

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

BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER

**ITA No.1943/Mum/2023
(A.Y. 2017-18)**

Raheja Green Co-operative Housing Society Limited Society Office, Ground Floor, Raheja Estate, Kulupwadi Road, Borivali East, Mumbai – 400 066	Vs.	Income Tax Officer, Ward 32(1)(4) 706, 7 th Floor, Kautilya Bhavan, C-41 to C-43, G Block, Bandra Kurla Complex, Bandra East, Mumbai – 400 051
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AAAAR4856Q		
Appellant	..	Respondent

Appellant by :	Sanjay Pariksh
Respondent by :	Prakash Kishinchandani

Date of Hearing	04.09.2023
Date of Pronouncement	28.09.2023

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 28.03.2023 for A.Y. 2017-18. The assessee has raised the following grounds before us:

“(A) Disallowance of deduction u/s. 80P(2)(d) - Rs.17,64,209/-

1. The learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC) [CIT(A)] erred on facts and in law in upholding the order of the Income Tax Officer, Ward - 32(1)(4), Mumbai (AO) disallowing the appellant's claim of deduction u/s 80P(2)(d) amounting to Rs.17,64,209/-

2. *The learned CIT(A) erred on facts and in law in upholding the disallowance made by the AO of the appellant's claim of deduction u/s 80P(2)(d) of Rs.17,64,209/- by interpreting section 80P(2)(d) to be eligible to income by way of interest or dividends derived by the co-operative society from its investments with any other co-operative society that is not a co-operative bank.*
3. *The learned AO and CIT(A) failed to appreciate that the appellant had earned interest from co-operative banks which were co-operative societies and hence the appellant was entitled to deduction u/s 80P(2)(d) of Rs.17,64,209/-.*
4. *The appellant prays that the disallowance made by the AO of the appellant's claim of deduction u/s 80P(2)(d) of Rs.17,64,209/- and confirmed by the CIT(A), may be deleted.*

B) General

5. *The above grounds of appeal are without prejudice to one another and the appellant craves leave to add, alter, amend, delete or modify any of the above grounds of appeal.”*
2. Fact in brief is that assessee is a cooperative Housing Society and filed its return of income for the assessment year on 11.03.2018 declaring total income of Rs.456,110/-. The case was subject to scrutiny assessment and assessment u/s 143(3) of the Act was finalised on 29.11.2019. The assessing officer has disallowed the claim of deduction made u/s 80P(2)(d) of the Act in respect of interest amount of Rs.17,64,209/- received from the deposit maintained with the Saraswat Cooperative Bank and SVC Cooperative Bank. The assessing officer was of the view that deduction u/s 80P(2)(d) cannot be given without fulfilling the conditions laid down u/s 80P(4) of the Act. The assessing officer stated that after insertion of subsection (4) of 80P the cooperative bank is not treated as a cooperative society and benefit of deduction u/s 80P cannot be given when there was investment in any Co-operative Bank.
 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 society formed with the object of maintaining and attracting the builder occupied its members. Copy Pran Gold Coin case consider in the various decision of the ITAT Mumbai benches it is held that claim of deduction u/s 80P(2)(d) in respect of interest earned from investment made in the cooperative bank is allowable. 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:

- (i) Mittal Park Cooperative Housing Society Ltd. Vs. Asst. Director of Income Tax, Mum, W(125) (95) CPC, Bengaluru, (Ld. ADIT).
- (ii) Mittal Park Cooperative Housing Society Vs. ITO, Ward 25 (3)(1), Mumbai
- (iii) Kaliandas Udyog Bhavan Premises Coop Society Ltd. Vs. ITO 21(1)(2).
- (iv) Aqua Cooperative Housing Society Limited Vs ITO 21(1)(2)
- (v) Sea Green Cooperative Housing Society Ltd. Vs. ITO 21(3)(2)
- (vi) lands' End Cooperative Housing Society Ltd. Vs. ITO 16(1)(3)
- (vii) The Nutan Laxmi Chs Ltd. Mumbai Vs. ITO 19(2)(4)
- (viii) M/s Palmera Cooperative Housing Society Ltd. Vs. ACIT, 19(2)

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 28.09.2023

Sd/-

(Amarjit Singh)
Accountant Member

Place: Mumbai

Date 28.09.2023

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.