

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

**BEFORE SHRI S. RIFAUH RAHMAN, ACCOUNTANT MEMBER AND**  
**SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER**

**ITA no.598/Mum./2023**  
**(Assessment Year : 2016-17)**

Oberoi Spring Co-operative  
Housing Society Limited  
Office of the Oberoi Spring Co-operative  
Housing Society Limited, Oshiwara Link Road  
Near Mongings Cake Factory, Oshiwara  
Andheri (West), Mumbai 400 053  
PAN-AAAA0236K

...Appellant

v/s

Income Tax Officer  
Ward-24(3)(1), Mumbai

.....Respondent

Assessee by : Shri Vijay Mehta  
Revenue by : Shri Chetan Kacha

Date of Hearing-01/05/2023

Date of Order-08/05/2023

**ORDER**

**PER SANDEEP SINGH KARHAIL, J.M.**

The present appeal has been filed by the assessee challenging the impugned order dated 20/01/2023, passed under section 250 of the Income Tax Act, 1961 (*"the Act"*) by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, [*"learned CIT(A)"*], for the assessment year 2016-17.

2. In this appeal, the assessee has raised the following grounds:-

*"1. Under the facts & circumstances of the case, the NFAC has erred in restricting deduction U/S 80P(2)(d) in respect of the interest received from Co-operative Bank to the extent to which deduction is claimed in the ROI at Rs. 54,74,228/- only, ignoring the fact that ADDITION OF INTEREST INCOME MADE TO THE RETURNED INCOME of Rs. 1,45,16,542/-, which is DIRECTLY CREDITED TO THE RESERVES IN THE BALANCE SHEET, is also eligible for deduction U/S 80P(2)(d).*

*2. Under the case, the NFAC has erred in NOT considering interest received from Co-operative Bank directly credited to Balance sheet aggregating to Rs.1,45,16,542/- as per the Bye laws of the society as eligible for deduction U/s 80P(2)(d).*

*3. Under the facts & circumstances of the case the NFAC ought to have allowed TOTAL INTEREST RECEIVED FROM CO-OPERATIVE BANK, whether directly credited to the Reserves in the Balance sheet or credited to Income & Expenditure A/c as eligible for deduction U/S 80P(2)(d).*

*Your appellant craves leave to add to, alter and/or amend any of the above ground/s of appeal and request to consider each ground of appeal as separate & independent ground of appeal without prejudice of one other."*

3. The only grievance of the assessee, in the present appeal, is against the addition of interest received from Co-operative Bank to the extent the same was directly credited to the Reserves and Surplus in the balance sheet.

4. The brief facts of the case pertaining to this issue are: The assessing is a co-operative housing society, a non-profit making entity, formed with the objective of maintaining and protecting building occupied by its members. For the year under consideration, the assessee filed its return of income on 17/10/2016 declaring a total income of Rs.40,80,570. The return of income filed by the assessee was selected for scrutiny and statutory notices under section 143(2) and section 142(1) along with the questionnaire were issued and served on the assessee. The Assessing Officer ('AO') vide order dated 30/12/2018 passed under section 143(3) of the Act disallowed the deduction claimed by the assessee under section 80P(2)(d) of the Act in respect of interest income of Rs.54,74,228 received from Co-operative Bank and

disclosed in the return of income. The AO also disallowed the interest income of Rs.1,45,16,552 directly credited by the assessee to the Reserves and Surplus in the balance sheet as per the Co-operative Societies Act.

5. The learned CIT(A) vide impugned order granted the relief in respect of interest income of Rs.54,74,228 claimed as deduction under section 80P(2)(d) of the Act by the assessee and disclosed in the return of income, by observing as under:-

*"From the above it becomes amply clear that section 80P(4) was introduced to preclude claims of deductions by co-operative banks. That in no way affects the status of co-operative banks as co-operative societies and in that token preclude the assessee from claiming a deduction u/s 80P(2)(d) of the Act. It is too far-fetched, on the part of the AO, to hold forth that with the introduction of section 80P(4) cooperative banks cease to be co-operative societies for the purposes of section 80P in its entirety. It is clear from the FM's speech that the intent was to tax cooperative banks on their profits at par with the commercial banks. The same is also clear from the heading of the explanatory notes to the said amendment viz. "withdrawal of tax benefits available to certain cooperative banks Further, the Supreme Court in a recent judgement in the case of "The Mavilayi Service Co-operative Bank Ltd. & Ors." dated 12.01.2021 has quoted extensively from other judgements, after laying down that section 80P(4) is in the nature of a proviso, to assert that a proviso cannot be used to cut down the language of the main enactment where such language is clear or to exclude by implication what the main enactment says. Section 80P(2)(d) clearly enunciates deduction of interest/dividend earned by a cooperative society from its investments in any other co- operative society. That cooperative banks remain to be cooperative societies is undeniable. If the intent of the legislature was to include income earned from cooperative banks also to be denied deduction it would have featured as an explanation to section 80P.*

*In the above background it would be in the fitness of things to assert that the AO is not right in extending the applicability of section 80P(4) to preclude the assessee's claims for deduction u/s 80P(2)(d) on interest earned from its investments in a cooperative bank Having come to the aforesaid conclusion one doesn't deem it necessary to deal with the issue of 'principle of mutuality' referred to by the AO as being inapplicable in the case of the assessee. It's also relevant, in the case, to assert that the appeal with the ITAT (referred to by the AO in his order) for AY 2015-16 in ITA No. 786/Mum/2019 in the assessee's own case on the same issue has been decided against the department. The said decision would also necessitate adherence to the principles of judicial discipline. The claim of Rs. 54,74,228/- as deduction u/s 80P(2)(d) is upheld. To that extent GOA No. 1 is partly allowed."*

6. However, as regards the ground of the assessee pertaining to the addition of interest income which is transferred to the respective repair and/or

sinking fund in the balance sheet, the learned CIT(A) dismissed the appeal filed by the assessee on the basis that neither the said claim is borne from the return of income nor same was claimed as deduction under section 80P(2)(d) of the Act. The relevant findings of the learned CIT(A) in this regard are as under:-

*"In this respect, it needs to be clarified that the claim that the AO had denied deduction claimed under Section 80P(2)(d) in respect of interest received aggregating to Rs. 1,99,90.970/- made in the GOA No. 1 is not borne out from the return of income filed by the assessee. It doesn't reflect at any point or at any place that this amount was claimed as deductible u/s 80P(2)(d). During the course of the appellate proceedings this issue has not been pressed and dilated upon by the assessee. It can't be allowed deduction in excess of what has been claimed in the return. Merely on the basis of a passing reference that the amount of interest earned is exempt would not suffice in the absence of clear assertions how the income is exempt and under what provisions. In this regard reference is drawn to GOA No. 3 as well where a possible linkage to the claim could be conjectured. The said ground claims that the AO has wrongly added interest income which the society as per requirement of Maharashtra Co-operative Societies Act 1960 is required to transfer to the respective repair and/or sinking fund and that should also be considered as eligible for deduction under section 80P(2)(d). Apart from the reason cited above it is also the case, in this regard, that the claim is not made out merely by asking. There is no submission on how these funds (there is no mention of the amounts deposited and under what provisions of the Society's MoA the same were deposited in such funds) qualified as income from a cooperative society. The AO's finding on this count doesn't require any interference."*

Being aggrieved, the assessee is in appeal before us.

7. We have considered the submissions of both sides and perused the material available on record. In the present case, it is undisputed that the assessee is a Co-operative Society and has earned interest from Co-operative Bank. The interest income of Rs.54,74,228, which was credited by the assessee to the profit and loss account, has been allowed as a deduction under section 80P(2)(d) of the Act by the learned CIT(A). As per the assessee, during the year, the assessee received a total interest of Rs.1,99,90,770 from the Co-operative Banks. Out of the above, the interest of Rs.54,74,228 was credited to the profit and loss account and was claimed as a deduction under section 80P(2)(d) of the Act while filing the return of income. However, as per the

requirement of the Maharashtra Co-operative Societies Act, 1960, the interest accumulated on Sinking Fund and Reserve Fund is to be credited to the respective fund account only.

8. We find from the audited financials of the assessee, forming part of the paper book from pages 1-15, that the assessee credited part of the interest income directly to the Sinking Fund Reserve, Repair Fund Reserve, and Corpus Fund Reserve of the balance sheet and thus was not claimed as deduction under section 80P(2)(d) of the Act, despite the fact this portion of the interest is also earned from Co-operative Bank. However, the lower authorities despite correctly noting that the said portion of the interest income is not borne from the return of income filed by the assessee and thus not claimed under section 80P(2)(d) of the Act, proceeded to make the addition on the basis that the claim of deduction against such income is possible only if the income is first declared in the return. It is pertinent to note that in the present case, the interest which was directly credited to the Reserve and Surplus in the balance sheet by the assessee, as per the statutory requirement, at the first instance is not only treated as income by the assessee. Therefore, the question of claim of deduction against such income does not arise. In any case, from Schedule-7 forming part of the audited financials of the assessee, it has been duly substantiated that the interest income, which was transferred to the Reserves and Surplus in the balance sheet, is interest earned from Co-operative Bank which is of the same nature as has already been allowed under section 80P(2)(d) of the Act.

9. We find that, in the assessment year 2014-15, similar accounting treatment pursuant to the Maharashtra State Co-operative Societies Act, 1960 was made by the assessee, and part of the interest income received from Co-operative Bank was directly credited to the respective Repair Fund and Sinking Fund. However, the learned CIT(A) while allowing the interest credited to the profit and loss account and claimed in the return of income under section 80P(2)(d) of the Act, did not extend the similar relief in respect of interest credited to the balance sheet, which was added as income by the AO. We find that vide rectification order dated 16/11/2018 passed under section 154 of the Act, forming part of the paper book from pages 41-42, the learned CIT(A) granted the relief to the assessee allowing deduction under section 80P(2)(d) of the Act on the entire interest income received by the assessee from the Co-operative Bank, including the amount credited to the balance sheet. There is no material available on record to show that the aforesaid findings of the learned CIT(A) have been overruled. Therefore, in view of the above, we are of the considered opinion that the assessee is entitled to deduction under section 80P(2)(d) of the Act on the entire amount of interest income of Rs.1,99,90,770 received from the Co-operative Bank. As a result, grounds raised by the assessee are allowed.

10. In the result, the appeal by the assessee is allowed.

Order pronounced in the open Court on 08/05/2023

**Sd/-**  
**S. RIFAUH RAHMAN**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**SANDEEP SINGH KARHAIL**  
**JUDICIAL MEMBER**

**MUMBAI, DATED: 08/05/2023**