

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“SMC” BENCH, MUMBAI**

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER &  
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER,**

**ITA No.3852/Mum/2023  
(A.Y. 2018-19)**

The Mangalorean Garden Homes Co-operative Housing Society Limited, Rebello House, 132, Hill Road, Bandra (West), Mumbai – 400050	Vs.	ITO Ward 23(3) Piramal Chamber Mumbai - 110001
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No:AAAAT3420G		
Appellant	..	Respondent

Appellant by :	Subhash S. Shetty
Respondent by :	Manish Ajudiya

Date of Hearing	04.03.2024
Date of Pronouncement	07.03.2024

आदेश / ORDER

**Per Amarjit Singh (AM):**

This appeal filed by the assessee is directed against the order passed by the Id. CIT(A) NFAC, dated 04.09.2023 for A.Y. 2018-19. The assessee has raised the following grounds before us:

- “1. The order passed by the learned Commissioner of Income-tax (Appeals), National Faceless Appeal Centre, dismissing the appeal of the Appellant and confirming the order of the assessing officer is illegal, bad in law, contrary to the express provisions of the Act and therefore unsustainable in law and facts.*
- 2. The learned Commissioner of Income-tax (Appeals) committed a gross error of law and fact in confirming the order of the assessing officer disallowing the claim of deduction of Rs.46,67,607/- under section 80P(2)(d) on the ground that appellant has failed to submit its return of income within the stipulated time allowed under section 139(1) of the Act.*
- 3. The learned Commissioner of Income-tax (Appeals) committed a gross error of law and fact in not appreciating the fact that the return of income*

*filed by the appellant on 26-09-2018 is within the time prescribed under section 139(1) Explanation 2 clause (a) sub-clause(ii) where in the person (other than a company) whose accounts are required to be audited under this Act or under any other law for the time being in force, is required to file the return by 31-10-2018*

4. *The learned Commissioner of Income-tax (Appeals) grossly erred in not appreciating that the appellants accounts being audited as required under the Co-operative Societies Act, the return of income of the appellant is required to be filed by 31-10-2018 as prescribed under section 139(1) Explanation 2 clause (a) sub-clause (ii) of the Act. and consequently there cannot be denial of deduction claimed by the appellant under section 80P(2)(d) of the Act.*
5. *The learned Commissioner of Income-tax (Appeals) committed a gross error of law and facts in coming to his impugned erroneous conclusion by relying upon case laws which has no application to the facts of the appellant.*
6. *The learned Commissioner of Income-tax (Appeals) grossly erred in upholding the conclusion of the assessing officer without appreciating the fact that the assessing officer came to his erroneous impugned conclusion without giving any notice or any other opportunity to the appellant to justify its stand.*

*Appellant craves leave to add, alter or amend the above grounds of appeal.”*

2. Fact in brief is that assessee has filed return of income electronically on 26.09.2018 declaring total income at Rs.nil after claiming deduction u/s 80P(2)(d) of the Act in respect of interest income earned from the deposit maintained with the cooperative bank. The assessment u/s 143(3) of the Act was finalised on 22.02.2021 and the AO has disallowed the claim of deduction u/s 80P(2)(d) of the Act on the ground that assessee has failed to submit its return of income within the stipulated time provided u/s 139(1) of the Act.

3. The assessee filed the appeal before the ld. CIT(A). Before the ld. CIT(A) the assessee has submitted that in its case the due date of filing the return of income was 31<sup>st</sup> October not 31<sup>st</sup> July for the relevant year under consideration because assessee was required to get its books of account audited under Maharashtra Cooperative Society Act 1960. However, the ld. CIT(A) has dismissed the appeal of the assessee holding that assessee has not submitted any documentary evidences to

establish that it was mandatory to get the books of audited under Maharashtra Cooperative Society Act 1960.

4. During the course of appellate proceedings before us the Id. Counsel contended vehemently that the due date for filing the return of income in the case of the assessee was 31.10.2018 since the assessee was required to get its account audited under the Cooperative Society Act. He referred provision of Sec. 139(1) explanation 2 clause (a)(ii) of the Act. The Id. Counsel has also filed copy of Maharashtra Cooperative Society Act 1960 and Rules 1961. He also furnished copy of audit report dated 25.07.2018 of the chartered accountant prepared in accordance with Maharashtra Cooperative Society Act 1960 and Rules therein.

On the other hand, the Id. D.R supported the order of lower authorities.

5. During the course of assessment the assessing officer observed that due date for filing the return of income as per provision of Sec. 139(1) in the case of the assessee was 31.08.2018. However, the assessee has filed return of income on 26.09.2018, therefore, deduction claimed by the assessee u/s 80P(2)(d) of the Act was disallowed on the ground that assessee has failed to submit its return of income within the stipulated time period u/s 139(1) of the Act. Before us the Id. Counsel submitted that in the case of the assessee the return of income is required to be filed by 31.10.2018 as prescribed u/s 139(1) explanation 2 clause (1)(ii) of the Act because accounts of the assessee are required to be audited mandatory under the provision of Maharashtra Cooperative Society Act 1960 and Rules 1961. The explanation 2 of Sec. 139(1) is reproduced as under:

*“Explanation 2-In this sub-section, "due date" means,-  
(a) where the assessee "[other than an assessee referred to in clause (aa)]  
is-*

*(i) a company [\*\*\*]; or*

- (ii) *a person (other than a company) whose accounts are required to be audited under this Act or under any other law for the time being in force; or*
- (iii) *a [\*\*\*] partner of a firm whose accounts are required to be 'audited under this Act or under any other law for the time being in force for the spouse of such partner if the provisions of section 5A applies to such spouse],*
- the "[31st day of October] of the assessment year,*
- (aa)*in the case of an assessee '[, including the partners of the firm or the spouse of such partner (if the provisions of section 5A applies to such spouse), being such assessee,] [who] is required to furnish a report referred to in section 92E, the 30th day of November of the assessment year,]*
- (b) *in the case of a person other than a company, referred to in the first proviso to this sub-section, the 31st day of October of the assessment year,*
- (c) *in the case of any other assessee, the 31st day of July of the assessment year."*

We have perused the copy of Maharashtra Cooperative Society Act 1960 and noticed that as per Sec. 81 of the Act, the Cooperative Society shall caused to be audited its accounts at least once in each financial year and in the Maharashtra Cooperative Society Act 1960 and Rules 1961 procedure for appointment of auditor and conducting of audit is prescribed under Rule 69 of the Societies Rules 1961. The assessee has duly got its account audited under the Maharashtra Cooperative Society Act 1960 as per the copy of audit report dated 25.07.2018 on the prescribed form in accordance with section 81 and Rule 69(3) of the Act from the chartered accountant. The assessee has also filed copy of intimation u/s 143(1) of the Act for the succeeding assessment year 2019-20 wherein on similar facts the assessee has filed return of income on 21.09.2019 and the claim of deduction u/s 80P was allowed. Since it is mandatory for the assessee to get its account. Audited from the independent Auditor as provided in the Maharashtra Co-operative Societies Act 1960 therefore the due date of filing return of income as prescribed in provision of Section 139(1) explanation 2 clause (a)(ii) of the Act in the case of the assessee was 31.10.2018. Therefore, we

consider that the AO is not justified in denying the claim of deduction u/s 80P(2)(d) of the Act in view of the provision of Explanation 2 to Sec. 139(1) of the Act. Therefore, we direct the AO to allow the claim of deduction of 80P(2)(d) filed by the assessee, therefore, ground no. 2 to 6 of the appeal of the assessee are allowed.

6. Ground no. 1 is general in nature which is not required any adjudication therefore the same stand dismissed.

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

Order pronounce in the open court on 07.03.2024

Sd/-

(Kuldip Singh)  
Judicial Member

Sd/-

(Amarjit Singh)  
Accountant Member

Place: Mumbai

Date 07.03.2024

Rohit: PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,  
Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//  
आदेशानुसार/ BY ORDER,

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