

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

**BEFORE MS PADMAVATHY S, AM &
SHRI RAHUL CHAUDHARY, JM**

**I.T.A. No. 1708/Mum/2024
(Assessment Year: 2020-21)**

The Mangalorean Garden Homes Co-operative Housing Society Ltd. Rebello House, 132, Hill Road, Bandra (W), Mumbai-400050. PAN : AAAAT3420G	Vs.	Income Tax Officer Ward- 23(3)(1) Mumbai.
Assessee)	:	Respondent)

Assessee/Appellant by : Shri Subhash Shetty, CA
Revenue/Respondent by : Shri R. R. Makwana, Sr. DR

Date of Hearing : 15.07.2024
Date of Pronouncement : 26.07.2024

ORDER

Per Padmavathy S, AM:

This appeal by the assessee is against the order of the Commissioner of Income Tax (Appeals) / National Faceless Appeal Centre (NFAC) dated 28.08.2023 for Assessment Year (AY) 2020-21. The assessee raised the following grounds of appeal.

“The order passed by the learned Commissioner of Income-tax (Appeals). National Faceless Appeal Centre, dismissing the appeal of the Appellant and confirming the order of the assessing officer is illegal, bad in law and unsustainable in law and facts.

2. *The learned Commissioner of Income-tax (Appeals) committed a gross error of law and fact in confirming the order of the assessing officer disallowing the claim of deduction of Rs. 41,15,820/- being the interest earned on deposits made with Co-operative banks under section 80P(2)(d) of the Income Tax Act, 1961.*

3. *The learned Commissioner of Income-tax (Appeals) committed a gross error of law and fact in dismissing the appellant's appeal without dealing with the decision of ITAT Mumbai bench in the case of Lands End Co-operative Housing Society Ltd. relied upon by the appellants, the facts wherein are identical to that of the appellant.*

4. *The learned Commissioner of Income-tax (Appeals) grossly erred in not following the decisions of his predecessor for the assessment years 2013-2014 and 2014-2015 in appellants own case on identical facts allowing deduction under section 80P(2)(d) on the interest earned from Co-operative Banks, without giving any reason whatsoever.*

5. *The learned Commissioner of Income-tax (Appeals) committed a gross error of law in not appreciating that a Co-operative Bank continues to be Co-operative society registered under the Co-operative Societies Act, 1912 or under any other law for the time being in force in any state for registration of Co-operative Societies, interest income derived by a Co-operative Society from its investment held with a Co-operative Bank, would be entitled for claim of deduction under section 80P(2)(d) of the Act.*

6. *The learned Commissioner of Income-tax (Appeals) grossly erred in not dealing with the order dated 09-09-2022 passed by CIT(A) (NEAC) in the case of Ruchi Heights Co-operative Housing Society Ltd., relied upon by the appellant, who has allowed deduction under section 80P(2)(d) for the interest earned by a Co-operative Society from a Co-operative Bank.*

7. *The learned Commissioner of Income-tax (Appeals) committed a gross error of law and fact while dismissing the appeal of the appellant by relying upon certain decisions which has no application to the facts of the appellant case.*

8. *The learned Commissioner of Income-tax (Appeals) committed a gross error of law and fact in dismissing the claim of the appellant under section 80P(2)(d) of the Act by erroneously proceeding on the basis that the impugned interest was received from Co-operative Bank and other Commercial Banks which finding is contrary to the facts on record and the finding of the assessing officer.”*

2. The assessee is co-operative housing society and filed its return of income for AY 2020-21 on 15.02.2021 by declaring a total income of Rs. 1,07,260/-. The case was selected for scrutiny and the statutory notices were duly served on the assessee. The AO during the course of assessment noticed that the assessee has claimed deduction of Rs. 41,15,820/- under section 80P(2)(d) of the Income Tax Act (the Act) in the return of income in respect of interest earned from investments with Co-operative Banks. The Assessing Officer (AO) denied the benefit of deduction under section 80P(2)(d) as claimed by the assessee and accordingly made an addition of Rs. 41,15,820/-. The AO in this regard placed reliance on the decision of the Hon'ble Karnataka High Court in the case of PCIT Vs. Totagar's Co-operative Sale Society (395 ITR 611). Aggrieved the assessee filed further appeal before the CIT(A) who upheld the disallowance made by the AO.

3. There is a delay of 161 days in filing the appeal before the Tribunal. The assessee has filed a petition seeking condonation of delay along with the affidavit from the Tax Consultant. It is mentioned in the affidavit that due to inadvertent mistake on the part of the assistant of the tax consultant, the appeal was missed to be filed on time and that the delay was beyond the control of the assessee. Having heard both the parties and perused the material on record, we are of the view that there is a reasonable and sufficient cause for the delay in filing the appeal before the Tribunal. Therefore following the Hon'ble Supreme Court decision in the case of Collector, Land Acquisition Vs. MST.Katiji & Ors., (167 ITR 471) (SC) we condone the delay of 1030 days in filing the appeal and admit the appeal for adjudication

4. The ld. AR submitted that the Co-ordinate bench has been consistently holding that the interest earned from deposit with the Co-operative Bank are

eligible for deduction under section. The ld. AR further submitted that in assessee's own case for AY 2016-17, the Co-ordinate Bench has allowed the deduction by holding that –

“4. Before us it has been brought on record that this issue has come before the Tribunal in several cases wherein after discussing the decision of Hon’ble Karnataka High Court, claim of section 80P (2)(d) has been allowed interest received from co-operative banks of the co-operative societies. For sake of ready reference, the decision of ITAT order No. 1195/Mum/2023, dated 10.7.2023, in case of Rustomjee Aspiree Premises Co-op. Soc. Ltd., wherein the Tribunal after referring to various decisions has allowed the claim of deduction. Mostly according to the decision of Hon’ble Kerala High Court in the case of PCIT vs. Percoorkada Services Company Bank Ltd. (2022) 442 ITR 141 (Kerala), the claim of deduction of interest income is allowed.”

5. The ld. DR on the other hand relied on the order of the lower authorities.
6. We heard the parties and perused the material on record. We notice that the facts in assessee's case are identical for the year under consideration also and therefore in our considered view the ratio laid down in the above decision is clearly applicable to assessee's case also. Therefore, respectfully following the above decision, we hold that the assessee is entitled for deduction under section 80P(2)(d) against the interest earned from Co-operative Bank and accordingly, we direct the AO to delete the disallowance made in this regard.
7. In the result, the appeal of assessee is allowed.

Order pronounced in the open court on 26 -07-2024.

Sd/-
(RAHUL CHAUDHARY)
Judicial Member

**SK, Sr. PS*

Sd/-
(PADMAVATHY S)
Accountant Member

Copy of the Order forwarded to :

1. The Assessee
2. The Respondent
3. DR, ITAT, Mumbai
4. Guard File
5. CIT

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai