

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'G', NEW DELHI**

Before Sh. Amit Shukla, Judicial Member

Dr. B. R. R. Kumar, Accountant Member

ITA No. 5623/Del/2018 : Asstt. Year : 2012-13

Income Tax Officer, Ward-63(5), New Delhi-110002	Vs	The Jwala Cooperative Urban Thrift & Credit Society Ltd., 218, DDA Cycle Market, Jhandewalan Extn. New Delhi-110055
(APPELLANT)		(RESPONDENT)
PAN No. AABAT0924C		

Assessee by : Ms. Gunjan Jain, CA

Revenue by : Sh. Ratan Singh, Sr. DR

Date of Hearing: 20.10.2021

Date of Pronouncement: 20.01.2022

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

This appeal has been filed by the Revenue against the order of the Id. CIT(A)-18, New Delhi dated 07.06.2018.

2. Following grounds have been raised by the Revenue:

"1. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in deleting the addition of Rs. 3,33,46,046/- made on account of disallowance of deduction claimed u/s 80P of the Income Tax Act, 1961 on the interest received from Bombay Mercantile Bank Ltd. and Rs. 66,389/- interest on FDR and Rs. 99,242/- of bank interest, without appreciating the fact that it is a case of parking of surplus funds and the case is squarely covered by the decision of Hon'ble Supreme Court in the case of Totgar's Co-operative sales Society Ltd. (in Ca no. 1622 of 2010), the decision of Hon'ble Delhi High Court in the case of M/s. Mantola Co-operative Thrift & Credit Society Ltd (ITA no 128/2017) and the decision of Karnataka High Court in the case of CIT vs. M/s. Sangam Sahakari Karkane

Niyamith (order dated 30.10.2017 in ITA no. 100011/2016)."

3. The assessee filed return of income on 29.09.2012 declaring total income of Rs. Nil. During the year, the assessee has earned interest on FDRs with Bombay Mercantile Bank Ltd. and with Ramgarhia Cooperative Bank Ltd. The interest amount claimed u/s 80P of the Income Tax Act has been disallowed by the AO.

4. This issue has been squarely covered by the order of the Tribunal in ITA No.2607/Del/2012, order dated 19.12.2014 as well as by the order of the ITAT in ITA No.2900 & 2901/Del/2015 by order dated 26.04.2018 for AYs 2010-11 and 2011-12. For the sake of ready reference and completeness of the said order is reproduced below.

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "E" : DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI O.P. KANT, ACCOUNTANT MEMBER

ITA.No.2900 & 2901/Del./2015
Assessment Years 2010-2011 & 2011-2012

The Jawala Cooperative Urban Thrift & Credit Society Limited, 218-219, Cycle Market, Jhandewalan Extn. New Delhi – 110 055. PAN AABAT0924C (Appellant)	vs	The ACIT, Circle-62(1) Civic Centre, New Delhi – 110 002. (Respondent)
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For Assessee :	Shri Puneet Agarwal, Shri Deepak Thakur & Shri Sai Prasana Dash Advocates
For Revenue :	Shri S.R. Senapati, Sr. D.R.

Date of Hearing :	24.04.2018
Date of Pronouncement :	26.04.2018

ORDER

PER BHAVNESH SAINI, J.M.

Both the appeals by the same Assessee are directed against the different Orders of the Ld. CIT(A)-XX, New Delhi, Dated 16th March, 2015, for the A.Ys. 2010-2011 and 2011-2012.

2. We have heard the learned Representatives of both the parties and perused the material on record.

3. The issue is common in both the appeals. For the purpose of disposal of both the appeals, we decide the appeal for the A.Y. 2010-2011 as under.

ITA.No.2900/Del./2015 – A.Y. 2010-2011 :

4. The assessee has raised the following grounds of appeal :

1. *“The order of assessing officer is bad in law and against the facts of the case.*
2. *A.O. has wrongly disallowed and C.I.T (A) has wrongly upheld the disallowance of deduction claimed by ‘A’ u/s 80P for the interest on FDR earned by it on FDR kept with Bombay Mercantile Co Operative Bank Limited of Rs.1,31,01,754/- and also saving bank interest of Rs.22,163/- and also has wrongly upheld that interest on FDR kept with Bombay Mercantile Co Operative Bank Limited is ‘Income from Other Sources’ while ‘A’ claiming it is a business income.”*

5. The A.O. made disallowance of deduction under section 80P(2)(d) being interest on FDR amounting to Rs.1,34,65,081/- and S.B. interest of Rs.22,163/- by treating them as income from other sources. The assessee took the plea that income of the assessee from Bombay Mercantile Cooperative Bank Ltd., is exempt under section 80P(2)(d) of the I.T. Act. The assessee filed written submissions before Ld. CIT(A) which is reproduced in the appellate order in which the assessee explained that assessee is a Cooperative Urban Thrift & Credit Society engaged in providing credit facilities to its Members. Only a Member can get credit facilities say up to Rs.1.50,000/- after providing personal surety of the Members. Return was filed declaring gross income of Rs.1,35,70,457/- after claiming deduction under section 80P of the entire amount, -NIL- income was offered for taxation. The assessee was filing return of income regularly and in past, several scrutiny assessments have been done and taxable income declared by the assessee at NIL have already been accepted. It was claimed as exempt under section 80P of the I.T. Act which invariably included interest income on FDR kept with Bombay Mercantile Cooperative Bank Ltd., In A.Ys. 2008-2009 and 2009-2010, for the first time, in the history of the assessee, interest income on FDR of assessee with Bombay Mercantile Cooperative Bank Ltd., was taxed. However, the Ld. CIT(A) deleted the addition as the assessee’s contention that income from FDR with Bombay Mercantile Cooperative Bank Ltd., was eligible for deduction under section 80P from the above Bank which is also Cooperative Bank was found correct. The A.O. had divided the income into two parts i.e., income for Members and other

interest income on funds invested by assessee with Bombay Mercantile Cooperative Bank Ltd., and dividend from Delhi State Corporation Bank. The A.O. held that interest income is taxable. It is stated that A.O. relied upon the decision of the Hon'ble Supreme Court in the case of Totgar's Co-operative Sale Society Ltd., vs. ITO (2010) 322 ITR 283 (SC). It was submitted that the facts in this case are clearly distinguishable because it relates to a Society whose business is sales i.e., Marketing. A Marketing Society's main business is not of providing credit facilities to its Members and such a Society getting short term fund invested and getting income from it may be taxable. The assessee's interest income is however from its main business. This case does not relate to Cooperative Bank. The ITAT, Chandigarh Bench in the case of Punjab State Cooperative Federation of House Building Society Ltd., vs. ACIT in ITA.No.966/Chd./2009 dated 29th January, 2010 decided the issue in favour of the assessee by holding that funds kept in Bank can be said to be ready for utilisation by the Cooperative Society in its business of providing credit facilities to its Members, the income from such monies, kept in Bank, can be said to be attributable to the business of providing credit facilities so as to fall within the ambit of Section 80P(2)(a)(i) of the I.T. Act. The facts of the case of assessee are identical. Therefore, interest income on such funds deposited in the Banks are eligible for deduction under section 80P(2)(a)(i) of the I.T. Act. The assessee invested surplus funds in FDR and earned interest. These funds were always available to assessee for utilisation for providing credit facilities to its Members. The A.O. failed to note that income on FDR on which interest income is accrued have all been pledged with the same bank and O.D. facility is obtained, on which, interest have been paid. The O.D. facility, thus, obtained were used for providing credit facilities to its Members and the FDR invested was of Rs.19.62 crores (On Asset side). It was submitted that Bombay Mercantile Cooperative Bank Ltd., does not fall within the purview of TDS provisions. Certificate to that effect was filed. The O.D. against FDs are utilised by the assessee for the purpose of its business for running Thrift Credit Society for payment to its Members. Bombay Mercantile Cooperative Bank Ltd., is a Cooperative Bank and therefore, interest income received from the fixed deposits placed with it also quantified for deduction under section 80P(2)(d) of the I.T. Act. The assessee relied upon the order of the ITAT, Delhi Bench in the case of the assessee in ITA.No.2607/Del./2012 for A.Y. 2008-2009 dated 19.12.2014 in which it was held as under :

"9. 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 be exempt u/s 80P(2)(i) as held by Mumbai Tribunal in I.T.A. 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 I.T.A. 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)(d) 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 Totgars 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 Ld. CIT(A).

10. *In view of above, appeal filed by revenue is dismissed.*

11. *Order pronounced in the open court on 19th Dec., 2014."*

5.1. A fresh Certificate from Bombay Mercantile Cooperative Bank Ltd., was also filed. The interest from FDR is directly linked to the interest bearing deposits received from its Members, on which, the Society was paying interest. The other decision relied upon by A.O. are not applicable.

5.2. The Ld. CIT(A) quoted the order of ITAT, Delhi Bench in the case of same assessee for A.Y. 2008-2009 (supra), but, tried to distinguish the said decision and ultimately held that the earlier order of the Tribunal is distinguishable on facts. It was held that facts of the case in the case of Totgar's Cooperative Sale Society Ltd. vs. ITO (supra) are similar to the case of the assessee. It was noted that as per Section 80P(4) the provisions of this Section shall not apply in relation to any Cooperative Bank. The assessee deposited the money with Bombay Mercantile Cooperative Bank Ltd., which has filed its return as a Bank and not as Cooperative Society. Therefore, no benefit is allowable to assessee. The Ld. CIT(A), therefore, held that assessee is not entitled for deduction under section 80P(2)(d) of the I.T. Act and dismissed the appeal of assessee.

6. Learned Counsel for the Assessee reiterated the submissions made before the authorities below and submitted that issue is identical as have been decided by ITAT, Delhi Bench in

the case of the assessee for A.Y. 2008-2009 (supra) in which the Ld. CIT(A) allowed the claim of assessee and the Tribunal dismissed the Departmental appeal. He has submitted that the Revenue preferred appeal before the Hon'ble Delhi High Court which have been dismissed in ITA.No.805/2015 dated 18th December, 2015, though, on tax effect being less than Rs.20 lakhs. He has submitted that ITAT, Ahmedabad Bench in the case of The Arbuda Credit Co-op. Society Ltd., vs. ACIT in ITA.Nos.2084&2085/Ahd./2015 dated 29.02.2016 considered the case of Assessee which is Credit Cooperative Society and following the decision of A.Y. 2008-2009 above in the case of assessee and decision of the Hon'ble Karnataka High Court in the case of Tumkur Merchants Souharda Credit Cooperative Limited, Tumkur vs. ITO, Ward-1, Tumkur in ITA.No.307 of 2014 dated 28.10.2014 allowed similar claim of assessee by holding that assessee is eligible for deduction under section 80P(2)(a)(i) of the I.T. Act for the interest income earned on unutilized idle funds kept for business purposes of the Society being deposited with M/s. Banas Bank. Learned Counsel for the Assessee further submitted that in subsequent A.Y. 2013-2014, the Ld. CIT(A)-27, vide order dated 15th February, 2018, in the case of the assessee allowed similar claim of assessee. Copies of all the orders are placed on record. Learned Counsel for the Assessee, therefore, submitted that the issue is covered in favour of the assessee by order of the Tribunal in the case of same assessee and other decisions referred to above.

7. On the other hand, Ld. D.R. relied upon the orders of the authorities below and submitted that assessee made a claim of deduction under section 80P(2)(d) of the I.T. Act before authorities below and no claim is made for deduction under section 80P(2)(a)(i) of the I.T. Act.

8. We have considered the rival submissions. It is not in dispute that assessee is a Cooperative Urban Thrift & Credit Society engaged in providing credit facilities to its Members and only its Members can get credit facilities. The assessee claimed that its income is exempt under section 80P of the I.T. Act from taxation. It was also pleaded that in earlier years the same claim of assessee have been accepted by the Revenue Department. The rule of consistency applies in favour of assessee as no different facts have been brought on record. It is also claimed that in A.Y. 2008-2009, the A.O. has denied deduction under section 80P of the I.T. Act on interest income on FDR with Bombay Mercantile Cooperative Bank Ltd., and was taxed. The Ld. CIT(A), however, deleted the addition and the Tribunal dismissed the appeal of Revenue. The assessee placed sufficient material before the authorities below to prove that it has invested surplus funds in FDR and earned interest. These funds were available to assessee for utilisation for providing credit facilities to its Members. The interest on FDR have been pledged with the same Bank and O.D. facility have been obtained. The O.D. facility obtained were used for providing credit facilities to its Members. The assessee also filed

Certificate that Bombay Mercantile Cooperative Bank Ltd., is a Cooperative Society. The findings of the Tribunal in the case of assessee for A.Y. 2008-2009 have already been reproduced above in which it was held that Bombay Mercantile Cooperative Bank Ltd., have been assessed as a Cooperative Society and its income was allowed to be exempt under section 80P(2)(a)(i) of the I.T. Act by the Mumbai Bench. It was, therefore, held that fixed deposits placed with this Bank falls within the exemption granted by Section 80P(2)(d) of the I.T. Act and assessee was also eligible for deduction under section 80P(2)(a)(i) of the I.T. Act. The order of the Tribunal has become final because Departmental Appeal have been dismissed by the Hon'ble Delhi High Court, though, on tax effect. Thus, assessee has been able to prove that it has invested surplus fund in the FDR and earned interest which is utilised for providing credit facilities to its Members. The O.D. facility was also obtained from the same Bank which is used for providing credit facilities to its Members. The issue is, therefore, covered in favour of the assessee by the Order of ITAT, Delhi Bench, in the case of same assessee for A.Y. 20082009. Since the finding of fact has become final that Bombay Mercantile Cooperative Bank Ltd., is a Cooperative Society, therefore, there was no justification to apply Section 80P(4) of the I.T. Act against the assessee. In the same Order of the Tribunal, the decision of the Hon'ble Supreme Court in the case of Totgars Cooperative Sale Society Ltd., (supra) was found to be distinguishable on facts. Therefore, there was no justification for Ld. CIT(A) to distinguish the Order of the Tribunal in the case of the same assessee. The Hon'ble Karnataka High Court in the case of Tumkar Merchants Souharda Credit Cooperative Ltd., Tumkur vs. ITO, Tumkur (supra)in para-8 held as under:

“8. Therefore, the word “attributable to” is certainly wider in import than the expression “derived from”. Whenever the legislature wanted to give a restricted meaning, they have used the expression “derived from”. The expression “attributable to” being of wider import, the said expression is used by the legislature whenever they intended to gather receipts from sources other than the actual conduct of the business. A Cooperative Society which is carrying on the business of providing credit facilities to its members, earns profits and gains of business by providing credit facilities to its members. The interest income so derived or the capital, if not immediately required to be lent the members, they cannot keep the said amount idle. If they deposit this amount in bank so as. to earn interest, the said interest income is attributable to

the profits and gains of the business of providing credit facilities to its members only. The society is not carrying on any separate business for earning such interest income. The income so derived is the amount of profits and gains of business attributable to the activity of carrying on the business of banking or providing credit facilities to its members by a co-operative society and is liable to be deducted from the gross total income under Section 80P of the Act.

8.1. In the said decision, the Judgment of Hon'ble Supreme Court in the case of Totgars Cooperative Sale Society Ltd., (supra) have been considered by the High Court and it was held that the said decision is confined to facts of that case. The appeal of assessee was allowed. The Ahmedabad Bench of the Tribunal in the case of Arbuda Credit Co-op. Society Ltd., vs. ACIT (supra), followed the Order in the case of same assessee for A.Y. 2008-2009 and decision of the Hon'ble Karnataka High Court above and decided the issue in favour of the assessee and held that assessee is eligible for deduction under section 80P(2)(a)(i) of the I.T. Act for the interest income earned on unutilized idle funds kept for business purposes of the Society being deposited with Banas Bank. The Ld. CIT(A) in the case of the same assessee for A.Y. 2013-2014 vide order dated 15.02.2018 following the order of the Tribunal for A.Y. 2008-2009 allowed the claim of assessee. therefore, there were no justification for Ld. CIT(A) in not following the order of the Tribunal in the case of same assessee for A.Y. 2008-2009. The Hon'ble Madhya Pradesh High Court in the case of Agrawal Warehousing and Leasing Ltd., 257 ITR 235 held that the Ld. CIT(A) not only committed judicial impropriety but also erred in law in refusing to follow the order of the Appellate Tribunal. The conditions of Section 80P(2)(a)(i) and also 80P(2)(d) are satisfied by assessee.

8.2. Considering the totality of the facts and circumstances, we are of the view that authorities below were not justified in refusing to grant deduction under section 80P of the I.T. Act in favour of the assessee. We, accordingly, set aside the orders of the authorities below and delete the entire addition. The appeal of assessee is allowed.

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

ITA.No.2901/Del./2015 – A.Y. 2011-2012 :

10. The assessee has raised the following grounds in its appeal :

1. *The order of assessing officer is bad in law and against the facts of the case.*
2. *A.O. has wrongly disallowed and C.I.T (A) has wrongly upheld the disallowance of deduction claimed by 'A' u/s 80P for the interest on FDR earned by it on FDR kept with*

Bombay Mercantile Co Operative Bank Limited of Rs.2,10,61,424/- and also saving bank interest of Rs.3,75,966/- and also has wrongly upheld that interest on FDR kept with Bombay Mercantile Co Operative Bank Limited is 'Income from Other Sources' while 'A' claiming it is a business income.

3. *Without prejudice to the ground no. 2, the assessable income of the 'A' can't exceed amount of deduction u/s 80P claimed by 'A'. In this year assessee claim u/s 80P is Rs.82,95,417/- and it can't be assessed at an income of exceeding Rs.82,95,417/- as only point of contention is allowably of deduction u/s 80P."*

11. The issue is same as have been considered in A.Y. 20102011. Following the reasons for decision for the same, we set aside the orders of the authorities below and delete the entire addition.

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

13. To sum-up, both the appeals of the assessee are allowed.

5. Since, there is no material change in the factual matrix or in the legal position of the issue before us, the appeal of the Revenue is hereby dismissed.

Order Pronounced in the Open Court on 20/01/2022.

Sd/-

(Amit Shukla)
Judicial Member

Dated: 20/01/2022

Subodh Kumar, Sr. PS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

ASSISTANT REGISTRAR