

| आयकर अपीलिय अधिकरण न्यायपीठ, मुंबई |
IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH, MUMBAI

BEFORE SHRI NARENDRA KUMAR BILLAIYA, HON'BLE ACCOUNTANT MEMBER
&

SHRI RAHUL CHAUDHARY, HON'BLE JUDICIAL MEMBER

I.T.A. No. 1598, 1597 & 1596/Mum/2024
Assessment Year: 2013-14, 2014-15 & 2015-16

M/s. Silver Sand Coop Housing Soc Ltd. Building No. 12 Silver Sands CHS Ltd. S.V. Road, Piramal Nagar Goregaon (West) Mumbai -400062 [PAN: AADAS5600G]	Vs	ACIT (CPC), Bangalore
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अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
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Assessee by :	Shri Ravindra Poojari, A/R
Revenue by :	Shri R.R. Makwana, Sr. D/R

सुनवाई की तारीख/Date of Hearing : 11/07/2024
घोषणा की तारीख /Date of Pronouncement: 11/07/2024

आदेश/ORDER

PER NARENDRA KUMAR BILLAIYA, AM:

I.T.A. No. 1598, 1597 & 1596/Mum/2024, are three separate appeals by the assessee preferred against the three separate orders of Addl./JCIT(A)-3, Bengaluru, dt. 29/12/2023, pertaining to AY 2013-14, 2014-15 & 2015-16, respectively.

2. Since common issues are involved in the captioned appeals, they were heard together and are disposed off by this common order of the sake of convenience and brevity.

3. The common grievance in all the captioned appeals relates to the denial of claim of deduction u/s 80P(2)(d) of the Act in respect of

interest received from deposits kept in Co-operative banks, though the quantum may differ.

4. Briefly stated, the facts of the case are that the assessee is a Co-operative Housing Society and in its return of income, the assessee has claimed deduction u/s 80P(2)(d) of the Act on interest earned from Co-operative banks. The CPC, while processing the return, disallowed the claim of deduction which was affirmed by the Id. CIT(A).

5. In our considered opinion, this issue is no more *res integra* as the same has been considered in catena of decisions by the Co-ordinate Benches and the Hon'ble High Courts across the country. In the case of *Kaliandas Udyog Bhavan Premises Co-op Hsg Society v. ITO in ITA.No. 6547/Mum/2017 dated 25.04.2018* the Coordinate Bench held as under:-

"7. We have deliberated at length on the issue under consideration and are unable to persuade ourselves to be in agreement with the view taken by the lower authorities. Before proceeding further, we may herein reproduce the relevant extract of the said statutory provision, viz. Sec. 80P(2)(d), as the same would have a strong bearing on the adjudication of the issue before us.

"80P(2)(d)

(1). Where in the case of an assessee being a co-operative society, the gross total income includes any income referred to in sub-section (2), there shall be deducted, in accordance with and subject to the provisions of this section, the sums specified in sub-section (2), in computing the total income of the assessee.

(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 co-operative society from its investments with any other co-operative society, the whole of such income;"

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 cooperative 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 01.04.2007, 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 co-operative 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 cooperative 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 cooperative societies, therefore, the interest income derived by a cooperative 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.

8. We shall now advert to the judicial pronouncements that had been relied upon by the authorized representatives for both the parties and the lower authorities. We find that the issue that a co-operative society would be entitled for claim of deduction under Sec. 80P(2)(d) for the interest income derived from its investments held with a cooperative bank is covered in favour of the assessee in the following cases:

- (i) Land and Cooperative Housing Society Ltd. v. ITO (2017) 46 CCH 52 (Mum)*
- (ii) M/s C. Green Cooperative Housing and Society Ltd. v. ITO 1(3)(2), Mumbai (ITA No. 1343/Mum/2017, dated 31.03.2017)*
- (iii) Marwanjee Cama Park Cooperative Housing Society Ltd. v. ITO Range- 20(2)(2), Mumbai (ITA No. 6139/Mum/2014, dated 27.09.2017.*

We further find that the Hon'ble High Court of Karnataka in the case of Pr. Commissioner of Income Tax and Anr. v. Totagars Cooperative Sale Society [2017] 78 taxmann.com 169/392 ITR 74 (Karnataka) and Hon'ble High Court of Gujarat in the case of State Bank of India v. CIT [2016] 72 taxmann.com 64/290 CTR 129/389 ITR 578/241 Taxman 163 (Gujarat), had also held that the interest income earned by the assessee on its investments held with a co-operative bank would be eligible for claim of deduction under Sec. 80P(2)(d) of the Act. Still further, we find that the CBDT Circular No. 14, dated 28.12.2006, as had been relied upon by the ld. A.R, also makes it clear beyond any scope of doubt, that the purpose behind enactment of sub-section (4) of Sec. 80P was to provide that the cooperative banks which are functioning at par with other banks would no more be entitled for claim of deduction under Sec. 80P(4) of the Act. We are of the considered view that the reliance placed by the CIT(A) on the judgment of the Hon'ble Supreme Court in the case of Totgars Cooperative Sale Society Ltd. v. ITO (2010) 322 ITR 283 (S.C) being distinguishable on facts, thus, had wrongly been relied upon by him. The adjudication by the Hon'ble Apex Court in the aforesaid case was in context of Sec. 80P(2)(a)(i), and not on the entitlement of a co-operative society towards deduction under Sec. 80P(2)(d) on the interest income on the investments parked with a cooperative bank. We further find that the reliance place by the ld. D.R on the order of the ITAT "F" bench, Mumbai in the case of M/s Vaibhav Cooperative Credit Society v. ITO -15(3)(4)(ITA No. 5819/Mum/2014, dated 17.03.2017 is also distinguishable on facts. We find that the said order was passed by the Tribunal in context of adjudication of the entitlement of the assessee cooperative bank towards claim of deduction under Sec.80P(2)(a)(i) of the Act. We find that it was in the backdrop of the aforesaid facts that the Tribunal after carrying out a conjoint reading of Sec. 80P(2)(a)(i) r.w. Sec. 80P(4) had adjudicated the issue before them. We are afraid that the reliance placed by the ld. D.R on the aforesaid order of the Tribunal being distinguishable on facts, thus, would be of no assistance for adjudication of the issue before us. Still further, the reliance placed by the Ld. D.R on the order of the ITAT "SMC" Bench, Mumbai in the case of Shri Sai Datta Cooperative Credit Society Ltd. v. ITO (ITA No. 2379/Mum/2015, dated 15.01.2016, would also not be of any assistance, for the reason that in the said matter the Tribunal had set aside the issue to the file of the assessing officer for fresh examination. That as regards the reliance placed by the ld. D.R on the judgment of the Hon'ble High Court of Karnataka in the case of Pr. CIT v. Totagars co-operative Sale Society [2017] 83 taxmann.com 140/297 CTR 158/395 ITR 611 (Karnataka), the High Court had concluded that a co-operative society would not be entitled to claim of deduction under Sec. 80P(2)(d). We however find that as held by the Hon'ble High Court of Bombay in the case of K. Subramanian and Anr. v. Siemens India Ltd. and Anr [1983] 36 CTR 197/[1985] 156 ITR 11/[1983] 15 Taxman 594 (Bombay), where there is a conflict between the

decisions of non-jurisdictional High Court's, then a view which is in favour of the assessee is to be preferred as against that taken against him. Thus, taking support from the aforesaid judicial pronouncement of the Hon'ble High Court of jurisdiction, we respectfully follow the view taken by the Hon'ble High Court of Karnataka in the case of Pr. Commissioner of Income Tax and Anr. v. Totagars Cooperative Sale Society [2017] 78 taxmann.com 169/392 ITR 74 (Karnataka) and Hon'ble High Court of Gujarat in the case of State Bank Of India v. CIT [2016] 72 taxmann.com 64/290 CTR 129/389 ITR 578/241 Taxman 163 (Gujarat), wherein it was observed that the interest income earned by a co-operative society on its investments held with a cooperative bank would be eligible for claim of deduction under Sec.80P(2)(d) of the Act."

6. Facts being identical, respectfully following the aforementioned decisions, we hold that the assessee, a cooperative housing society is eligible for deduction u/s 80P(2)(d) of the Act in respect of the interest income earned by the assessee from a co-operative bank.

7. In the result, captioned appeals of the assessee are allowed.

Order pronounced in the Court on 11th July, 2024 at Mumbai.

Sd/-
(RAHUL CHAUDHARY)
JUDICIAL MEMBER

Sd/-
(NARENDRA KUMAR BILLAIYA)
ACCOUNTANT MEMBER

Mumbai, Dated 11/07/2024

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आदेश की प्रतिलिपि ँ ग्रेषित/Copy of the Order forwarded to :

1. ँ पीलर्डी / The Appellant
2. प्रत्यर्धी / The Respondent
3. संबंघित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (ं पील) / The CIT(A)-
5. विभर्गीय प्रतिनिधि , आयकर अपीलीय अधिकरण, मुंबई /DR,ITAT, Mumbai,
6. गार्ड फाई/ Guard file.

आदेशानुसार/ BY ORDER,
TRUE COPY

Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, Mumbai