

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "B", MUMBAI

Before Justice (Retd.) C V Bhadang, Hon'ble President &
Shri B R Baskaran, Hon'ble Accountant Member

ITA Nos. 4144 & 4146/Mum/2023
Assessment Years : 2015-16 & 2014-15

Backbay Premises Co-op Society Ltd., Jolly Maker Chambers No. 2, 225, Nariman Point, Mumbai 400 021. PAN AAATB9482D (Appellant)	Vs.	NFAC, Delhi (Respondent)
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Appellant By : Shri Vimal Punmiya
Respondent By : Shri Ashok Kumar Ambastha

Date of Hearing : 18.04.2024	Date of Pronouncement: 14.06.2024
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ORDER

Per Justice (Retd.) C V Bhadang :

Both these appeals for the assessment years 2014-15 and 2015-16 involve common issue about admissibility of deduction u/s 80P(2)(d) of the Income tax Act, 1961 ('Act' for short). As such, they are being disposed off by this common order.

2. The appellant assessee is a Co-operative Housing Society. For the assessment year 2014-15, the assessee had filed its Return of Income (RoI) on 25.09.2014 disclosing income as 'Nil'. The case was selected for scrutiny u/s. 143(3) of the Act, which was completed on 1.12.2016, by which the Assessing

Officer made a disallowance of Rs. 65,20,342/- as deduction claimed u/s. 80P(2)(d) of the Act was disallowed. Consequently, the penalty proceedings have also been initiated. According to the Assessing Officer the interest earned by the assessee from investments made with Co-operative Banks are not entitled to deduction u/s. 80P(2)(d) of the Act.

3. The assessee's appeal challenging the said order has been decided exparte, in the absence of the assessee by order dated 03.10.2023.

4. For the assessment year 2015-16, the assessee filed its RoI on 28.09.2015 again declaring 'Nil' income after claiming deduction u/s. 80P(2)(d) of Rs 1,48,88,954/-, which was disallowed by the Assessing Officer vide order dated 30.10.2017 for similar reason, which has been confirmed by the CIT(A) by an order dated 26.09.23.

5. Both these orders are subject matter of challenge in these appeals.

6. We have heard the learned counsel for the appellant and the learned Senior DR. With the assistance of the parties, we have gone through the record.

7. The learned counsel for the appellant has placed reliance on the decision of the Hon'ble Madras High Court in Thorapadi Urban Co-op Credit Society Ltd. vs. ITO, [2023] 156 taxmann.com 419 (Madras), which has been relied upon by this Tribunal in Shivsahyadri Sahakari Patpedhi Mayadit vs. ITO in ITA No. 3829/Mum/2023 decided on 05.04.2024. It is submitted that a Co-operative Bank would fall within the purview of 'Co-operative Society', as held by Hon'ble

Madras High Court in the case of Thorapadi Urban Co-op Credit Society Ltd. vs. ITO (supra).

8. The learned DR has supported the impugned orders. It is submitted that the deduction is available to a Co-operative Society in respect of an income derived from investment made with any other Co-operative Society. It is submitted that a Co-operative Bank cannot fall within the ambit of the term "Co-operative Society". He therefore, submitted that the Assessing Officer was justified in making the disallowance which has been confirmed by the learned CIT(A).

9. We have considered the submissions made. The issue appears to be no longer *res integra*. Hon'ble Madras High Court in Thorapadi Urban Co-op Credit Society Ltd. (supra), in para 8 to 10 of its judgment has held as under:

"8. The main issue is to decide in the present case is as to whether the petitioner Co-operative Society is entitled for a deduction for the interest income received from the Co-operative Bank?"

9. It would be appropriate to extract hereunder the relevant portion of section 80P(2)(d).

"80 P. Deduction in respect of income of co-operative societies:

*(1) ** ** ***

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

*(a) to (c) ** ** ***

(d)"in respect of any income by way of interest or dividends derived by the co-operative society from its investment with any other co-operative society, the whole of such income"

9.1 A reading of the above said provision makes it clear that in the event if any Co-operative Society derived income by way of interest from investment made in any other Co-operative Society the whole such interest is eligible for deduction. Now the issue is as to whether the Co-operative Bank would fall within the purview of the term 'Co-operative Society'. In the present case, the petitioner produced a document to show that the Co-operative Bank, where they have made investments was registered under the Tamil Nadu Co-operative Societies Act, 1983 on 20-5-2003. In this regard, he also produced a copy of the Certificate of Incorporation of the said Co-operative Bank. Therefore, it is clear that the investment made by the petitioner is a Co-operative Bank registered under the Co-operative Societies Act. The Income Tax Act, 1961 has also defined 'Co-operative Society' under section 2(19) as follows:

'2(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. A reading of the above definition would make it clear that 'Co-operative Society' means a Co-operative Society registered under Co-operative Societies Act, 1912. Thus, a Co-operative Society referred therein is only a co-operative society as defined under the Act, be it a Co-operative Society carrying on banking business or Co-operative Society carrying on the other businesses or a Co-operative bank."

10. Before the High Court the assessee-Co-operative Society, had made investment with a Co-operative Bank, which was registered under the Tamil Nadu

Co-operative Societies Act, 1983. The High Court after taking a note of the definition of a 'Co-operative Society', as contained in section 2(19) of the Income Tax Act, 1961, held that a Co-operative Bank, would fall within the purview of the term 'Co-operative Society', entitling the income from the investment with said bank being eligible for deduction u/s. 80P(2)(d) of the Act.

11. Coming to the present appeals, in so far as assessment year 2015-16 is concerned, the interest income is earned from the investment made by the assessee with Saraswat Co-operative Bank Ltd., which is registered under the Maharashtra Co-operative Societies Act, 196- [which a state legislation, in *pari materia* with the Tamil Nadu Co-operative Societies Act].

12. So far as assessment year 2015-16, the investment appears to have been made with Shamrao Vithal Co-operative Bank Ltd. and Saraswat Co-operative Bank Ltd. and Mumbai District Central Co-operative Bank Ltd., which are again governed by the Maharashtra Co-operative Societies Act, 1960.

13. The only reasoning articulated by the CIT(A) while confirming the disallowance can be found in para 5, which is as under :-

5. Decision

I have carefully gone through the grounds of appeal, facts of the case, assessment order passed by the AO. In its arguments appellant emphasizes on the points that interest/dividend income earned out of investment with M/s. Shamrao Vithal Co-Op Bank Ltd., Saraswat Co-Op Bank Ltd. & Mumbai District Central Co-Op Bank Ltd. is covered u/s 80P(2)(d) of the I. T. Act. As apparent from the discussion, Act & Case laws mentioned in the assessment order it is crystal clear that the income from Cooperative Bank by a Co-operative society is not eligible for deduction u/s 80P of the I. T. Act. Further, nowhere in its submission, appellant rebutted the finding of the AO that all three Co-operative Banks are the not the Co-

operative society as required for deduction 80P(2)(d) of the Act. Hence it is beyond doubt that above 3 entities are cooperative banks only as narrated by the AO. The case laws reproduced & attempts of the appellant to divert the facts through its explanation miserably failed to the substantiated its grounds of appeal. Therefore, I after due consideration hereby confirmed the addition made by the A.O. Accordingly Grounds of Appeal No. 1 is hereby dismissed. Ground No. 2 & 3 are consequential in nature so dismissed. Ground 4 does not have relevance so not adjudicated.

14. The finding by the learned CIT(A) cannot be sustained in the face of law laid down by Madras High Court in the case of Thorapadi Urban Co-op Credit Society Ltd. (supra).

15. We are fortified in our view by the decision of this Tribunal in *Pathare Prabhu Co-operative Housing Society Ltd., 153 taxmann.com 714* which incidentally was a case of an assessee which was a co-operative housing society as in the present case and the investment was made with various co-operative banks.

16. The CIT(A) has relied upon the decision of Hon'ble Supreme Court in *Totgar's Co-operative Sale Society Ltd. vs ITO, [2010] 322 ITR 282 (SC)*. We have gone through the same. That was a case of an assessee which was a co-operative society providing credit facility to its members and also marketing the agricultural produce of its members. The assessee in that case had invested surplus funds in short term deposits with banks and government securities. The substantial question of law before the Hon'ble Supreme Court was whether the interest received on said investments would qualify for deduction as "business income" u/s 80P(2)(a)(i) of the said Act? After referring to the said provisions, Hon'ble Supreme Court held that the deduction was not available. It was *inter alia* noticed that while the assessee was marketing the agricultural produce of its

members, it retained the sale proceeds in many cases. Thus, the retained amount was found to be payable to its members from whom the produce was bought, which was invested in short term deposits as securities. The following observations are relevant for the purpose:

"10.Further, as stated above, assessee(s) markets the agricultural produce of its members. It retains the sale proceeds in many cases. It is this "retained amount" which was payable to its members, from whom produce was bought, which was invested in short-term deposits/securities. Such an amount, which was retained by the assessee-Society, was a liability and it was shown in the balance-sheet on the liability-side. Therefore, to that extent, such interest income cannot be said to be attributable either to the activity mentioned in section 80P(2)(a)(i) of the Act or in section 80P(2)(a)(iii) of the Act. Therefore, looking to the facts and circumstances of this case, we are of the view that the Assessing Officer was right in taxing the interest income, indicated above, under section 56 of the Act."

17. The Hon'ble Supreme Court has also observed that the findings in the judgment are confined to the facts of the said case. In our opinion, the facts in the present case are clearly distinguishable.

18. In the result, the appeals are allowed. The impugned disallowance is hereby set aside. Consequently, the impugned addition stands deleted for both the assessment years in question.

Order pronounced in the open court on 14 June, 2024.

Sd/-

[B R Baskaran]
ACCOUNTANT MEMBER
Mumbai, Dated : 14 June, 2024.
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Sd/-

[Justice (Retd.) C V Bhadang]
PRESIDENT

Copy of the Order forwarded to :

1. The Appellant.
2. The Respondent.
3. The PCIT, Mumbai.
4. The CIT
5. The DR, 'B' Bench, ITAT, Mumbai

BY ORDER

//True Copy//

(Assistant Registrar)
Income Tax Appellate Tribunal, Mumbai