

IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH, MUMBAI

BEFORE SHRI SAKTIJIT DEY (JUDICIAL MEMBER)

I.T.A. No.743/Mum/2019
(Assessment year: 2014-15)

Salakha Sangh Co-op. Hsg Soc. Ltd Plot No.9, M.K. Road, Queens Barracks Area, Mumbai-400 021 PAN : AAAAS6099Q	vs	ITO-17(3)(3), Mumbai
APPELLANT		RESPONDENT

Appellant by	Shri Viren Shah, AR
Respondent by	Smt. Smita Verma, DR

Date of hearing	18-03-2021
Date of pronouncement	21-05-2021

ORDER

This is an appeal by the assessee against order dated 12-12-2018 of learned Commissioner of Income Tax (Appeals)-28, Mumbai for the assessment year 2014-15.

2. Grounds 4 and 5 being general grounds, do not require adjudication.
3. Ground 3 is not pressed; hence, dismissed.
4. The only issue raised in grounds 1 & 2 relates to disallowance of deduction claimed under section 80P(2)(d) of the Income Tax Act, 1961 for an amount of Rs.20,79,677/-.
5. Briefly the facts are, the assessee is a co-operative housing society. For the assessment year under dispute, assessee filed its return of income on 29-11-2014 declaring nil income. In course of assessment proceedings, assessee filed a

revised computation of income claiming deduction under section 80P(2)(d) of the Act in respect of interest income of Rs.20,79,677/- earned on deposits made with some co-operative banks. The assessing officer disallowed assessee's claim primarily on two reasoning. Firstly, such claim was not made either in the original return of income or through a revised return of income. Secondly, referring to section 80P(2)(d) of the Act, the assessing officer held that only interest/dividend income received from co-operative societies would be eligible for deduction. Accordingly, he disallowed assessee's claim and added back an amount of Rs.20,79,677/-. Assessee contested the aforesaid addition before learned Commissioner of Income Tax (Appeals). Agreeing with the view of the assessing officer that assessee's claim of deduction under section 80P(2)(d) cannot be allowed, as, such claim was not made either in the original return of income or in a revised return of income, learned Commissioner of Income Tax (Appeals) upheld the disallowance. Consequently, he did not decide the merits of the issue.

6. The learned counsel for the assessee submitted, now it is well settled principle of law that the assessee can make a fresh claim in course of assessment proceedings and even before the appellate authority. Therefore, the deduction claimed by the assessee is admissible.

7. On merits, the learned counsel submitted, since co-operative banks are primarily co-operative societies, the income earned from deposits with co-operative banks would be eligible for deduction under section 80P(2)(d) of the Act. In support of such contention, he relied upon the following decisions:-

1. PCIT vs Totagars Co-operative Sale Society (2017) 78 taxmann.com 169 (Kar)
2. Solitaire CHS Ltd vs PCIT (ITA No.3155/Mum/2019)

3. Lands End Co-operative Housing Society Ltd vs ITO(ITA No.3566/Mum/2014)
4. Sea Green Co-operative Housing Society Ltd vs ITO (ITA No.1343/Mum/2017)
5. Kaliandas Udyog Bhavan Premises Co-operative Society Ltd ITO (2018) 94 taxmann.com 15(Mum Trib)

8. The learned departmental representative relied upon the observations of the assessing officer and learned Commissioner of Income Tax (Appeals).

9. I have considered rival submissions and perused materials on record. As regards the issue, whether the revised claim made by the assessee in course of assessment proceedings is acceptable or not, in my view, the issue is no more *res integra*. Now it is fairly well settled that assessee can make a fresh/revised claim not only before the assessing officer, but even before the appellate authorities. In fact, in the decision of the Hon'ble Apex Court relied upon by the assessing officer and learned Commissioner of Income Tax (Appeals), it has been made clear that there is no fetter on the appellate authority to consider a revised/fresh claim of the assessee. In case of CIT vs Prithvi Brokers & Shareholders (2012) 23 taxmann.com 23, the Hon'ble jurisdictional High Court has held that the assessee can make a revised/fresh claim in course of proceedings before the assessing officer and appellate authorities.

10. As regards the merits of the issue, it is evident, only reason for denial of assessee's claim of deduction under section 80P(2)(d) is, interest was earned from a co-operative bank. However, in my view, the aforesaid reasoning of the assessing officer would not hold water as in various case laws cited before me by the learned counsel for the assessee, the Tribunal has taken a consistent view that co-operative banks are primarily co-operative societies; hence, any

interest/dividend earned from such co-operative banks would be eligible for deduction under section 80P(2)(d) of the Act.

11. In view of the aforesaid, I allow assessee's claim of deduction. The addition made is deleted. These grounds are allowed.

12. In the result, appeal is partly allowed.

Order pronounced on 21/05/2021.

Sd/-

SAKTIJIT DEY
JUDICIAL MEMBER

Mumbai, Dt : 21/05/2021

Pavanan

Copy to :

1. Appellant
2. Respondent
3. The CIT concerned
4. The CIT(A)
5. The DR, ITAT, Mumbai
6. Guard File

/True copy/

By Order

Asstt. Registrar, ITAT, Mumbai