

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

Before Shri Prashant Maharishi (AM)

I.T.A. No. 672/Mum/2024 (A.Y. 2021-22)

Pearl Cooperative Housing Society Limited Ground Floor, C-Block Opp. Hotel Shantidoot Tata Mills, Dr. Ambedkar Road Hindmata, Dadar Mumbai-400 014. PAN : AAAAP0539Q	Vs.	ACIT Ward 20(1)(1) Piramal Chamber Lalbaug Parel Mumbai-400 012.
(Appellant)		(Respondent)

Assessee by	Shri Dinesh Shah
Department by	Shri R.R. Makwana
Date of Hearing	10.06.2024
Date of Pronouncement	27.06.2024

ORDER

Per Prashant Maharishi , Accountant Member

1. This appeal is filed by Pearl cooperative housing society (the assessee/appellant) for assessment year 2021 – 22 against the appellate order passed by the Commissioner of income tax (appeals) – 3, am of the bath (the learned CIT – A) dated 30/1/2024 wherein appeal filed against the intimation order passed under section 143 (1) of the income tax act, 1961 (the act) dated 19/10/2022 passed by the central processing Centre Bangalore denying the deduction under section 80 P (2) (d) of the act of the assessee of ₹ 1,109,929 was denied, was dismissed.

2. Assessee is in appeal before us raising several grounds stating that the adjustment made by central processing Centre is not correct as well as assessee is entitled to deduction under that section.
3. Brief facts of the case shows that assessee is a cooperative housing society filed its return of income on 11/3/2022 wherein the due date for filing of such a return is 15/3/2022 at a total income of ₹ 266,810/-. The intimation under section 143 (1) was passed on 19/10/2022 wherein the total income of the assessee was determined at ₹ 1,376,730/-. Assessee has received interest from three cooperative banks namely Saraswat cooperative bank Ltd of ₹ 124,452/-, Mumbai District Central cooperative bank Ltd of ₹ 55,261/- and Mumbai District Central cooperative bank Ltd of ₹ 34,126/-.
4. The adjustment was on account of deduction under section 80 P (2) claimed by the assessee of ₹ 1,109,920/- was determined at Rs Nil.
5. The appeal filed by the assessee before the CIT – A against such intimation resulted into partial relief at the learned CIT – A deleted the disallowance of ₹ 896,090/- but did not allow deduction of interest income on from another cooperative banks of Rs 213,839/- . Therefore assessee is in appeal before us for the claim of ₹ 213839/- only,
6. The learned authorized representative has submitted a paper book containing 155 pages wherein a written submission was placed along with several judicial precedents and other documents. He was heard.
7. The learned departmental representative vehemently supported the order of the learned lower authorities.
8. We have carefully considered the rival contention and perused the orders of the lower authorities.
9. 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:

11. 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.

12. 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;

13. 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.
14. 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.
15. 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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16. 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.
17. 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.

18. 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.
19. According to the provisions of section 80 P (2) (d) of the income tax act
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| (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; |
|-----|--|
20. 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.
21. 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.
22. 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 of interest received from cooperative banks.
23. In the written submission made before us, the assessee has in paragraph number 7 stated that it has received interest income from cooperative banks of Rs 213,839/-, we direct the learned AO to grant deduction to the assessee of interest income on from cooperative banks under section 80 P (2) (d) of the act.
24. Accordingly the orders of the lower authorities are reversed and all the grounds of the appeal of the assessee are allowed.

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

Sd/-
(Prashant Maharishi)
Accountant Member

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