

**IN THE INCOME TAX APPELLATE TRIBUNAL "SMC", BENCH MUMBAI  
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER  
&  
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER**

**ITA No.6511/Mum/2018  
(Assessment Year: 2015-16)**

Janta Gramin Bigar Sheti Sahakari Patsanstha Maryadit, Manor Bharat Ratna Dr. Babasaheb Ambedkar Chowk At-Post-Manor, Tal.Dist.-Palghar-410 403	Vs.	ACIT,Palghar Circle Aaykar Bhawan, BIDCO Road, Palghar(W) Tal.-Dist.Palghar-401 404
<b>PAN/GIR No.AABAJ0077G</b>		
<b>(Appellant)</b>	..	<b>Respondent)</b>

Revenue by	Ms. R.Kavitha, DR
Assessee by	Shri Rajendra V. Kadrekar, AR
<b>Date of Hearing</b>	<b>20/02/2020</b>
<b>Date of Pronouncement</b>	<b>04/03/2020</b>

**आदेश / O R D E R**

**PER G.MANJUNATHA (A.M):**

This appeal filed by the assessee is directed against order of the Id. Commissioner of Income Tax (Appeals)-3, Thane, dated 01/08/2018 and it pertains to the A.Y 2015-16.

2. The assessee has raised the following grounds of appeal:-

1. *On the facts and in the circumstances of the case and in law the Ld, Asst Ld. Commissioner of Income Tax, Palghar, has erred in disallowing bonafide claim of deduction u/s. 80P of the Income Tax Act, 1961 and the Ld- Commissioner of Income Tax, Thane has also erred in upholding the disallowance of deduction u/s. 80P of the Act made by the Assessing Officer.*

2. *The Assessing Officer and the Commissioner of Income Tax [Appeals]-3, Thane has failed to follow the doctrine of precedents. The jurisdictional Bombay High Court judgement in the case of Quepem Co-*

*operative Credit Society Ltd. having similar facts on which the Appellant has relied upon is totally disregarded.*

*3. The Ld. Assessing Officer has disallowed the claim of deduction u/s 80P of the Income Tax Act, 1961 to the appellant - Society –Society of its income derived from the activity of providing credit facilities to its members by relying on the Apex Court judgement in the case of THE CITIZEN CO OPERATIVE SOCIETY LIMITED VS. ACIT 9(1) HYDERBAD, though, the facts of the said case arc different than the Appellant Society.*

*4. The Ld, Assessing Officer has accepted the fact that the appellant is a Co-operative Credit Society engaged in the business of acceptance of deposits and providing credit facilities to its members but failed to allow deduction u/s. 80P of the Act,*

*5. That the Ld, Commissioner of Income Tax (Appeals) -3, Thane has while sustaining the disallowance of deduction made by the Assessing Officer has wrongly assumed that the loans are likely to the advance to the nominal members without any cogent evidence on his record.*

3. The brief facts of the case are that the assessee is a co-operative credit society registered under Maharashtra Co-operative Societies Act, 1960 and classified as 'Resource Society' u/s 12 of the Maharashtra Co-operative Societies Act, 1960. The object of the society laid down in the by-laws of the society inter alia are to inculcate the habit of thrift, self-help and co-operation among the members and to up-lift the socio-economic standard of its Members amongst others. The assessee has filed its return of income for the AY 2015-16, declaring 'Nil' total income after claiming deduction 80P(2)(a)(i) of the I.T.Act, 1961. The case was selected for scrutiny and during the course of assessment proceedings, the Ld. AO has denied deduction clamed u/s 80P(2) of the Act, on the ground that the activities of the society are akin to a co-operative bank, because it is accepting deposits and advancing loans to nominal members in additions to members of the society in contravention of the principles of mutuality as envisaged in the co-operative Act. The assessee carried the matter in appeal before the Ld.CIT(A), the

Ld.CIT(A) for the details recorded in his appellate order and also by following the decision of Hon'ble Supreme Court, in the case of The Citizen Co-operative Credit Society Limited vs ACIT in Civil Appeal No.10245 of 2017, upheld additions made by the Ld. AO towards disallowances of deduction claimed u/s 80P(2) of the I.T.Act, 18961, on the ground that the assessee has admitted nominal members and the purpose of admission of nominal members is not clear from the activities carried out by the assessee. Therefore, it is very clear that the activities of the society are akin to a co-operative bank and hence, it is not entitled for deduction u/s 80P(2) of the Act. Aggrieved by the Ld.CIT(A) order, the assessee is in appeal before us.

4. The Ld. AR for the assessee submitted that the Ld.CIT(A) has erred in upholding the findings of the Ld.AO in denying the benefit of deduction u/s 80P(2) of the I.T.Act, 1961, without appreciating the fact that the assessee is a credit co-operative society engaged in the business of providing credit facilities to its members. The Ld. AR, further submitted that although, it has admitted nominal members, but the percentage of such nominal member is hardly 2% of the total members and the deposits accepted from them is even less than 2% of the total deposits of the society. Further, it has not advanced any loans to nominal members. Therefore, there is no reason for the Ld.AO to deny the benefit of deduction claimed u/s 80P(2) of the I.T.Act, 1961. In this regard, he relied upon the decision of Hon'ble Bombay High Court, in the case of Quepem Urban Co-operative Society Ltd. vs CIT in ITA No.22 to 24 of 2015.

5. The Ld. DR, on the other hand, strongly supporting order of the Ld.CIT(A) submitted that the Ld.CIT(A) has brought out clear facts to the effect that the principles of mutuality is braked, when the assessee has admitted nominal members and transacted business with them and hence, it is not entitled for deduction u/s 80P(2) of the Act, 1961. Therefore, there is no reason to interfere with the orders of the lower authorities.

6. We have heard both the parties, perused the material available on record and gone through orders of the authorities below. Admittedly, the assessee is a credit Co-operative society registered under Maharashtra Co-operative Societies Act, 1960 and classified as "Resource Society" u/s 12 of the Maharashtra Co-operative Society Act, 1960. The objects of the society laid down in the by-laws inter-alia includes the habit of thrift and self help and co-operation among the members and to up-lift the socio-economic standards of its members amongst others. Further, the society is governed by the guidelines, rules and regulations of RBI and as per which, it has admitted nominal members with a view to financial literacy and financial inclusion. The percentage of nominal members and their business, when compared to total number of members and the business of the society is hardly less than 2% of total deposits accepted from the members. Further, the assessee claims that it has not advanced any loans to nominal members. Therefore, we are of the considered view that when, the main objects of the society is to develop the habit of thrift, self-help and cooperation among the members and to uplift the socio-economic standard and in this process, it has admitted few nominal members in accordance with rules and regulations made applicable to societies by the RBI and

also, the total business with nominal members is insignificant, the Ld. AO was incorrect in denying the benefit of deduction claimed u/s 80P(2) of the I.T.Act, 1961, in respect of profit derived from its activities. Further, although the Ld. AO, as well the Ld.CIT(A) have relied upon by the decision of Hon'ble Supreme Court, in the case of Citizen credit Co-operative Society Limited vs ACIT (supra), but, facts of the present case are entirely different from the facts of Citizen credit Co-operative Society Ltd. case, because in the case before the Hon'ble Supreme Court, the assessee has done substantial business with nominal members by accepting deposits and advancing loans to them. Under those facts, the Hon'ble Supreme Court, came to the conclusion that the assessee's activities are akin to co-operative banks and hence, it is not entitled for deduction u/s 80P(2) of the I.T.Act, 1961. In this case, on perusal of facts, it is very clear that although, the assessee has admitted nominal members, but the total number of nominal members and the business with them is hardly less than 2%, which is very insignificant, when compared to total business of the society. Further, the facts of the present case are squarely covered by the decision of Hon'ble Bombay High Court, in the case of Quepem Urban Co-operative Society Ltd. (supra), where the Hon'ble High Court held that in view of the very insignificant transactions of nominal members, it cannot be concluded that the assessee principle business is accepting deposits from the public and therefore, it is in the banking business.

7. In this view of the matter and by following the ratios of the case laws discussed hereinabove, we are of the considered view that the predominant objects of the assessee is to extend credit facility to its

members and in the process, it has admitted few nominal members in accordance with rules and regulations issued by the RBI applicable to credit co-operative societies and accordingly, it cannot be said that the activities of the assessee are akin to a co-operative bank, which is carried out banking business to its members, as well as to public. But, the facts with regard to the percentage of nominal members and the total amount of business carried out with them is not emanating from the orders of lower authorities. Therefore, we are of the considered view that the issue needs to be re-examined by the Ld. AO, in light of our discussions given hereinabove and also, in light of the ration of the Hon'ble Bombay High court, in the case of *Quepem Urban Co-operative Society Ltd.* to ascertain the fact with regard to the amount of business carried out with nominal members. Therefore, we set aside the issue to the file of the Ld. AO, for the limited purpose of verification of facts with regard to the claim of the assessee that the number of nominal members and total business with them is hardly 2%, which is insignificant, when compared to total number of members and business with them. If the Ld. AO finds that the total number of nominal members and their business is insignificant, then the Ld. AO is directed to allow the benefit of deduction claimed u/s 80P(2)(d) of the I.T.Act, 1961.

8. In the result, appeal filed by the assessee is allowed for statistical purpose.

Order pronounced in the open court on this 04 /03/2020

**Sd/-**  
**(VIKAS AWASTHY)**  
JUDICIAL MEMBER

**Sd/-**  
**(G. MANJUNATHA)**  
ACCOUNTANT MEMBER

Mumbai; Dated 04/03/2020  
Thirumalesh Sr.PS

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

सत्यापित प्रति //True Copy//

BY ORDER,

(Asstt. Registrar)  
ITAT, Mumbai