

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
MUMBAI BENCH "SMC", MUMBAI**

**BEFORE SHRI C.N. PRASAD, JUDICIAL MEMBER AND  
SHRI RAJESH KUMAR, ACCOUNTANT MEMBER**

**ITA No.1130/M/2019  
Assessment Year: 2014-15**

M/s. Rayat Sahkaari Patpedhi, Office No.115, 1sts Floor, AP Market, SS Gatakwad Marg, Dhobi Talao, Mumbai - 400 002 <b>PAN: AAAAR7082G</b>	Vs.	ACIT 18(3), Aayakar Bhavan, M.K. Road, Mumbai - 400020
(Appellant)		(Respondent)

**Present for:**

Assessee by : None  
Revenue by : Shri R. Bhoopati, Sr. D.R.

Date of Hearing : 11.02.2020  
Date of Pronouncement : 18.02.2020

**ORDER**

**Per Rajesh Kumar, Accountant Member:**

The present appeal has been preferred by the assessee against the order dated 20.12.2018 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2014-15.

2. During the course of hearing, neither assessee nor his authorized representative appeared to attend the hearing nor any application seeking adjournment was filed. Therefore, we are disposing off the appeal after hearing the Ld. D.R. and going through the facts of the case.

3. The only issue raised by the assessee is against the order of Ld. CIT(A) confirming the order of AO wherein the AO has

disallowed the claim under section 80P(2)(d) to the tune of Rs.3,88,522/- being interest received from the co-operative bank.

4. The facts in brief are that during the course of assessment proceedings, the AO observed that assessee has earned interest of Rs.3,88,522/- from Saraswat Co-operative Bank Ltd. and claimed the same as exempt under section 80P(2)(d) of the Act. According to the AO, the said interest is not eligible to be covered under section 80P(2)(d) of the Act as the income by way of dividend or interest earned from investments in another co-operative society is covered under the provisions of section 80P(2)(d) and not from the cooperative Bank . Finally, the AO rejected the claim of the assessee and brought to tax the said interest income of Rs.3,88,522/-.

5. In the appellate proceedings, the Ld. CIT(A) dismissed the appeal of the assessee by holding that co-operative bank is a commercial and does not fall under the purview of co-operative society as referred to in section 80P(2)(d) of the Act and thus dismissed the appeal of the assessee.

6. After hearing the Ld. D.R. and perusing the material on record, we observe that in this case the Ld. CIT(A) has upheld the order of the AO wherein the AO has rejected the claim of Rs.3,88,522/- under section 80P(2)(d) on the ground that Saraswat Co-operative Bank Ltd. is not a cooperative society and therefore the exemption can not be allowed. Ld. CIT(A) held that the co-operative bank is a commercial bank and therefore justified the order of AO. However, in the present case, the issue

is settled by the various judicial forums wherein it has been held that cooperative bank is a cooperative society and any interest income accruing to the cooperative society is eligible for deduction under section 80P(2)(d). The case of the assessee is squarely covered by the decision of the coordinate bench in the case of M/s. Lands End Coop. Housing Society Ltd. Vs I.T.O. ITA No.3566/Mum/2014 Assessment Year 2009-10 order dated 15.1.2016. The operative part is reproduced 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 Samruddhi 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 Honble 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."

Considering the facts of the case of the assessee in the light of coordinate bench decision as referred to above, we are inclined to set aside the order of Ld. CIT(A) and direct the AO to allow the deduction under section 80P(2)(d) of the Act.

7. In the result, the appeal of the assessee is allowed.

**Order pronounced in the open court on 18.02.2020.**

**Sd/-**  
**(C.N. Prasad)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(Rajesh Kumar)**  
**ACCOUNTANT MEMBER**

Mumbai, Dated: 18.02.2020.

\* Kishore, Sr. P.S.

Copy to: The Appellant  
The Respondent  
The CIT, Concerned, Mumbai  
The CIT (A) Concerned, Mumbai  
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.