

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

**BEFORESHRI ANIKESH BANERJEE, JUDICIAL MEMBER AND
SHRI PRABHASH SHANKAR, ACCOUNTANT MEMBER**

ITA No.5691/Mum/2024 - A.Y. 2020-21
ITA No.5695/Mum/2024 - A.Y. 2021-22

Guru Anand Co-Operative Housing Society Ltd, Plot No.131, Ram Maruti Road, Dadar West, Mumbai-400 028 PAN:AACAG5061A	vs	Income Tax Officer Ward 42 (1)(2), Mumbai. Kautilya Bhawan Bandra Kurla Complex, Bandra East, Mumbai-400 051
APPELLANT		RESPONDENT

Assessee by : Shri Arvind Wadke, CA
Respondent by : Shri Kiran Unavekar(SR DR)

Date of hearing : 27/01/2025
Date of pronouncement : 03/02/2025

ORDER

PERBENCH:

These two appeals filed by the assessee against the order of the National Faceless Appeal Centre (NFAC), Delhi [for brevity, 'Ld.CIT(A)'] passed under section 250 of the Income-tax Act, 1961 (for brevity, 'the Act'), for A.Ys. 2020-21 and 2021-22, date of order 06/09/2024, for both the appeals. The impugned order was emanated from the order of the Ld.CPC, Bengaluru, passed under section 154 of the Act, date of order 26/11/2022 for A.Y. 2020-21 and dated 22/11/2022 for A.Y. 2021-22.

2. Both the appeals have same nature of facts and a common issue. Therefore, both the appeals were clubbed together, heard together, and are disposed of by this common order and **ITA No.5691/Mum/2024** is taken as the lead case.

ITA 5621/Mum/2021

2.1 The assessee has taken the following grounds of appeal: -

"1. The learned Commissioner of Income Tax (Appeals) grossly erred in not considering rectification order u/s 154 of the Income Tax Act, 1961 as an appealable order even though the tax liability determined in the intimation u/s. 143(1) was confirmed in rectification order.

2. The learned Commissioner of Income Tax (Appeals) grossly erred in dismissing the appeal on the technical ground that the Appellant cannot file an appeal against the order passed u/s -154 when the cause of action arose against the intimation order u/s 143(1) of the Act which is an appealable order u/s 246A of the Act.

3. In any case the learned Commissioner of Income Tax (Appeals) failed to give proper opportunity to the Appellant to make submissions on this highly technical issue.

4. On the facts and the circumstances of the case and in law the learned Commissioner of Income Tax (Appeals) erred in disallowing the appellants appeal for granting of claim of deduction under Section 80P (2)(d) of the Income Tax Act, 1961 on the interest income of Rs. 3,20,390/- earned by the appellant (A Co-operative Housing Society) from its investments held with Co-operative Banks.

5. Without prejudice to the above The learned Commissioner of Income Tax (Appeals) out to have allowed the claim of the Appellant (a Nonprofit making Housing Society) on the basis of facts & Judicial pronouncements supporting the claim of deduction under Section 80P (2)(d) of the Income Tax Act, 1961 on the

interest income derived by a Co-operative Housing Society from its investments held with Co operative Banks.

Appellant craves leave to add, alter or amend the above grounds of appeal.”

3. The matter brought before the Bench pertains to the deduction claimed under Section 80P of the Act, concerning interest income of Rs.3,20,990/- received from cooperative banks. The assessee, a Cooperative Housing Society, had invested funds in two cooperative banks, namely Saraswat Cooperative Bank and Maharashtra State Cooperative Bank, and earned interest income accordingly.

The assessee duly claimed the deduction under Section 80P(2)(d) of the Act in its Return of Income (ROI) filed under Section 139(1). However, during the processing of the return under section 143(1) of the Act, the claim for deduction under Section 80P(2)(d) was disallowed. Subsequently, the assessee filed a rectification petition under Section 154 of the Act, which was rejected by the CPC. Aggrieved by this rectification order, the assessee filed an appeal before the CIT(A). However, the Ld. CIT(A) dismissed the appeal, citing that an order under Section 154 of the Act is not appealable under Section 246A of the Act. Consequently, the assessee has filed the present appeal before us.

4. The primary issue raised in this appeal is whether an order passed under Section 154 is appealable under Section 246A of the Act. Upon reviewing the provisions of Section 246A(c) of the Act, we find that it states:

"246A. Appealable Orders Before Commissioner (Appeals)

(c) an order made under Section 154 or Section 155 that has the effect of enhancing the assessment, reducing a refund, or an order refusing to allow a claim made by the assessee under either of the said sections."

From the above reading, it is evident that an order under Section 154 is appealable, and the assessee has the right to challenge such an order before the Ld. CIT(A). The Ld. CIT(A) is bound to pass an order under Section 250 regarding any rectification order under Section 154.

5. Regarding the merits of the case, the interest income claimed under section 80P(2)(d) was derived from investments made in cooperative banks. The issue has already been addressed in multiple judicial pronouncements, including:

ITAT Mumbai Bench-G in **M/s Solitaire CHS Ltd. vs. Pr. CIT-26, Mumbai, ITA No. 3155/Mum/2019**, dated **29.11.2019**, where the Tribunal held:

"However, at the same time, we are unable to subscribe to his view that the aforesaid amendment would jeopardies the claim of deduction of a co-operative society under Sec. 80P(2)(d) in respect of its interest income investments/deposits parked with a cooperative bank. In our considered view, as long as it is proved that the interest income is being derived by a cooperative society from its investments made with any other co-operative society, the claim of deduction under the aforesaid statutory provision, viz. Sec. 80P(2)(d) would be duly available. We find that the term cooperative society" had been defined under Sec. 2(19) of the Act, as under:- "(19) "Cooperative society" means a cooperative society registered under the Cooperative 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;" We are of the considered view, that though the cooperative banks 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 cooperative bank continues to be 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, therefore, the interest income derived by a cooperative society from its

investments held with a co- operative bank would be entitled for claim of deduction under Sec.80P(2) (d) of the Act. 8. We shall now advert to the judicial pronouncements that have been relied upon by the Id. A.R. We find that the issue that a co-operative society would be entitled for claim of deduction under Sec. 80P(2)(d) on the interest income derived from its investments held with a cooperative bank is covered in favour of the assessee in the following cases: (i) Land and Cooperative Housing Society Ltd. Vs. ITO (2017) 46 CCH 42 (Mum) (ii) M/s C. Green Cooperative Housing and Society Ltd. Vs. ITO21(3)(2), Mumbai (ITA No. 1343/Mum/2017, dated 31.03.2017 (iii) Marvwanjee Cama Park Cooperative Housing Society Ltd. Vs. ITO Range-20(2)(2). Mumbai (ITA No. 6139/Mum/2014, dated 27.09.2017. (iv). Kaliandas Udyog Bhavan Premises Co-op. Society Ltd. Vs. ITO, 21(2)(1), Mumbai. We further find that the Hon'ble High Court of Karnataka in the case of Pr. Commissioner of Income Tax and Anr. Vs. Totagars Cooperative Sale Society (2017) 392 ITR 74 (Karn) and Hon'ble High Court of Gujarat in the case of State Bank Of India Vs. CIT (2016) 389 ITR 578 (Guj), had held, that the interest income earned by the assessee on its investments with a co-operative bank would be eligible for claim of deduction under Sec. 80P(2)(d) of the Act. Still further, we find that the CBDT Circular No. 14, dated 28.12.2006, also makes it clear beyond any scope of doubt that the purpose behind enactment of sub-section (4) of Sec. 80P was that the co-operative banks which were functioning at par with other banks would no more be entitled for claim of deduction under Sec. 80P(4) of the Act. Insofar the reliance placed by the Pr. CIT on the judgment of the Hon'ble Supreme Court in the case of Totgars Co-operative Sale Society Ltd. vs. ITO (2010) 322 ITR 283 (SC) is concerned, we are of the considered view that the being distinguishable on facts had wrongly been relied upon by him. The adjudication by the Hon"ble Apex Court in the aforesaid case was in context of Sec. 80P(2)(a)(i), and not on the entitlement of a cooperative society towards deduction under Sec. 80P(2) (d) on the interest income on the investments/deposits parked with a co-operative bank."

Furthermore, the ITAT Mumbai G Bench reaffirmed this position in the case of **Sadhana Sahakari Patpedhi Limited vs. NFAC, ITA No. 55/Mum/2024**, dated **23/07/2024**.

6. The Ld. DR argued and fully relied on the orders of the revenue authorities. But unable to rebut the argument of the Id. AR by filing any contrary judgment.

7. We heard the rival submission and perused the documents available in records. The interest income received by the assessee from cooperative banks has not been disputed by the revenue. The appeal was rejected solely on legal grounds.

The Ld. CIT(A) erred in dismissing the appeal, holding that an order under section 154 is not appealable, despite the clear provision under section 246A(c) of the Act allowing such an appeal. In view of the established judicial precedents and statutory provisions, we set aside the impugned appeal order and the addition of Rs.3,20,990/- is deleted.

8. In the result, appeal filed by the assessee is allowed.

ITA No.5695/Mum/2024

9. Since the facts and circumstances in this appeal are identical to the appeal in ITA No.5691/Mum/2024, the decision arrived at above shall apply *mutatis mutandis* to this appeal also. As a result, the appeal filed by the assessee stands allowed.

10. In the result, both the appeals filed by the assessee bearing **ITA Nos 5691 & 5695/Mum/2024** are allowed.

Order pronounced in the open court on 03rd day of February, 2025.

Sd/-

(PRABHASH SHANKAR)
ACCOUNTANT MEMBER

Mumbai, दिनांक/Dated: 03/02/2025
Pavanan

sd/-

(ANIKESH BANERJEE)
JUDICIAL MEMBER

Copy of the Order forwarded to:

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकरआयुक्त CIT
4. विभागीयप्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,
Mumbai
5. गार्डफाइल/Guard file.

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BY ORDER,

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