IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE "SMC" BENCH : PUNE

BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER

I.T.A.No.1184/PUN./2023
Assessment Year 2020-2021

Maharashtra Rajya Vidyut Mandalnagari Credit Co.op Society Ltd., S.No.378/2, Plot No.10, Vishrambag, Sangli – 416 436. Maharashtra. PAN AAAAM0517B	vs.	National Faceless Appeal Centre ["NFAC"] Delhi
(Appellant)		(Respondent)

For Assessee :	-None-
For Revenue :	Shri Basavaraj Hiremath

Date of Hearing :	07.03.2024
Date of Pronouncement :	07.03.2024

ORDER

PER SATBEER SINGH GODARA, J.M. :

This assessee's appeal for assessment year 2020-21, arises against the National Faceless Appeal Centre [in short the "NFAC"] Delhi's Din and Order No. ITBA/NFAC/S/250/2023-24/1056170761(1), dated 17.09.2023, involving proceedings u/s.143(3) of the Income Tax Act, 1961 (in short "the Act").

Cases called twice. None appears at assessee's behest. It is accordingly proceeded ex-parte.

2. The assessee's sole substantive grievance raised in the instant appeal is that both the learned lower authorities have wrongly disallowed its deduction claimed u/sec.80P(2)(d) of the Act of Rs.33,69,953/- received from Co-operative Bank(s). It is found that the instant issue is no more *res integra* in light of this

tribunal's recent coordinate bench's order ITA.No.1249/PUN./2018 dated 07.01.2022 in The Rena Sahakari Sakhar Karkhana Ltd. vs. PCIT's case has rejected the Revenue's identical arguments as follows :

"3. After culmination of the assessment proceedings, the Pr. CIT called for the assessment records of the assessee. It was observed by the Pr. CIT that the assessee had during the year shown interest income from FDs with Co-operative Banks amounting to Rs.75,38,534/-, against which it had claimed deduction under Sec.80P(2)(d) of the Act. It was observed by the Pr. CIT, that the A.O while framing the assessment had allowed the aforesaid claim of deduction raised by the assessee. Observing, that as co-operative banks were commercial banks and not a co-operative society, therefore, the Pr.CIT was of the view that the assessee was not eligible for claim of deduction under Sec.80P(2)(d). In the backdrop of his aforesaid conviction, the Pr. CIT was of the view that the assessment order passed by the A.O under Sec.143(3), dated 07.03.2016, therein allowing the assesses claim for deduction under Sec. 80P(2)(d), had therein rendered his order as erroneous, insofar it was prejudicial to the interest of the revenue. Accordingly, the Pr.CIT not finding favour with the reply of the assessee, wherein the latter had tried to impress upon him that it was duly eligible for claim of deduction under Sec.80P(2)(d) of the Act, therein "set

aside" the order of the A.O with a direction to redecide the issue afresh and reframe the assessment.

4. The assessee being aggrieved with the order of the Pr.CIT has carried the matter in appeal before us. As the present appeal involved a delay of 52 days, therefore, the ld. A.R took us through the reasons leading to the same. It was submitted by the ld. A.R that as the then counsel of the assessee society who was looking after its tax matters, viz. Shr. Ravikiran Pandurang Todkar, Chartered Accountant was taken unwell due to kidney failure and had undergone kidney transplant, therefore, due to his unavailability the appeal could not be filed within the stipulated time period. Our attention was drawn towards the „affidavit" of the assessee society wherein the aforesaid facts were deposed. On the basis of the aforesaid facts, it was submitted by the ld. A.R that the delay involved in filing of the present appeal in all fairness may be condoned. Per contra, the ld. D.R did not object to the seeking of condonation of the delay in filing of the appeal by the assessee society. After giving a thoughtful consideration, we are of the considered view, that as there were justifiable reasons leading to delay on the part of the assessee in filing of the present appeal before us, therefore, the same merits to be condoned.

5. On merits, it was submitted by the ld. A.R, that as the A.O while framing the assessment had after making necessary verifications taken a plausible view, therefore, the Pr. CIT had

exceeded his jurisdiction by seeking to review the order passed by him in the garb of the revisional powers vested with him under Sec.263 of the Act. It was submitted by the ld. A.R, that the issue as regards the eligibility of the assessee for claim of deduction under Sec.80P(2)(d) on interest income derived from investments/deposits lying with co-operative banks was squarely covered by the various orders of the coordinate benches of the Tribunal viz., (i). M/s Solitaire CHS Ltd. vs. Pr. CIT, ITA No. 3155/Mum/2019; dated 29.11.2019 (ITAT "G" Bench, Mumbai); Kaliandas Udyog Bhavan Premises Co-op Society Ltd. Vs. ITO-21(2)(1), Mumbai, ITA No. 6547/Mum/2017 (ITAT Mumbai); and (iii). Majalgaon Sahakari Sakhar Karkhana Ltd. Vs. ACIT, Circle-3, Aurangabad, ITA No, 308/Pun/2018 (ITAT Pune). On the basis of his aforesaid contentions, it was averred by the ld. A.R that as the Pr. CIT had exceeded his jurisdiction and had not only sought to review the plausible view that was taken by the A.O after necessary deliberations which was in conformity with the order of the jurisdictional bench of the Tribunal, therefore, his order may be vacated and that of the A.O be restored.

6. Per contra, the ld. Departmental Representative (for short "D.R") relied on the order passed by the Pr. CIT under Sec.263 of the Act. It was submitted by the ld. D.R, that as the assessee was not eligible for claim of deduction under Sec.80P on the interest income received on the investments/deposits lying with

the co-operative banks, therefore, the Pr. CIT finding the assessment order passed by the A.O under Sec.143(3), dated 07.03.2016 as erroneous, insofar it was prejudicial to the interest of the revenue, had rightly „set aside" his assessment with a direction to re-adjudicate the issue therein involved. Our attention was also drawn by the ld. D.R to his written submissions and certain judicial pronouncements in support of his aforesaid contention.

7. We have heard the ld. 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 or not 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. In our considered view, the issue involved in the present appeal hinges 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 the co-operative bank, 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 cooperative 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.

8. After necessary deliberations, we are unable to persuade ourselves to concur with the view taken by the Pr. CIT. Before proceeding any further, we may herein cull out 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 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).....

(b).....

(c).....

(d) in respect of any income by way of interest or dividends derived by the cooperative 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) to Sec. 80P of the Act, 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 jeopardize 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 „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 banks pursuant to the insertion of sub-section (4) to Sec. 80P would no more be entitled for claim of deduction under Sec. 80P of the Act, but as a cooperative 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.

9. In so far the judicial pronouncements that have been relied upon by the ld. A.R are concerned, 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). M/s Solitaire CHS Ltd. vs. Pr. CIT, ITA No. 3155/Mum/2019; dated 29.11.2019 (ITAT "G" Bench, Mumbai);

(ii). Majalgaon Sahakari Sakhar Karkhana Ltd. Vs. ACIT, Circle-3, Aurangabad, ITA No, 308/Pun/2018 (ITAT Pune)

(iiii). 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. 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. 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), as had been relied upon by the ld. D.R before us, had held, that a co-operative society would not be entitled to claim deduction under Sec. 80P(2)(d); but then, the Hon'ble High Court 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 co-operative bank would be eligible for claim of deduction under Sec.80P(2)(d) of the Act. Backed by the aforesaid conflicting judicial pronouncements, we may herein observe, 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 that of the 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 co-operative society on its investments held with a co-operative bank would be eligible for claim of deduction under Sec.80P(2)(d) of the Act.

10. Be that as it may, in our considered view, as the A.O while framing the assessment had taken a possible view, and allowed the assessee's claim for deduction under Sec. 80P(2)(d) on the interest income earned on its investments/deposits with co-operative banks, therefore, the Pr. CIT was in error in exercising his revisional jurisdiction u/s 263 of the Act for dislodging the same. Accordingly, finding no justification on the part of the Pr. CIT, who in exercise of his powers under Sec. 263 of the Act, 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), dated 07.03.2016."

3. I adopt the foregoing detailed discussion *mutatis mutandis* to accept the assessee's sec.80P(2)(d) deduction claim in very terms. Ordered accordingly.

4. This assessee's appeal is allowed in above terms.

Order pronounced in the open Court on 07.03.2024.

Sd/-
[SATBEER SINGH GODARA]
JUDICIAL MEMBER

Pune, Dated 07th March, 2024

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	The Pr. CIT, Pune concerned
4.	D.R. ITAT, "SMC" Bench, Pune.
5.	Guard File.

//By Order//

//True Copy //

Sr. Private Secretary, ITAT, Pune Benches,
Pune.