

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ 'SMC', मुंबई ।
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "SMC", MUMBAI
Before Shri Shamim Yahya, Accountant Member

ITA Nos.49 & 50/Mum/2017 : Asst.Years 2010-11 & 2013-14

The Income Tax Officer Ward 21(2)(4) Mumbai.	बनाम/ Vs.	M/s.Navsandesh Sahakari Podpedhi Maryadit, 13/2,3 and 4, B.D.D.Chawl N.M.Joshi Marg, Lower Parel Mumbai – 400 013. PAN : AADFN6130H.
(अपीलार्थी /Appellant)		(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से /Appellant by : **Shri Sunil Kumar**
प्रत्यर्थी की ओर से /Respondent by : **Shri Ramesh S.lyer**

सुनवाई की तारीख / Date of Hearing : 01.06.2017	घोषणा की तारीख / Date of Pronouncement : 07.08.2017
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आदेश / ORDER

These are appeals by the Revenue directed against common order of the learned CIT(A) dated 25.10.2016 and pertains to assessment years 2010-2011 & 2013-2014.

2. The issue raised in these appeals is that on the facts and circumstances of the case and law, the learned CIT(A) has erred in deleting the disallowance of the deduction u/s 80P(2)(a)(i) of Rs.29,51,778 for assessment year 2010-2011 and Rs.49,75,020 for assessment year 2013-2014, without appreciating the action of the Assessing Officer.

3. In this case the assessee is a Cooperative Credit Society having the business of accepting deposits and lending money to the members of the society. The society is registered with the Registrar of Co-operative Societies of Maharashtra. Assessee's claim for deduction u/s 80P was disallowed by

the Assessing Officer by invoking the provisions of section 80P(4). The Assessing Officer held as under:-

“Further, the case law referred by the authorized representative of the assessee of M/s.Quepem Urban Co-operative Credit Society Ltd., the department has preferred an appeal before the Honorable Supreme Court.

In the case of the assessee during the F.Y. 2012-13 relevant to A.Y. 2013-14, the nature of business was of banking as mentioned in section 5(b) of the Banking Regulation Act 1949, and also as business of banking being the adventure or concern in the nature of trade, commerce or manufacture as defined in Section 2(13) of the Income tax Act, 1961 as discussed above. Further, as seen from the records of the society, it seen that the paid up share capital of the assessee was more than one lakh i.e. Rs.63,60,000/- and the bye-laws of 'the society does not permit admission of any other co-operative society as a member (para D-1.1 and D-1.2 of Bye laws). Accordingly, the assessee falls into the category of Primary Cooperative Bank as per Banking Regulation Act, 1949 satisfying all the three conditions mentioned therein. The definition of Primary Co-operative Bank is meant for Co-operative Society other than primary agricultural credit society. Accordingly, deduction claimed by the assessee u/s.80P of the Income Tax Act, 1961 is not allowed read with sub section (4) of section 80P and explanation to section 80P of the Income Tax Act, 1961 as discussed above in detail.”

4. Upon assessee’s appeal, the learned CIT(A) following the decision of the Hon’ble jurisdictional High Court in the case of *Quepem Urban Co-operative Credit Society Limited v. ACIT dated 17.04.2015 (2015) 58 taxmann.com 113 (Bombay)*, deleted the addition holding as under:-

I find that, the issue involved in the instant case is covered by the decision of Hon'ble Bombay High Court in the case of

Quepem Urban Co-operative Credit Society Ltd. vs ACIT dated 17.04.2015 (2015) 58 taxmann.com 113 (Bombay) wherein it is held that the assessee cannot be considered to be a co-operative Bank for the purposes of section 80P(4) of the Act, unless following three conditions are satisfied-

- (i) the principal business or primary objective should be business of banking*
- (ii) its paid up share capital and reserves should not be less than rupee one lac*
- (ii) its bye-laws do not permit admission of any other co operative society as its members*

On analysis of the above conditions we find that the word "banking" means accepting, a 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. In the appellant's case, acceptance and lending of money are from members only. Hence, condition 1 mentioned above is not applicable to the appellant.

Apart from that, it is submitted by the appellant that as per the bye-law no.(10) of the society, the society can admit any other co-operative society registered under the Maharashtra Co-Op. Society Act as a member. Hence, condition no. 2 is also not satisfied in this case.

It is also seen that, the appellant has submitted clear distinction between Co-operative Banks registered under Banking Regulations Act, 1949 and Co-operative Societies registered under Co-operative Societies Act. From that it is apparent that the appellant cannot be categorized under Co-operative Bank governed under Banking Regulations Act, 1949.

The above judgment has been followed by the Hon'ble Mumbai ITAT in a no. of judgements some of which are highlighted by the appellant in his written submission."

5. Thereafter the learned CIT(A) referred to several other case laws and concluded as under:-

“In view of the facts and circumstances as well as the juridical pronouncements cited above, in my considered opinion, the income earned by the appellant society is eligible for deduction u/s 80P(2)(a)(i) of the Act. The addition made by the AO on account of disallowance of Rs.29,51,780 for assessment year 2010-2011 and of Rs.49,75,020 for assessment year 2013-2014 is not in order and hence deleted.”

6. Against the above order, Revenue is in appeal before the ITAT.

7. I have heard both the Counsel and perused the records. I find that the learned CIT(A) decided the issue in favour of the assessee by placing reliance upon the jurisdictional High Court decision as referred above. The said decision was also cited before the Assessing Officer, but he did not follow by observing that Department has filed appeal against the said decision before the Hon'ble Supreme Court. When the learned CIT(A) has followed the decision of the Hon'ble High Court, I do not find any infirmity in the same. Accordingly, I uphold the same.

8. In the result, both the appeals by the Revenue stand dismissed.

Order pronounced on this 07th day of August, 2017.

Sd/-
(Shamim Yahya)
ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 07th August, 2017.
Devdas*

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT, Mumbai.
4. आयकर आयुक्त / CIT(A), Mumbai
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**