IN THE HIGH COURT OF BOMBAY AT GOA

TAX APPEAL NOS. 73 & 76 OF 2015

TAX APPEAL NO. 73 OF 2015

The Principal Commissioner of Income Tax,
having office at Aayakar Bhavan,
Patto-Plaza,
Panaji Goa. .... Appellant

V e r s u s

M/s The Goa PWD Staff Co-op.
Credit Society Ltd.,
PWD Building, Altinho,
Panaji Goa.
PAN : AAEFG9154F .... Respondent

AND

TAX APPEAL NO. 76 OF 2015

The Commissioner of Income Tax,
having office at Aayakar Bhavan,
Patto-Plaza,
Panaji Goa. .... Appellant

V e r s u s

M/s. The Goa State Co-operative
Housing Finance & Federation Ltd.,
3rd Floor, Gomes Building,
Opp. Hotel Delmon
Panaji Goa.
PAN: AAAAG0330L .... Respondent

Mr. Asha A. Desai, Advocate for the appellant.

Mr. S. R. Rivankar, Advocate for the respondent.

Coram:- F. M. REIS &
C. V. BHADANG, JJ.

Date:- 1st December, 2015

ORAL ORDER (Per F. M. Reis, J)

Heard Ms. Asha Desai, learned counsel appearing for the appellant and Mr. S. R. Rivankar, learned counsel appearing for the respondent.

2. Both the learned counsel point out that considering the issues involved, both the above appeals may be taken up together as they cover the same contentions raised by both the respective parties. The above appeals challenge the orders passed by the authorities below whereby the ITAT has taken a view that the respondents are not a Co-operative Banks but a Co-operative Societies and as such entitled for exemption in terms of Section 80P(2)(a)(i) of the Income Tax Act (herein after referred to as "the said Act").

3. Ms. A. Desai, learned counsel appearing for the appellant has pointed out that the respondents are to be treated as a Co-operative Banks as according to her the definition of 'income' in terms of Section 2(24)(viia) inter-alia includes an income from credit facilities provided to the members. The learned counsel

further submits that as it is not disputed in the present appeals that the respondents provide credit facilities to the members, the income drawn by the respondents is the income of a Co-operative Banks and as such, the respondents are not entitled for exemption in terms of Section 80P(2)(a)(i) of the said Act. The learned counsel thereafter has taken us through the Assessment Order to point out that the Assessment Officer on the basis of the said definition has taken a view that the respondents were not entitled to get an exemption in terms of the said provisions. The learned counsel further points out that both the authorities below have misconstrued the said provisions to come to the conclusion that the respondents are a Co-operative Societies and consequently, entitled for exemption in terms of the said provisions. The learned counsel as such submits that there are substantial questions of law on that count to be examined by this Court.

4. On the other hand, Mr. S. R. Rivankar, learned counsel appearing for the respondents has pointed out that the fact finding authorities have come to the conclusion that the respondents are not Co-operative Banks but Co-operative Societies and as such, they are entitled for exemption in terms of Section 80P(2)(a)(i) of the said Act. The learned counsel further points out that this aspect is no longer *res integra* in view of the judgment of the Division Bench of this Court dated 17.04.2015 passed in Tax Appeal Nos. 22,

23 and 24 of 2015 in the case of **M/s. The Quepem Urban Co-operative Credit Society Ltd., V/s The Assistant Commissioner of Income Tax,** wherein one of us (F. M. Reis, J) was a party. The learned counsel further pointed that in view of the observations of this Court while disposing of the said appeals which clearly disclose that giving credit facilities only to the members cannot be a Co-operative Bank, the question of entertaining the above appeals would not arise at all. The learned counsel has taken us through the observations in the said judgment of the Division Bench at para 9 to point out that such findings are squarely applicable to the facts of the present case.

5. Ms. A. Desai, learned counsel appearing for the appellant in reply to the said submissions has pointed out that while disposing of the said appeals, this Court has taken a view that credit facilities provided to non-members would not be entitled for an exemption under Section 80P(2)(a)(i) of the said Act. The learned counsel as such points out that the facts in the said appeals were different and as such the question of applying the principle laid down therein to the facts of the present cases would not at all be justified.

6. We have given our thoughtful consideration to the rival contentions and with the assistance of the learned counsel, we have

also gone through the said judgment and the relevant provisions of the said Act. On going through the said judgment dated 17.04.2015 in the case of **M/s. The Quepem Urban Co-operative Credit Society Ltd.,** (supra), this Court has observed at para 9 thus :

> "**9**. There is no dispute between the parties that the appellant is a cooperative society as the same is registered under the Co-operative Societies Act. The appellant is claiming deduction of income earned on providing credit facilities to its members as provided under Section 80P(2)(a)(i) of the Act. It is appellant's case that, it is not carrying on the business of the banking. Consequently, not being a co-operative bank the provisions of Section 80P(4) of the Act would not exclude the appellant from claiming the benefit of deduction under Section 80P(2)(a)(i) of the Act. However in terms of Section 80P of the Act the meaning of the words Cooperative Bank is the meaning assigned to it in Chapter V of the Banking Regulation Act, 1949. A cooperative bank is defined in Section 5(cci) of Banking Regulation Act to mean a State Cooperative Bank, a Central Cooperative Bank

and a primary cooperative bank. Admittedly, the appellant is not a State Cooperative Bank, a Central Cooperative Bank. Thus what has to be examined is whether the appellant is a primary Cooperative Bank as defined in Para V of the Banking Regulation Act. Section 5(ccv) of the Banking Regulation Act defines a primary cooperative bank to mean a cooperative society which cumulatively satisfies the following three conditions :

(1) Its principal business or primary object should be banking business of Banking;

(2) Its paid up share capital and reserves should not be less that rupees one lakh.

(3) Its bye-laws do not permit admission of any other cooperative society as its member.

It is accepted position that condition No.(2) is satisfied as the share capital in an excess of rupees one lakh. It has been the appellant's contention that the conditions No. (1) and (3) provided above are not satisfied.”

7. Taking note of the above observations, it is clearly held therein that unless and until the said three conditions are

cumulatively satisfied, the question of holding that such society is a Co-operative Bank would not arise at all. In the present cases, it is not disputed that the third condition that the bye laws should not permit admission of any other Co-operative Society as its member is not at all satisfied. In any event, the fact finding authorities after examining the material on record have concurrently come to the conclusion that the respondents' Societies are not Banks but Co-operative Societies and as such they are entitled for exemption in terms of Section 80P(2)(a)(i) of the said Act. The findings of fact arrived at by the authorities below cannot be interfered by this Court in the present appeals unless there is perversity in such findings. The learned counsel appearing for the appellant has not pointed out any material which has not considered or that there is any misreading of the evidence whilst coming to such conclusions. The contention of Ms. A. Desai, learned counsel appearing for the appellant that in view of the definition of the word 'income' as provided in Section 2(24)(viia), the respondents' Societies are to be treated as a Bank cannot be accepted. This aspect has also been taken note by the Division Bench while disposing of the said appeals in the case of **M/s. The Quepem Urban Co-operative Credit Society Ltd.,** (supra).

8. Taking note of the observations in the said judgment in the case of **M/s. The Quepem Urban Co-operative Credit**

Society Ltd., (supra) to the effect that merely giving credit facilities to the members would not be a Co-operative Bank but continued to be a Co-operative Society and as there is no material on record that the respondents were giving any such credit facilities to the non members, we find that the observations in the said judgment in the case of **M/s. The Quepem Urban Co-operative Credit Society Ltd.,** (supra) would be squarely applicable to the facts of the present case. As such, as no other contentions have been raised by the learned counsel appearing for the appellant, we find that the proposed substantial questions of law to that effect would not survive and does not require any further consideration. For the reasons stated in the said judgment in the case of **M/s. The Quepem Urban Co-operative Credit Society Ltd.,** (supra), we find that there is no substantial question of law which arises in the present appeals for consideration. The appeals stand accordingly rejected.

C. V. BHADANG, J. **F. M. REIS, J**.

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