

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“C” BENCH, MUMBAI**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER &  
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

**ITA Nos. 846 & 847/Mum/2023**

**(A.Ys.2017-18 & 2018-19)**

The ACIT-24(1) Room No. 601, Piramal Chambers, Jeejeebhoy Lane, Lalbaug, Parel, Mumbai - 400012	Vs.	Oberoi Spring Coop Housing Society Ltd. Oshiwara Link Road, Near Monginis Cake Factory, Oshiwara Andheri (W) Mumbai - 400053
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AAAAO2236K		
Appellant	..	Respondent

Appellant by :	Ujjwal Chavhan
Respondent by :	Anil Mehta

Date of Hearing	24.05.2023
Date of Pronouncement	29.05.2023

आदेश / O R D E R

**Per Amarjit Singh (AM):**

Both these appeals filed by the revenue pertained to assessment years 2017-18 and 2018-19 are based on similar fact and identical issue therefore for the sake of convenience these appeals are adjudicated together by taking ITA No. 846/Mum/2023 as a lead case and its finding will applied as mutatis mutandis to the other appeal wherever applicable.

**ITA No. 846/Mum/2023**

- “1. Whether on the facts and in circumstances of the case and in law, the Ld. CIT(A) in allowing deduction u/s 80P(2)(d) of the IT. Act. 1961, without appreciating legislative intent of the inserted provision of 80(P) which specifically provides that section shall not apply in relation to any

*cooperative bank other than a primary agricultural credit society or primary cooperative agricultural and rural developer bank.*

2. *On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in allowing deduction u/s 80P(2)(d) of the IT. Act. 1961, without appreciating the facts that assessee has earned interest income from investment of idle funds with cooperative bank.*
3. *On the facts and in circumstances of the case and in law, the Ld. CIT(A) erred allowing deduction u/s 80P(2)(d) of the I.T. Act, 1961, without considering the decision of the Hon'ble Supreme Court in the case of Citizen Co-operative Society Ltd, Vs. ACIT vide its order dated 08/08/2017 [[2017] 84 taxmann.com 114 (SC)] which was further affirmed in its order dated 21/11/2017 in response to a review petition [[2017] 88 taxmann.com 279 (SC)].*
4. *The appellant prays that the order of the CIT (Appeals) on the above grounds be aside and that of the AO be restored.*
5. *The appellant craves leave to amend or alter any ground or submit additional ground which may be necessary.”*

2. The fact in brief is that the assessee cooperative housing society had filed its return of income for the year under consideration on 31.10.2017 declaring total income at Rs.11,16,410/- after claiming deduction u/s 80P of the I.T Act at Rs.2,21,25,862/-. The case of the assessee was subject to scrutiny assessment and assessment u/s 143(3) of the Act was finalized 05.12.2019 after disallowing the claim of deduction u/s 80P(2)(d). After referring sub-section (4) of Sec. 80P of the Act, the AO stated that deduction u/s 80P(2)(a)(i) is neither available to cooperative bank in respect of their own income nor is the interest dividend earned on investment in cooperative bank allowable as deduction u/s 80P(2)(d) of the Act.

3. Aggrieved, the assessee filed the appeal before the ld. CIT(A). The ld. CIT(A) has allowed the claim of deduction of the assessee cooperative society holding that assessing officer was not right in extending the applicability of Sec. 80P(4) to preclude the assessee's claim for deduction u/s 80P(2)(d) on interest earned from its investment in a cooperative bank. The ld. CIT(A) has also stated that in the preceding

year for assessment year 2015 -16 the similar claim of deduction in the case of the assessee was allowed by the ITAT vide ITA No.786/Mum/2019.

4. During the course of appellate proceedings before us the ld. Counsel submitted that ld. CIT(A) from assessment year 2014-15 to assessment year 2021-22 has consistently held that interest earned from investment from cooperative bank was allowable as deduction u/s 80P(2)(d) of the Act. The ld. Counsel has also referred decision of ITAT for assessment year 2016-17 vide ITA No. 589/Mum/2023 dated 08.05.2023 wherein the similar claim of deduction was allowed to the assessee society.

On the other hand, the ld. D.R supported the order of assessing officer.

5. Heard both the sides and perused the material on record. The assessing officer has disallowed the claim of deduction u/s 80P(2)(d) on the ground that the assessee cooperative society is also covered by the amended provisions of Sec. 80P(4) of the Act. The ld. CIT(A) has allowed the claim of the deduction holding that provision of Sec. 80P(4) is not applicable to the case of the assessee. The interest income earned from the deposit maintained with the cooperative bank was claimed as deduction u/s 80P(2)(d) of the Act and the assessee has also referred the various decisions of the ITAT Mumbai as under:

*“(a) Palm Court CHS Ltd. V/S Principal CIT 30 Mumbai - ITA No. 561/MUM/2021 Dt. 09/09/2022 Mumbai C bench.*

*(b) Ashoka Palace CHS Ltd V/S ITO 2022 Tax Scan ITAT 1808.*

*(c) ITAT D bench in the case of ITO 22(3)/ 5) V/S The Bombay Catholic Hsg. Society Ltd. A.Y. 2014-15 dt. 24/01/2023.”*

6. The assessee is a cooperative society formed with the object of maintaining and protecting the building occupied by its member

therefore assessee is not a bank and the provisions of Section 80P(4) will not apply to the assessee cooperative housing society. It is undisputed fact that Id. CIT(A) has allowed the claim for simliar deduction u/s 80P(2)(a) in respect of interest earned on deposit maintained with the Co-operative Bank consistently in the case of the assessee for assessment year 2014-15 to 2021-22. Therefore, taking a consistent view following the decision of the coordinate bench of the ITAT in the case of the assessee itself as referred above we don't find any infirmity in the decision of Id. CIT(A) in allowing the claim of deduction to the assessee u/s 80P(2)(d) of the Act. Accordingly, appeal of the Revenue is dismissed.

**ITA No.847/Mum/2023**

7. Since the facts and issue in this appeal are similar to the ITA No. 846/Mum/2023 as we have adjudicated supra therefore applying its finding as mutatis mutandis, this appeal filed by the revenue is also dismissed.

8. In the result, the appeals filed by the revenue are dismissed.

Order pronounced in the open court on 29.05.2023

Sd/-  
(Amit Shukla)  
Judicial Member

Sd/-  
(Amarjit Singh)  
Accountant Member

Place: Mumbai

Date 29.05.2023

Rohit: PS

**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 DR, ITAT,  
Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//  
आदेशानुसार/ BY ORDER,

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