

THE INCOME TAX APPELLATE TRIBUNAL
"SMC" Bench, Mumbai
Before Shri B.R. Baskaran (AM)

I.T.A. No. 5435/Mum/2017 (Assessment Year 2011-12)
I.T.A. No. 5436/Mum/2017 (Assessment Year 2012-13)

Income Tax Officer 24(1)(4) Room No. 607 6 th Floor, Pirmal Chambers, Lalbaug Mumbai-400 012.	Vs.	M/s. Citiscape Co-op. Housing Society Ltd. Ground Floor Society Office Andheri Kurla Road Andheri East Mumbai-400 059. PAN : AAAAC4160G
(Appellant)		(Respondent)

Assessee by	Shri Rishabh Shah & Shri Suchak Anchaliya
Department by	Ms. N. Hemalatha
Date of Hearing	2.11.2017
Date of Pronouncement	8.12.2017

ORDER

Both the appeals filed by the revenue are directed against the orders passed by Ld CIT(A)-36, Mumbai and they relate to the assessment years 2011-12 and 2012-13. Both the appeals were heard together and hence they are being disposed of by this common order. In both the appeals, the revenue is aggrieved by the decision of Ld CIT(A) in holding that the interest received by the assessee from co-operative banks is deductible u/s 80P(2)(d) of the Act.

2. The assessee is a co-operative housing society. It earned interest on deposits kept with Co-operative banks and claimed the interest income as exempt u/s 80P(2)(d) of the Act. Sec. 80P(2)(d) provides that the interest income or dividend derived by a co-operative society from its investments with any other co-operative society is deductible u/s 80P of the Act. The assessee took the view that the co-operative banks are basically co-operative societies

and interest received from them qualifies for deduction u/s 80P(2)(d) of the Act. Accordingly it claimed deduction.

3. The AO took the view that the income of co-operative banks is not deductible u/s 80P of the Act in terms of sec. 80P(4) of the Act and consequently the provisions of sec.80P cannot be availed by the assessee in respect of income received from co-operative bank. Accordingly the AO reopened the assessments of both the years under consideration and rejected the claim for deduction u/s 80P(2)(d) of the Act in respect of interest income received from co-operative banks.

4. The Ld CIT(A) allowed the claim of the assessee in both the years by following the decision rendered by Hon'ble Karnataka High Court in the case of PCIT vs. Totagars Co-operative sale society (2017)(392 ITR 74), wherein the Hon'ble Karnataka High Court had held that the co-operative banks are co-operative societies. Aggrieved, the revenue has filed these appeals.

5. The Ld D.R submitted that the Hon'ble Karnataka High had delivered the decision reported in 392 ITR 74 on January 5, 2017. However, in its subsequent decision in the case of very same assessee, the Hon'ble Karnataka High Court has taken a different view, viz., in the case of The Principal CIT Vs. The Totagars Co-operative Sale Society (Income tax Appeal No.100066 of 2016 & others dated 16-06-2017). The Hon'ble Karnataka High Court has expressed the view that the interest income earned from co-operative banks is not different from the interest earned from Scheduled bank and hence clause (d) of Section 80P(2) of the Act would not apply to interest earned from deposits kept with co-operative bank.

6. On the contrary, the Ld A.R submitted that the fact that the cooperative banks are basically co-operative societies only cannot be denied. He submitted that the Hon'ble High Court of Himachal Pradesh has taken the view in the case of CIT Vs. Kangra Co-operative bank Ltd (2009)(309 ITR 106) that co-

operative banks are cooperative societies and hence the interest income from investments made in any co-operative society would be entitled for deduction u/s 80P(2)(d) of the Act. He submitted identical claim made in respect of interest income earned from co-operative banks has been allowed by the SMC bench in the case of Murude Sahakari Parsanstha Maryadid (ITA No.1058/Mum/2017 dated 21-08-2017) and by the division bench in the case of Lands End Co-operative Housing Society Ltd (ITA No.3566/Mum/2014 dated 15-01-2016).

7. I heard the parties and perused the record. I notice that the Hon'ble Karnataka High Court has initially taken the following view in the case of Totagars Co-operative Sale Society Ltd (392 ITR 74)

"...the word "co-operative bank" is a word of limited extent, which merely demarcates and identifies a particular species of the genus Co-operative Societies. Co-operative society can be of different nature, and can be involved in different activities; the Cooperative society Bank is merely a variety of the Co-operative Societies. Thus the Co-operative Bank which is a species of the genus would necessarily be covered by the word "Co-operative Society".....

Admittedly, the interest which the assessee responded had earned was from a Co-operative Society Bank. Therefore, according to Sec. 80P(2)(d) of the I.T Act, the said amount of interest earned from a Co-operative Society Bank would be deductible from the gross income of the Co-operative Society in order to assess its total income."

8. However, the very same Hon'ble Karnataka High Court in the very same assessee's case in ITA No.100066 of 2016 & others dated 16-06-2017 has taken the view that the interest income earned by a co-operative society from a co-operative bank is not deductible u/s 80P(2)(d) of the Act.

9. The Ld A.R has referred to me the decision rendered by Hon'ble Himachal Pradesh High Court in the case of Kangra co-operative bank Ltd (supra), wherein the High Court has observed as under:-

"....Furthermore, the investments have been made in H.P. State Co-operative Bank which is also a co-operative society and therefore even

under sec. 80P(2)(d) of the Act, interest income from investments made in any co-operative society would also be entitled for deduction.”

10. Thus, I notice that there are divergent views on this matter. The Hon'ble Karnataka High Court has expressed the view that the deduction u/s 80P(2)(d) would not be available in respect of interest income received from co-operative bank, whereas the Hon'ble Himachal Pradesh High Court has held that the said deduction would be available. The Hon'ble Supreme Court has held in the case of Vegetable Products Ltd (88 ITR 192) that if two reasonable constructions of a taxing provision are possible that construction which favours the assessee must be adopted. By applying the said principle, the view taken by Hon'ble Himachal Pradesh High Court, which is in favour of the assessee, is required to be adopted in this case. Accordingly I hold that the interest income earned by the assessee from Co-operative banks, which are basically co-operative societies carrying on banking business, is deductible u/s 80P(2)(d) of the Act. On this reasoning, I uphold the decision taken by Ld CIT(A) in both the years on this issue.

11. In the result, both the appeals of the revenue are dismissed.

Order has been pronounced in the Court on 8.12.2017.

Sd/-
(B.R.BASKARAN)
ACCOUNTANT MEMBER

Mumbai; Dated : 8/12/2017

Copy of the Order forwarded to :

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

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BY ORDER,
(Asstt. Registrar/Senior PS)
ITAT, Mumbai