

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ "एच" मुंबई
IN THE INCOME TAX APPELLATE TRIBUNAL "H" BENCH, MUMBAI
BEFORE S/SHRI B.R.BASKARAN, AM AND PAWAN SINGH, JM

आयकर अपील सं./I.T.A. No.2965/Mum/ 2014
(निर्धारण वर्ष / Assessment Year: 2010-11)

Income Tax Officer 15(1)(4), Matru Mandir, Room No.108, Tardeo Road, Mumbai-400007	बनाम/ Vs.	M/s Hooseini Co-Op Credit Soc.Ltd., 496-498, Sir J J Road, Opp J J Hospital, Mumbai.
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

आयकर अपील सं./I.T.A. No.3556/Mum/ 2014
(निर्धारण वर्ष / Assessment Year: 2010-11)

M/s Hooseini Co-Op Credit Soc.Ltd., 496-498, Sir J J Road, Opp J J Hospital, Mumbai.	बनाम/ Vs.	Income Tax Officer 15(1)(4), Matru Mandir, Room No.108, Tardeo Road, Mumbai-400007
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

स्थायी लेखा सं./जीआइआर सं./PAN. :AABAT4478P

अपीलार्थी ओर से / Revenue by	Shri B D Naik
प्रत्यर्थी की ओर से/Assessee by	Shri Vimal Punamiya

सुनवाई की तारीख / Date of Hearing : 9.2.2016

घोषणा की तारीख /Date of Pronouncement: 9.2.2016

आदेश / O R D E R

Per B R Baskaran, AM:

These cross-appeals are directed against the order dated 24.2.2014 passed by the Id.CIT(A)-26, Mumbai and they relate to the assessment year 2010-11.

2. The assessee is a Co-operative Society and Registered under the Co-operative Societies Act, 1960. The object of the Society is to enable its members to sale their earning and to obtain loan from the Society.

3. The issue contested by the revenue relates to the claim for deduction u/s 80P of the Act. The assessee claimed deduction u/s 80P((2)(a)(i) of the Act. The AO took the view that the assessee falls under the category of "Co-operative Bank" and accordingly by following the provisions of section 80P(4) rejected the claim for deduction u/s 80P of the Act. The Id. CIT(A), however, allowed the claim of the assessee and hence the revenue has filed this appeal before us.

4. We have heard the parties on this issue and perused the record. The Id. AR placed reliance on the decision of the Hon'ble Bombay High Court in the case of Quepem Urban Co-operative Credit Society Ltd V/s ACIT reported in (2015) 377 ITR 272 (Bom) and submitted that a Co-operative Society transacting mainly with its members cannot be treated as Co-operative Bank. The Id. AR further submitted that in the case before the Hon'ble Bombay High Court, the assessee therein was providing credit mainly to its members and transaction with non-members was insignificant. Despite this fact, the Hon'ble Bombay High Court has held that the assessee therein could not be treated as Co-operative Bank and accordingly allowed the deduction u/s 80P of the Act to the said assessee. The Id. AR further submitted that the assessee before us was providing a credit only to its members and hence, the case of the assessee stands in stronger footing. The Id. AR further placed reliance on the decision rendered by the SMC Bench of Mumbai Tribunal, in M/s Jaoli Taluka Sahakari Patpedhi Maryadit V/s ITO in ITA No.6627/Mum/2014 (AY-2010-11) dated 10.8.2015, wherein the Tribunal, by following the decision of Hon'ble Karnataka High Court in the case of Tumkur Merchants Souharda

Credit Co-operative Ltd. (2015) (230 Taxman 309) and also the decision rendered by the Hon'ble Supreme Court in the case of Totgars Co-operative Sale Society Ltd (2010) (229 CTR (SC) 209) held that the deduction u/s 80P cannot be rejected to a co-operative society.

5. On the contrary, the Id. DR placed strong reliance on the order of AO.

6. Having heard the rival contentions, we notice that the issue raised before us stands squarely covered by the decision of the Hon'ble Bombay High Court of Bombay rendered in the case of Quepem Urban Co-operative Credit Society Ltd (supra). Since the decision rendered by Ld CIT(A) on this issue is in accordance with the binding decision of Hon'ble Bombay High Court, we do not find any reason to interfere with his order passed on this issue.

7. The appeal filed by the assessee relates to the decision of tax authorities in assessing the interest income received from fixed deposits under the head "Income From Other Sources". This issue is squarely covered in favour of the assessee by the decision rendered by the Hon'ble Karnataka High Court rendered in the case of Tumkur Merchants Souharda Credit Co-operative Ltd. (supra), wherein the Hon'ble High Court has held that the interest income earned from deposits kept with bank shall form part of "Business Income". Accordingly, the deduction u/s 80P of the Act is allowable to the interest income as per the decision passed by the Hon'ble Karnataka High Court. Accordingly, we set aside the order of the Id.CIT(A) on this issue and direct the AO to assess the interest income under the head "Income from business" and accordingly allow the deduction u/s 80P of the Act.

8. In the result, the appeal filed by the assessee is allowed and the appeal of the revenue is dismissed.

Pronounced accordingly on 9th FEB , 2016.

घोषणा खुले न्यायालय में दिनांक: 9th FEB, 2016 को की गई ।

Sd

sd

**(PAWAN SINGH)
JUDICIAL MEMBER**

**(B.R. BASKARAN)
ACCOUNTANT MEMBER**

मुंबई Mumbai: 9th Feb, 2016.

व.नि.स./ SRL , Sr. PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

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

True copy

आदेशानुसार/ BY ORDER,

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