

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

**BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER,**

ITA No.4483/Mum/2023 (AY 2017-18)

Rekab Co-operative Hsg. Society Ltd. Plot No. 730, E S Patanwala Marg, Ghodapdeo Mumbai 400033	Vs.	Income Tax Officer 20(3)(1) Piramal chambers Mumbai
PAN/GIR No. :AAABR0111M		
Appellant	..	Respondent

Appellant by :	Shri Marlon Rego& Shri Amir H. Bhora
Respondent by :	Shri Krishna Kumar, JCIT

Date of Hearing	09.05.2024
Date of Pronouncement	16.05.2024

आदेश / O R D E R

PER AMARJIT SINGH, AM:

This appeal filed by the assessee is directed against the order passed by the CIT(A)-2, Vadodara, which in turn arises from the assessment order dated 04.02.2019 passed by the A.O u/s 143(1) of the Income Tax Act, 1961 (the Act), dated for AY 2017-18. The assessee has assailed the impugned order on the following grounds before us:

- “1. On the basis of facts and circumstances of the case and in law, the order u/s 250 passed by the Hon'ble Commissioner of Income tax (Appeals) is bad in Law and against the principle of natural justice therefore needs to be quashed.*

2. *On the basis of facts and circumstances of the case and in law, the Hon'ble Commissioner of Income tax (Appeals) erred in holding that the delay in filing the appeal is not condoned and appeal stands dismissed. The appellant prays that the delay be condoned and appeal should be taken up for hearing.*
3. *On the basis of facts and circumstances of the case and in law, the Hon'ble Ld. Commissioner of Income tax (Appeals) failed to appreciate that the reason for late filling appeal was due to technical procedure involved in rectifying the mistake u/s 154 and delay in grievances reply on portal.*
4. *On the basis of facts and circumstances of the case in law, the Hon'ble Ld. Commissioner of Income Tax (Appeals) erred in dismissing the appeal even after issuing notice U/s 250 for hearing of the appeal.*
5. *On the basis of facts and circumstances of the case in law, the Hon'ble Ld. Commissioner of Income Tax (Appeals) erred in not allowing deduction u/s 80P(2)(d) of Rs.8,07,635/- on merit. The appellant prays that the same may kindly be heard and allowed.”*

2. The facts in brief are that the assessee has filed return of income on 05.08.2017 and claimed deduction u/s. 80P under Chapter VIA of the Act of an amount of Rs.8,07,635/-. The return was processed by the CPC, Bangalore u/s. 143(1) of the Act on 04.02.2019 and disallowed the claim of deduction u/s. 80P of the Act.

3. Aggrieved the assessee filed appeal before the CIT(A) in support of its claim of deduction u/s. 80P(2)(d) of interest of Rs. 8,07,635/- earned from fixed deposit maintained with Mumbai District Central Co-op Bank Ltd. and Saraswat Co-op Bank Ltd. The assessee also submitted that in its own case similar deduction was allowed by the Id. CIT(A)-32 wide order dated 22.05.2019 for AY 2014-15. However, the Id. CIT(A) dismissed the appeal of the assessee holding that there was delay in filing the appeal beyond the due date prescribed under law.

4. Heard both the sides and perused the material on record. We have decided identical grounds, raised by the assessee in AYs 2013-14 and 2015-16 in ITA Nos. 4481 & 4482/Mum/2023. The relevant extract of the decision is reproduced as under:

“6. Heard both the sides and perused the material on record. The claim of deduction u/s. 80P(2)(d) in respect of interest income earned from the deposit maintained with the co-operative bank was disallowed while processing of the return of income u/s. 143(1) of the Act. As reported in the affidavit the assessee has filed Grievance and Rectification for not allowing the impugned deduction u/s. 80P(2)(d) of the Act as the interest received from the co-operative bank. The assessee has also placed the copies of the Rectification application filed u/s. 154 of the Act and the related correspondence in the paper book. On non disposal of the pending Rectification Application, the assessee had also filed grievances on the online portal of the Department. However, the Assessing Officer, Ward 20(3)(1), Mumbai vide letter dated 12.07.2019 placed in the paper book instead of disposing the pending rectification application of the assessee has requested the assessee to file appeal with the CIT(A). We find all these facts were reported by the assessee in the Form No. 35 of the appeal filed before the CIT(A), and also incorporated in the submission of the assessee made during the course of appellate proceedings before the First Appellate Authority as mentioned at pages 3 & 4 of the appellate order. The ld. Addl. CIT/JCIT(A) has failed to consider these material available on record. The Hon’ble Supreme Court in the case of Collector of Land Acquisition v. Mst. Katiji and others, Civil Appeal No. 960 of 1987 dated 19.02.1987 held that sufficient cause for the purpose of condonation of delay should be interpreted with a view to do even handed justice on merit in preference to the approach which scuttle the decision on merits. Therefore, we find merit in the submission of the assessee and the delay in filing these appeals before the ld. CIT(A) is condoned. The assessee has also made detailed submission before the First Appellate Authority vide letter dated 21.09.2023 on the allowability of deduction of Rs. 9,45,402/- in respect of interest earned from the fixed deposit maintained with the co-operative banks. The assessee has also discussed the related judgement in its submission which the ld. Addl. CIT/JCIT (Appeal) has produced at pages 5 to 9 of her

appellate order. In its submission made before the Addl/JCIT (A) the assessee has also provided the details pertaining to the claim of deduction u/s. 80P(2)(d) allowed by the CIT(A) for AY 2014-15.

7. *In view of the above facts reported in the material placed as record it is evident that the assessee has received interest income of Rs.9,45,402/- (i.e. Rs.6,23,877 from FDR with Mumbai District Central Co-op. Bank and Rs.3,21,525/- from FDR with Saraswat Co-op. Bank Ltd.)*

8. *On the similar facts and issued in the various decisions of the ITAT Mumbai Benches it is held that claim of deduction u/s. 80P(2)(d) in respect of interest earned from investment made in the co-operative bank is allowable. Some of the decisions of the ITAT where the claim of deduction u/s. 80P(2)(d) was allowed on the interest earned from deposit with co-operative bank are as under: -*

- (i) Mittal Park Cooperative Housing Society Ltd. Vs. Asst. Director of Income Tax, Mum, W(125) (95) CPC, Bengaluru, (Ld. ADIT).*
- (ii) Mittal Park Cooperative Housing Society Vs. ITO, Ward 25 (3)(1), Mumbai.*
- (iii) Kaliandas Udyog Bhavan Premises Coop Society Ltd. Vs ITO 21(1)(2).*
- (iv) Aqua Cooperative Housing Society Limited Vs ITO 21(1)(2).*
- (v) Sea Green Cooperative Housing Society Ltd. Vs. ITO 21(3)(2).*
- (vi) Lands' End Cooperative Housing Society Ltd. Vs. ITO 16(1)(3).*
- (vii) The Nutan Laxmi Chs Ltd. Mumbai Vs. ITO 19(2)(4).*
- (viii) M/s Palmera Cooperative Housing Society Ltd. Vs. ACIT, 19(2).*

9. *In the case of Kaliandas Udyog Bhavan Premises Co-op. Society Ltd. vs. ITO vide ITA No. 6547/Mum/2017 dated 25.04.2018 it is held that though the cooperative bank pursuant to the insertion of subsection (4) of Sec. 80P is no more be entitled for claim of deduction u/s 80P of the Act, but however, as a cooperative bank continued to be a cooperative society registered under the Cooperative Society Act, therefore, the interest income earned by a cooperative society from its investment held that cooperative bank would be entitled for claim of deduction u/s 80P(2)(d), therefore, we direct the AO to allow the claim of deduction to the assessee in respect of interest earned from investment made with the cooperative bank, Therefore, the appeal of the assessee is allowed."*

5. Therefore, following our decision in earlier years supra we condone the delay in filing the appeal before the First Appellate Authority and claims of deduction u/s. 80(P)(2) is allowed after applying the findings in ITA 4481/Mum/2023 mutatis mutandis to this appeal of the assessee.

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

Order pronounced in the open court on 16.05.2024.

Sd/-
(VIKAS AWASTHY)
Judicial Member

Sd/-
(AMARJIT SINGH)
Accountant Member

Place: Mumbai
Date: 16.05.2024
n.p

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent.
3. आयकरआयुक्त(अपील) / The CIT(A)-
4. आयकरआयुक्त/ CIT
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण DR, ITAT,
Mumbai
6. गार्डफाईल / Guard file.

सत्यापितप्रति //True Copy//
आदेशानुसार/ BY ORDER,

उप/सहायकपंजीकार (Dy./Asstt. Registrar)
आयकरअपीलीयअधिकरण/ ITAT, Bench, Mumbai