

आयकर अपीलिय अधिकरण
मुंबई पीठ "बी", मुंबई
श्री जी.एस. पन्नु, अध्यक्ष एवं
श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH " B", MUMBAI
BEFORE SHRI G.S.PANNU,PRESIDENT &
SHRI VIKAS AWASTHY, JUDICIAL MEMBER

आअसं. 358/मुं/2021(नि. व.2015-16)
ITA NO.358/MUM/2021(A.Y.2015-16)

New Vijay Co-operative Housing Society Ltd.,
59, Vishnu Mahal, 'D 'Road,
Opp. Wankhede Stadium,
Churchgate, Mumbai 400 020
PAN:AAAAN-4356-R

..... अपीलार्थी /Appellant

बनाम Vs.

The Principal CIT -17,
Room No. 120, 1st Floor,
Kautilya Bhavan, C-41 to C-43,
G-Block, Bandra Kurla Complex,
Bandra (E), Mumbai 400 051

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : Shri Percy Pardiwalla, Sr. Advocate
Shri Sukhsagar Syal, Advocate

प्रतिवादी द्वारा/Respondent by : Shri Mahesh Akhade, CIT-DR

सुनवाई की तिथि/ Date of hearing : 01/12/2021

घोषणा की तिथि/ Date of pronouncement : 17/ 12/2021

आदेश/ ORDER

PER BENCH:

This appeal by the assessee is directed against the order of Principal
Commissioner of Income Tax-17 Mumbai [in short 'the PCIT'] dated

22/01/2021 passed under section 263 of the Income Tax Act, 1961 (in short ' the Act') for the assessment year 2015-16.

2. Shri Percy Pardiwala appearing on behalf of the assessee submitted that the assessee is a Co-operative Housing Society registered under the Co-operative Societies Act. During the period relevant to assessment year under appeal the assessee had earned interest income of Rs.11,78,251/- on deposits with Co-operative Bank. In the return of income the assessee claimed aforesaid income as exempt under section 80P(2)(d) of the Act. The Assessing Officer accepted the assessee's claim of exemption. Thereafter, the PCIT invoked revisional jurisdiction and issued notice u/s 263 of the Act. The assessee by placing reliance on various decisions of Hon'ble'ble High Courts and the Tribunal submitted before the PCIT that assessee is eligible and entitled to claim deduction u/s 80P(2)(d) of the Act in respect of interest income earned from Co-operative banks. However, the PCIT rejected the contentions of assessee solely on the ground that in view of provisions of section 80P(4) of the Act the assessee is not eligible to claim deduction in respect of interest income earned from Co-operative Banks. The PCIT has erred in coming to the conclusion that assessment order dated 30/06/2017 is erroneous and prejudicial to the interest of Revenue as the Assessing Officer has failed to make necessary enquiries to determine the true character and nature of the income in the light of provisions of section 80P(4) of the Act.

3. On the other hand, Shri Mahesh Akhade representing the Department vehemently defended the impugned order and prayed for dismissing appeal of the assessee. The Id.Departmental Representative submitted that in the light of newly inserted sub-section(4) of section 80P of the Act the benefit of section 80P is not allowed to the Co-operative Banks.

4. We have heard the submissions made by rival sides and have examined the orders of authorities below. The assessee a Co-operative Housing Society has earned interest income on deposits with Co-operative Banks. The assessee has claimed deduction in respect of the aforesaid interest income under section 80P(2)(d) and the same was allowed by the Assessing Officer. In exercise of revisional powers the PCIT has held that the Assessing Officer has failed to examine assessee's claim in the light of provisions of section 80P(4) of the Act.

5. Before proceeding further it would be imperative to refer to the provisions of sub-section(4) of section 80P of the Act.

“(4) The provisions of this section shall not apply in relation to any co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank.

Explanation.—For the purposes of this sub-section,—

(a) "co-operative bank" and "primary agricultural credit society" shall have the meanings respectively assigned to them in Part V of the Banking Regulation Act, 1949 (10 of 1949);

(b) "primary co-operative agricultural and rural development bank" means a society having its area of operation confined to a taluk and the principal object of which is to provide for long-term credit for agricultural and rural development activities.”

A bare perusal of the aforesaid sub-section reveals that sub-section inserted by the Finance Act 2007 w.e.f. 01/04/2007 excludes Co-operative Banks other than primary agricultural credit society or a primary co-operative agricultural and rural development bank for the benefit of exemption u/s 80P of the Act. In the present case it is the Housing Co-operative society which is seeking benefit of exemption u/s 80P(2)(d) in respect of interest income earned from Co-operative Bank. It is not the Co-operative Bank which is seeking the benefit of exemption u/s 80P of the Act. The PCIT has clearly erred in interpreting the provisions of sub-section (4) of section 80P of the Act. The Co-operative Bank in the present case is the payer of interest and not the recipient. The interest

income has accrued to Co-operative Housing society and section 80P(4) of the Act does not preclude it from the benefits of exemption u/s. 80P of the Act. The PCIT by misinterpreting the provisions of sub-section (4) of Section 80P of the Act has wrongly assumed revisional jurisdiction in the present case to hold that the Assessing Officer has not examined the interest income earned by the assessee in the light of provisions of section 80P(4) of the Act.

6. We find merit in appeal by the assessee, accordingly the same is allowed and the impugned order is quashed, as above.

7. In the result, appeal by the assessee is allowed.

Order pronounced in the open court on Friday the 17th day of December, 2021.

Sd/-

(G.S.PANNU)

अध्यक्ष/ PRESIDENT

मुंबई/ Mumbai, दिनांक/Dated 17/12/2021

Vm, Sr. PS(O/S)

प्रतिलिपि अग्रेषितCopy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त(अ)/ The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,
Mumbai
6. गार्ड फाइल/Guard file.

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar)
ITAT, Mumbai