

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

Before Shri Prashant Maharishi (AM)

I.T.A. No. 875/Mum/2024 (A.Y. 2020-21)

Enkay Square Co- operative Housing Society Plot No. 21, Sector No. 6 Koparkhairane, Navi Mumbai-400 709.	Vs.	ITO, Ward 28(2)(1) Vashi Railway Station Building Navi Mumbai.
---	-----	---

PAN : AAAAE4816B
(Appellant)
Assessee by
Department by
Date of Hearing
Date of Pronouncement

(Respondent)
Shri Sanjeev Brahme
Shri R.R. Makwana
10.06.2024
27.06.2024

ORDER

1. This appeal is filed by Enkay Sqaure cooperative housing society limited against the appellate order passed by the National faceless appeal Centre (NFAC), the leader (the learned CIT – A) for assessment year 2020 – 21 dated 18/12/2023 wherein the appeal filed by the assessee against the rectification order of the central processing Centre under section 154 of the income tax act, 1961 (the act) dated 25/3/2022 was dismissed.
2. Solitary issue in this appeal is that the claim of deduction of assessee cooperative society under section 80 P (2) (d) of the act was denied by the central processing Centre of interest income on by the assessee from fixed deposits made with cooperative banks.
3. Brief facts of the case are that the assessee is a cooperative housing society has submitted the return of income by claiming deduction under section 80 P (2) (d) for the interest received on fixed deposit with Maharashtra state cooperative bank and Ahudaya Cooperative bank

Limited amounting to Rs. 214,970/–, on 30/12/2020. The due date for filing of the return of income was 15/2/2021.

4. This return of income was processed under section 143 (1) of the act on 25/11/2021 wherein the deduction claimed of ₹ 214,972 was determined as nil. Assessee preferred an application under section 154 of the income tax act for rectification of the order which was passed on 25/3/2022 and no relief was granted to the assessee.
5. Assessee preferred appeal before the learned CIT – A also held that on merits assessee is not entitled to the deduction under section 80 P (2) (d) of the act. Aggrieved, assessee has preferred appeal before us.
6. The learned authorized representative has submitted a paper book containing 139 pages stating that there are several judicial precedents which covers the issue in favour of the assessee. He further stated that both the cooperative bank in which assessee has placed money are cooperative society and therefore the claim of the assessee is eligible.
7. The learned departmental representative vehemently supported the order of the learned CIT – A and stated that assessee has made investment with reduced banks and therefore these are not cooperative societies. Thus the order of the lower authorities are sustainable.
8. We have carefully considered the rival contentions and perused the intimation under section 143 (1) of the act as well as rectification order under section 154 of the act and the order of the learned CIT – A.
9. Undisputed facts stated that assessee is a co-operative society, filed its return of income in time, claimed deduction under section 80 P (2) (d) on amount of interest on investment made by it other cooperative banks. Whether the claim made by the assessee is correct on merit or even otherwise the adjustment can be made under section 143 (1) (a) of the act or not in case of the assessee is the issue.
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:—
(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.—Deductions in respect of certain incomes", 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. This is not the reason.
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 ;
-----	---

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;

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 amounting to Rs. 214970/-. Order of the learned lower authorities are reversed and AO is directed accordingly.
24. In the result appeal filed by the assessee is 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