

आयकर अपीलीय अधधकरण “बी” न्यायपीठ पुणे मठेठं ।
IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH, PUNE

BEFORE SHRI S.S.GODARA, JM
AND SHRI G.D. PADMAHSHALI, AM

ITANo.1485/PN/2018

Assessment Year : 2010-11

Mahesh Urban Co-Operative Bank Ltd.,
128, Near Old Faujdar,
Shukruwar Peth,
Solapur – 413 002.

PAN : AAAAM0511H

Appellant

□□□□ / V/s.

Asst. CIT, Cir-2, Solapur

Respondent Assessee

by : None
Revenue by : Shri M.G.Jasnani

Date of Hearing : 28.09.2022

Date of Pronouncement : 29.09.2022

ORDER

PER S. S. GODARA, JM :

1. This assessee’s appeal for A.Y. 2010-11 is directed against the CIT(A)-7, Pune’s order dated 17/05/2018 passed in case No. PN/CIT(A)-7/Cir-2/10209/2017-18 involving proceeding u/s. 143(3) r.w.s. 147 of the Income Tax Act, 1961; in short "the Act".

Case called twice. None appears at the assessee’s behest. It is accordingly proceeded ex-parte.

2. The assessee's sole substantive ground on merits challenges correctness of both the lower authorities action invoking section 40(a)(ia) interest payment disallowance of Rs.2,00,095/- on account of non-deduction of TDS regarding payments made to members /non-members. Suffice to say, hon'ble apex court's recent landmark decision in the Mavilavi Service Co-operative Bank Ltd. V/s. CIT (2021) 431 ITR page 1 (SC) has settled the law regarding the alleged distinction between members and nominal-members; as the case may be, regarding section 80P deduction claim; against the department.

3. The factual position is hardly different on merits as well wherein Mr. Jasnani strongly supported the learned lower authorities' conclusion that the assessee had failed to deduct TDS on its interest payments. We find no merit in the Revenue's instant arguments as we are in assessment year 2010-11 whereas "a cooperative bank" has been excluded from the purview of section 194(A)(3)(v) vide Finance Act 2015 w.e.f. 01.06.2015 only. This tribunal's Special Bench decision is The Virudhunagar Central District Co-Operative Bank Ltd., V/s. ITO, ITA NO. 2055 & 2056/CHNY/2014; dated 09/10/2014 (Chennai) has followed hon'ble Madras high court's judgment M/s. Coimbatore District Central Co-Operative Bank Ltd. V/s. ITO, Tax case (Appeal) Nos. 588-645/2015 dated 15/10/2015 while adjudicating the very issue against the department. This is coupled with the fact that hon'ble jurisdictional high court in (2004) 134 taxmann.com 1 (BOM) Jalgaon district Central Co-operative Bank Ltd., V/s Union Of India has quashed the CBDT's circular dated 11.09.2002 as ultra vires violating section 119 of the Act.

Their lordship's further decisions in ITA No. 100001 of 2014 dated 16.12.2015 in The Bailhongal Urban Cooperative Bank Ltd., V/s. CIT and Tax Appeals No. 3 to 9 and 11 of 2015 dated 07.03.2017 in Saraswat co-operative Bank V/s. ITO take note of forgoing legislation developments to hold that a co-operative bank/ assessee has no liability to deduct TDS on interest payments made to members. We thus delete the impugned section 194A r.w.s. 40 (a)(ia) disallowance of Rs. 2,00,095/- in very terms therefore. The assessee's sole substantive grievance is accepted therefore.

4. Delay of 23 days in the instant appeal instituted on 17.09.2018 is condoned in larger interest of justice.

5. This assessee's appeal is partly allowed in above terms.

Order pronounced in the Open Court on this 29th day of September, 2022.

Sd/-
(G.D. PADMAHSHALI)
ACCOUNTANT MEMBER

Sd/-
(S.S. GODARA)
JUDICIAL MEMBER

Dated : 29th September, 2022.

Ashwini

Copy of the Order forwarded to :

1. The Appellant.
 2. The Respondent.
 3. The CIT(A)-7, Pune.
 4. The Pr.CIT-6, Solapur.
 5. DR, ITAT, "B" Bench, Pune.
 6. Guard File.
- // True Copy //

BY ORDER,

Senior Private Secretary
ITAT, Pune.

S.No.	Details	Date	Initials
1	Draft dictated on	28.09.2022	
2	Draft placed before author	28.09.2022	
3	Draft proposed & placed before the Second Member		
4	Draft discussed/approved by Second Member		
5	Approved Draft comes to the Sr. PS/PS		
6	Kept for pronouncement on		
7	Date of uploading of Order		
8	File sent to Bench Clerk		
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R.		
11	Date of Dispatch of order		