

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

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

**ITA No. 1235/MUM/2024
(Assessment Year: 2022-23)**

Urvashi Cooperative Housing Society Limited,

Urvashi Co-operative HSG
Soc Ltd. Road No.2, Sundar Nagar Kalina,
Santacruz, Mumbai - 400098
[PAN: AAAAU0034B]

..... **Appellant**

Income Tax Officer

ITO Ward 22(3)(1),
Piramal Chamber Building, Mumbai

Vs

..... **Respondent**

Appearance

For the Appellant/Assessee : Shri Surendra Tiwari
Ms. Riya Srivastava

For the Respondent/Department : Shri Himanshu Sharma

Date

Conclusion of hearing : 03.07.2024
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 23/01/2024, passed by the Learned Commissioner of Income Tax, Appeals - ADDL/JCIT (A)-4 Bengaluru, [hereinafter referred to as the '**CIT(A)**'] for the Assessment Year 2022-23, whereby the Ld. CIT(A) had dismissed the appeal of the Assessee against the Intimation, dated 24/07/2023, issued under Section 143(1) of the Income Tax Act, 1961 (hereinafter referred to as '**the Act**') by the Centralized Processing Centre.
2. All the grounds raised in the present appeal are directed against the order of CIT(A) dismissing the appeal and thereby,

confirming the disallowance of INR 2,84,801/- made in respect of deduction claimed by the Appellant in the return of income under Section 80(P)(2)(d) of the Act for the interest income received from co-operative banks.

3. We have considered the rival submission and perused the material on record. There is no dispute on facts. The core issue that arises for consideration is whether a co-operative society is entitled to claim deduction under Section 80(P)(2)(d) of the Act in respect of interest income received from a co-operative bank.
4. We find that the aforesaid issue is no longer res-integra and stands decided in favour of assessee.
- 4.1. The CIT(A) has made reference to the provisions of Section 80P(4) of the Act while confirming the disallowance made under Section 80P(2)(d) of the Act. In the case of **Mavilayi Service Co-operative Bank Ltd. vs. Commissioner of Income Tax, Calicut: [2021] 431 ITR 1 (SC)[12-01-2021]**, the Hon'ble Supreme Court has held that the provision of Section 80P(4) are attracted only in case of co-operative society holding a banking license issued by the Reserve Bank of India (RBI). It is not the case of the Revenue that the Assessee is either registered with RBI under Banking Regulation Act, 1949 and/or hold baking license issued by RBI. Therefore, provisions of Section 80P(4) of the Act would not get attracted in the case of the Appellant.
- 4.2. Bare perusal of provisions of Section 80P(2)(d) of the Act shows that for purposes of eligibility for deduction under Section 80P(2)(d) of the Act, interest must be received from a 'co-operative society'. A co-operative society is defined in Section 2(19) of the IT 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 has held that co-operative bank continues to be a co-operative society and therefore, the 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 **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].

- 4.3. The judgment of the Hon'ble Supreme Court in the case of **Totgars Cooperative Sale Society Ltd. vs. ITO (2010) 322 ITR 283 (SC)** was rendered in the context of Section 80P(2)(a) of the Act (wherein expression '*the whole of the amount of profits and gains of business attributable to any one or more of such activities*' has been used), whereas in Section 80P(2)(d) of the Act expression used is '*any income by way of interest*'. Thus, 'any income by way of interest' derived by a co-operative society (from a co-operative bank) would be eligible for deduction under Section 80P(2)(d) of the Act irrespective of the fact that such interest income is taxable as '*profits and gains of business*' or as

'income from other sources' since Section 80P(2)(d) uses the expression *'any income'* and not *'profits & gains of business'*.

4.4. In view of the above, disallowance of deduction of INR, 2,84,801/- claimed by the Appellant under Section 80P(2)(d) of the Act cannot be sustained.

5. We note that the CIT(A) had supported the disallowance by observing in paragraph 2.3 of the order impugned that the return filed by the Appellant was belated. In this regard, we note that the reason for holding that the return as belated was that the date of receipt of verification in ITR-V by the Centralized Processing Centre was taken into consideration for the purpose of determination whether the verification was filed by the Appellant within a period of period of 30 days from the date of filing return electronically. Since the receipt by Centralized Processing Centre was after the expiry of the aforesaid period of 30 days from the date of electronic transmission of the return, the return was treated as belated. However, on perusal of Notification No. 5 of 2022, dated 29/07/2022, and Notification No. 2 of 2024, dated 31/03/2024 (as corrected by corrigendum dated 04/04/2024) it is clear that the date of dispatch (and not the date of receipt) of the speed-post by the Appellant should have been taken into consideration for the relevant assessment year. It is not the case of the Revenue that even the dispatch was after the expiry of 30 days from the date of electronic transmission of the return. Therefore, the return of income filed by the Appellant on 20/10/2022 cannot be regarded as belated return.

6. Thus, in view of paragraph 4 to 5 above, we overturn the decision of the CIT(A) and allow Appellant's claim for deduction of INR.2,84,801/- under Section 80P(2)(d) of the Act. Ground No. 3, and 4 raised by the Appellant are allowed; and therefore,

Ground Nos 1, 2 & 4 are dismissed having been rendered infructuous.

7. In result, in terms of paragraph 5 above, appeal preferred by the Assessee is 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

Poonam mirashi
Stenographer

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