

IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” BENCH, MUMBAI
BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER &
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No. 3659/Mum/2019
(A.Y: 2016-17)

Choice Co-op Credit Society Ltd Shop No. 9, K-3, BMC Colony, Goregaon, Mumbai – 400065.	Vs.	ITO Ward 31(1)(3) Pratyakshakar Bhavan C-13, Bandra Kurla Complex, Bandra East Mumbai – 400051.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AABAC4576H		
Appellant	..	Respondent

Appellant by :	None
Respondent by :	Ms.Neena Jeph. Sr. DR

Date of Hearing	15.03.2022
Date of Pronouncement	22.03.2022

आदेश / O R D E R

PER PAVAN KUMAR GADALE JM:

The assessee has filed the appeal against the order of the Commissioner of Income Tax (Appeals)-42 passed u/s 143(3) and 250 of the Act. The assessee has raised the following grounds of appeal.

The Ld. AO has erred in:

- 1. Denying the exemption claimed by appellant u/s 80P of the Act on the ground that the activity of the Co-op society is in violation of the Co-op societies Act and co-op society rules*

as the principle of mutuality is absent, whereas as per facts and circumstances the addition should not be made.

2. The brief facts of the case are that, the assessee is a mutually aided cooperative society engaged in the business of banking or providing the credit facility to their members and the activities are confined to members only who are making deposits and availing loans and surplus if any is distributed among the members only. The assessee has filed the return of income for the A.Y 2016-17 on 17.10.2017 with a total income of Rs.Nil after claiming deduction U/sec 80P of the Act and the return of income was processed u/s 143(1) of the Act. Subsequently, the case was selected for scrutiny under the CASS and notice u/s 143(2) and 142(1) of the Act along with the questionnaire are issued. The assessee has filed the details online on the claim of deduction u/s 80P of the Act in respect of income. Whereas the A.O on perusal of the facts dealt on the Bylaws, issues with respect to concept of mutuality principle, members and nominal members rights. Finally the A.O has relied on the Hon'ble Supreme Court decision on the category of members and observed at page 3 Para 4.6 as under:

4.6 As discussed above, on perusal of the by-laws of the society, it is noted that society caters to two distinct categories of members. The first category is that of resident members or ordinary members. The second category is that of nominal members. On further perusal of By-laws of the society, it is gathered that the nominal members does not have equal rights compared to ordinary members. They are not allowed to vote and even not allowed to share annual

dividend etc. Therefore, both in form and substance, the activity is in violation of the Cooperative Societies Act and Cooperative Society Rules as the principle of mutuality is missing in the instant case. The said facts has been already decided by the Hon'ble Apex court in the case of Citizen Co-operative Society Ltd Vs. ACIT, Circle-9(1), Hyderabad. [2017184 taxmann.com114(SC). In light of the above discussion the claim of 80P amounting to Rs. 30,64,326/- is hereby disallowed and added back to the total income of the assessee The penalty proceedings u/s 271(1)(c) of the Act is hereby also initiated for filing inaccurate particulars of income.

3. The A.O has passed the order u/s 143(3) of the Act dated 21.12.2018 with the assessed income of Rs.30,64,326/- Aggrieved by the order, the assessee has filed an appeal before the CIT(A). Whereas, the CIT(A) considered the grounds of appeal, submissions of the assessee and findings of the A.O and was not satisfied with the explanations and relied on the decision of the Hon'ble Supreme Court on the disputed issue and dismissed the appeal. Aggrieved by the CIT(A)order, the assessee has filed an appeal before the Honble Tribunal.

4. We heard the Ld. DR submissions and perused the material on record as none appeared on behalf of the assessee. The sole crux of the disputed issue is with respect to disallowance of deduction U/sec 80 P of the Act as the principle of mutuality is absent in the cooperative society due to distinction in the rights of ordinary members and the nominal members. We find that assessee has submitted the details in support of claim of deduction U/sec80P of the Act. The A.O. has observed that it is a mutually aided cooperative society

and activities are confined to members only. Whereas the assessee being a cooperative society provided services to its nominal members who does not have equal rights compared to ordinary members and the concept of mutuality principle is nullified. The CIT(A) was not satisfied with explanations of the assessee on the concept of mutuality and relied on the the Hon'ble Supreme Court decision in the case of Citizen Cooperative Society Vs. ACIT 84 taxmann.com 114(SC) and observed at page 3 Para 8.1 to 9 as under:

8.1 I have considered the submission of the assessee, carefully gone through the order of the AG, perused the material on record, and referred to the case laws relied upon by the appellant and the AG.

8.2 During the course of appellate proceedings, the AR had fairly admitted that this issue is squarely covered by the decision of the Hon'ble Apex Court in the case of Citizen Co-operative Society Ltd Vs. ACIT, Circle-9(1), Hyderabad. [2017]84 taxmann.com114(SC) wherein assessee was catering to two distinct categories, viz. (1) ordinary members and (2) nominal members who made deposits with assessee for obtaining loans, who were not members in real sense and depositors and borrowers were quite distinct and hence the Hon'ble Apex Court has held that, in reality, such activity of assessee was that of finance business and could not be termed as cooperative society.

8.3 Therefore, respectfully following the decision of the Hon'ble Apex Court in the case of Citizen Co-operative Society Ltd Vs. ACIT (Supra) disallowance of deduction of Rs. 30,64,326/- u/s 80P of the Act by AO is upheld.

9. In the sum, the appeal of the appellant is dismissed.

5. We considering the facts, circumstances and the ratio of the Hon'ble Supreme Court decision do not find any infirmity in the order of the CIT(A) and uphold the same and dismiss the grounds of appeal of the assessee.

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

Order pronounced in the open court on 22.03.2022.

Sd/-

(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Sd/-

(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated 22.03.2022

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.

(Asst. Registrar)
ITAT, Mumbai