

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

Before Shri Prashant Maharishi (AM)

I.T.A. No. 72/Mum/2024 (A.Y. 2012-13)
I.T.A. No. 73/Mum/2024 (A.Y. 2013-14)
I.T.A. No. 74/Mum/2024 (A.Y. 2014-15)
I.T.A. No. 75/Mum/2024 (A.Y. 2015-16)

Sterling Court E Wing Cooperative Housing Society Limited Maheshwari Nagar Orkay Mill Lane Marol, MIDC, Andheri East, Mumbai-400 093. PAN : AADAS9639R (Appellant)	Vs.	ITO 31(2)(1) Kautilya Bhavan Bandra Kurla Complex Bandra East Mumbai-400 051. (Respondent)
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Assessee by	Shri Harshal Ajmera
Department by	Shri R.R. Makwana
Date of Hearing	11.06.2024
Date of Pronouncement	28.06.2024

ORDER

Per Prashant Maharishi Accountant Member

1. These are the four appeals filed by the assessee on identical issue for different assessment years, therefore these are taken together and disposed of by this common order.
2. ITA number 72/M/2024 is filed by the assessee for assessment year 2012 – 13 against the appellate order passed by the National faceless appeal Centre (Delhi) (the learned CIT – A) dated 10/11/2023 wherein the appeal filed by the assessee against the rectification order passed under section 154 of the income tax act 1961 on 25/8/2022 passed by the income tax officer Ward 25 x 1 x 1, Mumbai (the AO) was under challenge, and dismissed. The only issue involved in this appeal is that

- the assessee has claimed deduction under section 80 P (2) (d) of the act of ₹ 276,979/- on account of interest received from its investment in another cooperative bank.
3. ITA number 73/M/2024 is filed by the assessee for assessment year 2013 – 14 against the appellate order passed by the National faceless appeal Centre, Delhi dated 10/11/2023 wherein the appeal filed by the assessee against the rectification order passed under section 154 of the income tax act 1961 on 25/8/2022 was dismissed. The only issue is with respect to the allowability of deduction of ₹ 296,352 under section 80 P (2) (d) of the act of interest income received from cooperative banks.
 4. ITA number 74/M/2024 is filed by the assessee against the appellate order passed by the National faceless appeal Centre Delhi dated 10/11/2023 for assessment year 2014 – 15 wherein the appeal filed by the assessee against the rectification order passed under section 154 of the income tax act on 25/8/2022 by the learned assessing officer was dismissed holding that assessee is not entitled to deduction under section 80 P (2) (d) of the act on interest income earned by the assessee from other cooperative bank of ₹ 3 and 68,530.
 5. ITA number 75/M/2024 is filed by the assessee for assessment year 2015 – 16 against the appellate order passed by the National faceless appeal Centre Delhi dated 10/11/2023 wherein the appeal filed by the assessee against the rectification order passed under section 154 of the income tax act on 25/8/2022 was dismissed holding that assessee is not entitled for deduction under section 80 P (2) (d) of the act with respect to the interest income on ₹ 423,497/- on fixed deposits from other cooperative bank.
 6. Therefore the common issue involved in all these appeal is the entitlement of deduction under section 80 P (2) (d) of the act with respect to the interest income on by the assessee from cooperative

- banks. The assessee claimed in return of income such deduction for all the years. The learned central processing Centre while processing the return of income disallowed the above claim. Assessee preferred an application under section 154 of the income tax act which came to be disposed of against the assessee and therefore appeal was preferred before the National faceless assessment Centre. The learned CIT – A National faceless assessment Centre also dismissed the appeal of the assessee.
7. Contesting all the four appeals assessee has submitted detailed paper books for all the years showing that how the interest income has been earned and from whom. It was stated that all this interest income which is claimed as a deduction is derived by the assessee from cooperative banks, he submits that such claim cannot be disallowed under section 143 (1) of the act. He submitted that with effect from 2021 – 22 only if the return of income is not filed in time under section 139(1) of the act. He referred to his paper book for all these years.
 8. The learned departmental representative vehemently supported the order of the learned CIT – A submitted that assessee has received interest from cooperative banks and not cooperative societies and therefore the interest is correctly denied under section 80 P (2) (d) of the act.
 9. We have carefully considered the rival contention and perused the paper book filed by the assessee along with the several judicial precedents relied upon.
 10. 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 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:

12. 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. Further, prior to 14 2021, even for deduction under section 80 P this condition does not apply. Thus, This is not the reason on which disallowance can be made.
13. 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;

14. 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.

15. 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.

16. 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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17. 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.

18. 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.

19. 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.

20. 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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21. 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.
22. 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.
23. 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 .
24. Thus, assessee cannot be denied reduction of ₹ 276,979/- for assessment year 2012 – 13, RS. 2 96,186/- for assessment year 2013 – 14, ₹ 368,530 /- for assessment year 2014 – 15 and ₹ 423,497/- for assessment year 2015 – 16. Accordingly the orders of the lower authorities are reversed and AO is directed to grant the above deduction.
25. Accordingly, all the above four appeals of the assessee are allowed.

Order pronounced in the open court on 28 June, 2024.

Sd/-
(Prashant Maharishi)
Accountant Member

Mumbai : 28. 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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