

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

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

**ITA No. 756/MUM/2024
(Assessment Year: 2014-15)**

&

**ITA No. 755/MUM/2024
(Assessment Year: 2015-16)**

New Shangrilla Cooperative Housing Society Ltd. 1, New Shangrilla Co-op Hsg. Society, Nanabhai Moosa Road, Near Colaba Post Office, Mumbai 400 005.	Vs.	Centralized Processing Centre/Income Tax Officer, Ward 25(3)(1), Mumbai Kautilya Bhavan, Bandra-Kurla Complex, Bandra (East), Mumbai - 400 051.
PAN/GIR No. AAAAN2778D		
(Appellant)	..	(Respondent)

Assessee by	Shri. Rajesh S. Athavale
Revenue by	Smt. Kakoli Uttam Ghosh
Date of Hearing	24/06/2024
Date of Pronouncement	28/06/2024

आदेश / O R D E R

PER AMIT SHUKLA (J.M):

The aforesaid appeals have been filed by the assessee against separate impugned orders dated 27/12/2023 for the A.Y.2014-15 and order dated 23/01/2024 for the A.Y.2015-16

on account of adjustment made u/s.143(1) with respect to the claim of deduction u/s.80P(2)(d).

2. At the outset, ld. Counsel for the assessee submitted that in so far as A.Y.2014-15 is concerned, there is a delay in filing of appeal for 8 years before the First Appellate Authority where as similar delay for the A.Y.2015-16 has been condoned by the ld. CIT(A). Ld. Counsel submitted here in this case that ld. AO has made prima facie adjustment u/s.143(1). In both the years disallowance of interest of Rs.16,550/- in A.Y.2014-15 and Rs.4,49,697/- in the A.Y.2015-16 has been made. He submitted that, against such prima facie adjustment, assessee has filed petition for rectification u/s.154, however, the same was not disposed of by the CPC and therefore, assessee was under bonafide belief that adjustment would be rectified. It was further submitted that assessee was very belatedly advised that since rectification application has not been disposed of and therefore, the appeal should be filed when assessee society approached a different Counsel. Thus, he submitted that appeal should have been condoned because prima facie on merits itself, no adjustment was called for. We find that since the assessee was under a bonafide belief that it has filed rectification application therefore there is no requirement to file the appeal. Assessee being Cooperative Housing Society and management committee keeps on changing, therefore it was advised belatedly that since rectification order has not been passed then appeal should have

been filed. Accordingly we condone the delay in filing of first appeal.

3. On merits, after hearing both the parties and on perusal of the impugned order and the material placed on record we find that CPC has made adjustment for disallowance of interest claimed u/s.80P despite the fact that no such prima facie adjustment could have been made for disallowing the deduction u/s.80P within the scope and ambit of Section 143(1)(a) in the A.Y.2014-15 and 2015-16. The prima facie adjustment as provided in Section 143(1)(a) Clause v was with respect to deductions claimed u/s.10AA, 80IA, 80IAB, 80IB, 80IC, 80ID or Section 80IE. The amendment was brought by the Finance Act 2021 w.e.f. A.Y.2021-22 to include disallowance of deduction claimed under Chapter VIA. Thus, prior to A.Y.2021-22, no adjustment could have been made for disallowing the claim u/s.80P. Thus, at the threshold, the adjustment itself was bad in law. Moreover, the CPC has proceeded on the ground that return of income has been filed beyond the due date of Section 139(1) which is not correct because since assessee is a co-operative housing society governed by Maharashtra Co-operative Society's Act 1960, it is mandatorily required to get its account audited. The due date for filing of return of income in the case of audited accounts was on 31/10/2014 and 31/10/2015. Thus, on this ground also, the CPC was not justified disallowing the claim of deduction. Accordingly, adjustment made u/s.143(1) is deleted.

*ITA No. 756/Mum/2024 and ITA No. 755/Mum/2024
New Shangrilla Co-operative Housing Society Limited*

4. In the result, appeals of the assessee are allowed.

Order pronounced on 28th June, 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