

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

**BEFORE SHRI M. BALAGANESH, AM AND SHRI AMARJIT SINGH, JM**

आयकर अपील सं/ I.T.A. No.786/Mum/2019

(निर्धारण वर्ष / Assessment Year: 2015-16)

ITO 24(3)(1) R. No.415, 4 <sup>th</sup> Floor Piramal, Chambers, Lalbaug, Parel, Mumbai-400012.	<b>बनाम/</b> Vs.	M/s. Oberoi Spring Co- operative Housing Society Ltd. Near Monginish Cake Factory 14, Oshiwala Link Road Oshiwara Andheri (W), Mumbai-400053.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAAA02236K		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
Revenue by:	Shri Amit P. Singh (DR)	
Assessee by:	Shri Vijay Mehta/Anuj Kisnadwala	

सुनवाई की तारीख / Date of Hearing: 15/07/2020

घोषणा की तारीख /Date of Pronouncement: 28/08/2020

**आदेश / O R D E R**

**PER AMARJIT SINGH, JM:**

The revenue has filed the present appeal against the order dated 31.10.2018 passed by the Commissioner of Income Tax (Appeals) -36, Mumbai [hereinafter referred to as the "CIT(A)"] relevant to the A.Y.2015-16.

2. The revenue has raised the following grounds: -

"1. Whether on the facts and in circumstances of the case and in law. the Ld. CIT(A) in allowing deduction u/s 80P(2)(d) of the I. T. Act. 1961, without appreciating legislative intent of the inserted provision of 80P) which specifically provides that section shall not apply in relation to any



*cooperative bank other than a primary agricultural credit society or primary cooperative agricultural and rural developer bank.*

2. *On the facts and circumstances of the case and in law. the Ld CIT(A) erred in allow deduction u/s 80P(2)(d) of the I. T. Act, 1961. without appreciating the facts that assessee has earned interest income from investment of idle funds with cooperative bank*
3. *On the facts and in circumstances of the case and in law. the Ld. CIT(A) erred allowing deduction u/s 80P(2)(d) of the I. T. Act, 1961, without considering the decision of the Karnataka High Court in the case of Pr. CIT vs. Totagars Co-operative & Society (395 ITR 611) that the interest income received from investment of idle funds with cooperative banks is not eligible for claiming deduction u/s 80(P)(2)(d) of the Act.*
- 4 *The appellant prays that the order of the CIT (Appeals) on the above grounds be aside and that of the AO be restored*
5. *The appellant craves leave to amend or alter any ground or submit additional ground which may be necessary."*

3. The brief facts of the case are that the assessee filed its return of income on 02.11.2015 declaring total income to the tune of Rs.53,720/-. The case was selected for scrutiny under CASS. Notices u/s 143(2) & 142(1) of the Act were issued and served upon the assessee. The assessee/AOP is a co-operative housing society. During the year under consideration, the assessee declared the income from other sources of Rs.1,58,84,164/-. The assessee claimed deduction u/s 80P(2)(d) of the Act of Rs.1,57,80,440/- and u/s 80P(2)(c)(ii) of Rs.50,000/-. The assessee has earned interest income on sweep fixed deposit of Rs.8,83,167/- and earned interest income on sweep fixed deposit of Co-operative Bank of Rs.1,57,80,440/-. The assessee claimed the deduction u/s 80P(2)(d). The AO was of the view that the Co-operative Banks were deemed not to be Co-operative Society for the purpose of 80P(2)(d), therefore, the claim of



the 80P(2)(d) of the assessee was declined and added to the income of the assessee. The total income of the assessee was assessed to the tune of Rs.1,67,17,330/-. Feeling aggrieved, the assessee filed an appeal before the CIT(A) who allowed the claim of the assessee u/s 80P(2)(d), therefore, the revenue has filed the present appeal before us.

#### **ISSUE Nos. 1 to 4**

4. All the issues are in connection with the allowance of the claim of the assessee u/s 80P(2)(d) by the CIT(A)-36, Mumbai. The Ld. Representative of the revenue has argued that the CIT(A) has not properly relied upon the decision of the Hon'ble Karnataka High Court in the case of **Pr. CIT Vs. Totagars Co-operative Sale Society (395 ITR 611)**, therefore, the finding of the CIT(A) is not justifiable, hence, is liable to be set aside and the claim of the assessee u/s 80P(2)(d) is not allowable. The Ld. Representative of the revenue has also placed reliance upon the decision of Hon'ble Supreme Court in the case of **Citizen Co-operative Society Vs. ACIT, Civil Appeal No.10245 of 2017**. However, on the other hand, the Ld. Representative of the assessee has strongly relied upon the order passed by the CIT(A) in question. The Ld. Representative of the assessee has also relied upon the case **Kaliandas Udyog Bhavan Premises Co-op Society Ltd. Vs. ITO-21(2)(1)** to substantiate its claim. Before going further, we deem it necessary to advert the finding of the CIT(A) on record:

#### **“4. DECISION:**

*I have carefully gone through the facts of the case, the views taken by the Assessing Officer, alongwith the submissions made by the appellant and have arrived at the following view which is as under: The ground number 1 to 3 raised by the appellant relates to the disallowance u/s. 80P(2)(d) of the IT Act, 1961. For sake of*



*convenience all the grounds are being adjudicated together. These grounds of the appeal pertain to disallowance of deduction claimed u/s 80P(2)(d) of the Act amounting to Rs.1,57,80,440/- and interest on fixed deposits of Rs8,83,167/ aggregating to Rs.1,66,63,607/-. The appellant is a Cooperative Housing Society. It has earned interest income on FDR from Co-operative Banks to the tune of Rs. 1,66,63,607/-. Section 80P(2)(d) of the Act reads 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....." (shall be deducted)*

*The Assessing Officer held the view that a co-operative bank is a commercial bank and*

*does not fall under the purview of a "Co-operative Society" referred to in section 80P(2)(d) of the IT Act, 1961. In the view of the above the Assessing Officer disallowed the deduction of the appellant to the extent of Rs. 1.6643,607/-*

*4.1.1. PER CONTRA: The AR has submitted that the appellant is a Co-operative Housing Society and if a co-operative society receives any income from another co-operative society by way of interest or dividends from its investment, the whole of such income is deductible. He further submits that all the co-operative banks are invariably registered as co-operative societies under the co-operative societies Act. Later on they obtain banking license from Reserve Bank of India.*

*4.1.2. Similar issue has been dealt by Hon'ble ITAT B Bench Mumbai's in the case of The Niacin Laxmi Chs Ltd, Mumbai vs Assessee decided on 24 August, 2016 for (Assessment Years: 2009-10 & 2010-11). The extract of the same is reproduced below:*

*"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 A not material for the claim of deduction under this section. The*



*provisions of section 80(P)(2)(d) of the Act provides for deduction in respect of income of a co-op society by way of interest or dividend from its investments with other co-op society if such income is included in the gross total income of the such Co-op 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 co-op. banks and therefore the appeal of the assessee is allowed by reversing the order of the UT(A). The AO is directed accordingly"*

*4.1.3. Appellant further placed reliance on Lands End Co-operative Housing Society Ltd vs. I. LT.A. No. 3566/Mum/2014 (ITAT) dated 15-01-2016. The operative part of the above decision reads as under:-*

*" 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"*

*4.1.4. In the ACIT vs. Ws. Jawala Cooperative Urban Thrift & Credit Society Ltd., - it was held that:-*

*We have heard rival parties and have gone through the material placed on record We find that total income earned by the assessee included income on fixed deposits placed with Bombay Mercantile Bank. interest income from a scheduled bank and dividend income from Delhi Cooperative Bank From the certificate as placed at paper book page 30, we find that Bombay Mercantile Cooperative Bank is a cooperative society registered under Maharashtra Cooperative Societies Act and we further find that the said society has been assessed u/s 143(3) as a cooperative society and its income was allowed to the exempt u/s 80P(2)(i) as held by Mumbai Tribunal in ITA. No. 4128 and 4129 vide its order dated 30.11.2005, for Assessment Year 1990-91 and 1991-92 and further by Mumbai Tribunal vide order dated 07.09 2011 in ITA. No. 5292 for Assessment Year 1997-98. Therefore, it is held that fixed deposits placed with Bombay Mercantile Bank falls within the exemption granted by Section 80P(2)(i) of the Act. The assessee*



*was also eligible under the provisions of Section 80P(2)(a)(i) as the funds placed by assessee in the form of fixed deposits can be said to be kept for the purpose of business of the assessee as the assessee, had availed credit facilities also against such fixed deposits which were again used for the purpose of business of assessee. Moreover, under similar circumstances Chandigarh Bench in I.T.A. No. 996/2009 as noted by Ld. CIT(A) has decided in favour of assessee The dividend income is exempt for all persons including assessee. The interest income from bank amounting to Rs. 18,190/- is though not exempt u/s 80(p)(2)(d) but is exempt u/s 80P(2)(i) of the Act. The case law of Totgar's Cooperative Society was rightly distinguished by Ld CIT(A). Therefore, keeping in view all facts and circumstances, we do not find any infirmity in the order of 14 CIT(A). 10 In view of above, appeal filed by revenue is dismissed"*

*4.2. I have considered the assessment order and written submission of the appellant and found that the AO has disallowed claim of deduction of interest income of Rs. 1,66,63,607/- from Co-operative Bank u/s 80P(2)(d) of the Act as Co-operative bank is not a Co-operative Society. I find force in the arguments of the appellant and draw strength from various judicial pronouncements of jurisdictional Mumbai ITAT in the following cases like The Nuzan Laxmi ('Its Ltd, Mumbai vs. Assessee decided on 24 August, 2016(supra), Lands End Cooperative Housing Society Ltd vs. LT O. LEA. No. 3566/Mum/2014 (ITA 7) dated 15-012016(supra) and ACIT vs. M/s. Jawala Cooperative Urban Thrift & Credit Society Ltd.(supra) The issue whether a Co-operative Bank is considered to be a Co-operative Society is no longer res-integra. For the said issue has been decided by the Tribunal itself in different cases. Moreover, the word 'Co-operative Society' are the words of a large extent, and denotes a genus, whereas the word 'Co-operative Bank' is a word of limited extent, which merely demarcates and identifies a particular species of the genus Cooperative Societies. Co-operative Society can be of different nature, and can be involved in different activities; the Co-operative Society Bank is merely a variety of the Cooperative Societies. Thus, the Co-operative Bank which is a species of the genus Cooperative societies would necessarily be covered by the word 'Co-operative Society'. A Co-operative Bank is always registered under the relevant Co-operative Societies Act of the relevant State. In view of this and by respectfully following various judicial pronouncements. the appellant is entitled to claim deduction u/s 80P(2)(d) of the Act. Hence. AO is directed to allow Rs.1,66,63,607/-as deduction U/s*



*80P(2)(d) of the Act. Thus grounds of appeal raised by appellant are allowed.*

*4.3 Ground number 4 & 5 refers to initiation of penalty proceedings u/s 271(1)(c) of the I.T Act 1961. Since the AO has not imposed penalty, this ground of appeal filed by the appellant is premature and accordingly the same is dismissed.”*

5. The Ld. Representative of the revenue has relied upon the decision of the Hon’ble Karnataka High Court (supra) and the decision of the Hon’ble Supreme Court in the case of Citizen Co-operative Society (supra) but we noticed that the Hon’ble ITAT in the case of Kaliandas Udyog Bhavan Premises Co-op Society Ltd.(supra) has discussed and decided the matter of controversy by enumerating the law relied by the Ld. Representative of the revenue. The relevant finding in the case of Kaliandas Udyog Bhavan Premises Co-op Society Ltd. is hereby reproduced as under.:-

*“6. We have heard the authorised 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. "80P(2)(d). 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 cooperative 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*



*cooperative 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 cooperative 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. ITO21(3)(2), Mumbai (ITA No. 1343/Mum/2017, dated 31.03.2017 (iii) Marvwanjee Cama Park Cooperative Housing Society Ltd. Vs. ITORange-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 Id. 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 cooperative 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 Cooperative 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 Id. 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 Courts, 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 cooperative 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).”*

**6.** Taking into account all the facts and circumstances and also considering this fact that the law relied by the Ld. Representative of the revenue is based upon the other facts and circumstances, therefore, we are



of the view that the assessee is entitled for claim of deduction u/s 80P(2)(d) in respect of interest income on the investment made in the Co-operative bank. The CIT(A) has decided the matter of controversy judiciously and correctly which nowhere required any interference at this appellate stage. We also nowhere found illegality and infirmity in the finding of the CIT(A) in question, therefore, we affirm the finding of the CIT(A) in question and dismiss the appeal of the revenue.

7. In the result, the appeal filed by the **revenue is hereby ordered to be dismissed.**

Order pronounced in the open court on 28/08/2020

Sd/-

Sd/-

**(M. BALAGANESH)**  
**ACCOUNTANT MEMBER**  
मुंबई Mumbai; दिनांक Dated : 28/08/2020  
*Vijay Pal Singh/Sr.PS*

**(AMARJIT SINGH)**  
**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.

**आदेशानुसार/ BY ORDER,**

सत्यापित प्रति //True Copy//

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