IN THE HIGH COURT OF BOMBAY AT GOA

TAX APPEAL NO. 2 OF 2017

THE PRINCIPAL COMMISSIONER OF
INCOME TAX, PANAJI. ... Appellant

Versus

M/S. OUR LADY OF MILAGRES URBAN
CO-OPERATIVE CREDIT SOCIETY LTD. ... Respondent

Ms. Amira Abdul Razaq, Advocate for the appellant.

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

Coram:- F. M. REIS &
NUTAN D. SARDESSAI, JJ.

Date:- 3rd May, 2017

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

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

2. The challenge in the above appeal is to the orders passed

by the Commissioner of Income Tax (Appeals) and the Income Tax Appellate Tribunal whereby the respondent/assessee has been given benefit of Section 80P(2)(a)(i) of the Income Tax Act. The learned counsel appearing for the appellant points out that both the authorities have failed to consider that the respondent were not entitled for such benefit as according the appellant the respondent are carrying banking business. The learned counsel further points out that merely because the respondents give loans only to the members by itself does not mean that the respondent are not carrying out banking business. The learned counsel thereafter has taken us through the impugned order passed by the Tribunal to point out that the Tribunal has erroneously dismissed the appeal preferred by the appellant.

3. On the other hand, Mr. S. R. Rivankar, learned counsel appearing for the respondent has pointed out that the issue as raised by the appellant is no longer res integra in view of the judgment passed by this Court dated 01.12.2015 in ***Tax Appeal No. 73 of 2015*** in the case of the ***Principal Commissioner of Income Tax v/s***

M/s the Goa PWD Staff Co-op. Credit Society Ltd. The learned counsel further points out that it has been clearly held in the said judgment that merely giving some advances to the members would not mean that the respondent/assessee are carrying out banking business in terms of the Banking Regulation Act. The learned counsel submits that the respondent are not qualified to be a Co-operative Bank. The learned counsel as such submits that the appeal be accordingly dismissed.

4. We have considered the submissions of the learned counsel and we have also gone through the records. In the said judgment in the case of ***the Principal Commissioner of Income Tax*** (supra), this Court has observed at para 8 thus :

> "**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.

5. Looking into the factual findings of the learned Tribunal as the respondent are not carrying out banking business as defined in the Banking Regulation Act, the question of refusing benefits to the respondent in terms of Section 80P(2)(a)(i) of the Income Tax Act would not arise at all. For the reasons stated in the said

judgment, we find that there is no substantial question of law which arises for consideration in the above appeal. The appeal stands accordingly rejected.

NUTAN D. SARDESSAI, J. **F. M. REIS, J.**

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