

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

Before Shri Prashant Maharishi (AM)

I.T.A. No. 4707/Mum/2023 (A.Y. 2020-21)

Divya Satkar Cooperative Housing Society Limited Gaurav Garden Complex Bunder Pakhadi Road Kandivali West Mumbai-400 067. PAN : AAAAD4869R (Appellant)	Vs.	ITO-42(1)(2) Kautilya Bhavan Bandra Kurla Complex Bandra East Mumbai-400 051. (Respondent)
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Assessee by	Shri Devendra Bafna
Department by	Shri R.R. Makwana
Date of Hearing	05.06.2024
Date of Pronouncement	27.06.2024

O R D E R

1. This appeal is filed by Divya Satkar cooperative housing society Mumbai (assessee/appellant) for assessment year 2020 – 21 against the appellate order passed by National faceless appeal Centre NFAC), Delhi (the learned CIT – A) dated 2/11/2023 wherein appeal filed by the assessee against the rectification order passed under section 154 in order under section 143 (1) of the income tax act (the act) by central processing Centre, was dismissed. Assessee is aggrieved with denial of deduction under section 80 P (2) (d) of the act of ₹ 170,163 to the appellant on interest income received from cooperative banks.
2. Brief facts of the case shows that assessee filed its return of income on 28/1/2021 claiming deduction under section 80 P (2) (B) on account of interest on fixed deposit of ₹ 157,869/- from Shamrao Vithal cooperative bank Ltd and Saraswat cooperative bank Ltd along with the interest on savings bank account of ₹ 12,294 totaling to ₹ 170,163/-. Thus central processing Centre while processing the

return of income passed an intimation order under section 143 (1) of the act wherein the above deduction was disallowed. The assessee preferred an application under section 154 of the act which was rejected on 4/7/2020 not allowing the deduction claimed as above. Therefore, assessee filed an appeal before the learned CIT – A. The learned CIT – A several judicial precedents has dismissed the appeal of the assessee holding that assessee is not entitled to deduction under section 80 P (2) (D) of the act. Therefore assessee is in appeal before us.

3. Before us, assessee has submitted a paper book containing 43 pages wherein it was stated in submission filed before the learned CIT – A on 21/6/2023 that assessee is eligible for deduction under that section. Several judicial precedents were also relied upon. Same are reiterated by the learned authorized representative.
4. The learned senior departmental representative also supported the orders of the lower authorities and submitted that as the assessee has received interest income from cooperative banks and not cooperative societies, therefore deduction under section 80 P (2) (D) of the act has rightly been denied to the assessee.
5. We have carefully considered the rival contentions and perused the orders of the lower authorities. Undisputed facts in the rectification order stated that due date for filing of the return by the assessee was 15/2/2021 and assessee has filed return of income on 28/1/2021. Therefore return filed by the assessee is in time.
6. 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:

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" 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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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. Several judicial precedents cited before us also supports the case of the assessee that assessee is entitled to deduction under section 80 P (2) (d) of the act on its investment income of interest on dividend from another cooperative societies i.e. including cooperative banks.
20. 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. 1,70,163/-.
21. In the result, the solitary issue in this appeal covering all the 4 ground is of the appeal are allowed.
22. 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 : 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.

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BY ORDER,

(Assistant Registrar)
ITAT, Mumbai

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