

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

**BEFORE SHRI OM PRAKASH KANT, AM AND  
MS. KAVITHA RAJAGOPAL, JM**

ITA Nos. 1204 & 1205/Mum/2023  
(Assessment Years: 2020-21 & 2021-22)

Alsid Co-operative Housing Society Ltd ST Andrews Road Bandra Mumbai-400 050	Vs.	DCIT/ACIT-CPC Bangalore
PAN/GIR No. AAGAA 6813 J		
<b>(Appellant)</b>	:	<b>(Respondent)</b>
<b>Assessee by</b>	:	Shri Bhupendra Shah
<b>Revenue by</b>	:	Ms Indira Adakil
<b>Date of Hearing</b>	:	04.07.2023
<b>Date of Pronouncement</b>	:	27.09.2023

**ORDER**

**Per Kavitha Rajagopal, JM:**

These two appeals have been filed by the assessee, challenging the order of the learned Commissioner of Income Tax (Appeals) (‘ld.CIT(A) for short), National Faceless Appeal Centre (‘NFAC’ for short) passed u/s.250 of the Income Tax Act, 1961 (‘the Act’), pertaining to the Assessment Years (‘A.Y.’ for short) 2020-21 and 2021-22

2. As the facts are identical in both these appeals we hereby pass a consolidated order by taking ITA No.1204/Mum/2023 as the lead case.

**ITA No.1204/Mum/2023**

3. The assessee has challenged the disallowance of deduction u/s 80P(2)(d) of the Act amounting to Rs.1,81,560/- and Rs.1,90,094/- being the income from other sources

with regard to the interest earned on fixed deposit with Co-operative Bank for A.Ys. 2020-21 and 2021-22 respectively.

4. The brief facts are that the assessee being a co-operative society registered under Maharashtra State Co-operative Societies Ltd filed its return of income for A.Y.2020-21 dated 08.02.2021 declaring total income at Rs.1,81,560/- and the same was processed u/s. 143(1) of the Act. The Id.CPC/Assessing Officer ('A.O.' for short) u/s.154 of the Act vide intimation dated 30.09.2022 made a disallowance of Rs.1,81,560/- u/s. 80P(2)(d) of the Act being the interest received by the assessee out of the fixed deposit made in the co-operative bank.

5. Aggrieved the assessee was in appeal before the Id. CIT(A).

6. The Id. CIT(A) by relying on the decision of the Hon'ble Apex Court in the case of *Commissioner of Customs (Import) Mumbai vs M/s Dilip Kumar and Company* (Civil Appeal No. 3327 of 2007) upheld the disallowance made by the Id. A.O./CPC u/s 80P(2)(d) of the Act in the rectification application u/s 154 of the Act.

7. Further aggrieved the assessee was in appeal before us.

8. The learned Authorised Representative ('Id. AR' for short) for the assessee contended that the assessee had received interest out of the fixed deposit from Citizen Co-operative Bank amounting to Rs.1,81,560/- which was the allowable deduction u/s 80P(2)(d) of the Act as per various decisions of the Tribunal. The Id. AR relied on the decision of the Tribunal in the case of *Regency Premises Co-op. Housing Society Ltd.*

9. The learned Departmental Representative ('ld.DR' for short), on the other hand, controverted the said Act and stated that the assessee was not entitled to deduction u/s 80P(2)(d) of the Act for the reason that interest received from the Citizen Co-operative Bank is not an allowable deduction as only interest from co-operative societies are eligible u/s. 80P. The ld.AR relied on the decision of the Hon'ble Apex Court in the case of *The Mavilayi Service vs. CIT* (in Civil Appeal Nos. 7343 – 7350 o 2019 vide order dated 12.01.2021).

10. We have heard the rival submissions and perused the materials available on record. It is observed that the assessee being a Co-operative Housing Society have earned interest income from Co-operative Bank and had claimed deduction u/s 80P(2)(d) of the Act for the interest so received. The ld. A.O. /CPC u/s 154 of the Act disallowed the said deduction as not allowable. It is observed that the assessee has claimed the interest income under the head 'income from other sources'. The lower authorities have rejected the claim of the assessee for the reason that the assessee is entitled to deduction on interest earned on the investment which is made with other co-operative society and not made with co-operative banks. The assessee in the present case had deposited in Citizen Co-operative Bank and had earned interest income amounting to Rs.1,81,560/-. The ld. CIT(A) had relied on the provision of section 80P(iv) of the Act wherein co-operative bank is said to have been excluded from the purview of section 80P. The ld. CIT(A) further stated that the Co-operative Societies are based on the concept of mutuality where the benefits are restricted only to its members. The ld. CIT(A) also distinguished the Co-operative Society from Co-operative Banks as the latter is regulated

by RBI under the banking laws (application to Co-operative Society) Act 1965 whereas the Co-operative Societies are registered under Co-operative Societies Act 1912 and are regulated only by the State Act. The Id. CIT(A) also held that the Co-operative Banks are distinguishable from Co-operative Societies where the Co-operative Banks accept deposit from both the members and non members and the same is restricted to co-operative societies to its members only. The Id. CIT(A) relied on the decision of the Hon'ble Apex Court in the case of *M/s Dilip Kumar and Company* (supra) which held that exemption/deduction should be interpreted strictly and upheld the disallowance made by the Id.A.O./CPC. The assessee on the other hand has relied on a catena of decision of the co-ordinate benches which has held that interest income earned out of fixed deposits with Co-operative Banks are eligible for deduction u/s. 80P(2)(d) of the Act. The Id. AR had relied on the decision of the co-ordinate bench in the case of *Regency Premises Co-op Hsg Society Ltd. vs DCIT* (in ITA No. 2547/Mum/2022 vide order dated 17.01.2023).

The relevant extract of the said decision is cited hereunder or ease o ready reerence:

2. .... We note that this issue is no longer res-integra, sicne this issue has cropped up several times before this Tribunal wherein we have consistently allowed the same. Recently this Tribunal in the case of *UTI Employees Sai Samrudhi Co-op Housing Society Ltd. Vs. Centralized Processing Unit Income Tax* (ITA. No. 2477/Mum/2022 for AY. 2019-20 dated 05.12.2022) on this issue has held as under: -

“2.Assessee is a Co-operative Housing Society, Registered under the Maharashtra Co-op Society Act 1960. The society was formed by Employees and nominees of Unit Trust of India (Government Entity). The grounds of appeal of the assessee is against the action of the Ld. CIT(A) confirming the action of AO 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 Mumbai District Central Cooperative Bank to the tune of Rs.17,58,119/-.

2. Brief facts are that the assessee *UTI Employees Sai Samrudhi Co-op Housing Society Ltd.* is a Cooperative Housing Society, Registered under the Maharashtra Co-op Society Act. The society was formed by Employees and nominees of Unit Trust of India (Government Entity). The society being a housing society consists of members who are shareholders to whom flats which were allotted by the Society. The assessee had invested its Surplus fund with Co-operative Banks as per the directions of the Maharashtra State Co-operative Act. The assessee’s claim of deduction of interest income from Mumbai District Central Cooperative Bank to the tune of Rs.17,58,119.00/- u/s 80P(2)(d) of the

Act was rejected by CPC u/s 143(1) of the Act. 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 Karnataka High Court decision in the case of PCIT Vs. Totgars Co-operative Sales Society (2017) 83 taxmann.com 140 (Karn) wherein the Hon'ble High Court held in favour of the revenue. Aggrieved, the assessee is before this Tribunal.

3. 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 fixed deposit to the tune of Rs.17,58,199/- from Mumbai District Central Cooperative Bank. The assessee's claim of deduction in respect of interest income from the Mumbai District Central Co-operative Bank u/s 80P(2)(d) of the Act was rejected by CPC u/s 143(1) of the Act which has been confirmed by the Ld. CIT(A) by relying on the Hon'ble Karnataka High Court decision in the case of Totgars Co-operative Sales Society (supra). The correctness of the action of Ld. CIT(A) on this issue need to be examined. 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) ITA No.2547/Mum/2022 A.Y. 2020-21 Regency Premises Co.op Housing Society 4

(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 followingnamely :-

(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 cooperative society. So if the interest income is derived by a cooperative society from its investments made with any other cooperative 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;" ITA No.2547/Mum/2022 A.Y. 2020-21 Regency Premises Co.op Housing Society 5

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 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 ITA No.2547/Mum/2022 A.Y. 2020-21 Regency Premises Co.op Housing Society 6*
- (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 ld. 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 ITA No.2547/Mum/2022 A.Y. 2020-21 Regency Premises Co.op Housing Society 7 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 Rs. 17,58,199/- (FD Interest) from Mumbai District Central Co-operative Bank. 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. 17,58,199/-.” 3. Therefore, in the light of the aforesaid discussion on the case law, this Tribunal is of the view that the assessee Co-operative Society's claim for deduction of Rs.3,34,570/- (FD Interest) from the following co-operative banks (i) Shamrao Vitthal Co-operative Bank (ii) Saraswat Co-operative Bank & (iii) Mumbai District Co-operative ITA No.2547/Mum/2022 A.Y.

2020-21 Regency Premises Co.op Housing Society & Bank are 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.3,34,570/-. 4. In the result, the appeal of the assessee is allowed

11. By respectfully following the propositions laid down in the above mentioned decision we hereby hold that the assessee is eligible to claim deduction u/s. 80P(2)(d) of the Act for the interest earned out of the deposits made with Co-operative Bank namely Citizen Credit Co-operative Bank amounting to Rs.1,81,561/-. We therefore allow the grounds raised by the assessee.

**ITA No. 1205/Mum/2023**

12. As the facts in ITA No. 1205/Mum/2023 are identical with that of the facts in 1204/Mum/2023, the observation given above applies *mutatis mutandis* to this appeal also.

13. In the result, both the appeals filed by the assessee are allowed.

*Order pronounced in the open court on 27.09.2023.*  
Sd/- Sd/-

(Om Prakash Kant)  
Accountant Member

(Kavitha Rajagopal)  
Judicial Member

Mumbai; Dated : 27.09.2023

Roshani, Sr. PS

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent
3. CIT - concerned
4. DR, ITAT, Mumbai
5. Guard File

BY ORDER,

(Dy./Asstt. Registrar)  
ITAT, Mumbai