

**IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, MUMBAI**

**BEFORE SHRI AMIT SHUKLA, HON'BLE JUDICIAL MEMBER AND
SHRI S. RIFAUR RAHMAN, HON'BLE ACCOUNTANT MEMBER**

ITA.NO. 2084/MUM/2022 (A.Y: 2010-11)

Shree Rangdas Swami Sahakari Patpedhi Maryadit Shop No.11, Assisi Nagar P. L. Lokhande Marg, Govandi Mumbai - 400043 PAN: AAFAS8154F	v.	ITO - 27(3)(1) 422, 4th Floor, Tower No.6, Vashi Railway Station Complex Vashi, Navi Mumbai-400703
(Appellant)		(Respondent)

Assessee by	:	None
Department by	:	Shri Manoj Sinha
Date of Hearing	:	28.09.2022
Date of Pronouncement	:	30.09.2022

ORDER

PER AMIT SHUKLA (JM)

1. This appeal is filed by the assessee against order of Learned Commissioner of Income-tax (Appeals), National Faceless Appeal Centre, Delhi [hereinafter for short "Ld. CIT(A)] dated 21.06.2022 for the A.Y.2010-11.

2. Assessee has raised following grounds in its appeal: -

"1. On the facts and in the circumstances of the case, and also in law, the Ld. CIT(A) erred in confirming the addition of Rs.8,93,840/- made by the Ld. A.O. by disallowing deduction u/s. 80P of the Act claimed by the appellant by holding the appellant as a co-operative bank even though it is a co-operative credit society. Your appellant, therefore, prays that the deduction u/s.80P be allowed."

3. In spite of issue of notice none appeared on behalf of the assessee nor any adjournment was sought. Thus, we proceed to dispose off this appeal with the assistance of Ld.DR.

4. Ld. DR brought to our notice the relevant facts on record and vehemently supported the orders of the authorities below.

5. Considered the submissions of Ld.DR and material placed on record. We observe that identical issue i.e. whether the assessee a cooperative society is entitled for deduction u/s. 80P(2)(d) of the Act on the interest income earned from other cooperative banks/societies has been decided by various Coordinate Benches in favour of the assessee. In the case of Kshatriy Gadkari Maratha Cooperative Credit Society Ltd., v. ITO in ITA.No. 3646 & 3647/MUM/2018 dated 26.04.2019 it has been held as under: -

"3. The Assessing Officer while completing the assessments u/s.143(3) of the Act denied the deduction u/s. 80P(2)(a)(i) of the Act for the assessee, holding that the assessee is engaged in the banking activities and therefore assessee is not a cooperative society but is a cooperative bank. He also observed that in view of the

provisions of Sec. 80P(4) of the Act since assessee is a cooperative bank assessee is not entitled for deduction u/s. 80P of the Act. However, Ld.CIT(A) considering the activities of the assessee and referring to various judicial pronouncements held that assessee cannot be treated as a cooperative bank. Ld.CIT(A) deleted the disallowance made by the Assessing Officer in respect of the income earned from the activities of providing credit facilities to its members. In other words, the Ld.CIT(A) allowed deduction u/s.80P(2)(a)(i) of the Act in respect of the income earned by the assessee in providing credit facilities to its members as cooperative society and not a cooperative bank. No appeal by the Revenue challenging this finding of the Ld.CIT(A). He quantified the deduction to be allowed at ₹.8,07,963/- and ₹.10,34,063/- for the A.Ys. 2013-14 and 2014-15 respectively. However, the Ld.CIT(A) held that the assessee is not entitled for deduction u/s.80P(2)(d) of ₹.15,38,417/- and ₹.17,72,197/- for A.Ys. 2013-14 and 2014-15 respectively on the interest income earned by the assessee from cooperative banks and in coming to such conclusion the Ld.CIT(A) referred to the decision of the Coordinate Bench and also the decision of the Hon'ble Apex court in the case of *The Totgar Cooperative Sales Society Limited v. ITO* [322 ITR 283]. He also relied on the Coordinate Bench decision in the case of *Vaibhav Cooperative Credit Society v. ITO* in ITA.No. 5819/Mum/2014 dated 17.03.2017.

4. Ld. DR vehemently supported the orders of the authorities below.

5. Heard rival submissions, perused the orders of the authorities below. The issue in the case of *The Totgar Cooperative Sales Society Limited v. ITO* (supra) is as to whether the interest on surplus funds is eligible for deduction u/s. 80P(2)(a)(i) of the Act or is it assessable to tax under the head other sources. It was not the question as to whether the assessee a cooperative society engaged in the business of providing credit facilities to its members is entitled for deduction u/s. 80P(2)(d) of the Act on the interest income from cooperative Banks or cooperative societies. The facts in the case before the Hon'ble Supreme Court were that assessee which was engaged in providing credit facilities to its members also marketing the agricultural produce of its members had surplus funds from the sale proceeds of the produce. Assessee earned interest income on deposits from such surplus funds which were parked in the banks and government securities as short term deposits. The Hon'ble Supreme Court held that the interest earned on such deposits not being attributable to the business of providing credit facilities to the members or marketing of agricultural produce of the members is assessable as "other income" and not as "business profits". Therefore, this decision has no application to the facts of the assessee case.

6. In the case before me, the issue is, whether the assessee is entitled for deduction u/s. 80P(2)(d) of the Act on the interest earned from investments in cooperative banks/cooperative societies.

7. Provisions of section 80P(2)(d) reads as under: -

"(d) in respect of any income by way of interest or dividends derived by the cooperative society from its investments with any other cooperative society, the whole of such income."

8. As could be seen from the above, the provisions of section 80P(2)(d) of the Act are very clear and assessee is entitled for deduction u/s.80P(2)(d) of the Act in respect of interest or dividends received from investments made with any other cooperative societies. The decision on which the Ld.CIT(A) placed reliance i.e. *The Totgar Cooperative Sales Society Limited v. ITO* (supra), is not on the issue of whether the assessee is entitled for exemption u/s. 80P(2)(d) of the Act vis-à-vis the interest income earned by the cooperative society from investments in other cooperative societies. Hence the decision of Hon'ble Supreme Court in the case of

The Totgar Cooperative Sales Society Limited v. ITO (supra) has no application to the facts of the assessee's case.

9. At this stage it is relevant to note that in the case of *Pr.CIT v. Totgar Cooperative Sales Society Limited* [392 ITR 74] the Hon'ble Karnataka High Court considered the meaning of the word "cooperative society" within the provisions of section 80P(2)(d) and held that cooperative society includes cooperative bank for the purpose of deduction u/s.80P(2)(d) of the Act. Therefore, it has been held that interest received by the cooperative society from the cooperative bank is eligible for deduction u/s. 80P(2)(d) of the Act. While holding so, the Hon'ble High Court also considered the decision of the Hon'ble Supreme Court in the case of the very same assessee reported in 322 ITR 283 as *The Totgar Cooperative Sales Society Limited v. ITO*. The Hon'ble High Court held as under: -

"5. The learned counsel for the Revenue has pleaded that two substantial questions of law are raised in the present appeal, namely,

1. Whether the learned Tribunal was justified in deleting the additions made by the Assessing Authority being the disallowed deduction claimed u/S 80P(2)(d) of the Income Tax Act and in the light of the decision of the Supreme Court with regard to the same exact assessee as the present one, namely, *The Totgars Co-operative Sale Society Ltd., Vs. Income Tax Officer in Civil Appeal Nos.1622 to 1629/2010* decided by the Apex Court on 08.02.2010 or not?

2. Whether, in the facts and circumstances of the case, the Tribunal is justified in not following the decision rendered by the Hon'ble Supreme Court in Civil Appeal No. 1622 of 2010, wherein the Apex Court has to be held that the words used in Section 80P "the whole of the amount of profits and gains of business" emphasise that the income in respect of which deduction is sought must constitute the operational income and not the other income which accrues to the society and as such interest earned on funds which are not required for business purposes falls under the category of "other income" taxable under the Income Tax Act?

6. According to the learned counsel, the present appeal should be admitted on these two substantial questions of law.

7. However, the contention being taken by the learned counsel is untenable. For the issue that was before the ITAT, was a limited one, namely whether for the purpose of Section 80P(2)(d) of the Act, a Cooperative Bank should be considered as a Co-operative Society or not? For, if a Co-operative Bank is considered to be a Co-operative Society, then any interest earned by the Co-operative Society from a Cooperative Bank would necessarily be deductible under Section 80P(1) of the Act.

8. The issue whether a Co-operative Bank is considered to be a Co-operative Society is no longer *res integra*. For the said issue has been decided by the ITAT itself in different cases. Moreover, the word "Cooperative Society" are the words of a large extent, and denotes a genus, whereas the word "Co-operative Bank" is a word of limited extent, which merely demarcates and identifies a particular species of the genus Cooperative Societies. Co-Operative Society can be of different nature, and can be involved in different activities; the Co-operative Society Bank is merely a variety of the Co-operative Societies. Thus the Cooperative Bank which is a species of the genus would necessarily be covered by the word "Co-operative Society".

9. Furthermore, even according to Section 56(i)(ccv) of the Banking Regulations Act, 1949, defines a primary Co-Operative Society bank as the

meaning of Cooperative Society. Therefore, a Co-operative Society Bank would be included in the words 'Co-operative Society'.

10. Admittedly, the interest which the assessee respondent had earned was from a Co-operative Society Bank. Therefore, according to Sec. 80P(2)(d) of the I.T. Act, the said amount of interest earned from a Cooperative Society Bank would be deductible from the gross income of the Co-operative Society in order to assess its total income. Therefore, the Assessing Officer was not justified in denying the said deduction to the assessee respondent.

11. The learned counsel has relied on the case of *The Totgars Co-operative Sale Society Ltd. Vs. Income Tax Officer*, (supra). However, the said case dealt with the interpretation, and the deduction, which would be applicable under Section 80P(2)(a)(i) of the I.T. Act. For, in the present case the interpretation that is required is of Section 80P(2)(d) of the I.T. Act and not Section 80P(2)(a)(i) of the I.T. Act. Therefore, the said judgment is inapplicable to the present case. Thus, neither of the two substantial questions of law canvassed by the learned counsel for the Revenue even arise in the present case."

10. Following the above said decision, similar view has been taken by the Coordinate Bench in the cases of *ITO v. Abhyalaxhmi Co-op Credit Society Ltd in ITA.No. 1525/Mum/2017 dated 31.07.2017* and *Kalindas Udyog Bhavan Premises Co-op Society Ltd., v. ITO in ITA.No. 6547/Mum/2017 dated 25.04.2018.*"

6. In the case of Kaliandas Udyog Bhavan Premises Co-op Hsg Society v. ITO in ITA.No. 6547/Mum/2017 dated 25.04.2018 the Coordinate Bench held as under: -

"7. We have deliberated at length on the issue under consideration and are unable to persuade ourselves to be in agreement with the view taken by the lower authorities. Before proceeding further, we may herein reproduce the relevant extract of the said 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 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).....

(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;"

Thus, from a perusal of the aforesaid Sec. 80P(2)(d) it can safely be gathered that income by way of interest income derived by an assessee cooperative society from its investments held with any other cooperative society, shall be deducted in computing the total income of the assessee. 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 cooperative society. We though are in agreement with the observations of the lower authorities 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, but however, are unable to subscribe to their view that the same shall also jeopardise the claim of deduction of a co-operative society under Sec. 80P(2)(d) in respect of the interest income on their investments parked with a co-operative bank. We have given a thoughtful consideration to the issue before us and are of the considered view that 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 may herein observe that the term „co-operative society“ had been defined under Sec. 2(19) of the Act, as under: -

“(19) “Co-operative society” means a cooperative 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 cooperative societies;”

We are of the considered view, that though the co-operative bank pursuant to the insertion of Sub-section (4) of Sec. 80P would no more be entitled for claim of deduction under Sec. 80P of the Act, but however, 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 enforced in any state for the registration of cooperative 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 had been relied upon by the authorized representatives for both the parties and the lower authorities. We find that the issue that a co-operative society would be entitled for claim of deduction under Sec. 80P(2)(d) for the interest income derived from its investments held with a cooperative 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. ITO21(3)(2), Mumbai (ITA No. 1343/Mum/2017, dated 31.03.2017
- (iii) Marwanjee Cama Park Cooperative Housing Society Ltd. Vs. ITO Range-20(2)(2), Mumbai (ITA No. 6139/Mum/2014, dated 27.09.2017.

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 also held that the interest income earned by the assessee on its investments held 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, as had been relied upon by the Id. A.R, also makes it clear beyond any scope of doubt, that the purpose behind enactment of sub-section (4) of Sec. 80P was to provide that the cooperative banks which are functioning at par with other banks would no more be entitled for claim of deduction under Sec. 80P(4) of the Act. We are of the considered view that the reliance placed by the CIT(A) on the judgment of the Hon'ble Supreme Court in the case of Totgars Cooperative Sale Society Ltd. vs. ITO (2010) 322 ITR 283(S.C) being distinguishable on facts, thus, 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 parked with a co-operative bank. We further find that the reliance place by the Id. D.R on the order of the ITAT "F" bench, Mumbai in the case of M/s Vaibhav Cooperative Credit Society Vs. ITO-15(3)(4) (ITA No. 5819/Mum/2014, dated 17.03.2017 is also distinguishable on facts. We find that the said order was passed by the Tribunal in context of adjudication of the entitlement of the assessee co-operative bank towards claim of deduction under Sec.80P(2)(a)(i) of the Act. We find that it was in the backdrop of the aforesaid facts that the Tribunal after carrying out a conjoint reading of Sec. 80P(2)(a)(i) r.w. Sec. 80P(4) had adjudicated the issue before them. We are afraid that the reliance placed by the Id. D.R on the aforesaid order of the Tribunal being distinguishable on facts, thus, would be of no assistance for adjudication of the issue before us. Still further, the reliance placed by the Ld. D.R on the order of the ITAT „SMC" Bench, Mumbai in the case of Shri Sai Datta Co-operative Credit Society Ltd. Vs. ITO (ITA No. 2379/Mum/2015, dated 15.01.2016, would also not be of any assistance, for the reason that in the said matter the Tribunal had set aside the issue to the file of the assessing officer for fresh examination. That as regards the reliance placed by the Id. D.R on the judgment of the Hon'ble High Court of Karnataka in the case of Pr. CIT Vs. Totagars co-operative Sale Society (2017) 395 ITR 611 (Karn), the High Court had concluded that a co-operative society would not be entitled to claim of deduction under Sec. 80P(2)(d). We however 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. Thus, 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 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."

7. Facts being identical, respectfully following the above said decisions, we hold that the assessee a cooperative society is eligible for deduction

u/s.80P(2)(d) of the Act in respect of the interest income earned by the assessee from either any other cooperative society or from a cooperative bank. Grounds raised by the assessee are allowed.

8. In the result, appeal filed by the assessee is allowed.

Order pronounced in the open court on 30.09.2022

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER
Mumbai / Dated 30/09/2022
Giridhar, Sr.PS

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Copy of the Order forwarded to:

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

BY ORDER

(Asstt. Registrar)
ITAT, Mum