

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'B' BENCH
MUMBAI**

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SHRI OMKARESHWAR CHIDARA, ACCOUNTANT MEMBER**

**ITA No.1293/Mum/2024
(Assessment Year :2018-19)**

Bharat Sanchar Nigam Employees Co-operative Credit Society Limited Kalyan Telephone Exchange Kala Talao Kalyan West-421 301 Maharashtra	Vs.	Income Tax Officer, National E-Assessment Centre Delhi
PAN/GIR No.AAAAK8119K		
(Appellant)	..	(Respondent)

Assessee by	Shri Shekhar Patwardhan
Revenue by	Shri Ashok Kumar Ambastha
Date of Hearing	12/06/2024
Date of Pronouncement	29/08/2024

आदेश / O R D E R

PER AMIT SHUKLA (J.M):

The aforesaid appeal has been filed by the assessee against order dated 05/02/2024 passed by NFAC, Delhi for the quantum of assessment passed u/s.143(3) for the A.Y.2018-19.

2. In the grounds of appeal, assessee has raised the following grounds:-

“1. The learned CIT Appeals National Faceless Appeal Centre, Delhi has erred in confirming the order of the AO which disallowed the deduction u/s 80P(2)(d) for the Interest received by the Appellant from Co-operative Banks to the tune of Rs 10,10,768/-

2. The learned CIT Appeals National Faceless Appeal Centre, Delhi failed to appreciate the fact that the said Interest received is also eligible for the deduction u/s 80P(2)(a)(i) itself

3. The appellant craves leave to add, alter, amend, and modify the aforesaid grounds of appeal.”

3. The brief facts are that the assessee is BSNL Employees Co-operative Credit Society Ltd. Kalyan. The BSNL Employees are the members of the Society. The membership of the Society is restricted to only the Employees of BSNL. The deposits in the Society are generated through deduction from Salary and the Advances are strictly given to members only. The Society was established in 1955 and has been consistently claiming the deduction u/s. 80P(2)(a) for the last many years and it has been allowed also by the Department.

4. The assessee had claimed deduction of Rs.55,06,948 under Chapter VI-A. The ld. AO noted that assessee being a co-operative credit society had earned income from interest received from members on loan and has made FDs in various co-operative banks and it has earned interest of Rs.10,10,768/- which was maintained with co-operative banks. The ld. AO had disallowed the interest received from co-operative banks on FDs amounting

to Rs.10,10,768 as is not eligible for deduction u/s.80P. The ld. CIT(A) too has confirmed the said disallowance following the decision of Totgars Co-Operative Sale Society Ltd. v. ITO (2010) 322 taxmann.com 283 (SC).

5. We have heard both the parties and also perused the relevant finding given in the impugned order. The ld. CIT(A) had followed the judgment of the Hon'ble Supreme Court in the case of Totgars Co-Operative Sale Society Ltd(supra) and finally confirmed the action of the ld. AO in the following manner:-

6.4 I have carefully perused the impugned assessment order, Form-35 and the submissions and case laws cited by the appellant. It is necessary to refer to section 80P(2)(a) (i) of the Act:

80P(2) The sums referred to in sub-section (1) shall be the following, namely

(a) in the case of a co-operative society engaged in-

(1) carrying on the business of banking or providing credit facilities to its members."

6.5 The appellant has not stated or submitted anything on merits of the case and has rather proceeded to cite numerous case laws during the assessment as well as these proceedings. The decision as cited by the appellant are not tenable due to the following reasons:

1. The judgment of Mavilayi Service Co-operative Society Ltd. (supra)is not applicable to the facts of the instant case and is clearly differentiable as the facts of that case dealt with the proposition that the petitioner society was doing business with non-members. However, in the instant case the appellant/assessee has claimed deduction for interest earned on investment with cooperative banks u/s 80P(2)(a) (i) of the Act. Therefore, the above judgment does not support the case of the assessee.

ii. The judgment of Quepem Urban co-op Credit Society Ltd. (supra) is not binding precedent as the same has been challenged by the department before the Hon'ble Supreme Court, bearing C.A. No. 8295/2015, and the same is pending adjudication. Therefore, the same cannot be accepted.

iii. The case of the appellant is squarely covered by the judgment of the Hon'ble Supreme Court in the case of M/s. The Totgars Cooperative Sale Society Limited Vs. Income Tax Officer, Karnataka wherein, it was held as under

"The Parliament has included specifically business profits into the definition of the word "income Therefore, we are required to give a precise meaning to the words profits and gains of business" mentioned in Section 80P(2) of the Act. In the present case, as stated above, assessee- Society regularly invests funds not immediately required for business purposes Interest on such investments therefore, cannot fall within the meaning of the expression profits and gains of business" Such interest Income cannot be said also to be attributable to the activities of the society, namely, carrying on the business of providing credit facilities to its members or marketing of the agricultural produce of its members. When the assessee-Society provides credit facilities to its members, it earns interest income. As stated above, in this case, interest held as ineligible for deduction under Section 80P(2)(a)(i) is not in respect of interest received from members. In this case, we are only concerned with interest which accrues on funds not required immediately by the assessee(s) for its business purposes and which have been only invested in specified securities as "investment". Further, as stated above, assessee(s) markets the agricultural produce of its members. It retains the sale proceeds in many cases. It is this "retained amount which was payable to its members, from whom produce was bought, which was invested in short- term deposits/securities. Such an amount, which was retained by the assessee-Society, was a liability and it was shown in the balance-sheet on the liability-side. Therefore, to that extent, such interest income cannot be said to be attributable either to the activity mentioned in Section 80P(2)(a) (i) of the Act or in Section 80P(2)(a) (iii) of the Act. Therefore, looking to the facts and circumstances of this case, we are of the view that the

Assessing Officer was right in taxing the interest income, indicated above, under Section 56 of the Act.

iv It is evident from the above that interest earned on investment of funds that are not immediately required for the purpose cannot be allowed as deduction u/s 80P(2)(a)(i) of the Act. Thus, it flows from the above that the reliance on the judgments by the appellant is misplaced and since there is a decision of the Hon'ble Supreme Court which is directly concerned with the issue herein therefore, the deduction as claimed by the appellant cannot be allowed.

v. In light of the same, the judgments of various Lower courts and Tribunals, as cited by the appellant, cannot be relied upon for the reasons as stated above.

6.6 Considering the aforesaid decision in the case of M/s. The Totgars' Cooperative Sale Society Limited (supra) as well as the nature of the interest earned by investment made in cooperative banks in light of section 80P(2)(a)(i) of the Act. The addition made by the AO has no infirmity and has rightly been made.

6.7 Therefore, respectfully following the decision in M/s. The Totgars' Cooperative Sale Society Limited (supra) the disallowance made by the AO is hereby sustained.

7. In the result, the appeal is Dismissed.

6. After considering the relevant findings given in the impugned orders and the material placed on record, we find that only reason given for disallowance u/s.80P(2)(d) is relying upon the judgment of the Hon'ble Supreme Court in the case of Totagars Cooperative Societies Ltd. (supra) and decision of the Hon'ble Karanataka High Court in the case of PCIT vs. Totagars Cooperative Sale Society (395 ITR 611). Now this issue is covered by the decision of Tribunal in the case of Premium Tower Co-operative Housing Society Ltd., wherein all these judgments have

been discussed. For the sake of ready reference, the relevant portion of the order is reproduced hereunder:-

“4. After hearing both the parties and on perusal of the impugned order, we find that the only issue is with respect of allowability of deduction of Rs.13,85,628/- claimed u/s. 80 P(2)(d) on account of interest received by the assessee from various cooperative banks. The ld. CIT(A) has held that the provision of Section 80 P(2)(d) and Section 80 P(2)(a)(i) only extend the benefit of deduction towards income earned by cooperative society engaged in the business of providing banking facility to its members and does not extend to the interest received from the investments made in the cooperative banks. The ld. AO has invoked Section 80P (4) holding that since investments have been made in the cooperative banks and therefore, deduction is to be denied. Here, we are not dealing with, whether assessee can be treated as cooperative bank or not. Here the issue is, assessee had made investment in the cooperative banks, whether interest earned from such investment falls in the category of interest earned from cooperative society or not so as to get benefit u/s 80 P(2)(d)?

5. Section 80P provides that in case of assessee being a cooperative society, the gross total income which includes any income referred to sub-section 2 shall be deducted in accordance with subject to provision of this section. Sub-section 2 of section 80P Clause (a) states that, “in the case of cooperative society engaged in cooperative business of banking and providing credit facilities to its members or, the whole of amount of profit and gains of the business attributable to anyone or more or such activity.” Clause (d) of Sub-section 2 of Section 80P reads as under:-

(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;

6. Sub section 4 of section 80P carves out of exception that the provision of this section will not apply in relation to any

cooperative bank. Further explanation provides that the definition of cooperative bank and primary cooperative bank. The said provision reads as under:-

(4) The provisions of this section shall not 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.

Explanation. For the purposes of this sub-section-

(a) "co-operative bank" and "primary agricultural credit society" shall have the meanings respectively assigned to them in Part V of the Banking Regulation Act, 1949 (10 of 1949)

(b) "primary co-operative agricultural and rural development bank" means a society having its area of operation confined to a taluk and the principal object of which is to provide for long-term credit for agricultural and rural development activities.]

7. Thus, assessee being a cooperative society cannot be reckoned as cooperative bank carrying out banking business. The Hon'ble Jurisdictional High court in the case of *Quepem Urban Co-operative Credit Society Ltd. vs. ACIT* reported in (2015) 377 ITR 272 (Bom), after analyzing the relevant provision of Section 80P including Sub-section (4) had categorically held that cooperative banks are to be treated as cooperative society. In so far as deduction of interest earned on investment made in cooperative bank, Clause (d) of section 80P(2) provides that any income by way of interest on dividend derived from cooperative societies from its investment with any other cooperative societies, the whole of such income is deductible u/s 80P. The cooperative bank has been defined in part 5 of the Banking Regulation Act 1949. Section 56(ccv) provides that primary cooperative bank means cooperative societies other than a primary agriculture society. This view had come up for the Hon'ble Karnataka High Court in the case of **PCIT vs. Totagars Co-operative Sale Society (2017) 392 ITR 74 (Kar.) dated 5th Jan. 2017**, wherein the Hon'ble High Court had observed as under:-

1. Whether the learned Tribunal was justified in deleting the additions made by the Assessing Authority being the disallowed deduction claimed u/S 80P(2)(d) of the [Income Tax Act](#) and in

the light of the decision of the Supreme Court with regard to the same exact assessee as the present one, namely, The Totgars Co-operative Sale Society Ltd., Vs. Income Tax Officer in Civil Appeal Nos.1622 to 1629/2010 decided by the Apex Court on 08.02.2010 or not?

2. Whether, in the facts and circumstances of the case, the Tribunal is justified in not following the decision rendered by the Hon'ble Supreme Court in Civil Appeal No. 1622 of 2010, wherein the Apex Court has to be held that the words used in [Section 80P](#) "the whole of the amount of profits and gains of business" emphasise that the income in respect of which deduction is sought must constitute the operational income and not the other income which accrues to the society and as such interest earned on funds which are not required for business purposes falls under the category of "other income" taxable under the [Income Tax Act](#)?

6. According to the learned counsel, the present appeal should be admitted on these two substantial questions of law.

7. However, the contention being taken by the learned counsel is untenable. For the issue that was before the ITAT, 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 ITAT 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 Society 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 Regulations Act, 1949, defines a primary Co-Operative Society bank as the meaning of Co-Operative Society. Therefore, a Co-operative Society 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 Society Bank. Therefore, according to Sec. 80P(2)(d) of the [I.T. Act](#), the said 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. Therefore, the Assessing Officer was not justified in denying the said deduction to the assessee respondent.

11. The learned counsel has relied on the case of *The Totgars Co-operative Sale Society Ltd. Vs. Income Tax Officer*, (supra). However, the said case dealt with the interpretation, and the deduction, which would be applicable under [Section 80P\(2\)\(a\)\(i\)](#) of the I.T. Act. For, in the present case the interpretation that is required is of [Section 80P\(2\)\(d\)](#) of the I.T. Act and not [Section 80P\(2\)\(a\)\(i\)](#) of the I.T. 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.

8. This view has further been reiterated by the judgment of Hon'ble Kerala High Court in the case of **PCIT vs. Percoorkada Service Co. Bank Ltd. (2022) 442 ITR 141 (Kerala) dated 01.11.2021**, wherein one of the question before the Hon'ble High Court was, whether the interest income earned from deposits with the banks is eligible for deduction u/s 80P(2). The Hon'ble Kerala High Court has also considered the judgment of Hon'ble Supreme Court in the case of **Totagars Cooperative Societies Ltd. 322 ITR 323**, wherein the Hon'ble High Court has held that interest income earned from district cooperative bank or state cooperative bank, come within the ambit of section 80P (2)(d), therefore the income constitutes income from other sources and it is eligible for

deduction covered u/s 80P(2)(d). Otherwise section 80P(2)(d) specifies any income by way of interest or dividend which is otherwise taxable under the head income from other sources, deduction is allowable if the same is derived from investment made with any other cooperative societies.

9. In contravention, section 80P (2)(a) provides income from carrying out various activities which is in the nature of business. Irrespective whether the interest income derived from activities as provided in section 80P (2)(a) which is otherwise the business income for which deduction is allowable, if there is any interest income which is earned on deposits or investment made with cooperative societies, the same must fall in the category activity or the business, but still is eligible for deduction under the specific provision of section 80P(2)(d). Thus, the interest derived by the assessee from cooperative bank is eligible for deduction u/s 80P(2)(d) because as noted above, cooperative are also cooperative societies for this purpose. This has been held so by the Hon'ble Karnataka High Court and latest judgment of Hon'ble Kerala High Court.

10. Lastly, in so far as judgment of Hon'ble Karnataka High Court in the case of **Totagars Cooperative Sale Society (395 ITR 611)**, which has been referred and relied upon by the Ld. CIT(A), the Hon'ble High Court has held against and observed that income by way of interest earned by deposit or investment of idle or surplus funds does not change its character irrespective of the fact whether such income of interest is earned from a schedule bank or cooperative bank. Therefore, section 80P(2)(d) would not apply on the facts of that case. However, as noted above in one of the judgment, the Hon'ble Karnataka High Court has held the same issue in favour of the assessee.

11. Therefore, following the judgment of Hon'ble Karnataka High Court in the case of **Totagars Cooperative Sale Society (2017) 392 ITR 74 (Kar.) dated 5th Jan. 2017** and judgment of Hon'ble Kerala High Court in the case of **PCIT vs. Percoorkada Service Co. Bank Ltd. (supra)**, we hold that assessee is eligible for deduction of interest income earned from cooperative bank.

12. Thus, claim of deduction u/s.80P(2)(d) is allowed to the assessee.

7. This view has been consistently been followed in series of judgments by the Tribunal and many such decisions have also been placed before us in the compilation of the paper book. Accordingly, we hold that assessee is eligible for deduction of interest received from the co-operative banks u/s.80P(2)(d).

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

Order pronounced on 29th August, 2024.

Sd/-
(OMKARESHWAR CHIDARA)
ACCOUNTANT MEMBER

Mumbai; Dated 29/08/2024
KARUNA, sr.ps

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

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