

IN THE INCOME-TAX APPELLATE TRIBUNAL “SMC” BENCH MUMBAI

BEFORE SHRI G.S. PANNU, ACCOUNTANT MEMBER AND

SHRI PAWAN SINGH, JUDICIAL MEMBER

ITA No.1152/Mum/2018 (Assessment Year 2013-14)

Lady Ratan Tower Cooperative Housing Society Ltd. Dainik Shivner Marg, Worli, Mumbai-400018. PAN: AAAAL1740P	Vs.	ITO-21(2)(2) Room No. 111, 1 st Floor, Piramal Chamebers, Parel, Mumbai-400012.
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Appellant

Respondent

Appellant by : Shri Mandar Vaidya (AR)

Respondent by : Shri S.K. Bepair (Sr. DR)

Date of Hearing : 09.08.2018

Date of Pronouncement : 09.08.2018

ORDER UNDER SECTION 254(1) OF INCOME TAX ACT

PER PAWAN SINGH, JUDICIAL MEMBER;

1. This appeal by assessee is directed against the order of Id. Commissioner of Income-tax (Appeals)-33, Mumbai [Id. CIT(A)] dated 29.12.2017 for Assessment Year 2013-14. The assessee has raised the following grounds of appeal:

1) The Ld. CIT (Appeals) erred in confirming the disallowance of deduction, u/s. 80P(2)(d), of interest of Rs.14,37,130/- received from cooperative banks.

2) The Ld. AO fell in error of law in invoking section 80P(4) of the Act, which is not applicable to the facts of the assessee.

3) The Ld. AO fell in error of law in holding that a cooperative bank is not a cooperative society, for the purpose of section 80P(2)(d).

4) The Ld. CIT(A) misdirected himself in drawing support from the decision of the Hon'ble Apex Court in the case of Totgars Cooperative Society 322 ITR 283 (SC), which is on completely different set of facts.

2. At the outset of hearing, the Id. Authorized Representative (AR) of the assessee submits that the ground of appeal raised by assessee is squarely

covered in favour of assessee by various decision of Tribunal including the latest decision of Tribunal in Kaliandas Udyog Bhavan Premises Co-op. Society Ltd. in ITA No. 6547/Mum/2017 dated 25.04.2018. On the other hand, the ld. Departmental Representative (DR) for the Revenue after going through the grounds of appeal and the order of co-ordinate bench in Kaliandas Udyog Bhavan Premises Co-op. Society Ltd. (supra) fairly conceded that the grounds of appeal raised by assessee is covered in favour of assessee.

3. We have considered the rival submission of the parties and have gone through the orders of authorities below and the decision cited by ld. AR of the assessee. We have noted that on similar ground of appeal, the co-ordinate bench of Tribunal in Kaliandas Udyog Bhavan Premises Co-op. Society Ltd. (supra) has passed the following order:

“6. We have heard the authorized representatives for both the parties, perused the orders of the lower authorities and the material available on record. We find that our indulgence in the present appeal has been sought to adjudicate as to whether the claim of the assessee for deduction under [section 80P\(2\)\(d\)](#), in respect of interest income earned from the investments made with the co-operative banks is in order or not. We find that the issue involved in the present appeal hinges around the adjudication of the scope and gamut of sub-section (4) of Sec. 80P, as had been made available on the statute by the legislature vide the [Finance Act](#) 2006, with effect from 01.04.2007. We find that the lower authorities had taken a view that pursuant to insertion of sub-section (4) of Sec. 80P, the assessee would no more be entitled for claim of deduction under Sec. 80P(2)(d) of the interest income earned on the amounts parked as investments with co-operative banks, other than a Primary Agricultural Credit Society or a

Primary Co-operative Agricultural and Rural Development Bank. We find that the lower authorities had observed that as the co-operative bank with which the surplus funds of the assessee were parked as investments, were neither Primary Agricultural Credit Society nor a Primary Co-operative Agricultural and Rural Development Bank, therefore, the interest income earned on such investments would not be entitled for claim of deduction under Sec. 80P(2)(d) of the Act.

7. We have deliberated at length on the issue under consideration and are unable to persuade ourselves to be in agreement with the view taken by the lower authorities. Before proceeding further, we may herein reproduce the relevant extract of the said statutory provision, viz. Sec. 80P(2)(d), as the same would have a strong bearing on the adjudication of the issue before us.

(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).....

(b).....

(c).....

(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;"

Thus, from a perusal of the aforesaid Sec. 80P(2)(d) it can safely be gathered that income by way of interest income derived by an assessee co- operative society from its investments held with any other cooperative society, shall be deducted in computing the total income of the assessee. We may herein observe, that what is relevant for claim of deduction under Sec. 80P(2)(d) is that the interest income should have been derived from the investments made by the assessee co-operative society with any other cooperative society. We though are in agreement with the observations of the lower authorities that with the insertion of Sub-section (4) of Sec. 80P, vide the [Finance Act](#), 2006, with

effect from 01.04.2007, the provisions of Sec. 80P would no more be applicable in relation to any co-operative bank, other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank, but however, are unable to subscribe to their view that the same shall also jeopardise the claim of deduction of a co-operative society under Sec. 80P(2)(d) in respect of the interest income on their investments parked with a co-operative bank. We have given a thoughtful consideration to the issue before us and are of the considered view that as long as it is proved that the interest income is being derived by a co-operative society from its investments made with any other co-operative society, the claim of deduction under the aforesaid statutory provision, viz. Sec. 80P(2)(d) would be duly available. We may herein observe that the term "co-operative society" had been defined under Sec. 2(19) of the Act, as under:-

"(19) "Co-operative society" means a cooperative society registered under the [Co-operative Societies Act](#), 1912 (2 of 1912), or under any other law for the time being in force in any state for the registration of co- operative societies;"

We are of the considered view, that though the co-operative bank pursuant to the insertion of Sub-section (4) of Sec. 80P would no more be entitled for claim of deduction under Sec. 80P of the Act, but however, as a co-operative bank continues to be a co-operative society registered under the [Co-operative Societies Act](#), 1912 (2 of 1912), or under any other law for the time being enforced in any state for the registration of co- operative societies, therefore, the interest income derived by a co-operative society from its investments held with a co-operative bank, would be entitled for claim of deduction under Sec.80P(2)(d) of the Act.

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. ITO-21(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 ld. 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 co- operative 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 Co- operative 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 ld. 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 co- operative 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).

10. The appeal of the assessee is allowed in terms of our aforesaid observations.

11. In the result, appeal filed by the assessee is allowed.”

4. Considering the decision of Tribunal on almost similar ground of appeal and respectfully following the same the appeal filed by the assessee as allowed.
5. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 09.08.2018.

Sd/-
G.S. PANNU
ACCOUNTANT MEMBER
Mumbai, Date: 09.08.2018
SK

Sd/-
PAWAN SINGH
JUDICIAL MEMBER

Copy of the Order forwarded to :

1. Assessee
2. Respondent
3. The concerned CIT(A)
4. The concerned CIT(A)
5. DR “SMC” Bench, ITAT, Mumbai
6. Guard File

BY ORDER,
Dy./Asst. Registrar
ITAT, Mumbai