

| आयकर अपीलिय अधिकरण न्यायपीठ, मुंबई |  
IN THE INCOME TAX APPELLATE TRIBUNAL  
"SMC" BENCH, MUMBAI

BEFORE SHRI N.K. BILLAIYA, HON'BLE ACCOUNTANT MEMBER  
&  
SHRI RAHUL CHAUDHARY, HON'BLE JUDICIAL MEMBER

**I.T.A. No. 874/Mum/2024**  
**Assessment Year: 2021-22**

<b>Enkay Square Co-operative Housing Society, Navi Mumbai</b> Plot No. 21, Sector No. 6 Koparkhairane Navi Mumbai -400709 <b>[PAN: AAAAE4816B]</b>	Vs	<b>ACIT-CPC, Bengaluru</b>
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<b>अपीलार्थी/ (Appellant)</b>	<b>प्रत्यर्थी/ (Respondent)</b>
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Assessee by :	Shri Jayant Bhatt, A/R
Revenue by :	Shri Himanshu Sharma, CIT, D/R

सुनवाई की तारीख/Date of Hearing : 02/07/2024  
घोषणा की तारीख /Date of Pronouncement: 02/07/2024

**आदेश/ORDER**

**PER N.K. BILLAIYA, AM:**

This appeal by the assessee is preferred against the order dt. 18/12/2023 by NFAC, New Delhi for the Assessment Year 2021-22.

2. The grievance of the assessee reads as under:-

“1. The CIT Appeal erred in confirming the order of CPC in not rectifying the order under 154.

2. The CIT Appeal has erred in confirming the order of Assessing Officer CPC of not granting deduction u/s 80P(2)(d) of Rs.2,14,970/-.

3. The CIT Appeals has erred in accepting the order of CPC in not accepting Returned NIL Income by the Appellant.

4. The Appellant craves leave to add, alter, amend modify the aforesaid ground/s of appeal at or any time before the hearing as they may be advised from time to time.

5. *The CIT Appeal has erred in not appreciating the fact that CPC has no power to do adjustments like denying the benefit of deduction u/s 80P(2)(d)."*

3. At the very outset, the Id. Counsel for the assessee brought to our notice that, on identical set of facts the Tribunal in assessee's own case in AY 2020-21, vide order dt. 27/06/2024, has decided the impugned quarrel in favour of the assessee and against the revenue. The Id. Counsel for the assessee supplied copy of the decision of the Co-ordinate Bench.

The Id. D/R, could not bring any distinguishing decision in favour of the revenue, though strongly relied upon the orders of the authorities below.

4. We have given a thoughtful consideration to the orders of the authorities below. We find force in the contention of the Id. Counsel for the assessee. On identical set of facts, this Tribunal in *ITA No. 875/Mum/2024; AY 2020-21, order dt. 27/06/2024*, has considered similar grievance and held as under:-

14. *It is not the case that deduction under section 80 P (2) (d) is a deduction provided by any monitoring limit or percentage ratio or fraction. Thus, claim of deduction under section 80 P (2) (d) is also not classified as incorrect claim.*

15. *Thus, the adjustment of disallowance of deduction under that section is not permissible adjustment provided under section 143 (1) of the act. Therefore the intimation passed under section 143 (1) is not sustainable.*

16. *On the merits of the case, provisions of section 2 (19) define a co-operative society as under:-*

19)	<i>"co-operative society"<sup>97</sup> means a co-operative society registered under the Co-operative Societies Act, 1912 (2 of 1912), or under any other law for the time being in force in any State for the registration of co-operative societies ;</i>
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17. *Thus, for the definition of the cooperative society whether covers the cooperative banks are not one has to look at the respective cooperative societies act is applicable.*

18. THE MAHARASHTRA CO-OPERATIVE SOCIETIES ACT, 1960, Defines cooperative banks as per section 2 (10) of that Act as under :-

“Co-operative bank” means a Co-operative society which is doing the business of banking as defined in clause (b) of sub-sections (1) of section 5 of the Banking Companies Act, 1949 and includes any society which is functioning or is to function as an Agricultural and Rural Development Bank under Chapter X.

19. Thus it is apparent that cooperative banks are also a co-operative society. Only difference is that those cooperative societies are doing the business of banking as per the banking companies act 1949. Therefore, merely because these cooperative societies cooperative bank they do not lose their status as a co-operative society.

20. According to the provisions of section 80 P (2) (d) of the income tax act

(d)	in respect of any income by way of interest or dividends derived by the co-operative society from its investments with any other co-operative society, the whole of such income;
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21. Thus, the assessee's investment of earning interest income from such cooperative banks which are also cooperative societies whole of such income is deductible under this section.

22. It is not in dispute that assessee is not a cooperative bank and therefore provisions of section 80 P (4) of the act does not apply to it.

23. Thus the assessee is eligible for deduction under section 80 P (2) (d) of the act on its income received from all the above cooperative banks.

Hence assessee is eligible for that deduction amounting to Rs. 214970/-. Order of the learned lower authorities are reversed and AO is directed accordingly.

24. In the result appeal filed by the assessee is allowed.”

5. On finding parity of facts, respectfully following the decision of the Co-ordinate Bench (*supra*), we direct the Assessing Officer to allow the benefit of Section 80P(2)(d) of the Act, to the assessee.

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

**Order pronounced in the Court on 2<sup>nd</sup> July, 2024 at Mumbai.**

*Sd/-*  
**(RAHUL CHAUDHARY)**  
JUDICIAL MEMBER

*Sd/-*  
**(N.K. BILLAIYA)**  
ACCOUNTANT MEMBER

आदेश की प्रतिलिपि □ ग्रेषित/Copy of the Order forwarded to :

1. □ पीलर्षी / The Appellant
2. प्रत्यर्षी / The Respondent
3. संबंघित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (□ पील) / The CIT(A)-
5. विभर्षीय प्रतिनिधि , आयकर अपीलीय अधिकरण, मुंबई /DR,ITAT, Mumbai,
6. गार्ड फाई/ Guard file.

आदेशानुसार/ BY ORDER,  
TRUE COPY

Assistant Registrar  
आयकर अपीलीय अधिकरण  
ITAT, Mumbai