

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“C” BENCH, MUMBAI**

**BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER &  
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER,**

**ITA No.628/Mum/2024  
(A.Y. 2017-18)**

Mumbai Postal Employees Co-operative Credit Society Limited, Ground Floor, GPO Building, Fort, Mumbai – 400001	Vs.	ITO-17(2)(4) Room No. 112, 1 <sup>st</sup> Floor, Kautilya Bhavan, C-41 to C-43 G Block, Bandra Kurla Complex, Bandra (East) Mumbai – 400051
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AAAJM0032G		
Appellant	..	Respondent

Appellant by :	Madhur Agarwal
Respondent by :	H.M. Bhatt

Date of Hearing	29.05.2024
Date of Pronouncement	26.06.2024

आदेश / O R D E R

**Per Amarjit Singh (AM):**

The present appeal filed by the assessee is directed against the order of Id. CIT(A) NFAC of the Income Tax Act, 1961 for A.Y. 2017-18.

The assessee has raised the following grounds before us:

- “1. On facts, in circumstances of the case and in law, the learned CIT-A NFAC, erred in confirming disallowance by A.O. of Rs. 1,97,79,808/- u/s 80P(2)(a)(i) of the Income Tax Act, 1961.
2. On facts, in circumstances of the case and in law, the learned CIT-A NFAC, erred in confirming disallowance by A.O. of Rs.1,97,79,808/- u/s 80P(2)(d) of the Income Tax Act, 1961.
3. Without prejudice to Ground Nos. 2 & 3, the learned CIT-A- NFAC erred in confirming disallowance of proportionate deduction for cost of funds deployed in fixed deposits and shares.
4. The appellant craves leave to add, alter, modify or delete above Ground of Appeal.”

2. Fact in brief is that assessee is a Credit Cooperative Society registered under the Maharashtra Cooperative Society Act 1960 and its membership is open to employees of department of India post within the State of Maharashtra. All business during the year was done only with its members. During the year the assessee has filed return of income on 12.10.2017 declaring total income at Rs.nil after claiming deduction u/s 80P of Rs.19,21,62,128/-. The case was subject to scrutiny assessment and notice u/s 143(2) of the Act was issued on 28.09.2018. During the course of assessment the assessing officer observed that assessee has shown gross total income from business at Rs.19,21,62,128/- and claimed the whole amount as deduction u/s 80P(2)(a)(i) of the Act. The AO further observed that assessee has credited interest receipt of Rs.152,42,308/- and dividend of Rs.45,37,500/- received from cooperative banks in its profit and loss account. The AO observed that earning interest/dividend from investment in Cooperative Bank was not the object of the business of the assessee therefore, the same was no eligible for deduction in terms of provision of Sec. 80P(2)(a)(i) of the Act. The assessing officer also observed that assessee was not eligible for deduction u/s 80P(2)(d) of the Act in view of the provision of Sec. 80P(4) inserted by the Finance Act 2006 w.e.f 01.04.2007 which specifically excludes cooperative bank from the definition of cooperative societies for the purpose of benefit of Sec. 80P. He further stated that Sec.80P(4) of the Act say that such deduction shall not be allowed to the cooperative banks and cooperative banks are not included in the cooperative societies for the purpose of Sec. 80P(2)(d) of the Act. Therefore, the assessing officer concluded that benefit of 80P cannot be given either u/s 80P(2)(d)(i) as claimed by the assessee or 80P(2)(d) of the Act, therefore, deduction u/s 80P(2)(a)(i) to the extent of Rs.197,79,808/- being interest income/dividend received

from cooperative bank was rejected and also not allowed as deduction u/s 80P(2)(d) of the Act.

3. Aggrieved, the assessee filed the appeal before the ld. CIT(A). The ld. CIT(A) has dismissed the appeal of the assessee.

4. During the course of appellate proceeding before us the assessee has filed paper book comprising detail and copies of document filed before the assessing officer and ld. CIT(A). The ld. Counsel also referred the decision of ITAT in the case of Mumbai Postal Employees Co-operative Credit Society Ltd. Vs. ITO, Ward 17(2)(1) vide ITA No. 1050 & 1051/Mum/2023 dated 16.08.2023. The ld. Counsel after referring the detail of submission made before the CIT(A) submitted that assessee has made detailed submission along with the various judicial pronouncements and requested to allow the deduction u/s 80P(2)(a)(i) or alternatively u/s 80P(2)(d) of the Act, however, the ld. CIT(A) has dismissed the appeal of the assessee without any justification.

On the other hand, the ld. D.R supported the order of lower authorities.

5. Heard both the sides and perused the material on record. The assessee is a cooperative society registered under the Maharashtra Cooperative Society Act. The AO and CIT(A) has denied deduction under Section 80P(2)(a)(i) and 80P(2)(d) of the Act as discussed supra in this order. The AO was of the view that deduction u/s 80P(2)(d) is not available to any co-operative society when investment was made in any cooperative bank except two cooperative bank mentioned in the sub-section (4) of Section 80P. We consider that assessee society is not a co-operative bank and it is engaged in providing credit facilities to its members. The society does not provide any cheque book facility, Demand draft, pay order or other similar facilities to its members. We have also perused the decision of the coordinate bench of the ITAT vide

ITA No. 1050 & 1051/Mum/2023. The relevant extract of the decision in the said order is reproduced as under:

*“6. Heard both the side and perused the material on record. The assessee is a cooperative society registered under the Maharashtra Cooperative Society Act. It is engaged in providing credit to its members. During the year the assessee has shown net profit of Rs.17,73,07,795/- against which it has claimed deduction u/s 80P(2)(a)(i) of the Act. The income earned by the assessee is comprised business of providing loans to members, interest on deposit maintained with Mumbai District Central Co-op Bank and dividend on shares of that bank. The ld. Pr.CIT was of the view that such interest income and dividend income are not profits and gains of business of providing credit facilities to its members as mandated by section 80P(2)(a)(i) of the Act. The ld. Pr.CIT also observed that even deduction u/s 80P(2)(d) cannot be given when there is investment in any cooperative bank and that the income from investment in the cooperative bank after insertion of sub-section (4) of the section 80P is not eligible to deduction. However, we consider though the Cooperative Bank pursuant to the insertion of sub-section (4) of Sec. 80P is no more be entitled for claim of deduction u/s 80P of the Act, but a cooperative bank continue to be a cooperative society registered under the Co-operative Society Act. Even the interest income derived by a cooperative society from its investment held with a cooperative bank would be entitled for claim of deduction u/s 80P(2)(d) of the Act as held in the various decisions of the coordinate benches of the ITAT Mumbai.*

6. Some of the decision of the ITAT wherein the claim of deduction u/s 80P(2)(d) was allowed on the interest income earned from deposit with cooperative bank are as under:

- (i) Mittal Park Cooperative Housing Society Ltd. Vs. Asst. Director of Income Tax, Mum, W(125) (95) CPC, Bengaluru, (Ld. ADIT).
- (ii) Mittal Park Cooperative Housing Society Vs. ITO, Ward 25 (3)(1), Mumbai
- (iii) Kaliandas Udyog Bhavan Premises Coop Society Ltd. Vs. ITO 21(1)(2).
- (iv) Aqua Cooperative Housing Society Limited Vs ITO 21(1)(2)
- (v) Sea Green Cooperative Housing Society Ltd. Vs. ITO 21(3)(2)

- (vi) lands' End Cooperative Housing Society Ltd. Vs. ITO 16(1)(3)
- (vii) The Nutan Laxmi Chs Ltd. Mumbai Vs. ITO 19(2)(4)
- (viii) M/s Palmera Cooperative Housing Society Ltd. Vs. ACIT,  
19(2)

7. In the case of Kaliandas Udyog Bhavan Premises Coop. Society Ltd. Vs. ITO vide ITA No. 6547/Mum/2017 dated 25.04.2018 it is held that though the cooperative bank pursuant to the insertion of subsection (4) of Sec. 80P is no more be entitled for claim of deduction u/s 80P of the Act, but however, as a cooperative bank continued to be a cooperative society registered under the Cooperative Society Act, therefore, the interest income earned by a cooperative society from its investment held that cooperative bank would be entitled for claim of deduction u/s 80P(2)(d).

8. In the light of the above facts and finding we direct the AO to allow the alternative claim of deduction u/s 80P(2)(d) to the assessee in respect of interest earned/dividend from investment made with the cooperative bank, therefore, the appeal of the assessee is allowed.

9. In the result, the appeal of the assessee is allowed

Order pronounced in the open court on 26.06.2024

Sd/-

(Rahul Chaudhary)  
Judicial Member

Sd/-

(Amarjit Singh)  
Accountant Member

Place: Mumbai

Date 26.06.2024

Rohit: PS

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

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

सत्यापित प्रति //True Copy//  
आदेशानुसार/ BY ORDER,

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