

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

Before Shri Prashant Maharishi (AM)

I.T.A. No. 519/Mum/2024 (A.Y. 2021-22)

Colaba Sangita Cooperative Housing Ltd. 27/28, Arthur Bhunder Road, Colaba Mumbai-400 005. PAN : AAAAC1325P (Appellant)	Vs.	ITO 17(2)(1) Kautilya Bhavan Bandra Kurla Complex Bandra East Mumbai-400 051. (Respondent)
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Assessee by	Shri Vimal Punmiya
Department by	Shri R.R. Makwana
Date of Hearing	11.06.2024
Date of Pronouncement	28.06.2024

ORDER

1. This appeal is filed by all other Sangeeta cooperative housing society Ltd for assessment year 2021 – 22 against appellate order passed by the additional Commissioner of income tax (appeals) – 3, Bangalore (the learned CIT – A) dated 17/1/2024 wherein the appeal filed by the assessee against the order passed under section 143 (1) of the income tax act, 1961 (the act) by CPC Bangalore on 19/10/2022 wherein the assessee was denied the deduction under section 80 P (2) (d) of the act, was dismissed.
2. Therefore the only grievance in this appeal is about deduction under section 80 P (2) (d) of the act denied to the assessee amounting to ₹ 994,300/- by the central processing Centre.
3. Brief facts of the case shows that assessee is a cooperative housing society has invested in several cooperative banks and has earned interest of ₹ 924,212/- on fixed deposits and ₹ 70,087/- on savings bank account. Assessee claimed deduction under section 80 P of ₹ 1,016,027/-. Assessee filed its return of income on 16/12/2021

declaring total income rupees nil. The due date for filing of the return was extended up to 15/3/2022. This return was processed by an intimation dated 19/10/2022 wherein the total income of the assessee was determined at ₹ 994,300/-. The assessee was allowed the deduction under section 80 P of only ₹ 21,728/-. Assessee preferred appeal before the learned CIT – A who passed an order on 17/1/2024 rejecting the claim. Therefore assessee is in appeal before us.

4. The learned authorised representative submitted a detailed submission along with the orders of coordinate benches wherein identical claim is allowed.
5. The learned departmental representative supported the orders of the lower authorities stating that assessee cannot be allowed the claim of deduction of interest income from cooperative banks as those cooperative banks are not cooperative societies.
6. We have carefully considered the rival contention and perused the orders of the lower authorities. The fact shows that the assessee has earned fixed deposit interest of ₹ 924,212/- from cooperative banks and also savings bank interest from such cooperative banks amounting to ₹ 69,769/-. Thus the issue in appeal is whether the deduction can be denied while processing the return of income and passing an order under section 143 (1) of the act and as such the assessee is eligible for deduction under section 80 P (2) (d) of the act or not on interest income earned by it on its investment with cooperative banks.
7. 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 ;
(vi)	or 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:

9. 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.
10. 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;

11. 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.
12. 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.

13. 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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14. 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.

15. 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.

16. 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.

17. 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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18. 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.

19. 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.

20. Assessee has also received savings bank interest of ₹ 318/- from bank of India which is not eligible for deduction under section 80 P (2) (d) of the act. Therefore the claim of the assessee is not allowable on the same.
21. We have also considered the several judicial precedents of the coordinate benches wherein such claim is allowed.
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 amounting to Rs. 9,93,912/-. Therefore orders of the lower authorities are reversed.
23. In the result appeal of the assessee is partly allowed.

Order pronounced in the open court on 28 June, 2024.

Sd/-
(Prashant Maharishi)
Accountant Member

Mumbai : 28.06.2024

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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