

**IN THE INCOME TAX APPELLATE TRIBUNAL
“D” BENCH, MUMBAI**

**BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER &
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

**ITA No.1413/Mum/2021
(A.Y. 2017-18)**

Durga Co-Op Credit Society Limited 2/3 Sukarma Aptt. Prabhat Cly, Gandhi Chowk Santacruz (East), Mumbai – 400055	Vs.	The Income Tax Officer, 22(1)(2), Room No. 313, 3 rd Floor, Piramal Chamber, Lal Baug, Parel, Mumbai - 400012
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AAAAD8298C		
Appellant	..	Respondent

Appellant by :	None
Respondent by :	Smt. Mahita Nair

Date of Hearing	11.08.2022
Date of Pronouncement	24.08.2022

आदेश / O R D E R

Per Amarjit Singh (AM):

The solitary ground of appeal of the assessee is directed against the decision of CIT(A)-29, Mumbai, in sustaining the order of A.O for denying deduction u/s 80P(2)(a)(i) on account of interest earned from other cooperative society/bank. The assessee has raised the following ground:

- “1. The Ld. CIT (Appeals) has erred in confirming with the Ld. AO and considering the interest earned by the society from other co-operative societies earned in due course of business as income from other sources and denying deduction u/s 80P(2)(a)(i) against the same

2. *Alternatively, the interest income earned from other co-operative societies/banks is eligible for deduction u/s 80P(2)(d), the Ld. AO had erred in not allowing the same to the society. The Ld. CIT(Appeals) has erred in confirming with the Assessing officer and not.*
3. *The Ld. CIT (Appeal) has also erred by confirming with the AO and not considering deduction u/s 80P(2)(c) amounting to Rs. 50,000/- eligible against taxable income of the society.*
4. *Your appellant further reserves the rights to add, amend or alter the aforesaid grounds appeal as they may think fit by themselves or by their representatives.”*

2. The fact in brief is that return of income declaring income at Rs.nil was filed on 08.10.2017. The case was subject to scrutiny assessment and notice u/s 143(2) of the Act was issued on 10.08.2018. The assessee was cooperative society and during the year under consideration had declared income under the head income from business or profession. The assessee society was engaged in the business of accepting deposits from its members and advancing loan to its members. During the course of assessment the A.O noticed that assessee received income by way of interest of Rs.25,07,685/- from investment in cooperative bank and claimed deduction u/s 80P(2)(a)(i) of the Act. The A.O has disallowed the claim of deduction holding that interest income of Rs.25,75,611/- was derived from investment in the cooperative bank which was only a commercial cooperative bank and did not fall under the purview of a cooperative society.

3. Aggrieved, the assessee filed the appeal before the ld. CIT(A). The ld. CIT(A) has dismissed the appeal of the assessee. Reiterating the facts reported by the Assessing Officer.

4. Heard the ld. D.R. and perused the material on record. During the year under consideration the assessee received interest from investment in cooperative banks amounting to Rs.25,07,685/- and claimed

deduction u/s 80P(2)(a)(i) of the Act. The claim of deduction was denied stating that earning interest from bank was not an activity associated with the members of the society. During the course of appellate proceedings before us the ld .Counsel has referred the decision of the coordinate bench in the case of Lands End Cooperative Housing Society Ltd vs. ITO, ward 16(1)(3), ITA No. 3566/Mum/2014, dated 15.01.2016, wherein the ITAT has allowed deduction u/s 80P in respect of interest earned from cooperative banks. We have also gone through the decision of the ITAT Mumbai in the case of ITO Vs. M/s Shri Kulswami Co-op Credit Society Ltd. vide ITA No. 984 & 986/Mum/2022 dated 25.07.2022. The relevant operating para is reproduced as under:

“5. We heard the Ld. DR and perused the material on record. Prima-facie the sole grievance of the revenue is that the CIT(A) has erred in directing the AO to allow the deduction u/s 80(P)(2)(a)(i) of the Act. Without appreciating the facts that the assessee is not a primary cooperative bank. We find the assessee is a co-operative society and is engaged in providing credit facilities to its members which is not disputed. At this juncture we consider it appropriate to refer to the observations of the CIT(A) at page 12 Para 4 to 4.5 of the order allowing the claim of deduction u/sec 80P(2)(a)(i) of the Act , which is read as under:

4. DECISION: The 1st Ground of appeal relates to denial of deduction u/s 80P of the Act by A.O. as the AO observed that the appellant is a Co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank and therefore provisions of Sec. 80P(4) are applicable in the case of the appellant. On the other hand, the appellant contended that the provisions of Sec. 80P(4) are not applicable in the case of the appellant as the appellant is not a co-operative bank and it is a co-operative society duly registered under the Maharashtra Co-operative Societies Act, 1960. I have carefully considered the impugned Assessment Order and the submissions made by the appellant. The appellant is an Co Operative Credit Society Ltd. had shown gross total income of Rs. 2,67,25,499/- and claimed deduction u/s 80P of Rs. 2,64,85,491/- and declared total income of Rs. 2,40,008/-. Case was taken-up for scrutiny assessment and order u/s.143(3) of the Act was passed on 21/12/2016 determining the total income of Rs. 2,67,25,499%.

4.1 The AO while denying the deduction to the Assessee u/s 80P(2) (a)(i) took the view that the Assessee is a primary co-operative bank and therefore provisions of Sec. 80P(4) are applicable in the case of the Assessee. He relied upon the decision of the Hon'ble Kerala High Court in the case of Muhammed Usman Vs Registrar of co-operative credit society on 29th November 2002 Equivalent citations: AIR 2003 Ker 299, 2003 116 Comp Cases 505 Ker wherein the Hon'ble Court has categorically distinguished primary co-operative bank and primary co-operative society. The A.O. further relied on the decision of Hon'ble Madras High Court in the case of SBI Staff Co-operative Society Ltd. vs. ITO (1998) 144 CTR (Mad) 240: (1998) 234 ITR 104 (Mad) to justify that Patsanstha (credit institution) is a co-operative society engaged in the business of banking and therefore, the investment in the said Patsanstha (Credit society) is covered by the provision of section 11 (5) (ili) of the Act.

4.2 The appellant submitted that the credit society is working as a self help group under the concept of mutuality. The primary object of the appellant is to encourage thrift, self-help and co-operation among others and thereby to up-lift the standard of living of the members. The appellant has also submitted that the activities of the society are confined to members only and a person other than member cannot have any transaction with the society. The assessee relied upon the decision of Hon'ble Bombay High Court in its own case for A.Y. 2007-08 and 2008-09 wherein the issue is decided in favour of the appellant. For the sake of clarity section 80P of the Act is reproduced as below:

[Deduction in respect of income of co-operative societies.

98 80P. (1) Where, in the case of an assessee being a co-operative society, the 99 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) in the case of a co-operative society engaged in-

i. carrying on the business of banking or providing credit facilities 99 or to its members 99, or

ii. a cottage industry¹, or

2 (iii) the marketing¹ of agricultural produce 1 grown by its members, or]

(iv) the purchase of agricultural implements, seeds, livestock or other articles intended for agriculture for the purpose of supplying them Ito its members, or

(v) the processing, without the aid of power, of the agricultural produce of its members, 3 or]

3vi the collective disposal of the labour^{3a} of its members, or

(vii) fishing or allied activities, that is to say, the catching, curing

processing, preserving, storing or marketing of fish or the purchase of materials and equipment in connection therewith for the purpose of supplying them to its members,] the whole of the amount of profits and gains of business attributable to any one or more of such activities.

5 Provided that in the case of a co-operative society falling under sub-clause (vi), or sub-clause (vii), the rules and bye-laws of the society restrict the voting rights to the following classes of its members, namely:-

the individuals⁴ who contribute their labour or, as the case may be, carry on the fishing or allied activities;

the co-operative credit societies⁴ which provide financial assistance to the society;

(3) the State Government;]

6((b) in the case of a co-operative society, being a primary society engaged in supplying milk, oilseeds, fruits or vegetables raised or grown by its members to-

1. federal co-operative society, being a society engaged in the business of supplying milk, oilseeds, fruits, or vegetables, as the case may be; or

ii. the Government or a local authority; or

iii. a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956), or a corporation established by or under a Central, State or Provincial Act (being a company or corporation engaged in supplying milk, oilseeds, fruits or vegetables, as the case may be, to the public),

the whole of the amount of profits and gains of such business;]

C. in the case of a co-operative society engaged in activities⁸ other than those specified in clause (a) or clause (b) (either independently of, or in addition to, all or any of the activities so specified), so much of its profits and gains attributable⁸ to such activities⁸ as {does not exceed,-

(I where such co-operative society is a consumers' co-operative society, 10/one hundred] thousand rupees; and

II. in any other case, 11 fifty] thousand rupees.

Explanation.- In this clause, "consumers' co-operative society" means a society for the benefit of the consumers;]

(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;

(e) in respect of any income derived by the co-operative society from the letting of godowns or warehouses for storage, processing or facilitating the marketing of commodities, the whole of such income:

(f) in the case of a co-operative society, not being a housing society or an urban consumers' society or a society carrying on transport business or a society engaged in the performance of any manufacturing operations with aid of power, where the gross total income does not exceed twenty thousand rupees, the amount of any income by way of interest on securities or any income from house property chargeable under section 22.

Explanation.-For the purposes of this section, an "urban consumers' co-operative society" means a society for the benefit of the consumers within the limits of a municipal corporation, municipality, municipal committee, notified area committee, town area or cantonment.

(3) In a case where the assessee is entitled also to the deduction under section 80HH] 16/or section 80HHAy 17for section 80HHBy 18/or section 80HHC] 19 for section 80HHD] 20 (or section 80-1] 21 for section 80-IA] or section 2280J23 p 24p*), the deduction under sub-section (1) of this section, in relation to the sums specified in clause (a) or clause (b) or clause (c) of sub-section (2), shall be allowed with reference to the income, if any, as referred to in those clauses included in the gross total income as reduced by the deductions under 25p.* 26/section 80HH,) 27| section 80HHA,) 28/section 80HHB,) 29/section 80HHC,) 30/section 80HHD,) 31 | section 80-l,) 32/section 80-IA,) 33 p34 section 80J35 and section 80JJI.]

36[(4) 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 co-operative agricultural and rural development bank.

Explanation.-For the purposes of this sub-section,-

a. "co-operative bank" and "primary agricultural credit society" shall have the meanings respectively assigned to them in Part V of the Banking Regulation Act, 1949 (10 of 1949);

(b) "primary co-operative agricultural and rural development bank" means a society having its area of operation confined to a taluk and the principal object of which is to provide for long-term credit for agricultural and rural development activities.]

4.3 If both the sections, Sec. 80P(2) (a)(i) and Sec. 80P(4) are read together, it is found that the provisions of Sec. 80P(4) mandates that the provisions of Sec. 80P will not apply to any co-operative bank other than a

primary agricultural credit society primary co-operative agricultural and rural development bank but as per the provisions of Sec. 80P(2) (a)(i), a co-operative society engaged in carrying on the business of banking or providing credit facilities to its members is entitled for deduction. After the insertion of Sec. 80P(4), the provisions of Sec. 80P (2)(a)(i) were not amended, rather the co-operative society engaged in carrying on business of banking facilities to its members continued to be entitled for deduction u/s 80P (2)(a) (i). This pre-supposes that every co-operative society engaged in carrying on business of banking cannot be regarded to be a co-operative bank. The embargo put u/s 80P(4) are applicable only to a co-operative bank. In my opinion, it cannot be said that a co-operative society cannot carry on business of banking facilities to its members even if it is not a co-operative bank. If we read the provisions in the manner that every co-operative society engaged in carrying on business of banking even for its members is regarded to be a co-operative bank, then, the provisions of Sec. 80P(2) (a) (i) will become redundant. Therefore, in my opinion, before deciding the issue whether the appellant is entitled for deduction u/s 80P(2) (a)(i), it is essential to decide whether the appellant is a co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank. In case it is found that the appellant is a co-operative bank, the appellant will not be entitled for deduction as stipulated u/s 80P(2) (a)(i) but in case the appellant is not a co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank, the provisions of Sec. 80P(2) (a) (i) will be applicable to the appellant provided the appellant is engaged in carrying on business of banking or providing credit facilities to its members. This section nowhere states co-operative credit society except mentioned under proviso 2 to section 80P which is relevant for sub-clause 6 or 7. It has nothing to do with section 80P(2) (a)(i).

4.4 In my opinion, Sec. 80P(2) (a)(i) provides two types of activities in which the co-operative society must be engaged to be eligible for deduction under sub-clause

(i). These two activities are not alternate ones because the section allows deduction to the co-operative society on the whole of profits and gains of business attributable to any one or more of such activities. This pre-supposes that eligible co-operative society can carry on either one of these two businesses or can carry both these businesses for the members. If the Assessee co-operative society carries on one or both of the activities, it will be eligible for deduction. These two activities are (a) co-operative society engaged in carrying on business of banking facilities to its members or (b) co-operative society engaged in providing credit facilities to its members. Both the activities can be carried on by the co-operative society for its members. If a co-operative society is engaged in carrying on these activities/facilities for the persons other than its members, the co-operative society, in my opinion, will not be eligible for deduction u/s 80P(2) (a)(i) on the income which it derives from carrying on the activities not relating to its members. Therefore, where a co-operative society is engaged in carrying on business of banking facilities to its members and to the public or

providing credit facilities to its members or to the public, the income which relates to the business of banking facilities to its members or providing credit facilities to its members will only be eligible for deduction u/s 80P (2)(a)(i). There is no prohibition u/s 80P not to allow deduction to such co-operative societies in respect of business relating to its members.

4.5 *There is no dispute that the appellant is a co-operative society as the same is registered under the Co-operative Societies Act. The appellant is claiming deduction of income earned on providing credit facilities to its members as provided under Section 80P(2) (a)(i) of the Act. It is noted that under bye-laws of the society, the activities of the society are confined to its members only and a person other than members cannot have any transactions with the society. In my opinion, the deduction is available to the co-operative credit societies, those providing credit facilities to its members. Thus, the appellant is entitled to the benefit of deduction available under Section 80P (2)(a)(i) in respect of income earned from providing credit facilities to its members of the Act. The Ground No. 1 of appeal is allowed.*

6. *We find that the CIT(A) has dealt on facts, provisions of section 80P of the Act and relied on the decisions of the Hon'ble High Courts and Coordinate Bench of the Honble Tribunal and is of the opinion that the co-operative credit societies earning income in providing credit facilities to its members shall continues to be a co-operative society registered under the Co-operative Societies Act and directed the Assessing officer to allow deduction u/sec80P(2)(a)(i) of the Act and has passed a reasoned order. The Ld. DR could not controvert the findings of the CIT(A) with any new cogent material or information to take a different view. Accordingly, we do not find any infirmity in the order of the CIT(A) and upheld the same and dismiss the grounds of appeal of the revenue.”*

Following the decisions of the coordinate benches of ITAT, Mumbai as supra we direct the A.O to allow deduction u/s 80P(2)(a)(i) of the Act in respect of interest income earned by the assessee from investment made with the cooperative bank. Therefore, this ground of appeal of the assessee is allowed.

5. The other alternative ground u/s 80P(2)(d) and deduction u/s 80P(2)(c) were not discussed during the course of appellate proceedings by the ld. Counsel, therefore, ground no. 2 & 3 stand dismissed.

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

Order pronounced in the open court on 24.08.2022

Sd/-

(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Sd/-

(AMARJIT SINGH)
ACCOUNTANT MEMBER

Mumbai, Dated 24.08.2022

PS: Rohit

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त(अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR,
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/BY
ORDER,
सत्यापित प्रति //True Copy//

(Asst. Registrar)
ITAT, Mumbai