

आयकर अपीलिय अधिकरण
मुंबई पीठ "एस एम सी", मुंबई
श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "SMC", MUMBAI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER
आअसं. 2044/मुं/2021 (नि.व 2015-16)
ITA NO.2044/MUM/2021(A.Y. 2015-16)

CG Power and Industrial Solutions Ltd.Employees
Co Op Credit Society Ltd.
C/o. Mrs. Sadhana Modak,
102, Kamal Villa Co-Op. Hsg. Society,
Aaglave Lane, Gandhi Chowk,
Kalyan West, Dist. Thane – 421 301.
PAN: AAAAC-2551-P

..... अपीलार्थी /Appellant

बनाम Vs.

Income Tax Officer -26(1)(1),
Kautilya Bhavan, Bandra(East)
Mumbai 400 051.

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : Shri Ritesh Gawande

प्रतिवादी द्वारा/Respondent by : Ms. Beena Santosh

सुनवाई की तिथि/ Date of hearing : 01/08/2022

घोषणा की तिथि/ Date of pronouncement : 01/08/2022

आदेश/ ORDER

This appeal by the assessee is directed against the order of Commissioner of Income Tax(Appeals), National Faceless Appeal Centre, Delhi [in short 'the CIT(A)'] dated 18/10/2021 for the assessment year 2015-16.

2. The solitary issue raised by the assessee in appeal is against disallowance of deduction claimed under section 80P(2)(a)(i)/80P(2)(d) of the Income Tax Act, 1961 (in short ' the Act') in respect of interest income earned by the assessee from Co-operative Banks.

3. Shri Ritesh Gawande appearing on behalf of the assessee submitted that the assessee is an Employees Credit Co-operative Society. During the period relevant to the assessment year under appeal the assessee had earned interest and dividend income of Rs.10,74,752/- from deposits/ investments with Co-operative Bank. The assessee claimed interest and dividend income as exemption under section 80P(2)(d). The assessee's claim of deduction was denied by the Assessing Officer on the ground that the assessee is covered by the provisions of section 80P(4) of the Act. Aggrieved by the assessment order dated 11/12/2017 passed under section 143(3) of the Act, the assessee filed appeal before the CIT(A). The CIT(A) upheld the findings of Assessing Officer by further placing reliance on the decision of Hon'ble Supreme Court of India in the case of Totgars Co-operative Sale Society Ltd. vs. ITO, 188 Taxman 282.

3.1 The Id.Authorized Representative of the assessee submitted that the assessee being a Co-operative Society is eligible for deduction on interest income from the Co-operative Bank under section 80P(2)(d) of the Act. In support of his contention the Id.Authorized Representative of the assessee placed reliance on the following decisions:

- (i) The Sarvoday Co-operative Credit Society Ltd. vs. Income Tax Officer, Ward 26(3)(6), in ITA No.292/Mum/2022.
- (ii) The University of Mumbai Employees Co-op. Credit Society Ltd. Vs. ITO, Ward -17(3)(5) in ITA No.450/Mum/2019

The Id.Authorized Representative of the assessee further submitted that the decisions in the case of Totgars Co-operative Sale Society Ltd.(supra) is distinguishable on facts.

4. Per contra, Ms. Beena Santosh representing the Department vehemently supported the findings of CIT(A) and placed reliance on the decision rendered

by Hon'ble Supreme Court of India in the case of Totgars Co-operative Sale Society Ltd. vs. ITO(supra).

5. Both sides heard, orders of authorities below examined. Undisputedly the assessee has received interest and dividend income from deposits/investments with Co-operative Bank. The Assessing Officer and CIT(A) has disallowed the assessee's claim of deduction under section 80P(2)(d) of the Act in respect of said income of Rs.10,74,752/-.

6. The Hon'ble Karnataka High court in the subsequent judgment in the case of PCIT vs. Totgars, Co-operative Sale Society reported as 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.

7. However, on the same issue Hon'ble Karnataka High court in the subsequent judgment in the case of PCIT vs. Totgars, 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 Totgars, Co-operative Sale Society (supra).

8. 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 first 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), I hold that the assessee is eligible to claim deduction under section 80P(2)(d) of the Act in respect interest / dividend income from co-operative bank.

9. The CIT(A) has placed reliance on the decision of Hon'ble Supreme Court of India in the case of Totgars Co-operative Sale Society Ltd. vs. ITO(supra) to disallow assessee's claim of deduction under section 80P(2)(d) of the Act. I find that the aforesaid decision is distinguishable on facts. In the said case assessee's claim of deduction under section 80P(2)(d) of the Act was not rejected for the reason that the assessee falls within the ambit of section 80P(4) of the Act. Hence, ratio laid down by Hon'ble Apex Court in the case of Totgars Co-operative Sale Society Ltd. vs. ITO(supra) would not apply in the present appeal.

10. In the result, impugned order is set-aside and appeal by assessee is allowed.

Order pronounced in the open Court on Monday the 1st day of August, 2022.

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई/ Mumbai, दिनांक/Dated 01/08/2022
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.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)/
Sr.Private Secretary
ITAT, Mumbai