

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

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER  
AND  
SHRI RATNESH NANDAN SAHAY, ACCOUNTANT MEMBER**

**ITA No. 4796/MUM/2023  
Assessment Year: 2021-22**

<b>M/s. Kamal Co-op HSG Society Ltd.</b> 69, Kamal Society, Walkeshwar Road, Mumbai - 400006 <b>PAN: AAAAK0570C</b>	Vs.	<b>Income Tax Ward 19(2)(2)</b> Room No.608, 6 <sup>th</sup> Floor, Piramal Chambers, Lalbaug, Mumbai - 400012
(Appellant)		(Respondent)

**Present for:**

Assessee by : None  
Revenue by : Shri P.D. Chougule (Addl. CIT), SR. D.R.

Date of Hearing : 22 . 05 . 2024  
Date of Pronouncement : 26 . 06 . 2024

**ORDER**

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

1. This appeal has been filed against the order of the Ld. CIT Appeal passed u/s 250 of the Income Tax Act [the 'Act' in short] vide DIN & Order No. ITBA/NFAC/S/250/2023-24/1058240824(1) Dated 26/11/2023 for the Assessment Year 2021-22.
2. The following grounds of appeal have been raised:

*“The Appellant raises the following ground, which are mutually exclusive, independent of, and without prejudice to one another:*

- 1. On the facts and in the circumstances of the case, the Appellant submits that the Hon’ble Commissioner of Income Tax (Appeals) erred in sustaining the disallowance of deduction of Rs. 56,36,088/- claimed u/s 80P(2)(d) in respect of the interest income received from FDR and Savings Bank accounts held with various co-operative banks made by the Learned Assessing Officer.*

*The Appellant, therefore, submits that the addition of Rs. 56,36,088/- made under the head "Income from Other Sources" be deleted and the deduction of Rs. 56,36,088/- claimed u/s 80P(2)(d) be allowed.*

- 2. Without prejudice to the above, the Appellant raises the following ground of appeal*

*On the facts and in the circumstances of the case, the Appellant submits that the Learned Assessing Officer erred in not granting personal hearing requested through written petition during the assessment proceedings and the Hon'ble Commissioner of Income Tax (Appeals) erred in sustaining the same by treating the same as general in nature and dismissed it without any adjudication.*

*The Appellant submits that the fair opportunity of being heard be given.*

- 3. The Appellant craves leave to reserve to itself the right to add, after, amend or annual any of the grounds of appeal at or before the time of hearing and to produce such further evidences, documents and papers as may be necessary.”*

- 3. Though, the appellant has raised several grounds of appeal stated as above, the only ground needs to be decided is whether deduction of Rs.56,36,088/-claimed u/s 80P(2)(d) in respect of the interest income*

received from FDR and Savings Bank accounts held with various co-operative banks is an allowable deduction?

4. The facts of the case, in brief, are that the assessee is a Cooperative Housing Society registered under the Maharashtra Cooperative Society (Amendment) Ordinance, 2013. During the assessment proceedings u/s.143 (3) of the Act, the Assessing Officer noticed that the assessee Cooperative has claimed deduction of Rs.56,58,627/- u/s.80P(2)(d) of the Income Tax Act on account of interest earned on investments made in various Scheduled Banks and Cooperative Banks. The Assessing Officer, however, did not allow the same on the ground that the deduction u/s.80P(2)(d) cannot be extended to the assessee in respect of the interest/dividend earned from Schedule Bank/District Cooperative Bank on the ground that Section 80P(2)(d) clearly states that in respect of any income by way of interest or dividend derived by the cooperative society from its investment with any other cooperative society, the whole of such income and also the income earned on deposits/investment with Schedule Bank/District Cooperative Bank is not the business/operational income of the assessee and will be taxed under the head 'Income from other sources'. The Ld. Assessing Officer has also placed reliance on the decisions of the Hon'ble Karnataka High Court in the case of PCIT Vs. Totagar Co. op. Sale society Ltd. reported in (2017) 395 ITR 611 (Kar).

5. Aggrieved by the order of the Ld. assessing officer, the assessee filed appeal before the Ld. CIT (A) who, vide its order no. ITBA/NFAC /S/250/2023-24/1058240824(1) dated 26/11/2023 confirmed the order of the Ld. assessing officer on the ground that though the assessee had relied on various decisions of Hon'ble ITAT including coordinate bench ITAT, Mumbai, the facts of all the decisions are based on their factual matrix and not applicable in the present case. It was further, quoted by the Ld. CIT(A) that since the decision of the Hon'ble High Court is paramount; he has no alternative but to follow the same.
6. Aggrieved by the order of the Ld. CIT(A), this appeal has been preferred. We have considered the rival submissions and the legal position in this regard and it is found that the deduction u/s.80P (2)(d) of the Act, has been disallowed by the Assessing Officer and confirmed by the Ld. CIT(A) by relying upon decision rendered by Hon'ble Karnataka High Court in case of PCIT Vs. Totgar's Co-Operative Sales Society Ltd (supra.). However, the issue of allowability of deduction u/s. 80P (2)(d) of the Act, is no longer *Res Integra* having been decided by the coordinate Benches of the Tribunal in catena of cases in favour of the assessee by distinguishing the judgment rendered by Hon'ble Supreme Court in case of Totgar's Co- operative Sale Society Ltd. Vs. Income Tax Officer, 188 Taxman 282(SC) and by discussing the decisions rendered by Hon'ble Bombay High Court and Hon'ble Gujarat High Court wherein it

has been held that interest income earned by the Co-operative Society on its investment made with co-operative bank would be eligible for claim of deduction under section 80P(2)(d) of the Act.

7. Thus, respectfully following the considered view taken by the Hon'ble Coordinate Benches of the Income Tax Appellate Tribunal, we also hold that the appellant is entitled to get deduction u/s. 80P(2)(d) on the interest income earned from deposits made in the Schedule Bank/Cooperative Banks.
8. In the result, the appeal is allowed.

**Order pronounced in the open court on 26.06.2024.**

**Sd/-  
(AMIT SHUKLA)  
JUDICIAL MEMBER**

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

Mumbai, Dated: 26.06.2024.

*Snehal C. 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.