

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

Before Shri Prashant Maharishi (AM)

I.T.A. No. 252/Mum/2024 (A.Y. 2020-21)

Vasant Galaxy Co-op Association Limited VGA Society Office Vasant Galaxy Complex Bangur Nagar Goregaon West Mumbai-400 104. PAN : AAAAV6398P (Appellant)	Vs.	ITO, Ward 41(4)(2) Mumbai. (Respondent)
--	-----	--

Assessee by	None
Department by	Shri R.R. Makwana
Date of Hearing	12.06.2024
Date of Pronouncement	27.06.2024

ORDER

1. This appeal is filed by Vasant Galaxy cooperative Association Ltd against the appellate order passed by the National faceless appeal Centre (NFAC), Delhi (the learned CIT – F for assessment year 2020 – 21 dated 26/11/2023 wherein the appeal filed by the assessee against the rectification order passed under section 154 of the income tax act, 1961 (the act) passed on 11/1/2022 by the central processing Centre Bangalore, was dismissed.
2. The solitary issue in this appeal is that assessee has been denied Deduction of Rs. 696,002/- Under section 80 P (2) (d) of the act.
3. Brief facts of the case shows that assessee is registered cooperative society with the registrar of cooperative societies Mumbai under the Maharashtra cooperative societies act 1960. Assessee filed its return of income under section 139 (1) of the act on 8 December 2020 declaring a total income of Rs. 1,167,150. The income consisting of interest on

from bank deposits of Rs. 696,002/- from cooperative banks. On this sum the assessee claim deduction under section 80 P (2) (d) of the act. When the return of income was processed under section 143 (1) of the act on 23 December 2021 the above deduction was denied to the assessee. The assessee preferred an application under section 154 of the act for rectification of the above mistake. This application was rejected on 11 January 2022.

4. The assessee preferred an appeal before the learned CIT – A contesting that the rectification order passed by the central processing Centre is bad in law and further the assessee should be granted deduction of Rs. 696,002/- under section 80 P (2) (d) of the act. The learned CIT – A rejected the claim of the assessee and dismissed the appeal. Therefore assessee is in appeal before us.
5. The learned authorized representative submitted a paper book containing 56 pages wherein he relied upon several judicial precedents submitting that the assessee should be eligible for the above deduction and further no such adjustment under section 143 (1) of the act can be made and further the rectification application disposed of by the central processing Centre is without giving any opportunity to the assessee and therefore same is also bad.
6. The learned departmental representative vehemently submitted that the learned CIT – A has dealt with the issue by relying upon the several judicial precedent and dismiss the appeal of the assessee therefore there is no infirmity in the same.
7. We have carefully considered the rival contention and perused the orders of the lower authorities.
8. 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 15/02/2021 and assessee has filed its return of income on 8/12/2020 therefore, the return of the assessee is in time.

9. 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.— <i>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:

10. 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.
11. 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;

12. 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.
13. 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.
14. On the merits of the case, provisions of section 2 (19) define a co-operative society as under:-

19)	"co-operative society" ⁹⁷ 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 ;
-----	---

15. 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.
16. 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.
17. 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.
18. 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;
-----	--

19. 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.
20. 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.
21. 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. 6,96,002/-. Accordingly the order of the learned CIT – A reversed.
22. In the result appeal filed by the assessee is allowed.

Order pronounced in the open court on 27th June, 2024.

Sd/-
(Prashant Maharishi)
Accountant Member

Mumbai :27th.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

PS