filing and Acknowledgement Number of form 10F if "Yes" is selected above

**Schedule 80P** Deductions under section 80P

		Nature of Business Code	Income	Amount eligible for deduction
1	Sec.80P(2)(a)(i) Banking/Credit Facilities to its members			
2	Sec.80P(2)(a)(ii) Cottage Industry			
3	Sec.80P(2)(a)(iii) Marketing of Agricultural produce grown by its members			
4	Sec.80P(2)(a)(iv) Purchase of Agricultural Implements, seeds, live-stocks or other articles intended for agriculture for the purpose of supplying to its members.			
5	Sec.80P(2)(a)(v) Processing , without the aid of power, of the agricultural Produce of its members.			
6	Sec.80P(2)(a)(vi) Collective disposal of Labour of its members			
7	Sec.80P(2)(a)(vii) Fishing or allied activities for the purpose of supplying to its members.			
8	Sec.80P(2)(b)Primary cooperative society engaged in supplying Milk, oilseeds, fruits or vegetables raised or grown by its members to Federal cooperative society engaged in supplying Milk, oilseeds, fruits or vegetables/Government or local authority/Government Company / corporation established by or under a Central, State or Provincial Act			
9	Sec.80P(2)(c)(i)Consumer Cooperative Society Other than specified in 80P(2a) or 80P(2b)			
10	Sec.80P(2)(c)(ii)Other Cooperative Society engaged in activities Other than specified in 80P(2a) or 80P(2b)			
11	Sec.80P(2)(d)Interest/Dividend from Investment in other co-operative society			
12	Sec.80P(2)(e)Income from Letting of godowns/ warehouses for storage, processing / facilitating the marketing of commodities			
13	Sec.80P(2)(f)Others			
14	Total			

## Nature of Business

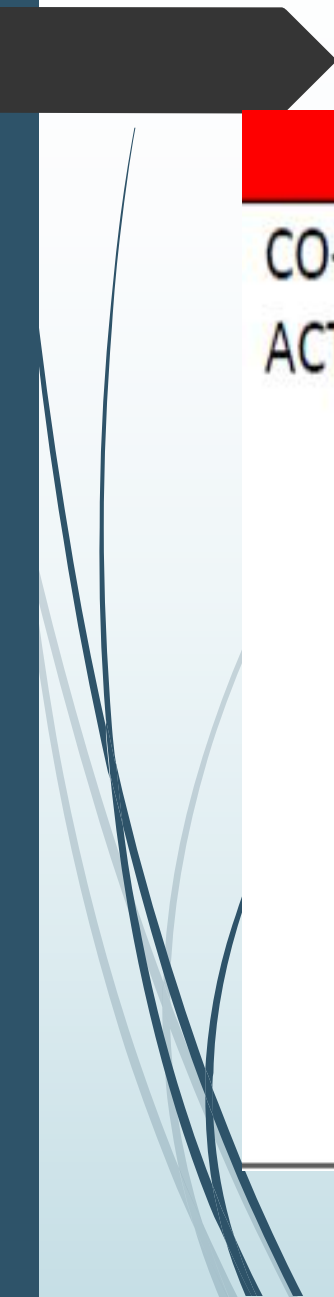
Please enter the name of business, business Code and description of business. The applicable business code can be selected from the list provided at the end of this instruction. If you were engaged in more than one business or profession during the previous year, indicate all the activities or products.

In case sub status selected is "Primary Agricultural Credit Society" or "Primary Co-operative Agricultural and Rural Development bank" or "Other Cooperative Society" then from the additional fourteen activities as per the list of business codes for co-operative societies activities provided at the end of this instruction, applicable business code should be selected. Also, please note that if you are claiming any deduction u/s 80P, then respective business code should be selected in both "Nature of Business" and in "Schedule 80P"

Part A-GEN

GENERAL

NATURE OF BUSINESS	G	Nature of business or profession, if more than one business or profession indicate the three main activities/ products (Other than those declaring income under sections 44AD, 44ADA and 44AE)		
	S.No.	Code <i>[Please see instruction]</i>	Trade name of the business, if any	Description
	(i)			
	(ii)			



CO- OPERATIVE SOCIETY ACTIVITES	Banking/Credit Facilities to its members	23001
	Cottage Industry	23002
	Marketing of Agricultural produce grown by its members	23003
	Purchase of Agricultural Implements, seeds, livestock or other articles intended for agriculture for the purpose of supplying to its members.	23004
	Processing , without the aid of power, of the agricultural Produce of its members.	23005

Collective disposal of Labour of its members	23006
Fishing or allied activities for the purpose of supplying to its members.	23007
Primary cooperative society engaged in supplying Milk, oilseeds, fruits or vegetables raised or grown by its members to Federal cooperative society engaged in supplying Milk, oilseeds, fruits or vegetables/Government or local authority/Government Company / corporation established by or under a Central, State or Provincial Act	23008
Consumer Cooperative Society Other than specified in 80P(2a) or 80P(2b)	23009
Other Cooperative Society engaged in activities Other than specified in 80P(2a) or 80P(2b)	23010
Interest/Dividend from Investment in other co-operative society	23011
Income from Letting of godowns / warehouses for storage, processing / facilitating the marketing of commodities	23012
Others	23013
Federal milk co-operative society	23014

**Schedule VI-A** Deductions under Chapter VI-A

<b>TOTAL DEDUCTIONS</b>	<b>1</b>	<b>Part B- Deduction in respect of certain payments</b>				
	Please note that the deduction in respect of the investment/ deposit/ payments for the period 01-04-2020 to 31-07-2020 cannot be claimed again, if already claimed in the AY 2020-21					
	a	80G		b	80GGA	
	c	80GGC				
	Total Deduction under Part B (a + b + c)					<b>1</b>
	<b>2</b>	<b>Part C- Deduction in respect of certain incomes</b>				
	d	80-IA	<i>(f of Schedule 80-IA)</i>	e	80-IAB	
	f	80-IAC		g	80-IB	<i>(j of Schedule 80-IB)</i>
	h	80-IBA		i	80-IC/ 80-IE	<i>(e of Schedule 80-IC/ 80-IE)</i>
	j	80JJA		k	80JJAA	<i>[Sl.no. 5I(etr) + 5II of Annexure to Form 10DA]</i>
l	80LA(1)	<i>(9 of Annexure to Form 10CCF)</i>	m	80LA(1A)	<i>(9 of Annexure to Form 10CCF)</i>	
n	80P					
Total Deduction under Part C (total of d to n )					<b>2</b>	
<b>3</b>	<b>Total deductions under Chapter VI-A (1 + 2)</b>				<b>3</b>	



# Delayed filing of return and denial of deduction u/s 80P.

- ▶ Consequent to amendment in Section 80AC w.e.f. **A Y 2018-19** deduction u/s 80 P is available only if the return is filed on or before the due date u/s 139(1).
- ▶ In quite a few cases, the returns have got delayed (albeit with reasonable cause) leading to denial of deduction u/s 80P.

## Issues-

1. What if the delay in filing the return is on account of reasonable cause?
2. Can the delay be condoned ?
3. Can the deduction u/s 80P be denied in processing u/s 143(1)(a) by way of 'prima facie adjustment'?

## Delayed filing of return and denial of deduction u/s 80P

- i. any arithmetical error in the return;
- ii. **an incorrect claim, if such incorrect claim is apparent from any information in the return;**
- iii. disallowance of loss claimed, if return of the previous year for which set off of loss is claimed was furnished beyond the due date specified under sub-section (1) of section 139;
- iv. disallowance of expenditure **[or increase in income]** indicated in the audit report but not taken into account in computing the total income in the return;
- v. **disallowance of deduction claimed under sections 10AA, 80- IA, 80- IAB, 80-IB, 80-IC, 80-ID or section 80-IE, if the return is furnished beyond the due date specified under sub- section (1) of section 139;**
- vi. addition of income appearing in Form 26AS or Form 16A or Form 16 which has not been included in computing the total income in the return:

## Delayed filing of return and denial of deduction u/s 80P-Legal Position

- ▶ **Mumbai ITAT New Ideal Cooperative Housing Society Limited** I.T.A. No. 2681/Mum/2019 (Assessment Year 2015-16) in Favour- Disallowance can not be made in processing u/s 143(1)(a).
- ▶ **Delhi ITAT in Fibefill Engineers 177 TTJ 0556:**
  - ▶ *Provisions for Section 80AC are incentive provisions and in view of various judicial pronouncements particularly in the case of Bajaj Tempo Ltd. Vs. CIT 196 ITR 188(SC), the incentive provision has to be interpreted in a manner so as to advance the objects of economic activities in the country and not to deny the claim merely on technical grounds*
  - ▶ *Section 139(4) is to be read as proviso to section 139(1)*
  - ▶ *Hence deduction to be allowed even when the return is filed by due date of S.139(4).*
- ▶ **Madras High Court in Veerappampalayam Primary Agricultural Cooperative Credit Society** Limited W.P. No.7038 of 2020 dated 07.04.2021. Denial of Deduction u/s 80P in view of the provisions of section 80AC well within the scope of Section 143(1)(a).

# Interest from Co-operative Banks?

- **To be claimed as income from**

- **Business**                      **Deduction u/s 80P(2)(a)(i)**
- **Other sources**                **Deduction u/s 80P(2)(d)**

- **Pune ITAT in Niphad Nagari Sahakari Patsanstha – Interest from nationalised Banks, Interest from mutual funds, gain on mutual funds was all treated to be income from business**

- **This was followed subsequently in many other decisions by CIT(A) and Pune ITAT and hence the deduction was effectively being achieved by the co-operative credit societies.**

- **In Niphad Patsanstha, Pune ITAT distinguished the decision of Supreme Court in Totagars 322 ITR 283 (2010).**

# Interest from Co-operative Banks?

## Totagars Co-operative Sale Society Decisions

### ► **Supreme Court in 322 ITR 283 (2010)**

- Totagars is a sale-purchase society and was parking surplus funds in banks when not required for business
- Interest income in such parked funds held by the Supreme Court to be not business income but from other sources not eligible for deduction u/s 80P(2)(a)(i).
- **It restored the matter to High Court for considering its claim for deduction for proportion cost for earning such interest income.**

### ► **Karnataka High Court 5<sup>th</sup> January 2017 A Y 2012-13 held** – Co-operative Banks are first Co-operative societies and hence interest received from them is eligible for deduction u/s 80P(2)(d).

### ► **Karnataka High Court 16<sup>th</sup> June 2017-** For earlier and subsequent Five AYs- Reversed the above decision.

### ► **C & AG took** objection for not following this decision of the Karnataka High Court

# Totagar- Karnataka HC- 16.06.2017..

## Reasoning given

- For availing deduction u/s 80P, the income specified in clauses (a) to (f) of S.80P(2) **should be its business or operational income**
- **The words 'Co-operative Banks' are missing in clause (d)** of S.80P(2).
- Even though a **cooperative bank** may have the corporate body or skeleton of a co-operative society **but its business is entirely different** and that is the banking business, regulated by Banking Regulation Act, 1949.
- The **banking business**, even though run by a Co-operative bank is sought to be excluded from the beneficial provisions of exemption or deduction **u/s 80P(4)** of the Act.
- The amendment of **section 194A(3)(v)** excluding the **Co-operative Banks** from the definition of 'Co-operative Society' by Finance Act, 2015 and **requiring them to deduct tax** at source under section 194A also makes the legislative intent clear that the **co-operative banks are not that specie of genus co-operative society**.
- Hence, the income by way of interest earned by deposit or investment of **idle or surplus funds does not change its character irrespective of the fact whether such income of interest is earned from a scheduled bank or a co-operative bank** and, thus, clause (d) of section 80P(2) of the Act would not apply

# Interest from Co-operative Banks?

Totagars Co-operative Sale Society Decisions- Countering

- The Supreme Court in the recent decision in **Mavilayi Service Co-operative Bank Ltd. 123 taxmann.com 161** held that the purpose of S.80P(4) is just limited to deny the benefit of deduction u/s 80P for co-operative banks and it is in no way to deny any benefit that accrues to other co-operative societies.
- Karnataka High Court in the case of **Tumkur Merchants Souharda Credit Cooperative Ltd 55 taxmann.com 447** has held that such interest income for a co-operative credit society is income from business and thus is eligible for deduction u/s 80P(2)(a)(i)
- Pune ITAT in the case of **Sant Motiram Maharaj Sahakari Pat Sanstha Ltd 120 taxmann.com 10**. Following the decision of the Karnataka High Court in the case of Tumkur Society (supra) such interest income was held to be income from business of the society eligible for deduction u/s 80P(2)(a)(i)

# Interest from Co-operative Banks?

The Supreme Court in **Mavilayi Service Co-operative Bank Ltd.**  
**123 taxmann.com 161**


- 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.
- 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
- 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).
- Loans being given to **non-members**, profits attributable to such loans obviously cannot be deducted.



# DEDUCTION U/S 80P- CONTROVERSY

THE CITIZEN CO-OP SOCIETY LTD Vs ACIT


397 ITR 1 (SC)

1. The society was registered under **Mutually Aided Co-operative Societies Act, 1995**
  2. The society was catering to regular members as well as to **Nominal members**.
  3. Most of the deposits were from the second category of Members which were used to give loans to members of first category.
  4. It was found, as a matter of fact, that the depositors and borrowers were quite distinct in reality, such activity of the society was that of Finance Business and could not be termed as co-operative society.
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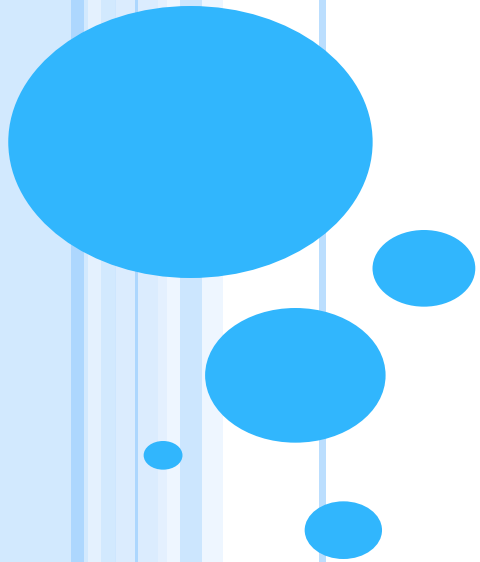
# DEDUCTION U/S 80P- CONTROVERSY

## THE CITIZEN CO-OP SOCIETY LTD VS ACIT

397 ITR 1 (SC)

5. The appellant society was also found to have engaged in providing loans to general public. This was without the authority /approval from Registrar of Societies.
  6. Thus the activity of the society was in violation of the Mutually Aided Co-operative Societies Act.
  7. There was specific finding that the principle of mutuality was missing in the instant case.
  8. Hence the appellant society was held to be not eligible for deduction u/s 80P (2)(a)(i).
  9. **However, PUNE ITAT, while allowing deduction u/s 80P(2)(a)(i) held that facts of the case in Citizen Co-op Society (Supra) are not applicable in Maharashtra ( Shri Prerana Gramin Patsanstha and others-1431/PUN/2018). This decision has been subsequently followed in many other cases.**
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# FINANCE BILL 2023



# Sections -115BAE- 15 %

- **Section provides for concessional rate of 15% in case of a Co-operative society.**
  - I. Incorporated on or after 01.04.2023;**
  - II. Commence manufacturing before 31-03-2024 (sic 31.03.2025);**
  - III. Must be engaged in manufacture or production of any article or thing and research in relation to, or distribution of, such article or thing manufactured or produced by it;**
  - IV. It must not be formed by splitting up or reconstruction of an existing business.**
  - V. It does not use any building which was previously used as a hotel or a convention center.**
  - VI. It does not use any machinery or plant previously used for any purpose. ( Imported Machinery allowed. Second machinery up to 20% of the total value of Pl & M)**



# Conditions-S.115BAE

- I.** The option to avail of the benefit of section must be exercised on or before the due date specified under Section 139(1) for furnishing of first return of income in the prescribed manner.
- II.** This option once exercised cannot be withdrawn subsequently.
- III.** The total income of the society has been computed without claiming specified deduction, exemption or incentives
- IV.** The Society shall not be allowed to set-off of any loss carried forward from earlier assessment year if such loss is attributable to any of the following deductions
- V.** The Society shall not claim additional depreciation in respect of plant and machinery.
- VI.** Surcharge of 10 % from entire tax without any threshold exemption.
- VII.** Safeguards introduced : to check artificial hike in profit to get the advantage of reduced tax rate of 15%:
- VIII.** MAT provisions u/s 115JC/115JD do not apply.

## CO-OPERATIVE SUGAR FACTORIES- SECTION 155(19)

- **Co-operative society engaged in the business of manufacturing of sugar**
- **Deduction of Sugarcane price –Disallowance in this respect till A Y 2014-15 and all earlier years: Final Cane Price(FCP) over and above Statutory Minimum Price(SMP): Expenditure vs Appropriation-Distribution of Profits.. FCP is computed based on actual results of the sugar factory**
- **Section 36(1)(xvii): A Y 2016-17- Purchase Price up to the price fixed by/ with the approval of the Government to be allowed as deduction**
- **Rectification Application to be filed u/s 155(19)**
- **Period of 4 years to be reckoned from 31.03.2023 i.e. till 31.03.2027**
- **Deduction of sugarcane purchase price which is equal to or less than the price fixed or approved by the Government for that previous year**

## SECTION 269SS AND 269T

- Provisions of these sections shall have effect, as if for the words “**20,000**”, the words “**2,00,000**” had been substituted in the case of any deposit or loan where,—
  - a) such deposit is accepted/paid by a **primary agricultural credit society** or a **primary co-operative agricultural and rural development bank** from/to its member; or
  - b) such loan is taken/repaid from/to a **primary agricultural credit society** or a **primary co-operative agricultural and rural development bank** by its member.”;

## SECTION 194 N

Effective-  
01.04.2023

**85.** In section 194N of the Income-tax Act, after the second proviso, the following proviso shall be inserted, namely:—

“Provided also that where the recipient is a co-operative society, the provisions of this section shall have effect, as if for the words “one crore rupees”, the words “three crore rupees” had been substituted.”.

2. However, in case of a recipient who is a non-filer tax is to be deducted at the rate of 2% on any sum exceeding Rs. 20 lakh but not exceeding Rs. 1 crore in aggregate during the financial year and, at the rate of 5% on sum exceeding Rs. 1 crore in aggregate during the financial year.

3. Non-filer means a recipient who has not filed any income-tax return for all of the three assessment years relevant to the three previous years immediately preceding the previous year in which such payment is received.



# THANK YOU

