

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

**BEFORE SHRI B R BASKARAN, AM, AM &  
SHRI NARENDER KUMAR CHOUDHRY, JM**

ITA Nos. **2704, 2705, 2706 & 2707/Mum/2023**

(Assessment Years:  
**2012-13, 2015-16, 2017-18 & 2018-19**)

**Shivsamarth Sahakari Patpedhi Ltd.**

Plot No. 23-A,  
Sector-5, Airoli,  
Navi Mumbai-400 708

**ITO, WARD 28(3)(2)**

Navi Mumbai

Vs.

PAN/GIR No. AACAS 9177 M

**(Assessee)**

:

**(Respondent)**

Assessee by :

Dr. P. Daniel, Ld. AR

Respondent by :

Shri Ram Prakash Rastogi,  
Ld. DR

Date of Hearing :

30.10.2023

Date of Pronouncement :

31.10.2023

**ORDER**

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

These appeals have been preferred by the Assessee against the orders dated 28.06.2023, 20.07.2023, 28.06.2023 and 30.06.2023 passed by National Faceless Appeal Centre ('NFAC')/ the learned Commissioner of Income Tax (Appeals) (in short 'Id. Commissioner for short) u/s.250 of the Income Tax Act, 1961 (in short 'the Act'), pertaining to the Assessment Years ('A.Y.' for short) 2012-13, 2015-16, 2017-18 & 2018-19.

2. As the facts and issues involved in all these appeals under consideration are exactly similar except variation in figures of amount, therefore, for the sake of brevity, the same were heard together and are being disposed of by this consolidated order and ITA No. 2704/Mum/2023 as a lead case.

### **ITA No. 2704/Mum/2023**

3. In this case, the Assessee by filing its return of income, has claimed the deduction of Rs.3,63,255/- u/s. 80P of the Act, therefore, the AO show caused the Assessee as to why the claim of deduction of Rs.3,63,255/- u/s. 80P of the Act should not be disallowed in view of the provision of section 80P(4) of the Act. The Assessee by filing its reply dated 15.11.2019 mainly claimed that the Assessee is not a Co-operative Bank carrying banking business and, therefore, not hit by the newly inserted provision of section 80P(4) of the Act.

4. The Id. Assessing Officer ('A.O.' for short) considered the claim of the Assessee, however, found the same as not acceptable and ultimately disallowed the deduction of Rs.3,63,255/- as claimed u/s. 80P of the Act, by concluding as under:

9. *The sub-section (4) of section 80P was inserted by Finance Act, 2006 w.e.f 01.04.2007. It provides that provision of said section shall not apply in relation to any co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank. It also defines the expressions "Co-operative Bank", "Primary Agricultural Credit Society" and "Primary co-operative agricultural and rural development bank". It has also inserted sub clause (viii) to section 2(24) so as to provide that the profits and gains of any business of banking (including providing credit facilities) carried on by a co-operative society with its members shall be included in the definitions of income'. This amendment will take effect from 1st April, 2007 and will*

accordingly apply in relation to the assessment year 2007-08 and subsequent years.

10. The Hon. Kerala High Court in the case of *Muhammed Usman vs Registrar of co-operative credit society* on 29th November 2002 Equivalent citations: AIR 2003 Ker (299), 2003 116 Comp Cases 505 Ker(299) has categorically distinguished primary co-operative bank and primary co-operative society and define their principle business as under:

*“The difference between a primary co-operative bank and a primary credit society is only in the case of paid up share capital and reserve. As far as a primary co-operative bank is concerned, the same shall not be less than one lakh of rupees and in case of a primary credit society it shall be less than one lakh rupees. It is significant to note that the primary object or principal business of both shall be the transaction of banking business. It has to be specifically noted that both definitions expressly exclude a primary agricultural credit society. The legislative intention of such a specific exclusion is clear from the Act itself. The primary agricultural credit society is permitted to provide financial accommodation only to its members and that too for agricultural purposes and purposes connected with agricultural activities whereas coming to co-operative bank and primary credit societies, those societies are intended to engage in the transaction of banking business. The only common factor is that all such societies are co-operative societies,”*

11. The Hon'ble Madras High Court in the case of *SBI Staff Co-operative Society Ltd. V. ITO*(1998) 144 CTR (Mad) 240:(1998) 234 ITR 104(Mad ) to justify that *Patsanstha* (Credit institution) is a co-operative society engaged in the business of banking and therefore, the investments in the said *Patsanstha* (Credit society) is covered by the provision of section 11(5)(iii) of the Act (3) (2).

12. There are many such judicial pronouncements in support of the same. Thus, it is clear in the case of the assessee that it fulfills the condition laid down u/s 56(c)(ccv)part V of the Banking Regulation Act, 1949.

(Cu) "Primary co-operative bank" means a co-operative society, other than primary agricultural credit society whose:

- (1) The primary object or principal business of which is the transaction of banking business; (as in the case of assessee)
- (2) The paid up share capital and reserves of which are not less than 1 lakh rupees and (share capital exceeds 1 lakh)
- (3) The byelaws of which do not permit admission of any other co-operative society as a member:

13. In view of the above discussion it is clear that the credit society assessee falls under the category of Primary Co-operative Bank. The assessee fulfills all the 3 conditions of a Primary Co-operative Bank and therefore, the provisions of sec. 80P(4) are applicable in this case.

14. Similar precedence laid down in *Renuka Co-Operative Credit Society Ltd. vs. ITO* Wd. 2(2) in ITA No. 346/PNJ/20 13 dated 14/08/2014 and *ITO, Ward 1(3), Belgaum vs. Shri Dudundeshwar Urban Co-operative Credit Society Ltd.* 53 taxann.Com 165(Panji-Trib.).

15. In view of the above discussion it is hereby held that the assessee is a Co-operative Bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank. The assessee fulfills the conditions laid down u/s 56(c)(ccv) of part V of the Banking Regulation Act 1949 for being a co-operative bank. The assessee further failed to substantiate that the assessee society are transacting with members only. Thus under sub section (4) of section 80P of 1.T. Act, 1961 the deduction u/s 80P(2)(a)(i) would not be allowable to the assessee.

16. In view of the facts and circumstances and the legal provisions explained above, I hold, that the assessee is not eligible for deduction u/s.80P of the Income Tax Act 1961. The assessee's claim for deduction of Rs. 3,63,255/- u/s.80P is disallowed and added back to the total income of the assessee. Penalty initiated u/s. 271(1)(c) of the Income Tax Act, 1961 for furnishing inaccurate particular of income and thereby concealing the said income for A.Y. 2012-13.

**5.** The Assessee being aggrieved challenged the afore-said addition of Rs.3,63,255/- by filing the first appeal before the Id. Commissioner , who though held that the Assessee is eligible for deduction u/s. 80P(2)(a)(i) of the Act on the business income earned from its members only, however, ultimately held that the Assessee is not entitled for deduction of the interest income/dividend generated from co-operative banks u/s. 80P(2)(d) of the Act and consequently directed the A.O. to quantify the amount of deduction u/s.80P(2)(d) of the Act on the interest income/dividend income according to the observation made by him and disallowed the same.

**6.** The Assessee being aggrieved is in appeal before us.

**7.** Heard the rival submissions and perused the materials available on record. The Assessee is in appeal against the denial of deduction of 3,63,255/- as claimed qua income earned as interest/dividend from co-operative bank. 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.

**7.1** 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*".

**7.2** 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) \*\* \*\**  
*(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;"*

*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 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(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."*

**7.3** 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. **Accordingly, the appeal i.e. ITA No. 704/Mum/2023 filed by the Assessee stands allowed in the afore-said terms.**

**8.** In view of our decision in **ITA No. 704/Mum/2023**, all appeals under considerations are allowed on the same terms.

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

Sd/-  
(B R Baskaran)  
Accountant Member  
Roshani, Sr. PS

sd/-  
(Narender Kumar Choudhry)  
Judicial Member

**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