

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "D", MUMBAI**

**BEFORE SHRI G.S. PANNU, ACCOUNTANT MEMBER AND
SHRI C.N. PRASAD, JUDICIAL MEMBER**

ITA NO. 343/MUM/2016 : A.Y : 2012-13

ITO-20(2)(1),
Mumbai (Appellant)

Vs. M/s. J.J. Hospital and Grant
Medical College Employee
Cooperative Credit Society Ltd.,
Room No. 311, J.J. Hospital Main
Building, Mumbai 400 008.
PAN : AAAAJ2088E (Respondent)

Appellant by : Shri Purushottam Kumar

Respondent by : None

Date of Hearing : 03/08/2017

Date of Pronouncement : 29/09/2017

ORDER

PER G.S. PANNU, AM :

The captioned appeal by the Revenue is directed against the order of CIT(A)-32, Mumbai dated 21.10.2015, pertaining to the Assessment Year 2012-13, which in turn has arisen from the order passed by the Assessing Officer, Mumbai dated 30.09.2014 under section 143(3) of the Income Tax Act, 1961 (in short 'the Act').

2. At the time of hearing, it was noticed that none appeared on behalf of the respondent-assessee inspite of service of notice by RPAD. On the other hand, the Id. DR appeared on behalf of the Revenue.

3. Accordingly, in view of Rule 25 of the Income Tax (Appellate Tribunal) Rules, 1963, the appeal of the Revenue is being disposed off *ex-parte* the respondent-assessee after hearing the appellant-Revenue on merits.

4. In this appeal, Revenue has raised the following Grounds of appeal :-

"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 (viiia) to section 2(24) vide Finance Act 2006 w.e.f. 01.04.2007 ?

3. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in ignoring the decision of the Supreme Court in the case of M/s. Totgar Co-op Sales Society Ltd. (322 ITR 285) wherein interest received by a Co-op Society from investment of surplus funds is assessable as "Income from other sources" and thus not eligible for deduction u/s 80P of the I.T. Act, 1961.

4. The appellant prays that the order of the CIT(A) on the above grounds be reversed and that of the Assessing Officer be restored."

5. In brief, the relevant facts are that the respondent-assessee is a co-operative credit society registered under the Maharashtra Co-operative Societies Act, 1960. The assessee-society is engaged in the activity of providing credit facilities to its Members and, therefore, in the return of income filed for the Assessment Year 2012-13, it claimed exemption u/s 80P of the Act. With regard to the income from providing credit facilities to its Members, exemption u/s 80P(2)(a)(i) of the Act was claimed on an amount of Rs.86,95,139/- whereas with respect to the interest earned from investments with other co-operative societies, exemption was claimed u/s 80P(2)(d) of the Act for an amount of Rs.2,17,939/-. The Assessing Officer, however, denied the claim of the assessee on the ground that the activities of the assessee were in the nature of banking and, therefore, according to the Assessing Officer, it was hit by the provisions of Sec. 80P(4) of the Act. Accordingly, the Assessing Officer denied the assessee's claim of exemption u/s 80P(2)(a)(i) as well as u/s 80P(2)(d) of the Act. Before the Assessing Officer, assessee had, *inter-alia*, claimed that for the Assessment Year 2010-11 the CIT(A) had allowed the claim of the assessee. The Assessing Officer, while disallowing the exemption, noted that so far as the decision of the CIT(A) for Assessment Year 2010-11 is concerned, the Revenue has filed an appeal before the Tribunal.

6. In the appeal before the CIT(A), assessee reiterated its reliance on the decision of the order of the CIT(A) for Assessment Year 2010-11, which had since been affirmed by the Tribunal vide order in ITA No. 5006/M/2013 dated 20.02.2015. The CIT(A) followed the decision of

the Tribunal dated 20.02.2015 (supra) and allowed assessee's claim for exemption u/s 80P(2)(a)(i) as well as u/s 80P(2)(d) of the Act. Against such a decision of the CIT(A), Revenue is in appeal before us.

7. Before us, it is not disputed by the Revenue that the order of the Tribunal dated 20.02.2015 (supra) continues to hold the field and it has not been altered by any higher authority. Be that as it may, even otherwise, we find that the decision of the Assessing Officer is untenable in law. Quite clearly, assessee is a co-operative credit society which is, *inter-alia*, providing credit facilities to its Members. The restriction prescribed in Sec. 80P(4) of the Act, which has been invoked by the Assessing Officer, is in relation to a 'co-operative bank' other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank. Ostensibly, if one is to go by the meaning of the expression "co-operative bank" prescribed in Explanation (a) to Sec. 80P(4) of the Act, the assessee does not get covered thereby. It is not the case of the Revenue that assessee is having licence from Reserve Bank of India to do the business of co-operative bank, therefore, on this count itself the assessee-society cannot be construed as a co-operative bank so as to invite the restriction contained in Sec. 80P(4) of the Act. The said position is now fairly well-settled by the judgment of the Hon'ble Supreme Court in the case of *The Citizen Co-operative Society Ltd. through its Managing Director, Hyderabad, Civil Appeal No. 10245 of 2017 dated 08.08.2017*.

8. In view of the aforesaid discussion, we hereby affirm the decision of the CIT(A) allowing the claim of the assessee for exemption u/s 80P(2)(a)(i) as well as u/s 80P(2)(d) of the Act.

9. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open court on 29th September, 2017.

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER

Sd/-
(G.S. PANNU)
ACCOUNTANT MEMBER

Mumbai, Date : 29th September, 2017

SSL

Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT(A) concerned
- 4) The CIT concerned
- 5) The D.R, "D" Bench, Mumbai
- 6) Guard file

By Order

Dy./Asstt. Registrar
I.T.A.T, Mumbai