

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

**BEFORE ABY T VARKEY, JUDICIAL MEMBER  
&  
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

**ITA No. 1748/MUM/2023**

**(A.Y. 2012-13)**

**ITA No. 1747/MUM/2023**

**(A.Y. 2013-14)**

**ITA No. 1743/MUM/2023**

**(A.Y. 2017-18)**

**ITA No. 1744/MUM/2023**

**(A.Y. 2018-19)**

**ITA No. 1749/MUM/2023**

**(A.Y. 2021-22)**

Laxmi Co-operative Housing Society Ltd. Laxmi Nagar, Khar (W) Mumbai-400052	Vs.	Income Tax Officer 22(2)(3) National Faceless appeal Centre
<b>स्थायी लेखा सं./जीआइआर सं./ PAN/GIR No: AAAAL1009P</b>		
<b>Appellant</b>	<b>..</b>	<b>Respondent</b>

Appellant by :	Shri. K. Shivaram & Ms. Neelam C. Jadhav
Respondent by :	Shri. Manoj Kumar Sinha

Date of Hearing	07.08.2023
Date of Pronouncement	24.08.2023

**आदेश / O R D E R**

**PER BENCH :-**

1. All these five appeals filed by the assessee are directed against the order passed u/s 250 of the Income Tax Act 1961 [hereinafter “the Act”] by the Learned Commissioner of Income

Tax (Appeals)-34/ [hereinafter ‘the CIT(A)’]/National Faceless Appeal Centre, Delhi [NFAC]. Since all these appeals are based on common issue on identical facts, therefore, all these appeals are adjudicated together by taking the ITA No. 1748/Mum/2023 as lead case and its finding will be applied mutatis mutandis to the other appeals filed by the assessee wherever applicable.

**ITA No. 1748/Mum/2023 A.Y. 2012-13**

The revised grounds of appeal filed by the assessee are as under:

- I. *Disallowance of deduction claimed u/s. 80(P)(2)(d) of ₹ 66,36,310/- in respect of interest received from fixed deposits held in the SVC Co-operative Bank, Saraswat Co-Op, Bank & Maharashtra State Co-Op. Bank.*
1. *The Learned National Faceless Appeal Centre erred in confirming the disallowance of deduction u/s. 80P (2)(d) of ₹ 66,36,310/- in respect of interest earned from deposits kept in co-operative banks. Without appreciating that, co-operatives banks are registered under Co-Operatives Societies Act, 1912 with a license to undertake banking activities, and therefore Appellant is eligible to claim deduction u/s 80P(2)(d). Therefore, disallowance confirmed by the NFAC may be deleted.*
2. *The Learned national Faceless appeal Centre (NFAC) erred in not following the judgment of the jurisdictional Tribunal which has explained the ratio of the Supreme Court and held that deduction u/s 80P(2)(d) is eligible in respect of interest received from the Co-operative Banks. Therefore, disallowance confirmed by the NFAC may be deleted.*

II Interest u/s 244B of ₹ 14,42,791/- & 234C of u/s. 75,759/-

3. *The learned National Faceless Appeal Centre (NFAC) erred in levying the interest of ₹ 14,42,791/- u/s 243B & ₹ 75,79/- u/s 234C of the Act. The appellant denied the liability of interests. Hence, the levy on interest may be directed to be deleted.*

2. Fact in brief is that the assessee is a co-operative society consisting various members on the concept of mutuality. The assessee has filed return of income for the assessment year 2012-13 on 27.09.2012 declaring income of ₹ Nil. The case of the assessee was reopened by issuing of notice u/s 148 of the Act on 03.01.2018 on the ground that the assessee has earned income from interest on FDR and interest on SB account totaling to ₹66,36,310/- received from the co-operative bank and after claiming various expenses the assessee had claimed deduction u/s 80P(2)(d) of the Act at ₹32,54,869/-.

3. AO was of the view that since the assessee had earned interest from co-operative banks and not from co-operative society, therefore, it was not eligible for deduction u/s 80P(2)(d) of the Act. On query assessee explained that co-operative banks are registered co-operative society, therefore, the interest received from the co-operative bank is eligible for deduction u/s 80P(2)(d) of the Act. However, the AO has not agreed with the submission

of the assessee. The AO referred Finance Act 2006 vide which deduction u/s 80P(4) of the Act available to the co-operative bank was withdrawn w.e.f. available from 1.04.2007. The AO was of the view that as per the provisions of section 80P (4) of the Act w.e.f. 01.04.2007 deduction u/s 80P(4) was not available to the co-operative banks. He also observed that co-operative Bank is a commercial bank and does not fall under the purview of a co-operative society. Therefore, the AO held that deduction u/s 80P(2)(d) of the Act claimed by the assessee on interest earned from the deposit maintained with co-operative banks is not allowable. Therefore, the same was added to the total income of the assessee.

4. Aggrieved, the assessee filed appeal before the Ld. CIT(A). The Ld. CIT(A) has dismissed the appeal of the assessee.
5. During the course of appellate proceedings before us the Ld. Counsel contended that section 80P(4) exclude only the corporative bank for claiming deduction u/s 80P(4) of the Act, however, interest income derived by the co-operative society from its investment maintained with the co-operative bank would be entitled for deduction u/s 80P(2)(d) of the Act. The Ld. Counsel filed paper book and referred various decisions of the ITAT on the issue that interest income earned from the deposit kept with

the co-operative bank is entitled for deduction u/s 80P(2)(d) of the Act.

6. On the other hand the Ld. DR supporting the order of the Lower authority.
7. Heard both the side and perused the material on record. During the year under consideration assessee society has received of ₹66,36,310/- from the deposit maintained with the co-operative banks and claimed deduction u/s 80P(2)(d) of ₹33,81,441/- after excluding expenses incurred for its members. The AO has disallowed the claimed of deduction stating that co-operative banks are not co-operative society. The AO stated that deduction u/s 80P(2)(d) of the Act cannot be allowed when there is investment in co-operative bank and such income from investment made with Co-operative Banks after insertion of sub section 4 of section 80P is not eligible for deduction u/s 80P(2)(d) of the Act. However, we consider though the co-operative bank pursuant to the insertion of sub section 4 of section 80P is no more entitled for claim of deduction u/s 80P of the act, but a co-operative bank continue to be a co-operative society registered under the co-operative society Act. Therefore, interest income derived by a co-operative society from its investment held with the co-operative bank would be entitled for claim of deduction

u/s 80P(2)(d) of the Act as held in the various decision of benches of ITAT Mumbai.

8. In this regard the Ld. Counsel has referred the decision of the ITAT Mumbai in the case of **Kaliandas Udyog Bhavan Premises Coop Society Ltd. V/s ITO 21(2)(1) Mumbai (2018) 94 taxmann.com 15 (Mumbai Tribunal)** where in held that-

*Para 7- "We are of the considered view, that though the co-operative bank pursuant to the insertion of Sub-section (4) of Sec. 80P would no more be entitled for claim of deduction under Sec. 80P of the Act, but however, as a co-operative 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 enforced 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."*

And also the decision of the ITAT Mumbai in the case of **Land End Co-operative Housing Society V/s ITO Ward 16(3)(1) (ITA No. 3566/Mum/2014) (A.Y. 2009-10)** wherein held that-

*"The provisions of section 80P(2)(d) of the Act provides for deduction in respect of income of a coop society by way of interest or dividend from its investments with other coop society if such income is included in the gross total income of the such coop society."*

In view of this above facts following the decision as discussed supra we consider that the decision of Ld. CIT(A) in sustaining

the disallowance made by the AO is not justified. Therefore grounds no 1 and 2 are allowed.

Ground No.3 – levying of interest u/s 234B and 234C of the Act. The interest u/s 234B and 234C is to levied mandatorily as per law. Therefore the AO is directed to charge interest as per law, after verification. Therefore, this ground of appeal is allowed for statistical purpose.

In the result the appeal filed by the assessee is partly allowed.

**ITA No. 1747/Mum/2023 A.Y. 2013-14.**

Since this appeal is based on identical fact and issue, as we have adjudicated vide ITA No. 1748 as supra, therefore, applying findings of that case mutatis mutandis this appeal the ground no.1 and 2 are allowed and ground no. 3 is allowed for statistical purpose.

In the result the appeal filed by the assessee is partly allowed..

**ITA No. 1743/Mum/2023 A.Y. 2017-18.**

Since this appeal is based on identical fact and issue, as we have adjudicated vide ITA No. 1748 as supra, therefore, applying findings of that case mutatis mutandis to this appeal the ground no.1 and 2 are allowed and ground no. 3 is allowed for statistical purpose.

In the result the appeal filed by the assessee is partly allowed

**ITA No. 1744/Mum/2023 A.Y. 2018-19.**

Since this appeal is based on identical fact and issue, as we have adjudicated vide ITA No. 1748 as supra, therefore, applying findings of that case mutatis mutandis to this appeal the ground no.1 and 2 are allowed and ground no. 3 is allowed for statistical purpose.

In the result the appeal filed by the assessee is partly allowed

**ITA No. 1749/Mum/2023 A.Y. 2021-22.**

Since this appeal is based on identical fact and issue, as we have adjudicated vide ITA No. 1748 as supra, therefore, applying findings of that case mutatis mutandis to this appeal the ground no.1 and 2 are allowed and ground no. 3 is allowed for statistical purpose.

In the result the appeal filed by the assessee is partly allowed

Order Pronounced in Open Court on 24.08.2023

Sd/-

(ABY T VARKEY)  
JUDICIAL MEMBER

Place: Mumbai

Date 24.08.2023

ANIKET SINGH RAJPUT/STENO

Sd/-

(AMARJIT SINGH)  
ACCOUNTANT MEMBER

**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.**