REPORTABLE

2023INSC830

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S).10069 OF 2016

KERALA STATE CO-OPERATIVE AGRICULTURAL AND RURAL DEVELOPMENT BANK LTD. KSCARDB **...APPELLANT(S)**

VS.

THE ASSESSING OFFICER, TRIVANDRUM AND ORS. **...RESPONDENT(S)**

WITH

CIVIL APPEAL NO(S). 5005-5007 OF 2019

CIVIL APPEAL NO(S)._____ OF 2023
(@SLP(C) NO(S). 2737 OF 2016)

CIVIL APPEAL NO(S)._____ OF 2023
(@SLP(C) NO(S). 5400 OF 2016)

CIVIL APPEAL NO(S)._____ OF 2023
(@SLP(C) NO(S). 26756 OF 2016)

CIVIL APPEAL NO(S). 3881-3882 OF 2019

J U D G M E N T

NAGARATHNA, J.

Leave granted in those Special Leave Petitions where it has not yet been granted.

2. These appeals arise out of analogous proceedings against the appellant/assessee, and, *inter alia*, impugn the judgement dated

26.11.2015 passed by the Kerala High Court; the order dated 08.08.2016 passed by the Commissioner of Income Tax (Appeals), Trivandrum and the order dated 07.02.2019 passed by the Income Tax Appellate Tribunal ('ITAT').

3. The issue involved in these cases is, whether, the appellant/assessee, a co-operative society, is entitled to claim deduction of the whole of its profits and gains of business attributable to the business of banking or providing credit facilities to its members who are all co-operative societies under Section 80P of the Income Tax Act, 1961 (hereinafter referred to as "the Act", for the sake of brevity).

Since the question of law involved in these proceedings are common, the facts only in SLP(C) No(s). 2737 of 2016 impugning the judgement of the High Court of Kerala dated 26.11.2015 are narrated.

4. The facts, in a nutshell, are that the appellant/assessee is a State-level Agricultural and Rural Development Bank governed by as a co-operative society under the Kerala Co-operative Societies Act, 1969 (hereinafter referred to as the "State Act, 1969" for the sake of brevity) and is engaged in providing credit facilities to its members who are co-operative societies only. Initially in the year 1951, the appellant/assessee got registered under Section 10 of the Travancore-Cochin Co-operative Societies Act, 1951 (for short, "State Act, 1951"). On 04.10.1956, the appellant received a Registration Certificate bearing No. 4017 from the Registrar of Co-operative Societies, Trivandrum,

recognizing it as a co-operative Central Land Mortgage Bank incorporated on the basis of limited liability under Section 10 of the State Act, 1951 (X of 1952). The office of the Registrar of Co-operative Societies, Trivandrum further addressed a communication dated 17.11.1961 bearing No. 36444/61.PR2 including the rules relating to Retirement Benefit Fund and Staff Benefit Fund for Kerala Co-operative Central Mortgage Bank Ltd.

5. The Kerala Co-operative Societies Act, 1969 was enacted in order to, *inter alia,* provide for the orderly development of the co-operative sector in the State and to unify the law relating to co-operative societies in the State. *Vide* Section 110 of the State Act, 1969, the State Act, 1951 (X of 1952) was repealed. Therefore, the appellant/assessee came to be registered and regulated under the State Act, 1969. The appellant/assessee being the Kerala State Co-operative Agricultural and Rural Development Bank Ltd., Thiruvananthapuram, is also included in Schedule I of the State Act, 1969 as regards the application of the Section 80(3A) thereof that postulates that when direct recruitments 'is resorted to' the same 'shall be made from a select list of candidates furnished by the Kerala Public Service Commission.'

6. The State Act, 1969 defines "co-operative society with limited liability" in Section 2(g) as a society in which the liability of its members for the debts of the society in the event of its being wound up is limited by its bye-laws (i) to the amount, if any, unpaid on the shares

respectively held by them; or (ii) to such amount as they may, respectively, undertake to contribute to the assets of the society.

7. It would also be apposite to take note of the Kerala State Co-Operative Agricultural Development Banks Act, 1984 (for short, "State Act, 1984"). This Act was passed 'to facilitate the more efficient working of Co-operative "Agricultural and Rural Development Banks" in the State of Kerala.'

8. Section 2(a) of the State Act, 1984 defines "Agricultural and Rural Development Bank" to mean "the Kerala Co-operative Central Land Mortgage Bank Limited, registered under Section 10 of the State Act, 1951 (X of 1952), and provides that the same shall be known as the "Kerala State Co-operative Agricultural and Rural Development Bank Limited" which is the name of the appellant herein. Section 2(d) thereof defines "co-operative society" to mean a co-operative society registered or deemed to be registered under the State Act, 1969 (21 of 1969). It is apposite to note that Section 2(iA) of the said Act defines "Rural Development" to mean any activity intended to promote the development in rural area and includes the following developmental activities: i) Development of handicrafts and other crafts; ii) Small Industries; iii) Cottage and Village Industries; iv) Industries in tiny and decentralized section; and v) Rural housing needs of the rural-population.

9. Having considered the evolution of the statutory framework that governs the appellant/assessee, it would be appropriate to briefly state relevant facts giving rise to these appeals.

9.1. On 27.10.2007 the appellant/assessee filed its Return of Income for the Assessment Year 2007-08 of Rs. 27,18,052 claiming deduction under Section 80P (2)(a)(i) of the Act. Upon scrutiny, on 22.12.2009 an Assessment Order under Section 143(3) of the Act, was passed by the Assessing Officer for the Assessment Year 2007-08, disallowing the deduction of Rs. 36,39,87,058 under Section 80P(2)(a)(i) holding that the appellant/assessee is neither a primary agricultural credit society nor a primary co-operative agricultural and rural development bank. The Assessing Officer held the appellant/assessee is a "co-operative bank" and thus, was hit by the provisions of Section 80(P)(4) and was not entitled to the benefit of Section 80(P)(2) of the Act. The Assessing Officer observed that with effect from 01.04.2007, Section 80P was amended by the insertion of sub-section (4) as per which the provisions of Section 80P shall not apply to any co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank. The Assessing Officer declared the appellant/assessee to be neither a primary agricultural credit society nor a primary co-operative agricultural and rural development bank, thus, the appellant/assessee's claim was hit by Section 80P (4) of the Act. The total income was assessed at Rs. 36,69,47,233.

9.2. Aggrieved by the Assessment Order dated 27.12.2009, the appellant/assessee filed an appeal before the Commissioner of Income Tax (Appeals) ("CIT(A)"). The CIT(A) *vide* Order dated 30.07.2010 confirmed the disallowance made by the Assessing Officer. The CIT (A) was of the view that the appellant/assessee is actively playing the role of a development bank in the State and is no longer a land mortgage bank but is a development bank. The appellant/assessee may have earlier been a land mortgage bank but by virtue of a shift in its activities has become a development bank and is now governed by the State Act, 1984 and thus, it is in the business of banking as it satisfies all the tests that are required to qualify as a "co-operative bank". CIT (A) further observed that with the insertion of Section 80P (4), co-operative banks are placed at par with other commercial banks and the appellant/assessee who is in the business of banking through its primary co-operative banks is definitely a co-operative bank within the meaning of Section 80P (4). Consequently, the appeal was dismissed.

9.3. Being aggrieved by the Order passed by CIT(A), the appellant/assessee filed further appeal before the Income Tax Appellate Tribunal ("ITAT"). The ITAT *vide* Order dated 23.02.2011 partly allowed the appeal and held that the appellant/assessee is a co-operative bank and is not a primary agricultural credit society or a primary co-operative agricultural and rural development bank and is consequently hit by the provision of Section 80P (4), thus, the deduction claimed was rightly

denied. However, the ITAT also clarified to the extent that the appellant/assessee is acting as a State Land Development Bank which falls within the purview of the National Bank for Agriculture and Rural Development Act, 1981 ("NABARD Act, 1981", for short) and is exigible for financial assistance from NABARD. Therefore, the appellant/assessee's claim merits acceptance and it would be entitled to deduction under Section 80P(2)(a)(i) on the income relatable to its lending activities as such a bank.

9.4. Aggrieved by the Order passed by the ITAT in only partly allowing its appeal, the appellant/assessee preferred an appeal being ITA No. 103 of 2011 against the ITAT's Order dated 23.02.2011**.** The issue raised by the appellant/assessee was with respect to the ITAT's finding that the appellant/assessee was neither a primary agricultural credit society nor a primary co-operative agricultural and rural development bank, hence, not entitled for exemption of its income under Section 80P(2)(a)(i) of the Act.

9.5. On 26.11.2015, the Kerala High Court dismissed the Assessee's Appeal, ITA No. 103 of 2011, holding that the ITAT's findings do not warrant any interference as the case did not involve any substantial question of law. Against the Judgment dated 26.11.2015, the appellant/assessee preferred a Special Leave Petition (C) bearing No. 2737 of 2016. This Court *vide* Order dated 01.02.2016, issued notice

and granted stay of recovery of demand made by the Income Tax Authorities from the appellant/assessee for the AY 2007-08.

Submissions:

10. The submissions of learned senior counsel for the appellant and learned ASG for the respondent are as under:

10.1. Learned senior advocate, Sri Krishnan Venugopal, at the outset, submitted that the appellant is aggrieved by the impugned orders declining to extend the benefit of deduction under Section 80P of the Act. He submitted that sub-section (4) of Section 80P is in the nature of an exception which was added subsequently to Section 80P and the said sub-section excludes a 'co-operative bank' from the benevolent provision. However, the appellant is not a co-operative bank within the meaning of the said sub-section. On the other hand, the appellant is a 'co-operative society' engaged in providing credit facilities to its members who are not individuals but are other co-operative societies and the appellant is an apex co-operative society.

10.2. Highlighting the genesis of the appellant, it was submitted that the appellant was first registered as a co-operative society under the State Act, 1951 and was recognised as a co-operative central land mortgage bank and when the State Act, 1969 was enacted, it was recognised as a co-operative society under the said enactment. The State Act, 1951 was repealed by Section 110 of the State Act, 1969.

Section 2(g) of the State Act, 1969 defines a co-operative society with limited liability. That on the enactment of the State Act, 1984, Section 2(a) thereof defines "agricultural and rural development bank" to mean the Kerala Co-operative Central Land Mortgage Bank Limited, registered under Section 10 of the State Act, 1951 which is known as "Kerala State Co-operative Agricultural and Rural Development Bank Limited". Therefore, the appellant is not a co-operative bank within the meaning of Section 80P of the Act.

10.3. Referring to Explanation (a) to sub-section (4) of Section 80P of the Act which states that a co-operative bank shall have the same meaning assigned to it in Part V of the Banking Regulation Act, 1949 (hereinafter referred to as "BR Act, 1949", for the sake of convenience), Part V of the BR Act, 1949 which applies to co-operative banks was adverted to. That Section 56 in Part V of the said Act begins with a non-obstante clause and it states that notwithstanding anything contained in any other law for the time being in force, the provisions of the BR Act, 1949 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, (a) throughout the said Act, unless the context otherwise requires references to a 'banking company' shall be construed as reference to a 'co-operative bank'. Further, a co-operative bank is defined to mean a state co-operative bank, a central co-operative bank

and a primary co-operative bank; that these expressions have the meaning respectively assigned to them in the NABARD Act, 1981.

10.4. It was contended that the appellant bank is not a banking company within the meaning of Section 5(c) of the BR Act, 1949 which defines a "banking company" to be any company which transacts the business of banking in India and Section 5(b) defines "banking" to mean the accepting, for the purpose of lending or investment, of deposits of money from the public, repayable on demand or otherwise, and withdrawal by cheque, draft, order or otherwise. That the appellant is a co-operative society and not a co-operative bank. That initially the appellant was registered as land mortgage bank under the provision of the State Act, 1951. That if an entity is engaged in banking business then it would be construed as referring to a co-operative bank in which case, under Section 22 of the BR Act, 1949, it is necessary for a company to hold a licence issued by the Reserve Bank if it has to carry on banking business in India and such licence is issued subject to such conditions as the Reserve Bank may think fit to impose. That in the instant case, the appellant is not a licenced company under the provisions of the Reserve Bank of India Act, 1934 ("RBI Act", for short) as the appellant does not transact 'banking business' and therefore, does not require any licence under the RBI Act. Reliance was placed on Section 3 of the BR Act, 1949 as it stood earlier which stated that the said Act would not apply, *inter alia,* to (a) a primary agricultural credit

society; (b) a co-operative land mortgage bank; and (c) any other co-operative society, except in the manner and to the extent specified in Part V. It was submitted that the appellant is a co-operative credit society engaged in providing credit facilities to its members and its members are other co-operative societies which are in the nature of primary societies. The appellant is not carrying on the business of banking within the meaning of Section 80P(2)(a)(i) of the Act. That only a co-operative society which is engaged in the business of banking and is a co-operative bank within the meaning of Part V of the BR Act, 1949 would come within the scope of the exclusion under sub-section (4) of Section 80P of the Act.

10.5. In this context, our attention was drawn to Section 56(o) of the BR Act, 1949 which states that under Section 22, no co-operative society shall carry out banking business in India unless it is a co-operative bank and holds a licence issued in that behalf by the Reserve Bank. That in the instant case, the appellant does not hold any licence as per Section 22 of the BR Act, 1949 and in fact such a licence is not required for the appellant to conduct its business as the appellant is not conducting banking business within the meaning of BR Act, 1949. Therefore, the appellant bank does not come under the provisions of Chapter V of the BR Act, 1949. It was submitted that the Reserve Bank of India reports and the RTI replies categorically indicate that the

appellant is not included under the scope of the provisions of the RBI Act.

10.6. In this regard, learned senior counsel, Sri Krishnan Venugopal, took us through various documents appended to the paper book in order to buttress his submission that appellant is not a co-operative bank within the meaning of Chapter V of the BR Act, 1949.

10.7. It was next contended that the judgment of this Court in ***Mavilayi Service Co-operative Bank Limited vs. Commissioner of Income Tax, Calicut, (2021) 7 SCC 90 ("Mavilayi Service Co-operative Bank")*** squarely applies to the case of the appellant inasmuch as, in the said judgment, the touchstone, on the basis of which an entity could be considered to be a co-operative bank or not within the meaning of provision of BR Act, 1949, has been elucidated. Learned senior counsel urged that impugned orders may be set aside by applying the ratio of the judgment in ***Mavilayi Service Co-operative Bank***. That such an approach has been adopted by the Assessing Officer as per the remand report.

10.8. *Per contra*, learned ASG, N. Venkataraman, appearing for the respondents, at the outset, vehemently contended that the appellant is "a co-operative bank" and not simply a land mortgage bank. That Section 80P(2)(a)(i) of the Act applies to a co-operative society engaged in carrying on business of banking or providing credit facilities to its

members. That the appellant herein is engaged in the business of banking and is a co-operative bank within the meaning of Part V of the BR Act, 1949 and the argument of the appellant that it is not a co-operative bank, is incorrect. According to learned ASG, the status of the appellant is in dispute, as, according to the respondent, the appellant is a co-operative bank while the appellant has contended that it is not doing banking business and therefore is not a co-operative bank but is a co-operative credit society. Distinguishing the judgment of this Court in ***Mavilayi Service Co-operative Bank,*** it was submitted that the status of the appellant therein was not in dispute as it was registered as a primary agriculture society together with one multi-state co-operative society and therefore such a society did not require Reserve Bank of India licence but the appellant is not a primary agriculture credit society but a co-operative bank which is excluded from the benefit of deduction in respect of its income under the provisions of the Act. It was therefore submitted that the judgment of this Court in ***Mavilayi Service Co-operative Bank*** does not apply to the appellant herein. In this regard, learned ASG submitted that any central or state co-operative bank is a co-operative bank within the meaning of Section 56 of BR Act, 1949 as it is engaged in banking business. That the appellant is a state co-operative bank. Therefore, sub-section (4) of Section 80P excludes the benefit of deduction in respect of income to such an entity. It was submitted that impugned orders are just and proper and do not

call for any interference in these appeals which lack merit and therefore the same may be dismissed.

10.9. By way of reply, learned senior counsel for the appellants reiterated that the appellant is not engaged in banking business at all and it receives funds from National Bank for Agriculture and Rural Development and in turn lends money to its member societies and in that sense is an apex bank. Reliance was placed on Section 2(d) of NABARD Act, 1981 to contend that a central co-operative bank is a principal co-operative society in a district in a state, the primary object of which is the financing of other co-operative societies in that district. The appellant is definitely not a central co-operative bank. That the appellant is also not a state co-operative bank whose primary object is the financing of other co-operative societies within the state as per Section 2(u) of the NABARD Act, 1981. That the Kerala State Co-operative Bank is an apex bank coming within the meaning of clause (u) of Section 2 of NABARD Act, 1981 but not the appellant herein. It was submitted that the appellant is a scheduled bank functioning within the State of Kerala as per the Second Schedule of the RBI Act read with Section 2(e) and Section 42 of the said Act. Section 2(e) defines a scheduled bank in the Second Schedule of RBI Act. The appellant is bound by the mandate of Section 42 in terms of cash reserves to be kept with the bank.

10.10. That on a reading of Section 42(1)(d) it becomes clear that a scheduled bank is distinct from a state co-operative bank as well as a co-operative bank inasmuch as the aggregate of the liabilities of a scheduled bank which is not a state co-operative bank shall be reduced by the aggregate of the liabilities of such co-operative bank and other bank or institutions to a scheduled bank. Thus, a bank can be a scheduled bank which is not a state co-operative bank or a co-operative bank within the meaning of sub-section (4) of the Section 80P of the Act. The appellant herein is a scheduled bank which is not a state co-operative bank or a co-operative bank within the meaning of the BR Act, 1949.

10.11. Reliance was placed on ***Apex Co-operative Bank of Urban Bank of Maharashtra and Goa Ltd. vs. Maharashtra State Co-operative Bank Ltd., (2003) 11 SCC 66 ("Apex Co-operative Bank of Urban Bank of Maharashtra and Goa Ltd.")*** with particular reference to paragraphs 11 to 13 and 18 and the case of ***A.P. Varghese vs. The Kerala State Co-operative Bank Ltd.*** reported in ***AIR 2008 Ker 91 ("A.P. Varghese")*** wherein the definition of co-operative bank as per section 56(cci) of the BR Act, 1949 was considered with particular reference to paragraphs 7 and 8, to contend that the Kerala State Co-operative Bank is a state co-operative bank as defined under the provisions of the NABARD Act, 1981 and the district co-operative banks are central co-operative banks as defined in that Act. Hence, they are

co-operative banks falling within the notification dated 28.01.2003 issued under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, "SARFAESI Act, 2002"). It was contended that the Kerala State Co-operative Bank is a state co-operative bank which is an apex bank. That a state co-operative bank, central co-operative bank in the co-operative sector is engaged in the business of banking but the appellant herein is not engaged in the business of banking within the meaning of BR Act, 1949 and is thus entitled to the benefit of deduction even as per sub-section (4) of Section 80P of the Act as it is not a co-operative bank.

10.12. In this regard, our attention was drawn to the provisions of State Act, 1969, namely, Section 2(rb) which defines a "state co-operative bank"; Section 2(ia) which defines a "district co-operative bank"; Section 2(ra) which defines a state co-operative agricultural and rural development bank and Section 2(oc) which defines a primary co-operative agricultural and rural development bank.

10.13. It was further submitted that the appellant herein is Kerala State Co-operative Agricultural and Rural Development Bank which is as defined in Section 2(ra) of the State Act, 1969 and which is an apex bank having only primary co-operative agricultural and rural development banks as its members as defined under Section 2(oc) of the State Act, 1969 and functioning in accordance with the State Act, 1984. That Section 2(a) of the State Act, 1984, defines agricultural and

rural development bank to mean the Kerala Co-operative Central Land Mortgage Bank Limited, registered under Section 10 of the State Act, 1951 which is known as “Kerala State Co-operative Agricultural and Rural Development Bank Limited”. This bank is different from “Kerala State Co-operative Bank” which is a state co-operative bank defined under the NABARD Act, 1981. Therefore, the benefit of Section 80P of the Act was sought by the appellant.

Points for Consideration:

11. Having heard learned senior counsel for the petitioner and learned ASG for the respondent, the following points would arise for our consideration:

i) Whether the appellant is a “co-operative bank” within the meaning of sub-section (4) of Section 80P of the Act?

ii) Whether the ratio of the judgment in ***Mavilayi Service Co-operative Bank*** and the tests laid down therein apply to the case of the appellant herein?

iii) What order?

The aforesaid points are inter-connected and shall be considered together.

Legal Framework:

12. At the outset, it would be necessary to garner together the several relevant provisions applicable in the present case.

i) The Income Tax Act, 1961 ('the Act', for short):

Section 80P of the Act reads as under:

"80P. **Deduction in respect of income of co-operative societies**.-

(1) Where, in the case of an assessee being a co-operative society, the gross total income includes any income referred to in sub-section (2), there shall be deducted, in accordance with and subject to the provisions of this section, the sums specified in sub-section (2), in computing the total income of the assessee.

(2) The sums referred to in sub-section (1) shall be the following, namely :—

(a) in the case of a co-operative society engaged in—

(i) carrying on the business of banking or providing credit facilities to its members, or

(ii) a cottage industry, or

(iii) the marketing of the agricultural produce of its members, or

(iv) the purchase of agricultural implements, seeds, livestock or other articles intended for agriculture for the purpose of supplying them to its members, or

(v) the processing, without the aid of power, of the agricultural produce of its members, or

(vi) the collective disposal of the labour of its members, or

(vii) fishing or allied activities, that is to say, 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 whole of the amount of profits and gains of business attributable to any one or more of such activities ;

Provided that in the case of a co-operative society falling under sub-clause (vi), or sub-clause (vii), the rules and bye-laws of the society restrict the voting rights to the following classes of its members, namely:-

(1) the individuals who contribute their labour or, as the case may be, carry on the fishing or allied activities;

(2) the co-operative credit societies which provide financial assistance to the society;

(3) the State Government'

(*b*) in the case of co-operative society, being a primary society engaged in supplying milk, oilseeds, fruits or vegetables raised or grown by its members to –

(i) a federal co-operative society, being a society engaged in the business of supplying of milk, oilseeds, fruits or vegetables, as the case may be; or

(ii) *the* Government or a local authority; or

(iii) a *Government* company as defined in section 617 of the Companies Act, 1956 (1 of 1956), or a corporation established by or under a Central, State or Provincial Act (being a company or corporation engaged in supplying milk, oilseeds, fruits or vegetables, as the case may be, to the public),

the whole of the amount of profits and gains of such business;

(c) in the case of a co-operative society engaged in activities other than those specified in clause (*a*)

or clause(*b*) (either independently of, or in addition to, all or any of the activities so specified), so much of its profits and gains attributable to such activities as does not exceed,-

(i) where such co-operative society is a consumers' co-operative society, one hundred thousand rupees.

(ii) in any other case, fifty thousand rupees.

Explanation. – In this clause, "consumers' co-operative society" means a society for the benefit of the consumers;

(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;

(e) in respect of any income derived by the co-operative society from the letting of go downs or warehouses for storage, processing or facilitating the marketing of commodities, the whole of such income;

(f) in the case of a co-operative society, not being a housing society or an urban consumers' society, or a society carrying on transport business or a society engaged in the performance of any manufacturing operations with the aid of power, where the gross total income does not exceed twenty thousand rupees, the amount of any income by way of interest on securities or any income from house property chargeable under section 22.

Explanation.— For the purposes of this section, an "urban consumers' co-operative society" means a society for the benefit of the consumers within the limits of a municipal corporation, municipality, municipal committee, notified area committee, town area, or cantonment.

(3) In a case where the assessee is entitled also to the deduction under section 80HH or section 80HHA or

section 80HHB or section 80HHC, or section 80HHD or section 80- 1 or section 80-IA or section 80J, or section 80JJ, the deduction under sub-section (1) of this section, in relation to the sums specified in clause (a) or clause (b) or clause (c) of sub-section (2), shall be allowed with reference to the income, if any, as referred to in those clauses included in the gross total income as reduced by the deductions under section 80HH, section 80HHA, section 80HHB, section 80HHC, section 80HHD, section 80-1, section 80-IA, section 80J and 80JJ.

[(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.

ii) The Banking Regulation Act, 1949 (BR ACT, 1949):

The relevant provisions of the BR Act, 1949 are extracted as under.

Section 3 of the said Act as it stood at the relevant point of time reads as follows:

3. Act to apply to certain co-operative societies in certain cases.—Nothing in this Act shall apply to—

(a) a primary agricultural credit society; or

(b) a co-operative land mortgage bank; and

(c) any other co-operative society, except in the manner and to the extent specified in Part V.

X X X

5. Interpretation.— In this Act, unless there is anything repugnant in the subject or context,

X X X

(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 withdrawal by cheque, draft, order or otherwise;

(c) "banking company" means any company which transacts the business of banking in India.

Explanation.—Any company which is engaged in the manufacture of goods or carries on any trade and which accepts deposits of money from the public merely for the purpose of financing its business as such manufacturer or trader shall not be deemed to transact the business of banking within the meaning of this clause;

X X X

22. Licensing of banking companies.—(1) Save as hereinafter provided, no company shall carry on banking business in India unless it holds a licence issued in that behalf by the Reserve Bank and any such licence may be issued subject to such conditions as the Reserve Bank may think fit to impose.

(2) Every banking company in existence on the commencement of this Act, before the expiry of six months from such commencement, and every other company before commencing banking business in India, shall apply in writing to the Reserve Bank for a licence under this section:
Provided that in the case of a banking company in existence on the commencement of this Act, nothing in sub-section (1) shall be deemed to prohibit the company from carrying on banking business until it is granted a licence in pursuance of this section or is by notice in writing informed by the Reserve Bank that a licence cannot be granted to it:

Provided further that the Reserve Bank shall not give a notice as aforesaid to a banking company in existence on the commencement of this Act before the expiry of the three years referred to in sub-section (1) of section 11 or of such further period as the Reserve Bank may under that sub-section think fit to allow.

(3) Before granting any licence under this section, the Reserve Bank may require to be satisfied by an inspection of the books of the company or otherwise that the following conditions are fulfilled, namely:—

(a) that the company is or will be in a position to pay its present or future depositors in full as their claims accrue;

(b) that the affairs of the company are not being, or are not likely to be, conducted in a manner deterimental to the interests of its present or future depositors;

(c) that the general character of the proposed management of the company will not be prejudicial to the public interest or the interest of its depositors;

(d) that the company has adequate capital structure and earning prospects;

(e) that the public interest will be served by the grant of a licence to the company to carry on banking business in India;

(f) that having regard to the banking facilities available in the proposed principal area of operations of the company, the potential scope for expansion of banks already in existence in the area and other relevant factors the grant of the licence would not be prejudicial to the operation and consolidation of the banking system consistent with monetary stability and economic growth;

(g) any other condition, the fulfilment of which would, in the opinion of the Reserve Bank, be necessary to ensure that the carrying on of banking business in India by the company will not be prejudicial to the public interest or the interests of the depositors.

(3A) Before granting any licence under this section to a company incorporated outside India, the Reserve Bank may require to be satisfied by an inspection of the books

of the company or otherwise that the conditions specified in sub-section (3) are fulfilled and that the carrying on of banking business by such company in India will be in the public interest and that the Government or law of the country in which it is incorporated does not discriminate in any way against banking companies registered in India and that the company complies with all the provisions of this Act applicable to banking companies incorporated outside India.

(4) The Reserve Bank may cancel a licence granted to a banking company under this section —

(i) if the company ceases to carry on banking business in India; or

(ii) if the company at any time fails to comply with any of the conditions imposed upon it under sub-section (1); or

(iii) if at any time, any of the conditions referred to in sub-section (3) and sub-section (3A) is not fulfilled:

Provided that before cancelling a licence under clause (ii) or clause (iii) of this sub-section on the ground that the banking company has failed to comply with or has failed to fulfil any of the conditions referred to therein, the Reserve Bank, unless it is of opinion that the delay will be prejudicial to the interests of the company's depositors or the public, shall grant to the company on such terms as it may specify, an opportunity of taking the necessary steps for complying with or fulfilling such condition.

(5) Any banking company aggrieved by the decision of the Reserve Bank cancelling a licence under this section may, within thirty days from the date on which such decision is communicated to it, appeal to the Central Government.

(6) The decision of the Central Government where an appeal has been preferred to it under sub-section (5) or of the Reserve Bank where no such appeal has been preferred shall be final.

X X X

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:—

(a) throughout this Act, unless the context otherwise requires,—

(i) references to a "banking company" or "the company" or "such company" shall be construed as references to a co-operative bank,

(ii) references to "commencement of this Act" shall be construed as references to commencement of the Banking Laws (Application to Co-operative Societies) Act, 1965 (23 of 1965);

(b) in section 2, the words and figures "the Companies Act, 1956 (1 of 1956), and" shall be omitted;

(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;

(cciia) "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 co-operative societies, or any other Central or State law relating to co-operative societies for the time being in force;

(cciii) "director", in relation to a co-operative society, includes a member of any committee or body for the time being vested with the management of the affairs of that society;

(cciiia) "multi-State co-operative bank" means a multi-State co-operative society which is a primary co-operative bank;

(cciiib) "multi-State co-operative society" means a multi-State co-operative society registered as such under any Central Act for the time being in force relating to the multi-State co-operative societies but does not include a national co-operative society and a federal co-operative;

(cciv) "primary agricultural credit society" means a co-operative society,—

(1) 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 (including the marketing of crops); and

(2) the bye-laws of which do not permit admission of any other co-operative society as a member:

Provided that this sub-clause shall not apply to the admission of a co-operative bank as a member by reason of such co-operative bank subscribing to the share capital of such co-operative society out of funds provided by the State Government for the purpose;

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

(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:

Provided that this sub-clause shall not apply to the admission of a co-operative bank as a member by reason of such co-operative bank subscribing to the share capital of such co-operative society out of funds provided by the State Government for the purpose;

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

(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 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:

Provided that this sub-clause shall not apply to the admission of a co-operative bank as a member by reason of such co-operative bank subscribing to the share capital of such co-operative society out of funds provided by the State Government for the purpose.

Explanation.—If any dispute arises as to the primary object or principal business of any co-operative society referred to in clauses (*cciv*), (*ccv*) and (*ccvi*), a determination thereof by the Reserve Bank shall be final;

(ccvii) "central co-operative bank", "primary rural credit society" and "state co-operative bank" shall have the meanings respectively assigned to them in the National Bank for Agriculture and Rural Development Act, 1981 (61 of 1981);"

X X X

(o) in section 22,—

(i) for sub-sections (1) and (2) the following sub-sections shall be substituted, namely:—

"(1) Save as hereinafter provided, no co-operative society shall carry on banking business in India unless—

(a) [***]

(b) it is a co-operative bank and holds a licence issued in that behalf by the Reserve Bank, subject to such conditions, if any, as the Reserve Bank may deem fit to impose:

Provided that nothing in this sub-section shall apply to a co-operative society, not being a primary credit society or a co-operative bank carrying on banking business at the commencement of the Banking Laws (Application to Co-operative Societies) Act, 1965 (23 of 1965), for a period of one year from such commencement.

Provided further that nothing in this sub-section shall apply to a primary credit society carrying on banking business on or before the commencement of the Banking Laws (Amendment) Act, 2012, for a period of one year or for such further period not exceeding three years, as the Reserve Bank may, after recording the reasons in writing for so doing, extend.

(2) Every co-operative society carrying on business as a co-operative bank at the commencement of the Banking Laws (Application to Co-operative Societies) Act, 1965 (23 of 1965) shall before the expiry of three months from the commencement, every co-operative bank which comes into existence as a result of the division of any other co-operative society carrying on business as a co-operative bank, or the amalgamation of two or more co-operative societies carrying on banking business shall, before the expiry of three months from its so coming into existence, every primary credit society which had become a primary co-operative bank on or before the commencement of the Banking Laws (Amendment) Act, 2012, shall before the expiry of three months from the date on which it had become a primary co-operative bank and every co-operative shall before commencing banking

business in India, apply in writing to the Reserve Bank for a licence under this section:

Provided that nothing in clause (b) of sub-section (1) shall be deemed to prohibit—

(i) a co-operative society carrying on business as a co-operative bank at the commencement of the Banking Law (Application to Co-operative Societies) Act, 1965 (23 of 1965); or

(ii) a co-operative bank which has come into existence as a result of the division of any other co-operative society carrying on business as a co-operative bank, or the amalgamation of two or more co-operative societies carrying on banking business at the commencement of the Banking Laws (Application to Co-operative Societies) Act, 1965 (23 of 1965) or at any time thereafter; or

(iii) [***]

from carrying on banking business until it is granted a licence in pursuance of this section or is, by a notice in writing notified by the Reserve Bank that the licence cannot be granted to it.];

(ii) sub-section (3A) shall be omitted;

(iii) in sub-section (4) in clause (iii) the words, brackets, figures and letter "and sub-section (3A)" shall be omitted;

iii) National Bank for Agriculture and Rural Development Act, 1981 ('NABARD Act, 1981', for short):

The relevant provisions of NABARD Act, 1981 are extracted as under for immediate reference:

2. Definitions.- In this Act, unless the context otherwise requires, -

X X X

(d) "central co-operative bank" means the principal co-operative society in a district in a State, the primary object of which is the financing of other co-operative societies in that district:

Provided that in addition to such principal society in a district, or where there is no such principal society in a district, the State Government may declare any one or more cooperative societies carrying on the business of financing other co-operative societies in that district to be also or to be a central co-operative bank or central co-operative banks within the meaning of this definition;

X X X

(u) "State co-operative bank" means the principal co-operative society in a State, the primary object of which is the financing of other co-operative societies in the State:

Provided that in addition to such principal society in a State, or where there is no such principal society in a State, the State Government may declare any one or more cooperative societies carrying on business in that State to be also or to be a State cooperative bank or State co-operative banks within the meaning of this definition;

(v) "State land development bank" means the co-operative society which is the principal land development bank (by whatever name called) in a State and which has as its primary object the providing of long-term finance for agricultural development:

Provided that, in addition to such principal land development bank in a State, or where there is no such bank in a State, the State Government may declare any cooperative society carrying on business in that State and authorised by the bye-laws of such cooperative society to provide long-term finance for agricultural development to be also or to be a State land development bank within the meaning of this definition;

(w) words and expressions used herein and not defined but defined in the Reserve Bank of India Act, 1934, (2 of 1934), shall have the meanings respectively

assigned to them in that Act;

(x) words and expressions used herein and not defined either in this Act or in the Reserve Bank of India Act, 1934 (2 of 1934), but defined in the Banking Regulation Act, 1949 (10 of 1949), shall have the meanings respectively assigned to them in the Banking Regulation Act, 1949."

iv) The Reserve Bank of India Act, 1934 (RBI Act):

The relevant provisions of the RBI Act are extracted as under for immediate reference:

"**2.Definitions**.- In this Act, unless there is anything repugnant in the subject or context,-

X X X

(e) "scheduled bank" means a bank included in the Second Schedule;"

v) The Kerala Co-Operative Societies Act, 1969 (State Act, 1969):

The relevant provisions of the State Act, 1969 are extracted as under for immediate reference:

"**2. Definitions.-** In this Act, unless the context otherwise requires—

X X X

(g)"co-operative society with limited liability" means a society in which the liability of its members for the debts of the society in the event of its being wound up is limited by its bye-laws-

(i) to the amount, if any, unpaid on the shares respectively held by them; or

(ii) to such amount as they may, respectively, undertake to contribute to the assets of the society;

X X X

(ia) District Co-operative Bank" means a Central Society having jurisdiction over one revenue district and

having as its members Primary Agricultural Credit Societies, Urban Co-operative Banks and the principal object of which is to raise funds to be lent to its members, including nominal or associate members, which existed under this Act, immediately before the commencement of the Kerala Co-operative Societies (Amendment) Act, 2019 and which has ceased to exist after the commencement of the said Amendment Act."

X X X

(oc) "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:

Provided that no Primary Co-operative Agricultural and Rural Development Bank shall be registered without the bifurcation of assets and liabilities of the existing societies having the area of operation in more than one taluk and the societies shall restrict their operation in the area of the respective society on such bifurcation;

X X X

(ra) "State Co-operative Agricultural and Rural Development Bank" means an apex society having only Primary Co- operative Agricultural and Rural Development Banks as its members and functioning in accordance with the provisions contained in the Kerala State Co-operative Agricultural and Rural Development Banks Act, 1984 (20 of 1984)"

(rb) a State Co-operative Bank means an apex society having only district co-operative banks as its members.

X X X

"**110. Repeal and savings.**- The Madras Co-operative Societies Act, 1932 (VI of 1932), as in force in the Malabar district referred to in sub-section (2) of section 5 of the States Re- organisation Act, 1956 (Central Act 37 of 1956) and the Travancore-Cochin Co-operative Societies Act, 1951 (X of 1952), are hereby repealed.

(2)Notwithstanding the repeal of the Madras Co-operative Societies Act, 1932 and the Travancore-Cochin Co-operative Societies Act, 1951 and without prejudice to the

provisions of sections 4 and 23 of the Interpretation and General Clauses Act, 1125 (VII of 1125),—

(i) all appointments, rules and orders made, notifications and notices issued, and suits and other proceedings instituted ,under any of the Acts hereby repealed shall, so far as may be, be deemed to have been respectively made, issued and instituted under this Act;

(ii) any society existing in the State on the date of the commencement of this Act which has been registered or deemed to be registered under any of the aforesaid repealed Acts shall be deemed to be registered under this Act, and the bye-laws of such society shall, so far as they are not inconsistent with the provisions of this Act, continue in force until altered or rescinded."

vi) The Kerala State Co-Operative Agricultural Development Banks Act, 1984 (State Act, 1984):

The relevant provisions of the State Act, 1984 are extracted as under for immediate reference:

"(2) Definitions.- In this Act, unless the context otherwise requires,-

(a) "Agricultural and Rural Development Bank" means the Kerala Co-operative Central Land Mortgage Bank Limited, registered under section 10 of the Travancore-Cochin Co-operative Societies Act, 1951 (X of 1952), which shall hereafter be known as the "Kerala State Co-operative Agricultural and Rural Development Bank Limited";

X X X

(ka) "Kerala State Co-operative Bank" means an apex society having Primary Agricultural Credit Societies and Urban Co-operative Banks as its members including nominal or associate members of the District Co-operative Banks who shall continue as nominal or associate members of the Kerala State Co-operative Bank;

X X X

> (iA) "Rural Development" means any activity intended to promote the development in rural area and intends the following developmental activities-
>
> (1) Development of handicrafts and other crafts;
>
> (2) Small Industries;
>
> (3) Cottage and Village industries;
>
> (4) Industries in tiny and decentralized section;
>
> (5) Rural housing needs of the rural-population.

Judicial Precedent:

13. The relevant judgments of this Court as well as the Kerala High Court, having a bearing on the issues raised in these appeals could be adverted to at this stage:

a) In ***Thalappalam Service Coop. Bank Ltd. vs. State of Kerala, (2013) 16 SCC 82***, this Court has referred to Entry 32 of List II of Seventh schedule of the Constitution in paragraph 26 which reads as under:

> 26. The cooperative society is a **State subject** under Schedule VII List II Entry 32 to the Constitution of India. Most of the States in India enacted their own Cooperative Societies Act with a view to provide for the orderly development of the cooperative sector in the State to achieve the objects of equity, social justice and economic development, as envisaged in the directive principles of State policy, enunciated in the Constitution of India. For cooperative societies working in more than one State, the Multi-State Cooperative Societies Act, 1984 was enacted by Parliament under Schedule VII List I Entry 44 of the Constitution. The cooperative society is essentially an association of persons who have come together for a common purpose of economic development or for mutual help.
>
> (Emphasis by us)

Entry 32 of List II of Seventh Schedule of the Constitution reads as under:

> "32. Incorporation, regulation and winding up of corporations, other than those specified in List I, and universities; unincorporated trading, literary, scientific, religious and other societies and associations; co-operative societies."

b) This Court in ***Union of India vs. Rajendra N. Shah, 2021 SCC OnLine SC 474*** while considering the *vires* of the constitution (Ninety Seventh Amendment) Act, 2011 has reiterated the aforesaid position of law.

c) In ***Apex Co-operative Bank of Urban Bank of Maharashtra and Goa Ltd.***, this Court on considering Section 56 of the BR Act, 1949 along with Section 22 thereof, observed that the Reserve Bank of India has the right to issue licences to companies to carry out banking business and no company can carry on a banking business unless it holds a licence issued by the Reserve Bank of India. After the amendment to Section 22 of the said Act, certain types of co-operative societies, as were brought within the purview of the BR Act, 1949, could be issued a licence by the Reserve Bank of India. Under Section 22, the term "co-operative society" would include all types of co-operative societies. This Court observed that in other words, no co-operative society can carry on banking business unless it falls within the permitted categories set out in Section 22. The term "co-operative bank" has been defined under Section 5(cci)

as a state co-operative bank, a central co-operative bank and a primary co-operative bank. Thus, the term "co-operative bank" does not include all co-operative societies. It only includes the abovementioned three types of societies which function as banks. By virtue of Section 5(ccvii), the term state co-operative bank is to be understood as defined in NABARD Act, 1981. Thus, unless a co-operative society is a state co-operative bank or a central co-operative bank or a primary co-operative bank as defined under NABARD Act, 1981, no licence can be issued by Reserve Bank of India.

It was further explained by this Court that under Section 22(1), a primary credit society can carry on banking business. However, if a co-operative society is not a primary credit society, then, to carry on banking business, it must be a co-operative bank and hold a licence issued by Reserve Bank of India. Therefore, a co-operative society other than a primary credit society, has to apply to Reserve Bank of India for licence before it can commence banking business. However, this does not mean that Reserve Bank of India can give to any or all co-operative societies, a banking licence. Reserve Bank of India can give a licence as provided in Section 22(1) only to a co-operative bank, which is defined under Section 56 of the said Act.

It was further observed by this Court that when a term is specifically defined in a statute**,** then**,** for purposes of that statute, that term cannot bear a meaning assigned to it in another statute. One cannot ignore the specific definition given in the BR Act, 1949 and apply some other

definition set out in some other statute. Therefore, a co-operative bank must have the meaning assigned to it in Section 5(cci) of BR Act, 1949. Reserve Bank of India cannot go by any other meaning given to the term "co-operative bank" for purposes of licensing under BR Act, 1949. Reserve Bank of India has to go by the meaning given to this term in the said Act only. Therefore, it was concluded that the Reserve Bank of India, by virtue of its power under Section 22 cannot grant a licence to any co-operative society unless it is a state co-operative bank or a central co-operative bank or a primary co-operative bank. For that it would be necessary that a declaration under the NABARD Act, 1981 be first obtained.

While considering the definition of co-operative society and state co-operative bank under Section 2(f) and Section 2(u) respectively of the NABARD Act, 1981, it was observed that under the NABARD Act, 1981, co-operative society is a society which is registered or deemed to be registered under the Co-operative Societies Act, 1912 or any other law relating to co-operative societies for the time being in force in any State. In the context of the appellant therein, it was observed that the said entity had not registered under the Co-operative Societies Act, 1912. The question thus was, whether, the appellant therein was a society registered under any other law relating to co-operative societies for the time being in force in any State which would include all laws relating to co-operative societies which are in force in any State. While interpreting Section 2(f) of the NABARD Act, 1981 which defines co-operative society,

this Court held that it is only co-operative societies registered under local or State laws relating to co-operative societies which would be covered under the said definition. If it is a state co-operative bank, then there would be a declaration only by the State Government. If a declaration is by the State Government, it must be in respect of a society which is registered in that State and which can be regulated by the Registrar of Co-operative Societies of that State. It was concluded that the words "in any State" in Section 2(f) of NABARD Act, 1981 would mean that the co-operative society must be registered under the law in force in any State in which it wants to operate. It was also observed that use of words "Co-operative Societies Act, 1912" in the NABARD Act, 1981 also indicates that the definition is restricted to societies registered under the law relating to co-operative societies in the State in which they want to operate. Thus, the term "any other law relating to co-operative societies for the time being in force in any State" necessarily means only a State law. Further, under the NABARD Act, 1981, a state co-operative bank has to be the principal co-operative society in the State, the primary object of which must be financing other co-operative societies in that State. The proviso to Section 2(u) of NABARD Act, 1981 enables the State to declare, in addition to an existing principal society in the State or where there is no principal society in the State, any one or more co-operative banks as State co-operative banks. However, this does not mean that the State Governments can, at their whims and fancies, declare any co-operative society to be a "State co-operative bank". Before

such a declaration can be made, the State Government must necessarily be satisfied- (a) that it is a principal co-operative society in the State; (b) that it is carrying on business in the State; and (c) that the business is of financing other co-operative societies in that State.

Further, elucidating on the expression "carrying on business in the State" it was held that the same means carrying on banking business only. Further, reading of the provisions would make it clear that what is necessary is that the co-operative society must be carrying on the business of financing other co-operative societies. The proviso has to be read in light of the main provision. If read in light of the main provision, it is clear that even though banking business, as understood in the strict sense, may not be carried on, yet the business of financing other co-operative societies in the State must be carried on.

It was ultimately observed that the Reserve Bank of India could not have granted the licence to the appellants in the said case unless they were first declared to be a state co-operative bank under the NABARD Act, 1981. Since, such a declaration was struck down, the Reserve Bank of India could not have issued licence to carry on banking business. Therefore, Reserve Bank of India would have to cancel the licence granted by it to the appellant therein. Hence, a direction was issued to the Reserve Bank of India to forthwith revoke the banking licence granted to the appellants therein.

d) In ***A.P. Varghese***, while considering Section 56 of the BR Act, 1949 in the context of co-operative bank which has been defined to mean a state co-operative bank, a central co-operative bank and a primary co-operative bank which have been assigned the definitions under NABARD Act, 1981 and while considering the definitions of clause (u) and (d) in Section 2 of NABARD Act, 1981, it was observed, *inter alia,* that a state co-operative bank is one defined in Section 2(rb) of the State Act, 1969 to mean an apex society having only district co-operative banks as its members. District co-operative bank as defined in clause (ia) of Section 2 of the said Act, is a central society, the principal object of which is to raise funds to be lent to its members, with jurisdiction over one revenue district and having as its members any type of primary societies and federal and central societies having headquarters in such district.

Therefore, Kerala State Co-operative Bank is a "state co-operative bank" as defined in the NABARD Act, 1981 and the district co-operative banks are central co-operative banks as defined in that Act. Hence, they are "co-operative banks" as defined in Section 5 (cci) of BR Act, 1949, falling within the BR Act, 1949.

It was further observed that co-operative banks are further divided into apex banks and other banks. The Kerala State Co-operative Bank is an apex bank and the district co-operative banks are other banks. The primary object or business of the state co-operative bank, the district co-operative banks and the urban banks in the co-operative sector is the transaction of banking business.

Further, it was observed that the provisions of the SARFAESI Act and particularly Section 13 thereof are also applicable to the institutions, namely, the Kerala State Co-operative Bank Ltd., the district co-operative banks and the urban co-operative banks.

e) In ***Citizen Co-operative Society Ltd. vs. Commissioner of Income Tax, (2017) 9 SCC 364 ("Citizen Co-operative Society Ltd."),*** appellant therein was a co-operative society which was denied benefit of Section 80P on the ground that it is a co-operative society of the nature covered by sub-section (4) of Section 80P of the Act and, therefore, disentitled to get the benefit. The question, therefore, was whether the appellant therein was barred from getting deduction in view of sub-section (4) of Section 80P of the Act. The assessee therein was established in the year 1997, initially, as a mutually aided co-operative credit society registered under Section 5 of the Andhra Pradesh Mutually Aided Co-operative Societies Act, 1995. As operations of the assessee over the years increased manifold and as the society spread its activities over the States of the erstwhile Andhra Pradesh, Maharashtra and Karnataka, the assessee was registered under the Multi-State Co-operative Societies Act, 2002. Assessing officer held that the deduction in respect of income of co-operative societies under Section 80P of the Act was not admissible to the appellant therein as the said appellant was carrying on banking business for the public at large and for all practical purposes, it was acting like a co-operative

bank governed by the BR Act, 1949 and its operation was not only confined to its members but outsiders as well. The appellant therein being aggrieved by the dismissal of its appeal by the High Court which had affirmed the order of the Income Tax Appellate Tribunal, had approached this Court.

On considering the rival submissions, this Court observed that sub-clause (1) of clause (a) of sub-section (2) of Section 80P recognises two kinds of co-operative societies, namely, (i) those carrying on the business of banking and; (ii) those providing credit facilities to its members. In this regard, reliance was placed on ***Kerala State Coop. Mktg. Federation Ltd. vs. CIT, (1998) 5 SCC 48.*** Also, reference was made to ***CIT vs. Punjab State Coop. Bank Ltd., (2008) 300 ITR 24*** which is a judgment of the Punjab and Haryana High Court and it was observed that Section 80P of the Act is a benevolent provision which is enacted by Parliament in order to encourage and promote growth of co-operative sector in the economic life of the country. Therefore, such a provision has to be read liberally, reasonably and in favour of the assessee with a view to effectuate the object of the Legislature and not to defeat it. Therefore, all those co-operative societies which fall within the purview of the Section 80P of the Act are entitled to deduction in respect of any income referred to in sub-section (2) thereof. Clause (a) of sub-section (2) gives exemption of whole of the amount of profits and gains of business attributable to any one or more of such activities which are mentioned in sub-section (2). Sub-section (4) of Section 80P

inserted by the Finance Act, 2006 is in the nature of a proviso and such a deduction under the said Section shall not be admissible to a co-operative bank. Thus, co-operative banks are now specifically excluded from the ambit of Section 80P of the Act.

The appellant therein was not a co-operative bank and it did not require a licence of the Reserve Bank of India to conduct its business. Therefore, it would not come within the mischief of sub-section (4) of Section 80P of the Act. However, the appellant therein was held to be not entitled to the benefit under Section 80P of the Act as it was a co-operative society meant only for its members and providing credit facilities to its member only. There were resident members or ordinary members but there were also another category of members called nominal members who were making deposits with the appellant therein for the purpose of obtaining loans, etc. and, they were not members in real sense. Most of the business of the appellant therein was with this second category of persons i.e. members of the general public who had been giving deposits which were kept in fixed deposits with a motive to earn maximum returns. Therefore, this Court held that the depositors and borrowers being distinct, doctrine of mutuality also did not apply to the activities of the appellant therein.

f) In ***Mavilayi Service Co-operative Bank***, the appeals before this Court were filed by the co-operative societies which had been registered as “primary agricultural credit societies”, together with one “multi-state

co-operative society" raising the question as to, whether, deductions could be claimed under Section 80P(2)(a)(i) of the Act and in particular, whether the assessees are entitled to such deductions after the introduction of Section 80P(4) of the Act by Section 19 of the Finance Act, 2006 with effect from 01.04.2007. It was noted that the appellants therein were providing credit facilities to their members for agricultural and allied purposes and had been classified as primary agricultural credit societies by the Registrar of Co-operative Societies under State Act, 1969, had claimed a deduction under Section 80P(2)(a)(i) of the Act which had been granted up to assessment year 2007-2008. However, with the introduction of Section 80P(4) of the Act, the Assessing Officer denied their claims for deduction, relying upon the said provision.

The Full Bench of the Kerala High Court ultimately held that if the assessee-societies ceased to be specific class of society for which deduction is provided, by reason of sub-section (4) of Section 80P of the Act the deduction could not be allowed. The Full Bench of the Kerala High Court accordingly answered the question. Being aggrieved, the assessees approached this Court. It was argued before this Court by the assessees that co-operative societies which are registered under the said Act are entitled to deductions under Section 80P. That the insertion of sub-section (4) to Section 80P of the Act had not led to any change insofar as the assessees therein were concerned. That the moment a co-operative society is registered under the said Act, whatever be its classification, so long as it provides credit facilities to its members, it is

entitled to a deduction contained in Section 80P(2)(a)(i) of the Act. A distinction was said to be drawn between eligibility for deduction, and whether the whole of the amounts of profits and gains of business attributable to any one or more such activities under the sub-section could be given.

On the other hand, in the said case, it was argued on behalf of the revenue that a society undeserving of any deduction cannot get a deduction contrary to what has been sought to be achieved by Section 80P(4) of the Act. That the judgment of this Court in ***Citizen Co-operative Society Ltd.*** was correctly read by the Full Bench of the Kerala High Court which is to the effect that the Assessing Officer must assess the real facts of a case in order to conclude as to whether activities of a primary agricultural credit society were, in fact, being carried out in the assessment year in question for which such an entity must adduce facts to show that it is in fact carrying on its business as a primary agricultural credit society in the assessment year in question. If it was unable to discharge such burden then such a society cannot avail of any deduction under Section 80P of the Act. This Court considered the definition of co-operative society under clause (19) of Section 2 of the Act in the context of Section 80P of the Act, specially in light of sub-section (4) thereof as well as Sections 3 and 56 of the BR Act, 1949 and the provisions of State Act, 1969 as well as the bye-laws of some of the societies and observed in paragraph 18 as under:

> "**18.** It is important to note that though the main object of the primary agricultural society in question is to provide financial assistance in the form of loans to its members for agricultural and related purposes, yet, some of the objects go well beyond, and include performing of banking operations "as per rules prevailing from time to time", opening of medical stores, running of showrooms and providing loans to members for purposes other than agriculture."

Further, this Court referred to various judgments of this Court including ***Citizen Co-operative Society Ltd.*** as discussed in paragraphs 24 to 24.5 of the judgment and held that Full Bench of the Kerala High Court had not properly understood the ratio in ***Citizen Co-operative Society Ltd.*** Also, an analysis of Section 80P was made particularly of sub-section (4) of the said Section in paragraphs 24 to 24.5 and paragraphs 39 to 43. Paragraphs 24 to 24.5 and paragraphs 39 to 43 are extracted as under:

> **24.** An analysis of this judgment would show that the question of law that was reflected in para 5 of the judgment was answered in favour of the assessee. The following propositions may be culled out from the judgment in *Citizen Coop. Society case*:
>
> **24.1.** That Section 80-P of the IT Act is a benevolent provision, which was enacted by Parliament in order to encourage and promote the growth of the co-operative sector generally in the economic life of the country and must, therefore, be read liberally and in favour of the assessee;
>
> **24.2.** That once the assessee is entitled to avail of deduction, the entire amount of profits and gains of business that are attributable to any one or more activities mentioned in sub-section (2) of Section 80-P must be given by way of deduction;
>
> **24.3.** That this Court in *Kerala State Coop. Mktg. Federation Ltd.* has construed Section 80-P widely and

liberally, holding that if a society were to avail of several heads of deduction, and if it fell within any one head of deduction, it would be free from tax notwithstanding that the conditions of another head of deduction are not satisfied;

24.4. This is for the reason that when the legislature wanted to restrict the deduction to a particular type of cooperative society, such as is evident from Section 80-P(2)(*b*) qua milk cooperative societies, the legislature expressly says so — which is not the case with Section 80-P(2)(*a*)(*i*)

24.5. That Section 80-P(4) is in the nature of a proviso to the main provision contained in Sections 80-P(1) and (2). This proviso specifically excludes only cooperative banks, which are cooperative societies who must possess a licence from RBI to do banking business. Given the fact that the assessee in that case was not so licensed, the assessee would not fall within the mischief of Section 80-P(4).

X X X

39. Coming to the provisions of Section 80-P(4), it is important to advert to the speech of the Finance Minister dated 28-2-2006, which reflects the need for introducing Section 80-P(4). Shri P. Chidambaram specifically stated:

"166. Cooperative Banks, like any other bank, are lending institutions and should pay tax on their profits. Primary Agricultural Credit Societies (PACS) and Primary Cooperative Agricultural and Rural Development Banks (PCARDB) stand on a special footing and will continue to be exempt from tax under Section 80-P of the Income Tax Act. However, I propose to exclude all other cooperative banks from the scope of that section."

40. Likewise, a Circular dated 28-12-2006, containing explanatory notes on provisions contained in the Finance Act, 2006, is also important, and reads as follows:

"Withdrawal of tax benefits available to certain cooperative banks

***

22.2. The cooperative banks are functioning on a par with other commercial banks, which do not enjoy any tax benefit. Therefore Section 80-P has been amended and a new sub-section (4) has been inserted to provide that the provisions of the said section shall not apply in relation to any cooperative bank other than a primary agricultural credit society or a primary cooperative agricultural and rural development bank. The expressions "cooperative bank", "primary agricultural credit society" and "primary cooperative agricultural and rural development bank" have also been defined to lend clarity to them."

41. A clarification by the CBDT, in a letter dated 9-5-2008, is also important, and states as follows:

"Subject.—Clarification regarding admissibility of deduction under Section 80-P of the Income Tax Act, 1961.

***

2. In this regard, I have been directed to state that sub-section (4) of Section 80-P provides that deduction under the said section shall not be allowable to any cooperative bank other than a primary agricultural credit society or a primary cooperative agricultural and rural development bank. For the purpose of the said sub-section, cooperative 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, "Cooperative Bank" means a State Cooperative bank, a Central Cooperative Bank and a primary cooperative bank.

4. Thus, if the Delhi Co-op Urban T & C Society Ltd. does not fall within the meaning of "Cooperative Bank" as defined in Part V of the Banking Regulation Act, 1949, sub-section (4) of Section 80-P will not apply in this case.

5. Issued with the approval of Chairman, Central Board of Direct Taxes."

42. The above material would clearly indicate that the limited object of Section 80-P(4) is to exclude cooperative banks that function on a par with other commercial banks i.e. which lend money to members of the public. Thus, if the Banking Regulation Act,

1949 is now to be seen, what is clear from Section 3 read with Section 56 is that a primary cooperative bank cannot be a primary agricultural credit society, as such cooperative bank must be engaged in the business of banking as defined by Section 5(b) of the Banking Regulation Act, 1949, which means the accepting, for the purpose of lending or investment, of deposits of money from the public. Likewise, under Section 22(1)(b) of the Banking Regulation Act, 1949 as applicable to cooperative societies, no cooperative society shall carry on banking business in India, unless it is a cooperative bank and holds a licence issued in that behalf by RBI. As opposed to this, a primary agricultural credit society is a cooperative society, the primary object of which is to provide financial accommodation to its members for agricultural purposes or for purposes connected with agricultural activities.

43. As a matter of fact, some primary agricultural credit societies applied for a banking licence to RBI, as their bye-laws also contain as one of the objects of the Society the carrying on of the business of banking. This was turned down by RBI in a letter dated 25-10-2013 as follows:

> "Application for licence
>
> Please refer to your application dated 10-4-2013 requesting for a banking licence. On a scrutiny of the application, we observe that you are registered as a Primary Agricultural Credit Society (PACS).
>
> In this connection, we have advised RCS vide Letter dated UBD (T) No. 401/10.00/16A/2013-14 dated 18-10-2013 that in terms of Section 3 of the Banking Regulation Act, 1949 (AACS), PACS are not entitled for obtaining a banking licence. Hence, your society does not come under the purview of Reserve Bank of India. RCS will issue the necessary guidelines in this regard."

Consequently, the judgment of the Full Bench of the Kerala High Court was set aside by observing that Section 80P of the Act, being a

benevolent provision enacted by Parliament to encourage and promote the credit of co-operative sector in general must be read liberally and reasonably, and if there is any ambiguity, in favour of the assessee. A deduction that is given without any reference to any restriction or limitation cannot be restricted or limited by implication, as is sought to be done by the Revenue in the said case by adding the word "agriculture" into Section 80P(2)(a)(i) when it is not there. Further, sub-section (4) of Section 80P had to be read as a proviso, which specifically excludes co-operative banks which are co-operative societies engaged in banking business i.e., engaged in lending money to members of the public, which have a licence in this behalf from Reserve Bank of India. Therefore, the benefit of deduction was extended to the assessee in the said case notwithstanding that they may also be giving loans to the members which are not related to agriculture. Also, in case it was found that there are instances of loans being given to non-members, profits attributable to such loans obviously cannot be deducted.

Analysis:

14. We shall now analyse the aforesaid judgments in a common conspectus.

14.1. In ***Apex Co-operative Bank of Urban Bank of Maharashtra and Goa Ltd.***, it was categorically held that under Section 56 of the BR Act, 1949 only three co-operative banks have been defined, namely, state co-operative bank, central co-operative bank and primary co-

operative bank which are covered under Section 56 (cci) read with (ccvii) read with the provisions of the NABARD Act, 1981. Thus, it is only these three banks which are co-operative banks which require a licence under the BR Act, 1949 to engage in banking business. If any bank does not fall within the nomenclature of the aforesaid three banks as defined under the NABARD Act, 1981, it would not be a co-operative bank within the meaning of Section 56 of BR Act, 1949 irrespective of whatever nomenclature it may have or structure it may possess or incorporated under any Act. It was further stated that if a bank has to be a state co-operative bank, there has to be a declaration made by the State Government in terms of Section 2(u) of NABARD Act, 1981. Hence, it is necessary to go into the question as to, whether, the appellant herein has been so declared as a state co-operative bank. This question would need not detain us for long as the Kerala High Court in ***A.P. Varghese*** had categorically stated that the "Kerala State Co-operative Bank" is a "state co-operative bank" as defined under the NABARD Act, 1981. Therefore, the appellant bank has not been declared as a state co-operative bank under the provisions of NABARD Act, 1981. Further, in the case of ***Mavilayi Service Co-operative Bank***, this Court observed that a co-operative bank would engage in banking business on obtaining a licence under Section 22(1b) of the BR Act, 1949. In the instant case, the appellant herein is not a co-operative bank having regard to the aforesaid conspectus of the provisions so as to require a licence under the aforesaid provision for carrying on banking business. In the

circumstances, the question could still arise as to whether the appellant herein is entitled to benefit of deduction under Section 80P of the Act.

14.2. In ***Mavilayi Service Co-operative Bank,*** it has been observed that Section 80P of the Act is a beneficial provision which was enacted in order to encourage and promote the growth of the co-operative sector generally in the economic life of the country and therefore, has to be read liberally in favour of the assessee. That once the assessee is entitled to avail of deduction, the entire amount of profits and gains of business that are attributable to any one or more activities mentioned in sub-section (2) of Section 80P must be given by way of deduction *vide* ***Citizen Co-operative Society***. This is because sub-section (4) of Section 80P is in the nature of a proviso to the main provision contained in sub-sections (1) and (2) of Section 80P. The proviso excludes co-operative banks, which are co-operative societies which must possess a licence from the Reserve Bank of India to do banking business. In other words, if an entity does not require a licence to do banking business within the definition of banking under Section5(b) of the BR Act, 1949, then it would not fall within the scope of sub-section (4) of Section 80P.

14.3. While analysing Section 80P of the Act in depth, the following points were noted by this Court:

i) *Firstly*, the marginal note to Section 80P which reads “Deduction in respect of income of co-operative societies” is significant as it indicates the general “drift” of the provision.

ii) *Secondly*, for purposes of eligibility for deduction, the assessee must be a "co-operative society".

iii) *Thirdly*, the gross total income must include income that is referred to in sub-section (2).

iv) *Fourthly*, sub-clause (2)(a)(i) speaks of a co-operative society being "engaged in", *inter alia,* carrying on the business of banking or providing credit facilities to its members.

v) *Fifthly*, the burden is on the assessee to show, by adducing facts, that it is entitled to claim the deduction under Section 80P.

vi) *Sixthly*, the expression "providing credit facilities to its members" does not necessarily mean agricultural credit alone. It was highlighted that the distinction between eligibility for deduction and attributability of amount of profits and gains to an activity is a real one. Since profits and gains from credit facilities given to non-members cannot be said to be attributable to the activity of providing credit facilities to its members, such amount cannot be deducted.

vii) *Seventhly*, under Section 80P(1)(c), the co-operative societies must be registered either under Co-operative Societies Act, 1912, or a State Act and may be engaged in activities which may be termed as residuary activities i.e. activities not covered by sub-clauses (a) and (b), either independently of or in addition to those activities, then profits and gains attributable to such activity are also liable to be deducted, but subject to the cap specified in sub-clause (c).

viii) *Eighthly*, sub-clause (d) states that where interest or dividend income is derived by a co-operative society from investments with other co-operative societies, the whole of such income is eligible for deduction, the object of the provision being furtherance of the co-operative movement as a whole.

14.4. In paragraph 42 of ***Mavilayi Service Co-operative Bank***, this Court observed that the object and purpose of sub-section (4) of Section 80P is to exclude only co-operative banks that function on par with other commercial banks i.e. which lend money to members of the public. That on a reading of Section 3 read with Section 56 of the BR Act, 1949, the primary co-operative bank cannot be a primary agricultural credit society. As such co-operative bank must be engaged in the business of banking as defined by Section 5(b) of the BR Act, 1949, which means accepting, for the purpose of lending or investment, of deposits of money from the public. Also under Section 22(1)(b) of the BR Act, 1949, no co-operative society can carry on banking business in India, unless it is a co-operative bank and holds a licence issued in that behalf by Reserve Bank of India. It was pointed out that as opposed to the above, a primary agricultural credit society is a co-operative society, the primary object of which is to provide financial accommodation to its members for agricultural purposes or for purposes connected with agricultural activities.

14.5. It was further observed in the said case that some primary agricultural credit societies had sought for banking licence from Reserve Bank of India but the same was turned down by observing that such a society was not carrying on the business of banking and that it did not come under the purview of Reserve Bank of India requiring a licence for its business.

14.6. Thereafter in paragraph 48 of the judgment, it was observed that a deduction that is given without any reference to any restriction or limitation cannot be restricted or limited by implication. That sub-section (4) of Section 80P which is in the nature of a proviso specifically excludes co-operative banks which are co-operative societies engaged in banking business i.e. engaged in lending money to members of the public, which have a licence in this behalf from Reserve Bank of India.

15. It is on the aforesaid touchstone that these appeals must now be further considered from the point of view of the applicable provisions of law.

15.1. Section 80P speaks about deduction in respect of income of co-operative societies from the gross total income referred to in sub-section (2) of the said Section. From the said income, there shall be deducted, in accordance with the provisions of Section 80P, sums specified in sub-section (2), in computing the total income of the assessee for the purpose of payment of income tax. Sub-section (2) of Section 80P enumerates

various kinds of co-operative societies. Sub-section (2)(a)(i) states that if a co-operative society is 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 shall be deducted. The sub-section makes a clear distinction between business of banking on the one hand and providing credit facilities to its members by co-operative society on the other. Thus, the definition of banking under Section 5(b) of the BR Act must be borne in mind as opposed to providing credit facilities to its members.

15.2. Section 80P was inserted to the Act with effect from 01.04.1968, however, sub-section (4) was reinserted with effect from 01.04.2007, in the present form. Earlier sub-section (4) was omitted with effect from 01.04.1970. Sub-section (4) of Section 80P in the present form is in the nature of an exception which states that the provisions of Section 80P shall 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. The expressions co-operative bank and primary agricultural credit society as well as primary co-operative agricultural and rural development bank are defined in the Explanation as co-operative bank and primary agricultural credit society having the meanings respectively assigned to them in Part V of the BR Act, 1949.

15.3. The controversy in this case is, whether, the appellant entity is a co-operative bank and if so, it would be covered within the scope and

meaning of sub-section (4) of Section 80P and therefore, would not be eligible to the benefit of deduction as provided therein.

15.4. Having regard to the Explanation to sub-section (4) of Section 80P, it is necessary to consider Chapter V of the BR Act, 1949 which states that the said Act shall apply to co-operative societies subject to modifications made thereunder. Section 56 begins with a non-obstante clause and states that notwithstanding anything contained in any other law for the time being in force, the provisions of the said Act 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,

- in clause (a) throughout the said Act, unless the context otherwise requires,- (i) references to a "banking company" or "the company" or "such company" shall be construed as references to a co-operative bank.
- in clause (c), it is stated that in Section 5 as per clause (cci), "co-operative bank" means a state co-operative bank, a central co-operative bank and a primary co-operative bank.
- clause (ccv) defines "primary co-operative bank" while clause (ccvii) defines "central co-operative bank" and "state co-operative bank" to have the meanings assigned to them in the NABARD Act, 1981.

Since the expression 'banking company' is defined under the BR Act, 1949, it would be useful to consider the definition of banking

company in Section 5(c) thereof which means any company which transacts the business of banking in India. "Banking" is defined in Section 5(b) of the said Act to mean the accepting, for the purpose of lending or investment, of deposits of money from the public, repayable on demand or otherwise, and withdrawal by cheque, draft, order or otherwise. Therefore, a banking company must transact banking business *vis-à-vis* the public. Thus, in the first place a co-operative society must be engaged in banking business as defined in Section 5(b) of the said Act. For that, Section 22 of the BR Act, 1949, speaks about licence to be obtained by a bank to do banking business which is modified as per clause (o) of Section 56 thereof which states that no co-operative society shall carry on banking business in India unless it is a co-operative bank and holds a licence issued in that behalf by the Reserve Bank, subject to such conditions, if any, as the Reserve Bank may deem fit to impose. Secondly, a co-operative society must obtain a licence under Section 22 of the BR Act, 1949, only if it functions as a co-operative bank and not otherwise. Thus, a co-operative society including a co-operative credit society which is not a co-operative bank does not require a licence to function as such.

15.5. Further, Section 2(d) of NABARD Act, 1981 defines central co-operative bank while Section 2(u) defines a state co-operative bank to mean the principal co-operative society in a State, the primary object of which is financing of other co-operative societies in the State which

means, it is in the nature of an apex co-operative bank having regard to the definition under Section 56 of the BR Act, 1949, in relation to co-operative bank. The proviso states that in addition to such principal society in a State, or where there is no such principal society in a State, the State Government may declare any one or more co-operative societies carrying on business of banking in that State to be also or to be a state co-operative bank or state co-operative banks within the meaning of the definition. Section 2(v) of NABARD Act, 1981 defines state land development bank to mean the co-operative society which is the principal land development bank (by whatever name called) in a State and which has as its primary object the providing of long-term finance for agricultural development.

15.6. Section 2(w) states that words and expressions used in the NABARD Act, 1981 which are not defined therein but defined in the RBI Act, shall have the meanings respectively assigned to them in that Act. Section 2(x) of the said Act states that words and expressions used in the NABARD Act, 1981 and not defined either in the said Act or in the RBI Act, but defined in the BR Act, 1949, shall have the meanings respectively assigned to them in the BR Act, 1949. Therefore, we revert back to BR Act, 1949.

15.7. What is central to the controversy in this batch of cases is, whether, the appellant bank is a co-operative bank. What is of significance to know is, a state co-operative bank or central co-operative

bank under the NABARD Act, 1981 is essentially a principal co-operative society either in a district or in a State, respectively, the primary object of which is the financing of other co-operative societies in the district or the State respectively. Further, NABARD Act, 1981 does not define banking business. Hence, reliance is to be placed, on the definition of banking business in terms of clause (w) of Section 2 of NABARD Act, 1981 which means the RBI Act has to be seen. When the RBI Act is perused, it is noted that clause (i) of Section 2 defines "co-operative bank", "co-operative credit society", "director", "primary agricultural credit society", "primary co-operative bank" and "primary credit society" to have the meanings respectively assigned to them in Part V of the BR Act, 1949. Therefore, we have to again fall back on Part V of the BR Act, 1949 which has defined a co-operative bank in Section 56 (c)(i)(cci) to be a state co-operative bank, a central co-operative bank and a primary co-operative bank and central co-operative bank and state co-operative bank to have the same meanings as NABARD Act, 1981.

15.8. Since the words 'bank' and 'banking company' are not defined in the NABARD Act, 1981, the definition in sub-clause (i) of clause (a) of Section 56 of the BR Act, 1949 has to be relied upon. It states that a co-operative society in the context of a co-operative bank is in relation to or as a banking company. Thus, co-operative bank shall be construed as references to a banking company and when the definition of banking

company in clause (c) of Section 5 of the BR Act, 1949 is seen, it means any company which transacts the business of banking in India and as already noted banking business is defined in clause (b) of Section 5 to mean the accepting, for the purpose of lending or investment, of deposits of money from the public, repayable on demand or otherwise, and withdrawal by cheque, draft, order or otherwise. Thus, it is only when a co-operative society is conducting banking business in terms of the definition referred to above that it becomes a co-operative bank and in such a case, Section 22 of the BR Act, 1949 would apply wherein it would require a licence to run a co-operative bank. In other words, if a co-operative society is not conducting the business of banking as defined in clause (b) of Section 5 of the BR Act, 1949, it would not be a co-operative bank and not so within the meanings of a state co-operative bank, a central co-operative bank or a primary co-operative bank in terms of Section 56(c)(i)(cci). Whereas a co-operative bank is in the nature of a banking company which transacts the business of banking as defined in clause (b) of Section 5 of the BR Act, 1949. But if a co-operative society does not transact the business of banking as defined in clause (b) of Section 5 of the BR Act, 1949, it would not be a co-operative bank. Then the definitions under the NABARD Act, 1981 would not apply. If a co-operative society is not a co-operative bank, then such an entity would be entitled to deduction but on the other hand, if it is a co-operative bank within the meaning of Section 56 of BR Act, 1949 read with the provisions of NABARD Act, 1981 then it would

not be entitled to the benefit of deduction under sub-section (4) of Section 80P of the Act.

15.9. Section 56 of the BR Act, 1949 begins with a non-obstante clause which states that notwithstanding anything contained in any other law for the time being in force, the provisions of the said Act, shall apply to, or in relation to, co-operative societies as they apply to, or in relation to, banking companies subject to certain modifications. The object of Section 56 is to provide a deeming fiction by equating a co-operative society to a banking company if it is a co-operative bank within the meaning of the said provision. This is because Chapter V of the BR Act, 1949, deals with application of the Chapter to co-operative societies which are co-operative banks within the meaning of the said chapter. For the purpose of these cases, what is relevant is that throughout the BR Act, 1949, unless the context otherwise requires, - references to a "banking company" or "the company" or "such company" shall be construed as references to a co-operative bank. Therefore, while considering the meaning of a co-operative bank inherently, such a co-operative society must be a banking company then only it would be construed as a co-operative bank requiring a licence under Section 22 of BR Act, 1949 in order to function as such a bank.

15.10. Further, while considering the definition of a co-operative bank under Section 56(cci) of the BR Act, 1949, to mean a state co-operative bank, a central co-operative bank and a primary co-operative

bank which is defined in (ccviii) thereof, to have meanings respectively assigned to them in the NABARD Act, 1981 would imply that if a state co-operative bank is within the meaning of NABARD Act, 1981 then it would be excluded from the benefit under Section 80P of the Act. Conversely, if a co-operative society is not a co-operative bank within the meaning of Section 56 of the BR Act, 1949, it would be entitled to the benefit of deduction under Section 80P of the Act.

15.11. Looked at from another angle, a co-operative society which is not a state co-operative bank within the meaning of NABARD Act, 1981 would not be a co-operative bank within the meaning of Section 56 of the BR Act, 1949. In the instant case, as already noted in ***A.P. Varghese*** case, the Kerala State Co-operative Bank being declared as a state co-operative bank by the Kerala State Government in terms of NABARD Act, 1981 and the appellant society not being so declared, would imply that the appellant society is not a state co-operative bank.

15.12. In fact, in ***Citizen Co-operative Society Ltd.,*** this Court held that the appellant therein was having both members as well as nominal members who were depositing and availing loan facilities from the appellant therein and therefore, appellant therein was not entitled to the benefit of Section 80P of the Act as it was functioning as a co-operative bank. But, the appellant herein is not a co-operative bank and neither has it been so declared under the provisions of NABARD Act, 1981 or the State Act. On the other hand, under the provisions of State

Act, 1969, the Kerala State Co-operative Bank has been so declared by the Government of Kerala as a co-operative bank.

15.13. Further, under the provisions of the State Act, 1984, 'agricultural and rural development bank' means the Kerala Co-operative Central Land Mortgage Bank Limited, registered under Section 10 of the Travancore-Cochin Co-operative Societies Act, 1951, which shall be known as Kerala State Co-operative Agricultural and Rural Development Bank Limited i.e. the appellant herein. Thus, from a conjoint reading of all the relevant statutory as alluded to hereinabove, it is quite clear that the appellant is not a co-operative bank within the meaning of sub-section (4) of Section 80P of the Act. The appellant is a co-operative credit society under Section 80P(2)(a)(i) of the Act whose primary object is to provide financial accommodation to its members who are all other co-operative societies and not members of the public.

15.14. Therefore, when the definition of "co-operative bank" in Section 56 of BR Act, 1949 is viewed in terms of Sections 2(u) of the NABARD Act, 1981, it is clear that only a state co-operative bank would be within the scope and meaning of a banking company under Section 2(c) of the BR Act, 1949 on obtaining licence under Section 22 of the said Act.

Conclusion:

In the instant case, although the appellant society is an apex co-operative society within the meaning of the State Act, 1984, it is not a co-operative bank within the meaning of Section 5(b) read with Section 56 of the BR Act, 1949.

In the result, the appeals filed by the appellant are allowed and the order(s) of the Kerala High Court and other authorities to the contrary are set aside. Consequently, we hold that the appellant is entitled to the benefit of deduction under Section 80P of the Act. The questions for consideration are answered accordingly.

Parties to bear their respective costs.

.....J.
(B.V. NAGARATHNA)

.....J.
(UJJAL BHUYAN)

NEW DELHI;
14th SEPTEMBER, 2023.