

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "I", MUMBAI**

BEFORE SHRI SHAMIM YAHYA (AM) AND SHRI RAM LAL NEGI (JM)

**ITA No. 1820/MUM/2017
Assessment Year: 2013-14**

The Income Tax Officer, Ward 20(2)(1), Room No. 216, Piramal Chamber, Lalbaug, Mumbai - 400012	Vs.	M/s Mumbai Sales Tax Staff Co-Op Credit Society Ltd., 18, Vikrikar Bhavan, Balwant Singh, Dhondi Marg, Mazgaon, Mumbai - 400010 PAN: AAAAT0006E
(Appellant)		(Respondent)

Revenue by : Shri Chaudhary Arun Kumar Singh
(DR)
Assessee by : Shri Rajendra Kadrekar (AR)

Date of Hearing: 02/08/2018
Date of Pronouncement: 08/08/2018

ORDER

PER RAM LAL NEGI, JM

This appeal has been filed by the revenue against the order dated 22.12.2016 passed by the Ld. Commissioner of Income Tax (Appeals) (for short 'the CIT (A)')-32, Mumbai, for the assessment year 2013-14, whereby the Ld. CIT (A) has allowed the appeal filed by the assessee against assessment order passed u/s 143 (3) of the Income Tax Act, 1961 (for short 'the Act').

2. Brief facts of the case are that the appellant/assessee a cooperative credit society engaged in providing credit facilities to its members, filed its return of income for the assessment year under consideration declaring Nil income after claiming deduction of Rs. 2,29,20,225/- u/s 80P(2) of the Act. It was noticed that the assessee has been collecting membership fees accepting deposits and providing credit facilities to the members. The assessee had kept

fixed deposit with Mumbai District Central Co-operative (MDCC) Bank. Accordingly, the AO asked the assessee to show cause as to why the disallowance claimed u/s 80P should not be disallowed under the provisions of section 80P (4) applicable with effect from 01.04.2007. The assessee contended that the assessee being cooperative credit society is entitled for deduction u/s 80(2)(d) of the Act. However, the AO rejected the contention of the assessee and disallowed the claim u/s 80P of the Act, holding that since the assessee fulfills the condition laid down u/s 56 (c) (ccv) of part-V of the Banking Regulation Act, 1949 and being cooperative bank, not entitle for deduction u/s 80P (2)(a)(i) of the Act. The assessee challenged the assessment order before the Ld. CIT (A). The Ld. CIT (A) after hearing the assessee allowed the appeal holding as under:

“5.2 From the facts of the instant case, it is quite clear that the appellant has limited himself to his own members. The appellant has not provided banking facilities either to the general public at large or even to the members of the society. Even the bye laws of the appellant do not provide for banking activities. Therefore facts of this case are not identical with any of the case laws relied upon by the AO. On the other hand, the facts of the instant case are almost similar to the decisions of the ITAT Nagpur & Panaji Benches in the cases of (i) ACIT vs Buldana Urban Coop Credit Soc Ltd. 32 Taxman 69, ITAT Nagpur and (ii) DCIT vs Jalaxami Mahila Vividodeshagala Souharrda Sahakari Ltd, Karwar by ITAT Panaji Bench 23 Taxman 313 wgere the activities of the assessee were limited to the members of a specific group and the area of operations was also limited to the acceptance of deposits of members and providing credit facilities to only members, which have been held as not falling under banking activities as defined in the Banking Regulation Act. I also find persuasive value in the opinion of the RBI issued vide letter dated 1st Feb 2012 whereby the RBI states that where a banking license has not been issued to the cooperative credit society, the same cannot be considered as an Urban Cooperative Bank under the Banking Regulation act 1949. Therefore respectfully following the aforesaid decisions of ITAT Nagpur & Panaji, the appellant cannot be held as a cooperative bank, hence deduction claimed u/s 80P(2)(a)(i) cannot be denied to it. I find that the AO in the present AY has nowhere led any facts to show that*

banking facilities such as cheque book, drafts have been provided. Neither is it the case of the AO that facilities have been provided to members of the general public without restricting only to its own members. On facts therefore the AO has not demonstrated as to how the appellant qualifies to be a bank. In the circumstances, I hold that the appellant is a cooperative society and not a cooperative bank and is therefore eligible for deduction u/s 80P(2)(a)(i). AO is accordingly directed to allow the deduction claimed by the appellant. Grounds 1, 2 are allowed in favour of the appellant.”

3. Aggrieved by the order of Ld. CIT (Appeals), the revenue has preferred this appeal before the Tribunal on the following effective grounds:-

1. *“On the facts and in the circumstances of the case and in law, the Ld. CIT (A) is justified in allowing deduction u/s 80P to the assessee even though assessee carries on the banking business and other business in the name of a credit cooperative society?”*
2. *“On the facts and in the circumstances of the case and in law, the Ld. CIT (A) is justified in allowing deduction u/s 80P (2)(a)(i) without considering inserted section 80P(4) and sub-clause (viiiia) to section 2(24) vide Finance Act 2006 w.e.f 01.04.2007?”*

4. Before us, the Ld. DR relying on the assessment order passed by the AO submitted that the AO has rightly disallowed the interest income earned out of surplus reserve funds deposited with the cooperative societies/banks. Since the assessee has invested its statutory reserve funds in fixed deposits with scheduled banks and cooperative banks, the assessee is not entitled for deduction u/s 80P of the Act in respect of income earned from such deposits. The reserve funds of the assessee are surplus funds or the funds which cannot be utilized for its day to day activities including granting loans to the members. Therefore, the same has to be invested only for the restricted purpose mentioned in the bye laws. Since, the assessee has invested the statutory reserve funds in the banks in FDs, interest received by the assessee from investment of its surplus funds is assessable under the head “income from other sources” and deduction u/s 80P is not available in respect of such

interest. Hence, the impugned order passed by the Ld. CIT(A) is liable to be set aside.

5. On the other hand, the Ld. counsel for the assessee relying on the findings of the Ld. CIT (A) submitted that since the issue involved in the present appeal is covered in favour of the assessee by the decisions rendered by ITAT, the Ld. CIT(A) has rightly decided the issue in the light of the decision of the ITAT. The Ld. counsel further submitted that since the assessee is a credit cooperative society and not a cooperative bank, the provisions of section 80P (4) will not apply, therefore, the assessee is entitled for deduction u/s 80P (2) (a) (i) of the Act. Since, the order of the Ld. CIT(A) does not suffer from any infirmity to interfere with, there is no merit in the appeal of the assessee.

6. We have perused the material on record in the light of the rival contentions. The only grievance of the revenue is that the Ld. CIT (A) has wrongly allowed deduction u/s 80P(2)(d) of the Act ignoring the fact that the assessee has been carrying on the banking business, particularly, after the insertion of sub section (4) of section 80(P) of the Act, the assessee is not entitled to claim deduction u/s 80P(2)(a)(i) of the Act. We notice that the AO has disallowed the claim on the ground that deduction allowable u/s 80P(2)(a) (i) in case of cooperative society engaged in the business of banking has been withdrawn from the A.Y. 2007-08 by inserting sub-section(4) of section 80P of the Act.

7. We further notice that in the case of *ITO vs. M/s Ashirwad Co.op. Credit Society Ltd.* ITA No. 5069/Mum/2017 the SMC Bench of the Tribunal has dealt with the identical issue. The SMC Bench has decided this issue in favour of the assessee relying on the judgment of the Hon'ble Bombay High Court in the case of *Quepem Urban Co-operative Credit Society Ltd. vs. Asst CIT [2015] 58 taxmann.com 113 (Bom)* and the ratio laid down by the Hon'ble Supreme Court in the case of *the Citizen co-operative Society Ltd. vs. ACIT Civil Appeal No*

10245 of 2017. The relevant portion of the order of the Tribunal reads as under:-

“6. I have heard both the counsel and perused the records. I find that the issue is covered in favour of the assessee by the decision of Hon’ble jurisdictional High Court in the case of Quepem Urban Co-operative Credit Society Ltd. vs. Asst CIT [2015] 58 taxmann.com 113 (Bom). The same read as under: (Headnotes only)

Section 80P of the Income Tax Act, 1961- Deductions- Income from cooperative societies (Primary Co-operative Bank)- Assessment years 2008-09, 2009-10, 2011-12- assessee, a co-operative society was registered under Co-operative Society Act- It was engaged in providing credit facilities to its members- It claimed deduction under section 80P(2)(a)(i), which was disallowed by Assessing Officer holding that assessee was a primary cooperative bank, therefore, hit by provisions of section 80P (4), which excluded benefit of section 80P- It was found that assessee- society was providing credit mainly to its members and its transactions with non- members were insignificant- Moreover, it was undisputed that bye laws of society did not allow any co-operative society to become its member- whether on facts, assessee was not a co-operative bank rather it was a co-operative society and, therefore, its claim for deduction was to be allowed. – Held.

7. Further, I find that this issue now is squarely covered in favour of the assessee by the decision Hon’ble Apex Court in Civil Appeal No. 10245 of 2017 in the case of the Citizen Co-operative Society Ltd. vs. ACIT vide order dated 08.08.2017. The Hon’ble Apex Court in this case has expounded that if one has to go by the definition of co-operative bank, the assessee does not get covered thereby. That is also a matter of common knowledge that in order to do the business of a co-operative bank, it is imperative to have a license from the Reserve Bank of India which the assessee does not possess. In the present case, before me also the assessee co-operative society is not licensed from the Reserve Bank of India to act as co-operative bank. Hence, as per the ratio emanating from the aforesaid Hon’ble Apex Court judgment, the assessee is not affected by the provisions of section 80P (4).

8. Accordingly, in the background of the aforesaid discussion and precedent, I confirm the order of the ld. Commissioner of Income Tax

(Appeals) and hold that the assessee is entitled to deduction u/s 80P(2)(a)(i)."

8. Since, the coordinate Bench has decided the identical issue in favour of the assessee in the case of *ITO vs. M/s Ashirvad Cooperative Credit Society Ltd. (supra)*, we respectfully follow the decision of the coordinate Bench aforesaid and accordingly uphold the impugned order passed by the Ld. CIT (A) and dismiss the sole ground of appeal of the revenue.

In the result, appeal filed by the revenue for assessment year 2013-2014 is dismissed.

Order pronounced in the open court on 8th August, 2018.

Sd/-

(SHAMIM YAHYA)

ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated: 08/08/2018

Sd/-

(RAM LAL NEGI)

JUDICIAL MEMBER

Alindra, PS

आदेश प्रतिलिपि अग्रेषित/ Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त (अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /
DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai