

IN THE INCOME-TAX APPELLATE TRIBUNAL "J(SMC)"
BENCH, MUMBAI

BEFORE SHRI ANIKESH BANERJEE, JUDICIAL MEMBER

&

SHRI PRABHASH SHANKAR, ACCOUNTANT MEMBER

ITA No. 5541/MUM/2024

(A.Y. 2021-22)

The Sangeet Plaza IFTEX Office Premises Coop Soc Ltd., 1 Sangeet Plaza, Marol Maroshi Road, Andheri (E), Mumbai 400 059, Maharashtra	v/s. बनाम	Dy. Commissioner of Income Tax 32(1), Mumbai, Income Tax Department, Kautilya Bhavan, BKC, Bandra, Mumbai Maharashtra 400 051
स्थायी लेखा सं./जीआइआर सं./ PAN/GIR No: AAIFR0443E		
Appellant/अपीलार्थी	..	Respondent/प्रतिवादी

Appellant by :	Shri Haridas Bhat
Respondent by :	Shri Asif Karmali (Sr. DR)

Date of Hearing	24.12.2024
Date of Pronouncement	30.12.2024

आदेश / ORDER

PER PRABHASH SHANKAR [A.M.] :-

The present appeal arising from the appellate order dated 27.09.2024 is filed by the assessee against the order passed by the Learned Commissioner of Income-tax (Appeals)/National Faceless Appeal Centre, Delhi [hereinafter referred to as "CIT(A)"] pertaining to the order passed u/s. 154 of the Income-tax Act, 1961 [hereinafter referred to as "Act"] as passed by the Centralized Processing Agency for the Assessment Year [A.Y.] 2021-22.



2. The grounds of appeal are as under:-

GROUND 1

- a) *On the facts and circumstances of the case, and in Law, the CITA and the Income Tax Officer Ward 25(1)(1), Mumbai erred in making disallowance u/s 154 r.w.s. 143(1) of the Act which is bad at law.*
- b) *On the facts and circumstances of the case and in law the AO failed to appreciate that:*
- i. *There is no discrepancy either clerical or technical in the return filed.*
 - ii. *No addition can be made u/s 143(1) unless there is some clerical or technical discrepancies in the return.*
 - iii. *CPC processed the return without considering the amount of deduction u/s 80P of the Act.*
 - iv. *In this case, the amount disallowed from the eligible deduction of the assessee is a disallowance that cannot be made without assessment proceedings u/s 143(3) of the Act.*
- c) *The appellant, therefore, prays that the disallowance made u/s 154 r.w.s. 143(1) of the Act is bad at law and shall be deleted.*

GROUND 2

- a) *On the facts and circumstances of the case, and in Law, CITA erred in confirming the disallowance made by the Income Tax Officer Ward 25(1)(1), Mumbai towards the deduction claimed on Interest earned of Rs. 19,36,819/- from cooperative banks u/s 80P(2)(d) of the Act.*
- b) *On the facts and circumstances of the case and in law the CITA and AO failed to appreciate that:*
- i. *The assessee is co-operative society eligible to claim deduction u/s 80P(2)(d) of the Act.*
 - ii. *The assessee has earned interest income from co-operative banks. Co-operative Banks are also Cooperative societies as per the Income Tax Act.*



3. The assessee is a Co-operative society. Facts of the case as emanating from the records reveal that in this case, the CPC while processing the return u/s 143(1) of the Act disallowed the claim of the assessee in respect of interest earned from deposits with Co-operative bank claimed in terms of section 80P(2)(d). Subsequent rectification application of the assessee for of rectification u/s 154 of the Income Tax Act was also rejected by CPC.

4. In the subsequent appeal before the CIT(A), the first appellate authority rejected the contention of the assessee on the ground that there was no apparent mistake in the order. It was observed by him that the issue is a controversial one and was yet to attain finality. Therefore, it is beyond the ambit of provisions of section 154 of the Act and there being no scope in interfering with the order, it was upheld.

5. Before us, the Id. Counsel of the assessee vehemently argued that the CPC was wrong in disallowing the claim as the issue could not be decided by way of intimation u/s 143(1). It was not a case covered by the provisions of this section. He also demonstrated that the assessee had disclosed relevant bank accounts maintained with co-operative banks whose deposits earned interest. Since the assessee is a co-operative society, such interest was eligible u/s 80P(2) of the Act which could not be disallowed as prima facie adjustment. It was also claimed



that the ld. CIT(A) has allowed similar claim of the assessee in its appeal for AY 20201-21. The ld.DR placed reliance on the orders of authorities below.

6. We have considered the submissions of both sides and perused the material available on record. In the present case, the assessee earned interest on FDR and savings account maintained with Co-operative Banks, viz. Saraswat Co-operative Bank, Shamrao Vitthal Co-operative Bank, Maharashtra State Co-operative Bank and NKGSB cooperative bank.

6.1 It may be stated here that the co-ordinate bench of ITAT, Mumbai in large number of cases allowed claims of the assessee where the facts were exactly the same. In **ITA NO.2850/MUM/2022 (A.Y: 2020-21) in the case of Hilla Heights Co-operative Housing Society Limited** also the CPC had disallowed the claim of the assessee u/s 143(1) of the Act and the subsequent appeal before the ld.CIT(A) also went against the assessee. Relevant paras of the order are reproduced below for ready reference:

“ 1. This appeal is filed by the assessee against order of Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [hereinafter in short "Ld.CIT(A)"] dated 30.09.2022 for the A.Y.2020-21. Brief facts of the case are, assessee is a cooperative housing society and filed its return of income on 21.10.2020 within the extended due date applicable to Cooperative Society [u/s. 139\(1\)](#) of Income-tax Act, 1961 (in short "Act").



2. During this assessment year assessee earned interest and dividend income from investments in cooperative banks for the year under consideration. Accordingly, assessee claimed deduction [u/s. 80P\(2\)\(d\)](#) in respect of the above said income earned from cooperative banks while filing the return of income. While processing the assessment [u/s. 143\(1\)](#) of the Act, Centralized Processing Centre, Bangalore disallowed the claim of the assessee [u/s. 80P\(2\)\(d\)](#) and has not assigned any reasons while processing the return of income [u/s. 143\(1\)](#) of the Act. Aggrieved, assessee filed an application [u/s. 154](#) of the Act seeking rectification of the above order. However, Centralized Processing Centre, Bangalore has rejected the rectification application.

3. Aggrieved, assessee preferred an appeal before the Ld.CIT(A) and filed a detailed written submissions during the course of the appellate proceedings. After considering the submissions of the assessee Ld.CIT(A) observed that the disallowance [u/s. 80P\(2\)](#) was made in the original Assessment Order [u/s. 143\(1\)](#) of the Act and not [u/s. 154](#) of the Act. Therefore, the concept of merger will not be applicable in this case. Therefore, he is of the opinion that assessee cannot challenge the denial of deduction [u/s. 80P](#) under the order of [section 154](#) by relying on certain decisions and assessee should have challenged the same [u/s. 143\(1\)](#) of the Act, accordingly, he dismissed the appeal filed by the assessee.

4. Aggrieved, assessee is in appeal before us and submitted details statement of facts. Assessee raised following grounds in its appeal: -

"1. On the facts, and in circumstances of the case, and in law, dismissing the appeal on the ground stating that "the effect of the subsequent rectification [u/s 154](#) dated 15.01.2022 has to be read as forming part of original intimation [u/s 143\(1\)](#) dated 25.11.2021 only and not independently. therefore, the impugned claim of deduction u/s 80p denied originally vide intimation [u/s 143\(1\)](#) cannot be challenged by the appellant through the present appeal against order under [section 154](#)" without appreciating that, adjustment made in intimation under [section 143 \(1\)](#) was beyond the scope of the [section 143 \(1\)](#) it being not incorrect claim apparent from any information in return, and therefore refusal of application under [section 154](#) was independent of Intimation under [section 143 \(1\)](#).

2. On the facts, and in circumstances of the case, and in law, learned Commissioner of Income-tax (Appeal) erred in upholding action of the Assessing Officer in making disallowance of claimed under [section 80P](#) without appreciating that these were not incorrect claims apparent from any information in the Return of Income in terms of [section 143 \(1\)](#) of the Income-tax Act 1961.

3. On the facts, and in circumstances of the case, and in law, learned Commissioner of Income-tax (Appeal) failed to appreciate that the



Centralized Processing Centre (CPC), Bengaluru erred in disallowing the claim of deduction under [Section 80P](#) of the Income Tax Act, 1961 without mentioning any reasons for disallowance of the valid claim while processing the return of income under [section 143 \(1\)](#) of the Income Tax Act, 1961 in as much as in order under [section 154](#) of the Income-tax Act 1961.

4. On the facts, and in circumstances of the case, and in law, learned Commissioner of Income-tax (Appeal) failed to the Centralized Processing Centre (CPC), Bengaluru erred in disallowing the claim of deduction under [Section 80P](#) of the Income Tax Act, 1961 in spite of the fact, that the appellant had filed return of income within the "second due date" applicable in terms of [section 139 \(1\)](#) of the Income Tax Act, 1961 and the intimation issued under [section 143 \(1\)](#) of the Income Tax Act, 1961 had also mentioned due date for filing return of income as "extended due date" since, book of accounts of your appellant were liable to audit under [Section 81](#) of the Maharashtra Co-operative Society Act, 1960.

5. On the facts, and in circumstances of the case, and in law, learned Commissioner of Income-tax (Appeal) failed to appreciate that, the Centralized Processing Centre (CPC), Bengaluru erred in disallowing the claim of deduction under [Section 80P](#) of the Income Tax Act, 1961 without considering the facts, that the appellant had made a rectification request under [Section 154](#) of the Income tax Act, 1961 for re-processing the return of income but, the reprocessing of the return of income was considered on the same lines as intimation issued in terms of [section 143 \(1\)](#) of the Income Tax Act, 1961."

5. At the time of hearing, Ld. AR submitted that in 143(1) proceedings, claim of the assessee [u/s. 80P\(2\)\(d\)](#) was disallowed and he brought to our notice the findings of the Ld.CIT(A). However, Ld.CIT(A) has not decided the issue with regard to disallowance [u/s. 80P\(2\)\(d\)](#) and however, he has decided the issue on whether assessee should file the appeal against the order [u/s. 143\(1\)](#) of the Act or [u/s. 154](#) of the Act. Ld. AR prayed that the claim of the assessee may be allowed and in this regard he relied on the order of the Coordinate Bench in the case of **Ashoka Palace Co-Op. Hsg. Soc. Ltd. v. ITO** in ITA.No. 2062/Mum/2021 dated **31.10.2022**.

6.

7. Considered the rival submissions and material placed on record, we observe from the record that assessee has received income under the head income from the cooperative banks which are eligible to be claimed [u/s. 80P\(2\)\(d\)](#) of the Act. Since the disallowance was made [u/s. 143\(1\)](#) of the Act assessee filed a rectification application before Centralized Processing Centre, Bangalore, however, the same was denied without giving any proper reasons and assessee filed the appeal before Ld.CIT(A) and Ld.CIT(A) has not decided the issue on merit, however, he proceeded to decide the issue on technical ground whether assessee should file the appeal [u/s. 143\(1\)](#) or [u/s. 154](#) of the Act. After considering the overall facts on record and the issue under consideration in our view, issue is squarely covered in various decisions of the



Hon'ble Supreme Court, various High Courts and Coordinate Bench. In this regard, we observe that Coordinate Bench has decided the issue in favour of the assessee in the case of **Ashoka Palace Co-Op. Hsg. Soc. Ltd. v. ITO (supra)** observing as under: -

"5. Both sides heard, orders of authorities below examined. The solitary issue raised by the assessee in appeal is with respect to assessee's eligibility to claim deduction u/s. 80P(2)(d) of the Act on interest income from deposits with Co-operative banks. It is not in dispute that the assessee has earned interest income from deposits with Co-operative Bank. The authorities below have denied the benefit of section 80P(2)(d) of the Act to the assessee on the premise that the interest income is not eligible for deduction u/s. 80P(2)(d) of the Act.

6. The issue whether interest income derived from deposits with cooperative banks is eligible for deduction under section 80P(2)(d) of the Act or not has been considered by Tribunal in catena of decisions. The Co-ordinate Bench in the case of Kaliandas Udyog Bhavan Premises Co-op Society Ltd. Vs. ITO, 94 taxmann.com 15 (Mumbai) after considering various decisions by Hon'ble High Courts and the Tribunal and the provisions of the Act, has held that interest income derived by a co-operative society from investments with a co-operative bank, would be entitled for deduction under section 80P(2)(d) of the Act.

The relevant extract of the order reads as under: -

"7. We have deliberated at length on the issue under consideration and are unable to persuade ourselves to be in agreement with the view taken by the lower authorities. Before proceeding further, we may herein reproduce the relevant extract of the said statutory provision, viz. Sec. 80P(2)(d), as the same would have a strong bearing on the adjudication of the issue before us:

"80P(2)(d) (1) Where in the case of an assessee being a co-operative society, the gross total income includes any income referred to in sub-section (2), there shall be deducted, in accordance with and subject to the provisions of this section, the sums specified in sub-section (2), in computing the total income of the assessee.

(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 investments with any other cooperative society, the whole of such income;

Thus, from a perusal of the aforesaid Sec. 80P(2)(d) it can safely be gathered that income by way of interest income derived by assessee co-operative society from its investments held with any other cooperative society, shall be deducted in computing the total income of the assessee. We may herein observe, that what is relevant for claim of deduction under Sec. 80P(2)(d) is that the interest income should have been derived from the investments made



by the assessee co-operative society with any other cooperative society. We though are in agreement with the observations of the lower authorities that with the insertion of Sub-section (4) of [Sec. 80P](#), vide the [Finance Act, 2006](#), with effect from 01.04.2007, the provisions of [Sec. 80P](#) would no more be applicable in relation to any co-operative bank, other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank, but however, are unable to subscribe to their view that the same shall also jeopardise the claim of deduction of a co-operative society under [Sec. 80P\(2\)\(d\)](#) in respect of the interest income on their investments parked with a cooperative bank.

We have given a thoughtful consideration to the issue before us and are of the considered view that as long as it is proved that the interest income is being derived by a co-operative society from its investments made with any other cooperative society, the claim of deduction under the aforesaid statutory provision, viz. [Sec. 80P\(2\)\(d\)](#) would be duly available. We may herein observe that the term 'cooperative society' had been defined under [Sec. 2\(19\)](#) of the Act, as under:--

'(19) "Co-operative society" means a cooperative society registered under the [Cooperative 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;' We are of the considered view, that though the cooperative bank pursuant to the insertion of Subsection (4) of [Sec. 80P](#) would no more be entitled for claim of deduction under [Sec. 80P](#) of the Act, but however, as a co-operative bank continues to be a cooperative society registered under the [Co-operative Societies Act, 1912](#) (2 of 1912), or under any other law for the time being enforced in any state for the registration of co-operative societies, therefore, the interest income derived by a cooperative society from its investments held with a co-operative bank, would be entitled for claim of deduction under [Sec.80P\(2\)\(d\)](#) of the Act." [Emphasized by us]"

8. Respectfully following the above said decision, we are inclined to allow the claim of the assessee by holding that, the interest income derived by a cooperative society from its investments held with a cooperative bank, would be entitled for claim of deduction [u/s. 80P\(2\)\(d\)](#) of the Act.

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

7. In another important decision Hon'ble ITAT, Mumbai Bench has also decided the issue in the favour of the assessee in **ITA No.1976/M/2024 in Dheeraj Gaurav Heights Co-operative Housing Society Limited**. Relevant pars are extracted as below:



“The assessee in the grounds claimed that on the facts and circumstance of the case, under the provisions of [Section 143\(1\)\(a\)](#), the ADDL/JCIT(A) erred in confirming the rejection of claim under [section 80P\(2\)\(d\)](#) in the Intimation 143(1)(a) without appreciating the fact and law that [the CPC](#) was mandated to make only prima facie adjustments as provided in clauses (i) to (v) of [Section 143\(1\)\(a\)](#) and too by providing prior intimation/notice to the Appellant, for such denial, in writing or in electronic mode as per first proviso to [Section 143\(1\)\(a\)](#). We have considered the above submissions and found that the coordinate benches of Hon'ble ITAT, Mumbai in several cases have decided the issue of 80P (2) (d) in favour of the cooperative societies. In one of the cases of **Blue Rose Industrial Premises Cooperative Society v. CIT Appeal, ITAT No. 4059 of 2023** it was held as under:

“11. In the present case, there is no dispute that the assessee is a Co-Operative Society. Thus, if any income as referred to in sub-section (2) to section 80P of the Act is included in the gross total income of the assessee, the same shall be allowed as a deduction. It is pertinent to note that since the assessee is registered under the Maharashtra Co-operative Societies Act, 1960, it is required to invest or deposit its funds in one of the modes provided in section 70 of the aforesaid Act, which includes investment or deposit of funds in the District Central Co-operative Bank or the State Co-operative Bank. Accordingly, the assessee kept the deposits in Co-operative Banks registered under the Maharashtra Co-operative Societies Act and earned interest, which was claimed as a deduction under section 80P(2)(d) of the Act. The AO denied the deduction under section 80P(2)(d) of the Act on the basis that the Cooperative Bank is covered under the provisions of section 80P(4) of the Act.

7. Therefore, respectfully following the decision of the coordinate bench of the cited supra, we direct the AO to grant a deduction under section 80P(2)(d) of the Act to the assessee in respect of the interest on FDR and savings account earned from the Co-



operative Banks. Accordingly, the impugned order is set aside and grounds no. 1 raised by the assessee is allowed.”

8. It is also noticed that in the case of **Sterling Court** in **ITA No.72-75/Mum/2024 dated 11.06.2024** ‘SMC’, Mumbai bench has allowed the appeals on exactly similar ground. After detailed analysis of similar facts and the provisions of section 143(1) of the Act, it has been decided that adjustment of disallowance of deduction u/s 80P(2)(d) is not permissible adjustment under section 143(1) of the Act.

9. Respectfully following the view taken by the Hon'ble Coordinate Benches of Mumbai Tribunal, we hold that the CPC was not justified in disallowing the claim of decision u/s 154/143(1) of the order. We set aside the order of the Id. CIT(A) and allow the deduction claimed by the assessee u/s 80P(d)(2) of the Act.

In the result, the appeal is hereby allowed.

Order pronounced in the open court on **30/12/2024**.

Sd/-

ANIKESH BANERJEE

(न्यायिक सदस्य / JUDICIAL MEMBER)

Sd/-

PRABHASH SHANKAR

(लेखाकार सदस्य / ACCOUNTANT MEMBER)

Place: मुंबई/Mumbai

दिनांक /Date. 30.12.2024

Lubhna Shaikh / Steno



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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,
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आयकर अपीलीय अधिकरण/ ITAT, Bench,
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