

आयकर अपीलिय अधिकरण

मुंबई पीठ " ए "

श्री विकास अवस्थी, न्यायिक सदस्य एवं

श्री एस. रिफौर रहमान, लेखा सदस्य के समक्ष

IN THE INCOME TAX APPELLATE TRIBUNAL

MUMBAI BENCH " A", MUMBAI

BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &

SHRI S.RIFAUR RAHMAN , ACCOUNTANT MEMBER

आअसं.2562/मुं/2021 (नि.व. 2019-20)

ITA NO.2562/MUM/2021(A.Y.2019-20)

Income Tax Officer, Ward 26(2)(1),

315, 3rd Floor, Kautilya Bhavan,

Bandra (East),

Mumbai – 400 051.

..... अपीलार्थी /Appellant

बनाम Vs.

Larsen an Toubro Kamgar Sahakari Patpedni

Maryadid, Gate No.1, Larsen Toubro Campus,

Saki Vihar Road, Powai,

Mumbai 400 072.

PAN: AAABL-0014H.

..... प्रतिवादी/Respondent

C.O. NO.56/MUM/2022

(Arising out of ITA No.2562/Mum/2021,A.Y. 2019-20)

Larsen an Toubro Kamgar Sahakari Patpedni

Maryadid, Gate No.1, Larsen Toubro Campus,

Saki Vihar Road, Powai,

Mumbai 400 072.

.... Cross Objector

बनाम Vs.

Income Tax Officer, Ward 26(2)(1),

315, 3rd Floor, Kautilya Bhavan,

Bandra (East),

Mumbai – 400 051

..... Appellant in Appeal

अपीलार्थी द्वारा/ Appellant by : Shri Mehul Jain

प्रतिवादी द्वारा/Respondent by : Shri S.P.Kenekar

सुनवाई की तिथि/ Date of hearing : 12/05/2022

घोषणा की तिथि/ Date of pronouncement : 05/08/2022

आदेश/ ORDER**PER VIKAS AWASTHY, JM:**

The appeal of the Revenue is directed against the order of Commissioner of Income Tax (Appeals), National Faceless Appeal Center, Delhi [in short 'the CIT(A)] dated 31/08/2021 for the Assessment Year 2019-20.

2. The solitary issue raised by the Revenue in appeal is against the findings of CIT(A) in allowing deduction u/s. 80P(2) of the Income Tax Act, 1961 [in short 'the Act'].

3. The assessee has filed Cross Objections in support of order of CIT(A).

4. The brief facts of the case as emanating from records are: The assessee is a Co-operative Credit Society registered under the Co-operative Societies Act, 1912. During the period relevant to the assessment year under appeal the assessee had earned interest income of Rs.2.06 crores from investments in the Co-operative Banks. The assessee claimed deduction u/s. 80P(2)(d) of the Act in respect of interest income earned from Co-operative Banks. The assessee filed its return of income for the impugned assessment year on 30/09/2019. The return of the assessee was processed u/s. 143(1) of the Act raising tax demand of Rs.72,03,510/- after rejecting assessee's claim of deduction u/s. 80P(2)(d) of the Act. Aggrieved by the order passed u/s. 143(1) dated 29/10/2020, the assessee filed appeal before the CIT(A), inter-alia, assailing the validity of adjustment made u/s. 143(1)(a) of the Act and disallowance of deduction u/s. 80P(2)(d) of the Act. The CIT(A) vide impugned order allowed deduction u/s. 80P(2)(d) of the Act in respect of interest income from Co-operative Banks stating that in the preceding Assessment Years i.e.

Assessment Year 2012-13 , A.Y. 2013-14 and 2014-15 deduction u/s. 80P(2)(a)(i) of the Act has been allowed to the assessee in respect of interest income. Hence, the present appeal by the Revenue.

5. The Id. Departmental Representative submitted that in the light of sub-section(4) to section 80P of the Act, the assessee is not eligible to claim deduction u/s. 80P of the Act. In support of his contentions the Id. Departmental Representative placed reliance on the decision rendered by Hon'ble Karnataka High Court in the case of PCIT vs. Totagars, Co-operative Sale Society reported as 395 ITR 611.

6. Per contra, the Id. Authorized Representative for the assessee vehemently supported the findings of CIT(A) in allowing deduction u/s. 80P(2)(d) of the Act. The LA to further support his submissions placed reliance on following decisions:

(i) MTNL Mumbai Employees Co.Op. Credit Society Ltd. vs. ITO-21(2)(2),

ITA No.7352/Mum/2016, A.Y.2013-14 decided on 17/04/2018.

(ii) Bombay Mercantile Co-op Bank Ltd Employees Co-op Credit Society

Ltd. vs. ITO -15(1)(2), ITA No.3583/Mum/2014 decided on 27/10/2020

(iii) ITO 24(3)(1) vs.M/s. Oberoi Spring Co-operative Housing Society Ltd. in

ITA No.786/Mum/2019 decided on 28/08/2020

7. We have heard the submissions made by rival sides. It is an undisputed fact that the assessee is a Co-operative Society registered under Co-operatives Societies Act, 1912. The assessee has earned interest income during the period relevant to the assessment year under appeal from the investments made in the Co-operative Banks. We find that there are conflicting decisions

by Hon'ble Non Jurisdictional High Courts on the issue of allowability of deduction u/s. 80(P) in respect interest income earned from Co-operative Banks.

8. 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 hence, interest income from Co-operative Bank is eligible for deduction u/s.80P of the Act. 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.

9. However, on the same issue Hon'ble Karnataka High court subsequently 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).

10. 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), the deduction claimed by the assessee under section 80P(2)(d) of the Act in respect interest derived from investments with the cooperative banks has to be allowed. Thus, in the light of above decisions, the appeal by the Revenue is dismissed.

C.O. No. 56/Mum/2022:

8. Since, we have dismissed the appeal of Revenue , the Cross Objection filed by the assessee has become infructuous, hence, the same is dismissed as such.

9. To sum up, the appeal by the Revenue as well as the Cross Objection by the assessee are dismissed.

Order pronounced in the open court on Friday the 5th day of August, 2022.

Sd/-

(S.RIFAUR RAHMAN)

लेखा सदस्य/ACCOUNTANT MEMBER

मुंबई/ Mumbai, दिनांक/Dated 05/08/2022

Vm, Sr. PS(O/S)

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

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.

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BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai