

**IN THE INCOME TAX APPELLATE TRIBUNAL
“D” BENCH, MUMBAI**

**BEFORE SHRI SAKTIJIT DEY, VICE PRESIDENT &
MS PADMAVATHY S, AM**

I.T.A. No.5127/Mum/2024
(Assessment Year: 2017-18)

I.T.A. No.5125/Mum/2024
(Assessment Year: 2018-19)

I.T.A. No.5122/Mum/2024
(Assessment Year: 2020-21)

ITO-2(2)(1), Room No. 312, 3 rd Floor, Piramal Chambers, Lalbaug, Mumbai-400012.	Vs.	M.T.N.L. Mumbai Employees Co-operative Credit Society Ltd. Shivaji Park Telephone Ex Compound, Anant PAH Marg, Shivaji Park S.O. Dadar West, Mumbai-400028. PAN : AAAAM1777H
Appellant)	:	Respondent)

Revenue / Appellant by : Shri R.R. Makwana, Sr. DR

Respondent /Assessee by : Shri Rohit Kasat (Hybrid)

Date of Hearing : 25.11.2024

Date of Pronouncement : 02.12.2024

ORDER

Per Padmavathy S, AM:

These appeals by the revenue are against the separate orders of the Commissioner of Income Tax (Appeals) / National Faceless Appeal Centre (NFAC), Delhi, (in short CIT(A)) all dated 05.08.2024 for Assessment Year (AY)

2017-18, 2018-19 and 2020-21. The only issue contended by the revenue in all these appeals is the relief given by the CIT(A) by deleting disallowance of deduction claimed by the assessee under section 80P(2)(d) of the Income Tax Act (the Act)

2. The assessee is a cooperative society. The details of the return of income filed by the assessee and the amount not allowed against the deduction claimed under section 80P(2)(d) of the Act for the years under consideration are as tabulated below

AY	Date of filing of return	Income returned – Rs.	Deduction claimed u/s.80P(2)(d) – Rs.
2017-18	27.10.2017	Nil	3,78,55,905
2018-19	11.10.2018	Nil	3,99,50,656 (after setting off loss actual claim is Rs. 3,21,87,161)
2020-21	14.02.2021	Nil	2,66,58,597

3. The Assessing Officer (AO) while denying the deduction claimed by the assessee, held that the interest and dividend income earned from investments held in Cooperative Banks is not eligible for deduction under section 80P(2)(d). The AO in this regard placed reliance on the decision of the Hon'ble Supreme Court in the case of Totgar's Co-operative Society Ltd. Vs. ITO, 322 ITR 283. On further appeal, the CIT(A) held that the assessee is entitled for deduction under section 80P(2)(d) by placing reliance on the decision of the coordinate bench in assessee's own case for AY 2013-14 (ITA No.7352/Mum/2016 dated 17.04.2018) and AY 2014-15 (ITA No.3733/Mum/2019 dated 27.01.2021). The findings of the AO and the CIT(A) are identical for all the years under consideration. The revenue is in appeal against the orders of the CIT(A).

4. We heard the parties and perused the material on record. The contention of the AO for denying the deduction under section 80P(2)(d) is that the said section provides for deduction only for income from investments held with cooperative society and not cooperative bank. The AO had placed reliance on the decision of the Hon'ble Supreme Court in the case of Totgar's Co-operative Society Ltd (supra). The CIT(A), held the appeal in favour of the assessee by placing reliance on the decision of the coordinate bench in assessee's own case for AY 2013-14 & 2014-15. The ld AR submitted that the facts are for the years under consideration are identical and therefore the decision of the coordinate bench in earlier years is applicable for the year under consideration also. The ld DR on the other hand placed reliance on the order of the AO. In this regard we notice that the coordinate bench while considering the similar issue in assessee's own case for AY 2013-14 (supra) has held that

"2.1. We have considered the rival submissions and perused the material available on record. In view of the above, we are reproducing hereunder the relevant portion from the aforesaid order of the Tribunal dated 06/03/2018 for ready reference and analysis:-

"This is an appeal filed by Revenue against the order of CIT(A)-37, Mumbai dated 15/03/2017 for A.Y.2012-13 in the matter of order passed u/s.143(3) of the IT Act.

2. Only grievance of Revenue relates to allowing claim of deduction u/s.80P to the assessee-co-operative society.

3. Rival contentions have been heard and record perused.

4. Facts in brief are that the assessee is an AOP and is engaged in the business of Co-operative Society. The return of income has e-filed on 12/11/2012 declaring total income of Rs.34,649/-. The AO has assessed the total income after disallowance of claim u/s.80P(2)(d) of Rs.42,57,348/-.

5. By the impugned order, CIT(A) allowed assessee's claim of deduction u/s.80P after observing as under:-

5.7 The appellant is a Co-operative Credit society. It is not carrying out any banking activity so as to say that it is a Co-operative Bank. It is not registered with the Reserve Bank of India and it does not fulfill all the conditions prescribed under section 5(ccv) of the Banking Regulations Act 1949. As per sections 2(19) of the income-tax act 1961, a Co-operative society means a co-operative society registered under the Co-operative societies Act. 1912 or under any other law for the time being in force in any state for registration of Co-operative Societies . Further, as per section 2(10) of Maharashtra Co-operative Society Act, 1960, Co-operative Bank means a society which is doing the business of banking as defined in section 5(l)(b) of the Banking Companies Act, 1949. Hence, it is apparent from the above that the appellant being a Co-operative society could not be said to be a cooperative bank so as to deny it the benefit of provision of sections 80P as provided in sections 80P(4), where as a cooperative Bank is to be treated as a co-operative Society for the purpose of allowing deduction as per section 80P(2)(d).

5.8 The Hon'ble Bombay High court as Goa, in the case of M/s. The Quepem Urban Co-operative Credit Society ltd., Vs ACIT Circle-1, Margoa in Tax Appeals No. 22, 23, & 24 of 2015 has examined the issue in detail and after considering al the relevant provisions and facts of the case has come to a conclusion and held that the assesses could not be considered to be a Cooperative Bank for the purpose of sections 80P(4) of the Act. Further, Hon'ble Income tax Appellate Tribunal "A" Bench, Mumbai in the case of Lands End Co-operative Housing Society Ltd. vs ITO, in ITA No. 3566/Mum/2014 has "...the provisos of section 80P(2)(d) of the act provides for deduction in respect of income of a co-operative society by way of invest for dividend from its investments with other co-op society if such income is included in the gross total income of the such co-op society. In view of these facts and circumstances we are of the considered view that the assessee is entitled to the deductions of Rs.14,88,107 in respect of interest received/ derived by it on deposit "with co-op banks and therefore the appeal of the assessee is allowed by reversing the order of the CIT(A). The AO is directed accordingly."

5.9 In the case of the advocates mutually aided Co-operative Society Vs ACIT(2015), in ITA No. 546,547 & 1331/Hyd/2103, it was held by the Hon'ble ITAT, Hyderabad Bench that provisions of sections 80P(4) does not apply as the assessee society is not in the business of Banking

and that sections 80P(2)(d) is applicable to the assessee society in respect of interest received from other Co-operative Society including Co-operative Banks. In Sabarkantha District Co-operative Milk producers Union Limited Vs CIT in ITA No. 2613/Ahd/@012 it was held by Hon'ble Ahmedabad Tribunal that the only requirement for claiming deduction under sections 80P(2)(d) was that the income should be received from the investments made in Cooperative Society and Co-operative Banks. 5.10 Hon'ble ITAT B Bench Mumbai's in the case of The NutanLaxmi Chs Ltd, Mumbai vs Assessee decided on 24 August, 2016 is held that.

"Thus it is amply clear that a cooperative society can only avail deduction u/s 80P(2)(d)(i) in respect of its income assessable as business income and not as income from other sources if it carries on business of the banking or providing credit facilities to its members and has income assessable under the head business whereas for claiming u/s 80P(2)(d) it must have income of interest and dividend on investments with other Co-operative society may or may not be engaged in the banking for providing credit facilities to its members and the head under which the income is assessable is not material for the claim of deduction under this section. The provisions of section 80(P)(2)(d) of the Act provides for deduction in respect of income of a co-op society by way of interest or dividend from its investments [Q\ "with other co-op society if such income is included in the gross total income of the such Co-op society. In view these facts and circumstances we are of the considered view that the assessee is entitled to the deduction of Rs. 14,88,107/- in respect of interest received/derived by it on deposits with co-op, banks and therefore the appeal of the assessee is allowed by reversing the order of the CIT (A). The AO is directed accordingly,"

5.11 Further Hon'ble ITAT Mumbai has decided the issue in the case of Lands' End Co-operative Housing Society Ltd vs. I.T.O. I.T.A. No. 3566/Mum/2014 (ITAT) dated 15-01-2016. The operative part of the above decision reads as under:-

" the provisions of section 80(P)(2)(d) of the Act provides for deduction in respect of income of a coop society by way of interest or dividend from its investments with other coop society if such income is included in the gross total income of the such coop society. In view these facts and circumstances we are of the considered view that the assessee is entitled to the deduction of Rs. 14,88,107/- in respect of

interest received/derived by it on deposits with coop, banks and therefore the appeal of the assessee is allowed by reversing the order of the CTT(A). The AO is directed accordingly "

5.12 In the ACIT vs. M/s. Jawala Cooperative Urban Thrift & Credit Society Ltd., - it was held that

"We have heard rival parties and have gone through the material placed on record. We find that total income earned by the assessee included income on fixed deposits placed with Bombay Mercantile Bank, interest income from a scheduled bank and dividend income from Delhi Cooperative Bank. From the certificate as placed at paper book page 30, we find that Bombay Mercantile Cooperative Bank is a cooperative society registered under Maharashtra Cooperative Societies Act and we further find that the said society has been assessed u/s 143(3) as a cooperative society and its income was allowed to be exempt u/s SOP(2) (i) as held by Mumbai Tribunal in I. T.A. No. 4128 and 4129 vide its order dated 30.11.2005, for Assessment Year 1990-91 and 1991-92 and further by Mumbai Tribunal vide order dated 07.09.2011 in I.T.A. No. 5292 for Assessment Year 1997-98. Therefore it is held that fixed deposits placed with Bombay Mercantile Bank falls within the exemption granted by Section 80P(2)(d) of the Act. The assessee was also eligible under the provisions of Section 80P(2)a(i) as the funds placed by assessee in the form of fixed deposits can be said to be kept for the purpose of business of the assessee as the assessee had availed credit facilities also against such fixed deposits which were again used for the purpose of business of assessee. Moreover, under similar circumstances, Chandigarh Bench in I.T.A. No. 996/2009 as noted by Ld. CIT(A) has decided in favour of assessee. The dividend income is exempt for all persons including assessee. The interest income from bank amounting to Rs.18,190/- is though not exempt u/s 80(p)(2)(d) but is exempt u/s 80P(2)(i) of the Act. The case law of Totgar's Cooperative Society was rightly distinguished by Ld. CIT(A). Therefore, keeping in view all facts and circumstances, we do not find any infirmity in the order of Ld. CIT(A). 10. In view of above, appeal filed by revenue is dismissed."

5.13 I have considered the assessment order and written submission of the appellant and found that the AO has disallowed claim of deduction of interest income of Rs.42,57,3487- from Co-operative Bank u/s 80P(2)(d) of the Act as Co-operative bank is not a Co-operative

Society. I find force in the arguments of the appellant and draw strength from various judicial pronouncements of the jurisdiction at ITAT like The Nutan Laxmi Chs Ltd, Mumbai vs Assessee decided on 24 August, 2016, Lands End Cooperative Housing Society Ltd vs. I.T.O. I.T.A. No. 3566/Mum/2014 (ITAT) dated 15-01-2016 and ACIT vs. M/s. Jawala Cooperative Urban Thrift & Credit Society Ltd. A Cooperative Bank is always registered under the relevant Cooperative Societies Act of the relevant State. However, during the appellate proceedings, appellant has submitted that the claim of deduction u/s.80P has been accepted in the subsequent year and no addition on the above ground has been made in the AY 2013-14 and AY 2014-15 In view of above, the appellant is entitled to claim of deduction u/s 80P of the Act, therefore, AO is directed to allow Rs.42,57,348/- as deduction u/s.80P of the Act. This ground of appeal is allowed.

6. I have gone through the orders of the authorities below. It is clear from the order of CIT(A) that after applying judicial pronouncements, as laid down by Hon'ble Bombay High Court and the various benches of Tribunal held that assessee-Co-operative society is eligible for deduction u/s. 80P. The finding recorded by CIT(A) has not been controverted by learned DR by bringing any positive material on record. Accordingly, I do not find any reason to interfere in the order of CIT(A).

7. In the result, appeal of the Revenue is dismissed.

2.2. The facts in brief, in the present appeal, are that the assessee is a employees co-operative credit society catering to its members. The main activity carried out by the society was mainly borrowing from banks and lending of funds/providing credit facilities to its own members under various schemes formulated by it. During assessment proceedings, the Ld. Assessing Officer observed that the assessee showed total receipt of Rs.22,21,52,042/- by way of interest including interest from deposits in MDC Co-operative bank amounting to Rs.57,22,046/-. The Ld. Assessing Officer further observed that the assessee claimed deduction of Rs.4,45,67,962/- u/s 80P(2)(a)(i) and Rs.61,75,706/- u/s 80P(2)(d) of the Act. As such the assessee claimed total deduction of Rs.5,07,43,668/- u/s 80P of the Act, which was denied by the Ld. Assessing Officer. On appeal, before the Ld. Commissioner of Income Tax (Appeal), the view taken in the assessment order was affirmed by Ld. Commissioner of Income Tax (Appeal) so far as deduction u/s 80P(2)(d) to the tune of Rs.61,75,706/-, which is under challenge before this Tribunal. However, we find that on identical issue in the case of Income Tax Officer vs M/s Presidency Co-

operative Housing Society Ltd. (ITA No.4058/Mum/2017) order dated 06/03/2018 ((supra)), another decision in Income Tax Officer vs M/s The Central Telegraph Office Co-operative Credit Society Ltd. (ITA No.4553/Mum/2016), Lands End Co-operative Housing Society Ltd. (2016) 46 CCH 52 (Mum. Trib.) following the decision in CIT vs Darbhanga Mansion CHS Ltd. (ITA No.1474/Mum/2012) decided identical issue in favour of the assessee by holding that the deduction in respect of income cooperative society by way of interest from its investment with other co-operative society, the assessee is entitle to deduction in respect of interest received/derived by it on deposit with cooperative bank. It is further noted that in the aforesaid decision, the Bench duly considered the decision in Totagar Cooperative Sale Society Ltd. 322 ITR 283 (Supreme Court), Mittal Court Premises Cooperative Society Ltd. vs Income Tax Officer 320 ITR 414 and CIT vs Kangra Cooperative Bank Ltd. 309 ITR 106. Identical ratio was laid down by the Mumbai Bench in Sea Grean Co-operative Hsg. Society vs Income Tax Officer (ITA No.1343/Mum/2017) order dated 31/03/2017. Following the aforesaid decisions and keeping in view, the principle of consistency, the appeal of the assessee is allowed.”

5. From the perusal of records, we notice that facts for the years under consideration are similar, and therefore in our considered view, the above decision of the coordinate bench is applicable for the years under consideration also. Accordingly we see no reason to interfere with the decision of the CIT(A) in allowing the deduction claimed by the assessee under section 80P(2)(d) towards interest and dividend.

6. In result the appeals of the revenue for AY 2017-18, AY 2018-19 and AY 2020-21 are dismissed.

Order pronounced in the open court on 02-12-2024.

Sd/-
(SAKTIJIT DEY)
Vice President

*SK, Sr. PS

Sd/-
(PADMAVATHY S)
Accountant Member

Copy of the Order forwarded to :

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

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai