

FORM NO. 35 [See rule 45]					CIT(A)					
Appeal to the Commissioner of Income-tax (Appeals)					CIT (A) 25, Mumbai					
Personal Information	First Name		Middle Name		Last Name or Name of Entity		PAN		TAN (if available)	
					SHRI OM SAI CO OPPERTIVE CREDIT SOCIETY LIMITED		AAEAS5258B			
	Flat/ Door/ Block No.		Name of Premises / Building / Village				Road / Street / Post Office			
	4 AC 1247		SHRI OM SAI CREDIT STY				C G GIDWANI ROAD NEAR NATIONAL SARVODAYA SCHOOL			
	Area/ Locality		Town/ City/ District				State		Country	
	CHEMBUR CAMP		MUMBAI				MAHARASHTRA		INDIA	
Personal Information	Pincode		Mobile No		STD Code-Phone No		Email Address		Whether notices/ communication may be sent on email?	
	400074		9702540916		-		shreeomsaicreditsociety@gmail.com		Yes	
Order against which Appeal is filed	1 Assessment year in connection with which the appeal is preferred/ Enter financial year in case appeal is filed against an order where assessment year is not relevant									
	Assessment Year		Financial Year		Block Period		Date Of Search			
	2015 - 16				From(AY) To(AY)					
	2 Details of Order appealed against/Application u/s 248									
	a Section and sub-section of the Income-tax Act,1961								143(3)	
	Order Number								OEII I/81 / P18 / 2017-18	
	b Date of Order/Date of Tax Payment in case of Application u/s 248								30/11/2017	
Pending Appeal	c Date of service of Order / Notice of Demand								30/11/2017	
	3 Income-tax Authority passing the order appealed against								WARD 27(3)(3), MUMBAI	
	4 Where an appeal in relation to any other assessment year is pending in the case of the appellant with any Commissioner (Appeals)								No	
	4.1 If reply to 4 is Yes, then give following details.									
	Sl.No	Commissioner (Appeals), with whom the appeal is pending	Appeal No	Date of Filing of appeal	Assessment year/ financial year in connection with which the appeal has been preferred	Assessment year/ financial year	Income-tax Authority passing the order appealed against	Section and sub-section of the Income-tax Act,1961, under which the order appealed against has been passed	Date of such Order	
	1									
	Appeal Details	5 Section and sub-section of the Income-tax Act,1961 under which the appeal is preferred								246A
6 If appeal relates to any assessment ?								Yes		
a Amount of Income Assessed (in Rs.)								1645000		
b Total Addition to Income (in Rs.)								1645000		
c In case of Loss, total disallowance of Loss in assessment (in Rs.)								0		
d Amount of Addition/ Disallowance of Loss disputed in Appeal (in Rs.)								1183002		
e Amount of Disputed Demand (in Rs.)-Enter Nil in case of Loss								530193		
7 If appeal relates to penalty ?								Not Applicable		
a Amount of penalty as per order (in Rs.)										
b Amount of penalty disputed in Appeal (in Rs.)										

Details of Taxes paid	8	Where a return has been filed by the appellant for the assessment year in connection with which the appeal is filed, whether tax due on income returned has been paid in full				Yes
	8.1	If reply to 8 is Yes, then enter details of return and taxes paid				
	a	Acknowledgement number				653229451090317
	b	Date of filing				09/03/2017
	c	Total tax paid				0
	9	Where no return has been filed by the appellant for the assessment year, whether an amount equal to the amount of advance tax as per section 249(4)(b) of the Income-tax Act, 1961 has been paid				Not Applicable
	9.1	If reply to 9 is Yes, then enter details				
	Tax Payments					
		Sl.No	BSR Code	Date of payment	Serial Number	Amount
		1				
	Total				0	
Statement of Facts, Grounds of Appeal and additional evidence	10	If the appeal relates to any tax deductible under section 195 of the Income-tax Act, 1961 and borne by the deductor, details of tax deposited under section 195(1)				
		Sl. No	BSR Code	Date of payment	Serial Number	Amount
		1				
	11	<p>Statement of Facts</p> <p>Facts of the case in brief (not exceeding 1000 words)</p> <p>1. The Appellant Shri Om Sai Co Operative Credit Society Ltd (PAN AAEAS5258B) is a Co Operative Credit Society engaged in the business of providing credit facilities to its members and assessed by ITO Ward 27(3)(3), Mumbai for A.Y. 2015 16. 2. During the relevant A.Y., the Appellant filed its return of Income on 9th March 2017 under section 139(4) of the Income Tax Act, 1961 declaring net total income of Rs. Nil. The return was processed under section 143(1) of the Income Tax Act, 1961. 3. The return was selected for scrutiny assessment. The assessment has been completed determining the net total income at Rs.16,45,000 against the returned income of Rs. Nil. While doing so, the assessing officer has made the following additions and/or disallowances. 3.1. Disallowance of deduction claimed under section 80P(2)(a)(i) of the Income Tax Act, 1961 of Rs. 11,83,002. 3.2. Additions of Rs. 4,62,000 on account of Rent received under the head Income from house property. 4. During the course of assessment proceedings, the appellant filed copies of byelaws, annual report, financials, details of members, Bank statements, rent agreement with the tenant and also filed submission providing reasons regarding the claim for such amount as deduction under section 80P(2)(a)(i) of the Income Tax Act, 1961. In spite of the same, the Assessing Officer has ignored the same and disallowed the claim of deduction and added an amount of Rs 11,83,002 to the Total Income of the appellant. 5. It is against this order of assessment this appeal is being preferred with a request to delete the addition made on account of disallowance of deduction claimed under section 80P(2)(a)(i) and allow the expenditure deductions as claimed. 6. Assessing Officer has not considered the complete definition of the Primary Co Operative Bank as per section 5(ccv) of the Banking Regulation Act, 1949. Para 4.3.3. of the assessment order only, states clause (i) and (ii) of the section 5(ccv). Whereas section 5(ccv) has three clauses. 6.1. It is clearly evident from the above that for a cooperative society to fall under the definition of the Primary Cooperative Bank all of the above three conditions should be satisfied. 6.1.1. The first condition states that primary objective of the society should be that of the banking business. 6.1.2. The principal object of the society as per Para 5 of the bye laws is as follows Principal Object of the society will be to promote the interest of all its members to attain their social and economic betterment through self help and mutual aid in accordance with the cooperative principles. 6.2. As for the second condition there is no doubt that share capital and reserves of the society exceed rupees one lakh. This condition is satisfied. 6.3. The third condition provides that bye laws of the society should not allow any other cooperative society as a member. This condition is clearly not satisfied as para 10(e) membership of the byelaws of the assessee permits admission of other cooperative societies. Except for those which are in the same business as of the assessee. Hence, except for other credit society assessee can admit all of the other types of cooperative societies as member. 6.3.1. Hence, the third condition is clearly not satisfied in the case of the assessee. If the AO had considered the full and complete definition of the Primary Cooperative Bank as per Section 5(ccv) of the Banking Regulation Act, 1949 in the assessment order, it would have been found that the assessee is a Primary Cooperative Bank and the addition made on account of disallowance of deduction claimed under section 80P(2)(a)(i) is not sustainable. Hence, the addition is deleted and the expenditure deductions are allowed.</p>				

ould have been clear that assessee is not covered under the said definition. 7. Conclusion arrived at by the Assessing officer regarding the Interpretation of the explanatory note No. 22 to the Finance Act, 2006 in para 4.3.11 is clearly erroneous and contradictory with the para 4.3.3 of the Assessment Order itself. 8. It is also relevant to note that a cooperative Bank requires a specific license from the Reserve Bank of India. Thus, it is mandatory to obtain a license from RBI to work as bank or banker. The Appellant has not obtained such license from RBI hence it is not bank or banker within the meaning of Banking Regulation Act, 1949. 9. Various High Courts after detailed analysis of Section 80P and its sub sections along with the provisions of Banking Regulation Act 1949, had arrived into the following conclusions

9.1. All Cooperative Societies other than those coming under the control of Reserve bank of India are eligible for deduction under Section 80(P) (2) (a) of the Income Tax Act 1961. 9.2. A Cooperative society carrying on banking activities is not a Cooperative Bank licensed by Reserve Bank of India and therefore is eligible for deduction under Section 80P of Income Tax Act, 1961 in the light of the clarification No.133/06/2006 dated 19/05/2007 issued by CBDT. 10. The above said viewpoints were expressed by various appellate authorities all over the country. Some of these decisions are mentioned below. Latest case Law 10.1. ACIT vs Buldana Urban Cooperative Credit Society Ltd. (2013) 32 taxmann.com 69 (Nagpur Trib.) 10.2. CIT vs Jafari Momin Vikas Coop. Credit Society Ltd (2014) 49 taxmann.com 571 (Gujarat) 10.3. Tararani Mahila CoOp credit society Ltd. vs ITO, Ward (1)(2), Belgaum (2014) 44 taxmann.com 123 (Panaji Trib.) 10.4. Chandraprabhu Urban CoOp Credit Society v. ITO, Ward 1, Nipani (2015) 64 taxmann.com 336 (Karnataka) 10.5. Incometax Officer, Ward 1(4) v. Jankalyan Nagri Sahakari Pat Sanstha Ltd. (2012) 24 taxmann.com 127 (Pune) 10.6. Commissioner of Incometax, Belgaum v. Shri Laxmi Credit Souhard Sahakari Ltd, (2015) 65 taxmann.com 96 (Karnataka) 10.7. Belgaum Merchants Coop Credit Society Ltd. v. Commissioner of Incometax (Appeals), Belgaum, (2015) 64 taxmann.com 274 (Karnataka) 10.8. ITO v. Shiva Credit Souhard Sahakari Niyamit, (2015) 55 taxmann.com 472 (Panaji Trib.) 11. The appellant craves leave to add, amend, alter, vary and/or withdraw any or all the above statement of facts before or during the course of the appeal being heard and or disposed of

List of documentary evidence relied upon

Bye Laws of the Appellant, Model Bye laws of Primary Co-operative Bank, Statutory Auditors Report for the year 2014-15

12 Whether any documentary evidence other than the evidence produced during the course of proceedings before the Income-tax Authority has been filed in terms of Rule 46A

No

12.1 If reply to 12 is Yes, furnish the list of such documentary evidence

13 Grounds of Appeal(each ground not exceeding 100 words)

Sl.No	Relevant section (s) of IT/Act	Issue	Ground of Appeal
1	80P(2)(a)(i) read with 80P(4)	As per grounds of appeal	The assessing officer has erred in ignoring the various documents and facts provided during the assessment, and therefore going against the law of natural justice have unwarranted in not accepting the return of income filed by the appellant.
2	80P(2)(a)(i) read with 80P(4)	As per grounds of appeal	The Assessing Officer erred in law and on the facts by disallowing the deduction, claimed by the Appellant of Rs. 11, 83,002/- under section 80P(2)(a)(i) of the Income Tax Act, 1961 by 2.1. Ignoring the Hon. CBDT Instructions for the same, as well as Hon. Supreme Court and Jurisdictional ITAT/ High Court decisions on this issue. 2.2. Ignoring the fact that as per section 80P(4) of the Income Tax Act, 1961 deduction under section 80P(2)(a)(i) is not allowed in the case of Co-operative Banks and not in the case of Co-operative Credit Society. 2.3. Not considering complete definition of Primary Co-operative Bank

					given in section 5(ccv) of the Banking Regulation Act, 1949. 2.4. Ignoring the fact that thatassessee does not satisfy all of the three clauses given in section 5(ccv) of the Banking Regulation Act, 1949. 2.5. Ignoring the fact that there is a substantive distinction between activities of a Co-operative Credit Society and that a Co-operative Bank.	
	3	Explanatory note no. 22 Finance Bill, 2006	As per grounds of appeal		3. The Assessing Officer erred in law and on the facts in interpreting the explanatory note no. 22 to the Finance Act, 2006 which withdrew the benefits available to certain Co-Operative Banks and not to Co-Operative Credit Societies.	
Appeal filing details	14	Whether there is delay in filing appeal ?			No	
	15	If reply to 14 is Yes, enter the grounds for condonation of delay (not exceeding 500 words)				
	16	Details of Appeal Fees Paid				
		Sl.No	BSR Code	Date of payment	Serial Number	Amount
		1	0242465	22/12/2017	527	1000
17	Address to which notices may be sent to the appellant					
	Flat/ Door/ Block No.		Name of Premises / Building / Village		Road / Street / Post Office	
	4 AC 1247		SHRI OM SAI CREDIT STY		C G GIDWANI ROAD NEAR NATIONAL SARVODAYA SCHOOL	
	Area/ Locality		Town/ City/ District		State	Country
	CHEMBUR CAMP		MUMBAI		MAHARASHTRA	INDIA
	Pincode		Mobile No	Email Address		
	400074		9702540916	shreeomsaiacreditsociety@gmail.com		

Form of Verification

I, **AMOL ANANDA CHAVAN, MANAGER, SHREE OM SAI CO-OP CREDIT SOCIETY** the appellant, do hereby declare that what is stated above is true to the best of my information and belief. It is also certified that no additional evidence other than the evidence stated in row 12.1 above has been filed.

Place : **MUMBAI**

Date : **29/12/2017**