

**IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH, MUMBAI**

**BEFORE SHRI PRAMOD KUMAR, VICE PRESIDENT &
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

**ITA No. 931/Mum/2019
(Assessment Years: 2012-13)**

Shree Omkar Co-operative Credit Society Ltd., 1/6 Yashoda Niwas Borala Village, Govandi, Mumbai – 400088.	बनाम/ Vs.	ITO, Ward No. 22(2)-4, Vashi Rly Stn Commercial Complex, 4 th Floor, Vashi Mumbai – 400703.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : ABMFS2073G		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से/ Appellant by :	Shri B.R. Sawant, AR
प्रत्यर्थी की ओर से/Respondent by :	Ms. Shreekala Paradeshi, DR
सुनवाई की तारीख / Date of Hearing	11/11/2020
घोषणा की तारीख /Date of Pronouncement	17/11/2020

आदेश / ORDER

PER PAVAN KUMAR GADALE - JM:

The appeal filed by the assessee is directed against the order of the Commissioner of Income Tax (Appeals)-25, Mumbai passed u/s 221(1) and 250 of the Act. The assessee has raised the following grounds of appeal:

“1. On the facts and circumstances of the case and in law the Ld. A.O erred in levying penalty u/s. 221(1) of

the Act of Rs. 3,30,930/- on the basis of intimation u/s. 143(1)(a) and CIT(A) has also erred in sustaining the same though the case was under scrutiny assessment u/s. 143(3) of the Act and therefore, the said intimation has merged into assessment order u/s. 143(3) of the Act.

2. On the facts and circumstances of the case and in law the Ld. A.O and CIT(A)-25, has failed to appreciate that the net taxable income of the Society is nil after claim of deduction u/s 80P of the Act.

3. That the order of penalty passed by the A.O u/s 221(1) of the Act, and sustained by the CIT(A), has become in fructuous in view of the fact that the CIT(A) has allowed the claim of deduction u/s. 80P of the Act, for the entire income earned by the society and hence, the taxable income has become nil as claimed by the Appellant Society.

4. That the CIT(A) has passed order on quantum appeal on 04.09.2018 wherein the claim of deduction u/s 80P of the Act is allowed. Therefore, income of the Appellant society has become nil. However, the CIT(A) while passing order on penalty appeal has not considered the effect of quantum appeal while disposing of the penalty appeal. In view of the said fact the income determined after appeal effect is nil and therefore, the order on penalty passed by the A.O becomes null and void.

5. The appellant craves leave to add, alter modify and delete all or any of the above grounds of appeal on or before the final hearing.

2. The Brief facts of the case are that, the assessee is a cooperative credit society classified as “Resource

Society” u/sec 12 of the Maharashtra Cooperative Society Act 1960, and is engaged in business of providing credit facilities and banking activities with its members. The assessee has filed the return of income on 30.09.2012 with total income of Rs.Nil after claiming deduction u/s 80P of the Act of Rs. 9,76,280/-. Subsequently, the case was selected for scrutiny and notice u/s 143(2) and 142(1) of the Act were issued. In response to the notice, the Ld. AR of the assessee appeared from time to time and submitted the details. The A.O on perusal of the financial statements and the claim of the assessee u/s 80P of the Act, is of the opinion that the assessee is a cooperative bank other than a primary agricultural credit society and primary cooperative agricultural and rural development bank, and he has categorized the assessee as cooperative bank as per conditions laid down u/s 56(c)(ccv) of part V of the Banking Regulation Act, 1949.Hence denied the claim deduction u/s 80P(2)(a)(i)of the Act and assessed the total income of Rs.9,76,280/-and passed order u/s 143(3) of the Act on 10.03.2015. Subsequently, The A.O initiated penalty proceedings u/s 221(1) of the

Act and observed that the assessee is in default for nonpayment of self assessment tax. Since there was no compliance on this disputed issue, the A.O has levied a penalty of Rs. 3,30,930/- u/s 221(1) of the Act vide order dated 05.03.2013. Aggrieved by the penalty order, the assessee has filed an appeal with the CIT(A). Whereas, the CIT(A) concord with findings and action of the A.O and dismissed the appeal. Aggrieved by the order of the CIT(A), the assessee has filed an appeal with the Tribunal.

3. At the time of hearing, the Ld. AR of the assessee submitted that the CIT(A) has erred in confirming the levy of penalty, irrespective of the fact that the assessee is a cooperative society and is entitled for deduction u/s 80P of the Act. Further, in the assessment proceedings, the A.O has disallowed the claim of deduction U/Sec 80P of the Act. But On appeal, the LdCIT(A) has allowed the assessee claim and observed that the assessee is entitled for deduction u/s 80P(2)(a)(i) of the Act. Therefore, the contentions of the Ld. AR are that, the assessee is not required to pay self assessment tax as the assessee has claimed deduction u/s 80P of the Act in the

return of income filed and is not disputed and prayed for allowing the assessee's appeal.

4. Contra, the Ld. DR supported the orders of the LdCIT(A).

5. We heard the rival contentions and perused the material available on record. Prima-facie, the sole disputed issue is in respect of levy of penalty u/s 221(1) of the Act by the A.O for nonpayment of self assessment tax. The Ld. AR argued that the assessee is a cooperative society and entitled for deduction u/s 80P(2)(a)(i) of the Act and filed the return of income on 30.09.2012 declaring the total income of Rs. Nil after claiming the deduction u/s 80P of the Act of Rs. 9,76,280/-. The Ld. AR demonstrated the copy of income tax return in paper book at page 15 to substantiate the claim. We find that, the assessment order was passed u/s 143(3) of the Act disallowing the claim of deduction u/sec80P of the Act. On appeal the LdCIT(A) has allowed the assessee's claim. Even otherwise, when the quantum addition has been deleted by the appellate authority, penalty on such addition is not sustainable. Further, on perusal of the

facts, we found that the assessee has filed the return of income disclosing total income as Rs. Nil and is also evident from page 1 of the assessment order. We are of the opinion, that when the assessee has filed the return of income with Rs. Nil. Income, there is no question of payment self assessment tax. The assessee has brought these facts to the knowledge of the higher authorities but the CIT(A) has confirmed the order of levy of penalty. Accordingly, We considered the facts, submissions and provisions of law and set aside the order of the CIT(A) and direct the Assessing officer to delete the penalty and allow the grounds of appeal of the assessee.

6. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 17.11.2020

Sd/-

(PRAMOD KUMAR)
VICE PRESIDENT

Sd/-

(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated 17/11/2020

KRK, PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त(अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद /DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

1.

उप/सहायक पंजीकार (Asst. Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Mumbai