

**IN THE INCOME TAX APPELLATE TRIBUNAL “F” BENCH MUMBAI
BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER
AND
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No.65/MUM/2024
Assessment Year: 2012-13
&
ITA No. 139/MUM/2024
Assessment Year: 2013-14**

Income Tax Officer – 28.3.1, Mumbai	Vs.	Vaibhav Co-op Credit Society, At Post Ghansoli, Thane Belapur Road, Thane – 400701 (PAN : AAAAV3417F)
(Appellant)		(Respondent)

Present for:

Assessee : Shri Deep Shah & Shri Mayur Gosrani
Revenue : Ms. Rajeshwari Menon, Sr. DR

Date of Hearing : 22.05.2024
Date of Pronouncement : 29.05.2024

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

Both the appeals filed by the Revenue are against the orders of Ld. CIT(A), National Faceless Appeal Centre (NFAC), Delhi, vide order no. ITBA/NFAC/S/250/2023-24/1057880206(1), and order no. ITBA/NFAC/S/250/2023-24/1057879536(1), dated 10.11.2023, passed against the assessment orders by the Income Tax Officer – 28(3)(4), Mumbai, u/s. 143(3) of the Income-tax Act (hereinafter referred to as the “Act”), dated 27.10.2014 for Assessment Year 2012-13 and dated 22.01.2016 for Assessment Year 2013-14 respectively.

2. Grounds taken by the revenue are reproduced as under:

ITA No. 65/MUM/2024

"1. Whether on the facts and in the circumstances of the case and in Law, the Ld. CIT(A) has erred in allowing deduction of Rs. 1,50,94,461/- under section 80P of the Income-tax Act, 1961 to the assessee by holding that the assessee is a Co-operative Society and not a Co-operative Bank and it is entitled for deduction under section 80P of the IT Act, 1961.

2. Whether on the facts and in circumstances of the case and in law, the Ld. CIT(A) has erred in allowing the deduction u / s 80P(2) (d) of the Act on interest income earned from Co-operative bank treating the Co-operative bank as Co-operative society also, ignoring the fact that Co-operative Society and Co-operative bank are distinct entity and it is essential for a co-operative society to loose its status as a Co-operative society so as to turn into a co-operative bank and to acquire license from the RBI so as to conduct banking business.

3. Whether On the facts and in the circumstances of the case and in Law, the Ld. CIT(A) has erred in deleting an addition of Rs. 43,67,916/- by holding that the assessee is a Co-operative Society and not a Co-operative Bank and accordingly application of section 36(1) (viiia) of the Act is factually unsustainable in this case."

ITA No. 139/MUM/2024

"1. Whether On the facts and in the circumstances of the case and in Law, the Ld. CIT(A) has erred in allowing deduction of Rs.1,81,50,620/-. under section 80P of the Income-tax Act. 1961 to the assessee by holding that the assessee is a Co-operative Society and not a Co-operative Bank and it is entitled for deduction under section 80P of the I.T. Act, 1961.

2. Whether on the facts and in circumstances of the case and in law, the Ld. CIT(A) has erred in allowing the deduction u/s 80P(2)(d) of the Act on interest income earned from Co-operative bank treating the Co-operative bank as Co-operative society also, ignoring the fact that Co-operative Society and Co-operative bank are distinct entity and it is essential for a co-operative society to loose its status as a Co-operative society so as to turn into a co-operative bank and to acquire license from the RBI so as to conduct banking business.

3. Whether On the facts and in the circumstances of the case and in Law, the Ld. CIT(A) has erred in deleting an addition of Rs. 46,38,704/- by holding that the assessee is a Co-operative Society and not a Co-operative Bank and accordingly application of section 36(1) (viiia) of the Act is factually unsustainable in this case."

3. The issue involved in both the appeals relate to disallowance of claim of deduction u/s. 80P(2)(a)(i) and 80P(2)(d) of the Act in respect of interest income earned by the assessee from deposits made by it with Co-operative bank as well as addition u/s 36(1)(viiia). Since,

common issue is involved in both the appeals, we adjudicate upon the matter by passing a consolidated order for both the appeals.

4. Brief facts of the case as culled out from records are that assessee is a credit cooperative society engaged in providing various credit facilities to its members. Assessee collects deposits from its members by way of fixed deposits, saving deposits and recurring daily deposits, etc. Ld. Assessing Officer observed that assessee gives various types of loans/ advances viz. term loans, against hypothecation or mortgage, vehicle loans, personal loans, housing loans, education loans, loan/ overdrafts against fixed deposits or NSC or LIC receipts etc. only to its members, but no cash credit facility, letter of credit, no export credit, packing credit etc. and no guarantee. Assessee earns interest from its members under various credit schemes and pays interest to its members under various deposit schemes.

5. Identical issues with varying amounts came up before the coordinate bench in assessee's own case in ITA No.44, 46 & 298/Mum/2024 for Assessment Year 2014-15, 2018-19 and 2021-22, order dated 28.05.2024 as well as in ITA No. 62 & 165/Mum/2024 for Assessment Year 2017-18 and 2020-21 (undersigned author is also the author of this order), wherein it was held that assessee is a credit cooperative society and not a cooperative bank within the meaning of Banking Regulation Act, 1949, allowing the claim of deduction u/s. 80P(2)(a)(i) and 80P(2)(d). Further, disallowance u/s 36(1)(vii) made by the ld. Assessing Officer was ruled out since assessee is held to be a credit cooperative society and not a cooperative bank. All the three grounds taken by the Revenue in the present appeals are squarely covered by the said order, there being no material change in the relevant facts and applicable law. The observations and findings by

the coordinate bench in the said order are reproduced for ease of reference:

“5. We have heard the rival contentions and perused the material on record. We have given our thoughtful considerations to the submissions made before us and various judicial precedents relied upon as discussed above including those in the case of assessee itself dealing with the issue before us. Admittedly, it is a fact on record that assessee does not hold banking license issued by Reserve Bank of India which is a necessary requirement for doing banking business. Assessee is a credit cooperative society providing credit facilities to its members from the deposits collected by it from its members. The credit activities undertaken by the assessee carry attributes of banking but for this sole reason assessee cannot be held to be doing banking business within the meaning of Banking Regulation Act, 1949 as applicable to cooperative banks. In this respect, it is worthwhile to take note of the difference in cooperative societies and cooperative banks explained elaborately by the Co-ordinate bench of ITAT, Mumbai in the case of ITO vs. Kulswami Cooperative Society in ITA No.6790/Mum/2012. The same is reproduced as under:

Sl.No.	Co-operative societies	Co-operative Banks
1.	The Co-operative Credit Societies are registered under Maharashtra State Cooperative Societies Act, 1960 and governed, regulated, administered and supervised by the Registrar of the Cooperative Societies, Government of Maharashtra.	Co-operative Banks are registered under Maharashtra Co-operative Societies Act, 1960 and administered by Registrar of Cooperative Societies, Govt. Of Maharashtra. Cooperative Banks are regulated and supervised by the Reserve Bank of India. Provisions of Banking Regulation Act, 1949 with modifications specified in section 56 of the Banking Regulation Act, 1949 are applicable to Co-operative Banks. Schedule 1 to Schedule V are applicable to Cooperative Bank.
2.	Co-operative Societies are classified as resource/thrifts Societies in the certificate of registration issued by Registrar of Cooperative Society.	Co-operative Banks are classified as Cooperative Bank.
3.	Co-operative Credit Societies can accept deposits and advance loans only to the members. Hence the business activities are restricted to members and hence it can be termed as a mutual association/self help group.	Co-operative Banks can accept deposits from public. However, unlike Co-operative credit societies they can advance loans to the members only.
4.	Co-operative Credit Societies cannot accept deposits from public.	Co-operative can accept deposits from public.
5.	The provisions of Banking	The provisions of Banking

	<i>Regulation Act 1949 are not applicable to the Cooperative Credit Societies.</i>	<i>Regulation Act 1949 are applicable to the Cooperative Bank.</i>
6.	<i>The Co-operative credit societies do not required license from Reserve Bank of India to carry on its business.</i>	<i>The Co-operative banks are required to obtain license from Reserve Bank of India to carry on its business.</i>
7.	<i>The Co-operative credit societies do not have cheque facilities, clearing facilities and they cannot issue demand drafts, pay orders etc.</i>	<i>The Co-operative have cheque facilities, clearing facilities and they issue demand drafts, Assessment Year order, bank guarantees etc.</i>
8.	<i>Co-operative Credit Societies cannot use word Bank/Bankers in their name.</i>	<i>Co-operative Banks are mandatorily required to use word Bank/Bankers in their name.</i>
9.	<i>Reserve Bank of India has no statutory power of control and supervision of Cooperative Societies.</i>	<i>Reserve Bank of India has vested with statutory powers of control and supervision of Cooperative Banks.</i>

6. Furthermore, in assessee's own case (*supra*), the coordinate bench has held that assessee is a cooperative credit society eligible for benefit of deduction u/s. 80P(2)(a)(i) and that Section 80P(4) restricting the benefit of deduction does not apply to the assessee since it is neither a cooperative bank nor a cooperative society holding license from RBI for banking business. Also, with detailed exposition on the issue in hand by the Hon'ble Supreme Court in the case of *The Mavilayi Service Cooperative Bank (Supra)* and *Kerala State Cooperative Agricultural and Rural Development Bank (Supra)* we do not find any reason to interfere with the well analysed and elaborate finding arrived at by the ld. CIT(A) in allowing the grounds raised by the assessee on this issue. Accordingly, ground no.1 and 3 of the Revenue are dismissed.

7. Having held that assessee is a credit cooperative society and not a cooperative bank within the meaning of Banking Regulation Act, 1949, provisions of Section 36(1)(viii) of the Act do not apply in the case of assessee, which has been rightly held by the ld. CIT(A). Accordingly, ground no.2 of the Revenue is dismissed.

8. In the result, appeal of the Revenue is dismissed.

9. In ITA No. 298/Mum/2024, the issue involved is in respect of disallowance of Rs.2,57,88,069/- u/s. 80P(2)(a)(i) which is identical to the issue dealt above in ITA No.46/Mum/2024 except for variation in the amount. Accordingly, our observations and findings stated above apply *mutatis mutandis* on this appeal also. In the result, appeal of the Revenue is dismissed.

10. In ITA No.44/Mum/2024, the ground raised by the Revenue refers to deduction u/s. 80P(2)(d) of Rs.1,89,79,925/- on interest income earned from cooperative bank. This issue has also been dealt with by us while dealing with ground no.3 in ITA No.46/Mum/2024 above by referring to findings of ld. CIT(A) in allowing the said claim.

10.1. To further elaborate on this issue, we refer to a recent decision of the

Co-ordinate Bench of ITAT, Mumbai in the case of Rajat Apartments Co-op Housing Society in ITA No. 4328 & 4329/Mum/2023, dated 27.05.2024 (undersigned author is also the author of this decision). While arriving at this decisions, reliance was placed on the decision of Hon'ble High Court of Karnataka in case of the PCIT vs. Totagar Cooperative Sales Society Limited [2017] 392 ITR 74 / 78 taxmann.com 169 (SC). The findings so arrived at by the co-ordinate bench is as under:

“6.1. From the above, we understand that the provisions of section 80P(2)(d) of the Act are very clear and assessee is entitled for deduction u/s.80P(2)(d) of the Act in respect of interest or dividends received from investments made with any other cooperative societies. The decision on which the Ld.CIT(A) placed reliance i.e. The Totagar Cooperative Sales Society Limited v. ITO 322 ITR 283 (SC), is not on the issue of whether the assessee is entitled for exemption u/s. 80P(2)(d) of the Act vis-a-vis the interest income earned by the cooperative society from investments in other cooperative societies. Hence the decision of Hon'ble Supreme Court in the case of The Totagar Cooperative Sales Society Limited v. ITO has no application to the facts of the present case.

6.2. From the above extraction, we also note that the Hon'ble High Court held that the word 'cooperative society' are the words of the large extent and denotes a genus, whereas the word 'cooperative bank' is a word of limited extent, which merely de-markets and identifies a particular species of the genus 'cooperative societies'. Thus, a cooperative bank is merely a variety of the cooperative societies which can be of a different nature and can be involved in different activities.

7. 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, since 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 cooperative 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 under Sec.80P(2)(d) of the Act.

8. We also find that the issue before us of whether a co-operative society would be entitled for claim of deduction under Sec. 80P(2)(d) for the interest income derived from its investments held with a cooperative bank or not is covered in favour of the assessee not only by the decision of Hon'ble High Court of Karnataka referred above but also in plethora of cases including few of the following cases:

- (i) Land and Cooperative Housing Society Ltd. v. ITO (2017) 46 CCH 52 (Mum)
- (ii) C. Green Cooperative Housing and Society Ltd. v. ITO 21(3)(2), Mumbai (ITA No. 1343/Mum/2017, dated 31.03.2017
- (iii) Marvwanjee Cama Park Cooperative Housing Society Ltd. v. ITO Range- 20(2)(2), Mumbai (ITA No. 6139/Mum/2014, dated 27.09.2017.”

10.2. *In the present case, ld. Assessing Officer has identified interest earned by the assessee from various cooperative banks against the investments made by it which has been disallowed towards deduction claimed under section 80P. Considering the facts on record and the judicial precedents referred above, as well as our observations and discussions made supra, 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, however, since 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 cooperative 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 under Sec.80P(2)(d) of the Act. We thus, hold that assessee is eligible for claiming deduction u/s. 80P(2)(d) disallowed by the ld. Assessing Officer. Accordingly, ground taken by the Revenue in this respect is dismissed. In the result, appeal of the Revenue is dismissed.”*

6. Considering the facts on record, applicable law judicial precedent referred above in assessee’s own case (supra), we do not find any reason to interfere with the findings arrived at by the CIT(A) in allowing the claim of the assessee for deduction u/s. 80P(2)(a)(i) and 80P(2)(d) of the Act as well as deleting the addition made u/s 36(1)(viia). Accordingly, grounds taken by the Revenue in both the appeals are dismissed.

7. In the result, both the appeals of the Revenue are dismissed.

Order is pronounced in the open court on 29 May, 2024

Sd/-
(Pavan Kumar Gadale)
Judicial Member

Sd/-
(Girish Agrawal)
Accountant Member

Dated: 29 May, 2024

MP, Sr.P.S.

Copy to :

1. The Appellant
2. The Respondent
3. DR, ITAT, Mumbai
4. Guard File
5. CIT

BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai