

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.1060/Mum./2024

(Assessment Year : 2018-19)

ITO-22(1)(6)

Room No. 108, Piramal Chambers
Lal Baug, Parel, Mumbai-400012

..... Appellant

v/s

Ahuja Tower Co-operative

Housing Society Ltd

Plot No. 1087 and 1088, Ahuja
Tower Co-op Hsg Soc Ltd,
Rajabhau Anant Desai Marg
Mumbai-400025
PAN – AAFAA0125I

..... Respondent

Assessee by : Shri Anil Sathe

Revenue by : Shri Harmesh Lal, Sr. DR

Date of Hearing – 06/06/2024

Date of Order – 20/06/2024

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The present appeal has been filed by the Revenue challenging the impugned order dated 18/01/2024 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 2018-19.

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

1. Whether on the facts and in circumstances of the case and in law, the L.d. CIT(A) in allowing deduction u/s 80P(2)(d) of the LT, 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 cooperative bank other than a primary agricultural credit society or primary cooperative agricultural and rural developer bank.

2. On the facts and circumstances of the case and in law, the Ld. CITA) erred in allowing deduction of Rs, 3,82,54,369/- 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 Id. 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. 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.

4. We have considered the submissions of both sides and perused the material available on record. The brief facts of the case are that 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 28/09/2018 declaring total income at Rs.Nil, after claiming deduction amounting to Rs.3,82,54,369 under section 80P(2)(d) of the Act. During the assessment proceedings, 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.36,90,703 from savings in Co-operative Banks, and interest income of Rs.3,45,63,666 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. 3,82,54,369 earned by the assessee from Co-operative Banks is eligible for deduction under section 80P(2)(d) of the Act. The Assessing Officer ("AO") vide order dated 30/03/2021 passed under section 143(3) read with section 143(3A) and 143(3B) of the Act did not agree with the submissions of the assessee, and held that the interest income earned from investment made in a Co-operative Bank, which is identical to the commercial bank is not eligible for deduction under section 80P of the Act. The learned CIT(A), vide impugned order, following the decision of the Tribunal 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.

5. During the hearing, learned representative of both parties fairly agreed that a similar issue came up for consideration before the Tribunal in assessee's own case for the assessment year 2020-21 in ITA no.859/Mum./2024, and decision rendered therein shall be applicable to the present case having a similar factual matrix. We find that in ITO v/s Ahuja Tower Co-operative Housing Society Ltd., in ITA no.859/Mum./2024, for the assessment year 2020-21, the coordinate bench of the Tribunal vide order 19/06/2024 decided the similar issue in favour of the assessee, and held that the assessee is entitled to claim deduction claimed under section 80P(2)(d) of the Act in respect of interest income earned from investment with Co-operative Banks.

The relevant findings of the coordinate bench, in the aforesaid decision, are reproduced as follows:-

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."

6. Therefore, respectfully following the aforesaid decision rendered by the coordinate bench in assessee's own case for the assessment year 2020-21, we uphold the plea of the assessee that it is entitled to claim deduction under section 80P(2)(d) of the Act in respect of interest income earned from investment with Co-operative Banks. As a result, the grounds raised by the Revenue are dismissed.

7. In the result, the appeal by the Revenue is dismissed.

Order pronounced in the open Court on 20/06/2024

Sd/-
NARENDRA KUMAR BILLAIYA
ACCOUNTANT MEMBER

MUMBAI, DATED: 20/06/2024

Vijay Pal Singh, (Sr. PS)

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

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