

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

Before Shri Prashant Maharishi (AM)

I.T.A. No. 276/Mum/2024 (A.Y. 2020-21)

M/s. Raheja Acropolis II Ariana Ambrosia CHS Ltd. Society Office, V.N. Purav Marg, Deonar, Mumbai- 400 088. PAN : AAAAR9136R (Appellant)	Vs.	ITO-27(3)(1) 4 th Floor Tower No. 6 Vashi Station Complex, Vashi Navi Mumbai 400 703. (Respondent)
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Assessee by	Shri Rajesh Shah
Department by	Shri R.R. Makwana
Date of Hearing	10.06.2024
Date of Pronouncement	27.06.2024

ORDER

Per Prashant Maharishi , AM

1. This appeal is filed by the assessee appellant, a co-operative society namely Raheja Acropolis II Ariana Ambrosia CHS Limited for assessment year 2020 - 21 against the appellate order passed by the Commissioner of income tax (Appeals) - 1 Lucknow (the learned CIT - A) dated 5/12/2023 wherein the appeal filed by the assessee against the order passed under section 143 (1) of The Income Tax Act 1961 (The Act) dated 23 December 2021 by the central processing Centre Bangalore, was dismissed.

2. The only issue involved in this appeal is that the assessee is a cooperative housing society which has been denied deduction under section 80 P (2) (d) of the act on interest income earned by it from investment with other cooperative bank.
3. Brief facts of the case shows that assessee filed its return of income on 5/1/2021 declaring a taxable income of ₹ 272,260/- wherein it claim deduction under section 80 P (2) (d) of ₹ 3,298,858/-. This income was received on account of interest on fixed deposits from certain other cooperative banks. This return of income was processed on 23/12/2021 wherein the total income returned by the assessee of ₹ 272,260/- was determined at ₹ 3,571,110/-. The only adjustment has been made as denial of deduction of ₹ 3,298,858/-.
4. Assessee preferred appeal before the learned CIT - A, wherein the appeal of the assessee was dismissed.
5. The learned authorized representative Shri Rajesh Shah CA , furnished paper book consisting of 110 pages wherein he referred to the several judicial precedents as well as the facts of the case of the assessee. According to him the assessee is not given any opportunity by the central processing Centre before making such adjustment, such adjustment is beyond the powers under section 143 (1) (a) of the act, and on merits also the assessee is entitled to deduction under section 80 P (2) (d) of the act as all the cooperative banks are also the cooperative societies. Therefore he submitted that issue is squarely covered in favour of the assessee and the orders of the learned that lower authorities are not sustainable.
6. The learned departmental representative vehemently supported the order of the learned lower authorities and stated that the assessee has made investment with cooperative banks and therefore those

cooperative banks are not cooperative societies accordingly the deduction is correctly denied.

7. We have carefully considered the rival contention and perused the orders of the lower authorities. The first thing that needs to be examined is whether the adjustment made by the CPC is correct or not and second issue is whether assessee is entitled to the deduction under section 80 P (2) (d) of the act or not.
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 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 " <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 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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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. 32,98,858/-.

22. Thus we hold that the intimation order under section 143 (1) (a) of the act is not sustainable as no such adjustment is permitted as assessee has filed its return of income in time and further the claim made by the assessee is not incorrect as per explanation to that section. Even otherwise on merits assessee is eligible for that deduction under section 80 P (2) (d) of the act. Accordingly the orders of the lower authorities are reversed and all the grounds of appeal are allowed.
23. In the result appeal of 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

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