

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

**BEFORE SHRI N. K. CHOUDHRY, JM**

**I.T.A. No. 2223/Mum/2023**  
Assessment Year: 2017-18)

**and**

**I.T.A. No. 2224/Mum/2023**  
Assessment Year: 2018-19)

**and**

**I.T.A. No. 2225/Mum/2023**  
Assessment Year: 2020-21)

**Shivsamruddhi Nagari  
Sahakari Patasanstha  
Maryadit,**  
1, Shivbhakt Mitra Mandal,  
Teen Dongari, Hanuman Nagar,  
Goregaon (W), Mumbai-400078

Vs.

**ITO, Ward 31(1)(9),  
Mumbai-400012.**

PAN No. **AAEAS2097J**

<b>Appellant)</b>	:	<b>Respondent)</b>
<b>Appellant/Assessee by Revenue/Respondent by</b>	:	Shri Shekhar Patwardhan, Ld. CA Ms. Smitha V. Nair, Ld. DR
<b>Date of Hearing</b>	:	03.10.2023
<b>Date of Pronouncement</b>	:	30.10.2023

ORDER

**Per N. K. Choudhry, JM:**

The Assessee has preferred these appeals against the orders dated 05.06.2023 for AY 2017-18 & 2020-21 and 02.06.2023 for AY 2018-19 impugned herein, passed by National Faceless Appeal Centre (NFAC), Delhi {in short 'NFAC'}/Ld. Commissioner of Income Tax (in short "Ld. Commissioner") u/s 250 of the Income Tax Act 1961 (in short 'the Act').

**2.** As the facts and issues involved in these appeals are identical, hence, for the sake of brevity the same were heard together and are disposed of by this composite order.

**3.** For brevity, I am deciding ITA No. 2223/Mum/2023 as a lead case and result of the same shall be applicable *mutatis mutandis* to the connected appeals. Brief facts relevant for adjudication of this appeal are that the Assessee claimed to have been established in 2004 and claiming the deduction under section 80P(2)(a) of the Act as alleged for the last many years, which has also been allowed. The Assessee during the year under consideration, claimed the deduction of Rs. 35,10,345/- under section 80P(2)(a)(i) of the Act, which was examined and therefore, a show-cause notice dated 22.12.2019 was issued to the Assessee "*as to why the said deduction should not be disallowed and added to the total income of Assessee*".

[In response the Assessee did not prefer to file any reply, therefore, the AO by presuming that the Assessee do not have any explanation for the same and analyzing various provisions of law as applicable to the case observed that in the present case, it is seen that the Assessee fulfils all the three conditions laid down under section 56(c)(ccv) of part-V of the Banking Regulation Act, 1949 and therefore, falls in the category of the Primary Co-operative Bank. The primary objective of the Assessee is to engage in carrying on the business of

banking or providing credit facilities to its members as mentioned in its letter submitted during the Assessment proceedings and its Tax Audit Report. The AO ultimately disallowed the deduction under section 80P of the Act to the tune of Rs. 35,10,345/- and added the same in the income of the Assessee by holding as under:

*“8.5 In view of a thorough and comprehensive analysis of the factual and legal position, the following conclusions are drawn:*

*1. The assessee is mainly engaged in the activity of providing credit facilities to its members from out of the deposits collected and income generated thereof which is in the nature of banking business.*

*1. By virtue of inclusive definition of income in section 2(24)(viii), providing credit facilities by a co-operative society with its members are to be included as profits and gains of business of banking*

*1. The membership to the assessee society is not restrictive and also satisfies the conditions prescribed for treating it as a primary co-operative bank in accordance with V of the Bank the definition laid down in Part V of the Banking Regulation Act, 1949.*

*1. The assessee satisfies all the 3 conditions prescribed to come under the purview of the definition of primary cooperative bank as per section 5(ccv) of the Banking Regulation Act, 1949.*

*1. The provisions of section 80P(4) r.w.s. 2(24)(viii) are overriding over section 80P as it stood after the amendments to these provisions w.e.f. AY 2007-08.*

*1. There to be uniformity in the activities of the assessee with that of a bank in as much as for collecting deposits the depositor has to enroll as a member and deposit the money then and there and an identical process is followed for claiming back the amounts. In the banking business also, the depositors are to take deposit receipts and become account holders for taking loans as well. Effectively, the transactions are comparable and similar. Moreover, as already pointed out, the activities are not restrictive.*

*8.6 Therefore, the assessee has satisfied all the conditions required to come under the purview of the definition of primary co-operative bank. Under the above facts and circumstances, the assessee is clearly not eligible for deduction u/s 80P(2)(a)(i) in view of the specific provisions of section 2(24)(viii) read with Explanation to 80P(4) of the Income Tax Act, 1961 inserted w.e.f. 01.04.2007."*

**4.** The Assessee being aggrieved challenged the said disallowance of Rs. 35,10,345/- before the Ld. Commissioner. The Ld. Commissioner observed that during the year under consideration, the Assessee earned income to the tune of Rs. 35,10,350/- which consists of interest on investment with Co-operative Bank to the tune of Rs. 18,09,761/-. The bifurcation of Rs. 35,10,350/- is as under:

(i)	<i>Deduction under section 80P(2)(a)</i>	<i>Rs. 17,00,569/-</i>
(ii)	<i>Deduction under section 80P(2)(d)</i>	<i>Rs. 18,09,781/-</i>

Though the Ld. Commissioner by taking refuge of the decision of the Hon'ble Apex Court in the case of Mavilayi Service Co-operative Bank Ltd. (2021) 123 taxmann.com 161 (SC) has not treated the Assessee as Co-operative Bank within the meaning of section 80P(4) of the Act and therefore, allowed the claim of deduction of Rs. 17,00,569/- under section 80P(2)(a)(i) , however with regard to the earning interest income on investment made with the Co-operative Bank to the tune of Rs. 18,09,761/-, by relying upon various judgments and holding "*that after insertion of section 80P(4) in the Act, deduction under section 80P(2)(d) has been limited to interest/dividend received from other co-operative Society only and not from Co-operative Bank (other than PACS and Primary Co-operative Agricultural and Rural Development Bank). Therefore, it is clear that Co-operative Bank is an Urban Commercial Bank and does not fall under the purview of Co-operative Society referred in section 80P(2)(d) of the Act and as such, the interest income earned from such Co-operative Bank is not allowable for the*

*said deduction under section 80P(2)(d) of the Act*” affirmed the decision of the AO in disallowing the same.

**5.** The Assessee being aggrieved is in appeal before this Bench. The limited question involved in the instant case relates to the issue “whether the interest income earned from Co-operative Bank is allowable as deduction under section 80P(2)(d) of the Act or not. The provisions of section 80P(2)(d) of the Act reflects that if any income by way of interest or dividend derived by the Co-operative Society from its investment with any other Co-operative Society, then the whole of such income shall be deducted in computing the total income of the Assessee. Meaning thereby income if any by way of interest or dividend earned from investment with any other Co-operative Society, then such amount of interest or dividend earned shall be deductible in computing the total income of the Assessee.

The Hon’ble Co-ordinate Benches of the Tribunal in various cases including in Belgaum Coal and Coke Consumer Co-operative Association Ltd. Vs. ITO in ITA No. 102/PAN/2018 decided on 06.04.2022, Nawbharat Darpan Co-operative Credit Society Ltd. Vs. CIT in ITA No. 5288 and 5289/Mum/2018 decided on 25.11.2021, Borivali Jan Kalyan Sahkari Patpedhi Ltd. Vs. ITO in ITA No. 5230/Mum/2019 decided on 30.03.2021 and in the case of Pathare Prabhu Co-operative Housing Society Ltd. Vs. ITO in ITA No. 1346 & 1347/(MUM) of 2023 decided on 27.07.2023 (2023) 153 taxmann.com 714 (Mum. Trib.) dealt with identical issue “as to whether the interest/dividend income earned from Co-operative Bank is allowable as deduction under section 80P(2)(d) of the Act or not” and ultimately allowed the deduction claimed as interest/dividend income earned from Co-operative Bank u/s 80P(2)(d)



*operative Bank or the State Co-operative Bank. Accordingly, the assessee kept the deposits in Co-operative Banks registered under the Maharashtra Co-operative Societies Act and earned Interest, which was claimed as a deduction under section 80P(2)(d) of the Act. The AO denied the deduction under section 80P(2Xd) of the Act on the basis that the Co-operative Bank is covered under the provisions of section 80P(4) of the Act. We find that the Hon'ble Supreme Court in Mavilayi Service Co-operative Bank Ltd. v. CIT [2021] 123 taxmann.com 161/279 Taxman 75/431 ITR 1 while analysing the provisions of section 80P(4) of the Act held that section 80P(4) is a proviso to the main provision contained in section 80P(1) and (2) and excludes only Co-operative Banks, which are Co-operative Societies and also possesses a licence from RBI to do banking business. The Hon'ble Supreme Court further held that the limited object of section 80P(4) is to exclude Co-operative Banks that function at par with other commercial banks i.e. which lend money to members of the public. Thus, we are of the considered view that section 80P(4) of the Act is of relevance only in a case where the assessee, who is a Co-operative Bank, claims a deduction under section 80P of the Act which is not the facts of the present case. Therefore, we find no merits in the aforesaid reasoning adopted by the AO and upheld by the learned CIT(A) in denying deduction under section 80P(2)(d) of the Act to the assessee.*

12. As regards the claim of deduction under section 80P(2)(d) of the Act, it is also pertinent to note that all Co-operative Banks are Co-operative Societies but vice versa is not true. We find that the coordinate benches of the Tribunal have consistently taken a view in favour of the assessee and held that even the interest earned from the Co-operative Banks is allowable as a deduction under section 80P(2)(d) of the Act. In Kaliandas Udyag Bhavan Premises Co-op Society Ltd. v. ITO [2018] 94 taxmann.com 15 (Mum.)/[ITA No. 6547/Mum./2017, dated 25-4-2018], while dealing with the provisions of section 80P(2)(d) vis-à-vis section 80P(4) of the Act, the coordinate bench of the Tribunal observed as under:

7..... 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 1-4- 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 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 co-operative 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 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;'*

*We are of the considered view, that though the co-operative bank pursuant to the insertion of Sub-section (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 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."*

13. We find that the learned CIT(A) has placed reliance upon the decision of the Hon'ble Karnataka High Court in *Pr. CIT v. Totagars Co-operative Sales Society* [2017] 83 taxmann.com 140/395 ITR 611, wherein it was held that interest earned by the assessee, a Co-operative Society, from surplus deposits kept with a Co-operative Bank, was not

*eligible for deduction under section 80P(210) of the Act. We find that in an earlier decision the Hon'ble Karnataka High Court in Pr. CT v. Totagars Co-operative Sale Society (2017) 78 taxmann.com 169/392 ITR 74 held that according to section 80P(2)(d) of the Act, the amount of interest earned from a Co-operative Society Bank would be deductible from the gross income of the Co-operative Society in order to assess its total income. Thus, there are divergent views of the same Hon'ble High Court on the issue of eligibility of deduction under section 80P(2)(d) of the Act in respect of interest earned from Co-operative Bank. No decision of the Hon'ble jurisdictional High Court was brought to our notice on this aspect. We have to, with our highest respect to both the views of the Hon'ble High Court, adopt an objective criterion for deciding as to which decision of the Hon'ble High Court should be followed by us. We find guidance from the judgment of the Hon'ble Supreme Court in CIT v. Vegetable Products Ltd. [1973] 88 ITR 192. In the aforesaid decision, the Hon'ble Supreme Court has laid down a principle that "if two reasonable constructions of a taxing provisions are possible, that construction which favours the assessee must be adopted".*

*14. Therefore, in view of the above, we uphold the plea of the assessee and direct the AO to grant the deduction under section 80P(2)(d) of the Act to the assessee in respect of interest income earned from investment with Co-operative Banks. Accordingly, we set aside the impugned order passed by the learned CIT(A) for the assessment year 2018-19. As a result, grounds raised by the assessee are allowed."*

**6.** In view of the consistent decisions taken by the Hon'ble Co-ordinate Benches of the Tribunal, the income if any earned by way of interest or dividend from the investments made with any other Co-operative Bank as well, is allowable as deduction under section 80P(2)(d) of the Act.

7. Coming to the instant case, from the orders passed by the authorities below, nothing is clear about the bifurcation of interest amount earned and its is also not clear from which Co-operative banks the interest claimed has been earned and even the Assessee also did not file any bifurcation of the income earned from Co-operative banks before this bench. Thus for just decision of the case and for the ends of justice, the Assessee is directed to file bifurcation of interest/dividend income earned before the AO, who will accordingly grant the deduction qua interest earned from Co-operative Banks only.

8. In the result, appeal filed by the Assessee stands allowed in the aforesaid terms.

9. In view of my decision in ITA No. 2223/Mum/2023, all the appeals under consideration are allowed on the same terms.

Order pronounced in the open court on 30-10-2023.

*Sd/-*

**(N. K. CHOUDHRY)**  
**Judicial Member**

*\*SK, Sr. PS*

**Copy of the Order forwarded to :**

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

BY ORDER,

(Dy./Asstt.Registrar)  
**ITAT, Mumbai**