

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
MUMBAI BENCH "G", MUMBAI**

**BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER  
AND  
SHRI RATNESH NANDAN SAHAY, ACCOUNTANT MEMBER**

**ITA No. 4059/M/2023  
(Assessment Year: 2016-17)**

M/s. The St. Sebastian Homes Cooperative Society Ltd. 3, Sebastian House, 42 Rebello Road, Bandra West, Mumbai- 400050. <b>PAN No. AAAAT3419K</b>	Vs.	ITO. Ward 23(3)(4) Matrumandir, Income Tax Office, Taddeo, Mumbai- 400007.
<b>(Appellant)</b>		<b>(Respondent)</b>

Assessee by : Shri. Rajesh Sanghvi- C.A.  
Revenue by : Shri. Prashant Mahajan- Sr. A.R.

Date of hearing : 17.04.2024  
Date of pronouncement : 30.04.2024

**ORDER**

**Per: Ratnesh Nandan Sahay, Accountant Member:**

1. Present appeal has been filed against the order of the Ld. CIT (Appeals) passed u/s 250 of the Income Tax Act [the 'Act' in short] vide DIN & its Order No. ITBA/NFAC/S/250/2023-24/1055925705(1) dated 11/9/2023 for the assessment year 2016-17.
2. Though, several grounds of appeal have been raised by the appellant, the main issue involved in this case is that the claim for deduction of

Rs.1,19,91,314/- was wrongly disallowed by the assessing officer on the ground that the interest income earned on the deposits made with the Citizen Credit Co-Operative Bank is not an allowable deduction as this bank is a commercial bank and does not fall under the definition of co-operative society as defined u/s. 80P(2)(d) of the Income Tax Act.

3. During the course of the hearing, the assessee submitted paper books and placed reliance on various decisions of the ITAT, Mumbai on this issue and also placed specific reliance on the decision of Blue Rose Industrial Premises Cooperative Society v. CIT Appeal, ITAT No. 4059 of 2023 for the assessment year 2020-21 in which one of the Members of this bench had decided the issue in the favour of the assessee. The extract of the decision was given as under:

*“13. We find that the learned CIT(A) has placed reliance upon the decisions of the Hon’ble Karnataka High Court in Pr. CIT v. Totagars Co-operative Sales Society [2017] taxmann.com 140/395 ITR 611, wherein it was held that interest earned by the assessee, a co-operative Society from surplus deposits kept with a co-operative Bank, was not eligible for deduction under section 80P(2)(d) of the Act. We find that in an earlier decision the Hon’ble Karnataka High Court in Pr. CIT v. Totagars Co-operative Sale Society*

*(2017) 78 taxmann.com 169/392 ITR 74 held that according to section 80P(2)(d) of the Act, the amount of interest earned from a co-operative Society Bank would be deductible from the gross income of the co-operative Society in order to assess its total income. Thus, there are divergent views of the same Hon'ble High Court on the issue of eligibility of deduction under section 80P(2)(d) of the Act in respect of interest earned from Co-operative Bank. No decision of the Hon'ble jurisdictional High Court was brought to our notice on this aspect. We have to, with our highest respect to both the views of the Hon'ble High Court, adopt an objective criterion for deciding as to which decision of the Hon'ble High Court should be followed by us. We find guidance from the judgment of the Hon'ble Supreme Court in CIT v. Vegetable Products Ltd [1973] 88 ITR 192. In the aforesaid decision, the Hon'ble Supreme Court has laid down a principle that "if two reasonable constructions of a taxing provisions are possible, that construction which favours the assessee must be adopted".*

14. *Therefore, in view of the above, we uphold the plea of the assessee and direct the AO to grant the deduction under section 80P(2)(d) of the Act to the assessee in respect of interest income earned from investment with Co-operative Banks. Accordingly, we set aside the impugned order passed by the learned CIT(A) for the assessment year 2018-19. As a result, grounds raised by the assessee are allowed."*



4. Thus, in view of the considered view taken by the Hon'ble Coordinate Benches of the Tribunal, the income, if any, earned by way of interest from the investments made with any other co-operative bank including the Citizen Co-operative Bank is allowed as a deduction u/s. 80P(2)(d) of the IT Act.

5. In the result, appeal filed by the assessee is allowed.

**Order pronounced in the open court on 30.04.2024.**

**Sd/-**  
**(NARENDER KUMAR CHOUDHRY)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(RATNESH NANDAN SAHAY)**  
**ACCOUNTANT MEMBER**

Mumbai, Dated: 30.04.2024  
*Snehal Ayare, Stenographer*

Copy to: The Appellant  
The Respondent  
The CIT, Concerned, Mumbai  
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.