

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'SMC' BENCH
MUMBAI**

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SHRI RATNESH NANDAN SAHAY, ACCOUNTANT MEMBER**

**ITA No. 681/MUM/2024
(Assessment Year : 2018-19)**

Chandralok Co-operative Housing Society Limited Ltd., Plot no. 1045, New Nanepada Road, Mulund East, Mumbai-400081	Vs.	ITO, Ward 41(1)(3), Kautilya Bhavan, BKC, Bandra East, Mumbai-400051
PAN/GIR No. AAAAC6670K		
(Appellant)	..	(Respondent)

Assessee by	Shri. Dharan Gandhi
Revenue by	Shri. R. R. Makwana
Date of Hearing	19/06/2024
Date of Pronouncement	28/06/2024

आदेश / O R D E R

PER AMIT SHUKLA (J.M):

The aforesaid appeal has been filed by the assessee against order dated 20/12/2023 passed by Additional / JCIT(A)-1, Guwahati in relation to the intimation u/s.143(1) for the A.Y 2018-19.

2. In the grounds of appeal assessee is aggrieved by disallowance of deduction u/s.80P(2)(d) of Rs.4,30,922/-.

3. The brief facts are that assessee is a co-operative housing society registered under Maharashtra Co-operative Societies Act. Since, it is a society it was required to get its account audited by the Auditor under the Maharashtra Co-operative Societies Act, 1960. Since it was required to file audit report, therefore the due date for filing of return of income for A.Y.2018-19 u/s.139(1) was on 30/09/2018. However, Government vide order No. [F.NO.225/358/2018/ITA-II], DATED 8-10-2018, the due date was extended till 31/10/2018. The assessee had filed the return of income on 26/10/2018. The CPC had acknowledged the due date of filing of original return as on 31/10/2018 which itself was not correct as assessee being a co-operative society was required to file the audit report for which different time limit for filing of return of income has been prescribed in the Act. The CPC has made adjustment on account of disallowance u/s.80P(2)(d) by treating it as income from other sources of Rs.4,13,922/-.

4. The ld. JCIT(A) has declared the assessee's appeal as infructuous after observing as under:-

"6.1 The submission of the assessee has been gone through. In Form No. 35 dated 09.09.2019 the assessee has mentioned in Col. No. 2(a): 143(1). It is noticed from the submission that 143(1) was passed on 31.05.2019 and served upon the assessee on 04.06.2019. However, the assessee itself vide letter dated 04.09.2019 has intimated that their application for rectification/s. 154 was rejected on 26.07.2019. Therefore on the date of filing of instant appeal i.e. on 09.09.2019 the

assessee was fully aware that the contention raised has been rejected in the aforesaid rectification order. Even in the submission, the appellant has not submitted copy of order u/s 154 dated 26.07.2019.

6.2 In the light of aforesaid facts and also considering "theory of merger" the earlier order passed u/s. 143(1) has merged in the order u/s. 154.

6.3 Therefore, the appeal becomes infructuous and accordingly the same is treated as DISMISSED without going into the merit of the case."

5. First of all the assessee has filed the appeal against adjustment made u/s.143(1) even after assessee had filed rectification u/s. 154 which was rejected and then also ld. CIT(A) should have been decided the issue and adjustment made u/s.143(1).

6. Be that as may be the scope of adjustment u/s.143(1)(a) provides that adjustment can be made from Clause (i) to (vi). Sub-clause (v) which existed prior to 01/04/2021` only permitted adjustment u/s.10AA, 80AIA, 80IAB, 80IB, 80IC, 80ID or Section 80IE. There was no scope of making any prima facie adjustment u/s.80P. The amendment was brought in the statute to include Section 10AA or under any provision of Chapter VIA if the return of income has been furnished beyond the due date specified under sub-section (1) of Section 139. Thus, prior to A.Y. 2021-22, no such adjustment could have been made. Moreover, here in this case as held above, the return of income was furnished within the due date

prescribed u/s.139(1). Thus, the entire disallowance was beyond the scope of Section 143(1) itself. Accordingly, the disallowance made by the CPC and as confirmed by the Id. CIT(A) is set aside and assessee is entitled for reduction u/s.80P.

7. In the result, appeal of the assessee is allowed.

Order pronounced on 28.06.2024.

Sd/-
(RATNESH NANDAN SAHAY)
ACCOUNTANT MEMBER

Mumbai; Dated 28/06/2024
KARUNA, sr. ps

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai