

**IN THE INCOME TAX APPELLATE TRIBUNAL
“K” BENCH (SMC), MUMBAI**

**BEFORE MS PADMAVATHY S, AM &
SHRI RAHUL CHAUDHARY, JM**

**I.T.A. No. 2470 /Mum/2024
(Assessment Year: 2020-21**

M/s Torino Co-operative Housing Society Ltd. Society Office South Avenue, Hiranandani Gardens, Powai, Mumbai-400076. PAN : AACAT9499B	Vs.	ITO-41(1)(5), MUM-W-401-95, Kautilya Bhavan, BKC, Bandra East, Mumbai-400051.
Appellant)	:	Respondent)

Appellant/Assessee by : Shri Rajesh Shah, AR

Revenue/Respondent by : Shri Kiran Unavekar, Sr. DR

Date of Hearing : 31.07.2024

Date of Pronouncement : 02.08.2024

ORDER

Per Padmavathy S, AM:

This appeal by the assessee is against the order of the Commissioner of Income Tax (Appeals) / National Faceless Appeal Centre, Delhi [for short 'the CIT(A)] dated 22.01.2024 for the AY 2020-21. The only issue contended in this appeal is the disallowance of deduction under section 80P(2)(d) of the Income Tax Act, 1961(the Act).

2. The assessee is a registered Co-operative Housing Society Ltd. filed its return of income on 08.01.2021 for AY. 202021 admitting a total income of Rs.3,15,680/-. The assessee has claimed a deduction under section 80P(2)(d) of the Act, towards interest on deposits with cooperative banks to the tune of Rs.16,42,639/-. The return was processed by the CPC under section 143(1) of the Act, wherein the deduction under section 80P(2)(d) of the Act was disallowed. Aggrieved the assessee filed further appeal before the CIT(A). The CIT(A) confirmed the disallowance by placing reliance on the decision of the Hon'ble Karnataka High Court in the case of PCIT Vs. Totgars Cooperative Sale Society (2017) 395 ITR 611 (Kar). The assessee is in appeal before the Tribunal against the order of the CIT(A).

3. The Id. Authorized Representative (AR) of the assessee submitted that the CPC has denied the deduction under section 80P(2)(d) of the Act for the reason that the deduction is claimed towards interest received from deposits with Co-operative Bank. The Id. AR further submitted that the term cooperative society is much wider and includes a Cooperative Bank also and that this proposition has been upheld in various judicial pronouncements. The Id. AR also submitted that the Co-ordinate Bench has been consistently holding that interest received from deposits with Co-operative Bank is also eligible for deduction under section 80P(2)(d) of the Act and in this regard placed reliance on the decision of the Co-operative Bank in the case of Pathare Prabhu Co-operative Housing Society Ltd. Vs ITO [2023] 153 taxmann.com 714 (Mumbai - Trib.). Accordingly the Id AR prayed that the disallowance made towards deduction claimed under section 80P(2)(d) be deleted.

4. The Id. DR on the other hand relied on the order of the lower authorities.

5. We have heard the parties and perused the material available on record. We notice that the Co-ordinate Bench has been consistently holding that the income derived by way of interest from Co-operative Banks is also eligible for deduction under section 80P. The relevant observations of the coordinate bench in Pathare Prabhu Co-operative Housing Society Ltd. (supra) where it is held that –

8. We have considered the submissions of both sides and perused the material available on record. The only dispute raised by the assessee is against the disallowance of deduction under section 80P(2)(d) of the Act in respect of interest income received from the Co-operative Banks. The assessee is a registered Co-operative Housing Society and during the assessment year 2018- 19 earned interest income of Rs. 50,39,861 from the investments made in various Co-operative Banks.

9. Before proceeding further, it is relevant to note the provisions of section 80P of the Act under which the assessee has claimed the deduction in the present case. As per the provisions of section 80P(1) of the Act, the income referred to in sub-section (2) to section 80P shall be allowed as a deduction to an assessee being a Co-operative Society. Further, section 80P(2)(d) of the Act, reads as under:

"80P. 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 investments with any other co-operative society, the whole of such income;"

10. Thus, for the purpose of provisions of section 80P(2)(d) of the Act, two conditions are required to be cumulatively satisfied- (i) income by way of interest or dividend is earned by the Co-operative Society from the investments, and (ii) such investments should be with any other Co-operative Society. Further, the term „co-operative society? is defined under section 2(19) of the Act as under:

"(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 ;"

11. In the present case, there is no dispute that the assessee is a Co-Operative Housing Society. Thus, if any income as referred to in sub-section (2) to section 80P

of the Act is included in the gross total income of the assessee, the same shall be allowed as a deduction. It is pertinent to note that since the assessee is registered under the Maharashtra Co-operative Societies Act, 1960, it is required to invest or deposit its funds in one of the modes provided in section 70 of the aforesaid Act, which includes investment or deposit of funds in the District Central Cooperative Bank or the State Co-operative Bank. Accordingly, the assessee kept the deposits in Co-operative Banks registered under the Maharashtra Co-operative Societies Act and earned interest, which was claimed as a deduction under section 80P(2)(d) of the Act. The AO denied the deduction under section 80P(2)(d) of the Act on the basis that the Co-operative Bank is covered under the provisions of section 80P(4) of the Act. We find that the Hon'ble Supreme Court in *Mavilayi Service Co-operative Bank Ltd. v. CIT* [2021] 123 taxmann.com 161/279 Taxman 75/431 ITR 1 while analysing the provisions of section 80P(4) of the Act held that section 80P(4) is a proviso to the main provision contained in section 80P(1) and (2) and excludes only Co-operative Banks, which are Co-operative Societies and also possesses a licence from RBI to do banking business. The Hon'ble Supreme Court further held that the limited object of section 80P(4) is to exclude Co-operative Banks that function at par with other commercial banks i.e. which lend money to members of the public. Thus, we are of the considered view that section 80P(4) of the Act is of relevance only in a case where the assessee, who is a Co-operative Bank, claims a deduction under section 80P of the Act which is not the facts of the present case. Therefore, we find no merits in the aforesaid reasoning adopted by the AO and upheld by the learned CIT(A) in denying deduction under section 80P(2)(d) of the Act to the assessee.

12. As regards the claim of deduction under section 80P(2)(d) of the Act, it is also pertinent to note that all Co-operative Banks are Co-operative Societies but vice versa is not true. We find that the coordinate benches of the Tribunal have consistently taken a view in favour of the assessee and held that even the interest earned from the Co-operative Banks is allowable as a deduction under section 80P(2)(d) of the Act. In *Kaliandas Udyag Bhavan Premises Co-op Society Ltd. v. ITO* [2018] 94 taxmann.com 15 (Mum.)/[ITA No. 6547/Mum./2017, dated 25-4-2018], while dealing with the provisions of section 80P(2)(d) vis-à-vis section 80P(4) of the Act, the coordinate bench of the Tribunal observed as under:

"7.Thus, from a perusal of the aforesaid sec. 80P(2)(d) it can safely be gathered that income by way of interest income derived by an assessee co-operative society from its investments held with any other cooperative society, shall be deducted in computing the total income of the assessee. 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 though are in agreement with the observations of the lower authorities that with the

insertion of sub-section (4) of sec. 80P, 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, but however, are unable to subscribe to their view that the same shall also jeopardise the claim of deduction of a co-operative society under sec. 80P(2) (d) in respect of the interest income on their investments parked with a co-operative bank. We have given a thoughtful consideration to the issue before us and are of the considered view that 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 may herein observe 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 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;' NEETU 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, 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 enforced 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 cooperative bank, would be entitled for claim of deduction under sec.80P(2)(d) of the Act."

13. We find that the learned CIT(A) has placed reliance upon the decision of the Hon'ble Karnataka High Court in Pr. CIT v. Totagars Co-operative Sales Society [2017] 83 taxmann.com 140/395 ITR 611, wherein it was held that interest earned by the assessee, a Co-operative Society, from surplus deposits kept with a Co-operative Bank, was not eligible for deduction under section 80P(2)(d) of the Act. We find that in an earlier decision the Hon'ble Karnataka High Court in Pr. CIT v. Totagars Co-operative Sale Society [2017] 78 taxmann.com 169/392 ITR 74 held that according to section 80P(2)(d) of the Act, the amount of interest earned from a Co-operative Society Bank would be deductible from the gross income of the Co-operative Society in order to assess its total income. Thus, there are divergent views of the same Hon'ble High Court on the issue of eligibility of deduction under section 80P(2)(d) of the Act in respect of interest earned from Co-operative Bank. No decision of the Hon'ble jurisdictional High Court was brought to our notice on this aspect. We have to, with our highest respect to both the views of the Hon'ble High Court, adopt an objective criterion for deciding as to which decision of the Hon'ble High Court should be followed by us. We find guidance from the judgment of the Hon'ble Supreme Court in CIT v. Vegetable Products Ltd. [1973] 88 ITR 192. In the

aforesaid decision, the Hon'ble Supreme Court has laid down a principle that "if two reasonable constructions of a taxing provisions are possible, that construction which favours the assessee must be adopted".

14. Therefore, in view of the above, we uphold the plea of the assessee and direct the AO to grant the deduction under section 80P(2)(d) of the Act to the assessee in respect of interest income earned from investment with Co-operative Banks. Accordingly, we set aside the impugned order passed by the learned CIT(A) for the assessment year 2018-19. As a result, grounds raised by the assessee are allowed.

6. Considering that the issue in assessee's case being identical i.e. denial of deduction under section 80P(2)(d) towards interest earned from deposits with Cooperative Banks, respectfully following the above decision we hold that the assessee is entitled for deduction under section 80P(2)(d) towards income derived from deposits with Co-operative Bank. Accordingly, the AO is directed to allow the deduction claimed by the assessee.

7. The assessee has also raised grounds contending that the denial of deduction under section 80P(2)(d) does not fall within the scope of adjustments permissible under section 143(1)(a). Since we have already allowed the claim of deduction under section 80P(2)(d) based on merits, the above contention has become academic and does not warrant separate adjudication.

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

Order pronounced in the open court on 02-08-2024.

Sd/-
(RAHUL CHAUDHARY)
Judicial Member

Sd/-
(PADMAVATHY S)
Accountant Member

**SK, Sr. PS*

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent

3. DR, ITAT, Mumbai
4. Guard File
5. CIT

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai