

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH “G”, MUMBAI
BEFORE MS. PADMAVATHY S., ACCOUNTANT MEMBER
AND
SHRI. RAJ KUMAR CHAUHAN, JUDICIAL MEMBER
ITA NO. 1048/MUM/2024 (A.Y: 2015-16)**

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ITA NO. 1049/MUM/2024 (A.Y: 2018-19)

The St. Sebastian Homes Co-operative Society Ltd. 3, Sebastian House, 42, Rebello Road, Bandra (West), Mumbai – 400 050.	Vs. Income Tax Officer NEAC/Ward-23(3)(1), Mumbai Income Tax Office, Matru Mandir, Mumbai – 400 007.
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PAN: AAAAT3419K

(Appellant)

(Respondent)

Assessee Represented by	:	Shri. Bhavesh Jain
Department Represented by	:	Shri. Dr. Kishor Dhule – CIT DR
Date of conclusion of Hearing	:	12.06.2024
Date of Pronouncement	:	23.08.2024

ORDER

PER BENCH:

1. Both these appeals are filed by the appellant/assessee against the orders dated 25.01.2024 and 29.01.2024 of Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi



[hereinafter referred to as the “CIT(A)”], passed under section 250 of the Income Tax Act, 1961 [hereinafter referred to as “*the Act*”] for the A.Y. 2015-16 and 2018-19, respectively, wherein the appeal of the assessee for the A.Y. 2015-16 and 2018-19 has been dismissed on the ground that the assessee is not interested in representing his case and he has nothing to say on the merit of the case and accordingly the Ld. CIT(A) dismissed the appeal without any discussion on the merits of the case and has refused to admit the appeals.

2. Both the appeals are taken up together for disposal by this common order because it pertains to the same parties and the issue involved is also the same i.e., disallowance of benefits u/s. 80P(2)(d) of the Act to the assessee by the Ld. AO in the order dated 21.11.2017 and 30.04.2021 for A.Y. 2015-16 and 2018-19. The case pertaining to the A.Y. 2018-19 is taken as lead case and the facts of the said case are discussed for the purpose of disposal of both the appeals.
3. The assessee is a co-operative society and filed its return of income for the A.Y. 2018-19 on 30.10.2018 admitting a total income of Rs. Nil, after claiming deduction u/s. 80P(2)(d) of the Act. The case was taken up for



scrutiny by way of issue of notice u/s. 143(2) dated 23.09.2019. Subsequently, notice u/s. 142(1) of the Act was issued on different dates calling for specific information. In response assessee has furnished the details such as Revised Balance Sheet, Income & Expenditure Statement, Computation of Income, etc. In the return of income filed by the assessee, assessee society has claimed u/s. 80P(2)(d) of the Act on the interest/dividend income of Rs. 1,06,09,280/-. It is stated by the assessee that the said interest income has been received on Fixed Deposits placed with various co-operative banks. The details of the interest income received during the F.Y. 2017-18 is discussed as under: -

<i>Sr. No.</i>	<i>Name of Bank</i>	<i>Interest Amount</i>
A.	<i>Interest on FDs with co-operative banks.</i>	
1.	<i>Model Co-operative Bank Ltd.</i>	<i>7,93,801</i>
2.	<i>Citizen Credit Co-operative Bank Ltd.</i>	<i>29,11,909</i>
3.	<i>The Saraswat Co-op. Bank Ltd.</i>	<i>43,50,527</i>
4.	<i>The Maharashtra State Co-op. Bank Ltd.</i>	<i>14,23,032</i>
5.	<i>The SVC Co-op. Bank Ltd.</i>	<i>10,11,769</i>
	<i>Total Interest of FDs with Cooperative Banks</i>	
6.	<i>Citizen Credit Co-op Bank (S. B. Interest)</i>	<i>1,18,142</i>
7.	<i>Citizen Credit Co-op Bank Ltd. (Dividend Income)</i>	<i>100</i>
	<i>Total</i>	<i>1,06,09,280</i>



4. After considering the submissions of the assessee as find noted in the para no. 14 of the judgment, the Ld. AO had disallowed the exemption claim u/s. 80P(2)(d) of the Act on the ground that the interest income has not been earned from the investment in another cooperative society and accordingly assessed the total income at Rs. 1,07,78,140/- which included disallowance of deduction claimed to tune of Rs. 1,06,09,280/-.
5. Aggrieved by the said order of the Ld. AO, assessee filed appeal before the Ld. CIT(A) who did not admit the appeal and dismissed in limine without going into the merit on the ground that seven notices on different dates were issued to the assessee/appellant to attend the hearing. Since the appellant/assessee failed to file the reply, it was concluded that the assessee was not interested in representing his case and appeal was dismissed in limine.
6. Aggrieved by the order of the Ld. AO as well as the Ld. CIT(A), the assessee is in appeal before us and has raised following grounds for A.Y. 2015-16:

“1. In the facts and circumstances of the case and especially in law, the Ld. AO has erred by disallowing deduction u/s 80P(2)(d) of Rs. 1,17,56,267/-, being interest income from Co-operative Banks which are also Co-operative Society, without appreciating/interpreting the evidences filed with AO and by wrongly interpreting the said section and ignoring established cases.



2. *In the facts and circumstances of the case and in law, the AO has erred in mixing up and mis-interpreting the law and provisions of sec 80P(2)d vis-a-vis 80P(4) of Income Tax act 1961, ignoring the status and nature of the appellant and thereafter denying benefit of Sec. 80P(2)(d) to the appellant.*
 3. *In the facts & circumstances of the case and in law, the Ld CIT (A) erred by dismissing the appeal without any discussion on merit of the case ignoring the mandate of section 250(6).*
 4. *In the facts & circumstances of the case and in law, the AO has erred by relying on case laws/citations, which are not applicable to the appellant's case.”*
7. The assessee in appeal before us and has raised following grounds for A.Y. 2018-19:

- “1. *In the facts and circumstances of the case and especially in law, the Ld. AO has erred by disallowing deduction u/s 80P(2)(d) of Rs. 1,06,09,280/-, being interest income from Co-operative Banks which are also Co-operative Society, without appreciating/interpreting the evidences filed with AO and by wrongly interpreting the said section and ignoring established cases.*
 2. *In the facts and circumstances of the case and in law, the AO has erred in mixing up and mis-interpreting the law and provisions of sec 80P(2)d vis-a-vis 80P(4) of Income Tax act 1961, ignoring the status and nature of the appellant and thereafter denying benefit of Sec. 80P(2)(d) to the appellant.*
 3. *In the facts & circumstances of the case and in law, the Ld. CIT(A) erred by dismissing the appeal without any discussion on merit of the case ignoring the mandate of section 250(6).*
 4. *In the facts & circumstances of the case and in law, the AO has erred by relying on case laws/citations, which are not applicable to the appellant's case.”*
8. We have heard the Ld. AR on behalf of the assessee and Ld. DR on behalf of the revenue. The Ld. AR at the very outset submitted that the Ld. AO



has committed illegality in making addition of the exempt income against the settled law by the various Ld. Coordinate Benches as well as Hon'ble High Court. The assessee/appellant has also filed written submissions, wherein in para no. 8 of the written arguments, he has referred assessee's own case for A.Y. 2016-17 wherein similar grounds and same subject matter of the disallowance of 80P(2)(d) of the Act has been decided by the Ld. Coordinate Bench in ITA No. 4059/MUM/2023, order dated 30.04.2024. The assessee has also referred in total 19 cases decided by various Ld. Coordinate Benches on the issue wherein interest income earned from the investment in cooperative bank by cooperative society has been allowed as exempt income.

9. It is vehemently argued on behalf of the assessee/appellant that the order of the Ld. AO needs to be set aside as the same is contrary to the settled law.
10. The Ld. DR on the other hand has relied upon the judgment of the Ld. AO because the Ld. CIT(A) has not decided the same on merit.
11. We have considered the submissions made by the parties and perused the material on record. The same issue already decided by various benches



including judgment of 'G' Bench, Mumbai in ITA No. 542/MUM/2024, ITA No. 544/MUM/2024 and ITA No. 543/MUM/2024, Shah and Nahar Industrial Premises A2 Co-op. Soc. Ltd. Vs. National e-Assessment Centre, New Delhi Asst. CIT, Circle-22(3), order dated 21.06.2024. The finding returned by us in the judgment of Shah and Nahar Industrial Premises A2 Co-op. Soc. Ltd. referred (supra) is relevant and reproduced as under:

- “4. The ld. Authorized Representative (AR) of the assessee submitted that the AO has denied the deduction under section 80P(2)(d) of the Act for the reason that the deduction is claimed towards interest received from deposits with Co-operative Bank. The ld. AR further submitted that the term cooperative society is much wider and includes a Cooperative Bank also and that this proposition has been upheld in various judicial pronouncements. The ld. AR also submitted that the Co-ordinate Bench has been consistently holding that interest received from deposits with Co-operative Bank is also eligible for deduction under section 80P(2)(d) of the Act and in this regard placed reliance on the decision of the Co-operative Bank in the case of Pathare Prabhu Co-operative Housing Society Ltd. Vs ITO [2023] 153 taxmann.com 714 (Mumbai - Trib.) and Kona Seema Co-operative Housing Society Ltd. in ITA No. 2024/Mum/2023 dated 08.11.2023. The ld. AR also brought to our attention that a similar view is held by the Co-ordinate bench in a recent decision dated 05.04.2024 in the case of Shivsahyadri Sahakari Patpedhi Maryadit Vs. ITO in ITA No. 3829/Mum/2023. Accordingly the ld AR prayed that the disallowance made towards deduction claimed under section 80P(2)(d) be deleted.
5. The ld. DR on the other hand submitted that the Hon'ble Gujarat High Court in the case of Katlary Kariyana Merchant Sahkari Vs. (ACIT 327 CTR 138) has held that the assessee is not entitled for deduction under section 80P(2)(d) towards the interest income received from deposit with Co-operative Bank. The ld. DR therefore, submitted that the lower authorities have correctly denied the benefit of deduction to the assessee.



6. *We have heard the parties and perused the material available on record. We notice that the Co-ordinate Bench has been consistently holding that the income derived by way of interest from Co-operative Banks is also eligible for deduction under section 80P(2)(d). The relevant observations of the coordinate bench in Kona Seema Co-operative Housing Society Ltd. (supra) where it is held that –*

"5. We have considered the submissions of both sides and perused the material available on record. The dispute raised by the assessee is against the denial of deduction claimed under section 80P(2)(d) of the Act in respect of interest income received from the Co-operative Banks. The assessee is a Cooperative Housing Society and during the assessment year 2015-16 earned interest income of Rs. 5,74,097 from the investments made in Saraswat Cooperative Bank Ltd and Maharashtra State Co-operative Bank Ltd.

6. Before proceeding further, it is relevant to note the provisions of section 80P of the Act under which the assessee has claimed the deduction in the present case. As per the provisions of section 80P(1) of the Act, the income referred to in sub-section (2) to section 80P shall be allowed as a deduction to an assessee being a Cooperative Society. Further, section 80P(2)(d) of the Act, reads as under:

"80P. Deduction in respect of income of co-operative societies.

(1)

(2) The sums referred to in sub-section (1) shall be the following, namely: –

(a)

(b)

(c)

(d) in respect of any income by way of interest or dividends derived by the cooperative society from its investments with any other co-operative society, the whole of such income;"

7. Thus, for the purpose of provisions of section 80P(2)(d) of the Act, two conditions are required to be cumulatively satisfied- (i) income by way of interest or dividend is earned by the Co-operative Society from the investments, and (ii) such investments should be with any other Co-operative Society. Further, the term 'cooperative society' is defined under section 2(19) of the Act as under:



“(19) "co-operative society" 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. In the present case, there is no dispute that the assessee is a Cooperative Housing Society. Thus, if any income as referred to in sub-section (2) to section 80P of the Act is included in the gross total income of the assessee, the same shall be allowed as a deduction. It is pertinent to note that since the assessee is registered under the Maharashtra Co-operative Societies Act, 1960, it is required to invest or deposit its funds in one of the modes provided in section 70 of the aforesaid Act, which includes investment or deposit of funds in the District Central Co-operative Bank or the State Cooperative Bank. Accordingly, the assessee kept the deposits in Saraswat Cooperative Bank Ltd and Maharashtra State Co-operative Bank Ltd and earned interest, which was claimed as a deduction under section 80P(2)(d) of the Act. The deduction under section 80P(2)(d) of the Act was denied on the basis that the Saraswat Co-operative Bank Ltd and Maharashtra State Co-operative Bank Ltd are multi-state scheduled banks and therefore interest derived will not qualify for deduction under section 80P(2)(d) of the Act. However, from the perusal of section 80P(2)(d) of the Act, it is sufficiently evident that there is no restriction on claiming deduction under the said section in respect of interest income earned from the Cooperative society operating in multiple states. Further, section 80P(4) of the Act is of relevance only in a case where the taxpayer, who is a Co-operative Bank, claims a deduction under section 80P of the Act which is not the facts of the present case. We find that the Hon'ble Supreme Court in *Mavilayi Service Co-operative Bank Ltd. vs CIT, Calicut*, [2021] 431 ITR 1 (SC) while analysing the provisions of section 80P(4) of the Act held that section 80P(4) is a proviso to the main provision contained in section 80P(1) and (2) and excludes only Co-operative Banks, which are Co-operative Societies and also possesses a licence from RBI to do banking business. The Hon'ble Supreme Court further held that the limited object of section 80P(4) is to exclude Co-operative Banks that function at par with other commercial banks i.e. which lend money to members of the public. Therefore, we find no merits in the reasoning adopted by the learned CIT(A) in denying deduction under section 80P(2)(d) of the Act to the assessee. As a result, grounds no. 4 and 5 raised in assessee's appeal are allowed."

7. We also noticed that in a recent decision the Co-ordinate bench in the case of *Shivsahyadri Sahakari Patpedhi Maryadit (supra)* has held a similar view by following the decision of the Hon'ble Madras High Court in the case of *Thorapadi Urban Co-operative Credit Society Vs. ITO (2023) 156 taxmann.com 419 (Madras)*. The relevant observations of the Co-ordinate Bench are extracted below:



“8. We have considered the submissions made. As noticed earlier, the issue stands concluded by the decisions of this Tribunal as referred to above. Even the Hon’ble Madras High Court in the case of Thorapadi Urban Co-op. Credit Society Ltd. (supra) has held thus in paras 8 to 10 of its order: -

8. The main issue is to decide in the present case is as to whether the petitioner Co-operative Society is entitled for a deduction for the interest income received from the Co-operative Bank?

9. It would be appropriate to extract hereunder the relevant portion of Section 80P(2)(d).

"80 P. Deduction in respect of income of co- operative societies:

(1)

(2) The sums referred to in sub-section (1) shall be the following, namely:
 -

(a) to (c).....

(d) "in respect of any income by way of interest or dividends derived by the co-operative society from its investment with any other co-operative society, the whole of such income”

9. A reading of the above said provision makes it clear that in the event if any Co-operative Society derived income by way of interest from investment made in any other Co-operative Society the whole such interest is eligible for deduction. Now the issue is as to whether the Co-operative Bank would fall within the purview of the term 'Co-operative Society'. In the present case, the petitioner produced a document to show that the Cooperative Bank, where they have made investments was registered under the Tamil Nadu Co-operative Societies Act, 1983 on 20.5.2003. In this regard, he also produced a copy of the Certificate of Incorporation of the said Co-operative Bank. Therefore, it is clear that the investment made by the petitioner is a Co- operative Bank registered under the Co-operative Societies Act. The Income Tax Act, 1961 has also defined 'Co-operative Society' under Section 2(19) as follows:

"2(19), "Co-operative society" 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 cooperative societies. ‘

10. A reading of the above definition would make it clear that 'Cooperative Society' means a Co- operative Society registered under Cooperative Societies Act, 1912. Thus, a Co-operative Society referred therein is only a



co-operative society as defined under the Act, be it a Cooperative Society carrying on banking business or Co-operative Society carrying on the other businesses or a Co-operative bank.”

9. *In that view of the matter, we find that the appeal has to succeed.*

8. *From the perusal of records, we noticed that the assessee has placed the surplus funds in deposits with various Co-operative Banks and has received interest income on the same. The assessee while filing the return of income has claimed such interest as a deduction under section 80P(2)(d). We notice that the lower authorities have denied the benefit of deduction for all the AYs under consideration for the reason that the interest received from Co-operative Bank is not eligible for deduction under section 80P(2)(d). These facts are identical to the facts adjudicated in the above judicial pronouncements. Therefore, respectfully following the above decisions, we hold that the assessee is entitled for deduction under section 80P(2)(d) towards income derived from deposits with Co-operative Bank for AY 2017-18, 2018-19 & 2020-21. Accordingly, the AO is directed to allow the deduction claimed by the assessee for these AYs.”*

12. In both the appeals, the assessee has claimed a sum of Rs. 1,17,56,267/- for A.Y. 2015-16 and Rs. 1,06,09,280/- for A.Y. 2018-19 as exempt income u/s. 80P(2)(d) of the Act stating that the said income has been earned as interest from the deposit with cooperative banks. Since the facts in the case of the Coordinate bench in ITA No. 542/Mum/2024 referred (supra) were same and similar, therefore, the finding returned by the Coordinate Bench as reproduced above, is squarely applicable to the facts and circumstances of the present case also.

13. For the reasons recorded in the above referred judgment by both of us, the facts and circumstances of the case in hand are squarely covered by



the said finding and accordingly, we hold that the assessee is entitled for deduction u/s. 80P(2)(d) of the Act towards income received from deposit with cooperative bank for the A.Y. 2015-16 and 2018-19. Accordingly, the Ld. AO is directed to allow the deduction claimed by the assessee for the A.Y. 2015-16 and 2018-19.

14. In the result, both the appeals filed by the assessee are allowed in the above terms.

Order pronounced in the open court on 23.08.2024

**Sd/-
(PADMAVATHY S.)
(ACCOUNTANT MEMBER)**

**Sd/-
(RAJ KUMAR CHAUHAN)
(JUDICIAL MEMBER)**

Mumbai / Dated 23.08.2024
Karishma J. Pawar, (Stenographer)

Copy of the Order forwarded to:

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

//True Copy//



**ITA No. 1048/Mum/2024; A.Y. 2015-16 &
ITA No. 1049/Mum/2024; A.Y. 2018-19
The St. Sebastian Homes Co-operative Society Ltd.**

BY ORDER

**(Asstt. Registrar)
ITAT, Mumbai**