

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "D" MUMBAI**

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
SHRI SUNIL KUMAR SINGH (JUDICIAL MEMBER)**

**ITA Nos. 2885, 2884, 2883 & 2882/MUM/2024
Assessment Year: 2014-15, 2017-18, 2018-19 & 2020-21**

Mumbai Kamgar Madhyawarti
Grahak Sahakari Sanstha Maryadit,
106A, Apna Bazar, Govindji Keni
Road, Naigaum Dadar,
Mumbai-400014.

**PAN NO. AAAJM 0005 H
Appellant**

Vs. Asst. CIT Circle-20(2),
Piramal Chambers Lalbaug,
Mumbai-400012.

Respondent

Assessee by : Mr. Dinesh Kukreja a/w Punit Shah
Revenue by : Mrs. Mahita Nair, Sr. DR

Date of Hearing : 31/07/2024
Date of pronouncement : 30/08/2024

ORDER

PER OM PRAKASH KANT, AM

The captioned appeals are directed against separate orders, all dated 28.03.2024, passed by the Ld. Commissioner of Income-tax (Appeals) – National Faceless Appeal Centre, Delhi [in short ‘the Ld. CIT(A)'] for assessment year 2014-15, 2017-18, 2018-29 and 2020-21 respectively.



2. In all these appeals, common grounds are permeating from set of identical facts and circumstances, therefore, all these appeals were heard together and disposed off by way of this consolidated order for convenience and avoid repetition of facts. Accordingly, the appeal of the assessee registered at ITA No. 2885/Mum/2024 for assessment year 2014-15 is taken as a lead case. The grounds raised in appeal by the assessee are reproduced as under:

1. On the facts and circumstances of the case and in law, the Ld. Assessing Officer as well as the Ld. CIT(A) erred in denying deduction of INR 1,00,000/- claimed under Section 80P(2)(c) of the Income Tax Act, 1961.

2. On the facts and circumstances of the case and in law, the Ld. Assessing Officer as well as the Ld. CITA) erred in denying deduction of INR 1,34,34,555/- claimed under Section 80P(2)(d) of the Income Tax Act, 1961, on the interest income earned on fixed deposits in co-operative banks.

3. On the facts and circumstances of the case and in law, the Ld. Assessing Officer as well as the Ld. CIT(A) erred in denying deduction of INR 2,03,970/- claimed under Section 80P(2)(d) of the Income Tax Act, 1961, on dividend income earned from shares held in co-operative banks by the Appellant.

4. The Appellant craves leave to, add to or alter, by deletion, substitution, or otherwise, any or all of the foregoing grounds of appeal at or before the hearing, and to submit such statements, documents, and papers as may be considered necessary either at or before the appeal hearing.

3. Briefly stated fact of the case are that the assessee is consumer co-operative society under the provisions of Multi-State Co-operative Societies Act, 2002 and **engaged in wholesale trading of 'food grains' and 'grocery goods' and other 'consumer goods'**. The assessee filed return of income for the year under consideration on 20.09.2014 declaring total income at Rs.1,10,86,870/-. The



return of income filed by the assessee was selected for scrutiny and statutory notices under the Income-tax Act, 1961 (in short 'the Act') were issued and complied with. In the assessment completed u/s 143(3) of the Act, the Assessing Officer made disallowance including the disallowance u/s 80P(2)(d) of the Act amounting to Rs.1,37,38,461/-.

4. On further appeal before the Ld. CIT(A), the assessee preferred sole issue of denial of deduction u/s 80P(2)(d) of the Act in respect of 'interest on deposits' held with the Cooperative banks and 'dividend' earned from co-operative banks. In the assessment year under consideration i.e AY 2014-15, disallowance include deduction u/s 80P(2)(c) of the Act amounting to Rs.1,00,000/-. The details of deduction claimed and denied in respect of each assessment year involved before us is reproduced as follows:

<i>Assessment Year</i>	<i>80P(2)(d) Interest -</i>	<i>80P(2)(d) - Dividend</i>	<i>80P(2)(c)</i>	<i>Total 80P disallowed</i>
<i>AY 20 14- 15</i>	<i>1,34,34,555</i>	<i>2,03,970</i>	<i>1,00,000</i>	<i>1,37,38,461</i>
<i>AY 2017-18</i>	<i>1,40,83,003</i>	<i>2,05,857</i>	<i>-</i>	<i>1,42,88,860</i>
<i>AY 2018-19</i>	<i>1,52,87,554</i>	<i>2,08,529</i>	<i>-</i>	<i>1,54,96,083</i>
<i>AY 2020-21</i>	<i>1,08,86,372</i>	<i>1,79,319</i>	<i>-</i>	<i>1,10,65,691</i>

6. We have heard rival submission of the parties and perused the relevant material on record including the paper books filed by the Ld. counsel for the assessee along with request for admitting additional evidences consisting of registration certificate of investee cooperative banks as cooperative society.



6.1 As far as ground No. 1 of the appeal of the assessee in relation to deduction u/s 80P(2)(c) of the Act is concerned, we find that before the Assessing Officer, the assessee never pointed out that the total deduction claimed u/s 80P of the Act include deduction u/s 80P(2)(c) of the Act and therefore, the Assessing Officer treated the entire deduction as claimed u/s 80P(2)(d) of the Act and accordingly he disallowed the said deduction.

6.2 Before us, the Ld. counsel for the assessee for the first time pointed out that said disallowance of claim u/s 80P of the Act amounting to Rs.1,37,38,461/- include deduction of Rs.1,00,000/- claimed u/s 80P(2)(c) of the Act. In the circumstances, we are of the opinion that eligibility of deduction under section 80P(2)(c) of the Act remained verified by lower authorities, thus, the claim of deduction u/s 80P(2)(c) of the Act need verification at the end of the Assessing Officer. Accordingly, we feel it appropriate to restore this issue back to the file of the Assessing Office for deciding afresh after verification claim of the assessee as per the provisions of the Act. The ground No. 1 of the appeal of the assessee is accordingly allowed for statistical purposes.

7. The ground Nos. 2 and 3 of the appeal of the assessee relate to deduction under the provisions of section 80P(2)(d) of the Act. The first part of deduction claimed is for interest income earned on fixed deposit in co-operative banks amounting to Rs.1,34,34,555/- and



second part of deduction claimed relate to dividend income earned from shares held in co-operative banks amounting to Rs.2,03,970/- on.

7.1 The facts in brief qua the issue in dispute are that during year under consideration, the assessee received interest from following co-operative banks:

Sr. No.	Particulars	Amt.
A	Interest received	
1.	Apna Sahakari Bank, naigaon	1,27,85,322/-
2.	Mumbai District Co-op Bank	2,43,595/-
3.	Apna Sahakari Bank,	54,678/-
4.	Apna Sahakari Bank, Charkop	73,537/-
5.	Janta Sahakari Bank	55,879/-
6.	Punjab and Maharashtra Bank	1,48,453/-
7.	Abhudya Bank	74,091/-
Total		1,34,34,555/-

7.2 The Assessing Officer relying on the decision of the Hon'ble Supreme Court in the case of Totgar Co-operative Sale Society Ltd. v. ITO [2010] 188 Taxman 282 and ITAT Bangalore decision in the case of Shri Sri Basaveshwara Credit Co-operative Society Ltd. [2014] 47taxmann.com189 (Bangalore - Trib.) held that assessee received interest from banks, which were not primary agricultural credit society or a primary co-operative agricultural and rural development bank, therefore, the assessee was not entitled for deduction u/s 80P(2)(d) of the Act. The Ld. CIT(A) relying on Kalidas Udhyog Bhavan Premises Co-operative Socierty Ltd Vs ITO (2018) 94 taxmann.com 15 (Mumbai-Tribunal) held that cooperative society, which are scheduled bank , then interest from deposits



into those cooperative would be eligible for deduction u/s 80P(2)(d) of the Act. The Ld. CIT(A) further observed that the assessee did not file evidence in support that co-operative bank from whom the assessee received interest are not scheduled bank. The relevant finding of the Ld. CIT(A) is reproduced as under:

“5.4 The appellant has relied on many case laws, the recent one being "Kaliandas Udyog Bhavan Premises Co-operative Society Ltd Vs. I.T.O (2018) 94 taxmann.com 15 (Mumbai - Tribunal). The appellant contented that from the above judgement it is understood that" what is relevant for claim of deduction under section 80P(2)(d) is that the interest income should have been derived from the investments made by assessee co-operative society with any other co-operative society. 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. section 80P(2)(d) would be duly available. The term Co-operative society had been defined u/s 2(19) of the I.T.Act. From the aforesaid provisions of section 2(19) of the Act, it is quite clear that "co-operative society" means a co-operative society registered under the Co-operative Societies Act, 1912 or under any other law for the time being in force in any State for the registration of co-operative societies. Going by the contention of the Appellant for a while, then in that case, In the present context, the relevant provisions of The Maharashtra Cooperative Societies Act, 1960 are relevant. In this context it is important to note that the appellant has not submitted that the relevant co-operative banks are registered under the Maharashtra Cooperative Societies Act, 1960 and its status is that of "co-operative Society". The Appellant has parked its money in the cooperative banks. If these co-operative banks are to be treated as co-operative societies for claiming deduction u/s 80P(2)(d), the appellant must submit the relevant registration proof. This is not submitted. Categorisation of co-operative banks as cooperative societies can be considered as per the above case law relied by the appellant only when it is registered. Mere categorisation is not sufficient. On perusal of interest certificates submitted by the appellant (pertaining to A.Y. 2018-19 for that relevant appeal under consideration) it is noticed that the Apna Sahakari Bank Ltd, Jankalyan Sahakari Bank Ltd are stated as scheduled banks in the interest certificate. As a result the disallowance of Interest Income from co-operative bank stands correct.

5.5 In conclusion, the stand taken by the Assessing Officer is hereby confirmed. Reliance is placed on (i) The Hon'ble Supreme Court in Totgars Co-operative Sales Society Ltd. v. ITO [2010] 322 ITR 283/188 Taxman 282. (ii) The Hon'ble jurisdictional High Court of Gujarat in the case of State Bank of India Vs CIT 389 ITR 578, (iii) The Hon'ble High Court of



Karnataka in Principal Commissioner of Income-Tax, Hubbali vs. Totagars Co-operative Sale Society(2017) and (iv) The Hon ble High Court of Gujarat in the case of Katlary Kariyana Merchant SahkariSarafıMandali Ltd Vs Assistant Commissioner of Income Tax [2022] 140.taxmann.com 602 (Gujarat) and hence interest earned from scheduled or cooperative bank is not allowed under 80P(2)(d) of the Act.”

7.3 Before us, the Ld. counsel for the assessee filed proof of registration of the investee co-operative banks as co-operative societies along with an application under Rule 29 of the ITAT Rules, 1963 and submitted that matter may be restored to the file of the lower authorities for examining the registration of the investee co-operative banks of the co-operative societies. Alternatively, the Ld. counsel for the assessee submitted that under the provisions of Maharashtra Co-operative Society Act all the Co-operative banks are registered as co-operative society and therefore relying on section 2(10) of the Act of Maharashtra Co-operative Society Act, 1960, therefore, the Co-operative Bank registered in Maharashtra are primarily co-operative society and therefore, even without considering the additional evidences, the assessee is entitled for deduction u/s 80P(2)(d) of the Act. In this regard, the Ld. counsel for the assessee relied on the decision of the Co-ordinate Bench of the Tribunal in the case of Ashok Tower “D” Co Op Housing Society Ltd. [2024] 163taxmann.com 598 (Mumbai - Trib.). The Ld. counsel for the assessee relied on the decision of the Division Bench of the Principal Commissioner of Income-tax, Hubballi v. Totagars Co-operative Sale Society [2017] 83 taxmann.com 140 (Karnataka)/[2017] 395 ITR 611. The Ld. counsel also relied on the



CIT v. Vegetable Products Ltd. [1973] 88 ITR 193 (SC), State Bank of India v. CIT, Katlari Karyana Merchant Sahkari Sarafi Mandali Ltd. v. ACIT, PCIT v. Peroorkada Service Co-operative Bank Ltd. [2022] 442 ITR 141 (Kerala).

7.5 The Ld. Departmental Representative (DR) on the other hand relied on the decision of the Co-ordinate Bench in the case of ITO v. Ms/ Brahmavara Vyavasaya Seva ITA Nos. 656, 667, 668/Bang/2024.

8. We have heard rival submission of the parties and perused the relevant material on record. The section 80P(2)(d) of the Act prescribe out of gross total income of co-operative society, deduction in respect of the whole of income by way of interest or dividend derived by the co-operative society from its investment with any other co-operative society. The Hon'ble Supreme Court in the case of Totgars, Co-operative Sale Society Ltd. (supra) however held that for eligibility of deduction u/s 80P(2)(d) of the Act, the whole of the income referred to the business income and not any interest income which is earned from surplus money deposited with co-operative societies. Thus the interest income which is eligible under the head 'profit and gains of the business' of co-operative society only becomes eligible for deduction u/s 80P(2)(d) of the Act. Further, the Hon'ble Supreme Court in the case of Kerala State Co-Operative Agricultural & Rural Development Bank Ltd. [2023] 154



taxmann.com 305 (SC) held that if the co-operative bank is carrying out business of banking as defined u/s 5(b) of the Banking regulation Act, then only such co-operative bank shall be barred for deduction u/s 80P(2)(d) of the Act, in view of prohibition u/s 80P(2)(4) of the Act, otherwise the co-operative bank not falling u/s 5(b) of the Banking regulation Act, shall be considered as co-operative society eligible for deduction u/s 80P(2)(d) of the Act. The Co-ordinate Bench of the Tribunal in the case of GSSS Credit Co-operative Society Ltd. v. ITO in ITA No. 248, 249 & 250/Bang/2024 held similar finding. For ready reference, said finding is reproduced as under:

“12. Regarding the interest income earned from the Co-operative Bank, in this regard, we are of the opinion that we have to see whether the Co-operative Bank is carrying on the business of bank as provided ITA No.248, 249 & 250/Bang/2024 under the Bank Regulation Act. In simple words, if the Co-operative Bank is not carrying out any banking business, then in our considered view, the deduction on account of interest on the investment made in such Co-operative Bank cannot be denied for the reason that such Co- operative Bank is not a bank as per the judgment of Hon'ble Supreme Court in the case of Kerala State Co-operative Agricultural and Rural Bank Ltd., Vs. ACIT reported in 154 taxmann.com 305, wherein it was observed that the assessee was a state-level agricultural and rural development bank and governed under the Kerala Co-operative Societies Act, 1969 as a co-operative society. The activity of the assessee was to provide credit facilities to its members. Accordingly, the assessee claimed a deduction under Section 80P(2)(a)(i) of the Act in the return of income. But the AO disallowed the same on the reasoning that the assessee was a cooperative bank and, therefore, it was hit by the provisions of section 80P(4) of the Act and thus would not be eligible for claiming deduction under section 80P(2) of the Act. Finally, the issue reached the Hon'ble Apex Court where it was held that banking is defined under section 5(b) of the Banking Regulation Act, 1949 to mean accepting, for the purpose of lending or investment, deposits of money from the public, repayable on demand or otherwise, and withdrawal by cheque, draft, order or otherwise. Therefore, a banking company must transact banking business with the public. If a co-operative society would not transact the business of banking as defined in Section 5(b), it would not be a co-



operative bank within the meaning of section 56 of Banking Regulation Act and would be entitled to the benefit of deduction under Section 80P(2) of the Act. Since, the assessee society was an apex co-operative society within the meaning of Kerala State Co-Operative Agricultural Development Banks Act, 1984 (State Act, 1984) whose primary object was to provide financial accommodation to its members ITA No.248, 249 & 250/Bang/2024 who were all other co-operative societies and not members of the public, it was not a co-operative bank within the meaning of section 5(b) read with Section 56 of Banking Regulation Act. Accordingly, the deduction under Section 80P could not be denied to the assessee by invoking Section 80P(4) of the Act.

13. In view of the above, we hold that if the Co-operative Bank is not functioning the business of banking as defined u/s 5(b) of Banking Regulation Act, then such Co-operative Bank shall be considered as Co-operative Society for the purpose of the deduction claimed u/s 80P(2)(d) of the Act. Therefore, in our considered view, such interest income will be eligible for deduction u/s 80P(2)(d) of the Act.

14. However, if the Co-operative Bank is carrying out banking activities as defined u/s 5(b) of the Bank Regulation Act, then the assessee shall not be entitled for the deduction with respect to the interest earned on the investments made with such bank under the provisions of sec. 80P(2)(d) of the Act. However, corresponding interest cost incurred by the assessee shall be eligible to be adjusted against such interest income at par with nationalized bank.”

8.1 In view of the above for eligibility of deduction u/s 80P(2)(d) of the Act, the two conditions are required to be satisfied , **firstly**, whether the interest income or dividend income claimed by the assessee for deduction is part of the business income or income from other sources. **Secondly**, the Assessing Officer has to verify whether the interest received from co-operative banks are registered under section 5(b) of Banking Regulation Act or not . Before us, the Ld. counsel of the assessee has filed an application under Rule 29 of ITAT Rules, 1963 along with the copy of the registration of the said co-operative banks, therefore, we feel it appropriate to restore



this issue back to the file of the Assessing Officer for verification and decide in accordance with law.

8.2 As far as, the grounds related to section 80P(2)(d) of the Act raised in other appeals are concerned, identical grounds have been raised in other years, therefore, following our finding in assessment year 2014-15, the grounds raised in other assessment years are also allowed for statistical purposes.

9. In the result, all the appeals of the assessee are allowed for statistical purposes.

Order pronounced in the open Court on 30/08/2024.

**Sd/-
(SUNIL KUMAR SINGH)
JUDICIAL MEMBER**

**Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER**

Mumbai;
Dated: 30/08/2024
Rahul Sharma, Sr. P.S.

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,
(Assistant Registrar)
ITAT, Mumbai