

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

ITA No. 1848/Mum/2022
(Assessment Year: 2020-21)

Pantnagar Ashtvinayak CHSL Building No. 244, Samata Colony, Pantnagar, Ghatkopar (E), Mumbai-400 075	Vs.	Income Tax Officer, Ward-27(2)(1) Mumbai
PAN/GIR No. AAAAP 8034 E		
(Appellant)	:	(Respondent)

Appellant by	:	Ms. Bhavya Sundesha
Respondent by	:	Shri Manoj Kumar Singh

Date of Hearing	:	05.09.2022
Date of Pronouncement	:	01.12 .2022

ORDER

Per Kavitha Rajagopal, J. M.:

This appeal has been filed by the assessee, challenging 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) 2020-21.

2. The assessee has raised the following grounds of appeal:

- 1) *The learned Commissioner of Income Tax (Appeals) erred in not allowing deduction u/s. 80P of the Income Tax Act, 1961 ("the Act") of Rs.10,35,413/-*
- 2) *The learned Commissioner of Income Tax (Appeals) erred in not allowing deduction u/s. 80P(2)(d) of the Act of Rs. 10,35,413/-, in respect of interest on Savings and Fixed Deposits with Co-operative Bank.*
- 3) *The learned Commissioner of Income (Appeals) erred in holding that benefit of section 80P is admissible to the extent of business activities with members and not available on interest income earned from investment.*
- 4) *The learned Commissioner of Income Tax (Appeals) erred in not considering that disallowance of claim u/s. 80P(2)(d) of the Act does not fall within the adjustments allowable u/s. 143(1)(a) of the Act.*

3. The brief facts are that the assessee is a co-operative housing society, earning rental income and interest on deposits with co-operative banks and had filed its return of income for A.Y. 2020-21 dated 08.02.2021, declaring total income of Rs.4,21,150/- after claiming deduction u/s.80P, amounting to Rs.10,35,413/-. While processing the returns u/s.143(1), the claim of deduction u/s. 80P amounting to Rs.10,35,413/- was disallowed. The assessee filed a rectification application u/s. 154 before the CPC, Bangalore which had rejected the said application without specifying any reason.

4. Aggrieved by this, the assessee preferred an appeal before the Id. CIT(A), who confirmed the disallowance made by the Assessing Officer (A.O. for short) by relying on the decision of the Hon'ble Apex Court in the case of *Totagars Co-operative Sales Society Ltd. vs. ITO* [2010] 322 ITR 283 (SC).

5. During the appellate proceeding, the Id. Authorized Representative (AR for short) for the assessee contended that the assessee is a co-operative housing society and not a co-operative bank and that section 80P(4) of the Act was not applicable in assessee's case. The Id. AR further contended that being a co-operative society, the assessee was entitled to deduction u/s. 80P(2)(d) for any income derived by way of interest or dividend from its investment with other co-operative society which also includes co-operative banks. The Id. AR relied on a plethora of judgments supporting the claim of the assessee.

6. The Id. Departmental Representative (Id. DR for short), on the other hand, relied on the proposition laid down by the Hon'ble Apex Court in the case of *Totagars Co-operative Sales Society Ltd.* (supra).

7. 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.

8. 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 Id. 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 only u/s. 80P(2)(a)(i). Further to this, the Id. CIT(A) stated that the interest income received by the assessee must be closely linked with the business of providing credit facilities attributable to the business of the assessee. 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)

9. 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 provides 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.

10. 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 Soccity 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 Hon'ble High Court of Gujarat in the case of *State Bank of India* [2016] 72 taxmann.com 64 (Guj). The relevant extract of the cited decision is hereunder for the ease of reference:

We further find that the Hon'ble High Court of Karnataka in the case of Totagars Cooperative Sale Society (supra) and Hon'ble High Court of Gujarat in the case of State Bank Of India (supra), 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 ld. 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 co-operative 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 Co-operative Sale Society Ltd. (supra) 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 ld. D.R on the order of the ITAT "F" bench, Mumbai in the case of M/s Vaibhav Cooperative Credit Society (supra) 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 ld. 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. (supra), 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 ld. D.R on the judgment of the Hon'ble High Court of Karnataka in the case of Totagars co-operative Sale Society (supra), 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 co-operative bank would be eligible for claim of deduction under Sec.80P(2)(d) of the Act.

9. We thus in the backdrop of our aforesaid observations are unable to persuade ourselves to be in agreement with the view taken by the lower authorities that the assessee would not be entitled for claim of deduction under Sec. 80P(2)(d), in respect of the interest income on the investments made with the co-operative bank. We thus set aside the order of the lower authorities and conclude that the interest income of Rs.27,48,553/- earned by the assessee on the investments held with the co-operative bank would be entitled for claim of deduction under Sec. 80P(2)(d).

11. The assessee's case is similar to the above mentioned decision of the co-ordinate bench which has distinguished the facts with the decision of *Totagars Co-operative Sales Society* (supra) case. For the foregoing reasons, we are of the view that the Id. CIT(A) was not justified in confirming the action of the A.O.

12. 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.

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

Order pronounced in the open court on 01.12.2022

Sd/-

(M. Balaganesh)
Accountant Member

Mumbai; Dated : 01.12.2022
Roshani, Sr. PS

Sd/-

(Kavitha Rajagopal)
Judicial Member

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