

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

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

**ITA No.615/M/2024
Assessment Year: 2014-15**

Shriram Sahakari Patpedhi Limited Room No.4, Bomanji House, Ground Floor, Copper Smith Road, Mazgaon, Mumbai- 400010. PAN: AANFS3097G	Vs.	ITO-20(3)(3) Room No. 614, Piramal Chambers, Lal Baug, Parel, Mumbai- 400012.
(Appellant)		(Respondent)

Present for :

Assessee by : Shri Vinay Shinde, A.R.

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

Date of Hearing : 19 . 06 . 2024

Date of Pronouncement : 26 . 07 . 2024

ORDER

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/NFAC/S/250/2023-24/1059006682(1)

Dated 22/12/2023 for the Assessment Year 2014-15.

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

1. *“The Ld. CIT (A) has completed the Appellate Proceedings without considering the facts and circumstances of the case, which is contrary to law and is against the natural justice.*
2. *The Ld. CIT(A) has erred in disallowing proportionate deduction of Rs.4,64,837/- claimed u/s. 80P(2)(a)(i) r. w. s. 80P(2)(d) of the Income Tax Act, 1961, considering the same is derived out of reserve and surplus invested in other than co-operative society. In fact, the same is derived from statutory investments in other co-operative societies during the course of business which is attributable to business income only.*
3. *The Ld. CIT (A) also erred in disallowing deduction u/s.80P(2)(d) for proportionate interest received of Rs.4,64,837/- treating it as income from other sources being interest received on surplus fund invested in other than co-operative societies first calculating the ratio of proportionate interest income to Reserve and Surplus to Total Investments and then Proportionate Interest Income to Total Receipts as per calculation mentioned on Page No. 14 of the order.*
4. *The Ld. CIT(A) erred ignoring latest judicial pronouncement by Hon. Supreme Court dt. 20/04/2023 (Civil Appeal No. 8719/2022) in case of 'The Pr. Commissioner Of Income Tax-17, Mumbai vs. M/s. Annasaheb Patil Mathadi kamgar Sahakari Patpedhi Maryadit,' where in whole income of the assessee including interest income on investments in other co-operative banks allowed as deduction u/s 80P of the Income Tax Act, 1961.*

5. The appellant craves leave to add, alter, modify, amend, or substitute all or any of the above grounds of appeal.”

3. The facts of the case, in brief, as per the statement of notice submitted by the appellant that the appellant i.e. Shriram Sahakari Patpedhi Limited is a Co-Operative Credit Society registered under Maharashtra Co-Operative Society Act, 1960 and is wholly and exclusively engaged in providing credit facilities to its members and accepting various types of deposits from its members. No business is transacted with person other than the member of the society. The appellant society is managed, administered and governed as per its bye laws, the MCS Act 1960 and rules framed under the Act. The Banking Regulation Act 1949 is not applicable to it. As such subsection 4 of section 80P is not applicable to it and the whole of the income of appellant society is fully exempt u/s. 80P of the Income Tax Act, 1961. The return of income for the assessment year 2014-15 was e-filed by the appellant society on 29/10/2014 declaring this total income as NIL after claimed of deduction u/s. 80P of the Act for whole of its income of Rs.17,94,641/- derived from its business, though, has accepted the total income of the appellant as ‘NIL’. However, the Ld. AO in its impugned order passed u/s. 143(3) of the Income Tax Act disallowed the deduction claimed u/s. 80P (2)(d) for gross amount of interest received from Co-operative Bank at

Rs.38,72,434/- and added to the total income of the appellant treating it as “income from other sources.”

4. Aggrieved by the order of the Ld. AO, the appellant filed appeal before the Ld. CIT (A). The Ld. CIT(A) partly allowed its appeal vide the impugned order and disallowed the claim of deduction made u/s. 80P (2) (d) for proportionate interest received at Rs.4,64,837/-. The Ld. CIT(A) while disallowing proportionate interest income, he first calculated proportionate interest income of Rs.27,83,460/- and then disallowed the proportionate interest income of Rs.4,64,837/-. The details of the conclusion of proportionate interest income has been given in the body of the Ld. CIT (A).
5. Aggrieved by the order of the Ld. CIT (A), this appeal has been preferred before us. In its written submission, the appellant contented that interest income received from statutory and temporary investment is not income from other sources, but the same is attributable to business income. The above interest income is received during the course of business and the same is attributable to carrying on the business of providing credit facilities to its members and therefore the same is liable to be deducted u/s. 80P (2)(a)(i) as business income.
6. It was further submitted by the appellant that otherwise also interest received from investments in other Co-Operative Societies (Co-Operative Banks) is eligible for deduction u/s. 80P (2) (d) of the Income Tax Act

1961. The above deduction u/s. 80P also has been upheld by Hon'ble Supreme Court, Bombay High Court, various ITAT's including Mumbai ITAT, Ld. CIT(A) the details of which are given is under:-

“A. Hon. Supreme Court:

1. CIVIL APPEAL NO.8719/2022 IN CASE OF

The PR. Commissioner of Income Tax-17, Mumbai vs.

*M/s. Annasaheb Patil Mathadi Kamgar Sahakari Patpedhi
Maryadit.*

Order dr.20.04.2023. (Copy of the order is attached herewith).

*2. The Mavilayi Service Co-Op. Bank Ltd., V/S CIT, Calicut. Civil
Appeal No.8314 of 2019.*

B. Hon. Mumbai High Court:

Jurisdictional High Court :-

*a. Commissioner of Income Tax-22 Vs. Shri Kulswami Co-op. Credit
society Ltd.:*

b. M/s. Quepem Urban Co-Operative Credit Society Ltd. vs.

*Assistant commissioner of Income Tax, 377 ITR 272 and the decision
in Principal Commissioner of Income Tax, Goa vs. Goa PWD Staff
Co-op. Credit Society Ltd. (2016) 242 Taxman 422.*

**C. Some ITAT Decisions allowing Deduction u/s 80P(2)(d) to Co-
Operative Societies:**

- i. *Vitthal Co-Operative Credit Society Ltd vs. CIT(A)-26, ITAT, Mumbai Bench 'SMC' Mumbai, ITA No.216/MUM/2015, ITAT vide its order dt.30.06.2016 as under:*
- ii. *Marathwada Krishi Vidyapeeth Karmachari Sahkari Patsanstha Ltd vs. PCIT (ITAT Pune)*
- iii. *Solitaire Co-Operative Hosing Society Ltd. vs. PCIT (2019) 76 ITR 59(SN) (MUM) (Trib.)*
- iv. *Lands' End Co-Operative Housing Society Ltd. vs. ITO in ITA No.3566/MUM/2014 dt. 15.01.2016.*
- v. *See Green Co-Operative Housing Society vs. ITO-ITA No. 1343/MUM/2017 dt.31.03.2017.*
- vi. *Rushi Heights co-operative Housing Society Ltd, Mumbai-NFAC order dt.09.09.2022 for AY 2017-18.*

Findings in the Rushi Heights Co-Op. Hsg. society case are as under:

Identical issues came up before many Courts/ITATs and the recent decisions are all in favour of the appellant. The decisions cited by the appellant including the decisions of jurisdictional ITAT support the appellant's claim for deduction u/s 80P(2)(d) against interest earned from co-operative banks. Further, the Mumbai ITAT, in the above decisions various other reference of the other judicial judgment are also mentioned, particularly in the cases of Lands' End Co-operative Housing Society Ltd vs. ITO, in ITA No. 3566/Mum/2014 dated 15-01-2016 and Sea Green co-op. Hsg. Society Ld

vs. ITO-ITA No. 343/MUM/2017 dated 31-03-2017, held that deduction u/s. 80P(2)(d) is allowable with respect to interest earned from co-operative banks. The ITAT in the case of Lands' End (supra) held that for claiming deduction u/s.80P(2)(d), the co-operative society must have Income of interest and dividend on investments with Other co-operative society and it may or may not be engaged in the banking for providing credit facilities to its members and the head under which the income is assessable is not material for the claim of deduction under this section. This view continued to be held by ITAT Mumbai, Pune & Jaipur Benches in a number of recent decisions.

Even ITAT Surat Bench, in the case of Bardoli Vibhag Gram Vikas Co-op. Credit Society Ltd vs. Pr. CIT-2, Surat reported at [2021] 127 taxmann.com 334, following the decision of Gujarat HC in the case of Surat Vankar Sahkari Sangh vs. ACIT [2016] 72 taxmann.com 169, held that a co-operative society is eligible for deduction in respect of interest received from a co-operative bank. The same ratio applies to even dividend income received from a co- operative bank.

D. Some latest NFAC decisions allowing claim of the assessee u/s 80P(2)(a)(i) for whole of the income including interest received on investments with co-operative banks:

1. BSNL Employees Co-Operative Credit Society Ltd, Mumbai:

<i>AY</i>	<i>Date of Order</i>	<i>DIN and Order No.</i>
2018-19	31.07.2023	ITBA/NFAC/S/250/2023-24/1054728604(1)
2020-21	31.07.2023	ITBA/NFAC/S/250/2023-24/1054729186(1)

2. KALBHAIKAVANATH SAHAKARI PATPEDHI MARYADIT:

<i>AY</i>	<i>Date of Order</i>	<i>DIN and Order No</i>
2013-14	12.07.2023	ITBA/NFAC/S/250/2023-24/1054320859(1)
2014-15	15.07.2023	ITBA/NFAC/S/250/2023-24/1054261806(1)
2018-19	12.07.2023	ITBA/NFAC/S/250/2023-24/1054321287(1)
2020-21	13.07.2023	ITBA/NFAC/S/250/2023-24/1054350563(1)

7. The appellant finally, submitted before us that in view of the various judicial pronouncements which are in favour of the appellant, the deduction of Rs.4,64,837/- may kindly be allowed u/s. 80P (2)(a)(i)/ 80P (2)(d) of the Income Tax Act for interest received from Co-operative Banks to the appellant during the assessment year 2014-15.

8. We have considered the above submissions and the legal position on this issue and it is found that the coordinate benches of Hon'ble ITAT (Mumbai) have already considered this issue in detail and have come to the conclusion that the income, if any, earned by way of interest from the investments made with any other cooperative bank is eligible for deduction u/s. 80P (2) (d) of the Act. Thus, respectfully following the decision of the coordinate bench of ITAT (Mumbai), we also allow the claim of deduction made u/s. 80P (2) (d) of the Act.
9. In the result, the appeal is allowed.

Order pronounced in the open court on 26.07.2024.

**Sd/-
AMIT SHUKLA
JUDICIAL MEMBER**

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

Mumbai, Dated: 26.07.2024.
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.