

**THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "B" MUMBAI**

**BEFORE SHRI PRAMOD KUMAR (VICE PRESIDENT) AND
SHRI RAVISH SOOD (JUDICIAL MEMBER)**

**ITA No.1939/MUM/2020
(Assessment Year: 2013-14)**

ACIT-27(3)
Room No. 423, 4th Floor, Tower
No. 6, Vashi Railway Station
Complex, Vashi,
Navi Mumbai – 400 703

Vs. M/s The Bharat Petroleum
Corporation Limited,
C/o BPCL, Refining Division,
Mahul, Mumbai – 400 704

PAN No. AAAJT0226F

(Revenue)

(Assessee)

Assessee by : Ms. Dinkle Haria, A.R
Revenue by : Shri Tharian Oommen, D.R

Date of Hearing : 29/09/2021
Date of pronouncement : 01/10/2021

ORDER

PER RAVISH SOOD, J.M:

The present appeal filed by the revenue is directed against the order passed by the CIT(A)-25, Navi Mumbai, dated 13.02.2020, which in turn arises from the order passed by the A.O u/s 143(3) of the Income Tax Act, 1961 (for short 'Act'), dated 18.09.2015 for A.Y. 2013-14. The revenue has assailed the impugned order on the following grounds before us:

- “(i) On the facts and circumstances of the case and in law, the Ld.CIT(A) erred in deleting the disallowance of Rs.1,36,39,920/- u/s 80P made by the Assessing Officer by holding that the assessee is not a cooperative bank therefore, the provisions of Section 80P(4) of the Act are not applicable to the assessee, without appreciating that the assessee squarely falls within the definition of "cooperative bank" provided in Part-V of the Banking Regulation Act, 1949?
- (ii) On the facts and circumstances of the case and law, the Ld. CIT(A) erred in not appreciating the fact that the sub clause (viiia) to clause 24 of Section 2 of the Act

clearly indicate that profits and gains of any business of banking (including providing credit facilities) carried on by a cooperative society with its members is income of the cooperative society providing credit facilities to its members.

- (iii) The appellant craves leave to amend, modify and alter any grounds of appeal during the course of hearing of this case.”

2. Briefly stated, the assessee which is a co-operative credit society had e-filed its return of income for A.Y. 2013-14 on 27.09.2017, declaring an income of Rs.2,73,760/-. The case of the assessee was thereafter selected for scrutiny assessment u/s 143(2) of the Act.

3. Assessment was thereafter framed by the A.O vide his order passed u/s 143(3), dated 18.09.2015, wherein after declining the assessee’s claim for deduction of Rs. 1,36,39,920/- u/s 80P of the Act, its income was determined by the A.O at Rs.1,39,13,680/-.

4. Aggrieved, the assessee carried the matter in appeal before the CIT(A). Observing that the assessee was not found to have cumulatively satisfied the three conditions contemplated in Sec. 5(ccv) of the Banking Regulation Act, 1949, the CIT(A) was of the view that it could not be brought within the realm of the definition a co-operative Bank. It was observed by the CIT(A) that as the assessee was a co-operative credit society that was only catering to the employees of Bharat Petroleum Corporation Ltd. (BPCL), therefore, it was a separate category of society as per Sec. 5(ccii) of the Banking Regulation Act, 1949. Backed by his aforesaid observations, the CIT(A) was of the view that as the assessee was not a co-operative bank, it would, thus, not be hit by the provisions of Sec. 80P(4) of the Act. Accordingly, the CIT(A) on the basis of his aforesaid deliberations vacated the disallowance of Rs.1,36,39,920/- that was made by the A.O by declining the assessee’s claim for deduction u/s 80P of the Act.

5. The revenue being aggrieved with the order of the CIT(A) has carried the matter in appeal before us. The Id. Authorized Representative (for short ‘A.R’) for

the assessee at the very outset submitted that the issue involved in the present appeal was squarely covered by the order passed by the Tribunal in the assessee's own case for 2010-11 in ITA No. 6905/Mum/2013.

6. Per contra, the Id. Departmental Representative (for short 'D.R') candidly admitted that the issue involved in the present appeal was squarely covered in favour of the assessee respondent by the order of the Tribunal in its own case for A.Y. 2010-11 in ITA No. 6905/Mum/2013.

7. We have heard the Id. Authorized Representatives for both the parties, perused the orders of the lower authorities and the material available on record, as well as considered the judicial pronouncements that have been pressed into service by the Id. A.R to drive home her aforesaid contention. As stated by the Id. A.R, and rightly so, the issue in question before us i.e the entitlement of the assessee society for claim of deduction u/s 80P(2)(a)(i) of the Act is squarely covered by the order passed by the Tribunal in the assessee's own case for A.Y. 2010-11 in ITA No. 6905/Mum/2013, dated 28.04.2015. On a perusal of the order passed by the Tribunal, we find, that as in the case before us, the A.O in the assessee's own case for A.Y 2010-11 had declined its claim for deduction u/s 80P(2)(a)(i) of the Act. However, the aforesaid view taken by the A.O was vacated by the CIT(A). On further appeal by the revenue, the Tribunal relying on a plethora of the judicial pronouncements/orders had upheld the view taken by the CIT(A) and concluded that the assessee's claim for deduction u/s 80P(2)(a)(i) was in order. The Tribunal while concluding as hereinabove had observed as under:

"3. In brief, the relevant facts are that the respondent assessee is a Co-Operative Society registered under the Maharashtra Co-Operative Societies Act, 1960. The society is run by the employees of Bharat Petroleum Corporation Ltd. and its main activity is providing credit facilities to its members only, who happen to be the employees of Bharat Petroleum Corporation Ltd. The society is giving loans to its members and also accepting deposits from its members. In the return of income filed for A.Y. 2010-11, it declared a gross total income of Rs. 80,98,490/- which was claimed as exempt in terms of Section 80P(2)(a)(i) of the Income Tax Act, 1961. The A.O. denied the claim of the

assessee for exemption under Section 80P(2)(a)(i) of the Act on the basis of the provisions of Section 80P(4) of the Act, which was inserted by Finance Act 2006 w.e.f. April, 1, 2007. The A.O. was of the opinion that after the insertion of sub-section (4) of Section 80P exemption shall not be available in relation to any Co-Operative Bank other than primary agricultural credit society or primary co-operative agricultural and rural development bank. According to the A.O. sub clause (viia) was also inserted in clause (iv) of Section 2 to provide that the profits and gains of any business of banking (including providing credit facilities) carried by cooperative society with its members shall be included in the definition of expression "income". On the basis of his combined reading of Sections of Section 2(24) (viia) and Section 80P of the Act after amendment by Finance Act, 2006, the A.O. concluded that even a co-operative society engaged in providing credit facilities to its members would be denied the exemption u/S 80P of the Act. Accordingly, the A.O. assessed the total income at Rs. 80,98,490/- and rejected assessee's claim for deduction under Section 80P of the Act.

4. The Id. CIT(A) has since disagreed with the A.O. primarily on the ground that the assessee-society was not carrying out any banking facilities and that its activities were limited to its members only. The Id.CIT(A) also held that the activities of the assessee do not fall for consideration as banking activities as defined in Banking Regulation Act, 1949. In coming to such conclusion, the Id. CIT(A) has relied on the following decisions of the Tribunal:-

- (i) ITO, Wd 1(4) Pune v/ Jankalyan Nagri Sahakari Patsanstha Ltd 54 SOT 60(Pune)/24 taxmman.com 127(Pune) (2012)
- (ii) ITO v/s Jain Nagri patsanstha Ltd ITAT Pune Bench (2010)
- (iii) DCIT v/s Jayalakshmi Mahila Vivivdodeshagala Souharda Sahakari Ltd. 137 ITD 163(Panji) (2012)
- (iv) Sri Vasavi Multipurpose vs CIT ITAT Bangalore bench order dated 10,05.2015.

5. Accordingly, he directed the A.O. to allow deduction to the assessee under Section 80(P)(2)(a)(i) of the Act except to the extent of interest income earned by the assessee from SBI, Patiala. Against the aforesaid decision of the Id. CIT(A), Revenue is in appeal before us.

6. Before us the Id. Representative of the assessee, at the outset, pointed out that the conclusion drawn by the Id. CIT(A) is in accordance with judgment of Hon'ble Gujarat High Court in the case of CIT vs. Jafari Momin Vikas Co. Op. Credit Society Ltd. [2014] 362 ITR 331 (Guj). In this context the following discussion in the judgment of Hon'ble Gujarat High Court is relevant:-

"The Assessing Officer held that by virtue of section 80P(4), the respondent-assessee would not be entitled to the benefits of deduction under section 80P. The Commissioner (Appeals) as well as the Tribunal reversed the decision of the Assessing Officer on the premise that the respondent-assessee not being a bank, exclusion provided in sub-section (4) of section 80P would not apply. This, irrespective of the fact that the respondent would not fall within the expression "primary agricultural credit society".

Had this been the plain statutory provisions under consideration in isolation, in our opinion, the question of law could be stated to have arisen. When, as contended by the assessee, by virtue of sub-section (4) only co-operative banks other than those mentioned therein were meant to be excluded for the purpose of deduction under section 80P, a question would arise why then the Legislature specified primary agricultural credit societies along with primary co-operative agricultural and rural development banks for exclusion from such exclusion and, in other words, continued to hold such entity as

eligible for deduction. However, the issue has been considerably Simplified by virtue of the Central Board of Direct Taxes Circular No. 133 of 2007, dated May 9, 2007. Circular provides as under :

"Subject: Clarification regarding admissibility of deduction under section BOP of the Income-tax Act, 1961.

1. Please refer to your letter No. DCUS/30688/2007, dated March 28, 2007, addressed to the Chairman, Central Board of Direct Taxes, on the above given subject.

2. In this regard, I have been directed to state that sub-section(4) of section 80P provides that deduction under the said section shall not be allowable to any co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank. For the purpose of the said sub-section, co-operative bank shall have the meaning assigned to it in Part V of the Banking Regulation Act, 1949.

3. In Part V of the Banking Regulation Act, 'co-operative bank means a State co-operative bank, a Central co-operative bank and a primary cooperative bank.

4. Thus, if the Delhi Co-op. Urban Thrift and Credit Society Ltd. does not fall within the meaning of 'co-operative bank' as defined in Part V of the Banking Regulation Act, 1949, sub-section (4) of section 80P will not apply in this case.

5. This is issued with the approval of the Chairman, Central Board of Direct Taxes."

7 From the above clarification, it can be gathered that sub-section (4) of section 80P will not apply to an assessee which is not a co-operative bank. In the case clarified by the Central Board of Direct Taxes, the Delhi Co-op. Urban Thrift and Credit Society Ltd. was under consideration. The circular clarified that the said entity not being a co-operative bank, section 80P(4) of the Act would not apply to it. In view of such clarification, we cannot entertain 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. In the present case, the respondent-assessee is admittedly not a credit co-operative bank but a credit co-operative society. The exclusion clause of sub-section(4) of section 80P, therefore, would not apply. In the result, the tax appeals are dismissed.

7. Apart from this, the Hon'ble Karnataka High Court in the case of CIT vs. Sri Biluru Gurubasava Pattina Sahakari Sangha Niyamitha in Income Tax Appeal No. 5006/2013 dated 5th February, 2014 also considered a similar issue. The following discussion in the judgment of Hon'ble Karnataka High Court is relevant:-

"Section 80P of the Act deals with the deduction of income of a society. In the case of any assessee being a Co-operative society, the whole of the amounts of profits and gains of business attributable to any of other activities referred to sub-section (2) of Section 80P shall be deducted in computing the total income of the assessee. In other words, the said income is not taxable. It is a benefit given to the Co-operative society. Section 80P(4) was introduced by Finance Act, 2006 with effect from 01.04.2007 excluding the said benefit to a Co-operative Bank. The said provision reads as under:-

"(4) The provisions of this section shall not apply in relation to any cooperative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank.

(a) "co-operative bank" and "primary agricultural credit society" shall have the meanings respectively assigned to them in Part V of the Banking Regulation Act, 1949 (10 of 1949);

(b) "primary co-operative agricultural and rural development bank" means a society having its area of operation confined to a taluk and the principal object of which is to provide for long-term credit for agricultural and rural development activities."

Therefore, the intention of the legislature is clear. If a Co-operative Bank is exclusively carrying on banking business, then the income derived from the said business cannot be deducted in computing the total income of the assessee. The said income is liable for tax. A Co-operative bank as defined under the Banking Regulation Act includes the primary agricultural credit society or a primary cooperative agricultural and rural development bank. The Legislature did not want to deny the said benefits to a primary agricultural credit society or a primary cooperative agricultural and rural development bank. They did not want to extend the said benefit to a Co-operative bank which is exclusively carrying on banking business i.e. the purport of this amendment. Therefore, as the assessee is not a Co-operative bank carrying on exclusively banking business and as it does not possess a licence from Reserve Bank of India to carry on business, it is not a Co-operative bank. It is a Co-operative society which also carries on the business of lending money to its members which is covered under Section 80P(2)(a)(i) i.e. carrying on the business of banking for providing credit facilities to its members. The object of the aforesaid amendment is not to exclude the benefit extended under Section 80P(1) to such society.”

8. Following the aforesaid judgments of the Hon’ble Gujarat High Court and Hon’ble Karnataka High Court and in the absence of any contrary decision brought to our notice by the Id. D.R., the impugned decision of the Id. CIT(A) is hereby affirmed. As a consequence, the appeal of the Revenue is dismissed.”

As the facts and the issue involved in the appeal before us, i.e the entitlement of the assessee for claim of deduction u/s 80P(2)(a)(i) remains the same as were there before the Tribunal in the aforesaid case of the assessee for A.Y. 2010-11, therefore, finding no reason much the less any justification for taking a different view we respectfully follow the same. Accordingly, we herein finding no infirmity in the view taken by the CIT(A) uphold his order. The **Grounds of appeal Nos. (i) and (ii)** are dismissed.

8. The **Ground of appeal No. (iii)** being general in nature is dismissed as not pressed.

9. Resultantly, the appeal filed by the revenue is dismissed.

Order pronounced in the open court on 01.10.2021

Sd/-
(Pramod Kumar)
VICE PRESIDENT

Sd/-
(Ravish Sood)
JUDICIAL MEMBER

Mumbai;

Dated: 01.10.2021

*PS: Rohit

Copy of the Order forwarded to :

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

BY ORDER,
//True Copy//

(Sr. Private Secretary)
ITAT, Mumbai