

IN THE INCOME TAX APPELLATE TRIBUNAL "G" BENCH, MUMBAI

BEFORE SHRI PRASHANT MAHARISHI, AM
AND
SHRI RAHUL CHAUDHRY, JM

ITA No.1280/MUM/2024
(Assessment Year: 2021-22)

Samata Co-operative Housing Society Ltd. Gr. Floor, Jagannath Bhosale Marg, Mumbai GPO, Nariman Point S.O., Mumbai-400021 (Appellant)	Vs.	Dy. Commissioner of Income-tax, Circle-26(1) Room No. 212, 2 nd Floor, Kautilya Bhavan, Bandra Kurla Complex, Bandra(E), Mumbai-400051 (Respondent)
PAN No. AADAS5219D		

Assessee by : Shri Sam Walve & Shri Tanzil
Padvekar
Revenue by : Shri Dr. Kishor Dhule

Date of hearing: 18.06.2024
Date of pronouncement 28.06.2024
:

ORDER

PER PRASHANT MAHARISHI, AM:

01. This appeal is filed by samta cooperative housing society Ltd for assessment year 2021 – 22 against the appellate order passed by the additional CIT (A) – 3, Bangalore (the learned CIT – A) dated 23/1/2024 wherein the appeal filed by the assessee against the order passed under section 143 (1) of the income tax act 1961 (the act) by central processing Centre Bangalore dated

21/12/2022, was dismissed disallowing the deduction under section 80 P (2) (d) of the act, raising following grounds

- a. *On the facts and in law, the Ld. CIT(A) erred in confirming the disallowance of Rs.58,68,245/- of interest income received from Co- operative Banks. The Ld. CIT(A) has failed to appreciate that interest income received by a Co-operative Society from Co-operative Bank is allowable under Section 80P(2)(d) of the Act.*
- b. *On the facts and in law, the Ld. CIT(A) ought to have appreciated that the issue of allowability of interest income earned by a Co-operative Society from a Co-operative Bank on surplus funds is allowable under Section 80P(2)(d) of the Act and its no longer res-integra as held in several decisions of this Hon'ble Court such as Pathare Prabhu Co- operative Housing Society Ltd. vs Income-tax Officer [2023] 153 taxmann.com 714 (Mumbai Trib.)andPalm Court M Premises Co-operative Society Ltd. V. Principal Commissioner of Income-tax [2022] 145 taxmann.com 415 (Mumbai - Trib.)*
- c. *On the facts and in law, the Ld. CIT(A) by mis-interpretingthe provision of law stating that interest income received from Co-operative Bank is not allowable as deduction under Section 80P of the Act as 80P(4) is in the nature of Proviso to Section 80P(1) and 80P(2) whereas interest income is allowable 80P(2)(d)of the Act. With great respect, the Learned CIT(A) has failed to note that the broad heading of the Section 80-P needed clarification. Hence, the Legislature stepped in. In other words, absent Section 80-P(4) which is inserted with effect from 1 April 2007, the benefit of deduction was*

available even to a Cooperative Bank. It is also a Cooperative Society but carrying on Banking Business. Hence, the words, "the provision of this Section" were inserted in the sub-section so that this category of Cooperative Societies cannot claim the Deduction.

- d. On the facts and in law, the Ld. CIT(A) has failed to appreciate that as per By-laws of the Appellant Society read with Section 70 and the Notification and Circulars under the Maharashtra Co-operative Act, it is incumbent on the Appellant society to invest its surplus funds in a Central Bank or the State Co-operative Bank. Thus, interest earned on such investment is allowable as deduction under section 80P(2)(d) of the Act as held in Pathare Prabhu Co-operative Housing Society Ltd vs Income-tax Officer [2023] 153 taxmann.com 714 (Mumbai Trib.).*
- e. On the fact and in law the mandatory requirement for cooperative societies to maintain certain statutory deposits or investments in cooperative banks, as stipulated by law, signifies a legislative intent to foster the co-operative sector. Simultaneously, the exclusion of interest earned on such deposits from eligibility for deduction under Section 80P of the Income Tax Act contradicts the legislative intent. It is impossible that the legislature or parliament intended such an outcome. Hence, interest income earned by a co-operative society on investment from Co-operative bank is allowable under section 80P(2)(d) of the Act. Pertinently, the Appellant is a Cooperative Housing Society and not a Cooperative Bank.*
- f. On the facts and in law, the Ld. CIT(A) has seriously erred by relying on the decision Totgar Co-operative Sale*

Society V/s. Income Tax Officer [(2010) 322 ITR 283 (SC)] which has no relevance to the fact of the case of the Appellant, as the said decision has been given in very different context, hence, shall have no application to the present case.

02. Brief facts of the case shows that assessee is a cooperative housing society filed its return of income on 25/1/2022 whereas the due date for filing of the return of income is 15/3/2022 declaring total income of ₹ 12,381,720/-. This return of income was processed by the central processing Centre determining total income of the assessee at Rs 182,88,900/-. The difference is arising because of the reason that assessee has claimed deduction under section 80 P (2) (d) of the act of ₹ 5,907,174/- on interest income earned by the assessee from co-operative banks was denied. Assessee preferred appeal before the learned CIT – A wherein the appeal of the assessee was dismissed. Therefore assessee has preferred appeal before us.
03. The learned authorised representative submitted a paper book containing several judicial precedent and stated that the issue is squarely covered in favour of the assessee.
04. The learned departmental representative supported the order of the learned CIT – A.
05. We have carefully considered the rival contention and perused the orders of the lower authorities. The facts clearly shows that assessee has earned interest on fixed deposit receipt amounting to ₹ 5,608,072 from various cooperative banks. Assessee has also received interest

income on savings bank account of various cooperative banks and other bank amounting to Rs 299102/- which also included the interest from bank of Baroda of ₹ 38,929. On the total interest income from fixed deposit and savings bank assessee claim deduction under section 80 P (2) (D) of the act. Before the learned CIT – A assessee himself submitted that the deduction on savings bank interest from bank of Baroda of ₹ 38,929/- is not eligible for deduction.

06. Undisputedly the fact shows that assessee is a cooperative society. Assessee has filed return of income within the due date.

07. As per provisions of section 143 (1) (a) permits following adjustment to the total income of the assessee:-

143. ⁶⁷[(1) Where a return has been made under section 139, or in response to a notice under sub-section (1) of section 142, such return shall be processed in the following manner, namely:—

(a)	the total income or loss shall be computed after making the following adjustments, namely:—
(i)	any arithmetical error in the return; ⁶⁸ [***]
(ii)	an incorrect claim, if such incorrect claim is apparent from any information in the return;
⁶⁹ [(iii)	disallowance of loss claimed, if return of the previous year for which set off of loss is claimed was furnished beyond the due date specified under sub-section (1) of <u>section 139</u> ;
(iv)	disallowance of expenditure ⁷⁰ [or increase in income] indicated in the audit report but not taken into account in computing the total income in the return;
(v)	disallowance of deduction claimed under ⁷¹ [section 10AA or under any of the provisions of Chapter VI-A under the heading "C.—Deductions in respect of certain incomes", if] the return is furnished beyond the due date specified under sub-section (1)

	of <u>section 139</u> ; or
(vi)	addition of income appearing in <u>Form 26AS</u> or <u>Form 16A</u> or Form 16 which has not been included in computing the total income in the return:

08. The disallowance of deduction under chapter VI A can only be made under section 143 (1) (a) (v) of the act only on account of non-furnishing of return of income within the due date of filing of the return. This is not the reason.

2. Claim of the assessee cannot be said to be an incorrect claim in view of the explanation (a) which is as under:-

(a)	"an incorrect claim apparent from any information in the return" shall mean a claim, on the basis of an entry, in the return,—
(i)	of an item, which is inconsistent with another entry of the same or some other item in such return;
(ii)	in respect of which the information required to be furnished under this Act to substantiate such entry has not been so furnished; or
(iii)	in respect of a deduction, where such deduction exceeds specified statutory limit which may have been expressed as monetary amount or percentage or ratio or fraction;

09. It is not the case that deduction under section 80 P (2) (d) is a deduction provided by any monitoring limit or percentage ratio or fraction. Thus, claim of deduction under section 80 P (2) (d) is also not classified as incorrect claim.

010. Thus, the adjustment of disallowance of deduction under that section is not permissible adjustment provided under

section 143 (1) of the act. Therefore the intimation passed under section 143 (1) is not sustainable.

011. On the merits of the case, provisions of section 2 (19) define a co-operative society as under:-

19)	"co-operative society" ⁹⁷ 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 ;
-----	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

012. Thus, for the definition of the cooperative society whether covers the cooperative banks are not one has to look at the respective cooperative societies act is applicable.

013. THE MAHARASHTRA CO-OPERATIVE SOCIETIES ACT, 1960, Defines cooperative banks as per section 2 (10) of that Act as under :"-

"Co-operative bank" means a Co-operative society which is doing the business of banking as defined in clause (b) of sub-sections (1) of section 5 of the Banking Companies Act, 1949 and includes any society which is functioning or is to function as an Agricultural and Rural Development Bank under Chapter X.

014. Thus it is apparent that cooperative banks are also a co-operative society. Only difference is that those cooperative societies are doing the business of banking as per the banking companies act 1949. Therefore, merely because these cooperative societies cooperative bank they do not lose their status as a co-operative society.



015. According to the provisions of section 80 P (2) (d) of the income tax act

(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;
-----	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

016. Thus, the assessee's investment of earning interest income from such cooperative banks which are also cooperative societies whole of such income is deductible under this section.

017. It is not in dispute that assessee is not a cooperative bank and therefore provisions of section 80 P (4) of the act does not apply to it.

018. Thus the assessee is eligible for deduction under section 80 P (2) (d) of the act on its income received from all the above cooperative banks. Hence assessee is eligible for that deduction amounting to Rs. on fixed deposit interest of ₹ 5,608,072/- and savings bank interest of Rs 260,173/-. Assessee is not eligible for deduction of bank interest from bank of Baroda of ₹ 38,929/-.

019. Accordingly the order of the learned CIT – A is reversed and appeal of the assessee is partly allowed.

Order pronounced in the open court on 28.06.2024.

Sd/-
(RAHUL CHAUDHRY)
(JUDICIAL MEMBER)

Sd/-
(PRASHANT MAHARISHI)
(ACCOUNTANT MEMBER)

Mumbai, Dated: 28.06.2024



Sudip Sarkar, Sr.PS

Copy of the Order forwarded to :

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

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Mumbai