

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

**BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER,**

ITA No. 4539/Mum/2023 (AY 2021-22)

BOB EML Mayuresh Co-operative Hsg. Society Ltd. Kumud Nagar, Nr. Samrat Theatre, S.V. Road, Goregaon Mumbai 400104	Vs.	Income Tax Officer 41(4)(1) Mumbai
PAN/GIR No. :AAAAB2139E		
Appellant	..	Respondent

Appellant by :	----- None -----
Respondent by :	Shri Krishna Kumar, JCIT

Date of Hearing	08.05.2024
Date of Pronouncement	08.05.2024

आदेश / O R D E R

PER AMARJIT SINGH, AM:

This appeal filed by the assessee is directed against the order passed by the CIT(A), NFAC, Delhi, which in turn arises from the assessment order dated \passed by the A.O u/s 143(1) of the Income Tax Act, 1961 (the Act), dated 19.10.2022 for AY 2021-22. The assessee has assailed the impugned order on the following grounds before us:

“Being aggrieved by the order passed by the learned Commissioner of Income Tax (Appeals) us. 250 of the Income Tax Act, 1961, the Appellant prefers the appeal on the following grounds

1. *The learned Commissioner of Income Tax (Appeals) has erred in making disallowance of claim of deduction under section 80P(2)(d) of Rs. 4,58,251/- in respect of income earned by the Appellant from deposit kept with co-operative bank in the facts and circumstances of the Appellant's case. The learned Commissioner of Income Tax (Appeals) ought to have allowed the various contentions of appellant under the facts and circumstances of the case*

The Appellant craves leave to add, to alter or to amend all or any of the grounds above at any time before or during the hearing of the above appeal.”

2. The facts in brief are that return of income claiming deduction u/s. 80P(2)(d) of the Act of Rs.4,58,251/- in respect of interest earned on deposit kept with the co-operative bank was filed on 01.10.2021. The CPC Bangalore has processed this return u/s. 143(1) of the Act on 19.10.2022 and disallowed the claim of deduction u/s. 80P(2)(d) of the Act.
3. The assessee has filed appeal before the ld. CIT(A). The ld. CIT(A) held that introduction of sub-section 4 was to exclude the co-operative banks from availing benefit of deduction u/s. 80P and s. 80P(4) is in the nature of proviso to the main provision contained in s. 80P(1) & (2), consequently, the exclusion of co-operative banks extends to s. 80P(2)(d) as well. The ld. CIT(A) also stated that the income by way of interest from deposit or investment of surplus fund does not change the character irrespective of the fact that whether the said income is earned from a scheduled bank or a co-operative bank and thus, the clause (d) of s. 80P(2) of the Act would not apply in the facts and circumstances of the present case.
4. Heard both the sides and perused the material on record. The assessee is a co-operative housing society providing various services related to upkeep and maintenance of property for an on behalf of its

members and it is registered under the Maharashtra Co-operative Societies Act, 1960, During the year under consideration the assessee filed appeal before the ld. CIT(A). The ld. CIT(A) held that co-operative society has received interest income from Saraswat Co-operative Bank Ltd. Mumbai of Rs.6,16,256/-. The ld. CIT(A) was of the view that the benefit of s. 80P of the Act cannot be allowed in respect of income earned by way of interest or dividend from that other co-operative society under the name 'Co-operative Bank'.

5. We have considered that in various decisions of the ITAT Mumbai Benches wherein it was held that the claim of deduction u/s. 80P(2)(d) in respect of interest earned from investments made in the co-operative bank is an allowable deduction. Some of the decisions of the ITAT where the claim of deduction u/s. 80P(2)(d) was allowed on the interest earned from deposit with co-operative 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).

6. In the case of Kaliandas Udyog Bhavan Premises Co-op. 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.

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

Order pronounced in the open court on 08.05.2024.

Sd/-
(VIKAS AWASTHY)
Judicial Member

Sd/-
(AMARJIT SINGH)
Accountant Member

Place: Mumbai

Date: 08.05.2024

n.p

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent.
3. आयकरआयुक्त(अपील) / The CIT(A)-
4. आयकरआयुक्त/ CIT
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण DR, ITAT,
Mumbai
6. गार्डफाईल / Guard file.

सत्यापितप्रति //True Copy//
आदेशानुसार/ BY ORDER,

**उप/सहायकपंजीकार (Dy./Asstt. Registrar)
आयकरअपीलीयअधिकरण/ ITAT, Bench,
Mumbai.**