IN THE INCOME TAX APPELLATE TRIBUNAL
“D” BENCH, MUMBAI

BEFORE SHRI G.S. PANNU, PRESIDENT, AND
SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA No.1239/Mum./2023	**ITA No.1240/Mum./2023**
(Assessment Year : 2013–14)	(Assessment Year : 2014–15)

Rashtriya Chemicals And Fertilisers
Employees’ Co–operative Credit Society
Type–1, A/21 481/484, Chambur
Mumbai 400 074 PAN AAAAR1076N ……………. Appellant

v/s

Income Tax Officer
Ward–27(3)(1), Mumbai ……………. Respondent

Assessee by : Shri Hasmukh Ravaria
Revenue by : Smt. Mahita Nair

Date of Hearing – 10/07/2023	Date of Order – 27/07/2023

O R D E R

The present appeals have been filed by the assessee challenging the separate impugned orders of even date 15/02/2023, passed under section 250 of the Income Tax Act, 1961 (*"the Act"*) by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, [*“learned CIT(A)”*] for the assessment years 2013–14 and 2014–15.

2. Since both appeals pertain to the same assessee involving similar issues arising out of a similar factual matrix, therefore, as a matter of convenience, these appeals were heard together and are being disposed off by way of this

consolidated order. With the consent of the parties, the assessee's appeal for the assessment year 2013-14 is taken up as a lead case.

ITA No.1239/Mum./2023
Assessee's Appeal – A.Y. 2013–14

3. In this appeal, the assessee has raised the following grounds:–

"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 February 15, 2023.

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. 87,80,140 made by the Assessing Officer in the assessment order.

3. The CIT(A) grossly erred in disallowing Rs. 87,80,140 u/s. 80P of the Act where in fact the claim of the Appellant Society under the said section was only Rs. 87,25,521 and thereby doubly taxing the income of Rs. 54,620.

4. In the facts, circumstances and merits of the case and in law, such order deserves to be quashed.

5. 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. 86,75,521 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.

6. In the facts and circumstances of the case, the R CIT(A) erred in upholding the disallowance of deduction made by the Assessing Officer of Rs. 50,000 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.

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

8. 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."

4. The only dispute raised by the assessee is against the disallowance of deduction claimed under section 80P(2) of the Act.

5. The brief facts of the case as emanating from the record are: The assessee is a co-operative credit society run by the employees of M/s Rashtriya Chemicals and Fertilisers Ltd. The main activity of the co-operative society is to provide credit facilities to its members. For the year under consideration, the assessee filed its return of income on 25/09/2013 declaring a total income of Rs. 54,640 after claiming a deduction of Rs. 87,25,521 under section 80P(2)(a) of the Act. The return filed by the assessee was selected for scrutiny and statutory notices under section 143(2) as well as section 142(1) of the Act were issued and served on the assessee. During the assessment proceedings, the assessee was asked to explain as to why the deduction claimed under section 80P of the Act be not disallowed in view of the amended provisions of section 80P(4) of the Act. In response thereto, the assessee submitted that the assessee is primarily engaged in the business of providing credit facility to its members and it raises funds through share capital and deposit from members only. It was further submitted that as per its by-laws, no person shall be a member unless he is a permanent employee of M/s Rashtriya Chemicals and Fertilisers Ltd. and also a member of P.F. scheme of the corporation. The assessee further submitted that vide scrutiny assessment for the assessment year 2009-10 under section 143(3), the deduction claimed under section 80P(2)(a) of the Act was allowed as claimed in the return. Further, for the assessment year 2010-11, the learned CIT(A) has allowed the claim of deduction under section 80P(2)(a) of the Act. It was also submitted

that the provisions of section 80P(4) of the Act brought into the statute are applicable only to Co-operative Banks and not to credit co-operative societies. The Assessing Officer ("*AO*") vide order dated 21/10/2015 passed under section 143(3) of the Act did not agree with the submissions of the assessee and held that provisions of section 80P(4) of the Act are clearly applicable to the assessee and it is not necessary that the word '*bank'* is attached to the name. Accordingly, the AO disallowed the deduction claimed under section 80P of the Act. The learned CIT(A), vide impugned order, dismissed the appeal filed by the assessee. Being aggrieved, the assessee is in appeal before us.

6. During the hearing, the learned Authorised Representative ("*learned AR*") submitted that this issue is covered in favour of the assessee by the decisions of the Co–ordinate Bench of the Tribunal in the preceding years, whereby the claim of deduction under section 80P(2) of the Act was allowed to the assessee. The learned AR further submitted that before the learned CIT(A) the aforesaid aspect was specifically submitted, however, the learned CIT(A) did not consider the decisions of the Co–ordinate Bench rendered in assessee's own case.

7. On the other hand, the learned Departmental Representative vehemently relied upon the orders passed by the lower authorities.

8. We have considered the submissions of both sides and perused the material available on record. It is undisputed that the assessee is a co-operative credit society and is engaged in the business of providing credit facilities to its members, who are permanent employees of M/s Rashtriya

Chemicals and Fertilisers Ltd. As per the assessee, it raises its funds through share capital and deposit from members only, as per its by-laws. Accordingly, the assessee claimed deduction under section 80P(2) of the Act. From the perusal of the record, it is evident that the AO denied the deduction claimed by the assessee under section 80P of the Act by applying the provisions of section 80P(4) of the Act since the assessee is providing credit facilities to its members. We find that the Co–ordinate Bench of the Tribunal in assessee's own case in Rashtriya Chemicals And Fertilisers Employees' Co–operative Credit Society v/s ITO, in ITA No.765/Mum./2022, vide order dated 30/05/2023 for the assessment year 2012-13, inter-alia, by following the decision rendered in the assessment year 2010-11 allowed the claim of the assessee under 80P of the Act. The relevant findings of the Co–ordinate Bench, in the aforesaid decision, are reproduced as under:-

> *"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"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 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 assessees 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 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 Cooprative 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 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:

> *"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 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.*
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> *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 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/- us 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."*

9. As also noted by the Co–ordinate Bench in the aforesaid decision, the Hon'ble Supreme Court in a recent decision in PCIT v/s Annasaheb Patil Mathadi Kamgar Sahakari Pathpedi Ltd. [2023] 150 taxmann.com 173 (SC), held that a taxpayer who is merely giving credit to its members cannot be said to be the Co-operative Banks/Banks under the Banking Regulation Act and the banking activities under the Banking Regulation Act are altogether different. Therefore, the Hon'ble Supreme Court held that the assessee, a co-operative credit society, could not be termed a Bank/Co-operative Bank and that being a credit society, it was entitled to exemption under section 80(P)(2) of the Act.

10. From the perusal of the statement of facts filed by the assessee before the learned CIT(A), we find that the assessee specifically placed reliance upon the decision of the Tribunal in its own case for the assessment year 2010-11, whereby the grant of deduction under section 80P(2)(a) of the Act was upheld. We further find that despite taking note of the aforesaid submission on page 16 of the impugned order, the learned CIT(A) completely ignored the same

and did not consider the decision of the Tribunal rendered in assessee's own case on a similar issue. Needless to mention that the learned CIT(A) is a quasi-judicial authority and therefore is required to deal with each and every submission made before it and more particularly is duty bound to consider the judicial precedent rendered in assessee's own case on a similar issue. However, as is evident from the impugned order, the learned CIT(A) neither considered nor distinguished the binding precedent rendered in assessee's own case.

11. We find that the issue arising in the present appeal is recurring in nature and has been decided in favour of the assessee in the preceding assessment years. The Revenue could not show us any reason to deviate from the aforesaid decision rendered in assessee's own case and no change in facts and law was alleged in the relevant assessment year. Thus, respectfully following the orders passed by the Co–ordinate Bench of the Tribunal in assessee's own case cited supra, we are of the considered view that the assessee is entitled to claim deduction under section 80P(2) of the Act. Accordingly, the grounds no. 2-6 raised in assessee's appeal are allowed.

12. Ground no. 1 is general in nature and therefore needs no separate adjudication.

13. Ground no. 7 pertaining to the levy of interest under section 234B and section 234C of the Act is consequential in nature and, therefore, in view of our aforesaid findings is allowed.

14. In the result, the appeal by the assessee for the assessment year 2013-14 is allowed.

ITA No.1240/Mum./2023
Assessee's Appeal – A.Y. 2014–15

15. In this appeal, the assessee has raised the following grounds:–

> *"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 February 15, 2023.*
>
> *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. 95,70,610 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.*
>
> *4. In the facts and circumstances of the case, the PCIT(A) has misdirected himself in upholding the disallowance of deduction made by the Assessing Officer of Rs. 95,20,610 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 PCIT(A) erred in upholding the disallowance of deduction made by the Assessing Officer of Rs. 50,000 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. The Appellant prays for consequential relief in respect of interest u/s. 234B, 234C, 234D and 244A of the Act.*
>
> *7. 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."*

16. The only dispute raised by the assessee, in the present appeal, is against the disallowance of deduction claimed under section 80P(2) of the Act. Since a similar issue has been decided in assessee's appeal for the assessment year

2013-14, the decision rendered therein shall apply *mutatis mutandis.* Accordingly, grounds no. 2-5 raised in assessee's appeal are allowed.

17. Ground No. 1, is general in nature and therefore needs no separate adjudication. Ground No. 6 is consequential in nature and is allowed in view of aforesaid findings.

18. In the result, the appeal by the assessee for the assessment year 2014-15 is allowed.

19. To sum up, both appeals by the assessee are allowed.

Order pronounced in the open Court on 27/07/2023

Sd/- **G.S. PANNU** **PRESIDENT**	**Sd/-** **SANDEEP SINGH KARHAIL** **JUDICIAL MEMBER**

MUMBAI, DATED: 27/07/2023

Copy of the order forwarded to:

(1) The Assessee;
(2) The Revenue;
(3) The PCIT / CIT (Judicial);
(4) The DR, ITAT, Mumbai; and
(5) Guard file.

True Copy
By Order

Pradeep J. Chowdhury
Sr. Private Secretary

Assistant Registrar
ITAT, Mumbai