

Vinita

IN THE HIGH COURT OF BOMBAY AT GOA.

TAX APPEAL NO.50 OF 2017.

The Pr. Commissioner Of Income
Tax, Having Office at Aayakar
Bhavan, Patto Plaza, Panaji Goa. Petitioner.

Versus

M/s. Laxmi Narcinva Urban Co-op.
Credit Society Ltd., 1st Floor, Karkars
Guru Asish Building Rua Clovus Costa,
Salcete, Goa.
PAN:AAAJL1003E. Respondent.

Ms. A. Razak, Advocate for the Appellant.
Mr. Riyaz Padvekar and Mr. P. Lotlikar, Advocates for the
Respondent.

***Coram : N.M. Jamdar &
Prithviraj K. Chavan, JJ.***

Date : 11 DECEMBER 2017.

ORAL JUDGMENT:(Per N.M. Jamdar, J.)

By this appeal, the Appellant the Principal Commissioner of Income Tax has challenged the order passed by the Income Tax Appellate Tribunal, Panaji dated 2 March 2016. The appeal is admitted and taken up for consideration forthwith by consent of the

parties considering the order that is proposed to be passed.

2. The Respondent is the Co-operative Society and had filed returns of income for the previous year 2011-2012, Assessment Year 2012-2013 on 30 September 2012 declaring total income as nil. The case of the Respondent was taken up for regular scrutiny and notice under Section 143(2) of the Income Tax Act was issued. The Assessing Officer, after considering the response of the Respondent and examining the bye-laws and held that the Respondent is not a Co-operative Credit Society but a Primary Co-operative Bank and, therefore, not eligible for deduction under Sections 80P(2)(a)(i) and 80P(2)(c)(ii) of the Act. The Assessing Officer after considering the other aspect held that total taxable income of the Respondent/Society is Rs.62,73,130/- and the tax thereupon payable is Rs.25,73,960/- .

3. An appeal was filed by the Respondent/Society challenging the order passed by the Assessing Officer, to the Commissioner of Income Tax(Appeals). The CIT(Appeals) accepted the case of the Respondent/Society that it is not a bank and the TDS provision therefore, do not apply to the Respondent/Society and addition of Rs.32,84,449/- was accordingly directed to be deleted and on this ground the appeal of the Respondent/Society was allowed by order dated 24 August 2015. The Revenue filed an appeal before

the Income Tax Appellate Tribunal challenging the order passed by the CIT(Appeals). The Tribunal reproduced the observations of the CIT(Appeals) and thereafter referred to decision of this Court in case of *Quepem Urban Co-Operative Credit Society Ltd Vs. Assistant Commissioner of Income Tax, Circle-I, Margao*¹ and dismissed the appeal filed by the Revenue by order dated 2 March 2016. Thereafter the Revenue has come in the appeal before us.

4. In the case of *Quepem Urban* the Division Bench observed thus:-

“On the aspect of the Respondent/Society being a bank, the CIT(Appeals) held that the main contention of Ms. Desai, learned Counsel for the Revenue that the Appellant is not entitled to the benefit of Section 80P(2)(a)(i) of the Act in view of the fact that it deals with non-members cannot be upheld. This is for the reason that Section 80P(1) of the Act restricts the benefits of deduction of income of Co-operative Society to the extent it is earned by providing credit facilities to its members. Therefore, to the extent the income earned is attributable to dealings with the non-members are concerned the benefit of Section 80P of the Act would not be available. In the above view of the matter, at the time when effect has been given to the order of this Court, the authorities under Act would restrict the benefit of deduction under Section 80P of the Act only to the extent that the same

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is earned by the appellant in carrying on its business of providing credit facilities to its member. Accordingly, the substantial question of law as framed is answered in the negative i.e. in favour of the appellant and against the respondent-revenue.”

5. The learned Counsel for the Revenue contended that a Special Leave Petition challenging the decision in the case of *Quepem Urban Co-operative Credit Society* has been admitted by the Apex Court on 5 October 2015. Reliance is also placed by the Revenue on the decision of *Citizen Co-operative Society Ltd. Vs. Assistant Commissioner of Income Tax, Circle-9(1) Hydrabad*¹. The learned Counsel for the Respondent/Assessee on the other hand submitted that merely because the special leave petition has been admitted does not mean that there is the law laid down by this Court in *Quepem Urban Co-operative Credit Society* would stand suspended. He relied upon the decision of the Bench of three learned Judges of the Apex Court in *Kunhayammed Vs State of Kerala*².

6. The entire issue would rest on the factual matrix before the legal position regarding the applicability of Sections 80P(2)(a)(i) and 80P(2)(c)(ii) of the Act is considered. Sections 80P(2)(a)(i) and

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2 [2011]113 Taxman 470(SC)

80P(2)(c)(ii) of the Act refer to a Co-operative Society carrying on business of banking or providing credit facilities to member and certain other criteria have been specified. The language of these two provisions clearly indicate that there will have to be an inquiry as to the nature of the business carried out by the Society. Merely because in case of one Co-operative Society a decision is taken does not mean that it would automatically apply to the cases of other societies, unless there is a primary factual adjudication.

7. The learned Counsel for the Respondent sought to contend that this exercise was done by the Assessing Officer and he has arrived at a certain position which itself will support the contention of the Respondent that the case of the Respondent falls within the ambit of the decision of this Court in *Quepem Urban* . However, the Income Tax Act provides for an appeal to the CIT(Appeals) under Section 143(3) of the Act. Further an appeal is provided to the Tribunal under Section 253 of the Act. The appeal before the CIT(Appeals) is an appeal on facts. The CIT(Appeals) has simply referred to the order of the Assessing Officer and to the decision of this Court in *Quepem Urban*. There is no scrutiny on facts, which was necessary since the CIT was reversing the decision of the Assessing Officer denying the benefit to the Respondent/

Assessee. When the Revenue filed an appeal to the Tribunal challenging a decision adverse to them, the Tribunal was expected to scrutinize the decision of the CIT(Appeals). Here again, we find that the Tribunal has not done so. In paragraph 4 the Tribunal has simply reproduced the decision of the CIT(Appeals) and thereafter referred to the decision of this Court in case of *Quepem Urban* and has dismissed the Appeal.

8. Thus the inquiry into the factual position, which the learned Counsel for the parties agree is necessary before the legal principle is to be considered, is not done by the CIT(Appeals) as well as the Tribunal. Therefore, before we consider what is the effect of the admission of the Special Leave Petition against the decision of this Court in *Quepem Urban* and the legal position enumerating from *Quepem Urban*, the factual foundation must be established as regards the nature of the business of the Respondent.

9. In these circumstances, the appropriate course of action would be to set aside the order passed by the CIT(Appeals) and the Tribunal and to direct the CIT(Appeals) to consider the appeal filed by the Respondent against the order passed by the Assessing Officer dated 31 December 2014. Accordingly, the Tax Appeal is disposed of

by quashing and setting aside the order passed by the ITAT Panaji Bench Goa dated 2 March 2016 and the order passed by the CIT(Appeals) Panaji dated 24 August 2015. Appeal No. ITA No.342/CIT(A)PNJ-1/14-15 stands restored before the CIT (Appeals). In the light of what is discussed above, the appeal is accordingly disposed of.

Prithviraj K. Chavan, J.

N.M. Jamdar, J.