

IN THE INCOME TAX APPELLATE TRIBUNAL
"F" Bench, Mumbai
Before Shri Shamim Yahya (AM) & Shri Amarjit Singh (JM)

I.T.A. Nos. 1384 & 1385/Mum/2021
(Assessment Years 2016-17 & 2017-18)

V.K.Natha co-operative Housing Society Vallabh Apartment Ground Floor Bhulabhai Desai Road Breach Candy Mumbai-400 026 PAN : AAAAV1213D (Appellant)	Vs.	ACIT, Circle-19(3) Matru Mandir Tardeo Road Mumbai-400 007 (Respondent)
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Assessee by	Shri Pankaj Toprani
Department by	Shri P.D.Chougule
Date of Hearing	22.11.2021
Date of Pronouncement	18. 01.2022

ORDER

Per Shri Shamim Yahya (AM) :-

These appeals by the assessee are directed against respective orders of learned Commissioner of Income Tax (Appeals) for the concerned assessment years.

2. Since the issues are common and appeals were heard together, these are consolidated for the sake of convenience.

3. Since ground and adjudication are similar, we are referring to AY 2016-17

1. The learned Commissioner of Income tax (Appeals), National Faceless Appeal Centre, Delhi (hereinafter referred to as "the CIT (A)") erred in law and on facts in upholding denial of deduction of Rs.48,69,271/-made by the Assessing Officer under section 80P (2) (d) of the Income tax Act, 1961 (hereinafter referred to as "the Act") in respect of interest income derived by

the Appellant from Saraswat Co-operative Bank, which is a co-operative society.

2. While upholding such denial of deduction under section 80P (2) (d) of the Act, the CIT (A) erred by not addressing the main plank of submission of the Appellant that the said co-operative bank is a cooperative society as a result of which interest derived by the Appellant from a co-operative society is eligible for deduction under section 80P (2) (d) of the Act.

4. Brief facts of the case are that assessee is a cooperative society assessee's claim for deduction under section 80P(2)(d) was denied by the AO in respect of interest income derived by the assessee from Sarswath Cooperative Bank. The AO held that section 80P(2)(d) is to be invoked which provides an exception to interest income from co-operative banks. The ld.CIT(A) upheld the same.

5. Against the above order, assessee is in appeal before us.

6. We have heard both the parties and perused the records. Ld. Counsel of the assessee submitted that the issue involved in these appeals related to treatment of interest received by co-operative societies from other co-operative societies including cooperative bank under section 80P(2)(d). He submitted that the issue is squarely covered in favour of the assessee by the decision of Hon'ble Supreme court in the case of Mavilayi Service Co-operative Bank Ltd. & Ors. Vs. CIT civil appeal No. 7343-7350 of 2019 with civil appeal No. 8315 of 2019 and Citizen Co-operative Bank in civil appeal No. 10245 of 2017.

7. The ld. DR could not dispute that the above said decisions of Hon'ble Supreme Court are squarely applicable.

8. We note that Hon'ble Supreme court in the aforesaid decision has expounded that section 80(2)(d), cannot be invoked in the case of co-operative banks unless they have license from RBI. In the case of Mavilayi Service Co-operative Bank Ltd. & Ors.

(supra), hon'ble Supreme Court has referred to the decision of Citizen Co-operative Bank in civil appeal No. 10245 of 2017 as under:-

That section 80P(4) is in the nature of a proviso to the main provision contained in section 80P(1) and (2). This proviso specifically excludes only co-operative banks, which are co-operative societies who must possess a license from the RBI to do banking business. Given the fact that the assessee in that case was not so licensed, the assessee would not fall within the mischief of section 80P(4).

9. Examining present case on the touchstone of above decision, we find that it is nobody's case that the assessee society has received interest from a co-operative bank, which is having the license from RBI. In this view of the matter, the issue is squarely covered in favor of the assessee by the aforesaid decision of Hon'ble Supreme Court. Hence, we set aside the orders of authorities below and allow the assessee's appeal.

10. Our above adjudication applies mutatis mutandis to assessment year 2017-18.

11. In the result, these appeals by the assessee stand allowed.

Pronounced in the open court on 18 .01.2022

Sd/-
(AMARJIT SINGH)
JUDICIAL MEMBER

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated : 18 /01/2022

Thirumalesh, Sr.PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

BY ORDER,

(Assistant Registrar)