

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

**BEFORE SHRI ABY T. VARKEY, JM**

आयकर अपील सं/ I.T.A. No.3059/Mum/2022

(निर्धारण वर्ष / Assessment Years: 2020-21)

State Bank of India Employees Devangini Co- operative Housing Soc. Ltd. Plot No. 4, Irani Wadi, Shahaji Raje Marg, Vile Parle (E), Mumbai-400057.	<b>बनाम/</b> Vs.	ADIT, CPC (JAO Ward, Mum-W-212-4) Mumbai-400020.
<b>स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAOAS5438D</b>		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	Shri P. G. Deshprabhu (Secretary)
Revenue by:	Shri Anil Gupta

सुनवाई की तारीख / Date of Hearing: 02/03/2023

घोषणा की तारीख /Date of Pronouncement: 31/03/2023

**आदेश / ORDER**

**PER ABY T. VARKEY, JM:**

This is an appeal preferred by the appellant/assessee State Bank of India Employees Devangini Co-operative Housing Society Ltd. against the order of the Ld. Commissioner of Income Tax (Appeals)/NFAC, Delhi dated 04.10.2022 for the assessment Year 2020-21.

2. Assessee is a Co-operative Housing Society, Registered under the Maharashtra Co-op Society Act 1960. The grounds of appeal of the assessee is against the action of the Ld. CIT(A) confirming the action of AO/CPC not allowing the claim of the assessee on the interest income u/s 80P(2)(d) of the Income Tax Act, 1961 (hereinafter "the Act") which it had received from Maharashtra State Co-operative Bank Ltd to the tune of Rs.1,89,143/-.



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**3.** Brief facts are that the assessee State Bank of India Employees Devangini Co-op Housing Society Ltd. is a Cooperative Housing Society, Registered under the Maharashtra Co-op Society Act. The assessee had invested its Surplus fund with Co-operative Banks as per the requirement under the Maharashtra State Co-operative Act. The assessee's claim of deduction of interest income from Maharashtra State Co-operative Bank Ltd to the tune of Rs.1,89,143/- u/s 80P(2)(d) of the Act was rejected by CPC u/s 143(1) of the Act dated 25.11.2021. Aggrieved, the assessee preferred an appeal before the Ld. CIT(A) who was pleased to confirm the action of the CPC by relying on the decision of the Hon'ble Supreme Court decision in the case of Bangalore Club Vs. CIT (2013) 29 taxmann.com 29 (SC) wherein the Hon'ble Supreme Court held that the interest income earned from member/corporate member Bank won't be eligible for exemption on the principle of mutuality. Aggrieved, the assessee is before this Tribunal.

**4.** Heard both the parties and perused the records. It is undisputed that the assessee is a Cooperative Society which has earned interest income on its saving bank deposit and fixed deposit to the tune of Rs.1,89,143/- from Maharashtra State Cooperative Bank Ltd. The assessee's claim of deduction in respect of interest income from the Maharashtra State Co-operative Bank u/s 80P(2)(d) of the Act was rejected by CPC u/s 143(1) of the Act; and the action of CPC has been confirmed by the Ld. CIT(A) by relying on the Hon'ble Supreme Court decision in the case of Bangalore Club (supra). The correctness



of the action of Ld. CIT(A) on this issue need to be examined. For that let me 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



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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 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 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. As far as the reliance placed made by the assessee before the Ld. CIT(A)/NFAC 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 before me for supporting the order of the Ld. CIT(A)/NFAC, 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



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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 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



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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 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



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Rs. 1,89,143/- (Interest income) from Maharashtra State Co-operative 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. 1,89,140/-.

**8.** Before parting, it is noted that the Ld. CIT(A) has relied on the decision of the Hon'ble Apex Court in the case of Bangalore Club, which is not relevant to the case in hand. The Hon'ble Supreme Court was dealing with the exemption claimed by the Bangalore Club in respect of "interest income" from corporate member banks on the principle of mutuality, which is not the case/lis in this appeal. So the impugned action of Ld. CIT(A) is erroneous for relying on the ratio of the decision of Apex Court in Bangalore Club case (supra) in the facts/issue of this appeal.

**9.** In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on this 31/03/2023.

**Sd/-**  
**(ABY T. VARKEY)**  
**JUDICIAL MEMBER**

मुंबई Mumbai; दिनांक Dated : 31/03/2023.  
*Vijay Pal Singh, (Sr. PS)*



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

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

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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