

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI "D" BENCH : MUMBAI

BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER

ITA.No.2024/Mum./2024
Assessment Year 2018-2019

The Income Tax Officer, Room No.353m 3 rd Floor, Kautilya Bhawan, BKC, Mumbai – 400 051 Maharashtra.	vs.	Ramaraja Kshatriya Coop Credit Society Ltd., 4-Kaveri Complex, Ground Floor, Kurla Pipeline Road, Prabhat Wadi Sakinaka, Mumbai- 400 072. Maharashtra. PAN AAAAR9632A
(Appellant)		(Respondent)

For Revenue :	Smt. Mahita Nair, Sr. DR
For Assessee :	Shri Anil Topiwala

Date of Hearing :	10.07.2024
Date of Pronouncement :	18.07.2024

ORDER

PER SATBEER SINGH GODARA, J.M.

This Revenue's appeal, for assessment year 2018-2019, arises against National Faceless Appeal Centre [in short the "NFAC"] Delhi's Din and Order No. ITBA/NFAC/S/250/2023-24/1061337575(1), dated 22.02.2024, in proceedings u/s.143(3) of the Income Tax Act, 1961 (in short "the Act").

Heard both the parties. Case file perused.

2. The Revenue pleads the following substantive grounds in the instant appeal :

- 1) *"Whether, on the facts and in the circumstances of the case and in law the learned CIT (A) erred in allowing deduction u/s 80P of the Act despite the fact that Hon'ble Supreme Court has held that the interest on deposits were not business income but the income from other sources and, therefore, the deduction u/s.80P(2)(d) is also not allowed in respect of interest earned from deposits in co operative banks."*
- 2) *"Whether on facts and in the circumstances of the case and in law, the learned CIT (A) was justified in allowing deduction u/s 80P of the Act despite the fact that Hon'ble Karnataka High Court in a detailed judgment discussing the law and various related issues in the case of PCIT v/s Totagars Cooperative Sales Society (392 ITR 74) has specifically decided the question of law about the allowability of interest earned from deposits with Cooperative Bank u/s 80P(2)(d) of the IT Act also in favour of Revenue."*

3. It emerges in this factual backdrop that the Revenue's sole substantive grievance raised in the instant appeal seeks to reverse CIT(A)-NFAC action reversing assessment findings disallowing the assessee's sec.80P(2)(d) deduction claim of Rs.2,55,37,783/- representing interest income from deposits made in cooperative societies/cooperative institutions as well as holding it as a cooperative bank; as the case may be.

4. Learned counsel representing the assessee has filed copy of this tribunal's order in assessee's case itself ITO vs. M/s. Ramaraja Kshatriya Cooperative Credit Society Ltd., Mumbai ITA.Nos.4896 & 4897/MUM./2019dated 11.03.2021 deciding the very issue against the department as follows :

4. Upon assessee's appeal learned CIT(A) deleted the disallowance holding that the was not a cooperative bank. The learned CIT(A) held as under :-

7. I have considered the facts of thg case, oral contentions and written submissions of the appellant as against the observations/findings of the AO in the assessment order. The contentions/submissions of the appellant are being discussed and decided^ as under:-

7.1 A careful and considerate perusal of the grounds of appeal revealed that the essence of the merits of the present appeal is that the appellant is aggrieved by the action of the AO in refusing to grant the deduction u/s.80P(2)(a)(i) to the tune of Rs.1,69,20,631/-. This has been challenged vide grounds 3.2 to 3.4 which shall be adjudicated together.

7.2 I have very carefully perused the impugned order, the entire relevant facts and circumstances of the matter and the submissions of the Ld. AR, as well as the various judicial pronouncements cited by him. I have also perused with circumspection, the pertinent details and materials on record.

7.3 On this entire issue, it is pertinent to mention that the activities mentioned in Section 80P(2)(a)(i) are 'a co-operative society engaged in carrying on business of banking or providing credit facilities to its members'. As per section 80P(4), the provisions of section 80P shall not apply in relation to any co-operative bank. Therefore, even after the insertion of Sec. 80P(4), the co-operative society engaged in providing credit facilities to its members continued to be entitled for deduction u/s 80P(2)(a)(i). There is no prohibition u/s. 80P not to allow deduction to such co-operative societies in respect of business relating to its members.

7.4 Further, it is to be noted that the Banking business has been defined under section 5(b) of the Banking Regulation Act, 1949 in the following manner:

"banking" means the accepting, for the purpose of lending or investment, of deposits of money from the public, repayable on demand or otherwise, and withdrawal by cheque, draft, order or otherwise.

7.5 The Banking Regulation Act, 1949 defines a co-operative bank in cl. (cci) of sec. 5 (as inserted by sec. 56 of the said Act) and Co-operative Credit Society is not included but its identity is kept separate by way of independent definition in Clause (ccii) of Sec. 5 of the Banking Regulation Act which is reproduced as under:

(cci) "Co-operative bank" means a state co-operative bank, a central co-operative bank and a primary co-operative bank

(ccii) "co-operative credit society" means a Co-operative Society, the primary object of which is to provide financial accommodation to its members and includes a co-operative land mortgage bank; "

7.6 On plain reading of the Banking Regulation Act, 1949, nowhere it is suggested that the term "Co-operative Bank" also includes 'Co-Operative Credit Society'. Further, the Primary Co-operative bank is defined in cl. (ccv) of sec. 5 of the Banking Regulation Act 1949 as under:—

'(ccv) "primary co-operative bank" means a co-operative society, other than a primary agricultural credit society—

i) the primary object or principal business of which is transaction of banking business:

ii) the paid-up share capital and reserves of which are not less than one lakh of rupees: and

iii) the bye-laws of which do not permit admission of any other co-operative society as a member:

7.7 Therefore, going by the definition of 'banking', 'co-operative bank' and 'primary cooperative bank as mentioned above, if a co-operative society is not allowed to accept deposits of money from the public for the purpose of lending or investment, it cannot be said that the prime object or principal business of the appellant is banking business. Hence, it will not be a primary co-operative Bank and consequently not a co-operative bank.

7.8 In this regard, I also find that the case of the appellant, inter-alia, is covered by the decision of the jurisdictional High Court in the case of Quepem Urban Co-operative Credit Society Ltd. vs. ACIT [2015] 58 taxmann.com 133 (Bom); [2015] 377 ITR 272 (Bombay), decided on 17.04.2015 wherein it is held that the assessee cannot be considered as a co-operative Bank for the purposes of section 80P(4) of the Act, unless the following three conditions are satisfied-

(i) the principal business or primary objective should be business of banking

(ii) its paid up share capital and reserves should not be less than rupee one lac

(iii) its bye-laws do not permit admission of any other co-operative society as its member. It is also pertinent to note that in the above quoted decision of the jurisdictional High Court in the case of Quepem Urban Co-operative Credit Society Ltd. (quoted supra), the Hon'ble High Court has also taken due note of the decision in the case of Totgars Cooperative Sales Society Limited."

5. Against the above order the Revenue is in appeal before us.

6. We have heard both the counsel and perused the records. We find that this issue is squarely covered in favour of the assessee by the decision of Hon'ble Supreme Court in the case of Citizen Cooperative Society Ltd. (Civil Appeal No. 10245 of 2017 vide order dated 8.8.2017) and The Mavilayi Service Cooperative Bank Ltd. & Ors. Vs. CIT, Calicut & Ors. (Civil Appeal Nos. 7343-7350 of 2019 dated 12.1.2021. We find that the Assessing Officer has completely erred in treating the assessee as cooperative bank and invoking the provisions of section 80P(4). Section 80P(4) provides that :-

(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,—

*M/s. Ramaraja Kshatriya Cooperative
Credit Society Limited*

(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.

7. Honourable Supreme Court in the case of Citizen Cooperative Society Ltd. (Civil Appeal No. 10245 of 2017 vide order dated 8.8.2017) has settled the law that for being considered as a cooperative bank licence from RBI in this regard is a sine qua non. In absence of the RBI licence as such the assessee cannot be treated as cooperative bank. Hence disallowing the deduction by referring to the provisions of section 80P(4) is completely unsustainable. Moreover section 80P(2)(d) provides exemption to interest earned on fixed deposit in cooperative societies. It is nobody's case that cooperative bank are not cooperative societies.

8. Moreover similar issue was elaborately dealt by a larger bench of honourable Supreme Court in the case of The Mavilayi Service Cooperative Bank Ltd. & Ors. Vs. CIT, Calicut & Ors. (Civil Appeal Nos. 7343-7350 of 2019 dated 12.1.2021) and the issue was decided in favour of the assessee. We may gainfully refer to the Hon'ble Apex Court observation in para 21 as under, wherein the Hon'ble Apex Court referred to its earlier decision of Citizen Cooperative Society Ltd. (supra) :-

"The following propositions may be culled out from the judgment:

(I) That section 80P of the IT Act is a benevolent provision, which was enacted by Parliament in order to encourage and promote the growth of the co-operative sector generally in the economic life of the country and must, therefore, be read liberally and in favour of the assessee;

(II) That once the assessee is entitled to avail of deduction, the entire amount of profits and gains of business that are attributable to any one or more activities mentioned in subsection (2) of section 80P must be given by way of deduction;

(III) That this Court in Kerala State Cooperative Marketing Federation Ltd. and Ors. (supra) has construed section 80P widely and liberally, holding that if a society were to avail of several heads of deduction, and if it fell within any one head of deduction, it would be free from tax notwithstanding that the conditions of another head of deduction are not satisfied;

(IV) This is for the reason that when the legislature wanted to restrict the deduction to a particular type of co-operative society, such as is evident from section 80P(2)(b) qua milk co-operative societies, the legislature expressly says so - which is not the case with section 80P(2)(a)(i);

(V) 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 cooperative societies who must possess a licence from the RBI to do banking business. Given the fact that the assessee in that case was not so licenced, the assessee would not fall within the mischief of section 80P(4)."

9. Respectfully following the precedent as above, we uphold the learned CIT(A)'s order.

5. The Revenue is fair enough in not pinpointing any specific distinction either on facts or on law in all these assessment years. Faced with this situation, we adopt judicial consistency to reject the instant sole substantive ground of the Revenue in very terms. Ordered accordingly.

6. This Revenue's appeal is dismissed in above terms.

Order pronounced in the open Court on 18.07.2024

Sd/-
[GIRISH AGARWAL]
ACCOUNTANT MEMBER

Sd/-
[SATBEER SINGH GODARA]
JUDICIAL MEMBER

Mumbai, Dated 18th July, 2024

VBP/-

Copy to

1.	The applicant
2.	The respondent
3.	The Pr. CIT, Mumbai concerned
4.	D.R. ITAT, "D" Bench, Mumbai.
5.	Guard File.

//By Order//

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Asst. Registrar, ITAT, Mumbai Benches,
Mumbai.