

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "E" MUMBAI

BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
SHRI RAHUL CHAUDHARY (JUDICIAL MEMBER)

ITA No. 2213, 2214 & 2215/MUM/2023
Assessment Year: 2014-15, 2015-16 & 2017-18

ITO-19(3)(1),
Piramal Chamber, Room No.
405, Lalbaug, Mumbai-
400012.

Appellant

vs.

Tahnee Heights Co-operative
Housing Society Ltd.,
Ground floor, Tahnee Heights,
66 Nepean Sea Road, Malabar
Hill, Mumbai-400006.
PAN No. AAAAT 6303 N
Respondent

Assessee by : Mr. Samir Saraiya, CA
Revenue by : Mr. P.D. Chogule, CIT-DR

Date of Hearing : 05/10/2023
Date of pronouncement : 10/10/2023

ORDER

PER OM PRAKASH KANT, AM

These three appeals by the Revenue are directed against three separate orders, each dated 20.04.2023, passed by the Ld. Commissioner of Income-tax (Appeals) – National Faceless Appeal Centre, Delhi [in short ‘the Ld. CIT(A)’] for assessment years 2014-15, 2015-16 and 2017-18 respectively.

2. In these appeals, grounds raised are identical and therefore same were heard together and disposed off by way of this



consolidated order for convenience. In all the three assessment orders, the Assessing Officer has disallowed the claim of the assessee for deduction u/s 80P(2)(d) of the Income-tax Act, 1961 (in short 'the Act'). In assessment year 2014-15, the Assessing Officer has also disallowed the claim of deduction for interest earned on bonds invested in Indian Railway Finance Corporation Ltd. In assessment year 2015-16, the claim for deduction on sale of scrap was also disallowed by the Ld. Assessing Officer. The Ld. CIT(A) in all the three assessment years following the decision of the Hon'ble Supreme Court in the case of Venkatesh Premises CA 2706 of 2018 allowed the claim of the assessee on the ground that as long as amount accrued to the co-operative society are for the benefit of all the members, principle of mutuality are involved and therefore the amount received could not be taxable even though there is a surplus in the end of the year.

3. We have heard both the parties on the issue in dispute and perused the relevant material on record. As far as the grounds of the Revenue relating to deduction u/s 80P(2)(d) of the Act in respect of interest earned from deposits in cooperative bank is concerned, we find that the coordinate bench of Tribunal in various decisions has consistently allowed the claim of deduction u/s 80P(2)(d) of the Act on the interest earned on deposits with co-operative bank, holding that these cooperative banks are primarily exist as cooperative society. . Before us, the Ld. Counsel for the assessee has cited



decision in the case of **Land End Co-Operative Housing Society in ITA No. 3566/Mum/2014** for assessment year 2009-10. The relevant finding of the Tribunal is reproduced as under:

"8.3 We have heard the rival submissions and perused the material on record. We find that the CIT(A) enhanced the income of the assessee by rejecting the deduction u/s 80P(2)(d) of the Act of Rs.14,88,107/- being interest on investment with other Coop. banks by following the decision in the case of Bandra Samruddihi Co-operative Housing Society Ltd.(Supra) which was passed on the basis of the decision passed by the Hon'ble Supreme Court in the case of Totagar's Co-operative Sale Society Ltd. In the case of Totagar's Co-operative Sale Society Ltd v/s ITAT (supra) the Hon'ble Supreme Court while interpreting the section 80P(2)(a)(i) of the Act held that surplus funds not immediately required in the business and invested in the short term deposit would be assessable under the head "income from other sources" where the Co-operative society is engaged in carrying on business of banking or providing credit facilities to its members and consequently no deduction is allowable u/s 80P(2)(a)(i) of the Act. Whereas in the case before us the issue is whether a co-operative society which has derived income on investment with cooperative banks is entitled to deduction u/s 80P(2)(d). The provisions of Section 80P(2)(d) of the Act provide deduction in respect of income by way of interest or dividend on investments made with other Cooperative society. For the purposes of better proper understanding of these two provisions the relevant extract of the section are reproduced below: 80P: Deduction in respect of income of co-operative Societies.

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 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) In the case of a co-operative society engaged in-

(i) Carrying on the business of banking or providing credit facilities to its members.

The whole of the amount of profits and gains of business attributable to any one or more of such attributes.

(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."



From the close perusal of the provisions of u/s 80P(2)(a)(i) and 80P(2)(d) it is clear that the former deals with deduction in respect of profits and gain of business in case of the co-operative society carrying on business of banking or providing credit facilities to its members if the said income is assessable as income from business whereas latter provides for deduction in respect of income by way interest and dividend derived by assessee from its investments with other cooperative society. Thus it is amply clear that a cooperative society can only avail deduction u/s 80P(2)(d)(i) in respect of its income assessable as business income and not as income from other sources if it carries on business of the banking or providing credit ITA No.3566/Mum/2014 Lands End Co-operative Housing Society Ltd Vs. I.T.O.

facilities to its members and has income assessable under the head business whereas for claiming u/s 80P(2)(d) it must have income of interest and dividend on investments with other Co-operative society may or may not be engaged in the banking for providing credit facilities to its members and the head under which the income is assessable is not material for the claim of deduction under this section. Now will evaluate the assessee's case in the light of the decision of the Hon'ble Supreme court. The Honble Supreme Court in the case of Totagar's Co-operative Sale Society Ltd.(Supra) held that a society has surplus funds which are invested in short term deposits where the society is engaged in the business of banking or providing credit facilities to its members in that case the said income from short term deposits shall be treated and assessed as income from other sources and deduction u/s 80(P)(2)(a)(i) would not be available meaning thereby that deduction u/s 80(P)(2)(a)(i) is available only in respect of income which is assessable as business income and not as income from other sources. Whereas in distinction to this , the provisions of section 80(P)(2)(d) of the Act provides for deduction in respect of income of a coop society by way of interest or dividend from its investments with other coop society if such income is included in the gross total income of the such coop society. In view these facts and circumstances we are of the considered view that the assessee is entitled to the deduction of Rs. 14,88,107/- in respect of interest received/derived by it on deposits with coop. banks and ITA No.3566/Mum/2014 Lands End Co-operative Housing Society Ltd Vs. I.T.O.

therefore the appeal of the assessee is allowed by reversing the order of the CIT(A). The AO is directed accordingly.”

3.1 Further, the Ld. Counsel of the assessee has also relied on the decision of the Tribunal in the case of the **Totgars co-operative sale society ltd. ITA No. 376 to 379/Bang/2023** for assessment years 2015-16 to 2018-19. The Ld. Counsel also relied on the decision of the Co-ordinate Bench of the Tribunal in the case of **M/s**



Ishwar Bhawan Housing Ltd. in ITA No. 3285 and 3269/Mum/2022 for assessment years 2020-21 and 2021-22 and decision of the Tribunal in the case of **Amore Commercial Premises Co-op Society in ITA No. 2873 and 2874/Mum/2022** for assessment years 2020-21 and 2021-22.

3.2 In these decisions the Co-ordinate Bench has allowed the claim of the assessee u/s 80P(2)(d) of the Act in respect of interest earned from deposits with co-operative banks. Respectfully following the decisions cited above, we allow the claim of the assessee for deduction u/s 80P(2)(d) of the Act in respect of interest earned on deposit with co-operative bank. The corresponding grounds of appeal of the revenue are accordingly dismissed for all three assessment years.

3.3 In respect of ground raised by the Revenue in AY 2014-15 for interest of Rs.2,84,104/- received from Indian Railway Financial Corporation Ltd. on bond invested by the assessee society is concerned, we find that the assessee has claimed the said interest as exempted u/s 10(15) of the Act but under the provisions of the Act said exemption has to be notified in the official gazette but no such notification has been produced by the assessee either before us or before the lower authorities, therefore in the interest of justice we restore this issue back to the file of the Assessing Officer with the direction to the assessee to produce necessary evidence in support of claim including notification in the official gazette. The



ground Nos. 7 to 8 of the appeal of the Revenue are accordingly allowed for statistical purposes.

3.4 As far as the ground No. 7 in the appeal for the assessment year 2015-16 concerning disallowance of deduction in respect of scrap sale is considered, the Ld. Counsel of the assessee submitted that issue in dispute is covered in favour of the assessee by the Co-ordinate Bench of the Tribunal in the case of the assessee in ITA No. 4035 for assessment year 2004-05. In para 2 of the order of the Tribunal (supra), it is mentioned that the controversy was whether income in respect of sale scrap of Rs.20,26,500/- could be allowed on basis of mutuality or not. The Tribunal (supra) in para 4.2 of the order have allowed the claim of the assessee observing as under:

“4.2 The principles of mutuality has been elaborated by the Honble Supreme Court in the case of CIT vs. Bankipur Club Ltd. (226 ITR 97) wherein the Hon'ble Supreme Court has held that for applying the principle of mutuality, "there must be complete identity between the contributors and the participators." In our opinion, the claim of the assessee that on the principles of mutuality, the sale proceeds has to be excluded while computing the income of the assessee on the principles of mutuality as there is a complete identity of contributors and participators. Accordingly, the addition in respect of the sale proceed is deleted.”

3.5 Respectfully following the finding of the Tribunal, the assessee is eligible for deduction for income from the scrap sale amounting to Rs.1,97,000/-. The ground No. 7 of the appeal of Revenue is accordingly dismissed.



4. In the result, the appeal of the Revenue for assessment year 2014-15 is partly allowed for statistical purposes whereas appeals for assessment year 2015-16 and 2017-18 are dismissed.

Order pronounced in the open Court on 10/10/2023.

Sd/-
(RAHUL CHAUDHARY)
JUDICIAL MEMBER

Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER

Mumbai;

Dated: 10/10/2023

Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai