

आयकर अपीलीय अधिकरण  
मुंबई पीठ " एच "

श्री प्रमोद कुमार, उपाध्यक्ष एवं  
श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष

IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH " H", MUMBAI

BEFORE SHRI PRAMOD KUMAR, VICE-PRESIDENT &  
SHRI VIKAS AWASTHY, JUDICIAL MEMBER

आअसं. 1834/मुं/2022 (नि.व .2017-18)  
ITA NO.1834/MUM/2022(A.Y. 2017-18)

आअसं. 1835/मुं/2022 (नि.व .2018-19)  
ITA NO.1835/MUM/2022(A.Y. 2018-19)

The Juhu Vile Parle Development  
Co-operative Housing Association Ltd.  
Plot No.51, Jai Hind Recreation Club,  
N.S.Road, No.11, Vile Parle (W),  
Mumbai 400 056;  
PAN: AABFT-5293-P

..... अपीलार्थी /Appellant

बनाम Vs.

Assistant Commissioner of Income-tax,  
Circle-25(3),  
Kautlya, BKC,  
Bandra (E), Mumbai – 400 051.

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : Shri Rajesh Shah

प्रतिवादी द्वारा/Respondent by : Shri Tejinder Pal Singh

सुनवाई की तिथि/ Date of hearing : 10/08/2022

घोषणा की तिथि/ Date of pronouncement : 29/09/2022

आदेश/ ORDER

PER VIKAS AWASTHY, JM:

These two appeals by the assessee are directed against the order of Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [in short 'the CIT(A)'] dated 07/07/2022 for the assessment year 2017-18 and

order dated 29/06/2022 for the assessment year 2018-19 respectively. Since, identical issue has been raised in these appeals, these appeals are taken up together for adjudication and are decided by this common order.

2. Shri Rajesh Shah appearing on behalf of the assessee submitted that the solitary issue in these appeals is with respect to disallowance of assessee's claim of deduction of interest income under section. 80P(2)(d) of the Income Tax Act, 1961 [in short 'the Act']. The Id. Authorized Representative of the assessee submitted that the assessee is a Co-operative Housing Society. The assessee had deposited certain amounts with Co-operative Banks on which the assessee had earned interest income. The assessee had earned interest of Rs.12,30,371/- in assessment year 2017-18 and interest of Rs.17,49,106/- during the assessment year 2018-19. The assessee claimed interest income from Co-operative Banks as deduction under section.80P(2)(d) of the Act. The Assessing Officer held that in the light of sub-section (4) of section 80P inserted by the Finance Act, 2006 w.e.f. 01/04/2007, the assessee is not eligible to claim deduction under section. 80P(2) of the Act and made addition of the entire interest income from Co-operative Banks. Aggrieved by the assessment order the assessee filed appeal before the CIT(A). The assessee cited various judgments including decision of Hon'ble Apex Court in the case of Mavilayi Service Co-operative Bank Ltd. vs. CIT in Civil Appeal No.7343-7350 of 2019 decided on 12/01/2021 to contend that the assessee is eligible for deduction under section. 80P(2)(d) of the Act on interest income earned from investments with Co-operative bank. The CIT(A) rejected the contentions of assessee and dismissed the appeal.

3. Similar are the facts and reasons for disallowance of assessee's claim of deduction under section 80P(2)(d) by the Assessing Officer and CIT(A) in assessment year 2018-19. The Id. Authorized Representative of the assessee submitted that there are several decisions of the Tribunal, wherein deduction under section 80P(2)(d) of the Act have been allowed to the Co-operative Societies on interest income from Co-operative Banks.

4. Per contra, Shri Tejinder Pal Singh representing the Department vehemently defended the impugned orders for the respective assessment years. The Id. Departmental Representative placed reliance on the decision of Hon'ble Supreme Court of India in the case of Totagars, Co-operative Sale Society Ltd. vs. ITO reported as 322 ITR 283 and also the decision of Hon'ble Karnataka High Court in the case of PCIT vs. Totagars, Co-operative Sale Society, 83 taxmann.com 140.

5. We have heard the submissions made by rival sides. The solitary issue in both these appeals is denial of deduction under section. 80P(2)(d) of the Act to the assessee citing the provisions of section 80P(4) of the Act. A bare perusal of the provisions of section 80P(4) would show that it has carved out exception for application of provisions under section 80P in relation to any Co-operative Bank other than a primary Agricultural Credit Society or a primary Co-operative Agricultural and Rural Development Bank. The provisions of sub-section(4) does not take out Co-operative Societies other than the Co-operative Banks from the preview of Section 80P, if they have earned interest income from Co-operative Banks. In other words, Co-operative Societies other than Co-operative Banks shall continue to enjoy the benefits of deduction as allowed under the provisions of section 80P. Undisputedly, the assessee has earned interest income from Co-operative Banks. The assessee has claimed deduction in respect of aforesaid interest income under the provisions of section 80P(2)(d) of the Act. If an interpretation of the Assessing Officer and the CIT(A) with regard to application of provisions of section 80P on

interest income from Co-operative Bank has to be accepted, then the provisions of section 80P(2)(d) would become otiose.

6. The issue whether interest income derived from deposits with cooperative banks is eligible for deduction under section 80P(2)(d) of the Act or not has been considered by Tribunal in several cases. The coordinate Bench of the Tribunal in the case of Kaliandas Udyog Bhavan Premises Co-op Society Ltd. Vs. ITO, 94 taxmann.com 15 (Mumbai) after considering various decisions by Hon'ble High Courts and the Tribunal and the provisions of the Act, has held that interest income derived by a co-operative society from investments with a co-operative bank, would be entitled for deduction under section 80P(2)(d) of the Act. The relevant extract of the order reads 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) to (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 co-operative 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 co-operative societies;'*

*We are of the considered view, that though the cooperative bank pursuant to the insertion of Subsection (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 cooperative 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 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."*

***[Emphasised by us]***

7. 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. 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.

8. However, on the same issue Hon'ble Karnataka High court in the case of PCIT vs. Totagars, Co-operative Sale Society 395, 83 taxmann.com 140/ 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).

9. 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 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 of interest derived from investments with the cooperative banks is allowed.

10. In the light of our above observations and the decisions discussed above, we hold that the assessee is eligible to claim deduction under section. 80P(2)(d) with respect to the interest income from deposits with Co-operative Banks.

11. In the result, both appeals by assessee are allowed.

Order pronounced in the open court on Thursday the 29<sup>th</sup> day of September, 2022.

Sd/-

(PRAMOD KUMAR)

उपाध्यक्ष/VICE PRESIDENT

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई/ Mumbai, दिनांक/Dated 29/09/2022

Vm, Sr. PS(O/S)

**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.

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar)/  
Sr.Private Secretary  
ITAT, Mumbai