



# ಕರ್ನಾಟಕ ರಾಜ್ಯ ಸಹಕಾರ ಪತ್ತಿನ ಸಂಘಗಳ ಮಹಾಮಂಡಲ ನಿ.,

ನಂ. 16, 1ನೇ ಮಹಡಿ, 1ನೇ ಅಡ್ಡ ರಸ್ತೆ, ಲಿಂಕ್ ರಸ್ತೆ, ಮಲ್ಲೇಶ್ವರಂ, ಬೆಂಗಳೂರು - 560003

**KARNATAKA STATE CO-OPERATIVE CREDIT SOCIETIES FEDERATION LTD.,**

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ಅಧ್ಯಕ್ಷರು

ಉಲ್ಲೇಖ : ಕರಾಸಪಸಂಮ/ 4156 12019-2020

ದಿನಾಂಕ : 10.12.2019

To,  
Smt. Nirmala Sitharaman  
Hon'ble Finance Minister,  
Ministry of Finance  
Government of India  
North Block, NEW DELHI-110001



Respected Madam,

**Sub: Difficulties faced by Co-operatives with respect to Income Tax in Karnataka State.**

Karnataka State Credit Co-operative Societies Federation is the federation of credit co operative societies of Karnataka State working with dual concept of welfare as well as education of member co-operatives.

With reference to the captioned subject, we would like to bring some points to your consideration. Here in Karnataka state, many local income tax authorities are disallowing the claim of the co-operative assesseees under Sec. 80P of the income tax Act, 1961. This leads to hardship to the cooperatives. Hence we would like to put before you the grievances faced by the co-operative societies in Karnataka.

## A. Section 80P(2)(a)

1. By Finance Act 2006, amendment to section 80P was carried out whereby all **Co-operative Societies with Banking License i.e Co-operative Banks** were taken out from the exemption they enjoyed under Income Tax Act 1961. During Discussion of the Finance Bill 2006 on 20<sup>th</sup> March 2006 in Parliament the Hon'ble Finance Minister had categorically stated that the exemption to the Co-operative Banks is only withdrawn and not that of Co operative Credit Societies.



The Income Tax Department in Karnataka State have been denying the exemption u/s 80P of the Income Tax Act 1961 to the credit co-operative societies and imposing tax on their entire income which is squarely against what the Hon'ble Finance Minister, said on the Floor of the Parliament.

3. After the amendment to Section 80P in the Finance Act 2007, there was confusion as to their application to the co-operative societies. Various High Courts as well as Appellate Tribunals have made it very clear that the said amendment of inserting 80 P (4) was to exclude only Co-operative Banks from claiming the deductions under Section 80P(2)(a) of the Act. The legislation is very clear that the co-operative societies other than co-operative banks continue to get the deduction as in the past. If the intention of the legislature is to deny exemption to the co-operative societies Section 80P (2) (a) (i) of the Act will become redundant. Section 80P of the Act deals with the deduction in respect of income of co-operative societies. The said section in so far as it is relevant for the purpose of this petition reads as under:

We produce here below the provisions of the said section for your ready reference

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



4. Further we would like to state that the Central Board of Direct Taxes has clarified in the case of the Delhi Co-operative Urban T&C Society Ltd., through communication No:F.No.133/06/2007-TPL that credit cooperatives do not fall within the meaning of 'Cooperative Bank'. Hence, the co-operative societies carrying on the business of providing credit facility to its members continue to get deduction under Section 80P (2) (a) (i) of the Income Tax Act.
5. Our member cooperatives accept deposits only from their members and also provides credit facility only to the members of the society and is not permitted to engage in full scale banking business as specified by the provisions of Banking Regulating Act 1949.
6. Here in Karnataka State, many local income tax authorities erred by not considering the factual, legal and technical differences between a bank and a credit co-operative society carrying on the banking activities permitted under the Banking Regulation Act, 1949.
7. For your kind information, we state that the co-operative societies are not allowed :
  - to accept deposit from public
  - to lend money or provide finance to the public
  - to draw, make, accept, discount, buy, sell, collect or deal in cheques, promissory notes, or bills of exchange, drafts, railway receipts, security scripts whether transferable, negotiable or not,
  - to issue letters of credit, traveller's cheques, and circular notes,
  - to buy, sell and deal in bullions and spices,
  - to buy, sell and deal in foreign exchanges, foreign notes and foreign currencies
  - to acquire, hold, issue on commission or underwriting, the shares, stocks, funds, debentures, debentures, stock bonds, obligations, securities and investment of any kinds,



- to purchase or sell any kind of securities, bonds on behalf of its constituents or others,
  - to negotiate the loans and advances
  - to receive of any kind of bonds, scripts or valuables on deposits or for safe custody or otherwise,
  - to collect or transmit securities
  - to issue or accept Demand Drafts or pay orders
  - to issuing or accept Bills & other instruments
  - to issue guarantees
  - to act as agents for any government or local authority or any person or persons for banking activities
  - to effect, insure, guarantee, underwrite, participate in managing and carrying out of any public issues of state, municipalities etc
  - to carry on any of guarantee or indemnity business
8. Use of words 'bank', 'banker', or 'banking' –(1) No co-operative society other than a co-operative bank shall use as part of its name or in connection with its business any of the words 'bank', 'banker', or 'banking', and no co-operative society shall carry on the business of banking in India unless it uses as part of its, name at least one of such words".
9. A plain reading of the aforesaid paragraphs clearly denotes that these provisions apply only to those co-operative banks to which the Banking Regulation Act applies. The new proviso to section 80P(4), which is brought into statute, is applicable to co-operative banks, both State and Central co-operative banks. In the precedent cases, the cooperatives are involved in accepting deposits from members and providing credit facilities to its members thus being mutual benefit permitted in law as co-operative act. After referring to the definition enumerated in the Banking Regulation Act 1949 and the factual, legal position as discussed above, anyone can conclude that the provisions of section 80P(4) are not



applicable to the cooperatives which are carrying on the business of providing credit facility to its members, hence, they are entitled for deduction u/s 80P(2)(a)(i).

10. Many local income tax authorities in Karnataka are not considering and properly appreciating the written submissions filed by the cooperatives discussing legislative intention of taxing co-operative societies engaged in doing the credit business with members at par with the co-operative banks who are taxed under the income tax Act, 1961.

#### **B. Section 80P(2)(d)**

11. The Co-operative Societies usually deposit their statutory deposits including Reserve fund and liquidity related funds in the District Central co-operative Banks, for which no prior permission is necessary from the Registrar of co-operative societies as per the provision of Sec. 58 of the Karnataka Co-operative Societies Act. But some of the assessing officers do not agree with our contention that the District Central Co-operative Banks are also Co-operative societies registered under co-operative Societies Act, saying that 'after insertion of section 80P(4) of IT Act, income from investment made in co-operative banks is not eligible for deduction u/s 80P(2)(d) of the IT Act' and compute the interest earned on these deposits and also dividend from investment in shares of these DCC banks as taxable income. This is because of the ambiguity in the Income Tax Act between a co-operative society and a co-operative Bank. The District Co-operative Central Banks or any other co-operative banks are registered under the Co-operative Societies Act only and they are co-operative institution for all practical purpose. Though they are guided by R B I guidelines, their structure is of Co-operative institutions and not of a nationalized bank. This is further supported by the fact that the IT Department is assessing district co-operative central banks under the status of "Co-operative Society".
12. We produce here below the provisions of the said section 80(P)(2)(d) for your ready reference





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

13. In this regard, there are number of orders by many Income Tax Appellate (ITATs) which have clearly upheld this contention. The following are some of those order which are very clear that the co-operative banks are as good as co-operative societies:

- a) SindhudhurgZillaMadhyamicAdhyapakSahakariPatpediMaryadit VS. ITO Word -2(4) ITA NO. 1825/PN/2013(AY 2010-11) Pune Banch "A"
- b) Asst. CIT Circle 11(1) Vs M/s Janata GrahakMadhyavarthiSahakariSanghaMaryadit, Pune ITA No. 575/PN/2013(AY2009-10) Pune Banch "A"
- c) Asst. Commissioner of Income Tax Circle AurangabadVs. M/s Bajaj Auto Limited Employees Co-Op. Credit Society Ltd., Waluj. ITA No. 1047/PN2012 (AY 2009-10) Pune Banch "B"
- d) Veejmandals' Workers Federation Sahakari Patsamstha Maryadit Vs. Income Tax Officer 2(24) Kudal. ITA No. 29/PN/2014(AY2010-11) Pune Banch "B"



- e) Sindhu Bank Staff Co-Operative Credit Society Limited Vs. Income Tax Officer 2(24) Kudal. ITA No. 30/PN/2014(AY 2010-11) Pune Bench "A"
- f) Sindhudurga District Primary Teachers Co-Operative Credit Society Limited Vs. Income Tax Officer 2(24) Kudal. ITA No. 31/PN/2014(AY 2010-11) Pune Bench "A"
- g) The Asst. Commissioner Of Income Tax Circle-38(1) New Delhi Vs. Jawala Co-Op. Urban Thrift & Credit Society Ltd., New Delhi. ITA No. 2607/Del/2012 Delhi Bench "D"

But, many of assessing authorities are not accepting these orders as binding on them saying that these orders are non-jurisdictional. This is because of the ambiguity in the Income Tax Act which has not clarified that a Co-operative bank is also a co-operative institution.

Now very recently the ITAT, Bangalore in the following cases have come out with clear decisions in favour of the assessee co-operatives in this regard

1. Menasi Seemeya Group Gramagagala Seva Sahakari Sangha, Vanalli, Sirsi Vs. CIT, Hubli (ITA No. 609 & 610(BNG)(A)/2014 dated 06-02-2015
  2. Shri Marikamba Mahilaa Co-operative Credit Society Ltd., Sirsi Vs. ITO, Sirsi (ITA No. 617(BNG)(B)/2014 dated 20-03-2015.
14. Usually the co-operatives deposit amounts in co-operative banks for the following two reasons.
- a. There are provisions in the Co-operative Act and the guidelines issued by the regulators from time to time to invest certain portion of their profits and free reserves in external deposits. This is a statutory obligation for the co-operatives to comply with. As a part of these statutory compliances they deposit their money in co-operative bank deposits.
  - b. Usually the credit societies accept deposit for the purpose of lending and in case, they don't find good borrowers, instead of keeping the funds idle, they deposit in short term deposits with Co-operative banks.



15. Many local income tax authorities in Karnataka are not considering and properly appreciating these facts though the written submissions were filed by the cooperatives discussing legislative provisions on the ground that
  - c. The societies have invested their excess money, and hence they are not eligible for deductions as per together Case decision
  - d. The societies have invested in Co-operative banks and not co-operative societies as specified in the section.
16. Very recently the H'nble High Court of Karnataka has categorically declared that the said together case is not applicable to Credit societies and that in case of credit societies, their objective being accepting deposits for the purpose of lending or investment, the process of depositing excess money in short term deposit is also a business transaction.
17. Even though the assessee co-operatives bring these facts to the notice of their assessing officers during the assessment process, some of the local assessing officers are not allowing the legitimate deductions under these sections and taxing the co-operative societies.
18. The information we gathered in this regard from the department sources is that they are instructed orally to disallow these claims in the interest of revenue collection though they know that afterwards these collections are to be refunded while giving effect to the appellate orders there by necessitating waste exercise of appeal, stay and other litigations.
19. These uncertainties are putting the co-operative in deep problems since they cannot anticipate such huge demands from the IT authorities, which actually puts these institutions under loss.
20. There are several instance of seizure of bank account, non-hearing of appeals in a reasonable time limit, causing heavy pressure on the working capital of such co-operatives by way of blockage of funds with IT department for 7-8 years.





21. In this connection, His Excellency Governor of Karnataka rightly made a reference during the speech at a Co-operative conference held at Belgaum during the month of November, 2014
22. In cases, where the Co-operative credit societies have favourable orders from the appellate authorities, the taxes paid are not refunded in time, causing financial strain on the Co-operative Credit Societies.

These events are creating panic in the minds of the co-operatives and they are scared. Hence we request your good selves to kindly intervene in the matter and initiate necessary actions to mitigate these hardships to the co-operatives. Also we request your kind selves to instruct the appropriate authorities to see that the AOs will not resort to these types of unfair means of tax collections.

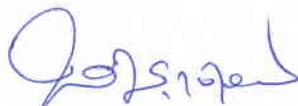
When the parliament does not intend to tax the Co-operative Credit Societies and so also the Appellate Tribunals and High courts have held so, we earnestly request your good selves to kindly issue the directions to the CBDT to give clear directions/circular to the Income Tax Department so that Co-operative Credit Societies are not subjected to harassment and their income be exempt u/s 80P of the Income Tax Act 1961, for which they are rightly entitled to.

Expecting a positive response from your end in the interest of the co-operative movement in India,

Thanking you, we the undersigned co-operatives remain,

Yours faithfully,

For and on behalf of the co operative societies in Karnataka

  
(Dr. B.D. Bhukantha)  
Vice-President

  
(K. Lalitha G.T. Devegowda)  
President