

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

BEFORE SHRI ABY T. VARKEY, JM

आयकर अपील सं/ I.T.A. No.2539/Mum/2022
(निर्धारण वर्ष / Assessment Years: 2014-15)

Basant Vihar Cooperative Housing Society Ltd Vasant Vihar Complex A Building, Ground Floor, Dr. C. G. Road Chembur, Mumbai-400074.	बनाम/ Vs.	ITO-27(1)(2) 4 th Floor, Tower No. 6, Vashi Railway Station Commercial Complex, Vashi, Navi Mumbai- 400703.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAAJB0835E		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	Shri Venugopal C. Nair
Revenue by:	Smt. Nayana K. Kumar

सुनवाई की तारीख / Date of Hearing: 28/11/2022
घोषणा की तारीख /Date of Pronouncement: 05/12/2022

आदेश / ORDER

PER ABY T. VARKEY, JM:

This is an appeal preferred by the assessee co-operative society against the order of the Ld. Commissioner of Income Tax (Appeals)/NFAC, Delhi dated 29.07.2022 for the assessment year 2014-15.

2. The grounds of appeal of the assessee reads as under: -

“1. The Ld. CIT(A) erred in facts and circumstances of the case and in law in upholding the action of AO denying deduction u/s 80P(2)(d) in respect of interest earned on Fixed Deposits kept with a co-operative bank disregarding proposition laid down in decisions of jurisdictional Mumbai ITAT and by Gujarat High Court on this subject.”



ITA No.2539/Mum/2022

A.Y. 2014-15

Basant Vihar Cooperative Housing Society Ltd.

3. Brief facts are that the assessee co-operative society had filed return of income for AY. 2014-15 on 24.12.2015 declaring a total income of Rs. Nil. Subsequently, the assessee has filed revised return of income on 28.01.2016 declaring total income of Rs.4,65,111/-. During the year, the society has earned interest income of Rs.12,64,452/- and the said interest has been claimed as deduction under section 80P(2)(d) of the Income Tax Act, 1961 (hereinafter “the Act”). During assessment proceedings u/s 143(3) of the Act, the AO has disallowed the deduction claimed u/s 80P(2)(d) of the Act amounting to Rs.12,64,452/- and assessed total income at Rs.17,28,560/-. Aggrieved, the assessee preferred an appeal before the Ld. CIT(A) wherein the assessee brought to the notice of the Ld. CIT(A) that the assessee is a cooperative society duly registered under the Maharashtra Cooperative Societies Registration Act 1960 vide registration No.BOM/wmm/Hsg/TC/g029 of 2004. And that its members occupy two buildings and several row of houses of the Society. And that assessee society had made investment of Fixed Deposits [FD]with Cooperative bank viz. The Saraswat Cooperative Bank Ltd, Chembur Branch and that bank was also registered as a Cooperative Society under the Maharashtra Cooperative Societies Registration Act 1960 besides other applicable laws. During the previous year, the assessee society had earned income of Rs.12,64,452/- by way of interest on Fixed Deposits from the said Cooperative Bank. The said amount of interest of Rs.12,64,452/- received by the society on fixed deposits with the said Cooperative



ITA No.2539/Mum/2022

A.Y. 2014-15

Basant Vihar Cooperative Housing Society Ltd.

bank has been claimed as exempt under provisions of Section 80P(2)(d) of the Act in the return filed by the assessee society. However, the Ld. CIT(A) relying on the decision of the Hon'ble Karnataka High Court in the case of Totagars Cooperative Sales Society reported in 395 ITR 611 dated 16.06.2017 affirmed the action of the AO. Aggrieved, the assessee is before this Tribunal.

4. Heard both the parties and perused the records. It is an undisputed fact that the assessee is a Cooperative Society and has received an amount of Rs. 12,64,452/- by way of interest on fixed deposits from a Cooperative bank namely viz, Saraswat Cooperative Bank Ltd which is also a Co-operative Society (supra). The assessee claimed deduction of this interest income u/s 80P(2)(d) of the Act which is allowable or not is the question before this Tribunal. For that let us have a look at the relevant provision, viz. Section 80P(2)(d) of the Act which falls under Chapter VIA (Deduction in respect of certain income).

Deduction in respect of income of Co-operative Society.

“80P(2)(d)

(1). Where in the case of an assessee being a co-operative society, the gross total income includes any income referred to in sub-section (2), there shall be deducted, in accordance with and subject to the provisions of this section, the sums specified in sub-section (2), in computing the total income of the assessee.

(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 cooperative society from its investments with any other co-operative society, the whole of such income;”

5. From a bare reading of Sec. 80P(2)(d), it can be discerned that interest income derived by an assessee co-operative society from its investments held with any other co-operative society shall be deducted in computing its total income. So, 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 co-operative society. So if the interest income is derived by a co-operative society from its investments made with any other co-operative society, the claim of deduction under Sec. 80P(2)(d) of the Act is a valid claim. Further 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;”

6. Further, it is noted that though the co-operative banks pursuant to the insertion of sub-section (4) to Sec. 80P of the Act would no more be entitled for claim of deduction under Sec. 80P of the Act, but as a cooperative 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 in force in any State for the registration of



ITA No.2539/Mum/2022

A.Y. 2014-15

Basant Vihar Cooperative Housing Society Ltd.

co-operative societies [in this case Maharashtra Co-operative Societies Act, 1960], 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. As far as the reliance placed made by the Ld. AR in support of the claim of deduction u/s 80P(2)(d) of the Act as well as the reliance placed by the Ld. DR for supporting the order of the Ld. CIT(A), it is noted that the case laws cited by both the parties have been taken note by this Tribunal in the case of M/s. Rema Sahakari Karkhana Ltd. Pune Bench (ITA. No. 1249/Pun/2018 dated 07.01.2022) wherein the Tribunal has held as under: -

“9. In so far the judicial pronouncements that have been relied upon by the ld. A.R are concerned; we find that the issue that a co-operative society would be entitled for claim of deduction under Sec. 80P(2)(d) on the interest income derived from its investments held with a co-operative bank is covered in favour of the assessee in the following cases:

(i). M/s Solitaire CHS Ltd. vs. Pr. CIT, ITA No. 3155/Mum/2019; dated 29.11.2019 (ITAT “G” Bench, Mumbai);

(ii). Majalgaon Sahakari Sakhar Karkhana Ltd. Vs. ACIT, Circle-3, Aurangabad, ITA No, 308/Pun/2018 (ITAT Pune) M/s Rena Sahakari Sakhar Karkhana Ltd. Vs. Pr. CIT-2, Aurangabad ITA No. 1249/Pun/2018 – A.Y 2013-14 7

(iii). Kaliandas Udyog Bhavan Pemises Co-op. Society Ltd. Vs. ITO, 21(2)(1), Mumbai

We further find that the Hon'ble High Court of Karnataka in the case of Pr. Commissioner of Income Tax and Anr. Vs. Totagars



ITA No.2539/Mum/2022

A.Y. 2014-15

Basant Vihar Cooperative Housing Society Ltd.

Cooperative Sale Society (2017) 392 ITR 74 (Karn) and Hon'ble High Court of Gujarat in the case of State Bank Of India Vs. CIT (2016) 389 ITR 578 (Guj), had held, that the interest income earned by the assessee on its investments with a co-operative bank would be eligible for claim of deduction under Sec. 80P(2)(d) of the Act. Still further, we find that the CBDT Circular No. 14, dated 28.12.2006 also makes it clear beyond any scope of doubt that the purpose behind enactment of sub-section (4) of Sec. 80P was that the co-operative banks which were functioning at par with other banks would no more be entitled for claim of deduction under Sec. 80P(4) of the Act. Although, in all fairness, we may herein observe that the Hon'ble High Court of Karnataka in the case of Pr. CIT Vs. Totagars co-operative Sale Society (2017) 395 ITR 611 (Karn), as had been relied upon by the Id. D.R before us, had held, that a co-operative society would not be entitled to claim deduction under Sec. 80P(2)(d); but then, the Hon'ble High Court in the case of Pr. Commissioner of Income Tax and Anr. Vs. Totagars Cooperative Sale Society (2017) 392 ITR 74 (Karn) and Hon'ble High Court of Gujarat in the case of State Bank of India Vs. CIT (2016) 389 ITR 578 (Guj), had observed, that the interest income earned by a co-operative society on its investments held with a co-operative bank would be eligible for claim of deduction under Sec.80P(2)(d) of the Act. Backed by the aforesaid conflicting judicial pronouncements, we may herein observe, that as held by the Hon'ble High Court of Bombay in the case of K. Subramanian and Anr. Vs. Siemens India Ltd. and Anr (1985) 156 ITR 11 (Bom), where there is a conflict between the decisions of non-jurisdictional High Court's, then a view which is in favour of the assessee is to be



ITA No.2539/Mum/2022

A.Y. 2014-15

Basant Vihar Cooperative Housing Society Ltd.

preferred as against that taken against him. Accordingly, taking support from the aforesaid judicial pronouncement of the Hon'ble High Court of jurisdiction, we respectfully follow the view taken by the Hon'ble High Court of Karnataka in the case of Pr. Commissioner of Income Tax and Anr. Vs. Totagars Cooperative Sale Society (2017) 392 ITR 74 (Karn) and that of the Hon'ble High Court of Gujarat in the case of State Bank Of India Vs. CIT (2016) 389 ITR 578 (Guj), wherein it was observed that the interest income earned by a co-operative society on its investments held with a co-operative bank would be eligible for claim of deduction under Sec.80P(2)(d) of the Act.”

7. Therefore, in the light of the discussion, this Tribunal is of the view that the assessee Co-operative Society's claim for deduction of Rs. 12,64,452/- (FD Interest) from Saraswat Cooperative Bank Ltd. is allowable deduction u/s 80P(2)(d) of the Act. Therefore, the appeal of the assessee is allowed; and AO is directed to allow the claim of deduction of Rs. 12,64,452/-

8. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on this 05/12/2022.

Sd/-
(ABY T. VARKEY)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 05/12/2022.
Vijay Pal Singh, (Sr. PS)



ITA No.2539/Mum/2022

A.Y. 2014-15

Basant Vihar Cooperative Housing Society Ltd.

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

**उप/सहायक पंजीकार /(Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai**