

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

**BEFORE SHRI M. BALAGANESH, ACCOUNTANT MEMBER &  
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

**ITA Nos. 4552/Mum/2019**

**(A.Y: 2014-15)**

ITO – 20(3)(4) Room No. 616, 6 <sup>th</sup> Floor, Piramal Chambers, Lalbaug, Parel – 400012.	<b>बनाम/ Vs.</b>	The KEM Hospital and Seth GSM College Employees Co-op. Credit Society Ltd., KEM Hospital Bldg, Parel Mumbai – 400012.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAAAT5055H		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से/ Appellant by :	Shri Gurbinder Singh, DR
प्रत्यर्थी की ओर से/Respondent by :	Shri Kumar Kale, AR

सुनवाई की तारीख / Date of Hearing	06/01/2021
घोषणा की तारीख/Date of Pronouncement	07/01/2021

आदेश / ORDER

**PER PAVAN KUMAR GADALE:**

The revenue has filed the appeal against the order of the Commissioner of Income Tax (Appeals) - 32, Mumbai, passed u/s. 143(3) and 250 of the Income Tax Act, 1961.

2. The brief facts of the case are that the assessee is cooperative credit society carrying on business of banking and filed the return of income on 01.10.2014

with total income Rs. Nil after claiming deduction under provisions of Sec. 80P of the Act. Subsequently, the case was selected for scrutiny and notice u/s 143(2) and 142(1) of the Act along with questionnaire was issued. The A.O on perusal of the financial statements found that the assessee is running a cooperative society and doing banking with its members. The gross total income for the F.Y 2013-14 as per the return of income filed is Rs. 1,47,61,101/- and the same has been claimed as a deduction U/sec 80P of the Act. The assessee submitted that, the cooperative society is in business of granting of medium term, short term and long term loans to its members and also credit facilities to its member. Therefore, the assessee is eligible for deduction u/s 80P of the Act. But, the A.O was not satisfied with the claim and has issued letter dated 16.11.2016 in respect of disallowance of claim u/s 80P of the Act under chapter VI-A of the Act. The assessee has filed explanations on 28.11.2016 referred at para 4 of the assessment order. Whereas, the A.O observed that due to amendment in Finance Act 2006 to Sec 80P(4) of the Act, effective from 01.04.2007 the said provision shall not apply in

relation to any cooperative bank other than a primary agricultural credit society or a primary cooperative agricultural and rural development bank. Therefore, the A.O treated the assessee as a cooperative bank other than primary agricultural credit society and denied the claim of deduction u/s 80P of the Act and determined the total income of Rs.1,47,61,100/- and passed the order u/s 143(3) of the Act dated 06.12.2016.

3. Aggrieved by the order, the assessee has filed an appeal with the CIT(A). In the appellate proceedings, the Ld.CIT(A) considered the grounds of appeal, findings of the A.O and the submissions of the assessee duly supported with the judicial decisions and the financial statements. The Ld.CIT(A) has granted relief relying on the judicial decisions and the assessee's own case for earlier assessment year, were the Hon'ble Tribunal has dismissed the revenue appeal. Aggrieved by the Ld.CIT(A) order, the revenue has filed an appeal before the Hon'ble Tribunal.

4. The Ld. DR submitted that the Ld.CIT(A) has erred in granting relief to the assessee under 80P of the Act, whereas the assessee carries on the business of

banking and other business in the name of cooperative society and the amendment in Finance Act, 2006 which is effect to 01.04.2007 has to be considered in respect of claim u/s 80P(2) of the Act and prayed for allowing the appeal of the revue.

5. Contra, the Ld. AR supported the orders of the Ld.CIT(A) and relied on the earlier years order.

6. We heard the rival submissions and perused the material on record. The sole matrix of the disputed issue emphasized by the Ld.DR in respect of granting of deduction u/s 80P of the Act to the Cooperative Society. The Ld. AR has submitted that the Ld. CIT(A) has followed the orders in the assessee's own case for the A.Y 2012-13 & 2013-14. We found strength in the submissions of the AR and on perusal of the LdCIT(A) order at para 5.1 to 5.2.1, the Ld. CIT(A) has dealt on the decisions in assessee's own case and granted the relief. We considered it appropriate to refer to the findings of the CIT(A) at page 12 para 5.1 to 5.2.1 of the order, which is read as under:

*"5.1 I find that the appellant is a co-operative society which provides credit facilities to its members only out of deposits received from its members. The society cannot be*

said to be carrying on the business of banking since "banking means the accepting, for the purpose of lending or investment, of deposits of money from the public, repayable on demand or otherwise, and withdrawal by cheque, draft, order or otherwise" and the appellant is not receiving deposits of money from the public. Thus, the first condition of Section 56(c)(ccv) of Part V of the Banking Regulation Act 1949 i.e. "the primary object for principal business of which is the transaction of banking business" is not fulfilled by the appellant. Further, the appellant society does not have a banking license under the Banking Regulation Act to conduct any business of banking. Therefore, the AO is not correct in holding that the appellant is a Co-operative Bank and not eligible for deduction u/s. 80P in view of the provisions of section 80P(4) of the Act.

In this regard reliance is placed on the following decision of the ITAT Mumbai in appellant's own case for A.Y 2012-13 and A.Y 2013-14 - on similar facts the AO had disallowed deduction u/s. 80P(2)(a)(i) and treated the dividend received from Mumbai District Central Co-operative Bank (MDCC) as taxable and the order of the CIT(A) allowing deduction u/s. 80P(2)(a)(i), relying on the decision of the jurisdictional Bombay High Court in the case of Quepem Urban Cooperative Credit Society [2015] 58 [taxmann.com](http://taxmann.com) 113 (Bombay), were upheld since the assessee society was found to be not carrying out any business of banking.

- i) ITA No. 4986/MUM/2016 - A.Y 2012-13 dated 15.03.2018 in which revenues appeal was dismissed.
- ii) ITA No. 864/MUM/2017 - A.Y 2013-14 dated 20.06.2018 in which revenues appeal was dismissed.

5.2 The appellant has submitted details of computation of income in which the dividend income of Rs. 119,589/- has been claimed as exempt. It has been submitted that the said income was received on the shares of MDCC and was deductible u/s. 80P(2)(d) of the Act. It has also been submitted that the interest income received on fixed deposits kept with the MDCC of Rs. 25,87,030/- was allowable u/s. 80P(2)(a)(i) as the said interest was part of its business income attributable to the activity of providing credit facilities to its members.

I find merit in the above said submissions of the appellant in view of the decision of the Hon'ble Karnataka High Court in the case of *Turrikur Merchants Souharda Credit Cooperative Ltd. vs. ITO [2015] 55 taxmann.com 447 (Karnataka)*. The Hon'ble High Court had examined, the issue in the context of interest earned on deposits kept with banks and after distinguishing the decision in the case of *Tatgar Co-operative Sales Society Ltd., Vs. ITO [2010] 322 ITR 283(SC)* on facts, it was held that such interest income is attributable to the business of providing credit facilities to the members, and hence, it was deductible u/s.80P(2)(a)(i). Further, the decision in *Tumkur Merchants' case (supra)* has been

followed by the jurisdictional Tribunal in the following cases:

- *Jaoli Talulca Sahakari Patpedhi Maryadit vs. ITO [2017] 83 taxmann. com 247 (Mumbai)*
- *Yashomandir Sahakari Patpedhi Maryadit vs. ITO [ITA No. 3477/Mum/2014]*
- *Shri Tatyasaheb Mohite Nagari Sahakari Patpedhi Ltd vs. ITO [TA No.412/1VIum/2018]*

*5.2.1 Following the above said decisions in the case of the appellant and the decision of the Hon'ble High Court of Karnataka in the case of Tumkur Merchants' case (supra), it is held that the appellant is eligible for deduction u/s. 80P(2)(a)(i) in respect of the income of Rs. 1,47,61,101/- and it is also eligible for deduction in respect of dividend income of Rs. 1,19,589/- u/s. 80P(2)(d) of the Act. The AO is directed to allow deduction u/s. 80P as claimed by the appellant and assess the total income at Rs. Nil. Ground no. 1 is allowed.*

7. The Ld.DR has relied on the order of the A.O and could not controvert the observations of the Ld.CIT(A) with any new cogent evidence or information. Accordingly, we do not find any infirmity in the order of the Ld.CIT(A),who has considered the judicial decisions of Hon'ble Tribunal in assessee's own case and granted the relief.Accordingly, we uphold the same and dismiss the grounds of appeal of the revenue.

8. In the result, the appeal filed by the revenue is dismissed.

Order pronounced in the open court on 07.01.2021

Sd/-  
(M. BALAGANESH)  
**ACCOUNTANT MEMBER**

Sd/-  
(PAVAN KUMAR GADALE )  
**JUDICIAL MEMBER**

Mumbai, Dated 07.01.2021

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