

IN THE INCOME TAX APPELLATE TRIBUNAL, "B" BENCH
MUMBAI
BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER &
MS PADMAVATHY S, ACCOUNTANT MEMBER

ITA. No.3658/MUM/2023
(A.Y. 2020-21)

Income Tax Officer, Room No 118, 1 st Floor, G Block, Kautilya Bhavan, Bandra Kurla Complex, Bandra (E), Mumbai-400051.	Vs.	Nariman Bhavan Premises Co-op Society Ltd., 227, Backbay Reclamation, Nariman Point, Mumbai-400021.
PAN/GIR No. AAJN0320J		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

Appellant By	Shri.Ashish Kumar.Sr.DR
Respondent by	Ms.Neha Paranjpe.AR

सुनवाई की तारीख/Date of Hearing	29.04.2024
घोषणा की तारीख/Date of Pronouncement	03.05 .2024

ORDER

PER PAVAN KUMAR GADALE, JM:

The appeal is filed by the revenue against the order of the National Faceless Appeal Centre (NFAC)/CIT(A) passed u/sec 143(3) and U/sec 250 of the Act. The revenue has raised the following grounds of appeal:

"1. Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) was correct in allowing deduction u/s 80P(2)(d) of the Income Tax Act in respect of interest earned from deposits from cooperative bank ignoring the amendment made by Finance Act, 2015 in section 194A(3)(v) of the Act

which excludes the Cooperative Banks from the definition of "Cooperative Society" and requiring them to deduct income tax at source under Section 194A of the Act that also makes the legislative intent clear that the Co-operative Banks are not that specie of genus cooperative society, which are entitled to claim deduction under the special provisions of Chapter VIA in the form of Section 80P of the Act."

2. "Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) was correct in allowing deduction u/s.80P(2)(d) of the Income Tax Act, 1961 in respect of interest earned from deposits in cooperative bank ignoring firstly, the purpose of bringing on the statute book subsection (4) in Section 80P of the Act to exclude the applicability of Section 80P of the Act altogether to any cooperative bank and secondly, ignoring the fact that words used in section 80P(4) are "in relation to" that can include within its ambit and scope even the interest income earned by the respondent assessee, a co-operative Society from a Co-operative Bank and this exclusion by Section 80P(4) of the Act even though without any amendment in Section 80P(2)(d) of the Act is sufficient to deny the claim of the assessee for deduction under Section 80P(2)(d) of the Act."

3. "Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) was correct in allowing deduction u/s.80P(2)(d) of the Income Tax Act in respect of interest earned from deposits in cooperative bank ignoring that whether the deposits and investment of surplus funds of assessee not immediately required for its purposes, is made with Scheduled Bank or Nationalized Banks or with cooperative Banks does not make a difference as far as the character of the Income earned by assessee is concerned and it does not partake the character of its operational income from its activity as cooperative housing society, the same would continue to be fully taxable and will not be eligible for deduction under section 80P(2)(d) of the Act."

4. "Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) was correct in allowing deduction u/s.80P(2)(d) of the Income Tax Act, 1961 in respect of interest earned from deposits, though Hon'ble Karnataka High Court in a detailed judgment discussing the law and various related issues in the case of PCIT vs. Totagar's Co-operative Sales

Society (395 ITR 611) has specifically decided the Question of Law about the allowability of interest earned from deposits with co-operative bank u/s 80P(2)(d) of the Income tax Act in favours of Revenue."

5. The appellant craves leave to amend or alter or add a new ground which may be necessary."

2. The brief facts of the case are that, the assessee is a cooperative housing society registered under Maharashtra Society Act 1960. The assessee has filed the return of income for the A.Y 2020-21 on 15.02.2021 disclosing a total income of Rs. 5,97,740/-. Subsequently, the case was selected for scrutiny under the CASS on the issue of deduction from total income under Chapter VI-A and notice u/sec 143(2) and U/sec 142(1) of the Act along with the questionnaire was issued. In compliance to notice, the assessee has furnished the details on 15.11.2021. Whereas the Assessing Officer (AO) found that the assessee has disclosed gross income including interest income on fixed deposits from four cooperative banks aggregating to Rs. 2,52,12,396/- and has claimed deduction U/sec 80P(2)(d) of the Act. The AO has called for the explanations on the claim of deduction u/s 80(P)(2)(d) of the Act, whereas the assessee has filed the details supporting the claim that the assessee is entitled for deduction u/s 80(P)(2)(d) of the Act, whereas the AO has dealt on the facts and provisions and has not allowed the deduction u/s 80(P)(2)(d) of the Act as the cooperative bank is an urban cooperative commercial bank does not fall under the purview of the cooperative society referred at

Sec. 80(P)(2)(d) of the Act and therefore interest income from cooperative banks has to be taxed under income from other sources and assessed the total income of Rs. 2,58,10,136/- and passed the order u/sec 143(3) r.w.s 144B of the Act dated 24.09.2022.

3. Aggrieved by the order, the assessee has filed an appeal before the CIT(A), whereas the CIT(A) has considered the grounds of appeal, statement of facts, submissions of the assessee and findings of the A.O and relied on the catena of judicial decisions and directed the AO to delete the addition and allowed the claim of deduction u/sec 80(P)(2)(d) of the Act and partly allowed the assessee appeal. Aggrieved by the order of the CIT(A), the revenue has filed an appeal with the Hon'ble Tribunal.

4. At the time of hearing, the Ld.DR submitted that the CIT(A) has erred in relying on the submissions of the assessee overlooking the findings of the AO and the decisions relied are distinguishable on facts and the Ld.DR supported order of the AO.

5. Contra, the Ld.AR submitted that the CIT(A) was correct in allowing the claim of deduction as interest income from cooperative bank is eligible for deduction u/s 80P(2)(d) of the Act as the cooperative bank to be treated as cooperative society for eligibility of deduction u/s 80P(2)(d) of the Act and relied on the judicial decisions and supported the order of the CIT(A).

6. We heard the rival submissions and perused the material on record. The sole matrix of the disputed issue emphasized by the Ld.DR is in respect of allowing the deduction u/s 80P(2)(d) of the Act to the Cooperative Housing Society. Whereas the Ld. DR submitted that the cooperative society does not entitle for deduction u/sec 80P(2)(d) of the Act. Whereas the Ld. AR submitted that the interest income derived by a co-operative society from its deposits with the co-operative banks would be entitled for deduction U/sec 80P (2)(d) of the Act. The co-operative bank continues to be a co-operative society registered under the Co-operative Societies Act. The Ld.AR has relied on the submissions and judicial decisions filed before the CIT(A) as under:

(i) M/s Solitaire CHS Ltd. v. Pr. CIT-26, Mumbai, ITA No. 3155/Mum/2019, dated 29-11- 2019

(ii) Kaliandas Udyog Bhavan Premises Co-op. Society Ltd. Vs. ITO, 21(2)(1), Mumbai ITAT SMC dated 25.04.2018.

(iii) Palm Court Co-operative Housing Society Vs. ITAT, Mumbai, ITA No. 561/MUM/2021 dated 08.09.2022. C Bench, Mumbai ITAT.

(iv) Gautam Dhan Co-operative Housing Society Vs. ITAT, Mumbai, ITA No. 997/MUM/2023 dated 13.06.2023. SMC Bench, Mumbai ITAT

7. We find the Coordinate Bench of the Honble Tribunal in the case of Amore Commercial Premises Co-op Society Ltd vs. CPC Karnataka in ITA No. 2873 & 2874/Mum/2022

dated 17-01-2023 has dealt on the taxability of interest earned on the deposits with the Co-operative Banks at page 2 Para 3 of the order, which is read as under:

3. Briefly stated facts necessary for consideration an adjudication of the issues at hand are :- Assessee being a Co-Operative Society has claimed disallowance/deduction u/s. 80P (2)(d) in respect of the interest of Rs. 6,96,725/- for parking its funds with Saraswat Co-Operative Bank, Sham Vithal Rao Co-Operative Bank and district central CoOperative Bank. However, centralized processing centre (CPC)/ Assessing Officer has disallowed the deduction Claimed by the Assessee u/s 143(1).

4. Assessee carried the matter before the Ld.CIT(A) by way of filing Appeals who has confirmed the addition by dismissing Appeals. Filling aggrieved Assessee has come up before the Tribunal by way of filing present Appeal.

5. We have heard the Ld. Authorized Representative of the parties to the Appeals, perused the order passed by the Lower Revenue Authorities and documents available on record in the light of the law applicable thereto.

6. Undisputedly Assessee Society has invested its surplus funds with Co-Operative banks and earned the interest income to the tune of Rs. 6,96,725/- and claimed it is deduction u/s. 80P (2)(d) of the Act, which has been disallowed by Assessing Officer & confirmed by the Ld.CIT(A) by relying upon decision rendered by Hon'ble Karnataka High Court in case of principle Ld.CIT Vs. Totgar's Co-Operative Sales Society Ltd.

7. Issue as to the allow-ability of the deduction claimed by the Assessee u/s. 80P (2)(d) of the Act, is no longer Res-Integra having being decided by the co-ordinate Bench of the Tribunal in case of Palm Court M Premises Co-operative Society Ltd. in ITA No.561/M/2021 order dated 09.09.2022 by settling the issue in favour of the assessee by distinguishing the judgment rendered by Hon'ble Supreme Court in case of Totgar's Co-operative Sale Society Ltd. Vs. Income Tax Officer, 188 Taxman 282(SC) and by discussing the decision rendered by Hon'ble Bombay High and Hon'ble Gujarat High Court wherein

it is held that interest income earned by the Co-operative Society on its investment made with co-operative bank would be eligible for claim of deduction under section 80P(2)(d) of the Act by returning following findings:

"8. We have given a thoughtful consideration to the contentions advanced by the Id. Authorized representatives for both the parties in context of the aforesaid issue under consideration. As stated by the Id. A.R, and rightly so, the issue that interest received by a co-operative society on its deposits with co-operative banks would be eligible for deduction w/s 80P(2)(d) of the Act is covered in assessee's favour by orders of the various coordinate benches of the Tribunal in the following cases: (i). M/s Solitaire CHS Ltd. Vs. Pr.CIT-26, Mumbai, ITA No.3155/Mum/2019, dated 29.11.2019 (ii). Land and Cooperative Housing Society Ltd. Vs. ITO (2017) 46 CCH 52 (Mum.) (iii). M/s C. Green Cooperative Housing and Society Ltd. Vs. ITO-21(3)(2), Mumbai (ITA No. 1343/Mum/2017, dated 31.03.2017. (iv). Marwanjee Cama Park Cooperative Housing Society Ltd. V's. ITO-Range 20(2)(2), Mumbai (ITA NO. 6139/Mum/2014, dated 27.09.2017. (v). Kaliandas Udyog Bhavan Pemises Co-op. Society Ltd. Vs. ITO, 21(2)(1), Mumbai. In the aforesaid orders, it has been held by the Tribunal that though the cooperative banks pursuant to the insertion of sub-section (4) to Sec. 80P of the Act would no more be entitled for claim of deduction u/s 80P of the Act, but 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 in force in any State for the registration of co-operative societies, therefore, the interest income derived by a cooperative society from its investments held with a co-operative bank would be entitled for claim of deduction w/s 80P(2)(d) of the Act. We find that the aforesaid issue had exhaustively been looked into by the ITAT, "G" bench, Mumbai in the case of M/s Solitaire CHS Ltd, Vs. Pr.CIT-26, Mumbai ITA No.3155/Mum/2019, dated 29.11.2019, wherein the Tribunal had observed as under: "6. We have heard the authorized 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 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, or not. In our considered view, the issue involved in the present appeal revolves 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 cooperative banks, 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 co-operative 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. 7. After necessary deliberations, we are unable to persuade ourselves to be in agreement with the view taken by the Pr. CIT. Before proceeding any further, we may herein reproduce 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 subsection (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 co-operative 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 cooperative 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) of Sec. 80P, 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 jeopardise the claim of deduction of a co-operative society under Sec. 80P(2)(d) in respect of its interest income 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 cooperative 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 cooperative society" had been defined under Sec. 2(19) of the Act, as under:- "(19) "Co-operative society" means a cooperative society registered under the Cooperative Societies Act, 1912 (2 of 1912), or under any other law for the time being in force in any state for the registration of cooperative societies;" We are of the considered view, that though the cooperative banks pursuant to the insertion of subsection (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 cooperative society from its investments held with a cooperative bank would be entitled for claim of deduction under Sec.80P(2) (d) of the Act. 8. We shall now advert to the judicial pronouncements that have been relied upon by the Id. A.R. 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 cooperative bank is covered in favour of the assessee in the following cases: (i) Land and Cooperative Housing Society Ltd. Vs. ITO (2017) 46 CCH \$2 (Mum) (ii) M/s C. Green Cooperative Housing and Society Ltd. Vs. ITO-21(3)(2), Mumbai (ITA No. 1343/Mum/2017, dated 31.03.2017 (iii) Marvwanjee Cama Park Cooperative Housing Society Ltd. Vs. ITO-Range-20(2)(2). Mumbai (ITA No. 6139/Mum/2014, dated 27.09.2017. (iv). 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. Insofar the reliance placed by the Pr. CIT on the judgment of the Hon'ble Supreme Court in the case of Totgars Co-operative Sale Society Ltd. vs. ITO (2010) 322 ITR 283 (SC) is concerned, we are of the considered view that the being distinguishable on facts had wrongly been relied upon by him. The adjudication by the Hon"ble Apex Court in the aforesaid case was in context of Sec. 80P(2)(a)(i), and not on the entitlement of a cooperative society towards deduction under Sec. 80P(2) (d) on the interest income on the investments/deposits parked with a co-operative bank. Although, in all fairness, we may observe that the Hon'ble High Court of Karnataka in the case of Pr. CIT Vs. Totagars cooperative Sale Society (2017) 395 ITR 611 (Karn), had concluded that a co-operative society would not be entitled to claim of deduction under Sec. 80P(2) (d). At the same time, we 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 observed, that the interest income earned by a co-operative society on its investments held with a cooperative bank would be eligible for claim of deduction under Sec. 80P(2) (d) of the Act. We find 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 nonjurisdictional 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 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 cooperative society on its investments held with a cooperative bank would be eligible for claim of deduction under Sec.80P(2)(d) of the Act. 9. Be that as it may, in our considered view, as the A.O while framing the assessment had taken a possible view, and therein concluded that the assessee would be entitled for claim of deduction under Sec. 80P(2) (d) on the interest income earned on its investments/deposits with cooperative banks, therefore, the Pr. CIT was in error in exercising his provisional jurisdiction u/s 263 for dislodging the same. In fact, as observed by us hereinabove, the aforesaid view taken by the A.O at the time of framing of the assessment was clearly supported by the order of the jurisdictional Tribunal in the case of Land and Cooperative Housing Society Ltd. Vs. ITO (2017) 46 CCH 52 (Mum). Accordingly, finding no justification on the part of the Pr. CIT, who in exercise of his powers under Sec. 263, 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), date 14.09.2016." As the facts and the issue involved in the present case before us remains the same as were there before the Tribunal in the case of M/s Solitaire CHS Ltd. (supra), wherein the order passed by the Pr. CIT u/s 263 of the Act was quashed, we, thus, respectfully follow the same. Backed by our aforesaid

deliberations, we are unable to uphold the view taken by the Pr. CIT that the failure on the part of the A.O to be disallow the assessee's claim for deduction u/s 80P(2)(d) had rendered the assessment order passed by him u/s 143(3) of the Act, dated 31.08.2017 as erroneous in so far it was prejudicial to the interest of the revenue. 9. Accordingly, on the basis of our aforesaid observations, we herein not finding favor with the view taken by the Pr. CIT that the order passed by the A.O u/s 143(3), dated 31.08.2017 was erroneous in so far it was prejudicial to the interest of the revenue within the meaning of Sec. 263 of the Act set-aside the same and restore the order passed by the A.O u/s 143(3) of the Act, dated 31.08.2017."

8. Hon'ble High Court of Karnataka in case of Pr. CIT & Anr.Vs. Totgar's Co-operative Sale Society Ltd. (2017) 292 ITR 74 (Kar.) and Hon'ble Gujarat High Court in case of State Bank of India vs. CIT (2016) 389 ITR 578 (Guj.) had held that interest income earned by a co-operative society on its investment held with cooperative bank would be eligible for claim of deduction under section 80P(2)(d) of the Act.

9. So following the decision rendered by Hon'ble Karnataka High Court (supra) and Hon'ble Gujarat High Court (supra), we are of the considered view that assessee society who has earned an amount of Rs. Rs. 6,96,725/- from its investment of surplus fund with cooperative banks is entitled for deduction under section 80P(2)(d) of the Act. Resultantly, the Ld. CIT(A) has erred in upholding the denial of deduction by the AO to the assessee under section 80P(2)(d) of the Act.

8. We considering the facts, circumstances and the ratio of the judicial decisions find the Honble Tribunal has relied on catena of judicial decisions were the co-operative society receives/earns interest on deposits with the co-operative bank is eligible for claim of deduction under section 80(2)(d) of the Act and we follow the judicial precedence. We find the CIT(A) has considered the facts, submissions and relied on the judicial decisions and has

passed a conclusive and reasoned order. Accordingly, we do not find any infirmity in the order of the CIT(A) on the disputed issues and uphold the same and dismiss the grounds of appeal of the revenue.

9. In the result, the appeal filed by the revenue is dismissed.

Order pronounced in the open court on 03.05.2024.

Sd/-
(MS. PADMAVATHY S)
ACCOUNTANT MEMBER

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated: 03/05/2024

KRK

Copy of the Order forwarded to:

1. The Appellant,
2. The Respondent
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,
(Dy./Asstt. Registrar)ITAT,
Mumbai