

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "SMC", MUMBAI**

**BEFORE SHRI KULDIP SINGH, HON'BLE JUDICIAL MEMBER AND
SHRI S. RIFAUR RAHMAN, HON'BLE ACCOUNTANT MEMBER**

ITA.NO.2980/MUM/2022 (A.Y: 2017-18)

Danda Co-op Credit Society Ltd. 239, Valmiki, Khar Danda Khar (W), Mumbai – 400052 PAN: AAAAD3039M	v.	Income Tax Officer – 22(1)(2) Room No. 313, 3 rd Floor Piramal Chambers Lalbaug, Mumbai – 400012
(Appellant)		(Respondent)

Assessee Represented by	:	Shri Ravindra Naik
Department Represented by	:	Shri Sourabh Kumar Rai
Date of Hearing	:	10.01.2023
Date of Pronouncement	:	21.02.2023

ORDER

PER S. RIFAUR RAHMAN (AM)

1. This appeal is filed by the assessee against order of the Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [hereinafter in short "Ld.CIT(A)"] dated 20.09.2022 for the A.Y.2017-18.

2. Brief facts of the case are, assessee is a co-op credit society having the business of accepting deposits and lending money to the members of the society. As per the Registration Certificate, the Co-operative society has been classified as Resource Society and sub-classified as loan giving Resource Society. The society is governed by the principle of mutuality. The assessee had filed its return of income declaring income of ₹.5,76,769/- and claimed ₹.5,64,829/- as deduction u/s 80P(2)(a)(i) of Income-tax Act, 1961 (in short "Act"). The society during the said year had received income by way of interest from investments in other co-operative banks and societies amounting ₹.1,46.79.771/-. During the assessment proceedings, Assessing Officer however considered interest income as income from other sources and denied benefit of deduction u/s. 80 P(2)(a)(i) of the Act. Assessing Officer added ₹.5.64,829/- to the income of the assessee and denied deduction of the same. Alternatively, assessee claimed that any income earned by the co-op society by way of interest or dividends from its investments with any other co-operative society is eligible for deduction u/s 80P(2)(d). However, Assessing Officer has denied the benefit of the same to the assessee. Further, Assessing Officer has also erred in not allowing the benefit of ₹.50,000/- standard deduction u/s 80P(2)(c) of the Act. Aggrieved assessee preferred an

appeal before the Ld.CIT(A). Ld.CIT(A) sustained the additions made by the Assessing Officer.

3. Aggrieved assessee, preferred appeal before us and raised following grounds in its appeal: -

"1. The Ld CIT(Appeals) has erred in confirming the addition made by Ld. AO on account of interest earned by the society in due course of business and considering it as income from other sources and denying deduction u/s 80P(2)(a)(i)

2. The Ld. CIT (Appeals) has also erred in assuming all the interest earned as received from nationalised banks and denying deduction u/s 80P(2)(d) against the same.

3. The Ld. CIT(Appeals) has also erred in not considering deduction u/s 80P(2)(c) amounting to Rs. 50,000

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

4. At the time of hearing, with regard to Ground No. 1 Ld. AR submitted as under: -

"The assessee has treated the interest income from fixed deposits with the Co-Operative banks as Business income attributable to the main activities of the society.

The matter is covered in our favour in our own case where Hon' ITAT Mumbai Bench "SMC", Mumbai vide their order no. ITA NO. 3240/MUM/2019 (A.Y.2012-13) dated 23rd November, 2020 has allowed the deduction u/s 80P(2)(a)(d) of the income tax act in respect of interest earned from co-operative banks by stating:

"6. However, on the same issue Hon'ble Karnataka High court in the case of PCIT vs. Totagars Co-operative Sale Society 395 ITR 611 (Karnataka) has taken a contrary view holding that interest income earned from deposit with the cooperative bank does not qualify for deduction

under section 80P(2)(d) of the Act. It would be relevant to mention here that the Hon'ble High Court while rendering the later judgement has not considered the earlier decision rendered in the case of Totagars Co-operative Sale Society (supra). The CIT(A) has rejected the claim of assessee by following later judgment rendered in Totagar's case.

7. No judgement from Hon'ble Jurisdictional High court on the issue of eligibility of deduction under section 80P(2)(d) of the Act on interest income derived by a Co-operative Society from a Cooperative Bank has been brought to our notice. The Hon'ble Bombay High Court in the case of K Subramanian Vs. Siemens India Ltd. 156 ITR 11 has held that when two conflicting decisions of non-jurisdictional High Courts are available, the view that favours the assessee is to be preferred. Accordingly, following the decision of Hon'ble Karnataka High Court in the case of Totagars Cooperative Sale Society (supra) and the decision in the case of Hon'ble Gujarat High Court in the case of Vankar Sahakari Sangh (supra) the deduction claimed by the assessee under section 80P(2)(d) of the Act in respect interest derived from investments with the cooperative banks is allowed. I find merit in the grounds of appeal raised by the assessee, ergo the appeal of assessee is allowed." (Copy of Order is attached).

We draw your attention to the following orders passed by Jurisdictional High Court i.e.. Hon. Bombay High court in the case of where the TOTGAR judgement has been considered and allowed deduction u/s 80(P)(2)(a)(1) and 80(P)(2)(d).

1. The Pr. Commissioner of Income Tax - 17... Appellant V/s. Annasaheb Patil Mathadi Kamgar Sahakari Patpedhi Maryadit Ltd. INCOME TAX APPEAL NO. 1574 OF 2017. (Copy of order is Attached) decided on 09th January 2020

2 Commissioner of Income Tax Vs. Shri Kulswami Co-Op. Credit Society Ltd. (Income Tax Appeal No. 1682 of 2014, decided on 20th March, 2017).

5. With regard to Ground No. 2, Ld. AR submitted as under: -

"Alternatively, the interest income earned from other co-operative societies/banks is eligible for deduction u/s 80P(2)(d), the Ld. AO has also erred in not allowing the same to the society.

Submission:

The society during the said year had received income by way of interest from investments in other co-operative banks and societies amounting Rs. 1,46,79,711/-

Sr. No.	Bank name	Amount (Rs.)	Registered under
1	Abhyudaya Co Op Bank Ltd	30,69,974.00	MCSAct, 1960
2	Bharat Co Op Bank Ltd	22,05,289.00	MSCSAct, 1984
3	The Cosmos Co Op Bank Ltd	32,70,220.00	MSCSAct, 1984
4	Jankalyan Sahakari Bank Ltd	62,180.00	MCSAct, 1960
5	Punjab And Maharashtra Co Op Bank Ltd	58,69,395.00	MSCS Act, 2002
6	SVC Bank Ltd	1,82,210.00	MSCS Act, 2002
7	United Bank Of India	20,503.39.00	
	Total	1,46,79,711.00	

*(MCS Act-Maharashtra Co-operative Societies Act
MSCS Act-Multi State Co-operative Societies Act)*

The Ld. AO have relied on the judgment of the Hon'ble Supreme Court in the case of Totgars, Co-operative Sale Society Ltd. vs. Income-tax Officer, Karnataka that a co-operative society would not be entitled to claim of deduction under Sec, 80P(2)(d).

We say that he assessee is entitled for deduction under Sec. 80P(2)(d).

Co-operative banks are basically Co-Operative societies and are registered under the respective state laws with The Registrar of Co-operative Societies of that State. They hold banking license from RBI for the purpose of doing business of banking.

The co-operative banks which are having multi state operations are further required to be registered under multi state co-operative societies act. Basically they are societies having banking licence.

The income tax payable by them is as per the rates prescribed for CO-OPERTATIVE SOCIETIES

Definition given in section 2(19) of the Income Tax Act-

"co-operative society" means 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

Definition given in section 3(f) of the Multi-State Co-operative Societies Act, 2002-

"co-operative bank" means a multi-State co-operative society which undertakes banking business

Definition given in section 3(f) of the Maharashtra State Co-operative Societies Act, 1960-

"Co-operative bank" means a Co-operative society which is doing the business of banking as defined in clause (b) of sub-sections (1) of section 5 of the Banking Companies Act, 1949 and includes any society which is functioning or is to function as an Agricultural and Rural Development Bank under Chapter XI

All the Banks from which we have received interest are registered either under the Maharashtra State Co-operative Societies Act or Multi-State Co-operative Societies Act. Thus, as per the definitions stated above, these Co-operative Banks are Co-operative Societies and hence, income earned from co-operative banks are eligible for deduction. For this purpose, we have attached few registration certificates received by the Co-operative banks from Registrar under Co-operative Societies Act.

We further rely on the order passed by Jurisdictional High Court i.e., Hon. Bombay High court in the case of where the TOTGAR judgement has been considered and allowed deduction u/s 80(P)(2)(a)(1) and 80(P) (2) (d).

1)The Pr. Commissioner of Income Tax - 17. Appellant V/s. Annasaheb Patil Mathadi Kamgar Sahakari Patpedhi Maryadit Ltd. Income Tax Appeal No. 1574 OF 2017. (Copy of order is Attached) decided on 09th January 2020

2) Commissioner of Income Tax Vs. Shri Kulswami Co-Op. Credit Society Ltd. (Income Tax Appeal No. 1682 of 2014, decided on 20th March, 2017).

6. With regard to Ground No. 3, Ld. Counsel for the assessee submitted as under: -

"As per section 80P(2)(c)(ii), in case of a co-operative society other than consumer co- operative society engaged in activities other than those specified in clause (a) or clause (b) (either independently of, or in addition to, all or any of the activities so specified), so much of its profits and gains attributable to such activities does not exceed Rs. 50000/-, is allowed as deduction.

Hon. Bombay HC in the case of CIT vs. Ratanabad Co-operative Housing Soc Ltd. (1995) 215 ITR 549 Bom stated:

5. We are in agreement with the view taken by the Gauhati High Court in the case of Industrial Co-operative Bank Ltd. [1992] 196 ITR 174. In our view, the assessee-society was entitled to get deduction from the profits and gains attributable to its activity of letting out the shops to persons other than its members to the extent of Rs. 20,000 in each of the said assessment years.

1. Accordingly, we answer the question in the affirmative, that is, in favor of the assessee-society subject, however, to, the limit as mentioned in clause (c) of sub- section (2) of section 80P of the Act."

7. On the other hand, Ld.DR graciously accepted that the case of the assessee is covered in earlier assessment year in assessee's own case.

8. Considered the rival submissions and material placed on record, the similar issue is came up in assessee's own case before Coordinate Bench in ITA.No. 3240/Mum/2019 for the A.Y. 2012-13 and Coordinate Bench has decided as under: -

"4. Submissions made by Id. Departmental Representative heard. Orders of the authorities below examined. The solitary issue raised in appeal is against disallowance of deduction Rs.4,72,960/- under

section 80P(2)(a)(i)/80P(2)(d) of the Act. The assessee has made investment in Co-operative bank in the form of fixed deposits and has earned interest income of Rs.4,72,960/-. Whether interest income derived by a Co-operative Society from deposits with cooperative banks is eligible for deduction under section 80P(2)(d) of the Act or not is still a subject of debate. The Tribunal in the case of *Kaliandas Udyog Bhavan Premises Co-op Society Ltd. Vs. ITO, 94 taxmann.com 15 (Mumbai)* after examining the provisions of section and the decision of Hon'ble Karnataka High Court in the case of *Totagars Co-operative Sale Society, 392 ITR 74* held that interest income derived by a co-operative society from investments with a co-operative bank, would be entitled for deduction under section 80P(2)(d) of the Act. The relevant extract of the order reads as under: -

"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 sub-section (2), there shall be deducted, in accordance with and subject to the provisions of this section, the sum 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 co-operative 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 co-operative 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 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 cooperative 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 co-operative 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 co-operative 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 cooperative society registered under the Co-operative 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 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 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 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 Id. 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 Id. 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 cooperative 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 Id. 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 Id. D.R on the order of the ITAT 'SMC' Bench, Mumbai in the case of Shri Sai Datta Cooperative 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 Id. D.R on the judgment of the Hon'ble High Court of Karnataka in the case of Totagars cooperative Sale Society (supra), the High Court had concluded that a cooperative 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 cooperative 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."

[Emphasized by us]

5. *The Hon'ble Karnataka High court in the case of PCIT vs. Totagars Co-operative Sale Society 392 ITR 74 has held that for the purpose of section 80P(2)(d) of the Act, Co-operative Bank should be considered as cooperative society. Similar view has been taken by the Hon'ble Gujarat High court in the case of Surat Vankar Sahakari Sangh Ltd. vs. ACIT 421 ITR 134.*

6. *However, on the same issue Hon'ble Karnataka High court in the case of PCIT vs. Totagars Co-operative Sale Society 395 ITR 611 (Karnataka) has taken a contrary view holding that interest income earned from deposit with the cooperative bank does not qualify for deduction under section 80P(2)(d) of the Act. It would be relevant to mention here that the Hon'ble High Court while rendering the later judgement has not considered the earlier decision rendered in the*

case of Totagars Co-operative Sale Society (supra). The CIT(A) has rejected the claim of assessee by following later judgment rendered in Totagar's case.

7. No judgement from Hon'ble Jurisdictional High court on the issue of eligibility of deduction under section 80P(2)(d) of the Act on interest income derived by a Cooperative Society from a Cooperative Bank has been brought to our notice. The Hon'ble Bombay High Court in the case of K. Subramanian Vs. Siemens India Ltd. 156 ITR 11 has held that when two conflicting decisions of non-jurisdictional High Courts are available, the view that favours the assessee is to be preferred. Accordingly, following the decision of Hon'ble Karnataka High Court in the case of Totagars Cooperative Sale Society (supra) and the decision in the case of Hon'ble Gujarat High Court in the case of Vankar Sahakari Sangh (supra) the deduction claimed by the assessee under section 80P(2)(d) of the Act in respect interest derived from investments with the cooperative banks is allowed. I find merit in the grounds of appeal raised by the assessee, ergo the appeal of assessee is allowed."

9. Since the issue and facts are exactly similar to the facts in the earlier assessment year, we respectfully following the above decision of the SMC Bench and allow the appeal filed by the assessee.

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

Order pronounced in the open court on 21st February, 2023

Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER
Mumbai / Dated 21/02/2023
Giridhar, Sr.PS

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Copy of the Order forwarded to:

1. The Assessee
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mum