Statement of facts

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 AY, 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 retuned 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 us 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 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 us 80P of Income Tax Act, 1961 in the light of the clarification No.133/06/2006 07 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