

IN THE INCOME TAX APPELLATE TRIBUNAL "SMC" BENCH, MUMBAI

BEFORE PRASHANT MAHARISHI, AM

ITA No. 434/Mum/2024
(Assessment Year: 2015-16)

Ashok Tower "D" Co Op Housing Society Ltd. Cs No. 63/74/07 Parel Sewri Division, DR B. A. Road, Parel, Mumbai-400012 (Appellant)	Vs.	ITO Ward 20(1)(2) Piramal Chambers, Dr. SS. Rao Marg, Parel, Mumbai-400012 (Respondent)
PAN No. AADAA0962B		

Assessee by : Shri Virendra Mishra
Revenue by : Shri R. R. Makwana

Date of hearing: 03.06.2024
Date of pronouncement 21.06.2024
:

ORDER

PER PRASHANT MAHARISHI, AM:

01. This appeal is filed by Ashok Tower D Cooperative Housing Society Limited (the assessee/appellant) against the appellate order passed by The Additional Commissioner Of Income Tax (Appeals) – 7, Kolkata (the learned CIT – A) dated 4/1/2024 for assessment year 2015 – 16 wherein the appeal filed by the assessee against the assessment order passed under section 143 (3) of The Income Tax Act, 1961 (the act) by The Income Tax Officer Ward – 20 (1) (2) Mumbai (the learned AO) was dismissed.

02. The assessee aggrieved with that appellate order has preferred appeal raising following grounds: –
- a. *In the facts and circumstances of the case and in law, the Assessing Officer erred in assessing the total income of Rs. 14,72,930/- as against returned income of Nil/- and thereby made addition to the tune of Rs. 14,72,930/-.*
 - b. *In the facts and circumstances of the case and in law, the learned NFAC has stated in the order that legislature intends to exclude co-operative banks from the definition of co- operative society under section 2 (19) of the Income Tax Act, 1961 which is not correct. All co-operative banks need to register themselves as co-operative society first before obtaining the license to operate as banks from RBI.*
 - c. *In the facts and circumstances of the case and in law, the assessing officer erred in disallowing deduction u/s.80P(2)(d).*
 - d. *In the facts and circumstances of the case and in law, the learned CIT(A) NFAC erred in confirming the addition by rejecting all the grounds of appeal.*
03. Thus the only issue in this appeal is whether assessee is entitled to deduction under section 80 P (2) (D) of the act or not.
04. Brief facts of the case shows that that assessee is a cooperative housing society, filed its return of income on 29/9/2015 at total income of Rs nil. The assessee claimed deduction of ₹ 50,000 under section 80 P of the act. The return was processed under



section 143 (1) of the Act, subsequently selected for scrutiny by issue of notice under section 143 (2) of the act.

05. During the course of assessment proceedings it was found that the assessee has earned interest income of ₹ 1,472,930 from its investment with cooperative banks which has not been offered for tax under the head income from other sources. The claim of the assessee is that same interest income is eligible for deduction under section 80 P (2) (d) of The Income Tax Act. The learned assessing officer issued show cause notice to the assessee that why the interest income of ₹ 1,472,931 should not be disallowed and added back to the total income of the assessee. Reason for issue of the show cause notice is that according to the learned assessing officer the investment is made in cooperative banks and they do not qualify as a cooperative society. The assessee submitted its reply on 13/4/2017 contesting that assessee is eligible for deduction under that section because the assessee has invested in a cooperative bank which are also cooperative societies and income earned from that from another cooperative society is eligible for deduction. The learned AO rejected the explanation of the assessee and stated that cooperative societies as defined under section 2 (19) of the act does not support the case of the assessee and therefore the interest income earned by the assessee of ₹ 1,472,931 is not eligible for deduction because these banks are neither cooperative society. It was further stated that as per the finance act 2006 deduction from income of cooperative banks as per provisions of section 80 P of the act has been withdrawn by way of insertion of section 80 P (4) of the act with effect from 1/4/2007. Accordingly the learned assessing officer disallowed the above deduction and computed the total income they assessee at a loss of ₹ 623,480 as per

assessment order passed under section 143 (3) of the act dated 20/11/2017.

06. Assessee aggrieved with the assessment order preferred appeal before the learned CIT – A which was delayed. The learned CIT – A, condoned the delay and decided the issue on the merits of the case. The learned CIT – A rejected the explanation of the assessee which was also before the learned AO that deduction by way of interest on dividend is allowed only when the cooperative society investment is made in another cooperative society and cooperative banks are not cooperative societies. Therefore assessee's investment in cooperative banks earning dividend income or interest income is not eligible for deduction under section 80 P (2) (d) of the act. The learned CIT – A further referred to the provisions of section 80 P (4) of the act and as well as the definition of cooperative society under section 2 (19) of the act. Therefore he held that there is no ambiguity in this issue and the assessee has invested in different cooperative banks and earned interest thereon is not eligible for deduction under section 80 P (2) (d) of the act. Thus he confirmed the action of the AO.
07. Assessee is aggrieved with that and is in appeal before us. Shri Virendra Mishra from the side of the assessee submitted that assessee's investment is eligible for deduction of section 80 P (2) (d) of the act.
08. The learned senior DR vehemently supported the order of the learned lower authorities and submitted that assessee is not eligible for deduction under section 80 P (2) (d) of the act. It was stated that the investment is made in the cooperative banks and not operative societies and therefore the orders of the lower authorities are sustainable.



09. We have heard the rival contentions and perused the orders of the lower authorities. The simple controversy involved in this appeal is that assessee is a co-operative society, has placed certain funds with cooperative banks and earned interest thereon of ₹ 1,472,930/-. The claim of the assessee is that deduction is available under section 80 P (2) (d) of the act to the assessee.
010. According to the provisions of section 80 P in case of a cooperative society the gross total income if it includes the income referred to in is subsection (2) then same shall be granted as a deduction subject to the conditions and to the extent of amount specified from the total income. In subsection 2, clause (d) provides that in respect of income by way of interest on dividend derived by the cooperative society from its investment with any other cooperative society the whole of such income is eligible for deduction. Therefore if the cooperative society makes any investment in another cooperative societies and consequently on any interest or dividend earned from such investment total sum so earned is eligible for deduction.
011. The controversy involved here is that the argument of the revenue is that when the assessee has made an investment in another cooperative society only then this deduction is allowable. Therefore according to the AO if the amount is not investment in a cooperative society, the deduction is not eligible. The revenue says that the amount is investment in a cooperative bank which is different from cooperative societies or those are not cooperative societies and therefore the assessee is not entitled to deduction under section 80 P (2) (d) of the Act.

012. Section 2 (19) of the act defines cooperative society means a cooperative society registered under the cooperative societies act, 1912 or under any other law for the time being in force in any State for the registration of cooperative societies. Thus if the cooperative banks are falling into the definition of 'cooperative societies', naturally the deduction would be eligible to the assessee under section 80 P (2) (d) of the act. Therefore it needs to be examined that whether the cooperative banks are operative societies under section 2 subsection (19) of the act are not.
013. Section 2 (10) of the Maharashtra cooperative societies act defines "Co-operative bank" **means a Co-operative society** which is doing the business of banking as defined in clause (b) of sub-sections (1) of section 5 of the Banking Companies Act, 1949 and includes any society which is functioning or is to function as an Agricultural and Rural Development Bank under Chapter XI; Therefore according to the above definition, the cooperative banks are also cooperative society.
014. Thus, though the assessee has referred to several judicial precedents, even after considering those precedents, which also holds the same view, we do not have any hesitation to hold that the amount of investment made by the assessee with cooperative banks in Maharashtra are also investment made in cooperative society.
015. Thus, on plain reading of the sections of the income tax act it is clear that if assessee has made an investment in fixed deposit receipts or in savings bank account, interest earned thereon is eligible for deduction under section 80 P (2) (d) of the act. The words of the statute are plain and clear and there is no room for applying any of the principles of interpretation. We are



supposed to interpret them as they stand. It is not the claim of the revenue that assessee is not a cooperative society.

016. In the result, the orders of the lower authorities are reversed and the learned AO is directed to grant deduction to the assessee on interest income earned from cooperative banks u/s 80 P (2) (d) of The Act.

017. In the result, Appeal of the assessee is allowed

Order pronounced in the open court on 21.06.2024.

Sd/-
(PRASHANT MAHARISHI)
(ACCOUNTANT MEMBER)

Mumbai, Dated: 21.06.2024

Sudip Sarkar, Sr.PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

BY ORDER,

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Mumbai