

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

**BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL
MEMBER**

&

SMT. RENU JAUHRI, ACCOUNTANT MEMBER

**ITA No. 3/MUM/2024
(A.Y. 2020-21)**

Laxmi Narayan Residency D Co. Op. Hsg. Soc. Ltd. Plot No. 189, 190, 191, Village Majjwada, Pokhran Road No. 2, Unnati Garden, 3, Thane (W.)-400610	Vs.	Assistant Director of Income-tax CPC, Bengaluru/ITO Ward(1)1, Gokhale Road, Thane
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AAAAL7961N		
Appellant	..	Respondent

Appellant by :	Shri Bharat Gandhi
Respondent by :	Shri Nagnath Pasale

Date of Hearing	30.05.2024
Date of Pronouncement	27.06.2024

आदेश / O R D E R

PER RENU JAUHRI [A.M.] :-

This appeal is filed by the assessee against the order of the Learned Commissioner of Income-tax (Appeals), Mumbai/National faceless Appeal Centre, Delhi [hereinafter referred to as “CIT(A)”] dated 07.11.2023 passed u/s. 250 of the Income-tax Act, 1961 [hereinafter referred to as “Act”] for Assessment Year [A.Y.] 2020-21.

2. The assessee has raised following grounds of appeals:



1. *“The Commissioner of Income Tax (Appeals) NFAC Delhi (CIT Appeal for short) erred in concluding that the Appellant claims of deduction U/s. 80 (P) 2 (d) of Rs. 3,82,972/- is in the ambit of prima facia adjustment of incorrect claim as there is no information on record of the income Tax Department to justify the prime facia adjustment. The disallowance claimed u/s. 80P (2) (d) was carried out as and by way of adjustment without giving intimation in writing or in electronic mode.*
 2. *The CIT - Appeals erred in concluding that Thane Janata Sahakari Bank Ltd is a Multi - state registered under the Maharashtra Co-operative Societies Act, 1960.*
 3. *He also failed to appreciate the fact that the word " Sahakari" in the name of the bank means co-operative and he further erred by unnecessary concluding that having multiple state branches changes the legal status of the co-operative bank.*
 4. *The CIT – Appeals also erred in concluding the Thane Janta Sahakari Bank being a Multi- state Scheduled society. Bank is not a co-operative*
 5. *The CIT erred in Unnecessary giving a three-tire structure of co-operative societies for the purpose of disallowing the appellants claim of deduction U/s. 80P (2) (d).*
 6. *This is the beneficiary provision and has to be interpreted liberally so as to achieve the objective of the section*
 7. *Both multi- state co-operative society and state co-operative society are covered under section 2(19) of the Income Tax Act 1961 and the said Bank is also registered under the Maharashtra State Co-operative Act, 1960 and hence deduction under section 80 P (2) (d) has to be allowed.”*
3. Brief facts of the case are that the assessee is a Co-operative Housing Society and is in receipt of income by way of interest on fixed deposits with co-operative banks. The assessee had claimed deduction u/s 80P(2)(d) of the Act in respect of interest income of Rs. 3,82,972/-, received from The Thane Janata Sahakari Bank Ltd. and The Thane

District Central Co-operative Bank Ltd.. The claim of the assessee was disallowed by the CPC, Bangaluru while processing the return u/s 143(1) of the Act. The assessee's application for rectification u/s 154 of the Act was also rejected by the CPC.

4. Aggrieved with the order dated 23.02.2023, the assessee filed an appeal before CIT(A)/NFAC on 09.03.2023. The CIT(A) vide order dated 07.11.2023 has dismissed the appeal of the assessee.
5. We have heard the rival submissions. This issue has been examined and decided in favour of the assessee in various cases by the co-ordinate benches. The Ld. AR has placed reliance on several decisions of some co-ordinate benches, some of which are as under:

- a. *Ruby Hall Clinic Karmachari Sahakari Pat Sanstha Maryadit v/s Income Tax Officer, Ward 7(1)(2024) 161 Taxmann.com 23 (Pune-Trib).*
- b. *Pathare Prabhu Co-operative Housing Society Ltd. v/s Income-tax Officer (2023) 153 taxmann.com 714 (Mumbai Trib.)*
- c. *Palm Court M Premises Co-operative Society Ltd. v/s PCIT (2022) 145 taxmann.com 415 (Mumbai-Trib.)*

6. The issue involved in the case has been decided in favour of the assessee in numerous decisions of the co-ordinate benches. In the case of Pathare Prabhu Co-operative Housing Society Ltd. v/s Income-tax Officer (supra) which has been held as under:

“In the present case, there is no dispute that the assessee is a Co-operative Housing Society. Thus, if any income as referred to in sub-section (2) to section 80P is included in the gross total income of the

assessee, the same shall be allowed as a deduction. It is pertinent to note that since the assessee is registered under the Maharashtra Co-operative Societies Act, 1960, it is required to invest or deposit its funds in one of the modes provided in section 70 of the aforesaid Act, which includes investment or deposit of funds in the District Central Co-operative Bank or the State Co-operative Bank. Accordingly, the assessee kept the deposits in Co-operative Banks registered under the Maharashtra Co-operative Societies Act and earned interest, which was claimed as a deduction under section 80P(2)(d). The Assessing Officer denied the deduction under section 80P(2)(d) on the basis that the Co-operative Bank is covered under the provisions of section 80P(4). It is noted that section 80P(4) is a proviso to the main provision contained in section 80P(1) and (2) and excludes only Co-operative Banks, which are Co-operative Societies and also possesses a licence from RBI to do banking business. The limited object of section 80P(4) is to exclude Co-operative Banks that function at par with other commercial banks ie. which lend money to members of the public. Thus, it is viewed that section 80P(4) is of relevance only in a case where the assessee, who is a Co-operative Bank, claims a deduction under section 80P which is not the facts of the present case. Therefore, there is no merits in the aforesaid reasoning adopted by the Assessing Officer and upheld by the Commissioner (Appeals) in denying deduction under section 80P(2) (d) to the assessee. [Para 11]

As regards the claim of deduction under section 80P(2)(d), it is also pertinent to note that all Co-operative Banks are Co-operative Societies but vice versa is not true. It is noted that the co-ordinate benches of the Tribunal have consistently taken a view in favour of the assessee and held that even the interest earned from the Co-operative Banks is allowable as a deduction under section 80P(2)(d). [Para 12]

There are divergent views of the High Courts on the issue of eligibility of deduction under section 80P(2)(d) in respect of interest earned from Co-operative Bank. If two reasonable constructions of a taxing provisions



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are possible, that construction which favours the assessee must be adopted. [Para 13]

Therefore, in view of the above, the plea of the assessee is accepted and the Assessing Officer was directed to grant the deduction under section 80P(2)(d) to the assessee in respect of interest income earned from investment with Co-operative Banks. Accordingly, the impugned order passed by the Commissioner (Appeals) for the assessment year 2018-19 is set aside. As a result, grounds raised by the assessee are allowed. [Para 14]”

7. Respectfully following the decisions of the co-ordinate benches, we hold that the interest income of Rs. 3,82,972/-, received by the assessee from co-operative banks, is eligible for deduction u/s 80P(2)(d) of the Act. the

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

Order pronounced in the open court on 27.06.2024.

Sd/-

NARENDER KUMAR CHOUDHRY
(JUDICIAL MEMBER)

Sd/-

RENU JAUHRI
(ACCOUNTANT MEMBER)

Place: Mumbai

Date 27.06.2024

ANIKET SINGH RAJPUT/STENO

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.



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सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण/ ITAT, Bench,
Mumbai.