

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

**BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER &
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA Nos. 2283 & 2284/Mum/2022
(A.Ys.2017-18 & 2018-19)**

Rashtriya Chemicals and Fertilizers Employee Co-op. Credit Society, Type 1A/21, 481/484, Chembur, Mumbai 400 074	Vs.	The Income Tax Officer, Ward 27(3)(1) Room No.442, 4 th Floor, Tower No. 6, Vashi, Railway Station Commercial Complex, Vashi, Navi Mumbai 400 703
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AAAAR1076N		
Appellant	..	Respondent

Appellant by :	Mayank Thoshar
Respondent by :	Megha Bhargav

Date of Hearing	01.12.2022
Date of Pronouncement	06.12.2022

आदेश / O R D E R

Per Bench:

Both the appeals filed by the assessee pertains to different years directed against the different orders of NAFC, Delhi, dated 15.07.2022 and 19.07.2022 respectively. Both these appeals are based on common issue on identical facts, therefore, for the sake of convenience these appeals are adjudicated together by taking ITA No.2283/Mum/2022 as

lead case and its finding will be applied mutatis mutandis to the other case. The assessee raised the following grounds before us:

I General

1. *In the facts and the circumstance of the case and in law, the Commissioner of Income-Tax (Appeals), NFAC (hereinafter referred to as the "the CIT(A)') has grossly erred in dismissing the appeal of the Appellant Society vide order dated July 15, 2022.*
2. *The CIT(A) has grossly erred in not appreciating the explanation offered by the Appellant Society and denying the deduction claimed u/s 80P of the Act and thereby confirming addition of Rs.1,23,58,851 made by the Assessing Officer in the assessment order*
3. *In the facts, circumstances and merits of the case and in law, such order deserves to be quashed.*

II Claim of deduction u/s 80P of the Act

4. *In the facts and circumstances of the case, the CIT(A) has misdirected himself in upholding the disallowance of deduction made by the Assessing Officer of Rs.1,02,90,946 claimed u/s 80P(2)(a) of the Act The CIT(A) failed to appreciate that the Appellant Society was engaged in the business of extending credit facility to it members only and as such, could not by any stretch of imagination be considered as a co-operative bank*
5. *In the facts and circumstances of the case, the CIT(A) erred in upholding the disallowance of deduction made by the Assessing Officer of Rs.47,356 claimed u/s 80P(2)(c) of the Act. The CIT(A) failed to appreciate that the Appellant Society was within the monetary limit as provided by the said section and was, therefore, eligible to claim deduction under the said sub-section as such*
6. *In the facts and circumstances of the case, the CIT(A) erred in upholding the disallowance of deduction made by the Assessing Officer of Rs. 20,20,549 claimed u/s 80P(2)(d) of the Act The CIT(A) failed to appreciate that the Appellant Society had earned the said amount in the form of interest and dividend from other co-operative society and was as such, eligible for the deduction.*

III Interest u/s 234B and 234C of the Act

7. *The Appellant prays for consequential relief in respect of interest u/s 234B and 234C of the Act.*

The Appellant craves leave to add, alter, delete, modify or amend any of the above grounds of appeal, if necessary, at any time till or during the hearing of the appeal.”

2. The fact in brief is that return of income declaring total income at Rs.nil was filed on 23.10.2017. The case was subject to scrutiny assessment and notice u/s 143(2) of the Act on 09.08.2018. The assessee is a cooperative society run by employees of the Rashtriya Chemicals and Fertilizers Ltd. In the return of income assessee has shown gross total income at Rs.1,23,58,851/- and after claiming deduction u/s 80P of Rs.1,23,58,851/- the total income was declared as Rs.nil. During the course of assessment the A.O was of the view that the assessee was carrying on the business of accepting the deposits and advancing loan from and to its members, therefore, provisions of Sec. 80P(4) of the Act are applicable to the case of the assessee. The A.O was of the view that advancing loans were the primary activity of any bank whether cooperative or otherwise. Therefore, the A.O has disallowed the claim of deduction u/s 80P(2)(a) of the Act in view of the amended provisions of Sec. 80P(4) considering that assessee was engaged in the banking business and therefore not eligible for deduction u/s 80P(2)(a) of the Act.

3. The assessee filed the appeal before the Id. CIT(A). The Id. CIT(A) has dismissed the appeal of the assessee.

4. Heard both the sides and perused the material on record. The A.O has denied the claim of deduction u/s 80P(2)(a) on the ground that the assessee cooperative society providing credit facility to its members is also covered by the amended provisions of Sec. 80P(4) of the Act. The Id. CIT(A) held that assessee is cooperative society and engaged in banking business and referred Sec. 80P(4) and observed that the provisions of Sec. 80P(4) shall not apply in relation to any cooperative bank and other than primary agricultural credit society or a primary agricultural and

rural development bank. The amended provisions of Sec. 80P(4) w.e.f 2007 is reproduced as under:

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

Explanation-For the purposes of this sub section,-

(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 or agricultural and rural development activities.”

The Banking Revolution Act 1949 specifically define the cooperative bank u/s 5 of the Act and the lower authorities have failed to substantiate how the assessee cooperative society can be held as cooperative bank. It is undisputed fact that assessee society was not engaged in the business of banking and merely engaged in extending credit to its members and on identical facts and similar issue the coordinate bench of the ITAT in the case of the assessee itself vide ITA No. 6903/Mum/2013 held as under:

“3. In this appeal, the only issue raised by the Revenue relates to the allowability of relief u/s 80P of the Act in respect of the income of the assessee when the assessee is a ‘credit cooperative society’. In the assessment, AO treated the same as a ‘credit cooperative bank’. During the first appellate proceedings, CIT (A) examined the facts relevant to the definition of ‘credit cooperative society’ as well as the applicable citations and came to the conclusion that the assessee is not a ‘bank’ and therefore, the provisions of section 80P(4) will not apply to the assessee-credit cooperative society. The contents of paras 6 and 7 of the CIT (A)’s order are relevant in this regard. Aggrieved with the same, Revenue is in appeal before the Tribunal with the present appeal.

4. During the proceedings before us, Ld DR for the Revenue submitted that the order of the CIT (A) should be reversed. By mentioning the fact that lending and borrowing activities between the members of the society and the assessee constitutes ‘banking activities’.

5. On the other hand, Ld Counsel for the assessee heavily relied on the order of the CIT (A) and the contents of paras 6 and 7 of the impugned order. Further,

Ld Counsel also relied on the citations relied upon by the CIT (A)'s vide para 7 of his order. For the sake of completeness of this order, the said prara 7 of the impugned order is extracted as under:

“7. From the facts of the instant case, it is quite clear that the appellant has limited itself to the members of employees of M/s. Rashtriya Chemicals & Fertilizers Ltd. Further, the appellant has not provided banking facilities either to general public at large or even to the members of the society. Even the bye laws of the appellant does not provide for the banking activities. The facts of the instant case are almost similar to the decisions relied upon by the appellant particularly, the facts in the case of (a) ITO vs. Jankalyan Nagri Sahakari Pat Sanstha 24 taxman.com 127 Pune Tribunal, and (b) DCIT vs. Jayalkshi Mahila Vividodeshagala Souharda Sahakari Ltd 23 taxmann.com 313 Panaji Tribunal, where the activities of the assesseees were limited to the members of a specific group and the area of operation was also limited to the acceptance of deposits of the members and providing credit facilities only to the members, which have been held as not falling under the banking activities as defined in the Banking Regulation Act. Therefore, respectfully following the aforesaid decisions of the ITAT Pune and Panaji Benches, the appellant also cannot be held as a Cooperative Bankhence the deduction claimed u/s 80P(2)(a)(i) cannot be denied to it. The AO is accordingly directed to allow the deduction claimed by the appellant.”

6. Further, we have also perused the judgment of the jurisdictional High Court in the case of Quepem Urban Cooperative Credit Society Ltd vs. ACIT [2015] 377 ITR 272 (Bom), which was relied upon by the Ld Counsel for the assessee for the proposition that such lending activities do not constitute banking activities as the same are transacted between the cooperative society and the members of the society. Since, no public is involved the definition of ‘banking’ does not cover such activities. As such, there is no Reserve Bank of India’s approval for conducting such banking activities in this case. He also relied on the definition of “banking” and read out from the contents of section 5 of the Banking Regulation Act, 1949 and the same reads as under:-

*Sec. 5(b) "**banking**" means the accepting, for the purpose of lending or investment, of deposits of money from the **public**, repayable on demand or otherwise, and withdrawal by cheque, draft, or otherwise;*

7. From the above, Ld. Counsel for the assessee demonstrated that the members of the Credit Cooperative Society do not constitute “public” and there is no depositing, withdrawal by cheque or draft etc. After considering the said judgment of the Hon’ble jurisdictional High Court in the case of Quepem Urban Cooprvative Credit Society (supra), we are of the opinion that decision of the CIT (A) is fair and reasonable and it does not call for any interference. Accordingly, issue raised in the Revenue’s appeal is dismissed.”

Following the decision of the coordinate bench of the ITAT in the case of assessee itself as supra we direct the A.O to allow the claim of deduction

to the assessee u/s 80P(2)(a)(i) of the Act. Therefore, ground of appeal of the assessee is allowed.

ITA No.2284/Mum/2022

7. As the facts and the issue involved in both these appeals are the same as supra in ITA No. 2283/Mum/2022, therefore, applying the same findings mutatis mutandis, this appeal of the assessee is also allowed.

8. In the result, both the appeals of the assessee are allowed.

Order pronounced in the open court on 06.12.2022

Sd/-

(Rahul Chaudhary)
Judicial Member

Sd/-

(Amarjit Singh)
Accountant Member

Place: Mumbai

Date 06.12.2022

Rohit: PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,
Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण/ ITAT, Bench, Mumbai.