TDS on cash withdrawals u/s 194N– Case of co-operative credit societies

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INTRODUCTION:

In order to discourage cash transactions and move towards less cash economy, Finance Act 2019 introduced new section 194N in the Act to provide for levy of TDS @ 2 % on cash payments in excess of Rupees One crores in aggregate made during the year, by –

- *A banking company to which the Banking Regulation Act, 1949 (10 of 1949) applies;*
- *A co-operative society engaged in carrying on the business of banking; or*
- *A post office,,*

to any person from one or more accounts maintained by the recipient with it.

It is further Provided that the section *shall not apply* to any payment made to, Government, banking company, cooperative society engaged in carrying on the business of banking, post office, banking correspondents and white label ATM operators, who are involved in the handling of substantial amounts of cash as a part of their business operation, etc.

In order to make the deductee eligible to take credit of TDS u/s 194N, the provisions of section 198 is also amended to state that the sum deducted in accordance with the provisions of section 194N for the purpose of computing the income of an assessee, shall be deemed to be income received.

CAUSE OF CONTROVERSY:

Section is applicable to a co-operative society engaged in carrying on the business of banking acting as a payer of cash; and at the same time, section is

not applicable to a co-operative society engaged in carrying on the business of banking acting as a recipient of cash.

CONTROVERSY:

Whether a Co-operative Credit society (Commonly known as Patsanstha) can be said to be a co-operative society engaged in carrying on the business of banking for the purpose of Section 194N?

When I quickly shuffled through the Income Tax Act, I found the term '***co-operative society engaged in carrying on the business of banking'***usedat following places:

Section/Sub-Section	Brief description of context in which term is used
Section 11(5)(iii)	Permissible modes of investments by charitable trusts
Section 80P(2)(a)(i)	Deduction in respect of income of certain Co-op. Societies
Section 80TTA/80TTB	Deduction in respect of interest on saving deposits
Section 194A(3)(i)(b)	Exception to the applicability of TDS provisions u/s 194A i.e. TDS on payment of interest (*qua* payer)
Section 194A(3)(iii)(a)	Exception to the applicability of TDS provisions u/s 194A i.e. TDS on payment of interest (*qua* receiver)
Section 194A(3)(viia)(b)	Exception to the applicability of TDS provisions u/s 194A i.e. TDS on payment of interest (*qua* nature of interest bearing deposits)
Section 194N	**TDS on cash withdrawals w.e.f. 01.09.19 (*qua* payer as well as receiver)**

BACKGROUND:

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

Banking is not defined under the Income Tax Act, 1961. **Section 5(b)** of the Banking Regulation Act defines the term *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 cheques, draft, order or otherwise.

If the definition of banking is further analyzed, the co-operative credit society can never issue cheques or drafts and cannot form part of any payment and settlement system in form of a Clearing House. Participation in Clearing House system is an important requisite to term itself as bank.

ANALYSIS:

Let's deal with the controversy in the context of some of the other sections where the identical term is used:

Section 11(5)(iii): Permissible modes of investments by charitable trusts

Hon'ble Madras High Court in***SBI Staff Credit Cooperative Society[(1998) 234 ITR 104 (Mad)]***while adjudicating the issue whether a credit co-operative society (Patsanstha) is covered by the expression "*co-operative society engaged in carrying on the business of banking*" appearing inSection 11(5)(iii), held in favour of assessee.

In the case of SBI Staff Credit Cooperative Society ***[supra],*** it was note-worthy that in the relevant definition clause i.e. definition of "credit institution" under Section 2(5A), the expression 'co-operative society engaged in carrying on the business of banking' appeared along with the expression 'a banking company to which the Banking Regulation Act, 1949 applies. Yet their Lordships came to the conclusion that a credit society dealing with members only can be said to be in the business of banking. These two expressions are two distinct limbs of the definition and must be given meaning accordingly. The common thread, if at all be necessary, between the two expressions is the business of banking, which, in the esteemed opinion of the Hon'ble Madras High Court, includes business of giving loans to members only. [Followed by ITAT Pune in ***Maharashtra ArogyaMandal vs. ITO (2008) 117 TTJ 631 (Pune)]***

Section 80P(2)(a)(i): Deduction in respect of income of certain Co-op. Societies

It is important to note that, Sec. 80P(2)(a)(i) is worded as "*.....in the case of a co-operative society engaged- in carrying on the business of banking* ***OR*** *providing credit facilities to its members.....*"

This clearly brings out the two limbs wherein the enactment itself has distinguished the words business of banking with that of providing credit facilities. One may argue that, f the intention was not to grant deduction to all co-operatives then the section would not have been worded with these two limbs.

Section 194A(3)(iii)(a): Exception to the applicability of TDS provisions u/s 194A i.e. TDS on payment of interest ***(qua receiver)***

In case of interest paid to Co-operative credit societies by its borrowers, the only possible exception to the general applicability of TDS on interest is provided in Section 194A(3)(iii)(a) to the effect that, TDS provisions u/s 194A(1) are not applicable to interest paid/credited to any co-operative society engaged in carrying on the business of banking (including co-operative land mortgage bank). Here, again one can argue that, the Co-operative credit societies render services which are similar to services usually rendered by co-operative banks, in the sense they accept deposits from the members and give loan to members. Though the said societies are not banks working under banking regulations Act, but undoubtedly there is fair degree of similarity in the services rendered by these credit co-operative societies and co-operative banks.

In the case of ***ACIT vs. U.P. Co-operative Cane union [114 ITR 70 (All.)]***the Division bench of the Allahabad High Court had an occasion to consider an activity of a co-operative society with reference to the exemption of its income in terms of the then section 81 of the I.T. Act. It held as follows:

"A person or a society may not be a banker in that wide sense yet he may be providing credit facilities which are a part of a banking business. The expression "providing credit facility" thus takes its colour from the activity of banking. In order that banking or providing of credit facility may constitute a business, it is necessary that these activities must be the chief source of income. A person who advances loans or supplies goods on credit in connection with and in the course of some other business of manufacture or purchase of sale of goods, etc., cannot be said to be carrying on the business of banking or providing credit facilities."

Alternatively, It can be said that, If by-laws of the co-op. credit society do not permit accepting deposits from non-members (i.e. *public* at large) it cannot be termed as doing ***Business of Banking.***
It was held that**,** From the definition of banking u/s 5(b) of the Banking Regulation Act it is clear that the banking means accepting the deposits of money from the public which is repayable on demand or otherwise and withdrawal of these deposits by cheque, draft or otherwise and these deposits are accepted for the purpose of lending or investment. This clearly states that the deposits must be accepted from the public for the purpose of lending or investment. These deposits must be repayable on demand or otherwise and could be withdrawn by the depositor by cheque, draft or otherwise. For deciding whether the assessee is carrying on the banking business as defined above, one has to refer to the aims and objects of the assessee as well as the profit and loss account. ***[ACIT v. Buldana Urban Co-operative Society Ltd. (2013) 32 taxmann.com 69 (Nagpur)]***

(In Vyavasaya Seva Sahakara Sangh vs. State of Karnataka and Ors., (ILR 1990 KAR 2080) their lordships, though in difference context, have held that activities of co-operative credit societies can never become banking business as contemplated under the Banking Regulation Act, 1949, inasmuch as these co-operative societies are not established for the purpose of doing "banking" as defined in section 5(b) of the Banking Regulation Act, 1949.)

EXPECTATIONS:

CBDT should clarify which of the Co-op. Societies / Co-op. Banks are required to follow the above provisions so as to have clarity in the minds of the those entities, to avoid litigation and harassment to public at large.

The provisions are further not applicable to certain categories of payees such as the Government. The Board should clarify what constitutes the Government, who are included and who are excluded since there are several classes of Govt. authorities, designated offices, autonomies bodies, Government sponsored schemes, societies, boards, institutions, corporations, market committeesetc. run by the Government and there is no clarity whether these entities are exempted or not exempted from the purview of S. 194N.

The MISCHIEF RULE:

The Mischief Rule of Interpretation requires that the statute be interpreted keeping in mind the mischief that it aims at punishing. This Rule of Interpretation would be employed when the provision in question is introduced to address what the laws already enacted on similar subjects failed to achieve. This is also clear from the Finance Ministers speech while introducing the concerned provisions and Memorandum explaining provisions of Finance Bill.

CONCLUSION:

Thus, if Co-Op. Credit societies are to be termed as engaged in the business of banking, society will be liable to make TDS u/s 194N as a payer but other institutions shall not be liable to make TDS from cash withdrawals by societies (acting as a receiver).

On the other hand, if Co-Op. Credit societies are NOT to be termed as engaged in the business of banking, society shall NOT be liable to make TDS u/s 194N as a payer, however, cash withdrawals by society (acting as a receiver) shall be subject to TDS by other institutions!!!

All other sections where the term – co-op. society engaged in business of banking is used such as S. 11(5), S. 80P(2), S. 80TTA, etc. are basically beneficial provisions which can be interpreted liberally. However, from the literal review and understanding from the language of the Finance Minister, introduction of

provision like Section 194N is not a case of widening of tax base or deepening of tax base but is a clear case of **provision to discourage cash economy**. And if looked from the angle of this legislative intent, to be on safer side, the interpretation which will augment the legislative intent should be preferred!!