

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

Before Shri Prashant Maharishi (AM)

I.T.A. No. 1096/Mum/2024 (A.Y. 2020-21)

I.T.A. No. 1097/Mum/2024 (A.Y. 2021-22)

Gangavihar Residency Cooperative Housing Society Limited Plot No. 174, CTS No. 427, Gangavihar Residency CHS, S.V. Road, Andheri West Mumbai-400 058.  PAN : AAAAG6470H (Appellant)	Vs.	ITO, Ward 24(1)(1) Piramal Chamber Mumbai.  (Respondent)
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Assessee by	Shri Surendra Tiwari
Department by	Shri R.R. Makwana
Date of Hearing	10.06.2024
Date of Pronouncement	27.06.2024

ORDER

1. These are the two appeals filed by the assessee for assessment year 2020 - 21 and 2021 - 22 involving similar issue of disallowance of deduction under section 80 P (2) (d) of the act disallowed in order under section 143 (1) of the act by the central processing Centre Bangalore while processing the return of income of the assessee, the appeals filed before CIT - A confirmed the action of the central processing Centre. Both the parties raised similar grounds and arguments, therefore these two appeals are disposed of by this common order.
2. For assessment year 2020 - 21, the assessee being a cooperative housing society filed return of income on 19/1/2021 before the due date of 15/2/2021 declaring total income at rupees Nil. The intimation under section 143 (1) of the act was passed on 25/11/2021. In the

intimation the claim of deduction of assessee of ₹ 115,770/- was considered as nil. This deduction was claimed by the assessee was on account of fixed deposit placed with the cooperative bank. The appeal was filed before the learned additional CIT – A – 4, Bangalore, (the learned CIT – A) but same was dismissed. Therefore assessee is in appeal before us.

3. For assessment year 2021 – 22 assessee filed its return of income on 9/2/2022 against the due date of filing of return of 15/3/2022. The return of income was filed at ₹ 11,930/-. The intimation was passed on 19/10/2022 a total income of ₹ 135,680. In the intimation the deduction claimed by the assessee of ₹ 123,745/- was disallowed. This deduction was with respect to the interest income earned on fixed deposit with a cooperative bank. Appeal filed against the intimation was disposed of by the learned CIT – A by order dated 22/1/2024 denying the claim.
4. We have heard the rival contention and perused the orders of the lower authorities. The simple fact involved in this two appeal shows that the assessee has earned fixed deposit interest from cooperative banks on which it has claimed deduction under section 80 P (2) (d) of the act. The AO denied and CIT – A confirmed the action of the central processing Centre.
5. As per provisions of section 143 (1) (a) permits following adjustment to the total income of the assessee:-

**143.** <sup>67</sup>[(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; <sup>68</sup> [***]
(ii)	an incorrect claim, if such incorrect claim is apparent from any information in the return;
<sup>69</sup> [(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 <a href="#">section 139</a> ;

(iv)	disallowance of expenditure <sup>70</sup> [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 <sup>71</sup> [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 <a href="#">section 139</a> ; or
(vi)	addition of income appearing in <a href="#">Form 26AS</a> or <a href="#">Form 16A</a> or Form 16 which has not been included in computing the total income in the return:

7. 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.
8. 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;

9. 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.
10. 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.

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

19)	"co-operative society" <sup>97</sup> 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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12. 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.

13. 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.

14. 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.

15. 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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16. 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.

17. 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.

18. 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 fixed deposit interest

received from the cooperative banks. Thus the order of the lower authorities are reversed and the learned assessing officer is directed to grant deduction to the assessee as claimed.

19. In the result both the appeals 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

PS