

IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'A' : NEW DELHI)
BEFORE SHRI R.V. EASWAR, VICE PRESIDENT AND
SHRI RAJENDRA SINGH, ACCOUNTANT MEMBER

ITA No.2143/Del./2007
(Assessment Year : 2003-2004)

M/s. Citizen Cooperative Bank Limited,
C-56/9, IInd Floor, Sector 62,
Noida.

vs. Addl. CIT,
Noida Range,
Noida.

(PAN No.AAAAC0914A)

(Appellant)

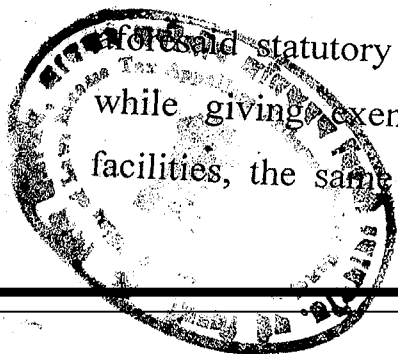
(Respondent)

Assessee by : Shri Ved Jain & Mrs. Rano Jain, CAs
Revenue by : Shri B. Koteshwara Rao, Senior DR

ORDER

PER R.V. EASWAR, VICE PRESIDENT :

The assessee in this appeal is a cooperative bank. We are concerned with the assessment year 2003-2004. In the return of income, the assessee claimed exemption of its income under section 80P (2)(a)(i) of the Income-tax Act on the ground that it was engaged in carrying on the business of banking. The Assessing Officer rejected the claim on the ground that even the business of banking, in order to be eligible for the exemption, should be confined to the members of the cooperative society and since the banking business was carried on in relation to both members and non-members of the assessee society, the income earned therefrom was not eligible for the exemption. In fact, the Assessing Officer took the view that since the said statutory provision referred to members of the assessee society while giving exemption to the income earned from providing credit facilities, the same qualification should also be read into the business of



banking and inasmuch as the said business was carried on both with the members and non-members the income was not eligible for the exemption. In the alternative, he held that the assessee cannot be considered to be carrying on the business of banking and it must be considered only as carrying on the business of providing credit facilities and since the loans were sanctioned to applicants even before they became members of the assessee society, this income from this activity also did not enjoy the exemption. The assessee derived total receipts of Rs.5,31,29,459/- which consisted of the following :

| | |
|---------------------------------------|------------------|
| (i) Interest and discount | Rs.4,24,35,696/- |
| (ii) Commission, exchange & brokerage | Rs. 16,22,741/- |
| (iii) Other receipts | Rs. 90,71,022/- |

The interest and discount income was further divided as follows :

| | |
|--|------------------|
| (i) Interest received on investments | Rs.1,01,58,855/- |
| (ii) Interest received on fixed deposits | Rs. 24,39,046/- |
| (iii) Interest received on tangible assets | Rs.2,98,37,794/- |

Again, the interest received on tangible assets is made up of the following :

| <u>Particulars</u> | <u>Amount</u> |
|--------------------|--------------------------|
| Term Loan | Rs.2,46,32,484.80 |
| Demand Loan | Rs. 14,31,240.50 |
| Over Draft | Rs. 24,83,575.00 |
| Cash Credit | Rs. 12,77,499.00 |
| ODD | Rs. <u>12,995.00</u> |
| Total | <u>Rs.2,98,37,794.30</u> |

The Assessing Officer treated the entire interest income of Rs.2,98,37,794/- as income earned from non-members. He computed the expenses for

earning the income on proportionate basis by applying a formula which is set out in paragraph 7.1 of the assessment order. After applying the formula, he arrived at the profit element in the gross income of Rs.2,98,37,794/- at Rs.66,44,629/- which he considered to be ineligible for the deduction under section 80P(2)(a)(i) of the Act. The same was added back and the taxable income was determined at Rs.66,44,630/-. The assessment having been confirmed by the CIT (Appeals) on substantially the same grounds, the assessee is in further appeal before the Tribunal.

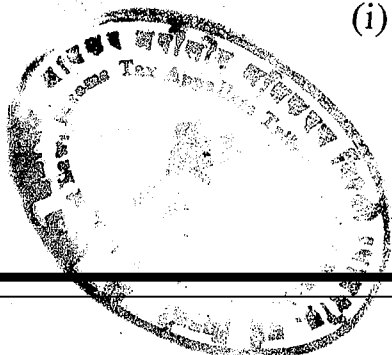
2. We have carefully considered the rival contentions in the light of the facts. We are unable to accept the stand of the departmental authorities that the business of banking should be confined to the members of the cooperative society in order to be eligible for the deduction under section 80P(2)(a)(i). The condition that the business should be confined to the members of the cooperative society is attached only to the business of providing credit facilities and does not extend to the business of banking. This is as a matter of interpretation of the statutory provision which reads as follows :

“(1) Where, in the case of an assessee being a co-operative society, the gross total income includes any income referred to in sub-section (2), there shall be deducted, in accordance with and subject to the provisions of this section, the sums specified in sub-section (2), in computing the total income of the assessee.

(2) The sums referred to in sub-section (1) shall be the following, namely :

(a) in the case of co-operative society engaged in –

(i) carrying on the business of banking or providing credit facilities to its members,”

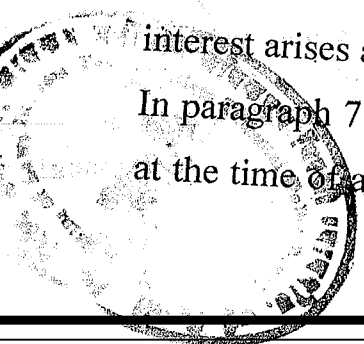


It may be seen from the above that the condition that the activity should be restricted to the members of the society can be read into only the business of providing credit facilities, whereas the business of banking can be carried out with both members and non-members. The disjunctive "or" makes the position clear and it is not possible to interpret the condition as attaching to the business of banking also. A perusal of the entire section shows that wherever the legislature wanted to place the condition that the activity should be confined to the members of the cooperative society it has expressly done so. Since the legislature has not expressly mandated that the business of banking should also be confined to the members of the cooperative society, such a condition cannot be read into the provision. The judgment of the Gujarat High Court in CIT vs. Baroda Peoples Co-operative Bank Ltd. 280 ITR 282 fully supports this interpretation of the section. This judgment has been followed by the Hyderabad Bench of the Tribunal in Milli Co-op. Urban Bank Ltd. vs. ITO, Ward 3(2), Hyderabad 106 ITD 151. Thus, the view taken by the departmental authorities to the contrary is not legally correct.

3. The assessee has put-forth its claim on the footing that the income arises from the carrying on of the business of banking. The Assessing Officer has stated that the assessee is not carrying on the business of banking. He has referred to section 61(1) of the U.P. Cooperative Societies Act, 1965 which says that a cooperative society shall not make a loan to any person other than a member. However, the Assessing Officer has overlooked section 61(2) of the said Act which says that "notwithstanding anything contained in sub-section (1) a cooperative society may make a loan to a depositor on the security of his deposit". This sub-section shows that the business of banking under the said Act need not be confined to the members and can be with any depositor. Further, the assessee has drawn our

attention to the fact that it is functioning under the supervision and control of the Reserve Bank of India (RBI) and that the RBI has given the assessee the licence to carry on banking business. A copy of the licence dated 21.1.1997 issued by the RBI (Urban Banks Department) is at page 60 of the paperbook which says that the assessee is granted a licence to commence and carry on banking business as understood by the Banking Regulation Act, 1949, subject to the condition that the area of operation of the bank shall be confined to the Noida Township and the Urban Agglomeration of Ghaziabad District and also that the assessee shall display a copy of the licence in the registered office of the bank. Section 5(b) of the Banking Regulation Act defines banking activity as accepting for the purpose of lending or investment, of deposits of money from the public, repayable on demand or otherwise and withdrawal by cheque, draft or otherwise. Section 6 of the said Act permits a banking company to engage in any of the other forms of business, in addition to the business of banking including the borrowing or raising or taking up of money and lending or advancing of money either with or without security etc. These provisions show that the lending of monies by a banking company can be to the members of the public which means that it need not be confined to the members of the cooperative society. The assessee bank functions under the supervision and control of the RBI and carries on banking business. The decision of the income-tax authorities to the contrary cannot be accepted.

4. Even if the assessee is held not to carry on the business of banking and to be carrying on only the business of providing credit facility, the income from such activity cannot be denied the deduction because the interest arises and is received only from the members of the assessee society. In paragraph 7 of the assessment order, the Assessing Officer has stated that at the time of applying for a loan and the sanction thereof, the applicants do



not become members of the assessee society. This position is not disputed by the assessee. However, the assessee points out that before the loan is disbursed, the applicant is required to become a member and this is also referred to in paragraph 7 of assessment order. The position thus is that when the loan is actually disbursed by the assessee to the applicant, he has already become a member though not before that stage is reached. It cannot also be disputed that the interest is received by the assessee from the member. Thus, even the condition which is insisted upon by the Assessing Officer remains satisfied in the assessee's case. In these circumstances, even the condition that the assessee should provide credit facilities to its members is satisfied.

5. Thus, the assessee is entitled to the deduction under section 80P(2)(a)(i) of the Income-tax Act in respect of its income as claimed in the return. The Assessing Officer is directed to allow the deduction as claimed.

6. The second ground is not pressed and is dismissed as such.

7. In the result, the appeal is partly allowed.

Order pronounced in open court this 4th day of April 2008.

RS
(RAJENDRA SINGH)
ACCOUNTANT MEMBER

RS
(R.V. EASWAR)
VICE PRESIDENT

Dated the 4th day of April 2008

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Copy forwarded to:

- By Hand 1. Appellant *MS Ghazipur of Bank Ltd. Noida*
2. Respondent
3. CIT
4. CIT(A), Ghaziabad.
5. CIT(ITAT), New Delhi.

[Signature]
सहायक पंजीकार
Assistant Registrar
आयकर ARITAT करण
Income Tax Tribunal
दिल्ली
Delhi Benches, New Delhi