

**IN THE INCOME-TAX APPELLATE TRIBUNAL “SMC” BENCH,  
MUMBAI**

**BEFORE SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER  
&  
SMT. RENU JAUHRI, ACCOUNTANT MEMBER**

**ITA No. 2131/MUM/2024  
(A.Y. 2021-22)**

Om Kalpavruksh Co-operative Housing Society Ltd. Society Office Om Kalpavruksha, Babhai Gaothan, Eksar Road, Borivali West, Mumbai-400092	v/s. बनाम	ITO, Kautilya Bhava, BKC, Mumbai-400050
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AAAA04209Q		
Appellant/अपीलार्थी	..	Respondent/प्रतिवादी

Appellant by :	Shri Kalpesh Turalkar
Respondent by :	Shri R. R. Makwana

Date of Hearing	30.07.2024
Date of Pronouncement	29.08.2024

**आदेश / ORDER**

**PER RENU JAUHRI [A.M.] :-**

This appeal is filed by the assessee against the order of the Learned Additional/ Joint Commissioner of Income-tax (Appeals)-Prayagraj/National Faceless Appeal Centre, Delhi [hereinafter referred to as “Addl. CIT(A)”] dated 26.02.2024 passed u/s. 250 of the Income-tax Act, 1961 [hereinafter referred to as “Act”] for Assessment Year [A.Y.] 2021-22.



2. The assessee has raised following grounds of appeal:

“1. On the facts and in the circumstances of the case and in law, the learned Assessing Officer erred in making the addition of Rs. 1,96,100/- under Income from other sources, being the interest received from Co Operative bank which is not taxable. In the hands of Co-Operative Housing Society, registered under Maharashtra State Co Operative Housing Societies Act, 1960. U/s. 80 P (2)(d) of the Income Tax Act 1961.

2. The CIT(A) has directed the assessing officer to add to the total income of Rs 20279/-. The deduction by the AO u/s 80(P)(2)(d).”

3. Brief facts of the case are that the assessee is a co-operative housing society which had filed its return declaring income of Rs. 17,460/- on 08.11.2021. The return was processed u/s 143(1) by the CPC, Bengaluru, disallowing the deduction claimed u/s 80P(2)(d) of the Act. The assessee had received following interest income during the year:

Saraswat Co-op Bank Ltd. – FD Interest	Rs. 2,11,562
Saraswat Co-op Bank Ltd. – FD Interest	Rs. 4,826
Total	Rs. 2,16,388
Punjab & Sind Bank (Union Bank)	Rs. 16,453

Out of the above, an amount of Rs. 1,96,109/- was disallowed at the time of processing.

4. Aggrieved with this order, the assessee filed an appeal before Ld. CIT(A). The same has been transferred to Ld. Addl. CIT(A) under the “e-appeals scheme 2023”. Ld. Addl. CIT(A) vide order dated 26.02.2024 dismissed the appeal of the assessee, after holding that deduction u/s 80P(2)(d) is available only on investments made with any other co-operative societies and the co-operative banks are not covered u/s 80P(2)(d) of the Act. Accordingly, relying on the decision of the **Hon’ble Karnataka High Court in the case of PCIT &**



**others v/s Totagars Co-operative Sale Society (2017) 297 CTR (Kar.)**

**158** . Ld. Addl. CIT(A) has concurred with the decision of the AO to disallow the deduction claimed and has directed the jurisdictional AO to revise the disallowance to Rs. 2,16,388/-.

5. We have heard the rival submissions. Ld. AR has cited several decisions of co-ordinate benches wherein the issue has been decided in favour of the assessee under the similar circumstances and facts. Ld. Addl. CIT(A) has relied upon the decision of the Hon'ble Karnataka High Court (supra), however, we find that there is an earlier decision to the contrary of the same high court in **PCIT v/s Totagars Co-operative Sales Society (2017) 392 ITR 74**. Thus, there are divergent views of the same high court on this issue. The facts of the assessee's case are similar to the case of **Pathare Prabhu Co-operative Housing Society v/s ITO reported as (2023) 202 ITD 464**. Relevant portion of the order is reproduced below:

*"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 s. 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 asst. yr. 2018-19 eamed 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 s. 80P of the Act under which the assessee has claimed the deduction in the present case. As per the provisions of s. 80P(1) of the Act, the income referred to in sub-s. (2) to s. 80P shall be allowed as a deduction to an assessee being a Co-operative Society. Further, s. 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-s. (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 s. 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 s. 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-s. (2) to s. 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 s. 70 of the aforesaid Act, which includes investment or deposit of funds in the District Central Co-operative 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 s. 80P(2)(d) of the Act. The AO denied the deduction under s. 80P(2)(d) of the Act on the basis that the Co-operative Bank is covered under the provisions of s. 80P(4) of the Act. We find that the Hon'ble Supreme Court in *Mavilayi Service Co-operative Bank Ltd. & Ors. vs. CIT & Anr.* (2021) 318 CTR (SC) 609; (2021) 197 DTR (SC) 361; (2021) 431 ITR 1 (SC); (2021) 279 Taxman 75 (SC); (2021) 123 taxmann.com 161 (SC) while analysing the provisions of s. 80P(4) of the Act held that s. 80P(4) is a proviso to the main provision contained in s. 80P(1) and (2) and excludes only Co-operative Banks, which are Co-operative Societies and also 11 possesses a licence from RBI to do banking business. The Hon'ble Supreme Court further held that the limited object of s. 80P(4) is to exclude Co-operative Banks that function at par with other commercial banks le.. which lend money to members of the public. Thus, we are of the considered view that s. 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 s. 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 s. 80P(2)(d) of the Act to the assessee.

12. As regards the claim of deduction under s. 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 Co-ordinate 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 s. 80P(2)(d) of the Act. In *Kaliandas Udyag Bhavan Premises Co-op Society Ltd. vs. ITO (2018) 94 taxmann.com 15 (Mumbai) (ITA No. 6547/Mum/2017, dt. 25th April, 2018)*, while dealing with the provisions of s. 80P(2)(d) vis-à-vis s. 80P(4) of the Act, the Co-ordinate Bench of the Tribunal observed as under:

7. Thus, from a perusal of the aforesaid s. 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 co-operative 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 s. 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 co-operative society. We though are in agreement with the observations of the lower authorities that with the insertion of sub-s. (4) of s. 80P, vide the Finance Act, 2006, w.e.f. 1st April, 2007, the provisions of s. 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 s. 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., s. 80P(2)(d) would be duly available. We may herein observe that the term 'co-operative society' had been defined under s. 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;"*

*We are of the considered view, that though the co-operative bank pursuant to the insertion of sub-s. (4) of s. 80P would no more be entitled for claim of deduction under s. 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 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 s. 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 asst. yr. 2018-19. As a result, grounds raised by the assessee are allowed.*

6. Respectfully following the above decision of the co-ordinate benches, we hereby direct the AO to allow the claim of deduction in respect of interest received from co-operative banks to the extent of Rs. 2,16,388 u/s 80P(2)(d) of the Act.

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

Order pronounced in the open court on 29.08.2024.

**Sd/-**

**SANDEEP SINGH KARHAIL**

**(न्यायिक सदस्य/JUDICIAL MEMBER)**

**Sd/-**

**RENU JAUHRI**

**(लेखाकार सदस्य/ACCOUNTANT MEMBER)**

Place: मुंबई/Mumbai

दिनांक /Date 29.08.2024

अनिकेत सिंह राजपूत/ स्टेनो



ITA No. 2131/Mum/2024  
A.Y. 2021-22

Om Kalpavruksh Co-operative Housing Society Ltd.

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,  
Mumbai
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आदेशानुसार/ BY ORDER,

**उप/सहायक पंजीकार (Dy./Asstt. Registrar)**  
**आयकर अपीलीय अधिकरण/ ITAT, Bench,**  
**Mumbai.**