IN THE INCOME TAX APPELLATE TRIBUNAL
Mumbai "SMC" Bench, Mumbai.

Before Shri Prashant Maharishi (AM)

I.T.A. No. 4675/Mum/2023 (A.Y. 2012-13)

Grand Paradi Co-op Housing Society Ltd. 572, Dady Seth Hill Kemps Corner Mumbai-400 026.	The Income Tax Officer Ward 19(1)(3) Matru Mandir Tardeo Mumbai
PAN : AAAAG1083E (Appellant)	(Respondent)
Assessee by	Shri H.N. Motiwalla
Department by	Shri R.R. Makwana
Date of Hearing	04.06.2024
Date of Pronouncement	24.06.2024

O R D E R

1. This appeal is filed by Grand Paradi Cooperative Housing Society Ltd (The assessee/appellant) for assessment year 2012 – 13 against the appellate order passed by The Joint Commissioner Of Income Tax (Appeals) – 1, Guwahati (the learned CIT – A) dated 6/12/2013 wherein the appeal filed by the assessee against the order passed under section 143 (1) of The Income tax Act, 1961 [the ACT] dated 14/7/2013 by the central processing Centre Bengaluru (the learned AO) was dismissed. Therefore, the assessee is aggrieved and is in appeal before us.
2. The solitary issue involved is that the learned CIT – A has not condone the delay of 3609 days in filing of the appeal and further on the merits, the assessee was denied deduction under section 80 P (2) (d) of the act on interest income of Rs. 3,013,558/–.
3. Brief facts of the case show that assessee is a cooperative was in society, filed its return of income on 30/9/2012 at a total income of Rs. 1,897,350/–. The assessee claim deduction under section 80 P (2) (d) of the act of Rs. 3,013,558/– with respect to the interest income earned by the assessee from the cooperative banks. The assessee was issued in

intimation under section 143 (1) of the act on 14/7/2013 wherein the claim of the assessee of deduction under section 80 P (2) (d) of the act of Rs. 3,013,558/– was denied.

4. The assessee aggrieved with this was required to file an appeal before the learned CIT – A on or before 13 August 2013 whereas the assessee filed appeal on 4/7/2023 after a delay of 3642 days which was not condoned by the learned CIT – A – the appeal of the assessee was dismissed as not maintainable as per paragraph number 5 of the appellate order.

5. Assessee aggrieved with the same appeals before us. Assessee has submitted a paper book containing 32 pages. The learned authorized representative submitted that the appeal was required to be filed before the learned CIT – A on 13 August 2013 however same was filed on 4 July 2023 and therefore the delay is only 3609 days. The learned CIT – A mentioning the delay of 3642 days is incorrect. The reason for delay in filing of the appeal before the learned CIT – A was that there was a change in the management committee which could not handle the matter earlier and therefore as soon as the new management committee came to know about the addition/disallowance, the appeal was filed.

6. The learned authorized representative submitted that assessee is a cooperative housing society and was run by the management. The assessee was granted deduction under this section from year to year except this year. As the assessee was allowed deduction under this section from year to year, on 30 January 2018 as per the assessee, an application under section 154 of the act was filed. As that application remained unattended, the assessee further reminded on 3 January 2023. To this application also there is no response. Therefore, the assessee filed an appeal on 4 July 2023. The learned authorized representative referred to letter dated 30/1/2018 stating that in the rectification application was made before the assessing officer within the permitted time limit of 4 years for correction of the intimation issued. as on that later there was no stamp being proof/acknowledgement of submission of the application on a particular date, the learned CIT – A did not believe the same. And

therefore, the subsequent reminder by the assessee on 3/1/2023 asking the CPC to rectify the intimation was found to be beyond prescribed time period of 4 years. Therefore, the learned first appellate authority did not accept the explanation of the assessee and did not condone the delay, hence the appeal of the assessee was dismissed. It was further stated that the delay has been caused due to sufficient reasons as the application for rectification was pending and not responded. Therefore, his argument was that the learned CIT – A should have condone the delay and decided the issue on the merits of the case.

7. On the merits of the case, he submitted that this is the only year in which the assessee has been denied the deduction under section 80 P (2) (d) of the act and for all these years the identical deduction is allowed. He further stated that the amount of investment made by the assessee with respect to the interest income earned of Rs. 3,013,558/– is eligible for deduction under that section. Therefore, on the merit the case of the assessee is squarely in favour of the assessee.

8. Therefore, he submitted that the order of the learned first appellate authority in not condoning the delay and thereafter not deciding the issue on the merits of the case is not sustainable.

9. The learned departmental representative vehemently supported the order of the learned CIT – A and stated that the assessee has not filed the appeal in time and therefore the learned CIT – A is justified in not condoning the exorbitant the delay in filing of the appeal and therefore not discussing the issue on the merits of the case.

10. We have carefully considered the rival contention and perused the orders of the lower authorities. We do not have any hesitation in holding that learned CIT – Ais perfectly justified in not condoning the delay in filing of the appeal. The argument of the assessee that there is a change in the managing committee and therefore it was not aware about the impugned disallowance of deduction and further and application of rectification is pending which was filed on 30/1/2018. Further assessee reminded to the CPC only on 3/1/2023 about pendency of rectification application for all

found to be not sufficient cause for not condoning the delay by the learned CIT – A. The assessee also could not produce that it had filed any application on 30/1/2018 for rectification before the assessing officer. Therefore, no cognizance was taken by the CIT appeal. In view of the above facts, we do not find any error in the order of the learned and CIT appeal in not condoning the delay in filing the appeal by the assessee. As such the delay is quite long and the explanation is quite sketchy. Thus, we dismiss ground number 1 and 2 of the appeal .

11. However, number 3 is on the merit of the addition. The claim of the assessee is that the assessee is a co-operative society, has made investment in cooperative banks and has earned interest thereon of Rs. 3,013,558/–. The interest income is on by the assessee of Rs. 1,866,254/– from Maharashtra state cooperative bank, Rs. 330,000 from Saraswat cooperative bank, Rs. 816,980 from Shamrao Vithal cooperative bank and Rs. 314 from Mumbai mercantile cooperative bank. This was claimed by the assessee as deduction under section 80 P (2) (d) of the act. The central processing Centre, while passing an order under section 143 (1) of the act made an adjustment denying the above deduction. There is no dispute that the due date for filing of the return of income was 31/10/2012 for assessment year 2012 – 13. Assessee filed its return of income on 30/9/2012. Return was processed under section 143 (1) of the act on 14/7/2013. In the computation of income given in order under section 143 (one) of the act at serial number 22 wherein deduction under section 80 P is considered, the amount provided by the taxpayer in the return of income was stated to be Rs. 30,13,558/- and the amount computed under section 143 (1) of the act was also Rs. 30,13,558/–. Thus, in the computation of income provided under section 143 (1) of the act there is no distinction is no difference between the amount of deduction computed by the assessee and computed by the CPC. It remains the same at Rs. 3,013,558. However, at serial number 27 suddenly the total deduction under chapter VIA the deduction is provided by the assessee is shown to be Rs. 3,013,558/– but as computed under

section 143 (1) is computed at Rs. Nil. Therefore, in the intimation itself at one place the deduction is granted as computed by the assessee under section 143 (1) of the act and at another place the deduction is not granted while computing total of chapter VIA deduction under section 143 (1) of the act at rupees Nil. Neither the assessee nor the learned that departmental representative could explain to us how this can happen. We leave it there only.

12. Now the question that arises whether under section 143 (1) assessee can be denied deduction under section 80 P (2) (d) of the act. The provisions of section 143 (1) permit following adjustment:-

(*a*)	the total income or loss shall be computed after making the following adjustments, namely:—
(*i*)	any arithmetical error in the return; [68][***]
(*ii*)	an incorrect claim, if such incorrect claim is apparent from any information in the return;
[69][(*iii*)	disallowance of loss claimed, if return of the previous year for which set off of loss is claimed was furnished beyond the due date specified under sub-section (1) of section 139;
(*iv*)	disallowance of expenditure [70][or increase in income] indicated in the audit report but not taken into account in computing the total income in the return;
(*v*)	disallowance of deduction claimed under [71][section 10AA or under any of the provisions of Chapter VI-A under the heading *"C.—Deductions in respect of certain incomes"*, if] the return is furnished beyond the due date specified under sub-section (1) of section 139; or
(*vi*)	addition of income appearing in Form 26AS or Form 16A or Form 16 which has not been included in computing the total income in the return:

13. The above provisions show that chapter VIA deduction can be denied only if the return is not filed in time. That is not the case with the assessee. Therefore the claim made by the assessee of deduction under section 80 P is not subject to any disallowance on addition under section 143 (1) of the act if it is not an incorrect claim.

14. It cannot also be claimed as an incorrect claim under explanation (a) of the act.

(*a*)	"an incorrect claim apparent from any information in the return" shall mean a claim, on the basis of an entry, in the return,—
(*i*)	of an item, which is inconsistent with another entry of the same or some other item in such return;
(*ii*)	in respect of which the information required to be furnished under this Act to substantiate such entry has not been so furnished; or
(*iii*)	in respect of a deduction, where such deduction exceeds specified statutory limit which may have been expressed as monetary amount or percentage or ratio or fraction;

Neither the claim of the assessee under section 80 P was inconsistent with another entry, the deduction also did not exceed the specified statutory limit. Therefore, it is apparent that even was not an incorrect claim.

15. In view of the above analysis, it is clear that disallowance of deduction under section 80 P (2) (d) is not permitted under section 143 (1) of the act.

16. Even otherwise on the merits, the amount of interest is earned from cooperative banks. According to section 2 (19) of the act cooperative societies means a co-operative society registered under the Co-operative 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 . Under the Maharashtra cooperative societies act section 2 (10) defines "Co-operative bank" means a Co-operative society which is doing the business of banking as defined in clause (b) of sub-sections (1) of section 5 of the Banking Companies Act, 1949 and includes any society which is functioning or is to function as an Agricultural and Rural Development Bank under Chapter XI;. Therefore, it is apparent that cooperative banks are cooperative societies who are doing the banking business. Thus, it cannot be said that all these four entities are not cooperative societies. It is not the case of the AO that the amount of deposit either in fixed deposit scheme or in savings bank account scheme of these cooperative banks is not an investment. Thus, the assessee satisfies all the conditions provided

under section 80 P (2) (d) of the act. Thus, according to us the assessee is entitled to the deduction under section 80 P (2) (d) of the act with respect to the amount of interest income earned from cooperative banks of Rs. 3,013,558 for the impugned assessment year. Accordingly ground number 3 of the appeal is allowed.

17. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court in 24th June 2024.

Sd/-

(Prashant Maharishi)
Accountant Member

Mumbai :24.06.2024

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai.
6. Guard File.

BY ORDER,

//True Copy//

(Assistant Registrar)
ITAT, Mumbai

PS