

IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, MUMBAI

BEFORE SHRI PRASHANT MAHARISHI, AM
AND
SHRI NARENDER KUMAR CHOUDHRY, JM

ITA No. 1353/Mum/2023
(Assessment Year: 2017-18)

Navrang Basant Co-operative Housing Society Limited Basant Apartments, Cuffe Parade, Mumbai-400 005	Vs.	ITO 17(2)(4) Room No. 112, 1 st Floor, Kautilya Bhavan, C-41 to C-43, G Block, Bandra Kurla Complex, Bandra (E), Mumbai-400 051
(Appellant)		(Respondent)

PAN No. AAAAN1511E

Assessee by : Shri Siddhant Khopkar, AR
Revenue by : Shri Adhok Kumar Ambastha,
DR

Date of hearing: 12.07.2023
Date of pronouncement : 11.10.2023

ORDER

PER PRASHANT MAHARISHI, AM:

01. This appeal is filed by the Navrang Basant Co-operative Housing Society Limited (the assessee/ appellant) against the appellate order passed by the National Faceless Appeal Centre, Delhi [the learned CIT (A)] for A.Y. 2017-18 on 30th November, 2022 wherein the assessee's appeal before him against the assessment order passed under section 143 (3) of the Income-tax Act, 1961 (the Act) dated 6th December, 2019 by the Income Tax Officer, Ward 17(2)(4), Mumbai was dismissed. Therefore, the assessee is aggrieved by that appellate order has preferred this appeal before us as per the grounds of appeal as under:-



"1) The Learned Commissioner of Income Tax (Appeals) National Faceless centre erred in confirming the action of the Assessing Officer in not allowing deduction u/s 80P(2)(d) of Rs. 15,89,3985 in respect of interest earned from Co-operative Banks.

2) The Learned Commissioner of Income Tax (Appeals) National Faceless centre failed to appreciate that deduction was not claimed u/s 80P (4) but u/s 80P(2)(d).

3) The Learned Commissioner of Income Tax (Appeals) National Faceless centre erred in ignoring the written submissions filed, the decision of the CIT(A) for A. Y. 2015-16 in the assessee's own case on the same grounds and facts and decisions of the jurisdictional Tribunal wherein deduction u/s 80P(2)(d) has been allowed in respect of interest income earned from Co-operative Banks.

4) The appellant prays that:

4.1 Deduction u/s 80p(2)(d) in respect of interest income from co- operative banks be allowed.

4.2 Interest charged u/s. 234B may be deleted/ reduced;

4.3 Personal hearing may be granted;

4.4 Any other relief your honours may deem fit.

5) The above grounds of appeal are without prejudice to each other and the Appellant craves leave to add, alter, amend or delete any of the above grounds of appeal."

02. The brief fact of the case shows that assessee is a cooperative housing society. It filed its return of income for A.Y. 2017-18 on 28th August, 2017, declaring total income at nil, wherein it claimed



deduction under Section 80P of ₹ 1,589,385/-. This return of income was picked up for scrutiny. During the course of assessment proceedings the learned Assessing Officer noted that assessee has received interest of ₹ 1,589,385/- from cooperative bank and deduction under section 80P (2) (d) of the same amount is claimed against the said income. The assessee was asked to explain that how the above sum is deductible as deduction under section 80P (2) (d). The learned Assessing Officer took the explanation of the assessee on record and it was rejected. The claim of the learned Assessing Officer is that as per sub-section 4 of section 80P of the Act such deduction is not allowable. It was noted that assessee has deposited funds in various cooperative banks as fixed deposits and has earned interest income thereon. In nutshell, the claim of the learned Assessing Officer is that interest received by the assessee from cooperative banks are not eligible for deduction under section 80P as they are not the cooperative societies. Accordingly, the assessment order under section 143 (3) of the Act was passed by the learned Assessing Officer on 6th December, 2019 wherein the total income of the assessee was assessed at ₹ 1,589,385/- denying deduction u/s 80 P (2) (d) of the Act.

03. Aggrieved by that assessee preferred an appeal before the learned CIT (A), who passed an order on 30th November, 2022 dismissing the appeal of the assessee. The main reason for dismissal of the appeal was with respect to the decision of the honorable Supreme Court in case of Mavilayi Service Co-operative Bank Ltd. vs. CIT reported in 123 taxmann.com 161 (SC) on 12th January, 2021. Aggrieved by that order of the learned CIT (A), assessee is in appeal before us.
04. The appeal of the assessee is filed late. The order of the CIT (A) was passed on 30th November, 2022 whereas the appeal was filed on 21st April, 2023, late by 82 days. The assessee has filed an application for condemnation of delay which is supported by the affidavit wherein it has been stated that assessee did not receive a copy of the order either by post or by email and therefore, he was not aware of the



order passed by the National Faceless Appeal Centre. The assessee came to know only on 11 March 2023 regarding outstanding demand wherein the order passed by the appellate authority came into the knowledge of the assessee. As soon as that order was put to the knowledge of the assessee, it was forwarded to the chartered accountant to file the appeal and immediately the appeal was filed on 21st April 2023. The due date for filing of the appeal was 31st January, 2023 whereas it has been filed late on 21st April, 2023. It was submitted that the delay is due to non-receipt of the order of the learned CIT (A) supported by the affidavit, the assessee does not derive any benefit by not filing the appeal in time before the coordinate bench and further, whenever the condonation of delay is required to be considered, pedantic approach should not be taken. Accordingly, it was prayed that as delay is nominal, same may be condoned.

05. The learned Departmental Representative vehemently objected to the same.
06. We find that assessee does not derive any benefit by filing the appeal late. Subsequently, the assessee has received the communication for the recovery of the demand, wherein it has come to its knowledge that the learned CIT (A) has passed an order against the cooperative society. As far as this argument is concerned we are not with the assessee, as such orders would always be available on portal with alert to the assessee on registered mobile number and registered email id. Further assessee does not deny that due to not taking cognizance of email and mobile alert, delay has occurred. However, after receipt of demand notice, assessee approached chartered accountant immediately and filed the appeal before us. It is also supported by an affidavit. Therefore respectfully following the decision of the honorable Supreme Court in case of Collector of Land Acquisition V. MST Khatiji & Others 167 ITR 471, wherein it has been held that in condonation of delay prayer, pedantic approach should



not be adopted and the appeal should be decided on the merits of the case. Accordingly, we condone the delay.

07. At the time of hearing the assessee made an application for adjournment of hearing stating that Council of the assessee is not available and therefore the matter may be adjourned. Looking to the facts of the case, we reject the application for the adjournment.
08. On hearing the parties we find that assessee is a cooperative society more precisely a housing society and not a cooperative bank therefore the provision section 80P (4) does not apply to assessee and therefore assessee is eligible for deduction u/s 80 P (2) of the Act. Assessee has invested in saraswat Cooperative bank, shamrao Vithal cooperative bank and Maharashtra District cooperative bank limited. There is no doubt that assessee is not a cooperative bank. Section 80P (4) denies deduction to cooperative banks only. Now this view is upheld by the honourable supreme court in case of Kerala State Co-Operative Agricultural & Rural Development Bank Ltd. V Assessing Officer [2023] 154 taxmann.com 305 (SC)[14-09-2023]. In view of this, we direct the Id AO to allow deduction to assessee cooperative housing society deduction on interest income. We reverse the order of the Id CIT (A) and allow solitary issue in appeal.
09. In the result, appeal of assessee is allowed.

Order pronounced in the open court on 11.10.2023.

Sd/-
(NARENDER KUMAR CHOUDHRY)
(JUDICIAL MEMBER)

Sd/-
(PRASHANT MAHARISHI)
(ACCOUNTANT MEMBER)

Mumbai, Dated: 11.10.2023

Sudip Sarkar, Sr.PS

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent
3. CIT



4. DR, ITAT, Mumbai
5. Guard file.

BY ORDER,

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Mumbai