

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "D" MUMBAI**

**BEFORE SHRI C.N. PRASAD (JUDICIAL MEMBER) AND
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)**

**ITA No. 5859/MUM/2018
Assessment Year: 2014-15**

Rohit Chambers Premises
Co-op Society Ltd, Gr. Floor,
Rohit Chambers,
Janmbhumi Marg, Mumbai-
400 001.

The Income Tax Officer-
17(3)(2), Mumbai, Aayakar
Vs. Bhavan, , Mumbai-400020.

PAN No. AAAAR4550K
Appellant

Respondent

Assessee by : Ms. Arati Vissanji, AR
Revenue by : Ms. Jyoti Laxmi Nayak, DR

Date of Hearing : 18/10/2019
Date of pronouncement : 25/10/2019

ORDER

PER N.K. PRADHAN, AM

This is an appeal filed by the assessee. The relevant assessment year is 2014-15. The appeal is directed against the order of the Commissioner of Income Tax-28, Mumbai [in short 'CIT(A)'] and arises out of the assessment completed u/s 143(3) of the Income Tax Act 1961, (the 'Act').

2. The solitary issue urged in this appeal is whether the assessee is eligible for deduction u/s. 80P(2)(d) of the Act, in respect of interest received from Co-operative banks.

The assessee is a registered co-operative housing society. It earned interest income of Rs.27,60,330/- from deposits kept with Co-operative banks. The assessee claimed it as deduction u/s. 80P(2)(d) of the Act. The AO rejected the claim on the ground that interest received from other Co-operative societies is not deductible u/s. 80P(2)(d) of the Act, since the word "bank" is not there in the said section. In appeal, the Id. CIT(A) confirmed the order of the AO.

3. We have heard the rival submissions and perused the relevant materials available on record. We find that an identical issue was considered by the ITAT "I" Bench, Mumbai in the case of *Mayoor Co-operative Housing Society Limited v. ITO* [ITA No. 263/MUM/2018] for A.Y. 2013-14 and the Tribunal *vide* order dated 19.03.2018 held as under:

"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 "cooperative bank" is a word of limited extent, which merely demarcates and identifies a particular species of the genus Co-operative Societies. Cooperative 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 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 cooperative 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 cooperative 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."

4. Facts being identical, we follow the above order of the Co-ordinate Bench and set-aside the order of the ld. CIT(A) and direct the AO to

allow deduction to the interest earned from Co-operative banks by the assessee u/s.80P(2)(d) of the Act.

5. In the result, the appeal is allowed.

Order pronounced in the open Court on 25.10.2019

Sd/-
(C.N.PRASAD)
JUDICIAL MEMBER

Sd/-
(N.K. PRADHAN)
ACCOUNTANT MEMBER

Mumbai;
Dated: 25/10/2019
Subhankar Samanta, P.S (On tour)

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.

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai