

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "F" MUMBAI**

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
SHRI SANDEEP SINGH KARHAIL (JUDICIAL MEMBER)**

**ITA No. 1605/MUM/2024
Assessment Year: 2016-17**

Murude Sahakari Patsanstha
Maryadit,
58 Shivaji Jagar, N. M. Joshi
Marg, Lower Parel,
Mumbai-400013.

**PAN NO. AADAM 0757 C
Appellant**

ITO, Ward-22(2)(1),
Room No. 312, 3rd floor,
Piramal Chamber, Lalbaug,
Parel, Mumbai-400012.

Vs.

Respondent

Assessee by : Mr. Dharan Gandhi
Revenue by : Ms. Usha Gaikwad, Sr. DR

Date of Hearing : 20/06/2024
Date of pronouncement : 21/06/2024

ORDER

PER OM PRAKASH KANT, AM

This appeal by the assessee is directed against order dated 12.03.2024 passed by the Ld. Commissioner of Income-tax (Appeals) – National Faceless Appeal Centre, Delhi [in short ‘the Ld. CIT(A)'] for assessment year 2016-17, raising following grounds:



1. The Ld. Commissioner of income Tax (Appeals), NFAC, Delhi has erred in confirming action of Ld AO of not following judicial discipline by not allowing the deduction u/s 80P (2)(d).

2. The Ld Commissioner of Income Tax (Appeals), NFAC, Delhi has erred in confirming action of Ld AO not not allowing the deduction u/s 80P(2)(d) in respect of interest income received from Co-operative bank to the tune of Rs.50,50,068/- on the ground that the co-operative bank is not a co-operative society.

2. Briefly stated, facts of the case are that the assessee , a co-operative credit society , is engaged in the business of accepting deposits from its members and lending the funds to its members only. There is no dispute on the issue that operations of the assessee were confined with its members during the year under consideration. The assessee filed its return of income for the year under consideration on 15.09.2016 declaring total income at Rs. Nil. The return of income filed by the assessee was selected for scrutiny assessment and statutory notices under the Income-tax Act, 1961 (in short 'the Act') were issued and complied with. The assessment was completed u/s 143(3) of the on 04.12.2018, wherein , the Assessing Officer disallowed claim of the assessee for deduction u/s 80P(2)(d) of the Act amounting to Rs.47,09,560/- along with claim for deduction of Rs.3,40,508/-, which was made u/s 80P(2)(a)(i) of the Act.

3. On further appeal, the Ld. CIT(A) allowed the claim of deduction u/s 80P(2)(a)(i) of the Act amounting to Rs.3,40,508/-, however, sustained the disallowance of claim u/s 80P(2)(d) of the Act amounting to Rs.47,09,560/-.



4. We have heard rival submission of the parties and perused the relevant material on record. We find that the assessee computed its income from business and claimed deduction in the return of income, details of which has been filed in chart submitted by the assessee before the Ld. CIT(A), which is available on page 5 of the impugned order. Fore ready reference, said chart is reproduced as under:

A) Income from Business :	Amount (Rs.)
As per computation submitted during the assessment	50,50,068
Less: Income chargeable under Income from Other Sources	47,09,560
Income(Loss) from Business	3,40,508
B) Income from Other Sources :	
Interest on bank deposits	47,09,560
Gross Total Income	50,50,068
Less: Deductions under Chapter VI-A	
Deductions u/s.80P(2)(a)(i)	(3,40,508)
Deductions u/s 80P(2)(d)	(47,09,560)

4.1 We find that deduction u/s 80P(2)(a)(i) of the Act amounting to Rs.3,40,508/- has already been allowed by the Ld. CIT(A) and only dispute is in respect of deduction u/s 80P(2)(d) of the Act. As per the provisions of the Act, whole of income by way of interest or dividend derived by a co-operative society from its investment with any other co-operative society is eligible for deduction. The Ld. CIT(A) has though referred to the decision of the Income-tax Appellate Tribunal (in short the Tribunal)in the case of the assessee for assessment year 2010-11 in ITA No. 1058/Mum/2017 but did not follow for the reason that no details whether the interest income from various banks were falling for the category of the co-



operative society were filed. The relevant finding of the Ld. CIT(A) is reproduced as under:

*“5.2 The case laws as relied upon by the assessee are not completely acceptable, as in the case of PCIT v. Totagars Co-operative Sale Society [2017] 78 taxmann.com 169 (Karnataka) order dated 05.01.2017, the Hon'ble Court has held that even Section 56(i)(ccv) of the Banking Regulation Act, 1949, defines a primary co-operative bank as the meaning of cooperative society, therefore a co-operative society bank would be included in the words Cooperative Society'. Accordingly he submitted that The Mysore and Chamarajanagar District Co-op. Central Bank Ltd. is primarily registered as a co-operative society and obtained licence from RBI for carrying on banking activities, therefore as per para-9 of the said judgment, it is to be termed as a co-operative society and section 80P(2)(d) clearly states that interest received from co-operative society is eligible for deduction u/s.80P(2)(d) of the Act. **However, in the instant case the assessee has received interest income from various Banks and it is not proved that all these Banks are obtained licence from RBI and termed as co-operative society and, therefore, the contentions of the appellant are hereby rejected.**”*

(emphasis supplied externally)

4.2 It is settled law that deduction u/s 80P(2)(d) of the Act is available in respect of investment made by a cooperative society with other co-operative society. In the case of assessee in AY 2010-11 (supra), the Tribunal, following the finding of Hon'ble Karnataka High Court in the case of PCIT v. Totagars Co-operative Sale Society (2017) 78 taxmann.com 169 (Karnataka), has held that cooperative banks are primarily cooperative society and deposits with cooperative banks by a cooperative society are eligible for deduction u/s 80P(2)(d) of the Act. In the year under consideration, ld CIT(A) has observed that details of investment/deposit with cooperative banks (who are primarily cooperative society) corresponding to interest income has not been filed, therefore, we feel it appropriate to restore this matter back to the file of the Assessing Officer for



examining whether the interest income claimed u/s 80P(2)(d) of the Act has been derived from the deposits with co-operative banks which are primarily co-operative society as held by the Hon'ble Karnataka High Court in the case of PCIT v. Totagars Co-operative Sale Society (2017) 78 taxmann.com 169 (Karnataka).

4.3 Further, the Ld. CIT(A) has considered the assessee as analogues to a club and rejected the deduction following the decision of the Hon'ble Supreme Court in the case of Bangalore Club v. CIT (2013) 29 taxmann.com 29 (SC) observing as under:

"5.3 The present case of co-operative society is more close to the facts of the Bangalore Club case. The Hon'ble Supreme Court's decision in the case of Bangalore Club Vs. CIT (2013) 29 taxmann.com 29 (SC), wherein it was held that "unlike the surplus amount itself, which is exempt from tax under the doctrine of mutuality, the amount of interest earned by the assessee from the member banks will not fall within the ambit of the mutuality principle and will therefore be eligible to Income-tax in the hands of the assessee". In view of the facts of the case and following the decision of the Hon'ble Supreme Court in the case of Bangalore Club case (supra), the interest income of Rs.47,09,560/- was rightly brought to tax by AO on which deduction u/s.80P(2)(a)(i)/ 80P(2)(d) of the I.T. Act was disallowed. In view of the above discussion, the appellant is eligible for deduction u/s.80P(2)(a)(i) of the I.T. Act to the extent of Rs.3,40,508/- only (Rs.50,50,068 - Rs.47,09,560) and remaining amount of Rs.47,09,560/- is hereby confirmed. Hence, the grounds of appeal are partly allowed."

4.4 In our opinion, the co-operative society has been made specifically eligible for deduction u/s 80P(2)(d) of the Act and therefore, claim of said deduction has to be examined in the relevant provisions only and decision in the case of Bangalore Club (supra) cannot be imported into the facts of the case of the assessee. Accordingly, we reject the finding of the Ld. CIT(A) on this issue.



5. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 21/06/2024.

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

**Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER**

Mumbai;
Dated: 21/06/2024
Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,
(Assistant Registrar)
ITAT, Mumbai