

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
MUMBAI BENCH "F", MUMBAI**

**BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER  
AND SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER**

**ITA No. 4126/Mum/2024 (A.Y. 2017-18)  
ITA No. 3737/Mum/2024 (A.Y. 2018-19)  
ITA No. 4127/Mum/2024 (A.Y. 2020-21)**

ITO, Mumbai	WD-30(1)(1),	vs	Vaidhyakiya Vibhag Karmachari Sahakari Patsanstha Maryadit  4 <sup>th</sup> Floor, Government Dental College, St. George Hospital Building Fort, Mumbai-400001.  PAN: AAAAV 7740 B
(Appellant)			(Respondent)

**Present for:**

Assessee by : None  
Revenue by : Shri Dinesh A Chourasia, Sr. DR

Date of Hearing : 05.12.2024  
Date of Pronouncement : 12.12.2024

**ORDER**

**PER AMARJIT SINGH, ACCOUNTANT MEMBER:**

All these three appeals filed by the Revenue pertaining to A.Y. 2017-18, 2018-19 & 2020-21 are directed against the different order of Id. CIT(A), NFAC. Since the common issue on identical facts are involved in these appeals, therefore, for the sake of convenience these three appeals filed by the Revenue are adjudicated together by taking the ITA No. 4126/M/2024 as lead case and its finding will be applied to the other two cases mutatis mutandis wherever it is applicable.

**ITA 4126/Mum/2024 (A.Y. 2017-18)**

*"1. Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) was correct in allowing the deduction u/s 80P(2) of the 1.T.Act in respect of interest earned from deposits from cooperative bank ignoring the amendment made by Finance Act, 2015 in section 194A(3)(v) of the*

*Act which excludes the Cooperative Banks from the definition of "Cooperative Society" and requiring them to deduct income tax at source under 194A of the Act that also makes the legislative intent clear that the Co-operative Banks are not that specie of genus cooperative society, which are entitled to claim deduction under the special provisions of Chapter VIA in the form of Section 80P of the Act?*

*2 Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) was correct in allowing the deduction u/s 80P(2) of the 1.T.Act, 1961 in respect of interest earned from cooperative banks ignoring the fact that the words used in section 80P(4) are "in relation to" that can include within its ambit and scope even the interest income earned by the assessee, from a Co-operative Bank and this exclusion by Section 80P(4) of the Act even though without any amendment in Section 80P(2) of the Act is sufficient to deny the claim of the assessee for deduction under Section 80P(2) of the Act.*

*3. Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) was correct in allowing the deduction u/s 80P(2) of the I.T. Act, 1961 in respect of interest earned from cooperative banks ignoring that whether the deposits and investment of surplus funds of assessee not immediately required for its purposes, is made with Scheduled Bank or Nationalized Banks or with Cooperative Banks does not make a difference as far as the character of the Income earned by the assessee is concerned and it does not partake the character of its operational income, the same would continue to be fully taxable and will not be eligible for deduction under Section 80P(2) of the Act.*

*4. Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) was correct in allowing deduction u/s.80P(2) of the Income Tax Act, 1961 in respect of interest earned from deposits, though Hon'ble Karnataka High Court in a detailed judgment discussing the law and various related issues in the case of PCIT vs. Totagar's Co-operative Sales Society (395 ITR 611) has specifically decided the Question of Law about the allowability of interest earned from deposits with co-operative bank u/s. 80P(2) of the Income tax Act in favour of Revenue."*

2. Fact in brief is that return of income declaring total income of Rs. Nil was filed on 01.09.2017. The case was subject to scrutiny assessment and notice u/s 143(2) of the Act was issued on 09.08.2018. During the course of assessment, the AO noticed that assessee has claimed deduction u/s 80P to the amount of Rs.

1,52,55,714/-. The assessee was asked to explain by the same should not be disallowed in view of the provision of section 80P(4) of the I.T. Act, 1961. The AO stated that assessee failed to make any compliance, therefore, after considering the material available on record the AO stated that assessee is a co-operative credit society and claimed deduction u/s 80P(2)(a)(i) for Rs. 1,52,55,714/-. The AO stated that assessee was mainly engaged in the activity of providing credit facilities to its members. Therefore, the assessing officer was of the view that assessee was nature of income generated by the assessee was of bank business. The AO further stated that provision of section 80P(4)(2)(24)(viiia) has been amended with effect from 2007-08 which provide that deduction u/s 80P(2)(a)(i) are not available to the co-operative bank. Therefore, in view of the provision of section 80P(4) of the Act the AO has disallowed the claim of deduction of the assessee u/s 80P of the Act.

3. The assessee filed appeal before the Id. CIT(A). The Id. CIT(A) allowed the appeal of the assessee.

4. Heard the Id. DR and perused the material on record. The assessee is a co-operative society registered under the Maharashtra Co-operative Societies Act, 1960. During the year under consideration, the assessee has earned interest income by way of interest by accepting deposit and accepting loan facilities and claimed deduction of Rs. 1,52,55,714/- u/s 80P(2)(a)(i) of the Act. The assessing officer has not allowed the claim of deduction u/s 80P of the Act by treating the assessee co-operative society similar to the co-operative bank on the basis of amendment made to section 80P(4) of the Act in the A.Y. 2007-08 that the co-operative bank is not eligible for deduction u/s 80P(4) of the Act. The assessee is mainly

engaged in the activity of providing credit facilities to its members out of the deposits collected and claimed deduction u/s 80P(2)(a)(i) on the interest income earned. The Id. AO has referred the decision of the Hon'ble Supreme Court in Civil Appeal No. 8719/2022 in the case of the Pr. CIT-17, Mumbai vs M/s. Annasaheb Patil Mathadi Kamgar Sahakari Pathpedi Ltd. holding that the banking activities under the Banking Regulation Act are altogether different activities. There is a vast difference between the credit societies giving credit to their own members only and the Banks providing banking sources including the credit to the public at large also. Section 80P(4) shall not be applicable and the assessee society shall be entitled to exemption under section 80P(2) of the Act. The assessee society is not in the business of banking therefore it cannot be treated as a bank therefore provision of section 80P(4) are not attracted to the assessee at all. We consider that assessee being a co-operative society has dealt in accepting deposit from its members and also extended credit facilities to its members therefore, as per provision of section 80P(2)(a)(i), the assessee co-operative society is eligible for claiming deduction u/s 80P(2)(a)(i) of the Act. Looking to the above facts and findings, we do not find any merit in the appeal filed by the Revenue therefore, the same stand dismissed.

#### **ITA 3737/Mum/2024 (A.Y. 2018-19)**

5. Since on similar issue and identical fact, we have dismissed the appeal of the revenue vide ITA No. 4126/M/2024 for A.Y. 2017-18 as supra in this order. Therefore, applying the finding of the same mutatis mutandis this appeal of the Revenue for A.Y. 2018-19 is also dismissed.

**ITA 4127/Mum/2024 (A.Y. 2020-21)**

6. Since on similar issue and identical fact, we have dismissed the appeal of the revenue vide ITA No. 4126/M/2024 for A.Y. 2017-18 as supra in this order. Therefore, applying the finding of the same mutatis mutandis this appeal of the Revenue for A.Y. 2020-21 is also dismissed.

7. In the result, all the appeals of the Revenue are dismissed.

Order pronounced in the open court on 12.12.2024.

**Sd/-**  
**(SANDEEP SINGH KARHAIL)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(AMARJIT SINGH)**  
**ACCOUNTANT MEMBER**

Mumbai, Dated: 12.12.2024  
Biswajit, Sr. P.S.

Copy to:

1. The Appellant:
2. The Respondent:
3. The CIT
4. The DR

//True Copy//

By Order

Assistant Registrar  
ITAT, Mumbai Benches, Mumbai