

IN THE INCOME TAX APPELLATE TRIBUNAL "B"
BENCH, MUMBAI
BEFORE HON'BLE SHRI SANDEEP GOSAIN, JM &
HON'BLE SHRI RAJESH KUMAR, AM

आयकर अपील सं/ I.T.A. No.6476/Mum/2017
(निर्धारण वर्ष / Assessment Years: 2013-14)

In the matter of :

ACIT 27(3)(4) 4th Floor, Tower No.6, Vashi Railway Station Complex, Vashi Navi Mumbai-400703.	<u>बनाम/</u> <u>Vs.</u>	The Barc Employees Co-Op Credit Society Ltd. R-5 Shed, Behind RIG, North Gate, Trombay, Mumbai- 400085.
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आयकर अपील सं/ I.T.A. Nos.6466 & 6467/Mum/2017
(निर्धारण वर्ष / Assessment Years: 2012-13 & 2014-15)

ITO 27(3)(4) 4 th Floor, Tower No.6, Room No.427, Vashi Railway Station Complex, Vashi Navi Mumbai-400703.	<u>बनाम/</u> <u>Vs.</u>	The Barc Employees Co-Op Credit Society Ltd. R-5 Shed, Behind RIG, North Gate, Trombay, Mumbai- 400085.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAAJT0003C		
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)

Revenue by:	Shri Amit Mohan Mittal (DR)
Assessee by:	Shri Bhadresh K. Doshi (AR)

सुनवाई की तारीख / Date of Hearing: 09/05/2019
घोषणा की तारीख /Date of Pronouncement: 14/05/2019

आदेश / ORDER

PER BENCH:

The above mentioned appeals have been filed by the Revenue against the different order passed by the Ld. Commissioner of Income Tax (Appeals)-25, Mumbai [hereinafter referred to as the "CIT(A)"] relevant to the A.Y.2012-13, 2013-14 & 2014-15.

ITA. NO.6466/M/2017:-

2. The revenue has filed the present appeal against the order dated 28.08.2017 passed by the Ld. Commissioner of Income Tax (Appeals)-25, Mumbai [hereinafter referred to as the "CIT(A)"] relevant to the A.Y.2012-13.

3. The Revenue has raised the following grounds: -

"1) On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in allowing assessee's appeal and allowing relief u/s 80P of the Act in the case of the assessee credit Co-operative Society.

2) On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in holding that the credit co-operative society is different from the credit co-operative bank.

3) On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in holding that the amended provision of section 80P(4) of the Act is not applicable to the credit co-operative society.

4) On the facts and in the circumstances of the case the appellant craves leave to amend or alter any grounds or add a new ground which may be necessary.

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

GROUND NOs. 1 to 4:-

4. All the grounds raised by the revenue are inter connected and inter related and relates to challenging the order of Ld. CIT(A) in allowing relief u/s 80P of the Act to the assessee, therefore we thought it fit to dispose of the same by this common order.

5. At the very outset, the Ld. AR submitted that the *identical grounds* raised by revenue have already been decided by the Coordinate bench of Hon'ble ITAT in ITA. No.6904/M/2013 for the A.Y.2010-11 dated 03.02.2016. The operative portion of Hon'ble ITAT is contained in para no.4 to 8 which are reproduced below: -

“4. By the impugned order, the Ld. CIT(A) allowed assessee’s claim under section 80P observing as under:

“7. I have carefully considered the findings of the AO as well as submission of the appellant. I have also gone through the case laws relied upon by the appellant. A perusal of the decision quoted by the appellant reveals that: (i) Where the assesses were indulging in the business of banking by providing various facilities related to banking to general public at large, in such cases the assesses were held to be belonging to the category of Co-op. Bank (ii) Where the activities of the assesses were limited to the acceptance of deposits from the members and providing loan facilities to the members only, without providing other facilities of banking such as the facility of cheque books, drafts, etc, such assesses have not been held to be belonging under the category of Co-op. Bank.

8. From the facts of the instant case it is quite clear that the appellant has limited itself to the members of employees of BARC. Further, the appellant has not provided banking facilities either to general public at large or even to the members of the society. Even the bye laws of the appellant does not provide for the banking activities. The facts of the instant case are almost similar to the decisions relied upon by the appellant particularly, the facts in the case of a) ITO Vs. Jankalyan Nagri Sahakari Pat Sanstha 24 taxman.com 127 Pune Tribunal,- b) ACIT Vs.

Buldana Urban Co-operative Credit Society Ltd. 32 taxmaan.com 69 Nagpur Tribunal and c) DCIT vs. Jayalkshi Mahila Vividodeshagala Souliarda Sahakari Ltd. 23 taxmaan.com 313 Panaji Tribunal, where the activities of the assessee were limited to the members of a specific group and the area of operation was also limited to the acceptance of deposits of the members and providing credit facilities only to the members, which have been held as not falling under the banking activities as defined in the Banking Regulation "Quepem Urban Co-operative Society? 120 TRR 153 wherein the Hon'ble High Court held as under:

"Deduction u/s 80P(4)—Deduction with respect of cooperative society—Allowability—Assessee who were registered Co-operative society had filed its return of income declaring gross total income—Assessee had claimed deduction of its entire income under Section 80P(2)(a)(i) resulting in nil taxable income—AO had disallowed assessee's claim for deduction u/s 80P(2)(a)(i) on the ground that the assessee was a primary Co-operative Bank and therefore, hit by the provisions of Section 80P(4) which excluded the benefit of Section 80P to cooperative banks—CIT(A) had allowed the assessee's appeal holding that the assessee was not a Cooperative Bank but a Co-operative Credit Society and not hit by the exclusion provided u/s 80P(4) and AO was directed to extend the benefit of deduction u/s 80P(2)(a)(i) to the assessee— Tribunal had allowed revenue's appeal and had held that the assessee was not entitled to the benefit of Section 80P(2)(a)(i), as it was a Primary Co-operative Bank, thus hit by the exclusion provided in Section 80P(4)— Held, assessee was admittedly a co-operative society registered under the Cooperative Societies Act and was engaged in providing credit facilities to its members—Consequently, the income earned by the assessee from its activity of providing credit facilities to its members, was entitled to deduction u/s 80P(2)(a) (i)—Assessee was not a co-operative Bank and thus the exclusion provided u/s 80P (4) would have no application—Banking was not its primary object nor its principal business nor does it prohibit any other cooperative society from becoming its member—Thus the assessee was not a cooperative bank as defined in the Explanation to Section 80P(4) and therefore not hit by the exclusion provided therein —Assessee's appeal allowed."

7. The issue is also covered by the following decisions of the co-ordinate benches of the Tribunal: (i) Quepem Urban Co-operative Credit Society Ltd. vs. ACIT 120 DTR 153 (Bombay) 2015 order dt.17.04.2015. (ii) CIT vs. Jafari Momin Vikas Co-op. Credit Society Ltd. 49 taxmann.com 571 (Gujarat) (2014) (iii) Tumkur Merchants Souharda Credit Co-operative Ltd. vs. ITO 230 Taxman 309 (Karnataka) (2015) (iv) ITO vs. Kulswami

Co-operative Society ITA No.6790/Mum/2012, ITAT, "A" Bench, Mumbai order dt.21.08.2015 (v) ITO vs. The Maharashtra Mantraliya vs. Sanlagana Shaskiya Karamchari Co-op. Credit Society Ltd. ITA No.5051/Mum/2013, ITAT, "B" Bench, Mumbai order dt.29.10.2014 (vi) ITO vs. M/s. Mumbai Teleworkers Co-op. Credit Society Ltd. ITA No.7106/Mum/2012, ITAT "B" Bench, Mumbai order dt.30.06.2014 (vii) ITO vs. Niphad Nagari Sahakari Patsanstha Ltd. ITA ITA No.6904/M/2013 M/s. The BARC Exmployee Co-op. Credit Society Ltd. 4 No.1336/PN/2012, ITAT "B" Bench, Pune order dt.31.07.2013 (viii) ACIT vs. BHEE Thrift & Credit Society ITA No.217Ind/2012, Indore Bench, Indore order dt.06.08.2012

8. In view of above, we do not find any infirmity in the order of the Ld. CIT(A) in allowing assessee's claim of deduction under section 80P."

6. After having gone through the facts of the present case as well as considering the orders passed by revenue authorities and order of ITAT as mentioned above, we find that identical issues have already been decided by the Coordinate Bench of ITAT in ***ITA No. 6904/Mum/13 for AY 2010-11*** in assessee's own case. Therefore, respectfully following the decision of the Coordinate Bench of ITAT and in order to maintain *judicial consistency* and *judicial discipline*, we apply the same findings which are applicable *mutatis mutandis* in the present case. Therefore, we order accordingly and dismiss these grounds raised by the revenue.

7. In the result, the appeal filed by the revenue is hereby **dismissed**.

ITA. NO.6476 & 6467/M/2017:-

8. The facts of the present appeals are quite similar to the fact of the case as narrated above while deciding the ITA. No.6466/M/2017, therefore, there is no need to repeat the same. The matter in controversy is also the same. Therefore our findings while deciding ITA. No.6466/M/2017 are applicable to the facts of the present case as *mutatis mutandis*. Accordingly, we confirm the finding of the CIT(A) on these issues and dismiss the grounds raised by the assessee.

9. In the net result, all the appeals filed by the revenue are hereby ordered to be **dismissed**.

Order pronounced in the open court on 14/05/2019

Sd/-

(RAJESH KUMAR)

लेखा सदस्य / ACCOUNTANT MEMBER

Sd/-

(SANDEEP GOSAIN)

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई Mumbai दिनांक Dated : 14/05/2019

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

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