

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

BEFORE, MS. KAVITHA RAJAGOPAL, JUDICIAL MEMBER

AND

SHRI RATNESH NANDAN SAHAY, ACCOUNTANT MEMBER

**ITA No.4421/M/2023
Assessment Year: 2021-22**

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| Kumkum Kavita Cooperative Housing Society Limited R. B. Mehta Marg, Opp. Swaminarayan Mandir, Ghatkopar (East).-400077. PAN: AAAAK1786G | Vs. | Deputy Commissioner of Income Tax Income Tax Officer- 27(1)(1), Mumbai- 400703. (Current Jurisdiction) |
| (Appellant) | | (Respondent) |

Present for :

Assessee by : None

Revenue by : Shri R. R. Makwana - SR. D.R.

Date of Hearing : 22 . 07 . 2024

Date of Pronouncement : 01 . 08 . 2024

O R D E R

Per: Ratnesh Nandan Sahay, Accountant Member:

1. This appeal has been filed by the appellant against the Order of the Ld. CIT (Appeals) passed u/s. 250 of the Income Tax Act [the 'Act' in short] vide DIN & Order No. ITBA/NFAC/S/250/2023-24/1057022437(1) Dated 12/10/2023 for the Assessment Year 2021-22.

2. Following grounds of appeal have been raised by the appellant:

1. *“On the facts and circumstances of the case and law, the Ld. CIT(A) erred in confirming disallowance of Rs.5,74,906/- being interest received from Co-Operative Banks under section 80P(2)(d) of Income Tax Act, 1961.*
2. *Appellant craves leave to add further grounds or to amend or alter the existing grounds of appeal on or before the date of hearing.”*

3. The facts of the case, in brief, are that the appellant is a Co-operative Housing Society registered under Maharashtra Society Act, 1960. It filed its return of income for the assessment year 2021-22 declaring a total income at Rs.69,930/- after claiming a deduction of Rs.5,74,906/- u/s. 80P(2)(d) of the Act. The return was processed u/s. 143(1) on 19/10/2022 by Central Processing Centre (CPC) in which the deduction claimed u/s. 80P (2)(d) was denied to the assessee. Subsequently, the assessee filed rectification application before the CPC stating therein that there was a mistake apparent from record in the intimation order u/s. 143(1) issued by the CPC as the deduction u/s. 80P (2)(d) was wrongly denied. The CPC, however, rejected the claim of the appellant.
4. Aggrieved by the order of the CPC, the appellant filed appeal before the Ld. CIT (A). During the appellate proceedings, the appellant claimed that the appellant Cooperative Society is entitled for the deduction u/s. 80P (2)(d) of the Act. The appellant also filed several decisions in favour of its contentions. The Ld. CIT (A), however, dismissed the appeal of the

assessee on the ground that the appellant filed the appeal against the order of the CPC passed u/s. 154 of the Act and not against the intimation order passed u/s. 143(1) of the Income Tax Act. The Ld. CIT (A) has also referred to several decisions of the Income Tax Tribunals, High Courts and the Hon'ble Supreme Court in support of its decision.

5. Aggrieved by the order of the Ld. CIT (A), this appeal has been preferred. During the appellate proceedings before us, the appellant has submitted a paper book and claimed that appellant, being a Cooperative Society, had kept fixed deposits with another Cooperative Society which was also carrying on the business of banking and therefore, the appellant was entitled to claim deduction u/s. 80P(2)(d) of the Income Tax Act. The appellant has also placed reliance on the decision of the Coordinate Bench of ITAT in ITA No. 2796/Mum/2022 in which the Hon'ble ITAT has allowed the deduction claimed u/s. 80P(2)(d) of the Act, in respect of the interest income earned by the Cooperative Society from Cooperative Bank.
6. We have considered the rival submissions and found that though the Coordinate Benches of ITAT, Mumbai have allowed the claim of deduction u/s. 80P (2)(d) of the Act in the case of Cooperative Society in respect of the interest income earned on deposits kept with Cooperative Banks, yet since the Ld. CIT(A) has not decided the issue on merit and has dismissed the appeal on the ground that the appeal was filed by the

assessee against the order of the CPC passed u/s. 154 of the Act and not against the intimation order passed u/s. 143(1) of the Act. We, therefore, find it proper to remand the issue to the file of the Ld. CIT (A) to decide the case on merit after affording opportunity of being heard to the assessee.

7. In the result, the appeal is allowed for statistical purpose.

Order pronounced in the open court on 01.08.2024.

**Sd/-
MS. KAVITHA RAJAGOPAL
JUDICIAL MEMBER**

**Sd/-
RATNESH NANDAN SAHAY
ACCOUNTANT MEMBER**

Mumbai, Dated: 01.08.2024.

Snehal C. Ayare, Stenographer

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai