

INCOME TAX DEPARTMENT

1.	Name & Address of the Assessee	:	SHRI OM SAI CO-OP CREDIT SOCIETY LIMITED. 4 AC/1247, NEAR THE NATIONAL SARVODAYA HIGH SCHOOL, C.G. GIDWANI MARG, OPP. DUDHESWAR MANDIR, CHEMBUR, MUMBAI – 400074.
2	PAN	:	AAEAS5258B
3	District/Ward/Circle	:	INCOME TAX OFFICER- 27(3)(3) MUMBAI
4	Status	:	AOP
5	Assessment Year	:	2015-16
6	Whether Resident/Resident but not Ordinarily Resident/Non- Resident.	:	RESIDENT
7	Method of Accounting	:	-
8	Previous Year	:	2014-15
9	Nature of Business	:	
10	Date(s) of hearing	:	AS PER ORDER SHEET
11	Date of order	:	30.11.2017
12	Section and sub-section under which the Assessment is made.	:	143(3) OF THE INCOME TAX ACT

ASSESSMENT ORDER

The Return of income for A.Y. 2015-16 declaring **Rs. Nil/-** income was e-filed by the assessee on 09-03-2017. The return was processed u/s.143(1) of the I T Act.

2. Subsequently, the case was selected for scrutiny and notice under section 143(2) of the I T Act dated 18-09-2017 was issued and served upon the assessee. Further, opportunity was given to the assessee by issue of notice u/s.142(1) of the I T Act , to present the case before the undersigned.

3. In response to the statutory notices issued the assessee's authorized representative: Shri Amol Chavan emailed the requisite details called for.



4. **Disallowance of deduction claimed u/s.80P of the I T Act.**

4.1 The assessee is a co-operative credit society and doing banking business. It collects deposits from members under various scheme. Its major source of income as is evident from the P&L A/c is on account of interest on loan to members and from fixed deposits. In the return of income, the assessee has shown gross total income at Rs. **11.83.002/-** and the entire amount has been claimed as deduction U/s.80P of the Act.

4.2 The assessee was requested to explain why the deduction claimed u/s.80P(2)(a)(i) should not be disallowed in view of the amended provisions of Section 80P(2)(a)(i) of the Income Tax Act 1961. In response to this, the assessee vide emailed dated 29/11/2017 stated as under:-

- *The assessee has claimed deduction u/s 80P being a co-operative society, deduction under section 80P(2)(a)(i) of the Income Tax Act, 1961 is available to the Co-operative society engaged in Carrying on the business of banking or providing credit facilities to its members. The deduction allowed is the whole of the amount of profits and gains of business attributable such activity.*
- *The assessee has been duly registered as co-operative credit society per section 9(1) of the Maharashtra Co-Operative Societies Act, 1961 vide registration No. BOM/WF-S/RSR/CR/1859/1999-2000. (Refer attached registration certificate).*
- *As evident in the registration certificate society has been classified as Resource Society (sub class- Credit Resource Society) in accordance with Rule 10(1) of the Maharashtra Co-operative Societies Rules, 1961 fulfills the conditions prescribed in the Section 80P(2)(a)(i). Hence, the deduction under Section 80P(2)(a)(i) should be allowed.*

4.3 During the course of assessment proceedings, the assessee had made a detailed submission vide his letter dated 29.11.2017, wherein the assessee tried to distinguish its activity from the activity of a co-operative bank. As the argument put forth by the assessee was not found to be acceptabl.The said contentions of the assessee are being dealt with hereunder :



4.3.1 The assessee has sought to establish that as per part V of the Banking Regulation Act, the assessee is not a cooperative bank. The relevant paras of Part V are reproduced below for purpose of brevity :-

1. Section 5(ccii) "co-operative credit society" means a co-operative society, the primary object of which is to provide financial accommodation to its members and includes a co-operative land mortgage bank
2. Section 5(ccia) "co-operative society" means a society registered or deemed to have been registered under any Central Act for the time being in force relating to the multi-state co-operative societies, or any other Central or State law relating to co-operative societies for the time being in force.
3. Section 5(ccv) "primary co-operative bank" means a cooperative society, other than a primary agricultural credit society.....
4. Section 5(ccvi) "primary credit society" means a co-operative society, other than a primary agricultural credit society,"

4.3.2 However, what is important is the definition of "co-operative bank" mentioned in Section 80P(4) of the I.T.Act, 1961. Explanation to Section 80P(4) states that :-

"For the purpose of this sub-section, -

(a) "**co-operative bank**" and "primary agricultural credit society" shall have the meanings respectively assigned to them in part V of the Banking Regulation Act, 1949 (10 of 1949);"

4.3.3 The definition of Co-operative bank is provided in 5(cci) & (ccv) of Part V of the Banking Regulation Act, 1949 which are reproduced below:-

"5(cci) "**Co-operative bank**" means a state co-operative bank, a central co-operative bank and a primary cooperative bank;

5(ccv) "**primary co-operative bank**" means a co-operative society, other than a primary agricultural credit society, -

(i) the primary object or principal business of which is the transaction of banking business; and

(ii) the paid up share capital and reserves of which are not less than one lakh of rupees;"

5(ccii-a) "**co-operative society**" means a society registered or deemed to have been registered under any Central Act for the time being in force relating to the multi state co-operative societies, or any other Central or State law relating to co-operative societies for the time being in force;"



4.3.4 As per the above definition in part V of the Banking Regulation Act, a cooperative society other than a primary agricultural credit society, the primary object or principal business of which is the transaction of banking business, the paid up capital & reserves of which are not less than Rs. one lakh and is registered under relevant Central or State Act, is a co-operative bank. The assessee is co-operative society, whose principle business is banking business and its share capital and reserves exceeds Rs. one lakh and is registered under the Maharashtra State Co-operative Societies Act. Thus, the assessee squarely falls within the definition of "co-operative bank" provided in part V of the Banking Regulation Act, 1949.

4.3.5 As regards applicability of section 80P(4), there is no dispute about the fact that the assessee is carrying on the business of accepting deposits and advancing loans albeit from and to its members. Accepting deposits and advancing loans are the primary activity of any bank whether cooperative or otherwise. The assessee society is doing the business of accepting deposits and giving credit facilities to its members like all other cooperative banks and credit societies. Now, let us analyze the relevant provisions of the Income Tax Act, 1961:

Section 80P(4) reads as under:-

"The provisions of this section 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."

4.3.6 A plain reading of the above provisions indicates that the said provisions are applicable to all 'co-operative banks' except **a primary agricultural credit society or a primary cooperative agricultural and rural development bank**. The assessee society is **neither** a primary agricultural credit society **nor** a primary cooperative agricultural and rural development bank. This takes us to the question of definition of 'co-operative bank'.

4.3.7. Explanation to Section 80P(4) of I.T.Act, 1961 provides the answer to this question. As per the explanation, the definition provided in Part V of Banking



Regulation Act, 1949 is applicable. As per the definition given in the said part V of the Banking Regulation Act, the assessee is squarely covered in the definition of 'co-operative bank' as discussed in detail in above paras.

4.3.8. A further clarification regarding the applicability of the amended provisions of section 80P(4) is available in the explanatory notes to the Finance Act, 2006, which is reproduced below:-

"22. Withdrawal of tax benefits available to certain co-operative banks:

22.1 Section 80P, *inter alia*, provides for a deduction from the total income of the Co-operative societies engaged in the business of banking or providing credit facilities to its members, or business of a cottage industry, or of marketing of agricultural produce of its members, or processing, without the aid of power, of the agricultural produce of its members, etc.

22.2 The co-operative banks are functioning at par with other commercial banks, which do not enjoy any tax benefit. Therefore, section 80P has been amended and a new sub-section (4) has been inserted to provide that the provisions of the said section 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. The expressions co-operative bank, primary agricultural credit society and primary cooperative agricultural and rural development bank have also been defined to lend clarity to them.

22.3 Further, a new sub-clause (viiia) has been inserted in clause (24) of section 2 to provide 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.

22.4 Applicability - From assessment year 2007-08 onwards."

4.3.9. The above explanatory notes further clarifies that a new sub-clause (viiia) has been inserted in clause (24) of section 2 of the Income Tax Act, 1961 to provide 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. In other words, this explanatory note clarifies that the provisions of Section 80P(4) applies to co-



operative societies carrying on business of banking including providing of credit facilities to its members. **The above explanatory note to Finance Bill makes it abundantly clear that but for two primary units i.e. primary agricultural credit society and primary cooperative agricultural and rural development bank, all other co-operative societies are no longer eligible for deduction u/s.80P w.e.f. A.Y. 2007-08.**

4.3.10 For the sake of ready reference and clarity, the newly inserted sub-clause (viia) in clause (24) of Section 2 of the Income Tax Act, 1961, is reproduced below:-

"The profits and gains of any business of banking (including providing credit facilities) carried on by a co-operative society with its members."

4.3.11 As can be seen, Section 80((4) and 2(24)(viia) have been inserted in the statute by the Finance Bill, 2006 w.e.f. 1.4.2007. Definition of a co-operative bank does not enlist the condition of the conduct of the 'business of banking' as the criterion for a co-operative society to be a cooperative bank. In fact, it is not even stated as one of the qualifying activities; the sole and defining activity that qualifies a co-operative society to be a co-operative bank, be it at the primary, district, or state level, is the financing of its members, rendering the conduct of the 'business of banking'. Clause (viia) inserted by Finance Act, 2007 in Sec.2(24) of the Act, defining 'income' inclusively, to include the profits and gains of any business of bank (including providing credit facilities) carried on by a co-operative society with its members. **Thus, the amendment only impacts co-operative societies and that too only those in the business of banking, which is construed broadly so as to include providing credit facilities to the constituents. The only purpose that the amendment therefore, serves, is to delineate such income of the specified entities (co-operative societies including providing credit facilities) separately and further clarify that for the purposes of the Act the financing of its constituents is to be considered as integral to banking i.e. as part of the business of banking.**



4.3.12. The Income Tax Act 1961 provides the definition of 'co-operative society' in clause (19) of section 2 which reads as under:-

"(19) "co-operative society" means a co-operative society registered under the Co-operative Societies Act, 1912 (2 of 1912), or under any other law for the time being in force in any state for the registration of co-operative societies."

4.3.13. The assessee is a co-operative society registered under the Maharashtra State Cooperative Societies Act and, therefore, in view of the legal provisions mentioned above, the provisions of Section 80P(4) are clearly applicable to the assessee. It is not necessary to have the word 'bank' attached to the name. The explanatory note and the new sub-clause (viia) quoted above also clearly indicates that a **cooperative society providing credit facilities to its members** is also covered by the amended provisions of the Act.

4.3.14 In the case of M/s **THE CITIZEN CO-OPERATIVE SOCIETY LIMITED** in CIVIL APPEAL NO. 10245 OF 2017 (ARISING OUT OF **SLP (C) NO. 20044 OF 2015**), the assessee filed an SLP before Hon'ble Supreme Court against issue of 80P disallowance. The Hon'ble Supreme Court dismissed the SLP of the assessee and decided the case in favour of the Revenue. It is in this background, a specific finding is also rendered that the principle of mutuality is missing in the instant case. *Though there is a detailed discussion in this behalf in the order of the Assessing Officer, our purpose would be served by taking note of the following portion of the discussion:* "As various courts have observed that the following three conditions must exist before an activity could be brought under the concept of mutuality;

that no person can earn from him;

that there a profit motivation;

and that there is no sharing of profit.

It is noticed that the fund invested with bank which are not member of association welfare fund, and the interest has been earned on such investment for example, ING Mutual Fund [as said by the MD vide his statement dated 20.12.2010]. [Though the bank formed the third party vis-à-vis the assessee entitled between contributor and recipient is lost in such case. The other



ingredients of mutuality are also found to be missing as discussed in further paragraphs]. In the present case both the parties to the transaction are the contributors towards surplus, however, there are no participators in the surpluses. There is no common consent of whatsoever for participators as their identity is not established. Hence, the assessee fails to satisfy the test of mutuality at the time of making the payments the number in referred as members may not be the member of the society as such the AOP body by the society is not covered by concept of mutuality at all

4.3.15 In view of the facts and circumstances and the legal provisions explained above, I hold that the assessee is not eligible for deduction of **Rs. 11,83,002/-** u/s.80P of the Income Tax Act 1961 and added to the total income . Prima facie, it appears that by making a wrong claim for deduction u/s.80P the assessee has concealed the income and/or concealed the particulars of income subject to tax within the meaning of Section 271(1)(c) read with explanation 1. Therefore, **penalty proceedings u/s.271(1)(c) are initiated separately.**

5. **Addition on account of House property:** During the course of assessment proceedings, it is observed that assessee has received rent of Rs. 6,60,000/-and as per computation of Income, it is stated that Income considered under other head of Income (Rental Income) and not offered for taxation. Accordingly assessee was asked to give the details of property held by you and income thereof vide notice u/s 142(1) dated 08/11/2017.

5.1 The assessee vide emailed on 29/11/2017 stated that the assessee has received Income in the form of rental receipts from the Mubai District Central Co-Operative Bnak Ltd of Rs. 6,60,000/- during the AY 2015-16. The same has been considered in the return of income as Business Income. It should have been considered as Income From House Property.

5.2 Considering the above facts and admission of the facts of the assessee, the amount of Rs. 6,60,000/- is considered as Income received as rent and it should be tax under head income from House Property after reducing 30% standard deduction of the Income Tax Act,1961. The house



property income works out to **Rs. 4,62,000/-** (Rs. 6,60,000 less 30% standard deduction of Rs. 6,60,000/-) and added to the total Income. **Penalty proceeding u/s 271(1)(c) is separately initiated for concealment of the Income.** The income from house property is determined as under:-

Income from rent received-	Rs. 6,60,000/-
Less: Deduction u/s 24 @ 30%	<u>Rs. 1,98,000/-</u>
Income from house property	Rs.4,62,000/-

6. In view of the above facts, the total income of the assessee is computed as below:-

	Particulars	Rs.
I	Business Income as per ROI	Nil
	Add: Disallowed u/s 80(P) as discussed above	11,83,002
II	House property Income as discussed in Para 5	4,62,000
	Total Income	16,45,002
	Total R/O	16,45,000

7. Assessed u/s 143(3) of the Income tax Act. Charged interest u/s. 234B & 234C of the I.T. Act as applicable. **Issue penalty Notice u/s 271(1)(c) of the I.T. Act, 1961.** Credit given for taxes already paid, if any. Issued demand notice and challans accordingly.



(UPENDRA KUMAR)
Income tax Officer- 27(3) (3),
Mumbai.

~~04/10/11
2017-18~~

PAN	AAEAS5258B	Status	Cooperative Society
Asmt Year	2015-16	Residential Status	Resident
Name	M/S SHRI OM SAI CO OPERATIVE CREDIT SOCIETY LIMITED	D&CR No	002 005

Address	4 AC 1247	Order U/s	143 (3)
	4 AC 1247	Read/With Sec	
	NEAR THE NATIONAL SARVODAYA HIGH SCHOOL C.G.GIDWANI MARG MUMBAI MAHARASHTRA 400074	Date of Order	30/11/2017
			Amount (Rs.)

1. Income from Salary	
2. Income from House Property	4,62,000
3a. Income from non-speculative business	23,66,004
3b. Income from speculative business	
3c. Profit and gains from specified business	
4a. Short term capital gains(u/s 111A)	
4b. Short term capital gains (Others)	
4c. Long term capital gains (With Indexation)	
4d. Long term capital gains (Without Indexation)	
4e. Total long term capital gains	
5a Income from other source other than from owning Race	
5b. Winning from lotteries/ crossword puzzles etc.	
5c. Income from owning race horses	
5d. Total income from other sources	
6. Total of five heads of income	28,28,004
-----Detail income after current year losses-----	
!7a. Current year loss adjusted against Salary Income	
!7b. Current year loss adjusted against House Property Income	
!7c. Current year loss adjusted against business Income	
!7d. Current year loss adjusted against Short Term Capital Gain	
!7e. Current year loss adjusted against Long Term Capital Gain	
!7f. Current year loss adjusted against Other Sources Income	
!7g. Total Current Year Loss Adjustment	
!8 Total Income remaining after Current year loss adjustment	28,28,004!
-----Detail income after Brought Forward losses-----	
!9a. Brought forward Loss Adjusted Against House property	
!9b. Brought forward Loss Adjusted Against Business Income	
!9c. Brought forward Loss Adjusted Against Short Term Capital Gain	
!9d. Brought forward Loss Adjusted Against Long Term Capital Gain	
!9e Brought forward Loss Adjusted Against Other Sources	
!9f. Total Brought Forwarded Loss Adjustment	
10. Gross Total Income	28,28,004
11. Miscellaneous Incomes	
12. Deductions under Chapter VIA	11,83,002
13. Assessed Income	16,45,000
14. Agricultural Income	
15. Aggregate Income	16,45,000
16. Deemed Income U/s 115JB (MAT INCOME)	
17. Deemed income u/s 115JC (AMT Income)	

INCOME TAX COMPUTATION FORM

TAX CALCULATION

1.Gross Tax	4, 90, 500
2.Rebate	
3.Surcharge	14, 715
4.Education Cess	
5.Tax credit u/s 115JAA/115JD	
6.Relief u/s 89(1) / u/s 90 / u/s 91	5, 05, 215
7.Net Tax	83, 448
8.Interest u/s 234A	19
8a.Delay Period	1, 44, 936
9.Interest u/s 234B	1, 44, 936
10.Interest u/s 234C	7, 33, 599
11.Gross Demand	

TAXES PAYMENT DETAILS

1.TDS/TCS	66, 000
2.Advance Tax	0
3.Self Assessment Tax	0
4.Regular Assessment Tax	-66, 000
5.Amount already refunded	66, 000
6.Total Tax paid	0

DIVIDEND DISTRIBUTION TAX DETAILS

1.Additional Income Tax And Interest Payable on Distributed Profits	0
2.Additional Income Tax And Interest Paid	0

FINAL DETAILS

1.Total tax and Interest Payable	733599
2.Interest u/s 244A	0
3.Interest made u/s 244A recovered	-
4.Delay period attributable to Assessee	330
5.Interest u/s 234D	3, 317
6.Interest u/s 220	

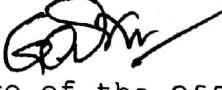
DEMAND/REFUND

1.Net amount payable/refundable	7, 37, 250
In Words Rupees:	

SEVEN LAKH THIRTY SEVEN THOUSAND TWO HUNDRED AND FIFTY ONLY.

Signature of the UDC/TA
Name of the UDC/TA




Signature of the Officer
AO Code MUMW22203
WARD 27(3)(3), MUMBAI