

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI "SMC" BENCH : MUMBAI

BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER
AND
SHRI RAJ KUMAR CHAUHAN, JUDICIAL MEMBER

ITA No. 4770/Mum/2024
Assessment Year : 2022-23

Ramas Tower Co-Operative Housing Society Limited, S.N. Road, Tambe Nagar, Mulund West, Mumbai PAN : AABAR9445E (Appellant)	vs.	Income Tax Officer, Ward-41(2)(4), Kautilya Bhavan, Mumbai (Respondent)
--	-----	---

For Assessee :	Shri Dharan Gandhi,
For Revenue :	Ms. Smitha V. Nair, Addl.CIT

Date of Hearing :	06-11-2024
Date of Pronouncement :	06-11-2024

ORDER

PER B.R. BASKARAN, A.M :

The assessee has filed this appeal challenging the order dated 27-06-2024 passed by Ld CIT(A), NFC, Delhi and it relates to the Assessment Year (AY.) 2022-23. The assessee is aggrieved by the decision of Ld CIT(A) in confirming the disallowance of deduction claimed u/s 80P(2)(d) of the Act in respect of interest earned from co-operative banks.

2. The Ld A.R submitted that the assessee is a co-operative housing society and it filed its return of income for the year under consideration on 22-12-2022, i.e., beyond the due date prescribed u/s 139(1) of the Act. He submitted that the due date prescribed in the Act was 31st

October and for this year, the same was extended to 07th November, 2022. In the return of income, the assessee had claimed deduction u/s 80P(2)(d) of the Act to the tune of Rs.1,85,198/- in respect of interest earned from deposits kept with co-operative bank. However, the said claim was rejected by CPC apparently on the reasoning that the return of income was not filed within the due date prescribed u/s 139(1) of the Act, vide intimation dated 17-02-2023 passed u/s 143(1) of the Act.

3. The Ld A.R submitted that the assessee had filed application before Ld Chief Commissioner of Income tax for condoning the delay in terms of sec.119(2)(b) of the Act. The Ld CCIT, vide his order dated 09-01-2024, has condoned the delay in filing return of income.

4. The Ld A.R further submitted that the assessee challenged the intimation passed u/s 143(1) of the Act by filing appeal before Ld CIT(A). However, the Ld CIT(A) rejected the appeal of the assessee by holding that the assessee will not be entitled for deduction u/s 80P(2)(d) of the Act in view of the embargo placed in sec.80P(4) of the Act. It is pertinent to note that the provisions of sec.80P(4) of the Act denies the deduction u/s 80P of the Act to the co-operative banks. Aggrieved by the order passed by Ld CIT(A), the assessee has filed this appeal.

5. We heard the parties and perused the record. We notice that the CPC appears to have rejected the claim for deduction u/s 80P(2)(d) of the Act for the reason that the return of income was not filed within the time allowed u/s 139(1) of the Act. We also noticed that the Ld CCIT has condoned the delay in filing return of income and hence the claim of the assessee should be allowed. However, the Ld CIT(A) has taken a different stand and rejected the claim for deduction u/s 80P(2)(d) of the Act by applying the provisions of sec.80P(4) of the Act.

6. The question as to whether a co-operative society is entitled for deduction u/s 80P(2)(d) of the Act in respect of interest earned on deposits kept with co-operative bank is no more res integra. We notice

that an identical issue has been decided by the Hon'ble Madras High Court in the case of Thorapadi Urban Co-op Credit Society Ltd (2023) (156 taxmann.com 419)(Mad) in favour of the assessee. The relevant observations made by Hon'ble Madras High Court are extracted below:-

"8. The main issue is to decide in the present case is as to whether the petitioner Co-operative Society is entitled for a deduction for the interest income received from the Co-operative Bank?"

9. It would be appropriate to extract hereunder the relevant portion of Section 80P(2)(d).

"80 P. Deduction in respect of income of cooperative societies:

(1)

(2) The sums referred to in sub-section (1) shall be the following, namely :— (a) to (c)

(d) "in respect of any income by way of interest or dividends derived by the co-operative society from its investment with any other co-operative society, the whole of such income"

9.1 A reading of the above said provision makes it clear that in the event if any Co-operative Society derived income by way of interest from investment made in any other Co-operative Society the whole such interest is eligible for deduction. Now the issue is as to whether the Co-operative Bank would fall within the purview of the term 'Co-operative Society'. In the present case, the petitioner produced a document to show that the Co-operative Bank, where they have made investments was registered under the Tamil Nadu Co-operative Societies Act, 1983 on 20.5.2003. In this regard, he also produced a copy of the Certificate of Incorporation of the said Co-operative Bank. Therefore, it is clear that the investment made by the petitioner is a Co-operative Bank registered under the Co-operative Societies Act. The Income Tax Act, 1961 has also defined 'Co-operative Society' under Section 2(19) as follows:

"2(19). "Co-operative society" means a co-operative 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."

*10. A reading of the above definition would make it clear that 'Co-operative Society' means a Co-operative Society registered under Co-operative Societies Act, 1912. **Thus, a Co-operative Society referred therein is only a co-operative society as defined under the Act, be it a Co-operative Society carrying on banking business or Co-operative Society carrying on the other businesses or a Co-operative bank.**"*

7. Following the above said decision of the Hon'ble Madras High Court, this Bench of Tribunal has held in the case of Back bay Premises Co-op. Society Ltd (ITA Nos. 4144 & 4146/Mum/2023 dated 14.06.2024) that the interest income earned by a co-operative society from co-operative banks are eligible for deduction u/s 80P(2)(d) of the Act.

8. In view of the above discussions, we are of the view that the Ld CIT(A) was not justified in denying deduction u/s 80P(2)(d) of the Act in respect of interest income earned by the assessee from deposits kept co-operative banks. The delay in filing return of income has already been condoned by Ld CCIT. Hence, the assessee is entitled for deduction u/s 80P(2)(d) of the Act. Accordingly, we set aside the order passed by Ld CIT(A) on this issue and direct the AO to allow deduction u/s 80P(2)(d) to the assessee on the interest income earned from deposits kept with co-operative banks.

9. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 06-11-2024

Sd/-
[RAJ KUMAR CHAUHAN]
JUDICIAL MEMBER

Sd/-
[B.R. BASKARAN]
ACCOUNTANT MEMBER

Mumbai,
Dated: 06-11-2024

TNMM

Copy to :

1.	The Appellant
2.	The Respondent
3.	The Pr. CIT, Mumbai concerned
4.	D.R. ITAT, "SMC" Bench, Mumbai.
5.	Guard File.

//By Order//

//True Copy //

Dy./Asst. Registrar,
ITAT, Mumbai