

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'D' BENCH  
MUMBAI**

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

**ITA No.6512/Mum/2019  
(Assessment Year :2009-10)**

The Municipal Co-op Bank Ltd., Municipal Bank Bhavan 245, P.D. Mello Road Fort, Mumbai-400 001	Vs.	DCIT-1(3)(2) 560, Aaykar Bhavan Mumbai - 400020
<b>PAN/GIR No.AAAAT3942P</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

Assessee by	Shri Ajay Singh
Revenue by	Shri T Shankar
<b>Date of Hearing</b>	<b>17/05/2022</b>
<b>Date of Pronouncement</b>	<b>23/05/2022</b>

**आदेश / O R D E R**

**PER M. BALAGANESH (A.M.):**

This appeal in ITA No.6512/Mum/2019 for A.Y.2009-10 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-3, Mumbai in appeal No.CIT(A)-3/IT-10249/2017-18 dated 09/08/2019 (Id. CIT(A) in short) against the order of assessment passed u/s.143(3) r.w.s. 147 of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 02/12/2016 by the Id. Dy. Commissioner of Income Tax – 1(3)(2), Mumbai (hereinafter referred to as Id. AO).

2. We find that assessee had raised the grounds before us challenging the confirmation of addition made by the Id. AO in the sum of Rs.2,09,32,478/- being the amounts received by the assessee from its members towards Surety Guarantee Fund (SGF).

2.1. We also find that assessee had raised an additional ground challenging the validity of re-assessment vide its letter dated 01/07/2021. The additional grounds raised by the assessee are hereby admitted as it goes to the root of the matter and the facts relevant for its adjudication are available on record.

2.2. We first proceed to address the issue raised in the original ground of appeal on merits of the addition.

3. We have heard rival submissions and perused the materials available on record. We find that assessee is a salary earners primary urban co-operative bank (non-scheduled) and is a society registered under the Maharashtra Co-operative Societies Act, 1960. The assessee has been granted the licence by the Reserve Bank of India (RBI) to carry on the business of banking. Only an employee of the Municipal Corporation of Greater Mumbai who is in continuous service is entitled to membership of the assessee bank and related privileges thereto. The assessee bank accepts deposits from general public. The sole purpose of assessee is to utilise the deposits in the form of giving loans to members and also carry on activities for the benefit of the members. As per the mutual agreement between the members and the assessee bank by way of resolution passed in general meeting, whenever the assessee bank gives any loan to the member, a part of the loan amount would be retained by the assessee by crediting to Surety Guarantee Fund (SGF) by way of contribution by the

member to the SGF. The funds lying in SGF account were utilised by the assessee by making investment in deposits which had earned interest income and said interest income had been duly offered to tax by the assessee voluntarily in the return of income, even though the interest component is added to the value of SGF as a balance sheet item in the books of accounts. It is not in dispute that SGF is created for specific purpose of utilising it in case of default in repayment of loan by borrower. The members continued to be liable for whole amount of the loan amount.

3.1. We find that assessee during the year had credited a sum of Rs.2,09,32,478/- to the SGF account and as stated supra, it is reflected in the balance sheet under liability side as under:-

**Surety Guarantee Fund:-**

<b><u>Sr.No.</u></b>	<b><u>Particulars</u></b>	<b><u>Amount (inRs.)</u></b>	
		<b><u>31/03/2009</u></b>	<b><u>31/03/2008</u></b>
1.	Opening Balance – Transfer from BDDR	11,02,01,000	0
2.	Addition during the year	2,09,32,478	1,74,72,813
3.	Add interest credited during the year	84,38,358	9,36,175
4.	Add appropriation	59,00,000	0
5.	Less transfer to BDDR	0	1,84,08,988
6.	Closing Balance	14,54,71,836	0

3.2. The short point of dispute in this appeal is whether the amounts received during the year towards SGF in the sum of Rs.2,09,32,478/- could be brought to tax. We find that surety guarantee fund is governed on principle of mutuality as admittedly the loans are given by the assessee only to its members and a part of such loan is retained by the assessee and credited to SGF account. Hence, the entire funds lying in the SGF account would represent the amounts received from its members only. On this fact, there is absolutely no dispute. Hence, the principle of mutuality would squarely come into operation, meaning thereby, the same cannot be subjected to any tax. However, the interest accrued on the SGF fund in the sum of Rs.84,38,358/- during the year had been duly offered to tax voluntarily in the return of income by the assessee bank, as it is not received from the members though the funds for making investment belongs to members.

3.4. We find that the primary objective of the SGF is to create a mutual benefit fund / a common pool among its members to help tide over any losses arising to the assessee due to any loan / advance given by the assessee bank turning bad / irrecoverable. We find that assessee has been receiving similar type of receipts from its members towards SGF right from A.Y.1986-87 onwards. The following table containing the entire receipts in SGF account, its appropriation, interest credited thereon, write off during the year or transfer to BDDR, closing balance and its treatment given in the assessment proceedings up to A.Y.2020-2021 are as under:-

**The Municipal Co-op Bank Ltd, Mumbai**  
**Summary statement of Surety Guarantee Fund since**  
**Inception in Balance Sheet Liability side(Amt in Rs.)**

Sr. No	F.Y	AY	Opening Balance in Balance sheet	Add:- Appropriation in balance sheet	Credit during the year from members	Add:- Interest on SGF by debiting PL and added in balance sheet	Less:- write off of last year and during the year/ Transfer to BDDR	Add:- Recovery from written off accounts	Closing Bal in balance sheet	Assessment Position	
1	1985-86	1986-87	3,00,000	-	-	-	-	-	3,00,000		
2	1986-87	1987-88	3,00,000	3,00,000	3,24,735	-	-	-	9,24,735		
3	1987-88	1988-89	9,24,735	5,00,000	5,83,326	-	-	-	20,08,061		
4	1988-89	1989-90	20,08,061	10,00,000	10,93,369	-	-	-	41,01,430		
5	1989-90	1990-91	41,01,430	10,00,000	12,39,046	-	-	-	63,40,476		
6	1990-91	1991-92	63,40,476	20,00,000	13,18,990	-	-	-	96,59,466		
7	1991-92	1992-93	96,59,466	10,00,000	8,88,986	-	-	-	1,15,48,452		
8	1992-93	1993-94	1,15,48,452	8,00,000	15,64,792	12,71,758	-	-	1,51,85,002		
9	1993-94	1994-95	1,51,85,002	10,00,000	17,58,824	16,62,395	-	-	1,96,06,221		
10	1994-95	1995-96	1,96,06,221	25,00,000	25,55,293	22,02,799	-	-	2,68,64,313		
11	1995-96	1996-97	2,68,64,313	30,00,000	32,09,611	30,46,182	-	-	3,61,20,106		
12	1996-97	1997-98	3,61,20,106	35,00,000	31,87,525	39,95,224	-	-	4,68,02,855		
13	1997-98	1998-99	4,68,02,855	1,00,00,000	33,58,628	54,26,911	-	-	6,55,88,394		
14	1998-99	1999-00	6,55,88,394	50,00,000	37,50,591	70,55,136	-	-	8,13,94,121		
15	1999-00	2000-01	8,13,94,121	20,00,000	36,43,475	84,81,667	-	-	9,55,19,263		
16	2000-01	2001-02	9,55,19,263	5,00,000	59,11,396	98,66,378	-	-	11,17,97,037		
17	2001-02	2002-03	11,17,97,037	26,00,000	72,33,028	1,17,77,771	-	-	13,34,07,836		
18	2002-03	2003-04	13,34,07,836	1,00,000	93,53,442	1,37,87,312	15,66,48,590	-	-		
19	2003-04	2004-05	-	75,00,000	1,01,38,735	9,60,162	1,85,98,897	-	-	-	
20	2004-05	2005-06	-	-	1,53,35,564	6,86,414	1,60,21,978	-	-	-	
21	2005-06	2006-07	-	-	2,24,99,052	9,48,185	2,34,47,237	-	-	-	

Upto AY 2006-07 Under section 80P entire amount of taxable income allowed as a deduction

(Amt in Rs.)											
Sr. No.	F.Y	AY	Opening Balance in Balance sheet	Add:- Appropriation In balance sheet	Credit during the year from members	Add:- Interest on SGF by debiting PL and added in balance sheet	Less:- write off of last year and during the year/ Transfer to BDDR	Add:- Recovery from written off accounts	Closing Bal in balance sheet	Assessment Position	
22	2006-07	2007-08	-	-	1,89,49,463	7,84,952	1,97,34,415 * Amount transfer to BDDR	-	-	Assessment closed for Assessment order 143(3) as per ITAT Order dated 22/06/2018. Tax refund of Rs 25,78,170 received by the Bank in Sept 2018.	
23	2007-08	2008-09	-	-	1,74,72,813	9,36,175	1,84,08,988	-	-	Assessment closed with Assessment order 143(3).	
24	2008-09	2009-10	11,02,01,000 * Amt transfer from BDDR but shown as opening in Annual report	59,00,000	<b>2,09,32,478</b>	84,38,358	-	-	14,54,71,836	ITAT case in process for credit (addition) during the year of Rs. 2,09,32,478/-.	
25	2009-10	2010-11	14,54,71,836	-	2,15,86,346	1,63,70,818	-	-	18,34,29,000	Assessment closed with Assessment order 143(3). Refund allowed of Rs. 3,74,090	
26	2010-11	2011-12	18,34,29,000	-	3,20,61,778	-	-	-	21,54,90,778	As per intimation order 143(1) tax demanded of Rs. 3.30 Cr. However the demand is rectified/ deleted on and the refund credited of Rs. 4.1 cr.	

Sr. No.	F.Y	AY	Opening Balance in Balance sheet	Add:- Appropriation In balance sheet	Credit during the year from members	Add:- Interest on SGF by debiting PL and added in balance sheet	Less:- write off of last year and during the year/ Transfer to BDDR	Add:- Recovery from written off accounts	Closing Bal in balance sheet	Assessment Position
27	2011-12	2012-13	21,54,90,778	-	4,08,32,463	-	-	-	25,63,23,241	143(3) assessment order received. Refund credited of Rs. 85.58 lakh.
28	2012-13	2013-14	25,63,23,241	-	3,95,56,003	-	3,93,57,351	22,88,719	25,88,10,612	CIT(A) in process for some other disallowance. No addition made for SGF.
29	2013-14	2014-15	25,88,10,612	-	14556856.02 *addition amt as per Annual report Rs.1,45,56,856.02 which incl amt from BDDR of Rs.1,32,022	-	4,40,40,214	<b>54,19,362</b>	23,47,46,616	Recovery from W/off accounts added by AO. CIT(A) in process.
30	2014-15	2015-16	23,47,46,616	-	3,83,92,214	-	1,90,92,577	70,49,663	26,10,95,916	143(1) intimation received income accepted by AO. Refund allowed of Rs. 4,49,58,214
31	2015-16	2016-17	26,10,95,916	-	5,66,92,432	2,54,78,595	2,93,82,022	63,83,188	32,02,68,108	Assessment closed with CIT(A) order for some other disallowances. Refund allowed of Rs. 21,710/-
32	2016-17	2017-18	32,02,68,108	-	8,84,92,191	2,53,00,588	-	73,34,336	44,13,95,223	CIT(A) in process for some other disallowance. No addition made for SGF.
33	2017-18	2018-19	44,13,95,223	-	13,28,76,092	3,63,76,581	5,43,61,697	1,35,22,250	56,98,08,449	CIT(A) in process for some other disallowance. No addition made for SGF.

Sr. No.	F.Y	AY	Opening Balance in Balance sheet	Add:- Appropriation In balance sheet	Credit during the year from members	Add:- Interest on SGF by debiting PL and added in balance sheet	Less:- write off oflast year and during the year/ Transfer to BDDR	Add:- Recovery from writtenoff accounts	Closing Bal in balnce sheet	Assessment Position
34	2018-19	2019-20	56,98,08,449	-	7,44,96,209	-	2,53,77,634	1,38,03,366	63,27,30,390	143(1) intimation received with some other addition. No addition made for SGF.
35	2019-20	2020-21	63,27,30,390	-	5,51,75,401	-	7,82,70,390	1,96,84,302	62,93,19,704	143(1) intimation received with some other addition. No addition made for SGF.

3.6. The facts stated in the above tabulation were not disputed or controverted by the Id. DR before us. The aforesaid tabulation is very evident that the very same receipt from members towards SGF account has been accepted as capital receipts by the Id. AO in earlier as well as in subsequent assessment years. There is no reason to take a divergent stand by the Id. AO during the year under consideration. The principle of consistency is required to be maintained by the Revenue. Reliance in this regard is placed on the decision of the Hon'ble Supreme Court in the case of Radhasoami Satsang reported in 193 ITR 321(SC). The facts prevailing in earlier years and subsequent years are exactly identical to the facts in the year under consideration. Hence, we have no hesitation to hold that the receipts from members in the sum of Rs.2,09,32,478/- being amount received from members towards SGF as capital receipts not chargeable to tax. Accordingly, the original grounds raised by the assessee on merits are allowed. Since the relief is granted to the assessee on merits, the legal ground raised by the assessee challenging the validity of reopening need not be adjudicated and is hereby left open. Accordingly, the appeal of the assessee is allowed.

**4. In the result, appeal of the assessee is allowed.**

Order pronounced on 23/05/2022 by way of proper mentioning  
in the notice board.

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

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

Mumbai; Dated 23/05/2022  
KARUNA, *sr.ps*

**Copy of the Order forwarded to :**

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

//True Copy//

BY ORDER,

(Asstt. Registrar)  
ITAT, Mumbai