

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

**BEFORE SHRI G.S. PANNU, ACCOUNTANT MEMBER AND
SHRI RAM LAL NEGI, JUDICIAL MEMBER**

ITA NO. 6857/MUM/2016 : A.Y : 2012-13

ITO-26(3)(2),
Mumbai (Appellant)

Vs. Shree Datta Prasad Sahakari
Patsanstha Ltd.,
Shop no. 108/109/110/111,
S.G. Barve Marg, Kurla (E),
Mumbai 400 024 (Respondent)
PAN : AABAS6993E

Appellant by : Ms. Aarju Garodia

Respondent by : Shri Vanesh Kumar

Date of Hearing : 17/04/2018

Date of Pronouncement : 15/06/2018

ORDER

PER G.S. PANNU, AM :

The captioned appeal by the Revenue is directed against the order of CIT(A)-38, Mumbai dated 31.08.2016 pertaining to the Assessment Year 2012-13, which in turn has arisen from the order passed by the Assessing Officer, Mumbai dated 25.02.2015 u/s 143(3) of the Income Tax Act, 1961 (in short 'the Act').

2. In its appeal, Revenue has raised the following Grounds of appeal :-

“1. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in holding that the assessee is entitled to the benefit of deduction of Rs.39,42,049/- under Section 80P(2) of the I.T. Act.

2. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in allowing deduction u/s 80P(2)(a)(i) to the assessee, even though the same is covered under Section 80P(4) read with Section 2(24)(viia) being income from providing credit facilities carried on by a Cooperative Credit Society with its Members.

3. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in not appreciating the fact that the assessee falls under the category of "Primary Co-operative bank" as per the definition in Part V of the Banking Regulation Act 1949, as it is carrying on banking business in the name of Co-operative Credit Society.

4. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in applying the decision of Gujarat High Court in the case of Jafari Momim Vikas Coop. Credit Society Ltd, (ITA NO. 442, 443 and 863 of 2013) dated 15.01.2014 which is based on patently erroneous reading of the Board's Clarification dated 09.05.2007.

5. The appellant prays that the order of CIT(A) on the above grounds be set aside and that of the assessing officer be restored.”

3. Briefly put, the relevant facts are that the respondent-assessee is a co-operative credit society which is engaged in the business of providing credit facilities to its members. For the assessment year under consideration, it filed a return of income declaring income of Rs.39,42,049/- from the aforesaid activities, which was claimed as exempt u/s 80P(2)(a)(i) of the Act. The Assessing Officer denied the claim on the ground that assessee was to be considered as a co-operative bank and, therefore, the restriction contained in Sec. 80P(4) of the Act would come into play which disentitled

the assessee from the exemption u/s 80P(2)(a)(i) of the Act. The CIT(A) has considered the objections of the Assessing Officer and noted that the assessee could not be construed as a 'co-operative bank' as it was not carrying on the business of banking and, therefore, according to him, the restriction contained in Sec. 80P(4) of the Act would not operate in the instant case. The CIT(A) relied upon the judgment of the Hon'ble Bombay High Court in the case of *Quepem Urban Co-operative Credit Society Ltd. vs ACIT, [2015] 58 taxman.com 113 (Bombay)* and decided the issue in favour of the assessee. Against such a decision of CIT(A), Revenue is in appeal before us.

4. Before us, it was a common point between the parties that in the assessee's own case an identical controversy has been considered by the Tribunal in Assessment Year 2010-11 vide its order in ITA Nos. 3783 and 3769/Mum/2014 dated 24.05.2017 in favour of the assessee.

5. We find that the Tribunal in its order dated 24.05.2017 (*supra*) noted the activities of the assessee to be in the realm of providing credit facilities to its members. It specifically considered the issue as to whether such activities could be equated to a 'banking business' or a 'co-operative bank' so as to attract the restrictions prescribed u/s 80P(4) of the Act. The Tribunal referred to the judgment of the Hon'ble Bombay High Court in the case of *Quepem Urban Co-operative Credit Society Ltd. (supra)* and came to conclude that in the facts of the case, the restrictions placed u/s 80P(4) of the Act were not attracted. Apart therefrom, we find that there is no case made out by the Revenue that assessee carries on any banking business on the strength of a licence granted by the RBI. Moreover, assessee has been

consistently pointing out that it is only engaged in providing credit facilities to its members and not to the general public. It has also been pointed out by the assessee that its activities are limited to its members and the area of operation was acceptance of deposits from the members and providing credit facilities to its members, and that too, without providing any facilities of banking, viz. facility of cheque book, draft, etc. In other words, the claim of the assessee has been that it is merely providing credit facilities to its members and even in such a situation, the typical banking facilities like providing of cheque book, drafts, etc. are not being carried out. All these factual aspects have been given a complete go-bye by the Assessing Officer and his inference that assessee was a 'co-operative bank' is devoid of any factual support. Under these circumstances, in our view, the CIT(A) made no mistake in following the judgment of the Hon'ble Bombay High Court in the case of *Quepem Urban Co-operative Credit Society Ltd. (supra)* and allowing the plea of the assessee for exemption u/s 80P(2)(a)(i) of the Act. The decision of CIT(A) being in line with the decision of the Tribunal in assessee's own case for Assessment Year 2010-11 vide order dated 24.05.2017 (supra), therefore, deserves to be affirmed. We hold so.

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

Order pronounced in the open court on 15th June, 2018.

Sd/-
(RAM LAL NEGI)
JUDICIAL MEMBER

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

Mumbai, Date : 15th June, 2018

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Copy to :

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

By Order

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