

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

BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

**ITA No.1206/Mum/2024
Assessment Year: 2014-15**

Income Tax Officer 25(1)(1), Mumbai	Vs.	IDBI Staff Co-Operative Credit Society Ltd. 1 st Floor, IDBI Tower, Cuffe Parade, Colaba, Mumbai- 400005. PAN: AAAAI 0083 Q
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Mandar Vaidya
Revenue by : Shri R.R. Makwana, SR. DR

Date of Hearing : 12.06.2024
Date of Pronouncement : 19.08.2024

ORDER

PER PRASHANT MAHARISHI, ACCOUNTANT MEMBER:

1. ITA 475/Mum/2024 is filed by the Income Tax Officer 25(1)(1), Mumbai against the appellate order passed by the National Faceless Appeal Centre, Delhi ('Id. CIT(A)') for A.Y. 2014-15 dated 18.01.2024 wherein the appeal filed by the assessee against the assessment order passed u/s 143(3) of the Act dated 30.12.2016 was partly allowed.
2. The Id. Assessing Officer has aggrieved and has preferred this appeal raising following four grounds of appeal:

"1. Whether on the facts and circumstances of the case and in law, the Ld. CITA) was justified 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 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 the deduction u/s 80P(2Xd) of the I.T. Act, 1961 in respect of interest earned from cooperative banks ignoring the fact that the 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 assessee, 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 not considering 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 the assessee is concerned and it does not partake the character of its operational income. 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 the deduction u/s 80P(2)(d) of the I.T.Act, 1961 in respect of interest earned from deposits, though the Hon'ble Karnataka High Court in a detailed judgment discussing the law and various related issues in the case decided the Question of Law about the allowability of interest earned from deposits with co-operative bank u/s 80P(2)\d) gf the Act in favour of the Revenue."

5. The appellant craves leave to amend or alter or add a new ground which may be necessary."

3. The brief fact of the case shows that assessee's main source of income is a co-operative society providing financial assistance to its member. Assessee filed its return of income on 26.09.2014 declaring Rs. Nil as total income. The case was selected for limited scrutiny u/s 143(2) notice dated 01.09.2015 was issued. Notice u/s 142(1) was also issued on 07.09.2016. The Id. Assessing Officer looked at the computation of the total income wherein the assessee claimed deduction of Rs. 2,63,61,174/- u/s 80P(2)(a)(i) of the Act. The Assessing Officer questioned the deductibility of interest income received by the assessee from banks. The assessee vide letter dated 03.12.2016 submitted that interest received on fixed deposit is not taxable u/s 80P of the Act. The AO noted that assessee is a co-operative society engaged in the banking activities, therefore, the provisions of section 80P(4) is applicable in the case of the assessee and assessee is not entitled to deduction u/s 80P of the Act. Therefore, the claim of the deduction of Rs. 2,63,61,174/- was disallowed. Accordingly, total income of the assessee was computed at Rs. 2,63,61,170/- by assessment order passed u/s 143(3) of the Act dated 30.12.2016.
4. Assessee aggrieved with the order of the Id. AO preferred before the Id. CIT(A). Before Id. CIT(A), it was contended that assessee is a co-operative society carrying business of credit society for its members and is not a co-operative bank and, therefore, the provisions of section 80P(4) are not applicable to the assessee. Accordingly, assessee claimed that interest on deposit received by the assessee qualifies for deduction u/s 80P(2)(a)(i) of the Act. The Id. CIT(A) considering the decision of Hon'ble Supreme Court in 431 ITR 1 held that income arising in the form of interest from investment by the assessee with other co-operative banks would be eligible for deduction u/s 80P(2)(d) of the Act. He further held that the interest

received by the assessee from Scheduled Bank would not be eligible for deduction. He directed the jurisdictional Assessing Officer to compute the deduction accordingly. Against this appellate order, the Id. AO is in appeal.

5. We have heard the rival contentions and perused the order of the Id. Lower Authorities. The controversy involved in this appeal that whether the assessee being a credit co-operative society transacting the business with its members has placed certain deposits with other co-operative societies which are cooperative banks. The AO held that assessee is a co-operative bank as it carries on all the banking activities except the issue of cheque books. Therefore, he held that by virtue of provisions of section 80P(4) of the Act, the assessee is not entitled to deduction u/s 80P(2)(a)(i) on the interest received. We find that the Id. CIT(A) has categorically held that assessee is not a co-operative bank but is a credit co-operative society, therefore, provisions of section 80P(4) does not apply to the assessee. He, therefore, held that if the assessee is receiving any interest and dividend income on its investment with any other co-operative societies including co-operative banks, the assessee would be entitled to deduction of whole of such income u/s 80P(2)(d) of the Act. Looking to the provisions of section 80P, section 2(19) of the Act, we do not find any infirmity in the order of the Id. CIT(A). Accordingly, all the grounds of the appeal of Id. AO are dismissed. Accordingly, the appeal of the Assessing Officer is dismissed.

6. Order pronounced in the open court on 19.08.2024.

**Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER**

Mumbai, Dated: 19.08.2024
Biswajit, Sr. P.S.

Copy to:

1. The Appellant:
2. The Respondent:
3. The CIT,
4. The DR

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By Order

Assistant

Registrar

ITAT, Mumbai Benches,

Mumbai