

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

**SHRI NARENDRA KUMAR BILLAIYA, ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No. 884/MUM/2024
(Assessment Year: 2018-19)**

Shri Brijkutir Co-Operative Housing Society Limited,
Ground Floor, 68A L. Jagmohandas Road,
Nepeansea Road, Mumbai - 400006
[PAN: AABAS3681B]

..... **Appellant**

Ward 19(3)(1),
Matru Mandir, Mumbai - 400007

Vs

..... **Respondent**

Appearance

For the Appellant/Assessee : Shri. Rajesh Shah
For the Respondent/Department : Shri. Himanshu Sharma (CIT DR)

Date

Conclusion of hearing : 04.07.2024
Pronouncement of order : 16.07.2024

ORDER

Per Rahul Chaudhary, Judicial Member:

1. By way of the present appeal the Assessee has challenged the order, dated 12/02/2024, passed by the Learned Commissioner of Income Tax, Appeals ADDL/JCIT (A)-6 Kolkata, [hereinafter referred to as the '**CIT(A)**'] for the Assessment Year 2018-19, whereby the Ld. CIT(A) had dismissed the appeal of the Assessee against the Intimation, dated 29/06/2019, issued under Section 143(1) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').
2. The Assessee has raised following grounds of appeal:
 - "1. *On the facts and the circumstances of the case and in law, the learning Addl/JCIT (A) erred in not allowing deduction u/s.80P(2)(d) of the Act of Rs.29,46,222.*

2. *On the facts and the circumstances of the case and in law, the learning Addl/JCIT (A) erred in passing the order of not allowing u/s.80P(2)(d) of the Act of Rs.29,46,222, though in the Intimation the addition was made only on the basis that the Return of Income is not filed in time. However, the fact that Return of Income was filed in time.*
 3. *On the facts and the circumstances of the case and in law. the learning Addl/JCIT (A) erred in not allowing deduction u/s.80P(2)(d) of the Act, though it is well settled law that deduction u/s.80P(2)(d) of the Act of Rs.29,46,222 is allowable to a Co-operative Society if the amounts are invested in another Co-operative Society and interest is earned on the said investment.*
 4. *On the facts and the circumstances of the case and in law, the AO has wrongly charged Fees u/s.234F of Rs.5,000 though the Return was filed in time.*
 5. *The appellant craves leave to add, amend, modify. substitute and/or cancel any of the ground of the appeal."*
3. Brief facts of the case are that the Assessee, a co-operative society, filed return of income for the Assessment Year 2018-19 on 26/09/2018 declaring 'Nil' income after claiming deduction of INR 29,46,222/- under Section 80P(2)(d) of the Act. The return of income was processed under Section 143(1) of the Act on 29/06/2019 and deduction of INR 29,46,222/- claimed by the Appellant under Section 80P(2)(d) of the Act was disallowed.
 4. Being aggrieved, the Appellant preferred appeal before the CIT(A) which was dismissed vide, order dated 12/02/2024. The CIT(A) confirmed the disallowance observing that interest received from a co-operative bank was not eligible for deduction under Section 80P(2)(d) of the Act.
 5. The Appellant is now before the Tribunal in appeal against the order passed by the CIT(A) on the grounds reproduced in

paragraph 3 above. All the grounds raised by the Assessee, being connected, are taken up together hereinafter.

6. We have given thoughtful consideration to the rival submission, perused the material on record and considered the position in law.
7. During the course of hearing reliance was placed on behalf of the Appellant on the decision of Tribunal in the case of **Vishva Villa Co-op Housing Society Vs. ITO, Ward 12(3)(1): ITA No. 682 to 684/Mum/2024, dated 27/06/2024**, wherein it was held by the Tribunal that prior to Assessment Year 2021-22 of the Act adjustment was permissible in terms of Section 143(1)(a)(v) of the Act only with respect to deduction claimed under Section 10AA, 80IA, 80IAB, 80IB, 80IC, 80ID and 80IE of the Act in case return of income was filed after the due date prescribed under Section 139(1) of the Act. Thus, no adjustment could have been made for the deduction claimed under Section 80P(2)(d) of the Act in cases where return was filed after the expiry of due date specified under Section 139(1) of the Act by invoking provisions of Section 143(1)(a)(v) of the Act for the assessment years prior to Assessment Year 2021-22.
 - 7.1. We note that by way of Finance Act, 2021 and with effect from 01/04/2021 (relevant for the Assessment Year 2021-22 and onwards) the provisions Section 143(1)(a)(v) of the Act were amended to provide as under:

"143(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:

(i) to (iv) xx xx

(v) *disallowance of deduction claimed under 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; or"*

7.2. Thus, concurring with the view taken by the Tribunal in the case Vishva Villa Co-op Housing Society (supra), we hold that for the Assessment Year 2018-19, the deduction claimed by the Assessee under Section 80P(2)(d) of the Act could not have been disallowed on the ground that the return was filed after due date specified in Section 139(1) of the Act.

8. We note that as per Section 80P(2)(d) of the Act, for the purpose of claiming deduction under the aforesaid provision interest must be received from a 'co-operative society'. A co-operative society is defined in Section 2(19) of the Act as being a co-operative society registered either under the Co-operative Societies Act, 1912 or under any other law for the time being in force in any State for the registration of co-operative societies. In the case of **Kaliandas Udyog Bhavan Premises Co-operative Society Ltd. vs. ITO: ITA No. 6547/Mum/2017, dated 24.04.2018**, after examining the judgment of the Hon'ble Supreme Court in the case of Totgars Cooperative Sale Society Ltd. vs. ITO (2010) 322 ITR 283 (SC), which was followed by the Hon'ble Karnataka High Court in the case of Pr.CIT vs. Totgars Co-operative Sale Society Ltd.: 2017 395 ITR 611 (Kar), and after taking into account the insertion of Section 80P(4) of the Act vide the Finance Act, 2006, the Mumbai Bench of the Tribunal had held that co-operative bank continues to be a co-operative society and therefore, assessee receiving interest from a co-operative bank would be eligible to claim deduction under Section 80P(2)(d) of the Act in respect of interest so received. To the same effect are the decisions of the Tribunal in the

case of **Kinjal Heaven Co-operative Society [ITA No. 2955 to 2958/Mum/2023, dated 06/11/2023]** cited on behalf of the Appellant during the course of hearing as well as other decision of the Tribunal in the case of Lands End Co-operative Housing Society Ltd. Vs. ITO [ITA No.3566/Mum/2014, dated 15/01/2016], M/s Sea Green Cooperative Housing and Society Ltd. Vs. ITO-21(3)(2), Mumbai [ITA No. 1343/Mum/2017, dated 31/03/2017], and Mystique Rose Cooperative Housing Society Ltd.: vs. ITO 22(2)(3) [ITA No. 1290/Mum/2021, dated 30/03/2022].

9. We also find merit in the contention of the Appellant that return was, in fact, filed within time specified under Section 139(1) of the Act. We observe that for the Assessment Year 2018-19, in case of person (other than a company) whose accounts were required to be audited under this Act or under any other law for the time being in force, as per Explanation 2(a)(ii) of Section 139(1) of the Act, the due date for filing of income tax return was 30th September of the relevant assessment year [*subsequently substituted with 31st October vide finance Act 2020 with effect from 01/04/2020*]. The Appellant being a Co-Operative Society governed by Maharashtra Co-Operative Society Act 1960 was required to be audited under Maharashtra State Co-Operative Act and therefore, was required to file its return of income upto 30/09/2018. As per Revenue the Appellant had filed return on 26/09/2018. Thus, the return was filed before the due date as prescribed under Section 139 of the Act, and therefore, the Appellant is entitled for deduction under Section 80P(2)(d) of the Act as claimed.
10. In view of the above, order passed by the CIT(A) cannot be sustained. The Assessing Officer is directed to allow deduction of INR 29,46,452/- under Section 80P(2)(d) of the Act. Ground No. 1, 2, and 3 raised by the Appellant are allowed. Ground No. 4 raised

by the Appellant pertaining to levy of fee under Section 234E of the Act does not arise from the impugned order passed by the CIT(A). Accordingly, the same is dismissed. The Appellant would be at liberty to pursue such remedy as available under law in relation to the same.

6. In result, the appeal preferred by the Assessee is partly allowed.

Order pronounced on 16.07.2024.

Sd/-
(Narendra Kumar Billaiya)
Accountant Member

Sd/-
(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 16.07.2024

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त/ The CIT
4. प्रधान आयकर आयुक्त / Pr.CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार /(Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai