

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH “J(SMC)”, MUMBAI
BEFORE SHRI B R BASKARAN, ACCOUNTANT MEMBER
&
SHRI. RAJ KUMAR CHAUHAN, JUDICIAL MEMBER**

- 1. ITA NO. 4120/MUM/2024 (A.Y: 2021-22)**
- 2. ITA NO. 4121/MUM/2024 (A.Y: 2020-21)**
- 3. ITA NO. 4122/MUM/2024 (A.Y: 2019-20)**
- 4. ITA NO. 4123/MUM/2024 (A.Y: 2015-16)**
- 5. ITA NO. 4124/MUM/2024 (A.Y: 2014-15)**
- 6. ITA NO. 4125/MUM/2024 (A.Y: 2013-14)**

**Rushabh Apartment Co- ITO Ward 19(3)(1),
Operative Housing Society Ltd. Vs. Matru Mandir,
Ground floor, Rushabh, Dr. Parekh Maharashtra-400 007
Street, Prathana Samaj,
Mumbai-400 004
PAN: AAAAR5230L**

(Appellant)

(Respondent)

**Assessee Represented by : Shri Rajesh Shah, Ld. AR
Department Represented by : Shri Asif Karmali (Sr. DR.)
Date of conclusion of Hearing : 26.09.2024
Date of Pronouncement : 13.12.2024**



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ORDER

PER RAJ KUMAR CHAUHAN (J.M.):

1. These appeals are filed by the appellant/assessee against the order dated 29.06.2024 of Learned Commissioner of Income Tax (Appeals), Addl./JCIT (A)-1, Kolkata [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. 2021-22, 2020-21, 2019-20, 2015-16, 2014-15 and 2013-14 respectively, wherein the appeals of the assessee against disallowance of interest amount earned by the assessee from depositing in cooperative bank has been dismissed and assessment order has been confirmed.

2. Since the facts of all the appeals filed by the assessee are exactly same and parties are same, hence all the appeals are taken up together in order to avoid the multiplicity of the decision. First of all, we are taking ITA No. 4120/Mum/2024 for AY 2021-22 as lead case.

3. The brief facts of the case are that, the assessee is co operative society Registered under Maharashtra Co operative Society Act. The assessee filed



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a Return of Income on 23/10/2021 declaring Rs. 82600/- income after claiming deduction under Section 80P(2)(d) of the Income tax Act 1961 amounting to Rs 7,34,104/- out of the total Income of Rs. 8,16,708-. The C.P.C vide its order dated 19/10/2022 passed an Assessment Order u/s. 143(1) of the income tax act 1961 disallowing claim made under 80P(2)(d) as deduction without assigning any proper reason.

4. Assessee has filed the appeal against the said intimation order before the Ld. CIT(A) which was partly allowed by the Ld. CIT (A), but order of AO is confirmed on the ground that interest income sought to be deducted from the taxable income is earned from deposit with cooperative banks and not from the deposit with cooperative societies.

5. Aggrieved with the order of Ld. CIT(A) assessee preferred the present appeal before us by raising the following grounds as under:

1. On the facts and the circumstances of the case and in law, the learned CIT(A) erred in holding that the deduction under section 80P(2)(d) is not available in respect of income earned from co-operative bank.



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2. On the facts and the circumstances of the case and in law, the learning CIT(A) erred not considering the various judgements where it has been held that co-operative banks are co-operative societies.

3. The CIT(A) erred in not considering that the interest received of Rs.7,34,104 from Co-operative Banks is allowable under section 80P(2)(d) of the Act.

4. The CIT(A) erred in not considering that CPC has wrongly made adjustment which is not envisaged u/s.143(1) of the Act and that too without giving any opportunity to the appellant. The CPC had no jurisdiction to make an adjustment.

5. The appellant craves leave to add, amend, modify, substitute and / or cancel any of the ground of the appeal.

6. We have heard Ld. AR and Ld. DR. At the outset, Ld. AR submitted that the claim of deduction of interest income earned from deposits with cooperative banks is wrongly denied by the CPC and has been illegally confirmed by the Ld. CIT (A) in the impugned order notwithstanding that various judgments of the Tribunal and Hon'ble High Courts were cited and submitted before the Ld. CIT (A). He further argued that various benches of ITAT throughout India has already taken view that the interest income earned by the Cooperative Society from depositing in Cooperative Banks is



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eligible to be exempted u/s 80P(2)(d) of the Act. He further relied on the following judgments in support of his arguments:-

i) ITA No. 1048 & 1049/Mum/2024 for AY 2015-16 & 2018-19 dated 23.08.2024 in the case of The St. Sebastian Homes Cooperative Society Ltd. Vs. ITO (Mumbai Tribunal)

ii) ITA No. 1259/Mum/2023 for AY 2018-19 dated 14.07.2023 in the case of ITO vs. Casa Grande Cooperative Housing Society (Mumbai Tribunal)

iii) ITA No. 1089 & 1079/Mum/2024 for AY 2016-17 & 2017-18 in the case of Su Prabhat Cooperative Housing society Ltd. Vs. ITO (Mumbai Tribunal).

7. On the other hand, Ld. DR supported the order of lower authorities stating that the disallowance has been rightly made because the interest income was not earned from deposits with cooperative societies.

8. We have considered the rival submissions made by the parties and perused the material placed on record. We find that the issue raised by the assessee is covered by the decision of this Bench in the case of **Ramas Tower Co-Operative Housing Society vs. ITO (ITA No. 4770/Mum/2024) dated 06.11.2024** wherein the Bench has held as under:-



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5. We heard the parties and perused the record. We notice that the CPC appears to have rejected the claim for deduction u/s 80P(2)(d) of the Act for the reason that the return of income was not filed within the time allowed u/s 139(1) of the Act. We also noticed that the Ld CCIT has condoned the delay in filing return of income and hence the claim of the assessee should be allowed. However, the Ld CIT(A) has taken a different stand and rejected the claim for deduction u/s 80P(2)(d) of the Act by applying the provisions of sec.80P(4) of the Act.

6. The question as to whether a co-operative society is entitled for deduction u/s 80P(2)(d) of the Act in respect of interest earned on deposits kept with co-operative bank is no more res integra. We notice that an identical issue has been decided by the Hon'ble Madras High Court in the case of Thorapadi Urban Co-op Credit Society Ltd (2023) (156 taxmann.com 419)(Mad) in favour of the assessee. The relevant observations made by Hon'ble Madras High Court are extracted below:

“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 cooperative societies:

(1)

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



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(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”

9.1 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 Cooperative 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 Co-operative 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 co-operative societies.”

10. A reading of the above definition would make it clear that „Co-operative Society“ means a Co-operative Society registered under Co-operative Societies Act, 1912. Thus, a Co-operative Society referred therein is only a co-operative society as defined under the Act, be it a Co-



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operative Society carrying on banking business or Co-operative Society carrying on the other businesses or a Co-operative bank.”

7. *Following the above said decision of the Hon’ble Madras High Court, this Bench of Tribunal has held in the case of Back bay Premises Co-op. Society Ltd (ITA Nos. 4144 & 4146/Mum/2023 dated 14.06.2024) that the interest income earned by a co-operative society from co-operative banks are eligible for deduction u/s 80P(2)(d) of the Act.*

8. *In view of the above discussions, we are of the view that the Ld CIT(A) was not justified in denying deduction u/s 80P(2)(d) of the Act in respect of interest income earned by the assessee from deposits kept cooperative banks. The delay in filing return of income has already been condoned by Ld CCIT. Hence, the assessee is entitled for deduction u/s 80P(2)(d) of the Act. Accordingly, we set aside the order passed by Ld CIT(A) on this issue and direct the AO to allow deduction u/s 80P(2)(d) to the assessee on the interest income earned from deposits kept with co-operative banks.*

9. *In the result, the appeal filed by the assessee is allowed*

9. The facts and circumstances of the appeal are perfectly covered by the above decision of this Bench to the effect that the co-operative banks though pursuant to the insertion of subsection (4) to Sec. 80P would no more be entitled for claim of deduction under Sec. 80P of the Act, but as a co-operative bank continues to be a co-operative society registered under



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the Co-operative Societies Act, 1912, or under any other law for the time being in force in any State for the registration of co-operative societies, therefore, the interest income derived by a co-operative society from its investments held with a co-operative bank would be entitled for claim of deduction u/s. 80P(2)(d) of the Act.

10. From the discussion and observations of Ld. CIT(A), it is noticed that Ld. CIT(A) has not rightly decided the issue and has ignored the fact that Ld. CIT (A) and AO are bound to follow the decision of ITAT and Hon'ble High Courts as held in the decision of the Hon'ble Allahabad High Court in the case of ***K. N. Agarwal Vs. Commissioner of Income Tax, order dated 11.01.1991, [1991] 189 ITR 769B (ALL)*** which says, "*Indeed, the orders of the Tribunal and the High Court are binding upon the Assessing Officer and since he acts in a quasi-judicial capacity, the discipline of such functioning demands that he should follow the decision of the Tribunal or the High Court, as the case may be. He cannot ignore it merely on the ground that the Tribunal's order is the subject-matter of revision in the High Court or that the High Court's decision is under appeal before the*



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Supreme Court. Permitting him to take such a view would introduce judicial indiscipline, which is not called for even in such cases.”

11. Thus in view of the above discussions and observations, we are of the considered opinion that the assessee is eligible for deduction u/s 80P(2)(d) of the Act in respect of interest income earned from Cooperative Banks, therefore the order of Ld. CIT(A) is hereby set aside and the Ground Nos. 1, 2 & 3 in the appeal are allowed. In view of decision on ground no. 1, 2 & 3, the decision on ground no. 4 pales into insignificance, hence disposed of as having become infructuous.

12. Resultantly, the appeal filed in ITA No. 4120/Mum/2024 for AY 2021-22 is **allowed** in above terms.

2. ITA NO. 4121/MUM/2024 (A.Y: 2020-21)

13. Since we have already decided the similar grounds of appeal raised by the assessee in ITA No. 4120/Mum/2024 for AY 2021-22 and the grounds of this appeal are exactly similar, therefore the findings in ITA No.



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4120/Mum/2024 for AY 2020-21 shall mutatis mutandis apply to this appeal also. Hence, the Ground Nos. 1, 2 & 3 in this appeal of assessee are also **allowed** in terms of order in ITA No. 4120/Mum/2024 for AY 2020-21. The ground no. 4 is disposed as having become infructuous.

3. ITA NO. 4122/MUM/2024 (A.Y: 2019-20)

14. Since we have already decided the similar grounds of appeal raised by the assessee in ITA No. 4120/Mum/2024 for AY 2021-22 and the grounds of this appeal are exactly similar, therefore the findings in ITA No. 4120/Mum/2024 for AY 2020-21 shall mutatis mutandis apply to this appeal also. Hence, the Ground Nos. 1, 2 & 3 in this appeal of assessee are also **allowed** in terms of order in ITA No. 4120/Mum/2024 for AY 2020-21. The ground no. 4 is disposed as having become infructuous.

4. ITA NO. 4123/MUM/2024 (A.Y: 2015-16)

15. Since we have already decided the similar grounds of appeal raised by the assessee in ITA No. 4120/Mum/2024 for AY 2021-22 and the grounds of this appeal are exactly similar, therefore the findings in ITA No.



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4120/Mum/2024 for AY 2020-21 shall mutatis mutandis apply to this appeal also. Hence, the Ground Nos. 1, 2 & 3 in this appeal of assessee are also **allowed** in terms of order in ITA No. 4120/Mum/2024 for AY 2020-21. The ground no. 4 is disposed as having become infructuous.

5. ITA NO. 4124/MUM/2024 (A.Y: 2014-15)

16. Since we have already decided the similar grounds of appeal raised by the assessee in ITA No. 4120/Mum/2024 for AY 2021-22 and the grounds of this appeal are exactly similar, therefore the findings in ITA No. 4120/Mum/2024 for AY 2020-21 shall mutatis mutandis apply to this appeal also. Hence, the Ground Nos. 1, 2 & 3 in this appeal of assessee are also **allowed** in terms of order in ITA No. 4120/Mum/2024 for AY 2020-21. The ground no. 4 is disposed as having become infructuous.

6. ITA NO. 4125/MUM/2024 (A.Y: 2013-14)

17. Since we have already decided the similar grounds of appeal raised by the assessee in ITA No. 4120/Mum/2024 for AY 2021-22 and the grounds of this appeal are exactly similar, therefore the findings in ITA No.



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4120/Mum/2024 for AY 2020-21 shall mutatis mutandis apply to this appeal also. Hence, the Ground Nos. 1, 2 & 3 in this appeal of assessee are also **allowed** in terms of order in ITA No. 4120/Mum/2024 for AY 2020-21. The ground no. 4 is disposed as having become infructuous.

18. In the result, all the appeals filed by the assessee are allowed in above terms.

Order pronounced in the open court on 13.12.2024

(B R BASKARAN)
(ACCOUNTANT MEMBER)

(RAJ KUMAR CHAUHAN)
(JUDICIAL MEMBER)

Mumbai / Dated 13.12.2024
Dhananjay, Sr. PS

Copy of the Order forwarded to:

1. The Appellant
 2. The Respondent.
 3. CIT
 4. DR, ITAT, Mumbai
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BY ORDER

(Asstt. Registrar)
ITAT, Mumbai