

Income Tax Appellate Tribunal - Mumbai

Kulswami Co Op Credit Society , ... vs Department Of Income Tax on 21 August, 2015

IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, MUMBAI

BEFORE SHRI G.S. PANNU, ACCOUNTANT MEMBER AND

SHRI SANJAY GARG, JUDICIAL MEMBER

ITA NO 6790/Mum/2012

Assessment year: - 2009-10)

ITO, Wd-22(3)-4,
Vashi Rly. Station Complex,
Tower No. 6, 3rd Floor,
Vashi, Navi Mumbai.

Vs. M/s Kulswami Co-operative
Society, F-3/1, Central Facility
Building,
APMC Market, Sector - 19,
Turbhe, Navi Mumbai - 400 705.

PAN/GIR No. AAAAS2059L
Appellant

Respondent

CO No. 05/Mum/2014

arising out of ITA No. 6790/Mum/2012

Assessment year: - 2009-10)

M/s Kulswami Co-operative
Society, F-3/1, Central Facility
Building, APMC Market, Sector -
19, Turbhe,
Navi Mumbai - 400 705

Vs. ITO, Wd-22(3)-4,
Vashi Rly. Station Complex,
Tower No. 6, 3rd Floor,
Vashi, Navi Mumbai.

PAN/GIR No. AAAAS2059L
Appellant

Respondent

Revenue By
Assessee By

Shri E. Shridhar
Shri R.V. Nadrekar

Date of hearing

29.07.2015

Date of pronouncement

21.08.2015

ORDER

Per G.S. Pannu, AM These cross appeals are directed against the order of the Commissioner of Income Tax (Appeals)-33, Mumbai (hereinafter referred to as 'the CIT(A)') dated 31.08.2012 which in turn has arisen from an order passed by the Assessing Officer u/s.

ITA NO 6790/Mum/2012 and CO No. 05/Mum/2014 Assessment Year 2009-10 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') dated 16.12.2011, pertaining to the assessment year 2009-10

2. The Revenue has raised following Ground of appeal:-

"On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the addition of Rs. 1,14,64,254/- by holding that the assessee being Co-

operative Credit Society is not a Co-operative bank and hence is entitled for deduction u/s 80P of the I.T. Act."

3. The assessee before us is a Co-operative society, which is, inter alia, engaged in the business of providing credit facilities to its members. For the assessment year under consideration i.e. assessment year 2009-10, it filed a return of income declaring total income at Nil on account of claim of exemption u/s 80P of the Act. In the revised return of income filed by the assessee, the gross total income as per the Income and Expenditure Account was declared at Rs. 1,14,64,524/-, which was also claimed as exempt in terms of section 80P of the Act and accordingly, the returned income was declared at Nil.

4. In the course of assessment proceedings, the Assessing Officer show-caused the assessee as to why the claim of exemption u/s 80P of the Act be not disallowed in view of the provisions of sub-section (4) of section 80P of the Act, inserted w.e.f 01.04.2007. In terms of sub-section (4) of section 80P of the Act, the provisions of section 80P of the Act were made inapplicable to a Co-operative Bank other than primary agricultural credit society or primary co-operative agricultural and rural development banks. The stand of the Assessing Officer was that since the assessee was a Co-operative Society registered ITA NO 6790/Mum/2012 and CO No. 05/Mum/2014 Assessment Year 2009-10 under the Maharashtra State Co-operative Societies Act, 1960 and was engaged in providing credit facilities to its members, such an assessee would be covered by the provisions of sub-section (4) of section 80P of the Act. Accordingly, assessee's claim for exemption u/s 80P was denied in toto and the gross total income of Rs. 1,14,64,254/- was determined as the final taxable income.

5. In appeal before the CIT(A), the pertinent plea of the assessee was that a Co- operative Society engaged in the activity of providing credit facilities to its members is quite different from a Co-operative Bank, which falls under the restriction placed in sub-section (4) of section 80P of the Act. Therefore, as per the assessee, the provisions of sub-section (4) of section 80P of the Act did not disentitle the assessee from claim of exemption u/s 80P of the Act. The CIT(A) found that similar issue came up in the case of assessee for assessment year 2008-09, wherein, the predecessor CIT(A) had upheld assessee's claim for exemption u/s 80P of the Act. Following the precedent in the assessee's own case, by way of the order of predecessor CIT(A) for assessment year 2008-09, the CIT(A) held the assessee entitled for claim of exemption u/s 80P of the Act.

6. Before us, it was a common point between the parties that identical controversy has been considered by the Tribunal in the assessee's own case for assessment years 2007-08, and 2008-09 vide ITA Nos. 3223/Mum/2011 & 505/Mum/2012 dated 28.03.2014, whereby it has been held that assessee Co- operative Society does not fall within the restriction placed in sub-section (4) of section 80P of the Act. The following discussion in the order of the Tribunal dated 28.03.2014 (supra) is relevant:-

ITA NO 6790/Mum/2012 and CO No. 05/Mum/2014 Assessment Year 2009-10 "4. Having heard both the sides and perused the material on record, it is pertinent to mention that the only issue arising out of both the appeals relate to the allowability of

the exemption/deduction claimed by the assessee u/s 80P of the Income Tax Act. The allowability of exemption of the said income depends on whether the assessee/cooperative credit society is a co-operative bank or not for the purposes of section 80P(4) of the Act since according to the said provision, deduction under section 80P shall not be available to any co-operative bank other than primary agricultural society or primary co-operative agricultural and rural development bank.

4.1 It is the case of the Revenue that the assessee has been functioning as a cooperative bank and by virtue of section 80P(4), the assessee is not entitled for the benefit of section 80P and also the assessee is not coming within the purview of primary agricultural society or primary co-operative agricultural and rural development bank. It is the case of the assessee that it is not a cooperative bank but only a cooperative society to which clause (4) of section 80P is not applicable.

4.2 In this connection, it is pertinent to mention that the assessee has brought on record before the lower authorities, the letter of the CBDT bearing No. F. No. 133/06/2007-TPL dated 09.05.2008 addressed to the Delhi Urban T&C Society Ltd., stating that for the purposes of subsection 4 of section 80P, 'cooperative bank' shall have the same meaning as assigned to it in part V of the Banking Regulation Act 1949, according to which 'cooperative banks' means a State Co-operative Bank, a Central Co-operative Bank and Primary Co-operative Bank. Though the said clarification is given by the CBDT in connection with some other assessee, the crux of the matter pertains to the clarification of 'co-operative bank' for the purpose of subsection 4 of section 80P. It is observed that the said clarification has also been relied by the Tribunal in many cases. Therefore, 'cooperative banks' mentioned in the said subsection indicates only the State, Central and Primary Co-operative Banks only.

4.3 Moreover, for commencing a banking business by the co-operative society, due license has to be obtained from the Reserve Bank of India and in the assessee's case, there is no such license obtained for commencing any banking business. The mere fact that the assessee has been providing credit facilities to its members and thereby earns interest and dividend cannot make the 'society' into a 'bank' for the purposes of section 80P(4) of the Act. If the intention of the legislature was not to grant deduction to cooperative societies carrying on the business of providing credit facilities to its members, then this section would have been deleted. This proposition is supported by various decisions including the decision of the Gujarat High Court in the case of CIT Vs. Jafari Momin Vikas Cooperative Credit Society Ltd and the decision of the Tribunal in the case of DCIT Vs. Jayalakshmi Mahila Vividodeshagala Souharda Sahakari Ltd. [2012] 137 ITD 163.

ITA NO 6790/Mum/2012 and CO No. 05/Mum/2014 Assessment Year 2009-10 4.4 In addition to the aforementioned discussion, the distinction between cooperative society registered under the Banking Regulation Act 1949 and the cooperative society registered under the Maharashtra State Cooperative Societies Act 1960 as brought out by the Ld.CIT(A) on the basis of the submission of the assessee is extracted hereunder:

Sl. No.	Co-operative societies	Co-operative Banks
1	The Co-operative Credit Societies are Co-operative Banks are registered under	

registered under Maharashtra State Maharashtra Co-operative Societies Act, 1960 Cooperative Societies Act, 1960 and administered by Registrar of Co-operative governed, regulated, administered and Societies, Govt. Of Maharashtra. Co- supervised by the Registrar of the operative Banks are regulated and supervised Cooperative Societies, Government Of by the Reserve Bank of India. Provisions of Maharashtra. Banking Regulation Act, 1949 with modifications specified in section 56 of the Banking Regulation Act, 1949 are applicable to Co-operative Banks. Schedule 1 to Schedule V are applicable to Co-operative Bank.

2 Co-operative Societies are classified as Co-operative Banks are classified as Co-

resource/thrifts Societies in the operative Bank. certificate of registration issued by Registrar of Cooperative Society.

3 Co-operative Credit Societies can Co-operative Banks can accept deposits from accept deposits and advance loans only public. However, unlike Co-operative credit to the members. Hence the business societies they can advance loans to the activities are restricted to members and members only. hence it can be termed as a mutual association/self help group.

4 Co-operative Credit Societies cannot Co-operative can accept deposits from public.

accept deposits from public.

5 The provisions of Banking Regulation The provisions of Banking Regulation Act Act 1949 are not applicable to the Co- 1949 are applicable to the Co-operative Bank. operative Credit Societies.

6 The Co-operative credit societies do not The Co-operative banks are required to obtain required license from Reserve Bank of license from Reserve Bank of India to carry on India to carry on its business. its business.

7 The Co-operative credit societies do not The Co-operative have cheque facilities, have cheque facilities, clearing facilities clearing facilities and they issue demand and they cannot issue demand drafts, drafts, Assessment Year order, bank pay orders etc. guarantees etc. 8 Co-operative Credit Societies cannot Co-operative Banks are mandatorily required use work Bank/Bankers in their name to use work Bank/Bankers in their name. 9 Reserve Bank of India has no statutory Reserve Bank of India has vested with power of control and supervision of statutory powers of control and supervision of ITA NO 6790/Mum/2012 and CO No. 05/Mum/2014 Assessment Year 2009-10 Cooperative Societies. Cooperative Banks.

The above distinction makes it very clear that the assessee is not a co-operative bank for the purposes of section 80P(4) of the Act.

4.5 As regards the claim of the revenue that for the Assessment Year 2007-08, the assessee has not claimed the deduction of the section 80P of the Act in the return of income but claimed the same only during the course of the assessment proceedings and hence the claim of the assessee is not

admissible in view of the findings of the Hon'ble Apex Court in the case of Goetze India Ltd. [284 ITR 323 (SC) (2006)], it is pertinent to mention that the Hon'ble Bombay High Court in the case of the CIT Vs. Pruthvi Brokers and Shareholders P. Ltd. [(2012) 349 ITR 336 (Bom)] has held that the appellate authorities have the power to consider the claim not made in return of income. The Hon'ble Bombay High Court while deciding so, has considered the judgment of the Hon'ble Apex Court in the case of Goetze India Ltd. (supra). In view of that matter, the Ld.CIT(A) giving relief to the assessee at the appellate stage on the claim of deduction not made in the return of income is justified.

4.6 Considering the entire facts and position of law, we are of the considered opinion that the Ld.CIT(A) is justified in directing the AO to allow the deduction claimed by the assessee u/s 80P of the Act on the reason that the assessee, a cooperative credit society is not a bank for the purposes of section 80P(4) of the Act. Thus the orders of the Ld.CIT(A) dated 11.02.2011 and 29.11.2011 for the Assessment Years 2007-08 and 2008- 09 respectively are upheld.

7. Following the aforesaid precedent, which has been rendered in assessee's own case under identical circumstances, we hereby affirm the order of CIT(A) upholding assessee's claim for exemption u/s 80P of the Act. Thus the Revenue fails in its appeal.

8. Insofar as the Cross Objection raised by the assessee is concerned, it does not involve any independent issue but is primarily in support of the conclusion drawn by the CIT(A). Since we have already confirmed the order of CIT(A) in the context of the appeal of the Revenue in earlier paras, the Cross Objection raised by the assessee is rendered infructuous.

ITA NO 6790/Mum/2012 and CO No. 05/Mum/2014 Assessment Year 2009-10

9. In the result, both the captioned appeals are dismissed.

Order pronounced in the open court on this 21st day of August 2015.

Sd/-

Sd/-

(Sanjay Garg)
(Judicial Member)

(G.S. Pannu)
(Accountant Member)

Mumbai dated
SKS Sr. P.S.,

21-08-2015

Copy to:

1. The Appellant
2. The Respondent
3. The concerned CIT(A)
4. The concerned CIT
5. The DR, "A" Bench, ITAT, Mumbai

By Order

Assistant Registrar

Kulswami Co Op Credit Society , ... vs Department Of Income Tax on 21 August, 2015

Income Tax Appellate Tribunal,
Mumbai Benches, MUMBAI