

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "SMC", MUMBAI**

**BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER
AND
SMT. RENU JAUHRI, ACCOUNTANT MEMBER**

**ITA No.183/Mum/2024
Assessment Year: 2020-21**

M/s. Shree Kumbhajai Co-op. Society Ltd., 5, Shiv Krupa Building, S.B. Pawar Marg, Kari Road West, Mumbai - 400 013 PAN: AAGAS9913B	Vs.	ACIT, CPC Bengaluru ACIT, Circle-13(2)(12), Room No.452, 4 th Floor, Aayakar Bhavan, Mumbai - 400 020
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Ravi Dasija, A.R.

Revenue by : Shri Nagnath Pasale, D.R.

Date of Hearing : 30 . 05 . 2024

Date of Pronouncement : 27 . 06 . 2024

O R D E R

Per : Narender Kumar Choudhry, Judicial Member:

This appeal has been preferred by the assessee against the order even dated 23.11.2023, impugned herein, passed by the Ld. Commissioner of Income Tax (Appeals) (in short Ld. Commissioner) under section 250 of the Income Tax Act, 1961 (in short 'the Act') for the A.Y. 2020-21.

2. The assessee has claimed the deduction under section 80P(2)(d) of the Act qua interest income of Rs.9,81,358/- earned from the following cooperative banks:

Sl. No.	Name of the Bank
1.	Mumbai District Central Cooperative Bank Ltd.
2.	SVC Cooperative Bank Ltd.
3.	Saraswat Cooperative Bank Ltd.
4.	The Ajara Urban Cooperative Bank Ltd.

2.1 The deduction was disallowed by the CPC vide intimation dated 25.11.2021 under section 143(1) of the Act.

2.2 The assessee, being aggrieved, filed a rectification application under section 154 of the Act, however the same was also dismissed by the CPC vide order dated 04.12.2021, whereby the CPC reaffirmed the said addition.

3. The assessee, being aggrieved with the intimation dated 25.11.2021 read with order dated 04.12.2021 under section 154 of the Act, preferred first appeal before the Ld. Commissioner who by impugned order affirmed the aforesaid addition.

4. The assessee, being aggrieved, is in appeal before us.

5. Heard the parties and perused the material available on record. Recently the co-ordinate Bench of the Tribunal in the case of M/s. Aurum Grande Co-operative Housing Society Ltd. in ITA No.4412/M/2013 for A.Y. 2020-21 has dealt with the identical issue as involved in the instant case and ultimately allowed the deduction

claimed u/s 80P(2)(d) of the Act qua interest income earned from Co-operative Banks, by concluding as under:

“3. Grounds No. 1 and 2 have not been pressed by the appellant and grounds no. 3 to 5 related to disallowance of deduction u/s 80P(2)(d) of the Act. Grounds No. 6 & 7 are against the charging of interest u/s 234A, 234B & 234C of the Act.

4. Brief facts of the case are as under:

a. The assessee is a co-operative housing society and return for A.Y. 2020-21 was filed on 13.02.2021 declaring income of ₹ 1,74,722/- after claiming deduction of ₹ 30,36,217/- u/s 80P(2)(d) of the Act.

b. After considering the written submissions filed by the assessee, the assessment was completed by the AO, disallowing the claim of the deduction u/s 80P(2)(d) of the interest income earned from banks as under:

Particulars	Amount	Bank Name
<i>Interest of Fixed deposit</i>	<i>14,76,640/-</i>	<i>Sarswat Co-op Bank Ltd.</i>
<i>Interest jn Sweep Fixed-Deposit-Sarswat Bank</i>	<i>15,39,258/-</i>	<i>Sqrswat Co-op Bank Ud</i>
<i>Interest in Saving Bank</i>	<i>9,040/-</i>	<i>Sarswat Co-op Bank Ltd</i>
<i>Interest in Saving Bank</i>	<i>11,273/-</i>	<i>Mumbai District Central Co-op Bank. Ltd.</i>
Total Interest	30,36,217/-	

c. Aggrieved by the assessment order, the assessee filed appeal before Ld.CIT(A)/NFAC who also upheld the disallowance vide order dated 31.10.2023 on the ground that interest earned on deposits with co-operative banks is not covered u/s 80P(2)(d) of the Act.

d. Both the AO and the Ld.CIT(A) have placed reliance on the decision of the Hon'ble Karnataka High Court in the case of PCIT v/s Totagars Co-operative Sale Society (2017) 395 ITR 611 (Karnataka) on this issue.

5. Before us, the Ld.AR submitted that the assessee is not a credit co-operative society, as wrongly stated by the AO, but is a co-operative housing society. During the year, the appellant has earned interest income to the tune of ₹30,36,217/- from its investments/deposits made with Saraswat Co-op Bank Ltd. & Mumbai District Central Coop Bank Ltd. On plain reading of section 80P(2)(d), it is clear that the deduction u/s 80P is available to the appellant. The Ld. AR also cited several decisions of the Co-ordinate benches of the ITAT, Mumbai in support of his claim.

6. On the other hand, the Ld. CIT DR has placed reliance on the order of the Ld.CIT(A) and the decision of the Hon'ble Karnataka High Court in the case of PCIT v/s Totagars Co-operative Sale Society (Supra).

7. We have heard rival submissions and carefully examined the facts of the case. It is seen that prior to the decision of the Hon'ble Karnataka High Court relied upon, the Hon'ble Karnataka High Court in PCIT v/s Totagars Co-operative Sale Society (2017) 392 ITR 74 have held that the amount of interest earned from co-operative society bank would be deductible u/s 80P(2)(d). Thus, there are divergent views of the same Hon'ble High Court on this issue.

8. The Co-ordinate Benches of the Tribunal in various decisions have consistently taken the view that in the case of a co-operative society, the income earned by way of interest income on the investments made with any co-operative bank is allowable as deduction u/s 80P(2)(d) of the Act . For ready reference, the relevant portion of one of the decisions in the case of Pathare Prabhu Cooperative Housing Society Ltd. v/s ITO (2023) in ITA No. 1346 & 1347/Mum/2023 and reported vide 153 taxmann.com 714 (Mum.Trib) on identical issue is reproduced hereinbelow:

"9. 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. (2) The sums referred to in

*sub-section (1) shall be the following, namely:- ***

(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;"

10. 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;

11. In the present case, there is no dispute that the assessee is a CoOperative Housing Society. Thus, if any income as referred to in subsection (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. 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 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. CIT* [2021] 123 taxmann.com 161/279 Taxman 75/431 ITR 1 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 and upheld by the learned CIT(A) in denying deduction under section 80P(2)(d) of the Act to the assessee. 12. 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. In *Kaliandas Udyag Bhavan Premises Co-op Society Ltd. v. ITO* [2018] 94 taxmann.com 15 (Mum.)/[ITA No. 6547/Mum./2017, dated 25-4-2018], while dealing with the provisions of section 80P(2)(d) vis-à-vis section 80P(4) of the Act, the coordinate bench of the Tribunal observed as under:*

7..... Thus, from a perusal of the aforesaid sec. 80P(2)(d) it can safely be gathered that income by way of interest income derived by an assessee co-operative society from its investments held with any other cooperative society, shall be deducted in computing the total income of the assessee. We may herein observe, that what is relevant for claim of deduction under sec. 80P(2)(d) is that the interest income should have been derived from the investments made by the assessee co-operative society with any other cooperative society. We though are in agreement with the observations of the lower authorities that with the insertion of sub-section (4) of sec. 80P, vide the Finance Act, 2006, with effect from 1-4-2007, the provisions of sec. 80P would no more be applicable in relation to any co-operative bank, other than a primary agricultural credit society or a primary cooperative agricultural and rural development bank, but however, are unable to subscribe to their view that the same shall also jeopardise the claim of deduction of a co-operative society under sec. 80P(2) (d) in respect of the interest income on their investments parked with

a co-operative bank. We have given a thoughtful consideration to the issue before us and are of the considered view that as long as it is proved that the interest income is being derived by a co-operative society from its investments made with any other co-operative society, the claim of deduction under the aforesaid statutory provision, viz. sec. 80P(2)(d) would be duly available. We may herein observe that the term 'co-operative society had been defined under sec. 2(19) of the Act, as under:-

'(19) "Co-operative society" means a cooperative 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;'

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, as 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 co-operative societies, therefore, the interest income derived by a co-operative 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."

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. Totagars Cooperative Sales Society [2017] 83 taxmann.com 140/395 ITR 611, wherein it was held that interest earned by the assessee, a Cooperative 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. CT v. Totagars Co-operative Sale Society (2017) 78 taxmann.com 169/392 ITR 74 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. [1973] 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".

14. Therefore, in view of the above, we uphold the plea of the assessee and direct the AO to grant the deduction under section 80P(2)(d) of the Act to the assessee in respect of interest income earned from investment with Co-operative Banks. Accordingly, we set aside the impugned order passed by the learned CIT(A) for the assessment year 2018-19. As a result, grounds raised by the assessee are allowed."

9. Following the decisions of the co-ordinate benches of ITAT, we direct the AO to allow the deduction of interest earned from cooperative banks u/s 80P(2)(d) of the Act as claimed by the assessee."

6. Admittedly the issue involved in this case is exactly similar to the issue decided by the Co-ordinate Bench of the Tribunal in the aforesaid case, hence respectfully following the judgment passed in the aforesaid case, we are inclined to allow the claim of deduction u/s 80P(2)(d) of the Act qua interest income earned by the assessee from the co-operative banks. Hence the claim of the Assessee is allowed accordingly.

7. In the result, the appeal filed by the assessee stands allowed.

Order pronounced in the open court on 27.06.2024.

**Sd/-
(RENU JAUHRI)
ACCOUNTANT MEMBER**

**Sd/-
(NARENDER KUMAR CHOUDHRY)
JUDICIAL MEMBER**

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.