

IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH, MUMBAI
BEFORE SHRI BASKARAN BR, ACCOUNTANT MEMBER &
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No. 2431/Mum/2022
(A.Y: 2017-18)

Poonam Chambers Premises Co-Op Society Ltd., G/5, Poonam Chambers, Dr. Annie Besant Road, Worli, Mumbai – 400018.	Vs.	NFAC, NewDelhi.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAAAP5497K		
Appellant	..	Respondent

Appellant by :	Mr. Shashank Mehta.AR
Respondent by :	Mr. B. Bagchi.DR

Date of Hearing	29.11.2022
Date of Pronouncement	30.11.2022

आदेश / O R D E R

PER PAVAN KUMAR GADALE JM:

The assessee has filed the appeal against the order passed by the National Faceless Appeal Centre, (NFAC) / CIT(A) u/s 250 of the Act. The assessee has raised the following grounds of appeal:

Ground-1 1. The Ld. CIT(A) has completed the assessment without considering the facts & circumstances of the

case, which is contrary to law and is against the principles of natural justice.

Ground- 2 2 a) The Ld. CIT (A) has erred in disallowing the claim of deduction of Rs. 71,61,553/-, being aggregate interest from co-operative banks u/s. 80P(2)(d) on the ground that co-operative bank does not fall under the purview of a Co-operative Society referred in section 80P(2)(d) by ignoring the explanation offered by your appellant. b) b. The Ld. CIT (A) ought to have considered that Co-operative Banks in which the appellant has invested are Co-operative Societies registered under the Maharashtra State Co-operative Societies Act, 1960, engaged in Banking business; and therefore interest received from such societies is eligible for deduction u/s. 80(P)(2)(d).

Ground-2 c) c. The Ld. CIT (A) ought to have considered that, so long the entity in which the assessee Co-operative Society has made investment is a registered Co-operative Society, the requirements of Sec. 80P(2)(d) are complied with and therefore, the nature of business of such co-operative society whether banking or otherwise has no relevance. d) d. The Ld. CIT(A) has erred in not appreciating that the provisions of Sec.80P(4) is applicable only where the assessee is a co-operative bank; and not to the Co-operative Societies; therefore, the provisions of Sec. 80P(4) has no relevance to the allowability of deduction of Interest income to a Co-operative Society u/s 80P(2)(d). e) e. The Ld. CIT(A) has erred in relying upon certain case laws which are irrelevant and/or clearly distinguishable.

Ground-3 3. The Ld. AO and CIT(A) is erred in not allowing the deduction u/s. 80(P)(2)(c) of Rs. 50,000/-

Ground-4 4. The appellant craves leave to add, alter, modify, amend or substitute all or any of the above grounds of appeal.

2. The brief facts of the case are that the assessee is a Co-operative housing society derives income from investment and compensation received towards space let out. The assessee has filed the return of income for the A.Y 2017-18 on 29.09.2017 disclosing a total income of Rs. 48,02,270/- and the return of income processed u/s 143(1) of the Act. Subsequently the case was selected for scrutiny and notice u/s 143(2) and 142(1) of the Act along with questionnaire were issued. In compliance to the notice the Ld. AR of the assessee appeared from time to time and submitted the details. Whereas the A.O. was not satisfied with the claim of the assessee and observed that the co-operative banks are categorized as urban commercial banks and does not fall under the purview of the co-operative society referred u/s 80P(2)(d) of the Act. Therefore, the interest income from co-operative banks are to be taxed under income from other sources. Finally the AO has made disallowance of the deduction u/s 80P(2)(d) of the Act of Rs. 72.11.553/- and assessed the total income of Rs.1,20,13,820/-and

passed order U/sec143(3) of the Act dated 10-12-2019.

3. Aggrieved by the order the assessee has filed an appeal before the CIT(A), whereas the CIT(A) considered the grounds of appeal, submissions of the assessee and findings of the AO and has confirmed the action of the AO and dismissed the assessee appeal. Aggrieved by the CIT(A) order, the assessee has filed an appeal before the Hon'ble Tribunal.

4. At the time of hearing the Ld. AR submitted that CIT(A) has erred in confirming the action of the AO in treating the interest income from the cooperative banks as ineligible for deduction u/s 80P(2)(d) of the Act and the assessee has filed return submissions before the lower authorities on the facts and applicability of provisions. Whereas the CIT(A) has considered the facts on claim u/s 80P of the Act but took a different view. The Ld. AR emphasized that the claim has to be allowed as the cooperative bank is treated as cooperative society for eligibility of deduction u/s 80P of the Act and supported the submissions with the judicial decisions and

assessee's own case for earlier years and prayed for allowing the appeal. Per Contra, the Ld.DR supported the order of the CIT(A).

5. We 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/sec80P(2)(d) of the Act. We find the Honble Tribunal in the assessee own case ITA No.4463/M/2017 A.Y.2013-14 dated 23-08-2018 has considered the similar facts and granted the relief and observed at page 3 to 11 Para 3 to 7 read as under:

3. Briefly stated facts are that the assessee is a co-operative housing society and during the year, assessee has earned interest income of ₹ 73,23,824/- from its investment in FDRS from the following co-operative banks:-

“a) Saraswat Bank.

b) Shamrao Vithal Co-operative Bank.

c) The NKGSB Bank.

d) Janakalyan Bank.

e) Mumbai District Co-operative Bank.”

4. The assessee claim deduction of this interest income under section 80P(2)(d) of the Act, but according to AO the deduction cannot be allowed as income from co-operative bank is not allowable under section 80P(2)(d) of the Act in view of insertion of section 80P(4) in the Act with effect from 01.04.2007 differentiating a co-operative bank in comparison to co-operative society. Accordingly, the AO disallowed the claim of the assessee. The CIT(A) also confirmed the action of the AO by observing as under: -

“.....

Hence, it is clear that where the assessee is a Cooperative Credit Society whose business is to provide credit facilities to its members and if the funds created by such activities are not required immediately for business purpose and it invested the deposits to earn interest thereon, it has been held by the Hon'ble Apex Court that the interest earned by the assessee on such deposits would come in the category of Income from other sources' taxable under section 56 of the IT Act. Applying the ratio to the facts of the instant case, it emerges that interest income earned from investments in Cooperative Banks or any other banks are not eligible for deduction u/s 80P(2)(d) of the Act.”

Aggrieved, now assessee is in appeal before us.

5. Before us, the learned Counsel for the assessee stated that the issue is squarely covered by Tribunal's decision in the case of *Kaliandas Udyog Bhavan Premises Co-op Society Ltd. vs. ITO* [2018] 94 taxmann.com 15 (Mumbai - Trib.), wherein Tribunal has considered the issue in great detail vide Para 6 to 9 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. We find that our indulgence in the present appeal has been sought to adjudicate as to whether the claim of the assessee for deduction under section 80P(2)(d), in respect of interest income earned from the investments made with the co-operative banks is in order or not. We find that the issue involved in the present appeal hinges around the adjudication of the scope and gamut of sub-section (4) of Sec. 80P, as had been made available on the statute by the legislature vide the Finance Act 2006, with effect from 01.04.2007. We find that the lower authorities had taken a view that pursuant to insertion of subsection (4) of Sec. 80P, the assessee would no more be entitled for claim of deduction under Sec. 80P(2)(d) of the interest income earned on the amounts parked as investments with co-operative banks, other than a Primary Agricultural Credit Society or a Primary Co-operative Agricultural and Rural Development Bank. We find that the lower authorities had observed that as the co-operative bank with which the surplus funds of the assessee were parked as investments, were neither Primary Agricultural Credit Society nor a Primary Cooperative Agricultural and Rural Development Bank, therefore, the interest income earned on such investments would not be entitled for claim of deduction under Sec. 80P(2)(d) of the Act.

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 subsection (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 cooperative 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 cooperative 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 Subsection (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 cooperative

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 cooperative 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 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 cooperative 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 co-operative society registered under the Cooperative 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 cooperative 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 had been relied upon by the authorized representatives for both the parties and the lower authorities. We find that the issue that a co-operative society would be entitled for claim of deduction under Sec. 80P(2)(d) for the interest income derived from its

investments held with a cooperative bank is covered in favour of the assessee in the following cases:

- (i) Land and Cooperative Housing Society Ltd. (supra)*
- (ii) Sea Green Cooperative Housing and Society Ltd. (supra)*
- (iii) Marwanjee Cama Park Cooperative Housing Society Ltd. (supra).*

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 cooperative 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 cooperative 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 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 v. Siemens India Ltd. [1983] 15 Taxman 594/[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 Totagars Cooperative Sale Society (supra) and Hon'ble High Court of Gujarat in the case of State Bank Of India (supra), 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 cooperative bank would be entitled for claim of deduction under Sec. 80P(2)(d).”

When this was confronted to the learned Sr. Departmental Representative, he heavily relied on the assessment order.

6. After hearing both the sides and going through the facts and circumstances of the case, we find that the issue is squarely covered by Tribunals decision in the case of Kaliandas Udyog Bhavan Premises Coop Society (supra). Respectfully following the same, we delete the disallowance and allow the assessee’s claim of deduction under section 80P(2)(d) of the Act. Accordingly, the appeal of the assessee is allowed.

7. In the result, the appeal of assessee is allowed.

6. We find the facts of the present case are identical to the earlier year decision discussed and follow the judicial precedence. Accordingly, we set-aside the order of the CIT(A) and direct the Assessing officer to

grant deduction U/sec80P(2)(d) of the Act and allow the grounds of appeal in favour of the assessee.

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

Order pronounced in the open court on 30.11.2022.

Sd/-

(BASKARAN BR)
ACCOUNTANT MEMBER

Sd/-

(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated 30.11.2022

KRK, PS

आदेश की प्रतिलिपि अग्रहित/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