



IN THE INCOME TAX APPELLATE TRIBUNAL
"I" BENCH, MUMBAI
BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND
SHRI DR. A.L. SAINI, ACCOUNTANT MEMBER

ITA no.644/Mum./2017
(Assessment Year : 2013-14)

Income Tax Officer
Ward-20(2)(2), Mumbai

..... Appellant

v/s

M/s. Mazgaon Dock Employees Co. Op.
Credit Society Ltd., Ground Floor
Mazgaon Dock Ltd., Dock Yard Road
Mazgaon, Mumbai 400 010
PAN – AAAAM5070F

..... Respondent

Revenue by : Shri Saurabh Kumar Rai
Assessee by : Shri Kedar Phadke

Date of Hearing – 19.06.2018

Date of Order – 27.06.2018

ORDER

PER SAKTIJIT DEY, J.M.

The Revenue has filed the aforesaid appeal against order dated 3rd November 2016, passed by the learned Commissioner (Appeals)-32, Mumbai, being aggrieved with his decision in allowing assessee's claim of deduction under section 80P(2)(a)(i) of the Income Tax Act, 1961 (for short "*the Act*") for the assessment year 2010-11.

2. Brief facts are, the assessee a credit co-operative society filed its return of income on 27th September 2013, declaring nil income after claiming deduction for an amount of ₹ 1,31,46,733, under section 80P(2)(a)(i) of the Act. During the assessment proceedings, the Assessing Officer after verifying the material on record found that the main object of the assessee is to provide credit / loans to its members and collect deposits from its members by way of fixed deposit, saving deposit and daily recurring deposits, etc. He also noticed that the assessee has received interest on loan to the tune of ₹ 5,20,58,907 and those from various banks are to the tune of ₹ 2,56,99,691. Therefore, the Assessing Officer called upon the assessee to justify its claim of deduction under section 80P(2)(a)(i) of the Act. In response, it was submitted by the assessee that the primary object of the assessee is to provide credit facilities to its members only, hence, it is eligible to claim deduction under section 80P(2)(a)(i) of the Act. It was submitted, since, the assessee is neither a State Co-operative or any other Co-operative Bank, it does not require a Banking license under the Banking Regulation Act to conduct its function. Therefore, the provisions of section 80P(4) of the Act do not apply. The Assessing Officer did not find merit in the submissions of the assessee. He concluded that deduction under section 80P(2)(a)(i) of the Act in case of a Co-operative Credit Society engaged in Banking activity has been

withdrawn from assessment year 2007–08 except in case of a primarily agricultural credit society or a primary co-operative agricultural and rural development bank. Referring to the provisions of section 80P(4) of the Act and section 56 of the Banking Regulation Act, 1949 he observed that the primary object of the assessee is to engage in providing credit facilities to its members. The bylaws of the society do not permit admission of any other Co-operative as member. Thus, he held that the assessee can be treated as a primary co-operative bank, hence, the provisions of section 80P(4) of the Act will be applicable to the assessee. That being the case, the assessee would not be eligible to claim deduction under section 80P(2)(a)(i) of the Act. Accordingly, he disallowed assessee's claim of deduction. Being aggrieved with the aforesaid decision of the Assessing Officer, the assessee preferred appeal before the first appellate authority.

3. The learned Commissioner (Appeals) taking note of the fact that in assessee's own case for assessment year 2010–11, the Tribunal has allowed the deduction claimed under section 80P(2)(a)(i) of the Act, accepted assessee's claim.

4. At the outset, the learned Counsel for the assessee submitted that the issue in dispute has been decided in favour of the assessee by the Tribunal in assessment year 2010–11 and 2012–13. A copy of the

order passed by the Tribunal in assessee's own case for assessment year 2012-13 in ITA no.3048/Mum./2016, dated 28th February 2018, was also placed before the Bench.

5. The learned Departmental Representative fairly submitted that in the preceding assessment years the Tribunal has decided the issue in favour of the assessee.

6. We have considered rival submissions and perused materials on record. As could be seen, the issue relating to assessee's claim of deduction under section 80P(2)(a)(i) of the Act is a recurring dispute between the assessee and the Department from the preceding assessment years. In fact, learned Commissioner (Appeals) relying upon the decision of the Tribunal in assessee's own case for assessment year 2010-11 has allowed assessee's claim of deduction under section 80P(2)(a)(i) of the Act. On a perusal of order dated 28th February 2018 of the Co-ordinate Bench passed in assessee's own case for assessment year 2012-13 (supra), it is noticed that by following its own order in assessee's case for assessment year 2010-11, the Tribunal has allowed assessee's claim of deduction under section 80P(2)(a)(i) of the Act. There being no difference in facts between the assessment year 2010-11 and 2012-13 and the impugned assessment year brought to our notice by the Department,

respectfully following the decision of the Co-ordinate Bench in assessee's own case, as referred to above, we uphold the decision of the learned Commissioner (Appeals) on this issue by dismissing the grounds raised.

7. In the result, Revenue's appeal is dismissed.

Order pronounced in the open Court on 27.06.2018

Sd/-
DR. A.L. SAINI
ACCOUNTANT MEMBER

Sd/-
SAKTIJIT DEY
JUDICIAL MEMBER

MUMBAI, DATED: 27.06.2018

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The CIT(A);
- (4) The CIT, Mumbai City concerned;
- (5) The DR, ITAT, Mumbai;
- (6) Guard file.

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

(Sr. Private Secretary)
ITAT, Mumbai