Santosh

IN THE HIGH COURT OF BOMBAY AT GOA

TAX APPEAL NO. 132 OF 2017

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

Versus

Deendayal Nagar Sahakari Pathsaunstha Maryadit, Deendayal Bhavan, F 2, Town Center, Bicholim, Goa. ...Respondent.

Ms. Amira Abdul Razaq, Central Govt. Standing Counsel for the appellant.

Mr. Somnath Karpe, Advocate for the respondent.

WITH

TAX APPEAL NO. 130 OF 2017

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

Versus

The Shiroda Urban Co-operative Credit Society Ltd., Panchayat Building, Shiroda, Ponda, Goa ...Respondent.

Ms. Amira Abdul Razaq, Central Govt. Standing Counsel *for the appellant.*

Mr. Riyaz Padvekar, with Mr. Prashil Arolkar, Advocates *for the respondent.*

CORAM: SUNIL P. DESHMUKH &
M. S. SONAK, JJ.

DATED: 3rd August 2021

ORAL JUDGMENT : (Per SUNIL P. DESHMUKH, J.)

1. Aforesaid tax appeals have been preferred by the Revenue against the decisions of the Income Tax Appellate Tribunal, Panaji Bench, (ITAT) on similar grounds.

2. The appeals have been admitted on the following substantial questions of law :

> (i) Whether in law and on facts the Hon'ble ITAT was right in not appreciating the fact that the assessee is a co-operative society which fulfills all the three conditions of being held a Primary Co-operative Bank, as given in section 5(ccv) of Banking Regulation Act, 1949 ?
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> (ii) Whether in law and on facts, the Hon'ble Income Tax Appellate Tribunal was right in not appreciating the definition of a co-operative bank which as per

explanation below section 80P(4) "The Co-operative bank" shall have the meaning assigned to it in part-V of the Banking Regulation Act, 1949 ?

(iii) Whether in the law and facts the Hon'ble Tax Appellate Tribunal was right in not appreciating the facts that the assessee society being a credit co-operative society engaged in banking business is a Primary Co-operative Bank within the definition of section 5(ccv) of the Banking Regulation Act, 1949 and as such, not eligible for deduction under section 80P(2)(a)(i) of the Income Tax Appellate Act, 1961 ?

and, as such, are conducted and heard together, and are being disposed of by common order.

3. Ms. Razaq, the learned Standing Counsel for the Revenue vehemently contends that going by the business conducted by the respondents-cooperative societies, it would be seen that the cooperative societies are doing banking business and would be primary cooperative banks under the Banking Regulation Act, 1949 and thus, would not be eligible for deduction under Section 80P(1)(2)(a)(i) of the Income Tax Act, 1961 (IT Act). She submits that admittedly, share capital of the respondent-cooperative societies is more than rupees one lakh, they do banking business with their members and do not allow a cooperative society as their members. Thus, requisites for a cooperative society to be a primary cooperative bank are fulfilled in the present cases and as such, deductions ought to have been disallowed pursuant to orders passed by the Assessing Officer.

4. On the other hand, Mr. Padvekar and Mr. Karpe, learned Counsel appearing for the respondent-cooperative societies submit that consideration of these aspects had come up earlier, on a number of occasions and this Court has consistently considered that a cooperative society doing business with the members whilst accepting deposits and lending money to the members, would not be a primary cooperative bank pursuant to the Banking Regulation Act, 1949. They submit that respondents-cooperative societies do accept deposits, but only from their members and also are lending money only to their members. They further purport to contend that even doing business with outsiders would not take away the basic character of the respondents-cooperative societies and would not be primary cooperative banks under the Banking Regulation Act, 1949. They refer to various decisions of this Court viz; Tax Appeal Nos. 73 & 76 of 2015 (*The Principal Commissioner of Income Tax vs. The Goa PWD Staff Co-op. Credit Society Ltd. & The Commissioner of Income Tax vs. The Goa State Co-operative Housing Finance & Federation Ltd.*), respectively, dated 1st December, 2015. They submit, recently in a case decided by this Court on 7th May, 2021 (*The Principal Commissioner of Income Tax vs. The Quepem Urban Cooperative Credit Society Ltd. and ors.*) it has been considered, in similar circumstances, that basic character of a cooperative credit society does not undergo any alteration, to give to the societies treatment as primary cooperative banks. They, therefore, submit that substantial questions of law in the appeal will have to be decided accordingly.

5. The respondents-Deendayal Nagar Sahakari Pathsaunstha Maryadit and The Shiroda Urban Cooperative Credit Society

Ltd. (the Societies) are registered Co-operative Societies, governed by the Goa Co-operative Societies Act, 2001. Object of the Societies, inter alia, is to accept deposits and provide credit facilities to their members.

6. In the respective assessment proceedings, the Assessing Officers, under their orders, had observed that the deduction pursuant to Section 80P(2)(a)(i) would not be allowed in the respondents' case, as they would be cooperative banks within the meaning of Part V of the Banking Regulation Act, 1949. In the proceedings, the respondents-Societies had informed that the Societies receive deposits from their members only and give advances to the members alone and the excess amount in hand is being deposited in banks.

7. The Assessing Officer purported to consider the status of the respondents-Societies as banks while the Societies accept deposits from their members and give credit facilities to their members, it is the activity akin to banking and their members are from public and transactions take place only after taking membership of the Societies and that there is no express prohibition for induction of a cooperative society as a member.

8. Pursuant to Section 80P(1)(2)(a)(i) from gross total income of the assessee-cooperative Society, the sums in case of a cooperative society engaged in carrying on business of banking or providing credit facilities to its members, shall be deducted in computing total income of the assessee. Section 80P(4), however, excludes aforesaid benefit to a cooperative bank and under explanation refers to that a cooperative bank, shall have a meaning assigned to it in Part V of the Banking Regulation Act, 1949.

9. In the present matters, there is no dispute among the parties that the respondents are cooperative societies registered under the relevant Act.

10. A cooperative bank, as referred to in Part V of the Banking Regulation Act, 1949, would mean a cooperative society having characteristics, namely, its principal object should be the business of banking; its paid up share capital and reserves should not be less than rupees one lakh and its bye-laws should not permit admission of any other cooperative society as its member.

11. There does not appear to be any dispute that the respondents-cooperative societies' paid up share capital and reserves are not less than rupees one lakh and thus satisfy one of the conditions above.

12. So far as the condition about the bye-laws not permitting admission of any other cooperative society as its member is concerned, the Revenue has been at loss to show as to how there is prohibition to induct a cooperative society. Thus, the appellate authorities were satisfied that the assessee-respondents would not be primary cooperative banks making them ineligible for the benefit of Section 80P(2)(a)(i) of the IT Act. They are not cooperative banks excluded under the provisions of Section 80P(4) of the IT Act.

13. In so far as business of accepting deposits and lending money to their members by the societies' is concerned, in series of decisions of this Court, it has already been considered that merely giving credit facilities to its members, would not render a cooperative society a cooperative bank within the meaning of the Banking Regulation Act, 1949. In the present matters, it emerges to be a clear position that the assessee-respondents do the business of banking with the members of the Societies. Not a single instance has been referred to about the respondents-Societies doing business with outsiders. There is no specific material placed on record showing that the respondent-cooperative societies had been giving credit facilities to non-members.

14. In the impugned decisions, stock of the situation has been taken, pointing out that the three characteristics required for a cooperative society to be considered for exclusion, pursuant to Section 80P (4) are not getting satisfied. This position has been emphasized in various decisions hitherto, starting from the decision dated 17/4/2015 in the case of *The Quepem Urban Co-*

operative Credit Society Ltd. vs. The Assistant Commissioner of Income-Tax (Tax Appeals No.22, 23 and 24 of 2015). In said case it has been observed that the three conditions are not cumulatively getting satisfied *i.e.* only second condition gets fulfilled and rest of the two are not and, thus the Society could not be considered as a cooperative bank for the purpose of Section 80P(4). Further, in said case it has been observed that the benefit of Section 80P(2)(a)(i) of the Act would be available to the extent, the Society does business with its members and would not be available for business with non-members. Said decision has been followed subsequently in the case of *Commissioner of Income-Tax, Panaji vs. VPK Urban Co-operative Credit Society Ltd.* (Tax Appeal No.40/2015). The same was further followed in the case of *The Principal Commissioner of Income Tax, Panaji vs. Our Lady of Milagres Urban Co-operative Credit Society Ltd.* (Tax Appeal No.2/2017). Similar considerations have also weighed in case of *The Principal Commissioner of Income Tax vs. The Goa PWD Staff Co-op. Credit Society Ltd.* (Tax Appeal No. 73 of 2015) in case of *The Commissioner of Income Tax vs. The Goa State Co-operative Housing Finance & Federation Ltd.* (Tax Appeal No. 76 of 2015), as well as in a recent decision of this Court dated 7th May, 2021 in the case of *The Principal Commissioner of Income-Tax, Panaji vs. The Quepem Urban Co-operative Credit Society Ltd. & ors.* (Tax Appeals No.2,9,23 and 26 of 2018.

15. In *Mavilayi Service Co-operative Bank Ltd. & ors. vs. Commissioner of Income Tax, Calicut and anr.* (2021 SCC OnLine SC 16) it has been observed by the Supreme Court that Section 80P is a benevolent provision which is enacted to encourage and promote growth of cooperative sector. It has further been observed that Section 80P(4) is in the nature of proviso to main provision and the proviso specifically excludes only cooperative banks which are cooperative societies, which must possess a licence from the RBI to do banking business. It may also have to be noted that the Supreme Court in said case has observed to the effect that cooperative society providing credit facilities to its members, would not dis-entitle itself from availing the benefit of Section 80P.

16. Foregoing discussion, leads us to consider that the ITAT had not been in error in appreciating that the respondents-assessees are not primary cooperative banks pursuant to the Banking Regulation Act, 1949 and, as such, would not be dis-entitled for deductions pursuant to Section 80P(2)(a)(i) of the Income Tax Act, 1961. The substantial questions stand answered accordingly.

17. The appeals, therefore, are dismissed. No costs.

M. S. SONAK, J. **SUNIL P. DESHMUKH, J.**