

आयकर अपीलीय अधिकरण "C" न्यायपीठ मुंबई में

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

श्री विकास अवस्थी, न्यायिक सदस्य एवं श्री राजेश कुमार, लेखा सदस्य के समक्ष
BEFORE SHRI VIKAS AWASTHY, JM AND SHRI RAJESH KUMAR, AM

आयकर अपील सं./ ITA No. 1950/Mum/2019

(निर्धारण वर्ष / Assessment Year 2014-15)

| | | |
|---|--------------|--|
| Om Sudarshan Co-operative Housing Society Ltd. Ground Floor, Om Sudarshan CHS Ltd, L.D. Ruparel Marg, Malabar Hill, Mumbai-400 006 | बनाम/ Vs. | The Income Tax Officer Ward 17(2)(5), Mumbai |
| (अपीलार्थी / Appellant) | | (प्रत्यर्थी/ Respondent) |
| स्थायी लेखा सं./PAN No. AAO0489L | | |

| | | |
|------------------------------------|---|---------------------------|
| अपीलार्थी की ओर से/ Appellant by | : | None |
| प्रत्यर्थी की ओर से/ Respondent by | : | Shri Vodral Raj Singh, DR |

| | |
|---|------------|
| सुनवाई की तारीख / Date of hearing: | 15.10.2020 |
| घोषणा की तारीख / Date of pronouncement: | 29.10.2020 |

आदेश / ORDER

श्री विकास अवस्थी, न्यायिक सदस्य के द्वारा

PER VIKAS AWASTHY, JM:

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals)-18, Mumbai [in short 'the CIT(A)'] dated 14.03.2019 for the Assessment year 2014-15.

2. The solitary issue raised by the assessee in appeal is against disallowance of assessee's claim of deduction under section 80P(2)(d) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') in respect of interest income derived from deposits with cooperative bank.

3. The brief facts of the case as emanating from the records are: The assessee is a Cooperative Housing Society. During the period relevant to Assessment Year under appeal, the assessee received interest income from cooperative bank as well as nationalized bank. The assessee claimed deduction under section 80P(2)(d) of the Act in respect of interest income earned from banks. In scrutiny assessment proceedings, the Assessing Officer disallowed the assessee's claim of deduction under section 80P(2)(d) of the Act and made addition of ₹2,65,481/-. Aggrieved by the assessment order dated 23.12.2016 passed under section 143(3) of the Act, the assessee filed appeal before CIT(A). The First Appellate Authority dismissed the appeal of the assessee in toto and upheld the findings of the Assessing Officer. Hence, the present appeal by the assessee.

4. Shri Uodal Raj Singh, representing the Department vehemently defended the impugned order and prayed for dismissing the appeal of assessee. The learned DR submitted that the assessee has claimed deduction under section 80P(2)(d) of the Act in respect of interest income from banks. The provisions of section 80P(2)(d) of the Act in an unambiguous manner states that it is only the interest or dividend derived from investments with any other cooperative society that are eligible for deduction. The interest income received from cooperative

bank or nationalized bank does not qualify for deduction under the provisions of section 80P(2)(d) of the Act.

5. We have heard submissions made by learned Departmental Representative and have examined the orders of authorities below. Whether interest income derived from deposits with cooperative banks is eligible for deduction under section 80P(2)(d) of the Act or not is still a subject of debate. The coordinate Bench of the Tribunal in the case of Kaliandas Udyog Bhavan Premises Co-op Society Ltd. Vs. ITO, 94 taxmann.com 15 (Mumbai) has held that interest income derived by a co-operative society from investments with a co-operative bank, would be entitled for deduction under section 80P(2)(d) of the Act. The relevant extract of the order reads as under: -

"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)

(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) to (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 co-operative 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 co-operative 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 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.

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. (supra)

(ii) Sea Green Cooperative Housing and Society Ltd. (supra)

(iii) Marwanjee Cama Park Cooperative Housing Society Ltd. (supra).

We further find that the Hon'ble High Court of Karnataka in the case of Totagars Cooperative Sale Society (supra) and Hon'ble High Court of Gujarat in the case of State Bank Of India (supra), 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 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 reliance placed by the CIT (A) on the judgment of the Hon'ble Supreme Court in the case of Totgars Co-operative Sale Society Ltd. (supra) 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 Vaibhav Cooperative Credit Society (supra) 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. (supra), 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 Totagars co-operative Sale Society (supra), 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 v. Siemens India Ltd. [1983] 15 Taxman 594/[1985] 156 ITR 11 (Bom), where there is a conflict between the decisions of non-jurisdictional High Court's, 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 Totagars Cooperative Sale Society (supra) and Hon'ble High Court of Gujarat in the case of State Bank Of India (supra), wherein it was observed 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." [Emphasized by us]

6. The Pune Bench of the Tribunal in the case of Majalgaon Sahakari Sakhar Karkhana Ltd. vs. ACIT [2019] 105 taxmann.com 100 (Pune - Trib.) has taken a similar view in respect of interest and dividend

income derived from investment with cooperative bank. The relevant extract of the findings of the Tribunal are as under: -

"24. In some of the appeals the issue of deduction under section 80P of the Act on interest and dividend income is also involved. The assessee claimed deduction u/s.80P(2)(d) of the Act on interest and dividend received from Co-operative Society on Savings Bank accounts. The AO did not allow such deduction. The Id. CIT(A) overturned the assessment order on this point and granted deduction. The Revenue is aggrieved by such allowing of deduction.

25. We have heard both the sides and gone through the relevant material on record. Relevant part of section 80P reads as under : —

80P. (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) to (c)

(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, the whole of such income;

26. A cursory look of the above provision deciphers that any amount of interest or dividend derived by a Co-operative Society from its investments with any other Co-operative Society, is deductible under clause (d) of section 80P(2) of the Act. The Id. CIT(A) has given a categorical finding that assessee is a Co-operative Society and the Co-operative Bank from which the above-mentioned income was earned, is also a Co-operative Society duly registered under Maharashtra Cooperative Societies Act. This contention has not been controverted by the Id. DR with any cogent material or evidence. Thus, it is seen that the case of the assessee is fully covered u/s.80P(2)(d) of the Act. Reliance of the AO on the provisions of sub-section (4) of section 80P is misplaced. Such provision states that : 'The provisions of this section shall not apply in relation to any co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank.' As the assessee under consideration is not a Co-operative Bank, the mandate of sub-section (4) does not extend to it. We, therefore, approve the view taken by the Id. CIT(A) in granting deduction u/s.80P(2)(d) of the Act in respect of interest and dividend income earned by the assessee on such facts."

7. The Hon'ble Karnataka High court in the case of PCIT vs. Totagars Co-operative Sale Society 392 ITR 74 has held that for the purpose of section 80P(2)(d) of the Act cooperative bank should be considered as cooperative society. Similar view has been taken by the Hon'ble Gujarat High court in the case of Surat Vankar Sahakari Sangh Ltd. vs. ACIT 421 ITR 134.

8. However, on the same issue Hon'ble Karnataka High court in the case of PCIT vs. Totagars Co-operative Sale Society 395 ITR 611 (Karnataka) has taken a contrary view holding that interest income earned from deposit with the cooperative bank does not qualify for deduction under section 80P(2)(d) of the Act. It would be relevant to mention here that the Hon'ble High Court while rendering the later judgement has not considered the earlier decision rendered in the case of Totagars Co-operative Sale Society (supra).

9. No judgement from Hon'ble Jurisdictional High court on the issue of eligibility of deduction under section 80P(2)(d) of the Act on interest income derived by a Co-operative Society from a Cooperative Bank has been brought to our notice. The Hon'ble Bombay High Court in the case of K. Subramanian Vs. Siemens India Ltd. 156 ITR 11 has held that when two conflicting decisions of non-jurisdictional High Courts are available, the view that favours the assessee is to be preferred. Accordingly, following the decision of Hon'ble Karnataka High Court in the case of Totagars Co-operative Sale Society (supra) and the decision in the case of Hon'ble Gujarat High Court in the case of Vankar Sahakari Sangh (supra) the deduction claimed by the assessee under section 80P(2)(d) of the Act in respect interest derived from

investments with the cooperative banks is allowed. We find merit in the contention raised by the assessee. The impugned order is set aside and the appeal of assessee is allowed.

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

Order pronounced in the open court on Thursday, the 29th day of October, 2020.

Sd/-

(राजेश कुमार / RAJESH KUMAR)

(लेखा सदस्य / ACCOUNTANT MEMBER)

Sd/-

(विकास अवस्थी / VIKAS AWASTHY)

(न्यायिक सदस्य / JUDICIAL MEMBER)

मुंबई, दिनांक/ Mumbai, Dated: 29.10.2020

सुदीप सरकार, व. निजी सचिव/ *Sudip Sarkar, Sr.PS*

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 (Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai