

IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "A", MUMBAI  
**BEFORE SHRI NARENDER KUMAR CHOUDHARY, JUDICIAL MEMBER AND  
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER**

**ITA No. 2593/Mum/2024 (A.Y.2017-18)**

**Abhinav Nagar Co. Op. Hsg. Society Ltd.,**

Abhinav Nagar, Road No. 2,  
Borivali (E), Near National Park  
Maharashtra – 400 066  
PAN: AAAAAA0320Q

..... Appellant

Vs.

**ITO,**

Kautilya Bldg.,  
BKC, Bandra  
Maharashtra - 400 050

..... Respondent

Appellant by	:	Shri Hiten H. Dedhia, Ld. AR
Respondent by	:	Shri Manoj Kumar Sinha, Ld. DR
Date of hearing	:	25/07/2024
Date of pronouncement	:	19/08/2024

**ORDER**

**PER GAGAN GOYAL, A.M.:**

This appeal by assessee is directed against the order of National Faceless Appeal Centre (for short "NFAC") Delhi dated 16.05.2024 passed u/s. 250 of the Income Tax Act, 1961 (in short 'the Act') for A.Y. 2017-18. The assessee has raised the following grounds of appeal:-

*Ground: 1: 1.1 CIT (A) erred in disallowing deduction u/s. 80P of the Act of Rs 54, 98,103/-*

*The appellant earned interest on FDR From Co-Op Bank of Rs 54, 48,103/- and Claimed deduction u/s. 80P of the Act as under:-*

*80P (2) (d) Rs. 54, 48,103/-*

*80P (2) (c) (ii) Rs. 50,000/-*

*Total Deduction Claimed u/s 80P Rs. 54, 98,103*

*Less: Deduction allowed by CIT (A) NIL*

*CIT (A) disallowed u/s 80P Rs. 54, 98,103/-*

*1.2 CIT (A) erred in holding that Co-Op Bank are not Co Op society and hold that interest Income Earned from Co op Banks do not qualify for deduction u/s 80P(2)(d) of the Act of Rs 54,98,103/-*

*1.3 CIT (A) erred in holding that adhoc deduction u/s 80P (2) (c) of the Act of Rs 50,000/- is also not allowable.*

*The Appellant craves leave to add or alter Grounds of Appeal*

2. The brief facts of the case are that the assessee is a housing cooperative society filed its return of income on 29.10.2017 declaring total income at Rs. 2,27,760/-. The case of the assessee was selected for scrutiny under CASS and due notices were issued and served upon the assessee. In its return of income, assessee claimed deduction u/s. 80P of the Act amounting to Rs. 54, 26,515/-. The return of the income was assessed at Rs. 56, 54,278/-. The assessee being aggrieved with this order preferred an appeal before the Ld. CIT (A), who in turn confirmed the order of the AO. The assessee being further aggrieved preferred the present appeal before us.

3. We have gone through the order of the AO, order of the Ld. CIT (A) and submissions of the assessee alongwith grounds taken before us. It is observed on perusal of the computation of taxable income, the assessee has shown the gross total income at Rs. 57,25,866/-, wherein the assessee have claimed to have received income from house property at Rs. 1,75,254/- and under the head Income from other sources, interest of Rs. 54,48,103/- and other income at Rs. 1,02,509/- (totalling to Rs. 55,50,612/-). The assessee has claimed deduction u/s. 80P (ii) (d) of the Act at Rs. 54, 98,103/- on the ground that it has been received interest from Co-operative Banks. After claiming deduction under Chapter VI-A, the total income offered for taxation is at Rs. 2,27,763/- rounded off to Rs.2,27,760/-. However, perusal of the return of income revealed that the assessee has shown the gross total income at Rs. 56,54,278/-, wherein the assessee have claimed to have received income from house property at Rs. 1,75,254/- and under the head Income from other sources, interest of Rs. 53,76,515/- and other income at Rs. 1,02,509/- (totalling to Rs. 54,79,024/-). The assessee has claimed deduction u/s.80P (ii) (d) of the Act at Rs. 54, 26,515/- on the ground that it has been received interest from Co-operative Banks. After claiming deduction under Chapter VI-A, the total income offered for taxation is at Rs. 2,27,763/- rounded off to Rs. 2,27,760/-.

4. The issue under consideration has been dealt with so many times in numerous appeals by this Tribunal and other coordinate benches also. It is observed that assessee filed its return of income well within the time. We observed that AO and Ld. CIT(A) has relied on the decision of Totagar Cooperative Sales Society Ltd. vs. ITO, (2010) 322 ITR 283 (SC). Wherein the Hon'ble Apex

Court had dealt with section 80P (2) (a) (i) of the Act and not in the context of claim u/s. 80P (2) (d) of the Act. Time and again it's a consistent view of ITAT that cooperative bank is also a type of cooperative society under the Cooperative Societies Act, 1912 or under any other law for the time being in force in any state for the registration of cooperative societies. Secondly, the decision of Hon'ble Apex Court in the case of Totagar was rendered with reference to business income vs. Income from other sources for the purposes of claiming deduction u/s. 80P (2)(a) (i) vis-a-vis section 80P (2) (d) of the Act. Now we are reproducing the findings of the AO as under:

*"4.16 to summarise, the interest income earned by the Co-operative Societies on the interest income earned on the deposits placed with the Co-operative banks is not eligible for the deduction u/s. 80P (2) (d) of the Act in view of the following facts;*

- 1. Section 80P (2) (d) of the Act does not contain the word "Bank". Its scope is limited to only the "Co-operative societies". Further, the exemption and the deduction clauses of the Act cannot be interpreted liberally.*
- 2. The clear definition of the Co-operative societies u/s. 2(19) of the Income Tax Act 1961 does not include the word "Bank". Only exception is provided in respect of a regional rural bank to which provisions of the Regional Rural Bank Act, 1976 apply. The urban Co-operative Banks such as Saraswat Co-operative bank is neither "Co-operative society" nor a "Regional Rural Bank"*
- 3. The legislative intent is to distinguish the Co-operative banks from the Co-operative societies for the purpose of benefits u/s. 80P of the IT Act.*
- 4. The urban Co-operative Banks such as Saraswat Co-operative bank does not operate on the principle of mutuality with respect to the assessee.*

*4.17 In view of the above, it is clear that a co-operative bank is a urban commercial bank and does not fall under the purview of a "Co-operative Society" referred in Section 80P(2)(d) of the Income tax Act, 1961. In the present case, the assessee has earned interest income from such co-operative bank of Rs. 54, 26,515/-. The same has been*

*claimed as deduction u/s. 80P (2) (d) of the Act. Accordingly, on the basis of the above discussion, the deduction u/s. 80P (2)(d) of the Act, of Rs. 54,26,515/- claimed by the assessee on account of interest received from co-operative bank is not allowed and assessed accordingly.*

*5 Further, the assessee is not eligible for any deduction u/s. 80P (2) (c) (ii) of the Act on the taxable income as the same has not been derived from the activity for which the Co-operative Society has been constituted.”*

5. The issue involved under consideration is purely a legal issue and no substantial question of fact is involved into it. Further it is also observed that the objections raised by the Revenue on the case are not acceptable and tenable in purview of judgments of various authorities wherein it has been held that interest received from the Co-op. banks by the Coop. Credit Societies partakes the character of the "interest received from a Credit Co-op. Society" and the Courts have allowed the deduction of 80P (2) (d) of the Act. Similar view has also been taken by the Hon'ble ITAT Mumbai 'SMC' Bench in the case of Kaliandas Udyog Bhavan Premises Co-Op. Society Ltd. Vs. Income Tax Officer- 21(2)(1), Mumbai (2018) 94 taxmann.com 15 (Mumbai-Trib.). The decision of Hon'ble Supreme Court in the case of Totgar's Co-op, Sales Society Ltd. Vs. ITO (210) 322 ITR 283 (SC) relied/quoted by the Revenue is having distinguishable facts, thus, it has been wrongly been relied upon. The adjudication by the Hon'ble Apex Court in the aforesaid case was in the context of section 80P (2) (a) (i) of the Act and not on the entitlement of a co-operative societies towards deduction u/s. 80(P) (2) (d) of the Act. Further in the judgment of State Bank of India vs. CIT (2016) 309 ITR 578 (Guj.), it has been held that the interest income earned by co- operative society on its investment with co-op., banks would be eligible for claim of deduction u/s. 80P (2) (d) of the Act. In a recent judgment in the case of Rena

Sahakari Sakhar Karkhana Ltd. vs. Pr. Commissioner of Income Tax-2, Aurangabad being ITA No. the Hon'ble ITAT Pune vide its order pronounced on 07.01.2022 has decided the identical issue in the favour of the assessee and against the Department. In that case, the Ld. PCIT-2, Aurangabad vide order dated 27.03.2018 u/s. 263 of the Act set aside the order of AO dated 07.03.2016 wherein the AO had allowed the interest income amounting to Rs. 75,38,534/- received from FDs with Co-operative Banks which was claimed by the assessee as deduction u/s. 80P(2)(d) of the Act. The Hon'ble Tribunal relying on the judgment of Hon'ble High Court of Gujarat in the case of State Bank of India Vs. CIT (2016) 389 ITR 578 (Guj.) wherein the Hon'ble High Court observed that the interest income earned by a co- operative society on its investment held with a co-operative bank would be eligible for claim of deduction u/s. 80P (2) (d) of the Act.

6. In conclusion, we hold that the judgment of the Hon'ble Supreme Court in the case of Totgar's Cooperative Sale Society Ltd. vs. ITO (2010) 322 ITR 283 (SC), rendered in the context of Section 80P(2)(a)(i) of the Act (wherein expression ""profits and gains of business"" has been used), is distinguishable on facts. The aforesaid judgment is not applicable to the facts of the present case as deduction has been claimed under Section 80P (2) (d) of the Act (wherein expression ""any income"" has been used). Impact of insertion of Section 80P (4) of the Act is that a co-operative bank would no more be entitled for claim of deduction under Sec. 80P of the Act, however, the interest income derived by a co-operative society from a co-operative bank would continue to be eligible for deduction under Sec.80P(2)(d) of the Act irrespective of the fact that such interest income is in the nature of ""profits and gains of business"" or ""income from other sources""

as Section 80P(2)(d) of the Act uses the expression “any income” and not “profits & gains of business”.

7. Accordingly, the Appellant is entitled to claim deduction under Section 80P (2)(d) of the Act in respect of interest received from co-operative banks amounting to Rs. 54,26,515/- derived from a co-operative bank. In view of above orders of authorities below are set aside and directed to allow the claim u/s. 80P of the Act to the assessee on interest earned on deposits with cooperative banks.

8. In view of the above judicial pronouncements, similar with the facts and law applicable to the assessee, we hold that assessee is entitled for deduction u/s. 80P(2)(d) of the Act amounting to Rs. 54,26,515/-. **In the result, ground no. 1.2 raised by the assessee is allowed.**

9. As far as ground no. 1.3 is concerned, we deem it fit to reproduce the provisions of section 80P (2) (c) (ii) of the Act as under:-

*“(c) in the case of a co-operative society engaged in activities other than those specified in clause (a) or clause (b) (either independently of, or in addition to, all or any of the activities so specified), so much of its profits and gains attributable to such activities as does not exceed,—*

*(i) where such co-operative society is a consumers' co-operative society, one hundred thousand rupees; and*

*(ii) In any other case, fifty thousand rupees.*

*Explanation.—In this clause, "consumers' co-operative society" means a society for the benefit of the consumers;]*”

10. In view of the above provisions of the Act, it is clearly visible that deduction u/s. 80P (2) (c) (ii) of the Act is in the form of standard deduction applicable to all

the societies other than falling in section 80P (2) (a) & (b) of the Act. There is no bar in the Act which prohibits the assessee by claiming this standard deduction provided in the Act. We are agreed with the stand of the assessee and allow the ground no. 1.3 also. In the result, appeal of the assessee is allowed and the AO is directed to recompute the income of the assessee considering our directions (supra).

**11. In the net result, the appeal filed by the assessee is fully allowed.**

Order pronounced in the open court on 19<sup>th</sup> day of August, 2024.

Sd/-

(NARENDER KUMAR CHOUDHRY)  
JUDICIAL MEMBER

Mumbai, दिनांक/Dated: 19/08/2024

*Dhananjay, Sr. PS*

**Copy of the Order forwarded to:**

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
5. गार्ड फाइल/Guard file.

Sd/-

(GAGAN GOYAL)  
ACCOUNTANT MEMBER

BY ORDER,

//True Copy//

(Asstt. Registrar)  
ITAT, Mumbai