

IN THE INCOME TAX APPELLATE TRIBUNAL

"A" BENCH, MUMBAI

BEFORE SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER

ITA No.4576/MUM/2025
(Assessment Year 2017-18)

Income Tax Officer, Ward – 23(2)(1)

Room No.512, 5th Floor,
Piramal Chambers, Lalbaug,
Mumbai - 400012

..... Appellant

v/s

MIG Co – Op Housing Society Group II Ltd.,

B-32, Kalpataru Sparkle, MIG Colony,
Gandhi Nagar, Bandra East,
Mumbai - 400051
PAN : AAAAM8129P

..... Respondent

Assessee by : Shri Yogesh Thar
Shri Surajsingh Devda

Revenue by : Shri Surendra Mohan, Sr.DR

Date of Hearing – 01/09/2025

Date of Order - 04/09/2025

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The Revenue has filed the present appeal against the impugned order dated 26/05/2025, passed under section 250 of the Income-tax Act, 1961 ("*the Act*"), by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [*learned CIT(A)*], for the assessment year 2017-18.

2. In this appeal, the Revenue has raised the following grounds: -

"(i) Whether on the facts and in circumstances of the case and in law, the Ld. CIT(A) has erred in allowing deduction u/s 80P(2)(d) of the I.T. Act. 1961, without appreciating legislative intent of the inserted provision of 80(P)(4)

which specifically provides that section shall not apply in relation to any cooperative bank other than a primary agricultural credit society or primary cooperative agricultural and rural developer bank".

(ii) On the facts and in circumstances of the case and in law, the Ld. CIT(A) has erred in allowing deduction u/s 80P(2)(d) of the IT. Act, 1961, 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 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 Act is allowable only with the deposit made with co-operative society not with co-operative bank?"

(iii) Whether on the facts and circumstances of the case and in the law, the Ld. CIT(A) has erred in allowing the deduction u/s 80P(2)(d) of Rs. 1,90,42,168/- even if Hon'ble Supreme Court as well as Hon'ble Karnataka High Court in the case of Totagar Cooperative Sale Society Ltd. (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 ora co-operative bank and thus, clause (d) of section 80P(2) of the Act would not apply in case of co-operative bank?"

(iv) Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in allowing the deduction u/s 80P(2)(d) of Rs. 1,90,42,168/- even though 80P(4) says that provisions of section 80P does not apply to co-operative banks?"

(v) Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in allowing the deduction u/s 80P(2)(d) of Rs.1,90,42, 168/- even if the assessee earned the interest from Cooperative Bank which are not recognized as Co-operative Societies?"

(vi) Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in allowing the deduction u/s 80P(2)(d) of Rs. 1,90,42, 168/- even if 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 held that interest earned from investments made in any bank, not being a cooperative society, is not deductible under section 80P(2)(d) of the Act?"

3. The sole grievance of the Revenue, in the present appeal, pertains to the deletion of the disallowance of deduction claimed under section 80P(2)(d) of the Act in respect of interest income received from the co-operative banks.

4. The brief facts of the case are that the assessee is a co-operative housing society, for the year under consideration, filed its return of income on 16.09.2017, declaring a total income of Rs. 'Nil'. During the year under consideration, the assessee received interest to the tune of Rs.1,90,42,168/- from its investment in the co-operative banks, and the same was claimed as a deduction under section 80P(2)(d) of the Act. The return filed by the assessee was selected for complete scrutiny under CASS, and statutory notices under section 143(2) and section 142(1) of the Act were issued and served on the assessee. During the assessment proceedings, the assessee was asked to show cause as to why the deduction claimed under section 80P(2)(d) of the Act should not be disallowed. The said show cause notice was duly responded to by the assessee.

5. The Assessing Officer ("AO"), vide order dated 17.12.2019 passed under section 143(3) of the Act, disagreed with the submissions of the assessee and held that deduction under section 80P(2)(d) of the Act cannot be extended to the interest earned from the investment in any co-operative bank. The AO further held that the very basis of the functioning of any co-operative society is the principles of mutuality, and these principles are not satisfied in the case of interest earned from co-operative banks by the co-operative society. The AO also placed reliance upon the decision of the Hon'ble Supreme Court in Totgar's Co-operative Sale Society Ltd. vs. ITO, reported in (2010) 188 Taxman 282 (SC). Accordingly, the AO disallowed the deduction of Rs.1,90,42,168/- claimed by the assessee under section 80P(2)(d) of the Act in respect of interest received from the co-operative banks.

6. The learned CIT(A), vide impugned order, allowed the appeal filed by the assessee and deleted the disallowance of deduction claimed under section 80P(2)(d) of the Act by following the decisions of the Tribunal in the assessee's own case in preceding assessment years. Being aggrieved, the Revenue is in appeal before us.

7. We have considered the submissions of both sides and perused the material available on record. In the present case, the assessee is a co-operative society. During the year under consideration, the assessee earned interest income from savings bank account / fixed deposits maintained with the co-operative banks, which was recognized as income of the society. Thus, during the year under consideration, the assessee earned interest income of Rs.1,90,42,168/- from its deposits maintained with the co-operative banks and the same was claimed as a deduction under section 80P(2)(d) of the Act, which was denied by the AO.

8. We find that while deciding a similar issue in the assessee's own case pertaining to the claim of deduction under section 80P(2)(d) of the Act with respect to interest income earned from investment in the co-operative banks, the Co-ordinate Bench of the Tribunal in MIG Co-op. Housing Society Group-II Limited vs. ITO, in ITA No.1923/mum/2024, for the assessment year 2018-19, vide order dated 22.07.2024, following the decision rendered in the assessee's own case in the preceding year observed as follows: -

"3. Learned counsel representing the assessee has filed copy of this tribunal's order in assessee's case itself MIG Coop Housing Society Group-II Limited, Mumbai vs. ITO ITA.No.896/Mum/2016 dated 17.02.2017 deciding the very issue against the department as follows :

"12. Next is about allowing deduction u/s.80P of the Act. During the assessment proceedings, the AO held that the society had violated the principles of mutuality, that the provisions of section SOP were not applicable to a Co-op. Housing Society that the assessee had made deposits out of money received against redevelopment agreement and from different channels, that same was not permissible under byelaws of the society, that it had transferred a sum of Rs.2.97 crores from the corpus fund to the P&L account that such investment in banks would not qualify for deduction u/s.80P of the Act Finally he denied the assessee the benefit of deduction u/s. 80P.

12.1. During the appellate proceedings the assessee referred to provisions of section 80P(2) of the Act especially 80P(2)(c)(ii) and 80P(d) of the Act and relied upon the case of Daoba Co- op Sugar Mills Ltd.230/774, Ashok APT CHS Ltd. (ITA/ 2845/M/2010), Sagar Sanjog CHS Ltd.(ITA/1972-74/Mum/2005); Panchratna Co-op. Hsg Ltd. (ITA2858/ Mum/2010). Referring to the provisions of section 80P of the Act, the FAA held that restrictions put by the section was with regard to income received by way of interest on securities/ income from house property, that the restriction could be extended to other sub sections of section 80P(2), that there was no bar for claiming deduction under other sub sections of Section 80P(2) by a Co- op. Hsg. Society, that deductions could not be denied by observing that the society had breached the principle of mutuality or had violated the bye laws that till the society was registered as a CHS in the Register of the Registrar of Co-op. Society deduction u/s.80P could not be denied. Finally, he allowed the appeal filed by the assessee.

12.2 Before us, the DR relied upon the order of the AO and the AR relied upon the order of the FAA.

12.3 We find that the assessee had made a claim deduction of Rs.47.08 lakhs and Rs. 50,000/ - u/s.80P(2)(d) and 80P(2)(c)(ii) respectively, that the AO had invoked the provisions of Sec.80P (2) (f)and denied the society the benefits claimed by it. In our opinion, the sub sections of 80P deal with different claims and operate in different fields. The provisions of one sub section cannot be imported to another sub section. It is a fact that the Registrar of Co-op. Hsg. Society had not cancelled the registration of the Housing Society on the alleged violation of principle of mutuality or bye laws. In these circumstances, in our opinion the FAA has rightly held that deduction claimed by the assessee under sub-sections (d) and (c)(ii) cannot be denied the assessee. Upholding his order, we dismiss the ground raised by the AO.

As a result, appeal filed by the assessee is partly allowed and the appeal of the AO is dismissed."

The Revenue is fair enough in not pinpointing any specific distinction either on facts or on law in all these assessment years. Faced with this situation, we adopt judicial consistency to accept the assessee's instant sole substantive ground in very terms. Ordered accordingly."

9. As the learned CIT(A), following the decision rendered by the Co-ordinate Bench of the Tribunal in assessee's own case, allowed the deduction claimed by the assessee under section 80P(2)(d) of the Act, therefore, we do not find any infirmity in the findings of the learned CIT(A). Further, as regards the reliance placed by the AO upon the decision of the Hon'ble Supreme Court in Totgar's Co-operative Sale Society Ltd. (*supra*), we find that in the said case, the issue was whether the taxpayer would be entitled to a deduction under section 80P(2)(a)(i) of the Act. Therefore, the provisions of section 80P(2)(d) of the Act were not under consideration before the Hon'ble Supreme Court in the aforesaid case. Thus, we are of the considered view that the reliance placed upon the aforesaid decision by the AO is wholly misplaced. Accordingly, the order passed by the learned CIT(A) is upheld, and the grounds raised by the Revenue are dismissed.

10. In the result, the appeal by the Revenue is dismissed.

Order pronounced in the open Court on 04/09/2025

Sd/-
GIRISH AGRAWAL
ACCOUNTANT MEMBER

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 04/09/2025

Prabhat

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The PCIT / CIT (Judicial);
- (4) The DR, ITAT, Mumbai; and
- (5) Guard file.

By Order

Assistant Registrar
ITAT, Mumbai