

आयकर अपीलिय अधिकरण
मुंबई पीठ " एस एम सी "
श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH " SMC", MUMBAI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER
आअसं.2062/मुं/2021 (नि.व. 2018-19)
ITA NO.2062/MUM/2021(A.Y.2018-19)

Ashoka Palace Co-op. Hsg. Soc.Ltd.,
Malad East, Makrani Pada Road,
Mumbai 400 097.

PAN: AAAAA-9300-N

..... अपीलार्थी /Appellant

बनाम Vs.

Income Tax Officer –Ward-31(1)(1),
Kautilya Bhavan, Bandra (East)
Mumbai 400 051.

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : Shri Dharan Gandhi

प्रतिवादी द्वारा/Respondent by : Ms. Beena Santosh

सुनवाई की तिथि/ Date of hearing : 02/08/2022

घोषणा की तिथि/ Date of pronouncement : 31/10/2022

आदेश/ ORDER

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals), National Faceless Appeal Center, Delhi [in short 'the CIT(A)'] dated 06/10/2021 for the Assessment Year 2018-19.

2. Shri Dharan Gandhi appearing on behalf of the assessee submitted that the assessee is a Co-Operative Housing Society. The assessee filed its return of income for the impugned assessment year declaring income of Rs.130/- after claiming deduction of Rs.10,93,368/- u/s. 80P(2)(d) of the Income Tax Act, 1961 [in short 'the Act']. The return of income was process u/s. 143(1) of the

Act. The Assessing Officer disallowed assessee's claim of deduction u/s. 80P(2)(d). Thereafter, the assessee filed rectification petition u/s. 154 of the Act. The rectification petition of the assessee was dismissed by the Assessing Officer vide order dated 08/09/2020. Aggrieved by the said order, the assessee filed appeal before CIT(A) assailing denial of deduction u/s. 80P(2)(d) of the Act in proceedings u/s. 154 of the Act. The CIT(A) vide impugned order dismissed the appeal of assessee.

3. The Id.Counsel for the assessee submits that the assessee had made deposits with Co-operative Banks and has earned interest income on such deposits. The assessee claimed deduction u/s. 80P(2)(d) in respect of interest income earned from the Co-operative Banks. The assessee's claim of deduction u/s. 80P(2)(d) of the Act was disallowed by the Assessing Officer. The Id.Counsel for the assessee submits that there are several decisions in favour of the assessee, wherein the Tribunal has allowed deduction claimed u/s. 80P(2)(d) of the Act in respect of interest income.

4. Per contra, Ms. Beena Santosh representing the Department vehemently defended the impugned order and prayed for dismissing the appeal of the assessee.

5. Both sides heard, orders of authorities below examined. The solitary issue raised by the assessee in appeal is with respect to assessee's eligibility to claim deduction u/s. 80P(2)(d) of the Act on interest income from deposits with Co-operative banks. It is not in dispute that the assessee has earned interest income from deposits with Co-operative Bank. The authorities below have denied the benefit of section 80P(2)(d) of the Act to the assessee on the

premise that the interest income is not eligible for deduction u/s. 80P(2)(d) of the Act.

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 catena of decisions. The Co-ordinate Bench 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. The judgment rendered by Hon'ble Apex Court in the case of Totagars Co-operative Sale Society Ltd. Vs. ITO 188 Taxman 282 on which CIT(A) has placed reliance to dislodge the claim of assessee is also considered. The facts in the said decision are distinguishable, therefore, the ratio laid down in said

decision would not apply to the facts of present case. Therefore, following the decision of Hon'ble Karnataka High Court in the case of Totagars Co-operative Sale Society Ltd.(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.

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

10. In the result, appeal by the assessee is allowed.

Order pronounced in the open court on Monday the 31st day of October, 2022.

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई/ Mumbai, दिनांक/Dated 31/10/2022

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