

**IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH, MUMBAI
BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER
& SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER
ITA No.4853/Mum/2023
(A.Y.2017-18)**

ITO, Ward -26(2)(1) Room No. 234, G Block, Kautilya Bhavan, BKC, Bandra (East) Mumbai – 400051	Vs.	State Bank of India Employees M.S. Patel Co-op Credit Society Ltd. 3 rd Floor, State Bank Building, SBI Mumbai Main Branch, Samachar Marg, Near Horniman Circle, Fort, Mumbai - 400023
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AAAAS9621A		
Appellant	..	Respondent

Appellant by :	H.M. Bhatt
Respondent by :	Hemant Shah

Date of Hearing	14.05.2024
Date of Pronouncement	24.06.2024

आदेश / O R D E R

PER AMARJIT SINGH, AM:

The present appeal filed by the revenue are directed against the order passed by the CIT(A) NFAC for A.Y. 2017-18 of the Income Tax Act 1961. The revenue has raised the following grounds before us:

- “1. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was correct in allowing deduction u/s.80P(2)(a)(i) of the Income Tax Act without appreciating the fact that the assessee is engaged in business of granting credit or loan facility to its members and accepting deposits from them means it carries out business of banking, and allowance of deduction u/s 80P(2)(a)(i) of which has been withdrawn

from the Assessment Year 2007-08 after insertion of subsection (4) of section 80P by Finance Act, 2006, w. e. f. 01.04.2007, except in the case of a primary agricultural credit society or a primary co-operative agricultural and rural development bank.

2. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was correct in allowing deduction u/s.80P(2)(a)(i) of the Income Tax, without appreciating the fact that the CBDT inserted sub- clause (viia) to section 2(24) vide Finance Act, 2006, w. e. f. 01.04.2007, so as to clarify that the profits and gains of any business of banking (including providing credit facilities) carried on by a co-operative society with its members shall be included in the definition of 'Income?.'*

2. Fact in brief is that return of income declaring nil income after claiming deduction under Chapter VIA of Rs.4,29,26,833/- was filed on 24.10.2017. The case was subject to scrutiny assessment and notice u/s 143(2) of the Act was issued on 25.09.2018. The assessee had claimed deduction u/s 80P(2)(a)(i) of the Act amounting to Rs.4,29,26,833/-. On query regarding claim of deduction the assessee submitted before the assessing officer that this society is engaged in the business of granting credit or loan facility to its members and accepting deposits and giving loans on interest. During the year the assessee had earned interest income from loans given to its members and from deposits kept with cooperative bank and nationalised bank. The assessee society is a multi-state Society having its area of operation in the State of Maharashtra, Gujarat, Goa, MP and Chattisgarh. The society is registered under multi-state Cooperative Society Act 2002. The society was only dealing with its members and not with any other non-members, as per the bye-laws rules and Act governing the society. The assessee society has to create Reserve Fund as specified in section 63 of the multi-state Co-operative Societies Act 2002 which prescribed that:

“(1) A multi-state co-operative society shall, out of its net profits in any year-

1. *Transfer an amount not less than twenty-five per cent to the reserve fund;*

2. *Credit one per cent to co-operative education fund maintained by the National co-operative Union of India Limited, New Delhi, in the manner as may be prescribed;*
3. *Transfer an amount not less than ten per cent to a reserve fund for meeting unforeseen losses.'*

Further read with section 64 of the Act which specified that

“A multi state co-operative society may invest or deposits its funds inter alia in any other bank or in such other mode as may be provided in Bye-Laws. For the purpose of this clause 'bank' menas any banking company as defined in clause @ of Section 5 of Banking Regulation Act, 1949 and includes:”

It was also submitted that assessee society was not a Co-operative Bank and it was engaged in providing credit facilities to its members. The assessing officer has not agreed with the submission of the assessee and stated that assessee satisfied the conditions laid down u/s 5(ccv) of the Banking Regulations Act 1949, therefore it falls in the category of Primary Cooperative Bank. The AO was also of the view that the provisions of Section 80P(4) r.w.s 2(24)(viiia) are overriding over section 80P as it stood after the amendments to these provision w.e.f A.Y. 2007-08. The AO has treated the assessee society as primary cooperative bank and disallowed the claim of deduction u/s 80P(2)(a)(i) of Rs.4,29,26,833/- in view of the specific provisions of Sec. 2(24)(viiia) r.w.s Explanation 2 Sec. 80P(4) of the Income Tax Act 1961 inserted w.e.f 01.04.2007.

3. The assessee filed the appeal before the ld. CIT(A). The ld. CIT(A) has allowed the appeal of the assessee.

4. Heard both the sides and perused the material on record. The assessee had claimed deduction u/s 80P(2)(a)(i) of the Act amounting to Rs.4,29,26,833/-. The AO had denied the deduction treating the assessee as a Primary Cooperative Bank. The assessee State Bank Employee Cooperative Credit Society Ltd. was registered under Multi

State Cooperative Societies Act 2002. The society was engaged in business granting credit or loan facility to its members and accepting deposit from them. The acceptance of the deposit was restricted from the members only as per Rules framed by the Board of Directors. The society does not provide any cheque book facility, Demand Draft, pay order or other similar facilities to its members for the operation of the various deposit schemes. Before the Id. CIT(A) the assessee has also placed reliance upon the decision of the Hon'ble Bombay High Court at Goa, in the case of M/s The Quepem Urban Co-operative Credit Society Ltd. Vs. ACIT. After considering all these fact and findings of the Hon'ble Bombay High Court the Id. CIT(A) has decided that assessee cooperative society is entitled for deduction u/s 80P(2)(a)(i) of the Act. The relevant extract of the decision of CIT(A) is reproduced as under:

"7.2 I am not in agreement with the findings of the A.O. The appellant State Bank of India Employees' (M. S. Patel) Co-operative Credit Society Ltd. ('the Society') is a Co Operative Credit society engaged in business of providing loan and credit facility to its members and accepting deposits from the members. The members are the employees of State Bank of India and its Subsidiary Banks. State Bank of India Employees' (MS Patel) Co-op Credit Society Ltd ('the Society') is registered under Multi State Co-operative Societies Act, 2002 and the Bye Laws of the Society are approved by The Central Registrar of Co-operative Societies, Dept. of Agriculture & Co-operation, Ministry of Agriculture, New Delhi. The Society does not carry out Banking Activity and it does not have any Banking License from the Reserve Bank of India. The Society is engaged in business of granting credit or loan facility to its members and accepting deposits from them. Thus, the main activity of the society is accepting deposits from the members and granting of loans to its members. The appellant society cannot be equated with a Primary Co-operative Bank for the reason that to operate as a banking institution, a specific license is required to be issued by the Reserve Bank of India under the Banking Regulation Act 1949 IS TAX DEPA

7.3 This issue is covered in the favour of the appellant by the Jurisdictional Bombay High Court in the Case of Principal Commissioner of Income-tax, Goa vs M/s Quepem Urban Co- operative Credit Society Ltd. Vs. The ACIT, Circle -1, Margoa (2021] 128 taxmann.com 41 (Bombay) vide order dated May 7th, 2021, the relevant extracts of which are reproduced below.

16. This Court, through its judgment Quepem Urban Co-operative Credit Society Ltd. case (supra), dated 17 April 2015, in TXA Nos. 22, 23, and 24 of 2015, has examined the statutory scheme under section 80P of the IT Act. In paragraph 9 of the judgment, this Court has held that indisputably, the Assessee is a cooperative society as the same is

registered under the Co-operative Societies Act. The Assessee is claiming deduction of income earned on providing credit facilities to its members as provided under section 80P(2)(a)(i) of the Act. It is Assessee's case that it is not carrying on the business of the banking. In other words, not being a co-operative bank, it faces no hurdle through section 80P(4) of the Act to claim the benefit of deduction under section 80P(2)(a)(i) of the Act.

17. This Court has further observed that in terms of Section 80P of the Act, the meaning of the words Cooperative Bank is as assigned in Chapter V of the Banking Regulation Act, 1949 A cooperative bank is defined in section 5(cci) of Banking Regulation Act to mean a State Cooperative Bank, a Central Cooperative Bank, and a primary cooperative bank. Admittedly, the Assessee is not a State Cooperative Bank or a Central Cooperative Bank. Thus what has to be examined, according this Court, is whether the Assessee is a primary Cooperative Bank as defined in Para V of the Banking Regulation Act.

18. As we may note, section 5(ccv) of the Banking Regulation Act defines a primary cooperative bank to mean a cooperative society which cumulatively satisfies the following three conditions

- (1) *Its principal business or primary object should be banking business of Banking,*
- (2) *Its paid up share capital and reserves should not be less than rupees one lakh*
- (3) *Its bye-laws do not permit admission of any other cooperative society as its member.*

19. *It is an accepted position that condition No (2) is satisfied as the share capital is in excess of one lakh rupees. But, as the Assessee has contended, the conditions Nos (1) and (3) have not been satisfied.*

20. *That apart, the fact remains that the Assessee does deal with non-members in a few cases, it accepts deposits from them. This activity, taken with its Bye law 43, allowed the Revenue to conclude that the Assessee is carrying on banking business Before the Tribunal also the Assessee did not dispute that in a few cases it had dealt with non-members That said, the Assessee contended that the Bye-law 43 only permits the society to accept deposits from its members In other words, Bye-law 43 does not permit deposits from persons other than members, the word "any person", the Assessee asserted, is a gloss the Tribunal added in the impugned order, though it is not found in Bye-law 43.*

21. *Then, this Court has held that indisputably the transactions with non-members are insignificant or miniscule. So it has refused to conclude that the Assessee's principal business is of accepting deposits from public and that it is in banking business. At any rate, the Assessee's principal business is not banking.*

22. *In the end, this Court has noted that Section 80P(1) of the Act restricts the benefits of deduction of Co-operative Society's income to the extent it earns by providing credit facilities to its members On the converse, to the extent of the income it earns by its dealings with the non-members, the benefit of Section 80P of the Act would not be available. So, the Court has concluded that the*

authorities under the IT Act would restrict the benefit of deduction under section 80P of the Act only to the extent that the same is earned by the Assessee by carrying on its business of providing credit facilities to its members, but not non-members.

7.3.1 The Hon'ble Bombay High Court has relied heavily on the judgement of the Hon'ble Supreme Court of Indian in the case of *Mavilayi Service Co-operative Bank & Ors vs CIT Calicut & Anr CIVIL APPEAL NOS. 7343-7350 OF 2019*, in its decision dated 12th January 2021, by stating as under:

Mavilayi Service Co-operative Bank Ltd.

24. In *Mavilayi Service Co-operative Bank Ltd. v CIT (2021) 123 taxmann.com 161/279 Taxman 75 (SC)*, the question concerns the deductions a primary agricultural credit society can claim under section 80P(2)(a) (1) of the Income-tax Act, 1961 ("IT Act") after the introduction of section 80P(4) of that Act.

25. To provide the background for *Mavilayi (SC)*, we may examine how the dispute reached the Supreme Court. To begin with a Division Bench of the Kerala High Court has answered the above issue in *Chirakkal Service Co-operative Bank Ltd. v. CIT [2016] 68 taxmann.com 298/239 Taxman 417/384 ITR 490 (Ker.)*. It has held that once a Co-operative Society is classified by the Registrar of Co-operative Societies under the Kerala Act as being a primary agricultural credit society, the authorities under the IT Act cannot go behind the certificate so granted. That is, the certified credit society can claim the benefit under section 80P(2)(a) (i) of the IT Act.

26. But *Chirakkal Service Co-operative Bank Ltd.'s case (supra)* was said to be in ignorance of *Perinthalmanna Service Co-operative Bank Ltd. v. ITO (2014) 49 taxmann.com 438/363 ITR 268 (Ker.)* a co-equal Bench decision. This judgment, on the contrary, permits an inquiry by the IT authorities into the factual situation whether a society is in fact conducting business as a co-operative bank but not as a primary agricultural credit society.

27. In fact, these divergent views compelled the Kerala High Court to refer the matter to a Full Bench. Then, in *Mavilayi Service Co-operative Bank Ltd v CIT 2019 (2) KHC 287, ("Mavilayi HC")* the Full Bench has endorsed *Perinthalmanna Service Co-operative Bank's Ltd's case (supra)* view that the IT Authority can go behind the certificate granted by the Registrar of Co-operative Societies. To hold thus, the Full Bench has relied on the Supreme Court's *Citizen Cooperative Society Ltd. v. Asstt. CIT [2017] 84 taxmann.com 114/250 Taxman 78*. The Full Bench decision taken in further appeal, the Supreme Court, finally, in *Mavilayi Service Co-operative Bank Ltd 's case (supra)* SC considered the controversy threadbare and reversed the Kerala High Court's Full Bench decision. It has thus, endorsed *Chirakkal Service Co-operative Bank's case (supra)* view.

28. Here, before us, an identical question of law has arisen. It will suffice if we examine the case holding of *Mavilayi Service Co-operative Bank Ltd's case (supra) (SC)* and see whether it applies on all four. For here, too, the Revenue relies on *Citizen Cooperative Society Ltd's case (supra)*, as did *Mavilayi Service Co-operative Bank Ltd 's case (supra) (HC)*.

29. To begin with, a three-Judge Bench of the Apex Court in *Mavilayi Service Co-operative Bank Ltd.'s case (supra)* (SC) has noted that though the main object of the primary agricultural society is to provide financial assistance in the form of loans to its members for agricultural and related purposes, yet some of the objects go well beyond, and include banking operations 'as per rules prevailing from time to time' Then, *Mavilayi Service Co-operative Bank Ltd.'s case (supra)* SC has examined the case holding of *Citizen Co-operative Society case (supra)*. In fact, *Mavilayi SC* underlines the fact that even *Citizen Co-operative Society case (supra)* acknowledges that section 80-P of the IT Act is a benevolent provision, it was enacted by Parliament to encourage and promote growth of cooperative sector in the country. *Citizen Co-operative Society case (supra)*, as noticed by *Mavilayi SC*, has further accepted that once the assessee is entitled to avail itself of deduction, the entire amount of profits and gains of business that are attributable to any one or more activities mentioned in sub-section (2) of section 80P must be given by way of deduction Further, *Citizen Co-operative Society case (supra)* also accepts that section 80P(4) is in the nature of a proviso to the main provision contained in section 80P(1) and (2). This proviso specifically excludes only co-operative banks which are cooperative societies that must possess a license from the RBI to do banking business. In this backdrop, on facts, *Citizen Co-operative Society case (supra)* concludes that the appellant assessee did not have RBI licence, so it would "not fall within the mischief of section 80P(4).

30. *Mavilayi SC* points out that in *Citizen Co-operative Society case (supra)* the counsel for the assessee advanced no argument that "the assessing officer and other authorities under the IT Act could not go behind the registration of the co-operative society to discover whether it was conducting business in accordance with its bye-laws. Without that question in the Court's contemplation, *Citizen Co-operative Society case (supra)*, according to *Mavilayi Service Co-operative Bank Ltd's case (supra)* SC, stands robbed of its precedential on a point that has never been raised and, thus, never discussed. For a decision binds not because of its conclusion but because of the ratio and the principle it lays down. In other words, a decision is only an authority for what it actually decides. What matters in a decision is its ratio and not every observation found in it or what logically follows from the various observations made in it

31. Then, *Mavilayi Service Co-operative Bank Ltd.'s case (supra)* SC turns to the proper interpretation of Section 80P of the IT Act In interpreting that provision, it refers, among other things, to (a) the marginal note to Section 80P to ascertain the general "drift" of the provision, to the Finance Minister's speech, dated 28-2-2006, on the floor of Parliament, to a Circular dated 28-12-2006, explaining the provision as found in the Finance Act. 2006. Eventually, *Mavilayi SC* holds that to earn eligibility for deduction, the assessee must be a "co-operative society", it is unnecessary to probe any further whether the co-operative society is classified as X or Y. Besides, the gross total income must include income that is referred to in sub-section (2) of section 80P of IT Act.

32. *Mavilayi Service Co-operative Bank Ltd 's case (supra)* (SC) has referred to sub-section (4) of section 80P, which, according to it is in the nature of a proviso to that section This sub-section clarifies that no deduction shall be admissible for a cooperative bank But, if it is a primary agricultural credit society or a primary cooperative agricultural and rural development bank, the deduction will still be provided. Thus, only cooperative banks now specifically stand excluded from the ambit of Section 80P of the Act.

33. *On the facts, Mavilayi Service Co-operative Bank Ltd. 's case (supra) (SC) has noted that the appellant cannot be termed a cooperative bank. It is also a matter of common knowledge that in order to do the business of a cooperative bank, it is imperative for that bank to have a licence from Reserve Bank of India. And, admittedly, the appellant does not have it. In Mavilayi Service Co-operative Bank Ltd 's case (supra) (SC), as is the case here, the main reason for the Revenue to disentitle the appellant from getting the deduction under section 80P of the Act is not sub-section (4). It is the appellant's alleged activities in violation of the Cooperative Societies Act, under which it is formed. The AO has pointed out that the appellant has been catering to two distinct categories of people: the first category is the resident members or ordinary members; the second category is the "nominal members". These are those members who are making deposits with the assessee for the purpose of obtaining loans, etc. And, in fact, they are not members in real sense."*

7.3. *In view of the above discussion and decisions of the Hon'ble Supreme Court of Indian in the case of Mavilayi Service Co-operative Bank Ltd 's case (supra) (SC) and the Hon'ble Bombay High Court in the case of Principal Commissioner of Income-tax, Goa vs M/s Quepem Urban Co-operative Credit Society Ltd. Vs. The ACIT, Circle -1, Margoa. [2021](supra), it is held that the appellant society is entitled to the benefit of section 80P(2)(a)(i) of the Act. Accordingly, the addition made by the A.O is deleted and the Grounds of Appeal are Allowed."*

4. We further noticed that in the case of the assessee itself vide ITA No.1970/Mum/2016, ITO,17(3)(4) Vs. State Bank of India Employees for the A.Y. 2012-13 on the similar issue on identical facts as per the copy of the decision placed by the assessee in the paper book the ITAT, Mumbai held that assessee is also eligible for deduction u/s 80P(2)(a)(i) of the Act. Similarly, the ITAT in the case of the assessee itself for A.Y. 2013-14 vide ITA No. 6780/Mum/2018 SBI Employees M.S. Patel Co. Op. Credit Society Ltd. Vs. ITO, 17(3)(4) after following the decision of the coordinate bench of the ITAT in the case of M/s Jaoli Taluka Sahakari Vs. ITO 15(1)(2) vide No. 6627/Mum/2014 for AY 2010-11 decided the issue in favour of the assessee. Following the decision of the Hon'ble High Court of Bombay at Goa as reproduced in the findings of the Ld. CIT(A) in the case of the Quepem Urban Co-operative Credit Society Ltd. and the decisions of the coordinate benches of the ITAT in the case of the assessee itself and others as referred above we don't find

any reason to interfere in the decision of Id. CIT(A). Therefore, all the grounds of appeal of the revenue are dismissed.

5. In the result, the appeal of the revenue is dismissed.

Order pronounced in the open court on 24.06.2024

Sd/-
(Rahul Chaudhary)
JUDICIAL MEMBER

Sd/-
(Amarjit Singh)
ACCOUNTANT MEMBER

Mumbai, Dated 24.06.2024

PS: Rohit

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त(अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

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(Asst. Registrar)
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