

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "C", MUMBAI

BEFORE SHRI ANIKESH BANERJEE, JUDICIAL MEMBER AND
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER

ITA 1325/Mum/2024
(Assessment year: 2018-19)

Bombay Mercantile Co-op. Bank Ltd Employees Co-Op. Credit Soc. Ltd, 1, Navratan Bldg, 69, P.D.Mello Road, Carnac Bunder, Mumbai- 400 009 PAN : AADAB8533H	vs	ITO-17(2)(1), Mumbai Kautilya Bhavan, B.K.C., Mumbai- 400 0051
APPELLANT		RESPONDENT

Assessee by : Ms. Aarti Sathe a/w Asavari Kadam
Respondent by : Shri H.M. Bhatta (SR DR)

Date of hearing : 13/06/2024
Date of pronouncement : 20/06/2024

ORDER

PER ANIKESH BANERJEE, J.M:

Instant appeal of the assessee is preferred against the order of the National Faceless Appeal Centre, Delhi [for brevity, 'Ld.CIT(A)'] passed under section 250 of the Income-tax Act, 1961 (in short, 'the Act'), for Assessment Year 2018-19, date of order 02.02.2024. The impugned order was emanated from the order of the National e-Assessment Centre, Delhi (in short, 'the A.O.') passed under section 143(3) r.w.s. 143(3A) & 143(3B) of the Act date of order 16/02/2021.

2. The assessee has taken the following grounds of appeal:-

"Based on the facts and in the circumstances of the case, the Bombay Mercantile Co-Op. Bank Employees Co-Op. Credit Society Ltd. (hereinafter referred to as the (Appellant') respectfully craves leave to prefer an appeal under section 253(1)(a) of the Income-tax Act, 1961 (hereinafter referred to as the 'Act"), against the order dated 2nd February, 2024 ('impugned order') passed by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi (hereinafter referred to as the 'CIT(A)') received on 2nd February, 2024 on the following grounds, which are independent of and without prejudice to each other:

On the facts and circumstances of the case and in law, the Ld. CIT(A) has:-

A. ON JURISDICTION

1. Erred in passing the impugned order ex-parte, without providing an opportunity of being heard to the Appellant on the ground that there was no condonation of delay application filed along with the appeal, without appreciating the facts of the case. The impugned order therefore has been passed on a gross violation of principles of natural justice and is therefore liable to be set aside on this ground alone.

2. Erred in passing the impugned order on the ground that no application for condonation of delay was filed by the Appellant without appreciating the fact that there was no delay in filing the appeal before the Ld. CIT(A) inasmuch as the Assessment Order dated 16th February, 2021 was received by the Appellant on 27th March, 2023 ("Assessment Order") and the appeal was filed by the Appellant on 4th April, 2023 i.e. within 30 days from the date of receipt thereof.

3. Erred in not appreciating that the Appellant was not served a copy of the Assessment Order by the Ld. Assessing Officer (AO), and only on 20th March, 2023, one of the employees and Authorized Signatory of the Appellant received a call from the Department informing them about the outstanding demand for the present A.Y. thereafter the Chartered Accountant ("CA") of the Appellant wrote to the AO to provide them a copy of the Assessment Order and Demand Notice, which was handed over to the CA of the Appellant physically on 27th March 2023 which is beyond a period of 2 Years from the date of passing the Assessment Order,

4. Erred in not appreciating that at the time of assessment proceedings, notices dated 21/09/2019 u/s. 143 (2), 16/12/2020 U/s. 142 (1) were not received on the email id of the Appellant, but were informed via a message dated 26/12/2020 on the mobile number of the Authorized signatory of the Appellant as a reminder that the same have been issued by the Department under the faceless Assessment Scheme, which were duly replied to by the Appellant on getting the knowledge of the same, thereby showing that during the course of assessment proceedings the Department had not served all the notices to the Appellant at the correct correspondence address/mobile number and post passing the Assessment Order they did not to serve the Assessment Order dated 16/02/2021 and it was only given to the Appellant physically on 27/03/2023 and therefore there was no delay-on the part of the Appellant to file the Appeal.

5. Erred in not appreciating that the Appellant has regularly filed their ROJ within the prescribed due date and also duly responded to the notices issued under section 143(2) and 142(1) of the Act during the assessment proceedings for the present AY. It is further submitted that there has been no change in the address of the Appellant. There was no attempt on the

part of the Ld. AO to serve the Assessment Order for 2 years. Therefore, there was no delay on the part of the Appellant to file the appeal before the Ld. CIT(A).

6. Without prejudice to the above grounds, the CIT(A) erred in not appreciating that the Hon'ble. Supreme Court had, by way of various orders, extended the period of limitation for filing appeals during the COVID19 pandemic from time to time. By way of the order dated 10th January, 2022 passed in Misc. Application No. 21 of 2022, it was specified that in cases where the limitation would have expired during the period 15th ...March, .2020 till .28th August, 2022, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 1st March, 2022. In the present case, since the Assessment Order was passed within the aforementioned period, the same had to be excluded for the purpose of computing the period of limitation. However, even otherwise, since the Appellant was not served a copy of the Assessment Order between the aforementioned period and it was served only on 27th March. 2023, there was no delay on the part of the Appellant to file the appeal before CIT(A).

7. Without prejudice to the above submissions it is submitted that the correspondence address & the mobile number of the Authorized Signatory of the Appellant have remained unchanged, which have been provided while filing RO1, however sometime in August/September 2019, the email address of the Appellant which was in operation i.e. bmcc.s60fogmail.com was changed to forex@bmcbank.co.in. However, the Department had the correspondence address as well as the mobile number of the Authorized Signatory to effect service of the Assessment Order dated 16th February, 2021 on the Appellant. The impugned order has failed to consider the factual position and is therefore liable to be set aside on this ground alone.

B. ON MERITS

8. Erred in upholding the order of the Id. AO in not allowing deduction under section 80P of the Act amounting to Rs.1,06,80, 074/-, out of which Rs.71,56,179/- was claimed under sub-clause (i) to clause (a) to sub-section (2) of section 80P in respect of interest received from its members for the credit facilities provided to them, and Rs. 35,23, 895/- was claimed under clause (d) to sub-section (2) of section 80P in respect of interest received by the Appellant on Fixed Deposit, created out of share application money received from the members, which was kept with a co-operative bank.

9. Erred in not appreciating that the Appellant is not in the business of banking inasmuch as the business of the Appellant does not fall within the purview of section 5(b) of the Banking Regulation Act, 1949. Further the Appellant is not registered credit co-operative society with limited liability under the Maharashtra Co-operative Societies Act, 1960 since 12th March, 1960.

10. It is further submitted that the CIT(A) has erred in not appreciating that the deduction under section 80P of the Act has been allowed to the Appellant in some of the previous years and also in some of the subsequent years on the same set of facts. Further for AYs 2010-11 and 2012-13, the ITAT has passed a common order dated 27. 10.2020 and allowed the deduction under section 80P to the Appellant on the same set of facts, which has not been challenged by the Department before the High Court. In so far as AYs 2016-17 and 2017-18 are concerned, the CIT(A) has followed the aforementioned order of the ITAT for AYs 2010-11 and 2012-13 and allowed the deduction under section 80P, which has not been challenged further by the Department before the ITAT. Thus, the Department has accepted the Appellant's contention for earlier as well as subsequent years and hence the impugned order has been passed without following the rule of consistency which is one of the principles of

interpretation of taxing statutes. The impugned order is therefore liable to be set aside on this ground alone.

11. Without prejudice to the above grounds of appeal, the CIT(A) erred in not appreciating that the Appellant is engaged in providing credit facilities only to its members, who are employees of the Bombay Mercantile Co-Op. Bank Ltd. The Appellant does not provide such facilities to any non-member or an outsider. It is further submitted that the Appellant is not governed by the Rules and Regulations of the Reserve Bank of India. The Appellant does not accept any deposits from its members or any outsider. However, every-member has to contribute to the share capital of the Appellant at the time of enrolling as a member of the Appellant-society, The Appellant therefore, is not engaged in any banking business and is a purely co-op, credit society. Further, the CIT(A) erred in not allowing deduction under section 80P(2)(a)(i) of Rs. 71,56,179/- in respect of interest received by the Appellant from providing credit facilities to its members on the principle of mutuality.

12. Erred in denying deduction under section 80P(2)(d) of the Act amounting to Rs. 35,23,895/- without appreciating the settled law that the interest earned by a co-operative society from a co-operative bank is covered within the scope of section 80P(2)(d) of the Act, because even a cooperative bank is essentially a co-operative society registered under the Co-operative Societies Act, 1912, or under any other law for the time being in force in any state for the registration of co-operative societies, therefore, the interest income derived by a co-operative society from its investments held with a co-operative bank, would be entitled for claim of deduction under Sec. 80P(2)(d) of the Act.

13. Erred in not appreciating the fact that section 80P of the Act is a benevolent provision which is enacted by the Parliament in order to encourage and promote growth of co-operative sector, therefore, such a provision has to be read liberally, reasonably and in favour of an Assessee with a view to effectuate the object of the Legislature and not to defeat it.

14. The Appellant craves leave to add, alter, amend, delete or modify all or any of the above grounds of appeal.”

3. Brief facts of the case are that the assessee is a co-operative society and has been formed by employees of Bombay Mercantile Co-operative Bank Ltd. It caters to only its members, who are employees of the said bank only. Bank provides loan only amongst the members of the society. The excess fund of the assessee was invested in Bombay Mercantile Co-op. Bank Limited and earned interest. The assessee claimed deduction under section 80P(2)(a)(i) amount of Rs.1,06,80,074/- in impugned assessment year during the time of filing return. But the assessment was framed. The Ld. AO disallowed the deduction claimed by

assesseeU/s 80P(2)(a)(i) and tax on the total income of Rws.1,06,80,074/- . Aggrieved, assessee filed an appeal before the Ld.CIT(A). The Id.CIT(A) has not spent a single word about the merit of the case. The appeal was rejected on the basis of the delay in filing appeal. Being aggrieved on the appellate order, the assessee filed an appeal before us.

4. The Ld.AR filed written submission which is kept on record (in short APB). The Ld.AR first invited our attention in the appeal order page3,para 4. The relevant paragraphs are reproduced as below:-

"4. Decision in Appeal:

4.1 At the outset, it is noticed that the appellant, in Form-35, has stated the date of service of Assessment order passed on 16.02.2021 to be 27.03.2023 and has thereby, concluded that there is no delay in filing the appeal, thus, no condonation was filed considering the above.

4.2 It is seen from the impugned assessment order that the same has been passed by National e-Assessment Centre, Delhi and a Document Identification Number (DIN) has been duly allotted to the said order. Furthermore, the last page of the impugned order also shows that the order was digitally signed on 16.02.2021. In order to shed light on the same, the relevant pages of the order are reproduced as below-

"1. The case was selected for Complete Scrutiny assessment under the E-assessment Scheme, 2019 on the following issues: -

I. Deduction u/s 80P

II . Deduction from Total Income under Chapter VI-A

The assessee has e-filed its return of income on 02.10.2018, declaring total income of Rs. 1,06,80,074/-, The return was processed u/s 143(1) of the I.T. Act. The case was selected for scrutiny assessment under CASS selection. Accordingly, statutory notice u/s 143(2) was issued on 21.09.2019.

2. Thereafter, notice u/s 142(1) of the Income Tax Act was issued on dated 16.12.2020. In response to the said notice, assessee uploaded following submission on 08.01.2021.

"During the year as well in last three years, the Assessee Society has collected Share Money from members against which these members are issued Shares in the Assessee Society. The amount so received is kept in FD with bank and an Overdraft Facility has been availed against these FD which is used to give loans to members. Thus, those employees who need loans apply for loans and are allowed loans as per the terms and conditions as prescribed by the Management of the Assessee Society. The Assessee is a co-operative society formed and registered under Maharashtra Cooperative Societies Act, 1956 with the classification as 'credit co-operative society The Assessee provides credit facilities to its members only. The members are employees of 'BOMBAY MERCANTILE CO-OPERATIVE BANK LTD. The Assessee does not carry on any banking activity as also does not in any manner provide credit facility to any nonmember or outsider. The Assessee is not registered under Banking Regulation Act and is not controlled or regulated or governed by rules and regulations of Reserve Bank of India for the purpose. Thus, it is submitted that the Assessee is only 'credit co-operative society and is not a bank or co-operative bank in any manner...

The Assessee is admittedly a co-operative society registered under the Co- operative societies Act and is engaged in providing credit facilities to its own members only. Consequently, the income earned by the appellant from its activity of providing credit facilities to its members, is entitled to deduction under Section 80P(2)(a)(i) of the Act. The appellant is not a co-operative Bank and thus, the exclusion provided under Section 80P(4) of the Act would have no application.

In support of the above contentions, the reliance is placed on the following judgements:

- 1. Quepem Urban Co-operative Credit Society Ltd vs ACIT, Margao*
- 2."*

3. Above submission has been duly considered. It is felt expedient to verify the claim of the assessee as stipulated in section SOP and decide whether the submission is tenable or it ought to be rejected. For this, following issues/facts/ decisions also need to be considered.

3(a) On perusal of the Profit & Loss Account and Balance Sheet as on 31.03.2018, it amply demonstrated that the activity being carried out by the assessee was nothing but accepting deposits and extending loan facilities. Moreover, it is seen that the assessee's credit society was formed in 1960, It is registered with the Registrar of Society. It carries out business of credit facilities, financial / banking transaction to cater the business and financial needs of the members. Who happen to be employees of the Bombay Mercantile Co-op. Bank Ltd. Thus, these members have good chance of availing credit facility from bank also.

3(b) Apart from the above, the assessee society has given loan and advances to its members after availing overdraft facility. Further, the business activity of the assessee was carried out at other branches apart from the Main Branch.

3(c) The above activity can be carried out for expanding the credit facility only by a Scheduled bank or Non-scheduled bank or a cooperative bank other than a primary agricultural society or a primary cooperative agricultural and Rural Development Bank. Thus, these aspects also clearly showed that the assessee had been engaged in banking business and that the assessee credit society is taking the benefits which are enjoyed by the banking business. Further, in its submissions the assessee's nature of business is mentioned as "Co-operative society carrying on business of providing credit facility to its own members only".

3. The Co-operative banks are not the co-operative society but these are banks and governed by the principle of banking formulated by the Reserve Banks of India (RBI). In case of number of cooperative banks, the RBI has put restriction for their being deviating from normal banking principal. Thus, Co-operative Banks are the sub species of normal banks and not the normal co-operative society as discussed in the foregoing paras.

5. As regards the allowability of balance amount of Rs. 1,06,80,074 u/s 80P(2)(a)(i) of the Act, being the income of cooperative societies. The claim of deduction u/s SOP of the Income Tax Act 1960 has attained detailed attention in earlier years and in the A.Y 2016-17 and 2017-18, the claim of the assessee was rejected by the then Assessing

Officer in the orders passed u/s 143(3) of the Act dated 26/12/2018 and 08/12/2019 respectively, by holding that the deduction claimed by the assessee is not allowable.

6. Further, the assessee's appeals for the above years were allowed by the Hon. ITAT relying on a decision in the case of Quepem Urban Co-operative Credit Society. However, the Department has not accepted the decision of the Hon'ble Bombay High Court in the case of Quepem Urban Co-operative Credit Society and SLP has been admitted by the Hon'ble Apex. Court. As the decision on the issue has not attained finality, the deduction claimed amounting to Rs. 1,06,80,074 made by the assessee is hereby disallowed."

4.3 Therefore, the statement regarding date of service of order to be 27.03.2023 is without any substantiation to justify as to how the date of service was after a time lag of more than two years. Since, it is incomprehensible that an order will be served after such a serious lapse of time, especially when the same was issued via electronic mode and bears a digital signature as well as a duly allotted DIN which is uploaded on the e-portal of the appellant/assessee."

4.1 The Ld.AR further invited our attention in **APB page 92** where the assessee filed a letter to the Income-tax Officer, Ward 17(2)(1) and requested for issuance of the copy of the assessment order for A.Y. 2018-19. The assessee placed that the assessee has not received any order for A.Y. 2018-19 till that date. So the certified copy of the order should be issued. Then the assessee received the order and filed appeal. Assessee claimed that the assessee received the order dated 23/03/2023 though the order is issued on 16/02/2021. The long delay was

not condoned by the Ld.CIT(A) and passed an order without considering the merit.

5. The Ld.DR vehemently argued and fully relied on the order of the revenue authorities.

6. We heard the rival submission, considered the documents available in the record. The issue related to allowance of deduction of interest earned from the investment parked in cooperative bank U/s 80P(2)(a)(i) read with section 80(P)(2)(d) is a very common issue for the co-operative society. The Ld.AR for the assessee explained that the assessee has not received any order after completion of assessment. When the demand collection process was started, then assessee came to know about the assessment order. The Ld.AR for the assessee immediately applied for certified copy of the order and filed the appeal. We find that that there is a material and reasonable ground for assessee for filing appeal belatedly. The revenue is also not able to prove about the service of the order within the time to the assessee. About the service of the impugned assessment order, the Id. DR was also silent before the bench. Cause of action is started after receiving of the notice for realization of the demand. As per the Id. AR the service of impugned assessment order is after receiving the certified copy of the order. Accordingly, we direct Ld.CIT(A) to condone the delay and admit the appeal for hearing and to pass an order on merit after giving opportunity to the assessee. We are not expressing any view as it will restrict the proceeding of the appeal. Needless to say, the assessee should get a reasonable opportunity of hearing in set aside proceedings.

7. In the result, **ITA No.1325/Mum/2024** is allowed for statistical purposes.

Order pronounced in the open court on 20th day of June, 2024.

Sd/-

(GAGAN GOYAL)
ACCOUNTANT MEMBER

Mumbai, दिनांक/Dated: 20/06/2024

Pavanan

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,
Mumbai
5. गार्डफाइल/Guard file.

sd/-

(ANIKESH BANERJEE)
JUDICIAL MEMBER

BY ORDER,

//True Copy//

(Asstt. Registrar), **ITAT, Mumbai**