

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. 1590/मुं/2023 (नि.व 2016-17)
ITA NO.1590/MUM/2023(A.Y 2016-17)
आअसं. 1591/मुं/2023 (नि.व 2017-18)
ITA NO.1591/MUM/2023(A.Y 2017-18)

Sunshine Heights Co Op Housing Society Limited.
243, P.L.Kale Guruji Marg,
Dadar West, Mumbai 400 028.

PAN: AAEAS-1525-R

..... अपीलार्थी /Appellant

बनाम Vs.

ITO,Ward 21(3)(4), Mumbai/

ITO, Ward-22(3)(7), Mumbai.

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : Shri Ajay Wadke

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

These two appeals by the assessee are directed against the order of Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [in short 'the CIT(A)'] for Assessment Years 2016-17 and 2017-18, respectively. Both the impugned orders are of even date i.e. 27/03/2023.

2. Since the grounds of appeal and the facts germane to the grounds in both appeals are identical, these appeals are taken up together for adjudication and are decided by this common order.

ITA No.1590/Mum/2023 - A.Y. 2016-17:

3. Shri Ajay Wadke appearing on behalf of the assessee submits that the assessee is a Co-operative Housing Society and is registered under the Maharashtra State Co-operative Societies Registration Act, 1960. During the period relevant to assessment year under appeal the assessee earned interest income of Rs.15,48,405/- from deposits with the Co-operative Banks. The assessee claimed deduction u/s. 80P(2)(d) of the Act on the said income. During the course of assessment proceedings the Assessing Officer denied the benefit of deduction u/s. 80P(2)(d) of the Act to the assessee on the ground that as per the provisions of section 80P(2)(d) of the Act, the assessee should have earned interest income from Co-operative Society and not a Co-operative Bank, interest received by the assessee is from the Co-operative Banks which do not fall within the definition of Co-operative Society as defined u/s.2(19) of the Act. The Assessing Officer further placed reliance on the decision in the case of Totgars Co-operative Sale Society Limited vs.ITO. 188 taxmann.com 282(SC) to hold that interest earned on deposits with Bank would not be eligible for deduction u/s. 80P of the Act as the said interest income is taxable under the head "Income from other sources". The Id. Authorized Representative of the assessee submitted that the Tribunal in various decisions has held that interest income received from deposits/investment with Co-operative Banks is eligible for deduction u/s. 80P(2)(d) of the Act. One of such decision by the Tribunal is in the case of Solitaire CHS Ltd. vs. PCIT in ITA No.3155/Mum/2019 for Assessment Year 2014-15 decided on 29/11/2019.

4. Per contra Shri Sunny Kachhwaha representing the Department vehemently defended the impugned order and prayed for dismissing appeal of assessee. The Id. Departmental Representative submitted that CIT(A) has upheld the findings of Assessing Officer and has placed reliance on various decision including decisions rendered by Hon'ble Supreme Court of India. The Ld. Departmental Representative vehemently placed reliance on the impugned order and prayed for dismissing appeal of the assessee.

5. Both sides heard, orders of authorities below examined. The short issue assailed in appeal is denial of deduction u/s. 80P(2)(d) of the Act in respect of interest income received from investments/deposits with Co-operative Banks. Undisputedly, the assessee received interest amounting to Rs.15,48,405/- from investments with Co-operative Banks. The assessee has claimed deduction of the said amount u/s. 80P(2)(d) of the Act. Before proceeding further it would be imperative to refer to the provisions of said section:

“80P. (1) Where, in the case of an assessee being a co-operative society, the gross total income includes any income referred to in sub-section (2), there shall be deducted, in accordance with and subject to the provisions of this section, the sums specified in sub-section (2), in computing the total income of the assessee.

(2) The sums referred to in sub-section (1) shall be the following, namely:

xxxxxx

xxxxxx

xxxxxx

(d) in respect of any income by way of interest or dividends derived by the co-operative society from its investments with any other co-operative society, the whole of such income;”

A bare perusal of the above provisions would show that any income received by way of interest from investments with other Co-operative Society shall be

eligible for deduction for the purpose of section 80P of the Act. The Co-operative Society has been defined under section 2(19) of the Act to mean: -

"co-operative society" means a co-operative society registered under the Co-operative Societies Act, 1912 (2 of 1912), or under any other law for the time being in force in any State for the registration of co-operative societies"

The Co-operative Banks are the Co-operative Societies registered under the Co-operative Societies Act, 1912 or under any other relevant law for the time in force in any State for registration of Co-operative societies and are engaged in the business of Banking and related activities. Thus, before being a Co-operative Bank, they are the Co-operative Societies. A plain reading of section 80P(2)(d) would show that the requirement of the section is, interest derived by the Co-operative Society from investments with any other Co-operative Society. The condition set out in clause(d) to section 80P(2) is satisfied in the instant case. Therefore, I do not find merit in the findings of the authorities below holding that the interest income earned from Co-operative Bank is not eligible for deduction u/s. 80P(2)(d) of the Act.

6. The Assessing Officer has also placed reliance on the decision in the case of Totgars Co-operative Sale Society Limited vs.ITO(supra). The said case is distinguishable on facts. The issue before Hon'ble Apex Court in the said case was in respect of deduction claimed u/s. 80P(2)(a)(i) of the Act and not claim of deduction u/s. 80P(2)(d) of the Act, as is in the present case.

7. Thus, in the facts of the case , I find merits in the submissions of the assessee, the impugned order is set aside and the appeal of assessee is allowed .

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8. Both sides are unanimous in stating that the facts and the grounds of appeal(except amount of interest earned) are identical to assessment year 2016-17. Since, the facts are identical to the appeal in assessment year 2016-17, the findings given while adjudicating the appeal of assessee for assessment year 2016-17 would mutatis mutandis apply to the present appeal.

9. In the result, appeal of assessee is allowed for parity of reasons.

10. To sum up, appeal of the assessee for assessment year 2016-17 and 2017-18 are 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 अग्रहितCopy 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)/
ITAT, Mumbai