

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'J(SMC)' BENCH
MUMBAI**

**BEFORE: SHRI BR BASKARAN, ACCOUNTANT MEMBER
&
SHRI SUNIL KUMAR SINGH, JUDICIAL MEMBER**

**ITA No. 1762/MUM/2024
(Assessment Year : 2015-16)**

Stella Maris Co-operative Housing Society Ltd. Sitaladevi Temple Road, Mahim, Mumbai-400016.	Vs.	Income Tax Officer Ward 22(3)(6) Piramal Chambers Lal Baug, Parel-400012, 400016.
PAN/GIR No. AADAS1717Q		
(Appellant)	..	(Respondent)

Assessee by	Shri. Ajay Arvind Wadke
Revenue by	Shri. Ajit Pal Singh Daia (Sr. AR)
Date of Hearing	18/07/2024
Date of Pronouncement	15/10/2024

आदेश / O R D E R

PER SUNIL KUMAR SINGH (J.M):

1. This appeal has been preferred against the impugned order dated 14.03.2024 passed in Appeal no. NFAC/2014-15/10252299 by the Ld. Commissioner of Income-tax(Appeals)/ National Faceless Appeal Centre (NFAC) [hereinafter referred to as the "CIT(A)"] u/s. 250 of the Income-tax Act, 1961 [hereinafter referred to as "Act"] for the

Assessment year [A.Y.] 2015-16, wherein learned CIT(A) has dismissed assessee's appeal.

3. The brief facts state that the appellant Stella Maris Co-operative Housing Society Ltd. is a Cooperative Society and filed return of income for the A.Y. 2015-16 on 16.10.2016, declaring total income of Rs. 1,12,030/-. Learned assessing officer (CPC) passed an order u/s. 143(1) dated 04.12.2016 and disallowed assessee's claim of deduction of Rs. 1,12,027/- and made addition of Rs. 1,12,030/- in the total income of the assessee.
4. Aggrieved, assessee preferred an appeal before learned CIT(A) against the order dated 04.12.2016 passed u/s. 143(1) of the Act. Learned CIT(A) dismissed assessee's appeal.
5. Aggrieved, by the impugned order, assessee approached this Tribunal on the ground that learned Addl/JCIT(A) has erred in dismissing in assessee's appeal, ignoring the fact that the assessee co-operative society derived interest income of Rs. 1,12,030/- from its investments held with co-operative banks.
6. In response to the notice issued by the tribunal, learned DR appeared and participated in the hearing.
7. We have perused the material on record and heard learned representatives for both the parties.
8. The limited issue for determination under appeal is as to whether the appellant Stella Maris Co-operative Housing Society Ltd. is entitled to its claim of deduction of Rs. 1,12,030/- u/s. 80P(2)(d) of the Act on the interest received from investment in the said co-operative bank?

9. Learned AR has submitted that the assessee is a co-operative society registered under the Maharashtra Co-operative Society, Act 1960. The interest income earned by a co-operative society on its investments held with a co-operative bank would be eligible for the deduction u/s. 80P(2)(d) of the Act. Learned AR has referred order dated 29.11.2019 passed by the co-ordinate bench of ITAT Mumbai in ITA no. 3155/MUM/2019, for A.Y. 2014–15, M/s. Solitaire CHS Ltd. V. Principal Comm. Income-Tax in support of his submissions.

10. Per contra, learned DR has vehemently supported the impugned order.

11. The term “co-operative society” is defined under the Income Tax Act 1961, as under:

“section 2(19) of the Income Tax Act 1961

“ ‘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.”

The term “Co-operative Bank” is defined under the Maharashtra co-operative society Act 1960, as under:

Maharashtra Co-operative Society Act 1960

“(10) “Co-operative Bank means a society which is doing the business of banking as defined in clause (b) of sub section (1) of section 5 of the Banking Companies Act 1949, and includes any society which in functioning are is to function as (a co-operative agricultural and rural multipurpose developers bank) under chapter XI”

12. In Mavilayi Service Co-operative Bank Limited V Commissioner of Income Tax, Calicut, (2021) 7SCC 90, it has been held by the Apex Court that Section 80P of the Act is a beneficial provision which was

enacted in order to encourage and promote the growth of the co-operative sector generally in the economic life of the country and therefore, has to be read liberally in favour of the assessee. 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 vide *Citizen Co-operative Society Limited V Commissioner of Income Tax*, (2017) 9SCC 364. This is because sub-section (4) of Section 80P is in the nature of a proviso to the main provision contained in sub-sections (1) and (2) of Section 80P. The proviso excludes co-operative banks, which are co-operative societies which must possess a licence from the Reserve Bank of India to do banking business. In other words, if an entity does not require a licence to do banking business within the definition of banking under Section 5(b) of the BR Act, 1949, then it would not fall within the scope of sub-section (4) of Section 80P. Hon'ble Supreme Court in *Kerala State Co-operative Agricultural and Rural Development Bank Ltd. (KSCARDB) V The Assessing Officer Trivendrum and Ors*, in Civil Appeal no. 10069 of 2016, vide judgment dated 14.09.2023 has also reiterated the same.

13. Hon'ble Karnataka High Court in Principal Commissioner of Income Tax and another V Totgars Co-operative Sale Society, [2017] 392 ITR 74 (Karn.), held in para 7,8,9,10 as under:

"7. However, the contention being taken by the learned counsel is untenable. For the issue that was before the Income-tax Appellate Tribunal, 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 Income-tax Appellate Tribunal 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 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 Regulation Act, 1949, defines a primary co-operative bank as the meaning of co-operative society. Therefore, a co-operative 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 bank. Therefore, according to section 80P(2)(d) of the Income-tax Act, the said amount of interest earned from a co-operative 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.

The learned counsel has relied on the case of Totgar's Co-operative Sale Society Ltd. v. ITO [2010] 322 ITR 283 (SC). However, the said case dealt with the interpretation, and the deduction, which would be applicable under section 80P(2)(a) (i) of the Income-tax Act. For, in the present case the interpretation that is required is of section 80P(2)(d) of the Income-tax Act and not section 80P(2)(a)(i) of the Income-tax 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."

14. The coordinate Mumbai bench of the Tribunal in M/s. Solitaire CHS Ltd (Supra), vide paras 8 & 9, held as under:

“8. We shall now advert to the judicial pronouncements that have been relied upon by the ld. A.R. We find that the issue that a co-operative society would be entitled for claim of deduction under Sec. 80P(2)(d) on the interest income derived from its investments held with a co-operative bank is covered in favour of the assessee in the following cases:

(i) *Land and Cooperative Housing Society Ltd. Vs. ITO (2017) 46 CCH 52 (Mum)*

(ii) *M/s C. Green Cooperative Housing and Society Ltd. Vs. ITO-21(3)(2), Mumbai (ITA No. 1343/Mum/2017, dated 31.03.2017)*

(iii) *Marvwanjee Cama Park Cooperative Housing Society Ltd. Vs. ITO-Range-20(2)(2), Mumbai (ITA No. 6139/Mum/2014, dated 27.09.2017.*

(iv). *Kaliandas Udyog Bhavan Pemises Co-op. Society Ltd. Vs. ITO, 21(2)(1), Mumbai We further find that the Hon'ble High Court of Karnataka in the case of Pr. Commissioner of Income Tax and Anr. Vs. Totagars Cooperative Sale Society (2017) 392 ITR 74 (Karn) and Hon'ble High Court of Gujarat in the case of State Bank Of India Vs. CIT (2016) 389 ITR 578 (Guj), had held, that the interest income earned by the assessee on its investments with a co-operative bank would be eligible for claim of deduction under Sec. 80P(2)(d) of the Act. Still further, we find that the CBDT Circular No. 14, dated 28.12.2006, also makes it clear beyond any scope of doubt that the purpose behind enactment of sub-section (4) of Sec. 80P was that the co-operative banks which were functioning at par with other banks would no more be entitled for claim of deduction under Sec. 80P(4) of the Act. Insofar the reliance placed by the Pr. CIT on the judgment of the Hon'ble Supreme Court in the case of Totgars Co-operative Sale Society Ltd. vs. ITO (2010) 322 ITR 283 (SC) is concerned, we are of the considered view that the same being distinguishable on facts had wrongly been relied upon by him. The adjudication by the Honble Apex Court in the aforesaid case was in context of Sec. 80P(2)(a)(i), and not on the entitlement of a co-operative society towards deduction under Sec. 80P(2)(d) on the interest income on the investments/deposits parked with a co-operative bank. Although, in all fairness, we may herein observe that the Hon'ble High Court of Karnataka in the Case of Pr. CIT VS. Totagars co-operative Sale Society (2017) 395 ITR 611 (Karn), had concluded that a co-operative society would not be entitled to claim of deduction under Sec. 80P(2)(d). At the same time, we find, that the Hon'ble High Court of Karnataka in the case of Pr. Commissioner of income Tax and Anr. Vs. Totagars Cooperative Sale Society (2017) 392 ITR 74 (Karn) and Hon'ble High Court of Gujarat in the case of State Bank Of India Vs. CIT (2016) 389 ITR 578 (Guj), wherein it was observed, that the interest income earned by a co-operative society on its investments held with a co-operative bank would be eligible for claim of deduction under Sec.80P(2)(d) of the Act. We find that as held by the Hon'ble High Court of Bombay in the case of K. Subramanian and Anr. Vs. Siemens India Ltd. and Anr (1985) 156*

ITR 11 (Bom), where there is a conflict between the decisions of non-jurisdictional High Courts, then a view which is in favour of the assessee is to be preferred as against that taken against him. Accordingly, taking support from the aforesaid judicial pronouncement of the Honble High Court of jurisdiction, we respectfully follow the view taken by the Hon'ble High Court of Karnataka in the case of Pr. Commissioner of Income Tax and Anr. Vs. Totagars Cooperative Sale Society (2017) 392 ITR 74 (Karn) and Hon'ble High Court of Gujarat in the case of State Bank Of India Vs. CIT (2016) 389 ITR 578 (Guj), wherein it was observed that the interest income earned by a co-operative society on its investments held with a co-operative bank would be eligible for claim of deduction under Sec.80P(2)(d) of the Act.

9. Be that as it may, in our considered view, as the A.O while framing the assessment had taken a possible view, and therein concluded that the assessee would be entitled for claim of deduction under Sec. 80P(2)(d) on the interest income earned on its investments/deposits with co-operative banks, therefore, the Pr. CIT was in error in exercising his revisional jurisdiction u/s 263 for dislodging the same. In fact, as observed by us hereinabove, the aforesaid view taken by the A.O at the time of framing of the assessment was clearly supported by the order of the jurisdictional Tribunal in the case of Land and Cooperative Housing Society Ltd. Vs. ITO (2017) 46 CCH 52 (Mum). Accordingly, finding no justification on the part of the Pr. CIT, who in exercise of his powers under Sec. 263, had dislodged the view that was taken by the A.O as regards the eligibility of the assessee towards claim of deduction under Sec. 80P(2)(d), we set aside his order and restore the order passed by the A.O under Sec. 143(3), date 14.09.2016.”

15. We note that the various co-ordinate benches of this Tribunal have time and again, considered the identical issue and have consistently held that the income earned by way of interest or dividend from investments made with any other co-operative bank is allowable as deduction u/s. 80P(2)(d). The assessee is thus entitled for the benefit u/s. 80P(2)(d) of the Act. The aforesaid limited issue is accordingly determined in favor of the assessee and against the revenue. The impugned order passed by learned CIT(A), thus cannot be sustained. Hence, the appeal is liable to be allowed.

16. In the result, the assessee's appeal is allowed. The impugned order dated 14.03.2024 is set aside. We direct the learned assessing officer to allow the benefit of deduction to assessee u/s. 80P(2)(d) of the Act.

Order pronounced on 15.10.2024.

Sd/-
(BR BASKARAN)
ACCOUNTANT MEMBER

Sd/-
(SUNIL KUMAR SINGH)
JUDICIAL MEMBER

Mumbai; Dated 15/10/2024

Anandi Nambi, *Steno*

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