

**IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH, MUMBAI
BEFORE SRI MAHAVIR SINGH, JM AND SRI G. MANJUNATHA, AM**

ITA No. 439/Mum/2017

(A.Y. 2012-13)

Jaimalhar Sahyadri Nagari Sahkari, Patpedi Maryadit Room No. 5, Metro Chamber, 69/71, S.S. Gaikwad Marg, Dhobi Talao, Mumbai-400 002	Vs.	The Income Tax Officer, 18(1)(5), Mumbai
Appellant	..	Respondent
PAN No. AAATJ9735F		

Assessee by : Ravindra Naik, AR

Revenue by : M. Hemalatha, DR

Date of hearing: 12-03-2018 **Date of pronouncement :** 16-03-2018

ORDER

PER MAHAVIR SINGH, JM:

This appeal by the assessee is arising out of the order of CIT(A)-29, Mumbai, in appeal No. CIT(A)-29/IT-151/ITO-18(1)(5)/15-16 dated 10.11.2016. The Assessment was framed by the Income Tax Officer, Ward-18(1)(5), Mumbai (in short 'ITO') for the A.Y. 2012-13 vide order dated 27-03-2015 under section 143(3) of the Income Tax Act, 1961(hereinafter 'the Act').

2. The only issue in this appeal of assessee is against the order of CIT(A) confirming the action of the AO in disallowing the claim of deduction under section 80P(2)(d) of the Act in respect of interest earned by society on fixed deposits made with Saraswat Co-operative Bank Limited. For this assessee has raised the following 2 grounds: -.



“1. The Id. CIT Appeal has erred in the Laws and Facts that the interest earned by the society is not from Co-op Bank as eligible for deduction under section 80P(2)(d).”

2. The learned CIT Appeal has erred in Laws and Facts in adding to the Income. Interest received from Saraswat Co-operative Bank Limited which is co-operative Bank and income earned is eligible for deduction under section 80P(2)(d).”

3. Briefly stated facts are that the assessee is a co-operative society registered with the Registrar of Co-operative societies under Maharashtra Co-operative Societies Act 1960, and the object of the society is to enable its members to obtain loans and to several other incomes in safe and convenient way to lend money etc. as per bye laws of the society. In pursuance of the stated objects, society is functioning by taking deposits from its members and also grants loans / advances to its members, but it does not conduct any business with any other person other than the members. The society earned income by way of interest on loan/ advances granted to its members and also interest on fix deposits maintained with Saraswat Co-operative Bank Limited. The assessee claimed deduction of this interest on fixed deposits maintained with Saraswat Co-operative Bank Limited under section 80P(2)(d) of the Act. The AO disallowed the claim of the assessee recording the following reasons: -

“According to the provisions of section 80P(2)(d) of the Income Tax Act, 1961 the deduction is available only "in respect of any income by way interest or dividends derived by the co-operative society from its investment. with any other co-operative society, the whole of such income.



It is seen from the details filed that all the fixed deposits made by the assessee are in the co-operative banks and not in other co-operative society. It is pertinent to mention here that the co-operative bank has been excluded from the purview of the section 80P by inserting the provision of section 80P(4) w.e.f. 01/04/2007 and thus the interest carried from the deposits made with co-operative Bank is not allowable for claim; of deduction u/s. 80P(2)(d) of the Act”

Aggrieved, assessee preferred the appeal before CIT(A), who also confirmed the action of the Assessing Officer. Aggrieved, now assessee is in second appeal before Tribunal.

4. We have heard the rival contentions and gone through the facts and circumstances of the case. We find that the assessee has received an interest on fixed deposits maintained with Saraswat Co-operative Bank Limited amounting to ₹ 7,83,325/-. The learned Counsel for the assessee argued that the interest has been received from Saraswat co-operative Bank Ltd which is registered as a co-operative society and has to be treated as a co-operative society. He furnished a copy of the letter issued by the Dy. Director, co-operation certifying the bank as a Multistate co-operative Bank registered under multistate co-operative societies Act, 2002. He therefore argued that Saraswat Bank from whom interest is received is a multistate co-operative bank and retains its identity of being a co-operative bank and deposits are made in the regular course of and business of the assessee. Therefore, he argued that the interest is fully eligible for deduction under section 80P of the Act. The learned Counsel for the assessee before us, relied on the decision of co-ordinate bench of this tribunal of Pune Bench in the case of ITO Vs. Maharashtra Bank Employees Co-op. Credit Society Ltd. in ITA No. 454



to 456/Pun/2015 vide order dated 22.12.2017 considered this issue vide Para 17 and 18 as under: -

“17. However, we find that the Hon’ble High Court of Gujarat in State Bank of Income Vs. CIT (supra) while deciding similar issue of eligibility of deduction under section 80P(2)(a)(i) of the Act on interest income from deposits of surplus funds in banks held that neither it was business income nor income from investment in any other Co-operative societies. It may be pointed out that the Hon’ble High Court in para 16 has clearly noted that in the said case, there was no obligation upon the assessee to invest its surplus funds with the State Bank of India. It was further observed that investing surplus funds in a bank is no part of the business of the appellant of providing credit to its members and hence, it cannot be said that the interest income derived from depositing surplus funds with the State Bank of India being attributable to the business carried on by the appellant, cannot be deducted under section 80P(2)(a)(i) of the Act. The Hon’ble High Court further referred to section 71 of the Gujarat Co-operative Societies Act, 1961 permitting society to invest or deposit its funds in the State Bank of India. The Hon’ble High Court held that while investment in State Bank of India was permissible under section 71 of that Act, there was no statutory obligation upon the assessee to deposit the funds as part of its business. The said provision also permitted investment of funds in any Co-operative Bank or any banking company approved for this purpose by the Registrar. The Hon’ble High Court further held that the assessee could not avail the deduction under



section 80P(2)(d) of the Act in this regard. Even in the case of Mantola Co-operative Thrift & Credit Society Ltd. Vs. CIT (supra) the issue before the Hon'ble High Court was in respect of interest income earned from FDRs out of surplus funds and applying the principle laid down in Totgar's Co-operative Sale Society Ltd. Vs. ITO (supra), the Hon'ble High Court held the assessee not to be entitled to claim the deduction.

18. We find that the facts of the present case are at variance to the facts before the Hon'ble High Court of Gujarat (supra). Even in the facts before the Hon'ble Supreme Court in Totgar's Co-operative Sale Society Ltd. Vs. ITO (supra), the issue was deposit of surplus funds as in the case before the Hon'ble High Court of Gujarat. Though reference is being made to the reserve funds but the ratio laid down is against investing of surplus funds. Where any society deposits its surplus funds in fixed deposits with Scheduled Bank, then the Courts have held that such interest income is not eligible for claim of deduction under section 80P(2)(a)(i) of the Act. However, the facts of the present case before us are at variance, it is not surplus funds which has been deposited by the assessee. On the other hand, the assessee is statutorily required to deposit 25% of its profits in reserve funds, which in turn, have to be parked in FDRs with Co-operative Bank or Scheduled Banking company. The assessee before us, in line with statutory obligation of maintaining its status of Co-operative society and as per the regulations of Maharashtra State Co-operative Societies Act, was duty bound to transfer 25% of its



profits to reserve funds, which it has done. There is no dispute to the same. The second aspect is the utilization of funds in reserve funds by way of making FDRs with Scheduled bank under section 70 of the said Act. The assessee has received permission of the Registrar of Maharashtra Cooperative Societies Act to make such investment with Bank of Maharashtra and also in order to carry on the business activities of providing credit facilities to its employees, it is mandatory upon the assessee to invest 25% of its profits in the reserve funds, which in turn, are parked in FDRs with Bank of Maharashtra, then interest income earned by the assessee is from carrying on its business activities. Once it is so, then the said income is assessable as „Income from business“ and the assessee is entitled to claim deduction under section 80P(2)(a)(i) of the Act. Accordingly, we hold so. However, the assessee is not entitled to claim the said deduction on Saving Account interest.”

5. We find the facts are exactly identical in the present case as were before Pune Bench in the case of Maharashtra Bank Employees Co-op. Credit Society Ltd. (supra). Respectfully following the same, we allow the appeal of the assessee.

6. **In the Result, the appeal of the assessee is allowed.**

Order pronounced in the open court on 16-03-2018.

Sd/-

Sd/-

(G. MANJUNATHA)
ACCOUNTANT MEMBER

(MAHAVIR SINGH)
JUDICIAL MEMBER



ITA No. 439/Mum/2017

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,

Assistant Registrar
ITAT, MUMBAI