

**IN THE INCOME TAX APPELLATE TRIBUNAL,
'A' BENCH MUMBAI**

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SHRI, GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No.5901/M/2024
(Assessment Year :2020-21)**

&

**ITA No.5905/M/2024
(Assessment Year :2018-19)**

ITO- 19(3)(1) 405, 4 th Floor, Piramal Chambers, Parel, Mumbai- 400012.	Vs.	ShivsahyadriSahakariPathpedhi 118, Devi Bhavan, 5 th Floor, Senapati Bapat Marg, Matunga, Maharashtra- 400016.
PAN/GIR No.AAFAS6090N		
(Appellant)	..	(Respondent)

Assessee by	Shri Dinesh Ahir
Revenue by	Shri Pravin Salunkhe (Sr. DR)
Date of Hearing	24/12/2024
Date of Pronouncement	31/12/2024

आदेश / ORDER

PER BENCH:

The aforesaid appeals have been filed by the Revenue against order dated 13/11/2024 passed by NFAC, Delhi, Mumbai for the quantum of assessment passed u/s.143(3) for the A.Y.2020-21 and for A.Y.2018-19.

2. In both the years the grounds raised by the Revenue are similar. For the sake of ready reference, the grounds raised in 2018-19 are reproduced hereunder:-

"1. Whether on the facts and in circumstances of the case and in law, the Ld. CIT(A) is erred in deleting the addition made of Rs. 4,34,49,404/- by the AO, on account of disallowance of claimed made by the applicant u/s 80(P)(2)(a) (i) and 80P(2)(d) of the Income-Tax Act, 1961 ?"

2. Whether on the facts and in circumstances of the case and in law, the Ld. CIT(A) is erred in deleting the addition made of Rs. 4,34,49,404/- by the AO, by ignoring the order of the AO, wherein it was stated that Co-operative bank is an urban commercial bank and does not fall under the purview of a 'Co-operative Society' as referred in section 80P(2)(d) of the Income Tax Act, 1961 and further the AO has mentioned that Appellant(Society), has failed to demonstrates that the credit facilities were given to non-members or the general public?"

3. Whether on the facts and in circumstances of the case and in law, the Ld. CIT(A) is erred in deleting the addition made of Rs. 4,34,49,404/- by the AO, without appreciating legislative intent of the inserted provision of 80(P) of the income-Tax Act, was amended with new sub section (4), which specifically provides that this section shall not apply in relation to any co-operative bank other than a primary agricultural credit society or primary co-operative agricultural and rural developer bank ?"

4. Whether on the facts and in circumstances of the case and in law, the Ld. CIT(A) is erred in deleting the addition made of Rs. 4,34,49,404/- by the AO without considering the decision of the Hon'ble Supreme Court in the case of Citizen Co-operative Society Ltd. Vs. ACIT vide its order dated 08/08/2017 [[2017] 84 taxmann.com 114 (SC)], which was further affirmed in its order dated 21/11/2017 in response to a review petition [2017] 88 taxmann.com 279 (SC)], wherein the Hon'ble Apex Court has held that the co-operative bank cannot be treated as co-operative society and cannot take benefit of deduction u/s 80P of the Act and accordingly, as per the Act the deduction u/s 80P(2)(d) of the

Income-Tax Act, is allowable only with the deposit made with co-operative society not with co-operative banks?"

5. Whether on the facts and in circumstances of the case and in law, the Ld. CIT(A) is erred in deleting the addition made of Rs. 4,34,49,404/- by the AO, without appreciating the decision of Hon'ble Apex Court in the case of The Mavilayi Service Co-op Bank Ltd & Others Vs. CIT. Civil Appeals Nos. 7343-7350 of 2019 dt. 12-01-2021, wherein it was held that interest earned from investments made in any bank, not being a co-operative society, is not deductible under section 80P(2)(d) of the Act?"

6. Whether on the facts and in circumstances of the case and in law, the Ld. CIT(A) is erred in deleting the addition made of Rs. 4,34,49,404/- by the AO, even if Hon'ble Supreme Court as well as Hon'ble Karnataka High Court in the case of Totagar Cooperative sale society (2010) 322 ITR 283(SC) and (2017)392 ITR 74(Kar) held that the income by way of interest earned by deposit or investment of idle or surplus funds does not change its character irrespective of the fact whether such income of interest is earned from a schedule bank or a co-operative bank and thus, clause (d) of section 80P(2) of the Act would not apply in case of co-operative bank?

7. The appellant craves leave to amend or alter any grounds or add a new ground which may be necessary?"

3. At the outset, it has been stated that this issue stands covered by the decision of the Tribunal in assessee's own case for the A.Y.2017-18 wherein, the Tribunal have allowed the claim of deduction u/s.80P(2)(d). For the sake of ready reference the relevant finding reads as under:-

2. The assessee, which is a credit co-operative society registered under the Maharashtra Co-operative Societies Act, had filed its Return of Income (RoI) on 30.10.2017 declaring NIL income after claiming a deduction of Rs.5,01,16,340/- under Section 80P(2)(d) of the said Act. The return was initially processed under Section

143(1) of the Act. The case was selected for scrutiny under CASS. Notice under Section 142(1) of the Act was issued to the assessee. Eventually the AO by order dated 27.12.2019 disallowed the deduction as claimed.

3. Feeling aggrieved, the appellant challenged the same before the CIT(A). The First Appellate Authority passed the impugned order confirming the disallowance. Hence, this appeal.

4. We have heard the parties. Perused record.

5. The issue in our view is no longer *res integra*. The authorities below have concurrently found that the provisions of Section 80P(2)(d) of the Act envisage allowable deduction only against the interest earned by co-operative society on account of deposit made with any other co-operative society. The CIT(A) has also found that the intention of the legislature to exclude the co-operative banks or commercial banks is with a view to ensure that credit facility is available to the co-operative societies (para 8.1 of the order), which are supposed to provide "credit facility to their Members for agricultural purposes and to create agro-based activities".

6. The learned AR has placed reliance on the decision of Hon'ble Madras in *Thorapadi Urban Co-op. Credit Society Ltd. vs ITO*, [2023] 156 Laxmann.com 419 (Madras) and the decision of this Tribunal in ITA No. 1455/Num/2023 dated 21.04.2023 (Kalpataru Estate Building No. 2 Cooperative Housing Society Ltd.) and ITA Nos. 2955 to 2958/Mum/2023 dated 06.11.2023 (Kinjal Heaven).

7. The learned CIT-DR has supported the impugned order on the ground that Section 80P(2)(d) of the Act cannot take into its ambit the interest income on deposits kept with co-operative banks/commercial banks.

8. We have considered the submissions made. As noticed earlier, the issue stands concluded by the decisions of this Tribunal as referred to above. Even the Hon'ble Madras High Court in the case of *Thorapadi Urban Co-op. Credit Society Ltd.* (*supra*) has held thus in paras 8 to 10 of its order :-

"8. The main issue is to decide in the present case is as to whether the petitioner Co-operative Society is entitled for a deduction for the interest income received from the Co-operative Bank?"

9. It would be appropriate to extract hereunder the relevant portion of section 80P(2)(d).

"80 P. 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 investment with any other co-operative society, the whole of such income"

9.1. A reading of the above said provision makes it clear that in the event if any Co-operative Society derived income by way of interest from investment made in any other Co-operative Society the whole such interest is eligible for deduction. Now the issue is as to whether the Co-operative Bank would fall within the purview of the term 'Co-operative Society'. In the present case, the petitioner produced a document to show that the Co-operative Bank, where they have made investments was registered under the Tamil Nadu Co operative Societies Act, 1983 on 20-5-2003. In this regard, he also produced a copy of the Certificate of Incorporation of the said Co-operative Bank Therefore, it is clear that the investment made by the petitioner is a Co-operative Bank registered under the Co-operative Societies Act. The Income Tax Act, 1961 has also defined 'Co-operative Society under section 2(19) as follows:

'2(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."

10. A reading of the above definition would make it clear that 'Co-operative Society' means a Co-operative Society registered under Co-operative Societies Act, 1912. Thus, a Co-operative Society referred therein is only a co-operative society as defined under

the Act, be it a Co-operative Society carrying on banking business or Co-operative Society carrying on the other businesses or a Co-operative bank."

9. In that view of the matter, we find that the appeal has to succeed."

4. Further, the Hon'ble Supreme Court in the case of **PCIT vs. Annasaheb Patil reported in 454 ITR 117**, the Hon'ble Court held that assessee being a credit society are entitled for exemption u/s. 80P(2) and they cannot be termed as public co-operative banks and therefore, Section 80P(4) shall not be applicable. Admittedly, here in this case the interest had been received from co-operative banks and law is well settled that credit co-operative society investments in co-operative bank claimed as allowable u/s.80P(2) because co-operative banks are also registered under co-operative society. Accordingly, respectfully following the earlier year precedents for A.Y.2017-18, the grounds raised by the Revenue in both the appeals are dismissed.

5. In the result, appeals of the Revenue are dismissed.

Order pronounced on 31st December, 2024.

Sd/-
(GIRISH AGRAWAL)
ACCOUNTANT MEMBER

Mumbai; Dated 31/12/2024
KARUNA, *sr.ps*

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

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