

**IN THE INCOME-TAX APPELLATE TRIBUNAL "SMC" BENCH,  
MUMBAI**

**BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL  
MEMBER**

**&  
SMT. RENU JAUHRI, ACCOUNTANT MEMBER**

**ITA No. 4412/Mum/2023  
(A.Y. 2020-21)**

Aurum Grande Co-operative Housing Society Ltd. CTS No. 1293, 1-5,/30/7&675 Village Kuanjur Road, Kanjurmrg East Mumbai-400042	Vs.	Income-tax Department, National Faceless Appeal, Centre, Delhi
<b>स्थायी लेखा सं./जीआइआर सं./ PAN/GIR No:AAFAA2092L</b>		
<b>Appellant</b>	<b>..</b>	<b>Respondent</b>

Appellant by :	Mr. Sukhsagar Syal
Respondent by :	Shri Himanshu Kumar

Date of Hearing	14.05.2024
Date of Pronouncement	16.05.2024

**आदेश / O R D E R**

**PER RENU JAUHRI [A.M.] :-**

This appeal is filed by the assessee against the order of the Ld. Commissioner of Income-tax (Appeals)/National Faceless Appeal Centre, Delhi [NFAC] dated 31.10.2023 passed u/s. 250 of the

Income-tax Act, 1961 [hereinafter referred to as “Act”] for the Assessment Year [A.Y.] 2020-21.

2. The assessee has raised the following grounds of appeal:

1) *On the facts and circumstances of the case and in law, the assessment order dated 06.09.2022 passed by the Ld. Assessing Officer u/s 143(3) r.w.s 1448 of the Income Tax Act, 1961(the Act), being barred by limitation, the Ld. CIT(A) ought to have annulled the same as being invalid and bad in law.*

2) *On the facts and in the circumstances of the case and in law, since the substituted second proviso to Section 153(1) of the Act, extending the time limit to pass the assessment order for A Y 2020-21, came into force only from 01.04.2022 and not 31.03.2022, the assessment proceedings for A Y 2020-21 became time barred on 31.03.2022 in terms of the existing second proviso to Section 153(1) of the Act and, hence, the impugned assessment order dated 06.09.2022 being barred by limitation, ought to be annulled.*

3) *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in upholding the denial of deduction by the Ld. Assessing Officer of Rs.30,36,217/, being interest received by the assessee from cooperative banks u/s. 80P(2)(d) of the Act.*

4) *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in holding that the assessee is a cooperative credit society when the assessee is a cooperative housing society.*

5) *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in relying upon the decision of the Hon'ble Karnataka High Court in Pr. CIT v/s Totagars Cooperative Sale Society (395 ITR 611) to confirm the denial of deduction by the Ld. Assessing Officer u/s 80P(2)(d) of the Act, when the said decision is inapplicable to the facts of the present case.*

6) *On the facts and in the circumstances of the case and in law, the assessee having filed its return of income within the time limit prescribed, the levy of interest u/s. 234A of the Act of Rs 39,944 is erroneous and ought to be deleted.*

7) *On the facts and in the circumstances of the case and in law, the Ld. Assessing Officer not having given any direction in the assessment order to charge interest u/s 234A, 234B and 234C of*

*the Act, the levy of interest under these sections is erroneous and ought to be deleted.”*

3. Grounds No. 1 and 2 have not been pressed by the appellant and grounds no. 3 to 5 related to disallowance of deduction u/s 80P(2)(d) of the Act. Grounds No. 6 & 7 are against the charging of interest u/s 234A, 234B & 234C of the Act.

4. Brief facts of the case are as under:

a. The assessee is a co-operative housing society and return for A.Y. 2020-21 was filed on 13.02.2021 declaring income of ₹ 1,74,722/- after claiming deduction of ₹ 30,36,217/- u/s 80P(2)(d) of the Act.

b. After considering the written submissions filed by the assessee, the assessment was completed by the AO, disallowing the claim of the deduction u/s 80P(2)(d) of the interest income earned from banks as under:

<b>Particulars</b>	<b>Amount</b>	<b>Bank Name</b>
<i>Interest of Fixed deposit</i>	<i>14,76,640/-</i>	<i>Sarswat Co-op Bank Ltd.</i>
<i>Interest in Sweep Fixed-Deposit-Sarswat Bank</i>	<i>15,39,258/-</i>	<i>Sarswat Co-op Bank Ltd</i>
<i>Interest in Saving Bank</i>	<i>9,040/-</i>	<i>Sarswat Co-op Bank Ltd</i>
<i>Interest in Saving Bank</i>	<i>11,273/-</i>	<i>Mumbai District Central Co-op Bank. Ltd.</i>
<b>Total Interest</b>	<b>30,36,217/-</b>	

c. Aggrieved by the assessment order, the assessee filed appeal before Ld.CIT(A)/NFAC who also upheld the disallowance vide order dated 31.10.2023 on the ground

that interest earned on deposits with co-operative banks is not covered u/s 80P(2)(d) of the Act.

d. Both the AO and the Ld.CIT(A) have placed reliance on the decision of the Hon'ble Karnataka High Court in the case of **PCIT v/s Totagars Co-operative Sale Society (2017) 395 ITR 611 (Karnataka)** on this issue.

5. Before us, the Ld.AR submitted that the assessee is not a credit co-operative society, as wrongly stated by the AO, but is a co-operative housing society. During the year, the appellant has earned interest income to the tune of ₹30,36,217/-from its investments/deposits made with Saraswat Co-op Bank Ltd. & Mumbai District Central Co-op Bank Ltd. On plain reading of section 80P(2)(d), it is clear that the deduction u/s 80P is available to the appellant. The Ld. AR also cited several decisions of the Co-ordinate benches of the ITAT, Mumbai in support of his claim.

6. On the other hand, the Ld. CIT DR has placed reliance on the order of the Ld.CIT(A) and the decision of the Hon'ble Karnataka High Court in the case of PCIT v/s Totagars Co-operative Sale Society (Supra).

7. We have heard rival submissions and carefully examined the facts of the case. It is seen that prior to the decision of the Hon'ble Karnataka High Court relied upon, the **Hon'ble Karnataka High**

**Court in PCIT v/s Totagars Co-operative Sale Society (2017) 392**

**ITR 74** have held that the amount of interest earned from co-operative society bank would be deductible u/s 80P(2)(d). Thus, there are divergent views of the same Hon'ble High Court on this issue.

8. The Co-ordinate Benches of the Tribunal in various decisions have consistently taken the view that in the case of a co-operative society, the income earned by way of interest income on the investments made with any co-operative bank is allowable as deduction u/s 80P(2)(d) of the Act . For ready reference, the relevant portion of one of the decisions in the case of **Pathare Prabhu Co-operative Housing Society Ltd. v/s ITO (2023) in ITA No. 1346 & 1347/Mum/2023** and reported vide **153 taxmann.com 714 (Mum.Trib)** on identical issue is reproduced hereinbelow:

*"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.*

*(2) The sums referred to in sub-section (1) shall be the following, namely:- \*\* \*\**

*(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."

9. Following the decisions of the co-ordinate benches of ITAT, we direct the AO to allow the deduction of interest earned from co-operative banks u/s 80P(2)(d) of the Act as claimed by the assessee.

10. Ground No. 6 relates to charging of interest u/s 234A of the Act. It has been pointed out by the Ld.AR that for the AY 2020-21, due date for filing of return had been extended to 15.02.2021 vide CBDT notification No. 93/2020/F.No.370142/35/2020-TPL dated 31.12.2020. As such no interest u/s 234A can be charged as return has been filed well within the extended period.

11. In view of the extension of time for filing of return, the interest u/s 234A was no chargeable. We, accordingly, delete the interest charged u/s 234A of the Act.

12. In the result the appeal filed by the assessee stands allowed.

Order Pronounced in Open Court on 16.05.2024

Sd/-

(NARENDER KUMAR CHOUDHRY)  
JUDICIAL MEMBER

Sd/-

(RENU JAUHRI)  
ACCOUNTANT MEMBER

Place: Mumbai

Date 16.05.2024

ANIKET SINGH RAJPUT/STENO

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,  
Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

**आदेशानुसार/ BY ORDER,**

**उप/सहायक पंजीकार (Dy./Asstt. Registrar)**  
**आयकर अपीलीय अधिकरण/ ITAT, Bench,**  
**Mumbai.**