

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

BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER

**ITA No.2686/M/2025
Assessment Year: 2019-20
&
ITA No.2687/M/2025
Assessment Year: 2022-23**

M/s. Sagar Tech Plaza A Premises Co-op Society Ltd Ground Floor, Sakinaka Andheri Kurla Road, Mumbai- 400072 PAN: AAEAS5654D	Vs.	Income-tax Officer, Mum-W-(401)(94) Kautilya Bhavan, Mumbai-400051
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Virat Doshi, Ld.AR
Revenue by : Shri Kavan Limbasiya, Ld. Sr.D.R.
Date of Hearing : 11.06.2025
Date of Pronouncement : 11.06.2025

O R D E R

Per : Narender Kumar Choudhry, Judicial Member:

These appeal have been preferred by the Assessee against the orders dated 17.02.2025 and 12.02.2025 impugned herein, passed by the ADDL/JCIT (A)-4 BENGALURU (in short Ld. Commissioner) u/s 250 of the Income Tax Act, 1961 (in short 'the Act') for the A.Ys. 2019-20 and 2022-23.

2. Both the Authorities below through their respective orders made and affirmed the additions of Rs. 3,81,560 and Rs. 2,17,000/- respectively for the AYs 2019-20 and 2022-23, on account of disallowance of interest income earned by the Assessee from co-operative Banks, which was claimed as exempt u/s 80(2)(d) of the Act. Thus the Assessee has preferred this appeal.

3. Admittedly the issue qua disallowance being made on account of interest income earned from co-operative banks, which was claimed as deduction u/s 80(2)(d) of the Act , is squarely covered in favour of the assessee by various judgments including by the Coordinate Bench of the Tribunal Mumbai in the case of in Pathare Prabhu Co-operative Housing Society Vs. ITO, reported in (2023) 202 ITD 464 (Mum-Trib.), relevant part of the same is reproduced herein below : -

“5. We have heard both the parties and perused the material available on record. Admittedly, assessee had claimed deduction u/s.80P(2)(a)(i), which included interest and dividend income earned by it from investments made with cooperative banks. Ld. Assessing Officer disallowed deduction claimed towards interest and dividend income from these investments by holding that these are income from other sources and not business income of the assessee. Assessee has contended alternatively that these incomes are allowable u/s. 80P2(d), since there is no dispute of earning of this income from cooperative banks. The issues before us is no longer res integra, as we find that while deciding similar issue, Coordinate Bench of ITAT, Mumbai in the case of Pathare Prabhu Co-operative Housing Society v. ITO, [2023] 202 ITD 464 (Mum-Trib), held that interest income earned from investment with Cooperative Bank eligible for deduction under section 80P(2)(d) of the Act. The relevant findings of the Coordinate Bench, in the aforesaid decision, are reproduced as follows: -

“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 Cooperative Housing Society and during the assessment year 2018-19 earned interest income of Rs. 50,39,861 from the investments made in various Cooperative 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 subsection (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) to (c) ** ** *

(d) in respect of any income by way of interest or dividends derived by the cooperative 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 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 Co-Operative 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 Co-operative 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 Cooperative Bank is covered under the provisions of section 80P(4) of the Act. We find that the Hon'ble Supreme Court in Mavilayi Service Co-operative Bank Ltd. v. CIT (2021] 123 taxmann.com 161/279 Taxman 75/431 ITR 1 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 Co-operative 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 Cooperative 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 Kalandas Udyag Bhavan Premises Co-operative Society Ltd. vs. ITO (2018) 94 taxmann.com 15 (Mum.)/[ITA No. 6547/ Mum./2017, dated 25-4-2018], while dealing with the provisions of section 80P(2)(d) vis-d-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 1-4-2007, the provisions of sec. 80P would no more be applicable in relation to any co-operative bank, other than a primary agricultural society or a primary co-operative agricultural and 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 considered view that as long as it is proved that the interest income is being derived by a co-operative society from its investments made with other co-operative society, the claim of deduction under the aforesaid statutory provision, viz. 80P(2)(d) would be 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 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;

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 Co-operative 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 cooperative 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. Totagars Co-operative Sales Society* (2017) 83 taxmann.com 140/395 ITR 611, 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. Totagars Co-operative Sale Society* (2017) 78taxmann.com 169/392 ITR 74 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 Cooperative 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.* (1973) 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."

4. Thus, considering the peculiar fact that in view of judgment referred to above, issue qua deduction claimed u/s 80P(2)(d) of the Act by the Assessee, is covered in its favour, the additions are deleted, by allowing appeals of the Assessee.

5. In the result, the Assessee's appeals are allowed.

Order pronounced in the open court on 11.06.2025.

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

* Disha Raut, Stenographer
Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.