

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

BEFORE SHRI ABY T. VARKEY, JM AND SHRI S. RIFAUR RAHMAN, AM

आयकर अपील सं/ I.T.A. No.02/Mum/2022

(निर्धारण वर्ष / Assessment Years: 2015-16)

Maker Towers A & B Co-op Hsg. Soc Ltd. Ground Floor, Maker Tower A & B Cuffe Parade, Colaba, Mumbai-400005.	बनाम/ Vs.	ACIT Ward-17(2)(3) Kautilya Bhavan, BKC, Bandra (E), Mumbai- 400051.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAABM0409M		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	Shri B. V. Jhaveri
Revenue by:	Shri M. P. Ahuja (Sr. AR)

सुनवाई की तारीख / Date of Hearing: 23/05/2022

घोषणा की तारीख /Date of Pronouncement: 31/05/2022

आदेश / ORDER

PER ABY T. VARKEY, JM:

This is an appeal preferred by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals) (NFAC), Delhi dated 15.11.2021 for the assessment year 2015-16.

2. The main grievance of the assessee is against the action of the Ld. CIT(A) in not condoning the delay of three (3) years and seven (7) months for filing the appeal before the Ld. CIT(A) against the order of the CPC (Bangalore) intimation u/s 143(1) of the Income Tax Act, 1961 (hereinafter "the Act") dated 14.12.2015 wherein the deduction claimed u/s 80P(2)(d) of the Act amounting to Rs.1,04,09,041/- was disallowed. For condonation of delay, the assessee had filed an affidavit. A perusal of which reveals that the assessee is a co-operative society registered under the Maharashtra Co-operative Society Act 1960 and had filed return of income on 24.08.2015 declaring 'Nil' income as well as claiming deduction u/s 80P(2)(d) of the Act in



ITA No.02/Mum/2022

A.Y. 2015-16

Maker Towers A & B Co-op Hsg society Ltd.

respect of interest of Rs.1,04,09,041/-received from the co-operative banks (income from other sources). Section 80P(2)(d) deduction of Rs.1,04,09.041/- was denied by the CPC, Bangalore vide intimation u/s 143(1) of the Act dated 14.12.2015 (served on the assessee on 20.01.2016) and against such an action of CPC, the assessee was advised to file immediately rectification application u/s 154 of the Act before the CPC- Bangalore which it did vide applications dated 23.01.2016 (refer page no. 8 of the paper book). According to the assessee, it was under bonafide belief that the CPC, Bangalore would act upon the rectification application filed by assessee dated 23.01.2016. But finding no response from the CPC, (Bangalore) in this regard, in order to be on safer side, the assessee had filed the appeal before the CIT(A) explaining the aforesaid facts which led to late filing of appeal before him [CIT(A)]. However, according to Ld. AR, the Ld. CIT(A) did not appreciate the facts and rejected the application for condonation of delay. According to the assessee society, its claim for the deduction u/s 80P(2) of the Act was allowed since its inception and drew our attention to the scrutiny assessments passed u/s 143(3) of the Act for A.Y.2012-13 vide order dated 15.03.2015 (refer page no. 13 to 14 of the paper book) wherein such a claim u/s 80P(2) of the Act was allowed.

3. Having heard both the parties and having gone through the affidavit filed which has been sworn before the notary public, we find from the contents of the affidavit that assessee society being a recipient of the deduction in respect of its interest income from the co-operative bank, finding that its claim for this relevant assessment year being



ITA No.02/Mum/2022

A.Y. 2015-16

Maker Towers A & B Co-op Hsg society Ltd.

denied by CPC/AO, promptly had filed application for rectification of intimation passed u/s 143(1)(a) of the Act. However, the CPC/AO omitted to act upon it and then the assessee filed the appeal before the Ld. CIT(A)/NFAC and in that process, the delay took place. The assessee society in its affidavit had explained the delay, which according to us, is a reasonable cause for delay in filing of appeal before Ld. CIT(A). The fault of CPC/AO not to dispose of the application for rectification u/s 154 of the Act, cannot come in the way for the assessee's quest for its claim which Ld. CIT(A) ought to have adjudicated. Be that as it may, since there is reasonable cause for the delay in filing appeal before the Ld. CIT(A) against the intimation u/s 143(1)(a) of the Act of the CPC, we condone the delay and set aside the impugned order of Ld. CIT(A)/NFAC and restore the appeal of the assessee before the Ld. CIT(A) and direct him to adjudicate the claim of assessee u/s 80P(2) of the Act in accordance with law and the assessee is directed to be diligent and file documents/submission to substantiate its claim.

4. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on this 31/05/2022.

Sd/-

(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER

Sd/-

(ABY T. VARKEY)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 31/05/2022.
Vijay Pal Singh, (Sr. PS)



ITA No.02/Mum/2022

A.Y. 2015-16

Maker Towers A & B Co-op Hsg society Ltd.

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

**उप/सहायक पंजीकार / (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai**