

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

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.1819/M/2022  
Assessment Year: 2017-18**

M/s. Datta Digambhar Co-operative Credit Society Ltd., Shop No.21, Hilton Arcade Evershine C, Vasai (East), Thane- 401 205 <b>PAN: AAAAD4835H</b>	Vs.	Income Tax Department, National Faceless Appeal Centre (NFAC), Delhi
(Appellant)		(Respondent)

**Present for:**

Assessee by : Shri Kartik Golekar, A.R.  
Revenue by : Shri Anul Gupta, D.R.

Date of Hearing : 29 . 09 . 2022  
Date of Pronouncement : 31 . 10 . 2022

**O R D E R**

**Per : Kuldip Singh, Judicial Member:**

The appellant, M/s. Datta Digambhar Co-operative Credit Society Ltd. (hereinafter referred to as ‘the assessee’) by filing the present appeal, sought to set aside the impugned order dated 17.05.2022 passed by the National Faceless Appeal Centre(NFAC) [Commissioner of Income Tax (Appeals), Delhi] (hereinafter referred to as CIT(A)] qua the assessment year 2017-18 on the grounds inter alia that :-

*“The Honourable Commissioner of Income Tax (Appeals), NFAC has erred in fact that the Bye Laws of the Appellant do not permit*

*admission of any other cooperative society as a member. Thus resulting, the Honourable Commissioner of Income Tax (Appeals), has erred in considering the status of the Appellant as that of a Cooperative Bank instead of the correct status that of a Cooperative Credit Society.*

*2. The Honourable Commissioner of Income Tax (Appeals), erred in not allowing deduction under section 80P(2)(a)(i) of the Income Tax Act, 1961, for the income amounting to Rs.13,85,532/-. It is to be considered that the total income of the Appellant is eligible and falls for deduction u/s 80P(2)(a)(i) only and no income is to be considered u/s 80P(2)(d). Income from Other Sources is Rs.5,02,541/- which is agreed by the Appellant”*

2. Briefly stated facts necessary for adjudication of the controversy at hand are: assessee is a cooperative credit society into the business of accepting the deposits from its members and advances the same to the members. Assessee filed the return of income for the year under consideration at Nil after claiming deduction to the tune of Rs.13,85,532/- under section 80P of the Income Tax Act, 1961 (for short ‘the Act’). Assessing Officer (AO) declined the deduction under section 80P of the Act. AO also disallowed the amount of Rs.5,02,541/- on account of commission received from Tata Insurance on the ground that the condition of mutuality is not satisfied by the assessee and thereby framed the assessment at Rs.18,88,070/- under section 143(3) of the Act.

3. Assessee carried the matter before the Ld. CIT(A) by way of filing appeal who has partly allowed the appeal. Feeling aggrieved assessee has come up before the Tribunal by way of filing present appeal.

4. I have heard the Ld. Authorised Representatives of the parties to the appeal, 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 law applicable thereto.

5. So far as question of disallowing the deduction claimed by the assessee society under section 80P(2)(a)(i) of the Act by relying upon the decision rendered by the Hon'ble Supreme Court in case of Totgars Co-operative Sale Society Ltd. vs. ITO (2010) 322 ITR 283 (SC) is concerned, now this issue is no longer res-integra having been already decided by the co-ordinate Bench of the Tribunal in the light of the decision rendered by the Hon'ble Supreme Court in case of Totgars Co-operative Sale Society Ltd. (supra).

6. Undisputedly assessee society has invested its surplus fund with co-operative banks and earned the interest income at Rs.13,85,532/-. It is also not in dispute that the assessee society has also earned commission income of Rs.5,02,541/- received from MSEB and Tata Insurance.

7. The co-ordinate Bench of the Tribunal in case of Palm Court M Premises Co-operative Society Ltd. in ITA No.561/M/2021 order dated 09.09.2022 decided the issue in favour of the assessee by distinguishing the judgment rendered by Hon'ble Supreme Court in case of Totgar's Co-operative Sale Society Ltd. (supra) and by discussing the decision rendered by Hon'ble Bombay High Court and Hon'ble Gujarat High Court wherein it is held that interest income earned by the Co-operative Society on its investment made with co-operative bank would be eligible for claim of deduction under section 80P(2)(d) of the Act 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.”*

8. Hon’ble High Court of Karnataka in case of Pr. CIT & Anr. Vs. Totgar’s Co-operative Sale Society Ltd. (2017) 292 ITR 74 (Kar.) and Hon’ble Gujarat High Court in case of State Bank of India vs. CIT (2016) 389 ITR 578 (Guj.) had held that interest income earned by a co-operative society on its investment held with

co-operative bank would be eligible for claim of deduction under section 80P(2)(d) of the Act.

9. So following the decision rendered by Hon'ble Karnataka High Court (supra) and Hon'ble Gujarat High Court (supra), we are of the considered view that assessee society who has earned an amount of Rs. Rs.13,85,532/- from its investment of surplus fund with co-operative banks is entitled for deduction under section 80P(2)(d) of the Act. Resultantly, the Ld. CIT(A) has erred in upholding the denial of deduction by the AO to the assessee under section 80P(2)(d) of the Act.

10. So far as question of treating the income of the assessee society of Rs.5,02,541/- by the AO from other sources is concerned, this ground has been wrongly raised by the assessee as Ld. CIT(A) has already allowed this amount as standard deductions towards corresponding expenses by returning following findings:

*“8. The next ground of the appeal is related to the addition of commission income received from MSEB and TATA Insurance amounting to Rs.5,02,541/-. The appellant in this regard has submitted in its reply that AO has erred in not considering any Standard Deduction towards corresponding expenses in respect of Income earned from Other Sources amounting to Rs.5,02,541/-.The appellant may be allowed expenses related to earning of this income after verification . This ground is also partly allowed.”*

11. So this issue requires no adjudication by the Tribunal.

12. In view of what has been discussed above, I am of the considered view that the Ld. CIT(A) has erred in upholding the denial of deduction by the assessee society claimed under section 80P(2)(d) of the Act, hence, AO is directed to allow the same.

13. Resultantly, appeal filed by the assessee is allowed for statistical purposes.

**Order pronounced in the open court on 31.10.2022.**

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

Mumbai, Dated: 31.10.2022.

\* 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.