

IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH MUMBAI
BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER

ITA No.1883/MUM/2024
Assessment Year: 2020-21

DTPS Employees Co-op Credit Society Ltd. Dahanu, Shop No.7, Adani Township, Dahanu Thermal Power Station, Dahanu Road, Dahanu, Palghar, Maharashtra – 401608 (PAN : AABAR1071N)	Vs.	Jurisdiction Ward 1, Palghar
(Appellant)		(Respondent)

Present for:

Assessee : Ms. Pallavi Limaye, C.A
Revenue : Smt. Mahita Nair, Sr. DR

Date of Hearing : 09.07.2024
Date of Pronouncement : 18.07.2024

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of Ld. CIT(A), National Faceless Appeal Centre (NFAC), Delhi, vide order no. ITBA/NFAC/S/250/2023-24/1061010383(1), dated 15.02.2024 passed against the assessment order by Assessment Unit, Income Tax Department, u/s. 143(3) of the Income-tax Act, 1961 (hereinafter referred to as the “Act”), dated 26.09.2022 for Assessment Year 2020-21.

2. Grounds taken by the assessee are reproduced as under:

1. *“The learned Commissioner of Income Tax Appeals erred in confirming the complete misapplication/misunderstanding of the learned, AO in treating interest of Rs. 1,26,89,457/- paid to members of the Society as income u/s 56 of the Act & denying deduction u/s 80P(2)(a)(i) of the Act of Rs. 37,77,654/-*
2. *The learned Commissioner of Income Tax - Appeals erred in confirming the grossly erroneous action of the learned AO in treating expenditure debited to Profit & Loss Account as income assessable u/s 56 of the Act. Under no circumstance, the expenditure debited to Profit & Loss Account can be treated as income u/s 56 of the Act.*
3. *The learned Commissioner of Income Tax - Appeals failed to appreciate that the amount of Rs. 12,04,78,523/- shown in the loan on the Asset side of the Balance sheet reflects the loan credit facilities given to members and not to others. The eligibility of a claim under section 80P is based on whether the activity falls within the realm of section 80P(2)(a)(i). This it clearly does and the principle of mutuality has no relevance to this eligibility.*
4. *The learned Commissioner of Income Tax - Appeals erred in stating that loans have been advanced to "others" whereas they have been advanced to members only.*
5. *The learned Commissioner of Income Tax - Appeals erred in confirming the order of the learned Assessing Officer in which it is stated that the details of investment made by the appellant with the Banks for the period April 2019 to March 2020. The total amounts to Rs. 5,93,14,718/- instead of Rs. 12,04,78,523/- which is mentioned by the learned assessing officer in the assessment order.*
6. *The learned Commissioner of Income Tax- Appeals failed to appreciate that the interest earned from Cooperative Banks is intrinsically linked to the main activity which itself is eligible under section 80P(2)(a)(i).*
7. *The learned Commissioner of Income Tax- Appeals failed to consider that the interpretation of the term "attributable" being wider is an established proposition of law and needs no further elaboration as used in the last limb of section 80P(2)(a)(i). The words used are "the whole of the amount of profits and gains of business attributable to any one or more of such activities".*
8. *Alternatively and without prejudice to the above grounds the learned Commissioner of Income Tax Appeals erred in not allowing the deduction under section 80P(2)(d) in respect of interest of Rs. 37,77,654/- received from Cooperative Banks, which deduction has no condition or fetter of any sort.*
9. *The learned Commissioner of Income Tax- Appeals failed to appreciate that Co-operative banks are a class of Co-operative Societies which is a wider term and encompasses various categories of co-operative societies. Thus, income received from investments with co-operative banks are squarely covered by the provisions of sec. 80P(2)(d) and are eligible for 100 percent deduction.*

10. *The learned Commissioner of Income Tax- Appeals failed to appreciate that the insertion of sec. 80P(4) has no effect on the applicability of sec. 80P deductions to co-operative societies. Only co- operative banks shall no longer be eligible for sec. 80P benefits. Section 80P(4) seeks to deny the exemption to income of cooperative banks and not income from cooperative banks.*
11. *The learned Commissioner of Income Tax Appeals failed to appreciate that the Honourable Income Tax Appellate Tribunal, Mumbai Bench, in catena of cases has held under similar set of facts that the appellant society is entitled to deduction under sec. 80P(2)(d) in respect of interest and dividend received from co-operative banks.”*

3. The grounds raised by the assessee in the present appeal are essentially in respect of amount of Rs.1,26,89,457/- debited to Profit and Loss account of the assessee which has been brought to tax u/s.56 of the Act and in respect of interest and dividend income received of Rs.39,07,604/- from other Co-operative banks not allowed u/s.80P(2)(d).

4. Brief facts are that assessee is an Employees Credit Co-operative Society with main object of accepting deposits from its members and providing credit facilities to its members only. Assessee has stated that it does not accept deposits from the general public nor does it lend money to the general public since it does not have banking license. Assessee filed its return of income on 02.02.2021, reporting total income at Nil. During the year, assessee earned total interest of Rs.1,81,04,661/- out of which Rs.1,42,38,307/- was on account of interest received from members of the society on loans advanced to them. The balance interest amount of Rs.37,36,404/- and dividend of Rs.41,250/- aggregating to Rs.37,77,654/- was received from investments made with Co-operative banks namely, Thane District Central Co-operative Bank and Bassein Catholic Co-operative bank. The balance interest of Rs.1,29,950/- was received from investments made with IDBI Bank, i.e., other than Co-operative bank.

4.1. In the assessment made by the Id. Assessing Officer, addition of Rs.1,26,89,457/- and Rs.39,07,604/- was made on the ground that business activity carried out by the assessee is with other than its members. According to the assessee, claim u/s. 80P is based on whether the activity falls within the realm of section 80P(2)(a)(i) and 80P(2)(d). Principle of mutuality as alleged by Id. Assessing Officer has no relevance for this eligibility. According to assessee, interest of Rs.1,26,85,939/- which is debited to Profit and Loss account is paid on loans taken from members and against this interest of Rs.1,81,04,661/- is credited to Profit and Loss account which is received on the loans given to members during the year. Thus, the amount debited to profit and Loss account claimed as expenditure cannot be treated as income u/s. 56 of the Act. According to assessee, this is a misinterpretation on the part of Id. Assessing Officer, treating the amount of Rs.1,26,89,457/- as income u/s. 56 of the Act. Further, in respect of addition of Rs.39,07,604/-, assessee furnished the break-up of the same, which is tabulated as under:

Particulars	Amount in Rs.
Interest income from Thane District Central Co-operative Bank	24,48,334
Interest income from Bassein Catholic Co-operative Bank	12,88,070
	37,36,404
Interest income from IDBI Bank	1,29,950
Dividend from Thane District Central Co-operative Bank Shares	41,250
Total	39,07,604

4.2. Assessee, thus claimed that entire amount of Rs.39,07,604/- is allowable as deduction u/s. 80P, more particularly, Rs.37,77,654/- u/s. 80P(2)(d) and the balance of Rs.1,29,950/- u/s. 80P(2)(a)(i). According to the assessee, activity of acceptance of deposits and lending does not occur simultaneously. There is always an interregnum between

the acceptance of deposits and its deployment of lending. During this interregnum, there is investment in funds which are deposits with Co-operative banks thus, interest earned is intrinsically linked to the main activity of the Co-operative Society. Further, it is submitted that section 80P(4) seeks to deny the deduction to income of Co-operative banks and not the income from Co-operative banks. Assessee furnished a statement showing deposits received from members during the year and interest paid thereon. The same is reproduced for ease of reference:

Point No.10 : Statement Showing Deposit Received from Members During F.Y. 2019-20

Diffrent types of Deposit	Amount of deposit from diffrent class of members During F.Y. 2019-20			Interest paid to different class of members During F.Y. 2019-20		
	A	B	C	A	B	C
CUMULATIVE DEPOSIT	52,76,000	-	-	47,44,206	-	-
FIXED DEPOSIT	5,96,08,626	-	-	72,26,110	-	-
RECURRING DEPOSIT	1,95,64,400	-	-	13,89,646	-	-

5. We note that, ld. CIT(A) has dismissed the ground taken by the assessee in respect of addition of Rs.1,26,89,457/- by observing that assessee has merely stated that interest paid and disallowed is to members only for which no evidence has been submitted to substantiate the same. In respect of claim of Rs.39,07,604/-, ld. CIT(A) has placed reliance on the decision of Hon'ble Supreme Court in Totagar's Co-operative Sales Society vs. ITO [2010] 322 ITR 293 (SC) and other decisions and thus dismissed the appeal of the assessee. We note that status of the assessee and the main object carried on by it to accept deposits from its members and to provide credit facilities to these members is un-controverted and un-disputed. On this very premise of un-disputed facts, we find that assessee is eligible to claim deduction u/s. 80P(2)(a)(i) in respect of its income from providing credit facilities to its members. Ld. Assessing Officer on a mis-conception of facts has

treated the amount of Rs.1,26,89,457/- debited towards interest paid by the assessee on cumulative deposits, fixed deposits and recurring deposits made by its members as income u/s.56 of the Act.

5.1. To meet the objectives on which the assessee is set up, it accepts deposits of various nature from its members for which it has to pay interest. From these deposits, it provides various types of loans to its members on which it earns interest income. The profit and loss account prepared by the assessee in this respect is reproduced below for ready reference:

DTPS EMPLOYEES CO OPERATIVE CREDIT SOCIETY LIMITED DAHANU							
PROFIT & LOSS A/C MARCH-2020							
Mar-19	EXPENSES	INER AMT.	Mar-20	Mar-19	INCOME	INER AMT.	Mar-20
1,32,09,293	INTEREST		1,26,85,939	1,77,21,883	INT INCOME		1,81,04,661
47,65,832	INT ON CUMULATIVE DEP	47,44,206		1,42,29,144	INT ON LONG TERM LOAN	1,40,50,609	
69,54,854	INT ON FIXED DEPOSIT	67,35,937		1,15,099	INT ON EMERGENCY LOAN	1,41,853	
14,88,607	INT ON RECURRING DEPOSITE	12,05,796		15,382	INT ON F.D.O.D LOAN	45,845	
				33,62,258	INT INCOME ON BANK DEPOSIT	38,66,354	
4,62,979	EXPENSES ON EMPLOYEES		5,13,189				
3,17,007	SALARY /ACCOUNTING CHGS	3,37,200		60,631	OTHER INCOME		79,465
72,851	EMPLOYEES TRAVELLING ALLOWENCE	86,040		19,381	MIS INCOME	38,215	
25,932	EMPLOYEE BONUS	40,080		41,250	Dividend on Shares T.D.C.C	41,250	
47,189	EMPLOYEE PROVIDENT FUND	49,869					
2,73,357	OTHER OFFICE EXPENSES		2,66,331				
99,655	AUDIT FEES (GOVT)	1,00,085					
6,000	AUDIT FEES (INTERNAL)	7,000					
20,791	OFFICE EXPENSES	18,430					
37,804	MEETING & GENERAL EXP	38,951					
20,820	PRINTING & STATIONERY	13,220					
36,746	CALENDER EXPENSES A/C	8,120					
3,378	BANK CHAGES & COMMISSION	3,518					
14,330	COMPUTER PRINTER REP. CHGS	16,580					
-	PROFESSIONAL FEES	23,600					
17,500	TAX AUDIT A/C	18,500					
3,520	TRAVELLING & CON EXPENSES	1,520					
-	TELEPHONE BILL	8,390					
750	PROFESSIONAL TAX EXP	684					
200	MIS. EXPENSES	619					
611	INSURANCE CHARGES	611					
1,090	F.D.S & SERVICE CHARGES	400					
4,800	DEPRECIATION ON COMPUTER SOFTWARE	2,880					
5,372	DEPRECIATION ON COMPUTER PRINTER	3,223					
38,36,885	PROFIT		47,18,667				
38,36,885	NET PROFIT	47,18,667					
1,77,82,514	GRAND TOTAL		1,81,84,126	1,77,82,514	GRAND TOTAL		1,81,84,126

6. Accordingly, without any hesitation, we accept the claim of the assessee in allowing deduction u/s.80P(2)(a)(i), as claimed by it in its return. Further, in respect of disallowance made by the Id. Assessing Officer of Rs.39,07,604/-, we note that except for amount of Rs.1,29,950/- which is an interest income from IDBI bank, the balance

of Rs.37,77,654/- is allowable u/s. 80P(2)(d) of the Act. Accordingly, we allow the claim of the assessee u/s. 80P(2)(d) to the extent of Rs.37,77,654/-.

6.1. This issue has already been dealt with in detail in the decision of the Co-ordinate Bench of ITAT, Mumbai in the case of Vaibhav Co-op Credit Society in ITA Nos.44, 46 & 298/Mum/2024 for Assessment Years 2014-15, 2018-19 and 2021-22, order dated 28.05.2024 (undersigned author is also the author of this order), wherein it was held that assessee is a credit cooperative society and not a cooperative bank within the meaning of Banking Regulation Act, 1949, allowing the claim of deduction u/s. 80P(2)(a)(i) and 80P(2)(d). Both the grounds taken by the assessee in the present appeals are squarely covered by the said order, there being no material change in the relevant facts and applicable law. The observations and findings by the Coordinate Bench in the said order are reproduced for ease of reference:

“5. We have heard the rival contentions and perused the material on record. We have given our thoughtful considerations to the submissions made before us and various judicial precedents relied upon as discussed above including those in the case of assessee itself dealing with the issue before us. Admittedly, it is a fact on record that assessee does not hold banking license issued by Reserve Bank of India which is a necessary requirement for doing banking business. Assessee is a credit cooperative society providing credit facilities to its members from the deposits collected by it from its members. The credit activities undertaken by the assessee carry attributes of banking but for this sole reason assessee cannot be held to be doing banking business within the meaning of Banking Regulation Act, 1949 as applicable to cooperative banks. In this respect, it is worthwhile to take note of the difference in cooperative societies and cooperative banks explained elaborately by the Co-ordinate bench of ITAT, Mumbai in the case of ITO vs. Kulswami Cooperative Society in ITA No.6790/Mum/2012. The same is reproduced as under:

Sl.No	Co-operative societies	Co-operative Banks
1.	The Co-operative Credit Societies are registered under Maharashtra State Cooperative Societies Act, 1960 and governed, regulated, administered and	Co-operative Banks are registered under Maharashtra Co-operative Societies Act, 1960 and administered by Registrar of Cooperative Societies, Govt. Of

	<i>supervised by the Registrar of the Cooperative Societies, Government of Maharashtra.</i>	<i>Maharashtra. Cooperative Banks are regulated and supervised by the Reserve Bank of India. Provisions of Banking Regulation Act, 1949 with modifications specified in section 56 of the Banking Regulation Act, 1949 are applicable to Co-operative Banks. Schedule 1 to Schedule V are applicable to Cooperative Bank.</i>
2.	<i>Co-operative Societies are classified as resource/thrifts Societies in the certificate of registration issued by Registrar of Cooperative Society.</i>	<i>Co-operative Banks are classified as Cooperative Bank.</i>
3.	<i>Co-operative Credit Societies can accept deposits and advance loans only to the members. Hence the business activities are restricted to members and hence it can be termed as a mutual association/self help group.</i>	<i>Co-operative Banks can accept deposits from public. However, unlike Co-operative credit societies they can advance loans to the members only.</i>
4.	<i>Co-operative Credit Societies can't accept deposits from public.</i>	<i>Co-operative can accept deposits from public.</i>
5.	<i>The provisions of Banking Regulation Act 1949 are not applicable to the Cooperative Credit Societies.</i>	<i>The provisions of Banking Regulation Act 1949 are applicable to the Cooperative Bank.</i>
6.	<i>The Co-operative credit societies do not required license from Reserve Bank of India to carry on its business.</i>	<i>The Co-operative banks are required to obtain license from Reserve Bank of India to carry on its business.</i>
7.	<i>The Co-operative credit societies do not have cheque facilities, clearing facilities and they cannot issue demand drafts, pay orders etc.</i>	<i>The Co-operative have cheque facilities, clearing facilities and they issue demand drafts, Assessment Year order, bank guarantees etc.</i>
8.	<i>Co-operative Credit Societies cannot use word Bank/Bankers in their name.</i>	<i>Co-operative Banks are mandatorily required to use word Bank/Bankers in their name.</i>
9.	<i>Reserve Bank of India has no statutory power of control and supervision of Cooperative Societies.</i>	<i>Reserve Bank of India has vested with statutory powers of control and supervision of Cooperative Banks.</i>

6. Furthermore, in assessee's own case (*supra*), the coordinate bench has held that assessee is a cooperative credit society eligible for benefit of deduction u/s. 80P(2)(a)(i) and that Section 80P(4) restricting the benefit of deduction does not apply to the assessee since it is neither a cooperative bank nor a cooperative society holding license from RBI for banking business. Also, with detailed exposition on the issue in hand by the Hon'ble Supreme Court in the case of *The Mavilayi Service Cooperative Bank (Supra)* and *Kerala State Cooperative Agricultural and Rural Development Bank (Supra)* we do not find any reason to interfere with the well analysed and elaborate finding arrived at by the ld. CIT(A) in allowing the grounds raised by the assessee on this issue. Accordingly, ground no.1 and 3 of the Revenue are dismissed.

7. Having held that assessee is a credit cooperative society and not a cooperative bank within the meaning of Banking Regulation Act, 1949, provisions of Section 36(1)(viii) of the Act do not apply in the case of assessee, which has been rightly held by the ld. CIT(A). Accordingly, ground no.2 of the Revenue is dismissed.

8. In the result, appeal of the Revenue is dismissed.

9. In ITA No. 298/Mum/2024, the issue involved is in respect of disallowance of Rs.2,57,88,069/- u/s. 80P(2)(a)(i) which is identical to the issue dealt above in ITA No.46/Mum/2024 except for variation in the amount. Accordingly, our observations and findings stated above apply *mutatis mutandis* on this appeal also. In the result, appeal of the Revenue is dismissed.

10. In ITA No.44/Mum/2024, the ground raised by the Revenue refers to deduction u/s. 80P(2)(d) of Rs.1,89,79,925/- on interest income earned from cooperative bank. This issue has also been dealt with by us while dealing with ground no.3 in ITA No.46/Mum/2024 above by referring to findings of ld. CIT(A) in allowing the said claim.

10.1. To further elaborate on this issue, we refer to a recent decision of the Co-ordinate Bench of ITAT, Mumbai in the case of *Rajat Apartments Co-op Housing Society* in ITA No. 4328 & 4329/Mum/2023, dated 27.05.2024 (undersigned author is also the author of this decision). While arriving at this decisions, reliance was placed on the decision of Hon'ble High Court of Karnataka in case of the *PCIT vs. Totagar Cooperative Sales Society Limited* [2017] 392 ITR 74 / 78 *taxmann.com* 169 (SC). The findings so arrived at by the co-ordinate bench is as under:

“6.1. From the above, we understand that the provisions of section 80P(2)(d) of the Act are very clear and assessee is entitled for deduction u/s.80P(2)(d) of the Act in respect of interest or dividends received from investments made with any other cooperative societies. The decision on which the Ld.CIT(A) placed reliance i.e. *The Totagar Cooperative Sales Society Limited v. ITO* 322 ITR 283 (SC), is not on the issue of whether the assessee is entitled for exemption u/s. 80P(2)(d) of the Act vis-a-vis the interest income earned by the cooperative society from investments in other cooperative societies. Hence the decision of Hon'ble Supreme Court in the case of *The Totagar Cooperative Sales Society Limited v. ITO* has no application to the facts of the present case.

6.2. From the above extraction, we also note that the Hon'ble High Court held that the word 'cooperative society' are the words of the large

extent and denotes a genus, whereas the word 'cooperative bank' is a word of limited extent, which merely de-markets and identifies a particular species of the genus 'cooperative societies'. Thus, a cooperative bank is merely a variety of the cooperative societies which can be of a different nature and can be involved in different activities.

7. 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, since 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 also find that the issue before us of whether 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 or not is covered in favour of the assessee not only by the decision of Hon'ble High Court of Karnataka referred above but also in plethora of cases including few of the following cases:

- (i) Land and Cooperative Housing Society Ltd. v. ITO (2017) 46 CCH 52 (Mum)*
- (ii) C. Green Cooperative Housing and Society Ltd. v. ITO 21(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."*

10.2. In the present case, ld. Assessing Officer has identified interest earned by the assessee from various cooperative banks against the investments made by it which has been disallowed towards deduction claimed under section 80P. Considering the facts on record and the judicial precedents referred above, as well as our observations and discussions made supra, 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, however, since 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. We thus, hold that assessee is eligible for claiming deduction u/s. 80P(2)(d) disallowed by the ld. Assessing Officer. Accordingly, ground taken by the Revenue in this respect is dismissed. In the result, appeal of the Revenue is dismissed."

7. Considering the facts on record, applicable law & judicial precedent referred above, we hold that assessee is eligible for claim of deduction u/s. 80P(2)(a)(i) and 80P(2)(d) of the Act. We thus, allow the

deduction claimed by the assessee. Accordingly, grounds taken by the assessee are allowed.

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

Order is pronounced in the open court on 18 July, 2024

Sd/-
(Satbeer Singh Godara)
Judicial Member

Sd/-
(Girish Agrawal)
Accountant Member

Dated: 18 July, 2024

MP, Sr.P.S.

Copy to :

- 1 The Appellant
- 2 The Respondent
- 3 DR, ITAT, Mumbai
- 4 Guard File
- 5 CIT

BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai