

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

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER
AND
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER**

**ITA No.730/M/2022
Assessment Year: 2017-18
&
ITA No.729/M/2022
Assessment Year: 2018-19**

Shree Kulswami Co-op Credit Society Limited, F-3/1, A.P.M.C., Central Facility Building, Sector – 19, APMC Market, Turbhe, Navi Mumbai – 400 705 PAN: AAAAS2059L	Vs.	Income Tax Officer, Ward-28(3)(2), Vashi Railway Station Complex, Tower No.6, Vashi, Navi Mumbai – 400 703
(Appellant)		(Respondent)

Present for:

Assessee by : None
Revenue by : Shri Soumendu Kumar Dash, D.R.

Date of Hearing : 14 . 09 . 2022
Date of Pronouncement : 29 . 09 . 2022

O R D E R

Per : Kuldip Singh, Judicial Member:

For the sake of brevity aforesaid interconnected appeals bearing common question of law and facts are being taken up for disposal by way of composite order.

2. The appellant, Shree Kulswami Co-op Credit Society Limited (hereinafter referred to as 'the assessee') by filing the present appeals, sought to set aside the impugned orders even dated 10.03.2022 passed by the National Faceless Appeal Centre(NFAC) [Commissioner of Income Tax (Appeals)] hereinafter referred to as the CIT(A)] qua the assessment year 2017-18 & 2018-19 on the grounds inter alia that :-

“1. On the facts and in the circumstances of the case and in law the Ld. CIT(A) erred by observing that the interest income received by the Assessee Society from its mandatory investment is "Income from Other Sources" and thereby disallowing the said interest income u/s. 80P(2)(d) of the Income Tax Act, 1961.

2. On the facts and in the circumstances of the case and in law the CIT(A) has erred in observing that the investment in securities is not primary object of the Society and assessee has made investments out of surplus funds with intention of earning interest income while disallowing the claim of deduction.

3. On the facts and in the circumstances of the case and in law the CIT(A) has erred in relying on the Hon'ble Apex Court decision in the case of "Totgar's Co-operative Sale Society Ltd. v/s. ITO (20110)322 ITR 283 (SC).

4. The appellant craves leave to add, amend, alter, modify, substitute, vary, delete, and rescind all or any of the above ground(s) of appeal before or at the time hearing.”

3. Briefly stated facts necessary for adjudication of the controversy at hand are : assessee is a co-operative society listed under Maharashtra Co-operative Act, 1960 with object of providing credit facility to the members. During scrutiny proceedings for A.Y. 2017-18 and 2018-19 Assessing Officer (AO) made disallowance of Rs.6,24,46,489/- and Rs.3,54,46,623/- for A.Y. 2017-18 and 2018-19 respectively claimed by the assessee under section 80P of the Income Tax Act, 1961 (for short 'the Act') on the ground that the assessee fulfils the condition laid down under

section 56C (CCV) of part 5 of Banking Regulation Act, 1949 for being a co-operative bank and thereby framed the assessment under section 143(3) of the Act.

4. Assessee carried the matter before the Ld. CIT(A) by way of filing appeal who has partly allowed the same. Feeling aggrieved with the impugned order passed by the Ld. CIT(A) the assessee has come up before the Tribunal by way of filing present appeals.

5. This appeal was presented on 21.04.2022 and thereafter two notices issued through registered post with acknowledgement due (RPAD) which have not been received back served or unserved. Since period of more than one month has already elapsed the notices sent to the assessee are presumed to be served, but the assessee has not preferred to put in appearance to prosecute this appeal. Consequently, the Bench has decided to dispose of the appeal on the basis of documents available on record with the assistance of the Ld. D.R. for the Revenue.

6. We have heard the Ld. Departmental Representative for the Revenue, perused the orders passed by the Ld. Lower Revenue Authorities and documents available on record in the light of the facts and circumstances of the case and case law relied upon.

7. From the statement of facts, grounds raised by the assessee, order passed by Lower Revenue Authorities and argument addressed by the Ld. D.R. for the Revenue, the sole question arises for determination in this case is:

“As to whether assessee society is entitled for deduction under section 80P(2) of the Act qua the interest income received by it on mandatory investment in various co-operative banks as per statutory requirement.”

8. Undisputedly, assessee society is a co-operative society duly registered under the Maharashtra Co-operative Society Act, 1960, engaged in providing credit facilities to its members. It is also not in dispute that the assessee has earned interest income from its investment made with co-operative banks as per statutory requirements and claimed deduction thereof under section 80P of the Act.

9. The AO as well as the Ld. CIT(A) made a disallowance of the deduction claimed by the assessee under section 80P by relying upon the decision rendered by the Hon'ble Supreme Court in case of Totgar's Co-operative Sale Society Ltd. vs. ITO (2010) 322 ITO (2010) 322 ITR 283 (SC). However, this issue is no more res-integra as the Tribunal in case of Palm Court M Premises Co-operative Society Limited vs. PCIT in ITA No.561/M/2021 order dated 09.09.2022 has thrashed this issue in the light of the decision rendered by Hon'ble Supreme Court in case of Totgar's Co-operative Sale Society Ltd. (supra) in favour of the assessee by returning following findings:

“8. We have given a thoughtful consideration to the contentions advanced by the ld. Authorized representatives for both the parties in context of the aforesaid issue under consideration. As stated by the ld. A.R, and rightly so, the issue that interest received by a co-operative society on its deposits with co-operative banks would be eligible for deduction u/s 80P(2)(d) of the Act is covered in assessee's favour by orders of the various coordinate benches of the Tribunal in the following cases :

- (i). M/s Solitaire CHS Ltd. Vs. Pr.CIT-26, Mumbai, ITA No. 3155/Mum/2019, dated 29.11.2019***
- (ii). Land and Cooperative Housing Society Ltd. Vs. ITO (2017) 46 CCH 52 (Mum.)***
- (iii). M/s C. Green Cooperative Housing and Society Ltd. Vs. ITO-21(3)(2), Mumbai (ITA No. 1343/Mum/2017, dated 31.03.2017.***

(iv). Marvwanjee Cama Park Cooperative Housing Society Ltd. Vs. ITO-Range 20(2)(2), Mumbai (ITA NO. 6139/Mum/2014, dated 27.09.2017.

(v). Kaliandas Udyog Bhavan Pemises Co-op. Society Ltd. Vs. ITO, 21(2)(1), Mumbai.

In the aforesaid orders, it has been held by the Tribunal that though the cooperative banks pursuant to the insertion of sub-section (4) to Sec. 80P of the Act would no more be entitled for claim of deduction u/s 80P of the Act, but as a co-operative bank continues to be a co-operative society registered under the Co-operative Societies Act, 1912 (2 of 1912) or under any other law for the time being in force in any State for the registration of co-operative societies, therefore, the interest income derived by a cooperative society from its investments held with a co-operative bank would be entitled for claim of deduction u/s 80P(2)(d) of the Act. We find that the aforesaid issue had exhaustively been looked into by the ITAT, „G“ bench, Mumbai in the case of M/s Solitaire CHS Ltd, Vs. Pr.CIT-26, Mumbai ITA No.3155/Mum/2019, dated 29.11.2019, wherein the Tribunal had observed as under :

“6. We have heard the authorised representatives for both the parties, perused the orders of the lower authorities and the material available on record, as well as the judicial pronouncements relied upon by them. Our indulgence in the present appeal has been sought, for adjudicating, as to whether the claim of the assessee for deduction under section 80P(2)(d) in respect of interest income earned from the investments/deposits made with the co-operative banks is in order, or not. In our considered view, the issue involved in the present appeal revolves around the adjudication of the scope and gamut of sub-section (4) of Sec. 80P as had been made available on the statute, vide the Finance Act 2006, with effect from 01.04.2007. On a perusal of the order passed by the Pr. CIT under Sec. 263 of the Act, we find, that he was of the view that pursuant to insertion of sub-section (4) of Sec. 80P, the assessee would no more be entitled for claim of deduction under Sec. 80P(2)(d) in respect of the interest income that was earned on the amounts which were parked as investments/deposits with co-operative banks, other than a Primary Agricultural Credit Society or a Primary Co-operative Agricultural and Rural Development Bank. Observing, that the co-operative banks from where the assessee was in receipt of interest income were not co-operative societies, the Pr. CIT was of the view that the interest income earned on such investments/deposits would not be eligible for deduction under Sec. 80P(2)(d) of the Act.

7. After necessary deliberations, we are unable to persuade ourselves to be in agreement with the view taken by the Pr.

CIT. Before proceeding any further, we may herein reproduce the relevant extract of the aforesaid statutory provision, viz. Sec. 80P(2)(d), as the same would have a strong bearing on the adjudication of the issue before us. “80P(2)(d) (1). Where in the case of an assessee being a co-operative society, the 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 subsection (2), in computing the total income of the assessee. (2). The sums referred to in sub-section (1) shall be the following, namely :-

(a).....

(b).....

(c)..... (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;”

On a perusal of Sec. 80P(2)(d), it can safely be gathered that interest income derived by an assessee co-operative society from its investments held with any other co-operative society shall be deducted in computing its total income. We may herein observe, that what is relevant for claim of deduction under Sec. 80P(2)(d) is that the interest income should have been derived from the investments made by the assessee co-operative society with any other co-operative society. We are in agreement with the view taken by the Pr. CIT, that with the insertion of sub-section (4) of Sec. 80P, vide the Finance Act, 2006, with effect from 01.04.2007, the provisions of Sec. 80P would no more be applicable in relation to any co-operative bank, other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank. However, at the same time, we are unable to subscribe to his view that the aforesaid amendment would jeopardise the claim of deduction of a co-operative society under Sec. 80P(2)(d) in respect of its interest income on investments/deposits parked with a co-operative bank. In our considered view, as long as it is proved that the interest income is being derived by a co-operative society from its investments made with any other co-operative society, the claim of deduction under the aforesaid statutory provision, viz. Sec. 80P(2)(d) would be duly available. We find that the term „cooperative society“ had been defined under Sec. 2(19) of the Act, as under:-

“(19) “Co-operative society” means a cooperative society registered under the Cooperative Societies Act, 1912 (2 of 1912), or under any other law for the time being in force in any state for the registration of co-operative societies;”

We are of the considered view, that though the co-operative banks pursuant to the insertion of subsection (4) to Sec. 80P would no more be entitled for claim of deduction under Sec. 80P of the Act, but as a co-operative bank continues to be a co-operative society registered under the Co-operative Societies Act, 1912 (2 of 1912), or under any other law for the time being in force in any State for the registration of co-operative societies, therefore, the interest income derived by a co-operative society from its investments held with a co-operative bank would be entitled for claim of deduction under Sec.80P(2)(d) of the Act.

8. We shall now advert to the judicial pronouncements that have been relied upon by the ld. A.R. We find that the issue that a co-operative society would be entitled for claim of deduction under Sec. 80P(2)(d) on the interest income derived from its investments held with a co-operative bank is covered in favour of the assessee in the following cases:

(i) Land and Cooperative Housing Society Ltd. Vs. ITO (2017) 46 CCH 52 (Mum)

(ii) M/s C. Green Cooperative Housing and Society Ltd. Vs. ITO-21(3)(2), Mumbai (ITA No. 1343/Mum/2017, dated 31.03.2017)

(iii) Marvwanjee Cama Park Cooperative Housing Society Ltd. Vs. ITO-Range-20(2)(2), Mumbai (ITA No. 6139/Mum/2014, dated 27.09.2017.

(iv). Kaliandas Udyog Bhavan Pemises Co-op. Society Ltd. Vs. ITO, 21(2)(1), Mumbai.

We further find that the Hon'ble High Court of Karnataka in the case of Pr. Commissioner of Income Tax and Anr. Vs. Totagars Cooperative Sale Society (2017) 392 ITR 74 (Karn) and Hon'ble High Court of Gujarat in the case of State Bank Of India Vs. CIT (2016) 389 ITR 578 (Guj), had held, that the interest income earned by the assessee on its investments with a co-operative bank would be eligible for claim of deduction under Sec. 80P(2)(d) of the Act. Still further, we find that the CBDT Circular No. 14, dated 28.12.2006, also makes it clear beyond any scope of doubt that the purpose behind enactment of sub-section (4) of Sec. 80P was that the co-operative banks which were functioning at par with other banks would no more be entitled for claim of deduction under Sec. 80P(4) of the Act. Insofar the reliance placed by the Pr. CIT on the judgment of the Hon'ble Supreme Court in the case of Totgars Co-operative Sale Society Ltd. vs. ITO (2010) 322 ITR 283 (SC) is concerned, we are of the considered view that the same being distinguishable on facts had wrongly been relied

upon by him. The adjudication by the Hon'ble Apex Court in the aforesaid case was in context of Sec. 80P(2)(a)(i), and not on the entitlement of a co-operative society towards deduction under Sec. 80P(2)(d) on the interest income on the investments/deposits parked with a co-operative bank. Although, in all fairness, we may herein observe that the Hon'ble High Court of Karnataka in the case of Pr. CIT Vs. Totagars co-operative Sale Society (2017) 395 ITR 611 (Karn), had concluded that a co-operative society would not be entitled to claim of deduction under Sec. 80P(2)(d). At the same time, we find, that the Hon'ble High Court of Karnataka in the case of Pr. Commissioner of Income Tax and Anr. Vs. Totagars Cooperative Sale Society (2017) 392 ITR 74 (Karn) and Hon'ble High Court of Gujarat in the case of State Bank Of India Vs. CIT (2016) 389 ITR 578 (Guj), had observed, that the interest income earned by a co-operative society on its investments held with a cooperative bank would be eligible for claim of deduction under Sec.80P(2)(d) of the Act. We find that as held by the Hon'ble High Court of Bombay in the case of K. Subramanian and Anr. Vs. Siemens India Ltd. and Anr (1985) 156 ITR 11 (Bom), where there is a conflict between the decisions of non-jurisdictional High Court's, then a view which is in favour of the assessee is to be preferred as against that taken against him. Accordingly, taking support from the aforesaid judicial pronouncement of the Hon'ble High Court of jurisdiction, we respectfully follow the view taken by the Hon'ble High Court of Karnataka in the case of Pr. Commissioner of Income Tax and Anr. Vs. Totagars Cooperative Sale Society (2017) 392 ITR 74 (Karn) and Hon'ble High Court of Gujarat in the case of State Bank Of India Vs. CIT (2016) 389 ITR 578 (Guj), wherein it was observed that the interest income earned by a cooperative society on its investments held with a cooperative bank would be eligible for claim of deduction under Sec.80P(2)(d) of the Act. 9. Be that as it may, in our considered view, as the A.O while framing the assessment had taken a possible view, and therein concluded that the assessee would be entitled for claim of deduction under Sec. 80P(2)(d) on the interest income earned on its investments/deposits with cooperative banks, therefore, the Pr. CIT was in error in exercising his revisional jurisdiction u/s 263 for dislodging the same. In fact, as observed by us hereinabove, the aforesaid view taken by the A.O at the time of framing of the assessment was clearly supported by the order of the jurisdictional Tribunal in the case of Land and Cooperative Housing Society Ltd. Vs. ITO (2017) 46 CCH 52 (Mum). Accordingly, finding no justification on the part of the Pr. CIT, who in exercise of his powers under Sec. 263, had dislodged the view that was taken

by the A.O as regards the eligibility of the assessee towards claim of deduction under Sec. 80P(2)(d), we “set aside” his order and restore the order passed by the A.O under Sec. 143(3), date 14.09.2016.”

As the facts and the issue involved in the present case before us remains the same as were there before the Tribunal in the case of M/s Solitaire CHS Ltd. (supra), wherein the order passed by the Pr. CIT u/s 263 of the Act was quashed, we, thus, respectfully follow the same. Backed by our aforesaid deliberations, we are unable to uphold the view taken by the Pr. CIT that the failure on the part of the A.O to be disallow the assessee’s claim for deduction u/s 80P(2)(d) had rendered the assessment order passed by him u/s 143(3) of the Act, dated 31.08.2017 as erroneous in so far it was prejudicial to the interest of the revenue.

9. Accordingly, on the basis of our aforesaid observations, we herein not finding favor with the view taken by the Pr. CIT that the order passed by the A.O u/s 143(3), dated 31.08.2017 was erroneous in so far it was prejudicial to the interest of the revenue within the meaning of Sec. 263 of the Act set-aside the same and restore the order passed by the A.O u/s 143(3) of the Act, dated 31.08.2017.”

10. Wherein it is categorically held that the interest income earned by the cooperative society on its investment held with cooperative bank would be eligible for claim of deduction under section 80P(2)(d) of the Act. Hon’ble High Court of Gujarat in case of State Bank of India vs. CIT (2016) 389 ITR 578(Guj.) also decided this issue in favour of the assessee society “that the interest income earned by the cooperative society on its investment with cooperative bank would be eligible for claim of deduction under section 80P(2)(d) of the Act”.

11. So we are of the considered view that assessee being a cooperative society registered under the Maharashtra Cooperative Society Act, 1960 is entitled for deduction qua its interest income

derived from its investment with cooperative bank under section 80P(2)(d) of the Act. So the question framed is answered in affirmative in favour of the assessee.

12. In view of what has been discussed above, consequently the orders passed by the AO/Ld. CIT(A) disallowing the deduction claimed by the assessee society under section 80P(2)(d) of the Act are not sustainable in the eyes of law, hence set aside. AO is directed to allow the deduction claimed by the assessee under section 80P(2)(d) of the Act. Resultantly, aforesaid appeals filed by the assessee are allowed.

Order pronounced in the open court on 29.09.2022.

**Sd/-
(GAGAN GOYAL)
ACCOUNTANT MEMBER**

**Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

Mumbai, Dated: 29.09.2022.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.