

IN THE INCOME TAX APPELLATE TRIBUNAL "D" BENCH, MUMBAI  
**BEFORE SHRI D. KARUNAKARA RAO, ACCOUNTANT MEMBER**  
**AND**  
**SHRI SANDEEP GOSAIN, JUDICIAL MEMBER**

I.T.A. No.6903/M/2013 (Assessment Year: **2010-2011**)

ITO-22(2)(2), 4 <sup>th</sup> Floor, Tower No.6, R.No.20, Station Complex, Vashi, Navi Mumbai, Mumbai-400703.	बनाम/ Vs.	M/s. RCF Employee's Cooperative Credit Society Ltd., Type 1A/21/481-484, Chembur, Mumbai-400074.
स्थायी लेखा सं./PAN : AAAAR1076N		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

I.T.A. No.7465/M/2013 (Assessment Year: **2010-2011**)

M/s. RCF Employee's Cooperative Credit Society Ltd., Type 1A/21/481-484, Chembur, Mumbai-400074.	बनाम/ Vs.	ITO-22(2)(2), 4 <sup>th</sup> Floor, Tower No.6, R.No.20, Station Complex, Vashi, Navi Mumbai, Mumbai-400703.
स्थायी लेखा सं./PAN : AAAAR1076N		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से / Assessee by :	Mr. H.P Mahajani
प्रत्यर्थी की ओर से/ Revenue by :	Ms. R.M. Madhavi, DR

सुनवाई की तारीख /Date of Hearing : 11.01.2016

घोषणा की तारीख /Date of Pronouncement : 29.01.2016

**आदेश / O R D E R**

**PER D. KARUNAKARA RAO, AM:**

There are **two** appeals under consideration and they are **cross appeals** involving the assessment year 2010-2011. Since, the issues raised in these appeals are inter-connected, therefore, for the sake of convenience, they are clubbed, heard together and disposed of in this consolidated order. Appeal wise adjudication is given in the following paragraphs of this order.

**ITA No.6903/M/2013 (By Revenue)**

2. This appeal filed by the Revenue on 28.11.2013 is against the order of the CIT (A)-33, Mumbai dated 2.9.2013 for the assessment year 2010-2011.

3. In this appeal, the only issue raised by the Revenue relates to the allowability of relief u/s 80P of the Act in respect of the income of the assessee when the assessee is a 'credit cooperative society'. In the assessment, AO treated the same as a 'credit cooperative bank'. During the first appellate proceedings, CIT (A) examined the facts relevant to the definition of 'credit cooperative society' as well as the applicable citations and came to the conclusion that the assessee is not a 'bank' and therefore, the provisions of section 80P(4) will not apply to the assessee-credit cooperative society. The contents of paras 6 and 7 of the CIT (A)'s order are relevant in this regard. Aggrieved with the same, Revenue is in appeal before the Tribunal with the present appeal.

4. During the proceedings before us, Ld DR for the Revenue submitted that the order of the CIT (A) should be reversed. By mentioning the fact that lending and borrowing activities between the members of the society and the assessee constitutes 'banking activities'.

5. On the other hand, Ld Counsel for the assessee heavily relied on the order of the CIT (A) and the contents of paras 6 and 7 of the impugned order. Further, Ld Counsel also relied on the citations relied upon by the CIT (A)'s vide para 7 of his order. For the sake of completeness of this order, the said para 7 of the impugned order is extracted as under:

*"7. From the facts of the instant case, it is quite clear that the appellant has limited itself to the members of employees of M/s. Rashtriya Chemicals & Fertilizers Ltd. Further, the appellant has not provided banking facilities either to general public at large or even to the members of the society. Even the bye laws of the appellant does not provide for the banking activities. The facts of the instant case are almost similar to the decisions relied upon by the appellant particularly, the facts in the case of (a) ITO vs. Jankalyan Nagri Sahakari Pat Sanstha 24 taxman.com 127 Pune Tribunal, and (b) DCIT vs. Jayalkshi Mahila Vividodeshagala Souharda Sahakari Ltd 23 taxmann.com 313 Panaji Tribunal, where the activities of the assesseees were limited to the members of a specific group and the area of operation was also limited to the acceptance of deposits of the members and providing credit facilities only to the members, which have been held as not falling under the banking activities as defined in the Banking Regulation Act. Therefore, respectfully following the aforesaid decisions of the ITAT Pune and Panaji Benches, the appellant also cannot be held as a Cooperative Bank,*

*hence the deduction claimed u/s 80P(2)(a)(i) cannot be denied to it. The AO is accordingly directed to allow the deduction claimed by the appellant."*

6. Further, we have also perused the judgment of the jurisdictional High Court in the case of **Quepem Urban Cooperative Credit Society Ltd vs. ACIT [2015] 377 ITR 272 (Bom)**, which was relied upon by the Ld Counsel for the assessee for the proposition that such *lending activities do not constitute banking activities as the same are transacted between the cooperative society and the members of the society*. Since, no public is involved the definition of 'banking' does not cover such activities. As such, there is no Reserve Bank of India's approval for conducting such banking activities in this case. He also relied on the definition of "banking" and read out from the contents of section 5 of the Banking Regulation Act, 1949 and the same reads as under:-

*Sec. 5(b) "banking" means the accepting, for the purpose of lending or investment, of deposits of money from the **public**, repayable on demand or otherwise, and withdrawal by cheque, draft, or otherwise;*

7. From the above, Ld Counsel for the assessee demonstrated that the members of the Credit Cooperative Society do not constitute "public" and there is no depositing, withdrawal by cheque or draft etc. After considering the said judgment of the Hon'ble jurisdictional High Court in the case of Quepem Urban Cooperative Credit Society (supra), we are of the opinion that decision of the CIT (A) is fair and reasonable and it does not call for any interference. Accordingly, issue raised in the Revenue's appeal is dismissed.

8. In the result, **appeal of the Revenue is dismissed.**

**ITA No. 7465/M/2013 (By Assessee)**

9. This appeal filed by the assessee on 18.12.2013 is against the said order of the CIT (A)-33, Mumbai dated 2.9.2013 for the AY 2010-2011.

10. In this appeal, the only issue raised by the assessee in this appeal relates to the taxing of the 'commission income' of Rs.2,76,216/- under the head 'income from other sources'. Giving the facts on this issue, Ld Counsel for the assessee demonstrated that certain vendors are allowed to market their products to the members of the credit cooperative society and the credit cooperative society has the responsibility of recovering the instalments from the DDO and paying the same to

the vendors. The said commission received from the vendors was partly distributed among the members of the cooperative society.

11. Before us, on the above backgrounds of the facts, Ld Counsel for the assessee demonstrated that there is no objection if the said amount is taxed as per the provisions of clause (c) to section 80P(2) of the Act. He also mentioned that as per the said provisions, such amounts should not be treated as 'profits or gains from business or profession'. He also mentioned that the wording used in clause (c) "**attributable**" not 'from the business'. Eventually, Ld Counsel for the assessee submitted that giving deduction out of the said commission income to the amount distributed among the members of the cooperative society is a verifiable fact. He pleaded for remanding the whole matter to the file of the AO to decide the issue afresh as per the provisions of clause (c) of section 80P(2) of the Act.

12. After hearing both the parties as well as on perusal of the relevant provisions of the Act and the relevant material placed before us, we remand this issue to the file of the AO for deciding the issue as per the said provisions of clause (c) of section 80P(2) of the Act, which covers the issue under consideration. We order accordingly. AO is directed to give deduction of Rs. 50,000/- as per the provisions of section 80P(2)(c)(ii) of the Act and allow a reasonable opportunity of being heard to the assessee as per the principles of natural justice. Accordingly, the relevant ground raised by the assessee is allowed for statistical purposes.

13. In the result, appeal of the assessee is **allowed for statistical purposes**.

14. Conclusively, appeal of the Revenue is dismissed and the assessee's appeal is allowed for statistical purposes.

Order pronounced in the open court on 29<sup>th</sup> January, 2016.

**Sd/-**  
**(SANDEEP GOSAIN)**  
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक 29.1.2016  
व.नि.स./ OKK, Sr. PS

**Sd/-**  
**(D. KARUNAKARA RAO)**  
ACCOUNTANT MEMBER

**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)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,  
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

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