

**INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "E": NEW DELHI  
BEFORE Shri C.M. Garg, Judicial Member  
AND  
Shri M. Balaganesh, Accountant Member**

ITA No. 585/Del/2022  
(Assessment Year: 2017-18)

The Maestro Multi State Cooperative Group Housing Society Ltd, D-24, Green View Apartments, Sector-9, Rohini, New Delhi (Appellant) <b>PAN:AABAT7650F</b>	Vs.	PCIT, Delhi-12,  (Respondent)
---	-----	--

Assessee by :	Sh. Raghav Sharma, CA
Revenue by:	Ms. Sarita Kumar, CIT DR

Date of Hearing	25/05/2023
Date of pronouncement	31/07/2023

**ORDER**

**PER C. M. GARG, J. M.:**

1. This appeal has been filed by the assessee against the order of the Id PCIT-12, Delhi dated 25.02.2022 for AY 2017-18.
2. The assessee has raised the following grounds of appeal:-
  - "1. On the facts and circumstances of the case, the order passed by the learned Pr. CIT under section 263 of the Act is bad in the eyes of law and on facts.
  2. That the Id Pr. CIT has erred on facts and in law in invoking the provisions of Section 263 of the Income Tax Act, 1961 which are not at all applicable on the facts of the case.
  3. That the Ld. Pr.CIT has erred on facts and in law in directing the AO to disallow the exemption of interest income of Rs.35,89,839/- earned by the appellant from the funds kept with Delhi State Co- operative Bank Ltd.
  4. That the impugned appellate order is arbitrary, illegal, bad in law and the violation of rudimentary principle of contemporary jurisprudence.

3. The Id counsel of the assessee submitted that the impugned revisionary order passed by the Id PCIT, Delhi u/s 263 of the Income Tax Act, 1961 (for short the Act) dated 25.02.2022 for AY 2017-18 is bad in law and under the facts and circumstances of the case. He further, submitted that the Id PCIT has erred on facts and in law in invoking the provisions Section 263 of the Act which is not applicable to the facts of the case. The Id counsel vehemently submitted that the Id PCIT has erred on facts and in law in directing the AO to disallow the exemption of interest income of Rs. 35,89,839/- earned by the appellant from the funds kept with Delhi State Cooperative Bank Ltd. The Id counsel submitted that as per the order of ITAT Mumbai Bench dated 08.05.2023 in the case Oberoi Spring Co-operative Housing Society Ltd Vs. ITO in ITA No. 958/Mum/2023, wherein, it was held that when the Id CIT(A) granted the relief to the assessee allowing deduction 80P(2)(d) of the amount of interest income received from the co-operative bank.

4. Replying to the above, the Id CIT DR placing reliance on the order of ITAT Varanasi Bench in the case **NE Railway Employees Multi State Primary Co-operative Bank Ltd Vs. ACIT** and submitted that where assessee, a multi-state primary co-operative bank, was not doing any activity falling in purview of primary agricultural credit society or a primary co-operative agricultural and rural development bank rather it satisfied conditions for being primary co-operative bank as provided under Banking Regulation Act, 1949, benefit of deduction under section 80P was not available to assessee in view of sub-section (4) of section 80P.

5. The Id CIT DR submitted that the authorities below have rightly disallowed the claim of the assessee u/s 80P(2) on the interest earned by its from the deposits with the cooperative bank.

6. Placing rejoinder to the above, the Id counsel of assessee drew our attention towards brief synopsis filed and submitted that the Id PCIT has cancelled the assessment and directed the AO to make afresh de novo

assessment order without any enquiry and verification, therefore, the impugned revisionary order is not sustainable. He further submitted that even on merit the AO was right in allowing claim of the assessee as the appellant has filed return of income where deduction u/s 80P of the Act was claimed by the appellant against the interest income received from deposit with Delhi Cooperative Bank and also exemption against agricultural income and other income. The Id counsel of assessee further drawing our attention to relevant assessment order submitted that the AO has rightly appreciated the factual matrix of the Act therefore, allowed claimed of the assessee which is quite correct and sustainable, therefore, as the assessment order cannot be alleged as erroneous and prejudicial to the interest of the revenue.

7. On careful consideration of the above submission, first of all, we note that in the present case the assessee claimed deduction u/s 80P(2) of the Act on the interest earned from Delhi State Cooperative Bank. The Id PCIT has not disputed the fact that the appellant is group housing society having status of AOP and was incorporated under the Multi-State Cooperative Act, 2002 on 27.02.2009 with the object to construct residential flats for its members. The assessee collected money from its members and deposited the same in Delhi State Cooperative Bank, New Delhi and HDFC Bank. The appellant society earned interest income from surplus of deposit lying with the said banks and interest earned was to be utilized for meeting the sole object of the assessee i.e. to construct the residential flat. These facts have not been controverted or disputed by the Id PCIT in any manner. Therefore, the assessee is a housing cooperative society and not cooperative bank.

8. In the case **NE Railway Employees Multi State Primary Cooperative Bank Ltd Vs. ACIT** (supra) the assessee was multi state primary cooperative bank and not doing any activity falling in purview of a cooperative society therefore, the tribunal ruled against the assessee that once the assessee falls in the definition of cooperative bank the

benefit of deduction u/s 80P of the Act was not available to the assessee in view of the sub-section 4 of section 80P of the Act.

9. In the case of PCIT Vs. Totagars Co-operative Sale Society the Hon'ble Karnataka High Court held that for the purpose of section 80P(2)(d) a co-operative bank should be considered by a cooperative society and interest earned by cooperative society from cooperative bank would necessarily be deductible u/s 80P(1) of the Act.

10. Similar view was taken by the coordinate bench of Rajkot in case of Surendarnagar District Co-operative Milk Producer Union Ltd. v. Dy. CIT [2019] 111 taxmann.com 69/179 ITD 690 (Rajkot Tribunal) held the assessee co-operative society could not claim benefit under section 80P(2)(d) in respect of interest earned by it from deposits made with nationalized/private banks, however, the said benefit was available in respect of interest earned and on deposits made with co-operative bank.

11. In view of the above, we reached to a legal conclusion that the AO was right in allowing claim of assessee u/s 80P(2)(d) of the Act and therefore, the assessment order cannot be alleged as erroneous and prejudicial to the interest of revenue on merits. Therefore, we are compelled to hold that Id PCIT was not correct and justified in invoking revisionary provision of section 263 of the Act at the issue of allowance of exemption u/s 80P(2)(d) to the assessee on the interest earned from Delhi State Cooperative Bank. Accordingly, sole grievance of the assessee is allowed and impugned revisionary order of the Id PCIT for AY 2017-18 is set aside restoring the assessment order dated 13.12.2019 for AY 2017-18,.

12. In the result, the appeal is allowed on merits.

Order pronounced in the open court on 31/07/2023.

**-Sd/-**  
**(M. Balaganesh)**  
**ACCOUNTANT MEMBER**

**-Sd/-**  
**(C. M. GARG)**  
**JUDICIAL MEMBER**

Dated: 31/07/2023  
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi