

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

BEFORE SHRI KULDIP SINGH (JUDICIAL MEMBER)

I.T.A No.1832/Mum/2022 - A.Y. 2018-19

Neptune Snowden Peak Co-op. Housing Society Ltd, Pilevel Society Office, Neptune Living Point, LBS Marg, Bhandup West, Mumbai-400 078 PAN : AABAN3969R	vs	ITO Ward 26(1)(1), Mumbai Room No.629, Kautilya Bhavan Bandra Kurla Complex, Mumbai=400 051
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Assessee represented by	Shri Aditya Ramchandran
Revenue represented by	Shri Anil Gupta

Date of hearing	04/10/2022
Date of Pronouncement	04/10/2022

ORDER

The Appellant, Neptune Snowden Peak Co-op. Housing Society Ltd (hereinafter referred to as the 'assessee society') by filing the present appeals, sought to set aside the impugned orders dated 23/04/2022 passed by National Faceless Appeal Centre(NFAC), Delhi [hereinafter referred to as the 'CIT(A)'] qua the assessment order for Assessment Year 2018-19 on the ground interalia that :-

“1. On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in confirming the action of CPC, Bengaluru in disallowing deduction u/s 80P(2)(d) amounting to Rs. 5,24,583.

2. On the facts and circumstances of the case and in law, the learned CIT(A) failed to appreciate the fact that the appellant had filed its return of income within the extended due date of filing return of income which was 31.10.2018, since it was subject to audit under The Maharashtra

Co-operative Societies Act, 1960, though not under the Income Tax Act, 1961.”

2. Briefly stated, common facts necessary for adjudication of the controversy at hand are – assessee being a co-operative housing society, filed the return of income which was processed under section 143(1) of the act by the Deputy Commissioner of Income-tax, Central Processing Centre (CPC), Bangalore and thereby raised a demand of Rs.2,00,640/- for the year under consideration, by making a disallowance of deduction claimed by the assessee amounting to Rs.5,24,583/- under section 80P(2)(d) of the Income-tax Act, 19061 (in short, “the Act”).

3. Assessee carried the matter before the Ld.CIT(A) by filing appeals who has confirmed the disallowance made by the Assessing Officer by dismissing the same. Feeling aggrieved, the assessee has come up in appeal before the Tribunal by way of filing present appeal.

4. We have heard the Ld.authorised representative of the parties to the appeal, gone through the material made available on record in the light of the facts and circumstances of the case as well as law applicable thereto.

5. At the very outset, it is brought to the notice of the Bench by the Ld.AR for the assessee that vide impugned order, Ld.CIT(A) has not decided this appeal on merit, rather dismissed the same on technical ground that the assessee has failed to annex the Auditor’s

Report alongwith the return of income under section 44AB of the Act before the prescribed date of filing. Ld.CIT(A) also recorded in the impugned order that assessee has failed to adduce any evidence for filing Auditor's Report before the due date. These facts have not been controverted by Ld.AR for the assessee.

6. Now the assessee has brought on record system generated acknowledgement along with letter dated 22/10/2018, submission of AGM Minutes for F.Y. 2017-18, independent auditor's report before the Tribunal. I am of the considered view that when the assessee has filed the return of income well before the due date, but due to inadvertence, has not filed independent auditor's report, which it has filed later on, the claim of the assessee, if otherwise admissible, cannot be denied.

7. The Ld.CIT(A) also has invoked the provisions contained under section 44AB of the Act that the assessee has not filed audited accounts under the Income-tax Act. Since the assessee society is not required to file report under section 44AB, the order passed by Ld.CIT(A) is not sustainable in the eyes of law. Now the assessee has filed the independent auditor's report under the Maharashtra Co-operative Societies Act, 1960; however, the same is required to be examined by the Assessing Officer. To decide the issue once for all, this case is required to be remanded back to the Assessing Officer to decide afresh after taking into account independent auditor's report and other documents brought on record by the assessee after

providing opportunity of being heard and to examine the claim of the assessee in view of the order passed by Co-ordinate Bench in the case of M/s Petit Towers Co-operative Housing Society Ltd vs IT O (ITA No.549/Mum/2021). Resultantly, appeal filed by the assessee is allowed for statistical purpose.

Order pronounced in the open court on 04th November, 2011.

Sd/-

(KULDIP SINGH)
JUDICIAL MEMBER

Mumbai, Dt : 04th November, 2022

Pavanan

Copy to :

1. The appellant
2. The respondent
3. The CIT concerned
4. The CIT(A)
5. DR,SMC Bench
6. Guard File

(True copy)

By order

Dy.Registrar / Asstt.Registrar
ITAT, Mumbai Benches