

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

BEFORE PRASHANT MAHARISHI, AM

ITA No. 239/Mum/2024

(Assessment Year: 2021-22)

B2345 Vikas Complex Hsg.
Soc. Ltd.
Seveno, 43,46,46 Vikas
Complex Castle Mill
Compound Mumbra Road,
Thane west-400601

Vs.

CPC, Income Tax
Department,
Post Bag No. 2, Electronic
City, Post Office,
Bangalore,
Karnataka-560100

(Appellant)

(Respondent)

PAN No. AAJVO231C

Assessee by : Shri Devendra Jain
Revenue by : Shri. R. R. Makhwana

Date of hearing: 03.06.2024
Date of pronouncement : 27/6/2024

ORDER

PER PRASHANT MAHARISHI, AM:

01. This appeal is filed by B2345 Vikas complex cooperative housing society Ltd (assessee/appellant) against the appellate order passed by the additional Commissioner of income tax (appeals) – 1, Jaipur (the learned CIT – A) for assessment year 2021 – 22 dated 15/12/2023 wherein the appeal filed by the assessee against the order under section 143 (1) of the income tax act, 1961 (the act) dated 25/10/2022 passed by the central processing Centre on 25/10/2022 was dismissed.
02. The assessee has raised following grounds of appeal: –

a. In the facts and circumstances of the case and in law, the Ld. CIT, Appeal Addl/JCIT(A) – 1 has erred in confirming the disallowance of deduction claimed of Rs. 6,04,396/- u/s 80P of the IT Act, 1961.

03. Brief facts of the case shows that assessee is a registered cooperative housing society filed its return of income on 30/12/2021 declaring a total income of ₹ 614,280/-. The return was processed under section 143 (1) (a) of the act on 25 – 10 – 2022 wherein the deduction under section 80 P (2) (D) amounting to ₹ 604,396/- claimed by the assessee in its return of income was not allowed. Assessee preferred an application under section 154 on 20/12/2022 for rectification of the mistake.
04. Assessee preferred an appeal before the learned CIT – A. The learned CIT – A noted that intimation under section 143 (1) of the act was passed on 25/10/2022 and this was sound on assessee on 27/10/2022 where the assessee has filed an appeal only on 2/3/2023 which is beyond the statutory lime limit provided for filing of the appeal. Thus the appeal of the assessee was delayed for more than 3 months. The assessee submitted the justification for delay in filing of the appeal stating that assessee has filed a rectification application under section 154 of the act and the rectification order could only be seen by logging on the income tax portal on 20/2/2023 and therefore immediately appeal was filed and the delay may be condoned. The learned CIT – A did not condoned the delay and dismissed the appeal of the assessee is not maintainable.



05. Assessee aggrieved with the same is in appeal before us. The learned authorized representative submitted that assessee is eligible for deduction under section 80 P (2) (d) of the act on interest income on by assessee from other cooperative banks amounting to ₹ 604,396/- . He further submitted that the learned CIT – A has not condoned the delay which was explained to him was on account of the application for rectification filed by the assessee.
06. The learned departmental representative vehemently supported the order of the learned CIT – A and submitted that when the assessee has not filed appeal in time, there is no fault with the learned CIT – A in dismissing the appeal without condoning the delay. On the merits he submitted that the assessee has invested money with another cooperative bank which is not a co-operative society and therefore the assessee is not eligible for deduction.
07. We have carefully considered the rival contention and perused the orders of the lower authorities. We find that the intimation under section 143 (1) was passed on 25/10/2022 wherein the return of income filed in time by the assessee was processed adjusting the deduction claimed under section 80 P (2) (d) of the act of ₹ 604,396/-. Assessee preferred an application under section 154 of the act before the central processing Centre on 20/12/2022 which was summarily rejected. For these reasons the appeal was filed only on 02/3/2023. For this

reason the delay of three months occurred. This was not condoned by the learned CIT – A despite request by the assessee recorded in paragraph number 4.6 of the appellate order. We find that the learned CIT – A has taken to pedantic approach in disposing of the petition for condonation of delay. According to us there is a sufficient cause for not filing an appeal before the learned CIT – A in time and therefore the delay should have been condoned.

08. On the merits of the case, the fact clearly shows that the assessee cooperative society has filed its return of income within due date. On interest income on from another cooperative bank, it has claimed deduction under section 80 P (2) (d) of the act. While processing the return of income under section 143 (1) (a) the central processing Centre Bangalore disallowed the above claim.
09. 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:—
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(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 ²⁴ [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:

010. 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.

011. 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;

012. 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.

013. 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.

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

19)	"co-operative society" ²⁷ 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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015. 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.

016. 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.

017. 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.

018. 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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019. 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.

020. 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.

021. 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. 604396/-.

022. In the result, solitary ground in the appeal as well as the appeal is allowed.

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

Sd/-
(PRASHANT MAHARISHI)
(ACCOUNTANT MEMBER)

Mumbai, Dated: 27th June 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