

IN THE INCOME TAX APPELLATE TRIBUNAL

"H (SMC)" BENCH, MUMBAI

**BEFORE SHRI. PRASHANT MAHARSHI, ACCOUNTANT MEMBER AND
SHRI. SANDEEP SINGH KARHAIL, JUDICIAL MEMBER**

ITA no.3657/Mum./2024

(Assessment Year: 2020-2021)

**Laburnum Mahindra Gardens Co. Op. Hsg.
Limited**

CTS No. 900A, Laburnum Mahindra Gardens,
CHSL, Village Pahadi, S. V. Road, Goregaon,
(West), Mumbai - 400104.
PAN-ACJPM9319D

..... Appellant

v/s

Income Tax Officer

Ward 41(4)(2), Mumbai- 400051.

..... Respondent

Assessee by : Ms. Vinita Nara a/w. Shri. Dharan Gandhi
Revenue by : Shri. Akhatar Hussain Ansari, Sr. DR

Date of Hearing - 04/09/2024

Date of Order - 11/09/2024

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The present appeal has been filed by the assessee challenging the impugned order dated 24/05/2024 passed under section 250 of the Income Tax Act, 1961 (*"the Act"*) by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [*"learned CIT(A)"*], for the assessment year 2020-21.

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

1. *"The Ld. CIT(A), NFAC, erred in confirming the addition of Rs. 28,73,630/- made by the Ld. AO. NeAC, being disallowance of deduction under section*



80P(2)(d) of the Act. Therefore, the prays that deduction of under section 80P(2)(d) of Rs. 28,73,630/- be allowed to it.

- 2. The Ld. AO, NeAC, has erred in the levying interest under section 234B of the Act.*
- 3. The Ld. AO, has erred in initiating penalty proceeding u/s 270A of the Act.*
- 4. The Appellant craves leave to add, to amend, alter/delete and/or modify the above grounds of appeal on or before the final hearing."*

3. The sole grievance of the assessee is against the denial of deduction claimed under section 80P(2)(d) of the Act on the interest income earned on Fixed Deposit Receipts ("FDRs") and savings accounts.

4. The brief facts of the case are that the assessee is a co-operative housing society duly registered under the Maharashtra State Co-operative Society Act. For the year under consideration, the assessee filed its return of income on 28/01/2021 declaring a total income of Rs. Nil. The assessee has shown a gross total income of Rs. 28,86,264 and claimed the same as deduction under section 80P of the Act. The return filed by the assessee was selected for scrutiny under CASS to verify the deduction from total income under Chapter VI-A of the Act. During the assessment proceedings, the assessee was asked to furnish the details/documents, inter-alia, pertaining to the deduction of Rs.28,73,620 claimed under section 80P(2)(d) of the Act. Upon verification of the details furnished by the assessee, it was noticed that the deposits/investments in Co-operative Banks/commercial banks are out of the surplus funds of the society. Accordingly, the assessee was asked to show cause as to why the deduction of Rs.28,73,630 representing interest on FDR and savings account earned from the Co-operative Bank should not be disallowed under section 80P(2)(d) of the Act. The Assessing Officer ("AO") vide order dated 19/09/2022 passed under section 143(3) read with section



144B of the Act did not agree with the submissions of the assessee and held that the deduction under section 80P(2)(d) of the Act cannot be extended to the interest earned from the investment in any Co-operative Bank as sub-section (4) to section 80P excludes Co-operative Banks from the applicability of section 80P of the Act. Therefore, it was held that even the interest earned by the assessee from the deposits with the Co-operative Bank would not be exempted or deductible under section 80P(2)(d) of the Act. Accordingly, the AO disallowed interest income of Rs.28,73,630, claimed under section 80P(2)(d) of the Act, and added the same to the total income of the assessee.

5. The learned CIT(A), vide impugned order, dismissed the appeal filed by the assessee. Being aggrieved, the assessee is in appeal before us.

6. We have considered the submissions of both sides and perused the material available on record. In the present case, the assessee earned interest on FDR and savings account maintained with Co-operative Banks, viz. Saraswat Co-operative Bank, Shamrao Vitthal Co-operative Bank, Maharashtra State Co-operative Bank, and Maharashtra district Central co-operative bank. We find that while deciding a similar issue the coordinate bench of the Tribunal in Pathare Prabhu Co-operative Housing Society v/s ITO, (2023) 202 ITD 464 (Mum-Trib), after considering the decisions of the Hon'ble Karnataka High Court and the Hon'ble Supreme Court, as relied upon by the lower authorities in the present case, held that interest income earned from investment with Co-operative Bank is eligible for deduction under section



80P(2)(d) of the Act. The relevant findings of the coordinate bench, in the aforesaid decision, are reproduced as follows: –

"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 section 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 assessment year 2018-19 earned 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 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 Co-operative 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 Co-operative 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 co-operative 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 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 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. CIT 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."

7. Therefore, respectfully following the decision of the coordinate bench of the cited supra, we direct the AO to grant a deduction under section 80P(2)(d) of the Act to the assessee in respect of the interest on FDR and savings account earned from the Co-operative Banks. Accordingly, the impugned order is set aside and grounds no. 1 raised by the assessee is allowed.



8. The issue arising in ground no. 2 raised in assessee's appeal pertains to the levy of interest under section 234B of the Act, which is consequential. Therefore, the same needs no separate adjudication.

9. The issue arising in ground no. 3 pertains to the levy of penalty under section 270A of the Act, which is premature at this stage. Therefore, ground no. 3 is dismissed.

10. In the result, the appeal by the assessee is partly allowed.

Order pronounced in the open Court on 11/09/2024

Sd/-
PRASHANT MAHARSHI
ACCOUNTANT MEMBER

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 11/09/2024
Karishma J. Pawar, (Stenographer)

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The PCIT / CIT (Judicial);
- (4) The DR, ITAT, Mumbai; and
- (5) Guard file.

By Order

Assistant Registrar
ITAT, Mumbai