

IN THE INCOME TAX APPELLATE TRIBUNAL  
PANAJI 'SMC' BENCH : PANAJI  
(THROUGH VIRTUAL HEARING)  
BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER  
ITA.No.42/PAN/2019  
Assessment Year 2015-2016

The Tisk Usgao Urban Co-operative Credit Society Ltd., 1, Tisk Usgao, Ponda, Goa – 403 406. PAN AAAAT6212A	vs.,	The Income Tax Officer, Ward-2(3), Aaykar Bhavan, Pato Plaza, Panaji, Goa – 403 001.
(Appellant)		(Respondent)

For Assessee :	Shri S.J. Kamat, C.A.
For Revenue :	Shri N. Shrikant

Date of Hearing :	16.01.2023
Date of Pronouncement :	24.01.2023

**ORDER**

This assessee's appeal for assessment year 2015-16, arises against the CIT(A) Panaji-1, Panaji's order dated 10.01.2019, passed in case ITA.No.CIT(A), PNJ-1/10400/2017-18, in proceedings u/s. 143(3) of the Income Tax Act, 1961 (in short "the Act").

Heard both the parties. Case file perused.

2. The assessee pleads the following substantive grounds in the instant appeal :

1. *"In the facts and circumstances of the case, the Commissioner of Income Tax (Appeals) has no jurisdiction u/s 251 for remanding to AO or directing the AO to decide, subject to conditions, in accordance with directions; and accordingly the remarks be expunged in Para 7 of the impugned order that "Subject to satisfying the AO that it does not have nominal*

*members by producing a certificate from the appellant itself to this effect, and also a certificate from the auditor stating that it does not have nominal members', while allowing the ground "disallowance under section 80P is not applicable and they are entitled to deduction under section 80P in respect of the profits from the business of providing credit facilities to the members. " after already holding "that the appellant is not a co-operative bank but a co-operative society.*

*2. In the facts and circumstances of the case, the Commissioner of Income Tax (Appeals) has erred in disallowing the claim of the appellant u/s 80P of interest Rs.10,03,999/- earned from amounts maintained as liquid resources for providing liquidity and safety of working capital in the appellants' business of providing credit facilities to members, which have to be maintained as a concomitant and natural incident of the business and above the statutory minimum ratio.*

*3. In the facts and circumstances of the case, the Commissioner of Income Tax (Appeals) has no jurisdiction u/s 251 for remanding to AO or directing the AO to decide, subject to conditions, in accordance with directions; and accordingly the remarks be expunged in Para 9 of the impugned order that "subject to the condition that the nominal members criteria be fulfilled i.e. the appellant should not have nominal members. Accordingly, as a result of verification by the AO, if the society*

*is found to be a co-operative bank, then the provisions of section 40(a)(ia) will apply and the claim of assessee will fail. Alternatively, if it is found that the appellant is not having nominal members, then this ground will succeed. The AO may verify and give effect to the order accordingly.” while allowing the ground "Disallowance under section 40(a)(ia) is not applicable to the interest paid as no tax is deductible on such payments under section 194A of the act.*

*4. In the facts and circumstances of the case, the Commissioner of Income Tax (Appeals) has erred in not considering, while deciding that the appellant is not a co-operative bank, the fact that the appellant cannot and does not have the facility; that "the mode by which the withdrawal of the deposit can be effected is by the issue of cheques, drafts, orders or otherwise, that is, by like methods", which is a sine qua non to constitute BANKING as held by the Apex Court and accordingly banking is not the primary object or principal business of the appellant.”*

3. Both the learned representatives next invited my attention to the CIT(A)'s detailed discussion regarding it's sec.80P deduction claim as well as sec.40(a)(ia) disallowance involving varying sums, reading as under :

7. The appellant has claimed deduction of interest received from various banks, which has been claimed under the provisions of section 80P(2)(a)(i) as well as 80P(2)(d).

**A) As regards applicability of provisions of section 80P(2)(a)(i):**

The facts of the case are that the appellant is a co-operative credit society providing credit facilities to its members. In the assessment order, the AO has denied deduction claimed by the appellant as per the provisions of section 80P. Aggrieved by the said disallowance the appellant is in appeal. According to AO, the appellant is a co-operative bank as it satisfies all the three requirements contained in section 5(ccv) of Banking Regulation Act 1949 as applicable to co-operative societies, and thus he denied deduction u/s 80P, applying the provisions of 80P(4) of the IT Act, 1961, holding that the appellant is a co-operative bank and not a co-operative credit society as claimed by the appellant.

I have gone through the decision of Hon. Bombay High Court, Goa Bench in the case of QUEPEM Urban Co-operative Credit Society Limited vs. ACIT (Appeal No. 20224 of 2015 dated 17.04.2015). The facts of the appeal are identical to the fact of QUEPEM Urban Co-operative Credit Society Limited vs. ACIT (Supra). The Hon. High Court in the said decision has held that any co-operative society to be called a co-operative bank has to cumulatively satisfy the following three conditions:

1. Its principle business or Primary object should be business of banking
2. Its paid up share capital and reserves should not be less than Rs. 1 Lakh
3. Its bye laws do not permit the admission of any other co-operative society as its member.

It is an accepted position that condition no. 2 is satisfied as the share capital is in excess of Rs. 1 Lakh. It has been the appellant's contention that condition no. 1 and 3 mentioned above are not satisfied.

Therefore, the issue that arises for consideration is whether the appellant satisfies condition no. 1 and 3 above.



BRANCH MANAGER  
The Tika Lagoon Urb. Co-op. Cr. Sect. Ltd.

The Tisk Usgao Urban Co-Operative Credit Society Ltd.  
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The Appellant has been held as doing banking business because it is accepting deposits for the purpose of lending of investments of deposit from the public repayable on demand or otherwise. However, a co-operative society to carry on banking business it has to obtain a license issued by the RBI, which the appellant has not done; and therefore cannot be considered as a co-operative bank.

As it is held that the appellant is not a co-operative bank but a co-operative society, the appellant cannot be denied the deduction claimed u/s 80P (2)(d). Subject to satisfying the AO that it does not have nominal members by producing a certificate from the appellant itself to this effect, and also a certificate from the auditor stating that it does not have nominal members, the appeal on this ground is allowed.

**B) As regards applicability of provisions of sec 80P(2)(d):**

I have critically and carefully analysed the provisions of the IT Act as well as the citations relied upon by the AO as well as by the AR of the appellant. The provisions of section 80P(4) have been analysed clearly and lucidly by the Assessing Officer. The Hon'ble Court in Totgar's case (order dt. 16/06/2017) has given a clear finding that the banking business even though run by a co-operative bank is sought to be excluded from the beneficial provision of deduction u/s 80P. It has also been observed by Hon'ble Court that "The income by way of interest earned by deposit or investment of ideal or surplus funds does not change its character. Irrespective of the fact whether such income of interest is earned from a scheduled bank or a co-operative bank, and thus clause (d) of section 80P(2) would not apply in the facts and circumstances of this case. The person or body corporate from which such income is received will not change its character viz interest income not arising from its business operations, which remain illegible of deduction u/s 80P of the Act." Moving on, the Memorandum of Finance Bill 2015 makes it clear that the intention is to provide a level playing field to co-operative banks and other commercial banks and therefore they have amended the provisions of section 194A(3)(v) excluding the co-operative banks from the definition of co-operative society.

On the other hand the case laws relied upon by the appellant are of much earlier date than the Totgar's case relied upon and discussed above. Presumably, in Totgar's case, the Hon'ble Court would have taken into account all the earlier judgments. The Hon'ble Court has stated as follows:

*The court in the instant case observed "The banking business, even though run by a Co-operative bank is sought to be excluded from the beneficial provisions of exemption or deduction under section 80P of the Act. The purpose of bringing on the statute book sub-section (4) in section 80P was to exclude the applicability of section 80P altogether to*



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any co-operative bank and to exclude the normal banking business income from such exemption/deduction category. The words used in section 80P(4) are significant. They are:

**'The provisions of this section shall not apply in relation to any co-operative bank other than a primary agricultural credit society.....' The words in relation to' can include within its ambit and scope even the interest income earned by the assessee, a co-operative society from a Co-operative Bank. This exclusion by section 80P(4) even though without any amendment in section 80P(2)(d) is sufficient to deny the claim of the assessee for deduction under section 80P(2)(d).**

*The only exception is that of a primary agricultural credit society. The depository Kanara District Central Bank Limited in the present case is admittedly not such a primary agricultural credit society"*

Respectfully following the judgment delivered in Totgar's case (supra), it is held that the claim of deduction u/s 80P(2)(d) has rightly been denied. The appeal on this issue is dismissed.

8. Applying the provisions of 80P(2)(a)(i) and that of section 80P(2)(d) together, the claim of the appellant is denied in view of the discussions made in the case of Totgar, as discussed above.

9. In the result, the appeal on ground no. 1 and 2 fail.

10. **Ground no. 3:**

**Disallowance u/s 40(a)(ia):**

In ground no. 1 the appellant has been held to be a co-operative society not a co-operative bank, subject to the condition that the nominal members criteria be fulfilled i.e. the appellant should not have nominal members. Accordingly, as a result of verification by the AO, if the society is found to be a co-operative bank, then the provisions of section 40(a)(ia) will apply and the claim of assessee will fail. Alternatively, if it is found that the appellant is not having nominal members, then this ground will succeed. The AO may verify and give effect to the order accordingly.

3.1. It is in this factual backdrop that the first and foremost issue between the parties is that of denial of sec.80P (2) deduction to the assessee regarding it's interest income derived from deposits made in cooperative banks, and that too involving the alleged nominal members. The Revenue could hardly dispute that this distinction between member-ship i.e., nominal or regular members hardly carries any significance now in light of hon'ble apex court's recent landmark decision in Mavilayi Service Co-operative Bank Ltd.,

vs., CIT [2021] 431 ITR 1 (SC) has settled the law that even such a registered cooperative society is also entitled for the impugned deduction. The latter limb of interest income derived from cooperative banks also found to have been adjudicated in assessee's favour as per this tribunal's recent coordinate bench's order in the case of Shri Chandraprabhu Urban Co-operative Credit Society Ltd., vs. ITO ITA.Nos.61 & 62/PAN/2018 decided on 10.05.2022 reading as follows :

*“4. The appellant through various grounds of appeal as well as the additional grounds of appeal raised the solitary issue in the present appeal is that the eligibility of exemption of income received from BDC Bank and other banks under the provisions of section 80P(2)(d) of the Income Tax Act, 1961 (‘the Act’).*

*5. Briefly, the facts of the case are as under :-*

*The appellant is a co-operative bank formed with the object of providing credit facilities to its members. The appellant filed the return of income for the assessment 2012-13 on 30.09.2012 declaring total income of Rs.Nil. Against the said return of income, the assessment was completed by the Income Tax Officer, Nipani (‘the Assessing Officer’) vide order dated 20.11.2014 passed u/s 143(3) of the Act at a total income of Rs.45,43,916/-. While doing so, the Assessing Officer had denied the exemption u/s 80P(2)(a)(i) by holding*

*that the appellant society is a co-operative bank rejecting the contention of the appellant that it is not a co-operative bank but merely a co-operative society as it does not enjoy any banking license nor granted any license to do the banking business by the Reserve Bank of India. It is only engaged in accepting the deposits from its members and lending to its members. The Assessing Officer also made addition of Rs.1,26,610/- under the provisions of section 40(a)(ia) of the Act.*

*6. Being aggrieved by the above assessment order, an appeal was filed before the ld. CIT(A), who vide impugned order held that the appellant is not a co-operative bank but a mere co-operative society carrying on the business of providing credit facilities to its members. The ld. CIT(A) also held that the appellant is eligible for deduction u/s 80P(2)(a)(i) of the Act.*

*As regards to the interest received from other co-operative bank or schedule private bank, the ld. CIT(A) held that the appellant society is eligible for deduction u/s 80P(2)(d) in respect of interest received from co-operative societies on short term deposits, SB A/c, but not interest on long term investment or deposits for period more than one year. The ld. CIT(A) also directed the Assessing Officer to delete the addition u/s 40(a)(ia) by holding that the appellant society is not liable to deduct tax at source.*

7. *Being aggrieved by the decision of the ld. CIT(A) that the interest earned on long term investments or deposits for period more than one year to be treated as income from other sources and not eligible for deduction u/s 80P(2)(a)(i) or section 80P(2)(d) of the Act, the appellant is in appeal before us.*

8. *It is submitted on behalf of the appellant that the provisions of income-tax does not provide for any distinction between long term and short term investments that any income received by the co-operative society from another co-operative society is eligible for deduction u/s 80P(2)(d) of the Act.*

9. *On the other hand, ld. Sr. DR placed reliance on the order of the ld. CIT(A).*

10. *We heard the rival submissions and perused the material on record. The solitary issue in the present appeal relates to the eligibility of exemption of income received from BDCC Bank and other banks under the provisions of section 80P(2)(d) of the Act. The ld. CIT(A) was of the opinion that the interest earned on long term investments i.e. deposits for period of more than one year received from BDCC Bank and other banks is not eligible for exemption u/s 80P(2)(d) of the Act. The ld. CIT(A) gave a specific finding vide sub-para (e) of para 11 of the impugned order that the appellant being a co-operative society is eligible for deduction u/s 80P(2)(d) on interest received from another co-operative society.*

*Similarly, the interest received from SB accounts or other bank or schedule bank, the short term investments is treated as business income of the assessee held to be eligible for deduction u/s 80P(2)(a)(i) of the Act. The Department is not in appeal before us on the above findings of the ld. CIT(A).*

*Whereas, the appellant is only challenging the finding given in sub-para (e) of para 11 of the impugned order that interest earned on long term investments cannot be treated as business income. We find that the section 80P does not make a distinction between the long term investments and short term investments, the only requirement under the provisions of section 80P(2)(d) is that an interest income or dividend income should be earned by a co-operative society from another co-operative society. The provisions of section 80P does not provide for any distinction between income earned on long term and short term investments. Thus, the ld. CIT(A) clearly fell in error in drawing such distinction not supported by any statutory provisions in the Act. Therefore, the findings of the ld. CIT(A) contained in sub-para (e) of para 11 are set-aside. Therefore, the grounds of appeal filed by the assessee stands allowed.*

11. *In the result, the appeal filed by the assessee in ITA No.61/PAN/2018 for the assessment year 2012-13 stands allowed.”*

4. So far as the assessee's letter issue of sec.40(a)(ia) is concerned, I quote the CBDT's Circular No.37/2016 dated 02.11.2016 that once it is eligible for sec.80P deduction, the impugned disallowance would add the corresponding eligible income only. This instant letter issue is also decided against the department therefore.

5. No other ground or argument has been pressed before me during the course of hearing.

6. This assessee's appeal is allowed in above terms.

Order pronounced in the open court on 24.01.2023.

Sd/-  
[SATBEER SINGH GODARA]  
JUDICIAL MEMBER

Pune, Dated 24<sup>th</sup> January, 2023

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	The Ld. CIT(A) concerned.
4.	The CIT concerned
5.	D.R. ITAT, Panaji 'SMC' Bench, Panaji
6.	Guard File.

//By Order//

Assistant Registrar, ITAT, Pune Benches,  
Pune.