

IN THE INCOME TAX APPELLATE TRIBUNAL

"F" BENCH, MUMBAI

BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER AND

SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA no.1473/Mum./2024

(Assessment Year : 2021-22)

**Johnson & Johnson Employees
Co-operative Credit Society Ltd**

Johnson & Johnson Pvt. Ltd, LBS
Marg, Mulund West,
Mumbai-400080
PAN- AABAJ4134C

..... Appellant

v/s

**Income Tax Officer
Ward-41(1)(3)**

Kautilya Bhawan, BKC, Bandra
East, Mumbai-400058

..... Respondent

Assessee by :Shri Jitendra Singh

Revenue by :Shri Surendra Meena

Date of Hearing – 10/06/2024

Date of Order – 19/06/2024

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The present appeal has been filed by the assessee challenging the impugned order dated 29/01/2024, passed under section 250 of the Income Tax Act, 1961 ("*the Act*") by the learned Commissioner of Income Tax (Appeals), Addl./JCIT(A)-1, Jaipur, [*learned CIT(A)*], for the assessment year 2021-22.

2. In its appeal, the assessee has raised the following grounds:–

"Non Grant of Deduction claimed under section 80P on account of interest and Investment Income

"1. erred in affirming the action of the Centralised Processing Center, Income Tax Department ("CPC-ITD") of not considering the deduction claimed of Rs.3,67,640 under section 80P of the Act.

2. erred in not appreciating the submission made by the Appellant that the said eligible deduction was not considered on account of Inadvertent error made while filing the Income Tax Return.

3. erred in holding that deduction can be claimed by filing revised return without appreciating the fact that time limit of filing revised return has already passed."

3. The brief facts of the case as emanating from the record are: The assessee is a co-operative credit society registered under the Maharashtra Co-operative Societies Act, 1960, and was formed to cater to the financial needs of its members. For the year under consideration, the assessee filed its return of income on 18/01/2022 declaring a total income at Rs.Nil after claiming deduction under section 80P of the Act. The return filed by the assessee was processed vide intimation dated 19/10/2022 issued under section 143(1) of the Act restricting the deduction claimed under section 80P(2)(d) of the Act to Rs.40,115 as against the original claim of Rs.4,07,859, and assessed the total income at Rs.3,67,740.

4. Before the learned CIT(A), the assessee submitted that the deduction claimed of Rs.4,07,859 has been restricted to Rs.40,115 on account of an inadvertent error in the return of income made by disclosing the items of income. The learned CIT(A), vide impugned order, dismissed the appeal filed by the assessee, and by placing reliance upon the decision of the Hon'ble

Supreme Court in Goetze (India) Ltd. v/s CIT, [2006] 284 ITR 323, held that the powers of the first appellate authority are coterminous with that of the assessing officer and the appellate authority cannot do what the Assessing Officers ought to have done. Being aggrieved, the assessee is in appeal before us.

5. We have considered the submissions of both sides and perused the material available on record. The only dispute raised by the assessee in the present appeal is against the denial of deduction claimed under section 80P(2)(d) of the Act in respect of interest income earned from the investments with Co-operative Banks. From the perusal of the record, we find that vide intimation issued under section 143(1) of the Act, the interest income of Rs.10,11,013 earned by the assessee from grant of loans to the members was allowed under section 80P(2)(a)(i) of the Act. Further, the interest income of Rs.40,115 from savings in Co-operative Bank was allowed under section 80P(2)(d) of the Act. However, the interest income of Rs.3,67,744 from fixed deposits in Co-operative Banks was disallowed under section 80P(2)(d) of the Act. The learned CIT(A) also did not grant any relief to the assessee by placing reliance upon the decision of the Hon'ble Supreme Court in Goetze (India) Ltd. (supra), as the assessee submitted that due to inadvertent error in the return of income by disclosing the items of income the deduction claimed of Rs.4,07,859 has been restricted to Rs.40,115.

6. At the outset, we find that Hon'ble Supreme Court in Goetze (India) Ltd. (supra) and Hon'ble jurisdictional High Court in CIT v/s Pruthvi Brokers and Shareholders Pvt. Ltd., [2012] 349 ITR 336 (Bom.) has held that the appellate

authority can entertain a fresh claim made by the assessee, even if such a claim was not made in return of income or by way of revised return of income.

7. Before proceeding further, it is relevant to note the provisions of section 80P of the Act under which the assessee has claimed the deduction in the present case. As per the provisions of section 80P(1) of the Act, the income referred to in sub-section (2) to section 80P shall be allowed as a deduction to an assessee being a co-operative society. Further, section 80P(2)(d) of the Act, reads as under:

"80P. Deduction in respect of income of co-operative societies.

(1)

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

(a)

(b)

(c)

(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;"

8. Thus, for the purpose of provisions of section 80P(2)(d) of the Act, two conditions are required to be cumulatively satisfied- (i) income by way of interest or dividend is earned by the co-operative society from the investments, and (ii) such investments should be with any other co-operative society. Further, the term "*co-operative society*" is defined under section 2(19) of the Act as under:

"(19) "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 ;"

9. In the present case, there is no dispute that the assessee is a Co-operative Society, which is engaged in providing credit facilities to its

members, and was formed to cater to the financial needs of its members. Thus, if any income as referred to in sub-section (2) to section 80P of the Act is included in the gross total income of the assessee, the same shall be allowed as a deduction. It is pertinent to note that since the assessee is registered under the Maharashtra Co-operative Societies Act, 1960, it is required to invest or deposit its funds in one of the modes provided in section 70 of the aforesaid Act, which includes investment or deposit of funds in the District Central Co-operative Bank or the State Co-operative Bank. Accordingly, the assessee kept the deposits in District Central Co-operative Banks and earned interest, which was claimed as a deduction under section 80P(2)(d) of the Act. It is pertinent to note that the Hon'ble Supreme Court in *Mavilayi Service Co-operative Bank Ltd. v/s CIT, Calicut*, [2021] 431 ITR 1 (SC) while analysing the provisions of section 80P(4) of the Act held that section 80P(4) is a proviso to the main provision contained in section 80P(1) and (2) and excludes only Co-operative Banks, which are Co-operative Societies and also possesses a licence from RBI to do banking business. The Hon'ble Supreme Court further held that the limited object of section 80P(4) is to exclude Co-operative Banks that function at par with other commercial banks i.e. which lend money to members of the public. Thus, we are of the considered view that section 80P(4) of the Act is of relevance only in a case where the assessee, who is a Co-operative Bank, claims a deduction under section 80P of the Act. We also find that in *PCIT v/s Annasaheb Patil Mathadi Kamgar Sahakari Pathpedi Ltd.* [2023] 150 taxmann.com 173 (SC), the Hon'ble Supreme Court held that a taxpayer who is merely giving credit to its members cannot be said to be the Co-operative Banks/Banks under the Banking Regulation Act and the banking

activities under the Banking Regulation Act are altogether different. Therefore, the Hon'ble Supreme Court held that the assessee, a co-operative credit society, could not be termed a bank/Co-operative Bank and that being a credit society, it was entitled to exemption under section 80(P)(2) of the Act. Thus, we find no basis in denial of deduction claimed under section 80P(2)(d) of the Act in respect of interest income earned from the investments with Co-operative Banks.

10. As regards the claim of deduction under section 80P(2)(d) of the Act, it is also pertinent to note that all Co-operative Banks are Co-operative Societies but vice versa is not true. We find that the coordinate benches of the Tribunal have consistently taken a view in favour of the assessee and held that even the interest earned from the Co-operative Banks is allowable as a deduction under section 80P(2)(d) of the Act. We find that the coordinate bench of the Tribunal in *Jansevak Co-operative Society Ltd. vs ITO*, in ITA Nos. 3229 & 3230/Mum./2022, vide order dated 23/02/2023 allowed the deduction claimed by the assessee under section 80P(2)(d) of the Act, by observing as under:-

"7. Hon'ble High Court of Karnataka in case of Pr. CIT & Anr. Vs. Totgar's Co-operative Sale Society Ltd. (2017) 292 ITR 74 (Kar.) and Hon'ble Gujarat High Court in case of State Bank of India vs. CIT (2016) 389 ITR 578 (Guj.) had also held that interest income earned by a co-operative society on its investment held with co-operative bank would be eligible for claim of deduction under section 80P(2)(d) of the Act. We are of the considered view that the Ld. CIT(A) has erred in upholding the denial of deduction by the AO to the assessee under section 80P(2)(d) of the Act.

8. So following the decision rendered by Hon'ble Karnataka High Court (supra) and Hon'ble Gujarat High Court (supra) and order passed by the coordinate Bench of the Tribunal discussed in preceding paras, we are of the considered view that assessee society who has earned an amount of Rs.16,76,460 and Rs.87,93,570/- for A.Y. 2013-14 and A.Y. 2018-19 respectively from its investment of surplus fund parked with co-operative banks is entitled for deduction under section 80P(2)(d) of the Act.

9. In view of what has been discussed above, we are of the considered view that the Ld. CIT(A) has erred in upholding the denial of deduction by the AO to the assessee society claimed under section 80P(2)(d) of the Act, hence, AO is directed to allow the same."

11. Therefore, in view of the aforesaid findings, we uphold the plea of the assessee and direct the AO to grant deduction under section 80P(2)(d) of the Act to the assessee in respect of interest income earned from investment with Co-operative Banks. Accordingly, we set aside the impugned order passed by the learned CIT(A). As a result, the grounds raised by the assessee are allowed.

12. In the result, the appeal by the assessee is allowed.

Order pronounced in the open Court on 19/06/2024

Sd/-
B.R. BASKARAN
ACCOUNTANT MEMBER

MUMBAI, DATED: 19/06/2024

Vijay Pal Singh, (Sr. PS)

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The PCIT / CIT (Judicial);
- (4) The DR, ITAT, Mumbai; and
- (5) Guard file.

True Copy

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

By Order

Assistant Registrar
ITAT, Mumbai