

IN THE INCOME TAX APPELLATE TRIBUNAL  
Mumbai "E" Bench, Mumbai.

Before Shri Narendra Kumar Choudhry (JM)  
& Shri Omkareshwar Chidara (AM)

I.T.A. No. 3803/Mum/2024 (A.Y. 2017-18)

ITO-30(1)(1) 2 <sup>nd</sup> Floor, 245B Kautilya Bhavan BKC, Bandra East Mumbai-400 051.	Vs.	The Times of India Employees Cooperative Credit Society Dr. D.N. Road, Fort Mumbai-400 001.  PAN : AAAAT4856G
(Appellant)		(Respondent)

Assessee by	Shri Suyog Bhave & Shri Vysnavi Krshnan
Department by	Shri V.M. Bhosale
Date of Hearing	19.09.2024
Date of Pronouncement	22.10.2024

ORDER

Per Omkareshwar Chidara (AM) :-

The only issue in the above cited Departmental appeal is whether assessee society is entitled for deduction under section 80P(2)(d) of the Income Tax Act (the Act for short) on the interest earned from the deposits with cooperative banks. In the grounds of appeal, the Department relied on the case of PCIT Vs. Totagar's Cooperative Sales Society (395 ITR 611).

2. In the above cited case, the learned Assessing Officer has denied the deduction claimed by the assessee society u/s. 80P(2)(d) of the Act and aggrieved by the denial of the benefit, the assessee society filed an appeal before the learned Commissioner of Income Tax (Appeals) (Ld. CIT(A) for short) who deleted the addition made by the Ld. AO and allowed the appeal of the assessee. The Ld. CIT(A) has mentioned several decisions of the Mumbai ITAT and also decisions of Kerala High Court in the case of PCIT Vs.

Peroorkada Service Cooperative Bank Ltd. (ITA No. 142/2019) dated 1.11.2021 and held that the interest income earned by the society comes within the category of income from other sources and the assessee is entitled to deduction u/s. 80P(2)(d) of the Act.

3. The Department filed an appeal before the ITAT stating that Hon'ble Karnataka High Court in the case of Totgars Cooperative Sale Society, 395 ITR 611 has held that the assessee society is not titled for deduction u/s. 80P(2)(d) of the Act.

4. During the proceedings before the Bench, Ld. DR relied on the order of the Ld. AO and the grounds of appeal.

5. Per contra, Ld. AR of the assessee has argued that this issue is covered in favour of the assessee in several decisions of the Coordinate Bench of Mumbai Tribunal and hence the assessee society is entitled for deduction u/s. 80P(2)(d) of the Act.

6. After hearing both sides, it is decided that the assessee society is entitled for deduction u/s. 80P(2)(d) of the Act as this issue was examined in detail and decided in favour of the assessee in several decisions of the ITAT Mumbai which are mentioned below :-

- i) M/s. Solitaire CHS Ltd. Vs. PCIT, ITA No. 3155/Mum/2019 dated 29.11.2019.
- ii) Land and Cooperative Housing Society Ltd. Vs. ITO, 46 CCH 52 (MUM)
- iii) M/s. C. Green Cooperative Housing Society Ltd. Vs. ITO, ITA No. 1343/Mum/2017 dated 31.3.2017.
- iv) Marvwanjee Cama Park Cooperative Housing Society Ltd. Vs. ITO (ITA No. 6139/Mum/2014 dated 27.9.2017.
- v) Kaliandas Udyog Bhavan Premises Cooperative Society Ltd. Vs. ITO.

7. Hon'ble Gujarat High Court in the case of State Bank of India Vs. CIT, 389 ITR 578, also held that the assessee society is entitled for deduction u/s. 80P(2)(d) of the Act on the interest earned from the funds invested by the cooperative society by investing in the cooperative banks. Moreover, in the subsequent decision of Hon'ble Karnata High Court in the case of Totagars Cooperative Sale Society Ltd. (2017) 392 ITR 74 dated 5.1.2017 held that the assessee society is entitled for deduction of interest income on investment in FDRs with cooperative banks is exempt. Apart from the above, Hon'ble Supreme Court in the case of Malvilayi Service Cooperative Bank Ltd. Vs. CIT, Calicut dated 12.1.2021 (431 ITR 1) held that the disallowance u/s. 80P(2)(d) of the Act is applicable only to the cooperative banks which are cooperative societies engaged in the banking business having a license from the RBI. Thus, 80P(4) is to be read as proviso and this proviso now specifically excludes the cooperative banks, which are cooperative societies engaged in the banking business i.e. engaged in lending money to the members of the public, and have license in this behalf from the RBI. Since the assessee does not have any license from the RBI for the banking business, the provisions of section 80P(4) are not attracted in the present case. Hence, the assessee is entitled for deduction u/s. 80P(2)(d) of the Act.

8. In view of the above, it is held that the assessee society is entitled for deduction u/s. 80P(2)(d) of the Act and the appeal of the Department is dismissed.

Order pronounced in the open court on 22<sup>nd</sup> October, 2024.

Sd/-  
(Narender Kumar Choudhry)  
Judicial Member

Sd/-  
(Omkareshwar Chidara)  
Accountant Member

Mumbai : 22.10.2024

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai.
6. Guard File.

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BY ORDER,

(Assistant Registrar)  
ITAT, Mumbai