

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

**BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

**ITA No.1993/Mum/2023  
(A.Y. 2017-18)**

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|---|-----|--|
| Shree Vijaya Residency<br>Coop Housing Society Ltd.<br>01, Ground Floor, B Wing,<br>Chivada Galli, Ganesh<br>Nagar, Lalbaug<br>Maharashtra - 400012 | Vs. | ITO,<br>20(3)(3)<br>Piramal Chamber Lal<br>Baug-400012, Mumbai |
| स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AAGAS0596L   |     |  |
| Appellant   | ..  | Respondent   |

|                 |                        |
|-----------------|------------------------|
| Appellant by :  | Om Kandalkar           |
| Respondent by : | Prakash Kishinchandani |

|                       |            |
|-----------------------|------------|
| Date of Hearing       | 06.09.2023 |
| Date of Pronouncement | 27.09.2023 |

आदेश / O R D E R

**Per Amarjit Singh (AM):**

This appeal filed by the assessee is directed against the order passed by the Id. CIT(A) NFAC, dated 231.03.2023 for A.Y. 2017-18. The assessee has raised the following grounds before us:

- “1. *The Learned CIT Appeals erred in confirming the disallowance of Rs.18,78,388/- claimed by the Appellant on the ground that the matter u/s. 80P(2)(d) is covered by Hon'ble Supreme Court's decision, in the case of Totgar's Co-operative Sale Society Ltd Vs ITO [2010] 322 ITR 283 (SC) as held by the Learned Assessing Officer*
2. *The Learned CIT Appeals erred in considering the fact that the Hon'ble Supreme Court's decision, in the case of Totgar's Co-operative Sale Society Ltd Vs ITO [2010] 322 ITR 283 (SC) is distinguished and is fully covered by the decision of Income Tax*

*Appellate Tribunal "D" Bench, Mumbai in the case of Mittal Court Premises Co. Op Society Ltd v/s ITO-17(2)(1) in ITA Nos 1535 to 1537/Mum/2022 that the Hon'ble Supreme Court decision pertains to the allowability of deductions claimable u/s 80P(2)(a)(i) or 80P(2)(a)(iii), whereas Appellant's claim is with respect to deductions u/s. 80P(2)(d) of the Act.*

3. *The Learned CIT Appeals erred in confirming the additions made by the Learned Assessing Officer on the ground that section 80P(4) of the Act distinguishes the co-operative banks from co-operative societies.*
  4. *The appellant crave leave to add, alter or delete any of the grounds of appeal.”*
2. Fact in brief is that assessee is a Cooperative Housing Society and filed return of income for the assessment year under consideration declaring total income of Rs.3,26,270/- on 08.01.2018. The ld. AO also mentioned that vide Finance Act 2006, deduction of income for Co-operative Banks as per provision of section 80P of the Act has been withdrawn by way of insertion of sec. 80P(4) of the Act w.e.f. 01.04.2007. The AO stated that interest earned from the investment made with the Co-operative Bank by the assessee Co-operative Society is not entitled for deduction u/s 80P(2)(d) of the Act. Vide order u/s 154 r.w.s 143(3) of the Act dated 21.12.2019 the assessing officer has disallowed the claim of deduction of the assessee society made u/s 80P(2)(d) of the Act in respect of interest earned from the deposit maintained with the cooperative society.
3. Aggrieved, the assessee filed the appeal before the ld. CIT(A). The ld. CIT(A) has dismissed the appeal of the assessee.
4. Heard both the sides and perused the material on record. The assessee is a cooperative Housing Society registered under the Maharashtra Cooperative Society Act 1960. The assessee has claimed deduction of Rs.18,78,388/- u/s 80P(2)(d) of the Act being interest received from investment made with Shamrao Vittal

Cooperative Bank & Saraswat Cooperative Bank. On similar issues and identical facts the coordinate benches of the ITAT have held that interest derived by a cooperative society from its investment with a cooperative Bank is entitled for claim of deduction u/s 80P(2)(d) of the Act. Some of the decision of the ITAT wherein the claim of deduction u/s 80P(2)(d) was allowed on the interest income earned from deposit with cooperative bank are as under:

- “1. *Abhinav Nagar Co-op. Hsg. Soc Ltd. Vs. AO, CPC, Vide ITA Nos. 2564 & 2565/Mum/2022.*
2. *Bhag Coop Housing Society Ltd. Vs. Asst. CIT, CPC vide ITA No. 1972/Mum/2022.*
3. *Samapan A & B Wing Co-operative Housing Society Ltd. Vide ITA No. 2121/Mum/2022.*
4. *Sumer Nagar Co-operative Housing Society Ltd. Vs. ITO, Ward 32(3)(4) vide ITA No. 1239/Mum/2022.*
5. *ACIT, Circle 23(3) Vs. The Salsette Catholic Co-operative Housing Society vide ITA Nos. 3870 & 3871/Mum/2019.”*

In the case of Kaliandas Udyog Bhavan Premises Coop. Society Ltd. Vs. ITO vide ITA No. 6547/Mum/2017 dated 25.04.2018 it is held that though the cooperative bank pursuant to the insertion of subsection (4) of Sec. 80P is no more be entitled for claim of deduction u/s 80P of the Act, but however, as a cooperative bank continued to be a cooperative society registered under the Cooperative Society Act, therefore, the interest income earned by a cooperative society from its investment held that cooperative bank would be entitled for claim of deduction u/s 80P(2)(d), therefore, we direct the AO to allow the claim of deduction to the assessee in respect of interest earned from investment made with the cooperative bank, Therefore, the appeal of the assessee is allowed.

5. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 27.09.2023

Sd/-

(Amarjit Singh)  
Accountant Member

Place: Mumbai  
Date 27.09.2023  
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.