

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

Before Shri Prashant Maharishi (AM)

I.T.A. No. 4694/Mum/2023 (A.Y. 2013-14)

I.T.A. No. 4696/Mum/2023 (A.Y. 2018-19)

I.T.A. No. 4697/Mum/2023 (A.Y. 2019-20)

Usha Janakalyan Nagar CHS Ltd. 211, Kharodi, Marver Road, Malad West Mumbai-400 095. PAN : AAAAU1039J	Vs.	Income Tax Officer, Ward 41(3)(4) Room No. 722, Kautilya Bhavan, C-41 to C-43, G Block, Bandra Kurla Complex, Bandra (East), Mumbai-400051
(Appellant)		(Respondent)

Assessee by	None
Department by	Shri R.R. Makwana
Date of Hearing	13.06.2024
Date of Pronouncement	27.06.2024

ORDER

1. These are the three appeals filed by the assessee Usha jankalyan nagar cooperative housing society Ltd Mumbai for assessment year 2013 – 14, 2018 – 19 and 2019 – 20 involving similar issue and therefore as the arguments of the parties are also similar, disposed of by this common order.
2. ITA number 4694/M/2023 is filed by the assessee for assessment year 2013 – 14 against appellate order passed by the National Faceless Appeal Centre (NFAC) Delhi dated 24/10/2023 wherein the appeal filed by the assessee against order passed under section 154 read with section 143 (1) of the income tax act dated 28/9/2018 passed by the ITO Ward 30/1/1, Mumbai was dismissed.
3. The brief facts of the case shows that the assessee is aggrieved that interest received from cooperative bank were held to be not eligible for deduction under section 80 P (2) (d) of the Act.

4. Brief facts of the case show that the assessee is registered as a cooperative housing society and has invested money in a cooperative bank. The assessee has on interest income and on such interest income assessee has claimed deduction under section 80 P (2) (d). It filed its return of income on 16/9/2012. In intimation was issued under section 143 (1) of the act wherein the deduction claimed by the assessee under section 80 P (2) (d) was denied. Assessee filed a rectification application with the assessing officer on 30/1/2018. The order under section 154 of the Act was passed on 28/9/2018 dismissing application of the assessee. Therefore assessee is in appeal.
5. The only grievance of the assessee is that the deduction under section 80 P (2) (d) is not allowed to the assessee for the year and such deduction was disallowed under section 143 (1) of the act. The learned authorized representative submitted that adjustment under section 143 (1) of the Act is not permissible and further even on the merits the disallowance cannot be said to be correct.
6. The learned senior DR vehemently supported the order of the lower authorities.
7. We have carefully considered the rival contention and perused the orders of the lower authorities. It is not the case of the revenue that assessee has not filed its return of income in time. The claim of the assessee is with respect to the interest income earned by the assessee from other cooperative bank of ₹ 113,325/-.
8. 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

(iv)	set off of loss is claimed was furnished beyond the due date specified under sub-section (1) of section 139 ; 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 " <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:

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 ;
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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 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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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. 1,13,325/-.

22. In the result appeal for assessment year 2013 – 14 is allowed.
23. Now we come to the appeal of the assessee for assessment year 2018 – 19 wherein on identical facts and circumstances the assessee is denied deduction under section 80 P (2) (d) of the act though claimed in the return of income by central processing Centre by processing the return of income and passing an intimation under section 143 (1) of the act. The assessee preferred a rectification application under section 154 of the act which was rejected by an order dated 23/1/2023. Admittedly for this year the claim of the deduction is ₹ 231,481/- being interest received from cooperative banks.
24. As the facts and circumstances of the case is similar to the case of the assessee for assessment year 2013 – 14, we direct the learned assessing officer to grant the deduction under section 80 P (2) (d) to the assessee of interest income of ₹ 231,481/-.
25. Accordingly the appeal of the assessee is allowed for assessment year 2018 – 19.
26. Appeal for assessment year 2019 – 20 is filed by the assessee on similar facts and circumstances where such deduction of interest income earned on fixed deposit with the cooperative bank. In fact the facts of the case in this case are little bit different because on the perusal of the return of income filed by the assessee to show that in the income tax return assessee has claimed deduction of ₹ 158,648 in the computation of income whereas in the corresponding schedule of deduction it is claimed that ₹ 176,774/-. Therefore there is an incorrect claim of the assessee and it cannot be said that adjustment made under section 143 (1) is incorrect. However on the merits the assessee deserves the deduction under section 80 P (2) (B) of the act with respect to the interest income earned by the assessee from

investment made in the cooperative banks for the reasons given by us in the appeal of the assessee for assessment year 2013 – 14. Accordingly on merits the appeal of the assessee for assessment year 2019 – 20 is allowed.

27. In the result all three appeals filed by the assessee are allowed.

Order pronounced in the open court on 27 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.

//True Copy//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai

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