

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

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER  
&  
SHRI RATNESH NANDAN SAHAY, ACCOUNTANT MEMBER**

**ITA No.729/Mum/2024  
(Assessment Year :2022-23)**

Aashirwad (1) Co-operative Housing Society Limited Near Kokilaben Hispital Ambivali Village Andheri (West) Mumbai-400 058	Vs.	ITO Ward 24(1)(1), Mumbai
<b>PAN/GIR No.AAGAA9749R</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

Assessee by	None
Revenue by	Shri R.R. Makwana
<b>Date of Hearing</b>	<b>20/06/2024</b>
<b>Date of Pronouncement</b>	<b>28/06/2024</b>

**आदेश / O R D E R**

**PER AMIT SHUKLA (J.M):**

The aforesaid appeal has been filed by the assessee against order dated 20/12/2023 passed by Additional / JCIT(A)-2, Surat in relation to the adjustment made u/s.143(1) for disallowing deduction u/s.80P for the A.Y.2012-13.

2. In the grounds of appeal assessee has challenged the disallowance made u/s.80P(2)(d) of Rs.3,87,990/- earned by the

assessee on deposit with the co-operative banks which was claimed as deduction u/s.80P(2)(d). The assessee is a co-operative housing society registered in the Maharashtra Government Society Act, 1960. The CPC has made adjustment on account of this interest claimed u/s. 80P of Rs.3,87,991/-. The JCIT(A) in its *exparte* order had dismissed on the ground that assessee had not attended the hearing and also on merits.

3. At the outset, this issue of claim of deduction u/s.80P(2)(d) in the case of co-operative housing society on the interest received from the co-operative banks is covered by the decision of this Coordinate Bench in the case of Premium Tower Co-operative Housing Society Ltd vs. The Commissioner of Income Tax(Appeals), Mumbai in ITA No.1583/Mum/2023 dated 17/05/2023. For the ready reference, the relevant portion of the order is reproduced hereunder:-

*“5. Section 80P provides that in case of assessee being a cooperative society, the gross total income which includes any income referred to sub-section 2 shall be deducted in accordance with subject to provision of this section. Sub-section 2 of section 80P Clause (a) states that, “in the case of cooperative society engaged in cooperative business of banking and providing credit facilities to its members or ....., the whole of amount of profit and gains of the business attributable to anyone or more or such activity.” Clause (d) of Sub-section 2 of Section 80P reads as under:-*

*(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;*

6. *Sub section 4 of section 80P carves out of exception that the provision of this section will not apply in relation to any*

cooperative bank. Further explanation provides that the definition of cooperative bank and primary cooperative bank. The said provision reads as under:-

(4) The provisions of this section shall not apply in relation to any co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank.

*Explanation.* For the purposes of this sub-section-

(a) "co-operative bank" and "primary agricultural credit society" shall have the meanings respectively assigned to them in Part V of the Banking Regulation Act, 1949 (10 of 1949)

(b) "primary co-operative agricultural and rural development bank" means a society having its area of operation confined to a taluk and the principal object of which is to provide for long-term credit for agricultural and rural development activities.]

7. Thus, assessee being a cooperative society cannot be reckoned as cooperative bank carrying out banking business. The Hon'ble Jurisdictional High court in the case of *Quepem Urban Co-operative Credit Society Ltd. vs. ACIT* reported in (2015) 377 ITR 272 (Bom), after analyzing the relevant provision of Section 80P including Sub-section (4) had categorically held that cooperative banks are to be treated as cooperative society. In so far as deduction of interest earned on investment made in cooperative bank, Clause (d) of section 80P(2) provides that any income by way of interest on dividend derived from cooperative societies from its investment with any other cooperative societies, the whole of such income is deductible u/s 80P. The cooperative bank has been defined in part 5 of the Banking Regulation Act 1949. Section 56(ccv) provides that primary cooperative bank means cooperative societies other than a primary agriculture society. This view had come up for the Hon'ble Karnataka High Court in the case of **PCIT vs. Totagars Co-operative Sale Society (2017) 392 ITR 74 (Kar.) dated 5<sup>th</sup> Jan. 2017**, wherein the Hon'ble High Court had observed as under:-

1. Whether the learned Tribunal was justified in deleting the additions made by the Assessing Authority being the disallowed deduction claimed u/S 80P(2)(d) of the [Income Tax Act](#) and in

*the light of the decision of the Supreme Court with regard to the same exact assessee as the present one, namely, The Totgars Co-operative Sale Society Ltd., Vs. Income Tax Officer in Civil Appeal Nos.1622 to 1629/2010 decided by the Apex Court on 08.02.2010 or not?*

*2. Whether, in the facts and circumstances of the case, the Tribunal is justified in not following the decision rendered by the Hon'ble Supreme Court in Civil Appeal No. 1622 of 2010, wherein the Apex Court has to be held that the words used in [Section 80P](#) "the whole of the amount of profits and gains of business" emphasise that the income in respect of which deduction is sought must constitute the operational income and not the other income which accrues to the society and as such interest earned on funds which are not required for business purposes falls under the category of "other income" taxable under the [Income Tax Act](#)?*

*6. According to the learned counsel, the present appeal should be admitted on these two substantial questions of law.*

*7. However, the contention being taken by the learned counsel is untenable. For the issue that was before the ITAT, was a limited one, namely whether for the purpose of [Section 80P\(2\)\(d\)](#) of the Act, a Co-operative Bank should be considered as a Co-operative Society or not? For, if a Co-operative Bank is considered to be a Co-operative Society, then any interest earned by the Co-operative Society from a Co-operative Bank would necessarily be deductible under [Section 80P\(1\)](#) of the Act.*

*8. The issue whether a Co-operative Bank is considered to be a Co-operative Society is no longer res integra. For the said issue has been decided by the ITAT itself in different cases. Moreover the word "Co-operative Society" are the words of a large extent, and denotes a genus, whereas the word "Co-operative Bank" is a word of limited extent, which merely demarcates and identifies a particular species of the genus Co-operative Societies. Co-Operative Society can be of different nature, and can be involved in different activities; the Co-operative Society Bank is merely a variety of the Co-operative Societies. Thus the*

Co-operative Bank which is a species of the genus would necessarily be covered by the word "Co-operative Society".

9. Furthermore, even according to [Section 56\(i\)\(ccv\)](#) of the Banking Regulations Act, 1949, defines a primary Co-Operative Society bank as the meaning of Co-Operative Society. Therefore, a Co-operative Society Bank would be included in the words 'Co-operative Society'.

10. Admittedly, the interest which the assessee respondent had earned was from a Co-operative Society Bank. Therefore, according to Sec. 80P(2)(d) of the [I.T. Act](#), the said 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. Therefore, the Assessing Officer was not justified in denying the said deduction to the assessee respondent.

11. The learned counsel has relied on the case of *The Totgars Co-operative Sale Society Ltd. Vs. Income Tax Officer*, (supra). However, the said case dealt with the interpretation, and the deduction, which would be applicable under [Section 80P\(2\)\(a\)\(i\)](#) of the I.T. Act. For, in the present case the interpretation that is required is of [Section 80P\(2\)\(d\)](#) of the I.T. Act and not [Section 80P\(2\)\(a\)\(i\)](#) of the I.T. Act. Therefore, the said judgment is inapplicable to the present case. Thus, neither of the two substantial questions of law canvassed by the learned counsel for the Revenue even arise in the present case.

8. This view has further been reiterated by the judgment of Hon'ble Kerala High Court in the case of **PCIT vs. Percoorkada Service Co. Bank Ltd. (2022) 442 ITR 141 (Kerala) dated 01.11.2021**, wherein one of the question before the Hon'ble High Court was, whether the interest income earned from deposits with the banks is eligible for deduction u/s 80P(2). The Hon'ble Kerala High Court has also considered the judgment of Hon'ble Supreme Court in the case of **Totagars Cooperative Societies Ltd. 322 ITR 323**, wherein the Hon'ble High Court has held that interest income earned from district cooperative bank or state cooperative bank, come within the ambit of section 80P (2)(d), therefore the income constitutes income from other sources and it is eligible for

*deduction covered u/s 80P(2)(d). Otherwise section 80P(2)(d) specifies any income by way of interest or dividend which is otherwise taxable under the head income from other sources, deduction is allowable if the same is derived from investment made with any other cooperative societies.*

*9. In contravention, section 80P (2)(a) provides income from carrying out various activities which is in the nature of business. Irrespective whether the interest income derived from activities as provided in section 80P (2)(a) which is otherwise the business income for which deduction is allowable, if there is any interest income which is earned on deposits or investment made with cooperative societies, the same must fall in the category activity or the business, but still is eligible for deduction under the specific provision of section 80P(2)(d). Thus, the interest derived by the assessee from cooperative bank is eligible for deduction u/s 80P(2)(d) because as noted above, cooperative are also cooperative societies for this purpose. This has been held so by the Hon'ble Karnataka High Court and latest judgment of Hon'ble Kerala High Court.”*

3. Accordingly, following the aforesaid decision, the claim of deduction u/s.80P(2)(d) is allowed.

**4. In the result, appeal of the assessee is allowed.**

Order pronounced on 28<sup>th</sup> June, 2024.

**Sd/-**  
**(RATNESH NANDAN SAHAY)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(AMIT SHUKLA)**  
**JUDICIAL MEMBER**

Mumbai; Dated 28/06/2024  
KARUNA, sr.ps

**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,

(Asstt. Registrar)  
**ITAT, Mumbai**