

**IN THE INCOME TAX APPELLATE TRIBUNAL (VIRTUAL COURT),  
'D' BENCH MUMBAI**

**BEFORE SHRI M.BALAGANESH, AM**

**&**

**SHRI AMARJIT SINGH, JM**

**ITA No.4296/Mum/2016  
(Assessment Year :2007-08)**

**ITA No.403/Mum/2018  
(Assessment Year :2014-15)**

**ITA No.4211/Mum/2018  
(Assessment Year :2007-08)**

**ITA No.4297/Mum/2016  
(Assessment Year :2010-11)**

**&**

**ITA No.5983/Mum/2017  
(Assessment Year :2013-14)**

The Thane Zilla Madhyamik Shikshak Sangh Sahakari Parpedhi Maryadit At. Saphale Post Umbarpada, Taluka Palghar, Dist: Thane-401102	Vs.	ACIT Palghar Circle Palghar
<b>PAN/GIR No.AAAAT9514H</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

Assessee by	Shri Vijay Mehta
Revenue by	Shri O.P. Meena
<b>Date of Hearing</b>	<b>05/10/2020</b>
<b>Date of Pronouncement</b>	<b>03/12 /2020</b>

## **आदेश / O R D E R**

**PER M. BALAGANESH (A.M):**

### **ITA No.4296/Mum/2016 (A.Y.2007-08) (Assessee Appeal)**

This appeal in ITA No.4296/Mum/2016 for A.Y.2007-08 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-3, Thane in appeal No.397-THN/12-13 dated 02/03/2016 (Id. CIT(A) in short) against the order of assessment passed u/s.143(3) r.w.s. 147 of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 31/01/2013 by the Id. Assistant Commissioner of Income Tax, Palghar Circle, Palghar (hereinafter referred to as Id. AO).

### **ITA No.4297/Mum/2016 (A.Y.2010-11) (Assessee Appeal)**

This appeal in ITA No.4297/Mum/2016 for A.Y.2010-11 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-3, Thane in appeal No.263-THN/13-14 dated 02/03/2016 (Id. CIT(A) in short) against the order of assessment passed u/s.143(3) of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 26/03/2013 by the Id. Assistant Commissioner of Income Tax, Palghar Circle, Palghar (hereinafter referred to as Id. AO).

### **ITA No.4211/Mum/2018 (A.Y.2007-08) (Assessee Appeal)**

This appeal in ITA No.4211/Mum/2018 for A.Y.2007-08 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-II, Thane

in appeal No.THN/CIT(A)-II/JCIT Plg.Rg/PLG/68/10-11 dated 29/12/2010 (Id. CIT(A) in short) in the matter of imposition of penalty u/s.271D of the Income Tax Act, 1961.

**ITA No.403/Mum/2018 (A.Y.2014-15) (Assessee Appeal)**

This appeal in ITA No.403/Mum/2018 for A.Y.2014-15 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-3, Thane in appeal No.10508-THN/16-17 dated 25/10/2017 (Id. CIT(A) in short) against the order of assessment passed u/s.143(3) r.w.s. 147 of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 20/12/2016 by the Id. Income Tax Officer, Palghar (hereinafter referred to as Id. AO).

**ITA No.5983/Mum/2017 (A.Y.2013-14) (Assessee Appeal)**

This appeal in ITA No.5983/Mum/2017 for A.Y.2013-14 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-3, Thane in appeal No.10129-THN/16-17 dated 25/07/2017 (Id. CIT(A) in short) against the order of assessment passed u/s.143(3) of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 29/01/2016 by the Income Tax Officer (hereinafter referred to as Id. AO).

Identical issues are involved in all the appeals hence they are taken up together and disposed off by this common order for the sake of convenience. With the consent of both the parties, the appeal for the A.Y.2010-11 is taken as the lead year and the decision rendered thereon would apply with equal force for other assessment years except with variance in figures.

2. The ground Nos.2,3 and 4 raised by the assessee were stated to be not pressed at the time of hearing before us. The same is reckoned as a statement made from the bar and accordingly, the ground Nos.2,3 & 4 are dismissed as not pressed. The ground No.5 raised by the assessee is general in nature and does not require any specific adjudication.

2.1. The only surviving ground to be decided in this appeal is as to whether the assessee is entitled for deduction u/s.80P(2)(a)(i) of the Act in the facts and circumstances of the instant case.

3. The brief facts of this issue is that the assessee is engaged in the business of providing the credit facilities to its members. It accepts deposits from its members and provides credit facilities to its members. The Id. AO observed that assessee is carrying on banking business as stated in the tax audit report in form 3CD. The assessee is a co-operative society engaged in collecting deposits and providing credit facilities to the Secondary Teachers who are its members. The assessee is also registered under Maharashtra State Co-operative Societies Act, 1960 providing financial assistance to its members. The return of income for the A.Y.2010-11 was filed by the assessee on 26/07/2010 declaring total income of Rs. Nil after calculating the deduction u/s. 80P(2)(a)(i) of the Act. The Id. AO observed that assessee had during the F.Y.2006-07 relevant to A.Y.2007-08, collected certain deposits in cash in excess of Rs.20,000/- totalling to the tune of Rs.61,83,222/-. The then Assessing Officer of the assessee for A.Y.2007-08 levied penalty u/s.271D of the Act on 27/09/2010 for violation of provisions of Section 269SS of the Act in respect of cash deposits received by the assessee in excess of Rs.20,000/-.

3.1. Aggrieved by the said levy of penalty, the assessee before the Id. CIT(A) had submitted that it is a co-operative bank and accordingly, he is entitled to receive cash deposits in excess of Rs.20,000/- from its members. Accordingly, it was pleaded that the provisions of Section 269SS of the Income Tax Act would not be applicable to the assessee and consequently, penalty u/s.271D of the Act would not arise in the case of the assessee. This argument of the assessee was accepted by the then CIT(A)-II, Thane and accordingly, deleted the penalty u/s.271D of the Act vide its order dated 29/12/2010.

3.2. In view of the above, the Id. AO did not accept the contention of the assessee that it is a co-operative society and held that it is only the co-operative bank and accordingly, not entitled for deduction u/s. 80P(2)(a)(i) of the Act.

3.3. The Id. CIT(A) observed that assessee had already taken one particular stand before his predecessor in the course of penalty proceedings u/s.271D of the Act, relying on which, his predecessor had already accepted the assessee to be a co-operative bank and not a co-operative society. Against such order deleting the levy of penalty u/s.271D of the Act, the revenue had not preferred any appeal before the Tribunal and matter has attained finality. The Id. CIT(A) also observed that for the A.Y.2010-11, the paid up capital of the assessee is Rs.8,27,67,620/- and reserves and surplus is Rs.1,72,15,456/-. Thus, the assessee fulfils all the criteria laid down in Section 5(CCV) of Banking Regulation Act, 1949 and therefore, is a primary co-operative bank. He also placed reliance on the provisions of Section 80P(4) of the Act which

categorically says that the provisions of Section 80P shall not apply in relation to any co-operative bank. Before the Id. CIT(A), the assessee submitted as under:-

- a) That it is a co-operative society engaged in the business of providing credit facilities to its members
- b) Its activities are confined to accepting deposits from members and lending to its members only.
- c) It does not accept deposits from non-members and does not lend to non-members.
- d) It is not a co-operative bank within the meaning of provisions of Section 80P(2)(a)(i) of the Act r.w.s. 80P(4) of the Act.
- e) It is a co-operative society registered under the Maharashtra State Government Societies Act 1960 providing financial assistance to its members who are mainly salary earners of secondary school. It was pleaded that as per the bye laws of the assessee, no person can become member of its society unless its members are permanently employed in any recognised aided secondary and higher secondary school in Thane district run by any society registered under Societies Registration Act or any trust registered under the Bombay Public Trust Act. The bye laws of the assessee does not permit to accept the deposit money from any non-members / general public and also does not permit it to lend it by way of loans to general public other than its members. Thus, the assessee is

providing the credit facilities to its members only and accordingly, is eligible to claim deduction u/s. 80P(2)(a)(i) of the Act.

f) The assessee is only a co-operative society providing banking facilities / credit facilities to its members. It was pleaded that provisions of Section 80P(4) states that the provisions of Section 80P shall not apply to a co-operative bank. For deciding whether the assessee society is a co-operative bank or not, definition given in Section 5(cci) under part V of Banking Regulation Act, 1949 is to be followed strictly. From the said definition, it is apparent that co-operative bank means state co-operative bank. The assessee herein is neither the state co-operative bank nor central co-operative bank. Hence, it has to be examined whether the assessee is a primary co-operative bank. As per the definition of primary co-operative bank u/s.5(ccv) of Banking Regulation Act, 1949, if a co-operative society fulfils all the following three conditions simultaneously, it shall be regarded as a primary co-operative bank:-

- (i) Primary object or principal business should be to the banking business.
- (ii) Paid up share capital and reserves should not be less than One lakh of rupees.
- (iii) Bye laws of which do not permit admission of any other co-operative as a member.

3.4. Thus, if co-operative society which does not fulfil any of the above conditions, it cannot be regarded as primary co-operative bank. The assessee pleaded that in the instant case, the assessee's case does not comply with these three conditions cumulatively and hence, it cannot be

regarded as primary co-operative bank and hence, the provisions of Section 80P(4) cannot be made applicable and that the assessee would be entitled for deduction u/s. 80P(2)(a)(i) of the Act, in respect of profit derived from the activity of providing credit facilities to its members.

3.5. The assessee also pleaded that the expression "banking business" is defined u/s.5(b) of Banking Regulation Act, 1949 as per which "banking business" means accepting deposits of money from the public which is repayable on demand or otherwise and withdrawal of these deposits by cheque, draft or otherwise and these deposits are accepted for the purpose of lending or investment. The assessee in this regard drew the attention to its bye laws which does not permit it to accept deposit of money from non-members / general public and also does not permit it to lend moneys by way of loans to general public. Thus, the assessee actually is not doing "banking business" within the meaning of Section 5(b) of Banking Regulation Act, 1949.

3.6. Further, in order to carryout banking business, the society needs to obtain license from the Reserve Bank of India (RBI) which the assessee society does not possess. Hence, the assessee's activity of providing credit facilities to its members cannot be construed as carrying on "banking business" within the meaning of Section 5(b) of the Banking Regulation Act, 1949 and hence, it cannot be categorised as primary co-operative bank and accordingly, not a co-operative bank within the meaning of Banking Regulation Act, 1949 and consequently would be entitled for deduction u/s. 80P(2)(a)(i) of the Act.

3.7. It was subsequently pleaded before the Id. CIT(A) that even for the A.Y.2007-08, the assessee was accepted as a co-operative credit society by the Id. AO and deduction u/s. 80P(2)(a)(i) of the Act was duly granted vide order u/s. 143(3) of the Act dated 29/09/2009, which was sought to be withdrawn later vide order u/s.143(3) r.w.s. 147 of the Act dated 31/01/2013 in view of the reason that assessee on its own had accepted before the then Id. CIT(A)-II, Thane in the penalty proceedings u/s.271D of the Act for the A.Y.2007-08 that it is a co-operative bank.

3.8. It was subsequently pleaded before the Id. CIT(A) that for deciding the eligibility of the assessee for deduction u/s. 80P(2)(a)(i) of the Act, definition of "co-operative bank" and "primary co-operative bank" as per Maharashtra State Government Act is not relevant because Section 80P(4) of the Act specifically refers to definition of "co-operative bank" as per Banking Regulation Act only. Accordingly, it was pleaded that the stand taken by the assessee in the penalty proceedings cannot be used in regular assessment proceedings. It was also respectively submitted that the benefits conferred by the Parliament cannot be allowed or denied on the basis of what one says or what one believes or what one observes. The Id. AO in the instant case had not established that assessee is a co-operative bank within the meaning of Section 80P(4) of the Act r.w.s. 5(cci) of the Banking Regulation Act.

3.9. It was specifically brought to the attention of the Id. CIT(A) that unlike the assessee, (which is a co-operative credit society) co-operative banks are free to deal with non-members. Like co-operative banks, the assessee co-operative society is not subjected to control or supervision of RBI.

4. The Id. CIT(A) completely disregarded the entire contentions made by the assessee as narrated hereinabove and accordingly, placed reliance on the stand taken by the then Chartered Accountant of the assessee before his predecessor i.e. (CITA-II, Thane) during the penalty proceedings u/s. 271D of the Act wherein assessee was construed as co-operative bank in order to escape from the rigours of provisions of Section 269SS of the Act in respect of deposits received in cash in excess of Rs.20,000/- from its members. The Id. CIT(A) in the instant case by placing heavy reliance on the observations made by his predecessor CIT(A) for A.Y.2007-08 in the penalty proceedings finally concluded that assessee is a co-operative bank and assessee cannot have double standard in the income tax proceedings as far as its status is concerned. Accordingly, he upheld the action of the Id. AO denying deduction u/s. 80P(2)(a)(i) of the Act.

5. Aggrieved, the assessee is in appeal before us.

6. We have heard rival submissions and perused the materials available on record. We find from the perusal of the bye laws of the assessee that assessee is a co-operative credit society engaged in the business of providing credit facilities to its members. The bye-laws of the assessee permit assessee's society to accept deposits from **members only** and provide credit facilities to its **members only** and not to any general public. We find that the provisions of Explanation to Section 80P(4) of the Income Tax Act, 1961 specifically defines "co-operative bank" to have a meaning assigned to it in part V of the Banking Regulation Act, 1949. Hence, in order to make a person fall within the

category of a Co-operative bank for the purpose of Section 80P(4) of the Act, we need to look into the definition of Co-operative Bank as per Banking Regulation Act, 1949.

6.1. We find that part V of Banking Regulation Act, 1949 in Section 5 Clause (cci) "Co-operative Bank" is defined as under:-

*"Co-operative Bank means the State co-operative bank, the Central Co-operative Bank and a primary co-operative bank."*

6.2. We also find that the Banking Regulation Act, 1949 in Section 5 Clause (ccv), the expression "primary co-operative bank" is defined as under:-

*"Primary Co-operative Bank means a co-operative society, other than the primary agricultural credit society,-*

- (i) The primary object or principal business of which is the transaction of banking business;*
- (ii) The paid up share capital and reserves of which are not less than One Lakh of rupees and;*
- (iii) The bye-laws of which do not permit admission of any other co-operative society as a member;*

*Provided that this sub-clause does not apply to the admission of "co-operative" bank as a member by reason of such co-operative bank subscribing to the share capital of such co-operative society out of funds provided by the State Government for the purpose. "*

6.3. We find that the term 'banking' means accepting for the purpose of lending or investment of deposits of money from the public, repayable on demand or otherwise and withdrawable by cheque, draft, order or otherwise. Hence, from the above definitions provided for the expression "primary Co-operative bank" and for the expression "banking" as per the

Banking Regulation Act 1949, it could be safely concluded that unless the person collects deposits from the general public and provides credit facilities to the general public (both members and non-members), they cannot fall within the category of "co-operative bank", "primary co-operative bank" or said to have engaged in the business of banking. **In the instant case it is undisputed that assessee does not have any transaction with non-members of the credit society. At the cost of repetition, we would like to state that assessee had collected deposits only from its members and had provided credit facilities to its members, in consonance with the powers provided in its bye laws.** Hence, it could be safely concluded that the provisions of Section 80P(4) of the Act cannot be made applicable to the assessee society in the instant case. Hence, the assessee being a co-operative society would fall within the ambit of Section 80P(2)(a)(i) of the Act and hence, would be eligible for deduction thereon.

6.4. Now, let us examine yet another aspect advocated by the Id. DR before us that assessee had taken double standards with regard to its status. It is a fact that the assessee's then Chartered Accountant had made submission before the then CIT(A)-II, Thane during the course of penalty proceedings u/s.271D of the Act for the A.Y.2007-08 that the assessee is a co-operative bank. The then Id. CIT(A) believing the said contention of the assessee's authorised representative had proceeded to delete the penalty u/s.271D of the Act, against which no appeal has been preferred by the revenue before us. But we find that assessee on realising its mistake had preferred an appeal before us against that order (though it is not aggrieved on the result of the order but aggrieved on the observations made thereon) in ITA No.4211/Mum/2018 for penalty

u/s.271D of the Act for A.Y.2007-08, which is also listed alongwith these main appeals for other assessment years. It is trite law that no addition or denial of any deduction could be made by the revenue authorities merely based on admission of any person much less the authorised representative of the assessee without going into the actual charter documents i.e. in the instant case, objects of the society to ascertain and understand the status of the assessee. The objects of the society (bye laws of the assessee) which are enclosed in page 5 of the paper book filed before us categorically states that assessee society could transact only with its members. Hence, by no stretch of imagination, it could be considered as a co-operative bank. At the cost of repetition, a co-operative bank is one which transacts with general public which includes both members as well as non-members. In this regard, we would like to state that there is no estoppel against the statute and therefore, it is open to the assessee to claim before the authorities that a particular item of income is not taxable despite having offered the same in its return of income or even having accepted the same as taxable before the authorities or even in the books of accounts. With regard to these propositions, reliance is placed on the following decisions:-

- a. Decision of the Hon'ble Jurisdictional High Court in the case of Nirmala L Mehta vs. A. Balasubramaniam reported in 269 ITR 1 (Bom)
- b. Decision of the Hon'ble Jurisdictional High Court in the case of CWT vs. APAR Ltd., reported in 267 ITR 705 (Bom)
- c. Decision of the Hon'ble Jurisdictional High Court in the case of Balkukund Acharya vs. DCIT reported in 310 ITR 310 (Bom)

- d. Decision of Hon'ble Gujarat High Court in the case of P.V. Doshi vs. CIT reported in 113 ITR 22 (Guj)

6.5. It is also well settled that any amount of admission or misapprehension could not make an item taxable which is otherwise not so. In support of this, we would like to place reliance on the following decisions:-

- a. Decision of Hon'ble Allahabad High Court in the case of Abdul Qayume vs. CIT reported in 184 ITR 404 (All)
- b. Decision of Hon'ble Calcutta High Court in the case of Mayank Poddar vs. ITO reported in 262 ITR 633 (Cal)
- c. Hon'ble Calcutta High Court in the case of SAIL DSP VR Employees Association 1998 vs. Union of India & Ors. Reported in 262 ITR638 (Cal)

6.6. We also find that the concerned Chartered Accountant who had made the aforesaid submission before the Id. CIT(A) during penalty proceedings for A.Y.2007-08 had also filed an affidavit before us which is enclosed in page 16 of the paper book which is reproduced hereunder for the sake of convenience:-



### Affidavit

I Burzin Sukeshwala, Son of Rohinton Sukheshwala, Indian inhabitant, aged 35 years and a Chartered Accountant, do hereby solemnly affirm and declare on as under:

- 1) I state that I represented, the Thane Zilla Madhyamik Shikshak Sangh Sahakari Pathpedhi Maryadit ("the appellant"), in appeal before The Commissioner of Income Tax (Appeals)-II, Thane for Assessment Year 2007-08 in respect of penalty matter under Section 271D of the Income Tax Act, 1961.
- 2) I state that during the appellant proceedings it was contended before the Commissioner of Income Tax (Appeals)-II, Thane that the said society is providing financial assistance to its members who are mainly salary earners of secondary school and therefore the nature of Business of the appellant is akin to that of Banking Business and as per the provisions of The Maharashtra State Co-operative Societies Act, 1960 the Appellant falls under the category of Co-operative Bank and Sub Category of other Banks which include the Urban Bank and Salary Earners Societies.  
Considering the complex nature of legislation and the fact that the department was assessing the Credit Co-operative Societies as Banking Company in number of cases, the interpretation was made that the society is a Bank.  
This was an interpretation of law based on the above stated facts and my understanding of law and there was no malafied intention.
- 3) I have made this affidavit to state that the contention was made with bonafide intention and not to claim any relief under the Income Tax Act and on the basis interpretation mainly available from the assessments of certain Credit Societies by the Income Tax Department.
- 4) I again affirm that my interpretation of the law is based on above stated facts and interpretation of law and hence this affidavit is made to put the facts in correct perspective.

Whatever stated above is correct and believed to be true.



*Burzin Sukeshwala*  
[BURZIN SUKESHWALA]  
**BEFORE ME**  
Sun  
07-06-18  
S. M. N. Naqvi  
NOTARY  
Government of India  
Mumbai & Thane Dist.  
SR. No. 589 P. No. 56  
NOTARY Register 299 Date 01/06/18

6.7. We find from the order passed by Id. CIT(A)-II Thane dated 29/12/2010 deleting the levy of penalty u/s.271D of the Act for the A.Y. 2007-08, which are kept in pages 24-31 of the paper book filed before us,

even there, the assessee through the then Chartered Accountant had categorically stated that it is a co-operative society registered under Maharashtra State Co-operative Societies Act, 1960 providing financial assistance to its members who are mainly salary earners in secondary school. Since, it is providing financial assistance, the then Chartered Accountant had interpreted the activity carried on by the assessee to be akin to banking business and therefore, assessee could be categorised as a co-operative bank. Hence, it is a genuine misinterpretation of the provisions of Income Tax Act and Banking Regulation Act with regard to the status of the assessee. This mere admission of the Chartered Accountant alone would not, as stated earlier, determine the status of the assessee. The status of the assessee has to be determined based on the charter documents i.e. objects and bye laws of the society. In fact, after realising its mistake, the assessee had even preferred rectification petition before the Id. CIT(A) on 28/05/2018 pointing out the aforesaid mistaken interpretation of Act regarding the status of the assessee, which is still pending disposal. Parallely, the Id. AR also made a statement from the bar that Section 119 petition was also preferred by the assessee before the Central Board of Direct Taxes (CBDT) on 29/05/2018 to rectify the aforesaid mistaken interpretation made by the then Chartered Accountant. The Id. AR submitted that the said petition is yet to be disposed off by the CBDT. Accordingly, in order to put all the disputes to rest and to have a coherent understanding of the issues in dispute vis a vis the status of the assessee, in the interest of justice, the assessee had voluntarily preferred an appeal before this Tribunal against the order passed by the Id. CIT(A)-II, Thane on 29/12/2010 wherein the penalty u/s.271D of the Act was deleted. In the said appeal, the assessee had categorically raised a ground before us stating that the penalty u/s.271D

of the Act ought not to have been deleted on the basis that assessee is a bank. We find that assessee had rather pleaded in its ground that the penalty u/s.271D of the Act need to be examined by the Id. CIT(A) on the facts and circumstances of the case and not based on its status. We find lot of force in this argument made by the Id. AR and we find that this appeal filed by the assessee in ITA No.4211/Mum/2018 against penalty u/s.271D of the Act for A.Y.2007-08 requires to be remanded back to the file of the Id. CIT(A) for denovo adjudication in accordance with law. The Id. CIT(A) is hereby directed to hear this appeal afresh uninfluenced by his earlier decision taken with regard to the status of the assessee. Accordingly, the appeal of the assessee in ITA No.4211/Mum/2018 is allowed for statistical purposes by way of remanding it to the file of the Id. CIT(A).

6.8. We find that subsequent development that had happened in the instant case wherein the then Chartered Accountant of the assessee had filed an affidavit narrating the entire facts and his interpretation of provisions of the Income Tax Act and the Banking Regulation Act had not been properly appreciated by the lower authorities.

6.10. It is very crucial to note that for the A.Ys.2008-09 and 2012-13, this Tribunal in assessee's own case in ITA No.1249 & 1250/Mum/2017 respectively dated 17/05/2017 had decided the impugned issue of deduction u/s. 80P(2)(a)(i) of the Act against the assessee. We have gone through the entire order and we find that this Tribunal had decided the issue against the assessee basically on the premise that the assessee itself had accepted its status to be a co-operative bank before the then Id. CIT(A)-II, Thane in penalty proceedings u/s.271D of the Act and the very

same assessee cannot be allowed to change its status in the regular income tax assessment proceedings when it comes to claim of deduction u/s. 80P(2)(a)(i) of the Act. This we find it had already been addressed hereinabove by us in as much as the quasi judicial proceedings cannot be decided based on an admission made by some person. It has to be decided based on the prevailing facts and circumstances and the charter documents of the assessee to determine the status of the assessee. Hence, in our considered opinion, the order passed by this Tribunal in assessee's own case for A.Y.2008-09 and 2012-13 dated 17/05/2017 is factually distinguishable because of the subsequent development that had happened by way of affidavit of the then Chartered Accountant and assessee's bonafide intent by realising its mistake by making 154 petition before the Id. CIT(A) for changing its status in penalty proceedings u/s.271D of the Act on 28/05/2018 and parallel filing Section 119 petition before the CBDT to settle all these disputes to rest. This bonafide intent of the assessee needs to be duly appreciated. We find that assessee is genuinely interested in putting all the disputes to rest and in order to avoid any ambiguity with regards to its status had done the following:-

- a) Had obtained a bonafide from the then Chartered Accountant and placed it on record.
- b) Had preferred an appeal before us in ITA No.4211/Mum/2018 for A.Y.2007-08 in respect of penalty proceedings u/s. 271D of the Act even though the same is decided in favour of the assessee.
- c) The assessee has filed rectification petition u/s.154 of the Act before the Id. CIT(A) on 28/05/2018 to rectify the mistake with regard to status of the assessee in the penalty proceedings

u/s.271D of the Act dated 29/12/2010 and the same is pending disposal according to Id. AR.

- d) Petition u/s.119 of the Act has also been filed by the assessee on 29/05/2018 before the CBDT to put all these disputes to rest and the same is pending disposal according to Id. AR.

6.11. We specifically find that the Hon'ble Jurisdictional High Court in the case of Quepem Urban Co-operative Credit Society Ltd., vs. Assistant Commissioner of Income Tax reported in 377 ITR 272 (Bom) had categorically held that if the activities of the assessee are confined only to members, then it cannot be construed as a co-operative bank. We find that this decision had also taken note of the point that obtaining licence from RBI for carrying on banking business is a *sin qua non* for recognising and addressing to be a co-operative bank. In this regard, reliance was also placed on the decision of the Hon'ble Karnataka High Court in the case of CIT vs. Shri Biluru Gurubasava Pattina Sahakari Sangha Niyamitha Bagalkot (2014) 269 ITR 86 (Kar).

6.12. Considering the totality of the facts and circumstances of the case, we categorically hold that status of the assessee should be considered only as a co-operative credit society and not as a co-operative bank. Accordingly, the assessee is entitled for deduction u/s. 80P(2)(a)(i) of the Act for A.Y.2010-11 and we direct the Id. AO accordingly.

7. In the result, appeal of the assessee in ITA No.4297/Mum/2016 for A.Y.2010-11 is partly allowed.

**ITA No.4296/Mum/2016 (A.Y.2007-08)**

8. The ground No.1 raised by the assessee was stated to be not pressed at the time of hearing by the Id. AR. The same is reckoned as statement made from the Bar and accordingly, ground No.1 is dismissed as not pressed.

9. The ground Nos.3 & 4 raised by the assessee are general in nature and does not require any specific adjudication.

10. Ground No.2 raised by the assessee is with regard to deduction u/s. 80P(2)(a)(i) of the Act. The decision rendered by us for A.Y.2010-11 supra would apply with equal force for this assessment year also except with variance in figures.

11. In the result, appeal of the assessee for ITA No.4296/Mum/2016 for A.Y.2007-08 is partly allowed.

**ITA No.5983/Mum/2017 (A.Y.2013-14)**

12. The ground No.1 raised by the assessee was stated to be not pressed at the time of hearing by the Id. AR. The same is reckoned as statement made from the Bar and accordingly, ground No.1 is dismissed as not pressed.

13. The ground Nos.3 & 4 raised by the assessee are general in nature and does not require any specific adjudication.

14. Ground No.2 raised by the assessee is with regard to deduction u/s. 80P(2)(a)(i) of the Act. The decision rendered by us for A.Y.2010-11 supra would apply with equal force for this assessment year also except with variance in figures.

15. In the result, appeal of the assessee for ITA No.5983/Mum/2017 for A.Y.2013-14 is partly allowed.

**ITA No.403/Mum/2018 (A.Y.2014-15)**

16. The ground No.1 raised by the assessee was stated to be not pressed at the time of hearing by the Id. AR. The same is reckoned as statement made from the Bar and accordingly, ground No.1 is dismissed as not pressed.

17. The ground Nos.3 & 4 raised by the assessee are general in nature and does not require any specific adjudication.

18. The ground No.2 raised by the assessee is with regard to denial of deduction u/s. 80P(2)(a)(i) of the Act. For this assessment year, the assessee preferred an application u/s.144A before the Jt. CIT and that Jt. CIT, Palghar Range, Palghar gave directions to the Id. AO to examine the case of the assessee in the light of the decision of the Hon'ble Jurisdictional High Court in the case of Quepem Urban Co-operative Credit Society Ltd., vs. Assistant Commissioner of Income Tax reported in 377 ITR 272 (Bom). The Id. AO did not examine the applicability of this decision to the facts of the assessee case before us and reiterated the same order as he had passed in the case of the assessee for the earlier

years. Since the issue in dispute had been already addressed by us hereinabove, we do not deem it fit to remand this issue to the file of Id. AO for this assessment year. The decision rendered by us for the A.Y.2010-11 supra would apply with equal force for this assessment year also except with variance in figures.

19. In the result, appeal of the assessee in ITA No.403/Mum/2018 for A.Y.2014-15 is partly allowed.

**20. TO SUM UP:-**

<b><u>ITA NO.</u></b>	<b><u>A.Y.</u></b>	<b><u>RESULT</u></b>
<b>ITA No.4211/Mum/2018</b>	<b>2007-08</b>	<b>Partly allowed for statistical purposes</b>
<b>ITA No.4296/Mum/2016</b>	<b>2007-08</b>	<b>Partly allowed</b>
<b>ITA No.4297/Mum/2016</b>	<b>2010-11</b>	<b>Partly allowed</b>
<b>ITA No.403/Mum/2018</b>	<b>2014-15</b>	<b>Partly allowed</b>
<b>ITA No.5983/Mum/2017</b>	<b>2013-14</b>	<b>Partly allowed</b>

Order pronounced on 03/12/2020 by way of proper mentioning in the notice board.

**Sd/-**  
**(AMARJIT SINGH)**  
JUDICIAL MEMBER

**Sd/-**  
**(M.BALAGANESH)**  
ACCOUNTANT MEMBER

Mumbai; Dated 03/12/2020  
KARUNA, sr.ps

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)  
**ITAT, Mumbai**