

Decoding The Deduction U/S 80P Of The Income Tax Act, 1961.

CA Rajat Power
B.Com, ACA, DISA(ICAI)

Co-operative societies have played a major role in economic development of India. Forming a co-operative society is now a fundamental right under Article 19(1)(i) of the Constitution of India. Sec 80P of the Income Tax Act provides deduction to certain co-operative society in respect of its income. Sec 80P was introduced so as to encourage and strengthen the co-operative development in the country. Sec 80P (2)(a)(i) contained therein provides deduction to co-operative societies engaged in business of banking or providing credit facilities to its members. Sec 80P (4) inserted by Finance Act 2006 provides that the said deduction shall not be available in respect of Co-operative Banks. After the decision of the Apex Court in the case of Citizen Co-operative Credit Society, the deduction was denied to many co-operative societies after relying on the said judgment. Also there are contradictory judgments of the judiciary both in the favor of and against the assessee and the issue is currently pending before the Supreme Court for adjudication. This issue regarding eligibility of deduction u/s 80P has remained a contentious issue and has been a subject matter of litigation. The Author tries to analyze the relevant provisions and precedents.

1. Chapter VIA Part C of the Income Tax Act deals with profit linked deductions. Sec 80P contained therein, provides deduction to a co-operative society in respect of its income. Sub-section 1 of the said section provides that the amount referred to in sub-section (2) is allowed as a deduction while calculating the Gross Total Income of the assessee. Section 80P (2)(a) provides seven types of activities of co-operative societies, the income of which is provided as deduction. Further, Section 80P (4) was inserted by Finance Act 2006, so as to put an embargo on co-operative banks availing deduction under section 80P. Co-operative Society has been defined u/s 2(19) of the Act. However, the definition of co-operative banks has been borrowed from the Banking Regulation Act, 1949 vide the explanation to Sec 80P (4).

2. The relevant provisions of the Income tax Act, 1961 and the Banking Regulation Act,1949 have been reproduced for ready reference:

2.1 Income Tax Act, 1961

80P. (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

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

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

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

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

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

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

CBDT Circular No 133/2007 dated 09.05.2007 is also relevant in this context and hence is reproduced below

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

1. Please refer to your letter no. DCUS/30688/2007, dated 28.03.2007 addressed to Chairman, Central Board of Direct Taxes, on the above given subject.
2. In this regard, I have been directed to state that sub-section(4) of section 80P provides that deduction under the said section shall not be allowable to any co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank. For the purpose of the said sub-section, co-operative bank shall have the meaning assigned to it in part V of the Banking Regulation Act, 1949.
3. In part V of the Banking Regulation Act, Co-operative Bank means a State Co-operative bank, a Central Co-operative Bank and a primary Co-operative bank.
4. Thus, if the Delhi Co op Urban T & C Society Ltd. does not fall within the meaning of Co-operative Bank as defined in part V of the Banking Regulation Act, 1949, sub-section(4) of section 80P will not apply in this case.
5. The issues with the approval of Chairman, Central Board of Direct Taxes.

2.2 Banking Regulation Act, 1949

Section 5(b) "Banking" means the accepting, for the purpose of lending or investment, of deposits of money from the public, repayable on demand or otherwise, and withdrawable by cheque, draft, order or otherwise.

PART V APPLICATION OF THE ACT TO CO-OPERATIVE BANKS

56. Act to apply to co-operative societies subject to modifications.--

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

(c) in section 5,--

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

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

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

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

(cciv) "Primary agricultural credit society" means a co-operative society;

- (i) the primary object or principal business of which is to provide financial accommodation to its members for agricultural purposes or for purposes connected with agricultural activities
- (ii) The bye laws of which do not permit admission of any other co-operative society as a member.

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

- (i) the primary object or principal business of which is the transaction of banking business;
- (ii) the paid-up share capital and reserves of which are not less than one lakh of rupees; and
- (iii) the bye-laws of which do not permit admission of any other co-operative society as a member:

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

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

- (ii) the paid-up share capital and reserves of which are less than one lakh of rupees; and
- (iii) the bye-laws of which do not permit admission of any other co-operative society as a member

4. Deduction u/s 80P(2)(a)(i) r.w.s 80(P)(4) has been a vexed issue of litigation. The former provides deduction in respect of income received by a co-operative society engaged in business of banking or providing credit facilities to its members, while the later puts an embargo that the deduction shall not be available to a co-operative bank. The scope of the section has been a matter of consideration for the judiciary in many of the cases. The author tries to decipher the position relating to the provisions.

5. Co-operative societies can be primarily divided into following categories - Co-operative Banks, Co-operative Credit Societies, Primary Agriculture credit Society, other Co-operative societies. The cardinal point is the coverage of the term co-operative bank, does it also cover other co-operative society engaged in banking business/providing credit facilities to members thereby denying them the benefit of deduction.

6. We shall now consider the view taken by judiciary in the following context

6.1 The Citizen Co-operative Society vs ACIT (SC) 397 ITR 1

The issue for consideration before honorable Supreme Court was whether the assessee is eligible for deduction u/s 80P. Supreme Court held that the Society cannot be considered as co-operative bank as it does not have any Banking license from RBI. However, the SC further observed that the society had two categories of members ordinary members and nominal members. The assessee used to accept the deposits from nominal members which were made with an intent to maximize return, and a portion of this deposits was advanced as a loan to the ordinary members. Hence the activities of the assessee were akin to that of finance business rather than a co-operative society. Loans were also granted to general public. With such activities the assessee has made a violation of co-operative societies Act. Hence, it was held that it was not eligible for deduction u/s 80P.

The above decision was rendered in the context of the co-operative societies governed by the Mutually aided Co-operative Societies Act, 1995 (MACSA). Hence, the ratio of the decision would be applicable only in case of co-operative societies governed by the aforementioned Act.

The Supreme Court in the given case went beyond the registration granted and analyzed the actual working of the co-operative society. The deduction was denied as it violated the provisions of MACSA and was working on commercial principles

It is trite law that any decision has to be viewed in the light of facts on which it was rendered. Ex consequenti in the case of Co-operative societies governed by any other act this ratio may not be

directly applicable. Let us consider the societies registered under the Maharashtra State Co-operative Societies Act, 1960. Section 2(19)(a) provides that a member includes a nominal member, associate member and a sympathizer member. Hence, there is no distinction made as such between the ordinary member and the nominal members. Hence, the ratio of the Decision of SC in case of Citizen Co-operative (Supra) is not applicable in the above case. This issue is no longer a Res Integra and stands covered by decision of various high courts and tribunal in favor of assessee.

6.2 Quepem Urban Co-operative Credit Society Ltd vs ACIT,(Bom) 377 ITR 272,

The issue involved in this case was whether the co-operative society registered under the Goa Co-operative Societies Act was eligible for deduction u/s 80P. The HON' HC in this case decided the issue by taking recourse to three conditions as specified in sec 5(ccv) of the Banking Regulation Act(Supra)

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

In respect of condition 1, The High Court Referred to definition of banking as per Sec 5(b) of the Banking Regulation Act. As per the definition for a co-operative society to be engaged in the business of banking it should accept deposits from public. In the given case though the society had dealing with non-members which was not disputed yet the amount of dealing with non-member was minuscule. The bye-laws also do not permit the acceptance from deposit from non-members. Hence, considering the above factual matrix it was held that co-operative society was not considered to be engaged in business of banking.

In respect of condition 3, the HC Vide Para 12 observed that the bye-laws as amended and applicable for subject year does not contain any prohibition for admission of co-operative society as member. It held that the revenue could not demonstrate that there was any prohibition in case of acceptance of another co-operative society as a member in the bye-laws of the society. Hence, the third condition for being a primary co-operative bank was not satisfied ergo it cannot be considered as a co-operative bank.

As the above two conditions were not satisfied it was held that the co-operative society was not a co-operative Bank and hence it is eligible for deduction u/S 80P. However, after considering that the society had dealings with non-members directed to limit the deduction to dealing with members.

This decision was rendered while dealing the society registered under Maharashtra State Co-operative Societies Act, 1960. The Maharashtra Co-operative Societies Act, 1960 does not make any distinction between an ordinary member and a nominal member. Sec 2 of The Maharashtra Co-operative Societies Act, 1960 which defines a member takes within its sweep even a nominal/sympathizer/associate member. Hence, the ratio of Citizen Co-operative society would not be per se applicable in the case of co-operative Societies Registered under Maharashtra Co-operative Societies Act, 1960. Though this judgment was rendered prior to Citizen Co-operative society (Supra) it has been consistently followed by

the Hon Bombay High Court in its subsequent Judgments (**Pr CIT vs Goa PWD Staff Co-op Credit Society LTD (2016) 242 Taxman 422** and **Pr CIT vs. Annasaheb Patil Mathadi Kamgar Sahakari Patpedhi Maryadit Ltd. (ITA NO 1574/2017)**]

However, vide the Amendment Act, 2017 Sec 144-5A was inserted in The Maharashtra Co-operative Societies Act, Prohibiting accepting deposits from non-members. The Section is reproduced as under

“Notwithstanding anything contained in any Act, a non-agricultural co-operative credit society shall not accept deposit from any person who is not its member. If any society which has accepted deposit from non-members, before the date of commencement of the said Amendment Act, 2017, it shall either enroll them as member or refund deposits of all non-members within two years from commencement of the said Amendment Act, 2017.

Explanation- For the purpose of this section, “member” does not include nominal member.”

After the above amendment there is a change in law governing acceptance of deposits from nominal members. Any deposits accepted from nominal members may be considered as a violation of Maharashtra Co-operative Societies Act. In such a case, if majority of the deposits are received from nominal members by a society in violation of the Act, the deduction may be denied and the ratio in the case of Citizen Co-operative (supra) may apply.

6.3 The Mavilayi Service Co-operative Bank Ltd vs. CIT (Kerala-HC) 2019 414 ITR 67 (Larger bench)

The issue for consideration before the Hon Kerala HC was that whether the assessee registered as Primary Agriculture Credit Society (PACS) under Kerala Co-operative Societies Act, 1959 was eligible for deduction under section 80P after insertion of sub-section 4. This issue was referred by Division Bench to Larger Bench as there were conflicting judgments of Division Bench in the case of Perinthalmanna Service Co-operative Bank Ltd vs ITO [(2014)363 ITR 268(Kerala)] and Chirakkal Service Co-operative Bank vs CIT[(2016)384 ITR 490(Kerala)]. In Perinthalmanna Service Co-operative Bank (Supra), the AO had allowed deduction u/s 80P as the society was registered as PACS under the Kerala Co-operative Societies act, 1959. Subsequently, the CIT had set aside the order, on the grounds that the substantial activity of the assessee was for non-agricultural purposes and hence the principal purpose of the assessee cannot be considered to be agriculture. Hence, the order of AO being passed without conducting any enquiry on the above aspect was erroneous and prejudicial to interest of revenue. The order passed was upheld by honorable HC, and it was held that the deduction u/s 80P cannot be given solely on the basis of the registration certificate granted by the registrar and can only be granted based on the enquiry into the actual conduct of the co-operative society.

As per sec 2(oaa) Of the KCS Act, the Society shall be categorized as a primary agricultural co-operative society, if the principal activity is to undertake agricultural credit activities and provide loans and advances for agricultural purposes. The Second Proviso provides that, if the society fails to achieve its purpose it will lose its identity and cease to be a Primary Agricultural Credit Society, whether or not the Registrar has made any change.

The HC after considering the above legal provision and after taking into consideration plethora of judgments held that the benefit of Sec 80P has to be granted only after making an enquiry into the activities of the society and not merely based on the registration certificate granted by the Registrar. The AO has to take into consideration the activities of the assessee and whether based on its activities it is eligible for the deduction. The HC followed the judgment of Honorable SC in the case of Citizen Co-operative Society (397 ITR 1). The HC overruled its earlier judgment in the case of Chirakkal(supra) after considering it to be per incurram.

6.4 NERINJIPETTAI PRIMARY AGRICULTURAL COOPERATIVE CREDIT SOCIETY LTD. Vs. THE INCOME TAX OFFICER W.P No 2552 OF 2019(Madras HC)

In the above case the Hon Mad HC after relying on the its own decision in the case of *ITO Vs. M/s. Veerakeralam Primary Agricultural Co-operative Credit Society T.C.A. Nos. 735, 755 of 2014 and 460 of 2015* allowed the appeal of the assessee. The decision was rendered after considering that the primary object of the society is to provide financial accommodation to members to meet agricultural requirements and to provide credit facilities to its members as per the bye-laws and as per Sec 5 (cciv) of the Banking Regulation Act. The Court further relied on CPT circular dated 12.03.2008, which provides that credit co-operative society is not a co-operative bank. It relied on the findings on appellate authorities and the tribunal. Reliance was also placed on the judgment of Chirakkal Service Co-operative Bank Ltd vs CIT (Supra).

However, the ratio may need reconsideration after the judgment in the case of Chirakaal(Supra) has now been overruled by The Mavilayi Service Co-operative Bank Ltd(Supra)

6.5 Pr CIT vs. Ammapet Primary Agricultural Co-operative Bank Ltd.(Mad HC) Tax Appeal no 882-891/2018

The issue before the Honorable Madras High Court was regarding the eligibility of co-operative society registered under The Tamil Nadu Co-operative Societies Act for deduction u/s 80P, in light of the judgment of Honorable Supreme Court in case of Citizen Co-op(Supra). The Substantial questions of law are reproduced as under:

- i. "Whether the Appellate Tribunal was right and justified in following the jurisdictional High Court; decision when there is an Apex Court decision of latter date available?
- ii. Whether, on the facts and circumstances of the case and in law, the Tribunal was right and justified in allowing the deduction under Section 80P(2)(a)(i) to the assessee society when the Apex Court, in its decision in the case of Citizen Cooperative Society Ltd. Vs. ACIT [reported in (2017) 84 Taxmann. 114] held in paragraph 25 that such activity of the appellant is that of finance business and cannot be termed as cooperative society ? And

iii. Whether, on the facts and circumstances of the case, the Tribunal was right to conclude that the activities carried on by the assessee are confined to its members only and that too, in a particular geographical area, when the Assessing Officer clearly stated in paragraph 3.1 of the assessment order that anyone can become an associate member of the society on payment of a nominal token fee? ""

Vide Para 15 and 16 the Hon HC held that in the case of Citizen Co-op(Supra) the SC found that the society was carrying on its activities in violation of MACS Act,1955 in as much as it was accepting deposits from third parties who were not members in the real sense and were using those deposits to advance gold loans. The loans were disbursed without approval of Registrar. Hence, the activity was that of finance business and not of a co-operative society. The deduction u/s 80P would still be available in case of primary agricultural credit society or a primary cooperative agriculture and rural development bank

Vide Para 17 it held that as per Sec 2(16) of The TNCS Act a member also includes a associate member. The AO has observed that the Associate members are also admitted as members. The AO was not able to prove that the Assessee has disbursed the loan to general public and the area of operation of the society is confined to a taluka and it is providing long term credit facilities for agricultural and rural development activities as well. Hence, the substantial question of law framed was answered against revenue and the deduction u/s 80P was allowed.

6.6 Pr. CIT vs. Ekta Co-op Credit Society Ltd(2017) 402 ITR 85 (Guj HC)-

The issue before the Hon Guj HC was whether the co-operative society was eligible for deduction u/s 80P(2) r.w.s 80P(4) and sec 2(24)(viiia).

Hon Guj HC relying on its earlier judgment in the case of **CIT v. Surat Vankar Sahakari Sangh Ltd., [2014] 225 Taxman 162/43 taxmann.com 431 (Guj.)**, allowed deduction to co-operative society providing credit facilities to its members.

In the judgment of Surat Vankar Sahakari Sangh Ltd (Supra), it was held that the sec 80P(4) applies only to co-operative Banks and not to co-operative societies. It also relied on CBDT Circular No 133/2007 dated 09.05.2007.

6.7 Pr. CIT Vs. M/S Guru Nithyananda Credit Co-operative Society Ltd (Karn HC) (ITA NO 804/2017)

The substantial question of law framed before the Hon Karnataka High Court was whether a co-operative society is eligible for deduction u/s 80P(2) of the Act when the same is covered under sec 80P(4) r.w.s. 2(24)(viiia) .

The High Court Observed that the issue is no longer a Res Integra and is covered by the judgment of the co-ordinate benches in the case of (i) Commissioner of Income-tax vs Sri Biluru Gurubasava Pattina Sahakari Sangha Niyamitha, Bagalkot reported in [(2015) 56 Taxmann.com 280 (Kar)]; (ii) Shri

Chandrababhu Urban Co-operative Credit Society Limited vs The Income Tax Officer (ITA Nos. 100043 & 100045/2014 dated 21.9.2015) and (iii) Belgaum Merchants Co-op Credit Society Limited vs Commissioner of Income-tax (Appeals), Belgaum reported in [(2016) 236 Taxman 351]

The judgment in the case of Quepem(Supra) was also relied upon.

The Hon HC vide Para 7 observed that the bye-laws of the society did not permit admission of any other co-operative society as its member. Hence, condition No 3 for holding the co-operative society as a co-operative Bank as laid down in sec 5(ccv) in the BRA,1949 is not satisfied and hence it cannot be termed as a Co-operative Bank . It relied on the finding of the lower authorities that it is a co-operative society and not a Co-operative bank.

The HC vide Para 8 held that as there was no evidence that the Co-operative society was providing credit facilities to non-members, the decision of Quepem (Supra) would be squarely applicable in this case.

The HC further observed that the co-operative society does not have a Banking License from RBI and cannot be termed as Co-operative Bank.

Accordingly the High Court allowed the deduction to the assessee.

6.8 ACIT vs. People's Co-operative Credit Society Ltd. (2019) 177 ITD 25

The Special Bench was constituted to decide the following questions

1. "Whether the assessee being a co-operative credit society, in view of its function in providing credit facilities to its members, is into the business of banking and is it not being impeded or hit by the provisions of section 80P(4) of IT Act 1961? Further, in view of section 5 of Banking Regulation Act, 1949 and section 2 of NABARD Act, 1981 whether this co-operative credit society is carrying on the Banking business, and for all practical purposes acting a co-operative bank?
2. Whether a co-operative credit society being providing credit facilities to its members can be held as banking function, so as to deny the benefit of section 80P(2)(a)(i) by invoking the provisions of section 80P(4)? "

The Hon Tribunal after relying upon the judgment of Hon Jurisdictional High Court in case of **Ekta Co-operative Credit Society Ltd.(supra) and CIT v. Jafari Momin Vikas Co-operative Credit Society Ltd . [2014] 49 taxmann.com 571/227 Taxman 59 (Mag.) 362 ITR 331 (Guj.)**, held that the legal position is clear and unambiguous, the benefit of deduction cannot be denied to co-operative credit societies engaged in providing credit facilities to its members as they are not hit by sec 80P(4) and hence answered the question in favor of assessee.

6.9 Sai Prerana Gramin Bigarsheti Sahakari Pat Sanshta Maryadit vs ITO (Pune ITAT) ITA NO 1431/PUN/2018

The Pune ITAT vide a common order had decided the issue relating to allowability of deduction u/s 80P.

After Discussing catena of judgments the Pune ITAT Vide Para 10 held that the issue is covered in favor of the assessee by the judgment of the co-ordinate bench in the case of **ITO vs. Jankalyan Nagri Sahakari Pat Sanshta Ltd. (2012) 24 Taxmann.com 127(Pune)**

Vide Para 11 ITAT held that the definition of member as per the MACS Act,1995 and Maharashtra Co-operative societies Act,1960 is different ergo ratio of the decision in case of Citizen Co-op Society(Supra) cannot be applied to the present case. This view is also followed by the Hon Mad HC in the case of Ammapet Primary Agricultural society(Supra). The ITAT further relying on the judgment of Hon Bom HC in the case of **Jalgaon District Central Cooperative Bank Ltd.(2004) 134 Taxmann.com 1 (Bom)** held that as per sec 2(19) of the Maharashtra Co-operative Societies Act, member includes a nominal/sympathizer/associate member and there is no distinction made between duly registered member and nominal/sympathizer/associate member and hence the society is eligible for deduction u/s 80P.

7. Sec 80P(2)(a)(i) contains two limbs, first is applicable to the co-operative society carrying on banking business and second is providing credit facilities to its members. Explanation to Sec 80(P)(4) borrows the definition of Co-operative Bank, primary agricultural credit society from the Banking Regulation Act,1949. However, the term 'Banking' is not defined in the act and hence the definition of Banking as provided in Sec 5(b) of the Banking Regulation Act has to be considered. The term 'Member' has also not been defined under the Act; hence the definition has to be borrowed from the respective co-operative law as held in the case of **U.P. Cooperative Cane Union Federation Ltd. Vs. CIT [reported in (1999) 237 ITR 574]**

8. Co-operative Societies is a State Subject (Entry 32 of List II of Seventh Schedule to the Constitution of India, i.e. the State List) hence each state has its own law governing the co-operative societies. Hence, the allowability of deduction depends upon the co-operative laws applicable to the society, and there cannot be a straight jacket formula which can be applied across the country for determining the eligibility of deduction.

9. CBDT Circular No 14 dated 28.12.2006 makes it clear that the purpose of enactment of Sec. 80P(4) was to provide that the co-operative Banks which are working at par with Commercial Banks should not be given benefit of deduction u/s 80P. Hence, the purpose was not to deny deduction to genuine co-operative societies working on the co-operative principles.

10. For testing the eligibility of the co-operative society the test of 'Substance over form' has to be applied. The Deduction cannot be granted merely on the basis of the certificate of Registration but enquiry into the actual conduct of the society is required.

11. If the Co-operative Society Cumulatively satisfies the following three conditions as laid down in sec 5(ccv) of the Banking regulation Act, 1949 they shall be termed as a Co-operative Bank and would be ineligible for Deduction.

1. The primary object or principal business of which is the transaction of banking business;
2. The paid-up share capital and reserves of which are not less than one lakh of rupees; and
3. The bye-laws of which do not permit admission of any other co-operative society as a member

12. It is a settled law that the provisions of Taxing Statutes have to be strictly interpreted. There is no room for any intendment. Nothing has to be read into the provisions. If the Parliament in its own wisdom has borrowed the definition of co-operative bank from the BRA, 1949; the same has to interpreted strictly. There is an inherent difference in the Co-operative Bank and Co-operative Credit Society.

13. Let us now consider the general principle relating to interpretation of exemptions provisions

The Hon Supreme Court in the case of **UOI vs. Wood papers Ltd (1990) 4 SCC 256** after relying on its earlier decision in case of **Collector of Central Excise vs. Parle Exports (P) Ltd (1989) 1 SCC 345** held that liberal and strict construction of exemption provisions are to be invoked at different stages. At the time of applicability the exemption should be interpreted strictly, but once it is considered to be applicable, the same has to be interpreted liberally. This view has been affirmed by the Supreme Court in the landmark judgment of **Commissioner of Customs vs. Dilip Kumar (2018) 9 SCC 1 (FB)(SC)** and recently in case of **Ramnath & Co vs. CIT(SC)**

Hence, while construing the eligibility for deduction u/s 80P, the conditions for eligibility have to be interpreted strictly, but once eligibility for deduction has been proved by the assessee, the provisions of Sec 80P should be construed liberally. In the Authors opinion, once the co-operative society is considered to eligible for the deduction u/s 80P after taking into consideration the registration certificate granted by the registrar, the bye-laws and the applicable co-operative law, the same should not be denied to co-operative societies merely because they have minuscule dealings with nominal members/non-members as the case may be.

14. If the respective co-operative law makes no distinction between Nominal members and Ordinary members, and freely allows acceptance of deposit from nominal members; the deduction should be denied only in case of dealings with non-members. However, if the co-operative law does not allow acceptance of deposit from nominal members, the deduction should only be allowed in respect of dealings with ordinary members.

15. Per Contra if the co-operative society is acting in all capacities as a Bank, accepting deposits from the public at large in violation of co-operative laws and its bye-laws, the deduction is to be denied to such a society. In such a case the deduction cannot be given merely on the basis of the certificate of registration and enquiry into the facts should be conducted by the AO.

16. In **CIT vs Daulat Ram Rawat Muli(1973) 87 ITR 349** the Supreme Court held that the onus of proving what was apparent is not real is on the other party who claims it to be so. Hence, once the society is duly registered under the respective co-operative law, the onus to prove that the actual conduct of the society is not in accordance with such a registration is on the revenue and the AO has to bring on record the material to prove the same.

17. Some principles which can be enunciated are as follows

1. If the Co-operative Society has obtained a banking License from RBI, it is a co-operative bank and hence is not eligible for deduction.
2. The deduction under section 80P cannot be given merely on the basis of certificate of registration of the co-operative society and enquiry into the actual conduct of the society by the AO is essential.
3. If the Co-operative Society is accepting deposit from the public at large, i.e. non-members in violation of the applicable Co-operative law and its bye laws, it is not eligible for deduction. In any case deduction shall not be available for dealings with non-member even if the amount of such dealings is minuscule.
4. If the Co-operative society cumulatively satisfies the three conditions as laid down in sec 5(ccv) of the BRA,1949, it shall be considered as co-operative bank
3. If the respective Co-operative law does not make any distinction between a nominal member and ordinary member deduction is not to be denied to the co-operative society merely because it has dealing with nominal members. Per Contra if the co-operative law prohibits acceptance of deposit from nominal members, in such a case if the co-operative society has majority dealings with nominal members deduction has to be denied. In such a case deduction shall not be available in respect of dealing with nominal members even if the amount of such dealing is minuscule.
4. However in the case the society has minuscule dealings with non-members or the nominal members as the case may be, the deduction u/s 80P shall be available to it subject to the condition that deduction should be denied only in respect of proportionate income from dealing with non-member/nominal member.

The following chart can be referred to for determining the eligibility for deduction u/s 80P

