

**आयकर अपीलीय अधिकरण “सी” न्यायपीठ चेन्नई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH, CHENNAI**

**माननीय श्री एबी टी. वर्की, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON'BLE SHRI ABY T. VARKEY, JM AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM**

**आयकर अपील सं./ ITA No.1165/Chny/2024
(निर्धारणवर्ष / Assessment Year: 2018-19)**

Potheri Village Weaning Food Manufacturing Womens Development Industrial Co-op. 12, Amman Koil Street, Potheri, Katankolathur Post, Kanchipuram-603 203.	बनाम / Vs.	ITO Non-Corporate Ward-22(1), Tambaram.
स्थायी लेखा सं./जी आइ आर सं./PAN/GIR No. AAAAP-9745-Q		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से/ Appellant by	:	Shri I. Dinesh (Advocate) Ld.AR
प्रत्यर्थी की ओर से/ Respondent by	:	Ms. R. Anita (Addl.CIT)-Ld .DR

सुनवाई की तारीख/ Date of Hearing	:	01-08-2024
घोषणा की तारीख / Date of Pronouncement	:	12-08-2024

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by assessee for Assessment Year (AY) 2018-19 arises out of the order of learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [CIT(A)] dated 27-03-2024 in the matter of an assessment framed by Ld. Assessing Officer [AO] u/s.143(3) r.w.s 263 r.w.s 144B of the Act on 16-02-2024. The sole grievance of the assessee is denial of deduction u/s

80P for Rs.11.06 Lacs in respect of interest income earned from SBI and Tamil Nadu Industrial Co-op. Bank (TAICO Bank).

2. The Ld. AR advanced arguments and filed written submissions. The Ld. Sr. DR has controverted the arguments of Ld. AR. Having heard rival submissions, the appeal is disposed-off as under.

3. The assessee being resident cooperative society claimed interest income as deduction u/s 80P(2)(a)(ii) for Rs.11.06 Lacs. The same was allowed in the regular assessment order passed u/s 143(3) on 15-01-2021. However, an order was passed u/s 263 by revisionary authority on 27-03-2022 flagging the issue of claim of deduction with respect to interest income. The assessee submitted that interest received from TAICO bank would be eligible for deduction u/s 80P(2)(d) since it was registered as cooperative society under Tamil Nadu Cooperative Societies Act. Alternative submissions was that since the society was created for upliftment of downtrodden and destitute women, the entire income would be eligible for deduction u/s 80P(2)(a)(ii) which is applicable for cottage industries. Further, in AY 2016-17, similar claim was accepted. However, in assessment order passed u/s 143(3) r.w.s. 263 on 16-02-2024, Ld. AO held that the assessee was not eligible for any deduction and accordingly, the same was added to the income of the assessee.

4. The Ld. CIT(A) HELD that the assessee was not eligible to claim deduction u/s 80P(2)(a)(ii) since it was a cottage industry and the interest income could not be said to be earned out of cottage industry. The deduction u/s 80P(2)(d) would also not be available considering the decision of Hon'ble Karnataka High Court in the case of **PCIT vs.**

Totagars Co-operative Sale Society Ltd. (395 ITR 611). Aggrieved, the assessee is in further appeal before us.

Our findings and Adjudication

5. It is the submission of Ld. AR that the assessee is claiming deduction u/s 80P(2)(a)(ii) on this income since its inception. The assessee uses Savings Bank Account held with SBI for day-to-day operations of the cottage industry. Further, TAICO bank is a cooperative society doing banking business. For AY 2016-17, this deduction has been allowed by Ld. AO in toto. The same has been clarified by CBDT in its Circular No.722 dated 19-09-1995 that profit and gains from business of cottage industry falls u/s 80P(2)(a)(ii). It has also been submitted that the cited decision of Hon'ble Karnataka High Court has been rendered only in the context of deduction u/s 80P(2)(d) alone. The Ld. AR further submitted that the decision in Mavilayi Service Cooperative Bank Ltd. (123 Taxmann.com 161) also deals with a situation where the interest income is claimed u/s 80P(2)(d) only.

6. We have gone through CBDT Circular No.722 dated 19-09-1995. Upon perusal of the same, we find that the same do not address the issue of treatment of bank interest. The same merely state the conditions which are required to be satisfied for availing the benefit u/s 80P(2)(a)(ii). Therefore, the same do not render any assistance to the case of the assessee. Secondly, if the claim is accepted in earlier years on erroneous assumption of facts, the same could not bind the department to take similar view in other years since the assessment of each year is independent. Therefore, this argument is also not to be accepted. Proceeding further, the interest has arisen because of the fact that the assessee has maintained deposits with the bank and it cannot be said

that the same has arisen out of carrying out of cottage industry. The interest income could not be said to be attributable to carrying out of cottage industry since this income primarily spring from the deposits held by the assessee with the bank which has separate color and character. Therefore, the deduction u/s 80P(2)(a)(ii), in our considered opinion, would not be available to the assessee u/s 80P(2)(a)(ii) on this income. Further, the provisions of Sec. 80P(2)(d) are specific provisions dealing with interest income earned by a co-operative society and therefore, these provisions would prevail over general provisions.

7. So far as the applicability of Sec. 80P(2)(d) is concerned, we find that interest income earned from a cooperative society, would be eligible for deduction as per the decision of Hon'ble High Court of Madras in the case of **Thorapadi Urban Co-op Credit Society Ltd. v. ITO (156 Taxmann.com 419)**. It was held by Hon'ble Court as under: -

8. The main issue is to decide in the present case is as to whether the petitioner Co-operative Society is entitled for a deduction for the interest income received from the Co-operative Bank?

9. It would be appropriate to extract hereunder the relevant portion of section 80P(2)(d).

"80 P. Deduction in respect of income of co-operative societies:

(1) ** **

(2) The sums referred to in sub-section (1) shall be the following, namely:—

(a) to (c) ** ** ** **

(d) "in respect of any income by way of interest or dividends derived by the co-operative society from its investment with any other co-operative society, the whole of such income"

9.1 A reading of the above said provision makes it clear that in the event if any Co-operative Society derived income by way of interest from investment made in any other Co-operative Society the whole such interest is eligible for deduction. Now the issue is as to whether the Co-operative Bank would fall within the purview of the term 'Co-operative Society'. In the present case, the petitioner produced a document to show that the Co-operative Bank, where they have made investments was registered under the Tamil Nadu Co-operative Societies Act, 1983 on 20-5-2003. In this regard, he also produced a copy of the Certificate of Incorporation of the said Co-operative Bank. Therefore, it is clear that the investment made by the petitioner is a Co-operative Bank registered under the Co-

operative Societies Act. The Income Tax Act, 1961 has also defined 'Co-operative Society' under section 2(19) as follows :

'2(19). "Co-operative society" means 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.'

10. A reading of the above definition would make it clear that 'Co-operative Society' means a Co-operative Society registered under Co-operative Societies Act, 1912. Thus, a Co-operative Society referred therein is only a co-operative society as defined under the Act, be it a Co-operative Society carrying on banking business or Co-operative Society carrying on the other businesses or a Co-operative bank.

11. The learned counsel for the respondent referred to the judgment of the Hon'ble Supreme Court rendered in Totgars Co-operative Sale Society Ltd. (supra), wherein the issue came up for consideration as to whether the interest income received by a Co-operative Bank from its members by way of providing the credit facilities to its members is eligible for deduction or not. Ultimately the Hon'ble Supreme Court found that under section 80P(2)(a)(i), the same is eligible for deduction. Therefore, the law laid down by the Hon'ble Supreme Court is not applicable for in the present case as the eligibility of deduction of interest has to be decided under section 80P(2)(d) and not under section 80P(2)(a)(i). The learned counsel has also relied upon other judgments which are not applicable for the present facts of the present case.

12. At this juncture, it would be appropriate to refer a judgment passed by a Division Bench of this Court in CIT v. Salem Agricultural Producers Co-operative Marketing Society Ltd. [2016] 76 taxmann.com 225 (Mad.)/[Tax Case Appeal No. 5 of 2015], wherein, apart from other substantial issues, the following issue has been framed for consideration, which reads as under :

"Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the assessee is to be treated as primary agricultural society and is carrying on the business of banking or providing credit facilities to its members and is entitled for deduction under section 80P(2)(a)(i) of the Income-tax Act, 1961 with respect to the interest received from Class B members who were involved in non-agricultural society?".

While answering to the above, the Division Bench held that the respondent therein, which is a Co-operative society, is entitled to avail the benefit under 80P(2)(d) of the Act. The judgment was rendered on 10-8-2016, where the judgement rendered by the Hon'ble Supreme Court in 2010 was considered.

13. In such view of the matter, since the impugned orders are passed without considering all these aspects, this Court is of the view that the same are liable to be set aside. Accordingly, the Writ Petitions are allowed and all the impugned notices are set aside. No costs. Consequently, all the connected miscellaneous petitions are closed.

The Hon'ble Judge has held that if the interest has been earned from cooperative society, the same would be eligible for deduction u/s 80P(2)(d), be it a Co-operative Society carrying on banking business or Co-operative Society carrying on the other businesses or a Co-operative bank. Respectfully following the same, we would hold that interest

income earned from TAICO Bank (since it is registered as a co-operative society) would be eligible for deduction u/s 80P(2)(d). The interest income earned from SBI would clearly be assessable as income from other sources.

8. The appeal stand partly allowed.

Order pronounced on 12th August, 2024

Sd/-
(ABY T. VARKEY)
न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(MANOJ KUMAR AGGARWAL)
लेखक सदस्य / ACCOUNTANT MEMBER

चेन्नई Chennai; दिनांक Dated :12-08-2024
DS

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त/CIT Chennai.
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF