



# Taxation and GST

---

## on Co-operative

PRESENTED BY: CA VIJAY JOSHI

# Contents

What is a co-operative society?

Types of Co-operative society

Principle of Mutuality

Exemptions & Deductions

Judicial Interpretations

Issues in Income Tax – S. 80P deduction

Other Issues

TDS

Income Tax Return Filing-Issues

GST on Co-operative Housing Societies

Conclusion

# What is a co-operative society?

---

‘Co-operative society’ means a co-operative society registered under the Co-operative Societies Act, 1912 or under any other law for the time being in force in any State for the registration of co-operative societies. [S. 2(19) of Income Tax Act, 1961]

However, it is not assessable as ‘person’ as defined u/s. 2(31) of Income Tax Act, 1961.

Thus, an organisation having various characteristics discussed earlier and registered either under Central Law or State Law is recognised and covered in the definition.

It is needless to state that benefits available under income tax law are available to an organisation satisfying above conditions.

The activities carried out by such organisation i.e. co-operative society shall make it eligible for different benefits.

# Introduction

---

Co-operative society is a society formed for various purposes. There are many types of co-operative societies. Based on activities undertaken by a Cooperative Society; classification can be: -

**1. Consumers cooperative societies**

**2. Producers cooperatives**

**a. Industrial service cooperatives**

**b. Manufacturing cooperatives**

➤ **3. Marketing Cooperatives**

➤ **4. Cooperative Farming Societies**

➤ **5. Housing Cooperatives**

➤ **6. Credit Cooperatives**

**There could be a society which is not covered in the above classification but is otherwise a cooperative society eligible for benefits under Income Tax Act 1961.**

# Is co-op. society a person as defined u/s 2(31)?

---

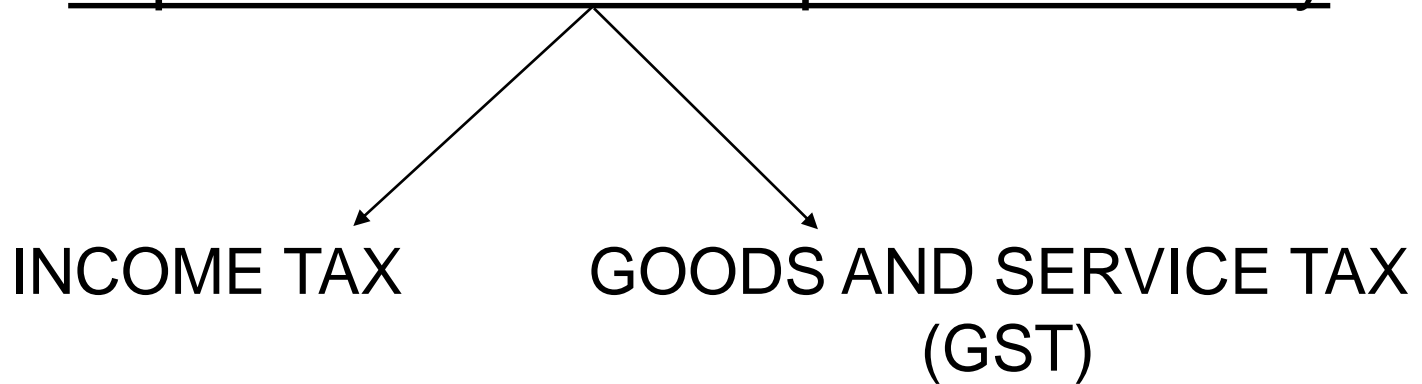
No, it is not a person under 2(31).

The co-operative society would be assessed in the manner of AOP or BOI which is a person under 2(31).

Although, status of a cooperative society is to be taken as an Association of Persons, the **Section 67A** and **Section 86** of the Act have been **excluded** from application to the members of society.

1. Nasik District Labour Societies v/s Income Tax Officer on 5 May , 1986  
Equivalent citations : (1986) 18 ITD 354 Pune
2. M.V. Rajendran v/s Income Tax Officer (2003) 260 ITR 442 Ker

# Impact of Tax on Co-operative Society



We shall be looking at & studying the impact of both through the balance of the presentation.

# Tax Compliance for Co-operative Society

---

**Is it mandatory to file Income Tax Return by a co-operative society?**

YES.

A reference to proviso added by Finance Act, 2005 (w.e.f. 01.04.2006) in provisions of section 139(1) make it mandatory for every co-operative society to file income tax return.

Finance Act 2018 has added section 80AC whereby deduction is not allowed under Chapter VIA Heading 'C-Deduction in respect of certain incomes' unless the income tax return is filed within time allowed under section 139(1), thus effectively denying allowance of deduction under section 80P.

Needless to state that therefore, every co-operative society has to apply and obtain PAN as well as file income tax return within the time allowed under section 139(1).

# Tax Compliance for Co-operative Society

---

## Even if it does not have any taxable income?

The question whether a co-operative society has a taxable income or not shall depend on many factors and shall differ from case to case.

Before venturing to analyse the term 'taxable income', it is necessary to look at what is taxable income.

A reference to 'Gross Total Income' AND 'Total Income' shall make this distinction clear. Combined reading of section 5 with section 14 and section 80B(5) makes it clear that income before applying the deductions allowable under Chapter VI-A is 'Gross Total Income'.

After allowing deductions in Chapter VI-A, the net result of such deduction is 'Total Income' which is also 'taxable income' since tax at the applicable rates is payable on it. Since tax liability for every society commences from Re. 1/-, every society is liable to file income tax return.



# Tax Compliance for Co-operative Society

---

What, if a society only has interest from deposits kept with co-operative bank and no other income?

Such income shall be eligible for deduction under Chapter VI-A subject to prior discussion and since, income from deposits kept with co-operative bank forms part of 'Gross Total Income', the same is covered under proviso to section 139(1) making society liable for filing income tax return.

Also, deduction under section 80P is allowable only on filing of income tax return.

# Tax Compliance for Co-operative Society

---

## What about TAN and liability for TDS?

This shall depend upon the nature and quantum of payments incurred by a society and as covered by Part-B of Chapter XVII under sections 192 to 195.

Thus, if a society does not have any such payment during the year nor is it likely to have any such expenditure in the next year, it may not apply for TAN and file any return for TDS.

Practically speaking, every society is some time or the other liable to obtain TAN, deduct TDS, deposit with Government, file TDS return and issue TDS Certificate as applicable.

Hence, it is in the interest of every co-operative society to obtain TAN and comply with TDS provisions.

# Principle of Mutuality

---

Principle of Mutuality has been the subject of deep scrutiny by the High Courts, Supreme Court and the House of Lords in very many cases and has a chequered history of its development.

*'For this doctrine to apply, it is essential that all the contributories to the common fund are entitled to participate in the surplus and that all its participants in the surplus are contributors, so that there is complete identity between contributors and participators.'*

[Extract from CIT v Bankipur Club Ltd [1997] 226 ITR 97 (SC)]

# Concept of mutuality

---

No man can trade with himself; he cannot make, in what is in its true sense or meaning, taxable profit by dealing with himself" – **(As per Palles, C.B. in Dublin Corpn. v. M. Adam 2 T.C. 387 at p. 397)**

The principle of mutual association is that all contributories to the common fund are entitled to participate in surplus and all the participators to the surplus fund must contribute.

If the service is provided to the members as well as non-members alike for the same consideration, then the dealing is tainted with commerciality and profit earning motive and hence resultant profit would not be exempt.

**CIT v Bankipur Club Ltd [1997] 226 ITR 97 (SC)**

**ITO v Venkatesh Premises Co-op. Soc. Ltd. [2018] 402 ITR 670 (SC)reaffirmed**

# Principle of Mutuality

---

Principle of mutuality is not defined under Income Tax Act, 1961.

However, its reference and reliance have been drawn from various SC and HC judgments.

Prominent cases to be referred –



- Municipal Mutual Insurance Ltd v Hills 16 (TC) 430 (HL)
- CIT v Bankipur Club Ltd [1997] 226 ITR 97 (SC)
- CIT v Apsara Co-op. Hsg. Soc. Ltd. [1993] 204 ITR 662 (Cal)
- CIT v Adarsh Co-op. Hsg. Soc. Ltd. [1995] 213 ITR 677 (Guj)
- Sind Co-op. Hsg. Soc v ITO, Ward 1(7),Pune [2009] 317 ITR 47 (Bom)
- ITO v Venkatesh Premises Co-op. Soc. Ltd. [2018] 402 ITR 670 (SC)

# What are the tax rates for Co-operative society?

---

❖ Income Level:	Tax Rate Applicable
❖ Up to Rs. 10,000	10%
❖ Rs. 10,000 - Rs. 20,000	20% between Rs. 10,000 and Rs. 20,000
❖ Above Rs. 20,000	30% in excess of Rs. 20,000

a) Surcharge – Where total income exceeds Rs. 1 Crore:

- (i) every co-operative society (except those opting under section 115BAD)  12%
- (ii) every co-operative society opting under section 115BAD  10%

**a) Health and Education Cess (from Assessment Year 2019-20)** - It is 4% of income-tax and surcharge.

# PAYMENT OF ADVANCE TAX

---

<b>By 15<sup>th</sup> June</b>	<b>25%</b>
<b>By 15th September-</b>	<b>25%,</b>
<b>By 15th December-</b>	<b>25%</b>
<b>By 15th March -</b>	<b>the whole amount of such advance tax as reduced by the amount paid in earlier instalment(s).</b>

# Exemptions and Deductions

---

The word '**exemption**' signifies that the particular income is not to be included in the total income as per the provisions of Income Tax Act, 1961 whereas '**deduction**' signifies that the particular amount of income or payment is eligible to be deducted after computing the gross total income.

Hence, in the former case, the amount is not included at all whereas in the latter case, the relevant taxable amount is included (in the case of income, as the case may be) and then, the same is deducted under relevant provisions of income tax act to arrive at taxable income.



# S. 80P

---

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. [S. 80P (1)]

- Accordingly, sub-section (2) gives deductions available as shown hereafter.
- Such co-operative societies having such income are eligible for deductions.
- The quantum of deductions are also given therein.

# S. 80P-Incentives under Income Tax

---

Though, there are different types of co-operative society based on various parameters, S. 80P of Income Tax Act, 1961 covers applicability in following manner:

- Co-operative Credit Society [S. 80P (2)(a)(i)]
- Cottage Industry [S. 80P(2)(a)(ii)]
- Marketing Society marketing agricultural produce [S. 80P(2)(a)(iii)]
- Supportive society [S. 80P(2)(a)(iv)]
- Society processing of agricultural produce [S. 80P(2)(a)(v)]
- Society providing collective disposal of the labour[S. 80P(2)(a)(vi)]
- Society indulging in fishing or incidental activities [S. 80P(2)(a)(vii)]
- Primary society supplying milk, etc. to federal society & others [S. 80P(2)(b)]
- Consumers Co-operative society [S. 80P(2)(c)(i)]
- Co-operative Bank [S. 80P(4)]
- Any Other Society [S. 80P(2)(c)(ii)]

# S. 80P (2)

---

If a co-operative society carries on certain activity, income from which is exempt and also certain activity, income from which is not exempt, the profits and gains attributable to the exempt activities shall enjoy the exemption and those attributable to the non-exempt activities shall be taxed.

At the same time, it is just and proper that in order to ascertain the income referable to non-exempt activity, the proportionate expenditure out of the total expenditure should be deducted, in order to arrive at correct income from non-exempt activity.

Besides, if the society has income some of which is exempt under one clause and the other under another clause of S. 80P(2), both will enjoy exemption.

- [Allahabad District Co-op. Bank Ltd v Union of India 83 ITR 895 (All)]
- [Addl.CIT v U P Co-operative Cane Union 114 ITR 70 (All)]

# S. 80P

---

As the provision of S. 80P is intended to encourage and promote the growth of co-operative societies, a liberal construction should be placed on the language employed in the provision.

- [CIT v South Arcot District Co-op. Marketing Society Ltd. 76 ITR 117 (SC)]

The benevolent purpose of the exemption scheme u/s. 80P (2)(a)(iii) is to encourage a vital national activity in the interest of rural economy. Therefore, the term 'marketing' occurring in that section has to be construed in a manner which would achieve the benevolent purpose of exemption rather than defeat the said purpose.

- [Meenachil Rubber Marketing & Processing Co-op. Soc. Ltd v CIT 193 ITR 108 (Kar)]

# S. 80P

---

A Co-operative society is entitled to deduction only on its **net amount of profits and gains**, i.e. on income of its business otherwise computable in accordance with the provisions of the I.T. Act for the purpose of charging income-tax thereon and which is included in its total income, and not on the amount of its gross profits and gains of business.

- [Sabarkantha Zilla Kharid Vechan Sangh Ltd Vs CIT 203 ITR 1027 (SC)]

Similar view was taken by ITAT Bench, Nagpur where it considered definition of 'gross total income' in S. 80B(5) and in view thereof, held that the deduction should be allowed on the total income as computed under the provisions of the Act and not on the gross income.

- [Second ITO v Nagpur Zilla Krishi Audyogik Sahakari Sangh Ltd 2 ITD 138]

# S. 80P

---

The deduction U/s 80-P is from gross total income determined in accordance with other provisions of the Act. Therefore, unabsorbed losses and unabsorbed depreciation of earlier years are to be set off before allowing deduction U/s 80-P.

- [C.I.T. Vs Kottagiri Industrial Co-operative Tea Factory Ltd 224 ITR 604 (SC)]

# S. 80P

---

A society is not disentitled from claiming exemption only because it also carries on the activities, the income from which is not exempt. All sales of specified commodities to members, irrespective of their proportion and quantum, would belong to exempted category and such sale to non-members, irrespective of their proportion and quantum, would belong to non-exempt category.

- [C.I.T. Vs Nagpur Jilla Krishi Audyogik Sahakari Sangh Ltd, 209 ITR 481(Bom)]

Similarly if a co-operative society carries on certain activities, income from which is exempt and also certain activities, income from which is not exempt; only profits attributable to exempted activities shall enjoy exemption.

- [C.I.T. Vs Ratanabad Co-operative Housing Society Ltd. 215 ITR 549 (Bom)]

Likewise, if a society carries on certain activities which are exempted and certain other activities which are non-exempted, the profits and gains attributable to such non-exempted activities must necessarily be taxed.

- [C.I.T. Vs Broach District Co-operative Cotton Sales, Ginning & Pressing Society Ltd, 97 ITR 575 (Guj)]

# S. 80P

---

Where the co-operative society was earning income which was partly taxable and partly entitled to special deduction U/s 80-P, proportionate share of expenses attributable to the earning of income which is entitled to deduction, should be deducted in computing such income for the purpose of deduction U/s 80-P.

- [Kota Co- operative Marketing Society Ltd Vs C.I.T. 207 ITR 608 (Raj)]

Similarly where assessee society has maintained a composite account of expenses in respect of both exempt income and taxable income, expenses related to non-exempt income have to be estimated, and expenses found to be incurred for exempted activities, have to be deducted from assessee's income before allowing deduction U/s 80-P.

- [C.I.T. Vs Rajasthan Rajya Sahakari Upbhokta Sangh Ltd. 215 ITR 448 (Raj)]



# Significance of Terms

---

S. 80P specifies that the whole amount of profits and gains of business attributable to the activities enumerated therein, shall be deducted from the income of the co-operative society.

The term 'attributable to' has been used in S. 80P(2)(b), 80P(2)(d), 80P(2)(e) and 80P(2)(f).

The expression 'attributable to' has been treated of wider import.

- [Cambay Electric Supply Industrial Co. Ltd v. CIT 113 ITR 84 (SC)]

In yet another case, interest on Government securities and dividends on shares of Industrial Finance Corporation were entitled to deduction U/s 80-P (2) (a)(i), because such income was held by the ITAT as attributable to assessee's business.

- [CIT v Bangalore District Co-operative Central Bank Ltd 233 ITR 282(SC)]

# Co-operative Credit Society – 80P(2)(a)(i)

---

(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.

The quantum of deduction is ‘whole of the amount of profits and gains of business attributable to any one or more of such activities’.

However, with the insertion of sub-section (4) vide Finance Act, 2006 w.e.f. 01.04.2007, a co-operative society carrying on the business of banking is not eligible for deduction.

The distinction between co-operative society ‘carrying on banking business’ AND ‘providing credit facilities to its members’ has been the bane of number of litigation matters.

# Deduction u/s 80P

---

All urban Co operative credit society and Pat-Pedhis are defined by virtue of provisions of [Note :Part V contains amendment in definition] – Section 5(ccii), 5(ccv) and 5(ccvi) of Banking Regulation Act, 1949.

Further, Section 5A of Banking regulation Act, 1949 overrides Bye laws of the co op credit society whose principal business of a primary credit society is the transaction of banking business and when its paid up capital and reserves attain the level of Rs. 1 lakh, a primary credit society automatically becomes a primary co-operative bank.

Further, vide para 8 in the case of [Salgaon Sanmitra Sahakari Pathpedhi Ltd. v. Additional Commissioner of Income-tax, Ward-17(3),Mumbai. – [12 Taxmann.com 246 (2011)] the assessee society was classified as ‘co-operative bank’ under Section 12(1) of the Maharashtra Co-operative Society Act, 1960 as per the registration certificate issued by the Assistant Registrar, Co-operative Society, Mumbai.

Once the urban Co operative credit society and Pat-Pedhis are classified as Bank then they are not eligible for benefit provided under Section 80P of the Income Tax Act,1961, from Assessment Year 2007-08 by virtue of Section 80P(4) read with Section 2(24)(vii) both of income Tax Act, 1961

# Credit Facilities

The expression 'facilities' used in the provision is an inclusive term of wide import embracing anything which aids or makes easier the performance of a duty.

---

- [Andhra Pradesh Coop. Central Land Mortgage Bank Ltd. v. CIT 100 ITR 472 (AP)]

The expression 'providing credit facilities' would comprehend not only the business of lending money on interest but also the business of lending services for guaranteeing payments

- [CIT v. U.P. Co-op. Cane Union Federation Ltd. 122 ITR 913 (All)]

When Section 80P (2)(a)(i) refers to a cooperative society engaged in providing credit facilities to its members, it really refers to a credit society whose primary object is to provide loans or other credit facilities to its members; it does not include any society whose primary object is something other than the provision of loans or other credit facilities, such as a consumer co-operative society.

- [Rodier Mill Employees' Co-op. Stores Ltd. v. CIT 135 ITR 355 (MAD)]

# Credit Facilities

---

Where an assessee, a cooperative society could not be regarded as 'Co-operative Bank' on mere fact that an insignificant proportion of revenue was coming from non-members and thus was entitled for deduction u/s. 80P(2)(a)(i).

- Quepem Urban Co-op. Credit Soc. Ltd v ACIT, Circle-1, Margao [2015] 58 taxmann.com 113 (Bom)

Where assessee had fulfilled all three basic conditions to be regarded as a primary co-operative bank, it was co-operative bank and therefore, provisions of section 80P(4) were applicable and it was not entitled for deduction u/s. 80P(2)(a)(i).

- ITO, Ward-1(3), Belgaum v Shri Durundeshwar Urban Co-op. Credit Soc. Ltd. [2015] 53 taxmann.com 165 (Panaji Trib)

# Credit Facilities contd. . .

---

From the definition of Primary Co-operative bank under section 5 clause (CCV) of Banking Regulation Act, 1949, it is apparent that if the co-operative society complied with all the three conditions;

- firstly that the primary object or principal business transacted by it is a banking business,
- secondly, the paid up share capital and reserve of which are 1 lakh or more and
- thirdly, by-laws of the Co-operative society do not permit admission of any other Co-operative society as a member, it will be regarded to be primary co-operative bank. If co-operative society does not fulfil any of the conditions, it cannot be regarded to be a primary Co-operative bank. Therefore, in the case of the assessee it is to be examined on the basis of the facts and materials on record whether the assessee co-operative society complies with all the three conditions.

# Other issues under 80P

---

The Hon'ble Supreme Court of India in the case of Totgars' Co-operative Sale Society Ltd. Vs Income-tax Officer [2010] 188 Taxman 282 (SC), held that funds not required immediately for business of providing credit facilities and interest earned on such fund would come under the category of 'Income from Other Sources' taxable u/s 56 of the Income-tax Act, 1961 and the same would not qualify for deduction as business income u/s 80P(2)(a)(i) of the Income-tax Act, 1961.

# Totgars' decision explained

---

The issue dealt with by the Hon'ble Supreme Court in the case of Totgar's Co-operative Sale Society Ltd v ITO [2010] 322 ITR 283 (SC) is extracted, for appreciation of facts, as under:

*“What is sought to be taxed under section 56 of the Act is the interest income arising on the surplus invested in short term deposits and securities which surplus was not required for business purposes. The assessee(s) markets the produce of its members whose sale proceeds at times were retained by it. In this case, we are concerned with the tax treatment of such amount. Since the fund created by such retention was not required immediately for business purposes, it was invested in specified securities. The question, before us, is-whether interest on such deposits/securities, which strictly speaking accrues to the members' account, could be taxed as business income under section 28 of the Act? in our view, such interest income would come in the category of ‘income from other sources’, hence, such interest income would be taxable under section 56 of the Act, as rightly held by the assessing officer...”*



# *Totgars' decision explained*

---

- i) At the first instance, the ratio of the decision in case of *Totgars Co-op. Sale Society (supra)*, as observed by Supreme Court itself, was confined only to the facts of the case before it & accordingly cannot be applied in general to all kinds of co-op. societies.
- ii) In the case of Totgars, the Hon'ble Supreme Court had not spelt out anything with regard to operational funds in the hands of pure Co-operative Credit Societies and the ratio was **applicable to co-operative sale societies only**.

# Contd..

---

iii) Assessee in Totgars' case had admitted that it had invested surplus funds, which were not immediately required for the purpose of its business, in short term deposits;

iv) The surplus funds arose out of the amount retained from marketing the agricultural produce of the members;

v) Assessee in Totgars case carried on two activities, namely, (i) acceptance of deposit and lending by way of deposits to the members; and (ii) marketing the agricultural produce; and (d) **that the surplus had arisen emphatically from marketing of agricultural produces.**

Whereas, in the case of co-op. credit societies, generally, it doesn't carry out any activity except in providing credit facilities to its members and that the funds are operational funds. The only fund available with the pure credit societies is deposits from its members and, thus, there are no surplus funds as such.

# Contd..

---

By considering all the above clinching dissimilarities, recently Hon'ble ITAT Ahmedabad bench in Jafari Momin Vikas Co-op Credit Society Ltd., vs. ITO [ITA No.1491/Ahd/2012 for A.Y. 2009-10], rightly held that ratio laid down by the Hon'ble Supreme Court in the case of Totgars Co-op Sale Society Ltd (supra) cannot be applied to the facts of the appellant credit society and accordingly deduction u/s 80P was allowed against interest income from deposits with nationalized banks.

# Deduction u/s 80P

---

80P(2) states that in the case of co-operative society engaged in **carrying on the business of banking or providing credit facilities to its members**, the whole of the amount of profits and gains of business **attributable** to any one or more of such activities.

Section 80P(4) states 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.

Thus section 80P(4) overrides section 80P(2) and hence deduction would only be available to primary agricultural credit society and rural development bank.

Thus, Section 80P(4) does not apply to co-operative credit society.(Jafari Momin Vikas Co-op credit society Ltd vs CIT,Gandhinagar).

# Contd..

---

Similar views:

Section 80P of the Income-tax Act, 1961 – Deduction – Income of co-operative societies (**Credit co-operative society**) – Assessee was registered as a co-operative credit society under Karnataka Co-operative Societies Act – Its main object was only to advance loan – Whether deduction under section 80P(2)(a)(i) could not be denied to assessee for investment made by it in private or public limited company – Held, yes –

***[Yamakanmardi Urban Co-operative Credit Society Ltd. v. CIT [2014] 45 taxmann.com 297 (Karnataka)]***

Contradictory decisions are also prevailing in case of income from transactions in Mutual funds by Co-op. credit society.

# Attributable to Business:

---

To elaborate further, the decision of Hon'ble ITAT Mumbai Special Bench in ***The Maharashtra State Co-operative Bank Ltd. vs. ACIT [(2010) 38 SOT 325]*** is worth seeking readers' attention, wherein the phrase '***Attributable to business of banking***' is explained authoritatively:

*Deduction under s. 80P(2)(a)(i)—Business of banking—In order to categorize an income under the head 'Profits and gains of business or profession' it is imperative that the income should have arisen from business carried on by the assessee—what is deductible under s. 80P is the amount of 'profits and gains' of business attributable to carrying on of the business of banking—"*

# What is a co-operative Bank?

---

Section 80P provides that word 'co-operative bank' has meaning assigned to it in Chapter V of the Banking Regulations Act, 1949.

A co-operative bank is defined in section 5 (cci) of Banking Regulation Act, 1949 to mean a State Co-op. Bank, a Central Co-op. Bank and a primary co-op. Bank.

A primary co-op. bank as per section 5(ccv) of Banking Regulation Act, 1949 means a co-op. society which cumulatively satisfies following conditions:

- Its principle business or primary object should be business of banking;
- Its paid up share capital and reserves should not be less than rupees one lakh;
- Its bye-laws do not permit admission of any other co-op. society as its member.

# Distinction in Applicability

---

Section 80P(2)(a)(i) provides for deduction to a co-op. society 'engaged in carrying on business of banking OR providing credit facilities to its members.

However, section 80P (2)(4) states that provisions of section 80P 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, one needs to bear in mind the operations of credit co-op. society as recently IT Department has been treating every credit co-op. society as co-op. bank.



# Co-operative Credit Society – 80P(2)(a)(i)

---

Where the assessee-society had been carrying on business of providing facilities to its members for obtaining fertilizers, etc., as also arranging loans from bank by giving certificates about cultivated land, etc., for which certain amount was charged as service charges, such service charges received by the assessee would not be eligible for deduction under Section 80P(2)(a)(i)

- [CIT v. Anakapalli Co-op. Marketing Society Ltd. 245 ITR 616 (AP)]

If a society regularly earns interest on funds (not required immediately for business purposes), such interest income is taxable under Section 56 under the head “Income from other sources” and not eligible for deduction under Section 80P.

- [Totgars’ Co-operative Sale Society Ltd.v ITO 188 Taxman 282 (SC)]

Interest received on income-tax refund is subject to deduction under Section 80P(2)(a) (i)

- [Maharashtra State Co-operative Bank Ltd. v. CIT 38 SOT 325 (Mum.)(SB)
- [CIT v. Haryana State Co-operative Apex Bank Ltd. 322 ITR 404 (Punj. & Har)]

# Cottage Industry – S. 80P(2)(a)(ii)

The term ‘cottage industry’ as such has not been defined in the Act.

---

Based on the ratio of the decision, a co-operative society engaged in cottage industry is required to broadly satisfy the following criteria for availing of the benefits under Section 80P(2)(a)(ii) –

- Cottage industry is one which is carried on in a small scale with a small amount of capital and a small number of workers and has a turnover which is correspondingly limited;
- It should not be required to be registered under the Factories Act;
- It should be owned and managed by the co-operative society;
- The activities should be carried on by the members of the society and their families [for this purpose, a family would include self, spouse, parents, children, spouses of the children and any other relative who customarily lives with such a member. Outsiders (i.e., persons other than members and their families) should not work for the society. In other words, the co-operative society should not engage outside hired labour. [However, it has certain exceptions];
- A member of co-operative society means a shareholder of the society;
- The place of work could be an artisan shareholder’s residence or it could be a common place provided by the co-operative society;
- The cottage industry must carry on activity of manufacture, production or processing; it should not be engaged merely in trade, i.e., purchase and sale of the same commodity.

# Cottage Industry – S. 80P(2)(a)(ii)

---

In the case of a weaver's society, so long as weaving is done by the members of the society at their residences or at a common place provided by the society, without any outside labour, such a society will be eligible for deduction under Section 80P(2)(a)(ii), even if certain payments have been made to outside agency for dyeing, bleaching, transport arrangements, etc., provided it satisfies all other conditions necessary for availing deduction under Section 80P(2)(a)(ii).

# Cottage Industry – S. 80P(2)(a)(ii)

---

A cottage industry is one which is carried on by the artisan himself using his own equipment with the help of the members of the family. It is the family unit which provides the labour force. The idea of cottage industry is alien to the idea of industry where hired labour is engaged and the relationship of employer and employee exists.

- [Distt. Co-op. Development Federation Ltd. v CIT 88 ITR 330 (All)]

A co-operative society can be regarded as a family consisting of its members and the premises belonging to the society can be regarded as its home or cottage.

- [CIT v. Chichli Brass Metal Workers Co-op. Society Ltd. 114 ITR 720 (MP)]

An apex society for coir marketing cannot be said to be engaged in regard to any affairs of cottage industry so as to be entitled to deduction under Section 80P(2) (a)(ii).

- [CIT v. Quilon Central Coir Marketing Cooperative Society Ltd. 229 ITR 348 (Ker.)]

# Cottage Industry – S. 80P(2)(a)(ii)

---

The assessee-society had the power to direct, supervise and control over the manufacturing of cloth through the primary societies which were the members of the assessee-society. Members of the primary societies ran cottage industries in their houses. In these circumstances, it could not be said that the assessee society was not engaged in the manufacturing activities carried out by the weavers. The weavers got the raw material, *i.e.*, yarn through their primary societies, but thereafter weaving charges were paid by the assessee and it purchased the cloths through primary societies.

- [CIT v. Rajasthan Rajya Bunker Sahakari Sangh Ltd. 24 Taxman 135 (Raj)]

Expression ‘whole of the amount of profits and gains of business attributable to any one or more of such activities’ indicates that deduction under Section 80P (2) (a) is to be given to the extent of whole of profit attributable to cottage industry without deducting there from any loss arising in any other activity.

- [CIT v. Agency Marketing Co-operative Society Ltd. 201 ITR 881 (Ori)]

# Agricultural Income

---

The term 'agricultural income' is defined in section 2(1A) as follows:

agricultural income" means

- [(a) any rent or revenue derived from land which is situated in India and is used for agricultural purposes;]
- (b) any income derived from such land by —
  - (i) agriculture; or . . . .

The term 'agriculture' is not defined under the act.

Hence, it would be interesting to note few judgments in this respect in order to have clear idea of what does or does not constitute agriculture and consequently agricultural income in the context of co-operative society.

The agricultural income though is exempt u/s. 10(1), we look at it from the society's perspective.

# Agricultural Income

---

It is necessary to have produce raised from land and where there is no land, the produce is not treated as agricultural produce.

Hence, the Assessing Officer observed that for growing of mushrooms, wooden casing filled with compost is stacked in the rooms under controlled temperature. The activity performed by the assessee is no way in the nature of cultivation and hence not covered within the definition of 'agriculture'.

- [Chander Mohan v ITO, Ward-4, Yamuna Nagar 52 taxmann.com 203 (Chandigarh Trib)]

However, it is not necessary that the land has to be owned by the assessee. It would suffice where the land has been taken on lease.

- [ITO, Ward 2(1), Kolhapur v Gajanan Agro Farms 33 taxmann.com 149 (Pune-Trib)]

# Agricultural Income

---

Where the assessee was engaged in cultivation of oil and processing and extraction of crude palm oil from fruit as well as from the kernel, AO held that part of income earned by assessee from sale of palm oil as business income by applying Rule 7 of the income tax rules.

However, on further appeals, High Court held that the processing covered by item (ii) of section 2(1A)(b) is only so much of process which a cultivator ordinarily engages to make the product for marketing. Therefore, income that is attributable to agricultural operations is the market value of palm fruit with pulp and kernel. Activity carried out by the assessee in extraction operations is the industrial activity and therefore income from such activity is assessable as business income.

- [Oil Palm India Ltd v ACIT [2012] 206 taxman 1 (Ker)]



# Agricultural Income

---

Where assessee is engaged in cultivating and growing raw peas and also in the process of converting them into pea seeds so as to render them fit for sale and also selling seeds in the market and to various godowns, income derived from pea seeds constituted agricultural income. (A.Y. 1997-98)

- [CIT v Rana Gurjit Singh [2012] 340 ITR 108 (P&H)]

In yet another case, assessee company was engaged in development and production of basic and hybrid seeds. Up to basic seed activity, all primary operations were performed by assessee company on its own lands or lands leased by it under its own direct supervision and guidance with help of casual labour engaged by it and then basic seeds were given to farmers for producing hybrid seeds on their own lands under supervision of assessee. Cost of production was reimbursed to farmers and produce was taken back by assessee.

Here it was held that production of hybrid seeds from basic seeds was agricultural activity and income earned by assessee from this activity would be agricultural income exempt under section 10.

- [Advanta India Ltd v ACIT, Cir 11(4), Bangalore 34 taxmann.com 188 (Bang Trib)]

# Marketing of Agricultural Produce

---

The whole of the amount of profits attributable to the marketing of agricultural produce grown by the members of society is deductible under Section 80P (2) (a) (iii).

The common meaning of the marketing is the effort or the sum total of the activities which are involved or put for taking a particular product or good to the sale point or to the market where it is ultimately sold.

‘Marketing’ is an expression of wide import, and it generally means ‘the performance of all business activities involved in the flow of goods and services from the point of initial agricultural production until they are in the hands of the ultimate consumer’. The marketing functions involve exchange functions such as buying and selling physical functions such as storage, transportation, processing and other commercial functions such as standardization, financing, market intelligence, etc.

- [CIT v. Karjan Co-op. Cotton Sale Ginning & Pressing Society Ltd. 129 ITR 821 (Guj)]
- [CIT v. Ryots Agricultural Produce Co-op. Marketing Society Ltd. 115 ITR 709 (Kar)]

# Marketing of Agricultural Produce

---

Where the assessee, a cooperative society, incorporated for manufacture of sugar, purchased sugarcane from its members as well as non-members as well as a co-operative society and manufactured sugar to sell the same in open market to earn profit, since profit so derived was not on account of marketing of sugarcane of its members but was on account of manufacturing of sugar out of sugarcane purchased on its own account, deduction claimed under Section 80P(2)(a)(iii) would not be available thereon to the assessee society.

**Buying Sugar cane” and “selling sugar” is not “marketing of agricultural produce” “grown by it’s members”**

- [Kamal Co-op. Sugar Mills Ltd. v. Dy. CIT 66 ITD 521 (Delhi)]

# Marketing of Agricultural Produce

---

The Society engaged in marketing of agricultural produce of its members also had other co-operative societies as its members.

Since the agricultural produce marketed by the Society was not produced by the primary marketing Societies, being its members, the assessee society was not held to be entitled to exemption under Section 81(1)(c) [now Section 80P(2)(a)(iii)].

- [Assam Co-operative Apex Marketing Society Ltd. v. CIT [1993] 201 ITR 338 (SC)]

# Marketing of Agricultural Produce

---

Poultry farming being an extended form of agriculture, eggs qualify to be treated as 'agricultural produce'.

- [CIT v. Mulkaluru Co-op. Rural Bank Ltd. 173 ITR 629 (AP)]

Amount of subsidy received by the assessee from National Co-operative Development Corpn. towards loss incurred on account of price fluctuation qualifies for deduction.

- [CIT v. Punjab State Co-operative Supply & Marketing Federation Ltd. 182 ITR 58 (Punj & Har)]

# Purchase of Agricultural Implements

---

Whole of income from the purchase of agricultural implements, seeds, livestock or other articles intended for agriculture for the purposes of supplying them to its members is deductible under Section 80P(2)(a)(iv).

While claiming deduction under this section, the following few judgments and points should be kept in mind.

It is necessary that the assessee must prove that it has purchased certain articles, which means that it has acquired property in certain articles, and those articles have been sold to the members.

- [Vidarbha Co-op. Marketing Society Ltd. v. CIT 156 ITR 422 (Bom)]

Section 80P (2) (a) (iv) does not require that the supplies shall be made by the co-operative society only to members and to no one else.

- [CIT v. Guntur Distt. Coop. Marketing Society Ltd. 154 ITR 799 (AP)]

# Purchase of Agricultural Implements

The expression 'members' in Section 80P (2) (a) (iv) cannot be restricted to either a member of a primary society or to an agriculturist alone (Apex Society can also claim deduction).

- [CIT v. Tamil Nadu Co-op. Marketing Federation Ltd. 144 ITR 744 (Mad)]

Coal is not an article which can be described as an “article intended for agriculture”.

- [U.P. Co-operative Federation Ltd. v. CIT 84 ITR 317 (All)]

It cannot be said that cattle-feed meant for livestock has no connection with agricultural operations and as such is outside the exemption contemplated under Section 80P(2)(a)(iv).

- [CIT v. Thudialur Co-operative Agricultural Services Ltd. 143 CTR 362 (Mad)]

However, deduction is not available under Section 80P (2) (a) (IV) in respect of profit on sale of commodities to non-members.

- [CIT v. Vidarbha Co-operative Marketing Society Ltd. 212 ITR 327 (Bom)]

# Purchase of Agricultural Implements

---

Where the assessee was a co-operative marketing federation registered under the Co-operative Societies Act and it mainly dealt, inter alia, in general fertilizers, products from mixing units, etc., it would be entitled to deduction in respect of profit from sale of fertilizers to its members.

- [CIT v. Tamil Nadu Co-operative Marketing Federation Ltd. 151 CTR 232 (Mad)]

Where the assessee undertook schemes to lift water from rivers known as Lift Irrigation Scheme and the water lifted by the assessee was supplied by it to its members for the purpose of cultivation, water being purchased by the assessee, the assessee would be entitled to deduction in respect of income from Lift Irrigation Scheme.

- [CIT v. Shetkari Sahakari Sakhar Karkhana Ltd. 238 ITR 983 (Bom)]



# Purchase of Agricultural Implements

---

By purchasing different kinds of manures and pesticides and mixing them up for the purpose of selling the same to the small farmers in retail, it cannot be said that the assessee is indulging in any manufacturing activity or processing of goods, so as to disentitle it to exemption under Section 80P(2)(a)(iv).

- [CIT v. Thudialur Cooperative Agricultural Services Ltd. 143 CTR 362]

# Processing of Agricultural Produce

---

Income from the processing (without the aid of power) of the agricultural produce of its members is deductible under Section 80P(2)(a)(v).

For this section the word “processing” and the “agricultural produce” are important.

These terms have not been defined in the Act but have been used in other sections also and therefore, for defining these words, help should be taken from the judgments which are given by various Courts while dealing the issues arising in other sections.

The most important point to be taken note is that the processing should be done without the aid of power.

The condition of ‘grown’ by its member is not stipulated here as compared to clause (iii). However, the clause requires that the agricultural produce should be grown by the members of the society. Only in that condition the deduction can be claimed.

In case the produce is bought from open market and is brought for processing, no deduction would be allowed.

# Collective Disposal of Labour

---

This deduction is available only when the earning of the society is through the utilisation of the actual labour of its members.

Thus, a society of engineers engaged in collective disposal of labour of members where actual supervision of work in field is done by paid employees, will not be entitled to exemption, since there is no direct connection between the work executed and the speciality of members of the society as engineers.

- [Nilagiri Engg. Co-op. Society Ltd. v. CIT 208 ITR 326 (Ori)]

Where not only members but also a large number of non-members were contributing collective disposal of labour and condition laid down in proviso to Section 80P(2)(a)(vi) was not fulfilled, the assessee-society would not be entitled to exemption of its income.

- [Assessing Officer v. Ganesh Co-op. (L&C) Society Ltd. 67 ITD 436 (Asr)]

# Collective Disposal of Labour

---

For this section an important landmark judgment given by the Hon'ble Gujarat High Court i.e. jurisdictional High Court in the case of Gora Vibhag Jungle Kamdar Mandali v. *CIT* [1986] 161 ITR 658 (Guj) should be kept in mind while analyzing the claim of the assessee.

According to this judgment, if the co-operative society as specified in sub-clause (vi) wants to claim full deduction of the profits made by it, persons other than those falling under the three specified categories can be members of the society, but they should not be given the right to vote and that fact should be clearly borne out from the rules and bye-laws restricting the right to vote only to members specified in the proviso.

# Collective Disposal of Labour

---

The whole of the profits of a co-operative society engaged in fishing and allied activities are deductible under Section 80P(2)(vii).

Fishing and allied activities include 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 Proviso regarding restriction of voting rights which has been discussed in the preceding paragraph is also applicable to this sub-clause and, therefore, while allowing the deduction the bye-laws of the societies should be analysed and it should be verified whether the voting rights confirm to the Proviso or not.

Accordingly, the class of members entitled to voting rights should be individuals who carry on the fishing or allied activities, the co-operative credit societies which provide financial assistance to the society and the State Government.

# Primary society engaged in supply of milk, oil seeds, fruits, etc.

---

The deductions of the whole of the amounts of profits and gains of a co-operative society is available if the following conditions are satisfied-

- The co-operative society is a primary society engaged in supplying milk, oil seeds, fruits or vegetables.
- Milk, oil seeds, fruits or vegetables are grown or raised by its members.

# Primary society engaged in supply of milk, oil seeds, fruits, etc.

To whom milk, oil seeds, etc. are supplied	Object of the society/company to whom milk, oil seeds, etc. are supplied
A federal co-operative society	It must be engaged in the business of supplying milk, oil seeds, fruits or vegetable as the case may be.
The Government or a local authority	- -
A Government company or a statutory corporation	The company/corporation must be engaged in the business of supplying milk, oil seeds, fruits or vegetables as the case may be

# Other Societies

---

If a co-operative society is engaged in any other activity (either independently or in addition to those specified in clause (a) or clause (b) then the following amount is deductible under Section 80P(2)(c) :

- In the case of a consumer co-operative society (i.e., a society for the benefits of consumers): Rs. 1,00,000; and
- In any other case: Rs. 50,000.

This is a general deduction available to any cooperative society which does not carry any of the activities which are specified.

The explanation below this clause also defines the consumer's co-operative society as a society for the benefit of consumers.

As is evident from the language of the section that it is a general section and no specific restriction or classification has been made. It only mentions the cases which are to be excluded and, therefore, there is bound to be litigation on the issue.



# Other Societies

---

A co-operative bank is legally obliged to invest part of deposit received from its members as reserve fund in Government Securities.

Generally such reserve funds cannot be utilized as working capital and the same can be withdrawn only to meet losses or when the bank is wound up.

Interest on such Government securities cannot be treated as essential part of banking activity as the same is not part of stock-in-trade or working/circulating capital. Such interest income is not fully deductible under Section 80P(2)(a)(i), but deduction is available under Section 80P(2)(c).

- [Madhya Pradesh Co-operative Bank Ltd. v. CIT [1996] 84 Taxman 640 (SC)]

# Consumers' Society

---

A society supplying coal and diesel to its members, who are manufacturers of bricks and tiles, is not a “consumer” co-operative society.

A “consumer society” means a registered society which has as its principal object the supply of the requirements of its members for the consumption of such members.

- [Tamil Nadu Brick & Tile Mfrs. Industrial Service Co-operative Society Ltd. v. CIT 129 Taxman 343 (Mad)]

# Housing Societies

---

Housing societies would fall under 'other societies'.

Accordingly, the taxation of such societies would have to be looked at with a different perspective.

The 'Principle of Mutuality' would be squarely applicable since here the members constituting the society are the members who are also beneficiaries.

The services rendered by society to its members against service charges collected shall be covered under 'Principle of Mutuality' and consequently, the same would be exempt from tax.

However, some specific incomes peculiar to a housing society are necessarily to be considered in different perspective.

# Tax Incidence on Specific Income

---

In the backdrop of earlier discussion, let us see the taxability of incomes peculiar to a co-operative housing society.

The specific incomes so considered are –

- Transfer Fees
- Non Occupancy Charges
- Rental from Cable Tower/Hoardings/Open Spaces (Terraces, etc)
- Parking Charges
- Transfer of TDR/FSI
- Interest received from co-operative banks/nationalized or private banks

# Transfer Fees

---

Transfer Fee has also been contentious issue and has attracted various judgments.

It is a fee collected from members (existing/incoming) towards admission of new members to the benefits of various services rendered by the society including right to occupy the premises.

The quantum may differ and may have been collected under various nomenclature.

# Transfer Fees

---

Prominent judgments to be referred are –

- CIT v Bankipur Club Ltd [1997] 226 ITR 97 (SC)
- CIT v Apsara Co-op. Hsg. Soc. Ltd. [1993] 204 ITR 662 (Cal)
- CIT v Adarsh Co-op. Hsg. Soc. Ltd. [1995] 213 ITR 677 (Guj)
- Walkeshwar Triveni Co-op. Hsg. Soc v ITO [2004] 88 ITD 159 (Mum)(SB)
- Sind Co-op. Hsg. Soc v ITO, Ward 1(7),Pune [2009] 317 ITR 47 (Bom)
- Mittal Court Premises Co-op. Soc Ltd v ITO, Ward 12(3)(1) [2009] 184 Taxman 292 (Bom)
- ITO v Venkatesh Premises Cooperative Society Ltd. [2018] 402 ITR 670 (SC)

# Non Occupancy Charges

---

Non occupancy Charges are the charges levied for not occupying its premises by member of the society.

These are paid by member or non member depending upon the facts and circumstances of the case.

Maharashtra Government has issued a notification dated 01.08.2001 restricting the levy of non occupancy charges to 10% of service charges (excluding municipal corporation/nagar palika taxes).

Though the taxability is a contentious issue, the same was held as non taxable in the following case-

- Mittal Court Premises Co-op. Soc Ltd v ITO, Ward 12(3)(1) [2009] 184 Taxman 292 (Bom)

# Rental Income from Hoardings

---

This is a common income for many housing societies depending on their locational advantages.

This is received from any outside agency or entity who is not a member of the society and is levied for display of hoarding of such an entity.

Since the tests of mutuality are not satisfied, the same is taxable in the hands of the society.

However, all direct and indirect expenses which are incurred for earning as well as maintaining the hoarding facility can be claimed as expenses.



# Rental Income from Cable Tower

---

Again, in view of various advantages, the mobile towers erected on the terraces of the housing society fetch rental income for society.

However, the same is taxable in the hands of the housing society.

This shall be taxable under the head 'Income from House Property' and accordingly, the deductions of property taxes and other standard deduction can be claimed.

Principle of mutuality shall not be applicable.

# Rental Income from use of Open Spaces, Terraces etc.

---

These represent an income from temporarily letting out of open spaces by the housing society.

The taxability shall depend upon the recipient of such services, whether a member or a non member.

In case of member recipient, the 'Principle of Mutuality' shall apply and accordingly, the same will be exempt from income tax.

In case of non member recipient, the same shall be taxable in the hands of housing society as 'Income from House Property'.

# Parking Charges

---

These are the charges collected by the housing society for parking vehicles in the society premises.

Municipal Corporations also levy certain share of property tax for parking spaces as allowed under its Development Control Rules.

Though Supreme Court has held that the open spaces within the society premises can not be let out to its members for consideration, the levy and collection of charges from members and in certain non members continues.

The taxability shall depend upon the status of recipient as to whether he is a member or non member.

# Transfer of FSI/TDR

---

FSI is 'Floating Space Index' and represents a right to construct an area based on various eligibilities under Development Control Rules.

TDR is 'Transfer of Development Rights' under Development Control Rules represented by a certificate issued by authorities.

Both these rights are generated by the plot/property/land held by the housing society.

Since these are dependent on and related to immovable property, the gains represent 'Capital Gains' under Income Tax Act, 1961.

# Transfer of FSI/TDR

---

The taxability on transfer of such FSI/TDR has raised questions on its taxability.

The issue needs to be understood in the light of provisions of S. 48, 49 and 55 of Income Tax Act, 1961.

Though these are Capital Assets as seen earlier, the levy and collection of provisions of Chapter on 'Capital Gain' failed to apply as held in –

- *New Shailaja Co-op. Hsg. Soc. Ltd v Income Tax Officer* [2010] 36 SOT 19 (Mum)
- *CIT-18 v Sambhaji Nagar Co-op. Hsg. Soc. Ltd* [2014] ITA No. 1356 of 2012 (Bom)

This was mainly because the description of various assets referred to in S. 55(2) does not include the above assets.

# Interest earned from co-operative banks

---

- As is well known, the co-operative housing societies have their bank accounts with one or more co-operative banks and other banks, which may be nationalized or private banks.
- Whether the interest earned on deposits with co-operative banks is eligible for deduction u/s. 80P (2)(d)?
- The answer is 'YES'. The interest received from co-operative banks is eligible for claim of deduction u/s. 80P (2)(d).
- Following direct judgments may be referred to in this regard:
  - **Kaliandas Udyog Bhavan Premises co-op. soc. Ltd v ITO [2018] 94 taxmann.com 15 (Mumbai Trib)**
  - **Surendranagar District Co-op. Milk Producers Union Ltd. v DCIT [2019] 111 taxmann.com 69 (Rajkot Trib)**
  - **Sant Motiram Maharaj Sahalari Pat Sanstha v ITO [2020] 120 taxmann.com 10 (Pune Trib)**

# Interest earned from co-operative banks

---

- However, savings interest received from co-operative bank by a co-operative society is not allowed as eligible for deduction u/s. 80P by ITR 5 utility.
- This is in view of the word 'investments with any other co-operative society' used in sub-section (2)(d) of section 80P and the amount held by co-operative society in its savings bank is not an investment.
- On the other hand, any interest earned from nationalized or private bank is taxable as the claim for deduction is not available u/s. 80P(2)(d).
- Courts have clearly declared that the source of investment by co-operative society is not material for eligibility of deduction u/s. 80P(2)(d).

*[Mantola Co-operative Thrift & Credit Society Ltd. v Income Tax Officer[2020] 118 taxmann.com 276 (Delhi - Trib.)]*

# Letting of Godowns-S. 80P(2)(e)

---

The whole of the income derived by a co-operative society from the letting of godowns or warehouses for storage, processing or facilitating the marketing of commodities is deductible under Section 80P(2) (e).

For this clause the term godown or warehouses is very important.

In a landmark judgment in the case of [CIT v. Ahmedabad Maskati Cloth Dealers Co-operative Warehouses Society Ltd. \[1986\] \(162 ITR 142\)](#), the Hon'ble Gujarat High Court has held that first of all it should be a godown or warehouse, which should be let out for the purpose specified in the clause.

However, if the godown or warehouse is let for a purpose other than storage, processing or facilitating the marketing of commodities, the income derived therefrom by a co-operative society would not be deductible under Section 80P.

The facts of letting out are very important and one should get the inspection of the let-out property done to ascertain the correct facts.



# Letting of Godowns-S. 80P(2)(e)

---

Where the assessee was storing commodities in its godowns as its own trading stock and, therefore, it was held to be not entitled for claim of deduction under Section 80P(2)(e).

- [Udaipur Sahkari Upbhokta Thok Bhandar Ltd. v. CIT [2009] 182 Taxman 287 (SC)]

Commission received by the assessee-society from State Government for stocking its goods in godown, would qualify for deduction under Section 80P(2)(e).

- [CIT v. Coimbatore District Central Co-op. Supply & Marketing Society Ltd. 1995 Tax LR 1308 (Mad)]

Shops in which wholesale or retail business in cloth is carried on, cannot come within the meaning of 'godowns' or 'warehouses'.

- [CIT v. Ahmedabad Maskati Cloth Dealers Cooperative Warehouses Society Ltd. [1986] 162 ITR 142 (Guj)]

# Letting of Godowns-S. 80P(2)(e)

---

Amount received for letting of godowns, where incidental services of taking delivery of stock at rail-head and transporting it to godowns are also rendered is wholly exempt.

- [CIT v. South Arcot District Co-operative Marketing Society Ltd. [1989] 176 ITR 117 (SC)]

Where the assessee-co-operative society is appointed the sole agent and entrusted with the handling, distribution and sale of fertilizers and it received commission-cum-incidental charges, it is entitled to exemption only on that part of its income which is attributable to storage of fertilizers in its godowns.

- [CIT v. J & K Co-operative Supply & Marketing Federation Ltd. [1993] 204 ITR 289 (J & K)]

Deduction under Section 80P(2)(e) is available only in respect of income from letting out of storage and if the assessee uses storage only for marketing, deduction is not permissible.

- [CIT v. Haryana State Co-op. Supply & Marketing Federation Ltd. [2011] 201 Taxman 169 (Punj & Har)]

# Interest on securities/property income- Section 80P(2)(f)]

---

The whole of the interest income from securities and property income in the case of a co-operative society (other than housing society or an urban consumers' society or a society carrying on transport business or a society engaged in manufacturing operations with the aid of power) is deductible under Section 80P(2)(f)

- provided the gross total income of such co-operative society does not exceed Rs. 20,000.

---

TDS



# TDS PROVISIONS

- 
- **No tax** shall be deducted from any **interest payable on debentures** issued by any co-operative society **u/s 193**.
  
  - **TDS u/s 194A is deductible on interest paid exceeding Rs.10,000/-**. This has been increased to **Rs. 50,000/- in the case where payee is senior citizen and Rs. 40,000/- in other cases. [Finance Act, 2020]**
  
  - **TDS provisions u/s 194A** are not applicable for :
    - if such income is credited or paid by a cooperative society(not being a co-operative bank) to a member thereof or to any other cooperative society.
    - Interest payment on deposits by a primary agricultural credit society or primary credit society or co-operative land mortgage bank or co-operative land development bank
    - Interest payment on deposits **other than time deposits** by a co-operative society.

# TDS PROVISIONS

---

After the amendment by [Finance Act 2020](#), TDS has to be deducted u/s 194A by a co-operative society having gross receipts exceeding Rs 50 Cr in case of payment of interest to its members and also to other co-operative societies irrespective of the fact that whether it is engaged in the business of banking or not.

# Lower Tax Regime-S.115BAD

---

Finance Act, 2020 has inserted section 115BAD to introduce the concessional tax regime for co-operative society.

The option to pay tax at lower rates under these sections shall be available only if the total income of the assessee is computed without claiming specified exemptions/ deductions and assessee satisfies prescribed conditions.

The Income-tax (22ndAmendment) Rules, 2020 inserted Rule 21AH prescribing Form 10-IF for opting concessional tax regimes under Section 115BAD. This Form must be filed on or before the due date of filing return of income under section 139(1).

The concessional tax regime is optional but once the option has been exercised for any previous year, it cannot be subsequently withdrawn for the same or any other previous year.

# Income Tax Return Filing

---

- The co-operative society is not a separate person as seen earlier and hence, the status is AOP/BOI with sub-status as co-operative society.
- The Return is required to be filed in ITR-5.





₹ 2000

897108

**GST**

Goods and Services Tax (India)

# GST on Co-operative Society

---

There is a general belief that the cooperative societies are exempt from the various compliances of direct or indirect taxation.

A cooperative society must set up a process for tax compliance, tax management and tax planning.

# Few terms in GST related to Housing Society

As per Section 2 Sub Section (84) *clause (i) “**person**” includes a co-operative society registered under any law relating to co-operative societies*

As per section 2 sub section (17) provide “business” includes

- provision by a club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members;
- admission, for a consideration, of persons to any premises;

# What is the Definition of Aggregate turnover?

---

As per section 2 sub section (6) *“aggregate turnover” means the aggregate value of all taxable supplies*

- (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis),
- **exempt supplies,**
- exports of goods or services or both and
- inter-State supplies

# What is Exempt Supplies?

---

As per Section 2 sub section (47) :

*“exempt supply” means supply of any goods or services or both*

- *Which attracts nil rate of tax or*
- ***which may be wholly exempt from tax under section 11 CGST Act, or under section 6 of the IGST Act, and***
- Includes non-taxable supply;

# What is supply?

**7. (1) For the purposes of this Act, the expression “supply” includes—**

*(a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration*

*by a person in the course or furtherance of business;*

*(b) import of services for a consideration whether or not in the course or furtherance of business;*

*(c) the activities specified in Schedule I, made or agreed to be made without a consideration; and*

*(d) the activities to be treated as supply of goods or supply of services as referred to in Schedule II.*

# Persons liable for Registration

---

Every supplier who makes taxable supply of goods or services or both if his aggregate turnover exceeds 20 lakhs shall be liable to be registered under the GST Act.

However, if a person is located in special category states, the turnover is reduced to 10 lakhs.

# Notification No. 12/2017

Dated 28.06.2017

Sr N o	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of Services	Rate (per cent)
77	Heading 9995	<p>Service by an unincorporated bode or a non-profit entity registered under any law for the time being in force, to its own members by way of reimbursement of charges or share of contribution –</p> <ul style="list-style-type: none"><li>(a) As a Trade Union</li><li>(b) For the provision of carrying out any activity which is exempt from the levy of Goods and Service Tax</li><li>(c) Upto an amount of five thousand rupees per month per member for sourcing of goods or services from a third person for the common use of its members in a housing society or a residential complex</li></ul>	Nil



# Notification No. 02/2018

Dated 25.01.2018

As per this Notification, Notification No. 12/2017 has been amended.

Amendment:

Against serial number 77, in the entry in column (Description of Services) for the words “five thousand”, the words “seven thousand” five hundred” shall be substituted.

The exemption ceiling was enhanced from Rs. 5,000/- per member per month to Rs. 7,500/-.

So, services up to Rs. 7,500/- per member per month are exempted irrespective of the turnover.

# Registration

---

Section 22(1) of the CGST Act states that if the turnover of the supplier of goods or services or both exceeds Rs. 20 lacs in a financial year, the supplier should get registered under the GST.

Thus, if the annual receipts of the co-op society from its members exceed Rs. 20 lacs, then registration should be obtained.

However, Section 23(1) of the CGST Act gives exemption from registration to the suppliers who are supplying goods or services which are not liable to tax or wholly exempt from tax.

Thus, if the **total turnover** of the society is below Rs. 20 lacs, there is no need to take registration under GST to the society.

# Registration

---

Income for the society can be divided into three categories -

- 1) Common services – Charges collected for Maintenance / cleaning of society, security service, maintenance of lifts and other facilities viz. club house, swimming pool, gym, external maintenance of building, Generator back up facility, running of water treatment plant etc.
- 2) Individual specific services – viz. Share Transfer fee, late fee (Tolerating an Act), rent of club house, rent for use of terrace, parking charges, non occupancy charges etc.
- 3) Income from renting of space for advertisement boards, mobile towers etc.
- 4) Income from interest on deposits.

Thus, the contribution for common services is exempt from GST. But the other income for services provided is taxable under GST. Registration is required to be obtained in such cases.

# Registration

---

A combined reading of all these provisions would reveal –

Sr.No	Situation	Registration status
1	Total receipts of society – below Rs. 20 lacs in a year	Not required.
2	Contribution per member per month below Rs. 7500/- Total Income exceeds Rs. 20 lacs. No income earned for individual services.	Not Required.
3	Contribution per member per month above Rs. 7500/- Total income below Rs. 20 lacs	Not required.
4	Contribution per member per month above Rs. 7500/- Total income above Rs. 20 lacs	Required.
5	Society has income from other taxable services – total income exceeds Rs. 20 lacs (Even if contribution is less than Rs. 7500/-)	Required

# Turnover :

---

The applicability of GST is determined on the basis of Aggregate Turnover, which means the aggregate value of all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis), exempt supplies, exports of goods or services or both and inter-State supplies of persons having the same Permanent Account Number, to be computed on all India basis but excludes central tax, State tax, Union territory tax, integrated tax and cess.

Thus all turnover–taxable and exempted is required to be considered for calculating the limit of Rs. 20 lacs.

Also, the value excludes any discount given at the time of supply or after the supply as per the agreement. Hence, discount given for yearly payment of charges should be excluded from the turnover amount.

# FAQ on levy of GST on Housing Society

The society collects the following charges from the members on quarterly basis as follows:

1. Property Tax-actual as per Municipal Corporation of Greater Mumbai (MCGM)
2. Water Tax- Municipal Corporation of Greater Mumbai (MCGM)
3. Non- Agricultural Tax- Maharashtra State Government
4. Electricity charges
5. Sinking Fund- mandatory under the Bye-laws of the Co-operative Societies
6. Repairs & maintenance fund
7. Car parking Charges
8. Non Occupancy Charges
9. Simple interest for late payment.

From the tax/ charge as listed above, on which GST is not applicable.

1. Services provided by the Central Government, State Government, Union territory or local authority to a person other than business entity, is exempted from GST. So, Property Tax, Water Tax, if collected by the RWA/Co-operative Society on behalf of the MCGM from individual flat owners, then GST is not leviable.

2. Similarly, GST is not leviable on Non Agricultural Tax, Electricity Charges etc, which are collected under other statutes from individual flat owners. However, if these charges are collected by the Society for generation of electricity by Society's generator or to provide drinking water facility or any other service, then such charges collected by the society are liable to GST.

3. Sinking fund, repairs & maintenance fund, car parking charges, Non- occupancy charges or simple interest for late payment, attract GST, as these charges are collected by the RWA/Co-operative Society for supply of services meant for its members.

# FAQ on levy of GST on Housing Society

As per guidelines on maintenance charges upto Rs. 7,500/- , no GST is applicable.

Maintenance charges means only maintenance or collection of all charges

This is applicable to only the reimbursements of charges or share of up to an amount of seven thousand five hundred rupees per month per member for sourcing of goods or services from a third person for the common use of its members.

Here, charges mean the individual contributions made by members of the society to avail services or goods by the society from a third party for common use. [\*Entry 77(c) of notification no 12/2017 Central Tax (Rate) dated 28.6.2017 refers]

# FAQ on levy of GST on Housing Society

Monthly maintenance (all above charges) are below Rs.7,500/-but yearly total collection exceeds Rs. 20 lakhs limit, whether GST is applicable?

Reimbursement of charges or share of contribution up to an amount of Rs. 7,500/- per month per member for sourcing of goods or services from a third person for the common use is not liable to GST.

However, if the Co- operative society/ RWAs provide specific services of its own to its members or to any third party (e.g. use of community hall for social function by a non-member) cumulatively exceeds the threshold limit as per GST, then GST is leviable on such supply of services.



# Taxability of Housing Society

CASE	Contribution from Member						Other Receipt		Total Receipt during the FY	Whether Liable to Register	Tax Payable On
	Below 7500			7500 or above			Exempted Receipt	Taxable Receipt			
	Contribution	No. of Member	Total Receipt	Contribution	No. of Member	Total Receipt	(eg. Interest Income)	(Eg. Renting of Tower)			
CASE I	3000	700	2100000	0	0	0	0	0	2100000	No	0
CASE II	3000	500	1500000	0	0	0	600000	0	2100000	No	0
CASE III	3000	500	1500000	0	0	0	0	600000	2100000	Yes	600000
CASE IV	3000	500	1500000	7500	50	375000	0	0	1875000	No	0
CASE V	3000	500	1500000	7500	200	1500000	0	0	3000000	Yes	1500000
CASE VI	0	0	0	7500	250	1875000	0	0	1875000	No	0
CASE VII	0	0	0	7500	350	2625000	400000	0	2225000	Yes	2225000
CASE VIII	0	0	0	7500	350	2625000	0	400000	3025000	Yes	3025000
CASE IX	0	0	0	0	0	0	2500000	0	2500000	No	0
CASE X	0	0	0	0	0	0	0	2500000	2500000	Yes	2500000
CASE XI	3000	300	900000	7500	100	750000	400000	400000	2450000	Yes	1150000





Transaction of Housing Society

# 1. Property Tax

What is Property Tax?

- Collection of property tax is statutory levy by a municipal corporation or a local authority under the Constitution of India.

On what basis it is charge?

- The property tax is levied on sq. ft. basis and the owner of the property is liable to pay the same.

What is role of Society in This?

- A society is a mere collecting agent and pays the same to the authority.

Whether it is Taxable?

- As Society act merely as Pure Agent, no service portion is involved. Therefore not Liable to tax. However it is advisable to have separate invoice for this.

## 1. Property Tax cont..

What About Property tax on common area?

- This is taxable subject to limit of exemption of 7500.

What about property tax on parking which is sold to member?

- As it is separately identifiable for each member, this is pure agent service.

## 2. Sinking Fund/ Building

What is Sinking Fund/building fund?

- Fund collected for development of building in future

Whether it is Taxable?

- It is used by society in future for its member for development. Therefore it will be treated as service and will be taxable on receipt basis.

Whether it is covered for calculating exemption limit?

- Yes, as it is contribution from member for common purpose it will be counted for 7500 limit.

### 3. Maintenance and Repair charges

What is Maintenance and Repair charges?

- 'Maintenance' as the name suggest is the amount collectively reimbursed to the society to upkeep and maintain the building and premises on regular basis.

What type of Charges are include in this?

- Electricity charges for common areas, watchman or security charges and other miscellaneous expenses incurred by the society including accounting, audit etc. is part of maintenance charges.

Whether it is Taxable?

- Yes, subject to to limit of exemption of 7500.

## 4. Share Transfer Fees

What is Share and Transfer Fees?

- Share transfer fees are the amount charged by the society for transfer of shares by member

Whether it is Taxable?

- Yes, it is taxable.

Whether it is covered for calculating exemption limit?

- No, it is not cover in exemption as it is not contribution for sourcing of service from third person

## 5. Non Occupancy Charges

What is Non occupancy Charges?

- Non occupancy charges are charges levied by a housing society only when a flat or unit is let out by its members

Whether it is Taxable?

- Yes, it is taxable.

Whether it is covered for calculating exemption limit?

- No, it is not cover in exemption as it is not contribution for sourcing of service from third person



## 6. Parking Charges

What is Parking Charges?

- Charges to regulate the parking place between the members and providing of space by use of vacant land belonging to the society for a consideration.

Whether it is Taxable?

- Yes it is purely service and thus it is taxable in Nature.

Whether it is covered for calculating exemption limit?

- No as there is no 3<sup>rd</sup> person is involved in this service.

# 7. Water Charges

What is Water Charges?

- the society is not selling the water to its members. It is just providing the pipeline to deliver water in the members' premises

What is role of Society in This?

- Billing by Municipal corporation in the name of society and then on some basis society collect charges from member.

Whether it is Taxable?

- Yes, as it is again contribution from member for common use of its member. This is taxable subject to limit of exemption of 7500.

What about common Water used like Swimming Pool?

- It is also taxable subject to limit of exemption of 7500.

What if different meter is provided for each member?

- It will fall under pure agent service, so not taxable.

## 8. Charges for use of club house, swimming Pool, etc

What is  
Water  
Charges?

- These are specific services by the society to the member opting for such facilities.

Whether it  
is Taxable?

- Yes, subject to exemption limit of Rs. 7500.

## 9. Other Transactions

Rental for Mobile tower

- Renting Service Liabe to tax at

Hording charges

- Advertisement Charges Liabe to Tax

Use of terrace for  
function of non member  
or member

- Renting Service Liabe to tax

Interest on default  
charges

- Not covered in exemption as it is not interest on advances. Therefore liabe to tax

# Valuation Rule for Pure Agent

**Supported by: Circular No.175 /01 /2014 – Service**

**As per Rule 7 of VALUATION Rule Value of supply of services in case of pure agent:**

---

The expenditure or costs incurred by a supplier as a pure agent of the recipient of supply shall be excluded from the value of supply, if all the following conditions are satisfied, namely:-

- (i) the **supplier acts as a pure agent** of the recipient of the supply, when he makes payment to the third party on authorization by such recipient;
- (ii) the payment made by the pure agent on behalf of the recipient of supply has been separately indicated in the invoice issued by the pure agent to the recipient of service; and
- (iii) the supplies procured by the pure agent from the third party as a pure agent of the recipient of supply are in addition to the services he supplies on his own account.



# Reverse Charge Mechanism

# Reverse Charge Mechanism

RCM Means the liability to pay tax by the recipient of supply of goods or services or both instead of the supplier of such goods or services or both



## Illustrative List of Exempted Expenses where tax on RCM is not required to pay:

---

- Interest
- Travelling Expenses\*
- Electricity Expenses
- Salary & Wages
- Fuel (for generator)
- Government Fees



## Purchase from Unregistered Person (Section 9(4))

If Society is registered

```
graph TD; A[If Society is registered] --> B[Taxable purchase from unregistered]; B --> C[Liable to pay tax on reverse charge basis];
```

Taxable purchase from unregistered

Liable to pay tax on reverse charge basis

# Applicability of RCM to Housing Society (Section 9(3))

---

## Entry 3 of RCM:

100% RCM in case of Services provided or agreed to be provided

- by an individual advocate or firm of advocates
  - by way of legal services, directly or indirectly
  - to Business Entity (If turnover exceed 20.00 Lakh)
- 
- Being Housing Society is treated as business entity RCM is applicable for housing society in above case

## Illustrative List of Input service on Which Housing society can claim ITC:

---

- House Keeping service
- Repair Service
- Swimming pool Contractor
- Goods purchase for Club or garden
- Security Service
- Accounting and Audit service
- Refreshment service
- Legal Service

## Illustrative List of Expenses where tax on RCM is require to pay:

---

- Rent
- Commission Payment
- Printing and stationery
- Office maintenance
- Vehicle maintenance
- Computer maintenance
- Legal Fees
- Consultancy Fees
- Professional Fees
- Audit Fees, etc

# Applicability of RCM to Housing Society

Entry 2 of RCM:

100% RCM is applicable in case of Services provided by a goods transport agency (GTA) in respect of transportation of goods by road to:

- (a) any factory registered
- (b) any society/Co-op Society
- (d) any person registered under GST
- (e) any body corporate/ AOA
- (f) any partnership firm registered or not
- (g) Casual taxable



Input Tax Credit

# Analysis [Section 17 sub section (1, 2, &3)]

## Proportionate Credit Example



### Goods Used for:

### Goods Used for:

### In case of Bank

For Business Purpose: 60%

ITC Allowed: 60%

For Non-Business Purpose: 40%

ITC Disallowed: 40%

For Taxable supplies plus zero-rated supplies: 60%

ITC Allowed: 60%

For Non-taxable supplies plus exempted supplies: 40%

ITC Disallowed: 40%

Avail ITC as per Proportionate Credit concept

ITC Allowed: to the extent use for Business

Or

Avail only 50% of ITC

ITC Disallowed: 50%

# Other Ineligible credit

Motor vehicles with few exceptions

Food & Beverages, Outdoor catering

Health services, Health & fitness centre to employees

Membership of a club to employee

Life insurance, health insurance to employee

Rent-a-cab to employees

Travel benefits extended to employees on vacation used primarily for personal use or consumption of any employee

Goods / services which are acquired / used in the construction of immovable property (other than Plant & Machinery)

works contract services when supplied for construction of an immovable property (other than plant and machinery) except where it is an input service for further

supply of works contract service;

Goods and / or services on which tax has been paid under compounding levy scheme



# Essence of the Amendment

---

Registered Person (RP) has to ensure that the suppliers have uploaded the invoices and debit notes in their GSTR-1.

The RP can avail the credit on such invoices immediately in the same month.

e.g. RP has received inward supply of 10 lakh in the month of October 2019 from Mr. A which has been declared by Mr. A in his GSTR-1 filed on November 11, 2019. RP can avail the ITC of the same in the GSTR-3B for the month of October 2019 to be filed on or before 20th November 2019.

# Conclusion

---

- Taxation of Co-operative Society and that too, even of Housing Societies is no longer a simple mechanism with increasing complexities of revenue acts.
- Even in the case of other co-operative societies, the application and compliance of tax poses challenges and at times, even professional accountants are also wandering in darkness.
- At the same time, professionals must gear up to update themselves so as to be able to stand up to the expectations of the service receiver, which in these cases are society members who are not at all well versed with increasing challenges faced.
- There is no end to learning and updation for a professional accountant.

# Disclaimer

---

This presentation has been prepared for internal use of ICAI and its members. The contents of this document are solely for informational purpose. It does not constitute professional advice or a formal recommendation. The presentation is made with utmost professional caution but in no manner guarantees the content for use by any person. It is suggested to go through original statute / notification / circular / pronouncements before relying on the matter given. The presentation is meant for general guidance and no responsibility for loss arising to any person acting or refraining from acting as a result of any material contained in this presentation will be accepted by us. Professional advice recommended to be sought before any action or refrainment.

# Thank You



**All ownership and credits for pictures, logos, copyright and trademarks rests with the owners.**

**We thank all of them for the use of their material in this presentation to educate users.**