आयकर अपीलीय अधिकरण "सी" न्यायपीठ, मुंबई

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

BEFORE SHRI RAJESH KUMAR, ACCOUNTANT MEMBER
&
SHRI RAM LAL NEGI, JUDICIAL MEMBER

आयकर अपील सं./**ITA No.5437/MUM/2017**
(**निर्धारण वर्ष** / Assessment Year :2014-2015)

ITO-24(1)(4), Mumbai-400012	Vs.	M/s Citiscape Co-op Housing Society Limited, Ground Floor, Society Office, Andheri Kurla Road, Andheri(East), Mumbai-400059
स्थायी लेखा सं./PAN No. : **AAAAC 4160 G**		
(अपीलार्थी /**Appellant**)	..	(प्रत्यर्थी / **Respondent**)

राजस्व **की ओर से** /Revenue by : Shri Abhirama Kartikeyan, DR
निर्धारिती **की ओर से** /Assessee by : Shri Gaurav Kabra, AR

सुनवाई की तारीख / **Date of Hearing : 07/01/2019**
घोषणा की तारीख/**Date of Pronouncement 15/01/2019**

आदेश / O R D E R

Per Shri Rajesh Kumar, AM:

This appeal by Revenue arises out of the order of the CIT(A) –36, Mumbai, dated 12.06.2017, which in turn has arisen out of the order passed by the Assessing Officer u/s. 143(3)/147 of the Income Tax Act, 1961 (hereinafter referred to as "the Act") relating to A.Y. 2014-2015.

2. The issue raised by the Revenue in the present appeal is against the direction of CIT(A) to the AO to allow deduction u/s.80P(2)(d) of the Act of Rs.65,89,133/- without appreciating the fact that the assessee has earned interest from investment with cooperative banks. Secondly, the Revenue raised a grievance that the CIT(A) erred in not considering the inserted section 80P(4) of the Act, which specifically provides that this section shall not apply in relation to any co-operative bank other than a

primary agricultural credit society or primary co-operative agricultural and rural development bank.

3. Facts in brief are that the assessee is a cooperative housing society and during the year under consideration declared income under the head income from other sources. During the year the assessee earned interest to the tune of Rs.65,89,133/- from the cooperative banks and, thus, claimed deduction thereon u/s.80P(2)(d) of the Act which according to AO is not permissible and accordingly the AO issued show cause notice to the assessee vide letter dated 25.11.2016, which was replied by the assessee and finally the AO not finding the reply of the assessee as tenable, added the same to the income of the assessee by framing assessment u/s.143(3) of the Act vide order dated 13.12.2016.

4. The CIT(A) in appeal, deleted the disallowance by following the orders of earlier years passed by the predecessors in which deduction u/s.80P(2)(d) of the Act was allowed.

5. At the outset, ld. AR submitted before the Bench that issue involved in the present case is squarely covered in favour of the assessee in his own case in ITA No.7154/Mum/2016, order dated 09.05.2018, A.Y. 2013-2014, wherein the Tribunal dismissed the appeal of the Revenue holding that the assessee is entitled to exemption u/s.80P(2)(d) of the Act on the ground that cooperative bank is also a cooperative society.

6. Ld. DR, on the other hand, relied on the grounds of appeal and order of AO.

7. We have heard the rival submissions of both the parties and perused the material on record including the order of the Tribunal in assessee's own case passed in ITA No.7154/Mum/2016, order dated 09.05.2018 for the assessment year 2013-2014. We observe that the issue has already been decided by the Tribunal in the aforesaid case. The operative part of the order of the Tribunal in the above case is reproduced as under :-

> *"6. We have heard the authorized representatives for both the parties, perused the orders of the lower authorities and the material available on record. We have given a thoughtful consideration to the issue before us and are persuaded to be in agreement with the view taken by the CIT(A) that as a co-operative Bank is always registered under the relevant co-operative Societies Act of the relevant State, therefore, the claim of deduction under Sec. 80P(2)(d) on the interest income of Rs.67,43,445/- received by the assessee from the co-operative Bank was well in order. Rather, in this regard it would be relevant to observe that Sec. 2(19) defining a "co-operative Society" categorically takes within its sweep a co-operative Society registered under the co-operative Societies Act, 1992 (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 thus are of the considered view that as a co-operative Bank is a co-operative Society, therefore, the CIT(A) had rightly concluded that the interest income of Rs.67,43,445/- received by the assessee from the Co-operative Bank would duly be entitled for claim of deduction under Sec. 80P(2)(d) of the Act."*

Since the facts before us admittedly same to the facts in the decision of the coordinate bench of the Tribunal in assessee's own case as cited above for assessment year 2013-2014, we, therefore, respectfully following the same, uphold the order of CIT(A) and dismiss the appeal of revenue.

8. In ground No.2, the revenue is aggrieved against the order of CIT(A) in not considering the fact that Section 80P(4) of the Act provides that this section shall not apply in relation to any co-operative bank other

than a primary agricultural credit society or primary co-operative agricultural and rural development bank.

9. Since the coordinate bench of the Tribunal has already held that cooperative bank is also cooperative society and, therefore, we do not find any merit in the ground raised by the revenue. In our view, a cooperative bank is first registered as cooperative society and then after licence of the RBI, financial and banking activities are carried on. In the present case, we have already held that the cooperative society also includes cooperative banks. Accordingly, this ground of revenue is also dismissed as squarely covered by the above cited decision of the coordinate bench of the Tribunal.

10. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open court on 15/01/2019.

Sd/-	Sd/-
(RAM LAL NEGI)	**(RAJESH KUMAR)**
न्यायिक सदस्य / JUDICIAL MEMBER	**लेखा सदस्य / ACCOUNTANT MEMBER**

मुंबई Mumbai; दिनांक Dated 15/01/2019

प्र.कु.मि/Prakash Kumar Mishra, Sr.PS.

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

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

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

(**Assistant Registrar**)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai