

IN THE INCOME TAX APPELLATE TRIBUNAL
"D" BENCH, MUMBAI

BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER AND
SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA no.3083/Mum./2022
(Assessment Year : 2018-19)

Manikpur Urban Co-operative Society Ltd.
01, Manickpur Naka, Church Road
Vasai Road, Vasai 401 202
PAN – AAAAM4220F

..... Appellant

v/s

Income Tax Officer
Ward-4(1), Mumbai

.....Respondent

Assessee by : Shri Dharan Gandhi
Revenue by : Smt. Mahita Nair

Date of Hearing – 02/02/2023

Date of Order – 27/02/2023

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The present appeal has been filed by the assessee challenging the impugned order dated 24/11/2022 passed under section 250 of the Income Tax Act, 1961 (*"the Act"*) by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre [*"learned CIT(A)"*], for the assessment year 2018-19.

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

"On the facts and in the circumstances of the case and in law,

1. The Ld. Commissioner of Income Tax (Appeals), NFAC, Delhi has erred in confirming action of Ld AO of disallowing the deduction claimed u/s 80P(2)(d) of Rs.4,52,17,289/-.

2. The Ld Commissioner of Income Tax (Appeals), NFAC, Delhi has erred in confirming action of AO not allowing the deduction u/s 80P(2)(a)(i) of Rs. 4,52,17,289/-.

The appellant craves leave to add, amend, modify or delete any grounds of appeal.”

3. The brief facts of the case are: The assessee is a society registered under Maharashtra Co-operative Societies Act, 1960 carrying on the credit business. Its business involves accepting deposits from members and advancing credit facility to them. Any amount which could not be advanced to members, out of deposits and accumulated profit and reserves, has to be invested as per the guidelines issued by Maharashtra Co-operative Societies Act and rules framed thereunder. During the year under consideration, the assessee filed its return of income on 27/09/2018, declaring income at Rs.Nil, after claiming deduction under Chapter-VIA of the Act. The entire income of Rs.4,52,17,289, earned by the assessee from its investment with co-operative banks, was claimed as deduction under section 80P(2)(d) of the Act. Similarly, the interest earned from credit facility provided to its members was claimed under section 80P(2)(a) of the Act. The Assessing Officer vide order dated 03/02/2021, passed under section 143(3) r/w sections 143(3A) and 143(3B) of the Act did not agree with the submissions of the assessee and held that under section 80P(2)(d) of the Act only income by way of interest or dividend derived from the investment with any other co-operative society is allowable as deduction and the provision of the Act does not extend the deduction in respect of interest received from investments made with the co-operative

banks. The Assessing Officer further held that if the term "Co-operative Society" is to be read as "*Co-operative Bank*", the same would render the entire provision redundant, otiose, and nugatory. Thus it was held that the term "co-operative banks" is missing in section 80P(2)(d) of the Act. Accordingly, the Assessing Officer disallowed the deduction of Rs.4,52,17,289, claimed by the assessee in respect of interest and dividend earned from investment with co-operative banks under section 80P(2)(d) of the Act.

4. The learned CIT(A) vide impugned order dismissed the appeal filed by the assessee and held that deduction under section 80P(2)(d) of the Act is not allowable in respect of interest earned from deposits kept in a co-operative bank. Being aggrieved, the assessee is in appeal before us.

5. We have considered the submissions of both sides and perused the material available on record. The only grievance of the assessee is against the denial of deduction under section 80P(2)(d) of the Act in respect of interest income received from various co-operative banks. 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;"

6. 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 ;"

7. In the present case, there is no dispute that assessee is co-operative 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, the same shall be allowed as deduction. Since the assessee is registered under the Maharashtra Co-operative Societies Act, 1962, 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 and earned interest, which was claimed as deduction under section 80P(2)(d) of the Act. The Revenue denied the deduction under section 80P(2)(d) of the Act on the basis that the interest income earned from co-operative bank is not covered under the aforesaid provisions and the said provision only grants deduction in respect of interest earned from co-operative society. In this regard, it is 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 are allowable as deduction under section 80P(2)(d) of the Act. 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, 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 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."

8. As regards the decision of the Hon'ble Supreme Court in Mavilayi Service Co-operative Bank Ltd. vs CIT, Calicut, [2021] 431 ITR 1 (SC), on which reliance has been placed by the learned CIT(A) as well as by the learned DR, we find that the said decision only clarifies the aspect that section 80P(4) is a proviso to the main provision and excludes only co-operative banks, which are co-operative societies and also possesses a licence from RBI to do banking business. After perusal of the aforesaid decision, we are of the considered view that the aforesaid decision 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. However, such is not the facts of the present case.

9. Therefore, in view of the above and respectfully following the decision of the coordinate bench, we uphold the plea of the assessee and direct the AO to grant 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). As a result, ground No. 1 raised by the assessee is allowed.

10. In view of our aforesaid findings, ground No. 2, raised in assessee's appeal, is rendered academic and is accordingly dismissed as infructuous.

11. In the result, the appeal by the assessee is partly allowed.

Order pronounced in the open Court on 27/02/2023

Sd/-
PRASHANT MAHARISHI
ACCOUNTANT MEMBER

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 27/02/2023

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