

आयकर अपीलिय अधिकरण
मुंबई पीठ "एस एम सी" , मुंबई
श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष
IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "SMC", MUMBAI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER
आअसं. 1609/मुं/2023 (नि.व 2016-17)
ITA NO.1609/MUM/2023(A.Y 2016-17)

Lodha Surpemus Worli Commercial
Premises Cooperative Society,
CS.No.3/301 & 4/301, Dr.E.Moses Road,
Worli Naka, Mumbai 400 018.

PAN: AAAAL-8379-G

..... अपीलार्थी /Appellant

बनाम Vs.

National Faceless Appeal Centre (NFAC),
Room No.245-A, North Block,
New Delhi – 110 001.

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : Shri R.V. Shah

प्रतिवादी द्वारा/Respondent by : Shri Sunny Kachhwaha

सुनवाई की तिथि/ Date of hearing : 24/07/2023

घोषणा की तिथि/ Date of pronouncement : 25/07/2023

आदेश/ ORDER

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [in short 'the CIT(A)] dated 16/02/2023, for the Assessment Year 2016-17.

2. The appeal is time barred by 23 days. The assessee has filed an application seeking condonation of delay supported by an affidavit. The Id. Departmental Representative has opposed the condonation application. After examining the contents of the affidavit I am satisfied that the delay in filing of

appeal is for the bonafide reasons stated in affidavit, and is not deliberate. The appeal is admitted for adjudication on merits.

3. Shri R.V. Shah appearing on behalf of the assessee submitted that the only issue in appeal is against disallowance of deduction u/s. 80P(2)(d) of the Income Tax Act, 1961 [in short 'the Act'] in respect of interest income received from investments/deposits in the Co-operative Bank. Narrating facts of the case the Id. Authorized Representative of the assessee submitted that assessee is a Co-operative Society. The assessee earned interest income of Rs.9,98,611/- from fixed deposits, etc. with Co-operative Banks. The assessee claimed deduction in respect of said interest u/s. 80P(2)(d) of the Act. The Assessing Officer invoked the provisions of section 80P(4) of the Act and denied the benefit of deduction u/s. 80P(2)(d) of the Act to the assessee. Aggrieved by the assessment order dated 28/12/2018, the assessee filed appeal before the CIT(A). The CIT(A) in an ex-parte proceedings dismissed the appeal. The Id. Authorized Representative of the assessee submits that the issue raised in present appeal by the assessee is squarely covered by various decisions of the Tribunal.

4. On the other hand, Shri Sunny Kachhwaha representing the Department vehemently defended the assessment order and prayed for dismissing appeal of the assessee.

5. Both sides heard, orders of authorities below examined. The assessee has earned interest income of Rs.9,98,611/- from Co-operative Banks and has claimed deduction u/s. 80P(2)(d) of the Act on the said interest income. A perusal of the assessment order reveals that the Assessing Officer has rejected

assessee's claim of deduction u/s. 80P(2)(d) of the Act primarily invoking the provisions of sub-section (4) to section 80P of the Act. A bare perusal of section 80P(4) would show that sub-section (4) create a bar on the Co-operative Banks, for seeking advantage of deduction u/s. 80P of the Act. The said sub-section is in no manner impediment for other Co-operative Societies to seek benefit of deduction under the said section on an income by way of interest from Co-operative Banks. Hence, I find no merit in the reason to deny benefit of deduction u/s. 80P(2)(d) of the Act to the assessee.

6. The Assessing Officer has also placed reliance on the decision in the case of Totgars Co-operative Sale Society Limited vs.ITO, 322 ITR 282 (SC). I find that the facts in the instant case are distinguishable, hence, the ratio laid down in the case cited by Assessing Officer will not apply in the present case. Consequently, the impugned order is set aside and the appeal of assessee is allowed.

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

Order pronounced in the open Court on Tuesday the 25th day of July, 2023.

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई/ Mumbai, दिनांक/Dated 25 /07/2023
Vm, Sr. PS (O/S)

प्रतिलिपि अग्रेषितCopy of the Order forwarded to :

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

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)/
Sr.Private Secretary
ITAT, Mumbai