

IN THE INCOME TAX APPELLATE TRIBUNAL

PANAJI BENCH : PANAJI

(THROUGH VIRTUAL HEARING)

BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER

AND

SHRI G.D. PADMAHSHALI, ACCOUNTANT MEMBER

ITA.No.175/PAN./2019

Assessment Year 2016-2017

The Deputy CIT, Circle-1(1) 1 st Floor, Aayakar Bhawan, EDC Complex, Patto Plaza, Panaji. Goa. PIN – 403 001	vs.	The Old Goa Urban Cooperative Credit Society Ltd., Panchayat Bldg., Near Police Outpost, Old Goa, North Goa, Tiswadi – 403 001 PAN AAAAO0421A
(Appellant)		(Respondent)

For Revenue :	Shri N. Shrikanth
For Assessee :	Shri Sham Kamat

Date of Hearing :	13.07.2023
Date of Pronouncement :	24.07.2023

ORDER

PER SATBEER SINGH GODARA, J.M. :

This Revenue's appeal for assessment year 2016-2017, arises against the CIT(A) Panaji-1, Panaji's order dated 28.02.2019, in case no.CIT(A), PNJ-1/10201/2018-19, in proceedings u/sec.143(3) of the Income Tax Act, 1961 (in short "the Act").

Heard both the parties. Case file perused.

2. The Revenue pleads the following substantive grounds in the instant appeal :

1. *“The order of the Ld. CIT (A) is opposed to law and facts of the case.*
2. *The Ld. CIT(A) has erred in deleting addition of Rs.2,08,55,277/- on account of disallowance of deduction under section 40(a)(ia) on interest paid to members.*
3. *Appellant craves leave to amend or alter any of the grounds of appeal or add to the same, if deemed necessary.”*

3. Both the parties next invited our attention to the CIT(A)'s detailed discussion reversing the assessment findings invoking sec.40(a)(ia) disallowance of Rs.2,08,55,277/- on account of non-deduction of TDS regarding interest payments made to members, reading as under :

“8. Ground No.1 (Part-II)

This ground is directed against the disallowance of deduction claimed.

The facts of the case are that the appellant is a co-operative credit society providing credit facilities to its members. In the assessment order, the AO has denied deduction claimed by the appellant as per the provisions of section 80P. Aggrieved by the said disallowance the appellant is in appeal. According to AO, the appellant is a co-operative bank as it satisfies all the three requirements contained in section 5(ccv) of Banking Regulation Act 1949 as applicable to co-operative societies, and thus he denied deduction u/s 80P, applying the provisions of 80P(4) of the IT Act, 1961, holding that the appellant is a co-operative bank and not a co-operative credit society as claimed by the appellant.

I have gone through the decision of Hon. Bombay High Court, Goa Bench in the case of QUEPEM Urban Co-operative Credit Society Limited vs. ACIT (Appeal No. 20224 of 2015 dated 17.04.2015). The facts of the appeal are identical to the fact of QUEPEM Urban Co-operative Credit Society Limited vs. ACIT (Supra). The Hon. High Court in the said decision has held that any co-operative society to be called a co-operative bank has to cumulatively satisfy the following three conditions:

1. Its principle business or Primary object should be business of banking
2. Its paid up share capital and reserves should not be less than Rs. 1 Lakh
3. Its bye laws do not permit the admission of any other co-operative society as its member.

It is an accepted position that condition no. 2 is satisfied as the share capital is in excess of Rs. 1 Lakh. It has been the appellant's contention that condition no. 1 and 3 mentioned above are not satisfied.

Therefore, the issue that arises for consideration is whether the appellant satisfies condition no. 1 and 3 above.

The Appellant has been held as doing banking business because it is accepting deposits for the purpose of lending of investments of deposit from the public repayable on demand or otherwise. However, a co-operative society to carry on banking business it has to obtain a license issued by the RBI, which the appellant has not done; and therefore cannot be considered as a co-operative bank.

As it is held that the appellant is not a co-operative bank but a co-operative society, the appellant cannot be denied the deduction claimed u/s 80P (2)(a)(i). Subject to satisfying the AO that it does not have nominal members by producing a certificate from the appellant itself to this effect, and also a certificate from the auditor stating that it does not have nominal members, the appeal on this ground is allowed.

It follows from the decision in foregoing lines that if the appellant is treated as a bank, then TDS should have been deducted; and failure to deduct will make the appellant liable to provision of 40(a)(ia). However, if it is not treated as a bank upon production of certificate as directed therein, then it would not be held liable for TDS and provision of 40(a)(ia) would not be attracted. The Assessing Officer may check the certificate, and Act accordingly.

9. **Ground No. 2**

This is directed against the action of AO in initiating penalty u/s. 271(1)(c). However, no cause for action has arisen because the AO has not imposed any penalty. Being premature, this ground is dismissed as infructuous.

4. Suffice to say, it has come on record that the CIT(A) has upheld the assessee's claim as eligible for sec.80P(2)(a)(i) deduction since he has directed the Assessing Officer to verify

about it's nominal members. That being the case, we first of all quote the CBDT's circular no.37/2016 dated 02.11.2016 that such a disallowance u/sec.40(a)(ia); in turn, enhances business income which is otherwise eligible for Chapter-VIA deduction. Coupled with this, case law Mavilayi Service Cooperative Bank Ltd., vs. CIT [2021] 431 ITR 1 (SC) holds that the status of the corresponding members i.e., those having voting rights and nominal memberships; hardly forms a condition precedent for the purpose of allowing sec.80P deduction. We see no merit in Revenue's instant sole substantive grievance. Rejected accordingly.

5. This Revenue's appeal is dismissed in above terms.

Order pronounced in the open court on 24.07.2023.

Sd/-
[G.D. PADMAHSHALI]
ACCOUNTANT MEMBER
Pune, Dated 24th July, 2023
VBP/-
Copy to

Sd/-
[SATBEER SINGH GODARA]
JUDICIAL MEMBER

1.	The appellant
2.	The respondent
3.	The CIT(A) Panaji-1, "Aayakar Bhavan", Plot No.5, EDC Complex, Patto Plaza, Panaji – 403 001.
4.	Pr. CIT, Panaji.
5.	D.R. ITAT, Panaji Bench, Panaji
6.	Guard File.

//By Order//

Assistant Registrar, ITAT, Pune Benches,
Pune.