IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "B", PUNE – VIRTUAL COURT

BEFORE SHRI R.S. SYAL, VICE PRESIDENT AND
SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER

ITA No.2644/PUN/2017
निर्धारण वर्ष / Assessment Year : 2013-14

Nilkanth Urban Cooperative Bank Limited, Near Samrat Chowk, Police Chowki, Solapur – 413002 PAN : AAAJN0172A	Vs.	ACIT, Circle-1, Solapur
Appellant		Respondent

Assessee by	None (Written submissions)
Revenue by	Shri Abhishek Meshram
Date of hearing	09-09-2020
Date of pronouncement	10-09-2020

आदेश / ORDER

PER R.S.SYAL, VP :

This appeal by the assessee is directed against the order dated 29-09-2017 passed by the CIT(A)-7, Pune, in relation to the assessment year 2013-14.

2. The only issue raised in this appeal is against the confirmation of disallowance of Rs.4,20,773/- made by the Assessing Officer (AO) u/s.40(a)(ia) of the Income-tax Act, 1961 (hereinafter also called 'the Act') on account of non-deduction of

tax at source on interest paid to some of the members, which were held to be not legal members.

3. Briefly stated, the facts of the case are that the assessee is a Co-operative Bank, who filed its return declaring total income of Rs.97,40,280/-. During the course of assessment proceedings, the AO required the assessee to submit data relating to `Person-wise deposits' held by the bank as on 31-03-2013 and interest credited or paid to them along with a copy of Bye-laws of the bank, elaborating the scope of its Members. The assessee furnished `Person-wise' data of the depositors with the break-up in the terms of Individual, Hindu Undivided Family (HUF), Partnership firm (registered), Partnership firm (unregistered), Company, Trust-registered, LLP, BOI, AOP, Cooperative society and Cooperative Banks and Others. On the perusal of bye-laws of the assessee-bank, the AO observed that clause 4 (ix) contains definition of "Person" to mean an adult-individual, partnership firm registered or local authority or any other body corporate and public trust registered etc. He further perused clause 4(iv) of the bye-laws defining the term "Member" to mean a `Person' joining with an application of registration of bank including a Nominal and Associate Member. On a conjoint reading of clauses 4(ix) and

4(iv), the AO held that only a "Person" can be a "Member". Since HUF and unregistered firms did not fall within the definition of the term "Person", the AO held that they could not be treated as "Members" and hence, interest amounting to Rs.4,20,773/- paid to them without deduction of tax at source u/s 194A was hit by section 40(a)(ia) of the Act. The ld. CIT(A) echoed the assessment order on this point, against which the assessee has come up in appeal before the Tribunal.

4. We have heard the ld. DR through virtual court. Written submission filed on behalf of the assessee have also been taken into consideration. The short point for consideration is whether the ld. CIT(A) was justified in sustaining disallowance made by the AO u/s.40(a)(ia) of the Act towards interest paid to some Members without deduction of tax at source in terms of section 194A. The *raison d'etre* assigned for making such a disallowance is that the HUFs and Unregistered firms could not have been legally inducted as "Members" within the definition of the term `Person' as given in the bye-laws of the assessee bank and hence, payment of interest to them was liable for deduction of tax at source u/s.194A of the Act.

5. Section 194A of the Act deals with deduction of tax at source on Interest other than interest on securities. Sub-section (1) provides that any person, not being an individual or a Hindu undivided family, who is responsible for paying to a resident any income by way of interest shall at the time of payment, deduct income-tax thereon. Sub-section (3) is exception to sub-section (1), which mandates that the provisions of sub-section (1) shall not apply in certain situations narrated therein. We are primarily concerned with clause (v) of sub-section (3) of section 194A which provides that sub-section (1) shall not apply: `to such income credited or paid by a co- operative society to a member thereof or to any other co-operative society'. On a harmonious reading of sub-sections (3) and (1) of section 194A, it becomes apparent that a co-operative society is required to deduct tax at source from any interest paid by it except where the interest is paid to its Member or to any other Cooperative society. In other words, if interest is paid by it to its Members, the same does not require any deduction of tax at source.

6. A question arose as to whether nominal members, associate members and sympathizer members were also covered by the exemption under section 194A(3)(v). The CBDT vide Circular

No.9/2002 clarified that `the exemption is available only to such members who have joined in application for the registration of the co-operative society and those who are admitted to membership after registration in accordance with the bye-laws and rules.' It further clarified that a member eligible for exemption under section 194A(3)(v) must have subscribed to and fully paid for at least one share of the co-operative bank and must be entitled to participate and vote in the General Body Meetings and/or Special General Body Meetings of the co-operative bank etc. To put it simply, the CBDT clarified that exemption under clause (v) of section 194A(3) applies to only such members who have either joined in the application for the registration of the society or those who are admitted after the registration *in accordance with the bye-laws* and rules. Going by the Circular, if a `Person' has been admitted as a `Member' contrary to the bye-laws and rules of the co-operative society, such a person will not be entitled to be covered within section 194A(3)(v).

7. This circular came up for consideration before the Hon'ble jurisdictional High Court in the *Jalgaon District Central Cooperative Bank Ltd. and Another Vs. Union of India (2004) 265 ITR* 423. The Hon'ble High Court quashed the circular by holding

that it restricts the exemption under section 194A(3)(v) only to such members who have joined in application for the registration of the co-operative society and those who are admitted to the membership after the registration in accordance with the bye-laws and rules and excluding nominal, associate or sympathizer members, which position is in conflict with the provisions of section 194A(3)(v) and, therefore, outside the scope of section 119 of the Act.

8. In view of the quashing of the said circular, which is even otherwise not binding on the Tribunal, the position which stands is that the exception carved out in clause (v) of section 194A(3) applies to all types of Members of the eligible co-operative Banks - whether or not they were admitted to the Membership in accordance with the bye laws and rules of the co-operative bank. A plain reading of section 194A(3)(v) deciphers that the legislature has not added any adjective to the term `Member', such as, nominal or associate or sympathizer, so as to restrict the application of clause (v) only to the regular and participating members. The corollary which now stands is that so long as a depositor is enrolled as a Member of a co-operative Bank, payment of any interest to such depositor-Member will not require

deduction of tax at source as it will fall within the domain of clause (v) u/s.194A(3) of the Act.

9. Adverting to the facts of the extant case, we find that the authorities below have denied the benefit of deduction of interest of Rs.4,20,773/- by making disallowance u/s.40(a)(ia) of the Act only on the ground that the assessee ought to have deducted tax at source u/s.194A on interest paid to HUF and Unregistered firms, who were not legal Members in accordance with the bye-laws of the assessee inasmuch as the definition of "Person" in clause 4(ix) of the bye-laws did not include HUF and unregistered firms. It is not the case of the AO that such HUFs and unregistered firms were not otherwise the Members of the assessee-bank. The assessee made it explicitly known to the authorities below, as has been recorded on page 8 of the impugned order that: \`Both the above entities are members of the bank and they have been admitted as \`Members' by way of an application made by them to the bank and then passing a resolution to the extent of their admission as members of the bank in its Board of Directors meeting.'

10. Reliance of the ld. CIT(A) on *Citizen Co-operative Society Ltd. vs. ACIT (2017) 397 ITR 1 (SC)* is misconceived. The issue involved in that case was about the denial of deduction u/s 80P of

the Act. The AO in that case held that deduction in respect of income of co-operative societies u/s 80P was not admissible to assessee therein as benefit of deduction was admissible, *inter alia,* to those co-operative societies which carried on business of banking or providing credit facilities to its members. The CIT(A) rejected claim for deduction thereby upholding order of AO. The further appeals to the Tribunal and the Hon'ble High Court met with the same fate. The Hon'ble Apex Court also dismissed the appeal of the assessee by holding that that with insertion of sub-section (4) by Finance Act, 2006, it was made clear that such deduction should not be admissible to co-operative bank except where it was primary agriculture credit society or primary co-operative agriculture and rural development bank. It is manifest that the question of deduction of tax at source u/s 194A was nowhere before the Hon'ble Supreme Court, which is currently under consideration.

11. In view of the categorical judgment of Hon'ble jurisdictional High Court in *Jalgaon District Central Cooperative Bank Ltd. (supra)* setting aside circular No.9/2002, which, in turn, made a distinction between various classes of members and entitled only some classes to the benefit of section 194A(3)(v) of the Act, there

remains no doubt whatsoever that payment of interest by a co-operative bank to its Members, whether admitted in accordance with the bye-laws or otherwise, does not require deduction of tax at source. So long as any person is a "Member", payment of interest to him has to be covered within the mandate of clause (v) of section 194A(3) requiring no deduction of tax at source. Since the assessee made payment of interest amounting to Rs.4,20,773/- to HUF and unregistered firms, which happened to be its "Members", we hold that the authorities below were not justified in making and confirming disallowance u/s.40(a)(ia) of the Act. The impugned order is set aside to this extent.

12. In the result, the appeal is allowed.

Order pronounced in the Open Court on 10th September, 2020.

Sd/-	Sd/-
(S.S. VISWANETHRA RAVI)	**(R.S.SYAL)**
JUDICIAL MEMBER	**VICE PRESIDENT**

पुणे Pune; दिनांक Dated : 10th September, 2020
Satish

<u>आदेश की प्रतिलिपि अग्रेषित/Copy of the Order is forwarded to</u>:

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. The CIT-7, Pune
4. The Pr.CIT-6, Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "**बी**" / DR 'B', ITAT, Pune
6. गार्ड फाईल / Guard file

आदेशानुसार/ BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune

		Date	
1.	Draft dictated on	09-09-2020	Sr.PS
2.	Draft placed before author	10-09-2020	Sr.PS
3.	Draft proposed & placed before the second member		JM
4.	Draft discussed/approved by Second Member.		JM
5.	Approved Draft comes to the Sr.PS/PS		Sr.PS
6.	Kept for pronouncement on		Sr.PS
7.	Date of uploading order		Sr.PS
8.	File sent to the Bench Clerk		Sr.PS
9.	Date on which file goes to the Head Clerk		
10.	Date on which file goes to the A.R.		
11.	Date of dispatch of Order.		

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