

THE INCOME TAX APPELLATE TRIBUNAL
"C" Bench, Mumbai
Shri Shamim Yahya (AM) & Shri Ramlal Negi (JM)

I.T.A. No. 1979/Mum/2019 (Assessment Year 2015-16)

M/s. Palmera Co-operative Housing Society Limited Ground Floor, Palmera, 16 D.N. Road, Nepean Sea Road Mumbai-400 006. PAN : AAAAP1848E (Appellant)	Vs.	ACIT-19(2) Room No. 207 2 nd Floor, Matru Mandir, Tardeo Grant Road(West) Mumbai-400 007. (Respondent)
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Assessee by	Shri Rajesh P. Shah
Department by	Shri Uodal Raj Singh
Date of Hearing	21.10.2020
Date of Pronouncement	25.11.2020

ORDER

Per Shamim Yahya (AM) :-

This is in appeal by the assessee directed against order of learned Commissioner of Income Tax (Appeals) [in short learned CIT(A)] dtated 27.2.2019 and pertains to assessment year 2015-16.

2. The grounds of appeal read as under :-

1. On facts and circumstances of the case and in law, the learned CIT(A) erred in confirming that the deduction u/s. 80P(2)(d) amounting to Rs. 12, 22,220 is not allowable to the appellant though the appellant is Co-operative Housing Society and it has received the interest from Cooperative Bank. (Tax effect Rs. 377,666/-)

2. On facts and circumstances of the case and in law, the learned CIT(A) erred in confirming that the deduction u/s.80P(2)(d) amounting to Rs. 12,22,220 is not allowable to the appellant though the judicial pronouncement of the ITAT Mumbai are in favour of the appellant. (Tax effect Rs. 377,666/-).

3. On facts and circumstances of the case and in law, the learned CIT(A) erred in not considering the various judgement in respect of S.80P(2)(d) though the same are accepted by the Department and wrongly confirm the additions by disallowing the deduction u/s.80P of the act. (Tax effect Rs. 377,666/-).

4. The appellant craves leave to add, amend, substitute, modify and or cancel any of the Grounds of Appeal.(Total Tax effect Rs. 377,666/-).
3. The issue in dispute is the assessee's claim of interest income earned from deposits in cooperative banks as to whether the same qualifies for deduction under section 80P(2)(d) of the I.T. Act.
4. The assessing officer despite noting that in several decisions the ITAT Mumbai has held that the same was eligible for deduction has refused to follow the precedent from ITAT Mumbai on the ground that the decisions have not been accepted and Department has filed appeal before the honourable Bombay High Court. No case has made out whatsoever that the honourable Bombay High Court has reversed any of those decisions.
5. upon assessee's appeal learned CIT(A)'s also refused to follow the decisions from ITAT Mumbai . He chose to follow the decision of honourable Karnataka High Court in the case of PCIT Vs. Totagars Co-operative Sale Society (395 ITR 611). Placing reliance upon the said decision of Karnataka High Court the learned CIT(A) upheld the decision of the assessing officer.
6. Against the above order assessee is in appeal before us.
7. We have heard learned Departmental Representative and perused the written submission of the assessee. Learned counsel of the assessee in the written submission stated the in several case laws ITAT Mumbai has held that the assessee should be eligible for deduction under section 80 P(2)(d) on interest income on from co-operative bank. In this regard the list of following case laws has been given :-
 - ITO Vs Oberoi Spring Co-operating Housing Society Ltd. (ITA No. 786/M/2019 dated 28.8.2020)
 - M/s Solitaire CHS Ltd. Vs. PCIT (ITA No.3155/Mum/2019 dated 29.11.2019)
 - Jiwan Satya Co-op Housing Society Ltd. Vs. ITO (ITA Nos. 4248 & 4249/MUM/2018 dated 26.7.2019)
 - Ekta Milan Co-op. Housing Society Limited Vs. CIT (ITA No.3867/Mum/2018 dated 30.4.2019)

- Kaliandas Udyog Bhavan Premises Co-op Society Ltd. V ITO (ITANo. 547/Mum/2017 dated 25.4.2018)
- ITO V.Shree Keshorai Patan Sahakari Sugar Mill (ITA Nos. 418&419/JP/2017 dated 31.1.2018)
- Pr. CIT Vs. Totagars C-operative Sale Society (392 ITR 74 dated 5.1.2017)(Karnataka)
- ITO Vs. Eternity Co-op Housing Society Ltd.(ITA No. 6159/M/2017 dated 15.5.2018)

8. Per contra, learned departmental representative relied upon the orders of the authorities below. Upon careful consideration we find that in the case of Ekta Milan Co-op. Housing Society Limited (supra) the ITAT has duly dealt with the decision of honourable High Court referred by the learned CIT(A). We may gainfully refer the same as under :-

7. We have heard the authorised representatives for both the parties, perused the orders of the lower authorities and the material available on record and judicial pronouncements relied upon by them. 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 cooperative bank is in order, or not. 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 Sec. 80P(2)(d), which reads as under :

“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 cooperative society from its investments with any other co-operative society, the whole of such income.”

On a perusal of Sec. 80P(2)(d), it can safely be gathered that interest income derived by a co-operative society from its investments held with any other co-operative society shall be eligible for deduction from 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. We are of the considered view that though with the insertion of sub-section (4) of Sec. 80P, vide the Finance Act 2006, w.e.f 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, however, the same would in no way jeopardise the claim of deduction of a co-operative society under Sec. 80P(2)(d) insofar its interest income on investments made with a co-operative bank is concerned. 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 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 IT 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;"

As observed hereinabove, 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 IT 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 deduction under Sec.80P(2)(d). In fact, we find that the issue that the interest income derived by a co-operative society from its investments held with a co-operative bank is eligible for deduction under Sec. 80P(2)(d) 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 Sea 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.

Apart there from, 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 held with a co-operative bank would be eligible for claim of deduction under Sec. 80P(2)(d). 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 IT Act. We are of the considered view that the reliance placed by the lower authorities on the judgment of the Hon'ble Supreme Court in the case of Totgars Co-operative Sale Society Ltd. vs. ITO (2010) 322 ITR 283(S.C) being distinguishable on facts, had thus wrongly been

relied upon by them. In fact, 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 its interest income on the investments parked with a co-operative bank. We thus respectfully following 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), as well as the aforesaid orders of the coordinate benches of the tribunal, therein conclude 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 IT Act."

9. From the above it is amply clear that ITAT has found that in the said decision the honourable Karnataka High Court chose to differ from its own coordinate bench decision which had allowed similar assessee's claim. The decision in favour of assessee was also from honourable Gujarat High Court. In this view of the matter the ITAT had found that when two views are possible one in favour of assessee should be adopted.

10. Now we revert to the issue at hand. The assessee had made the claim before the authorities below duly supported by several jurisdictional ITAT order in this regard. The assessing officer refused to follow the same on the ground that Department has not accepted the same and the same is in appeal before the honourable Bombay High Court. This in our considered opinion is a violation of discipline of judicial hierarchy, as no case is made out that Hon'ble Bombay High Court has reversed any of the decisions. The learned CIT(A) also has refused to follow the discipline of precedence by referring to decision of honourable Karnataka High Court. In this regard as evident from the above said decision of the ITAT wherein it has been brought out that there is a decision of honourable Karnataka High Court itself in favour of the assessee and there is another decision of honourable Gujarat High Court in favour of assessee on the same issue. In this view of the matter in our considered opinion learned CIT(A) has also committed violation of the judicial discipline by refusing to follow the precedence cited before him on not very cogent ground.

11. Be as it may we find that the issue involved is covered in favour of the assessee by several decisions of ITAT Mumbai as above. Moreover it is also supported by the decisions of honourable Karnataka High Court in the case of Totagars Cooperative Sale Society (392 ITR 74) and Honourable Gujarat High Court as referred in ITAT decision as above.

12. Accordingly respectfully following the precedent as above we set aside the orders of authorities below decide the issue in favour assessee.

13. In the result, appeal is allowed.

Order pronounced under Rule 34(4) of the ITAT Rules by placing the result on notice board on 25.11.2020.

Sd/-
(RAMLAL NEGI)
JUDICIAL MEMBER

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated : 25/11/2020

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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