

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

Before Shri Prashant Maharishi (AM)

I.T.A. No. 222/Mum/2024 (A.Y. 2017-18)

Prithvi Apartments Cooperative Housing Society Ltd. 21 At Amount Road Mumbai-400 026. PAN : AAAAP233A (Appellant)	Vs.	ACIT, Circle 19(2) Room No. 207 2 nd Floor Mathur Mandir Tardeo Road Mumbai 400 007. (Respondent)
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Assessee by	Shri Anuj Kisnadwala
Department by	Shri R.R. Makwana
Date of Hearing	11.06.2024
Date of Pronouncement	28.06.2024

ORDER

Per Prashant M Maharishi AM

1. This appeal is filed by Prithvi Apartments cooperative housing society Ltd for assessment year 2017 – 18 against the appellate order passed by National faceless appeal Centre (the learned CIT – A 28 December 2023 wherein the appeal filed by the assessee against the assessment order passed under section 143 (3) of the act by the assistant Commissioner of income tax Circle 19 (2), Mumbai (the learned AO dated 16/11/2019 under section 143 (3) of the act denying the deduction under section 80 P (2) (d) of ₹ 2,763,665/-, was dismissed.
2. The only grievance in the appeal is denial of deduction under section 80 P (2) (d) of ₹ 2,763,665/-.
3. The fact shows that assessee is a co-operative society and has on income under the head income from other sources. It filed its return of income on 24/8/2017 declaring total income of ₹ 540,130/- after

claiming deduction of ₹ 2,813,665/-. The return of income was processed but selected for scrutiny by issue of notice under section 143 (2) of the act on 23/8/2018. AO found that assessee has shown to have earned interest income of ₹ 3,353,797 on fixed deposits and saving bank accounts from cooperative as well as commercial bank out of which the assessee has claimed deduction of ₹ 2,763,665/- as deduction under section 80 P (2) (d) of the act. The assessee was issued a show cause notice that why the deduction should be disallowed. The claim of the assessee is that the interest received from cooperative bank is also eligible for deduction. The learned AO denied the same holding that such cooperative banks are not cooperative societies. Consequently the assessment order was passed determining total income of the assessee at ₹ 3,303,797/-.

4. The assessee preferred an appeal before the learned CIT - A wherein the appeal of the assessee was also dismissed rejecting the claim of the assessee.
5. Therefore the assessee is in appeal before us.
6. The learned authorised representative submitted a detailed note on the claim of the deduction as well as several judicial precedent contending that interest income earned by the cooperative society from another cooperative society including cooperative banks are eligible for deduction under section 80 P (2) (d) of the act. It was further submitted that there are several judicial precedents on this issue in favour of the assessee.
7. The learned departmental representative vehemently supported the order of the lower authorities and submitted that cooperative banks are not cooperative societies and therefore interest on that there is not eligible for deduction.
8. We have carefully considered the rival contention and perused the orders of the lower authorities. We have also carefully considered the

several judicial precedents relied upon by both the parties as well as mentioned in the assessment order as well as the appellate order.

9. 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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10. 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.

11. 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.

12. 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.

13. 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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14. 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.

15. 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.

16. 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. 27,63,665/-. Accordingly the orders of the lower authorities are reversed. Thus ground number 1 of the appeal is allowed.
17. Ground number two with respect to the charge of interest and ground number 3 with respect to the initiation of penalty proceedings are consequential and premature respectively, therefore dismissed.
18. Appeal of the assessee is allowed partly.

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.

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BY ORDER,

(Assistant Registrar)
ITAT, Mumbai

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