

IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH, MUMBAI

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

ITA no. 3508/Mum./2024
(Assessment Year: 2020 -2021)

**L and T Emerald Isle T-7 Co-operative
Housing Society Limited**

L-2/Tower-7, CTS No. 117-A, L and T Emerald Isle
T-7, Saki Vihar Road, Village Tungwa, Powai,
Mumbai - 400072.
PAN-AACAL0320M

..... Appellant

v/s

Commissioner of Income Tax (Appeals)

National Faceless Appeal Centre (NFAC), Delhi

..... Respondent

S.A. No. 93/Mum./2024
(Arising out of ITA no. 3508/Mum./2024)
(Assessment Year: 2020 -2021)

**L and T Emerald Isle T-7 Co-operative
Housing Society Limited**

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T-7, Saki Vihar Road, Village Tungwa, Powai,
Mumbai - 400072.
PAN-AACAL0320M

..... Applicant
(Original Appellant)

v/s

**National Faceless Appeal Centre (NFAC),
Delhi**

..... Respondent
(Original Respondent)

Assessee by : Shri. Bhavesh Gajelli
Revenue by : Shri. Anil Sant, Sr. DR

Date of Hearing - 06/09/2024

Date of Order - 13/09/2024

ORDER



PER SANDEEP SINGH KARHAIL, J.M.

1. The assessee filed the present Stay Application in ITA no. 3508/Mum./2024, seeking a grant of stay on recovery of outstanding demand of ₹ 2,19,219.

2. From the perusal of the record, we find that the impugned demand arose from the disallowance of deduction claimed under section 80P(2)(d) of the Income Tax Act, 1961 ("the Act") on the interest earned by the assessee from the Co-operative Bank. Since this issue has been decided in various decisions, with the consent of representatives of both sides, the main appeal was taken up for hearing.

3. In its appeal, the assessee has challenged the impugned order dated 16/05/2024 passed under section 250 of the Act by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, ["learned CIT(A)"], for the assessment year 2020-21.

4. The assessee has raised the following grounds in its appeal: –

- 1) *"The learned The Assistant Director of Income tax and Honourable Commissioner of Income Tax Appeal have erred in disallowing deduction under section 80P(2)(d) for an amount of Rs. 5.30,109/- This amount is interest earned by the co-op society from a co-op bank which is allowable as a deduction under section 80P(2)(d). The appellant prays that the reason for belated return was the office being closed due to pandemic of Covid-19.*
- 2) *The appellant prays that the deduction under section 80P(2)(d) for an amount of Rs. 5.30.109/-be allowed.*



3) *The copy of the rectification orders u/s 154 along with the order u/s 250 are attached herewith for your reference and record."*

5. The sole grievance of the assessee, in its appeal, 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 from the Co-operative Bank.

6. The brief facts of the case are that the assessee is a co-operative housing society, and for the year under consideration filed its return of income on 25/03/2021 declaring a total income of ₹ 74,230. The return filed by the assessee was processed vide intimation dated 23/12/2021 issued under section 143(1) of the Act by the Centralised Processing Centre, Bengaluru ("CPC") determining the total income of the assessee at ₹ 6,04,340 after disallowing interest amounting to ₹ 5,30,109 claimed under section 80P(2)(d) of the Act. No relief was granted to the assessee vide order dated 24/02/2023 passed under section 154 of the Act. In an appeal against the aforesaid order passed under section 154 of the Act, the learned CIT(A) vide impugned order adjudicated the issue on merits and held that the AO (CPC) rightly disallowed the deduction claimed under section 80P(2)(d) of the Act. The relevant findings of the learned CIT(A), vide impugned order, are reproduced as follows: –

"In respect of deduction u/s 80(P), I have decided to adjudicate the issue on the merits of the case. In the instant case the AO (CPC) has rightly disallowed Rs. 5,30,109/-. Since the appellant failed to substantiate appellant's claim and disallowed made by the Assessing Officer of Rs. 5,30,023/- on account of disallowed u/s 80(P) is hereby confirmed."

Being aggrieved, the assessee is in appeal before us.



7. We have considered the submissions of both sides and perused the material available on record. In the present case, it has not been disputed that the assessee has earned interest on FDR and savings account maintained with Co-operative Banks. We find that this issue has been considered in various decisions of the coordinate bench of the Tribunal. In Pathare Prabhu Co-operative Housing Society v/s ITO, (2023) 202 ITD 464 (Mum-Trib), while deciding a similar issue, the coordinate bench of the Tribunal 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."

8. Therefore, respectfully following the decision of the coordinate bench of the Tribunal 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 the sole issue raised in the assessee's appeal is allowed.

9. In the result, the appeal by the assessee is allowed.

10. Since the grounds raised by the assessee on merits are allowed, the stay application filed by the assessee, being S.A. No.93/Mum./2024, for the assessment year 2020-21, has become infructuous and therefore is dismissed.

11. In the result, the stay application filed by the assessee is dismissed.

12. To sum up, the appeal by the assessee is allowed, while the stay application filed by the assessee is dismissed.

Order pronounced in the open Court on 13/09/2024

Sd/-
PRASHANT MAHARSHI
ACCOUNTANT MEMBER
MUMBAI, DATED: 13/09/2024

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER



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