आयकर अपीलीय अधिकरण "H" न्यायपीठ मुंबई में।

IN THE INCOME TAX APPELLATE TRIBUNAL "H" BENCH, MUMBAI

BEFORE SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER AND SHRI RAVISH SOOD, JUDICIAL MEMBER

आयकर अपील सं./I.T.A. No.780/Mum/2018

(**निर्धारण वर्ष /** Assessment Year: 2014-15)

JCIT (OSD), Circle-3, Kalyan 2nd Floor, Rani Mansion, Murbad Road, Kalyan (W)-421301	**बनाम**/ v.	Kanchangauri Mahila Sahakari Patpedhi Maryadit, 1st Floor, Riddhi Siddhi Complex, Malviya Road, Ramnagar, Dombivli (E) 421201
	स्थायी लेखा सं./PAN: AABAK6464E	
(अपीलार्थी **/Appellant**)	..	(प्रत्यर्थी / **Respondent**)

Revenue by:	Shri. Manoj Kumar Singh (DR)
Assessee by:	Shri. Kumar Kale (AR)

सुनवाई की तारीख **/Date of Hearing : 14.05.2019**

घोषणा की तारीख **/Date of Pronouncement : 01.07.2019**

आदेश / ORDER

PER RAMIT KOCHAR, Accountant Member:

This appeal, filed by Revenue, being ITA No. 780/Mum/2018, is directed against appellate order dated 30.11.2017, passed by learned Commissioner of Income Tax (Appeals)-1, Mumbai (hereinafter called "the CIT(A)"), for assessment year 2014-15, the appellate proceedings had arisen before learned CIT(A) from assessment order dated 02.12.2016 passed by learned Assessing Officer (hereinafter called "the AO") u/s 143(3) of the Income-tax Act, 1961 (hereinafter called "the Act") for AY 2014-15.

2. The grounds of appeal raised by Revenue in the memo of appeal filed with the Income-Tax Appellate Tribunal, Mumbai (hereinafter called "the tribunal") read as under:-

> *"1. Whether on the facts and in the circumstances of the case and in law, the ld. CIT(A) erred in deleting the addition of Rs. 71,30,500/- on account of disallowance u/s 80P(2)(a)(i) of the I.T. Act.*
>
> *2.1 Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in granting above relief to the assessee without appreciating the fact that the assessee is carrying on the business of accepting deposits and advancing loans to its members which are the primary activities of any bank whether co-operative or otherwise.*
>
> *2.2 Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in not appreciating the fact that the assessees is a cooperative society whose share capital and reserves exceed Rs. l,00,000/-.*
>
> *2.3 Whether on the facts and in the circumstances of the case and in law, the Hon'ble CIT(A) erred in not appreciating the fact that the assessee is registered under the Maharashtra state co-operative societies Act.*
>
> *3. The appellant craves leave to add, amend, alter or delete any ground of appeal.*
>
> *4. The order of the CIT(A) may be vacated and that of the assessing officer may be restored."*

3. The brief facts of the case are that the assessee is co-operative credit society. The assessee is an AOP engaged in providing credit facilities to its members and interest is charged on these credit facilities/loans advances made by the assessee, while the assessee has also received deposits from its members and paid interest on these deposits. The assessee has claimed deduction u/s 80P(2)(a)(i) of Rs. 71,30,500/- which was disallowed by the AO by invoking provision of Section 80P(4) of the 1961 Act. The short question which has arisen in this appeal is whether assessee who is a co-operative credit society

is entitled for deduction u/s 80P(2)(a)(i) of the 1961 Act or the assessee is a co-operative bank which is hit by provisions of Section 80P(4) of the 1961 Act. It is undisputed between the rival parties that the assessee is accepting deposits and providing credit facilities to its members on which interest is paid on deposits received by the assessee from its members as well as interest is received by the assessee from its members on credit facilities/loans advanced by the assessee to its members.

4. The AO held against the assessee by disallowing deduction u/s. 80P(2)(a)(i) of the 1961 Act, vide assessment order dated 02.12.2016 passed u/s 143(3) of the 1961 Act, by holding as under:

> *" 4.4. Final conclusions: -*
>
> *4.4.1 Subjected to the above discussion, legalities and provisions, the claim of the assessee u/s 80P(2)(a)(i) of the Act is hereby rejected on the following grounds:-*
>
> *a) The assessee is a Co-operative Credit Society.*
>
> *b) As per the definition of Co-operative Bank in the Banking Regulation Act, 1949 as referred to in explanation to sub-section (4) of section 80{P) and the definition, it is concluded that, the assessee though not a Co-operative Bank, has accepted deposits and provided credit facilities to its members which is akin to the primary activity of any bank, Co-operative or otherwise.*
>
> *c) In respect of the case law relied upon by the AR, it may be stated that the department has not accepted the decision of the Hon'ble Bombay High Court in the case of Quepern Urban Co-op Credit Societies Ltd Vs ACIT (2015) 58 taxmann.com 113 (Bombay High Court) and an SLP before the Hon. Supreme Court has already been preferred by the Revenue and therefore no further discussion is required.*
>
> *d) The assessee is therefore not entitled to avail of the benefits provided u/s 80P(2)(a)(i) of the Act and the same is therefore denied to the assessee.*
>
> *4.4.2 Hence, amount of Rs. 71,30,500/- claimed as deduction u/s 80P is disallowed. ...."*

5. The assessee being aggrieved by an assessment framed by the AO u/s 143(3) filed first appeal with Ld. CIT(A) who was pleased to allow the claim of the assessee by following the decision of tribunal in assesse's own case for AY 2012-13 and 2013-14 . Presently we are concerned with AY 2014-15 which is immediately succeeding year to AY 2013-14. The Ld. CIT(A) granted relief to the assessee by holding that the assessee is entitled for deduction u/s 80P(2)(a)(i) of the 1961 Act, vide appellate order dated 30.11.2017 , by holding as under:-

" 8. I have carefully considered the facts of the case, findings of the AO, submission of the appellant, past history and material placed on record. From the facts of the case it is noticed that the appellant is a Primary Co-operative Credit Society, accepting deposits and providing credit facilities from and to its members only. The issue involved in this case is whether the appellant is a Co-operative Bank or not is required to be ascertained from the nature and modus operand of the appellant's business. As per the AO, the appellant is doing the business of accepting deposits and in turn financing the same to the others as per terms and conditions of the banking business. Accordingly, the AO has disallowed the claim of deduction to the appellant by holding that the appellant is not a Co-operative Bank, however, it is accepting the deposits and providing the credit facilities to its members, which is akin to the primary activity of any bank. This finding of the AO has not been found to be correct by the then CIT (A), Thane while deciding the appeals for A.Y. 2012-13 & 2013-14 and accordingly allowed the claim by holding, inter-alia, as under -

> *"8. I have carefully considered the appellant's submissions, observations of the AO in the assessment order and the facts of the case. The appellant is a Primary Co-operative Credit Society accepting deposits and providing credit facilities from and to its members only. The issue involved in this case is whether the appellant is a Co-operative Bank or not because if the appellant is held to be a Co-operative Bank as has been held by the AO, then deduction allowed u/s, 80P(1) is taken away in terms of section 80P(4) of the IT. Act, otherwise, if the appellant is a Co-operative Credit Society providing credit facilities to its members, then whole of the profits earned by the appellant Society are allowed to the society as deduction u/s. 80P(2) (a) (i), as claimed by the appellant. The main reason why the AO had disallowed deduction to the appellant is that according to the AO though the appellant is not a Co-operative Bank but as the appellant had accepted deposits and provided credit facilities to its members, the same was akin to the primary activity of any bank. The fact that the appellant accepts deposits and provide credit facilities to its members only, has not been disputed by the AO. Under these circumstances, the appellant cannot be held to be engaged in the business of banking as held in various judgements relied upon by the appellant as under –*
>
> *9. In the case of Quepem Urban Co-op Credit Society Ltd (supra) the Hon'ble Bombay High Court held as under -*

9. There is no dispute between the parties that the appellant is a cooperative society as the same is registered under the Co-operative Societies Act. The appellant is claiming deduction of income earned on providing credit facilities to its members as provided under Section 80P(2)(a)(i) of the Act. It is appellant's case that, it is not carrying on the business of the banking. Consequently, not being a co-operative bank the provisions of Section 80P(4) of the Act would not exclude the appellant from claiming the benefit of deduction under Section 80P(2)(a)(i) of the Act. However in terms of Section 80P of the Act the meaning of the words Cooperative Bank is the meaning assigned to it in Chapter V of the Banking Regulation Act, 1949. A cooperative bank is defined in Section 5(cci) of Banking Regulation Act to mean a State Cooperative Bank, a Central Cooperative Bank and a primary cooperative bank. Admittedly, the appellant is not a State Cooperative Bank, a Central Cooperative Bank. Thus what has to be examined is whether the appellant is a primary Cooperative Bank as defined in Para V of the Banking Regulation Act. Section 5(ccv) of the Banking Regulation Act defines a primary cooperative bank to mean a cooperative society which cumulatively satisfies the following three conditions :

(1) Its principal business or primary object should be banking business of Banking;

(2) Its paid up share capital and reserves should not be less that rupees one lakh.

(3) Its bye-laws do not permit admission of any other cooperative society as its member.

It is accepted position that condition No. (2) is satisfied as the share capital in an excess of rupees one lakh. It has been the appellant's contention that : the conditions No. (I) and (3) provided above are not satisfied.

10. Therefore the issue that arises for consideration is whether the appellant satisfies condition No. (1) and (3) above. The impugned order after referring to the definition of 'Banking Business' as defined in Section 5b of the Banking Regulation Act, held that the principal business of the Appellant is Banking. Section 5b of the Banking Regulation Act defines banking to mean accepting of deposits for the purpose of lending or investment, of deposit of money from the public repayable on demand or otherwise. The impugned order juxtaposes the above definition

with the finding of fact that the appellant did deal with non members in a few cases by seeing deposits. This read with Bye law 43 leads to the conclusion that it is carrying on banking business.

This fact of accepting deposits from people who are not members has been so recorded by the CIT(A) in his order dated 15 July, 2014. Before the Tribunal also the appellant did not dispute the fact that in a few cases they have dealt with non members. However so far as accepting deposits from non members is concerned it is submitted that the Bye-law 43 only permits the society to accept deposits from its members. It is submitted that By laws 43 does not permit receipt of deposits from persons other then members, the word "any person " is a gloss added in the impugned order as it is not found in Bye law 43. It is undisputed that the transactions with non members are insignificant/ miniscule. On the above basis it cannot be concluded that the appellant's principal business is of accepting deposits from public and therefore it is in banking business. In fact, the impugned order erroneously relies upon bye-law 43 of the society which enables the society to receive deposits to conclude that it can receive deposits from public. However, the impugned order relies upon bye-law 43 to conclude that it enables the appellant to receive deposits from any person is not correct. Thus in the present facts the finding that the appellant's principal business is of Banking is perverse as it is not supported by the evidence on record So far as the issue of primary object of the appellant is concerned the impugned order gives no finding on that basis to deprive the appellant the benefit of Section 80P of the Act. The impugned order sets out the object clause of the appellant, which has 24 objects but thereafter draws no sequiter to conclude that the primary object is Banking. Consequently there is no occasion to deal with the same as that is not the basis on which the impugned order holds that it is a Primary Cooperative Bank.

11. In the above view, the alternative contention of the appellant that it is not in the business of Banking as the sine quo non to carry on banking business is a licence to be issued by the Reserve Bank of India, which it admittedly does not have, is not being considered.

12. So far as condition No. 3 of the definition/meaning of Primary 'Cooperative Bank as provided in Section 5(ccv) of the Banking Regulation Act is concerned, the same requires the Bye laws of society to contain a prohibition from admitting any

other cooperative society as its member. In fact the bye-laws of the appellant society originally in bye-law 9(d) clearly provided that no co-operative society shall be admitted to the membership of the society. Thus there was a bar but the same was amended w.e.f. 12 January, 2001 as to permit a society to be admitted to the membership of the society. Therefore for the subject assessment years there is no prohibition to admitting a society to its membership and one of three cumulative conditions precedent to be a primary cooperative bank is not satisfied. However the impugned order construed the amended clause 9(d) of the appellant's bye laws to mean that it only permits a society to be admitted to the membership of the appellant and not a co-operative society. According to the impugned order, a society and a co-operative society are clearly words of different and distinct significance and the membership is only open to society and not to a co-operative society. As rightly pointed out on behalf of the appellant the word society as referred to bye law 9(d) would include the co-operative society. This is so as the definition of a society under the Co-operative Act is co-operative society registered under the Cooperative Act, Besides the qualifying condition 3 for being considered as a primary Cooperative bank is that the bye laws must not permit admission of any other cooperative society. This is a mandatory condition i.e. the bye laws must specifically prohibit admission of any other cooperative society to its membership. The Revenue has not been able to show any such prohibition in the bye laws of the appellant. Thus even the aforesaid qualifying condition (3) for being considered as a primary cooperative bank is not satisfied. Thus, the three conditions as provided under Section 5 (CVV) of the Banking Regulation Act, 1949. are to be satisfied cumulatively and except condition (2) the other two Qualifying conditions are not satisfied. Ergo, appellant cannot be considered to be a co-operative bank for the purposes of Section 80P(4) of the Act. Thus, the appellant is entitled to the benefit of deduction available under Section 80P(2)(a)(i) of the Act.

13. The contention of Ms. Dessai, learned Counsel for the revenue that the appellant is not entitled to the benefit of Section 80P(2)(a)(i) of the Act in view of the fact that it deals with non-members cannot be upheld. This for the reason that Section 80P(1) of the Act restricts the benefits of deduction of income of co-operative society to the extent it is earned by providing credit facilities to its members. Therefore, to the extent the income earned is attributable to dealings with the non-members are concerned the

benefit of Section 80P of the Act would not be available. In the above view of the matter, at the time when effect has been given to the order of this Court, the authorities under Act would restrict the benefit of deduction under Section 80P of the Act only to the extent that the same is earned by the appellant in carrying on its business of providing credit facilities to its members.

14. Accordingly, the substantial question of law as framed is answered in the negative i.e. in favour of the appellant and against the respondent-Revenue.

10, In view of the detailed facts of the case discussed as above and relying on the judgments of the Hon'ble Bombay High Court, Gujrat High Court and Karnataka High Court, as discussed above, it is held that the appellant is a Primary Co-operative Credit Society providing credit facilities to its members and not a Primary Co-operative Bank, Therefore, the provisions of section 80P(4) of the I.T. Act are not applicable in the appellant's case and the appellant is eligible for deduction u/s. 80P(2)(a)(i) of the I.T. Act, as claimed. The AO is therefore directed to allow the same. "

9. From the above facts and findings it is seen that my predecessor had given detailed findings by allowing the claim of deduction u/s. 80P(2)(a)(i) of the Act to the appellant which have duly been endorsed and upheld by the Hon'ble ITAT, Bench 'C', Mumbai, in A.Y. 2012-13, vide their order dated 11.11.2016, decided in ITA No. 369/Mum/2016,by holding, inter-alia, as under -

"6. In view of the above discussion we find that the decision of Hon'ble jurisdictional High Court in Quepem Urban Co-operative Credit Society Ltd. (supra) and further the decision of Madras High Court in Kalpadi Cooperative Township Ltd. (supra) is squarely applicable upon the facts of the present case and the assessee was entitled for the deductions claimed u/s. 80P(2)(a)(i) of the Act. Thus we do not find any illegality on infirmity in the order passed by Commissioner (Appeals) has the appeal filed by revue is dismissed."

10. From the above discussion it is crystal clear that the issue as well as facts under dispute are squarely covered by the orders of the CIT (A), as reproduced above and also upheld by the jurisdictional ITAT, 'C' Bench, Mumbai, in the appellant's own case for A.Y. 2012-13 & 2013-14. In view of the above facts, it is held that the appellant is eligible for deduction u/s. 80P(2)(a)(i) of the I.T. Act, therefore, the same is allowed and the AO is directed accordingly."

6. Now the Revenue is aggrieved by the appellate order passed by Ld. CIT(A) granting relief to the assessee and has come in appeal before the tribunal. The learned DR relied upon assessment order passed by the AO and it is submitted by learned DR that decision of Hon'ble Bombay High Court in the case of Quepem Urban Co-operative Credit Society Ltd v. ACIT reported in (2015) 58 taxmann.com 113 (Bom. HC) was not accepted by Revenue and SLP is filed with Hon'ble Supreme Court. While the Ld. Counsel for the assessee has made statement before us that the assessee is dealing only with its members in accepting deposits and granting loans and advances to its members only. The Ld. Counsel for that assessee submitted that the assessee is entitled for deduction u/s. 80P(2)(a)(i) of the 1961 Act as the assessee is Co-operative Credit Society and eligible for deduction u/s 80P(2)(a)(i) of the 1961 Act. The learned counsel for the assessee relied upon decision of ITAT, Mumbai in assessee's own case for AY 2012-13 and 2013-14.

7. We have considered rival contentions and we have perused the material on record including cited case laws. We have observed that the assessee is co-operative credit society and is only dealing with its members in providing credit facilities on which interest is charged and the assessee is also accepting deposits from its members on which interest is paid by the assessee. We have observed that the assessee is not dealing with outside public and had confined its dealings with members only as per the facts emerging from records and as stated by learned counsel for the assessee before the Bench. We have observed that in assesse's own case for AY 2012-13 and 2013-14 , the tribunal has taken a consistent view that the assessee is entitled for deduction u/s. 80P(2)(a)(i) of the 1961 Act . The decision of tribunal in assessee's own case in ITA no. 369/Mum/2016 for AY 2012-13 , vide orders dated 11.11.2016 is as under:-

> *" 4. We have considered the rival contention of the parties and further gone through the orders of authorities below. The*

Commissioner(Appeals) relied on the decision of Quepem Urban Co-operative Credit Society Ltd(supra) and passed the following order;

"9. There is no dispute between the parties that the appellant is a cooperative society as the same is registered under the Co-operative Societies Act. The appellant is claiming deduction of income earned on providing credit facilities to its members as provided under Section 80P(2)(a)(i) of the Act. It is appellant's case that, it is not carrying on the business of the banking. Consequently, not being a co-operative bank the provisions of Section 80P(4) of the Act would not exclude the appellant from claiming the benefit of deduction under Section 80P(2)(a)(i) of the Act. However in terms of Section 80P of the Act the meaning of the words Cooperative Bank is the meaning assigned to it in Chapter V of the Banking Regulation Act, 1949. A cooperative bank is defined in Section 5(cci) of Banking Regulation Act to mean a State Cooperative Bank, a Central Cooperative Bank and a primary cooperative bank. Admittedly, the appellant is not a State Cooperative Bank, a Central Cooperative Bank. Thus what has to be examined is whether the appellant is a primary Cooperative Bank as defined in Para V of the Banking Regulation Act. Section 5(ccv) of the Banking Regulation Act defines a primary cooperative bank to mean a cooperative society which cumulatively satisfies the following three conditions:

(1) Its principal business or primary object should be banking business of Banking;

(2) Its paid up share capital and reserves should not be less that rupees one lakh.

(3) Its bye-laws do not permit admission of any other cooperative society as its member.

It is accepted position that condition No. (2) is satisfied as the share capital in an excess of rupees one lakh. It has been the appellant's contention that the conditions No. (1) and (3) provided above are not satisfied.

10. Therefore the issue that arises for consideration is whether the appellant satisfies condition No. (1) and (3) above. The impugned order after referring to the definition of 'Banking Business' as defined in Section 5b of the Banking Regulation Act, held that the principal business of the Appellant is Banking. Section 5b of the Banking Regulation Act defines banking to mean accepting of deposits for the purpose of lending or investment, of deposit of money from the public repayable on demand or otherwise. The impugned order juxtaposes the above definition with the finding of fact that the appellant did deal with non members in a few cases by seeing deposits. This read with Bye law 43 leads to the conclusion that it is carrying on banking business.

This fact of accepting deposits from people who are not members has been so recorded by the CIT(A) in his order dated 15 July, 2014. Before the Tribunal also the appellant did not dispute the fact that in a few cases they have dealt with non members. However so far as accepting deposits from non members is concerned it is submitted that the Bye-law 43 only permits the society to accept deposits from its members. It is submitted that Bye laws 43 does not permit receipt of deposits from persons other then members, the word "any person" is a gloss added in the impugned order as it is not found in Bye law 43. It

is undisputed that the transactions with non members are insignificant/ miniscule. On the above basis it cannot be concluded that the appellant's principal business is of accepting deposits from public and therefore it is in banking business. In fact, the impugned order erroneously relies upon bye-law 43 of the society which enables the society to receive deposits to conclude that it can receive deposits from public. However, the impugned order relies upon bye-law 43 to conclude that it enables the appellant to receive deposits from any person is not correct. Thus in the present facts the finding that the appellant's principal business is of Banking is perverse as it is not supported by the evidence on record. So far as the issue of primary object of the appellant is concerned the impugned order gives no finding on that basis to deprive the appellant the benefit of Section 80P of the Act. The impugned order sets out the object clause of the appellant, which has 24 objects but thereafter draws no sequiter to conclude that the primary object is Banking. Consequently there is no occasion to deal with the same as that is not the basis on which the impugned order holds that it is a Primary Cooperative Bank.

11. In the above view, the alternative contention of the appellant that it is not in the business of Banking as the sine quo non to carry on banking business is a licence to be issued by the Reserve Bank of India, which it admittedly does not have, is not being considered.

12. So far as condition No.3 of the definition/ meaning of Primary Cooperative Bank as provided in Section 5(ccv) of the Banking Regulation Act is concerned, the same requires the Bye laws of society to contain a prohibition from admitting any other cooperative society as its member. In fact the bye-laws of the appellant society originally in bye-law 9(d) clearly provided that no co-operative society shall be admitted to the membership of the society. Thus there was a bar but the same was amended w.e.f 12 January, 2001 as to permit a society to be admitted to the membership of the society. Therefore for the subject assessment years there is no prohibition to admitting a society to its membership and one of three cumulative conditions precedent to be a primary cooperative bank is not satisfied. However the impugned order construed the amended clause 9(d) of the appellant's bye laws to mean that it only permits a society to be admitted to the membership of the appellant and not a co-operative society. According to the impugned order, a society and a co-operative society are clearly words of different and distinct significance and the membership is only open to society and not to a co-operative society. As rightly pointed out on behalf of the appellant the word society as referred to bye law 9(d) would include the co-operative society. This is so as the definition of a society under the Co-operative Act is co-operative society registered under the Cooperative Act. Besides the qualifying condition 3 for being considered as a primary Cooperative bank is that the bye laws must not permit admission of any other cooperative society. This is a mandatory condition i.e. the bye laws must specifically prohibit admission of any other cooperative society to its membership. The Revenue has not been able to show any such prohibition in the bye laws of the appellant. Thus even the aforesaid qualifying condition (3) for being considered as a primary cooperative bank is not satisfied. Thus, the three conditions as provided under Section 5 (CVV) of the Banking Regulation Act, 1949, are to be satisfied cumulatively and except condition (2) the other two qualifying conditions are not satisfied. Ergo, appellant cannot be considered to be a co-operative bank for the purposes of Section 80P(4) of the Act. Thus, the appellant

is entitled to the benefit of deduction available under Section 80P(2)(a)(i) of the Act.

13. The contention of Ms. Dessai, learned Counsel for the revenue that the appellant is not entitled to the benefit of Section 80P(2)(a)(i) of the Act in view of the fact that it deals with non-members cannot be upheld.' This for the reason that Section 80P(1) of the Act restricts the benefits of deduction of income of co-operative society to the extent it is earned by providing credit facilities to its members. Therefore, to the extent the income earned is attributable to dealings with the non-members are concerned the benefit of Section 80P of the Act would not be available. In the above view of the matter, at the time when effect has been given to the order of this Court, the authorities under Act would restrict the benefit of deduction under Section 80P of the Act only to the extent that the same is earned by the appellant in carrying on its business of providing credit facilities to its members.

14. Accordingly, the substantial question of law as framed is answered in the negative i. e. in favour of the appellant and against the respondentRevenue."

5. The Hon'ble Madras High Court in CIT versus Kalpadi Co-operative Township Ltd(supra) "The expression 'banking' has been defined in the following terms by the Banking Regulation Act 1949. '(b) "banking" means the accepting, for the purpose or lending or investment, of deposits of money from the public, repayable on demand or otherwise, and withdrawable by cheque, draft, order or otherwise.' Thus, banking means accepting of deposits of money from the public repayable on demand or otherwise and withdrawable by cheque, draft, order or otherwise and such acceptance of money is intended for the purpose of lending or investment by itself. Therefore, the crucial expression relevant for making one answer the description of banking is that it is capable of accepting money from the general public but not necessarily confined to its members. Any such activity carried on by an body requires, apart from licensing, to answer the regulatory domain prescribed under the 1949 Act. Even a Co-operative Bank which carries on banking activity requires to be regulated by the provisions of the 1949 Act. Section 80P(4) therefore is clearly attractive to such an institution. But not to credit society. Even while dealing with a Co-operative Bank sub-section (4) has taken care to ensure that the Primary Agricultural Credit Societies and Primary Co-operative Agricultural and Rural Development Banks are kept out of the purview of the said provision. Sub-section (4) of Section 80P therefore, in its application is confined ill relation to Co-operative Banks only. In the instant case the Assessee being a Co-operative Credit Society which in turn is providing for certain credit facilities to its members alone but not to the general public at large and which also does not receive monies by way of deposit from the general public, it does not answer the description of a Cooperative Bank. Consequently, the main provision contained under subsection (i) of Section 80P gets attracted and consS9uently the Assessee is entitled to seek the deduction which has been provided for under Section 80P."

6. in view of the above discussion we find that the decision of Hon'ble jurisdictional High Court in Quepem Urban Co-operative Credit Society Ltd(supra) and further the decision of Madras High Court in Kalpadi Cooperative Township Ltd(supra) is squarely applicable upon the facts of the present case and the assessee was entitled for the deductions claimed u/s 80P(2)((a) (i) of the Act. Thus we do not find any illegality

on infirmity in the order passed by Commissioner (Appeals) has the appeal filed by revenue is dismissed."

7.2 We have also observed that for AY 2013-14 , the tribunal has again held in favour of the assessee by allowing deduction u/s. 80P(2)(a)(i) of the 1961 Act in ITA no. 5175/Mum/2017 for AY 2013-14 in assessee's own case , vide order dated 31.10.2018, by holding as under:-

" 4. All the issues are in connection with the allowance of the claim by the CIT(A) u/s 80P(2)(a)(i) of the Act. The Ld. Representative of the Revenue has argued that the assessee was doing the banking business, therefore, the assessee was not entitled to the claim u/s 80P(4) of the Act but the CIT(A) has wrongly allowed the claim of the assessee, therefore, the finding of the CIT(A) is wrong against law and facts and is liable to be set aside. However, on the other hand, the Ld. Representative of the assessee has strongly relied upon the order passed by the CIT(A) in question. Before going further, we deemed it necessary to advert the finding of the CIT(A) on record: -

"8. 1 have carefully considered the appellant's submissions, observations of the AO in the assessment order and the facts of the case. The appellant is a Primary Co-operative Credit Society accepting deposits and providing credit facilities from and to its members only. The issue involved in this case is whether the appellant is a Co-operative Bank or not because if the appellant is held to be a Co-operative Bank as has been held by the AO, men deduction allowed u/s. 80P(l) is taken away in terms of section 80P{4) of the I.T. Act, otherwise, if the appellant is a Co-operative Credit Society providing credit facilities to members, then whole of the profits earned by the appellant Society arc allowed to the society as deduction u/s, 80P(2)(a)(i), as claimed by the appellant. The main reason why the AO has disallowed deduction to the appellant is that according to the AO though the appellant is not a Co-operative Bank but as the appellant had accepted deposits and provided credit facilities to its members, the same was the primary activity of any bank. The same issue has been discussed and decided in detail in the appellants' own case for A.Y. 2012-13 by the CIT(A) by holding as under –

"8. I have carefully considered the appellant's submissions, observations of the AO in the assessment order and the facts of the case. The appellant is a Primary Co-operative Credit Society accepting deposits and providing credit facilities from and members only. The issue involved in this case is whether the appellant is a Co-operative Bank or not because if the appellant is held to be a Co-operative Bank as has been held by the AO, then deduction allowed u/s. SOP(J) is taken away in terms of section 80P(4) of the I.T. Act, otherwise, if the appellant is a Co-operative Credit Society providing credit facilities to its members, then whole of the profits earned by the appellant Society are allowed to the society as deduction u/s. 80P(2)(a)(i)l fix claimed by the appellant. The main reason why the AO had disallowed deduction to the appellant h that

according to the AO though the appellant is not a Co-operative Bank but as the appellant had accepted deposits and provided credit facilities to Us members, the same was akin to the primary activity of any bank. The fact that the appellant accepts deposits and provide credit facilities members only, has not been disputed by the AO. Under these circumstances, cannot be held to be engaged in the business of banking as held in relied upon by the appellant as under –

9. In the case of Quepem Urban Co-op Credit Society Ltd (supra) the Hon'ble Bombay High Court held as under –

> *9. There is no dispute between the parties that the appellant is a cooperative society as the same is registered under the Cooperative Societies Ad. The appellant is claiming deduction of income earned on providing credit facilities to its members as provided tinder Section 80P(2)(a)(i) of the Act. It is appellant's case that, it is not carrying on the business of the banking. Consequently, not being a co-operative hank the provisions of Section 80P(4) of the Act would not exclude the appellant from claiming the benefit of deduction under Section 80P(2)(a}(i) of the Act However in terms of Section SOP of the Act the meaning of the words Cooperative Bank is the meaning assigned fail in Chapter F of the Banking Regulation Act, 1949. A cooperative bank is defined in Section 5(cci) of Banking Regulation Act lo mean a State Cooperative Bank a Central Cooperative Bank and a primary cooperative bank. Admittedly the appellant if, not a State Cooperative Bunk, a Central Cooperative Bank. Thus what has to be examined is whether the appellant is a primary Cooperative Bank as defined in Para f of he Banking Regulation Act. Section 5{ccv) of the Banking Regulation Act defines a primary cooperative bunk to mean a cooperative society which cumulatively satisfies the following three conditions:*
>
> *(1) Its principal business or primary object should be banking business of Banking;*
>
> *(2) Its paid up share capital and reserves should not be less that rupees one lakh.*
>
> *(3) Its bye-laws do not permit admission of any other cooperative society as its member.*
>
> *It is accepted position that condition No. (2) is satisfied as the share capital in an excess of rupees one lakh. It has been the appellant's contention that the conditions No. (1) and (3) provided above are no! satisfied.*

10. Therefore the issue that arises for consideration is -whether the appellant satisfies condition No. (I) and (3) above. The impugned order after referring to the definition of 'Banking Business' as defined in Section 5b of the Banking Regulation Act, held that the principal business of the Appellant is Banking. Section 5b of the Banking Regulation Act defines banking to mean accepting of deposits for the purpose of lending of investment^ of deposit of money from the which: repayable on demand or otherwise. The impugned order juxtaposes the definition with the finding of fact that the appellant did deal with non members in a few cases by seeing deposits. this read with Bye taw 43 leads to conclusion that it is carrying on banking business. This fact of accepting deposits from people who are not members has been so recorded by she C1T(A) in his order dated 15 July, 2014. Before the Tribunal Also She appellant did tint dispute the fad that in a Jew cases they have dealt with non members. However, so far as accepting deposits from non-members is concerned it is submitted that the Bye-law 43 only permits the society to accept deposits from its members, it is submitted that Bye laws 43 does not permit receipt of deposits from persons other than members, the word "any person" is a gloss added the impugned order as it is not found in Bye law 43. Il is undisputed that the transactions with non-members. On the above basis it cannot be concluded that the appellant's principal business is of accepting deposits from public and therefore it is in banking business. In fact the impugned order erroneously relies upon byelaw 4$ of the society which enables the society to receive deposits to conclude that it can receive deposits from public. However, the impugned order relies upon bye-law 43 lo conclude that ii enables the appellant to receive deposits from any person is riot correct. Thus in the present fads she finding that the appellant's principal business is of Banking is perverse as it is not supported by the evidence on record So far as the issue of primary object of the appellant is concerned the impugned order gives no finding on that basis to deprive the appellant the benefit of Section 80P of the Act. The impugned order sets out the object clause of the appellant, which has 24 objects hut thereafter draws no sequiter to conclude that the primary object ja flanking. Consequently there is no occasion to deal with the same as that is not the basis on which the impugned order holds that is a Primary Cooperative Bank.

11. In the above view, the alternative contention of the appellant that it is not in the business of

Banking as the. sine quo non to carry on banking business is a licence to be issued by the Reserve Bank of India, which it admittedly does not have, is not being considered.

12. So far as condition No 3 of the definition/meaning of Primary cooperative Bank as provided in Section 5(ccv) of the Banking Regulation Act is concerned, the same requires the Bye laws of society to contain a prohibition from admitting any other cooperative society as its member. In fact the bye-laws of the appellant society originally in bye-taw 9(d) clearly provided no cooperative society shall he admitted to She membership of the society. Thus there was a bar but the same was amended w.e.f. 12 January, 2001 is to permit a society to be admitted to the membership of the society. Therefore, for the subject assessment years there is no prohibition to admitting a society to and one of three cumulative conditions precedent to be it cooperative hank is not satisfied. However the impugned order the amended clause 9(d) of the appellant's bye lows to mean that it ii society lo be admitted to the membership of the appellant and '-operative society. According to the impugned order, a society and a cooperative society are clearly words of different and distinct significance and the membership w only open so society aid not to a co-operative society. As rightly pointed out on behalf of the appellant the word society ax referred to bye law 9(d) would include the co-operative society. This is TO as the definition of a society under the Co-operative Act is co-operative society registered under the Cooperative Act. Besides She qualifying condition 3 for being considered as a primary Cooperative bank 14- that the bye laws must not permit admission of any other cooperative society. This is a mandatory condition i.e. the bye laws must specifically prohibit admission of arty other cooperative society to its member ship. The Revenue has not been able to show any such prohibition in the bye laws of the appellant. Thus even the aforesaid qualifying condition (3) for being considered us a primary cooperative bank is not satisfied Thu the three conditions its provided under Section 5(CVV) of the Banking Regulation Act. 1949 are to be satisfied cumulatively and except condition are not satisfied. Ergo two qualifying conditions are not satisfied. Ergo, appellant cannot be considered to be a co-operative bank for the purposes of Section 80P(4) of the Act. Thus, the appellant is entitled to ihe benefit of deduction available under Section 80P(2)(a)(i) of the Act.

13. The contention of Ms. Dessai, learned Counsel for the revenue that the appellant is not entitled to the benefit of Section 80P(2)(a)(i) of the Act in view of the fact that it deals 'with nonmembers cannot be upheld. This for the reason (hat Section 80P(l) of the Act restricts the benefits of deduction of income of cooperative society So the extent it is earned by providing credit facilities to Us members. Therefore^ to the extent the income earned is attributable to dealings with the non-members fire concerned the benefit of Section 80P of the Act would not be available. In the above view of the matter, a! the time when effect has been given to the order of this Court, the authorities under Act would restrict the benefit of deduction under Section 80P of the Act only to the extent that the same is earned by the appellant in carrying on its business of providing credit facilities to its members.

14 Accordingly, the substantial question of law as framed is answered in the negative i.e. in favour of the appellant find against the Respondent-Revenue. 10. In view of the detailed facts of the case discussed as above and relying on judgments of the Hon'ble Bombay High Court Gujrat High Court and High Court, a discussed above, it is held that the appellant is a primary Credit Society providing credit facilities to its members and Co-operative Bank. Therefore, the provisions of section 80P(4) of are not applicable in the appellant's case and the appellant is eligible for deduction u/s 80P(2)(a)(i) of the I.T. Act, as claimed. The AO is therefore, directed to allow the same."

5. On appraisal of the above said finding, we noticed that the assessee society was not doing the banking business having no licence from RBI, therefore, the claim of the assessee was not hit by the provision of Section 80P(4) of the Act. The CIT(A) while deciding the matter of controversy relied upon the decision of Bombay High Court in the case of Quepem Urban Co-operative Credit Society Ltd. We also noticed that the claim of the assessee has also been decided in favour of the assessee by the Hon'ble ITAT in the assessee's own case in ITA. No. 369/M/2016 for the A.Y. 2012-13. The CIT(A) has also followed the finding of the said case in the present case also. No distinguishable material has been placed on record. Taking into account, all the facts and circumstances, we are of the view that the CIT(A) has decided the matter of controversy judiciously and correctly which is not liable to be interfered with at this appellate stage.

6. In the result, the appeal filed by the revenue is hereby ordered to be dismissed."

7.3. We have observed that the facts have remained the same in the year under consideration as learned DR did not brought to our notice

any change in factual matrix of the case and Respectfully following the decision of the tribunal in assessee's own case for AY 2012-13 and 2013-14 vide afore-stated orders , we hold that the assessee is entitled for deduction u/s. 80P(2)(a)(i) of the 1961 Act. We have also noted that Hon'ble Bombay High Court in the case of Quepem Urban Co-operative Credit Society Limited v. ACIT, reported in (2105) 58 taxmann.com 113 (Bom) has decided this issue in favour of the tax-payer. We have also noted that SLP filed by Revenue in the case of ACIT v. Quepem Urban Co-operative Credit Society Limited reported in (2015) 63 taxmann.com 300(SC) has been admitted by Hon'ble Supreme Court and the status as of date is shown to be pending (CA No. 008295 , 008296 and 008297 of 2015) . We order accordingly.

8. In the Result, the appeal of the Revenue in ITA no. 780/Mum/2018 for AY 2014-15 is dismissed

Order pronounced in the open court on 01.07.2019.

आदेश की घोषणा खुले न्यायालय में दिनांकः 01.07.2019 को की गई

Sd/-	Sd/-
(RAVISH SOOD)	(RAMIT KOCHAR)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Mumbai, dated: 01.07.2019

Nishant Verma
Sr. Private Secretary

copy to…

1. The appellant
2. The Respondent
3. The CIT(A) – Concerned, Mumbai
4. The CIT- Concerned, Mumbai
5. The DR Bench,
6. Master File

// Tue copy//

BY ORDER

DY/ASSTT. REGISTRAR
ITAT, MUMBAI