

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "E", MUMBAI**

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

**ITA No. 808/MUM/2024
Assessment Year: 2021-22**

Income Tax Officer – 30(1)(1), Room No. 235, 2nd Floor, Kautilya Bhawan, BKC, Mumbai – 400051.	Vs.	Tifr Emp Co-op. Cr. Soc. Limited, Homi Bhabha Road, Colaba, Mumbai – 400005. PAN: AABAT5149H
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Navin Gandhi, A.R.
Revenue by : Shri P.D. Chougule (Addl. CIT), SR. D.R.

Date of Hearing : 28 . 05 . 2024
Date of Pronouncement : 26 . 06 . 2024

O R D E R

Per: Ratnesh Nandan Sahay, Accountant Member:

1. This appeal has been filed against the Order of the Ld. CIT (Appeals) passed u/s. 250 of the Income Tax Act [the 'Act' in short] vide its DIN & Order No ITBA/APL/S/250/2023-24/1059050265(1) dated 26/12/2023 for the assessment year 2021-22.
2. Following grounds of appeal have been raised in both the appeals:
 1. *“Whether on the facts and circumstances of the case and in law, the Ld.CTT(A) was correct in allowing deduction u/s.80P(2)(d) of the Income Tax Act in respect of interest earned from deposits from*

cooperative bank ignoring the amendment made by Finance Act, 2015 in section 194A(3)(v) of the Act which excludes the Cooperative Banks from the definition of "Cooperative Society" and requiring them to deduct income tax at source under Section 194A of the Act that also makes the legislative intent clear that the Co-operative Banks are not that specie of genus cooperative society, which are entitled to claim deduction under the special provisions of Chapter VIA in the form of Section 80P of the Act."

2. *Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) was correct in allowing deduction u/s.80P(2)(d) of the Income Tax Act, 1961 in respect of interest earned from deposits in cooperative bank ignoring firstly, the purpose of bringing on the statute book subsection (4) in Section 80P of the Act to exclude the applicability of Section BOP of the Act altogether to any cooperative bank and secondly, ignoring the fact that words used in section 80P(4) are "in relation to" that can include within its ambit and scope even the interest income earned by the respondent assessee, a co-operative Society from a Co-operative Bank and this exclusion by Section 80P(4) of the Act even though without any amendment in Section 80P(2)(d) of the Act is sufficient to deny the claim of the assessee for deduction under Section 80P(2)(d) of the Act."*
3. *Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) was correct in allowing deduction u/s.80P(2)(d) of the Income Tax Act in respect of interest earned from deposits in cooperative bank ignoring that whether the deposits and investment of surplus funds of assessee not immediately required for its purposes, is made with Scheduled Bank or Nationalized Banks or with cooperative Banks does not make a difference as far as the character of the Income earned by assessee is concerned and it does not partake the character of its operational income from its activity as cooperative housing society, the same would*

continue to be fully taxable and will not be eligible for deduction under section 80P(2)(d) of the Act."

4. *Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) was correct in allowing deduction u/s.80P(2)(d) of the Income Tax Act, 1961 in respect of interest earned from deposits, though Hon'ble Karnataka High Court in a detailed judgment discussing the law and various related issues in the case of PCIT vs. Totagar's Co-operative Sales Society (395 ITR 611) has specifically decided the Question of Law about the allowability of interest earned from deposits with co-operative bank u/s. 80P(2)(d) of the Income tax Act in favours of Revenue."*
5. *The appellant craves leave to amend or alter or add a new ground which may be necessary."*

3. The facts of the case, in brief, are that the appellant is a cooperative society under Maharashtra cooperative act 1960 having registered no. 25055. The society filed its return of income for the Assessment Year 2021-22 declaring income at 'Nil'. During the assessment order under consideration, the appellant society received interest of Rs.1,55,34,990/- on fixed deposit kept with Co-operative Banks. The entire bank interest received from the Co-operative Banks was claimed to be eligible for deduction u/s. 80P (2) (d) of the act. However, the same was disallowed by the AO, CPC while processing the return of income u/s. 143(1) of the IT Act.

4. Aggrieved by the said order, the assessee filed appeal before the CIT (A). It was submitted before the Ld. CIT (A) that *"the appellant analyzed the provisions of Sec80P(2)(d) post amendment to Sec 80P in 2006 that the*

impact of the amendment needs to be understood in light of the objective behind that amendment. In Circular No. 3/2006 dated 27-2-2006 explaining the objective of this amendment (insertion of sub-section (4)), it has been stated that the co-operative banks are functioning at par with other commercial banks, which do not enjoy any tax benefit. Therefore, section 80P has been amended and a new sub-section (4) has been inserted to provide that the provisions of the said section shall not apply in relation to any co-operative bank. This being the intention, the deduction claimed by the other co-operative society cannot be denied which is not functioning on a commercial basis otherwise merely on the ground that it has earned some income from the co-operative banks which are functioning on a commercial basis. In support of the submission the appellant relied upon:

- i) State Bank of India Vs CIT [2016] 389 ITR 578 (Guj)*
- ii) Kaliandas UdyogBhavan Premises Co-operative Society Limited vs. ITO[2018] 94 taxmann.com 15 (Mumbai - Trib.)*
- iii) Shree Mahadeshwar Sahakari Patpedhi Maryadit vs. ITO (ITA No. 374/Mum/2018 Order dated 13-3-2019)*
- iv) ACIT vs. Metro city Crimincals Courts (2015) 43 CCH 0217 HydTrib*
- v) M/s Solitaire CHS Ltd. vs. Pr. CIT [ITA No.3155/Mum/2019]*
- vi) Technopolis Premises Co-operative Society vs. Pr. CIT [ITA No.6433/Mum/2019]”*

5. After giving due consideration of the submissions made as above, the Ld. CIT(A) decided the issue in favour of the appellant by holding as under:

“5.2. The issue of denial of deduction u/s.80P(2) (d) has also been considered by the Hon'ble Mumbai ITAT in several cases. The gist of the decisions in a few cases in a few cases are as under:

i. ITAT Mumbai in the case of New Ideal Co-op Housing. vs. ITO dt. 03.02.2021 it was held that the adjustment has been done by the CPC Bengaluru under section 143(1)(a) of the Act and no such adjustments in clause (a)(i) to (v) of 143(1) shall be made unless an intimation is given to the assessee of such adjustments either in writing or in electronic mode: and further para 9 of the decisions reads as under:

**9) In my considered opinion the adjustment done by denial of deduction u/s. 80P(2) (d) and 80P(2)(c)(ii) in this case does not fall in any of the above. That a cooperative society will not get exemption on the interest earned on deposits in cooperative bank is not something which is a subject matter of adjustment under section 143(1)(a) of the Act. I find that despite noting that there are tribunal decisions in favour of assessee, the learned CIT(A) has chosen not to follow the same by referring to some other decisions.”*

ii. In a recent decision Hon'ble ITAT "D" Bench Mumbai in the case of Mittal Court Premises Co. Op. Society Ltd in ITA No. 1535 to 1537/Mum/2022 dt. 31.10.22 for A.Y. 14-15 to 16-17 noted that the issue is no longer res-integra; and dismissed the revenues appeal

against CIT's order allowing the claim of deduction u/s. 80P(2)(d). Reliance was placed on the Tribunal decision in the case of Palm Court M. Premises Cooperative Society Ltd. Vs PCIT for A.Y. 15-16 where in the order of the Ld. PCIT holding the Assessment Order passed by AO allowing the claim of deduction u/s. 80P(2)(d) was erroneous has been set aside. The Tribunal while arriving at the decision in favour of assessee in the case of Palm Court M. Premises Cooperative Society Ltd. placed reliance on the following cases.

- 1. M/s Petit Powers Co-op. Housing Society Ltd vs ITO (ITA No.549/MUM/2021)*
- 2. M/s Solitaire CHS Ltd Society Office, Solitaire CHS Ltd vs. PCIT (ITA No.3155/Mum/2019)*
- 3. Jai Hind Co-operative Housing Society Ltd vs. ACIT-25(2) (ITA No.1762 & 1763/Mum/2020)*
- 4. M/s Vadasinor Pragati Samaj Co-operative Credit Society Ltd vs. PCIT-18 (ITA No.2539/Mum/2019)*
- 5. M/s Doshi Palace Co-operative Hsg Soc. Ltd vs ACIT-19(1) (ITA No.2510/MUM/2019)*
- 6. The Salsette Catholic Co-operative Housing Ltd vs ACIT Circle-23(3) (ITA No.3870 & 3871/Mum/2019)*

iii. *In the case of M/s Solitaire CHS Ltd, Vs. Pr.CIT-26, Mumbai ITA No.3155/Mum/2019, dated 29.11.2019, also relied upon by the appellant the Tribunal had observed as under:*

"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 subsection (4) to Sec. 80P would no more be entitled for claim of deduction under Sec. 80P of the Act, but 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 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."

5.3. *In the aforementioned decisions it has been held that the disallowance of deduction u/s. 80P (2)(d) does not fall within the scope of adjustment u/s. 143(1) and that the interest income derived by a co-operative society by way of investment made with a co-operative bank would be entitled to claim of deduction under section 80P(2)(d) of the Act."*

6. Aggrieved by the order of the Ld. CIT (A) the Revenue has filed this appeal. During the course of appellate proceedings before us, the D.R. relied on the order of the AO, CPC. We have considered the facts of the case and the various decisions of the Hon'ble High court and Coordinate Benches of the Tribunals stated as above and respectfully following the considered view taken by the Hon'ble Coordinate Benches of the Income Tax Appellate Tribunal, we also hold that the appellant is entitled to get deduction u/s. 80P (2) (d) of the Act on the interest income earned from deposits made in the Cooperative Banks.

7. In the result, the appeal of the revenue is dismissed.

Order pronounced in the open court on 26.06.2024.

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

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

Mumbai, Dated: 26.06.2024.
Snehal C. Ayare, Stenographer

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.