

IN THE INCOME TAX APPELLATE TRIBUNAL

"H(SMC)" BENCH, MUMBAI

BEFORE SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER

SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA No. 966/Mum./2026

(Assessment Year : 2021-22)

Om Shivdarshan Co-op. Housing,

Plot No.33, Om Shivdarshan,

Datar Colony, Bhandup East,

Mumbai - 400042

PAN : AAAA01583D

..... Appellant

v/s

Income Tax Officer, Ward – 41(2)(3),

Kautilya Bhavan,

Mumbai – 400051

..... Respondent

Assessee by : Shri Ravindra Naik, CA

Revenue by : Shri Pravin Salunkhe, SR. DR

Date of Hearing – 18/03/2026

Date of Order – 27/03/2026

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The assessee has filed the present appeal against the impugned order dated 31/12/2025, passed under section 250 of the Income Tax Act, 1961 (*"the Act"*) by the learned Additional/Joint Commissioner of Income Tax (Appeals)-1, Jaipur, [*"learned Addl./Joint CIT(A)"*], for the assessment year 2021-22.

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

"1. The Ld. CIT(Appeals), NFAC has erred in confirming the disallowance of deduction u/s 80P(2)(d) in respect of interest income earned by a co-operative society from other cooperative societies/ banks."

3. The solitary grievance of the assessee is against the denial of the deduction claimed under section 80P(2)(d) of the Act.

4. We have considered the submissions of both sides and perused the material available on record. The brief facts of the case are that the assessee is a co-operative housing society and for the year under consideration filed its return of income on 28/12/2021 declaring a total income of INR 2,47,410, inter alia, after claiming a deduction of INR 4,29,500 under section 80P(2)(d) of the Act. The return filed by the assessee was processed vide intimation dated 19/10/2022 issued under section 143(1) of the Act, disallowing, inter alia, the deduction claimed under section 80P(2)(d) of the Act.

5. As per the assessee, it earned the interest amounting to INR 4,39,500 from its deposits maintained with the Jankalyan Sahakari Bank Ltd, which is a co-operative bank, and the said interest was claimed as a deduction under section 80P(2)(d) of the Act during the year under consideration. The learned Addl./Joint CIT(A), vide impugned order, dismissed the ground raised by the assessee on this issue and held that under section 80P(2)(d) of the Act, the deduction is allowed only when the interest is earned from the co-operative society. However, Jankalyan Sahakari Bank Ltd is not a co-operative society and is a co-operative bank under the control of the Reserve Bank of India and functions at par with other commercial banks. Thus, the learned Addl./Joint CIT(A) held that the deduction claimed under section 80P(2)(d) of the Act is

not allowable. The learned Addl./Joint CIT(A) also referred to the provisions of section 80P(4) of the Act and held that the provisions of section 80P of the Act are not 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. The learned Addl./Joint CIT(A), by placing reliance upon the decision of the Hon'ble Supreme Court in Totgar's Co-operative Sale Society Ltd. v/s ITO, reported in (2010) 188 Taxman 282 (SC), held that the interest earned by the assessee is to be treated as a revenue receipt taxable under the Act.

6. We find that while deciding a similar issue, the Co-ordinate Bench of the Tribunal in Pathare Prabhu Co-operative Housing Society v/s ITO, reported in (2023) 202 ITD 464 (Mum-Trib), held that interest income earned from investment with the co-operative bank is eligible for deduction under section 80P(2)(d) of the Act. The relevant findings of the Co-ordinate 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 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) to (c) ** ** **

(d) in respect of any income by way of interest or dividends derived by the co-operative 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 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 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 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 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 Udyag Bhavan Premises Co-op Society Ltd. v. 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-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 co-operative 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 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 co-operative 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 co-operative society from its investments made with any other co-operative 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 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 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. 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 Co-operative 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] 78 taxmann.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 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. [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 Co-operative 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. From the perusal of the aforesaid decision, we find that the Co-ordinate Bench, in the aforesaid decision, after taking into consideration the provisions of section 80P(4), directed the AO to grant a deduction under section 80P(2)(d) of the Act to the taxpayer in respect of interest income earned from investment with co-operative banks. The Co-ordinate Bench, in light of the decision of the Hon'ble Supreme Court in Mavilayi Service Co-operative Bank Ltd. v/s CIT, reported in [2021] 123 taxmann.com 161 (SC), held 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.

8. As regards the reliance placed by the learned Addl./Joint CIT(A) 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 in the impugned order is wholly misplaced.

9. As noted in the foregoing paragraphs, in the impugned order, the learned Addl./Joint CIT(A) noted that Jankalyan Sahakari Bank Ltd, from which the assessee received interest on deposits, is not a co-operative society. During the hearing, we asked the learned AR to produce the certificate of registration of Jankalyan Sahakari Bank Ltd as a co-operative society. However, the learned AR submitted that the said certificate is not readily

available and can be produced before the lower authorities, if given an opportunity, for necessary verification.

10. Accordingly, we deem it appropriate to restore this issue to the file of the jurisdictional AO for the limited purpose of verifying the registration of Jankalyan Sahakari Bank Ltd as a co-operative society on the basis of the evidence/documents as may be submitted by the assessee. Upon verification, if it is found that Jankalyan Sahakari Bank Ltd is a co-operative society, then the AO is directed to grant the deduction claimed by the assessee under section 80P(2)(d) of the Act in respect of the interest earned from the deposits maintained with Jankalyan Sahakari Bank Ltd. Accordingly, only for this limited purpose, this issue is restored to the file of the jurisdictional AO. With the above directions, the impugned order is set aside, and the sole ground raised by the assessee is allowed for statistical purposes.

11. In the result, the appeal by the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 27/03/2026

Sd/-
OM PRAKASH KANT
ACCOUNTANT MEMBER

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 27/03/2026

Prabhat