

IN THE INCOME TAX APPELLATE TRIBUNAL "D" BENCH, MUMBAI
BEFORE SHRI ABY T. VARKEY, JM AND SHRI PRASHANT MAHARISHI, AM

आयकर अपील सं/ I.T.A. No.765/Mum/2022
(निर्धारण वर्ष / Assessment Year: 2012-13)

Rashtriya Chemicals and Fertilisers Employees' Co-Op. Credit Society Type-1A/21 481/484, Chembur, Mumbai-400074.	बनाम/ Vs.	The ITO, Ward-27(3)(1) Room No. 442, 4 th Floor, Tower No. 6, Vashi Railway Station Commercial Complex, Vashi, Navi Mumbai- 4000703.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAAAR1076N		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	Shri Mayank Thosar
Revenue by:	Shri P. D. Chougule (Addl. CIT)

सुनवाई की तारीख / Date of Hearing: 24/05/2023
घोषणा की तारीख /Date of Pronouncement: 30/05/2023

आदेश / ORDER

PER ABY T. VARKEY, JM:

This is an appeal preferred by the assessee Rashtriya Chemicals and Fertilisers Employees Co-operative Credit Society against the order of the Ld. Commissioner of Income Tax (Appeals)/NFAC, Delhi dated 12.01.2023 for the assessment Year 2012-13.

2. The main grievance of the assessee is against the action of the Ld. CIT(A) in confirming the action of the AO in not allowing the deduction claimed by the assessee u/s 80P of the Income Tax Act, 1961 (hereinafter "the Act") to the tune of Rs.99,59,604/-.

3. Brief facts of the case are that the assessee is a Credit Co-operative Society providing credit facilities to its members. The assessee filed its return of income on 27.09.2012 declaring total income of Rs.Nil. Later, the case of the assessee was selected for scrutiny under CASS. And the AO noted that the assessee is a Co-



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operative Credit Society run by the employees of the M/s. RCF Ltd. And the main activity of the assessee is to provide credit facility to its members. The AO noted that the assessee has shown gross total income of Rs.99,59,604/- and after claiming deduction u/s 80P of the Act to the tune of Rs.99,59,604/-. it has declared its income at Nil. However, according to the AO, the assessee's claim cannot be allowed after the insertion of sub-section (4) in Section 80P of the Act which reads as under: -

“Section 80P(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 purpose of tis 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 taluk and the principal object of which is to provide for long term credit for agricultural and rural development activities.”

4. However, the assessee contended that the assessee is not a Co-operative Bank and is into the business of providing credit facilities to its members who are the employee's of the M/s. RCF Ltd. and objected to terming it as “Co-operative Bank”; and submitted that deduction u/s 80P of the Act cannot be denied and pointed out that it earns income by providing credit facilities to its members, which



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income are specifically allowed as a deduction u/s 80P(2)(a)(i) of the Act. However, the AO did not accept the contention of the assessee and held that the assessee's action/business falls in the definition of Co-operative Bank as provided in the Banking Regulation Act, 1949. And therefore, he held that assessee is not eligible for deduction u/s 80P of the Act; and thus disallowed the claim of deduction to the tune of Rs.99,59,604/- u/s 80P of the Act. Aggrieved, the assessee preferred an appeal before the Ld. CIT(A) who was pleased to dismiss the same by holding that assessee is a Co-operative Society engaged in banking business. And therefore, according to him, as per section 80P(4) of the Act, the assessee shall not be eligible for deduction under section 80P of the Act. Further according to the Ld. CIT(A), the assessee is neither a Primary Agricultural Credit Society nor a Primary Co-operative Agricultural & Rural Development Bank. And since assessee is engaged in banking business, the assessee is not eligible for deduction u/s 80P(4) of the Act. Aggrieved by the action of the Ld.CIT(A)/NFAC, the assessee is before us.

5. We have heard both the parties and perused the records. At the outset, the Ld. AR of the assessee brought to our notice that the assessee is a Credit Co-operative Society, and is only providing credit facilities to its members and its claim for deduction of Rs.99,59,604/- u/s 80P(2)(a)(i) of the Act was denied on the ground that the assessee is neither a Primary Agricultural Credit Society nor a Primary Co-operative Agricultural & Rural Development Bank but is a Co-operative Bank. Therefore, as per the section 80P(4) of the Act, the



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assessee is not entitled for the deduction u/s 80P of the Act. However, according to the Ld. AR, the issue is no longer *res-integra* since in assessee's own case for AY. 2010-11, this Tribunal in ITA. No.6903/Mum/2013 for AY 2010-11 dated 29.01.2016 was pleased to uphold the action of the Ld. CIT(A) allowing similar claim of deduction u/s 80P of the Act by holding as under: -

“2. This appeal filed by the Revenue on 28.11.2013 is against the order of the CIT (A)-33, Mumbai dated 2.9.2013 for the assessment year 2010-2011.

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



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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 Bank hence 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



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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 Cooperative 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.”

6. The Ld. AR also drew our attention to the decision of the Hon’ble Supreme Court wherein their Lordship upheld the decision of the Hon’ble Bombay High Court in the case of PCIT Vs. M/s. Annasaheb Patel Mathadi Kamgar Sahakari Pathpedi Ltd which in-turn followed the decision of Hon’ble Bombay High Court in the case of Quepem Urban Co-operative Credit Society Ltd. Vs. ACIT (2015) 377 ITR 272 (Bom) & SLP preferred by department dismissed by Hon’ble Supreme Court 235 Taxman 514 (SC). The Hon’ble Supreme



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Court in Annasaheb Patel (supra) has affirmed the view of the Hon'ble Bombay High Court by following the ratio laid down in the case of Mavilayi Service Co-operative Bank Limited and Others Vs. CIT, Calicut And Another (2021) 7 SCC 90 which order reversed the full bench decision of the Hon'ble Kerala High Court by holding as under:

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“Feeling aggrieved and dissatisfied with the impugned order dated 14-10-2019 passed by the High Court of Judicature at Bombay in ITA No.933/2017, by which the High Court has dismissed the said appeal preferred by the Revenue, relying upon its earlier decision in the case of M/s. Quepem Urban Co-operative Credit Society Ltd. Vs. Assistant Commissioner of Income Tax, 377 ITR 272, the Revenue has preferred the present appeal.

The High Court considered the following question of law –

“Whether on the facts and in the circumstances of the case and in law, the Tribunal is justified as claimed by the assessee on the ground that the assessee, a co-operative credit society and is not a bank for the purpose of Section 80P(4) of the Act?”

Apart from the fact that against the relied upon decision in the case of M/s. Quepem Urban Co-operative Credit Society Ltd. (supra) the Special Leave Petition has been dismissed, having heard learned counsel appearing on behalf of the respective parties, the issue involved in the present appeal is squarely covered against the Revenue in view of the decision of this Court in Mavilayi Service Cooperative Bank Limited and Others Vs. Commissioner of Income Tax, Calicut and Another (2021) 7 SCC 90. This Court, in the aforesaid decision has specifically



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observed and held that primary Agricultural Credit Societies cannot be termed as Co-operative Banks under the Banking Regulation Act and, therefore, such credit societies shall be entitled to exemption under Section 80(P)(2) of the Income Tax Act, 1961.

Ms. Aakansha Kaul, learned counsel appearing on behalf of the appellant/Revenue has tried to submit that the respondent/Assessee will fall under the definition of Co-operative Bank as their activity is to give credit/loan. However, it is required to be noted that merely giving credit to its members only cannot be said to be the Co-operative Banks/Banks under the Banking Regulation Act. The banking activities under the Banking Regulation Act are altogether different activities. There is a vast difference between the credit societies giving credit to their own members only and the Banks providing banking services including the credit to the public at large also.

There are concurrent findings recorded by CITA, ITAT and the High Court that the respondent/Assessee cannot be termed as Banks/Cooperative Banks and that being a credit society, they are entitled to exemption under Section 80(P)(2) of the Income Tax Act. Such finding of fact is not required to be interfered with by this Court in exercise of powers under Article 136 of the Constitution of India. Even otherwise, on merits also and taking into consideration the CBDT Circulars and even the definition of Bank under the Banking Regulation Act, the respondent/Assessee cannot be said to be Co-operative Bank/Bank and, therefore, Section 80(P)(4) shall not be applicable and that the respondent/Assessee shall be entitled to



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exemption/benefit under Section 80(P)(2) of the Income Tax Act.

In view of the above and for the reasons stated hereinabove, the present appeal deserves to be dismissed and is accordingly dismissed, answering the question against the Revenue and in favour of the Assessee.

The Appeal is accordingly dismissed. No costs.

7. In the light of the judicial precedents and the decision of this Tribunal in assessee's own case for AY 2010-11, we allow the appeal of the assessee for deduction u/s 80P of the Act and direct the AO to grant deduction of Rs.99,59,604/-. [*Rs.99,23,829/- u/s 80P(2)(a)(i) of the Act + Rs.35,775/- claimed u/s 80P(2)(c) of the Act*] which disposes of ground no. 2, 4, & 5. Ground no. 1 & 3 are general in nature and ground no. 6 is consequential.

8. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on this 30/05/2023.

Sd/-

(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Sd/-

(ABY T. VARKEY)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 30/05/2023.
Vijay Pal Singh, (Sr. PS)



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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
5. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

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