

IN THE INCOME TAX APPELLATE TRIBUNAL "H (SMC)"BENCH
MUMBAI

BEFORE SMT RENU JAUHRI, ACCOUNTANT MEMBER &
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No.2036/MUM/2024
(A.Y.2018-19)

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| M/s Splendor Complex Chs Ltd., CTS No.1, Part of Village, Majas Depot, Jogeshwari Vikhroli Link Road, Andheri (E), Mumbai – 400 060. | Vs. | Pr. CIT – 41 Circle 41(4)(1) Room No. 541, Kautilya Bhavan, C-41 to C-43, G Block, BKC, Bandra (E), Mumbai – 400051. |
| PAN/GIR No. AALAS9136K | | |
| (अपीलार्थी/Appellant) | | (प्रत्यर्थी/Respondent) |

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| Appellant by | Shri. Paresh Gohil, CA |
| Respondent by | Ms.Jancy Elizabeth Rani. Sr.DR & Shri K. C Selvamani, CIT DR |

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| सुनवाई की तारीख/Date of Hearing | 23.07.2024 |
| घोषणा की तारीख/Date of Pronouncement | 25.07.2024 |

ORDER

PER RENU JAUHRI, AM:

The appeal is filed by the assessee against the order of Pr. Commissioner of Income Tax – 41, Mumbai (in short “Pr. CIT”), passed u/s 263 of the Act Income Tax Act, 1961 (in short “the Act”). The assessee has raised the following grounds of appeal:

1. *On the facts and in the circumstances of the case, the Ld. P.C.I.T. erred in exercising jurisdiction by invoking provisions of section 263 without giving proper reasons for the same.*

2. *On the facts and in the circumstances of the case, the Ld. P.C.I.T erred in directing the A.O. to reconsider the deduction claimed under section 80P(2)(d) of Rs. 1,31,89,848/- even though the said issue was elaborately dealt with by the A.O. by applying its mind while passing original order u/s 143(3).*

3. *Without prejudice to the above, on the facts and in the circumstances of the case, the Ld. PCIT erred in not considering the order of the Hon'ble ITAT in the appellant's own case for A.Y. 2015-16 wherein similar issue has been held in favour of the appellant.*

4. *In doing so, the Ld. PCIT erred in following the judgment of Hon'ble Supreme Court in the case of Totgar's Co-operative Sale Society Ltd. v. ITO [2010] 322 ITR 283/188 Taxman 282 (SC) although the same was rendered based on section 80P(2)(a)(i) and not section 80P(2)(d)*

5. *In doing so, the Ld. PCIT erred in relying upon the provisions of section 80P(4) and the judgment of Hon'ble High Court of Karnataka in case of Principal Commissioner of Income-tax, Hubballi vs. Totagars Co-operative Sale Society [2017] 83 taxmann.com 140 (Karnataka) while directing the A.O. to reconsider the deduction under section 80P(2)(d).*

6. *The Appellant craves to add, alter or delete all or modify any or all the above grounds of appeal.*

2. The brief facts are that the assessee is a residential housing society which filed return declaring income of Rs. 36,76,470/- for the A.Y 2018-19. The case was selected for scrutiny and assessment was finalized at returned income vide order dated 09.04.2021. Subsequently, proceedings u/s 263 of the Act were initiated by the Ld. Pr. CIT on the ground that the AO had wrongly allowed the

claim for deduction of Rs. 1,31,89,848/- on account of interest received on investments made with cooperative banks u/s 80P(2)(d) of the Act. The Ld. Pr. CIT vide his order dated 22.03.2024 held that the AO had failed to examine / verify the claim of deduction u/s 80P(2)(d) of the Act rendering the order erroneous as well as prejudicial to the interest of revenue.

3. Before us, the Ld. AR contended that the issue was thoroughly examined by the AO and after considering the reply submitted by the assessee the deduction u/s 80(P)(2)(d) of the Act was allowed by the AO. In respect of his claim, the Ld. AR has filed a copy of the show cause notice issued by the AO on 11.11.2020 during the original assessment proceedings wherein he had proposed to disallow the claim of deduction u/s 80P(2)(d) of the Act. After duly considering reply to the show cause notice furnished by the assessee, the AO completed the assessment at returned income after allowing the deduction as claimed.

4. We have considered the rival submissions. From the documents furnished by the Ld. AR, it is clear that the issue had been examined during the original assessment proceedings and the deduction claimed u/s 80P(2)(d) of the Act has been rightly allowed in view of the judicial pronouncements and following the orders of the coordinate Bench in numerous cases. We, therefore, hold that the action of the Ld. Pr. CIT in reopening the assessment u/s

263 of the Act was not in order. Moreover, the issue regarding allowing deduction u/s 80P(2)(d) of the Act in cases of cooperative housing society in respect of the interest earned from investments in cooperative banks has been decided in favour of the assessee in several cases. Specifically, in the assessee's own case for the for A.Y 2015-16 in **ITA No. 2899/Mum/2023** the coordinate Bench of the Tribunal has decided the issue in favour of the assessee.

5. Respectfully following the order of the coordinate Bench in assessee's own case for the A.Y 2015-16, we hold that the assessee is entitled to deduction u/s 80P(2)(d) of the Act in respect of interest income from cooperative banks.

6. In the result the appeal filed by the assessee is allowed.

Order pronounced in the open court on 25.07.2024.

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Sd/-
(RENU JAUHRI)
ACCOUNTANT MEMBER

Mumbai, Dated: 25/07/2024

KRK

Copy of the Order forwarded to:

1. The Appellant,
2. The Respondent
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,
(Dy./Asstt. Registrar)ITAT,
Mumbai