

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

**BEFORE: SHRI PRASHANT MAHARISHI, ACCOUNTANT
MEMBER**

&

SHRI SUNIL KUMAR SINGH, JUDICIAL MEMBER

**ITA No. 2330/MUM/2024
(Assessment Year : 2018-19)**

**ITA No. 2329/MUM/2024
(Assessment Year : 2021-22)**

Blue Rose Industrial Premises Co-op Society Ltd 43, Blue Rose Industrial Premises Co-op Society Ltd, Western Express Highway, Borivali(East), Mumbai-400068.	Vs.	JAO- Income Tax Officer Ward(1)(1) Kautilya Bhawan, "G" Block Bandra Kurla Complex, Bandra (East), Mumbai-400051.
PAN/GIR No. AAAAB3779Q		
(Appellant)	..	(Respondent)

Assessee by	Shri. Ajay Singh
Revenue by	Shri. Rajneesh Yadav Sr. DR
Date of Hearing	25/07/2024
Date of Pronouncement	30/08/2024

आदेश / O R D E R

PER SUNIL KUMAR SINGH (J.M):

The facts in the two appeals are similar and issues arising are identical. The decision on facts and law for one appeal for relevant assessment year would answer the issue involved in the other year. Therefore, the two appeals are being decided by the

common order for the sake of brevity. The facts only in ITA no. 2330/MUM/2024 are being narrated as under:

ITA No. 2330/MUM/2024
(Assessment Year : 2018-19)

1. This appeal has been preferred against the impugned order dated 14.08.2023 passed in Appeal no. NFAC/2017-18/10012224 by the Ld. Commissioner of Income-tax(Appeals)/ National Faceless Appeal Centre (NFAC) [hereinafter referred to as the "CIT(A)"] u/s. 250 of the Income-tax Act, 1961 [hereinafter referred to as "Act"] for the Assessment year [A.Y.] 2018-19, wherein learned CIT(A) has dismissed assessee's appeal with the direction to AO for adjustment of proportionate cost, administrative and other expenses incurred in earning interest income.
2. The brief facts state that the appellant Blue Rose Industrial Premises Co-operative Society Limited is an industrial premises co-operative society whose main object is to manage, maintain and administer the property of the society and to raise funds for the management, maintenance and administration of activities from the members of the society. The appellant society filed its return of income for A.Y. 2018-19 on 30.10.2018 declaring income of Rs. 2,43,620/- after claiming a deduction of Rs. 37,45,701/- u/s. 80P of the Act. Subsequently, the assessee filed revised return on 31.10.2018 declaring the same income and claiming the similar deduction as stated above. The case was selected for limited scrutiny under CASS and statutory notices u/s. 143(2) and u/s. 142(1)

of the Act were issued and served upon the assessee for furnishing details of claim of deduction u/s. 80P(2)(d) of the Act. It was noticed from the submissions of the assessee that it was in the receipt of an interest of investments in co-operative banks to the tune of Rs. 38,47,108/- detailed as under:

M/s. SVC Cooperative Bank Ltd.	Rs. 23,68,455/-
M/s. Mumbai District Central Co-operative Bank Ltd	Rs.7,18,345/-
M/s. Saraswat Cooperative Bank Ltd	Rs. 7,60,308/-
Total	Rs. 38,47,108/-
Less: Interest on Savings/ Non-Cooperative Banks	Rs. 1,01,407/-
Deduction claimed u/s 80P(2)(d)	Rs. 37,45,701/-

Learned AO, after making adjustment of an interest on savings/ non co-operative bank of Rs. 1,01,407/-, disallowed the claim of deduction of Rs. 37,45,701/- claimed u/s. 80P(2)(d) of the Act and added in the income of assessee. Penalty proceedings u/s.270A where separately initiated.

3. Aggrieved by the assessment order, assessee preferred an appeal before learned CIT(A), who has dismissed assessee's appeal with the direction to AO for adjustment of proportionate cost, administrative and other expenses incurred in earning interest income only.
4. The appellant assessee has preferred this second appeal before the Tribunal on the ground that learned CIT(A) has erred in upholding the disallowance of Rs. 37,45,701/-

ignoring the fact that the appellant society is entitled to the said deduction u/s. 80P(2)(d) of the Act.

5. In response to the notice issued by the tribunal, learned DR appeared and participated in the hearing.
6. We have perused the material on record and heard learned representatives for both the parties.
7. The main point for determination under appeal is as to whether the appellant Blue Rose Industrial Premises Co-operative Society Ltd. is entitled to the deduction of Rs. 37,45,701/- u/s. 80P(2)(d) of the Act on the interest received from investment in the said co-operative bank?
8. Learned AR has submitted that this appeal was preferred before the Tribunal on 01.05.2024 against the impugned order dated 14.08.2023 by a delay of 201 days. The said delay was caused due to failure of society's manager to timely inform the society in respect of the impugned order. Prayed to condone the delay. The appellant has further submitted that the issue involved in the present appeal is squarely covered by the order dated 31.10.2023 passed in assessee's own case by the co-ordinate bench of ITAT Mumbai in ITA no. 2227/MUM/2023, for A.Y. 2020-21, Blue Rose Industrial Premises Co-operative Society Ltd. V. CIT(A)/NFAC Delhi. Appellant, thus, submits that the assessee is entitled to the benefit of section 80P(2)(d) of the Act and prayed to set aside the impugned order and allow the appeal.

9. Per contra, learned DR has opposed the assessee's prayer for the condonation of said delay of 201 days in filing the appeal and vehemently supported impugned order on merits.
10. We notice that appellant has filed an application for the condonation of delay on the ground that though the impugned order was received by the assessee on 14.08.2023 but the appeal could not be filed within limitation period, stating that the society's manager, failed to inform the managing committee/chartered accountant of the appellant society. Mr. Yogesh Kantilal Doshi, Honorary secretary of the appellant society has also filed an affidavit in support thereof. In the interest of justice and fair play, we condone the said delay of 201 days.
11. Coming on to the merits of the case, the definitions of the "co-operative society" under the Income Tax Act 1961 read as under:

"section 2(19) of the Income Tax Act 1961

" '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."

Maharashtra co-operative society act 1960 defines "co-operative bank" as under:

Maharashtra Co-operative Society Act 1960

"(10) "Co-operative Bank means a society which is doing the business of banking as defined in clause (b) of sub section (1) of section 5 of the Banking Companies Act 1949, and includes any society which in functioning are is to function as (a co-operative agricultural and rural multipurpose developers bank) under chapter XI"

12. 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. 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 has also reiterated the same.

13. 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 the co-operative 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."

14. The coordinate Mumbai bench of the Tribunal in Blue Rose Industrial Premises Co-operative Society Ltd. (Supra) has in

assessee's own case relevant to A.Y. 2020-21, held in Para 5.2, 5.3 and 5.4 as under:

"5.2 The provisions of section 80P(2)(d) of the Act reflects "Co-operative Society" but not the "Co-Operative Bank" therefore question emerge "whether income earned by way of interest or dividend from the investments made with any other Cooperative Bank is allowable as deduction under section 80P(2)(d) of the Act, or not.

5.3 The Honble Co-ordinate Benches of the Tribunal in various cases including in Belgaum Coal and Coke Consumer Co-operative Association Ltd. Vs. ITO in ITA No. 102/PAN/2018 decided on 06.04.2022, Nawbharat Darpan Co-operative Credit Society Ltd. Vs. CIT in ITA No. 5288 and 5289/Mum/2018 decided on 25.11.2021, Borivali Jan Kalyan Sahkari Patpedhi Ltd. Vs. ITO in ITA No. 5230/Mum/2019 decided on 30.03.2021 and in the case of Pathare Prabhu Co-operative Housing Society Ltd. Vs. ITO in ITA No. 1346 & 1347/(MUM) of 2023 decided on 27.07.2023 (2023) 153 taxmann.com 714 (Mum. Trib.) dealt with identical issue "as to whether the interest/dividend income earned from Co-operative Bank is allowable as deduction under section 80P(2)(d) of the Act or not" and ultimately allowed the deduction claimed as interest/dividend income earned from Co-operative Bank u/s 80P(2)(d) of the Act . For clarity and ready reference, conclusion drawn by the Hon"ble Co-ordinate Bench of the Tribunal in the case of Pathare Prabhu Co-operative Housing Society Ltd. (supra) is reproduced herein below:

"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 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 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 Cooperative 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 Cooperative 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 cooperative 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;

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 Cooperative 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 co-operative 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. CT 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.”

5.4 In view of the consistent decisions taken by the Hon“ble Coordinate Benches of the Tribunal, the income if any earned by way of interest or dividend from the investments made with any other Cooperative Bank as well, is allowable as deduction under section 80P(2)(d) of the Act. Accordingly the AO is directed to allow deduction qua interest earned from Co-operative Banks only but subject to verification.”

15. We note that ITAT Mumbai Bench in assessee’s own case in Blue Rose Co-operative Society Limited (Supra) has considered the identical issue and held that the interest earned by way of interest or dividend from investments made with any other co-operative bank is allowable as deduction u/s. 80P(2)(d) in assessee’s own case for the A.Y.2020-21. Nothing has been brought to our notice that the investee co-operative bank which is also a co-operative society is in possession of License from RBI to do banking business and did function at par with other commercial bank. The assessee is thus entitled for the benefit u/s. 80P(2)(d) of the Act. The aforesaid point is accordingly determined in favor of the assessee and against the revenue. The impugned order passed by learned CIT(A), thus cannot be sustained. Hence, the appeal is liable to be allowed.

ITA No. 2329/MUM/2024
(Assessment Year : 2021-22)

16. This appeal has been preferred against the impugned order dated 02.08.2023 passed in Appeal no. NFAC/2020-21/10223202 by the Ld. Commissioner of Income-tax(Appeals)/ National Faceless Appeal Centre (NFAC) [hereinafter referred to as the “CIT(A)”] u/s. 250 of the Income-

tax Act, 1961 [hereinafter referred to as "Act"] for the Assessment year [A.Y.] 2021-22, wherein learned CIT(A) has confirmed the addition of Rs. 27,11,654/- made vide intimation order dated 02.08.2023 passed u/s. 143(1) of the Act by learned assessing officer and dismissed assessee's appeal. The ground involved in this appeal is similar except the amount and figures. The similar ground has already been considered by us in our conclusive findings arrived at ITA no. 2330/MUM/2024, the same shall mutatis mutandis apply in this appeal.

17. In the result, the assessee's appeal ITA NO. 2330 & 2329 /MUM/2024 are allowed. The impugned orders, each dated 14.08.2023 and 02.08.2023 respectively are set aside. We direct the learned assessing officer to allow the benefit of deduction to assessee u/s. 80P(2)(d) of the Act as discussed hereinabove in both the appeals. The copy of this order be placed on the records of ITA no. 2329/MUM/2024.

Order pronounced on 30.08.2024.

Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Sd/-
(SUNIL KUMAR SINGH)
JUDICIAL MEMBER

Mumbai; Dated 30/08/2024
Anandi Nambi, *Steno*

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai