

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "SMC", PUNE

BEFORE SHRI R.S. SYAL, VICE PRESIDENT

आयकर अपील सं. / ITA No.1502/PUN/2018

निर्धारण वर्ष / Assessment Year : 2015-16

Nivruttisheth Gramin Bigarsheti Sahakari Patsanstha Ltd., Shiroli, Tal. Junnar, Dist. Pune PAN : AAJAS0749L	Vs.	ITO, Ward-10(5), Akurdi, Pune
(Appellant)		(Respondent)

Appellant by Ms. Deepa Khare
Respondent by Shri M.G. Jasnani

Date of hearing 14-03-2022
Date of pronouncement 15-03-2022

आदेश / ORDER

PER R.S.SYAL, VP :

This appeal by the assessee is directed against the order passed by the CIT(A)-6, Pune on 28-06-2018 in relation to the assessment year 2015-16.

2. The only issue raised in this appeal is against the denial of deduction u/s.80P of the Income-tax Act, 1961 (hereinafter also called 'the Act').

3. Briefly stated, the facts of the case are that the assessee is a co-operative credit society providing credit facilities to its members. A return was filed declaring Nil income after claiming deduction of Rs.45,71,701/- u/s.80P of the Act. The Assessing

Officer (AO) observed that the assessee was accepting deposits from its regular members and also nominal members. Considering the fact that there was a difference between the rights and obligations of the regular and nominal members, the AO held that the nominal members could not be considered as 'members' for the purpose of deduction u/s.80P. He also noted that the assessee earned interest income on deposits made with the banks, which was not eligible for deduction u/s.80P of the Act. In the ultimate analysis, he denied the benefit of deduction u/s.80P, which got echoed in the first appeal.

4. I have heard both the sides and gone through the relevant material on record. The assessee Co-operative society is admittedly engaged in carrying on the business of banking and providing credit facilities. Section 80P(2)(a)(i) provides that in the case of co-operative society engaged in carrying on the business of banking or providing credit facilities to its members, the whole of the amount of profits and gains of business attributable to such activities shall be deductible in the computation of total income. The claim of assessee for deduction has been negated by the authorities below, *inter alia*, on the ground that it admitted certain Members, described as 'Nominal Members', who were neither

entitled to dividend nor voting rights. It is relevant to note that the term 'Member' has been defined u/s 2(19) in the Maharashtra Act to mean: "a person joining in an application for the registration of a Co-operative society which is subsequently registered, or a person duly admitted to membership of a society after registration and includes a *nominal, associate or sympathizer member*". On going through the above definition of 'Member', it becomes overt that the term 'Member' also includes a Nominal Member. Once it is accepted that the assessee, governed by the Maharashtra Act, made advances to certain Nominal Members from whom interest income was earned, there can be no doubt whatsoever that the deduction u/s 80P(2)(a)(i) has to be allowed. The Department has heavily relied on the judgment of Hon'ble Supreme Court in the case of *Citizen Co-operative Society Ltd. vs. ACIT (supra)*. That was a case in which Andhra Pradesh Mutually Aided Co-operative Society Act, 1995 was under consideration, which did not admit 'Nominal Member' within the ambit of the term 'Member'. Recently, the Hon'ble Supreme Court in *Mavilayi Service Co-operative Bank Ltd. vs. CIT (2021) 123 taxmann.com 161 (SC)* considered its earlier judgment in *Citizen Co-operative Society Ltd. vs. ACIT (supra)* vide para 46 of its order. Taking note of the fact

that the *Citizen Co-operative Society Ltd. vs. ACIT (supra)* judgment dealt with the Andhra Act wherein the term 'Member' did not include Nominal Member, the Hon'ble Supreme Court in *Mavilayi Service (supra)* held that the interest on loans given to Nominal Members under the Kerala Act was eligible u/s 80P(2)(a)(i) of the Act as the term 'Member' under the Kerala Act included 'Nominal Members'. In view of the foregoing discussion, it is evident that when the loans are given to Nominal Members and the relevant State Act includes, 'Nominal Member' within the purview of 'Member', there can be no question of denial of benefit u/s 80P(2)(a)(i). The Hon'ble jurisdictional High Court in *Jalgaon District Central Co-operative Bank Ltd. VS. Union of India (2004) 134 Taxman 1 (Bom)* has held that the definition of 'Member' given in section 2(19) of the Maharashtra Act takes within its sweep even a nominal member and there is no distinction between a duly registered member and nominal member. In view of the above discussion, I overturn the impugned order on this score.

5. The second issue taken note of by the authorities below is about the assessee earning interest from fixed deposits held with co-operative bank. This issue is no more *res integra* by virtue of an

order of the Pune Bench dated 28-11-2018 in the case of *ITO Vs. Sureshdada Jain Nagri Sahakari Patsanstha* (ITA No.589/PN/2016) wherein the decision of CIT(A) allowing deduction u/s.80P was approved by the Tribunal. I find the said decision is squarely applicable to the facts of the instant case.

6. Further, it is noticed that the Pune Bench of the Tribunal in the case of *Shri Laxmi Narayan Nagari Sahakari Pat Sanstha Maryadit Vs. ITO* (ITA No.604/PN/2014) allowed similar deduction. In the said case, the Tribunal discussed the contrary views expressed by the Hon'ble Karnataka High Court in *Tumkur Merchants Souharda Credit Cooperative Ltd. Vs. ITO* (2015) 230 taxmann 309 (Kar.) allowing the deduction u/s. 80P on interest income and the Hon'ble Delhi High Court in *Mantola Cooperative Thrift Credit Society Ltd. Vs. CIT* (2014) 110 DTR 89 (Delhi) not allowing deduction u/s.80P on interest income, earned from banks under similar circumstances. Both the Hon'ble High Courts have taken into consideration the *ratio* laid down in the case of *Totgar's Cooperative Sale Society Ltd.* 322 ITR 283 (SC). There being no direct judgment from the Hon'ble jurisdictional High Court on the point, the Tribunal in *Shri Laxmi Narayan Nagari Sahakari Pat Sanstha Maryadit* (*supra*) preferred to go with the view taken in

favour of the assessee by the Hon'ble Karnataka High Court in the case of *Tumkur Merchants Souharda Credit Cooperative Ltd.* (*supra*).

7. In the absence of there being any change in the legal position prevailing on this issue and respectfully following the view taken by the Pune Bench of the Tribunal in *ITO Vs. Sureshdada Jain Nagri Sahakari Patsanstha* (*supra*) and host of other orders reiterating the similar view, I set-aside the impugned order and direct to grant the deduction.

8. In the result, the appeal is allowed.

Order pronounced in the Open Court on 15th March, 2022.

Sd/-
(R.S.SYAL)
उपाध्यक्ष/ VICE PRESIDENT

पुणे Pune; दिनांक Dated : 15th March, 2022
Satish

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

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. The CIT(A)-6, Pune
4. The Pr.CIT-5, Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "SMC"
/ DR 'SMC', ITAT, Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune

		Date	
1.	Draft dictated on	14-03-2022	Sr.PS
2.	Draft placed before author	15-03-2022	Sr.PS
3.	Draft proposed & placed before the second member	--	JM
4.	Draft discussed/approved by Second Member.	--	JM
5.	Approved Draft comes to the Sr.PS/PS		Sr.PS
6.	Kept for pronouncement on		Sr.PS
7.	Date of uploading order		Sr.PS
8.	File sent to the Bench Clerk		Sr.PS
9.	Date on which file goes to the Head Clerk		
10.	Date on which file goes to the A.R.		
11.	Date of dispatch of Order.		

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