

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“SMC” BENCH, MUMBAI**

**BEFORE SHRI ANIKESH BANERJEE, JM &  
MS PADMAVATHY S, AM**

**I.T.A. No. 3953/Mum/2023**  
(Assessment Year: 2014-15)

**I.T.A. No. 3946/Mum/2023**  
(Assessment Year: 2015-16)

**I.T.A. No. 3948/Mum/2023**  
(Assessment Year: 2017-18)

**I.T.A. No. 3945/Mum/2023**  
(Assessment Year: 2020-21)

<b>Central Warehousing Corporation Employees Co-op Credit Society Ltd.</b> Ground Floor, Sector-20, Near Turbe Station, Vashi, New Mumbai-400703. <b>PAN : AACAC0475E</b>	Vs.	<b>ITO, Ward-28(1)(1),</b> IT Office, Vashi Railway Station Building, Navi Mumbai-400703
<b>Appellant)</b>	:	<b>Respondent)</b>

**Appellant/Assessee by** : Shri Rohit Kasat, CA  
**Revenue/Respondent by** : Shri R.R. Makwana, JCIT

**Date of Hearing** : 17.04.2024  
**Date of Pronouncement** : 18.04.2024

**ORDER**

**Per Bench:**

These appeals are against the separate orders of the Commissioner of Income Tax (Appeals) / National Faceless Appeal Centre, Delhi [for short 'the

CIT(A)] all dated 11.10.2023 for the AY 2014-15, 2015-16, 2017-18 and 2020-21. The only issue contended in this appeal is the disallowance of deduction under section 80P of the Income Tax Act, 1961 (the Act).

2. The assessee is a Co-operative Credit Society registered under Maharashtra Co-operative Societies Act, 1961 accepting deposits and providing credit facility to its members as per the by-laws. The assessee is earning interest income on loans given to members and interest / dividend income from investments in fixed deposits with cooperative banks and in shares. The assessee is also accepting deposits from the members for which interest is paid. The assessee is arriving at the net business income and claiming the same deduction under section 80P(2)(a)(i) of the Act. The details of deduction claimed by the assessee under section 80P(2)(a)(i) are tabulated as under:

<b>AY</b>	<b>Deduction claimed under section 80P(2)(a)(i)</b>	<b>Assessment order passed under section</b>
2014-15	Rs. 64,22,916	143(3) r.w.s.263
2015-16	Rs. 58,07,473	143(3) r.w.s.263
2017-18	Rs. 31,53,101	143(3)
2020-21	Rs. 25,56,909	143(3) r.w.s.144B

3. The AO in the order under section 143(3) r.w.s. 263 for AY 2014-15, and 2015-16 as well as in the order passed under section 143(3) for AY 2017-18 and 2020-21 denied the benefit of section 80P(2)(a)(i) to the extent of the interest income earned by the assessee from deposits held with Co-operative Banks. The AO held that such interest income is taxable under the head "Income from Other Sources" and accordingly held that the assessee is not entitled claim deduction under section 80P(2)(d) towards the interest income. The assessee preferred further

appeal before the CIT(A) who upheld the order of the AO. The assessee is in appeal before the Tribunal against the orders of the CIT(A).

4. The Id. AR submitted that the issue is covered by the decision of the Co-ordinate Bench in assessee's own case for AY 2016-17 and that the facts for the year under consideration being similar, the decision of the Tribunal is applicable for the year under consideration also.

5. The Id. DR relied on the order of the lower authorities.

6. We have heard the parties and perused the material available on record. We noticed that the Co-ordinate Bench in assessee's own case has considered the similar issue and held that

*“3. Upon hearing both the parties and perusing the records, I find that the issue is covered in favour of the assessee by the decision of Hon'ble Supreme Court in the case of Citizen Cooperative Society Ltd. (Civil Appeal No. 10245 of 2017 vide order dated 8.8.2017). Moreover similar issue was elaborately dealt by a larger bench of Honourable Supreme Court in the case of The Mavilayi Service Cooperative Bank Ltd. & Ors. Vs. CIT, Calicut & Ors. (Civil Appeal Nos. 7343-7350 of 2019 dated 12.1.2021) and the issue was decided in favour of the assessee. We may gainfully refer to the Hon'ble Apex Court observation in para 21 as under, wherein the Hon'ble Apex Court referred to its earlier decision of Citizen Cooperative Society Ltd. (supra) :-*

*“The following propositions may be culled out from the judgment:*

- (I) That section 80P of the IT Act is a benevolent provision, which was enacted by Parliament in order to encourage and promote the growth of the co-operative sector generally in the economic life of the country and must, therefore, be read liberally and in favour of the assessee;*
- (II) That once the assessee is entitled to avail of deduction, the entire amount of profits and gains of business that are attributable to any one or more activities mentioned in subsection (2) of section 80P must be given by way of deduction;*
- (III) That this Court in Kerala State Cooperative Marketing Federation Ltd. and Ors. (supra) has construed section 80P widely and liberally, holding that if*

*a society were to avail of several heads of deduction, and if it fell within any one head of deduction, it would be free from tax notwithstanding that the conditions of another head of deduction are not satisfied;*

- (IV) *This is for the reason that when the legislature wanted to restrict the deduction to a particular type of co-operative society, such as is evident from section 80P(2)(b) qua milk co-operative societies, the legislature expressly says so - which is not the case with section 80P(2)(a)(i);*
- (V) *That section 80P(4) is in the nature of a proviso to the main provision contained in section 80P(1) and (2). This proviso specifically excludes only cooperative banks, which are cooperative societies who must possess a licence from the RBI to do banking business. Given the fact that the assessee in that case was not so licenced, the assessee would not fall within the mischief of section 80P(4)."*

*4. Respectfully following the precedent as above, I set aside the order of learned CIT(A) and decide the issue in favour of the assessee."*

7. We also noticed that the Co-ordinate Bench has been consistently holding that the income derived by way of interest from Co-operative Banks is also eligible for deduction under section 80P. The relevant observations of the coordinate bench in one such decisions namely Pathare Prabhu Co-operative Housing Society Ltd. vs ITO [2023] 153 taxmann.com 714 (Mumbai - Trib.) where it is held that –

*8. We have considered the submissions of both sides and perused the material available on record. The only dispute raised by the assessee is against the disallowance of deduction under section 80P(2)(d) of the Act in respect of interest income received from the Co-operative Banks. The assessee is a registered Co-operative Housing Society and during the assessment year 2018- 19 earned interest income of Rs. 50,39,861 from the investments made in various Co-operative Banks.*

*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 Cooperative 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;' NEETU 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 cooperative 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. CIT 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.*

8. Considering that the issue for the years under consideration being identical i.e. denial of deduction under section 80P(2)(d) towards interest earned from deposits with Cooperative Banks, respectfully following the above decisions we hold that the assessee is entitled for deduction under section 80P(2)(d) towards income derived from deposits with Co-operative Bank. Accordingly, the AO is directed to allow the deduction claimed by the assessee.

9. In the result, appeals for AY 2014-15, 2015-16, 2017-18 & 2020-21 are allowed.

*Order pronounced in the open court on 18-04-2024.*

**Sd/-**  
**(ANIKESH BANERJEE)**  
**Judicial Member**

*\*SK, Sr. PS*

**Sd/-**  
**(PADMAVATHY S)**  
**Accountant Member**

**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**