

IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” BENCH, MUMBAI
BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA Nos. 2694, 2696 and 2697/Mum/2022
(A.Ys: 2014-15, 2016-17 & 2017-18)

Vaibhavnagar Co Op Credit Soc Ltd., Ground Floor, Vaibhav Nagar Vaman Tukaram Patil Marg, Gowandi Mumbai – 400088	Vs.	ITO – 27(3)(5) Room No. 428, 4 th Floor, 6 th Tower, Vashi Rly Station Complex, Navi Mumbai – 400703
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAAAV5519Q		
Appellant	..	Respondent

Assessee by :	Mr.Ramesh S Iyer.AR
Revenue by :	Ms.Richa Gulati.DR

Date of Hearing	21.12.2022
Date of Pronouncement	22.12.2022

आदेश / O R D E R

These are the appeals filed the appeals against the separate orders passed by the National Faceless Appeal Centre (NFAC) – Delhi / CIT(A) u/s 143(3) and 250 of the Act.

Since the issues in these appeals are common and identical, hence are clubbed, heard and consolidated order is passed.

For the sake of convenience, we shall take up the ITA No.2694/Mum/2022 for the A.Y.2014-15 as a lead case and the facts narrated.

At the time of hearing, the Ld.AR for the assessee submitted that there is a delay in filing the appeal before the Hon'ble Tribunal and filed an affidavit for condonation of delay and relied on the decision of Hon'ble Supreme Court. We found the facts mentioned in the affidavit are reasonable and the Ld. DR has no specific objections. Accordingly, we condone the delay and admit the appeal.

The assessee has raised the following grounds of appeal:

- 1. The Ld. CIT(Appeals) has erred in considering interest earned by the society from other co-operative societies earned in due course of business as income from other sources and denying deduction u/s 80P(2)(a)(i) against the same.*
- 2. Alternatively, the interest income earned from other co-operative societies/banks is eligible for deduction u/s 80P(2)(d), the Ld. CIT(A) has also erred in not allowing the same to the society.*
- 3. The Ld. CIT(A) has erred in fact and law by not allowing deduction u/s 80P(2)(c) of the Income Tax Act, 1961 amounting to Rs. 50,000/-.*

4. Your appellant further reserves the rights to add, amend or alter the aforesaid grounds of appeal as they may think fit by themselves or by their representatives.

2. The brief facts of the case are that the assessee is a cooperative society and is engaged in the banking business and providing credit facilities to its members. The assessee has filed the return of income for the A.Y 2014-15 on 14.10.2016 disclosing the total income of Rs.Nil after claiming deduction U/sec80P of the Act and the return of income was processed u/s 143(1) of the Act. Subsequently the case was selected for scrutiny and notice u/s 143(2) and U/sec142(1) of the Act are issued. In compliance to the notice, the Ld. AR of the assessee appeared from time to time and filed the details and the case was discussed. The AO on perusal of the financial statements found that the assessee is the in business of collecting deposits from members under various schemes and major source of income being interest on loan to members and from fixed deposits with the Co-operative Banks. The assessee has disclosed the gross total income of Rs. 35,13,476/- and claimed the deduction u/s 80P of the Act. The assessee has filed the detailed submissions vide letter dated 19.09.2016 and the

A.O was not satisfied with the claim of deduction u/s 80P(2) of the Act. The AO has dealt on the facts and law in the assessment order at Para 6 and is of the opinion that the assessee is not eligible for deduction u/s 80P of the Act as the assessee is engaged in the business of banking and the interest earned from cooperative banks are to be taxed under income from other sources and assessed the total income of Rs.35,13,480/- and passed the order u/s 143(3) of the Act dated 14.11.2016.

3. Aggrieved by the order the assessee has filed an appeal before the CIT(A). Whereas the CIT(A) considered grounds of the appeal, submissions of the assessee and findings of the A.O and granted partial relief in other grounds of appeal and partly allowed the assessee appeal. Aggrieved by the CIT(A), the assessee has filed an appeal before the Hon'ble Tribunal.

4. At the time of hearing, the Ld.AR submitted that the CIT(A) has erred in confirming the action of the A.O in treating the interest income from cooperative bank is ineligible for deduction u/s 80P(2)(d) of the

Act and the assessee has filed the written submissions before the lower authorities on the applicability. Whereas, the CIT(A) has considered the facts on claim of deduction u/s 80P(2)(d) but took a different view. The Ld.AR emphasized that the claim has to be allowed as the cooperative bank is treated as a cooperative society for eligibility of deduction u/s 80P(2)(d) of the Act and supported the submissions with the judicial decisions and paper book. Contra, the Ld. DR relied on the orders of the lower authorities.

5. Heard the rival submissions and perused the material on record. The sole matrix of the disputed issue emphasized by the Ld.AR is in respect of granting of deduction u/s 80P(2)(d) of the Act to the Cooperative Society. The Ld. AR submitted that the interest income derived by a co-operative society from its deposits with the co-operative bank would be entitled for deduction U/sec 80P(2)(d) of the Act. The co-operative bank continues to be a co-operative society registered under the Co-operative Societies Act. The Ld.AR has demonstrated the facts of earning of interest on fixed deposits and utilization. The

Coordinate Bench of the Honble Tribunal in M/s Petit Towers Co-operative Housing Society Ltd Vs. ITO in ITA No.549/Mum/2021 dated 1-09-2021 has dealt on the taxability of interest earned on the deposits with the Co-operative Banks at page 6 Para 8 of the order, which is read as under:

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 co-operative 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 jeopardize 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 co-operative 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.

- 1. 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.*

6. Considering the facts, circumstances and the ratio of the judicial decisions. The Honble Tribunal has passed the order in the context of the revision order U/sec263 of the Act and relied on the catena of Honble High court and Tribunal decisions were the co-operative society receives/earns interest on deposits with the co-operative bank is eligible for claim of deduction under section 80(2)(d) of the Act. The Ld.AR emphatically substantiated the submissions with the facts, evidences and judicial decisions filed before the lower authorities and find merits in the arguments of the Ld.AR. Accordingly, we set aside the order of the CIT(A) and direct the Assessing officer to allow the claim of deduction u/sec80P(2)(d) of the Act on the interest income received /earned from the co-operative banks and allow the appeal filed by the assessee.

ITA No. 2696/Mum/2022 (A.Y 2016-17)

ITA No. 2697/Mum/2022 (A.Y 2017-18)

7. As the facts and circumstances in these appeals are identical to ITA No. 2694/Mum/2022, for the A.Y 2014-15 (except variance in figures) and the decision rendered in above paragraphs would apply mutatis

mutandis for these appeals also. Accordingly, grounds of appeal of the assessee are allowed.

8 In the result, the three appeals filed by the assessee are allowed

Order pronounced in the open court on 22.12.2022.

Sd/-

(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated 22.12.2022

KRK, PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त(अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

1.

(Asst. Registrar)
ITAT, Mumbai