

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

Before Shri Prashant Maharishi (AM)

I.T.A. No. 309/Mum/2024 (A.Y. 2021-22)

The Woodland Cooperative Housing Society Limited 101, Woodland Heights 23, Dr. Raghunath Road, Bandra West Mumbai-400 050. (Appellant)	Vs. The Deputy Commissioner of Income tax 23 (1) Mumbai (Respondent)
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Assessee by	Shri Ashish Thakurdesai
Department by	Shri R.R. Makwana
Date of Hearing	06.06.2024
Date Pronouncement	of 27.06.2024

ORDER

1. This appeal is filed by the Woodland cooperative housing society Ltd against the appellate order passed by The Commissioner Of Income Tax (Appeals) – 1, Lucknow (the learned CIT – A) for assessment year 2021 – 22 dated 28/11/2023 wherein the appeal filed by the assessee against the intimation order passed under section 143 (1) of the income tax act, 1961 (the act) dated 19 October 2022 by the central processing Centre Bangalore made an adjustment on account of disallowance of deduction under section 80 P (2) (d) with respect to interest income earned by these cooperative society from other cooperative banks amounting to ₹ 410,340/-, is dismissed.
2. Brief facts of the case shows that assessee is a resident Housing cooperative society, filed its return of income on 28/12/2021 for the impugned assessment year where the due date was 31/12/2021 declaring total income of ₹ 43,160/-. The assessee has earned

interest from various cooperative banks on fixed deposit and interest of ₹ 4,016,247/- and ₹ 6670/- totaling to ₹ 422,917/- . Assessee claimed deduction under section 80 P (2) (D) of ₹ 417,010/- in respect of interest received from cooperative bank. This return of income was processed under section 143 (1) of 19/10/2022 denying deduction under that section and assessing the income of the assessee at ₹ 4,53,500/-. The reason for such adjustment is that assessee has shown the interest income of ₹ 6670/- under the head of interest income in profit and loss account which has been allowed as a deduction under section 80 P of the act. However the assessee has shown ₹ 4,010,340/- as income from other sources not as the business income therefore same was not allowed as deduction under section 80 P of the act.

3. Assessee aggrieved with the same preferred an appeal before the learned CIT – A where the appeal of the assessee was dismissed. Hence assessee is in appeal before us.
4. We have heard the rival contention and perused the orders of the lower authorities. The issue involved in this appeal is whether the assessee is entitled to deduction under section 80 P (2) (D) of the act on account of interest income earned by the assessee from other cooperative banks even if it is disclosed as income from other sources and whether the adjustment made by the central processing Centre is correct or not.
5. 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 ²⁰ [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 ²¹ [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:

6. 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.
7. 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;

8. 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. Merely because part of the interest is disclosed by the assessee is interest income in profit and loss account and part of the income shown by the assessee under the head income from other sources does not change the character of the income and consequent deduction of such income, if available. Therefore, the claim of the assessee in the return of income is also not an incorrect claim.
9. 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.
10. 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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11. 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.
12. 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.

13. 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.
14. 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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15. 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.
16. 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.
17. 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. of Rs. 410340/- . Thus order of the learned CIT - A is reversed.
18. In the result appeal of the assessee is allowed

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

Sd/-
(Prashant Maharishi)
Accountant Member

Mumbai : 27. 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.

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BY ORDER,

(Assistant Registrar)
ITAT, Mumbai