

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

**BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
AND SHRI ANIKESH BANERJEE, JUDICIAL MEMBER**

**ITA No.136/Mum/2024
Assessment Year: 2020-21**

Laxmi Co-operative Housing Society Limited Laxmi Co-operative Housing Society Limited, Laxmi Nagar, Khar(W), Mumbai-400052. PAN: AAAAL 1009 P (Appellant)	Vs.	Assessment Unit Income Tax Department, Delhi / ITO 22(2)(1), Mumbai (Respondent)
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Present for:

Assessee by : Shri Dinesh Shah

Revenue by : Shri Manoj Kumar Sinha, Sr. DR

Date of Hearing : 11.07.2024

Date of Pronouncement : 21.08.2024

ORDER

PER PRASHANT MAHARISHI, ACCOUNTANT MEMBER:

1. This appeal is filed by the assessee Lakshmi cooperative housing society Ltd against the appellate order passed by the National Faceless Appeal Centre, Delhi (The Learned CIT – A) for assessment year 2020 – 21 dated 29/12/2023 wherein appeal filed by the assessee against the assessment order passed under section 143 (3) read with section 144 of The Income Tax Act (The Act) dated 27/9/2022 by The Assessment Unit, Income Tax Department (The learned AO) determining the total income of the assessee at Rs. 8,602,500/- denying the deduction under section 80 P (2) (d) of the act, was dismissed
2. Assessee is aggrieved with that and has preferred this appeal claiming that the assessee should be allowed the deduction under section 80 P (2) (d) of the act on the interest income earned by a cooperative housing society on investment and dividend received from cooperative banks.
3. Brief facts of the case show that :-

- a. the assessee is a housing co-operative society, filed its return of income on 23/12/2020 declaring total income of rupees nil.
 - b. The assessee has shown the gross total income of Rs. 8,602,497 and claimed deduction of Rs. 8,602,497 under section 80 P (2) (d) of the act.
 - c. The case of the assessee was selected for complete scrutiny and issue was flagged whether the assessee is entitled to the deduction claimed by the assessee or not.
 - d. On examination of the issue, it was found that the assessee has earned fixed deposit interest of Rs. 8,549,620/- and savings bank and the interest of Rs. 52,877/- from the cooperative banks namely Maharashtra state cooperative bank (Rs. 59,338/-), Saraswat cooperative bank (Rs. 39,73,728/-) and Sham RaoVithal cooperative bank (Rs. 4,560,554/-) and savings bank interest received from these banks of Rs. 52,877/-. This interest income earned by the assessee is amounting to Rs. 8,602,497.
 - e. The learned assessing officer disallowed the claim of the deduction holding that assessee is not entitled to this deduction because according to the provisions of section 80 P (4) such deduction is not allowed and further only the deduction is available if the interest income and dividend income is received from cooperative societies and not cooperative banks.
4. Accordingly, the total income of the assessee was determined at Rs. 8,602,497/- wherein the above deduction was denied by passing an assessment order under section 143 (3) read with section 144B of the income tax act on 27/9/2022.
 5. Aggrieved by that, assessee preferred an appeal before the learned CIT – A wherein the order of the learned assessing officer was confirmed. Therefore, the assessee is in appeal before us. The solitary ground of the appeal is disallowance of deduction claimed under section 80 P (2) (d) of Rs. 8,602,497.
 6. The learned authorized representative submitted that assessee being a cooperative housing society has earned the interest income from cooperative banks which are in fact cooperative societies and therefore the assessee should be entitled to deduction under section 80 P (2) (d) of the act. Several judicial precedents were cited before us.

7. The learned departmental representative vehemently supported the orders of the learned lower authorities.
8. We have carefully considered the rival contention and perused the orders of the learned lower authorities. It is an undisputed fact that.
 - a. assessee is a cooperative housing society which has put fixed deposits with other cooperative banks and maintains the savings bank account with those cooperative banks.
 - b. From these investments the assessee is deriving interest income. Whether such interest income is eligible for deduction under section 80 P (2) (d) of the act or not is the short issue involved in this appeal.
 - c. There is plethora of judicial precedents in favour of the assessee wherein it has been held that the definition of the cooperative society under section 2 (19) of the income tax act provides that cooperative society means a cooperative society registered under the cooperative societies act, 1912 or under any other law for the time being in force in any State for the registration of cooperative societies.
 - d. According to the provisions of section 80 P (1) in case of an assessee being a cooperative society the gross total income includes any income referred to in subsection (2) such amount shall be allowed to be deducted from the total income.
 - e. According to the provisions of subsection (2) of that section, clause (d) provides that if such cooperative societies earn income by way of interest or dividend derived by the cooperative society from its investment with any other cooperative societies the whole of such income is deductible.
 - f. According to the provisions of section 80 P (4) it is also provided that this section shall not apply in relation to any cooperative banks. Therefore, if the assessee is a cooperative bank the deduction under section 80 P is denied.
 - g. Admittedly the assessee is not a cooperative bank and therefore the provisions of section 80 P (4) does not apply to the assessee.
 - h. Now it is to be seen whether the assessee's claim falls under the clause (d) of subsection 2 or not. It is also a fact that all these banks are the cooperative societies under the Maharashtra cooperative societies act. They are cooperative societies carrying on the business of the cooperative bank.

- i. In view of this the claim of deduction cannot be denied to the assessee on interest income earned by it from its investment in fixed deposits and savings bank deposits with those banks.
 - j. Accordingly, we do not find any reason to uphold the orders of the learned lower authorities.
 - k. Accordingly, we direct the learned assessing officer to grant deduction of Rs. 8,602,497/- to the assessee under section 80 P (2) (d) of the act.
 - l. In view of this the appeal of the assessee is allowed on the subject matter of the claim.
9. In the result appeal of the assessee is allowed.

Order pronounced in the open court on 21.08.2024.

Sd/-
(ANIKESH BANERJEE)
JUDICIAL MEMBER

Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Mumbai, Dated: 21.08.2024
Biswajit, Sr. P.S.

Copy to:

1. The Appellant:
2. The Respondent:
3. The CIT,
4. The DR

//True Copy//

By Order

Assistant Registrar
ITAT, Mumbai Benches, Mumbai