

आयकर अपीलीय अधिकरण “SMC” न्यायपीठ मुंबई मे ।

IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH, MUMBAI
BEFORE SRI MAHAVIR SINGH, JUDICIAL MEMBER

आयकर अपील सं./ ITA No. 6159/Mum/2017

(निर्धारण वर्ष / Assessment Year 2013-14)

Income Tax Officer, Ward-3(2), Room No. 4, B-Wing, 6 th Floor, Ashar IT Park, Wagle Estate, Thane West-400 604	Vs.	M/s Eternity Co-op Housing Society Ltd. Telco Compound, Next to Eternity Mall, Dnyansadhanda College Road, Teen Hath naka, Thane (W)-400604
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)
PAN NO. AAAAE2614B		

Revenue by : PR Chauhan, DR

Assessee by : Anil Sathe, AR

Date of hearing: 15-05-2018 Date of pronouncement : 15-05-2018

आदेश / ORDER

PER MAHAVIR SINGH, JM:

This appeal by the Revenue is arising out of the order of Commissioner of Income Tax (Appeals)-1, Mumbai [in short CIT(A)], in appeal No. 10179/16-17 dated 21.07.2017. The Assessment was framed by the Income Tax Officer, Mumbai Ward 1(2) Mumbai (in short 'ITO') for the A.Y. 2013-14 vide order dated 18.03.2016 under section 143(3) of the Income Tax Act, 1961 (hereinafter 'the Act').



2. The only issue in this appeal of Revenue is against the order of CIT(A) deleting the disallowance of deduction by the AO claimed by assessee under section 80P(2)(d) of the Act in respect of interest received on deposit kept with co-operative bank. For this Revenue has raised the following grounds: -

“i. On the facts and in the circumstances of the case, and in law, the Ld. CIT(A) erred in deleting the addition by not appreciating the provisions of section 80P(2)(d) of the I.T. Act.

ii. On the facts and in the circumstances of the case, and in law, the Ld. CIT(A) erred in giving relief to the assessee by not appreciating the fact that the assessee has made investment in cooperative bank and not cooperative society which is a prerequisite to claim deduction under the said section.

iii. On the facts and in the circumstances of the case, and in law, the Ld. CIT(A) erred in giving relief to the assessee by not appreciating the fact that cooperative banks are different from the cooperative societies within the meaning of section 80P of the Income Tax Act, 1961.”

3. Briefly stated facts are that the assessee is a co-operative House Building Society and it has kept funds with co-operative Bank and earned interest amounting to ₹ 33,30,298/- and claimed deduction on the same under section 80P(2)(d) of the Act. The AO disallowed the claim of deduction by stating that the co-operative bank is different than a co-



operative society, as per provisions of section 80P(2). Aggrieved, assessee preferred the appeal before CIT(A). The CIT(A) following the decision of Mumbai Tribunal in the case of Land End Co-operative Housing Society Ltd. vs. ITO in ITA No. 3566/Mum/2014 for AY 2009-10 vide order dated 15.01.2016 allowed the claim of the assessee by observing as under: -

“8.3 We have heard the rival submissions and perused the material on record. We find that the CIT(A) enhanced the income of the assessee by rejecting the deduction u/s 80P(2)(d) of the Act of Rs.14,88,107/- being interest on investment with other Coop. banks by following the decision in the case of Bandra Samruddihi Co-operative Housing Society Ltd.(Supra) which was passed on the basis of the decision passed by the Hon'ble Supreme Court in the case of Totagar's Co-operative Sale Society Ltd. In the case of Totagar's Co-operative Sale Society Ltd v/s ITAT (supra) the Hon'ble Supreme Court while interpreting the section 80P(2)(a)(i) of the Act held that surplus funds not immediately required in the business and invested in the short term deposit would be assessable under the head “income from other sources” where the Cooperative society is engaged in carrying on business of banking or providing credit facilities to its members and consequently no deduction is allowable u/s 80P(2)(a)(i) of the Act. Whereas in the case before us the issue is whether a co-operative society which has derived income on investment with cooperative banks is entitled to deduction u/s 80P(2)(d). The provisions of Section



80P(2)(d) of the Act provide deduction in respect of income by way of interest or dividend on investments made with other Cooperative society. For the purposes of better proper understanding of these two provisions the relevant extract of the section are reproduced below: 80P: Deduction in respect of income of co-operative Societies.

1. Where, in the case of an assessee being a co-operative society, the gross total income, includes any income referred to in sub-section (2), there shall be deducted, in accordance with and subject to the provisions of this section, the sums specified in sub-section (2), in computing the total income of the assessee. 2. The sums referred to in sub-section (1) shall be the following, namely:- (a)In the case of a co-operative society engaged in- (i) Carrying on the business of banking or providing credit facilities to its members. The whole of the amount of profits and gains of business attributable to any one or more of such attributes. (d)In respect of any income by way of interest or dividends derived by the co-operative society from its investments with any other co-operative society, the whole of such income.

From the close perusal of the provisions of u/s 80P(2)(a)(i) and 80P(2)(d) it is clear that the former deals with deduction in respect of profits and gain of business in case of the co-operative society carrying on business of banking or providing credit facilities



to its members if the said income is assessable as income from business whereas latter provides for deduction in respect of income by way interest and dividend derived by assessee from its investments with other cooperative society. Thus it is amply clear that a cooperative society can only avail deduction u/s 80P(2)(d)(i) in respect of its income assessable as business income and not as income from other sources if it carries on business of the banking or providing credit facilities to its members and has income assessable under the head business whereas for claiming u/s 80P(2)(d) it must have income of interest and dividend on investments with other Co-operative society may or may not be engaged in the banking for providing credit facilities to its members and the head under which the income is assessable is not material for the claim of deduction under this section. Now will evaluate the assessee's case in the light of the decision of the Hon'ble Supreme court. The Hon'ble Supreme Court in the case of Totagar's Co-operative Sale Society Ltd.(Supra) held that a society has surplus funds which are invested in short term deposits where the society is engaged in the business of banking or providing credit facilities to its members in that case the said income from short term deposits shall be treated and assessed as income from other sources and deduction u/s 80(P)(2)(a)(i) would not be available meaning thereby that deduction u/s 80(P)(2)(a)(i) is available only in respect of income which is assessable as business income and not as income from other sources. Whereas in distinction



to this, the provisions of section 80(P)(2)(d) of the Act provides for deduction in respect of income of a coop society by way of interest or dividend from its investments with other coop society if such income is included in the gross total income of the such coop society. In view these facts and circumstances we are of the considered view that the assessee is entitled to the deduction of Rs. 14,88,107/- in respect of interest received/derived by it on deposits with coop. banks and therefore the appeal of the assessee is allowed by reversing the order of the CIT(A). The AO is directed accordingly.”

4. Even now, the Tribunal by following the decision of Hon'ble Karnataka High Court in the case of PCIT vs. Totagars Co-operative Sale Society [2017] 392 ITR 74 (Karnataka) allowed this claim. In the case of Kaliandas Udyog Bhavan Premises Co-op Society Ltd. vs. ITO in ITA No. 6547/Mum/2017 for AY 2014-15 vide order dated 25.04.2018 by observing in Para 8 and 9 as under : -

“8. We shall now advert to the judicial pronouncements that had been relied upon by the authorized representatives for both the parties and the lower authorities. We find that the issue that a co-operative society would be entitled for claim of deduction under Sec. 80P(2)(d) for the interest income derived from its investments held with a cooperative bank is covered in favour of the assessee in the following cases:

(i) Land and Cooperative Housing Society Ltd. Vs. ITO (2017) 46 CCH 52 (Mum)



(ii) *M/s C. Green Cooperative Housing and Society Ltd. Vs. ITO21(3)(2), Mumbai (ITA No. 1343/Mum/2017, dated 31.03.2017*

(iii) *Marvwanjee Cama Park Cooperative Housing Society Ltd. Vs. ITO Range-20(2)(2), Mumbai (ITA No. 6139/Mum/2014, dated 27.09.2017.*

We further find that the Hon'ble High Court of Karnataka in the case of Pr. Commissioner of Income Tax and Anr. Vs. Totagars Cooperative Sale Society (2017) 392 ITR 74 (Karn) and Hon'ble High Court of Gujarat in the case of State Bank Of India Vs. CIT (2016) 389 ITR 578 (Guj), had also held that the interest income earned by the assessee on its investments held with a co-operative bank would be eligible for claim of deduction under Sec. 80P(2)(d) of the Act. Still further, we find that the CBDT Circular No. 14, dated 28.12.2006, as had been relied upon by the Id. A.R, also makes it clear beyond any scope of doubt, that the purpose behind enactment of sub-section (4) of Sec. 80P was to provide that the cooperative banks which are functioning at par with other banks would no more be entitled for claim of deduction under Sec. 80P(4) of the Act. We are of the considered view that the reliance placed by the CIT(A) on the judgment of the Hon'ble Supreme Court in the case of Totgars Cooperative Sale Society Ltd. vs. ITO (2010) 322 ITR 283(S.C) being distinguishable on facts, thus, had wrongly been relied upon by him. The adjudication by the Hon'ble Apex Court in the



aforesaid case was in context of Sec. 80P(2)(a)(i), and not on the entitlement of a co-operative society towards deduction under Sec. 80P(2)(d) on the interest income on the investments parked with a co-operative bank. We further find that the reliance place by the Id. D.R on the order of the ITAT “F” bench, Mumbai in the case of M/s Vaibhav Cooperative Credit Society Vs. ITO-15(3)(4) (ITA No. 5819/Mum/2014, dated 17.03.2017 is also distinguishable on facts. We find that the said order was passed by the Tribunal in context of adjudication of the entitlement of the assessee co-operative bank towards claim of deduction under Sec.80P(2)(a)(i) of the Act. We find that it was in the backdrop of the aforesaid facts that the Tribunal after carrying out a conjoint reading of Sec. 80P(2)(a)(i) r.w. Sec. 80P(4) had adjudicated the issue before them. We are afraid that the reliance placed by the Id. D.R on the aforesaid order of the Tribunal being distinguishable on facts, thus, would be of no assistance for adjudication of the issue before us. Still further, the reliance placed by the Ld. D.R on the order of the ITAT „SMC“ Bench, Mumbai in the case of Shri Sai Datta Co-operative Credit Society Ltd. Vs. ITO (ITA No. 2379/Mum/2015, dated 15.01.2016, would also not be of any assistance, for the reason that in the said matter the Tribunal had set aside the issue to the file of the assessing officer for fresh examination. That as regards the reliance placed by the Id. D.R on the judgment of the Hon'ble High Court of Karnataka in the case of Pr. CIT Vs. Totagars co-operative Sale



Society (2017) 395 ITR 611 (Karn), the High Court had concluded that a co-operative society would not be entitled to claim of deduction under Sec. 80P(2)(d). We however find that as held by the Hon'ble High Court of Bombay in the case of K. Subramanian and Anr. Vs. Siemens India Ltd. and Anr (1985) 156 ITR 11 (Bom), where there is a conflict between the decisions of non-jurisdictional High Court's, then a view which is in favour of the assessee is to be preferred as against that taken against him. Thus, taking support from the aforesaid judicial pronouncement of the Hon'ble High Court of jurisdiction, we respectfully follow the view taken by the Hon'ble High Court of Karnataka in the case of Pr. Commissioner of Income Tax and Anr. Vs. Totagars Cooperative Sale Society (2017) 392 ITR 74 (Karn) and Hon'ble High Court of Gujarat in the case of State Bank Of India Vs. CIT (2016) 389 ITR 578 (Guj), wherein it was observed that the interest income earned by a co-operative society on its investments held with a cooperative bank would be eligible for claim of deduction under Sec.80P(2)(d) of the Act.

9. We thus in the backdrop of our aforesaid observations are unable to persuade ourselves to be in agreement with the view taken by the lower authorities that the assessee would not be entitled for claim of deduction under Sec. 80P(2)(d), in respect of the interest income on the investments made with the co-operative bank. We thus set aside the order of the lower authorities and conclude that the interest income of Rs.27,48,553/- earned by the



assessee on the investments held with the co-operative bank would be entitled for claim of deduction under Sec. 80P(2)(d)."

5. Respectfully following a consistent view of the Tribunal, we affirmed the order of CIT(A) allowing the claim of the assessee. Appeal of Revenue is dismissed.

6. **In the result, the appeal of Revenue is dismissed.**

Order pronounced in the open court on 15-05-2018.

आदेश की घोषणा खुले मे दिनांक 15.05.2018 को की गई ।

Sd/-
(MAHAVIR SINGH)
JUDICIAL MEMBER

Mumbai, Dated: 15-05-2018
Sudip Sarkar /Sr.PS



ITA No. 6159/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