



IN THE INCOME TAX APPELLATE TRIBUNAL, PANAJI BENCH, PANAJI



BEFORE HON'BLE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

AND

SHRI G. D. PADMAHSHALI, ACCOUNTANT MEMBER

ITA Nos. 212/PAN/2024

Assessment Year : 2017-18

ACGL BBD Employees Co-op.

Credit Society, Ltd.

Bhuimpal Honda, Sattari,

Bhuimpal, North Goa.

PAN : AAAAAA8278M

..... *Applicant*

V/s

Income Tax Officer

Ward-1(1), Panaji, Goa.

..... *Respondent*

Appearances

Assessee by : Mr S J Kamat ['Ld. AR']

Revenue by : Mr Narendra Reddy ['Ld. DR']

Date of conclusive Hearing : 06/02/2025

Date of Pronouncement : 12/02/2025

ORDER

PER G. D. PADMAHSHALI, AM;

The assessee is in appeal against DIN & Order No.

ITBA/NFAC/S/250/2024-25/1066146872(1) dt. 27/06/2024

passed u/s 250 of the Income-tax Act, 1961 ['the Act' hereinafter]

by the National Faceless Appeal Centre, Delhi ['Ld.

CIT(A)/NFAC' hereinafter] which in turn arisen out of order of

assessment dt. 19/12/2019 passed u/s 143(3) of the Act by the

Income Tax Officer, Ward-1(1), Panaji ['Ld. AO' hereinafter] for

assessment year 2017-18 ['AY' hereinafter].



2. The postal delay of one day endorsed by the Registry is supported by well-reasoned affidavit dt. 02/09/2024 executed by the appellant. The undeliberate reason as explained from the affidavit are in our considered view sufficient to pass the tests laid in '*Vijay V Meghani Vs. DCIT & Anr*' [2017, 398 ITR 250 (Bom)] and '*Collector, Land Acquisition, Anantnag and Anr. Vs Ms Katiji and Others*' [1987, 167 ITR 5 (SC)] hence is condoned in the larger interest of justice and advanced for adjudication on merits.

3. **The long and short of the case is that;** the assessee is an employee co-operative credit society registered under the provisions of State Co-op. Societies Act. For the year under consideration the assessee derived/earned an interest income of ₹21,18,607/- from its investment held with 'Goa State Co-op. Bank Ltd., ['GSCBL' hereafter] in form of Fixed/Term Deposit Receipt ['FDR/TDR' hereafter]. The assessee filed its return of income ['ITR' hereafter] on 29/11/2017 declaring NIL income after claiming chapter VI-A deduction of ₹21,18,607/- (supra) u/s 80P(2) of the Act. The said return without variation was in first



place processed summarily u/s 143(1) of the Act. Subsequently the case of the assessee was subjected to scrutiny by service of notice u/s 143(2) of the Act. The submission made and the explanation tendered by the assessee in support of its claim for deduction u/s 80P(2) of the Act did fail to inspire any confidence, for the reason the Ld. AO denied the claim for 80P(2)(d) deduction and assessed the taxable income accordingly by an order of assessment framed u/s 143(3) of the Act. Aggrieved assessee futilely contested the former denial & assessment in an appeal before first appellate forum. Thus, hurt by the orders of tax authorities below, the assessee society is in appeal before us with a sole and substantive ground that denial of 80P(2)(d) deduction in its case is bad in law and devoid of merits.

4. We have heard the rival parties; and subject to provision of rule 18 of ITAT-Rules, 1963 perused material placed on record, case laws relied by both the rival parties and considered the facts in light of settled legal position which are forewarned to parties present.



5. From solidified facts we note that, there is no dispute that, the assessee is a co-operative society and is entitled to claim deduction u/s 80P(2)(d) of the Act. Further there is also much less dispute over the nature of income received/earned by the assessee in the form of interest on deposits & balances held with 'GSCBL'. The Revenue in the present case has denied the 80P(2)(d) deduction to the appellant against interest earned from GSCBL apparently for a solitary reason that the payer GSCBL is a co-operative bank therefore the claim is hit by provisions of s/s (4) of section 80P of the Act. While denying said claim for deduction u/c VI-A of the Act, the Revenue strongly placed its reliance on '*Mavilayi Service Co-operative Bank Ltd. Vs CIT*' [2021, 431 ITR 1 (SC)] and on '*PCIT Vs Totagars Co-operative Sale Society*' [2017, 83 Taxmann.com 140 (Kar)]. In essence, the sole & substantive dispute in the present case is not over eligibility of the appellant assessee to claim deduction u/s 80P(2)(d) of the Act but over eligibility of interest derived/earned by the assessee in view of s/s (4) of section 80P of the Act.



6. First of all, we are mindful to state that, the allowability of deduction u/s 80P(2)(d) of the Act against the interest on deposits & dividend from shares held by one co-operative society with another co-operative society is no-more *res-integra*. Secondly the provisions of s/s (4) of section 80P of the Act applies to claimant assessee which is co-operative bank as defined in Part V of the Banking Regulation Act, 1949 [‘BRA’ hereafter].

7. Now coming to allowability of deduction u/s 80P(2)(d) of the Act is concerned, a bare perusal said provision of the Act clearly hint sites that an interest & dividend income derived by one co-operative society from its investment (irrespective of nature) held with other co-operative society is eligible for deduction u/s 80P(2)(d) of the Act. The constructive analysis of provision reveals that, an assessee’s entitlement for deduction u/s 80P(2)(d) of the Act *prima-facie* is subject to satisfaction of twofold pivotal conditions viz; (1) a recipient assessee *vis-à-vis* claimant of deduction must be a co-operative society within the meaning of section 2(19) of the Act **AND** (2) a payer of income



must also be a co-operative society as defined u/s 2(19) of the Act. The conjoint reading of section 80P(2)(d) and section 2(19) of the Act necessitates that, a recipient and a payer of interest/dividend both must be co-operative society registered either under Central Co-operative Societies Act, 1912 or under any other law for the time being in force in any state. This stipulation fastened is compiled the moment both recipient & payer of interest/dividend are registered either under; (a) Co-operative Society Act, 1912 or (b) State Co-operative Societies Act in force. Thus, where a recipient cum claimant assessee as well as a payer of interest/dividend income both are registered societies then in our considered view noting can preclude an assessee from claiming such interest/dividend as deductible u/s 80P(2)(d) of the Act. This continues to hold the field irrespective of class within which such recipient assessee society or a payer society is registered. What is indispensable for clause (d) of s/s (2) of section 80P of the Act is the statutory/legal establishment of recipient & payer and not the class within which they fall or registered.



8. Conversely, where an assessee is a co-operative society & is not a co-operative bank within the meaning of explanation (a) to section 80P(4) of the Act and a payer of interest/dividend is also a co-operative society then in our considered view irrespective of status of a payer falling within the meaning assigned to it in Part V of BRA as to co-operative bank or not, a recipient assessee society's right to deduction u/s 80P(2)(d) of the Act cannot be infringed by application of s/s (4) thereof. Going a step further it is also mindful to note here that, the language of s/s (4) of section 80P of the Act unambiguously capable of suggesting that it only comes into play when a claimant assessee falls within the meaning of 'Co-operative bank' as assigned under Part V of BRA (supra) and not otherwise.

9. In the present case, the appellant admittedly is a co-operative society registered under the State Co-operative society Act, thus at the outset absolutely fulfils the first condition so as to entitle for deduction u/s 80P(2)(d) of the Act. Now in vouching the fulfilment of second condition, we note that, the GSCBL is also a



society registered u/s 5 of Goa State Co-operative Societies Act, vide registration No BNK-(a)-1/Goa dt. 07/11/1963. In terms of section 10 (supra) the GSCBL is granted registration under ‘class-3 as co-operative bank with sub class as central Bank’. This findings *de-facto* sufficient to establish that, the payer of interest i.e. the GSCBL is also a registered co-operative society, thus slakes the second condition fastened on the assessee for claim of deduction u/s 80P(2)(d) of the Act. On the other hand, the appellant co-operative society is neither a co-operative bank within the meaning assigned in Part V of BRA nor holding any banking license. The payer of interest income to the assessee society i.e. GSCBL although is a co-operative bank in common parlance but not a co-operative bank strictly within the meaning assigned in Part V of BRA. Therefore, the denial of deduction by implication of s/s (4) of section 80P is untenable. In view of these clinching factual matrix, in our considered view there remains much less merits in application of s/s (4) of section 80P of the Act and in denying the 80P(2)(d) deduction to the appellant assessee.



10. A similar view can also be traced in the adjudication of Ld. Co-ordinate bench in '*Alaknanda Sahakari Gruharachana Sanstha Maryadit Vs ITO*' [2024, TaxPub(DT) 4845 (Pune-Trib)] wherein the claim for deduction u/s 80P(2)(d) of the Act was denied to the assessee by implication of s/s (4) of section 80P of the Act against interest received by the assessee on its investment from Pune District Central Co-operative Bank.

11. In our considered view, once the claimant assessee falls outside the ambit of explanation (a) to section 80P(4) of the Act then denial of 80P(2) deduction would be *contra-legem*. This find fortified in case of '*PCIT Vs Annasaheb Patil Mathadi Kamgar Sahakari Pathpedi Ltd.*' [2023, 454 ITR 117 (SC)], where the assessee was a cooperative credit society engaged in the business of providing credit facilities to its members. The assessee claimed deduction u/s 80P(2) of the Act, but the Assessing Officer disallowed the deduction holding that the assessee is a cooperative bank and hence not eligible to claim deduction as per Section 80P(4) of the Act. The first and second appellate authority



and the Hon'ble Jurisdictional High Court held in the favour of the assessee holding that assessee is a co-operative society and not a cooperative bank, hence eligible for deduction u/s 80P(2) of the Act.

12. On the contrary there is much less material placed on record by the Revenue in establishing that the payer GSCBL is a 'co-operative bank' within the meaning of explanation (a) to section 80P(4) of the Act, therefore in view of the decision of Hon'ble Apex Court in '*Kerala State Co-Operative Agricultural and Rural Development Bank Ltd. (KSCARDB) Vs TAO*' [2023 INSC 830 (SC)], the denial of 80P(2)(d) deduction to the assessee and the impugned action of the respondent Revenue has no legal sanctity.

13. Before departure, we further find that the Hon'ble Supreme Court in case of *Mavilayi Service Co-operative Bank Ltd.* (supra) while analysing the provision of Section 80P(4) of the Act has categorically held that Section 80P(4) is a proviso to the main



provision contained in Section 80P(1) and 80P(2) and excluded only cooperative banks which are cooperative society and also possesses a licence from RBI to do banking business. Their Hon'ble Lordships have further held that, the limited object of section 80P(4) is to exclude Co-operative Banks that function at par with other commercial banks, therefore Section 80P(4) is relevant only where the claimant assessee is a cooperative bank and which claims a deduction u/s 80P(2) of the Act which is not the facts of the present case. The decision of the Hon'ble Karnataka High Court '*PCIT Vs Totagars Co-operative Sale Society*' (supra) is distinguishable and in any case, the later decision of Hon'ble Supreme Court in case of '*Mavilayi Service Co-operative Bank Ltd*'. (Supra) wherein the correct legal proposition has been laid down by the Hon'ble Supreme Court has to be followed.

14. In view of the aforesaid discussion and respectfully following judicial precedents (supra) we hold that section 80P(4) of the Act does not jeopardise the claim of deduction to the



assessee co-operative society u/s 80P(2)(d) in respect of interest/dividend income from investments/share held with other co-operative society (payer) irrespective of its (payer) classification and status as to whether it attracted disqualification u/s 80P(4) of the Act or not.

15. In consequence we hold that, the views adopted by the tax authorities below in the present case, in our considered opinion are not in conformity with aforesaid legal position and binding judicial precedents (supra), hence vacated. Resultantly, we set aside the impugned order and reverse the denial of 80P(2)(d) deduction in entirety. The grounds accordingly stands adjudicated.

16. In result, the appeal of the assessee stands allowed.

In terms of rule 34 of ITAT Rules, 1963 the order pronounced in the open court on date mentioned herein before.

**-S/d-
PAVAN KUMAR GADALE
JUDICIAL MEMBER**

**-S/d-
G. D. PADMAHSHALI
ACCOUNTANT MEMBER**

Panaji/Dt: 12th February, 2025.

Copy of the Order forwarded to :

- | | | |
|-------------------|-----------------------------------|------------------------------|
| 1. The Appellant. | 2. The Respondent. | 3. The CIT(A)/NFAC Concerned |
| 4. PCIT Concerned | 5. DR, ITAT, Panaji Bench, Panaji | 6. Guard File |

By Order,
Sr. Private Secretary / AR ITAT, Panaji.