

| आयकर अपीलीय अधिकरण न्यायपीठ, मुंबई |
IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH, MUMBAI

BEFORE SHRI NARENDRA KUMAR BILLAIYA, HON'BLE ACCOUNTANT MEMBER
&
SHRI RAJ KUMAR CHAUHAN, HON'BLE JUDICIAL MEMBER

I.T.A. No. 5106/Mum/2024
Assessment Year: 2018-19

&

I.T.A. No. 5103/Mum/2024
Assessment Year: 2021-22

Prabhu Chhaya CHS Ltd. Plot No. 9, Bhardawadi Road Andheri (West) Mumbai - 400058 [PAN: AAAJP0442R]	Vs	Centralised Processing Centre/Income Tax Officer, Ward-24(3)(1), Mumbai
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
Assessee by :	Shri Rajesh Athavale, A/R	
Revenue by :	Ms. Kakoli Ghosh, Sr. D/R	

सुनवाई की तारीख/Date of Hearing : 21/11/2024

घोषणा की तारीख /Date of Pronouncement: 21/11/2024

आदेश/ORDER

PER NARENDRA KUMAR BILLAIYA, AM:

I.T.A. No. 5106/Mum/2024 & I.T.A. No. 5103/Mum/2024, are two separate appeals by the assessee preferred against the two separate orders of the Id. CIT(A)/Addl/JCIT(A)-3, Bengaluru, even dated 15/02/2024 pertaining to AYs 2018-19 and 2021-22.

2. Since common grievance is involved in both the appeals, they were heard together and are disposed off by this common order for the sake of convenience and brevity.

3. Both the appeals are barred by limitation. The assessee has requested for the condonation of delay and the reasons given are supported by an affidavit which have been considered and the delay is condoned.

4. The sum and substance of the assessee is that the claim of deduction u/s 80(P)(2)(d) of the Act has been denied by the intimation u/s 143(1) of the Act which is not permissible as per the provisions of the Act prevailing at the time of assessment.

5. The undisputed fact is that the assessee is a co-operative society and while processing the return of income of the assessee, the CPC Bengaluru, in its intimation, denied the claim of deduction u/s 80(P)(2)(d) of the Act in respect of the interest received from the Co-operative Bank. The action of the CPC was challenged before the Id. CIT(A) and was strongly contended that the interest income from deposits held with Co-operative Bank is eligible for deduction u/s 80(P)(2)(d) of the Act as the assessee has invested money in various Co-operative banks and earned interest on the money invested. Therefore, the claim of deduction should be allowed. The claim of the assessee did not find any favour with the Id. CIT(A) who denied the claim of deduction.

6. Before us, the Id. Counsel for the assessee vehemently stated that the deduction cannot be denied while processing the return for AY 2018-19 as the relevant amendment has come from AY 2021-22 and further stated that, even in AY 2020-21, since the return of income was filed on time, therefore, the claim cannot be denied while processing the return u/s 143(1) of the Act. Strong reliance was placed in assessee's own case decided by the Co-ordinate Bench in ITA No. 4463/Mum/2023 and further the Id. Counsel for the assessee relied upon the decision of the Co-ordinate Bench in the case of *Pathare Prabhu*

Co-operative Housing Society Limited vs. ITO (153 taxmann.com 714 (Mum) and New Shangrila Cooperative Housing Society Ltd. vs. CPC in ITA No. 755-756/Mum/2023.

7.1. Per contra the ld. D/R strongly supported the findings of the ld. CIT(A) but could not bring any decision in favour of the revenue.

8. We have given a thoughtful consideration to the orders of the authorities below. There is no doubt that the assessee has earned interest on deposits with Co-operative banks and hence eligible for deduction u/s 80(P)(2)(d) of the Act. It is also not in dispute that the claim has been denied by intimation u/s 143(1) of the Act. But it is also a fact that no intimation was issued to the assessee before making adjustments.

9. On identical set of facts, the Co-ordinate Bench in assessee's own case has held as under:-

"4. Heard the parties and perused the material available on record. Admittedly, no intimation as prescribed in proviso to section 143(1) of the Act, has been issued to the assessee before making the adjustments and issuing the intimation u/s 143(1) of the Act, therefore, the adjustment made/addition Rs.1,86,757/- on account of disallowance under section 80P(2)(d) of the Act is unsustainable. Consequently, the same is directed to be deleted."

10. Even on merits, the decision of the Co-ordinate Bench in the case of *Pathare Prabhu Co-operative Housing Society Limited (supra)* squarely applies. The relevant finding read as under:-

"13. We find that the learned CIT(A) has placed reliance upon the decision of the Hon'ble Karnataka High Court in Pr. CIT v. Totagars Co-operative Sales Society [2017] 83 taxmann.co 140/395 ITR 611, wherein it was held that interest earned by the assessee, a Co-operative Socie from surplus deposits kept with a Co-operative Bank, was not eligible for deduction und section 80P(2)(d) of the Act. We find that in an earlier decision the Hon'ble Karnataka High Cou in Pr. CIT v. Totagars Co-operative Sale Society [2017] 78 taxmann.com 169/392 ITR 74 held th according to section 80P(2)(d) of the Act, the amount of interest earned from a Co-operative

Society Bank would be deductible from the gross income of the Co-operative Society in order to assess its total income. Thus, there are divergent views of the same Hon'ble High Court on the issue of eligibility of deduction under section 80P(2)(d) of the Act in respect of interest earned from Co-operative Bank. No decision of the Hon'ble jurisdictional High Court was brought to our notice on this aspect. We have to, with our highest respect to both the views of the Hon'ble High Court, adopt an objective criterion for deciding as to which decision of the Hon'ble High Court should be followed by us. We find guidance from the judgment of the Hon'ble Supreme Court in CIT v. Vegetable Products Ltd. [1973] 88 ITR 192. In the aforesaid decision, the Hon'ble Supreme Court has laid down a principle that "if two reasonable constructions of a taxing provision are possible, that construction which favours the assessee must be adopted".

14. Therefore, in view of the above, we uphold the plea of the assessee and direct the AO to grant the deduction under section 80P(2)(d) of the Act to the assessee in respect of interest income earned from investment with Co-operative Banks. Accordingly, we set aside the impugned order passed by the learned CIT(A) for the assessment year 2018-19. As a result, grounds raised by the assessee are allowed."

11. Respectfully following the decision of the Co-ordinate Bench (*supra*), we direct the AO to delete the impugned disallowance.

12. In the result, both the appeals of the assessee are allowed.

Order pronounced in the Court on 21st November, 2024 at Mumbai.

Sd/-

(RAJ KUMAR CHAUHAN)
JUDICIAL MEMBER

Sd/-

(NARENDRA KUMAR BILLAIYA)
ACCOUNTANT MEMBER

Mumbai, Dated 21/11/2024

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आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)-
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, मुंबई /DR,ITAT, Mumbai,
6. गार्ड फाई/ Guard file.

आदेशानुसार/ BY ORDER,
TRUE COPY

Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, Mumbai