

IN THE INCOME TAX APPELLATE TRIBUNAL
Mumbai "SMC" Bench, Mumbai.

Before Shri Prashant Maharishi (AM)

I.T.A. No. 4798/Mum/2023 (A.Y. 2021-11)

Rehanabad Co- operative Housing Society Limited 8, Rehanabad Housing Society Limited Spence Road, Byculla Mumbai-400 008.	Vs.	ITO, Ward-24(1)(1) Piramal Chamber Mumbai.
---	-----	---

PAN : AAAAR4330D
(Appellant)

(Respondent)

Assessee by
Department by
Date of Hearing
Date of Pronouncement

Ms. Ritu Punjabi
Shri R.R. Makwana
04.06.2024
24.06.2024

O R D E R

1. This appeal is filed by Rehanabad cooperative housing society Ltd, Mumbai (the assessee/appellant) for assessment year 2021 – 22 against the appellate order passed by The Additional Commissioner/Joint Commissioner Of Income Tax (A) Indore (the learned CIT – A) dated 31/10/2023 wherein the appeal filed by the assessee against intimation under section 143 (1) of The Income Tax Act, 1961 dated 19/10/2022 passed by the central processing Centre Bangalore [the ld. AO] wherein the assessee was denied the benefit of deduction under

section 80 P (2) (d) of the act of Rs. 510,497/- and on appeal it was confirmed.

2. Thus, the only grievance of the assessee is that the CIT – (A) erred in confirming the action of The Assistant Director of Income Tax, central processing Centre in denying the deduction of Rs. 510,497/- under section 80 P (2) (d) of the act.
3. Briefly, the fact is that assessee is a cooperative housing society. It filed its return of income on 18/12/2021 at a total income of Rs. 1,812,150/-. The assessee has claimed deduction under chapter VIA of the act of Rs. 560,497/- wherein the deduction of Rs. 50,000/- and a further deduction of Rs. 510,497/- was claimed u/s 80 O 92) (d) of the Act on account of interest received from the Maharashtra State Cooperative Bank Limited.
4. This return of income was processed by the central processing Centre on 19/10/2022 wherein the claim deduction of the assessee under chapter VIA was reduced from claim of Rs. 560,497/- to Rs. 50,000/- only. Thus, the deduction claimed by the assessee under section 80 P (2) (d) of Rs. 510,497 was denied.
5. Assessee preferred an appeal before the learned CIT – A who denied the deduction relying upon the decision of the honourable Supreme Court in case of Kerala State cooperative agricultural and rural development bank Ltd versus the assessing officer dated 14/9/2023. Further the

learned CIT – A was also of the view that interest income has been received by the assessee from the Maharashtra State cooperative bank which is scheduled bank and not a cooperative society. Thus, the assessee was denied the deduction under section 80 P (2) (B) of the act of Rs. 510,497 received as interest from the Maharashtra State cooperative bank.

6. Assessee aggrieved with that appellate order is in appeal before us.
7. The learned authorized representative vehemently submitted that.
 - i. The assessee is a co-operative society, and it has received interest from a cooperative bank which is also cooperative society and therefore the assessee is entitled to deduction under section 80 P (2) (d) of the act.
 - ii. that there is no provision u/s 143 (1) of The Act to make an adjustment with respect to the disallowance under section 80 P(2) (d) of the act , it is also not an incorrect claim and therefore the adjustment itself is invalid.
 - iii. in the case of the assessee for assessment year 2020 – 21 identical issues arose in ITA number 331/M/2023 wherein by order dated 27/4/2023 the assessee was allowed the deduction under section 80 PD of the act.

- iv. that the decision relied upon by the learned CIT – A of Kerala State cooperative agricultural and rural development bank Ltd of the honourable Supreme Court in (2023) (458 ITR 384) (SC) is in fact in favour of the assessee. Even otherwise that was the case of a cooperative agricultural and rural development bank Ltd, and the issue was whether the assessee is cooperative society is entitled to claim deduction of the whole of profits and gains of the business attributable to the business of banking or providing credit facility to its members who or all cooperative societies under section 80 P of the act. Therefore, the issue before the honourable Supreme Court also does not apply to the assessee.
8. The learned departmental representative vehemently supported the order of the learned lower authorities and submitted that assessee has earned interest income from Maharashtra State cooperative bank Ltd which is a scheduled bank and therefore the deduction under section 80 P (2) (D) is available only with the investment income received by the cooperative society from another cooperative society. Therefore, the assessee has rightly been denied the deduction.
9. We have carefully considered the rival contention and perused the orders of lower authorities. The issue that arises is that assessee has filed its return of income on 18 December 2021 declaring a gross total income of Rs.

2,372,649 and deduction under chapter VIA of Rs. 560,497/- under section 80 P of the act was claimed and net taxable income was disclosed at Rs. 1,812,115. This return of income was processed under section 143 (1) of the act on 19th October 2022 and the deduction of Rs. 510,497 claimed by the assessee under section 80 P (2) (D) of the act was denied and the income of the assessee was assessed at Rs. 2,322,650/-.

10. Thus, the first issue that arises before us is whether such an adjustment can be made under the provisions of section 143 (1) of the act or not. We find that under the provisions of section 143 (1) of the act following adjustments are permitted:-

(a)	the total income or loss shall be computed after making the following adjustments, namely:—
(i)	any arithmetical error in the return; ⁶⁸ [***]
(ii)	an incorrect claim if such incorrect claim is apparent from any information in the return;
⁶⁹ (iii)	disallowance of loss claimed, if return of the previous year for which set off of loss is claimed was furnished beyond the due date specified under sub-section (1) of section 139 ;
(iv)	disallowance of expenditure ⁷⁰ [or increase in income] indicated in the audit report but not taken into account in computing the total income in the return;
(v)	disallowance of deduction claimed under ⁷¹ [section 10AA or under any of the provisions of Chapter VI-A under the heading " <i>C.—Deductions in respect of certain incomes</i> ", if] the return is furnished beyond the due date specified under sub-section (1) of section 139 ; or
(vi)	addition of income appearing in Form 26AS or Form 16A or Form 16 which has not been included in computing the total income in the return:

11. In this case return is not filed beyond the due date prescribed under the provisions of section 139 of the act and therefore the disallowance of deduction claimed under chapter VIA for that reason cannot be made. It is also not the case of the learned assessing officer that it is an 'incorrect claim' made by the assessee as per explanation (a) of that section. Therefore, the disallowance of deduction under section 80 P (2) (d) of the act is not permitted adjustment under the provisions of section 143 (1) of the act. Therefore, the adjustment made by the central processing Centre, Bengaluru, in this case is beyond the powers and therefore such an intimation deserves to be quashed and hence quashed.
12. Even otherwise on the merits of the case the assessee is entitled to deduction under section 80 P (2) (d) of the act for the reason that assessee has placed the sum with the Maharashtra State cooperative bank which is also cooperative society as per Maharashtra cooperative societies act. Therefore, in terms of the provisions of section 80 (P) (2) (d) read with the provisions of section 2 (19) of the income tax act where the definition of cooperative societies is provided and further reading the same with respect to the Maharashtra cooperative societies act, it is apparently clear that the cooperative banks are also the cooperative societies under that act. Therefore, the assessee is eligible for a deduction of Rs. 510,497/- earned by the assessee cooperative society from the

investment made in another cooperative society i.e., Maharashtra state cooperative Bank Limited u/s 80 P (2) (d) of The Act.

13. This issue is further decided in favour of the assessee by the decision of the coordinate bench in assessee's own case for earlier assessment year wherein identical issue arose, therefore, this issue is also to be decided in favour of the assessee on that ground also.
14. The decision relied upon by the learned CIT – A of the honourable Supreme Court in (2023) 458 ITR 384 (SC) in case of Kerala State cooperative agricultural and rural development bank Ltd versus the assessing officer was on the issue of whether a state-level agricultural and rural development Bank government as a co-operative society under the Kerala cooperative societies act 1969 engaged in credit facilities to its members who are cooperative societies is eligible to claim deduction under section 80 P of the income tax act or not. The issue was not with respect to the deduction under section 80 P (2) (d) of the act. Therefore, the reliance by the learned CIT – A on that decision is misplaced.
15. Even otherwise the honourable Supreme Court in case of citizen cooperative society Ltd versus assistant Commissioner of income tax (2017) 397 ITR 1 (SC) has categorically held that the section 80 P of the act is a benevolent provision, which was enacted by the Parliament in order to encourage and promote the growth of the

cooperative sector generally in the economic life of the country and must therefore, be treated liberally and in favour of the assessee. Even otherwise if the strict interpretation of the law is made, the assessee is entitled to the deduction under section 80 P (2) (d) of the act with respect to the interest earned by the assessee on its investment with other cooperative banks who are in fact cooperative societies as per the Maharashtra State cooperative societies act.

16. Accordingly, the learned CIT – A is not correct in not allowing the assessee deduction under section 80 P (2) (d) of the act on such interest income. Hence the order of the learned CIT – A reversed, and the learned assessing officer is directed to grant the deduction to the assessee of Rs. 510,497/- under section 80 (P) (2) (d) of the income tax act. Accordingly ground number 1 of the appeal is allowed.
17. Accordingly appeal of the assessee is allowed.

Order pronounced in the open court on 24th June 2024.

Sd/-
(Prashant Maharishi)
Accountant Member

Mumbai : 24.06.2024

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai.
6. Guard File.

//True Copy//

PS

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai