

**IN THE INCOME TAX APPELLATE TRIBUNAL**

**"A" BENCH, MUMBAI**

**BEFORE SHRI NARENDRA KUMAR BILLAIYA, ACCOUNTANT MEMBER AND**

**SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER**

**ITA no.644/Mum./2024**  
**(Assessment Year : 2020-21)**

**Ahuja Tower Co-operative Housing  
Society Ltd**

Plot No. 1087 and 1088, Ahuja  
Tower Co-operative Housing  
Society, Rajabhau Anant Desai  
Marg, Prabhadevi, Maharashtra  
PAN – AAFAA0125L

..... Appellant

v/s

**Income Tax Officer-22(1)(6)**

Room No.108, Piramal Chamber,  
Lal Baug, Parel, Maharashtra-400012.

..... Respondent

**ITA no.859/Mum./2024**  
**(Assessment Year : 2020-21)**

**Income Tax Officer-22(1)(6)**

Room No.108, Piramal Chamber,  
Lal Baug, Parel, Maharashtra-400012.

..... Appellant

v/s

**Ahuja Tower Co-operative Housing  
Society Ltd**

Plot No. 1087 and 1088, Ahuja  
Tower Co-operative Housing  
Society, Rajabhau Anant Desai  
Marg, Prabhadevi, Maharashtra  
PAN – AAFAA0125L

..... Respondent

Assessee by : Shri Anil Sathe

Revenue by : Shri Sunny Kachhwaha

Date of Hearing – 29/05/2024

Date of Order – 19/06/2024

## **ORDER**

### **PER SANDEEP SINGH KARHAIL, J.M.**

The present cross appeals have been filed by the assessee and the Revenue challenging the impugned order dated 30/12/2023 passed under section 250 of the Income Tax Act, 1961 ("the Act") by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi ["learned CIT(A)"], for the assessment year 2020-21.

2. In its appeal, the Revenue has raised the following grounds:-

*"1. Whether on the facts and in circumstances of the case and in law, the Ld. CIT(A) in allowing deduction u/s 80P(2)(d) of the I. T. Act, 1961 without appreciating legislative intent of the inserted provision of 80(P) which specifically provides that section shall not apply in relation to any co-operative bank other than a primary agricultural credit society or primary cooperative agricultural and rural developer bank.*

*2. On the facts and in circumstances of the case and in law, the Ld. CIT(A), in allowing deduction of Rs.5,70,79,573/- u/s 80P(2)(d) of the I. T. Act, 1961 without appreciating the facts that assessee has earned interest income from investment of idle funds with cooperative bank.*

*3. On the facts and in circumstances of the case and in law, the Ld. CIT(A) erred in allowing deduction u/s 80P(2)(d) of the I. T. Act, 1961, without considering the decision of the Hon'ble Supreme Court in the case of Citizen Co-operative Society Ltd. Vs. ACIT vide its order dated 08/08/2017 [(2017) 84 taxmann.COM 114 (SC)] which was further affirmed in its order dated 21/11/2017 in response to a review petition [(2017) 88 taxmann. Com 279 (SC)]."*

3. While, the assessee has raised the following grounds in its appeal:-

*"1. The learned Commissioner of Income Tax (Appeals) erred in facts and in law in sustaining the addition to the extent of Rs. 30,19,574.*

*2. The learned Commissioner of Income Tax (Appeals) erred in facts and in law in not appreciating that interest of Rs. 30,19,574/- was also received from co-operative banks and therefore deduction under section 80P(2)(d) of the Income Tax Act, 1961 (the Act) should have been granted in respect of the same.*

*3. The learned Commissioner of Income Tax (Appeals) erred in facts and in law in not appreciating that interest income of Rs. 30,19,574/- which was directly credited to repairs and renovation fund and sinking fund, had inadvertently remained to be included in the total income and therefore deduction under section 80P(2)(d) of the Act was not claimed by the Appellant in the return of income on account of an inadvertent error.*

*4, The learned Commissioner of Income Tax (Appeals) erred in facts and in law in not appreciating that even if the deduction under section 80P(2)(d) of the Act to the extent of Rs. 30,19,574/- was not claimed by the Appellant in the return of income, the Appellant is entitled to make such claim in the appellate proceedings.*

*5. The Appellant craves leave to add, alter or amend any of the grounds of the appeal, at any time before or at the time of hearing."*

4. The brief facts of the case, as emanating from the record, are: The assessee is a Co-operative Housing Society registered under the Maharashtra State Co-operative Societies Act, 1960. For the year under consideration, the assessee filed its return of income on 31/12/2020 declaring a total income at Rs.Nil, after claiming deduction amounting to Rs.5,70,79,573 under section 80P(2)(d) of the Act. The return filed by the assessee was selected for limited scrutiny assessment on the issue of deduction from total income under Chapter VI-A of the Act, and statutory notices under section 143(2) as well as section 142(1) of the Act were issued and served on the assessee. During the assessment proceedings, the assessee was asked to explain as to how the interest received from the Co-operative Banks is eligible for deduction under section 80P(2)(d) of the Act. In response thereto, the assessee submitted that it is a Co-operative Housing Society and has made investments in fixed deposits with Co-operative Banks. The assessee submitted that it has earned interest income of Rs.7,29,045 from savings in Co-operative Banks, and interest income of Rs.5,63,50,528 from term deposits in Co-operative Banks. The assessee further submitted that the interest and dividend income derived

by a Co-operative Society from its investments in any other Co-operative Society is eligible for deduction under section 80P(2)(d) of the Act. Accordingly, the assessee claimed that the interest income of Rs.5,70,79,573 earned by the assessee from Co-operative Banks is eligible for deduction under section 80P(2)(d) of the Act.

5. The Assessing Officer ("AO") vide order dated 20/09/2022 passed under section 143(3) read with section 144B of the Act noted that out of interest income of Rs.6,00,99,147, the assessee has claimed deduction of Rs.5,70,79,573 under section 80P(2)(d) of the Act and the remaining interest income of Rs.30,19,574, which was earned from the term deposit, has been reported in the financial statements under the head "*Repair and Maintenance Fund*" and "*Sinking Fund*" and is not offered as income in the Profit and Loss account. The AO held that the Co-operative Bank cannot be considered as Co-operative Society, and therefore the Co-operative Bank has rightly been excluded from availing the benefits of deduction under section 80P of the Act. The AO further held that if the assessee Co-operative Society parks funds as investment in Co-operative Banks and earns interest receipts and dividends thereon, it cannot be considered to be same as the income earned by way of interest from investments with any other Co-operative Society. Thus, the AO held that the interest income received by the assessee from investments in Co-operative Banks will not be available as deduction under section 80P(2)(d) of the Act. Accordingly, the AO disallowed interest income of Rs.5,70,79,573, claimed under section 80P(2)(d) of the Act, and added the same to the total income of the assessee. As regards the interest income directly credited to

"*Repair and Maintenance Fund*" and "*Sinking Fund*" by the assessee, the AO held that there is no provision for different treatment of interest income earned from fund reserved for specific purposes such as Repair and Maintenance Fund. Accordingly, the interest income of Rs.30,19,574 earned from term deposit was treated as "*income from other sources*" and added to the total income of the assessee.

6. The learned CIT(A), vide impugned order, following the decision of the coordinate bench in Amore Commercial Premises Co-op Society Ltd., in ITA No. 2873 & 2874/Mum./2022, held that income arising in form of interest from investment by the assessee with Co-operative Banks would be eligible for deduction under section 80P(2)(d) of the Act. As regards the interest income of Rs.30,19,574 directly credited to "*Repair and Maintenance Fund*" and "*Sinking Fund*", the learned CIT(A) held that the claim of deduction on income of Rs.30,19,574 was not made by the assessee in its return of income and the transaction came to light only when a query was raised during the assessment proceedings. The learned CIT(A) further held that claim of deduction at this stage would require regularisation of the relevant return of income by filing revised return of income for which the time has elapsed. Accordingly, the learned CIT(A) held that the interest income of Rs.30,19,574 is not eligible for the purpose of claiming deduction under section 80P(2)(d) of the Act. Being aggrieved, both the assessee and the Revenue are in appeal before us.

7. We have considered the submissions of both sides and perused the material available on record. The solitary issue arising in Revenue's appeal pertains to allowance of deduction under section 80P(2)(d) of the Act by the

learned CIT(A) on the interest income earned from the investments with Co-operative Banks. The assessee is a registered Co-operative Housing Society and during the year under consideration, earned interest income of Rs.6,00,99,147 from the investments made in various Co-operative Banks, such as Saraswat Co-operative Bank Ltd. and SVC Co-operative Bank. Admittedly, in its return of income, out of the total interest income of Rs.6,00,99,147 earned by the assessee, it considered interest income of Rs.5,70,79,573 as "income from other sources" and claimed deduction under section 80P(2)(d) of the Act. The remaining interest income of Rs.30,19,574 was directly credited to "Repair and Maintenance Fund" and "Sinking Fund" and was not offered as income in the profit and loss account.

8. 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) .....*

*(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;"*

9. 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 ;"*

10. 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. At this stage, 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 cannot be considered as Co-operative Society and 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/s CIT, Calicut*, [2021] 431 ITR 1 (SC) 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 in denying deduction under section 80P(2)(d) of the Act to the assessee.

11. 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.

12. We find that the AO has placed reliance upon the decision of the Hon'ble Karnataka High Court in Pr.CIT v/s Totagars Co-operative Sales Society, [2017] 395 ITR 611 (Karn.) in support of its conclusion that interest derived from fixed deposits in Co-operative Banks is not eligible for deduction under section 80P(2)(d) of the Act and should be treated as "*income from other sources*" under section 56 of the Act. We find that the coordinate bench of the Tribunal in Pathare Prabhu Co-operative Housing Society Ltd. v/s ITO, [2023] 202 ITD 464 (Mum-Trib.), while dealing with the aforesaid decision of the

Hon'ble Karnataka High Court in Totagars Co-operative Sales Society (supra) in the context of claim of deduction under section 80P(2)(d) of the Act, observed as follows:-

*"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/s Totagars Co-operative Sales Society, [2017] 395 ITR 611 (Karn.), 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/s Totagars Co-operative Sales Society, [2017] 392 ITR 74 (Karn.) 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., [1972] 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"."*

13. Further, as regards the reliance placed by the AO upon the decision of Hon'ble Supreme Court in Totgar's Co-operative Sale Society Ltd vs ITO., [2010] 322 ITR 283 (SC), we find that in the said case the issue was whether taxpayer would be entitled to deduction under section 80P(2)(a)(i) of the Act. Therefore, the provisions of section 80P(2)(d) of the Act were not under consideration before the Hon'ble Supreme Court. Thus, we are of the considered opinion that the reliance placed upon the aforesaid decisions by the AO is completely misplaced. In this regard, following observations of Hon'ble Supreme Court in CIT v/s Sun Engineering Private Limited, [1992] 198 ITR 297 (SC), becomes relevant:

*"It is neither desirable nor permissible to pick out a word or a sentence from the judgment of the Court, divorced from the context of the question under consideration and treat it to be the complete 'law' declared by the Court. The judgment must be read as a whole and the observations from the judgment have to be considered in the light of the questions which were before the Court. A decision of the Court takes its colour from the questions involved in the case in which it is rendered and while applying the decision to a latter case, the Courts must carefully try to ascertain the true principle laid down by the decision of the Court and not to pick out words or sentences from the judgment, divorced from the context of the questions under consideration by the Court, to support their proceedings."*

14. We are further of the considered opinion that if Revenue's plea is accepted then section 80P(2)(d) of the Act would be rendered completely otiose.

15. Therefore, in view of the above, we uphold the plea of the assessee and find no infirmity in the impugned order passed by the learned CIT(A) in allowing deduction claimed under section 80P(2)(d) of the Act in respect of interest income of Rs.5,70,79,573 earned from investment with Co-operative Banks. As a result, grounds raised by the Revenue are dismissed.

16. In its appeal, the assessee has challenged the denial of deduction claimed under section 80P(2)(d) of the Act on the interest income which was directly credited to "*Repair and Maintenance Fund*" and "*Sinking Fund*".

17. From the computation of total income, for the year under consideration, forming part of the paper book on page 17-18, we find that the assessee considered interest income of Rs.5,70,79,573 as "*income from other sources*" and claimed deduction under section 80P(2)(d) of the Act. We further find from the balance sheet of the assessee as at 31/03/2020, forming part of the paper book on page 11, that the balance interest income amounting to Rs.

30,19,574 earned from fixed deposits in Co-operative Banks were credited to "Repair and Maintenance Fund" and "Sinking Fund", and the same was not considered as income by the assessee. It is evident from the record that during the assessment proceedings, the AO notices the same and held that there is no provision for different treatment of interest earned from fund reserved for specific purposes such as Repair and Maintenance Fund. Accordingly, the AO treating the aforesaid interest earned by the assessee as "income from other sources" and added the same to the total income of the assessee. The learned CIT(A), vide impugned order, did not grant any relief to the assessee on the basis that claim of deduction on the interest income of Rs.30,19,574 would require a revised return of income for which the time has elapsed.

18. We find that Hon'ble Supreme Court in Goetz India Ltd. v/s CIT, [2006] 284 ITR 323 and Hon'ble jurisdictional High Court in CIT v/s Pruthvi Brokers and Shareholders Pvt. Ltd., [2012] 349 ITR 336 (Bom.) has held that the appellate authority can entertain a fresh claim made by the assessee, even if such a claim was not made in return of income or by way of revised return of income.

19. It is the plea of the assessee that the interest income of Rs.30,19,574, which was directly credited to "Repair and Maintenance Fund" and "Sinking Fund", had inadvertently remained to be included in the total income. In the present case, it is undisputed that the interest income of Rs.30,19,574 was also earned by the assessee from its deposits in Co-operative Bank, i.e. Saraswat Co-operative Bank Ltd. Since the AO has now considered the

aforesaid interest income as “*income from other sources*” and added the same to the total income of the assessee, we are of the considered view that in view of our findings rendered in foregoing paragraphs, the assessee is also entitled to deduction under section 80P(2)(d) of the Act on the aforesaid interest income amounting to Rs.30,19,574. As a result, grounds raised by the assessee are allowed.

20. In the result, the appeal by the assessee is allowed, while the appeal by the Revenue is dismissed.

Order pronounced in the open Court on 19/06/2024

**Sd/-**  
**NARENDRA KUMAR BILLAIYA**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**SANDEEP SINGH KARHAIL**  
**JUDICIAL MEMBER**

**MUMBAI, DATED: 19/06/2024**

Vijay Pal Singh, (Sr. PS)

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The PCIT / CIT (Judicial);*
- (4) *The DR, ITAT, Mumbai; and*
- (5) *Guard file.*

True Copy

By Order

Assistant Registrar  
ITAT, Mumbai