

**IN THE INCOME TAX APPELLATE TRIBUNAL
“G” BENCH, MUMBAI**

**BEFORE MS PADMAVATHY S, AM &
SHRI RAJ KUMAR CHAUHAN, JM**

I.T.A. No. 542 /Mum/2024
(Assessment Year: 2020-21)

I.T.A. No. 544 /Mum/2024
(Assessment Year: 2017-18)

I.T.A. No. 543/Mum/2024
(Assessment Year: 2018-19)

Shah and Nahar Industrial Premises A2Co-op. Soc. Ltd. Bldg 2, Shah and Nahar A2, Sitaram Jadhav Marg, Lower Parel, Mumbai-400013. PAN : AAABS1145A	Vs.	National e-Assessment Centre, New Delhi/ Asst. CIT, Circle- 22(3), Piramal Chambers, Lalbaug, Mumbai-400012.
Appellant)	:	Respondent)

Appellant/Assessee by : Shri Ashish A. Thakurdesai, CA
Revenue/Respondent by : Shri Dr. Kishor Dhule, CIT-DR &
Shri G. Santosh Kumar , Sr. DR

Date of Hearing : 11.06.2024
Date of Pronouncement : 21.06.2024

ORDER

Per Bench:

These appeals by the assessee are against the separate orders of the Commissioner of Income Tax (Appeals) / National Faceless Appeal Centre, Delhi [for short 'the CIT(A)] dated 30.11.2023 for the AY 2017-18 & 2018-19 and dated

21.12.2023 for AY 2020-21. The only issue contended in this appeal is the disallowance of deduction under section 80P(2)(d) of the Income Tax Act, 1961 (the Act).

2. The assessee is a Co-operative Society which maintains industrial / commercial Galas. The details of the return filed and the deduction claimed under section 80P for the AYs under consideration are tabulated below:

AY	Date of filing of return	Income returned	Deduction u/s 80P(2)(d)
2020-21	09.01.2021	Rs. 18,18,650/-	Rs. 75,51,959/-
2017-18	08.12.2017	Rs. 1,09,89,963/-	Rs. 87,58,953/-
2018-19	26.11.2018	Rs. 15,43,820/-	Rs. 47,71,651/-

3. During the course of assessment, the AO disallowed the deduction claimed by the assessee under section 80P(2)(d) for the reason that the interest income which the assessee has claimed as deduction under section 80P(2)(d) is received from Co-operative Banks. Aggrieved the assessee filed further appeal before the CIT(A). The CIT(A) confirmed the disallowance by placing reliance on the decision of the Hon'ble Karnataka High Court in the case of PCIT Vs. Totgars Cooperative Sale Society (2017) 395 ITR 611 (Kar). The assessee is in appeal before the Tribunal against the order of the CIT(A).

4. The Id. Authorized Representative (AR) of the assessee submitted that the AO has denied the deduction under section 80P(2)(d) of the Act for the reason that the deduction is claimed towards interest received from deposits with Co-operative Bank. The Id. AR further submitted that the term cooperative society is much wider and includes a Cooperative Bank also and that this proposition has been upheld in various judicial pronouncements. The Id. AR also submitted that the Co-

ordinate Bench has been consistently holding that interest received from deposits with Co-operative Bank is also eligible for deduction under section 80P(2)(d) of the Act and in this regard placed reliance on the decision of the Co-operative Bank in the case of Pathare Prabhu Co-operative Housing Society Ltd. Vs ITO [2023] 153 taxmann.com 714 (Mumbai - Trib.) and Kona Seema Co-operative Housing Society Ltd. in ITA No. 2024/Mum/2023 dated 08.11.2023. The ld. AR also brought to our attention that a similar view is held by the Co-ordinate bench in a recent decision dated 05.04.2024 in the case of Shivsahyadri Sahakari Patpedhi Maryadit Vs. ITO in ITA No. 3829/Mum/2023. Accordingly the ld AR prayed that the disallowance made towards deduction claimed under section 80P(2)(d) be deleted.

5. The ld. DR on the other hand submitted that the Hon'ble Gujarat High Court in the case of Katlary Kariyana Merchant Sahkari Vs. (ACIT 327 CTR 138) has held that the assessee is not entitled for deduction under section 80P(2)(d) towards the interest income received from deposit with Co-operative Bank. The ld. DR therefore, submitted that the lower authorities have correctly denied the benefit of deduction to the assessee.

6. We have heard the parties and perused the material available on record. We notice that the Co-ordinate Bench has been consistently holding that the income derived by way of interest from Co-operative Banks is also eligible for deduction under section 80P(2)(d). The relevant observations of the coordinate bench in Kona Seema Co-operative Housing Society Ltd. (supra) where it is held that –

"5. We have considered the submissions of both sides and perused the material available on record. The dispute raised by the assessee is against the denial of deduction claimed under section 80P(2)(d) of the Act in respect of interest income received from the Co-operative Banks. The assessee is a Cooperative Housing

Society and during the assessment year 2015-16 earned interest income of Rs. 5,74,097 from the investments made in Saraswat Cooperative Bank Ltd and Maharashtra State Co-operative Bank Ltd.

6. 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 cooperative society from its investments with any other co-operative society, the whole of such income;”

7. 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 ;”

8. In the present case, there is no dispute that the assessee is a CoOperative 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. 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 Cooperative Bank. Accordingly, the assessee kept the deposits in Saraswat Cooperative Bank Ltd and Maharashtra State Co-operative Bank Ltd and earned interest, which was claimed as a deduction under section 80P(2)(d) of the Act. The deduction under section 80P(2)(d) of the Act was denied on the basis that the Saraswat Co-operative Bank Ltd and Maharashtra State Co-operative Bank Ltd are multi-state scheduled banks and therefore interest derived will not qualify for

deduction under section 80P(2)(d) of the Act. However, from the perusal of section 80P(2)(d) of the Act, it is sufficiently evident that there is no restriction on claiming deduction under the said section in respect of interest income earned from the Co-operative society operating in multiple states. Further, section 80P(4) of the Act is of relevance only in a case where the taxpayer, who is a Co-operative Bank, claims a deduction under section 80P of the Act which is not the facts of the present case. We find that the Hon'ble Supreme Court in Mavilayi Service Co-operative Bank Ltd. vs 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. Therefore, we find no merits in the reasoning adopted by the learned CIT(A) in denying deduction under section 80P(2)(d) of the Act to the assessee. As a result, grounds no. 4 and 5 raised in assessee's appeal are allowed."

7. We also noticed that in a recent decision the Co-ordinate bench in the case of Shivsahyadri Sahakari Patpedhi Maryadit (supra) has held a similar view by following the decision of the Hon'ble Madras High Court in the case of Thorapadi Urban Co-operative Credit Society Vs. ITO (2023) 156 taxmann.com 419 (Madras). The relevant observations of the Co-ordinate Bench are extracted below:

"8. We have considered the submissions made. As noticed earlier, the issue stands concluded by the decisions of this Tribunal as referred to above. Even the Hon'ble Madras High Court in the case of Thorapadi Urban Co-op. Credit Society Ltd. (supra) has held thus in paras 8 to 10 of its order :-

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) *The 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. *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."

9. *In that view of the matter, we find that the appeal has to succeed*

8. From the perusal of records, we noticed that the assessee has placed the surplus funds in deposits with various Co-operative Banks and has received interest income on the same. The assessee while filing the return of income has claimed such interest as a deduction under section 80P(2)(d). We notice that the

lower authorities have denied the benefit of deduction for all the AYs under consideration for the reason that the interest received from Co-operative Bank is not eligible for deduction under section 80P(2)(d). These facts are identical to the facts adjudicated in the above judicial pronouncements. Therefore, respectfully following the above decisions, we hold that the assessee is entitled for deduction under section 80P(2)(d) towards income derived from deposits with Co-operative Bank for AY 2017-18, 2018-19 & 2020-21. Accordingly, the AO is directed to allow the deduction claimed by the assessee for these AYs.

9. In the result, the appeals for AY 2017-18, 2018-19 & 2020-21 of the assessee are allowed.

Order pronounced in the open court on 21-06-2024.

Sd/-
(RAJ KUMAR CHAUHAN)
Judicial Member

**SK, Sr. PS*

Sd/-
(PADMAVATHY S)
Accountant Member

Copy of the Order forwarded to :

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

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai