

THE INCOME TAX APPELLATE TRIBUNAL  
"F" Bench, Mumbai  
Shri Shamim Yahya (AM) & Shri Amarjit Singh (JM)

I.T.A. No. 7325/Mum/2019 (Assessment Year 2012-13)  
I.T.A. No. 7326/Mum/2019 (Assessment Year 2013-14)  
I.T.A. No. 7327/Mum/2019 (Assessment Year 2015-16)

ITO-23(2)(3) Room No. 110 Matru Mandir Grant Road Mumbai-400 007.	Vs.	M/s. MIG Co-operative Housing Society Group II Ltd. C/22/200, MIG Colony Gandhi Nagar, Bandra East Mumbai-400 051.  PAN : AAAAM8129P
(Appellant)		(Respondent)

Assessee by	Shri Yogesh Thar
Department by	Ms. Usha Gaikwad
Date of Hearing	02.06.2021
Date of Pronouncement	09.08.2021

ORDER

Per Shamim Yahya (AM) :-

These are appeals by the Revenue against a common order of learned Commissioner of Income Tax (Appeals) [in short learned CIT(A)] dated 18.9.2019 for aforesaid assessment years.

2. Since issues are common and connected these are being disposed of by this common order.

3. Grounds of appeal for A.Y. 2012-13 read as under :-

1. "Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) was justified in deleting the addition of Rs.1,43,75,000/- being interest @12.50% pa on part amount receivable as corpus from developers on the alleged ground that the interest u/s 12.50% is due and since the assessee is following mercantile system of accounting, the said interest is chargeable to tax

2. "Whether on the facts and circumstances of the case and in law the Ld. CIT (A) was justified in holding that the Registrar of Co-operative Housing Society had not cancelled the registration of the Housing Society on the alleged violation of principle of mutuality or bye law, without appreciating the

facts that cooperative bank is a commercial bank and does not fall under the purview of a "Co-operative Society" referred in section 80P(2)(d) of the Income tax Act, 1961".

3. "Whether on the facts and circumstances of the case and in law the Ld. CIT (A) was justified in holding that the Registrar of Co-operative Housing Society had not cancelled the registration of the Housing Society on the alleged violation of principle of mutuality or bye law, without appreciating the facts that the assessee has made deposits out of money received against redevelopment agreement and from different channels which is not the specified activity of the society and is not qualified for deduction u/s.80P(2)(c) of the Act".

4. "The appellant prays that the order of the CIT(A) on the above grounds be set aside and that of the Assessing Officer be restored."

4. Brief facts the assessee is a Co-Operative Housing Society registered under the Maharashtra Co-Operative Society Act, 1960. The assessee has executed development agreement with Kalpataru Properties Ltd. on 26.04.2010 and transferred assets having stamp value of Rs. 78.52 crores as against compensation received at Rs. 51.36 crore. Apart from this, Rs. 15.00 crore was receivable against corpus fund which was taxed in AY 2011-12 on accrual basis. Out of above, corpus fund of Rs. 1.50 crore was received in AY 2011-12 on execution of agreement and the balance Rs. 11.50 crore was payable to the society on the expiry of 30 months from the possession date. It was also agreed that Kalpataru shall also pay interest @ 12 5 % per annum calculated from possession date till the actual payment date. Possession date was 31.03.2011. Hence, according to the assessee, the sum of Rs. 11.50 crore was only due on or after 30.09.2013. Total sum of Rs. 15,53,97,935/- was received from Kalpataru on 07.01.2014. As per assessee, the interest on Rs. 11.50 crore was properly reported and offered in AY 2014-15.

5. However, the AO taxed interest on accrual basis @ 12.5 % on Rs. 11.50 crore which comes to Rs. 1,43,75,000/- following the order for AY 2011-12. The assessee had earned interest income of Rs. 63,95,051/- from its investments with the co-operative banks and had claimed deduction u/s 80P(2)(d) for the same. The AO disallowed deduction of Rs. 63,95,051/- u/s 80P(2)(d) for the following reasons:

- a) A co-operative bank is a commercial bank and does not fall under the purview of a 'co-operative society' referred to in section 80P(2)(d).
- b) Vide Finance Act, 2006; deduction from income of Co-operative banks u/s 80P has been withdrawn by inserting sub-section (4) in section 80P.
- c) The society had received corpus funds from non-members i.e. developer which is against the bye-laws of the Co-operative Society Act. Similar disallowance was made in AY 201 1-12.

6. Upon assessee's appeal learned CIT(A) noted as under :

6. Aggrieved by aforesaid additions, the assessee has filed the present appeal under consideration. During the course of appellate proceedings, the AR of the appellant submitted that the interest on Rs. 11.50 crores acquired and became due only in FY 20 13-14 relevant to AY 2014-15 and hence the same was offered to tax in AY 2014-15 It was also submitted that in the A.Y. 2011-12, the claim of the appellant has been allowed by CIT(A) and the same has been upheld by the Hon'ble Tribunal vide order dated 17/02/2017.

7. On the issue of deduction u/s 80P(2)(d), the appellant placed reliance on various decisions of the Mumbai ITAT in case of Lands End CHSL, Sea Green CHSL, Merwanje Cama Park CHSL etc. It was also submitted that in the A.Y. 2011-12, the claim of the appellant has been allowed by CIT(A) and the same has been upheld by the Hon'ble Tribunal vide order dated 17/02/2017.

7. The learned CIT(A) decided the issue in favour of the assessee by holding as under :-

“8. I have carefully perused the facts highlighted in the assessment order, the written submission filed by the appellant during appellate proceedings and various judicial pronouncements available on the issues under appeal. My observations and findings are as under:

9. In AY 2011-12, the ITAT Mumbai in ITA No. 1099/Mum/2016 vide order dated 17.02.2017 has dismissed the appeal of the Department and, confirmed the order of the CIT(A) on both the issues. The ITAT has held that Rs. 11.60 crore and interest of Rs. 1.43 crore was not received by the assessee and hence were not taxable for AY 2011-12. The ITAT has also held that the FAA has rightly held that deduction claimed by the assessee under sub-section (d) and (c)(ii) cannot be denied to the assessee.

10. So far the issue of deduction u/s 80P(2)(d) is concerned, it is found that in the following decisions of ITAT, Mumbai, it has been held that the co-

operative society is entitled to deduction u/s 80P(2)(d) on interest and dividend earned from its investment with co-operative banks.

- a) Kliandas Udyog Bhavan Premises Co-operative Society Ltd. vs. ITO (2018) 94 Taxmann.com 15 (Mumbai- Trib)
- b) Lands End Co-operative Housing Society Ltd. Vs. ITO (2017) 46 CCH 52
- c) Sea Grean Co-operative Housing Society Ltd. Vs ITO 21(3)(2), Mumbai (ITA No. 1343/Mum/2017 dated 31.03.2017.
- d) Merwanjee Cama Park Co-operative Housing Society Ltd. Vs. ITO (ITA No. 6139/Mum/2014, dated: 27.09.2017.

It has been noted that there are conflicting decisions of non-jurisdictional High Courts. The decision of the Bombay High Court in case of K. Subramanian Vs. Siemens India Ltd. [1983] 15 Taxman 594 [1985] 156 ITR 11 (Bom) was referred to by the Tribunal in the case of Kaliandas Udyog Bhavan Premises Co-operative Society Ltd. supra), where it has been held that if there is a conflict between decisions of non-jurisdictional High Courts, then a view which is in favour of the assessee is to be preferred as against that taken against him. It has been also held in the aforesaid decisions of the Tribunal that the adjudication of the Supreme Court in case of Totgars Co-operative Sale Society Ltd. was in context of Sec, 80P(2)(a)(i) and not on entitlement of a co-operative society towards deduction under section 80P(2)(d) on investments parked with a co-operative bank.

11. Considering the aforesaid judicial pronouncements and the order of the ITAT in its own case for AY 2011-12, I am of the view that the appellant co-operative society is eligible for deduction u/s 80P(2)(d) on interest derived from its investment with co-operative banks since co-operative banks are covered under co-operative societies referred in section 80P(2)(d).

12. To conclude, respectfully following the order of my predecessor CIT(A) for AY 2011-12 and the order of the ITAT for AY 2011-12, it is held that the AO was not justified in adding interest income of Rs. 1,43,75,000/- on accrual basis in AY 2012-13 and hence the same is deleted. It is also held that the AO was not justified in denying deduction of Rs. 63,95,051/- u/s 80P(2)(d) in AY 2012-13. Hence, the deduction of Rs. 63,95,051/- is hereby allowed. It is also held that the appellant is eligible for deduction of Rs. 50,000/- u/s 80P(2)(c)(ii) as the same is a statutory deduction. So far calculation of interest u/s 234C is concerned, it is held that the same is to be calculated on return income and not on the assessed income. In the result, all the grounds of the appellant are allowed.”

8. Against the above order Revenue is in appeal before us. We have heard both the parties and perused the records.

9. Upon careful consideration we note that as regards the first issue of addition of interest receipt, the learned CIT(A) has found that no interest was due during the impugned financial year. This is duly supported by ITAT order in assessee's own case referred by learned CIT(A). Hence, we do not find any infirmity in the order of learned CIT(A) in this issue.

10. As regards the issue of denial of 80P(2)(d) deduction, we note that the issue is squarely covered in favour of the assessee. Learned Counsel of the assessee has submitted as under :-

“1. The captioned appeals preferred by the Department were heard before Your Honours on June 2, 2021. One of the grounds of appeal raised by the Department in all three appeals is regarding allowability of deduction u/s. 80P claimed by the Respondent Assessee. During the course of the hearing, our learned authorized representative Mr. Yogesh Thar had argued that insofar as claim of deduction u/s. 80P of the Act is concerned, the same is covered in Assessee's favour by the decision of the Hon Jurisdictional Mumbai Tribunal in Assessee's own case for AY 2011-12 (ITA No. 896/M/2016, order dated February 17, 2017 (copy has been already filed in the factual paperbook on 21.05.2021).

2. During the course of the hearing, it fell from the Hon Bench that there is a recent full bench decision of the Hon Supreme Court wherein the Hon Supreme Court has elaborately dealt with the issue of allowability of s. 80P deduction in the context of different types of co-operative societies that are entitled to claim the said deduction. Accordingly, the Hon'ble Bench desired that the Assessee may furnish a note in the matter and the matter was treated as heard.

3. In deference to the aforesaid, we are filing this note together with a copy of the said decision of the Hon Supreme Court in the case of The Mavilayi Service Cooperative Bank Ltd. & Ors. Vs. CIT, Calicut & Ors. (Civil Appeal Nos. 7343-7350 of 2019 dated 12.1.2021)(copy attached at Annexure 1 to this note). The crux of the said decision is that provisions of s.s. (4) to s. 80P cannot come in the way while allowing deduction u/s. 80P of the Act to an assessee being a co-operative society, as long as the said assessee is not a co-operative bank.

4. Following the said decision, the Hon Jurisdictional Mumbai Tribunal has allowed identical claim of deduction u/s. 80P(2)(d) and 80P(2)(c) of the Act in the case of New Ideal Cooperative Housing Society Ltd. v. ITO (ITA No. 2681/M/19, order dated 03.02.2021) (copy attached at Annexure 2 with this note).

5. The Appellant submits that since it is a cooperative housing society and not a cooperative bank, s. 80P(4) has no role to play and therefore deduction claimed u/s. 80P(2)(d) and 80P(2)(c) deserves to be allowed in entirety.

6. Similar is the ratio of the decisions of the Hon Jurisdictional Mumbai Tribunal in following cases:

- 6.1. Land End Cooperative Housing Society Ltd. v. ITO (46 CCH 52) (Mum);
- 6.2. Sea Green Cooperative Housing Society Ltd. v. ITO (ITA No. 1343/M/17, order dated 31.03.2017) (Mum);
- 6.3. Merwanjee Cama Park Cooperative Housing Society Ltd. v. ITO (ITA No. 6139/M/14, order dated 27.09.2017) (Mum);
- 6.4. ITO v. Ashoka Apt. C.H.S. Ltd. (ITA No. 2845/M/10) (Mum);
- 6.5. ITO v. Sagar Sanjog C.H.S. Ltd. (ITA No. 1972-74/M/2005)(Mum);
- 6.6. ITO v. Pancharatna Co. Op. Hsg. Soc. Ltd. (ITA 2858/Mum/2010) (Mum)

7. In view of the foregoing as also the decision in Appellant's own case for AY 2011-12, the Respondent Assessee most humbly submits that the claim of deduction u/s. 80P(2)(d) and 80P(2)(c) be allowed and appeals of the department be dismissed on that ground.”

Hence we find that the main reason for disallowing the claim here is by his mistaken invocation of section 80P(4) of the Act. This has been duly settled by Hon'ble Supreme Court that in the case of Cooperative societies this section cannot be invoked as they cannot be held to be cooperative bank. When they have a lease from RBI to this effect.

11. Examining the learned CIT(A)'s order on the conspectus of aforesaid decisions, we do not find any infirmity in the order of learned CIT(A). Hence, we uphold the same.

12. Grounds of appeal for A.Y. 2013-14 read as under :-

1. "Whether on the facts and in the circumstances of the case and in law, the Ld.CIT(A) was justified in deleting the addition of Rs.1,43,75,000/- being interest @12.50% pa on part amount receivable as corpus from developers on the alleged ground that the interest u/s 12.50% is due and since the assessee is following mercantile system of accounting, the said interest is chargeable to tax?
2. "Whether in circumstances of the case and in law the Ld. CIT (A) was justified in holding that the Registrar of Co-operative Housing Society had

not cancelled the registration of the Housing Society on the alleged violation of principle of mutuality or bye law, without appreciating the facts that co-operative bank is a commercial bank and does not fall under the purview of a "Co-operative Society" referred in section 80P(2)(d) of the Income tax Act, 1961".

13. Since the issues are identical to A.Y. 2012-13, our adjudication for A.Y. 2012-13 applies mutatis mutandis for this year A.Y. 2013-14 also.

14. Grounds of appeal for A.Y. 2015-16 read as under :

1. "Whether on the facts and circumstances of the case and in law the Ld. CIT (A) was justified in holding that the disallowance of deduction u/s 80P(2)(d) of the Income tax Act, 1961 made by the CPC Bangalore is beyond the scope of provisions of section 143(1) of the Act without appreciating the fact that as per section 143(1)(a)(ii) of the Act an incorrect claim can be disallowed if such incorrect claim is apparent from any information in the return."
2. "Whether on the facts and circumstances of the case and in law the Ld. CIT (A) was justified in holding that the disallowance of deduction u/s 80P(2)(c) of the Income tax Act, 1961 made by the CPC Bangalore is beyond the scope of provisions of section 143(1) of the Act without appreciating the fact that as per section 143(1)(a)(ii) of the Act an incorrect claim can be disallowed if such incorrect claim is apparent from any information in the return."

15. Brief facts the DCIT, CPC Bangalore has passed intimation u/s. 143(1) of the Act on 02/02/2017. As per the said intimation, due date of filing return has been mentioned as 07/09/2015. Date of filing return was 27/10/2015. The A.O. has not allowed the deduction u/s. 80P of Rs. 2,15,31,450/- and has levied interest u/s. 234A, 234B & 234C.

16. Upon assessee's appeal learned CIT(A) noted as under :

"Aggrieved by the said order, the assessee has filed the present appeal under consideration. During the course of appellate proceedings, the AR of the appellant has submitted that being a co-operative housing society, it is required to get its accounts audited under the Co-operative Societies Act, 1912. Hence, original due date for filing return was 30.09.2015. CBDT vide Circular F.No. 225/207/2015 ITA.II dated 1.10.2015 extended due date of filing return upto 31.10.2015 from 30.09.2015. Hence the return is filed u/s 139(1) within due date. The appellant has also made elaborate submission on deduction u/s 80P(2)(d) including various case laws."

17. Considering the above learned CIT(A) held as under :

“24 I have carefully perused the facts highlighted in the intimation and the written submission filed by the appellant during appellate proceedings. I have also perused the return of income filed by the assessee on 27/10/2015 claiming deduction of Rs. 2,15,31,450/- under Chapter VIA. In schedule B-TI (computation of total income), total income of Nil has been shown after claiming deduction of Rs. 2,15,31,450/- under chapter VIA. In Schedule VIA [Deduction under chapter VI-A], deduction of Rs. 2,15,31,150/- has been claimed under section 80P. In the intimation at column 12, the DCIT, CPC has also acknowledged the total deduction of Rs. 2,15,31,450/- was provided by the taxpayer in return of income. Therefore, neither any arithmetical error in the return nor any incorrect claim apparent from any information in the return is found in this case. The specific circumstances for making disallowance mentioned u/s 143(1) are also not applicable in this case. Therefore, it is held that making adjustment by disallowing deduction of Rs. 2,15,31,450/- u/s 80P is not justified as the same are beyond the scope of provisions of section 143(1) and hence, the AO is directed to allow deduction of Rs. 2,15,450/- to the appellant u/s 80P.

25. The CBDT vide order dated 1.10.2015 has extended the due date of filing return of income due on 30.09.2015 to 31.03.2015. As the accounts of the appellant was required to be audited under the Co-operative Act and its original due date was 30.09.2015, the benefit of extension was available to the appellant. Hence, it is held that the return filed on 27/10/2015 was a return within due date as per section 139(1). Therefore, the interest levied u/s 234A is hereby deleted. It is also held that the interest u/s 234C is to be levied on returned income and not on assessed income. So far, charging of interest u/s 234B is concerned, the same is mandatory and consequential. Thus, the grounds of the appeal are allowed.”

18. Upon careful consideration, we do not find any infirmity in the order of learned CIT(A). We note that claim was due and proper. There was no reason that CPC would disallow the same. The date of filing of return being extended by CBDT, no adverse inference can be drawn that the assessee could not be eligible for deduction and claim which are allowable if return are filed within due date. The extension of due date makes the assessee eligible for all the claims, which are allowable when the return is filed within due date. Moreover, as rightly noted by learned CIT(A) in any case this was not something which could be denied under section 143(1) of the Act. Hence, we uphold the same.

19. In the result, these appeals filed by the Revenue are dismissed.

Pronounced in the open court on 9.8.2021

Sd/-  
(AMARJIT SINGH)  
JUDICIAL MEMBER

Sd/-  
(SHAMIM YAHYA)  
ACCOUNTANT MEMBER

Mumbai; Dated : 09/08/2021

Copy of the Order forwarded to :

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

//True Copy//

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BY ORDER,

(Assistant Registrar)  
ITAT, Mumbai