

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

**BEFORE SHRI M. BALAGANESH, ACCOUNTANT MEMBER AND**  
**SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER**

**ITA No.1057/Mum./2022**  
(Assessment Year : 2014-15)

**ITA No.1060/Mum./2022**  
(Assessment Year : 2017-18)

**ITA No.1059/Mum./2022**  
(Assessment Year : 2016-17)

**ITA No.1058/Mum./2022**  
(Assessment Year : 2018-19)

Maker Tower A&B Co-operative Housing  
Society Ltd., Ground Floor, Maker Tower,  
A & B Wing, Cuffe Parade, Colaba  
Mumbai 400 005 PAN – AAABM0409M

..... Appellant

v/s

Asstt. Commissioner of Income Tax  
Ward-17(3)(3), Mumbai

.....Respondent

Assessee by : Shri B.V. Jhaveri  
Revenue by : Ms. Agnes Thomas

Date of Hearing – 01/08/2022

Date of Order – 18/10/2022

**ORDER**

**PER SANDEEP SINGH KARHAIL, J.M.**

The present appeals have been filed by the assessee challenging the impugned order dated 06/04/2022, passed for the assessment year 2014-15, separate orders of even date 04/05/2022, passed for the assessment years 2016-17 and 2017-18, and order dated 28/04/2022, passed for the assessment year 2018-19, under section 250 of the Income Tax Act, 1961 (*"the Act"*) by learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, [*"learned CIT(A)"*].

2. Since all these appeals pertain to the same assessee and issue involved is also common, therefore these appeals were heard together as a matter of convenience and are being adjudicated by way of this consolidated order. With the consent of the parties, the appeal by the assessee for the assessment year 2014-15 is taken up as a lead case and the decision rendered therein would apply *mutatis mutandis* to the appeals for the assessment year 2016-17, 2017-18 and 2018-19 as well, except with variance in figures.

**ITA no.1057/Mum./2022**  
**Assessee's Appeal – A.Y. 2014-15**

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

*"1) On the facts and in the circumstances of the case and in law the learned Commissioner of Income Tax erred in confirming the denial of the deduction in respect of interest from Co-operative banks amounting to Rs. 1,01,30,360/ SOP(2)(d) and in dismissing the appeal.*

*Your appellant states that justice be done by granting deduction allowable us 80P(2)(d) denied by the learned A.O. to the appellant.*

*2) The learned CIT(A) erred in holding that interest from co-operative banks is includible in total income under the head Income from other sources and not eligible for deduction u/s 80P(2)(d)."*

4. Only grievance of the assessee in present appeal is against denial of deduction in respect of interest received from co-operative banks under section 80P(2)(d) of the Act.

5. The brief facts of the case, as emanating from the record, are: The assessee is a co-operative housing society. The income of the assessee consists of contribution from members and interest from co-operative banks. For the assessment year 2014-15, assessee e-filed its return of income on

30/09/2014 declaring total income at Rs. Nil. During the course of assessment proceedings, it was noticed that the assessee has claimed to have received interest of Rs. 1,01,80,360 from co-operative banks, which are shown under the head income from other sources. In computation of the total income, the assessee has claimed deduction under section 80P of the Act of Rs. 1,01,80,360 and accordingly arrived at nil income. During the course of assessment proceedings, the assessee was asked to specify the sub-section of section 80P and to justify the claim of such deduction, in terms of provisions of said section. In reply, assessee submitted that it is engaged in activities other than those specified in clause (a) or clause (b) of section 80P(2) of the Act and therefore is entitled to deduction under section 80P(2)(d) of the Act. The Assessing Officer ('AO') vide order dated 19/12/2016 passed under section 143(3) of the Act did not agree with the submissions of the assessee and held that the co-operative banks from whom interest income has been earned by the assessee are not co-operative society for the purpose of section 80P of the Act and thus deduction of income earned from co-operative banks cannot be allowed to the assessee as these banks are neither the members of the assessee nor are co-operative societies. Accordingly, the AO disallowed the deduction of Rs. 1,01,80,360 claimed by the assessee under section 80P(2)(d) of the Act.

6. The learned CIT(A) vide impugned order dated 06/04/2022 dismissed the appeal filed by the assessee and held that neither during the course of assessment proceedings nor during the course of appeal, the assessee has submitted any evidence to prove that the co-operative bank from whom

assessee has earned interest income as co-operative society. The learned CIT(A) also placed reliance upon the decision of Hon'ble Supreme Court in Totgar's Co-operative Sale Society Ltd vs ITO., [2010] 322 ITR 283 (SC). The relevant findings of learned CIT(A) in this regard are as under:

*"7. I have considered the facts and circumstances of the case. Submissions of the appellant, material available on record and various case laws referred on the above matter. It is seen that the Assessing Officer has disallowed deduction u/s 80P on interest income earned from Co-operative Bank. Assessing Officer has disallowed the deduction u/s 80P on interest income of Rs. 1,01,80,360/- because it was not earned out of business operation.*

*7.1 During the course of assessment proceedings the assessee has stated that it has derived income by way of interest from a) Sharmrao Vithal Co-operative Bank Ltd, b) Abhyudaya Co-operative Bank Ltd, c) Saraswat Co-operative Bank Ltd being the investment with any other Co-operative Society, the whole of the amount is deductible u/s 80P(2)(d) of the Income Tax Act, 1961". However, the appellant, neither during the course of assessment proceedings nor during the course of appeal, has submitted any evidence to prove that the above co-operative Bank are Co-operative society. Moreover, it is seen that the action of the Assessing Officer is in accordance with the decision of the Hon. Gujarat High Court in the case of State Bank of India (SBI) Vs. Commissioner of Income-tax [2016] 72 taxmann.com 64 (Gujarat HC). In the said decision Hon'ble Gujarat High Court has held that.*

*"Insofar as the provisions of the Income Tax Act are concerned, under section 80P(2)(d) thereof, it is only the income by way of interest or dividends derived by a co-operative society from its investments with any other co-operative society which is required to be deducted while computing the total income of the assessee."*

*7.2 It is seen that appellant is a Co-Operative Housing Society maintaining procures of the Society members. It collects contribution from members for maintenance and managing the buildings of the society. During this process, if surplus funds become available, the same is invested as deposits with co-operative banks or other banks. Since the intention of the appellant is to earn interest income on contributions received from members, keeping of surplus funds with the banks as deposits result into interest income which is assessable under the head "Income from other sources". This also finds support from Totgars Co-operative Sale Society Ltd. vs ITO [2010] 322 ITR 283 (SC) where the Hon'ble Supreme Court held as under:*

*"To say that the source of income is not relevant for deciding the applicability of section 80P of the Act would not be correct because we need to give weightage to the words "the whole of the amount of profits and gains of business" attributable to one of the activities specified in section 80P(2)(a) of the Act. An important point needs to be mentioned. The words "the whole of the amount of profits and gains of business" emphasise that the income in respect of which deduction is sought must constitute the operational income and not the other*

*income which accrues to the Society. In this particular case, the evidence shows that the assessee-Society earns interest on funds which are not required for business purposes at the given point of time. Therefore, on the facts and circumstances of this case, in our view, such interest income falls in the category of "Other Income" which has been rightly taxed by the Department under section 56 of the Act."*

*7.3 In view of the above, Interest Income earned from Co-operative Bank is treated as "Income from Other Sources" and first ground of appeal of the appellant is hereby dismissed."*

Being aggrieved, the assessee is in appeal before us.

7. During the course of hearing, learned Authorised Representative (*'learned AR'*) submitted that the co-operative banks from which interest income was earned by the assessee are registered as co-operative society. The learned AR further submitted that under section 80P(2)(a)(i) emphasis is on carrying on of the business and therefore Hon'ble Supreme Court in Totgar's Co-operative Sale Society Ltd (supra) dealt with the issue whether income is business income or income for other sources. While, for the purpose of section 80P(2)(d), interest or dividend are always be income from other sources and there is no requirement that the assessee be carrying on business and income is received from that business.

8. On the other hand, learned Departmental Representative (*'learned DR'*) vehemently relied upon the orders passed by the lower authorities.

9. We have considered the rival submissions and perused the material available on record. In the present case, assessee is maintaining the procures of the society members and it collects contribution from the members for maintenance and managing the buildings of the society. Before proceeding further, it is pertinent to analyse few provisions of the Act, which are relevant

for the purpose of this appeal. 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 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 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 assessee is co-operative housing society and thus if any income referred to in sub-section (2) to section 80P of the Act is included in gross total income of the assessee, same shall be allowed as deduction. During this year, assessee has claimed deduction under section 80P of the Act in respect of the interest income earned from the following co-operative banks:

- (a) Sharmrao Vithal Co-operative Bank Ltd;*
- (b) Abhyudaya Co-operative Bank Ltd; and*
- (c) Saraswat Co-operative Bank Ltd.*

12. The only basis on which Revenue denied the deduction under section 80P(2)(d) of the Act to the assessee is that the interest income was earned from co-operative bank, which are not co-operative society. In this regard, assessee placed reliance upon the list of banks registered under Multi-State Co-operative Societies Act, 2002. From the perusal of the aforesaid list, forming part of the case law paper book at page 102 – 103, we find that names of the aforesaid co-operative banks, from which assessee has earned interest income, are mentioned at serial No. 17, 40 and 52. Thus, from the above it is evident that the co-operative banks in which assessee had invested are registered as co-operative societies and therefore we are of the considered view that these banks are co-operative society as per the provisions of section 2(19) of the Act.

13. Further, as regards the reliance placed by the AO as well as the learned CIT(A) upon the decision of Hon'ble Supreme Court in Totgar's Co-operative Sale Society Ltd (supra), we find that in the said case the issue was whether taxpayer would be entitled to 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. Thus, we are of the considered opinion that the reliance upon the aforesaid decision by the lower authorities is completely misplaced. In this regard, following observations of

Hon'ble Supreme Court in CIT vs Sun Engineering Private Limited, [1992] 198

ITR 297 (SC), becomes relevant:

*"It is neither desirable nor permissible to pick out a word or a sentence from the judgment of the Court, divorced from the context of the question under consideration and treat it to be the complete 'law' declared by the Court. The judgment must be read as a whole and the observations from the judgment have to be considered in the light of the questions which were before the Court. A decision of the Court takes its colour from the questions involved in the case in which it is rendered and while applying the decision to a latter case, the Courts must carefully try to ascertain the true principle laid down by the decision of the Court and not to pick out words or sentences from the judgment, divorced from the context of the questions under consideration by the Court, to support their proceedings."*

14. We are further of the considered opinion that if Revenue's plea is accepted then section 80P(2)(d) of the Act would be rendered completely otiose.

15. We find that the coordinate bench of the Tribunal in Kaliandas Udyog Bhavan Premises Co-op 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, 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 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 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."*

16. Therefore, in view of aforesaid findings, we uphold the plea of the assessee and direct the AO to allow deduction under section 80P(2)(d) of the Act to the assessee in respect of interest income earned from investment with co-operative banks, which are registered as co-operative societies under the relevant statute. As a result, grounds raised by the assessee are allowed.

17. In the result, appeal by the assessee is allowed.

**ITA no.1059/Mum./2022,**  
**ITA no.1060/Mum./2022 and**  
**ITA no.1058/Mum./2022**  
**Assessee's Appeals –**  
**For A.Ys. 2016-17, 2017-18 and 2018-19**

18. Since, similar issue is arising in appeals for assessment years 2016-17, 2017-18 and 2018-19, therefore, our findings/conclusions in assessee's appeal for assessment year 2014-15 shall apply *mutatis mutandis* to these appeals as well. In the result, these appeals by the assessee are also allowed.

19. To sum up, all the appeals by the assessee are allowed.

Order pronounced in the open Court on 18/10/2022

**Sd/-**  
**M. BALAGANESH**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**SANDEEP SINGH KARHAIL**  
**JUDICIAL MEMBER**

**MUMBAI, DATED: 18/10/2022**

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The CIT(A);
- (4) The CIT, Mumbai City concerned;
- (5) The DR, ITAT, Mumbai;
- (6) Guard file.

*Pradeep J. Chowdhury*  
*Sr. Private Secretary*

True Copy  
By Order

Assistant Registrar  
ITAT, Mumbai