

**आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'एसएमसी' अहमदाबाद ।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**“ SMC ” BENCH, AHMEDABAD**

सर्वश्री महावीर प्रसाद, न्यायिक सदस्य एवं अमरजीत सिंह, लेखा सदस्य के समक्ष ।  
**(BEFORE SHRI MAHAVIR PRASAD, JUDICIAL MEMBER &**  
**SHRI AMARJIT SINGH, ACCOUNTANT MEMBER)**

आयकर अपील सं./I.T.A. No. 2331/Ahd/2016  
(निर्धारण वर्ष / Assessment Year : 2012-13)

Anklav Taluka Employee Co-op Credit and Consumer, 9, Marketing Yard, Shopping Center, Opp. Municipal Office, Anklav, Dist.Anand -388510	<b>बनाम/</b> Vs.	ITO, Ward-1(3)(2) Petlad, Anand - 388450
<b>स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAAAA 3246 K</b>		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से/ <b>Appellant by</b> :	--None--
प्रत्यर्थी की ओर से/ <b>Respondent by</b> :	Shri Madhusudan, Sr.D.R.

सुनवाई की तारीख / <b>Date of Hearing</b>	25/09/2017
घोषणा की तारीख/ <b>Date of Pronouncement</b>	27/09/2017

**आदेश / O R D E R**

**PER SHRI MAHAVIR PRASAD, JUDICIAL MEMBER :**

This is an appeal by the assessee against the order of the Commissioner of Income Tax(Appeals)-5, Vadodara, dated 03/05/2016 for the Assessment Year (AY) 2012-13, on the following Grounds:

- i. *The learned CIT(A)-5, Vadodara has erred in law and on facts in not allowing the claim of deduction u/s.80P(2)(a)(i) of the Act on Bank deposits treating the same as income from other sources.*
- ii. *The learned CIT(A)-5, Vadodara has erred in law and on facts in treating net interest income of Rs.80,319/- as Income from other sources, which in fact is income from business.*

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iii. *If Ground No.1 is allowed the deduction allowed by A.O. of Rs. 50,000 u/s.80P(2)(c)(ii)be directed to be withdrawn.*

2. The relevant facts as culled out from the materials on record are as under:-

In this case, the assessee is a Co.op credit society which is akin to banking business. It is accepting deposits from its members and granting advances to its members.

2.2 The gross total income shown in the return of income is Rs.7,33,873/- from which deduction u/s.80P of the Act of Rs.7,33,873/- has been claimed as deduction. Thus, the net income is shown at Rs.Nil. On perusal of profit and loss account, it was observed that the assessee has shown gross receipts of Rs.28,51,761/- which includes interest income amounting to Rs.4,78,938/- earned on deposits with other than Co.op. Society.

2.3 The assessee vide letter dated 07/01/2015 was requested to show cause as to why its claim of deduction u/s.80P of the Act should not be restricted to the availability of deduction in view of the provisions of the Act and deduction u/s.80P will be worked out accordingly. The said show cause notice was duly served upon the assessee. For the sake of convenience and ready reference relevant paras of the show-cause notice was reproduced hereunder:

*“Your attention is drawn to the ongoing assessment proceedings for the above mentioned assessment year. On perusal of your return of income, it is seen that you have shown business income of Rs.7,33,873/- and have claimed deduction u/s.80P of the Income-Tax Act of entire*

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*business income. In this connection, it may please be noted that as per section 80P(2)(a)(i) of the Act, a Co.op Society engaged in carrying on the business of banking or providing credit facilities to its members, the whole of the profit and gains of business attributable to such activities would be deductible. On perusal of schedule forming part of income and expenditure account that the society has also earned interest on Fixed Deposit with other than co.op. Society also which comes to Rs.4,78,938/-which is income from other sources. Earning of interest from other than co-op, society is not an activity, for which income would be deductible. Therefore, interest income earned from other than co.op. society is not eligible for deduction u/s.80P(2)(a)(i) of the Act.*

*Further, as per section 80P(2)(d) of the Act, the whole of income by way of interest or dividends derived by the co-op. society from its investments with any other co-op. society is deductible. The interest earned on deposits with other than co-op. bank i.e. with other banks is not eligible for deduction under the said section.*

*4. Therefore, you are requested to show cause as to why the deduction claimed by you should not be restricted to the availability of deduction in view of aforesaid provisions of the Act and deduction u/s.80 P will be worked out accordingly".*

2.4 The assessee vide letter dated 04/02/2015 has furnished reply to the show-cause notice dated 07/01/2015, which is reproduced as under:

*“1) This is to state that your assessee is a cop. operative credit society engaged in providing credit facility to its members and the purchase of fertilizers agricultural implements, seeds etc article intended for Agriculture for the purpose of supplying them to its member. Your assessee is not a co-op bank and hence your assessee has claimed deduction u/s.80P(2)(a)(i) and u/s.80P(2)(a)(iv) of the Act. Assessee collects deposits from its members and provide credit facility to its members.*

*2) Sir, your assessee has not claim credit for TDS of Rs.20,603/-. Copy of 26AS is attached herewith for your ready reference; income received is already included in the gross interest income computed by the assessee.*

*3) Details of interest earned and paid a/c are as under:*

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<i>Particulars of interest earn</i>	<i>Rs.</i>
<i>Interest on advances</i>	22,94,519/-
<i>Interest n BOB FD</i>	4,11,862/-
<i>Interest on KDCC Bank FD</i>	<u>67,076/-</u>
<i>Total Rs.</i>	<u>27,73,457/-</u>

<i>Particulars of Interest expenses</i>	<i>Rs.</i>
<i>Interest paid to Member depositors</i>	17,60,769/-
<i>Interest on SBI FDOD</i>	1,578/-
<i>Interest on BOB FDOD</i>	23,776/-
<i>Interest on KDCC FDOD</i>	<u>14,043/-</u>
<i>Total Rs.</i>	<u>18,00,168/-</u>

*Summary of total income and expenses on pro-rata base for interest earn on bank FDR and interest earn on advances to members and other income as your office call for are as under:*

<i>Particulars</i>	<i>Interest on Adv to members and other income</i>	<i>Interest on Bank FDR</i>	<i>Total</i>
<i>Income Rs.</i>	23,72,823	4,78,938	28,51,761
<i>Expenses on Pro-rata @ 72.79%</i>	17,27,247	3,48,619	20,75,866
<i>Net Profit</i>	6,45,576	1,30,319	7,75,895
<i>Appropriation of profit Rs.</i>			4,30,000
<i>Provision for building 2,00,000</i>			
<i>Provision for gift 1,50,000</i>			
<i>Provision for BD 50,000</i>			
<i>Member death saha 30,000</i>			
<i>Net profit after appropriation</i>			3,45,895

*Your assessee has received deposits from members and has a business liability of making payment. Funds not advanced immediately and which are circulating capital of the assessee are placed as deposits with bank to ensure that the liability of interest payment as well as liability of repayment of deposits can be met in time without any default. Your assessee also avails overdraft facility against term deposits with banks to fulfill the business obligations. Copy of overdraft statement for the*

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*year under assessment are produced herewith for your verification.  
Account No of OD a/c are as under:*

- Bank of Baroda Anklav OD a/c No.0310400000008*
- KDCC Bank Anklav OD A/c No.90201438000003*
- State Bank of India Anklav OD a/c No.30877110229.”*

2.5 The above submission of the assessee has been considered carefully by the Ld. AO but same is not acceptable in view of the fact that the provisions in this regard is very clear as to availability of deduction under this section and it can never be treated that the interest received on fixed deposits with commercial bank, other interest income as narrate above as qualified for deduction u/s.80P(2)(a)(i) of the Act as that of income from providing credit facilities to its members. Therefore, the assessee was requested to submit the working of deduction claimed u/s.80P in respect of interest income earned on deposits with other than co.op society after claiming proportionate expenses. As per provisions of section 80P(2)(d) of the Act, in respect of any income by way of interest or dividends derived by the co-operative society from its investments with any other co-operative society, the whole of such income is deductible. In the instant case, the assessee has received interest from nationalized banks FDR, the same cannot be said to be earned from the members for providing credit facilities to them. Such interest cannot be said to be attributable to the activities of the society viz. carrying on the business of providing credit facilities to its members. Accordingly, such interest income cannot be said to be attributable to the activities mentioned in section 80P(2)(i) of the Act.

2.6 Finally, learned AO has computed total income of the assessee is Rs.80,320/-.

3. Against the said addition, assessee preferred first statutory appeal before the learned CIT(A), who partly allowed the appeal of the assessee.

4. We have gone through the relevant record and impugned order. Learned DR cited a judgment of **Gujarat High Court [2016] 389 ITR 578 (Guj), State Bank of India vs. Commissioner of Income Tax**, in this case, Jurisdictional High Court has held that:

*“The assessee had claimed deduction under section 80P and not specifically under section 80P(2)(a)(i). The assessee had also not shown any bifurcation of the income derived from providing credit facilities to its members and the interest earned by depositing surplus funds with the bank. In response to the notice under section 263, the assessee had contended that the reason for treating the interest income received from deposits as business income was that the funds of the business were kept in interest earning account with facility to withdraw the fund as and when necessary to earn interest for and on behalf of its members and that it was one of its activities as provided in section 80P(2)(a) and that the gains of business attributable to such activity were exempted from taxable income. The contention of the assessee that the Commissioner had not held that the interest derived from the deposits in the bank was income from other sources did not merit consideration for the reason that it was for the Assessing Officer, pursuant to the order under section 263 to examine the nature of the income and tax it accordingly. Having regard to the stand adopted by the assessee in response to the notice under section 263, it could not be said that the Commissioner had travelled beyond the scope of the notice under section 263, inasmuch as, he had only dealt with the contention raised by the assessee. The Appellate Tribunal was justified in upholding the invocation of powers under section 263 of the Act by the Commissioner and that the order did not suffer from any legal infirmity.*

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*The assessee did not carry on any banking business and its objects did not contemplate investment of surplus funds received from its members. The business of a credit society like that of the assessee was limited to providing credit to its members and the income that was earned by providing such credit facilities to its members was deductible under section 80P(2)(a)(i). The character of interest was different from the income attributable to the business of the assessee-society providing credit facilities to its members. The interest income derived from investing surplus funds with the bank must be closely linked with the business of providing credit facilities for it to be held attributable to the business of the assessee. Therefore, the profits and gains could be said to be directly attributable to the business of providing credit facilities to its members if there was a direct and proximate connection between the profits and gains and the business of the assessee. There was no obligation on the assessee to invest its surplus funds with the bank. Investing surplus funds in a bank was no part of the business of the assessee providing credit facilities to its members and hence it could not be said that the interest derived from depositing its surplus funds with the bank was profits and gains of business attributable to the activities of the assessee. It was only the interest income derived from the credit provided to its members which was deductible under section 80P(2)(a)(i) and the interest income derived by depositing the surplus funds with the bank not being attributable to the business carried on by the assessee could not be deducted under section 80P(2)(a)(i). There was no infirmity in the orders of the Appellate Tribunal warranting interference and the assessee's appeal was dismissed by the Hon'ble High Court."*

5. Considering the binding decisions of the Hon'ble High Court, in the case of SBI (supra) the interest income earned by depositing the same in the nationalized bank as dealt by the CIT(A) (supra) is hereby upheld to be taxed under the head income from other sources.

6. Respectfully, following the Jurisdictional High Court's judgment, we dismiss the appeal.

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7. In the result, appeal filed by the assessee is dismissed.

**This Order pronounced in Open Court on 27/09/2017**

Sd/-  
अमरजीत सिंह  
(लेखा सदस्य)  
( AMARJIT SINGH )  
**ACCOUNTANT MEMBER**  
Ahmedabad; Dated 27/09/2017

Sd/-  
महावीर प्रसाद  
(न्यायिक सदस्य)  
( MAHAVIR PRASAD )  
**JUDICIAL MEMBER**

*Priti Yadav, sr.PS*

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

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

आदेशानुसार/ BY ORDER.

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt.Registrar)  
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad