

THE INCOME TAX APPELLATE TRIBUNAL  
"SMC" Bench, Mumbai  
Before Shri Shamim Yahya (AM) & Shri Amarjit Singh (JM)

I.T.A. No. 6030/Mum/2018 (Assessment Year 2014-15)

M/s. Varma Chambers Premises Co-operative Society Limited 15-B, Varma Chambers 11, Homji Street, Fort Mumbai-400 001.  PAN : AAABV0011C (Appellant)	Vs.	ITO-17(3)(5) Aayakar Bhavan M.K. Road Mumbai-400 020.  (Respondent)
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Assessee by	Shri Bhupendra L. Keria
Department by	Shri Kamal Mangal
Date of Hearing	17.01.2020
Date of Pronouncement	16.03.2020

ORDER

Per Shamim Yahya (AM) :-

This appeal by the assessee is directed against the order of learned CIT(A) dated 30.12.2016 and pertains to A.Y. 2013-14.

2. Grounds of appeal read as under :-

"On the facts and circumstances of the case and in law :-

1. The learned CIT(A) is not justified in confirming disallowance of deduction of Rs. 13,47,421 claimed by the appellant Society under section 80P(2)(d) of the Income Tax Act on accounts of interest earned on deposits with Co-operative Banks.
2. The learned CIT(A) erred in not treating Co-op Bank as "Co-operative Society" and acted contrary to provisions of section 2(10) of Maharashtra Co-operative societies Act.,1960 which states that "Co-operative bank is a Co-operative society".
3. The learned CIT(A) failed to consider the provisions of section SOP clause (2)(d) of the Act properly which read as under :-

"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, the whole of such income."

4. The learned CIT(A) failed to understand that the provisions of section 80P(2)(d) of the Act does not emphasis on principal of mutuality as long as income is received from the investments made with a Co-operative Bank which is a Co-operative Society u/s.2(10) of the Maharashtra Co-Op. Societies Act., 1960.
5. The learned CIT(A) erred in relying on the companies Act.,1956 and the 2013 Act for definition of "Co-operative Society" instead of Income Tax Act.
3. Brief facts of the case are that the assessee is a cooperative society and it earned interest from cooperative bank amounting to Rs. 13,47,421/-. The assessee had claimed deduction u/s. 80P(2)(d) of the I.T. Act.
4. The Assessing Officer in this regard was of the opinion that section 80P(2)(d) deals with income by way of interest or dividend derived by the cooperative society from its investment with any other cooperative society. Hence, the Assessing Officer held that income tax does not have extent deduction u/s. 80P(2)(d) on interest received from investment made with the cooperative bank. In this regard the Assessing Officer referred to several case laws including that of Hon'ble Supreme Court in the case of Totgars Co-operative Sale Society Ltd. (188 Taxman 282). He distinguished the decision relied upon by the assessee by referring to some other decisions referring them to be contradictory.
5. Against the above order assessee appealed before learned CIT(A). Learned CIT(A) upheld the same.
6. Against this order assessee is in appeal before us.
7. We have heard both the counsel and perused the records. Learned Counsel of the assessee in this regard has referred to several case laws, and submitted that the issue is decided in favour of the assessee.
8. We note that learned Counsel of the assessee has referred to two decisions one from Hon'ble Karnataka High Court in the case of CIT Hubli Vs. The Totgars Co-operative Sale Society Ltd. (392 ITR 74) and Hon'ble Punjab &

Haryana High Court in the case of CIT Vs. Haryana State CHS Ltd. vide (I.T. Reference No. 103 of 1989 vide order dated 4.3.1998), wherein similar issue was decided in favour of the assessee.

9. We may gainfully referred to the decision of Hon'ble Karnataka High Court in the case of Totgars Co-operative Sale Society Ltd. (supra) as under :-

10. Admittedly, the interest which the assessee respondent 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. Therefore, the Assessing Officer was not justified in denying the said deduction to the assessee respondent.

11. The learned counsel has relied on the case of The Totgars Co-operative Sale Society Ltd. Vs. Income Tax Officer, (supra). However, the said case dealt with the interpretation, and the deduction, which would be applicable under Section 80P(2)(a)(i) of the I.T. Act. For, in the present case the interpretation that is required is of Section 80P(2)(d) of the I.T. Act and not Section 80P(2)(a)(i) of the I.T. Act. Therefore, the said judgment is inapplicable to the present case. Thus, neither of the two substantial questions of law canvassed by the learned counsel for the Revenue even arise in the present case.

10. We find that above decision is squarely applicable in the facts of the present case. No contrary decision from Hon'ble Jurisdictional High Court has been produced before us.

11. Furthermore, we note that the decision of Totgars Co-operative Sale Society Ltd. (supra) from Hon'ble Supreme Court referred by the Revenue has already been distinguished by Hon'ble Karnataka High Court as above, as not applicable in case such as the present one.

12. Furthermore, learned Counsel of the assessee has referred to following decisions from the ITAT wherein the issue has been decided in favour of the assessee :-

- Shree Mahadeshwar Sahakari Patpedhi Maryadit Vs. ITO (ITA No. 374/Mum/2018 vide order dated 13.3.2019)

- The Veer Cooperative group Housing Society Ltd. Vs. ITO (ITA Nos. 2787 & 2788/Del/2018 vide order dated 4.9.2018)
- Poonam Chambers Premises Cooperative Society Ltd. Vs. ACIT (ITA No. 4463/Mum/2017 vide order dated 23.8.2018)
- Lady Ratan Tower Cooperative Housing Society Ltd. Vs. ITO (ITA No. 1152/Mum/2018 vide order dated 9.8.2018)
- The Jawala Cooperative Urban Thrift & Credit Society Ltd. Vs. ACIT (ITA No. 2900 and 2901/Del/2015 vide order dated 26.4.2018)
- Kaliandas Udyog Bhavan Premises Co-operative Society Ltd. Vs. ITO (ITA No. 6547/Mum/2017 vide order dated 25.4.2018)
- M/s. Lokhandwala Residency Towers CHS Ltd. Vs. ITO (ITA No. 7018/Mum/2017 vide order dated 20.4.2018)
- Aqua Cooperative Housing Society Ltd. Vs. ITO (ITA No. 408/Mum/2018 vide order dated 20.4.2018)
- Marathon Era Cooperative Housing Society Ltd. Vs. ITO (ITA No. 6966/Mum/2017 vide order dated 6.3.2018)
- ACIT Vs. M/s. The Jawahar Nagar Cooperative Housing Society Ltd. (ITA No. 6252 & 6253/Mum/2016 vide order dated 28.2.2018)
- Merwanjee Cama Park Co-operative Housing Society Ltd. Vs. ITO (ITA No. 6139/Mum/2014 vide order dated 27.9.2017)
- Shree Modhpatni Cooperative Credit Society Ltd. Vs. DCIT (ITA No. 2710/Ahd/2015 vide order dated 10.4.2017)
- M/s. Sea Green Cooperative Housing Society Ltd. Vs. ITO (ITA No. 1343/Mum/2017 vide order dated 31.3.2017)
- Lands End Cooperative Housing Society Ltd. Vs. ITO (ITA No. 3566/Mum/2014 vide order dated 15.1.2016)

13. In the background of the aforesaid discussion and precedent, we set aside the orders of the authorities below and decide the issue in favour of the assessee.

14. In the result, assessee's appeal is allowed.

Order has been pronounced in the Court on 16.3.2020.

Sd/-  
(AMARJIT SINGH)  
JUDICIAL MEMBER

Sd/-  
(SHAMIM YAHYA)  
ACCOUNTANT MEMBER

Mumbai; Dated : 16/03/2020

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

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