

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH “A”, MUMBAI**

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER
AND
SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER**

**ITA No.731/M/2022
Assessment Year: 2014-15**

M/s. Shree Kulswami Co-op Credit Society Ltd., F-3/1, A.P.M.C., Central Facility Building, Sector – 19, APMC Market, Turbhe, Navi Mumbai- 400 705 PAN: AAAAS2059L	Vs.	Income Tax Officer, Ward – 28(3)(2), Vashi Railway Station Complex, Tower No.6, Vashi, Navi Mumbai-400 703
(Appellant)		(Respondent)

Present for:

Assessee by : None
Revenue by : Shri Manoj Sinha, D.R.

Date of Hearing : 29 . 08 . 2022
Date of Pronouncement : 29 . 08 . 2022

O R D E R

Per : Kuldip Singh, Judicial Member:

The appellant, M/s. Shree Kulswami Co-op Credit Society Ltd. (hereinafter referred to as ‘the assessee’) by filing the present appeal, sought to set aside the impugned order dated 10.03.2022 passed by National Faceless Appeal Centre(NFAC) [Commissioner of Income Tax (Appeals), Delhi] qua the assessment year 2014-15 on the grounds inter alia that :-

“1. On the facts and in the circumstances of the case and in law the Ld. CIT(A) erred by observing that the interest income received by the

Assessee Society from its mandatory investment is "Income from Other Sources" and thereby disallowing the said interest income u/s. 80P(2)(d) of the Income Tax Act, 1961.

2. On the facts and in the circumstances of the case and in law the CIT(A) has erred in observing that the investment in securities is not primary object of the Society and assessee has made investments out of surplus funds with intention of earning interest income while disallowing the claim of deduction.

3. On the facts and in the circumstances of the case and in law the CIT(A) has erred in relying on the HonTMe Apex Court decision in the case of "Totgar's Co-operative Sale Society Ltd. v/s. ITO (20110)322 ITR 283 (SC).

4. The appellant craves leave to add, amend, alter, modify, substitute, vary, delete, and rescind all or any of the above ground(s) of appeal before or at the time hearing."

2. Briefly stated facts necessary for adjudication of the controversy at hand are : assessee being a co-operative society registered under the Co-operative Society Act is into the business of providing credit facilities to its members. Assessee society has claimed its gross total income at Rs.2,67,25,499/- and claimed deduction under section 80P of the Income Tax Act, 1961 (for short 'the Act') to the tune of Rs.2,64,85,491/- and declared the total income at Rs.2,40,008/-. Declining the contentions raised by the assessee Assessing Officer (AO) proceeded to hold that assessee is a cooperative bank other than a primary agricultural credit society or a primary co-operative and rural development bank, fulfilling the conditions laid down under 56c(ccv) of part V of Banking Regulation Act, 1949 and as such is not eligible for claiming deduction under section 80P of the Act claimed by it and thereby framed the assessment under section 143(3) of the Act.

3. Assessee carried the matter before the Ld. CIT(A) who has though allowed the appeal but held that the interest income

received by the assessee society from its mandatory investment is income from other sources and thereby disallowed the interest income under section 80P(2)(d) of the Act. Feeling aggrieved, the assessee has come up before the Tribunal by way of filing present appeal.

4. We have heard the Ld. Authorised Representatives of the parties to the appeal, perused the orders passed by the Ld. Lower Revenue Authorities and documents available on record in the light of the facts and circumstances of the case and law applicable thereto.

5. Undisputedly assessee society has claimed deduction to the tune of Rs.2,64,85,491/- under section 80P of the Act being a cooperative credit society. It is also not in dispute that the assessee society has categorically claimed that it has been dealing with members of the society only and not with the general public.

6. However, Ld. CIT(A) in para 6 and 7 of the impugned order has taken the view that the assessee is a cooperative bank other than a primary agricultural credit society or a primary co-operative and rural development bank and as such fulfills the condition 56c(ccv) of part V of the Banking Regulation Act, 1949 being a cooperative bank, thus not eligible for deduction under section 80P of the Act by returning following findings:

***“The AR Shri B.R.Sawant of the assessee appeared on 15.12.2016. He failed to provide PAN and/or other documents to prove identity of members of the assessee society. The AR also failed to substantiate that entire transactions have been carried out with members only.*”**

The AR also stated that there are around 78,000 members spread over 4 districts and identification of individual entries manually is little difficult.

It is surprising to note that the assessee is not able to submit identification of members, howsoever large members it may.

In this regard summon u/s. 131 issued to the Manager (I.T. System) and the Chief Account of the assessee society vide summon dated 19.12.2016. Shri Balasaheb J Chavan, Asstt. Manager EDP and Shri Chandrakant Chavan, Chief Accountant of the assessee society informed that all the data related to members and loan are with Head Office of the assessee at Vashi, in electronic form. Therefore, the clarification of the AR of the society is not acceptable that manually it is not possible and moreover the assessee was given sufficient opportunities to establish their claim that entire transactions were with the assessee and assessee's members only. Therefore, the above referred judgment relied by the assessee in the case of Quepem Urban Cooperative Credit Society Ltd. v/s. ACIT(2015) 120 DTR(Bom.)153 is not available to the assessee for any relief.

*1. Further, against the order of the Hon'ble Bombay High Court, Department has filed SLP before the Hon'ble Supreme Court Of India vide %*jjSLP(C) No. 8296 of 2015 and the same appeal is still pending before the Hon'ble Apex Court of India. Here it is pertinent to mention that in the case of Commissioner of Income Tax , Belgaum vs Biluru Gurubasawa Pittina Sahakari Sangha Niyamitha Bagalkot the Hon'ble Karnataka High Court held that since the assessee was a credit society, engaged in providing credit facilities to its members only, it was entitled to claim deduction under section 80P(2)(a)(i) of the Income Tax Act. 1961. Against the order of the Hon'ble Karnataka High Court the revenue had filed SLP before the Hon'ble Supreme Court and same had been admitted on merit vide SLP(C) No. 9958 of 2015 dated 06.07.2015. The Revenue has not accepted the order of Hon'ble ITAT, Mumbai in the assessee's case on same issue. We are in appeal before the Hon'ble Bombay High Court for AY. 2007-08, 2008-09 & 2009-10. The assessee further relied on the precedence laid down in the case of Bank of Baroda Vs H. C. Shrivastava (2002) 256 ITR 385 (Bom.) The fact of the above referred case was different from the present case as the department has not accepted the decisions of the Appellate Tribunals and Hon'ble High Courts and department is in appeal before the Hon'ble Apex Court on the same issue.*

2. In view of the above discussion it is hereby held that the assessee is a Co-operative Bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank. The assessee fulfills the conditions laid down u/s 56(c)(ccv) of part V of the Banking Regulation Act 1949 for being a co-operative bank. Thus under sub section”

7. Now the sole issue to be decided by the Ld. CIT(A) was as to whether assessee is a cooperative credit society or a cooperative bank. Though the assessee has come up with the specific plea that it is a cooperative society having carrying out transactions with members only, but as per findings returned by Ld. CIT(A) assessee has failed to substantiate this issue as the Ld. A.R. for the assessee stated before the Ld. CIT(A) that “there are around 78,000 members of the assessee society spread over 4 districts and identification of individual entries manually is little difficult” .

8. We are of the considered view that when the issue was cropped up before the Ld. CIT(A) that the assessee has failed to prove that it is a cooperative credit society but a cooperative bank, the onus was on the assessee to prove it by producing entire records/evidence that it has been transacting with members only and not the general public as in the case of cooperative banks. So we are of the considered view that the entire issue is required to be revisited by the AO by providing opportunity of being heard to the assessee who shall produce the evidence to prove that it is a cooperative society and has been transacting with members only, eligible for deduction under section 80P of the act. In case the assessee is able to prove this fact the AO shall allow the deduction under section 80P of the Act in view of the order passed by co-

ordinate Bench of the Tribunal in case of ITA No.5741/M/2018 for A.Y. 2014-15 order dated 03.12.2018.

9. In view of what has been discussed above appeal filed by the assessee is hereby allowed for statistical purposes.

Order pronounced in the open court on 29.08.2022.

**Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER**

**Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

Mumbai, Dated: 29.08.2022.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.