

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "H" MUMBAI**

**BEFORE SHRI MANOJ KUMAR AGGARWAL (ACCOUNTANT MEMBER) AND
SHRI RAVISH SOOD (JUDICIAL MEMBER)**

**ITA No. 6366/MUM/2019
(Assessment Year: 2015-16)**

Income Tax Officer-20(3)(4),
Mumbai

Vs. The KEM Hospital & Sheth
GSM College Employees
Co-operative Credit
Society Limited

PAN No. AAAAT5055H

(Revenue)

(Assessee)

Assessee by : Shri Kumar Kale, A.R
Revenue by : Shri Sumit Kumar, D.R

Date of Hearing : 31/03/2021
Date of pronouncement : 07/04/2021

ORDER

PER RAVISH SOOD, J.M:

The present appeal filed by the revenue is directed against the order passed by the CIT(A)-32, Mumbai, dated 17.07.2019, which in turn arises from the order passed by the A.O under Sec.143(3) of the Income Tax Act, 1961 (for short 'Act'), dated 06.11.2017 for A.Y. 2015-16. The revenue has assailed the impugned order on the following grounds of appeal before us:

"1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in by granting relief of Rs.73,91,380/- by deleting the addition made by the Assessing Officer".

2. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has failed to appreciate the fact that the deduction allowable earlier u/s.SOP of the Act in the case of Co-operative societies engaged in the banking has been withdrawn w.e.f. 2007-08 by Section 80P(4) except in the

case of primary Agricultural Credit Society or a primary Co-operative Agricultural and Rural Development Bank."

3. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in not considering the fact that the Hon'ble Supreme Court has granted leave against High Court's order where it has been held that assessee co-operative society could not be regarded as Co-operative Bank on mere fact that an insignificant proportion of revenue was coming from non-members, and thus, was entitled for deduction under section 80P(2)(a)(i)".

4. The appellant prays that the order of the CIT(A) on the above grounds be reversed and that of the Assessing Officer be restored.

5. The appellant craves leave to amend or alter any ground or add a ground which may be necessary."

2. Briefly stated, the assessee which is a co-operative credit society carrying on finance/banking business i.e. financing their members and collecting deposits from them by way of FD"s etc. had filed its return of income for A.Y. 2015-16 on 30.09.2015, declaring a total income of Rs. Nil i.e after claiming deduction of Rs. 1,64,84,079/- under Sec. 80P(2) of the Act. The return of income filed by the assessee was initially processed as such under Sec. 143(1) of the Act. Subsequently, the case of the assessee was taken up for scrutiny assessment under Sec. 143(2) of the Act.

3. During the course of the assessment proceedings, it was submitted by the assessee that it was a co-operative credit society and its only business was to grant medium term, short term and long term loans to its members. It was observed by the A.O that the assessee had claimed deduction under Sec. 80P(2) of Rs. 1,64,84,079/-. However, the A.O was not persuaded to subscribe to the aforesaid claim of deduction raised by the assessee under Sec.80P of the Act. The A.O held a conviction that the assessee being a primary co-operative bank was hit by the provisions of Sec. 80P(4), and thus, was not eligible for claim of deduction under Sec. 80P(2)(a)(i). The contention of the assessee that it was a co-operative credit society providing banking/credit facilities only to its members and was not a co-operative bank providing banking/credit facility to the public at large did not find favour with the A.O. It was observed by the A.O that deduction allowable under

Sec.80P(2)(a)(i) in the case of co-operative credit society engaged in carrying on the business of banking (co-operative banks) was withdrawn by the legislature in all its wisdom from the assessment year 2007-08, except in the case of a “primary agricultural credit society” or “a primary co-operative agricultural and rural development bank”. It was noticed by the A.O that sub-section (4) of Sec.80P was inserted by the Finance Act, 2006 w.e.f. 01.04.2007, which provided that provisions of Section 80P shall not apply in relation to any co-operative bank other than a “primary agricultural credit society” or a “primary co-operative agricultural and rural development bank”. Further, It was observed by him that the ‘Explanation’ to Sec. 80P(4) clearly defined the expressions “co-operative bank”, “primary agricultural credit society” and “primary cooperative agricultural and rural development bank”. It was also noticed by him that as per the Finance Act, 2006 sub-clause (viiia) to Sec.2(24) had been inserted so as to provide that the profit and gains of any business of banking (including providing credit facilities) carried out by a co-operative society with its members shall be included in the definition of “income”. On the basis of his aforesaid deliberations, it was observed by the A.O that as the assessee fulfilled all the three conditions laid down under Sec. 56(c)(ccv) of Part V of the Banking Regulation Act, 1949, viz. (i) the primary object of the principal business of the co-operative society is the transaction of banking business; (ii) the paid-up share capital and reserves of the co-operative society are not less than one lac of rupees; and (iii) the bye laws of the co-operative society did not permitted admission of any other co-operative society as a member, therefore, it clearly fell within the category of a primary co-operative bank. In the backdrop of his aforesaid deliberations the A.O was of the view that the assessee being a primary cooperative bank would thus be hit by the provisions of Sec. 80P(4) of the Act and w.e.f A.Y 2008-09 would not be eligible for claim of deduction under the said section. On the basis of his aforesaid observations the A.O declined the claim of deduction of the assessee society under Sec.80P and assessed its income at Rs.1,64,84,080/-

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4. Aggrieved, the assessee carried the matter in appeal before the CIT(A). The CIT(A) after deliberating at length on the contentions advanced by the assessee observed that the assessee was a co-operative credit society providing banking/credit facilities to its members out of the deposits received from its members and was not providing banking/credit facility to the public at large. The CIT(A) further deliberating on the issue as to whether the assessee as observed by the A.O could be held to be a primary co-operative bank, therein referred to the judgment of the Hon'ble High Court of Bombay in the case of Quepem Urban Credit Society Ltd. Vs. ACIT, (2015) 58 Taxman.com 113 (Bom). In its aforesaid judgment it was observed by the Hon'ble High Court that an assessee cannot be considered to be a co-operative bank for the purposes of Sec.80P(4) unless three conditions were cumulatively satisfied, viz. (i) the principal business or primary objective should be business of banking; (ii) its paid up share capital and reserves should not be less than rupees one lac; and (iii) its bye laws do not permit admission of any other co-operative society as its member. On analysis of the above conditions, it was observed by the CIT(A) that the word "banking" means 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, order or otherwise. In the backdrop of his aforesaid view the CIT(A) held a conviction that as in the case of assessee co-operative society the acceptance and lending of money was only from the members and not from the public thus, it could safely be concluded that the principal business or primary objective of the assessee co-operative credit society was not the business of banking. Further, it was observed by the CIT(A) that in the assessee's own case for A.Y 2012-13, his predecessor had vide an order dated 27.05.2016 held that as the assessee was not a co-operative bank, it was, thus, eligible for claim of deduction under Sec. 80P(2)(a)(i) of the Act. It was, further, observed by the CIT(A) that the order passed by his predecessor in the assessee's own case for A.Y 2012-13 was thereafter upheld by the Tribunal in ITA No. 4986/Mum/2016, vide its order dated 15.03.2018. In the backdrop of his

aforesaid observations the CIT(A) allowed the assessee's claim for deduction under Sec. 80P(2) of Rs. 1,64,84,079/- and directed the A.O accordingly.

5. The revenue being aggrieved with the order of the CIT(A) has carried the matter in appeal before us. The Id. Departmental Representative (for short "D.R") has relied on the order passed by the A.O. It was submitted by the Id. D.R that the CIT(A) had wrongly held that the assessee being a co-operative credit society would be eligible for claim of deduction under Sec.80P(2)(a)(i) of the Act.

6. Per contra, the Id. Authorised Representative (for short "A.R") for the assessee relied on the order of the CIT(A).

7. We have heard the authorised representatives for both the parties, perused the orders of the lower authorities and the material available on record, as well as considered the judicial pronouncements that have been relied upon by the lower authorities. After deliberating at length on the orders of the lower authorities, we are persuaded to subscribe to the observations of the CIT(A) that as the assessee which is a co-operative credit society is not a primary co-operative bank, hence, it would not be hit by the provisions of Sec.80P(4) as had been made available on the statute vide the Finance Act, 2006 w.e.f 01.04.2007. Our said view is fortified by the fact that it is absolutely mandatory for a co-operative society to seek a licence from the Reserve Bank of India to form and operate as a co-operative bank. Further, a perusal of Circular No. 312 of the Reserve Bank of India reveals the process involved for conversion of a co-operative society into a primary co-operative bank. Admittedly, in the case before us as the assessee being a co-operative credit society is neither authorized nor had undertaken any of the banking business activities as are carried out by a primary co-operative bank, but had only provided financial assistance/credit to its members, therefore, it can safely be concluded that it cannot be held to be a co-operative bank. Apart from that, we find that as stated by the Id. A.R, and rightly so, the issue involved in the present appeal is squarely covered by the orders of the Tribunal in the

assessee's own case for the preceding years, viz. A.Y. 2012-13, ITA No. 4986/Mum/2018, dated 15.03.2018; A.Y 2013-14, ITA No. 864/Mum/2017, dated 20.06.2018; and A.Y 2014-15, ITA No. 4552/Mum/2019, dated 07.01.2021. On the basis of our aforesaid deliberations, we are persuaded to be in agreement with the observations of the CIT(A) that the assessee would not be hit by the provisions of Sec. 80P(4) of the Act. We, thus, being in agreement with the view taken by the CIT(A) that the claim of the assessee under Sec. 80P(2)(a)(i) was in order, uphold the same.

8. Resultantly, the appeal of the revenue is dismissed.

Order pronounced in the open court on 07.04.2021

Sd/-
(Manoj Kumar Aggarwal)
ACCOUNTANT MEMBER

Sd/-
(Ravish Sood)
JUDICIAL MEMBER

Mumbai;

Dated: 07.04.2021

PS: Rohit

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

BY ORDER,
//True Copy//
(Sr. Private Secretary)
ITAT, Mumbai