

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

**BEFORE SHRI B R BASKARAN, ACCOUNTANT MEMBER AND**  
**SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER**

**ITA no.1360/Mum./2024**  
**(Assessment Year : 2018-19)**

**Maker Tower F Premises**

**Co-Op. Soc. Ltd,**

56, Maker Arcade, G. D. Somani  
Road, Cuffe Parade,  
Maharashtra-400005  
PAN – AAAAM2065Q

..... Appellant

v/s

**DCIT-CPC**

Post Bag No.2, Electricity  
Post Office, Bengaluru  
560500

..... Respondent

Assessee by :Ms Vasanti Patel

Revenue by :Shri Surendra Meena, Sr. DR

Date of Hearing – 13/06/2024

Date of Order – 25/07/2024

**ORDER**

**PER SANDEEP SINGH KARHAIL, J.M.**

The present appeal has been filed by the assessee challenging the impugned order dated 31/01/2024 passed under section 250 of the Income Tax Act, 1961 (*"the Act"*) by the learned Joint Commissioner of Income Tax (Appeals)-3, Ahmedabad, [*"learned JCIT(A)"*], which in turn arose from the intimation issued under section 143(1) of the Act, for the assessment year 2018-19.

2. In this appeal, the assessee has raised the following grounds:-

*"I. DISMISSAL OF APPEAL FILED AGAINST INTIMATION U/S 143(1) ON THE GROUNDS OF DOCTRINE OF MERGER:*

*1.1 On the facts and in the circumstances of the case and in law, the learned Commissioner of Income-tax (Appeals) [CIT (Appeals)] erred in dismissing the appeal filed by the Appellant against the intimation under section 143(1) treating it as infructuous on the grounds of doctrine of merger.*

*1.2 The learned CIT (Appeals) erred in not deciding the appeal filed against the intimation under section 143(1) on the merit.*

*1.3 The learned CIT(Appeals) failed to appreciate the submissions made and explanations furnished by the Appellant and laid down by court in this behalf.*

*II. DENIAL OF DEDUCTION UNDER SECTION 80P(2)(d) IN RESPECT OF INTEREST FROM CO-OPERATIVE BANKS:*

*2.1 On the facts and in the circumstances of the case and in law, the learned CIT (Appeals) erred in not dealing with Grounds of Appeal relating to the additions made to the Total Income of the Appellant by the learned Assessing Officer by denying the deduction under section 80P(2)(d) of Rs. 18,61,150/- claimed by the appellant.*

*2.2 The learned Assessing officer and the learned CIT(Appeals) failed to appreciate that the Appellant is a Registered Premises Co-operative Society and is therefore eligible to deduction under Section 80P(2)(d) of the Act in respect of interest from the Co-operative Banks.*

*2.3. The learned Assessing officer and the learned CIT(Appeals) failed to appreciate the submissions made and explanations furnished by the Appellant and principles laid down by the Courts in this behalf.*

*The Appellant prays that the denial of deductions by the learned Assessing Officer is unjustified, unreasonable and deduction may kindly be granted.*

*The appellant craves leave to add, alter or amend the aforementioned Grounds of Appeal, which are without prejudice to each other, as and when an occasion may arise at the time of hearing."*

3. The issue arising in ground no.1, raised in assessee's appeal, pertains to dismissal of appeal by the learned JCIT(A) by applying the doctrine of merger.

4. We have considered the submissions of both sides and perused the material available on record. The brief facts of the case are that the assessee

is the Co-operative Housing Society. For the year under consideration, the assessee filed its return of income on 15/09/2018 declaring a total income of INR 97,64,660, after claiming deduction of INR 18,61,150 under section 80P(2)(d) of the Act. The return filed by the assessee was processed vide intimation dated 29/06/2019 issued under section 143(1) of the Act determining the total income of the assessee at INR 1,16,25,810, after disallowing the deduction claimed under section 80P(2)(d) of the Act. Being aggrieved, the assessee filed the appeal before the learned CIT(A). However, in the meanwhile, the return filed by the assessee was selected for scrutiny, and notice under section 143(2) of the Act was issued on 22/09/2019 in order to examine the issue of claim of deduction under section 80P of the Act. While the assessee's appeal against the intimation issued under section 143(1) of the Act was pending before the learned CIT(A), the scrutiny assessment under section 143(3) of the Act was concluded and vide order dated 18/03/2021, the Assessing Officer disallowed the deduction of INR 18,61,150 claimed under section 80P(2)(d) of the Act. The learned JCIT(A), vide impugned order, after taking into consideration the aforesaid facts held that since the scrutiny order under section 143(3) of the Act has been passed disallowing the deduction of INR 18,51,150 claimed under section 80P(2)(d) of the Act after an elaborate discussion in the assessment order, therefore the intimation under section 143(1) of the Act itself is not in existence now, and consequently the assessee's appeal has become infructuous. Being aggrieved with the dismissal of its appeal by the learned JCIT(A), the assessee is in appeal before us.

5. From the perusal of the material available on record, in the present case, it is undisputed that the deduction claimed by the assessee under section 80P(2)(d) of the Act was not only disallowed vide intimation issued under section 143(1) of the Act, but the same has also been subsequently disallowed by the Assessing Officer pursuant to conduct of scrutiny assessment under section 143(3) of the Act. Undisputedly, the deduction claimed under section 80P of the Act was the basis for selection of assessee's return for scrutiny assessment. Such being the facts, now the issue arises whether after passing of the assessment order passed under section 143(3) of the Act, the intimation issued under section 143(1) of the Act still survives qua the disallowance of deduction claimed under section 80P(2)(d) of the Act.

6. We find that the coordinate bench of the Tribunal in M/s. Areca Trust v/s The CIT(A), NFAC, in ITA no.433/Bang/2023, vide order dated 26/07/2023, held that unless the issue has been discussed and adjudicated in the regular assessment under section 143(3) of the Act, merger of intimation issued under section 143(1) of the Act with that of the regular assessment under section 143(3) of the Act does not arise. Further, we find that another coordinate bench of the Tribunal in National Stock Exchange of India Limited v/s DCIT, in ITA No. 732/Mum/2023, vide order dated 22/09/2023, observed as follows:-

*"5. ....Further, as the case of assessee was scrutinized u/s. 143(2) and assessment order u/s. 143(3) was passed, technically the doctrine of merger comes into picture, therefore the impugned adjustment by CPC gets merged into order passed u/s. 143(3) of the Act and order passed u/s. 143(3) only survives....."*

7. Therefore, in both the decisions, the coordinate bench of the Tribunal came to the conclusion that once the issue has been examined and adjudicated in the regular assessment proceedings, the doctrine of merger is triggered, and the intimation issued under section 143(1) of the Act gets merged with the assessment order passed under section 143(3) of the Act qua that issue. In its submission, the assessee has emphasised on the aspect that section 246A specifically provides for an appeal as against the intimation issued under section 143(1) of the Act. It is pertinent to note that undoubtedly the intimation issued under section 143(1) of the Act is appealable before the learned CIT(A), however subsequent to the assessment order being passed under section 143(3) of the Act, the only order which survives, as regards deduction claimed under section 80P(2)(d) of the Act, is the scrutiny assessment order passed under section 143(3) of the Act as the intimation issued under section 143(1) of the Act get merged in the former. Therefore, we find no reason to interfere in the findings of the learned JCIT(A) that after passing of the assessment order under 143(3) of the Act, the intimation issued under section 143(1) of the Act is not in existence. Accordingly, we are of the considered view that the learned JCIT(A) has rightly dismissed assessee's appeal, as the same has become infructuous. As a result, ground no.1 raised in assessee's appeal is dismissed.

8. The issue arising in ground no.2, raised in assessee's appeal, pertains to the merit of deduction claimed under section 80P(2)(d) of the Act. Since the appeal filed by the assessee before the learned CIT(A), resulting in the

impugned order, has been found to be infructuous, therefore this issue has become academic, and is left open without rendering any finding on same.

9. As a result, the appeal by the assessee is dismissed.

Order pronounced in the open Court on 25/07/2024

**Sd/-**  
**B.R. BASKARAN**  
**ACCOUNTANT MEMBER**

**MUMBAI, DATED: 25/07/2024**

Vijay Pal Singh, (Sr. PS)

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The PCIT / CIT (Judicial);*
- (4) *The DR, ITAT, Mumbai; and*
- (5) *Guard file.*

True Copy

**Sd/-**  
**SANDEEP SINGH KARHAIL**  
**JUDICIAL MEMBER**

By Order

Assistant Registrar  
ITAT, Mumbai