

आयकर अपीलीय अधिकरण “डी” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“D” BENCH, MUMBAI

माननीय श्री महावीर सिंह, उपाध्यक्ष एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON’BLE SHRI MAHAVIR SINGH, VP AND
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM
(Hearing Through Video Conferencing Mode)

आयकर अपील सं./ I.T.A. No.682/Mum/2021
(निर्धारण वर्ष / Assessment Year: 2015-16)

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आयकर अपील सं./ I.T.A. No.681/Mum/2021
(निर्धारण वर्ष / Assessment Year: 2016-17)

Mumbai Postal Employees Co-operative Credit Society Ltd. GPO Building, Fort, Mumbai-400 001	बनाम/ Vs.	Pr. CIT – 17 R. No. 120, 1 st floor, C-41 to C-43, G-Block, Kautilya Bhavan Bandra Kurla Complex, Bandra(East), Mumbai-400 051
स्थायीलेखासं ./जीआइआरसं ./PAN/GIR No. AAAJM-0032-G		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Assessee by	:	Shri Deepak Tikkekar, Ld. AR
Revenue by	:	Shri Sunil Jha, Ld. CIT-DR

सुनवाई की तारीख/ Date of Hearing	:	05/08/2021
घोषणा की तारीख / Date of Pronouncement	:	14/09/2021

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1.1 Aggrieved by invocation of revisional jurisdiction u/s 263 for Assessment Years (AY) 2015-16 & 2016-17 by learned Pr. Commissioner of Income Tax-17, Mumbai (Pr. CIT) vide separate orders dated 22/01/2021 & 09/03/2021, the assessee is in further appeal before us.

1.2 The Registry has noted a delay of 38 days in appeal for AY 2015-16, the condonation of which has been sought by the assessee on the strength of affidavit of Shri Mahesh Dhondiraj, Secretary of the assessee. In the affidavit, it has been stated that the hearing notices as well as the impugned order were accessed by employees in the office but were not brought to the notice of concerned officials. The Ld. CIT-DR, on the other hand, pointed out that the assessee did not appear during revisional proceedings.

1.3 After going through the contents of the affidavit, the bench formed an opinion that the delay deserve to be condoned and the assessee be provided another opportunity of hearing. Accordingly, the appeal is admitted and adjudicated as given in succeeding paragraphs.

2. The assessee being a cooperative credit society was assessed for AY 2015-16 u/s 143(3) on 28/04/2017. The assessee claimed deduction u/s 80P(2)(a)(i) which was allowed in the assessment order.

3. However, the order was subjected to revision u/s 263 vide order dated 22/01/2021. It was noted that the assessee claimed deduction u/s 80P(2) on interest and dividend receipts. The interest of Rs.74.50 Lacs was taxable income. However, Ld. AO did not make any enquiry as to issue of taxability of interest income and therefore, the order was erroneous and prejudicial to the interest of the revenue. Accordingly, a show-cause notice was issued on 16/03/2020 and 28/12/2020, however, none appeared for assessee and no submissions were filed. Accordingly, an opinion was formed that the assessee was ineligible to claim deduction in view of amended provisions of Sec.80P(4), The failure on the part of Ld. AO make necessary enquiries and bring on record all necessary facts for determining the true character and nature of interest

income especially in the light of amended provisions of Sec.80P(2)(4) has made the order amenable to revisions u/s 263. Accordingly, the order was set aside with a direction to Ld. AO to frame de novo assessment. Aggrieved, the assessee is in further appeal before us.

4. The Ld. AR submitted that the assessee earned interest of Rs.107.52 Lacs on fixed deposits held with MDCC Cooperative Bank and dividend income of Rs.17.61 Lacs on shares held with the same entity. The Ld. AR submitted that since entire investment was in Co-operative Banks, both these components were eligible for deduction u/s 80P(2)(d). Reliance has been placed on various decisions of the Tribunal to support the same. The Ld. AR also submitted that the assessee claimed deduction u/s 80P(2)(a)(i) on entire net profit based on the decision of Hon'ble Bombay High Court in the case of **The Quepem Urban Co-operative Credit Society Ltd. vs. Asst. CIT (2015) 377 ITR 272** and various other decisions as enumerated in the written submissions. The Ld. AR also submitted that Ld.AO, having taken possible view based on various judgments, his order cannot be said to be erroneous and prejudicial to the interests of revenue. The Ld. CIT-DR, on the other hand, submitted that all these arguments are being put forth by the assessee for the first time.

5. Upon careful consideration of assessment order, revisional order and the submissions made by both the parties, we find that there is no material discussion in the assessment order regarding factual matrix as well as assessee's eligibility to claim deduction u/s 80P. The assessee failed to appear during revisional proceedings and could not substantiate the same. All these arguments as put forth by Ld. AR were not considered by Ld. Pr.CIT while setting aside the assessment order.

Therefore, keeping in view the same, we are of the considered opinion that it would be in the fitness of thing to restore the matter of revision back to the file of Ld. Pr. CIT to consider factual matrix as well as to consider the arguments of the assessee on the issue. Needless to add that adequate opportunity of hearing shall be granted to the assessee. The assessee, in turn, is directed to substantiate his stand, in this regard. The appeal stands allowed for statistical purposes.

6. Facts are substantially the same in AY 2016-17. An assessment was framed u/s 143(3) on 11/12/2018 accepting the returned income filed by the assessee. The Ld. Pr. CIT, invoking revisional jurisdiction u/s 263, show-caused the assessee that the assessment order was passed without making necessary enquiries and verifications. The assessee only filed written submission and relied on few judicial pronouncements. However, based on certain judicial decisions, Ld. Pr. CIT, held that the interest income was not eligible for deduction u/s 80P(2)(a)(i) and therefore, Ld.AO was directed to redo the assessment on similar lines. Aggrieved, the assessee is in further appeal before us.

7. Since the facts as well as issues are pari-materia the same as in AY 2015-16, our findings as well as adjudication as for AY 2015-16 shall *mutatis-mutandis* apply to this year also. Accordingly, the revisional order dated 09/03/2021 is set-aside and the matter of revision stand restored back to the file of Ld. Pr. CIT with similar directions. The appeal stands allowed for statistical purposes.

8. Both the appeal stands allowed for statistical purposes.

Order pronounced on 14th September, 2021.

Sd/-

(Mahavir Singh)

उपाध्यक्ष / Vice President

Sd/-

(Manoj Kumar Aggarwal)

लेखा सदस्य / Accountant Member

मुंबई Mumbai; दिनांक Dated : 14/09/2021
Sr.PS, Dhananjay

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT- concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

**उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.**