

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

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

**ITA No. 1528/MUM/2024
(Assessment Year: 2020-21)**

Bianca Co Operative Housing Society Limited,

Yari Road Village, Versova,

Andheri (West) - 400061

[PAN: AAAAB5938K]

..... **Appellant**

Vs

Income Tax Officer - 24(1)(1),

Piramal Chamber, Mumbai - 400012

..... **Respondent**

Appearance

For the Appellant/Assessee : Shri Dharan Gandhi

For the Respondent/Department : Shri R.R. Makwana

Date

Conclusion of hearing : 10.07.2024

Pronouncement of order : 19.07.2024

ORDER

Per Rahul Chaudhary, Judicial Member:

1. By way of the present appeal the Assessee has challenged the order, dated 05/02/2024, passed by the National Faceless Appeal Centre (NFAC) – Delhi [hereinafter referred to as 'the **CIT(A)**'], for the Assessment Year 2020-21, whereby the Ld. CIT(A) had dismissed the appeal of the Assessee against the Assessment Order, dated 19/09/2022, passed under Section 143(3) r.w.s. 144B of the Income Tax Act, 1961 (hereinafter referred to as 'the **Act**').
2. The Assessee has raised following grounds of appeal:
 1. *The Ld. CIT(A), NFAC, failed to condone of delay in filing the appeal on the ground that there was no sufficient cause shown by the appellant as per the provisions of section 249(3) r.w.s. 250 of the Income Tax Act, 1961.*

2. *The Ld. CIT(A), NFAC, erred in confirming the addition of Rs. 27,27,524/- made by the Ld. AO, NFAC, being disallowance of deduction under section 80P(2)(d) of the Act. Therefore, the prays that deduction of under section 80P(2)(d) of Rs. 27,27,524/- be allowed to it.*
 3. *The assessment order dated 19.09.2022 has been passed in gross violation of principles of natural justice.*
 4. *The Ld. AO, NeAC, has erred in the levying interest under section 234B of the Act.*
 5. *The Ld. AO, has erred in initiating penalty proceeding u/s 274 r.w.s.270A of the Act.*
 6. *The Appellant craves leave to add, to amend, alter/delete and/or modify the above grounds of appeal on or before the final hearing.*
3. 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 27,27,524/- made by the Assessing Officer 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.
4. We have considered the rival submission and perused the material on record.
- 4.1. Both sides agreed that, on merits, identical issue stands decided in favour of the Appellant vide order, dated 13/04/2023, passed by the Co-ordinate Bench of the Tribunal in appeal preferred by the Appellant for the Assessment Year 2018-19 [ITA No. 339/Mum/2023]. In the aforesaid decision, the Tribunal held that the Appellant was entitled to claim deduction under Section 80P(2)(d) of the Act in respect of interest income received from a co-operative bank. The relevant extract of the aforesaid decision of the Tribunal reads as under:

"10. In the present case, there is no dispute that the assessee

is a co-operative society and thus if any income referred to in sub-section (2) to section 80P of the Act is included in the gross total Income of the assessee, the same shall be allowed as deduction. Since the assessee is registered under the Maharashtra Co-operative Societies Act, 1962, it is required to invest or deposit its funds in one of the modes provided in Section 70 of the aforesaid Act, which includes investment or deposit of funds in the District Central Co-operative Bank or the State Co-operative Bank. Accordingly, the assessee kept the deposits in co-operative banks and earned interest of Rs.28,52,748, which was claimed as a deduction under section 80P(2)(d) of the Act. The Revenue denied the deduction under section 80P(2)(d) of the Act on the basis that the Interest income earned from co-operative bank is not covered under the aforesaid provisions and the said provision only grants deduction in respect of interest earned from co-operative society. In this regard, it is pertinent to note that all co-operative banks are co-operative societies but vice versa is not true. We find that the coordinate benches of the Tribunal have consistently taken a view in favour of the assessee and held that even the interest earned from the co-operative banks is allowable as a deduction under section 80P(2)(d) of the Act. In Kallandas Udyog Bhavan Premises Co-op Society Ltd vs ITO, in ITA No. 6547/ Mum./2017, vide order dated 25/04/2018, while dealing with the provisions of section 80P(2)(d) vis-à-vis section 80P(4) of the Act, the coordinate bench of the Tribunal observed as under:

"7. Thus, from a perusal of the aforesaid Sec. 80P(2)(d) it can safely be gathered that income by way of interest income derived by an assessee co-operative society from its Investments held with any other cooperative society, shall be deducted in computing the total income of the assessee. We may herein observe, that what is relevant for claim of deduction under Sec. SOP(2)(d) is that the interest income should have been derived from the investments made by the assessee co-operative society with any other cooperative society. We though are in agreement with the observations of the lower authorities that with the insertion of Sub-section (4) of Sec. 80P, vide the Finance Act, 2006, with effect from 01.04.2007, the provisions of Sec. 80P would no more be applicable in relation to any

co-operative bank, other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank, but however, are unable to subscribe to their view that the same shall also jeopardise the claim of deduction of a co-operative society under Sec. 80P(2)(d) in respect of the interest income on their investments parked with a co-operative bank. We have given a thoughtful consideration to the issue before us and are of the considered view that as long as it is proved that the interest income is being derived by a co-operative society from its investments made with any other co-operative society, the claim of deduction under the aforesaid statutory provision, viz. Sec. 80P(2)(d) would be duly available. We may herein observe that the term 'co-operative society' had been defined under Sec. 2(19) of the Act, as under:-

'(19) "Co-operative society" means a cooperative 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;'

We are of the considered view, that though the co-operative bank pursuant to the insertion of Sub-section (4) of Sec. 80P would no more be entitled for claim of deduction under Sec. 80P of the Act, but however, as a co-operative bank continues to be a co-operative society registered under the Co-operative Societies Act, 1912 (2 of 1912), or under any other law for the time being enforced in any state for the registration of co-operative societies, therefore, the interest income derived by a co-operative society from its Investments held with a co-operative bank, would be entitled for claim of deduction under Sec.80P(2)(d) of the Act."

- 11. Therefore, in view of the above and respectfully following the decision of the coordinate bench, we uphold the plea of the assessee and direct the AO to grant deduction under section 80P(2)(d) of the Act to the assessee in respect of interest income earned from investment with co-operative banks. Accordingly, we set aside the impugned order passed by the learned CIT(A). In view of our aforesaid findings, ground No. 1 raised by the assessee is allowed for statistical*

purposes."

- 4.2. Thus, in view of above decision, the Appellant is entitled to claim deduction under Section 80P(2)(d) of the Act in respect of the interest received from co-operative banks. However, we note that the CIT(A) had dismissed the appeal as being barred by limitation. During the course of hearing Counsel for the Appellant submitted that the delay in filing appeal before the CIT(A) was caused on account of bonafide reasons. We note that in the Statement of Facts filed before the CIT(A) along with the appeal memo in Form 35, it was stated as under:

"CONDONATION OF THE DELAY IN FILING THE ABOVE APPEAL AND THE GROUNDS OF APPEAL

Assessee being a co. op. housing society & the day to day operations of the same were managed by the designated manager who had the exclusive access to all the society emails & communications. Unfortunately during the tenure when the assessment order dated 19-09-2022 for ay 2020-21 was passed the manager was on a long leave & the email communications were left unattended. During that period also no hard copies of the assessments orders were also received by the society M.C. as a back up mechanism. The matter came to light only on the manger resuming duties on receiving the show cause notice U/S 270A dated 23-01-2023 by email & then the matter came to disclosure & so cognizance of the earlier connected relevant orders U/S 143(3) was taken on immediate priority. Hence in view of the above unforeseen facts and considering the unintentional delay, the fault or lapse on assessee part of assessee, the delay in filing the appeal may please be condoned & hence allowing the opportunity of providing the natural justice it is our humble request to admit the appeal filed hereby and oblige".

- 4.3. The Learned Counsel for the Appellant also placed reliance on the affidavit, dated 05/07/2024, sworn by the secretary of the Appellant/Co-operative Society in support of the above explanation offered before the CIT(A).

4.4. We note that for identical reasons the appeal filed by the Appellant before the Tribunal for the Assessment Year 2018-19 was delayed by 141 days. Accepting the explanation furnished by the Appellant, the Tribunal, vide order dated 14/04/2023 passed in ITA No. 339/Mum/2023, condoned the delay in filing the appeal holding as under:

"2. *The present appeal is delayed by 141 days. The Secretary of the assessee has filed an affidavit praying for condonation of delay. In the said affidavit sworn on 03/02/2023, the Secretary of the assessee has submitted as under:*

"1. Our society being the assessee which is a co. op, housing society & the day to day operations of the same were managed by the designated manager who had the exclusive access to all the society emails & communications. Unfortunately during the tenure when the appellate order dated 20-07-2022 for ay 2018-19 was passed, the society manger was on a long leave & the email communications were left unattended. During that period also no hard copies of any orders from the department were received by the society M.C. as a back up Intimation. The matter came to light only on the manger resuming duties back & then the matter was highlighted & so the cognizance of the same was taken on immediate priority. Hence in view of the above unforeseen facts and considering the un-Intentional delay, the fault or lapse on the part of society & the delay in filing the appeal may please be condoned by allowing the opportunity of providing the natural justice, it is our humble request to admit the appeal filed hereby and oblige."

3. *In view of the above, the assessee has requested to condone the delay as the same is unintentional and due to circumstances beyond the control of the assessee. On the other hand, the learned Departmental Representative ("learned DR") did not raise any serious objection against the application seeking condonation of delay. Having perused the affidavit, we find that the Impugned order dated 20/07/2022, was received by the assessee on the same date. Thus, as per the provisions of section 253(3) of the Act, the assessee was required to file the appeal within 60*

days from the date of receipt of the order. However, the assessee filed the appeal, for the year under consideration, on 06/02/2023. The reasons stated by the assessee for seeking condonation of delay fall within the parameters for grant of condonation laid down by the Hon'ble Supreme Court in the case of Collector Land Acquisition, Anantnag Vs. MST Katiji and others: 1987 SCR (2) 387. It is well established that rules of procedure are handmaid of justice. When substantial justice and technical considerations are pitted against each other, the cause of substantial Justice deserves to be preferred. In the present case, the assessee did not stand to benefit by late filing of the appeal. In view of the above and having perused the affidavit, we are of the considered view that there exists sufficient cause for not filing the present appeal within the limitation period and therefore, we condone the delay in filing the appeal by the assessee and we proceed to decide the appeal on merits."

- 4.5. We are also of the view that the Appellant had sufficient cause for not filing appeal before the CIT(A) within the prescribed time. In the facts and circumstances of the present case it cannot be said that there was excessive or inordinate delay in filing the appeal and that the reason stated by the Appellant show a reasonable cause not filing appeal within limitation. In our view the delay deserves to be condoned. Accordingly, in view of the explanation provided by the Appellant we condone the delay of 103 days in filing the appeal before CIT(A) is condoned. Further, on merits the issue raised stands decided in favour of the Appellant by the decision of the Tribunal in the case of the Appellant for the Assessment Year 2018-19 [ITA No. 339/Mum/2023, dated 13/04/2023], and therefore, remanding the issue back to the file of the CIT(A) for adjudication on merits would amount to empty formality. Therefore, respectfully following the aforesaid decision of the Tribunal in the case of the Appellant for the Assessment Year 2018-19, we overturn the decision of the CIT(A) and delete the disallowance of INR

27,27,524/- made by the Assessing Officer with the direction to allow deduction for the same under Section 80(P)(2)(d) of the Act.

5. In view of the above, Ground No. 2 raised by the Appellant is allowed; Ground No. 4 raised by the Appellant is disposed off as being consequential; and all the other grounds raised by the Appellant are disposed off as being infructuous.
6. In result, the present appeal preferred by the Assessee is allowed.

Order pronounced on 19.07.2024.

Sd/-
(Narendra Kumar Billaiya)
Accountant Member

Sd/-
(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 19.07.2024
Poonam Mirashi
Stenographer

आदेश की प्रतिलिपि ँ ग्रेषित/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