

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

BEFORE SHRI PRASHANT MAHARISHI, AM

And

SHRI SUNIL KUMAR SINGH, JM

**ITA No 2331 and 2332/Mum/2024**

(Assessment Year:2020 – 21 and 2021 – 22)

Mahim Davida cooperative  
housing society Ltd  
Plot number 449  
Devida Apartments  
Pitambar lane  
Mahim  
Mumbai – 16

Vs.

The income tax officer  
Ward 42 (1) (3) Mumbai  
Room number 803, eighth  
floor, Kautilya Bhavan,  
C – 41 and C – 43, G-Block  
Bandra Kurla complex,  
Bandra (East)  
Mumbai – 51.

**(Appellant)**

**(Respondent)**

**PAN No. AAHAM2367G**

**Assessee by** : Shri Ajay wadke

**Revenue by** : Shri Rajnish Yadav , SR DR

**Date of hearing:** 25 July 2024

**Date of pronouncement :** 29<sup>th</sup> July 2024

**ORDER**

**PER PRASHANT MAHARISHI, AM:**

1. These are the two appeals filed by the assessee for assessment year 2020 – 21 and 2021 – 22 against the order passed by the additional CIT (joint Commissioner of income tax (appeals) – 1, Lucknow (the learned CIT – A) dated 14/3/2024 for assessment year 2020 – 21 and dated 28/3/2024 for assessment year 2021 – 22 wherein the appeal filed by the assessee against the intimation passed under section 143 (1) of the income tax act, 1961 (the act) dated 25<sup>th</sup> number 2021 and 30 8 September 2022 by the central processing Centre Bangalore was dismissed.
2. For both the years the solitary issue involved in this appeal is that assessee is a cooperative housing society which has been denied deduction under section 80 P (2) (d) of the income tax act on interest income received by it from another cooperative banks who are in turn the cooperative societies. For assessment year 2020 – 21 such interest income is Rs. 174,100 and for assessment year 2021 – 22 is Rs. 130,752.
3. Assessee is a cooperative was in society wherein it has earned interest on fixed deposits on saving banks with citizen credit cooperative bank, Maharashtra state cooperative bank and Mumbai District cooperative bank. For assessment year 2020 – 21 such interest income is Rs. 174,100/- and for assessment year 2021 – 22 it is Rs. 130,752. When the assessee filed return of income, such deduction was claimed under section 80 P (2) (d) of the act. When the return was processed under section 143 (1) of the act, such deduction was denied for both the assessment years. Identically appeal was filed before the learned CIT – A which was dismissed on the ground that honourable Supreme Court in case of Totgar cooperative society Ltd versus ITO has held that assessee is not entitled to deduction under section 80 P (2) (a) of the act.

4. We have heard the rival contentions. Undisputed fact shows that assessee is a cooperative was in society. It has placed fixed deposit receipts and savings bank balances with another cooperative banks. The investment of the assessee is in the form of fixed deposit receipts and savings bank deposits. The assessee has earned interest on such an investment.
5. Section 80 P (1) provides that Where, in the case of an assessee being a co-operative society, the <sup>72</sup>gross total income includes any income referred to in sub-section (2), there shall be deducted, in accordance with and subject to the provisions of this section, the sums specified in sub-section (2), in computing the total income of the assessee.
6. According to the provisions of section 80 P (2)(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.
7. According to section 2 (29) "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.
8. According to section 2 (10) of the Maharashtra State cooperative societies act 1860 provides "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 XI;

9. Therefore, even the cooperative banks are also the cooperative societies which are doing the banking business. In view of this it cannot be said that the interest income earned by the assessee on account of fixed deposit receipt in savings bank account is not received from a co-operative society. It may be an altogether another thing that such cooperative societies are carrying on the banking business. Therefore, these banks are accepting fixed deposit receipts from the assessee. In view of the above analysis, it is clear-cut that cooperative banks are also co-operative society and interest income earned by the assessee on fixed deposit as well as savings bank account is an investment income of the assessee and therefore it qualifies for deduction under section 80P (2) (d) of the act.
10. The decision of the honourable Supreme Court cited by the learned CIT – A relates to the deduction under section 80 P (2) (a) of the act and not under section 80 P (2) (d) of the act.
11. Number of decisions of the coordinate benches are cited wherein it has been held that a co-operative society is eligible for deduction of investment income if it is placed with other co-operative banks which is also a co-operative society.
12. The learned departmental representative has failed to show that the cooperative banks are not registered under the cooperative societies.
13. In view of the above facts the learned assessing officer is directed to grant deduction to the assessee under section 80 P (2) (d) of the act on interest on fixed deposit receipt and

savings bank account received by the assessee from the cooperative banks for both the years.

14. Thus, the orders of the learned lower authorities are reversed and appeal of the assessee for both the years are allowed.

Order pronounced in the open court on 29<sup>th</sup> July 2024

Sd/-

(SUNIL KUMAR SINGH)  
(JUDICIAL MEMBER)

Sd/-

(PRASHANT MAHARISHI)  
(ACCOUNTANT MEMBER)

Mumbai, Dated:29.07.2024

*Sudip Sarkar, Sr.PS/Dragon*

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

BY ORDER,

Sr. Private Secretary/ Asst. Registrar

ITA number 2331 and 2332/MUM/2024  
Assessment year 2020 - 21 and 2021 - 22  
Mahim Davida cooperative housing society Ltd versus the income tax officer, Mumbai

Income Tax Appellate Tribunal, Mumbai