

आयकर अपीलीय अधिकरण
मुंबई पीठ "एस एम सी"
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "SMC", MUMBAI
श्री विकास अवस्थी, न्यायिक सदस्य एवं
श्री एस. रिफौर रहमान, लेखा सदस्य के समक्ष
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI S.RIFAUR RAHMAN, ACCOUNTANT MEMBER
आअसं. 4622/मुं/2019 (नि.व. 2014-15)
आअसं. 4621/मुं/2019 (नि.व. 2015-16)
ITA NO.4622/MUM/2019 (A.Y 2014-15)
ITA NO.4621/MUM/2019 (A.Y 2015-16)

Food Corporation of India Employees
Co-Operative Credit Soc. Ltd.,
FCI Godown, Rajendra Nagar,
Dattapada Road, Borivalli(E),
Mumbai 400 066.

PAN: **AAAAT4204G**

..... अपीलार्थी /Appellant

बनाम Vs.

The Income Tax Officer, Ward 32(1)(5),
Room No.729, 7th Floor, Kautilya Bhavan,
G-Block, Bandra Kurla Complex,
Mumbai - 400 051

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : None.
प्रतिवादी द्वारा/Respondent by : Shri Sanjay J Sethi
सुनवाई की तिथि/ Date of hearing : 13/01/2021
घोषणा की तिथि/ Date of pronouncement : 09/04/2021

आदेश/ ORDER

PER VIKAS AWASTHY, JM:

These two appeals by the assessee are directed against the order of
Commissioner of Income Tax (Appeals) -44, Mumbai [in short 'the CIT(A)'] for

the assessment years 2014-15 and 2015-16, respectively. Both the impugned orders are of even date i.e. 06/05/2019. Since, the issue raised in both the appeals is identical, these appeals are taken up together for adjudication and are disposed of by this common order.

2. For the sake of convenience, facts are extracted from the appeal of assessee in ITA 4622/Mum/19 for assessment year 2014-15. The short issue for adjudication in the appeal is assessee's eligibility to claim deduction under section 80P(2)(a)(i)/80P(2)(d) of the Income Tax Act, 1961 (in short 'the Act').

3. The assessee is a Co-operative Credit Society engaged in providing financial support to its members. The society/appellant accept deposits from its members i.e. employees of Food Corporation of India Ltd. and grant loan at reasonable rate as and when required by its members. During the period relevant to assessment year under appeal, the assessee has earned interest income of Rs.11,45,183/- on investments made in fixed deposits with Saraswat Co-operative Bank Ltd. and Apna Sahkari Bank Ltd. Apart from interest income from Co-operatives Banks, the assessee has earned interest income of Rs.2,01,382/- on saving bank account with State Bank of India. The assessee claimed deduction under section 80P(2)(a)(i) in respect of above interest income. In assessment proceedings, the assessee's claim of deduction under section 80P(2)(a)(i) of the Act was rejected by the Assessing Officer by holding interest income as, "Income from other sources".

Aggrieved by the assessment order dated 29/11/2016, the assessee filed appeal before the CIT(A). In First Appellate Proceedings, the assessee raised alternate contention claiming deduction under section 80P(2)(d) of the Act on interest on fixed deposits with Co-operative Banks. The CIT(A) rejected the

appeal of assessee in toto and confirmed the addition. Hence, the present appeal by the assessee.

4. Shri Sanjay J. Sethi representing the Department vehemently defended the impugned order and prayed for dismissing appeal of the assessee. The Id. Departmental Representative submitted that after insertion of sub-section (4) to section 80P by the Finance Act 2006 w.e.f. 01/04/2007, the benefit of section 80P is not available to Co-operative Banks. Therefore, the assessee neither qualifies for claim of deduction under section 80P(2)(a)(i) nor 80P(2)(d) of the Act.

5. We have heard the submissions made by Id. Departmental Representative and have examined the orders of authorities below. The assessee in appeal has assailed the findings of CIT(A) in not allowing deduction of Rs.13,46,565/- under section 80P(2)(a)(i) of the Act. Without prejudice to primary contention, the assessee has raised alternate plea for allowing deduction of Rs.11,45,183/- under section 80P (2)(d) of the Act in respect of interest income on fixed deposits with Co-operative Banks.

6. The assessee during Financial Year 2013-14 has earned interest income as under:-

Name of Bank	Nature of Investment	Interest Earned. (Rs.)
Saraswat Co-operative Bank Ltd.	Fix Deposits	4,50,000/-
Apna Sahakari Bank Ltd.	Fix Deposits	6,95,183/-
State Bank of India	Saving Bank A/c.	2,01,382/-
	Total	13,46,565/-

7. The primary contention of the assessee is that interest income from fixed deposits and saving bank account is eligible for deduction under section 80P(2)(a)(i) of the Act. The Hon'ble Supreme Court of India in the case of Totgars, Co-operative Sale Society Ltd. vs. ITO, 322 ITR 283(SC) has held that interest earned by assessee would come in category of 'Income from other sources' taxable under section 56 and would not qualify for deduction as business income under section 80P(2)(a)(i) of the Act. Similar view has been expressed by the Hon'ble Gujarat High Court in the case of State Bank of India vs. CIT, 389 ITR 578. In the light of aforesaid decisions, primary contention of the assessee is liable to be rejected. Therefore, ground No.1 of the appeal is dismissed.

8. The alternate contention of the assessee is with regard to deduction of interest income Rs.11,45,183/- on investment with Co-operative Banks under section 80P (2)(d) of the Act. The issue whether interest income derived from deposits with cooperative banks is eligible for deduction under section 80P(2)(d) of the Act or not has not crystallised so far. 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) after considering various decisions by Hon'ble High Courts and the Tribunal and the provisions of the Act, 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 cooperative bank pursuant to the insertion of Subsection (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 cooperative 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."

[Emphasised by us]

9. The Pune Bench of 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 cooperative 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 cooperative 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.”

[Emphasised by us.]

10. 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, co-operative 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.

11. 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).

12. No judgement by the Hon'ble Jurisdictional High Court on this issue was 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 alternate contention raised by the assessee. Ergo, the assessee succeeds on ground No.2 of the appeal.

13. In the result, appeal of the assessee is partly allowed.

ITA 4621/Mum/2019- A.Y.2015-16

14. The Id. Departmental Representative admitted that the facts in the assessment year 2015-16 are identical to 2014-15, except for the amount of interest earned.

15. We find that in assessment year 2015-16 the relief claimed by the assessee is identical to the one as in assessment year 2014-15. During the period relevant to assessment year 2015-16, the assessee has earned interest income as under:

Name of Bank	Nature of Investment	Interest Earned. (Rs.)
Saraswat Co-operative Bank Ltd.	Fix Deposits	4,50,000/-
Apna Sahakari Bank Ltd.	Fix Deposits	11,74,620/-
State Bank of India	Saving Bank A/c.	83,932/-
	Total	17,08,552/-

Since, the facts in both the impugned assessment years are *pari materia*, the findings given by us while adjudicating the appeal of assessee for assessment year 2014-15 would apply *mutatis mutandis* to the appeal for assessment year 2015-16. Consequently, the assessee is allowed the benefit of deduction under section 80P(2)(d) on the interest income earned from Co-operative Banks.

16. In the result, appeal of the assessee is partly allowed.

17. To sum up, both appeals by the assessee are partly allowed.

Order pronounced in the open court on Friday the 09th day of April, 2021.

Sd./-

(S.RIFAUR RAHMAN)

लेखा सदस्य/ACCOUNTANT MEMBER

Sd./-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई/ Mumbai, दिनांक/Dated: 09/04/2021

Vm, Sr. PS(O/S)

प्रतिलिपि अग्रेषितCopy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त(अ)/ The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
6. गार्ड फाइल/Guard file.

BY ORDER,

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ITAT, Mumbai