

| आयकर अपीलीय अधिकरण न्यायपीठ, मुंबई |
IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH, MUMBAI

BEFORE SHRI NARENDRA KUMAR BILLAIYA, HON'BLE ACCOUNTANT MEMBER
&
SHRI SUNIL KUMAR SINGH, HON'BLE JUDICIAL MEMBER

I.T.A. No. 696/Mum/2024
Assessment Year: 2013-14

CIDCO Employees' Co-op. Credit Society Ltd. Ground Floor, CIDCO Bhavan CBD-Belapur Navi Mumbai - 400614 [PAN: AAAAC2203N]	Vs	Income Tax Officer, 28(1)(3), Mumbai
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)

Assessee by :	Shri Bhupendra Shah, A/R
Revenue by :	Shri R.R. Makwana, Sr. D/R

सुनवाई की तारीख/Date of Hearing : 27/08/2024
घोषणा की तारीख/Date of Pronouncement : 29/08/2024

आदेश/ORDER

PER NARENDRA KUMAR BILLAIYA, AM :

This appeal by the assessee is preferred against the order dated 13/02/2024 by National Faceless Appeal Centre, Delhi [in short 'Id. CIT(A)], pertaining to AY 2013-14.

2. The sum and substances of the grievance of the assessee is that, the Id. CIT(A) erred in confirming the order of the AO disallowing the whole amount of profit and gains of Rs.37,52,545/- claimed to be exempt u/s 80P of the Act.

3. At the very outset, the Id. Counsel for the assessee supplied copies of the orders of the Tribunal in assessee's own case for AY 2012-13 to AY 2018-19 and strongly contended that the impugned issues have been decided by the Tribunal in favour of the assessee and against the revenue.

Though the Id. D/R strongly relied upon the orders of the lower authorities but could not bring any distinguishing decision in favour of the revenue.

4. We have carefully considered the orders of the authorities below and have also gone through the orders of the Co-ordinate Bench. We find force in the contention of the Id. Counsel for the assessee. The impugned issues have been decided by the Co-ordinate Bench in earlier years in favour of the assessee and against the revenue.

5. The assessee is a co-operative credit society registered under Maharashtra Co-operative Society Act, 1960, and is engaged in providing credit facilities to those CIDCO employees who are members of credit society. During the year the assessee has shown income from business with gross total income of Rs. 37,52,545/- and claimed deduction u/s 80P of the Act. The said claim of deduction u/s 80P of the Act was denied by the AO who completed the assessment by assessing the income of the assessee at Rs.37,52,545/-.

5.1. The assessee agitated the matter before the Id. CIT(A) but without any success.

6. We find that the Co-ordinate bench in assessee's own case in *ITA Nos. 697, 698 & 699/Mum/2024 vide order dated 07/08/2024*, has considered a similar grievance on similar set of facts and held as under:-

"10. In Apex Co-operative Bank of Urban Bank of Maharashtra and Goa Ltd., Maharashtra State Co-Operative Bank Ltd. (2003)11SC 66, Hon"ble Supreme Court on considering [Section 56](#) of the BR Act, 1949 along with [Section 22](#) thereof, observed that the Reserve Bank of India has the right to issue licences to companies to carry out banking business and no company can carry on a banking business unless it holds a licence issued by the Reserve Bank of India. After the amendment to [Section 22](#) of the said Act, certain types of co-operative societies, as were brought within the purview of the [BR Act, 1949](#), could be issued a licence by the Reserve Bank of India. Under [Section 22](#), the term "co-operative society" would include all

types of co-operative societies. Hon'ble Supreme Court observed that in other words, no co-operative society can carry on banking business unless it falls within the permitted categories set out in [Section 22](#). The term "co-operative bank" has been defined under [Section 5\(cci\)](#) as a state co-operative bank, a central co-operative bank and a primary co-operative bank. Thus, the term "co-operative bank" does not include all co-operative societies.

It was further observed by Hon'ble Supreme Court that when a term is specifically defined in a statute, then, for purposes of that statute, that term cannot bear a meaning assigned to it in another statute. One cannot ignore the specific definition given in the [BR Act, 1949](#) and apply some other definition set out in some other statute. Therefore, a co-operative bank must have the meaning assigned to it in [Section 5\(cci\)](#) of BR Act, 1949. Reserve Bank of India cannot go by any other meaning given to the term "co-operative bank" for purposes of licensing under [BR Act, 1949](#). Reserve Bank of India has to go by the meaning given to this term in the said Act only. Therefore, it was concluded that the Reserve Bank of India, by virtue of its power under [Section 22](#) cannot grant a licence to any co-operative society unless it is a state co-operative bank or a central co-operative bank or a primary co-operative bank. For that it would be necessary that a declaration under the [NABARD Act, 1981](#) be first obtained....."

11. In *Mavilayi Service Co-operative Bank Limited V Commissioner of Income Tax, Calicut*, (2021) 7SCC 90, it has been held by the Apex Court that [Section 80P](#) of the Act is a beneficial provision which was enacted in order to encourage and promote the growth of the co-operative sector generally in the economic life of the country and therefore, has to be read liberally in favour of the assessee. 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 sub-section (2) of Section 80P must be given by way of deduction vide *Citizen Co-operative Society Limited V Commissioner of Income Tax*, (2017) 9SCC 364. This is because sub-section (4) of Section 80P is in the nature of a proviso to the main provision contained in sub-sections (1) and (2) of Section 80P. The proviso excludes co-operative banks, which are co-operative societies which must possess a licence from the Reserve Bank of India to do banking business. In other words, if an entity does not require a licence to do banking business within the definition of banking under [Section 5\(b\)](#) of the BR Act, 1949, then it would not fall within the scope of sub-section (4) of Section 80P.

12. Hon'ble Supreme Court in *Kerala State Co-operative Agricultural and Rural Development Bank Ltd. (KSCARDB) V The Assessing Officer Trivendrum and Ors*, in Civil Appeal no. 10069 of 2016, vide judgment dated 14.09.2023, after referring relevant statutory provisions and judicial precedents, including what we have referred hereinabove, has held as under:

"14.4 In paragraph 42 of *Mavilayi Service Co-operative Bank*, this Court observed that the object and purpose of sub-section (4) of Section 80P is to exclude only co-operative banks that function on par with other commercial banks i.e. which lend money to members of the public. That on a reading of [Section 3](#) read with [Section 56](#) of the BR Act, 1949, the primary co-operative bank cannot be a primary agricultural credit society. As such co-operative bank must be engaged in the business of banking as defined by [Section 5\(b\)](#) of the BR Act, 1949, which means accepting, for the purpose of lending or investment, of deposits of money from the public. Also under [Section 22\(1\)\(b\)](#) of the BR Act, 1949, no co-operative society can carry on banking business in India, unless it is a co-operative bank and holds a licence issued in that behalf by Reserve Bank of India. It was pointed out that as opposed to the above, a

primary agricultural credit society is a co-operative society, the primary object of which is to provide financial accommodation to its members for agricultural purposes or for purposes connected with agricultural activities.

14.5. It was further observed in the said case that some primary agricultural credit societies had sought for banking licence from Reserve Bank of India but the same was turned down by observing that such a society was not carrying on the business of banking and that it did not come under the purview of Reserve Bank of India requiring a licence for its business.

14.6 Thereafter in paragraph 48 of the judgment, it was observed that a deduction that is given without any reference to any restriction or limitation cannot be restricted or limited by implication. That sub-section (4) of Section 80P which is in the nature of a proviso specifically excludes co-operative banks which are co-operative societies engaged in banking business i.e. engaged in lending money to members of the public, which have a licence in this behalf from Reserve Bank of India."

15. It is on the aforesaid touchstone that these appeals must now be further considered from the point of view of the applicable provisions of law. 15.1 Section 80P speaks about deduction in respect of income of co-operative societies from the gross total income referred to in sub-section(2) of the said Section. From the said income, there shall be deducted, in accordance with the provisions of Section 80P, sums specified in sub-section (2), in computing the total income of the assessee for the purpose of payment of income tax. Sub-section (2) of Section 80P enumerates various kinds of co-operative societies. Sub-section (2)(a)(i) states that if a co-operative society is engaged in carrying on the business of banking or providing credit facilities to its members, the whole of the amount of profits and gains of business attributable to any one or more of such activities shall be deducted. The sub-section makes a clear distinction between business of banking on the one hand and providing credit facilities to its members by co-operative society on the other. Thus, the definition of banking under [Section 5\(b\)](#) of the BR Act must be borne in mind as opposed to providing credit facilities to its members. 15.2 Section 80P was inserted to the Act with effect from 01.04.1968, however, sub-section (4) was reinserted with effect from 01.04.2007, in the present form. Earlier sub-section (4) was omitted with effect from 01.04.1970. Sub-section (4) of Section 80P in the present form is in the nature of an exception which states that the provisions of Section 80P shall 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. The expressions co-operative bank and primary agricultural credit society as well as primary co-operative agricultural and rural development bank are defined in the Explanation as co-operative bank and primary agricultural credit society having the meanings respectively assigned to them in [Part V of the BR Act, 1949](#)....."

13. As regards the judgement of Hon'ble Supreme Court in *Totgar's Co-operative Sale Society Ltd.*, [2010]322 ITR 283SC, Hon'ble Andhra Pradesh and Telangana High Court in case of *The Vavveru co-operative rural bank V The Chief Commissioner of Income Tax* (2017) 396 ITR 71(AP), has discussed the decision of the Hon'ble Apex Court in *Totgars (Supra)* and distinguished the facts *vide para 34* of its judgement as under:

"34. The case before the Supreme Court in *Totgars* was in respect of a Co-operative Credit Society, which was also marketing the agricultural produce of its members. As seen from the facts disclosed in the decision of the Karnataka High Court in *Totgars*, from out of which the decision of the Supreme Court arose, the assessee was carrying on the business of marketing agricultural produce of the members of the Society. It is also found from Paragraph-3 of the decision of the Karnataka High Court in *Totgars* that the business activity other than marketing of the agricultural produce actually resulted in net loss to the Society. Therefore, it appears that the assessee in *Totgars* was carrying on some of the activities listed in Clause (a) along with other activities. This is perhaps the reason that the assessee did not pay to its members the proceeds of the sale of their produce, but invested the same in banks. As a consequence, the investments were shown as liabilities, as they represented the money belonging to the members. The income derived from the investments made by retaining the

monies belonging to the members cannot certainly be termed as profits and gains of business. This is why Totgars struck a different note."

14. This apart, Hon'ble Karnataka High Court in Principal Commissioner of Income Tax and another V Totgars Co-operative Sale Society, [2017] 392 ITR 74 (Karn.), has, after referring Hon'ble Apex Court Judgement in Totgar (Supra) held in para 7,8,9,10 as under:

"7. However, the contention being taken by the learned counsel is untenable. For the issue that was before the Income-tax Appellate Tribunal, was a limited one, namely whether for the purpose of [section 80P\(2\)\(d\)](#) of the Act, a co-operative bank should be considered as a co-operative society or not? For, if a co-operative bank is considered to be a co-operative society, then any interest earned by society from a co-operative bank would necessarily be deductible under [section 80P\(1\)](#) of the Act.

8. The issue whether a co-operative bank is considered to be a co-operative society is no longer res integra. For the said issue has been decided by the Income-tax Appellate Tribunal itself in different cases. Moreover the word "co-operative society"

are the words of a large extent, and denotes a genus, whereas the word "co-operative bank" is a word of limited extent, which merely demarcates and identifies a particular species of the genus co-operative societies. Co-operative society can be of different nature, and can be involved in different activities; the co-operative bank is merely a variety of the co-operative societies. Thus the co-operative bank which is a species of the genus would necessarily be covered by the word "co-operative society".

9. Furthermore, even according to [section 56\(i\) \(ccv\)](#) of the Banking Regulation Act, 1949, defines a primary co-operative bank as the meaning of co-operative society. Therefore, a co-operative bank would be included in the words "co-operative society".

10. Admittedly, the interest which the assessee-respondent had earned was from a co-operative bank. Therefore, according to [section 80P\(2\)\(d\)](#) of the Income-tax Act, the said amount of interest earned from a co-operative bank would be deductible from the gross income of the co-operative society in order to assess its total income. Therefore, the Assessing Officer was not justified in denying the said deduction to the assessee-respondent.

The learned counsel has relied on the case of [Totgar's Co-operative Sale Society Ltd. v. ITO](#) [2010] 322 ITR 283 (SC). However, the said case dealt with the interpretation, and the deduction, which would be applicable under [section 80P\(2\)\(a\)](#)

(i) of the [Income-tax Act](#). For, in the present case the interpretation that is required is of [section 80P\(2\)\(d\)](#) of the Income-tax Act and not [section 80P\(2\)\(a\)\(i\)](#) of the Income-tax Act. Therefore, [the said judgment](#) is inapplicable to the present case. Thus, neither of the two substantial questions of law canvassed by the learned counsel for the Revenue even arise in the present case."

15. The coordinate Mumbai bench of the Tribunal in the University of Mumbai employees co-op. credit society [Ltd.](#) (Supra) has held in Para 7 as under:

"..... We find that issue involved in present appeal filed by the assessee is squarely covered in favour of the assessee by the decision of Hon'ble Bombay High Court, in the case of M/s. Quepem Urban Credit Society Ltd. V. ACIT (Supra) [2015 377 ITR, 272], where under identical set of facts, the Hon'ble High Court held that interest and dividend earned from investments with other co-operative banks/societies is entitled for deduction u/s. 80P(2)(a)(i) of the [IT Act](#). We further note that the ITAT Mumbai „D” Bench, in the case of [Mahapalika Kshetra Madhyamik Shikshak Sahakari Patsansstha Maryadit V. ITO\(Supra\)](#) (2019) [112taxman.com 165], had considered an identical issue and held that where assessee, a co-operative credit society had not undertaken any of banking business and was providing credit facilities to its members only and not to general public, it would not hit by provisions of [section 80P\(4\)](#) of the IT Act 1961 and thus, entitled for deduction [u/s. 80P\(2\)\(a\)\(i\)](#) of the IT Act 1961 and thus entitled for deduction [u/s. 80P\(2\)\(a\)\(i\)](#) of the IT Act 1961....."

16. As per [section 56\(cci\)](#) of the BR Act, the term "co-operative bank" means "state co-operative bank", a "Central co-operative bank" and a "primary co-operative

bank". Revenue has neither treated the appellant as „State Co-Operative Bank" nor a "Central Co-operative Bank" but a "Primary Co-operative Bank" so as to bring the appellant within the ambit of [Section 80P\(4\)](#) of the Act. [Section 56\(ccv\)](#) of BR Act, defines "primary co- operative bank" to mean a "co-operative society" which cumulatively satisfies the following three conditions.

- 1) Its principal business of primary object should be banking business of banking;
- 2) Its paid up share capital and reserves should not be less than Rupees One Lakh.
- 3) Its bye-laws do not permit admission of any other co- operative society as its member.

17. In the instant case, though the aforesaid second condition exists in assessee"s case as its paid up share capital is in excess of Rupees One Lakh. However, we note that the appellant CIDCO Employee co-operative credit society was registered under Maharashtra state co-operative societies Act, 1960 on 11.10.1999, vide copy of registration certificate placed at page no. 86 of assessee"s paper book. According to appellant"s bye laws placed at pages 87-90 of assessee"s paper book, the main objective of the appellant society is to provide credit facility among its members and the membership is restricted to its employees only. The appellant assessee society"s members contribute their funds to society and same funds are given as loans on interest amongst its members only. Assessee"s principal business is not banking business as it does not transact banking business with general public in India. The first and third conditions, thus do not exist in the functioning of assessee society. It is accordingly held that in absence of aforesaid two conditions, the appellant assessee does not fall under the category either of a co-operative bank or a "primary co-operative bank", hence not hit by sub [section 4](#) of [section 80P](#) of the Act.

18. We further notice that apart from the business income, certain small portion of income of the society was earned from the interest and dividend. It appears from the profit & loss A/C of paper book at page 37 that the appellant"s co-operative credit society received interest income on investments at Rs. 19,31,375/- and dividend income on bank shares at Rs. 1,32,500/-. The investee institutions have not been questioned by the authorities below in respect of their status as co-operative societies. The total income from profit & gains of Rs. 56,64,971/- during the term under consideration is not disputed by the revenue. The income from interest on investment & dividend is eligible for deduction u/s. 80P(2)(d) and the remaining amount received from the interest from members on deposit is attributable to assessee society"s business income and is deductible [u/s. 80P\(2\)\(a\)\(i\)](#) of the Act. The Assessing Officer was thus not justified in denying the benefit of [Section 80P](#) of the Act to the assessee society. The aforesaid point is accordingly determined in favour of the assessee and against the revenue. The impugned order passed by learned CIT(A), thus, cannot be sustained."

7

6. On finding parity of facts, respectfully following the decision of the Co-ordinate Bench (*supra*), we direct the AO to allow the deduction u/s 80P of the Act.
7. In the result, appeal of the assessee is allowed.

Order pronounced in the Court on 29th August, 2024 at Mumbai.

Sd/-
(SUNIL KUMAR SINGH)
JUDICIAL MEMBER

Sd/-
(NARENDRA KUMAR BILLAIYA)
ACCOUNTANT MEMBER

Mumbai, Dated 29/08/2024

S.S.P.

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)-
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, मुंबई /DR,ITAT, Mumbai,
6. गार्ड फाई/ Guard file.

आदेशानुसार/ BY ORDER,
TRUE COPY

Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, Mumbai