

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

BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER

**ITA No.5989/M/2024
Assessment Year: 2021-22**

M/s. Sai Ankur Co-operative Housing Society Ltd., Ankur Sai Baba Park, Mith Chowki, Orlem, Malad West, MUmbai Maharashtra – 400 064 PAN: AAAAS0487J	Vs.	Income Tax Office- Ward 41(3)(4), C-41-43, G Block BKC, Gilban Area, Bandra Kurla Complex, Bandra East, Mumbai, Maharashtra – 400 051
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Abhishek Choksy, Ld. A.R.
Revenue by : Shri Gotimukul Santosh Kumar, Sr. D.R

Date of Hearing : 09.01.2025
Date of Pronouncement : 22.01.2025

O R D E R

Per : Narender Kumar Choudhry, Judicial Member:

This appeal has been preferred by the Assessee against the order dated 28.09.2024, impugned herein, passed by the National Faceless Appeal Center (NFAC)/ Ld. Commissioner of Income Tax (Appeals) (in short Ld. Commissioner) under section 250 of the Income Tax Act, 1961 (in short 'the Act') for the A.Y. 2021-22.

2. The Assessee during the assessment year under consideration has earned the amount of Rs.5,73,516/- on account of interest from investments in fixed deposits with Apna Sahakari Bank Ltd. which is a co-operative bank, wherein the Assessee has maintained saving bank account and fixed deposits. The Assessee therefore claimed the deduction of the said amount u/s 80P(2)(d) of the Act, however, the same

was denied by the CPC, vide intimation dated 19.10.2022 u/s 143(1) of the Act.

3. The Assessee, being aggrieved, challenged the said addition/disallowance before the Ld. Commissioner, however, could not succeed and therefore the Assessee is in appeal before this Court.

4. The Assessee claimed that it is entitled for the deduction as claimed u/s 80P(2)(d) of the Act, on the basis of various judgments passed by the various courts including by the Mumbai Benches.

5. On the contrary, the Ld. D.R. refuted the claim of the Assessee by supporting the orders passed by the authorities below.

6. Heard the parties and perused the material available on record. The issue is covered in favour of the Assessee, as the identical deduction as claimed u/s 80P(2)(d) of the Act has been allowed in favour of the Assessee by various courts including by the Tribunal in the case of Pathare Prabhu Co-operative Housing Society Ltd. vs. ITO (ITA No.1346 & 1347/M/2023 decided on 27.07.2023) (2023) 153 taxmann.com 714 (Mum. – Trib.) by observing and concluding as under:

“8. We have considered the submissions of both sides and perused the material available on record. The only dispute raised by the assessee is against the disallowance of deduction under section 80P(2)(d) of the Act in respect of interest income received from the Co-operative Banks. The assessee is a registered Co-operative Housing Society and during the assessment year 2018-19 earned interest income of Rs. 50,39,861 from the investments made in various Co-operative Banks.

9. Before proceeding further, it is relevant to note the provisions of section 80P of the Act under which the assessee has claimed the deduction in the present case. As per the provisions of section 80P(1) of the Act, the income referred to in sub-section (2) to section 80P shall be allowed as a deduction to an assessee being a Co-operative Society. Further, section 80P(2)(d) of the Act, reads as under:

“80P. 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)

(b)

(c)

(d) in respect of any income by way of interest or dividends derived by the cooperative society from its investments with any other co-operative society, the whole of such income;”

10. Thus, for the purpose of provisions of section 80P(2)(d) of the Act, two conditions are required to be cumulatively satisfied- (i) income by way of interest or dividend is earned by the Co-operative Society from the investments, and (ii) such investments should be with any other Co-operative Society. Further, the term „co-operative society” is defined under section 2(19) of the Act as under:

“(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 ;

11. In the present case, there is no dispute that the assessee is a CoOperative Housing Society. Thus, if any income as referred to in sub-section (2) to section 80P of the Act is included in the gross total income of the assessee, the same shall be allowed as a deduction. It is pertinent to note that since the assessee is registered under the Maharashtra Co-operative Societies Act, 1960, it is required to invest or deposit its funds in one of the modes provided in section 70 of the aforesaid Act, which includes investment or deposit of funds in the District Central Co-operative Bank or the State Cooperative Bank. Accordingly, the assessee kept the deposits in Co-operative Banks registered under the Maharashtra Co-operative Societies Act and earned interest, which was claimed as a deduction under section 80P(2)(d) of the Act. The AO denied the deduction under section 80P(2)(d) of the Act on the basis that the Co-operative Bank is covered under the provisions of section 80P(4) of the Act. We find that the Hon“ble Supreme Court in *Mavilayi Service Cooperative Bank Ltd. vs CIT, Calicut*, [2021] 431 ITR 1 (SC) while analysing the provisions of section 80P(4) of the Act held that section 80P(4) is a proviso to the main provision contained in section 80P(1) and (2) and excludes only Cooperative Banks, which are Co-operative Societies and also possesses a licence from RBI to do banking business. The Hon“ble Supreme Court further held that the limited object of section 80P(4) is to

exclude Co-operative Banks that function at par with other commercial banks i.e. which lend money to members of the public. Thus, we are of the considered view that section 80P(4) of the Act is of relevance only in a case where the assessee, who is a Co-operative Bank, claims a deduction under section 80P of the Act which is not the facts of the present case. Therefore, we find no merits in the aforesaid reasoning adopted by the AO and upheld by the learned CIT(A) in denying deduction under section 80P(2)(d) of the Act to the assessee.

12. As regards the claim of deduction under section 80P(2)(d) of the Act, it is also pertinent to note that all Co-operative Banks are Co-operative Societies but vice versa is not true. We find that the coordinate benches of the Tribunal have consistently taken a view in favour of the assessee and held that even the interest earned from the Co-operative Banks is allowable as a deduction under section 80P(2)(d) of the Act. In *Kaliandas Udyog Bhavan Premises Coop Society Ltd vs ITO*, in ITA No. 6547/ Mum./2017, vide order dated 25/04/2018, while dealing with the provisions of section 80P(2)(d) vis-à-vis section 80P(4) of the Act, the coordinate bench of the Tribunal observed as under:

“7.Thus, from a perusal of the aforesaid Sec. 80P(2)(d) it can safely be gathered that income by way of interest income derived by an assessee cooperative society from its investments held with any other cooperative society, shall be deducted in computing the total income of the assessee. 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 cooperative society. We though are in agreement with the observations of the lower authorities 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, but however, are unable to subscribe to their view that the same shall also jeopardise the claim of deduction of a cooperative society under Sec. 80P(2)(d) in respect of the interest income on their investments parked with a co-operative bank. We have given a thoughtful consideration to the issue before us and are of the considered view that as long as it is proved that the interest income is being derived by a cooperative society from its investments made with any other cooperative society, the claim of deduction under the aforesaid statutory provision, viz. Sec. 80P(2)(d) would be duly available. We may herein observe that the term 'co-operative 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 bank pursuant to the insertion of Sub-section (4) of Sec. 80P would no more be entitled for claim of deduction under Sec. 80P of the Act, but however, as a co-operative bank continues to be a co-operative society registered under the Cooperative Societies Act, 1912 (2 of 1912), or under any other law for the time being enforced 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."

13. We find that the learned CIT(A) has placed reliance upon the decision of the Hon'ble Karnataka High Court in Pr.CIT v/s Totagars Co-operative Sales Society, [2017] 395 ITR 611 (Karn.), wherein it was held that interest earned by the assessee, a Co-operative Society, from surplus deposits kept with a Cooperative Bank, was not eligible for deduction under section 80P(2)(d) of the Act. We find that in an earlier decision the Hon'ble Karnataka High Court in Pr.CIT v/s Totagars Co-operative Sales Society, [2017] 392 ITR 74 (Karn.) held that according to section 80P(2)(d) of the Act, the amount of interest earned from a Co-operative Society Bank would be deductible from the gross income of the Co-operative Society in order to assess its total income. Thus, there are divergent views of the same Hon'ble High Court on the issue of eligibility of deduction under section 80P(2)(d) of the Act in respect of interest earned from Co-operative Bank. No decision of the Hon'ble jurisdictional High Court was brought to our notice on this aspect. We have to, with our highest respect to both the views of the Hon'ble High Court, adopt an objective criterion for deciding as to which decision of the Hon'ble High Court should be followed by us. We find guidance from the judgment of the Hon'ble Supreme Court in CIT v. Vegetable Products Ltd., [1972] 88 ITR 192. In the aforesaid decision, the Hon'ble Supreme Court has laid down a principle that "if two reasonable constructions of a taxing provisions are possible, that construction which favours the assessee must be adopted".

14. Therefore, in view of the above, we uphold the plea of the assessee and direct the AO to grant the deduction under section 80P(2)(d) of the Act to the assessee in respect of interest income earned from investment with Cooperative Banks. Accordingly, we set aside the impugned order passed by the learned CIT(A) for the assessment year 2018-19. As a result, grounds raised by the assessee are allowed."

7. As the issue is covered as observed above, hence in view of the judgments including in the case referred above, this Court is inclined to allow the claim of the Assessee, as claimed u/s 80P(2)(d) of the Act, thus the same is allowed and the addition is deleted .

8. In the result, the appeal filed by the Assessee stands allowed.

Order pronounced in the open court on 22.01.2025.

**Sd/-
(NARENDER KUMAR CHOUDHRY)
JUDICIAL MEMBER**

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.