

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

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
SHRI RATNESH NANDAN SAHAY, ACCOUNTANT MEMBER**

**ITA No. 4692/M/2023
Assessment Year: 2017-18**

Income Tax Officer, Ward 3(1) Rani Mansion, Murbad Road, Kalyan West- 421301 PAN: AABAK6464E	Vs.	Kanchangauri Mahila Sahakari Patpedhi Maryadit 1 st Floor, Riddhi Siddhi Complex, Malwiya Path, Ramnagar, Dombivli (E.)- 421201
(Appellant)		(Respondent)

Present for:

Assessee by : Shri V. G. Ginde, A.R.
Revenue by : Shri P.D. Chougule (Addl. CIT), Sr.
D.R.

Date of Hearing : 14 . 05 . 2024
Date of Pronouncement : 29 . 05 . 2024

O R D E R

Per: Ratnesh Nandan Sahay, Accountant Member:

1. This appeal has been filed by the appellant against the Order of the Ld. CIT (Appeals) passed u/s. 250 of the Income Tax Act [the 'Act' in short] vide its DIN & Order No. ITBA/AST/S/143(3)/2019-20/1022252957(1) dated 13/12/2019 for the Assessment Year 2017-18.

2. The following grounds of appeal have been raised:

- “1. On the facts and circumstances of the case and in law, the CIT(A) erred in deleting the addition of Rs. 1,50,49,853/-on account of disallowance u/s. 80P(2)(a)(i) of the Act.*
- 2. On the facts and circumstances of the case and in law, the CIT(A) erred in granting above relief to the assessee without appreciating the fact that the assessee is carrying on the business of accepting deposits and advancing loans to its members which are the primary activities of any bank whether co- operative or otherwise.*
- 3. On the facts and circumstances of the case and in law, the CIT(A) erred in not appreciating the fact that the assessee is a co-operative society whose share capital and reserves exceeds Rs. 1,00,000/-.*
- 4. On the facts and circumstances of the case and in law, the CIT(A) erred in not appreciating the fact that the assessee is registered under the Maharashtra State Co-operative Societies.”*

3. The facts of the case, in brief, are that the assessee is a Co-operative Credit Society and was carrying on, during the Assessment Year under consideration, the business of accepting deposits and advancing loans to its members which were the primary activities of any bank whether co- operative society or otherwise.

4. During the course of assessment proceedings, it was noticed by the Assessing Officer that the society has been accepting deposits and availing loans from general public. Any person

from the general public could avail loans or keep deposits just by taking a nominal membership. The entire process was just a formality. As per the definition of Co-operative Bank given in the Banking Regulation Act, 1949 and mentioned in explanation to sub-section (4) of section 80(P) that if the assessee is not a Cooperative Bank, it cannot accept deposits and provide credit facilities to its members. However, in the case of the assessee, despite not being a Cooperative Bank, it was accepting deposits from and giving credit facility to its nominal members. The AO, therefore, held that in view of the facts stated above, the assessee was not entitled to avail the benefits provided u/s. 80P(2)(a)(i) of the Act and accordingly, the deduction of Rs.1,50,49,853/- claimed under this provision was disallowed and added to the total income of the assessee.

5. The Ld. CIT Appeal, however, reversed the order of the assessing officer by holding as under:

“This appeal pertains to this disallowance of Rs. 1,50,49,853/- While examining the grounds raised here, it would be pertinent to mention here that on identical set of facts, the Jurisdictional High Court of Mumbai in the case of the Quepem Urban Co-operative Credit Society Ltd vs. ACIT, Circle-1,

Margoa (vide: 377 ITR 272/ 58 Taxmamm.com 113] has elaborately discussed, analysed, and deliberated on the issue with particular reference to definitions provided in Part-V, of Banking Regulation Act 1949. After provisional changes were brought about by introducing section 80P(4) in the Income Tax Act. The jurisdictional High Court in the said case by their order dated 17.05.2015 has decided in favour of that assessee and allowed the claim of deduction u/s 80P(2)(a)(i) in a similar situation. Following the said decision of the Bombay High Court and the decision of Madras High Court in CIT versus Kalpadi Co-operative Township Ltd [2016] 74 taxman.com 226 (Madras), Hon'ble ITAT, Mumbai, which is the jurisdictional tribunal, in the case of the appellant itself has decided in its favour and allowed deduction u/s.80P(2)(a)(i) of the Act for the Assessment Years: 2012-13, 2013-14 and 2014-15, respectively.

- 1. I.T.A No.369/Mum/2016 for A.Yr: 2012-13, order dt: 11.11.2016*
 - 2. I.T.A. No.5175/Mum/2017 for A.Yr: 2013-14, order dt: 31.10.2018*
 - 3. I.T.A. No.780/Mum/2018 for A.Yr: 2014-15, order dt: 01.07.2019*
- a. It has not been disputed that the interests earned during the year were not accounted for as income by the appellant. Not a single instance has also been brought on record that interests earned were not from members or nominal members of the appellant co-*

operative society, during assessment proceeding. It has been contended that all the receipts on account of interests, accounted for as income, were from the members of the appellant co-operative society Nominal members are also included in the definition of "Members", in section 19 of the Maharashtra Co-operative Societies Act 1960, or [Maharashtra Act No. XXIV OF 1961), under which the appellant is registered. Further, hon'ble Supreme Court of India in the case of Mavilayi Service Co-operative Bank Ltd vs CIT, Calicut, in their order dt: 12.01.2021 has categorically decided that interest earned from "nominal members" by a co-operative society would also qualify for deduction u/s. 80P(2)(a)(i) of the I.T.Act. [vide: para-46, 47, (2021) 123 taxmann.com 161 (SC)/431 ITR 1 (SC)].

b. On perusal of the assessment order under consideration it appears that there is no change in the factual matrix of the case from what was there in the Assessment Years: 12- 13, 13-14 and 14-15. It is also not in the knowledge of the undersigned that the Tribunal orders as mentioned herein before have been overruled by any higher appellate forum Having regard to the facts of the case, extant provisions of law and the decisions of the jurisdictional ITAT in the case of the appellant, I am inclined to hold that the action of the AO is not sustainable and the appellant is entitled to the deduction u/s. 80P(2)(a)(i) of the I. T. Act. Hence, the AO is directed to delete

Rs.1.50,49,853/- added during the assessment. Appeal on ground No. 1 & 3 of this appeal is allowed, accordingly.”

1. During the course of hearing before us, the A.R. of the assessee has submitted a paper book in which the reliance has been placed on following three decisions of the ITAT Mumbai where similar issue has been decided in Assessee's own case for the assessment year 2012-13, 2013-14 & 2014-15:
 - (i) Hon'ble ITAT Mumbai order dated 11.11.2016 for AY 2012-13 [ITA No.369/Mum/2016]
 - (ii) Hon'ble ITAT Mumbai order dated 30.10.2018 for AY 2013-14 [ITA No.5175/Mum/2017]
 - (iii) Hon'ble ITAT Mumbai order dated 01.07.2019 for AY 2014-15 [ITA No.780/Mum/2018]
6. Hon'ble ITAT (Mumbai) vide above orders held that the assessee was entitled for deduction u/s. 80P(2)(a)(i) of the Income Tax Act, 1961 by following decision of the Hon'ble Bombay High Court in the case of Quepem Urban Co-operative Credit Society Limited v. ACIT, reported in (2105) 58 taxmann.com 113 (Bom.) Hon'ble Tribunal also noted that SLP filed by Revenue in the case of ACIT v. Quepem Urban Co-operative Credit Society Limited reported in

(2015) 63 taxmann.com 300(SC) has been admitted by Hon'ble Supreme Court and the status as of date is shown to be pending (CA No. 008295, 008296 and 008297 of 2015).

7. We have considered the rival submissions and also the legal position. Since, this issue has already been decided in favour of the assessee by coordinate benches of the ITAT Mumbai, in earlier years, we do not find any reason to defer with that. Accordingly, the appeal of the revenue is dismissed.

8. In the result, the appeal is dismissed.

Order pronounced in the open court on 29.05.2024.

**Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER**

**Sd/-
(RATNESH NANDAN SAHAY)
ACCOUNTANT MEMBER**

Mumbai, Dated: 29.05.2024.
Snehal C. Ayare, Stenographer

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.