

**IN THE INCOME TAX APPELLATE TRIBUNAL  
"H (SMC)" BENCH, MUMBAI**

**SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER  
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No.5559/MUM/2024                      ITA No.5558/MUM/2024  
(Assessment Year: 2020-2021)      (Assessment Year: 2021-2022)**

**Bimbisar Nagar Nisarg Co Op Housing Society Ltd.**

Bimbisar Nagar, Western Express Highway,  
Goregaon East, Mumbai – 400065. Maharashtra.

[PAN:AABAB8677Q]

..... **Appellant**

Vs

**Income Tax Officer 41(4)(1), Mumbai**

Kautilya Bhavan,  
Mumbai.

..... **Respondent**

**Appearance**

For the Appellant/ Assessee                      :    Shri Tanmay Phadke  
For the Respondent/Department                :    Shri Pravin Salunkhe

**Date**

Conclusion of hearing                                :    29.01.2025  
Pronouncement of order                             :    31.01.2025

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**ORDER**

**Per Bench:**

1.        These are two appeals preferred by the Assessee pertaining to Assessment Years 2020-2021 and 2021-2022. Since identical issues were raised in the appeals, the same were heard together and are, therefore, being disposed by way of a common order.
2.        We would first take-up appeal for the Assessment Year 2020-2021.

**ITA No. 5559/MUM/2024 (Assessment Year 2020-2021)**

3.        The present appeal preferred by the Assessee against the order, dated 06/09/2024, passed by the National Faceless Appeal Centre (NFAC), Delhi,[hereinafter referred to as 'the **CIT(A)**'] under Section 250 of the Income Tax Act, 1961 [hereinafter referred to as 'the

**Act']** whereby the Ld. CIT(A) had dismissed the appeal against the Rectification Order, dated 09/12/2022, passed under Section 154 of the Act for the Assessment Year 2020-2021.

4. The Assessee has raised following grounds of appeal :

- "1. *The learned Commissioner of Income Tax (Appeal) – National Faceless Appeal Centre (NFAC) Delhi (hereinafter referred as 'the learned CIT(A)') erred in stating that the issue is not covered u/s.154 despite the fact that Assessing Officer denied on Supreme Court decision of Totgar Coop Sale Agency 392 ITR 0074 by the Karnatak High Court and confirmed by the Supreme Court in the case of Mavilayi services Co op bank ltd Vs CIT (2021) 123, taxman.com 161(SC). This is a mistake of law, apparent from record of law. Hence the deduction u/s.80P(2)(d) of the Act should be allowed on this ground alone.*
2. *The Commissioner of Income Tax (A) is erred in stating that appeal is dismissed since it is not made under proper section. By passing such order, he restored to only technicality increasing to further litigation. On merits of the Sec 80P(2)(d), the deduction is allowable, as the investment was made in co op Banks, which are covered under section 80 P(2)(d). Hence the deduction u/s.80P(2)(d) section of the Act should be allowed on this ground alone.*
3. *The Commissioner of Income Tax (A) erred in confirming the levy of interest as consequential since the additions itself were wrongly made and not rectified despite a Supreme Court Order which covered the issue squarely. Hence interest charged should be deleted.*
4. *The learned CIT(A) failed to appreciate that on the facts and merits of the case the interest received of Rs.10,28,450.00 from the cooperative bank is allowable deduction u/s.80 P(2)(d) of the act as decided in the case of Totgar Coop Sale Agency 392 ITR 0074 by the Karnataka High Court and confirmed by the Supreme Court in the case of Mavilayi Services Coop Bank Ltd. Vs. CIT(2021) 123, taxman.com 161(SC)."*

5. The relevant facts in brief are that the deduction claimed by the

Assessee, a co-operative credit society, under Section 80P(2)(d) of the Act was denied while processing the return of income under Section 143(1) of the Act vide Intimation Order, dated 09/11/2022. The aforesaid intimation order was sought to be rectified by the Assessee by way of application under Section 154 of the Act which was rejected by the Assessing Officer vide Rectification Order, dated 09/12/2022. The appeal preferred by the Assessee against the aforesaid Rectification Order was dismissed by the CIT(A), vide order dated 06/09/2024. As a result, the Assessee has preferred the present appeal before the Tribunal on the grounds reproduced in paragraph 4 above.

6. We have heard both the sides and have perused the material on record.
7. The contention advanced on behalf of the Assessee is that the CIT(A) has rejected the appeal against the Rectification Order passed under Section 154 of the Act by holding that Assessee should have preferred appeal against the intimation order passed under Section 143(1) of the Act since the same was in appealable order under Section 246A of the Act. Learned Authorized Representative for the Assessee submitted that the intimation order dated 09/11/2022 suffered from mistake apparent on record as the Assessee was not put to notice before issuance of Intimation Order under Section 143(1) of the Act. Further, on merits the Assessee had a good case and was entitled to deduction under Section 80P(2)(d) of the Act as per the judgment of Hon'ble Supreme Court in the case of Mavilayi Services Co-Op Bank Ltd. Vs. CIT (2021), 123, taxman.com 161(SC). Learned Authorised Representative also placed reliance upon the decisions of the Tribunal wherein it was held that a co-operative society is eligible to claim deduction under Section 80P(2)(d) of the Act in respect of interest received from a co-operative bank being a particular specie of the genus of

cooperative society. It was submitted that denial of deduction was contrary to the existing decision of the Tribunal and therefore, Intimation Order, dated 09/11/2022, suffered from mistake apparent on record which was rectifiable in terms of Section 154 of the Act. However, the authorities below failed to appreciate the same.

8. Per contra the Learned Departmental Representative submitted that Intimation Order, dated 09/11/2022, had been issued after putting the Assessee to notice. However, it was submitted that a copy of the proposal for adjustment was not available on record. It was further submitted that the intimation order issued under Section 143(1)(a) of the Act was appealable order and therefore, the Assessee ought to have preferred appeal before the CIT(A).
9. In rejoinder, the Learned Authorised Representative for the Assessee submitted that CIT(A) could not have dismissed the appeal merely on the ground that the intimation issued under Section 143(1) of the Act is an appealable order.
10. We have given thoughtful consideration to the rival submissions and on perusal of record. We note that the CIT(A) had disposed off the appeal holding as under:

"4.0 *I have perused the appeal documents and the submissions of the assessee. Evidently, the tax liability was determined in the summary assessment u/s. 143(1) which is an appealable order u/s.246A. Hence, the cause of action for the assessee arises against the intimation u/s.143(1) and not against the impugned order u/s.154, the provisions of which are applicable only for the mistakes apparent from record. The assessee cannot use proceedings u/s.154 to file an appeal*

*against the order passed u/s.143(1) of the Act which is in appealable order u/s.246A of the Act. The grounds of appeal are therefore dismissed.”*

11. In our view the above approach adopted by the CIT(A) cannot be countenanced. It is admitted legal position that CIT(A) can dismiss an appeal against order rejecting rectification application holding that the order sought to be rectified did not suffer from any mistake apparent on record and/or the scope of rectification application fell in the ambit of appellate review. However, in our view, the CIT(A) cannot simply reject appeal against order rejecting rectification application by merely holding that the order sought to be rectified is an appealable order. The CIT(A) has moved on incorrect understanding that an intimation order issued under Section 143(1) of the Act cannot suffer from a mistake apparent on record merely because it is an appealable order. In our view, even an appealable order can also suffer from mistake apparent on record. Accordingly, the order, dated 06/09/2024, passed by the CIT(A) is set aside and the issue of allowability of Assessee's claim of deduction under Section 80P(2)(d) of the Act is remitted back to the file of the Assessing Officer for denovo adjudication. All the rights and contentions of the Assessee are left open. The Assessing Officer is directed to adjudicate the issue as per law after granting the Assessee a reasonable opportunity of being heard and after taking into consideration the submission and supporting documents furnished by the Assessee. In terms of the aforesaid, Ground No. 2 raised by the Assessee is allowed for statistical purposes while Ground No.1 & 2 are dismissed as having been rendered infructuous.
12. In result, in terms of paragraph 11 above, the present appeal preferred by the Assessee is treated as allowed for statistical purposes.

**ITA No. 5558/MUM/2024 (Assessment Year 2021-2022)**

13. The present appeal preferred by the Assessee against the order, dated 06/09/2024, passed by the CIT(A) under Section 250 of the Act whereby the Ld. CIT(A) had dismissed the appeal against the Rectification Order, dated 09/12/2022, passed under Section 154 of the Act for the Assessment Year 2021-2022.
14. Both the sides agree that in identical facts and circumstances appeal preferred by the Assessee against the order, dated 09/12/2022 passed under Section 154 of the Act rejecting the application for rectification of intimation order, dated 09/11/2022, issued under Section 143(1) of the Act for the Assessment Year 2021-2022 was dismissed by the CIT(A) vide order dated 06/09/2024. Therefore, our findings/adjudication in relation to appeal for the Assessment Year 2020-2021 shall apply mutatis mutandis to the appeal for the Assessment Year 2021-2022. Accordingly, keeping in view identical facts and circumstances, and adopting the reasoning given while adjudicating the appeal preferred by the Assessee for the Assessment Year 2020-2021, we set aside the order dated 06/09/2024 passed by the CIT(A) and remand back the issue of allowability of Assessee's claim of deduction under Section 80P(2)(d) of the Act to the file of the Assessing Officer for denovo adjudication. All the rights and contentions of the Assessee are left open. The Assessing Officer is directed to adjudicate the aforesaid claim as per law after granting the Assessee a reasonable opportunity of being heard and after taking into consideration the submission and supporting documents furnished by the Assessee. In terms of the aforesaid, Ground No. 2 raised by the Assessee is allowed for statistical purposes while Ground No.1 & 2 are dismissed as having been rendered infructuous.
15. In result, in terms of paragraph 14 above, the present appeal

preferred by the Assessee is treated as allowed for statistical purposes.

16. In conclusion, both appeals preferred by the Assessee are treated as allowed for statistical purposes.

Order pronounced on 31.01.2025.

**Sd/-**  
**(Om Prakash Kant)**  
**Accountant Member**

**Sd/-**  
**(Rahul Chaudhary)**  
**Judicial Member**

मुंबई Mumbai; दिनांक Dated : 31.01.2025  
*Milan, LDC*

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त/ The CIT
4. प्रधान आयकर आयुक्त / Pr.CIT
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण , मुंबई / DR,  
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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