

IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH, MUMBAI

**BEFORE SHRI OM PRAKASH KANT, AM AND
MS. KAVITHA RAJAGOPAL, JM**

ITA No. 1236/Mum/2023
(Assessment Year: 2020-21)

Om Shri Yashodhan Co-op Hsg Soc Road No 5 ay Prakash Nagar Goregaon (E) Mumbai-400 063	Vs.	ITO-Ward-41(4)(3) Mumbai
PAN/GIR No. AAAAO 2410 R		
(Appellant)	:	(Respondent)
Assessee by	:	Shri Viay Joshi
Revenue by	:	Ms. Indira Adakil
Date of Hearing	:	05.07.2023
Date of Pronouncement	:	27.09.2023

ORDER

Per Kavitha Rajagopal, JM:

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) u/s.250 of the Income Tax Act, 1961 ('the Act'), pertaining to the Assessment Year ('A.Y.' for short) 2020-21.

2. The solitary ground of appeal is the disallowance of claim of deduction u/s.80P(2)(d) of the Act in respect of the interest income earned by the assessee from deposits with Co-operative Banks.

3. The brief facts are that the assessee is a Co-operative Society engaged in the business of providing various services relating to upkeep and maintenance of property for and on behalf of its member and registered under Co-operative Societies Act 1960. The

assessee filed its return of income dated 08.02.2021 declaring total income at Rs.74,140/- and the same was processed u/s. 143(1) of the Act. The Id Assessing Officer ('A.O.' for short)/Central Processing Centre ('CPC' for short) vide intimation u/s 143(1) of the Act dated 24.03.2022 has disallowed the claim of deduction u/s. 80P(2)(d) of the Act. The assessee then filed a rectification application u/s. 154 of the Act where the AO/CPC disallowed the deduction claimed u/s 80P of the Act.

4. The assessee was in appeal before the first appellate authority and the Id. CIT(A) vide order dated 11.03.2023 upheld the disallowance made by the AO/CPC u/s. 80P(2)(d) of the Act by relying on the decision of the Hon'ble Apex Court in the case of *Mavilayi Service Co-operative Bank Ltd vs CIT* [2021] 431 ITR 1 (SC).

5. The assessee is in appeal before us challenging the impugned order of the Id. CIT(A).

6. The learned Authorised Representative ('Id. AR' for short) for the assessee contended that the assessee had received interest income from the fixed deposit and dividend from Mumbai District Central Co-operative Bank Ltd. amounting to Rs.1,13,143/- and Rs.1,18,294/- respectively. The Id AR further stated that the assessee had claimed deduction u/s. 80P(2)(d) of the Act and the same were disallowed by the lower authorities for the reason that the interest earned on deposits with co-operative banks is not an allowable deduction u/s 80P of the Act. The Id. AR further stated that this issue is a settled proposition of law where various benches of the Tribunal and various high courts have allowed the said deduction. The Id. AR relied on the decision of the

Tribunal in the case of *Palm Court M Premises Co-operative Society Ltd vs. Pr. CIT* [2022] 145 taxmann.com 415 (Mum-Trib).

7. The learned Departmental Representative ('ld.DR' for short), on the other hand, controverted the said facts and stated that the assessee was not eligible for the deduction on interest and dividend received from a Co-operative Bank. The ld. DR relied on the decision of the Hon'ble Apex Court in the case of *Mavilayi Service Co-operative Bank Ltd.* (supra) wherein it was held that the deductions have to be strictly interpreted and the co-operative banks does not include co-operative society. The ld. DR relied on the orders of the lower authorities.

8. We have heard the rival submissions and perused the materials available on record. It is observed that the assessee being a registered co-operative society has received the following income during the year under consideration:

- a) Interest income from fixed deposit with Mumbai District Central Co-operative Bank Ltd. – Rs.1,13,143/-
- b) Dividend from Mumbai District Central Co-operative Bank Ltd. – Rs.5,151/-

It is observed that the assessee in an aggregate has received Rs.1,18,294/- from Mumbai District Central Co-operative Bank Ltd. and had claimed the said amount as deduction u/s. 80P of the Act. The ld. A.O./CPC has disallowed the claim of the assessee and the first appellate authority in an appeal preferred by the assessee challenging the impugned disallowance upheld the order of the ld. AO on the ground that the Co-operative Banks are at par with commercial banks and the interest earned on deposits with such co-operative banks are not eligible for deduction u/s. 80P(2)(a) and 80P(2)(d) of the Act and the same is read as under:

Deduction in respect of income of co-operative societies

80P. (2) The sums referred to in sub-section (1) shall be the following, namely :—

(a) in the case of a co-operative society engaged in—

(i) carrying on the business of banking or providing credit facilities to its members, or

(ii) a cottage industry, or

(iii) the marketing of the agricultural produce of its members, or

(iv) the purchase of agricultural implements, seeds, livestock or other articles intended for agriculture for the purpose of supplying them to its members, or

(v) the processing, without the aid of power, of the agricultural produce of its members, the whole of the amount of profits and gains of business attributable to any one or more of such activities ;

(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;

9. The Id. CIT(A) has relied on the decision of the Hon'ble Apex Court in the case of *Mavilayi Service Co-operative Bank Ltd.* (supra) wherein it was held that the co-operative societies are barred from carrying on banking business whereas the co-operative banks are regulated by Banking Regulation Act and the same does not categories as a Co-operative Society. The Id. CIT(A) further to this held that as per the decision of the Hon'ble Apex Court the provision of section 80P should be construed strictly and no liberal interpretation can be inferred. The Id. AR on the other hand relied on various other decisions of the co-ordinate bench which has held that the interest income earned out of the deposits made in Co-operative Banks are allowable deduction u/s. 80P(2)(d) of the Act. The relevant extract of the said decision in *Palm Court M. Premises Co-operative Society Limited* (supra) is cited hereunder for ease of ready reference:

8. We have heard the rival submissions and perused the materials on record. It is evident that the assessee is a co-operative housing society registered under the Co-operative Housing Societies' Act and that the assessee has earned interest income of Rs.12,90,210/- which was claimed as deduction under section 80P(2)(d). It is observed that the assessee has invested the

surplus funds with co-operative banks and non co-operative banks for which the assessee has received interest income of Rs.10,39,909/- from non cooperative banks and Rs.12,90,210/- from co-operative banks, respectively. The Ld.PCIT revised the assessment order passed under section 143(3) of the I.T. Act dated 15/12/2017 on the ground that interest income received by the assessee by way of investment in co-operative banks is not eligible for deduction under section 80P(2)(d) on the ground that the co-operative banks will not be classified under 'Co-operative Societies' and that the interest earned from co-operative banks are not eligible for deduction under the provisions of section 80P(2)(d). The Ld.PCIT placed his reliance on the decision of PCIT vs Totagars Co-operative Sale Society (supra) wherein the Hon'ble High Court held that the amendment to section 194A(3)(v) of the Act excludes cooperative banks from the definition of co-operative society by Finance Act, 2015 thereby intending to deduct tax at source under 194A that the said cooperative banks are not speci of genus of co-operative society excluding them from exemption or deduction under the provisions of Chapter VIA by virtue of section 80P of the Act. Following the interpretation of the Hon'ble Karnataka High Court in the above said decision, the Ld.PCIT held that the assessee was not entitled to deduction under 80P(2)(d) thereby directing the Assessing 5 ITA No. 561/MUM/2021 Officer to frame assessment de novo. We would like to place our reliance on the decisions relied upon by the Ld.AR in the cases mentioned below:-

1. M/s Petit Powers Co-op. Housing Society Ltd vs ITO (ITA No.549/MUM/2021)
2. M/s Solitaire CHS Ltd Society Office, Solitaire CHS Ltd vs PCIT (ITA No.3155/Mum/2019)
3. Jai Hind Co-operative Housing Society Ltd vs ACIT-25(2) (ITA No.1762 & 1763/Mum/2020)
4. M/s Vadasinor Pragati Samaj Co-operative Credit Society Ltd vs PCIT-18 (ITA No.2539/Mum/2019)
5. M/s Doshi Palace Co-operative Hsg Soc. Ltd vs ACIT-19(1) (ITA No.2510/MUM/2019)
6. The Salsette Catholic Co-operative Housing Ltd vs ACIT Circle-23(3) (ITA No.3870 & 3871/Mum/2019)

These decisions of the co-ordinate benches have reiterated the principle that the interest income derived by a co-operative society by way of investment made with a co-operative bank would be entitled to claim of deduction under section 80P(2)(d) of the Act. For this proposition, we would like to place our reliance on the decision of M/s Petit Towers Co-op. Housing Society Ltd vs ITO (supra) wherein the co-ordinate bench has observed 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. 6 ITA No. 561/MUM/2021 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 cooperative 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 jeopardise 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) Marwanjee 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. 8 ITA No. 561/MUM/2021 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 cooperative 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. 9. 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."

9. From the above observation, we are of the view that the facts of the present case are similar to the decisions that have been cited above and by respectfully following the said decisions, we hold that the Ld.PCIT has erred in concluding that the assessment order passed by the Assessing Officer under section 143(3) dated 19/04/2021 was erroneous insofar as it is prejudicial to the interest of the revenue as per the provisions of section 263 of the I.T. Act, 1961, we set aside the order of the Ld.PCIT and restore the order passed by the Assessing Officer vide order dated 15/12/2017 passed under section 143(3) of the I.T. Act.

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

10. From the above observation it is evident that various high courts has allowed the claim of the assessee u/s. 80P(2) with regard to the interest income earned out of the deposits made in co-operative banks by treating Co-operative Banks akin to that of the Co-operative Societies and there are various other decisions of the co-ordinate bench which has taken identical view on the said issue

11. By respectfully following the said decision we hereby allow the ground raised by the assessee and direct the Id. A.O. to delete the disallowance made.

12. In the result the appeal filed by the assessee is allowed.

Order pronounced in the open court on 27.09.2023.

Sd/-

(Om Prakash Kant)
Accountant Member

Mumbai; Dated : 27.09.2023

Roshani, Sr. PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. CIT - concerned
4. DR, ITAT, Mumbai
5. Guard File

Sd/-

(Kavitha Rajagopal)
Judicial Member

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai