

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

**SHRI NARENDRA KUMAR BILLAIYA, ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No. 901/MUM/2024
(Assessment Year: 2018-19)**

Murude Sahakari Patsanshta Maryadit,
58, Shivaji Nagar, N.M. Joshi Marg,
Lower Parel, Mumbai - 400013
[PAN: AADAMO757C]

..... **Appellant**

Vs

Income Tax Officer, Ward 22(2)(1),
Room No. 312, 3rd Floor, Piramal
Chamber, Lalbaug, Parel,
Mumbai- 400012.

..... **Respondent**

Appearance

For the Appellant/Assessee : Shri Dharan Gandhi
For the Respondent/Department : Shri Himanshu Sharma

Date

Conclusion of hearing : 04.07.2024
Pronouncement of order : 24.09.2024

ORDER

Per Rahul Chaudhary, Judicial Member:

1. By way of the present appeal the Assessee has challenged the order, dated 19/02/2024, passed by the National Faceless Appeal Centre (NFAC), Delhi, [hereinafter referred to as the '**CIT(A)**'] for the Assessment Year 2018-19, whereby the Ld. CIT(A) had dismissed the appeal of the Assessee against the Assessment Order, dated 16/03/2021, passed under Section 143(3) read with section 143(3A) and 143(3B) of the Income Tax Act, 1961 (hereinafter referred to as 'the **Act**').

2. The appellant has raised following grounds of appeal :

"1. *The Ld. Commissioner of Income-tax (Appeals), NFAC, Delhi has erred in confirming action of Ld AO of not following*

judicial discipline by not allowing the deduction under Section 80P(2)(d).

2. *The Ld Commissioner of Income-tax (Appeals), NFAC, Delhi has erred in confirming action of Ld AO not allowing the deduction under Section 80P(2)(d) in respect of interest income received from Co-operative bank to the tune of Rs. 47,62,521/- on the ground that the co-operative bank is not a co-operative society."*
3. The relevant facts in brief are that the Assessee a registered co-operative society, carrying on business of providing credit facilities to its members, filed return of income for the Assessment Year 2018-19, claiming deduction of INR 32,20,000/- under Section 80P(2)(a)(i) and INR 47,62,521/- under Section 80P(2)(d) of the Act. The case of the Appellant was selected for scrutiny and the Assessing Officer passed assessment Order, under Section 143(3) read with Section 143(3A)/(3B) of the Act on 26/02/2021, rejecting the claim for deduction under Section 80P(2)(d) of the Act on the ground that benefit of the aforesaid section was not available in respect of interest earned on deposit/investment made in a co-operative bank since a co-operative bank is not a co-operative society.
4. The appeal preferred by the Assessee against the aforesaid Assessment Order was dismissed by the CIT(A), vide Order, dated 19/02/2024.
5. Being aggrieved, the Assessee has filed present appeal before the Tribunal on the grounds reproduced in paragraph 2 above.
6. All the grounds raised in the present appeal are directed against the order of CIT(A) dismissing the appeal and thereby, confirming the disallowance of INR 47,62,521/- made in respect of deduction claimed by the Appellant in the return of income under Section 80(P)(2)(d) of the Act for the interest income

received from co-operative banks.

7. We have considered the rival submission and perused the material on record. There is no dispute on facts. The issue that arises for consideration is whether a co-operative society is entitled to claim deduction under Section 80(P)(2)(d) of the Act in respect of interest income received from a co-operative bank. We find that the aforesaid issue is no longer res-integra and stands decided in favour of assessee.

7.1. We note that while disallowing deduction claimed by the Appellant under Section 80P(2)(d) of the Act the Assessing Officer had placed reliance on the provisions contained in Section 80P(4) of the Act, the judgment of the Hon'ble Supreme Court in the case of Citizen Co-operative Society Limited Vs ACIT : Circle-9(1), Hyderabad: [2017] 397 ITR 1 (SC) and the judgment of the Hon'ble Karnataka High Court in the case of Pr.CIT vs. Totgars Co-operative Sale Society Ltd.: 2017 395 ITR 611 (Kar). In the case of **Mavilayi Services Co-operative Bank Limited Vs. CIT, Calicut: [2021] 431 ITR 1 (SC) [12/01/2021]**, the Hon'ble Supreme Court had, after taking into consideration the aforesaid provisions of the Act and the judgments relied upon by the Assessing Officer, held that the provisions of Section 80P(4) of the Act would not be attracted in case of interest/dividend income received by a co-operative society provided such co-operative society receiving dividend/interest income is not holding a banking license issued by Reserve Bank of India to lend money to public. The relevant extract of the aforesaid judgment of the Hon'ble Supreme Court reads as under:

"20. We now come to the judgment of this Court in **Citizen Cooperative Society Ltd. (supra)**. This judgment was concerned with an assessee who was established initially as a mutually aided cooperative credit society, having been registered under section 5 of the Andhra Pradesh Mutually Aided Cooperative Societies Act, 1995. As operations of the assessee began to spread over States outside

the State of Andhra Pradesh, the assessee got registered under the Multi-State Cooperative Societies Act, 2002 as well. The question that the Court posed to itself was as to whether the appellant was barred from claiming deduction in view of Section 80P(4) of the Income-tax Act - see paragraph 5. After setting out the findings of fact in that case, and the income tax authorities concurrent holding that the society is carrying on banking business and for all practical purposes acts like a co-operative bank, this Court then held as follows:

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21. An analysis of this judgment would show that the question of law that was reflected in paragraph 5 of the judgment was answered in favour of the assessee. The following propositions may be culled out from the judgment:

(I) That section 80P of the IT Act is a benevolent provision, which was enacted by Parliament in order to encourage and promote the growth of the co-operative sector generally in the economic life of the country and must, therefore, be read liberally and in favour of the assessee;

(II) That once the assessee is entitled to avail of deduction, the entire amount of profits and gains of business that are attributable to any one or more activities mentioned in sub-section (2) of section 80P must be given by way of deduction;

(III) That this Court in Kerala State Cooperative Marketing Federation Ltd. (supra) has construed section 80P widely and liberally, holding that if a society were to avail of several heads of deduction, and if it fell within any one head of deduction, it would be free from tax notwithstanding that the conditions of another head of deduction are not satisfied;

(IV) This is for the reason that when the legislature wanted to restrict the deduction to a particular type of co-operative society, such as is evident from section 80P(2)(b) qua milk co-operative societies, the legislature expressly says so - which is not the case with section 80P(2)(a)(i);

(V) That section 80P(4) is in the nature of a proviso to the main provision contained in section 80P(1) and (2). This proviso specifically excludes only co-operative banks, which are cooperative societies who must possess a licence from the RBI to do banking business. Given the fact that the assessee in that case was not so licenced, the assessee would not fall within the mischief of section 80P(4)

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26. Applying the aforesaid decisions, it is clear that the ratio decidendi in Citizen Cooperative Society Ltd. (supra) would not depend upon the conclusion arrived at on facts in that case, the case being an authority for what it actually decides in law and not for what may seem to logically follow from it. Thus, the statement of the principles of law applicable to the legal problems disclosed by the facts alone is the binding ratio of the case, which as has been stated hereinabove, is contained in paragraphs 18 to 23 of the judgment. Paragraphs 24 to 26, being the judgment based on the combined effect of the statements of the principle of law applicable to the material facts of the case cannot be described as the ratio decidendi of the judgment. Nor can it be said that it would logically follow from the finding on facts that the assessing officer can go behind the registration of a society and arrive at a conclusion that the society in question is carrying on illegal activities. **On this score alone, the Full Bench's understanding of this judgment has to be faulted and is set aside.**

27. However, this does not conclude the issue in the present case. We now turn to the proper interpretation of section 80P of the Income-tax Act. Firstly, the marginal note to section 80P which reads "Deduction in respect of income of co-operative societies" is important, in that it indicates the general "drift" of the provision. This was so held by this Court in K.P. Varghese v. ITO [1981] 7 Taxman 13/131 ITR 597 as follows:

"9. This interpretation of sub-section (2) is strongly supported by the marginal note to Section 52 which reads "Consideration for transfer in cases of understatement". It is undoubtedly true that the marginal note to a section cannot be referred to for the purpose of construing the section but it can certainly be relied upon as indicating the drift of the section or, to use the words of Collins, M.R. in *Bushel v. Hammond* [1904] 2 KB 563 to show what the section is dealing with. It cannot control the interpretation of the words of a section particularly when the language of the section is clear and unambiguous but, being part of the statute, it prima facie furnishes some clue as to the meaning and purpose of the section (vide *Bengal Immunity Company Limited v. State of Bihar* [1955] 2 SCR 603)."

28. Secondly, for purposes of eligibility for deduction, the assessee must be a "co-operative society". A co-operative society is defined in Section 2(19) of the IT Act, as being a co-operative society registered either 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. This, therefore, refers only to the factum of a co-operative society being registered under the 1912 Act or

under the State law. For purposes of eligibility, it is unnecessary to probe any further as to whether the co-operative society is classified as X or Y.

29. Thirdly, the gross total income must include income that is referred to in sub-section (2).

30. **Fourthly, sub-clause (2)(a)(i) with which we are directly concerned, then speaks of a co-operative society being "engaged in" carrying on the business of banking or providing credit facilities to its members. What is important qua sub-clause (2)(a)(i) is the fact that the co-operative society must be "engaged in" the providing credit facilities to its members.** As has been rightly pointed out by the learned Additional Solicitor General, the expression "engaged in", as has been held in CIT v. Ponni Sugars & Chemicals Ltd. [2008] 174 Taxman 87/306 ITR 392 (SC), would necessarily entail an examination of all the facts of the case. This Court in Ponni Sugars & Chemicals Ltd. (supra) held:

"20. In order to earn exemption under section 80P(2) a cooperative society must prove that it had engaged itself in carrying on any of the several businesses referred to in sub-section (2). In that connection, it is important to note that under sub-section (2), in the context of cooperative society, Parliament has stipulated that the society must be engaged in carrying on the business of banking or providing credit facilities to its members. Therefore, in each case, the Tribunal was required to examine the memorandum of association, the articles of association, the returns of income filed with the Department, the status of business indicated in such returns, etc. This exercise had not been undertaken at all."

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35. **Eighthly, sub-clause (d) also points in the same direction, in that interest or dividend income derived by a co-operative society from investments with other co-operative societies, are also entitled to deduct the whole of such income, the object of the provision being furtherance of the co-operative movement as a whole.**

36. Coming to the provisions of section 80P(4), it is important to advert to speech of the Finance Minister dated 28-2-2006, which reflects the need for introducing section 80P(4). Shri P. Chidambaram specifically stated:

"166. Cooperative Banks, like any other bank, are lending institutions and should pay tax on their profits. Primary Agricultural Credit Societies (PACS) and Primary Cooperative Agricultural and Rural Development Banks (PCARDB) stand on a special footing and will continue to be exempt from tax under section 80P of the Income-tax Act. However, I propose to

exclude all other cooperative banks from the scope of that section."

37. Likewise, a Circular dated 28-12-2006, containing explanatory notes on provisions contained in the Finance Act, 2006, is also important, and reads as follows:

"Withdrawal of tax benefits available to certain cooperative banks

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22.2 The cooperative banks are functioning at par with other commercial banks, which do not enjoy any tax benefit. Therefore section 80P has been amended and a new sub-section (4) has been inserted to provide that the provisions of the said section shall not apply in relation to any cooperative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank. The expressions 'co-operative bank', 'primary agricultural credit society' and 'primary co-operative agricultural and rural development bank' have also been defined to lend clarity to them."

38. A clarification by the CBDT, in a letter dated 9-5-2008, is also important, and states as follows:

"Subject: Clarification regarding admissibility of deduction under section 80P of the Income-tax Act, 1961.

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2. In this regard, I have been directed to state that sub-section (4) of section 80P provides that deduction under the said section **shall not be allowable to any co-operative bank** other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank. For the purpose of the said sub-section, co-operative bank shall have the meaning assigned to it in part V of the Banking Regulation Act, 1949.

3. In part V of the Banking Regulation Act, "Co-operative Bank" means a State Co-operative bank, a Central Co-operative Bank and a primary Co-operative bank.

4. Thus, if the Delhi Co-op Urban T & C Society Ltd. does not fall within the meaning of "Co-operative Bank" as defined in part V of the Banking Regulation Act, 1949, sub-section(4) of section 80P will not apply in this case.

5. Issued with the approval of Chairman, Central Board of Direct Taxes."

39. **The above material would clearly indicate 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, if the Banking Regulation

Act, 1949 is now to be seen, what is clear from section 3 read with section 56 is that a primary co-operative bank cannot be a primary agricultural credit society, as such co-operative bank must be engaged in the business of banking as defined by section 5(b) of the Banking Regulation Act, 1949, which means the accepting, for the purpose of lending or investment, of deposits of money from the public. Likewise, under section 22(1)(b) of the Banking Regulation Act, 1949 as applicable to co-operative societies, no co-operative society shall carry on banking business in India, unless it is a co-operative bank and holds a licence issued in that behalf by the RBI. As opposed to this, a primary agricultural credit society is a co-operative society, the primary object of which is to provide financial accommodation to its members for agricultural purposes or for purposes connected with agricultural activities.

40. As a matter of fact, some primary agricultural credit societies applied for a banking licence to the RBI, as their bye-laws also contain as one of the objects of the Society the carrying on of the business of banking. This was turned down by the RBI in a letter dated 25-10-2013 as follows:

"Application for license

Please refer to your application dated April 10, 2013 requesting for a banking license. On a scrutiny of the application, we observe that you are registered as a Primary Agricultural Credit Society (PACS).

In this connection, we have advised RCS vide letter dated UBD (T) No. 401/10.00/16A/2013-14 dated October 18, 2013 that in terms of Section 3 of the Banking Regulation Act, 1949 (AACS), PACS are not entitled for obtaining a banking license. Hence, your society does not come under the purview of Reserve Bank of India. RCS will issue the necessary guidelines in this regard

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*45. To sum up, therefore, the ratio decidendi of Citizen Co-operative Society Ltd. (supra), must be given effect to. Section 80P of the IT Act, being a benevolent provision enacted by Parliament to encourage and promote the credit of the co-operative sector in general must be read liberally and reasonably, and if there is ambiguity, in favour of the assessee. A deduction that is given without any reference to any restriction or limitation cannot be restricted or limited by implication, as is sought to be done by the Revenue in the present case by adding the word "agriculture" into section 80P(2)(a)(i) when it is not there. **Further, section 80P(4) is to be read as a proviso, which proviso now specifically excludes co-operative banks which are co-operative societies engaged in banking business i.e. engaged in lending money to***

members of the public, which have a licence in this behalf from the RBI. Judged by this touchstone, it is clear that the impugned Full Bench judgment is wholly incorrect in its reading of Citizen Cooperative Society Ltd. (supra). Clearly, therefore, once section 80P(4) is out of harm's way, all the assessees in the present case are entitled to the benefit of the deduction contained in section 80P(2)(a)(i), notwithstanding that they may also be giving loans to their members which are not related to agriculture. Also, in case it is found that there are instances of loans being given to non-members, profits attributable to such loans obviously cannot be deducted.
(Emphasis Supplied)

In view of the above judgment of the Hon'ble Supreme Court, the deduction claimed by the Appellant cannot be denied by invoking the provisions contained in Section 80P(4) of the Act since the Appellant does not hold a banking license issued by the RBI for lending money to members of the public.

- 7.2. Further, on bare perusal of provisions of Section 80P(2)(d) of the Act shows that for purposes of eligibility for deduction under Section 80P(2)(d) of the Act, interest/dividend must be received from investment in a 'co-operative society'. A co-operative society is defined in Section 2(19) of the IT Act, as being a co-operative society registered either 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. In the case of **Kaliandas Udyog Bhavan Premises Co-operative Society Ltd. vs. ITO: ITA No. 6547/Mum/2017, dated 24.04.2018**, the Mumbai Bench of the Tribunal has held that co-operative bank continues to be a co-operative society and therefore, the Assessee receiving interest from a co-operative bank would be eligible to claim deduction under Section 80P(2)(d) of the Act in respect of interest so received. To the same effect are the decisions of the Tribunal in the case of **Lands End Co-operative Housing Society Ltd. Vs. ITO [ITA No.3566/Mum/2014, dated**

15/01/2016], M/s Sea Green Cooperative Housing and Society Ltd. Vs. ITO-21(3)(2), Mumbai [ITA No. 1343/Mum/2017, dated 31/03/2017], and Mystique Rose Cooperative Housing Society Ltd.: vs. ITO 22(2)(3) [ITA No. 1290/Mum/2021, dated 30/03/2022].

- 7.3. The judgment of the Hon'ble Supreme Court in the case of **Totgars Cooperative Sale Society Ltd. vs. ITO (2010) 322 ITR 283 (SC)** was rendered in the context of Section 80P(2)(a) of the Act (wherein expression 'the whole of the amount of profits and gains of business attributable to any one or more of such activities' has been used), whereas in Section 80P(2)(d) of the Act expression used is 'any income by way of interest'. Thus, 'any income by way of interest' derived by a co-operative society (from a co-operative bank) would be eligible for deduction under Section 80P(2)(d) of the Act irrespective of the fact that such interest income is taxable as 'profits and gains of business' or as 'income from other sources' since Section 80P(2)(d) uses the expression 'any income' and not 'profits & gains of business'.
8. In view of the above, disallowance of deduction of INR.47,62,521/- claimed by the Appellant under Section 80P(2)(d) of the Act cannot be sustained. Both the grounds raised by the Appellant are allowed.
9. In result, the Appeal is allowed.

Order pronounced on 24.09.2024.

Sd/-
(Narendra Kumar Billaiya)
Accountant Member

Sd/-
(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 24.09.2024
Y.S.Patil,Sr.P.S.

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त/ The CIT
4. प्रधान आयकर आयुक्त / Pr.CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार /(Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai