

IN THE INCOME TAX APPELLATE TRIBUNAL  
“C” BENCH, MUMBAI  
BEFORE SHRI BASKARAN BR, ACCOUNTANT MEMBER &  
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No. 1351/Mum/2022  
(A.Y: 2018-19)

ITO – 17(2)(1), 1 <sup>st</sup> Floor, Room No. 115, Kautilya Bhavan G Block, Bandra Kurla Complex, Bandra (E), Mumbai -400051.	Vs.	IDBI Staff Co-op Credit Society Ltd., 1 <sup>st</sup> Floor, IDBI Tower, Cuffe Parade, Colaba, Mumbai- 400005.
PAN/GIR No. : AAAAI0083Q		
Appellant	..	Respondent

Appellant by :	Mr.Ujjawal Kumar.DR
Respondent by :	Mr. Mandar Vaidya .AR

Date of Hearing	23.08.2022
Date of Pronouncement	29.08.2022

आदेश / O R D E R

**PER PAVAN KUMAR GADALE JM:**

The revenue has filed the appeal against the order of the CIT(A)-National Faceless Appeal Centre (NFAC), Delhi passed u/s 143(3) and 250 of the Act. The revenue has raised the following grounds of appeal:

1. "Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) was correct in allowing

*deduction u/s.80P(2)(d) of the Income Tax Act in respect of interest earned from deposits though Hon'ble Karnataka High Court in a detailed judgment discussing the law and various related issues in the case of PCIT VS Totagar's Cooperative Sales Society(392 ITR 74) has specifically decided the Question of Law about the allowability of interest earned from deposits with Cooperative Bank u/s. 80P(2)(d) of the Income Tax Act in favour of the Revenue."*

*2. "Whether on the facts and circumstances of the case and in law the reliance placed by the Ld.CIT(A) on the decision of Hon'ble Karnataka High Court in the case of PCIT Vs Totagar's Cooperative Sales Society(392 ITR 74) is misplaced in view of the fact that the Hon'ble Karnataka High Court has decided the issue of taxability of interest on deposits with Cooperative Bank u/s. 80P(2)(d) of the Income Tax Act in favour of the Revenue."*

*3. The appellant craves leave to amend or alter or add a new ground which may be necessary.*

2. The brief facts of the case are that the assessee is a credit cooperative society and is engaged in the business of providing credit facilities to its members. The assessee has filed the return of income for the A.Y 2018-19 disclosing a total income of Rs. Nil after claiming deduction of Rs.4,78,74,030/- u/s 80P(2)(d) of the Act. Subsequently the case was selected for complete scrutiny under E-assessment scheme 2019 to verify (i)Investments, Advances and loans(ii)

Expenses incurred for earning exempt income(iii) Deduction from total under Chapter VI-A. The Assessing Officer (A.O) has issued notice u/s 143(2) and 142(1) of the Act, in compliance to notice the assessee has filed the submissions online from time to time. The AO found that the assessee in the previous year has earned the income of Rs. 9,39,84,363/- from the investments with various co-operative banks / commercial banks and financial institutions and claimed interest income deduction u/s 80P(2) of the Act. The Assessing Officer(A.O) has dealt on the facts in the assessment order and relied on the judicial decisions and find that the assessee has received the interest income from cooperative banks and claimed deduction u/s 80(P)(2)(d) of the Act, whereas the interest income earned from co-operative banks is not eligible for claim and denied the deduction u/s 80(P)(2)(d) of the Act of Rs.4,78,74,030 and also made disallowance u/s 14A r.w.r 8D of Rs. 7,55,652/- and assessed the total income of Rs.4,86,29,682/- and passed the order u/s 143(3) r.w.s 143(3A) & 143(3B) of the Act dated 17.03.2021.

3. Aggrieved by the order of the A.O, the assessee has filed an appeal with the CIT(A). Whereas the CIT(A) considered the grounds of appeal, findings of the scrutiny assessment, submissions of the assessee and relied on the judicial decisions in respect of claim of deduction u/s 80P(2)(a) & 80P(2)(d) of the Act and granted relief and allowed the appeal. The CIT(A) has made the observations at page 9 Para 4.11 to 4.14 of the order read as under:

*4.11 Considering the above facts and discussion, the exclusion provision u/s 80P(4) is not applicable in the case of the appellant. Hence, deduction u/s 80P(2)(a) (i) is allowable to the appellant.*

*4.12 Further, the AO in para 6.12 of the order, has mentioned that interest of dividend earned by the assessee cannot be exempted u/s 80P(2)(d). In this regard, it is pertinent to note that in the following decisions, including the decisions of the jurisdictional Mumbai Bench of the Hon'ble ITAT, it has been held that a Cooperative Bank is a Cooperative Credit Society and interest income earned by the Cooperative Society from the investments made with the Cooperative Banks is eligible for claim of deduction u/s 80P(2)(d)*

*1. Pr.CIT VS. Totagars Co-operative Sale Society (2017) 392 ITR 74 (Karn)*

*2. State Bank of India vs. CIT (2016) 389 ITR 578 (Guj)*

3. *Lady Ratan Tower Cooperative Housing Society Ltd. vs. ITO in ITA No. 1152/Mum/2018 in decision dated 09.08.2018.*

4. *Shree Mahadeshwar Sahakari Patpedhi Maryadit vs. ITO in ITA No.374/Mum/2018 dated 06.03.2019.*

5. *Kaliandas Udyog Bhavan Premises Co-operative Society vs. ITO in ITA No. 6547/Mum/2017 dated 25.04.2018.*

6. *ITO vs. M/s Oberoi Spring Co-operative Housing Society in ITA no. 786/Mum/2019*

4.13 *In the case of Kaliandas Udyog Bhavan Premises Co-operative Society vs. ITO [2018] 94 taxmann.com 15 (Mumbai) [25-04-2018], the jurisdictional Mumbai Bench of the ITAT held that a co-operative bank continues to be a co-operative society registered under Co-operative Societies Act, 1912 or under any other law for time being in force in any State for registration of co-operative societies, and, therefore, interest income derived by a Society from its investments held with a co-operative bank, would be section 80P(2)(d). INCOME be for claim of deduction under*

4.14 *To sum up, the AO had disallowed the claim u/s 80P on the ground that the case of the appellant is covered under section 80P(4) and therefore, the appellant is not eligible for deduction u/s 80P(2)(a)(i) or u/s 80P(2)(d) of the Act. In view of the above discussion and following the decisions of Hon'ble Supreme Court, Hon'ble High Courts and jurisdictional Mumbai Bench of the ITAT, the case of the assessee does not fall under section 80P(4). In view of the above AO is directed to allow claim of deduction of Rs.4,78,74,030/- u/s 80P(2)(ai) and 80P(2)(d) of the Act. Accordingly, ground no. 1 to 3 of appeal are allowed.*

4. Aggrieved by the order of the CIT(A), the revenue has filed an appeal before the Hon'ble Tribunal.

5. At the time hearing, the Ld. DR submitted that the CIT(A) has erred in allowing the deducting u/s 80P(2)(d) of the Act irrespective of the fact that the AO has correctly pointed out that the interest received from the cooperative banks are on par with the nationalised/urban banks and cannot be treated as cooperative society. The Ld.DR emphasized that the total income including interest income received by the assessee is substantially more than the deduction claimed u/sec80P(2)(d) of the Act and relied on the order of the A.O. Contra, the Ld. AR has relied on the order of the CIT(A).

6. We heard the rival submissions and perused the material on record. The sole crux of the disputed issue in the revenue appeal that the CIT(A) has erred in granting relief to the assessee by allowing deduction u/s 80P(2)(d) of the Act. The contention of the Ld. DR that the assessee is not entitled for the deduction u/s 80P(2)(d) of the Act on the interest income received from the Co-operative banks as they are not on par with the cooperative society and the AO

has quantified the income and made disallowance. Whereas the Ld. AR submitted that the CIT(A) relied on the judicial decisions and has granted the relief. The Ld.DR mentioned that the assessee society has more interest income than what was disclosed in the return of income and claimed deduction.

7. We find in the Assessement order at page2 Para 3, the A.O. has observed that “the assessee has earned an income of Rs.9,39,84,363/-from investments with the various co-operative banks/commercial banks and other financial institutions”. When a query was raised to the Ld.AR to explain the reasoning of claim of deduction by the assessee of Rs.4,78,74,030/- and quantification in comparison with the table of sources of aggregate of income of Rs.9,39,84,363/- at Para 3 of the A.O. order. The Ld.AR submissions are not satisfactory on the facts and reasoning. Accordingly for limited purpose, we restore this issue to the file of the AO to verify and examine whether total interest component as disclosed in the assessment order are from the cooperative banks which are registered under the cooperatives societies Act or from other commercial banks. The benefit of

this deduction u/s 80P(2)(d) of the Act is applicable only to the cooperative banks as per the judicial decisions relied by the CIT(A) and not to the any nationalized banks. Further, the assessee should be provided adequate opportunity of hearing and shall cooperate in submitting the information and we allow the grounds of appeal for statistical purposes.

8. In the result, the appeal filed by the revenue is allowed for statistical purposes.

Order pronounced in the open court on 29.08.2022.

Sd/-  
(BASKARAN BR)  
**ACCOUNTANT MEMBER**  
Mumbai, Dated 29.08.2022  
KRK, PS

Sd/-  
(PAVAN KUMAR GADALE)  
**JUDICIAL MEMBER**

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)
4. Concerned CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

1.

आदेशानुसार/ BY ORDER,

( Asst. Registrar)  
ITAT, Mumbai

		Date	<u>Initial</u>	
1.	Draft dictated on	23.08.2022		PS
2.	Draft placed before author	26.08.2022		PS
3.	Draft proposed & placed before the second member			PS
4.	Draft discussed/approved by Second Member.			PS
5.	Approved Draft comes to the Sr.PS/PS			PS
6.	Kept for pronouncement on			
7.	File sent to the Bench Clerk			
8.	Date on which file goes to the AR			
9.	Date on which file goes to the Head Clerk.			
10.	Date of dispatch of Order.			
11.	Dictation Pad is enclosed			