

**IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH, MUMBAI
BEFORE SHRI M. BALAGANESH, AM AND MS. KAVITHA RAJAGOPAL, JM**

ITA No. 928/Mum/2022
(Assessment Year: 2017-18)

The Acropolis Co-op. Housing Society Ltd. B-31, Acropolis Little GIBS Road, Malbar Hill, Mumbai-400 006	Vs.	Dy. CIT, CPC Bengaluru, Karnataka
PAN/GIR No. AAATT 4718 N		
(Appellant)	:	(Respondent)

Appellant by	:	Shri Vishal Shah
Respondent by	:	Shri Manoj Kumar Singh

Date of Hearing	:	06.09.2022
Date of Pronouncement	:	01.12.2022

ORDER

Per Kavitha Rajagopal, J. M.:

This appeal has been filed by the assessee as against the order of the learned Commissioner of Income Tax (Appeals) ('Id.CIT(A) for short), National Faceless Appeal Centre ('NFAC' for short) passed u/s.250 of the Income Tax Act, 1961 ('the Act'), pertaining to the Assessment Year ('A.Y.' for short) 2017-18.

2. The solitary grounds of appeal is the disallowance of deduction u/s. 80P of the Act amounting to Rs.9,95,308/-, being the interest earned from investment with co-operative bank.

3. The brief facts are that the assessee is a co-operative housing society registered u/s.9(1) of the Maharashtra Co-operative Society's Act, 1960 and classified as Housing

Society Co-partnership Tenancy u/s. 12(1) of the said Act. The assessee society filed its return of income dated 29.10.2017. While processing the returns u/s. 143(1), addition amounting to Rs.34,78,032/- was made by the Assessing Officer (A.O. for short).

4. The assessee's application for rectification u/s. 154 was rejected and the assessee was in appeal before the Id. CIT(A), challenging the additions made. The Id. CIT(A) partly allowed the assessee's appeal, pertaining to addition toward 'Members Contribution' and confirmed the addition amounting to Rs.9,95,308/- being the interest income received by the assessee from the surplus amount deposited in the co-operative banks.

5. Aggrieved by this, the assessee was in appeal before us, challenging the said addition.

6. The Id. Authorized Representative (AR for short) contended that the assessee is eligible for deduction u/s. 80P(2)(d) on account of interest earned on deposit made with co-operative banks and which are not categorized as 'business income'. The Id. AR relied on the decision of the co-ordinate bench in the case of *Lands End Co-operative Housing Society vs. ITO* (in ITA No. 3566/Mum/2014 vide order dated 15.01.2016); *Kaliandas Udyog Bhavan Premises Co-op. Society Ltd. vs. ITO* [2018] 94 taxmann.com 15 (Mum-Trib) and *Surat Vankar Sahakari Sangh Ltd. vs. Asst. CIT* [2016] 72 taxmann.com 169 (Guj) for the proposition that the interest income earned by the assessee out of the deposit in a co-operative bank is akin to that of the interest earned out of funds deposited in the co-operative society.

7. The ld. AR distinguished the facts of the case in *Totagars' Co-operative Sale Society Ltd. Vs Income-tax Officer* [2010] 188 Taxman 282 (SC), which was relied upon by the ld. CIT(A).

8. The ld. Departmental Representative (ld. DR for short) controverted the same and relied on the proposition laid down by the Hon'ble Apex Court in the case of *Totagars' Co-operative Sale Society Ltd.* (supra). The ld. DR relied on the order of the ld. CIT(A).

9. Having heard the rival submissions and perused the materials available on record. It is observed that the assessee has earned rental income and interest on deposits made with co-operative bank. The moot question here is “whether the assessee is eligible for deduction u/s.80P(2)(d) where the deposits were made in the co-operative banks”. The assessee contends that the co-operative bank is akin to that of the co-operative society which is registered under the Co-operative Society’s Act or under any other law for the time being enforce. The assessee further states that the assessee is entitled to deduction u/s. 80P(2)(d) in respect of the entire income derived by way of interest or dividends from its investments with another co-operative society which also includes co-operative banks.

10. Per contra, the Revenue contends that the interest derived by way of deposit for investment of surplus funds is of the same nature as income out of interest earned from a scheduled bank and there is no difference between either scheduled bank or a co-operative bank and that section 80P(2) of the Act is not applicable in case of such income. The ld. CIT(A) further held that the assessee’s scope of income was limited to

providing credit to its members and the income which was earned from such credit facility was eligible for deduction u/s. 80P(2)(a)(i). Further to this, the Id. CIT(A) stated that the interest income received by the assessee is closely linked with the business of providing credit facilities attributable to the business of the assessee and such interest income is taxable as “other income” u/s. 56 of the Act. As the assessee has failed to substantiate that any expenditure has been expended wholly and exclusively to earn such income, the Id. CIT(A) added the entire interest income of Rs.9,95,308/- to tax under income from ‘other sources’.

Resultantly, the profits earned out of it are directly attributable to the business of providing credit facility to the assessee’s members which has direct nexus between the profit and the business of the assessee. The Id. CIT(A) has relied on the proposition laid down by the Hon’ble Karnataka High Court in *CIT & Anr. vs. Totagars Co-operative Sales Society* [2017] 395 ITR 611 (Kar.), which held that the character of income depends upon the nature of the activity for earning of that income. The relevant extract is cited as under:

"23. Thus, the aforesaid judgments supports the view taken by this Court that character of income depends upon the nature of activity for earning that income and though on the face of it, the same may appear to be falling in any of the specified Clauses of Section 80P(2) of the Act, but on a deeper analysis of the facts, it may become ineligible for deduction under Section 80P(2) of the Act. The case in Udaipur Sahakari Upbhokta Thok Bhandar Ltd. (supra) was that of Section 80P(2)(e) of the Act, whereas in the present case, it is under Section 80P(2)(d) of the Act. Hence, the income by way of interest earned by deposit or investment of idle or surplus funds does not change its character irrespective of the fact whether such income of interest is earned from a schedule bank or a co-operative bank and thus, clause (d) of Section 80P(2) of the Act would not apply in the facts and circumstances of the present case. The person or body corporate from which such interest income is received will not change its character, viz. interest income not arising from its business operations, which made it ineligible for deduction under Section 80P of the Act, as held by the Hon'ble Supreme Court.

24. In view of the aforesaid, we are of the opinion that the appeals filed by the Revenue deserve to be allowed and the appeals filed by the assessee deserve to be dismissed." (emphasis supplied)"

11. The above said decision was upheld by the Hon'ble Apex Court which held that the interest income earned was not the "income from business" as a co-operative society, but it pertains to "income from other source", which is taxable u/s. 56 of the Act and that section 80P(2)(a) of the Act provided for deduction on income earned by the co-operative society by carrying on the business of banking or providing credit facility society to its members, etc. where the entire income is eligible for deduction.'

12. On the other hand, the assessee has distinguished the facts and circumstances of the above cases with that of the present case in hand. The assessee has relied on the decision of co-ordinate bench in the case of *Kaliandas Udyog Bhavan Premises Co-operative Socieity vs. ITO* [2018] 94 taxmann.com 15 (Mum-Trib), which has considered the decision of the *Totgars Co-operative Sales Society Ltd.* (supra) and also the decision of the co-ordinate bench in the case of *Lands End Co-operative Housing Society* (supra).

The relevant extract of the cited decision is hereunder for ease of reference:

*From the close perusal of the provisions of u/s 80P(2)(a)(i) and 80P(2)(d) it is clear that the former deals with deduction in respect of profits and gain of business in case of the co-operative society carrying on business of banking or providing credit facilities to its members if the said income is assessable as income from business whereas latter provides for deduction in respect of income by way interest and dividend derived by assessee from its investments with other cooperative society. Thus it is amply clear that a cooperative society can only avail deduction u/s 80P(2)(d)(i) in respect of its income assessable as business income and not as income from other sources if it carries on business of the banking or providing credit facilities to its members and has income assessable under the head business whereas for claiming u/s 80P(2)(d) it must have income of interest and dividend on investments with other Co-operative society may or may not be engaged in the banking for providing credit facilities to its members and the head under which the income is assessable is not material for the claim of deduction under this section. Now will evaluate the assessee's case in the light of the decision of the Hon'ble Supreme court. The Honble Supreme Court in the case of *Totagar's Co-operative Sale Society Ltd.*(Supra) held that a society has surplus funds which are invested in short term deposits where the society is engaged in the business of banking or providing credit facilities to its members in that case the said income from short term deposits shall be treated and assessed as income from other sources and deduction u/s 80(P)(2)(a)(i) would not be available meaning thereby that deduction u/s 80(P)(2)(a)(i) is available only in respect of income which is assessable as business income and not as income from other sources. Whereas in distinction to this , the provisions of section 80(P)(2)(d) of the Act provides for deduction in respect of income of a coop society by*

way of interest or dividend from its investments with other coop society if such income is included in the gross total income of the such coop society. In view these facts and circumstances we are of the considered view that the assessee is entitled to the deduction of Rs. 14,88,107/- in respect of interest received/derived by it on deposits with coop. banks and therefore the appeal of the assessee is allowed by reversing the order of the CIT(A). The AO is directed accordingly.

13. We find merit in the submission of the assessee in distinguishing the fact of the case with that of the decision of the Hon'ble Apex Court in *Totagars' Co-operative Sale Society Ltd.* (supra). As per the provision of section 80P(2)(d) of the Act, interest earned from funds that are deposited in co-operative banks are entitled to deduction of the whole of such income.

14. From the above observation and by respectfully following the above said decision, we are inclined to allow the appeal filed by the assessee which is on identical facts as that of the above cited decision.

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

Order pronounced in the open court on 01.12.2022

Sd/-

Sd/-

(M. Balaganesh)
 Accountant Member

(Kavitha Rajagopal)
 Judicial Member

Mumbai; Dated : 01.12.2022

Roshani, Sr. PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT - concerned
5. DR, ITAT, Mumbai
6. Guard File

BY ORDER,

(Dy./Asstt. Registrar)
 ITAT, Mumbai