

**IN THE INCOME TAX APPELLATE TRIBUNAL
“G” Bench, Mumbai**

**Before Shri G. Manjunatha, Accountant Member
and Shri Ravish Sood, Judicial Member**

**ITA No.695/Mum/2019
(Assessment Year: 2015-16)**

Yuva Vikas Co-op Credit Society Ltd.
6/A, Windsor Building, Deshmukh
Residency, Borivali (East),
Mumbai – 400066

Vs.

Income Tax Officer -32(3)(2)
Room No. 106, C-11,
Pratyasksha Kar Bhavan,
Bandra Kurla Complex,
Maharashtra- 400051

PAN – AAAAY1179P

(Appellant)

(Respondent)

Appellant by: Shri Ravindra Naik, A.R
Respondent by: Shri V. Vinod Kumar, D.R
Date of Hearing: 02.03.2020
Date of Pronouncement: 04.03.2020

ORDER

PER RAVISH SOOD, JM

The present appeal filed by the assessee is directed against the order passed by the CIT(A)-44, Mumbai, dated 31.12.2018, which in turn arises from the assessment order passed by the A.O under Sec. 143(3) of the Income Tax Act, 1961 (for short ‘Act’), dated nil for A.Y. 2015-16. The assessee has assailed the impugned order on the following grounds of appeal before us:

- “1. The Ld. Assessing Officer has erred in not considering interest from investments as income from Business and Profession and hence allowable as deduction u/s 80P(2)(a)(i).
2. The Ld. Assessing Officer has erred in not allowing deduction u/s 80P(2)(d) in respect of any income by way of interest or dividends derived by the cooperative society from its investments with any other co-operative society.

3. The Appellant further reserve the right to add, amend or alter the aforesaid grounds of appeal as they may think fit by themselves or by their representatives.”

2. Briefly stated, the assessee which is a co-operative credit society engaged in the business of providing credit facilities to its members had filed its return of income for A.Y. 2015-16 on 28.09.2015, declaring its total income at Rs. nil. The return of income filed by the assessee was processed as such under Sec. 143(1) of the Act. Subsequently, the case of the assessee was selected for scrutiny assessment under Sec. 143(2) of the Act.

3. During the course of the assessment proceedings it was observed by the A.O that the assessee society was holding fixed deposits and recurring deposits with various co-operative banks viz. Mumbai Bank, Abhayadaya Co-operative Bank and Punjab and Maharashtra Co-operative Bank. On a perusal of the details, it was observed by the A.O that the assessee had claimed deduction under Sec. 80P as regards the interest income of Rs.12,88,184/- that was earned on its deposits with the Co-operative banks. Observing, that the provisions of Sec.80P were not 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, the A.O concluded that the assessee was not entitled for claim of deduction under the said statutory provision. Accordingly, the A.O rejected the assessee's claim for deduction under Sec. 80P, and assessed its income at Rs.12,88,184/-.

4. Aggrieved, the assessee assailed the assessment framed by the A.O before the CIT(A). After deliberating at length, it was observed by the CIT(A) that the interest income earned by the assessee society from its investment of surplus funds with the co-operative banks was not eligible for deduction either under Sec. 80P(2)(d) or 80P(2)(a)(i) of the Act. As such, finding no infirmity in the assessment framed by the A.O, the CIT(A) upheld the same.

5. The assessee being aggrieved with the order of the CIT(A) has carried the matter in appeal before us. The Id. Authorized Representative (for short 'A.R') for the assessee, took us through the facts of the case. It was submitted by the Id. A.R that the aforesaid claim of deduction raised by the assessee under Sec. 80P(2)(d) was supported by the orders of the jurisdictional Tribunal viz. (i) Kaliandas Udyog Bhavan Premises Co-operative Society Ltd. Vs. ITO-21(2)(1), Mumbai (2018) 94 Taxman.com 15 (Mum); and (ii) Shree Mahadeshwar Sahakari

Patpedhi Maryadit Vs. ITO 21(2) [ITA No. 374/Mum/2018]. On the basis of his aforesaid submissions, it was the claim of the Id. A.R that the lower authorities had erred in disallowing the assessee's claim for deduction under Sec. 80P of the Act.

6. Per contra, the Id. Departmental Representative (for short 'D.R') relied on the orders of the lower authorities.

7. We have given a thoughtful consideration to the issue before us, and find, that the controversy involved in the present case revolves around the aspect that as to whether or not the interest income earned by a co-operative society from its investments with the co-operative banks is eligible for deduction under Sec. 80P(2)(d) of the Act. In our considered view, the answer to the aforesaid issue 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 both the A.O/CIT(A) held a conviction 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) on its 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. As per them, as the co-operative banks 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 was not eligible for claim of deduction under Sec. 80P(2)(d) of the Act.

8. We have given a thoughtful consideration to the aforesaid issue before us, 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 aforesaid statutory provision, viz. Sec. 80P(2)(d), as the same would have a strong bearing on the adjudication of the issue before us.

"80P(2)(d)

(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;"

On a perusal of the aforesaid Sec. 80P(2)(d), it can safely be gathered that interest income derived by an assessee co-operative society from its investments held with any other co-operative 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 co-operative society. Although, 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 the same in our considered view would not jeopardise the claim of deduction of a co-operative society under Sec. 80P(2)(d) in respect of the interest income earned on its 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;”

9. We are of the considered view that though a 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, 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 in force 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. Our aforesaid view that a co-operative society would be entitled for claim of deduction under Sec. 80P(2)(d) on the interest income derived from its investments held with a co-operative 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) Marwanjee Cama Park Cooperative Housing Society Ltd. Vs. ITO-Range-20(2)(2), Mumbai (ITA No. 6139/Mum/2014, dated 27.09.2017).

Also, we 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 a co-operative society on its investments 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**, 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 judgment of the **Hon'ble Supreme Court** in the case of **Totgars Co-operative Sale Society Ltd. vs. ITO (2010) 322 ITR 283 (SC)** being distinguishable on facts, had wrongly been relied upon by the CIT(A). The adjudication by the Hon'ble Apex Court in the aforesaid case was in context of Sec. 80P(2)(a)(i), and not as regards the entitlement of a co-operative society towards deduction under Sec. 80P(2)(d) on the interest income from its investments parked with a co-operative bank. Accordingly, drawing support from the aforesaid judicial pronouncements, we are of the considered view 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.

10. On the basis of our aforesaid observations we are of the considered view that the interest income of Rs.12,88,184/- earned by the assessee on its deposits with the co-operative bank was duly entitled for claim of deduction under Sec. 80P(2)(d) of the Act. Accordingly, not being persuaded to subscribe to the view taken by the CIT(A), who had upheld the

disallowance of the assessee's claim for deduction under Sec. 80P of the Act, we 'set aside' his orders.

11. Resultantly, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 04.03.2020

Sd/-
(G. Manjunatha)
ACCOUNTANT MEMBER
मुंबई Mumbai; दिनांक 04.03.2020
P.S Rohit

Sd/-
(Ravish Sood)
JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /
DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,
उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai