

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

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER
AND
SHRI VINAY BHAMORE, JUDICIAL MEMBER

आयकर अपील सं. / ITA Nos.523 & 524/PUN/2024
निर्धारण वर्ष / Assessment Years : 2020-21 & 2021-22

Balaji Shrushti CHS Ltd., Ground Floor, Plot No.3, Sector 19, New Panvel Navi Mumbai- 410206. PAN : AAAAB8345G	Vs.	ITO, Ward-1, Panvel.
Appellant		Respondent

Assessee by : None
Revenue by : Shri Manoj Tripathi
Date of hearing : 29.04.2024
Date of pronouncement : 14.05.2024

आदेश / ORDER

PER VINAY BHAMORE, JM:

Both the above captioned appeals filed by the assessee are directed against the common order dated 19.02.2024 passed by Ld CIT(A) Addl/JCIT (A), Prayagraj for the assessment years 2020-21 & 2021-22 respectively.

2. Since the identical facts and common issues are involved in both the above captioned appeals of the assessee, we proceed to dispose of the same by this common order.

3. For the sake of convenience and clarity, the facts relevant to the appeal of the assessee in ITA No.523/PUN/2024 for the assessment year 2020-21 are stated herein.

ITA No.523/PUN/2024, A.Y. 2020-21 :

4. The appellant raised the following grounds of appeal :-

“1. On the facts and the circumstances of the case and in law, the learning Addl/JCIT (A) erred in confirming the disallowance of deduction u/s.80P(2)(d) of the Act of Rs.1,64,954.

2. On the facts and the circumstances of the case and in law, the learning Addl/JCIT (A) erred in confirming the disallowance of deduction u/s.80P(2)(d) of the Act of Rs.1,64,954, though no reasons were given while passing Intimation and adjustment made was beyond the jurisdiction of the AO.

3. On the facts and the circumstances of the case and in law, the learning Addl/JCIT (A) erred in confirming the disallowance of deduction u/s.80P(2)(d) of the Act, though it is well settled law that deduction u/s.80P(2)(d) of the Act of Rs.1,64,954 is allowable to a Co-operative Society if the amounts are invested in another Co-operative Society and interest is earned on the said investment.

4. The appellant craves leave to add, amend, modify, substitute and / or cancel any of the ground of the appeal.”

5. Briefly, the facts of the case are that the appellant assessee is a co-operative society registered under Maharashtra State Co-operative Societies Act, 1960. The Return of Income for the assessment year 2020-21 was filed on 27.11.2020 declaring taxable income of Rs.9,63,890/- after claiming deduction u/s 80P of the IT Act amounting to Rs.1,65,954/- out of the total income of Rs.11,28,843/-. The CPC vide its order dated 25.11.2021 issued

intimation order u/s 143(1) of the IT Act disallowing 80P2(d) deduction of Rs.1,65,954/- without assigning any proper reason for disallowance.

6. Being aggrieved, the assessee preferred an appeal before ld. Addl/JCIT(A). Vide order dated 19-02-2024 LD Addl/JCIT(A) dismissed the appeal filed by the assessee by observing as under :-

“7.12 Further, section 80P(2)(d) of the Act specifically exempts interest earned from funds invested in co-operative societies. Therefore, to the extent of the interest earned from investments made by it with any co-operative society, a co-operative society is entitled to deduction of the whole of such income under section 80P(2)(d) of the Act. However, interest earned from investments made in any bank, not being a co-operative society, is not deductible under section 80P(2)(d) of the Act. Reliance is placed on the case of PCIT & Ors. v. Totagars Co-operative Sale Society (Karnataka High Court, 2017).

7.13 In view of the above, I find no flaw in the AO's decision to disallow the appellant's deduction claim under section 80P(2)(d) of the Act while processing the return under section 143(1) of the Act.”

7. Being aggrieved by the order of LD Addl/JCIT(A), the appellant assessee is in appeal before this Tribunal.

8. When the matter was called for hearing, none appeared on behalf of the assessee despite due service of notice of hearing. Therefore, we proceed to dispose off the matter after hearing LD DR.

9. We have heard LD DR & perused the material available on record. We find that the CPC has simply issued an intimation order

u/s 143(1) of the IT Act wherein the deduction of Rs.1,64,954/- claimed by the appellant u/s 80P(2)(d) in respect of interest income earned from investment in other cooperative society has been denied. From the facts it is also gathered that the CPC has not issued any notice u/s 143(1)(a) to the appellant assessee before making any adjustment to the income. In first appeal LD Addl/JCIT(A) relying on a decision of PCIT & Ors vs. Totagars Cooperative Sale Society (Karnataka High Court, 2017) held that interest earned from investment made in any bank, not being a cooperative society, is not deductible u/s 80P(2)(d) of the IT Act. In this regard we find that there are series of decisions of coordinate bench of this Tribunal, wherein it has been held that the cooperative banks are also cooperative society. Recently, an identical issue had been decided in favour of the assessee by the Co-ordinate Bench of this Tribunal in the case of Anand Urban Cooperative Credit Society Limited vs. ITO vide ITA No.136/PUN/2024 order dated 28.02.2024. For the ready reference, the relevant discussion of the said order of the Tribunal (supra) is reproduced herein below :-

“3.

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)

(iii). 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."

10. Therefore, respectfully following the decisions of coordinate bench of this Tribunal specially in the case of Anand Urban Cooperative Credit Society Limited vs. ITO vide ITA No.136/PUN/2024 order dated 28.02.2024, we are of the considered view that the investment if any made by any cooperative society with any cooperative bank the relevant interest income will be deductible u/s 80P(2)(d) of the IT Act. Accordingly, we deem it proper to delete the disallowance made by the CPC & confirmed by the Addl/JCIT(A). Thus, the grounds raised in the present appeal of the assessee are allowed.

11. In the result, the appeal filed by the assessee in ITA No.523/PUN/2024 for A.Y. 2020-21 stands allowed.

ITA No.524/PUN/2024, A.Y. 2021-22 :

12. Since the facts and issues involved in both the appeals of the assessee are identical, therefore, our decision in ITA

No.523/PUN/2024 for A.Y. 2020-21 shall apply *mutatis mutandis* to the appeal of the assessee in ITA No.524/PUN/2024 for A.Y. 2021-22 respectively. Accordingly, the appeal of the assessee in ITA No.524/PUN/2024 for A.Y. 2021-22 stands allowed.

13. To sum up, both the above captioned appeals of the assessee stands allowed.

Order pronounced in the open Court on 14th day of May, 2024.

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

Sd/-
(VINAY BHAMORE)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 14th May, 2024.

Sujeet

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A) ADDL/JCIT(A), Prayagraj.
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "SMC" बेंच, पुणे / DR, ITAT, "SMC" Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.