

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

Before Shri Prashant Maharishi (AM)

I.T.A. No. 175/Mum/2024 (A.Y. 2012-13)
I.T.A. No. 176/Mum/2024 (A.Y. 2014-15)
I.T.A. No. 177/Mum/2024 (A.Y. 2016-17)

Vile Parle Model Cooperative Housing Society Ltd. A-7, Disha, Gulmohar Cross Road, 7 JVPD Scheme, Mumbai Maharashtra-400 049. PAN : AAAJV0060B (Appellant)	Vs.	ACIT, Ward-25(3)(5) Kautilya Bhavan Bandra Kurla Complex, Bandra East Mumbai-400 051. (Respondent)
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Assessee by	Shri Devenra Jain
Department by	Shri R.R. Makwana
Date of Hearing	03.06.2024
Date of Pronouncement	24.06.2024

ORDER

1. These are the three appeals filed by Vile Parle model cooperative housing society Ltd Mumbai(the assessee/appellant against the appellate order passed by the additional Commissioner of income tax (appeals) – 5, Kolkata (the learned CIT – A) for assessment year 2012-13, 2014-15 and 2016-17 on 22/11/2023 filed against the order passed under section 143 (1) of the income tax act by the central processing Centre not allowing the deduction to the assessee under section 80 P (2) (d) of the act on the interest earned on investment made by the assessee cooperative society with cooperative banks, were dismissed.
2. For assessment year 2012 – 13 the assessee filed its return of income on 22/8/2012 declaring a total income of rupees to lakhs 16,450. The

due date of filing of the return was 31/8/2012. This return was processed by an intimation under section 143 (1) of the income tax act 1961 on 1/3/2013 wherein total deduction claimed by the assessee under section 80P (2) (d) of Rs. 909,014 was not granted. Assessee preferred appeal before the learned CIT – A wherein the claim of the assessee was not accepted and the order of the central processing Centre was confirmed holding that interest income on from cooperative banks are exempt and the assessee's investment is not with cooperative banks. Therefore assessee is in appeal before us.

3. Assessee has made investment with Saraswat cooperative bank, Shamrao Vithal cooperative bank and Abhudaya Cooperative bank Limited. The first challenge of the assessee is that adjustment made under section 143 (1) (a) of the act is bad in law. Second challenges that even otherwise the assessee is entitled to deduction under section 80 P (2) (d) of the act.
4. The learned authorized representative reiterated his submissions made before the learned lower authorities.
5. The learned departmental representative vehemently supported the orders of the lower authorities.
6. We have carefully considered the rival contention and perused the orders of the lower authorities. Undisputedly the fact shows that assessee is a cooperative society. The due date for filing of the return as per intimation itself shows that it was 31/8/2012 and assessee has filed its return of income on 22/8/2012 therefore, the return of the assessee is in time.As per provisions of section 143 (1) (a) permits following adjustment to the total income of the assessee:-

143. ⁶⁷[(1) Where a return has been made under [section 139](#), or in response to a notice under sub-section (1) of [section 142](#), such return shall be processed in the following manner, namely:—

(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 "C.—Deductions in respect of certain incomes", 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;

8. The disallowance of deduction under chapter VI A can only be made under section 143 (1) (a) (v) of the act only on account of non-furnishing of return of income within the due date of filing of the return. This is not the reason.
9. Claim of the assessee cannot be said to be an incorrect claim in view of the explanation (a) which is as under:-

(a)	"an incorrect claim apparent from any information in the return" shall mean a claim, on the basis of an entry, in the return,—
(i)	of an item, which is inconsistent with another entry of the same or some other item in such return;
(ii)	in respect of which the information required to be furnished under this Act to substantiate such entry has not been so furnished; or
(iii)	in respect of a deduction, where such deduction exceeds specified statutory limit which may have been expressed as monetary amount or percentage or ratio or fraction;

10. It is not the case that deduction under section 80 P (2) (d) is a deduction provided by any monitoring limit or percentage ratio or fraction. Thus, claim of deduction under section 80 P (2) (d) is also not classified as incorrect claim.

11. Thus, the adjustment of disallowance of deduction under that section is not permissible adjustment provided under section 143 (1) of the act. Therefore the intimation passed under section 143 (1) is not sustainable.
12. On the merits of the case, provisions of section 2 (19) define a co-operative society as under:-

19)	"co-operative society" ⁹² 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 ;
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13. Thus, for the definition of the cooperative society whether covers the cooperative banks are not one has to look at the respective cooperative societies act is applicable.
14. THE MAHARASHTRA CO-OPERATIVE SOCIETIES ACT, 1960, Defines cooperative banks as per section 2 (10) of that Act as under :”-
“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 X.
15. Thus it is apparent that cooperative banks are also a co-operative society. Only difference is that those cooperative societies are doing the business of banking as per the banking companies act 1949. Therefore, merely because these cooperative societies cooperative bank they do not lose their status as a co-operative society.
16. According to the provisions of section 80 P (2) (d) of the income tax act

(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;
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17. Thus, the assessee’s investment of earning interest income from such cooperative banks which are also cooperative societies whole of such income is deductible under this section.

18. It is not in dispute that assessee is not a cooperative bank and therefore provisions of section 80 P (4) of the act does not apply to it.
19. Thus the assessee is eligible for deduction under section 80 P (2) (d) of the act on its income received from all the above cooperative banks. Hence assessee is eligible for that deduction amounting to Rs. 909,014/-.
20. Accordingly solitary ground of appeal in ITA number 175/M/2024 for assessment year 2012 – 13 is allowed. Accordingly appeal for that year is also allowed.
21. For assessment year 2014 – 15 in ITA number 176/M/2024 identical claim of Rs. 1,766,674/- and in ITA number 177/M/2024 for assessment year 2016 – 17 of Rs. 2,042,250/- are also allowable to the assessee, as there is no change in the facts and circumstances of the case. Accordingly solitary ground in those appeals and consequent those appeals are also allowed.
22. Accordingly, all the three appeals filed by the assessee are allowed.

Order pronounced in the open court on 24 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//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai

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