

**IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH “B”, PUNE**

**BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER
AND**

SHRI S. S. VISWANETHRA RAVI, JUDICIAL MEMBER

Sl. No.	ITA No.	Name of Appellant	Name of Respondent	Asst. Year
1	1153/PUN/2018	Mandheshwari Urban Development Co-op. Bank Ltd., 1 st Floor, Market Committee Complex, Near Bus Stand, A/p Madha, Distt.- Solapur- 413209 PAN : AAABM0276E	ACIT, Circle-1, Solapur.	2013-14
2	1770/PUN/2018	Solapur Janata Sahakari Bank Ltd., Gaganbharari, Shivsmarak, Gold Finch Peth, Solapur- 413007. PAN : AAAAS3627C	ACIT, Circle-2, Solapur.	2010-11
3-4	516/PUN/2020 517/PUN/2020	Solapur Siddeshwar Sahakari Bank, 205, East Mangalwar Peth, Head Office, Solapur-413002. PAN : AABAS6216L	ACIT, Circle-1/2, Solapur.	2011-12 2013-14
5-6	518/PUN/2020 519/PUN/2020	Samarth Sahakari Bank Ltd., 2, Antrolkar Shopping Centre, Datta Chowk, Solapur- 413007. PAN : AAAJS1390P	ACIT, Circle-2, Solapur.	2010-11 2011-12
7-8	520/PUN/2020 521/PUN/2020	Vyapari Sahakari Bank Maryadit, 452, West Mangalwar Peth, Solapur-413002. PAN : AAAAV1118P	ITO, Ward-2(4)/ Solapur/ ACIT, Circle-2, Solapur.	2012-13 2013-14

9-10	24/PUN/2021 25/PUN/2021	Solapur Janata Sahakari Bank Ltd., Gaganbharari, Shivsmarak, Sankul Gold Finch Peth, Solapur- 413007. PAN : AAAAS3627C	ACIT, Circle-2, Solapur/ITO, Ward-2(4), Solapur.	2011-12 2012-13
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Assessee by : Shri Pramod Shingte
Revenue by : Shri M. G. Jasnani

Date of hearing : 30.06.2022
Date of pronouncement : 18.07.2022

ORDER

PER BENCH :

These are the appeals filed by the different assessees against the different orders of Id. Commissioner of Income Tax (Appeals), Pune for the respective assessment years.

2. Since the identical facts and issues are involved in all the above captioned ten appeals, we proceed to dispose of the same by this common order.

3. For the sake of convenience and clarity, the facts relevant to the appeal in ITA No.1770/PUN/2018 for the assessment year 2010-11 are stated herein.

4. Briefly, the facts of the case are that the appellant is a cooperative-bank registered under the provisions of the Maharashtra Cooperative Act. It is engaged in the business of banking. The

return of income for the assessment year 2010-11 was filed on 14.10.2010 declaring total income of Rs.9,46,40,949/-. Against the said return of income, the assessment was completed vide order dated 31.12.2012 at total income of Rs.11,01,49,880/-. Subsequently, a notice u/s 148 of the Income Tax Act, 1961 („the Act“) was issued on 20.03.2017 served upon the appellant on 23.03.2017, as the Assessing Officer formed an opinion that the income had escaped assessment to tax, as the assessee had failed to deduct TDS on the interest paid on deposits received from the following categories, who are not members of appellant society:

<i>Sr. No.</i>	<i>Name of Entity</i>
<i>1</i>	<i>HUF</i>
<i>2</i>	<i>Un Registered Partnership Firms</i>
<i>3</i>	<i>Unregistered Trusts</i>
<i>4</i>	<i>Minor (Not Adult Individual)</i>
<i>5</i>	<i>Co-operative Societies</i>
<i>6</i>	<i>AOP</i>

Therefore, AO was of the opinion that addition under the provisions of section 40(a)(ia) is required to be made. Accordingly, the assessment was completed by the Assessing Officer after disallowing the interest paid on deposits received from such non-members rejecting the contention of the appellant that those categories of persons are nominal members of the society who are also the members of the society.

5. Being aggrieved by the order of assessment, an appeal was filed before the Id. CIT(A) who vide impugned order confirmed the action of the Assessing Officer.

6. Being aggrieved by the order of the Id. CIT(A), the appellant is in appeal before us in the present appeal.

7. It is submitted before us that any person who had done any transaction of business of banking with the appellant society, is entitled to become nominal member as per bye-laws of the appellant society. The term “member of co-operative society” includes “nominal members” as per the provisions of Maharashtra Cooperative Societies Act. Thus, it was submitted that the Assessing Officer was not justified in treating these categories of persons as non-members not allowing the exemption under clause (v) of sub-section (3) of section 194A of the Act. He also placed reliance on the decision of the Hon^{ble} Bombay High Court in the case of Saraswat Co-operative Bank Ltd. vs. ITO in Tax Appeals No.3 to 9 & 11 of 2015 dated 07.03.2017 wherein the Hon^{ble} Bombay High Court held that a cooperative bank is not liable to deduct TDS on the interest paid on deposits received from members prior to 01.06.2015. He also placed reliance on the decision of the Hon^{ble} Bombay High Court in the case of Jalgaon District Central

Co-operative Bank vs. UOI, 134 Taxman 1 (SC) wherein the Circular No.9 of 2010 making the distinction between nominal members and the registered members was quashed and said circular is held to be illegal. He also placed reliance on the decision of the Co-ordinate Bench of Pune Tribunal in the case of Nilkanth Urban Cooperative Bank Limited vs. ACIT in ITA No.2644/PUN/2017 for A.Y. 2013-14 order dated 10.09.2020.

8. On the other hand, ld. CIT-DR placing reliance on the orders of the lower authorities submitted that a member, who is not entitled to vote, cannot be treated as a member of the cooperative society and, therefore, the exemption under clause (v) of sub-section (3) of section 194A of the Act cannot be applied to the cooperative bank.

9. We heard the rival submissions and perused the material on record. The issue in the present appeal relates to the applicability of exemption under clause (v) of sub-section (3) of section 194A of the Act, in the case of a cooperative bank. The provisions of section 194A requires the cooperative bank to deduct tax from interest payment one time deposit, as the amount of such payment exceed the prescribed threshold limit. Further, the provisions of section 194A(3)(v) provides a general exemption from tax deduction at source on the payment of interest by all the cooperative societies to

its members. Now, it is settled position of law that the cooperative bank is also a specie of cooperative societies, is entitled to the benefit of general exemption provided to all the cooperative societies from deduction of tax on payment of interest to its members. But the issue in the present appeal relates to whether a nominal member, who is not a registered member of the society, can be treated as a member of the cooperative society whether the exemption is available under clause (v) of sub-section (3) of section 194A of the Act. There is no dispute as to the fact that the above categories of persons mentioned above are nominal members of the societies as per bye-laws of the appellant society. The provisions of Maharashtra Cooperative Societies Act also permit admission of such nominal members. The term "member" has been defined by the Maharashtra Cooperative Societies Act to include a nominal members. The Hon"ble Supreme Court in the case of Mavilayi Service Co-operative Bank Ltd. vs. CIT, 431 ITR 1 (SC) which dealt with the exemption u/s 80P in respect of society registered under the provisions of Kerala Cooperative Societies Act, while interpreting the term "member" of society after making reference to the judgement of the Hon"ble Supreme Court in the case of U.P. Co-

op. Cane Union Federation Ltd. vs. CIT, 237 ITR 574 (SC) by holding as under :-

“46. It must also be mentioned here that unlike the Andhra Act that Citizen Cooperative Society Ltd. (supra) considered, „nominal members“ are „members“ as defined under the Kerala Act. This Court in U.P. Cooperative Cane Unions“ Federation Ltd., Lucknow v. Commissioner of Income Tax, Lucknow-I (1997) 11 SCC 287 referred to section 80P of the IT Act and then held:

“8. The expression “members” is not defined in the Act. Since a cooperative society has to be established under the provisions of the law made by the State Legislature in that regard, the expression “members” in Section 80-P(2)(a)(i) must, therefore, be construed in the context of the provisions of the law enacted by the State Legislature under which the cooperative society claiming exemption has been formed. It is, therefore, necessary to construe the expression “members” in Section 80-P(2)(a)(i) of the Act in the light of the definition of that expression as contained in Section 2(n) of the Cooperative Societies Act. The said provision reads as under:

“2. (n) „Member“ means a person who joined in the application for registration of a society or a person admitted to membership after such registration in accordance with the provisions of this Act, the rules and the bye-laws for the time being in force but a reference to „members“ anywhere in this Act in connection with the possession or exercise of any right or power or the existence or discharge of any liability or duty shall not include reference to any class of members who by reason of the provisions of this Act do not possess such right or power or have no such liability or duty;”” Considering the definition of „member“ under the Kerala Act, loans given to such nominal members would qualify for the purpose of deduction under section 80P(2)(a)(i).”

10. In the present case also, the provisions of Maharashtra Cooperative Societies Act provides that the members includes nominal members and, therefore, we do not see any reason as to why the exemption under clause (v) of sub-section (3) of section

194A of the Act cannot be given in the case of members referred to above. Therefore, the reasoning of the lower authorities cannot be appreciated in the eyes of law. Accordingly, the orders of the lower authorities are hereby reversed and direct the Assessing Officer to delete the addition made u/s 40(a)(ia) of the Act for non-deduction of TDS on interest paid on deposit received from the nominal members of the society.

11. In the result, the appeal filed by the assessee in ITA No.1170/PUN/2018 for A.Y. 2010-11 stands allowed.

ITA Nos.1153/PUN2018, A.Y. 2013-14,

ITA Nos.516 to 521/PUN/2020, A.Y. 2011-12 to 2013-14,

ITA Nos.24 & 25/PUN/2021, A.Y. 2011-12 & 2012-13:

12. Since the facts and issues involved in all the above ten appeals are identical, therefore, our decision in ITA No.1770/PUN/2018 for A.Y. 2010-11 shall apply *mutatis mutandis* to the remaining nine appeals of the assessee in ITA Nos.1153/PUN2018 for A.Y. 2013-14, ITA Nos.516 to 521/PUN/2020 for A.Y. 2011-12 to 2013-14 and ITA Nos.24 & 25/PUN/2021 for A.Y. 2011-12 & 2012-13 respectively. Accordingly, the appeals of the assessee in ITA Nos.1153/PUN2018 for A.Y. 2013-14, ITA Nos.516 to 521/PUN/2020 for A.Y. 2011-12 to 2013-14 and ITA Nos.24 & 25/PUN/2021 for A.Y. 2011-12 & 2012-13 are allowed.

13. To sum up, all the above ten appeals filed by the different assesseees stand allowed.

Order pronounced on this 18th day of July, 2022.

Sd/-
(S. S. VISWANETHRA RAVI)
JUDICIAL MEMBER

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

Pune; Dated : 18th July, 2022.

Sujeet/GCVSR

Copy of the Order forwarded to :

1. The Appellant.
2. The Respondent.
3. The CIT(A) concerned.
4. The Pr. CIT concerned.
5. DR, ITAT, "B" Bench, Pune.
6. Guard File.

BY ORDER,

// True Copy //

Senior Private Secretary
ITAT, Pune.