

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

BEFORE SMT. BEENA PILLAI, JUDICIAL MEMBER  
&  
SMT. RENU JAUHRI, ACCOUNTANT MEMBER

ITA No. 812/MUM/2024  
(A.Y. 2013-14)

Tridev-II Co. Op. HSG. Soc. Bhakti Marg, Mulund West, Mumbai-400080	v/s. बनाम	ITO-41(3)(3) Kautilya Bhavan, Bandra Kurla Complex, Mumbai-400051
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AADAT629Q		
Appellant/अपीलार्थी	..	Respondent/प्रतिवादी

Appellant by :	Shri Varun Bramhecha
Respondent by :	Ms. Usha Gaikwad

Date of Hearing	17.10.2024
Date of Pronouncement	18.11.2024

**आदेश / ORDER**

**PER RENU JAUHRI [A.M.] :-**

This appeal is filed by the assessee against the order of the Learned Commissioner of Income-tax (Appeals), Mumbai/National Faceless Appeal Centre, Delhi [hereinafter referred to as "CIT(A)"] dated 08.01.2024 passed u/s. 250 of the Income-tax Act, 1961 [hereinafter referred to as "Act"] for Assessment Year [A.Y.] 2013-14.

2. The assessee has raised following grounds of appeal:

*"1. Learned assessing officer erred in disallowing our claim of deduction u/s 80P(2)(d) of Rs. 4,40,284/- with respect to income earned in the form of interest and dividends on investment with other co-operative society.*

2. The Assessing officer has passed an order ignoring the judgement of the jurisdictional Mumbai Tribunal in the case of M/s Petit Towers Co. Op. Hsg. Soc. v/s ITO 19(2)(5) in ITA No. 549/MUM/2021.

3. The first appellate authority has rejected the appeal on the basis of delay in filing of appeal without passing a single comment regarding rectification application pending with the Assessing Officer. Technically there is no delay in filing the first appeal as no order has been passed till date against the rectification application either accepting or rejecting the same.

4. There is no malafide intention on the part of the appellant in delay in filing the first appeal, instead we were under the impression that the demand would be cancelled for AY 13-14 and AY 14-15 on the basis of the rectification order u/s 154 of AY 19-20 dated 22/10/2020. We have filed the first appeal only after our refund of AY 22-23 was adjusted against the demand of AY 13-14 on 14/10/2022. Hence we would like to request your honour to condone the delay in filing the first appeal and consider the appeal on merits.”

3. The brief facts of the case are that the assessee is a co-operative housing society which filed its return declaring nil income after claiming deduction of Rs. 4,40,284/- u/s 80P(2)(d) of the Act in respect of interest income on deposits with co-operative banks. The Central Processing Centre, Bengaluru [CPC] passed an order u/s 143(1) on 21.01.2016 wherein the claim of deduction u/s 80P was disallowed and Rs. 4,40,284/- was added to the income of the assessee. A rectification application was filed by the assessee on 26.08.2015 on which no action has been taken by the department. Since the assessee's rectification application was pending and the rectification for AY 2019-20 was carried out by the CPC on similar facts, the assessee was under a bonafide belief that its demand for other years including AY 2013-14 would also be rectified. Since no action was taken by the department with regard to the assessee's long pending rectification application, it filed an appeal before Ld. CIT(A) on 14.10.2022.



4. Ld. CIT(A) noted that the appeal was delayed by six years for which no plausible justification had been given by the assessee. He accordingly did not condone the delay in filing of the appeal and dismissed it as non-maintainable.

5. Aggrieved with the order of the Ld. CIT(A), the assessee is in appeal before us. We have considered the rival submissions as well as the material available before us.

6. At the outset, it is observed that the disallowance u/s 80P made by the CPC was beyond the scope of prima facie adjournments permissible u/s 143(1) of the Act. Since the assessee's application for rectification was pending with the department and in view of the fact that the rectification had been allowed for subsequent years on similar facts, the delay in filing of the appeal is justified. In support of its contentions, Ld. AR has submitted rectification orders u/s 154 for AYs 2019-20 dated 22.10.2020 and 2020-21 dated 15.02.2023 in support of its contentions. Moreover, on similar facts the assessee's appeal for AY 2014-15 has been allowed by the co-ordinate bench vide order dated 28.06.2024 in **ITA No. 813/Mum/2024**. Relevant portion of the order is reproduced below:

*"2. We find that ld. CIT(A) has dismissed the appeals on the ground that there was a delay in filing of appeal for almost seven years. It has been stated that assessee had filed rectification before the CPC on 27/08/2016 but no action was taken by the Id. AO / CPC till date. In a similar situation for A.Y.2019-20 and 2021-22 and 2022-23 rectification application has been accepted and demand has been cancelled on account of disallowance of deduction u/s.80P. However, for the A.Y.2014-15 no such rectification was passed and accordingly, the assessee was under bonafide belief that it will get relief from the CPC. Since assessee was waiting for the rectification which has not been disposed off and accordingly, it cannot be held that there was a reasonable cause or bonafide belief for not filing the appeal in time specially when similar rectification application has been accepted for A.Y. 2019-20 and 2021-22 whereas for the*



*A.Y.2014-15 despite rectification was filed immediately after the intimation was received by the assessee. Thus, we hold that ld. CIT(A) should have condoned the appeal.*

*3. The assessee being a Cooperative Housing Society and is eligible for deduction u/s 80P. The CPC has made adjustment u/s.143(1) despite that return of income was filed within the due date and no reasons has been given as to why adjustment has been made. As per the provisions of scope of adjustment u/s.143(1)(a), no disallowance of deduction could have been made u/s.80P for the A.Y.2014-15 as there was no such provision for making disallowance u/s.143(1)(a) because the adjustment which was permissible was with respect to 10AA, 80AIA, 801AB, 80IB, 80IC, 80ID or Section 80IE. It was only by the Finance Act 2021 w.e.f. A.Y.2021-22, now the prima facie adjustment is permissible under Chapter VIA if the assessee has not filed the return of income on the due date. Thus, for the A.Y.2014-15 there was no provision for making such adjustment, Accordingly, the adjustment made by the ld. AO is deleted”*

7. In view of the facts and circumstances discussed hereinbefore and respectfully following the decision of the co-ordinate bench, we direct the Ld. AO to allow the assessee’s claim of deduction u/s 80P(2)(d) of Rs. 4,40,284/-.

8. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 18.11.2024.

**Sd/-**

**BEENA PILLAI**

**(न्यायिक सदस्य/JUDICIAL MEMBER)**

**Sd/-**

**RENU JAUHRI**

**(लेखाकार सदस्य/ACCOUNTANT MEMBER)**

Place: मुंबई/Mumbai

दिनांक /Date 18.11.2024

अनिकेत सिंह राजपूत/ स्टेनो

**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,  
Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//  
आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण/ ITAT, Bench,  
Mumbai.

