

IN THE INCOME TAX APPELLATE TRIBUNAL
Mumbai "H (SMC)" Bench, Mumbai.

Before Shri Amit Shukla (JM)
& Shri Omkareshwar Chidara (AM)

I.T.A. No. 3410/Mum/2024 (A.Y. 2014-15)

I.T.A. No. 3411/Mum/2024 (A.Y. 2013-14)

New Chandra Cooperative Housing Society Ltd. Ground Floor, New Chandra CHSL, Veera Desai Road, Andheri W Mumbai-400 053. PAN : AAAAN6586H (Appellant)	Vs.	THE CIT(A)/Addl. JCIT-3 Bengaluru (Respondent)
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Assessee by	Shri R.M. Hagir
Department by	Shri Aditya Manohar Rai
Date of Hearing	08.08.2024
Date of Pronouncement	22.10.2024

ORDER

Per Omkareshwar Chidara (AM) :-

ITA No. 3410/Mum/2024 :

The only dispute in the above said captioned appeal is whether appellant company M/s. New Chandra Cooperative Housing Society Ltd. is entitled for claim for deduction u/s. 80P(2)(d) of the Income Tax Act (the Act for short).

2. In the above cited case, the return of income was processed under section 143(1) of the Act raising demand of Rs. 76,471/- after disallowing the deduction claimed under section 80P(2)(d) of the Act to the extent of Rs. 219,386/-. Ld. AR of the appellant filed an application with the Ld. AO claiming that deduction u/s. 80P(2) was correctly claimed and in support of its contention, ld AR submitted various cases law and requested for allowing

the claim. The petition u/s. 154 of the Act filed by the appellant was rejected by the Ld. AO. The Ld. AO relied on the case of *The Totgar's Cooperative Sales Vs. ITO (SC)* and rectification petition u/s. 154 of the Act was rejected by sending e-mail dated 2.8.2021.

3. Aggrieved by this rejection of deduction u/s. 80P(2)(d) of the Act, an appeal was filed before the Ld. CIT(A), wherein the appellant has challenged the rejection of deduction u/s. 80P(2)(d) of the Act. Before the Ld. CIT(A), Ld. AR filed several cases law of the Mumbai Tribunal and argued that the appellant society is not liable for income tax on the principles of mutuality and tax levied should be cancelled. The Ld. CIT(A) upheld the addition made by the Ld. AO by relying on the decision of Hon'ble Supreme Court by citing the case of *The Totgars Cooperative Sale Society, 395 ITR 611*. Accordingly, it was held that the appeal is not maintainable on merits and the appeal of the appellant was dismissed.

4. Before the ITAT, the appellant has filed an appeal and stated that the Ld. CIT(A) has not appreciated the latest decisions of various High Courts and the Tribunal and rejected the deduction claimed by the society u/s. 80P(2)(d) of the Act.

5. During the proceedings before the Bench, the Ld. AR of the appellant has argued that the matter is covered in favour of the appellant by several decisions of Tribunal and High Court and filed a paper book containing the decisions of the Coordinate Bench of Mumbai.

6. Ld. DR relied on the orders of the Ld. AO and the Ld. CIT(A) and submitted that the appellant is not eligible for the deductions claimed.

7. After hearing both sides, it is decided that the Totgar's case (supra) relied on the by the Ld. CIT(A) is not applicable to the facts of this case

because facts are distinguishable. Hon'ble Apex Court in the above said case was in context of 80P(2)(a)(i) and not on the entitlement of the cooperative society trust deduction u/s. 80P(2)(d) relating to the interest of investment/deposits parked with the cooperative bank. It is observed that Hon'ble High Court of Karnataka in the case of PCIT Vs. Totgars Sale Society, 392 ITR 74 and Hon'ble Gujarat High Court in the case of SBI Vs. CIT, 389 ITR 578 (Guj) held that the interest income earned by the cooperative society from cooperative bank would be eligible for claim of deduction u/s. 80P(2)(d) of the Act. Apart from this, several decisions relied on by Ld. AR of the appellant also held that the appellant company is entitled for deduction u/s. 80P(2)(d) of the Act. Some of the decisions wherein the issue was squarely covered are ITO -17(2)(1) Vs. The Best Employees Cooperative Credit Society Ltd. vide order dated 5.9.2024 and in the case of M/s. Solitaire CHS Ltd. Vs. PCIT (ITA No. 3155/Mum/2019 dated 29.11.2019).

8. In view of the above, it is decided that the appellant society is entitled for deduction u/s. 90P(2)(d) of the Act and the order of the Ld. CIT(A) is reversed.

9. The appeal of the appellant is allowed.

10. ITA No. 3411/Mum/2024 :

As far as the appeal for A.Y. 2013-14 is concerned, the issue is same but the appellant has raised an additional ground stating that the addition relating to section 80P of the Act cannot be made under section 143(1) because it is beyond the limits of said section. In other words, it was contended that an addition u/s. 143(1) of the Act can be made only when there is an incorrect claim or disallowance of set off of loss etc.. As the decision rendered with regard to section 80P(2)(d) deduction is in favour of the appellant on merits, there is no need to adjudicate this ground and hence

the same is dismissed. The appeal of the appellant for A.Y. 2013-14 is also allowed and the addition made by the Ld. AO is deleted.

Both the appeals of appellant mentioned above are allowed.

Order pronounced in the open court on 22nd October, 2024.

Sd/-
(Amit Shukla)
Judicial Member

Sd/-
(Omkareshwar Chidara)
Accountant Member

Mumbai : 22.10.2024

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,

(Assistant Registrar)
ITAT, Mumbai

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