

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

**SHRI NARENDRA KUMAR BILLAIYA, ACCOUNTANT MEMBER  
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No. 2409/MUM/2024  
(Assessment Year: 2021-22)**

**Parekh Market Co-Op Society Limited,**  
Ground Floor, Parekh Market, Near Gandhi  
Market, M. G. Road, Ghatkopar East,  
Mumbai - 400077  
[PAN: AACAP6113E]

..... **Appellant**

**Income Tax Officer 27(2)(1),**  
Railway Station Buiding, Vashi,  
Navi Mumbai - 400077

Vs

..... **Respondent**

**Appearance**

For the Appellant/Assessee : Shri. Mehul Shah  
For the Respondent/Department : Shri. Kiran Unavekar

**Date**

Conclusion of hearing : 30.07.2024  
Pronouncement of order : 02.08.2024

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**ORDER**

**Per Rahul Chaudhary, Judicial Member:**

1. By way of the present appeal the Assessee has challenged the order, dated 10/04/2024, passed by the Learned Commissioner of Income Tax, Appeals ADDL/JCIT (A)-4 Delhi, [hereinafter referred to as the '**CIT(A)**'] for the Assessment Year 2021-22, whereby the Ld. CIT(A) had dismissed the appeal of the Assessee against the Intimation, dated 15/03/2022, issued under Section 143(1) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').
2. The Assessee has raised following grounds of appeal:  
*"Being aggrieved by the order of the Centralized Processing Centre (CPC), Bengaluru and learned Commissioner of Income-*

*tax (Appeal), NFAC, this appeal petition is filed on the following amongst other grounds of appeal, which it is prayed may be considered without prejudice to one another.*

- 1. On the facts, and in circumstances of the case, and in law, learned Commissioner of Income-tax (Appeal) erred in upholding order of the Centralized Processing Centre (CPC), Bengaluru making partial disallowance of claim under section 80P without appreciating that these were not incorrect claims apparent from any information in the Return of Income in terms of section 143 (1) of the Income-tax Act 1961.*
  - 2. On the facts, and in circumstances of the case, and in law, learned Commissioner of Income-tax (Appeal) erred in upholding order of the Centralized Processing Centre (CPC), Bengaluru disallowing partial claim of deduction of RS. 93,527/- under Section 80P of the Income Tax Act, 1961 holding that interest income from co-operative Society was Income from other sources on which deduction under section 80P was not admissible.*
  - 3. On the facts, and in circumstances of the case, and in law, learned Commissioner of Income-tax (Appeal) erred in upholding order of, the Centralized Processing Centre (CPC), Bengaluru partially disallowing the claim of deduction under Section 80P of the Income Tax Act, 1961 in spite of the fact, that the appellant had filed return of income within the "second due date" applicable in terms of section 139 (1) of the Income Tax Act, 1961 and the intimation issued under section 143 (1) of the Income Tax Act, 1961 had also mentioned due date for filing return of income as "extended due date" since, book of accounts of your appellant were liable to audit under Section 81 of the Maharashtra Co-operative Society Act, 1960."*
3. Brief facts of the case are that the Assessee, a co-operative society, filed return of income for the Assessment Year 2021-22 on 15/02/2022 (extended due date 15/03/2022) declaring 'Nil' income after claiming deduction of INR 1,24,613/- under Section 80P of the Act. The return of income was processed under

Section 143(1) of the Act on 19/10/2022 allowing partial deduction claimed under Section 80P of the Act to the extent of INR 31,076/- and making disallowance of balance deduction of INR 93,527/- claimed by the Appellant under Section 80P of the Act.

4. Being aggrieved, the Appellant preferred appeal before the CIT(A). It was contended before the CIT(A) that INR 93,527/- disallowed by the Assessing Officer represented interest received from by the Appellant/co-operative society from another co-operative bank which is also a co-operative society and therefore, the same was allowable as deduction Section 80P(2)(d) of the Act. However, the CIT(A) rejected the aforesaid submission and dismissed the appeal vide, order, dated 10/04/2024, by placing reliance upon the judgment of the Hon'ble Karnataka High Court in the case of Principal Commissioner of Income-tax, Hubballi vs. Totagars Co-operative Sale Society [2017] 83 Taxmann.com 140 (Karnataka). The CIT(A) confirmed the disallowance observing that interest received from a co-operative bank was not eligible for deduction under Section 80P(2)(d) of the Act. The CIT(A) also made reference the provisions contained in Section 80P(4) of the Act.
5. The Appellant is now in appeal before the Tribunal against the order passed by the CIT(A) on the grounds reproduced in paragraph 2 above. All the grounds raised by the Assessee, being connected, are taken up together hereinafter.
6. We have given thoughtful consideration to the rival submission, perused the material on record and considered the position in law.
7. The return of income was filed by the Appellant within the extended time and therefore, within the time specified under

Section 139(1) of the Act. Thus, the deduction claimed by the Appellant under Section 80P could not have been denied on the ground that the return of income was not filed within the prescribed time.

8. In the case of **Kaliandas Udyog Bhavan Premises Co-operative Society Ltd. vs. ITO: ITA No. 6547/Mum/2017, dated 24.04.2018**, after examining the judgment of the Hon'ble Supreme Court in the case of Totgars Cooperative Sale Society Ltd. vs. ITO (2010) 322 ITR 283 (SC), which was followed by the Hon'ble Karnataka High Court in the case of Pr.CIT vs. Totgars Co-operative Sale Society Ltd.: 2017 395 ITR 611 (Kar), and after taking into account the insertion of Section 80P(4) of the Act vide the Finance Act, 2006, the Mumbai Bench of the Tribunal had held that co-operative bank continues to be a co-operative society and therefore, assessee receiving interest from a co-operative bank would be eligible to claim deduction under Section 80P(2)(d) of the Act in respect of interest so received. To the same effect are the decisions of the Tribunal in the case of Monarch Co-Operative Hsg. Society Ltd: ITA No. 4448/Mum/2023, dated 06/05/2024 cited on behalf of the Appellant during the course of hearing as well as other decision of the Tribunal in the case of Lands End Co-operative Housing Society Ltd. Vs. ITO [ITA No.3566/Mum/2014, dated 15/01/2016], M/s Sea Green Cooperative Housing and Society Ltd. Vs. ITO-21(3)(2), Mumbai [ITA No. 1343/Mum/2017, dated 31/03/2017], and Mystique Rose Cooperative Housing Society Ltd.: vs. ITO 22(2)(3) [ITA No. 1290/Mum/2021, dated 30/03/2022].
- 3.1. Further, in the case of **Mavilayi Service Co-operative Bank Ltd. vs. Commissioner of Income Tax, Calicut: [2021] 431 ITR 1 (SC)[12-01-2021]**, the Hon'ble Supreme Court has held

that the provision of Section 80P(4) are attracted only in case of co-operative society holding a banking license issued by the Reserve Bank of India (RBI). It is not the case of the Revenue that the Assessee is either registered with RBI under Banking Regulation Act, 1949 and/or hold banking license issued by RBI. Therefore, provisions of Section 80P(4) of the Act would not get attracted in the case of the Appellant. Therefore, deduction claimed by the Appellant under Section 80P(2)(d) of the Act cannot be denied by invoking provisions of Section 80P(4) of the Act.

9. In view of the above, Appellant's claim of deduction of INR.93,527/- under Section 80P(2)(d) of the Act in respect of interest received from a co-operative bank is allowed. Ground No. 1, 2 and 3 raised by the Appellant are allowed.
3. In result, the appeal preferred by the Assessee is allowed.

Order pronounced on 02.08.2024.

**Sd/-**  
**(Narendra Kumar Billaiya)**  
**Accountant Member**

**Sd/-**  
**(Rahul Chaudhary)**  
**Judicial Member**

मुंबई Mumbai; दिनांक Dated : 02.08.2024  
Poonam Mirashi,  
Stenographer

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त/ The CIT
4. प्रधान आयकर आयुक्त / Pr.CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार /((Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai