

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

**BEFORE SHRI NARENDER KUMAR CHOUDHRY,  
JUDICIAL MEMBER**

ITA No. 2227/Mum/2023  
(Assessment Year: 2020-21)

Blue Rose Industrial Premises  
Co-op. Society Limited  
43, Blue Rose Industrial  
Premises Co-op. Society Limited  
Wester Express Highway,  
Borivali (E), Mumbai-400 068

CIT(A),  
NFAC,  
Delhi-110 001

Vs.

PAN/GIR No. AAAAB 3779 Q  
(Assessee) : (Respondent)

**Assessee by** : Shri Ajay Singh, Ld. AR  
**Respondent by** : Ms. Smitha V. Nair, Ld. DR

**Date of Hearing** : 05.10.2023  
**Date of Pronouncement** : 31.10.2023

**ORDER**

**Per Narender Kumar Choudhry, J M:**

This appeal has been filed by the Assessee against the order dated 31.05.2023 impugned herein passed by National Faceless Appeal Centre ('NFAC' for short)/ the learned Commissioner of Income Tax (Appeals) (in short 'Id. Commissioner) u/s.250 of the Income Tax Act, 1961 ('the Act'), pertaining to the Assessment Year ('A.Y.' for short) 2020-21.

2. In this case, the Assessee claimed the amount of Rs.33,57,902/- as deduction u/s. 80P(2)(d) of the Act and therefore the Id. Assessing Officer ('A.O.' for short) showcased the Assessee with regard to the afore-said deduction claimed, who in response filed the details of the interest received from various Scheduled Banks and Co-operative Banks, as tabulated below:

<b>Sr. No.</b>	<b>Bank Name</b>	<b>Bank Type</b>	<b>Amount in Rs.</b>
1	Bank of India	Scheduled Commercial Bank	250395
2	HDFC Bank	Scheduled Commercial Bank	189940
3	Axis Bank	Scheduled Commercial Bank	325622
4	Bank of Baroda	Scheduled Commercial Bank	291231
5	Saraswati Co-op. Bank	<b>Co-op Bank</b>	769384
6	SVC Co-op. Bank	<b>Co-op Bank</b>	2030903
7	Mumbai District Central Co-op Bank	<b>Co-op Bank</b>	160088
		<i>Total</i>	<i>40,17,563</i>

3. By perusing the said claim of the Assessee, the Id. A.O. noticed that as per the information furnished by the Assessee, the Assessee has claimed deduction u/s. 80P(2)(d) of the Act *qua* interest income of Rs.33,57,902/- out of the total interest of Rs.40,17,563/- derived from the deposits made with Bank of India, HDFC Bank, Axis Bank, Bank of Baroda, Saraswati Co-op. Bank and Mumbai District Central Co-op Bank.

**3.1** The Assessee before the Id. A.O. mainly claimed that the co-operative banks are registered under 'Co-operative Societies Act' and, therefore, the interest earned from such co-operative banks which are primarily co-operative societies is exempt u/s. 80P(2)(d) of the Act.

**3.2** The Id. A.O. though considered the said claim of the Assessee however did not get impressed and by concluding that the intention of the legislature is to keep the co-operative banks out of the scope of section 80P of the Act, therefore the provisions of section 80P are not applicable to co-operative banks, for all purposes as they have to be kept out of the scope of section. Wherever the word 'Co-operative Societies' is used in section 80P, it will not be applicable for Co-Operative Banks. This means that the interest income derived from the deposits/investments in co-operative banks are not eligible for deduction u/s. 80P(2)(d) of the Act. The Id. A.O. ultimately disallowed the claim of the deduction of Rs.33,57,902/- as claimed u/s. 80P(2)(d) of the Act and consequently added in the income of the Assessee as 'income from other sources' u/s. 56 of the Act.

**4.** The Assessee being aggrieved challenged the said addition/disallowance by filling first appeal before the Id. CIT(A), who affirmed the action of the Id. A.O. in disallowing such deduction claimed. The Assessee being aggrieved is in appeal before this Bench.

**5.** Heard the rival submissions and perused the materials available on record. The sole issue involved in instant case relates to the claim of deduction of income earned as interest/dividend from co-operative bank. The Assessee at the outset claimed that the Assessee is entitled

to claim the deduction of Rs.29,60,375/- instead of Rs.33,57,902/- which was inadvertently claimed before authorities below and therefore the amount of Rs.29,60,375/- may be allowed as deduction u/s. 80P(2)(d) of the Act as interest income received from co-operative banks , bifurcation of which is reproduced below :

1	<i>MDCC Bank</i>	<i>Rs.1,60,088</i>
2	<i>Saraswat Co-operative Bank</i>	<i>Rs.7,69,384</i>
3	<i>SVC Bank</i>	<i>Rs.20,30,903</i>
	<b><i>Total</i></b>	<b><i>Rs.29,60,375</i></b>

**5.1** 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.

**5.2** The provisions of section 80P(2)(d) of the Act reflects “*Co-operative Society*” but not the “*Co-Operative Bank*” therefore question emerge “*whether income earned by way of interest or dividend from the investments made with any other Co-operative Bank is allowable as deduction under section 80P(2)(d) of the Act, or not*”.

**5.3** 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) of the Act . For clarity and ready reference, conclusion drawn by the Hon'ble Co-ordinate Bench of the Tribunal in the case of Pathare Prabhu Co-operative Housing Society Ltd. (supra) is reproduced herein below:

*"9. Before proceeding further, it is relevant to note the provisions of section 80P of the Act under which the assessee has claimed the deduction in the present case. As per the provisions of section 80P(1) of the Act, the income referred to in sub-section (2) to section 80P shall be allowed as a deduction to an assessee being a Co-operative Society. Further, section 80P(2)(d) of the Act, reads as under:*

*"80P. Deduction in respect of income of co-operative societies.*

*(1)*

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*(2) The sums referred to in sub-section (1) shall be the following, namely:-*

*(a) to (c)\*\**

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*(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;"*

*10. Thus, for the purpose of provisions of section 80P(2)(d) of the Act, two conditions are required to be cumulatively satisfied- (i) income by way of interest or dividend is earned by the Co-operative Society from the*

investments, and (ii) such investments should be with any other Co-operative Society. Further, the term "co-operative society" is defined under section 2(19) of the Act as under:

"(19) "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;"

11. In the present case, there is no dispute that the assessee is a Co-Operative Housing Society. Thus, if any income as referred to in sub-section (2) to section 80P of the Act is included in the gross total income of the assessee, the same shall be allowed as a deduction. It is pertinent to note that since the assessee is registered under the Maharashtra Co-operative Societies Act, 1960, it is required to invest or deposit its funds in one of the modes provided in section 70 of the aforesaid Act, which includes investment or deposit of funds in the District Central Co-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(2)(d) 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 Udyog 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(2)(d) 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."

**5.4** 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. Accordingly the AO is directed to allow deduction qua interest earned from Co-operative Banks only but subject to verification.

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

*Order pronounced in the open court on 31-10-2023*

Sd/-  
(Narender Kumar Choudhry)  
Judicial Member

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

BY ORDER,

(Dy./Asstt. Registrar)  
ITAT, Mumbai

