

**IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH: COCHIN
(By virtual hearing)**

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND
SHRI SOUNDARARAJAN K., JUDICIAL MEMBER**

ITA No.244/Coch/2023
Assessment Year: 2018-19

Aided Primary Teachers Co-operative Society Ltd. M/s. Jacob and Jacob Chartered Accountants 2 nd Floor, Municipal Market Complex Market Road, Pala, Kottayam District Kerala 686 575 PAN NO : AADAA6992R	Vs.	ITO Ward-1 Kottayam
APPELLANT		RESPONDENT

Appellant by	:	Sri Josekutty Jacob, A.R.
Respondent by	:	Sri Ilaiyaraaja K.S, Sr. D.R

Date of Hearing	:	04.07.2024
Date of Pronouncement	:	04.07.2024

O R D E R

PER CHANDRA POOJARI, ACCOUNTANT MEMBER:

This appeal by assessee is directed against order of NFAC dated 9.2.2023 for the assessment year 2018-19.

2. The only ground in this appeal is with regard to deduction u/s 80P(2)(a)(i) of the Act.

3. After hearing both the parties, we are of the opinion that same issue came for consideration before this Bench in assessee's own case in ITA No.28/Coch/2022 for the assessment year 2017-18 dated 30.11.2022, wherein held as under:

“4. We find that this issue is covered in assessee’s favor by the decision of this Tribunal in **The Kizhathadiyoor Service Coop. Bank Ltd. vs ITO (ITA No.525/Coch/2014 dated 20.07.2016)** as well as subsequent decision in **M/s Mutholy Service Co-operative Bank Ltd. vs. ITO (ITA No.11/Coch/2014 dated 23.03.2017)** which, considering Circular No.18/2015 dated 02.11.2015, held that such interest income would be assessable as ‘Business Income’ and deduction u/s 80P(2)(a)(i) would be available to the assessee.

5. Another aspect of the matter is that even if the interest income is considered as ‘income from other sources’, the same would be eligible for deduction u/s 80P(2)(d) as per the decision of Pune Tribunal in the case of **Rena Sahakari Sakhar Karkhana Ltd. vs. Pr. CIT (138 Taxmann.com 532)**. The bench, after considering contrary decisions of various High Courts, held as under: -

8. After necessary deliberations, we are unable to persuade ourselves to concur with the view taken by the Pr.CIT. Before proceeding any further, we may herein cull out the relevant extract of the aforesaid 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 cooperative society from its investments with any other co-operative society, the whole of such income;"

On a perusal of sec. 80P(2)(d), it can safely be gathered that interest income derived by an assessee co-operative society from its investments held with any other co-operative society shall be deducted in computing its total income. 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 are in agreement with the view taken by the Pr.CIT, that with the insertion of sub-section (4) to sec. 80P of the Act, vide the Finance Act, 2006 with effect from 1-4-2007, 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. However, at the same time, we are unable to subscribe to his view that the aforesaid amendment would jeopardize the claim of deduction of a co-operative society under sec. 80P(2)(d) in respect of its interest income on investments/deposits parked with a co-operative bank. In our considered view, 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 find 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 Cooperative 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;'

We are of the considered view, that though the co-operative banks pursuant to the insertion of sub-section (4) to sec. 80P would no more be entitled for claim of deduction under sec. 80P of the Act, but as a cooperative 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 in force in any State for the registration of co-operative societies, therefore, the interest income derived by a co-operative 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.

9. In so far the judicial pronouncements that have been relied upon by the ld. A.R are concerned, we find that the issue that a co-operative society would be entitled for claim of deduction under sec. 80P(2)(d) on the interest income derived from its investments held with a co-operative bank is covered in favour of the assessee in the following cases: (i) Solitaire CHS Ltd. (supra)

(ii) Majalgaon Sahakari Sakhar Karkhana Ltd. (supra)

(iii) Kaliandas Udyog Bhavan Premises Co-op. Society Ltd. (supra)

We further find that the Hon'ble High Court of Karnataka in the case of Pr. CIT v.

Totagars Co-operative Sale Society [2017] 78 taxmann.com 169/392 ITR 74 and Hon'ble High Court of Gujarat in the case of State Bank of India v. CIT [2016] 72 taxmann.com 64/241 Taxman 163/389 ITR 578, had held, that the interest income earned by the assessee on its investments 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 also makes it clear beyond any scope of doubt that the purpose behind enactment of sub-section (4) of sec. 80P was that the co-operative banks which were functioning at par with other banks would no more be entitled for claim of deduction under sec. 80P(4) of the Act. Although, in all fairness, we may herein observe that the Hon'ble High Court of Karnataka in the case of Pr. CIT v. Totagars Co-operative Sale Society [2017] 83 taxmann.com 140/395 ITR 611, as had been relied upon by the ld. D.R before us, had held, that a co-operative society would not be entitled to claim deduction under sec. 80P(2)(d); but then, the Hon'ble High Court in the case of Totagars Cooperative Sale Society (supra) (Karn) and Hon'ble High Court of Gujarat in the case of State Bank of India (supra) had observed, that the interest income earned by a co-operative society on its investments held with a co-operative bank would be eligible for claim of deduction under sec.80P(2)(d) of the Act. Backed by the aforesaid conflicting judicial pronouncements, we may herein observe, that as held by the Hon'ble High Court of Bombay in the case of K. Subramanian v. Siemens India Ltd. [1983] 15 Taxman 594/[1985] 156 ITR 11, 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. Accordingly, 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 Totagars Co-operative Sale Society (supra) and that of the Hon'ble High Court of Gujarat in the case of State Bank of India (supra) wherein it was observed that the interest income earned by a co-operative society on its investments held with a co-operative bank would be eligible for claim of deduction under sec. 80P(2)(d) of the Act.

Therefore, the view of Ld. AO could not be upheld. We direct Ld. AO to treat the interest income as 'Business Income' which would be eligible for deduction u/s 80P(2)(a)(i). We order so.

6. *The appeal stand allowed in terms of our above order."*

3.1 In view of the above order of the Tribunal, we are inclined to decide the issue in favour of the assessee and against the revenue.

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

Order pronounced in the open court on 4th July, 2024

Sd/-
(Soundararajan K.)
Judicial Member

Sd/-
(Chandra Poojari)
Accountant Member

Bangalore,
Dated 4th July, 2024.
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The DR, ITAT, Bangalore.
5. Guard file

By order

**Asst. Registrar,
ITAT, Bangalore.**