

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

**BEFORE SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER
AND
MS. KAVITHA RAJAGOPAL, JUDICIAL MEMBER**

ITA No. 3738/Mum/2024
Assessment Year 2020-21

ITO-25(2)(1), Room No. 246, 2 nd Floor, G-Block, Kautilya Bhavan, Bandra Kurla Complex, Mumbai	vs.	Mumbai Postal Employees Co-Operative Credit Society Ltd., Ground Floor, GPO Building, Fort, Mumbai PAN : AAAJM0032G
(Appellant)		(Respondent)

For Assessee :	NONE
For Revenue :	Smt. Mahita Nair, Sr.DR

Date of Hearing :	11-09-2024
Date of Pronouncement :	12-09-2024

ORDER

PER OM PRAKASH KANT, A.M :

This appeal by the Revenue is directed against order dated 05-06-2024 passed by the Ld. Commissioner of Income Tax (Appeals)-NFAC, Delhi [in short Ld.CIT(A)] for the Assessment Year (AY) 2020-21, raising following grounds:

"1. Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) in allowing deduction u/s 80P(2)(6) of Income desert of interest earned from deposits from cooperative bank ignoring the amendment made by Finance Act. 2015 in section 194A(3)(v) of the Act which excludes the Cooperative Banks from the definition of "Cooperative Society" and requiring them to deduct income tax at

source under Section 194A of the Act that also makes the legislative Intent clear that the Co-operative Banks are not that specie of genus cooperative society, which are entitled to claim deduction under the special provision of Chapter VIA in the form of Section 80P of the Act.

2. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was correct in allowing deduction u/s 80P(2)(d) of Income Tax Act, 1961 in respect of interest earned from deposits in cooperative bank ignoring the fact that words used in section 80P(4) are "in relation to that con include within its ambit and scope even the interest income earned by the assessee, from Co operative bank and this exclusion by Section 80P(4) of the Act even the though without any amendment in Section 80P(2)(d) of the Act is sufficient to deny the claim of the assessee for deduction under Section 80P(2)(d) of the Act."

3. "Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was correct in not considering whether the deposits and investments made with Scheduled Bank or Nationalised banks or with Cooperative Banks does not make a difference as far as the character of the income earned by assessee is concerned and it does not partake the character of its operational income, the same would continue to be fully taxable and will not be eligible for deduction under Section 80P(2)(d) of the Act."

4. "Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was correct in allowing deduction us 80P(2)(d) of Income Tax Act, 1961 in respect of interest earned from deposits, though the Hon'ble Karnataka High Court in a detailed judgment discussing the law and various related issues in the case of PCTT vs. Totagar's Co-operative Sales Society (395 ITR 611) has specifically decided the Question of Law about the allowability of interest earned from deposits with co-operative banks u/s 80P(2)(d) of the Income tax Act in favour of Revenue".

5. The appellant craves leave to amend or alter or add a new ground which may be necessary."

2. Briefly stated facts of the case are that the assessee-society was registered under Maharashtra Co-operative Societies Act. The assessee-society availed loans from Mumbai Central Co-operative Bank and utilised the same to grant loans to its members. The assessee-society purchased minimum stipulated shares of the lending bank. The loan was continued in later years and consequently the investment in shares got continued and the said bank declared dividend to its share holders. The assessee received dividend which has been claimed as deduction u/s. 80P(2)(d) of the Income Tax Act, 1961 ('the Act'). The Assessing

Officer (AO) rejected the claim of the assessee of deduction, whereas, the Ld.CIT(A) allowed the claim of the assessee. The relevant finding of the Ld.CIT(A) is reproduced as under:

“6.1 The only ground relates to the addition made by the AO disallowing an amount of Rs.3,28,25,000/- u/s 80P treating the receipt of interest and dividend on investments made with the Co-operative banks as not attribute to the business of providing credit facilities to its members.

6.2 The appellant contended that the AO erred in not considering the interest earned on fixed deposits with cooperative banks as income attributable to Business income rather considered it as Income from Other Sources. Further contended that the AO considered that the said investment in fixed deposit with banks has been made out of the surplus fund and it is not a regular activity of the appellant's society to be claimed as deduction u/s. 80P (2)(a)(i) of the Income Tax Act, 1961.

6.3 The AO while completing the assessment has also placed reliance in the case of Totgars' Co-operative sale society Ltd Vs ITO (2010) 322 ITR 283 (SC) and concluded that the claim of the appellant on the receipt of interest and dividend from co-operative banks is also not eligible for deduction u/s 80P(2)(d) of the Act.

6.4 The submission of the appellant on the applicability of deduction available u/s 80P(2)(d) for the interest and dividend received from the Co-operative bank has been examined. It is found that the following case- laws of the Hon'ble ITATs states that the interest income derived by a co-operative society from its investments held with a co-operative bank would also be entitled for the claim of deduction under Sec.80P(2)(d) of the Act:

- 1. M/s Petit Powers Co-op. vs (ITO (ITA No. 549/Mum/2021) Housing Society Ltd*
- 2. M/s Solitaire CHS Ltd Society Office, Solitaire CHS Ltd vs PCIT (ITA No.3155/Mum/2019)*
- 3. Jai Hind Co-operative Housing Society Ltd vs ACIT-25(2) (ITA No. 176281763/Mum/2020*
- 4. M/s Vadasinor Pragati Samaj Co-operative Credit Society Ltd vs (PCIT-18(ITA NO.2539/Mum/2019)*
- 5. M/s Doshi Palace Co-operative Hsg Soc.Ltd vs ACIT-19(1) (ITA No.2510/MUM/2019*
- 6. The Salsette Catholic Co-operative Housing Ltd vs ACIT Circle-23(3) (ITA No.3870 & 3871/MuM/2019.)*

These decisions of the co-ordinate benches of Mumbai have reiterated the principle that the interest income and dividend derived by a co-

operative society by way of investment made with a co-operative bank would be entitled to claim of deduction under section 80P(2)(d) of the Act.

6.5 In the above stated decisions, the Hon'ble ITAT has held that that the term cooperative society had been defined under Sec. 2(19) of the Act, as under:-(19) "Co-operative society" means a cooperative society registered under the Cooperative 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;" Accordingly, the Hon'ble ITAT are of the considered view, that though the co-operative banks pursuant to the insertion of subsection (4) to Sec. BOP would no more be entitled for claim of deduction under Sec. 80P of the Act, but 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 In force 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 u/s. 80P(2)(d) of the Act.

6.6 It is also noticed that in the appellant's own case for the A.Y. 2015-16 and 2016-17, the Hon'ble ITAT Mumbai has decided the case in favour of the appellant on this issue on the appeal filed against the revision order of the PCIT u/s 263 of the Act vide, ITAT order, ITA No.1050 and 1051/Mum/2023 dated 16.08.2023.

6.7 In the instant case, the appellant has earned interest and dividend from surplus funds deposited from the cooperative banks to the tune of Rs. 3,28,81,458/-. Hence, this case is factually covered as per the decisions cited in the para 6.4 and 6.6.

6.8 It is further notable as per the decision of Apex Court in the case of Mavilayi Service Cooperative Bank (123 taxman.com 161), Supreme Court, the appellant is eligible for the claim of deduction u/s 80P (2)(d) on the interest income earned from the co-operative Societies/Cooperative Banks. Hence, the interest and dividend received from the cooperative banks to the tune of Rs.3,28,81,458/- is entitled for the deduction u/s. 80P (2) (d) of the Act and accordingly, the appellant succeeds on this ground."

3. Despite notifying none attended on behalf of the assessee and, therefore, this appeal is heard *ex-parte*, qua the assessee, after hearing arguments of the Ld.DR and perusal of the material available on record. In the instant case, the issue in dispute is in relation to deduction u/s. 80P(2)(d) of the Act. The Co-ordinate Bench of the Tribunal in the case of Mumbai Kamgar Madhyawarti Grahak Sahakari Sanstha Maryadit in ITA Nos. 2882 to 2885/2024 has held that for eligibility of deduction u/s. 80P(2)(d) of the Act, two conditions are required to be satisfied.

Firstly, the income from the interest and dividend should be part of the operating income of the assessee and secondly, the said income should be earned from the Co-operative banks, which are not registered under u/s 5(b) of the Bank Regulation Act. If the dividend or the interest income is not income from operation and if it is income from other sources, then, deduction for the earning of such income should be allowed to the assessee. The relevant finding of the Tribunal (supra) is reproduced as under:

“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.”

3.1. Respectfully following above, the issue in dispute involved in the case of assessee is also restored to the file of the AO for verification and decide the same accordingly, in accordance with law.

4. In the result, the appeal of the Revenue is treated as allowed for statistical purposes.

Order pronounced in the open court on 12th September, 2024

Sd/-
(MS. KAVITHA RAJAGOPAL)
JUDICIAL MEMBER

Mumbai,

Date : 12-09-2024

TNMM

Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT concerned
- 4) The D.R, “D” Bench, Mumbai
- 5) Guard file

By Order

Dy./Asst. Registrar
I.T.A.T, Mumbai