

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

**BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT**

**ITA NO. 1060/MUM/2020** : **A.Y : 2014-15**

Shree Naman Tower Co-op.  
Housing Society Ltd.,  
41, Shree Naman Tower CHSL,  
Next to flyover, S.V. Road,  
Kandivali (W), Mumbai 400 067.  
**PAN : AAANS5150F** (Appellant)

Vs. Income Tax Officer – 33(3)(3),  
Mumbai. (Respondent)

**Appellant by** : **Shri Ketan Vajani**

**Respondent by** : **Shri Vaibhav**

**Date of Hearing** : **25/10/2021**

**Date of Pronouncement** : **25/10/2021**

**ORDER**

This appeal by the assessee is arising out of the order of Commissioner of Income Tax (Appeals)-45, Mumbai (in short 'CIT(A)') in Appeal No. CIT(A), Mumbai-45/10677/2016-17 dated 26.11.2019. The assessment was framed by Income Tax Officer-33(3)(3), Mumbai for Assessment Year 2014-15 vide his order dated 29.12.2016 under Section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').

2. The only issue in this appeal of assessee is as regards to the order of CIT(A) confirming the disallowance of deduction claimed under Section 80P of the Act amounting to Rs.10,80,750/-. For this, the assessee has raised various grounds, but the relevant ground is Ground no. 1 which reads as under :-

*“1. On the facts and in the circumstances of the case, the Commissioner of Income-tax (Appeals), hereinafter referred to as the “CIT(A)”, has erred in confirming the disallowance of Rs.10,80,750/- u/s. 80P of the Income-tax Act, out of total disallowance of Rs.26,60,197/- as made by the assessing officer during the assessment u/s. 143(3).”*

3. I have heard the rival contentions and gone through the facts and circumstances of the case. Brief facts are that the assessee filed its return of income declaring total income of Rs. 11,13,290/-, which included interest earned from co-operative banks on parking funds amounting to Rs.10,80,650/- and also claimed a sum of Rs.15,79,747/-, which was not shown in the return of income. The Assessing Officer made addition of the entire interest earned on fixed deposits with the co-operative banks as well as the other interests amounting to Rs.26,60,197/-. Aggrieved, assessee preferred appeal before the CIT(A). Principally, CIT(A) agreed with the contentions of the assessee, but confirmed the addition to the extent of Rs.10,80,650/- only on the premise that if this deduction is allowed, then the income declared voluntarily by the assessee will go down below the returned income. He observed this in paragraph 3.7 of his order, which reads as under :-

*“3.7 However it is seen that the assessee declared the total income of Rs.11,13,290 which includes interest earned from Co-operative banks on Parking Fund. In the revised computation the assessee claimed deduction for this amount of Rs.10,80,650 and also Rs.15,79,547 which was not shown in the return amounting to Rs.26,60,197 earned Fixed Deposits with co-operative banks. With this claim, the revised income of the assessee goes below the income declared in the return of income filed. I am of the considered opinion that as a result of appeal order, the income cannot go below the income declared voluntarily by the assessee in the return of income filed. Therefore the income declared Rs.11,13,290 is maintained/sustained. The addition of Rs.15,79,547 is deleted. Assessee gets part relief. Ground No. 1 is partly allowed.”*

Before us, the learned Sr. DR stated that the income cannot go down below the returned income.

4. I have considered the facts of the case and noted that the CIT(A) has not disputed the allowability of claim under Section 80P(2)(d) of the Act. The only dispute is whether the income can go below the returned income or not. This issue has been considered by the Hon'ble Bombay High Court in the case of *CIT vs Pruthvi Brokers & Shareholders, 349 ITR 336 (Bom.)*. Hence, I admit the claim and allow the claim of the assessee.

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

Order pronounced in the open court on 25<sup>th</sup> October, 2021.

Sd/-  
(MAHAVIR SINGH)  
VICE PRESIDENT

Mumbai, Date : 25<sup>th</sup> October, 2021

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Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT(A) concerned
- 4) The CIT concerned
- 5) The D.R, "SMC" Bench, Mumbai
- 6) Guard file

By Order

Dy./Asstt. Registrar/Sr. PS  
I.T.A.T, Mumbai