

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

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

**ITA No. 1089/MUM/2024
(Assessment Year: 2016-17)**

AND

**ITA No. 1079/MUM/2024
(Assessment Year: 2017-18)**

Su Prabhat Cooperative Housing Society Ltd. Mumbai 76, Su Prabhat Cooperative Housing Society Ltd, Bhulabhai Desai Road, Whakeshwar, Mumbai – 400 026.	Vs.	Income Tax Officer, Mumbai Ward 19(3)(4), Mumbai
PAN/GIR No. AAAAS5937P		
(Appellant)	..	(Respondent)

Assessee by	Shri. Rajendra Bhende
Revenue by	Shri. R. R. Makwana
Date of Hearing	19/06/2024
Date of Pronouncement	28/06/2024

आदेश / O R D E R

PER AMIT SHUKLA (J.M):

The aforesaid appeals have been filed by the assessee against order dated 28/09/2022 for the A.Y.2016-17; and order dated 25/08/2022 for the A.Y.2017-18 passed by NFAC, Delhi for the quantum of assessment passed u/s.143(1).

2. The common ground in both the appeals relates to disallowance of deduction claimed u/s.80P(2)(d). The ld. AO has disallowed the claim of interest on some co-operative banks by the assessee which is a cooperative society.

3. The brief facts are that assessee is a cooperative society which is eligible for deduction u/s.80P and in the computation of income assessee has claimed deduction u/s.80P(2)(d) of Rs.35,83,227/- in the A.Y.2016-17 and Rs.19,34,750/- in the A.Y.2017-18. This interest has been received from Saraswat Co-operative Bank & NSBC Co-operative Bank. The ld. AO has disallowed the claim of deduction that 80P is not available for co-operative banks from A.Y.2007-08 as the Co-operative banks are commercial banks and does not fall in the purview of “Co-operative banks and not co-operative societies” therefore, claim of deduction of Rs.15,22,393/- claimed u/s.80P(2)(d) for A.Y.2016-17 and Rs.19,34,750/- for A.Y.2017-18 has to be disallowed. The ld. CIT(A) too has confirmed the said addition after observing and holding as under:-

“Adjudication: *The contention of the appellant is not accepted for the reason that the interest earned out of funds parked in the cooperative bank is exclusively covered by the provisions of Sec.80P(2)(d) which is governed by proviso to Sec.80P (4) of the Act. Since the appellant did not fulfil the condition prescribed in Sec.80P (4), it is not eligible for deduction under Sec.80P(2)(d) of the Act.*

*Reliance is placed on the recent decision of the Apex Court in the case of **The Mavilayi Service Co-op Bank Ltd & Others Vs.***

CIT. Civil Appeals Nos.7343-7350 of 2019 dt. 12-01-2021 it is held as below:

*"That section 80P(4) is in the nature of a proviso to the main provision contained in section 80P(1) and (2). This **Proviso specifically excludes only co-operative banks** which are co-operative societies who must possess a licence from the RBI to do banking business."*

The intention of the Legislature is to keep the co-operative banks out of the scope of section 80P of the Income Tax Act, 1961. Once the provisions of section 80P are not applicable to Co-operative Banks, for all purposes they have to be kept out of the scope of the section. Wherever the word 'co-operative society' is used in section 80P, it will not be applicable for co-operative banks. This means that the interest income derived from deposits/investments in co-operative banks are not eligible for deduction u/s. 80P(2)(d) of Income Tax Act, 1961.

Section 80P(2)(d) of the Act specifically exempts interest earned from funds invested in cooperative societies. Therefore, to the extent of the interest earned from investments made by it with any co-operative society, a co-operative society is entitled to deduction of the whole of such income under section 80P(2)(d) of the Act. However, interest earned from investments made in any bank, not being a co-operative society, is not deductible under section 80P(2)(d) of the Act.

*In view of the above decision of the Hon'ble Apex Court, the action of the Assessing Officer in denying the benefit of deduction under Sec.80P(2)(d) to the extent of Rs.19,34,750 is **confirmed**. This ground is "**Dismissed**."*

4. Exactly similar finding has been given in A.Y.2016-17 also.
5. We have heard both the parties and also perused the relevant finding given in the impugned orders. The sole issue relates to disallowance of interest income claimed u/s. 80P(2)(d). Assessee

being a co-operative housing society which is registered under the Maharashtra Co-operative Society Act, 1960 and therefore all its surplus are to be invested with co-operative banks.

6. 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;

7. 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.]

8. 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 5th 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](#)?

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

10. 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.

11. 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".

12. 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'.

13. 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.

14. 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.

9. 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.

10. 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.

11. Lastly, in so far as judgment of Hon'ble Karnataka High Court in the case of **Totagars Cooperative Sale Society (395 ITR 611)**, which has been referred and relied upon by the Ld. CIT(A), the Hon'ble High Court has held against and observed that income by way of interest earned by deposit or investment of idle or surplus funds does not change its character irrespective of the fact whether such income of interest is earned from a schedule bank or cooperative bank. Therefore, section 80P(2)(d) would not apply on the facts of that case. However, as noted above in one of the judgment, the Hon'ble Karnataka High Court has held the same issue in favour of the assessee.

12. Therefore, following the judgment of Hon'ble Karnataka High Court in the case of **Totagars Cooperative Sale Society (2017) 392 ITR 74 (Kar.) dated 5th Jan. 2017** and judgment of Hon'ble Kerala High Court in the case of **PCIT vs. Percoorkada Service Co. Bank Ltd. (supra)**, we hold that assessee is eligible for deduction of interest income earned from cooperative bank.

13. Thus, claim of deduction u/s.80P(2)(d) is allowed to the assessee.

14. In so far as reliance placed on the decision of the Hon'ble Supreme Court in the case of The Totgars Co-operative Sale Society Ltd (supra) as quoted by ld. CIT(A), the same was with regard to interpretation of Section 80P(4) that this could not be

applicable on co-operative banks. Assessee is not a co-operative bank albeit, is a co-operative society, therefore, sub-section 4 of Section 80P has no applicability therefore, this judgment has wrongly been relied upon by the ld. CIT(A). Further, this issue stands covered by the series of decisions of the Tribunal. Thus, the claim of 80P(2)(d) on the interest income received from co-operative banks are held to be allowable for deduction u/s.80P(2)(d).

15. In the result, both the appeals of the assessee are allowed.

Order pronounced on 28th June, 2024.

Sd/-
(RATNESH NANDAN SAHAY)
ACCOUNTANT MEMBER

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

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

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