

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

**BEFORE MS KAVITHA RAJAGOPAL, JUDICIAL MEMBER
AND
SHRI RATNESH NANDAN SAHAY, ACCOUNTANT MEMBER**

**ITA No.1976/M/2024
Assessment Year: 2021-22**

Dheeraj Gaurav Heights-1 Co- Operative Housing Society Limited Ground Floor, Dheeraj Gaurav Heights-1 Co- Operative Housing Society, Off. New Link Road, Lokhandwala, Andheri (East)- 400053. PAN: AAAAD3911A	Vs.	Income Tax Officer-24(1)(1) Piramal Chamber, Mumbai- 400012.
(Appellant)		(Respondent)

Present for :

Assessee by : Ms. Vinita Nara, A.R.

Revenue by : Shri R. R. Makwana- SR. D.R.

Date of Hearing : 22 . 07 . 2024

Date of Pronouncement : 01 . 08 . 2024

O R D E R

Per: Ratnesh Nandan Sahay, Accountant Member:

1. This appeal has been filed by the appellant against the Order of the Ld. CIT (Appeals) passed u/s. 250 of the Income Tax Act [the ‘Act’ in short]

vide DIN & Order No. ITBA/APL/S/250/2023-24/1061531213(1) Dated 26/02/2024 for the Assessment Year 2021-22.

2. Following grounds of appeal have been raised by the appellant:

1. *“The Intimation bearing DIN: CPC/2122/A5/310702433, dated 19th October 2022, under section 143(1)(a) of the Income Tax Act, 1961 ("the Act") and the Order, dated 26 February 2024, of the ADDL / JCIT(A) confirming rejection of deduction of Rs.2,88,120/- is bad in law and against the spirit of Section 143(1)(a) of the Act as no adjustment was warranted under Section 80P(2)(d) based on binding decisions of Jurisdictional Mumbai Tribunal.*
2. *On the facts and circumstance of the case, under the provisions of Section 143(1)(a), the ADDL/JCIT(A) erred in confirming the rejection of claim under section 80P(2)(d) in the Intimation 143(1)(a) without appreciating the fact and law that the CPC was mandated to make only prima facie adjustments as provided in clauses (i) to (v) of Section 143(1)(a) and too by providing prior intimation/notice to the Appellant, for such denial, in writing or in electronic mode as per first proviso to Section 143(1)(a).*
3. *The Ld. CIT(A), Prayagraj, erred in confirming the addition of Rs.2,88,120/- made by the Ld. CPC, being disallowance of deduction under section 80P(2)(d) of the Act. Therefore, the prays that deduction of under section 80P(2)(d) of Rs.2,88,120/- be allowed to it.*
4. *The Ld. CPC, has erred in the levying interest under sections 234A, 234B, 234C and 234F of the Act.*
5. *The Appellant craves leave to add, to amend, alter/delete and/or modify the above grounds of appeal on or before the final hearing.”*

3. The facts of the case, in brief, are that the appellant is a Co-Operative Society duly registered under the Maharashtra State Co-Operative Society

Act. The appellant filed its return of income for the assessment year under consideration and claimed a deduction of Rs.3,38,120/- u/s. 80P(2)(d) of the Act on the interest income received from Co-Operative Banks and non Co-Operative Banks also. The return of income filed by the assessee was processed u/s. 143(1) of the Act dated 10/10/2022 by the CPC Income Tax Department in which the claim of deduction u/s. 80P (2)(d) was denied to the assessee. The appellant challenged the order passed u/s. 143(1) before the Ld. CIT (A) and claimed that the deduction u/s. 80P(2)(d) is clearly allowable in the case of the appellant by placing reliance on various decisions of the Hon'ble High Court including the Hon'ble Supreme Court. The Ld. CIT(A), however, dismissed the appeal of the appellant on the ground that the Hon'ble Supreme Court has decided against the assessee in the case of Totagars Co-Operative Society Limited vs. ITO [2010] 322 ITR 283 (SC). Aggrieved by the order of the Ld. CIT (A), this appeal has been filed.

4. During the appellate proceedings before us, the appellant referred to various decisions of the Coordinate Benches of ITAT (Mum.), wherein, the Hon'ble ITAT has allowed the claim of deduction u/s. 80P (2)(d) on the interest income received from Co-Operative Banks or the Co-operative Societies.
5. We have considered the above submissions and found that the coordinate benches of Hon'ble ITAT, Mumbai in several cases have decided the

issue of 80P (2) (d) in favour of the cooperative societies. In one of the case of Blue Rose Industrial Premises Cooperative Society v. CIT Appeal, ITAT No. 4059 of 2023 for the assessment year 2020-21, the Hon'ble ITAT, Mumbai Bench has decided the issue in the favour of the assessee. The extract of the decision was given as under:

“13. We find that the learned CIT(A) has placed reliance upon the decisions of the Hon'ble Karnataka High Court in Pr. CIT v. Totagars Co-operative Sales Society [2017] taxmann.com 140/395 ITR 611, wherein it was held that interest earned by the assessee, a co-operative Society from surplus deposits kept with a co-operative Bank, was not eligible for deduction under section 80P(2)(d) of the Act. We find that in an earlier decision the Hon'ble Karnataka High Court in Pr. CIT v. Totagars Co-operative Sale Society (2017) 78 taxmann.com 169/392 ITR 74 held that according to section 80P(2)(d) of the Act, the amount of interest earned from a co-operative Society Bank would be deductible from the gross income of the co-operative Society in order to assess its total income. Thus, there are divergent views of the same Hon'ble High Court on the issue of eligibility of deduction under section 80P(2)(d) of the Act in respect of interest earned from Co-operative Bank. No decision of the

Hon'ble jurisdictional High Court was brought to our notice on this aspect. We have to, with our highest respect to both the views of the Hon'ble High Court, adopt an objective criterion for deciding as to which decision of the Hon'ble High Court should be followed by us. We find guidance from the judgment of the Hon'ble Supreme Court in CIT v. Vegetable Products Ltd [1973] 88 ITR 192. In the aforesaid decision, the Hon'ble Supreme Court has laid down a principle that "if two reasonable constructions of a taxing provisions are possible, that construction which favours the assessee must be adopted".

14. Therefore, in view of the above, we uphold the plea of the assessee and direct the AO to grant the deduction under section 80P(2)(d) of the Act to the assessee in respect of interest income earned from investment with Co-operative Banks. Accordingly, we set aside the impugned order passed by the learned CIT(A) for the assessment year 2018-19. As a result, grounds raised by the assessee are allowed."

6. Thus, respectfully following the view taken by the Hon'ble Coordinate Benches of Mumbai Tribunal, the income, if any, earned by way of interest from the investments made with any other co-operative bank is allowed as a deduction u/s. 80P (2)(d) of the IT Act.

7. The ground of appeal in respect of levy of interest u/s. 234A, 234B, 234C & 234F are consequential in nature and the Ld. AO is directed to levy the same as per law while giving effect to the order of this Bench.
8. In the result, the appeal is allowed.

Order pronounced in the open court on 01.08.2024.

**Sd/-
MS KAVITHA RAJAGOPAL
JUDICIAL MEMBER**

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

Mumbai, Dated: 01.08.2024.
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.