

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "G", MUMBAI**

**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER**

ITA NO. 2672/MUM/2019 : **A.Y : 2013-14**

Income Tax Officer – 28(3)(2),
Mumbai. (Appellant)

Vs. M/s. Shri Kulswami Co-op. Credit
Society Ltd.,
F-3, 1st floor, Central Facility
Building, APMC Market, Sector-19,
Turbhe, Navi Mumbai 400 705.
PAN : AAAAS2059L (Respondent)

CO NO. 38/MUM/2020 : **A.Y : 2013-14**
(in ITA NO. 2672/MUM/2019)

M/s. Shri Kulswami Co-op. Credit
Society Ltd.,
F-3, 1st floor, Central Facility
Building, APMC Market, Sector-19,
Turbhe, Navi Mumbai 400 705.
PAN : AAAAS2059L
(Cross-objector/Org. Respondent)

Vs. Income Tax Officer – 28(3)(2),
Mumbai.
(Respondent/Org. Appellant)

Assessee by : **Shri Rajendra Kadrekar**

Revenue by : **Shri T.S. Khalsa**

Date of Hearing : **01/02/2021**

Date of Pronouncement : **01/02/2021**

ORDER

PER MAHAVIR SINGH, VP :

This appeal by the Revenue and cross-objection by the assessee are arising out of the order of CIT(A)-26, Mumbai in Appeal no. CIT(A)-26/IT-

349/2015-16 dated 08.02.2019. Assessment was framed by the Income Tax Officer-28(3)-2, Mumbai under Section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') for Assessment Year 2013-14 vide order dated 28.01.2016.

2. The only issue in this appeal of the Revenue is against the order of CIT(A) deleting the addition made by the Assessing Officer by holding that the assessee, being a co-operative credit society, is not a co-operative bank and, therefore, entitled for deduction under Section 80P of the Act. For this, Revenue has raised the following two effective grounds of appeal :-

"1. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition of Rs.2,91,53,629/- by holding that the assessee being a Co-operative Credit Society is not a Co-operative Bank and hence is entitled for deduction u/s. 80P of the Act, 1961?"

2. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in not appreciating the fact that the new sub-clause (VIIA) to clause 24 of section 2 of the Act clearly indicate that the income of a co-operative society providing credit facilities to its members is not exempt?"

3. The assessee has preferred cross-objection, which is supportive of the order of CIT(A), by raising the following four grounds :-

"1. On the facts and circumstances of the case and in law, the appeal filed by the department is bad in law and the same is liable to be dismissed and order passed by the CIT(A)-26, Mumbai allowing, the claim of deduction be treated as final order.

2. On the facts and circumstances of the case and in law, the Assessing Officer has failed to follow the binding precedents and rule of consistency in view of the decision of Jurisdictional Hon'ble Bombay High Court and ITAT, Mumbai in Respondent's own case as well as other appellant Co-operative Credit Societies

having similar nature of business as well as facts with the similar Grounds of Appeal and therefore, the appeal filed by the department is liable to be dismissed.

3. *On the facts and circumstances of the case and in law, the Ld. Assessing Officer has erred in disallowing the bonafide claim of admissible deduction u/s. 82P(2)(a)(i) of the Income Tax Act, 1961 holding that the Assessee Society is a Co-operative Bank though the learned Assessing Officer has not disputed the fact of appellant carrying on business of providing credit facilities to its members and appellate authorities have allowed similar claim for deduction u/s 80-P(2)(a)(i) for earlier years in case of Appellant-Society,*

4. *On the facts and circumstances of the case and in law, the Ld. Assessing Officer has failed to appreciate that the appellant has declared its Income from its business activities of providing credit facilities under the head "Income form Business" since its inception and continued the uniform practice even after the amendment to the provisions of Section 2(24)(viia) of the Act and continued to claim admissible deduction under Section 80-P(2)(a)(i) of the Act."*

4. We have heard the rival contentions and gone through the facts and circumstances of the case. We noted that the assessee, Shri Kulswami Co-operative Credit Society, is a co-operative credit society registered under Maharashtra State Co-operative Societies Act, 1960 and classified as 'Resource Society' under Section 12 of the Maharashtra State Co-operative Societies Act, 1960. It is wholly and exclusively engaged in providing credit facilities to its members and no business is transacted with a person other than members of that society. As such, the credit society is working as a self-help group. The object of the assessee is to inculcate the habit of thrift, self-help and co-operation amongst its members. The Assessing Officer while framing the assessment noted that assessee-society was doing business of accepting deposits and giving credit to its members like all other co-operative banks and credit societies. Hence, he quoted provisions of Sections 80P(4) and 2(24)(viia) of the Act and held that in view of these provisions, the assessee is carrying on

banking business and disallowed the claim of deduction under Section 80P of the Act. Aggrieved, assessee preferred appeal before the CIT(A).

5. The CIT(A) noted that there is no dispute that assessee is a co-operative credit society carrying on business of accepting deposits and advancing loans from and to its members only. This fact has also been noted by the Assessing Officer in the assessment order wherein he stated, that, *“There is no dispute about the fact that the assessee is carrying on the business of accepting deposits and advancing loans albeit from and to its members only.”* The CIT(A) then discussed the definition of ‘banking business’ and noted as under :-

“Section 5(b) of the Banking Regulation Act, 1949, defines ‘banking business’ as under :

“(a) ‘banking means the accepting for the purpose of lending or investment, of deposits of money from the public, repayable on demand or otherwise, and withdrawable by cheque, draft, order or otherwise.”

From the above definition of banking, it is evident that the activity of accepting deposits from public at large for the purpose of lending would be banking business, but accepting deposits only from members and not from public at large is not banking business. Once it has been established that deposits are accepted from members only, it becomes clear that the appellant is not a co-operative bank and not hit by the exclusion provided under section 80P(4) for claiming deductions as condition No. (1) provided in section 5(ccv) of the Banking Regulation Act (BR Act) has not been satisfied. The action of the AO in treating the appellant as a co-operative bank is simply based on the observation that the activity of accepting deposits and giving loans is akin to that of a bank.”

6. Finally, the CIT(A) in para 7.3 of his order noted that even the Hon'ble Bombay High Court in assessee's own case for Assessment Years 2007-08 and

2008-09 has allowed assessee's claim of deduction under Section 80P of the Act and held that assessee is entitled for deduction. The observations of CIT(A) in para 7.3 of his order are reproduced hereunder.

"7.3 The Hon'ble Gujarat High Court in its judgment dated 15-01-2014 in CIT Vs Jafari Momin Vikas Co-operative Credit Society Ltd (Tax Appeals No. 442, 443 and 863 of 2013) held that if the assessee is not a co-operative bank but a credit co-operative society, exclusion clause of sub-section (4) of section 80P would not apply. The High Court rejected the Revenue's contention that section 80P(4) would exclude not only the co-operative banks other than those fulfilling the description contained therein but also credit societies, which are not co-operative banks. The High Court took note of the CBDT circular No. 133 of 2007 dated 09-05-2007 wherein it was clarified that sub-section (4) of section 80P will not apply to an assessee which is not a co-operative bank. Respectfully following the decision referred to above, I hold that the appellant's claim for deduction u/s. 80P cannot be disallowed since the exclusion contained in sub-section (4) of section 80P is not applicable to the appellant's case.

It was stated that in the appellant's own case for A.Y. 2007-08 & 2008-09 Bombay High Court vide order dated 20-03-2017 has dismissed departmental appeal on the same issue. Further the A.Y 2009-10 in appellant's own case, ITAT 'A' Bench, Mumbai vide order dated 21-08-2015 has allowed in favour of appellant on the same issue. Respectfully following the decisions of higher counts in appellant's own case the AO is directed to allow deduction u/s 80P to the appellant. The appellant's grounds of appeal on these issues are 'Allowed'."

7. We noted that in assessee's own case the Hon'ble Bombay High Court, relying upon the judgment of co-ordinate bench in the case of *Quepem Urban Co-operative Credit Society Ltd V/s ACIT, 377 ITR 272 (Bom)*, has held that the assessee-society is not a co-operative bank and hence entitled for deduction under Section 80P of the Act. Once the Hon'ble Bombay High Court has considered the issue and nothing new was argued before us, we are of the

view that the CIT(A) has rightly allowed the claim of deduction under Section 80P of the Act. Accordingly, we confirm the order of CIT(A) and the appeal of Revenue is dismissed.

8. As regards the cross-objection of the assessee is concerned, the same is supportive of the order of CIT(A). Hence, it has become infructuous and is dismissed as such.

9. In the result, appeal of the Revenue as well as the cross-objection of the assessee is dismissed.

Order pronounced in the open court on 1st February, 2021.

Sd/-
(MANOJ KUMAR AGGARWAL)
ACCOUNTANT MEMBER

Sd/-
(MAHAVIR SINGH)
VICE PRESIDENT

Mumbai, Date : 1st February, 2021

SSL

Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT(A) concerned
- 4) The CIT concerned
- 5) The D.R, "G" Bench, Mumbai
- 6) Guard file

By Order

Dy./Asstt. Registrar
I.T.A.T, Mumbai