

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

**BEFORE: SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER
&
SHRI SUNIL KUMAR SINGH, JUDICIAL MEMBER**

**ITA No. 2843/MUM/2024
(Assessment Year : 2020-21)**

Charkop Lands End Co-operative Housing Society Ltd. Plot No. 23, Lands End Chs, Netaji Subhashchandra Bose Marg, Sector 2A, Charkop, Kandivali West, 400067.	Vs.	ITO, Kautilya Bhavan, BKC, Mumbai.
PAN/GIR No. AAAAC4607J		
(Appellant)	..	(Respondent)

Assessee by	Shri. Siddharth Sunil Bhandari, ACA
Revenue by	Shri. Asif Karmali, Sr. DR
Date of Hearing	30/07/2024
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 31.03.2024 passed in Appeal no. NFAC/2019-20/10024791 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.] 2020-21, wherein learned CIT(A) has dismissed assessee's appeal filed against the intimation order dated 25.11.2021 passed by CPC u/s. 143(1) of the Act.

3. The brief facts state that the appellant Charkop Lands End Co-operative Housing Society Ltd. filed its return of income for A.Y. 2020-21 on 30.12.2020, declaring a total income at Rs. 2,80,303/-. The return was processed u/s. 143(1) of the Act on 25.11.2021, determining the total income at Rs. 6,75,160/-, after making disallowance of Rs. 3,94,856/- claimed by assessee u/s. 80P(2)(d) of the Act.
4. Aggrieved, assessee preferred first appeal before learned CIT(A), who dismissed assessee's appeal.
5. The appellant assessee has preferred this appeal before the Tribunal on the ground that learned Addl/JCIT(A) erred in confirming the disallowance of Rs. 3,94,856/- contrary to the provisions of section 80P(2)(d) of the Act.
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 main point for determination under appeal is as to whether the appellant Co-operative Housing Society is entitled to its claim of deduction of Rs. 3,94,856/- as interest income derived from its investments in the said co-operative bank?

9. Learned AR has submitted that the appellant co-operative housing society has earned interest income of Rs. 3,94,856/- from interest made in New India Co-operative Bank and NKGSB and is entitled to the benefit of deduction u/s. 80P(2)(d) of the Act. Learned AR has referred order dated 25.04.2018 passed by the co-ordinate bench of ITAT Mumbai in ITA no. 6547/MUM/2017, for A.Y. 2014-15, Kaliandas Udyog Bhavan Premises Co-operative Society Ltd. V. ITO-21(2)(1), Mumbai in support of his submissions.
10. Per contra, learned DR has vehemently supported 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. It appears that learned CIT(A) has taken support from the Hon'ble Apex Court decision in Totgars co-operative Sale Society Ltd. V. Income Tax Officer [2010] 322ITR283(SC). In this view of the matter, Hon'ble Karnataka High Court in Principal Commissioner of Income Tax and another V Totgars Co-operative Sale Society, [2017] 392 ITR 74 (Karn.), has, after referring Hon'ble Apex Court's Judgement in Totgar (Supra) held in para 7,8,9,10 as under:

"7. However, the contention being taken by the learned counsel is unten- able. 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-oper- ative 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 Regu- lation 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 soci- ety 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 ITA No. 2227/MUM/2023 for A.Y. 2020-21 Blue Rose Industrial Premises Co-operative Ltd. V CIT(A)/NFAC Delhi, vide order dated 31.10.2023, which also has reference of Kaliandas Udyog Bhavan Premises Co-operative Society (Supra), held in Para 5.2, 5.3 and 5.4 as under:

"5.2 The provisions of section 80P(2)(d) of the Act reflects "Co-operative Society" but not the "Co-Operative Bank" therefore question emerge "whether income earned by way of interest or dividend from the investments made with any other Cooperative Bank is allowable as deduction under section 80P(2)(d) of the Act, or not.

5.3 The Honble Co-ordinate Benches of the Tribunal in various cases including in Belgaum Coal and Coke Consumer Co-operative Association Ltd. Vs. ITO in ITA No. 102/PAN/2018 decided on 06.04.2022, Nawbharat Darpan Co-operative Credit Society Ltd. Vs. CIT in ITA No. 5288 and 5289/Mum/2018 decided on 25.11.2021, Borivali Jan Kalyan Sahkari Patpedhi Ltd. Vs. ITO in ITA No. 5230/Mum/2019 decided on 30.03.2021 and in the case of Pathare Prabhu Co-operative Housing Society Ltd. Vs. ITO in ITA No. 1346 & 1347/(MUM) of 2023 decided on 27.07.2023 (2023) 153 taxmann.com 714 (Mum. Trib.) dealt with identical issue "as to whether the interest/dividend income earned from Co-operative Bank is allowable as deduction under section 80P(2)(d) of the Act or not" and ultimately allowed the deduction claimed as interest/dividend income earned from Co-operative Bank u/s 80P(2)(d) of the Act . For clarity and ready reference, conclusion drawn by the Hon"ble Co-ordinate Bench of the Tribunal in the case of Pathare Prabhu Co-operative Housing Society Ltd. (supra) is reproduced herein below:

"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 Cooperative 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 Cooperative 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 Udyog 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 cooperative 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 Cooperative 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. CT 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."

5.4 In view of the consistent decisions taken by the Hon'ble Coordinate Benches of the Tribunal, the income if any earned by way of interest or dividend from the investments made with any other Cooperative Bank as well, is allowable as deduction under section 80P(2)(d) of the Act. Accordingly the AO is directed to allow deduction qua interest earned from Co-operative Banks only but subject to verification."

15. In the instant case the appellant society is registered under Maharashtra Co-operative Society Act, 1960. Assessee's investee co-operative Banks are thus co-operative societies in the state of Maharashtra. Various co-ordinate benches of the Tribunal have been consistently taking the view in favour of assessee as stated hereinabove, holding that the interest derived from the co-operative banks, which are co-operative societies, is allowable as deduction u/s. 80P(2)(d) of the Act. The assessee is thus entitled for the benefit u/s. 80P(2)(d) of the Act. The aforesaid point 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 31.03.2024 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/-
(OM PRAKASH KANT)
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