

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH “J(SMC)”, MUMBAI  
BEFORE SHRI. GAGAN GOYAL, ACCOUNTANT MEMBER  
AND  
SHRI. RAJ KUMAR CHAUHAN, JUDICIAL MEMBER  
ITA NO. 3777/MUM/2024 (A.Y: 2017-18)**

Yugdharma Co-operative Housing Society Limited	Vs. Income Tax Officer – Ward 31(1)(9)
Yugdharma CHS Ltd. Opp. Inorbit Mall Goregaon, Mumbai – 400104.	Room No. 536, 5 <sup>th</sup> Floor, Kautilya Bhavan, C-41 to C-43, G Block, Bandra Kurla Complex, Bandra East – 400051.

**(Appellant)**

**(Respondent)**

<b>Assessee Represented by</b>	<b>:</b>	<b>Shri. Dinesh Kukreja and Punit Shah</b>
<b>Department Represented by</b>	<b>:</b>	<b>Shri. Madhu N. T. (Sr. DR)</b>
<b>Date of conclusion of Hearing</b>	<b>:</b>	<b>04.09.2024</b>
<b>Date of Pronouncement</b>	<b>:</b>	<b>25.10.2024</b>

**ORDER**

**PER RAJ KUMAR CHAUHAN (J.M.):**

1. This appeal is filed by the appellant/assessee against the order dated 21.06.2024 of Learned Commissioner of Income Tax (Appeals), ADDL/JCIT (A) Bhubaneswar [hereinafter referred to as the “CIT(A)”],



passed under section 250 of the Income Tax Act, 1961 [hereinafter referred to as “*the Act*”] for the A.Y. 2017-18, wherein the order of the Ld. AO has upheld.

2. The brief facts as culled out from the proceedings before the lower authorities are that the assessee is a Cooperative HSG Society has e-filed its return of income for A.Y. 2017-18 declaring total income of Rs. Nil on 19.12.2017. The return was processed u/s. 143(1) of the Act and case was selected for limited scrutiny. Notice u/s. 143(2) dated 10.08.2018 was issued and served. A fresh notice u/s. 142(1) of the Act dated 13.11.2019 was also issued and duly served on the assessee. In response to notices, the assessee filed requisite details online. On consideration of the material submitted by the assessee a sum of Rs. 17,77,306/- was added as total income because the said amount was claimed as deduction u/s. 80P(2)(d) as well as u/s. 80P(2)(c)(ii) of the Act. The assessee has claimed deduction of Rs. 17,65,589/- u/s. 80P(2)(d) as interest earned from cooperative bank and a sum of Rs. 11,717/- u/s. 80P(2)(c)(ii) of the Act. Thus, making a total of Rs. 17,77,306/-. The Ld. AO made addition of the said amount on the ground that the interest amount was not earned from deposits with



cooperative society and the interest earned from cooperative bank was not exempted from tax.

3. Aggrieved by the said order, the assessee filed appeal before the Ld. CIT(A) who vide impugned order dismissed the appeal and confirmed the addition. Aggrieved by the impugned order of the Ld. CIT(A), the assessee is in appeal before us and has raised following grounds:

1. *“In the facts and circumstances of the case and in law, the Commissioner of Income Tax (Appeals) erred in concluding that in view of the provisions of section 80P (4) the appellant was not entitled to deduction in respect of income received from Co-operative Banks & hence the Learned AO erred in disallowing the deduction to the appellant under section 80P divided under subsections 80P(2)(d) & 80 P 2 C (ii).”*
  2. *In the facts and circumstances of the case and in law, the Commissioner of Income Tax (Appeals) erred in not applying the principal of natural justice in the case*
  3. *In the facts and circumstances of the case and in law, the Commissioner of Income Tax (Appeals) erred in not applying the provisions of Section 80P in right and judicial manner.”*
4. We have heard the Ld. AR on behalf of the assessee and Ld. DR on behalf of the revenue. The Ld. AR argued that both the Ld. Lower Authorities have committed illegality by refusing to exempt the amount earned as interest from the deposit with the cooperative bank. It is argued that since cooperative bank continues to be a cooperative society and assessee was



entitled to the benefit of provision of Section 80P(2)(d) of the Act which has been wrongly denied vide impugned order.

5. The Ld. DR on the other hand relied upon the judgment of the Ld. Lower Authorities stating that interest earned from the deposit with cooperative bank is not exempted.
6. We have considered the rival submissions and examined the record. At the very outset, we are of the considered opinion that the question of entitlement of the cooperative society, for exemption from tax the interest earned from the deposit with cooperative bank is no more res integra as various ITAT benches including the jurisdictional bench in numerous judgments consistently holding that the interest income earned by cooperative society from the deposit with cooperative bank is exempted from income tax.
7. The similar question has been decided by the Ld. Coordinate Bench of ITAT Bench, Mumbai in case of *ITA No. 3805/Mum/2023, Sahyadri Co-operative Credit Society Vs. ITO Ward 20(3)(2), Mumbai, order dated 07.03.2024*. The following findings extracted from the said order is



relevant as it deal all the issues raised by the Ld. AO as well as the Ld. CIT(A) and for the sake of reference reproduced as under:

*“On a perusal of Sec. 80P(2)(d), it can safely be gathered that interest income derived by an assessee co-operative society from its investments held with any other co-operative society shall be deducted in computing its total income. 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 co-operative society. We are in agreement with the view taken by the Pr. CIT, that with the insertion of sub- section (4) of Sec. 80P, vide the Finance Act, 2006, with effect from 01.04.2007, 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. However, at the same time, we are unable to subscribe to his view that the aforesaid amendment would jeopardise the claim of deduction of a co- operative society under Sec. 80P(2)(d) in respect of its interest income on investments/deposits parked with a co-operative bank. In our considered view, 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 find 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;”*

*We are of the considered view, that though the co-operative banks pursuant to the insertion of subsection (4) to Sec. 80P 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 under Sec.80P(2)(d) of the Act.*



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) *Marwanjee 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 Hon'ble 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), had observed, that the interest income earned by a co-operative society on its investments held with a cooperative bank would be eligible for claim of deduction under Sec.80P(2)(d) of the Act.”*

9. The above observation of the Ld. Coordinate Bench are mutatis mutandis applicable to the facts and circumstances of the case in hand because in this case also the sum of Rs. 17,65,589/- has been earned by the assessee from its deposits parked with cooperative bank.

10. With respect to the ground no. 2 regarding sum of Rs. 11,770/-, the Ld. CIT(A) has observed in para no. 5.1 and 5.1.1 as under:

*5.1. “In this ground of appeal, the appellant has averred the addition of Rs. 11,717/- made by the AO while framing the assessment order U/s 143(3) of the Act. It is the contention of the assessee that such amount is deductible in lieu of provision U/s 80P (2)(c) (ii) of the Act.*

*5.1.1. Careful consideration of this provision reveals that rupees of fifty thousand shall be allowed as deduction in case of a co-operative society engaged in activities other than those specified under clause (a) and (b) of section 80P(2) of the Act. However, such amount should be attributable to profit and gains of such activities. It is the case of the assessee that the amount claimed under this provision is the saving bank interest amount of Rs. 11,717/- which is not at all attributable any activities of which profit and gain has been derived. It is a passive income derived by the assessee from banks. Therefore, in my considered view such amount cannot be claimed as deduction under the extant provision of section 80P (2)(c) (ii) of the Act. Therefore this ground of appeal is dismissed and the addition made by the AO is confirmed.”*

11. Nothing contrary has been brought on record or submitted on behalf of the assessee with respect to the illegality or perversity in the finding of the



Ld. CIT(A) in ground no. 2. We do not find any illegality so as to differ with the finding of the Ld. CIT(A) with respect to addition of Rs. 11,770/- . Therefore, the appeal of the assessee with respect to the addition of Rs. 11,770/- claiming the same as deduction under the provisions of Section 80P(2)(c)(ii) of the Act is dismissed. The disallowance of interest earned from FDR / Saving Bank interest from cooperative bank amounting to Rs. 17,65,589/- is ordered to be deleted.

12. In the result, appeal filed by the assessee is partly allowed in the above terms.

**Order pronounced in the open court on 25.10.2024**

**Sd/-**  
**(GAGAN GOYAL)**  
**(ACCOUNTANT MEMBER)**

**Sd/-**  
**(RAJ KUMAR CHAUHAN)**  
**(JUDICIAL MEMBER)**

Mumbai / Dated 25.10.2024  
*Karishma J. Pawar, (Stenographer)*

**Copy of the Order forwarded to:**

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.



**ITA No. 3777/Mum/2024**  
**Yugdharma Cooperative Housing Society Limited; A.Y. 2017-18**

//True Copy//

**BY ORDER**

**(Asstt. Registrar)**  
**ITAT, Mumbai**