

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ “एक-सदस्य मामला” मुंबई
IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH, MUMBAI

श्री सी. एन. प्रसाद, न्यायिक सदस्य एवं श्री राजेश कुमार, लेखा सदस्य के समक्ष
BEFORE SHRI C.N. PRASAD, JM AND SHRI RAJESH KUMAR, AM

ITA NO.4553/Mum/2016
(निर्धारण वर्ष / Assessment Year: 2012-13)

Income Tax Officer-17(1)(3) Room No.116, 1st Floor, Aayakar Bhavan, M K Road, Mumbai-400020	बनाम/ Vs.	M/s The Central Telegraph Office Co-op. Credit Society Limited, CTO Compound, Gr. Floor, Fort, Mumbai-400001
स्थायी लेखा सं./जीआइआर सं./PAN : AAAAT7914M		
(अपीलार्थी /Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से / Appellant by	:	Smt.Beena Santosh
प्रत्यर्थी की ओर से/Respondent by	:	S/Shri Chandrakant P Kasat and Rohit Kasat

सुनवाई की तारीख /Date of Hearing	:	26.12.2016
घोषणा की तारीख /Date of Pronouncement	:	29.12.2016

आदेश / ORDER

PER RAJESH KUMAR, A. M:

The Revenue is in appeal against the impugned order dated 24/04/2016 of the Id. First Appellate Authority, Mumbai for the assessment year 2012-13.

2. The sole issue raised in this appeal is against the direction to AO to allow deduction of Rs.43,52,760/- u/s 80P(2)(a)(i) of the Income Tax Act,

1961 (The Act) to the assessee despite the fact that the assessee is carrying on banking business and other business. The assessee is a cooperative credit society. The assessee filed its return of income on 10.9.2012 declaring a total income at Rs.NIL after claiming deduction u/s 80P of the Act. The case of the assessee was processed u/s 143(1) of the Act. Subsequently, the case of the assessee was selected for scrutiny and statutory notices u/s 143(2) and 142(1) were issued to the assessee and served upon it. The assessee is a Co-operative Society and Registered under the Co-operative Societies Act, 1960. The object of the Society is to enable its members to obtain loan from the Society. During the course of assessment proceedings, the AO noticed that the assessee has received an interest on loans given to its members and also interest from the deposits made with co-operative banks and scheduled banks and claimed deduction u/s 80P in respect of interest received from the schedule bank. The AO issued show cause notice as to why the deduction claimed under section 80P should not be disallowed by rejecting the submission of the assessee that similar deduction has been allowed in the assessment year 2010-11 by the Id.CIT(A). The AO brushed aside the submissions of the assessee by holding that the order of the Id. CIT(A) has been challenged by the Income Tax Appellate Tribunal. The AO held that the assessee is a co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural

development bank. The assessee fulfills the condition laid down under section 56(c)(ccv) of Part V of the Banking Regular Act, 1949 and accordingly rejected the contention of the assessee claiming deduction of Rs.43,52,761/- u/s 80P of the Act by framing assessment under section 143(3) of the Act at Rs.43,52,760/- vide assessment order dated 12.3.2015. Aggrieved by the order of the AO, the assessee preferred an appeal before the First Appellate Authority, who allowed the appeal of the assessee. Further aggrieved by the order of Id.CIT(A), the revenue is in appeal before this Tribunal.

3. At the outset, the Id.AR submitted that the issue raised by the revenue in the present appeal stands covered in favour of the assessee and against the revenue by the decision of the Co-ordinate Bench of the Tribunal in assessee's own case rendered in ITA No. 2936/MUM/2014 (AY-2010-11) order dated 23.5.2016. The Id. AR, therefore, prays that the appeal filed by the revenue against the FAA deserves to be dismissed in view of the above said decision of the Co-ordinate Bench of the Tribunal.

4. The Id. DR submitted before us that the Department has filed Special Leave Petition before the Hon'ble Supreme Court against the order of Jurisdictional High Court and pending for disposal.

5. We have heard the rival contentions and perused the material placed before us including the orders of authorities below and cases relied upon by the assessee. We find that Ground No.1 and 2 of the appeal filed by the revenue stand covered in favour of the assessee vide para 3.1 of the decision of the Co-ordinate Bench of the Tribunal in assessee's own case (supra). For the sake of convenience, the same is reproduced below:

"3.1. We have considered the rival submissions and perused the material available on record. In view of the above, we are reproducing hereunder the relevant portion from the aforesaid order of the Tribunal dated 29/07/2015 for ready reference and analysis:-

"This appeal filed by the Revenue on 03.07.2013 is against the order of the CIT (A)-26, Mumbai dated 30.04.2013 for the assessment year 2010-2011. In this appeal, Revenue raised the following grounds which read as under:

"1. On the facts and in the circumstances of the case and in law, the Ld CIT (A) erred in directing to allow deduction u/s 80P to the assessee even though assessee carries on the banking business and other business in the name of a credit cooperative society.

2. On the facts and in the circumstances of the case and in law, the Ld CIT (A) has erred in allowing deduction u/s 80P(2)(a)(i) without considering insertion of section 80P(4) and sub clause (vii) to section 2(24) vide Finance Act, 2006 w.e.f. 1.4.2007.

3. On the facts and in the circumstances of the case and in law, the Ld CIT (A) has erred in holding that the facts of the assessee's case are not identical with any of the case laws relied upon by the AO especially decision of ITAT Jaipur in the case of Kekri Sahakari Bhumi Vikas Bank Ltd and Cochin ITAT in the case of Kerala State Coop. Agricultural Rural Development Bank Ltd.

4. *On the facts and in the circumstances of the case and in law, the Ld CIT (A) has erred in not following his own order in the case of vishal Janseva Sahakari Patsantha Ltd for AY 2008-2009 on the same issue vide order No. CIT (A)- 26/IT-30/15(3)(3)/10-11, dated 4 th July, 2012."*

2. *Briefly stated relevant facts of the case are that the assessee filed the return of income declaring the total income of Rs. NIL after claiming deduction u/s 80P of the Act for an amount of Rs. 40,13,467/-. The case was scrutinized under CASS and the notices u/s 143(1) & 143(2) were issued and the assessment was completed u/s 143(3) of the Act determining the assessed income at Rs. 40,13,470/- wherein the AO disallowed Rs. 40,13,467/- against the said claim of deduction u/s 80P of the Act. Aggrieved, assessee carried the matter in appeal before the first appellate authority.*

3. *During the proceedings before the first appellate authority, after considering the submissions of the assessee, CIT (A) allowed the appeal. Aggrieved with the said decision of the CIT (A), Revenue is in appeal before the Tribunal by raising the above mentioned grounds.*

4. *During the proceedings before us, at the outset, Ld Counsel for the assessee brought our attention to ground no.1, which is the only effective ground to be adjudicated, and submitted that the assessee is a credit cooperative society and claimed deduction u/s 80P(2)(a)(i) of the Act. However, Assessing Officer treated the same as "cooperative bank". On appeal, CIT (A) granted relief as per the discussion given in para 3.2 and 3.2.1 of the impugned order. Aggrieved with the same Revenue is in appeal before the Tribunal. In this regard, Ld Counsel for the assessee filed various orders of the ITAT, Mumbai as well as the other Benches and the judgment of the Hon"ble Bombay High Court in the case of Quepem Urban Cooperative Credit Society Ltd [2015] 58 taxmann.com 113 (Bombay).*

5. *After hearing the both the parties in this regard, we find the said judgment of the Hon"ble Bombay High Court in the case of Quepem Urban Cooperative Credit Society Ltd (supra) is relevant for the following proposition:*

"Where assessee-cooperative society could not be regarded as "Cooperative Bank" on, mere fact that an insignificant proposition of revenue was coming from non-members, and thus, was entitled for deduction under section 80P(2)(a)(i) of the Act."

6. Therefore, considering the above, we are of the opinion that the decision taken by the CIT (A) is fair and reasonable and it does not call for any interference. Accordingly, ground no.1 raised by the Revenue is dismissed. Rest of the grounds ie Ground no.2, 3 and 4 are argumentative in nature and therefore, they need no special adjudication. Accordingly, the same are dismissed as academic.

7. In the result, appeal of the Revenue is dismissed."

In view of the case being covered by the decision of the co-ordinate bench of the Tribunal in its own case, the ground no.1 and 2 are dismissed.

6. The ground No.2 raised by the Revenue also stands covered by para 2.1 and 2.2 of the decision of the Co-ordinate Bench of the Tribunal in assessee's own case order dated 23.5.2016 (supra), which is reproduced below:

2.1. During hearing, the Id. counsel for the assessee, Shri Rohit C. Kasat, at the outset, pointed out that the impugned issue is covered in favour of the assessee by the decision of the Tribunal in the case of Punjab National Bank Employees Credit Society Ltd. (ITA No.3415 & 2935/Mum/2014) order dated 31/03/2016. This factual matrix was consented to be correct by the Id. DR, Shri Ganesh Bare.

2.2. We have considered the rival submissions and perused the material available on record. In view of the above, we are reproducing hereunder the relevant portion of this order dated 31/03/2016 for ready reference and analysis:-

"There are two appeals under consideration for the AY 2010-2011 and they are cross appeals. These two appeals are filed against the order of the CIT (A)-26, Mumbai dated 18.2.2014. Since, the issues raised in these appeals are inter-connected, therefore, for the sake of convenience, they are clubbed, heard together and disposed of in this consolidated order. Appeal wise adjudication is given in the following paragraphs of this order.

ITA No.293S/M/2014 (By Revenue)

2. This appeal filed by the Revenue on 29.4.2014. In this appeal, Revenue raised objections on the applicability of the provisions of section 80P(4) of the Act. The Revenue is of the opinion that the references provided in the sub-section 4 of section 80P of the Act extends to all societies engaged in the activities of giving & taking deposits. Consequently, the assessee is not entitled for deduction u/s 80P(2)(a)(i) of the Act. But, CIT (A) explained this issue and granted relief to the assessee vide his discussion in para 3 and its sub-paras of his order. CIT (A) explained in the light of various decisions. On perusal of the same and after hearing both the parties, we find that the order of the CIT (A) on this issue is fair and reasonable. All such societies are not banks. Reference is made to the discussion at paras 4 and 5 of this order. Therefore, in our opinion, there is no need to interfere with the decision of the CIT (A). Accordingly, grounds raised by the Revenue are dismissed.

3. In the result, appeal of the Revenue is dismissed.

ITA No.341S/M/2014 (By assessee)

4. This appeal filed by the assessee on 13.5.2014 against the said order of the CIT (A)-26, Mumbai. The issue raised in this appeal relates to the allowability of deduction of interest and

dividend u/s 80P(2)(d) of the Act. As per the assessee, the cooperative banks are cooperative societies and they are not "bank" as defined in the Banking Regulation Act, 1969. On this issue, assessee relied on various decisions as well as the coordinate Bench decision in the case of ITO vs. M/s. RCF Employees Cooperative Credit Society Ltd in ITA Nos. 6903 and 7465/M/2013 (AY 2010-2011), dated 29.01.2016. Paras 6 and 7 of the said Tribunal's decision (supra) are relevant in this regard.

5. We have heard both the parties and perused the orders of the Revenue Authorities as well as the cited decision of the Tribunal in the case of M/s. RCF Employees Cooperative Credit Society Ltd (supra). On perusal of the said Tribunal's order (supra), we find, paras 6 and 7 are relevant in this regard. Considering the significance of the said paras 6 and 7 and also for the sake of completeness of this order, the same are extracted as under:-

" 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 (AJ is fair and reasonable and it does not call for any interference. Accordingly, issue raised in the Revenue's appeal is dismissed. "

6. Considering the above settled nature of the issue as well as respectfully following the decision of the Coordinate Bench in the case of RCF Employees Coop. Credit Society Ltd (supra), wherein one of us (AM) is a party to the said order, and also to maintain the principle of consistency, we are of the opinion that the assessee is entitled to relief. Accordingly, Grounds raised by the assessee are allowed.

7. In the result, appeal of the assessee is allowed.

8. Conclusively, Revenue's appeal is dismissed and the appeal of the assessee is allowed."

We find that in the aforesaid order, the Tribunal has placed reliance upon the decision of the coordinate Bench in the case of ITO vs M/s R.C.F. Employees Cooperative Credit Society Ltd. (ITA Nos.6903 & 7465/Mum/2013) order dated 29/01/2016. In that case, the decision from Hon'ble jurisdictional High Court in the case of Quepem Urban Cooperative Credit Society Ltd. vs ACIT (2015) 377 ITR 272 (Bom.) was discussed. Considering the aforesaid decision and the contention raised from both sides, the facts being similar, we find no infirmity in the conclusion of the Ld. Commissioner of Income Tax (Appeal), therefore, the appeal of the Revenue is having no merit, consequently, dismissed."

7. From the above, it is clear that the issue stands settled in favour of the assessee by the decision of the Co-ordinate Bench of the Tribunal in assessee's own case. Respectfully following the decision of the Co-ordinate Bench, the ground No.3 of the revenue stands dismissed.

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

Order pronounced in the open court on 29th Dec,2016

(C.N. Prasad)

न्यायिक सदस्य / Judicial Member

(Rajesh Kumar)

लेखा सदस्य / Accountant Member

मुंबई Mumbai; दिनांक Dated : 29.12.2016
SRL,Sr.PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT – concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard File

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आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai