

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

**BEFORE: SHRI VIKAS AWASTHY, JUDICIAL MEMBER
&
SHRI M.BALAGANESH, ACCOUNTANT MEMBER**

**ITA No.3113/Mum/2022 to 3115/Mu/2022
(Assessment Year :2015-16 to 2017-18)**

ITO Ward-1 Ayakar Bhawan Bidco Road Palghar- 401 404	Vs.	The Thane Zilla Madhyamik Shikshak Sangh Bsahkari Patpedhi Maryadit At-Saphale Post Umbarpada Dist: Palghar-401 102
PAN/GIR No.AAAAT9514H		
(Appellant)	..	(Respondent)

Assessee by	Shri Rajesh Shah
Revenue by	Ms. Richa Gulati
Date of Hearing	31/01/2023
Date of Pronouncement	31/01/2023

आदेश / ORDER

PER M. BALAGANESH (A.M):

These appeals in ITA Nos.3113/Mum/2022 to 3115/Mum/2022 for A.Yrs.2015-16 to 2017-18 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-National Faceless Appeal Centre (NFAC) in appeal Nos.CIT(A), Thane-3/10012/2019-20, CIT(A), Thane-3/10015/2019-20 & CIT(A), Thane-3/10414/2018-19 respectively dated 16/09/2022 (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 20/03/2019,18/03/2019 & 14/02/2019 respectively by

the Id. Asst. Commissioner of Income Tax, Palghar Circle, Palghar (hereinafter referred to as Id. AO).

2. The Revenue has raised the following identical grounds before us for all the three years:-

1. On the facts and in the circumstances of the case and in law, the Ld.CIT(A) erred in ignoring the fact that on identical issue in the case of the assessee, the department has preferred appeal before the Hon'ble Bombay High Court for A.Y. 2007-08.

2. The appellant craves leave to add, amend or alter any ground/grounds, which may be necessary.

2.1. With the consent of both the parties, the appeal for the A.Y.2015-16 was taken as the lead case and the decision rendered thereon shall apply with equal force for A.Ys.2016-17 and 2017-18 also except with variance in figures.

3. The only effective issue to be decided in this appeal is as to whether the assessee is entitled for deduction u/s.80P(2)(a)(i) of the Act in the facts and circumstances of the instant case. The brief facts of this issue is that the assessee is engaged in the business of providing the credit facilities to its members. It accepts deposits from its members and provides credit facilities to its members. The assessee is a co-operative society engaged in collecting deposits and providing credit facilities to the Secondary Teachers who are its members. The assessee is also registered under Maharashtra State Co-operative Societies Act, 1960 providing financial assistance to its members. The return of income for the A.Y.2015-16 was filed by the assessee on 28/09/2015 declaring total income of Rs. Nil after claiming the deduction u/s. 80P(2)(a)(i) of the Act. The Id. AO observed that assessee had, during the F.Y.2006-07 relevant to A.Y.2007-08, collected certain deposits in cash in excess of Rs.20,000/-

totalling to the tune of Rs.61,83,222/-. The then Assessing Officer of the assessee for A.Y.2007-08 levied penalty u/s.271D of the Act on 27/09/2010 for violation of provisions of Section 269SS of the Act in respect of cash deposits received by the assessee in excess of Rs.20,000/-.

3.1. Aggrieved by the said levy of penalty, the assessee before the Id. CIT(A) had submitted that it is a co-operative bank and accordingly, it is entitled to receive cash deposits in excess of Rs.20,000/- from its members. Accordingly, it was pleaded that the provisions of Section 269SS of the Income Tax Act would not be applicable to the assessee and consequently, penalty u/s.271D of the Act would not arise in the case of the assessee. This argument of the assessee was accepted by the then CIT(A)-II, Thane and accordingly, deleted the penalty u/s.271D of the Act vide its order dated 29/12/2010.

3.2. In view of this, the assessment for A.Y.2015-16 was sought to be reopened by the Id. AO vide issue of notice u/s.148 of the Act dated 17/10/2018. In the re-assessment proceedings, the Id. AO did not accept the contention of the assessee that it is a co-operative society and held that it is only the co-operative bank and accordingly, not entitled for deduction u/s. 80P(2)(a)(i) of the Act.

3.3. The Id. CIT(A) by placing reliance on the order passed by this Tribunal for A.Y.2007-08, 2010-11, 2013-14 and 2014-15 vide order dated 03/12/2020 had held that assessee is entitled for deduction u/s.80P(2)(a)(i) of the Act. Apart from this, the Id. CIT(A) also had gone through the entire activities carried out by the assessee and held on merits, that it is entitled for deduction u/s. 80P(2)(a)(i) of the Act. The

relevant operative portion of the order of the Id. CIT(A) is reproduced hereunder:-

The assessee's claim of deduction u/s 80P(2)(a)(i) is allowed for A.Y. 2015-16, in view of the following relevant facts on record.

1) The appellant is a co-operative credit society engaged in the business of providing credit facilities to its members. The bye-laws of the assessee permit assessee's society to accept deposits from members only and provide credit facilities to its members only and not to any general public

2) The term "banking" means accepting for the purpose of lending or investment of deposits of money from the public, repayable on demand or otherwise and withdrawable by cheque, draft, order or otherwise. Hence, from the above definitions provided for the expression "primary Co-operative bank and for the expression "banking" as per the Banking Regulation Act 1949 The society does not collect deposits from the general public and provides credit facilities to the general public and hence the appellant cannot fall within the category of "co-operative bank" "primary co-operative bank" or said to have engaged in the business of banking

3) In the instant case it is undisputed that the appellant does not have any transaction with non-members of the credit society. At the cost of repetition, the appellant would like to state that appellant had collected deposits only from its members and had provided credit facilities to its members, in consonance with the powers provided in its bye laws.

4) The appellant is not having a license from Co-operative bank to carry on business in banking

5) Hence, the provisions of Section 80P(4) of the Act cannot be made applicable to the appellant society in the instant case

3.4. From the above, it is very clear that the issue in dispute with regard to eligibility of deduction u/s.80P(2)(a)(i) of the Act has already been decided in favour of the assessee on merits in earlier years. The activities carried on by the assessee during the year under consideration i.e. A.Y.2015-16 is identical with the activities carried on in earlier years. Hence, the decision rendered by this Tribunal in ITA No.4296/Mum/2016(AY:2007-08); ITA No.403/Mum/2018(AY

:2014-15); ITA No.4211/Mum/2018 (AY :2007-08) ITA No.4297/Mum/2016(AY :2010-11) & ITA No.5983/Mum/2017 (AY :2013-14) vide order dated 03/12/2020 shall apply with full force for this assessment year also. In fact, the Id CIT(A) had reproduced this entire Tribunal order dated 03/12/2020 in his appellate order and granted relief to the assessee. Hence, we do not find any infirmity in the order of the Id. CIT(A).For the sake of brevity, the said Tribunal order is not reproduced hereunder. Accordingly, the grounds raised by the Revenue for A.Y.2015-16 are hereby dismissed.

4. The decision rendered by us for A.Y.2015-16 shall apply mutatis mutandis for A.Y.2016-17 and 2017-18 also except with variance in figures and dates of filing of returns.

5. In the result, all the appeals of the Revenue are dismissed.

Order pronounced on 31/01/2023 by way of proper mentioning in the notice board.

Sd/-
(VIKAS AWASTHY)
JUDICIAL MEMBER

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Mumbai; Dated 31/01/2023
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