

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD %SMC+BENCH

**Before: Shri Mahavir Prasad, Judicial Member
And Shri Amarjit Singh, Accountant Member**

**ITA No. 2752 /Ahd/2016
Assessment Year 2013-14**

Shri Friends Co-op Credit Society Ltd. Cinema Road, Juna Bazar, Karjan, Vadodara-391240 PAN: AAAAS1765K (Appellant)	Vs	The ITO, Ward-3(1)(2), Vadodara (Respondent)
---	----	---

**ITA No. 2753/Ahd/2016
Assessment Year 2013-14**

Shri Sahajanand Co-op Credit Society Ltd. Nava Bazar Karjan, Dist-Vadodara-391240 PAN: AAAAS1764L (Appellant)	Vs	The ITO, Ward-3(1)(2), Vadodara (Respondent)
--	----	---

**ITA No. 2754 /Ahd/2016
Assessment Year 2013-14**

I.M.A Vadodara Co-op Credit Soc. Ltd. IMA Bhailal Amin Hall, Salatwada Main Road, Vadodara-390001 PAN: AAIFI9966M (Appellant)	Vs	The ITO, Ward-3(1)(2), Vadodara (Respondent)
---	----	---

Revenue by: Shri Prasoon Kabra, Sr. D.R.
Assessee by: Shri Sanket Bakshi, A.R.

Date of hearing : 06-12-2017
Date of pronouncement : 21-12-2017

आदेश/ORDER

PER : AMARJIT SINGH, ACCOUNTANT MEMBER:-

These three appeals filed by different assesseees for A.Y. 2013-14, arise from order of the CIT(A)-3, Vadodara dated 29-08-2016 & 12-08-2016, in proceedings under section 143(3) of the Income Tax Act, 1961; in short the Act.

2. As the facts in these three appeals filed by different assesseees are similar, so, we take ITA No. 2752/Ahd/2016 as the lead case and decide all the three appeals for the sake of convenience accordingly.

3. The assessee has raised following grounds of appeal:-

ITA No. 2752/Ahd/2016

- “1. The learned Commissioner of Income Tax (Appeals) - 3, Vadodara [“the CIT(A)”] erred in fact and in law in confirming the action of Income Tax Officer, Ward 3(1)(2), Baroda [“the AO”] in not allowing the deduction u/s 80P(2)(a)(i) of Rs. 10,64,670/- claimed by the appellant.
2. The learned CIT(A) erred in fact and in law in confirming the action of the AO holding that the interest earned by the appellant from deposits made with nationalized banks is assessable u/s 56 and not eligible for deduction u/s.80P(2)(a)(i) as it is not related to the business of providing credit facilities to the members of the appellant.
3. The learned CIT(A) erred in fact and in law in ignoring the provisions of section 80P(2)(a)(i) which clearly provides that the deduction is available to a Co Operative society which is engaged in carrying on the business of banking or providing credit facilities to its members.
4. The learned CIT(A) erred in fact and in law in confirming the action of AO in charging interest u/s. 234B of the Act.
5. The learned CIT(A) erred in fact and in law in confirming the action of the AO in initiating penalty proceeding u/s 271(1)(c) of the Income Tax Act, 1961 (“the Act).”

All these grounds of appeal are interconnected therefore they are adjudicated together.

4. In this case, return of income declaring income of Rs. nil was filed on 7th December, 2013. Subsequently, the case was selected under scrutiny by issuing of notice u/s. 143(2) of the act on 2nd September, 2014. During the course of assessment proceedings, the assessing officer noticed that assessee has shown gross total income of Rs 28,93,952/-.The entire gross total income has been claimed as deduction u/s. 80P(2)(a)(i) and net income was shown at nil. On verification of the case record, the assessing officer noticed that assessee has received FDR interest of Rs. 9,92,750/- from Bank of Baroda and Rs. 71,915/- from MGVCL on which deduction u/s. 80P(2)(a)(i) of the act was claimed. The assessing officer observed that assessee Cooperative Society was engaged in providing credit

facilities to its members and the interest income earned on fixed deposit from Bank of Baroda and MGVCCL cannot be termed as activity of providing credit facilities to its members therefore, such interest income would not qualify for deduction u/s 80P(2)(a)(i) of the act. Therefore, deduction of Rs. 10,64,670/- pertaining to interest income from bank of Baroda and MGVCCL was disallowed by the assessing officer.

5. Assessee preferred appeal before the Hon'ble CIT(A). The Hon'ble CIT(A) has sustained the disallowance made by the assessing officer by observing as under:-

"5. I have considered the facts of the case, submissions of the appellant and the AO's observations. The entire submission dated 26.08.2016 of the appellant as reproduced in earlier paragraph of this appeal order cannot be accepted in view of recent judgement of Hon'ble High Court of Gujarat as given in the case of State Bank of India (SBI) vs. Commissioner of Income tax (2016) 72 Taxmann.com 64. In this referred case, the assessee was a Co-Operative Society registered with the object of accepting deposits from salaried persons of State Bank of India, Gujarat region with a view to encourage thrift and providing credit facility to them. This assessee for A.Y.2009-10 had declared Nil income after claiming deduction u/s. 80P. The AO allowed this claim of deduction of the appellant. Subsequently, the Commissioner invoked powers u/s.263 of the Act on the ground that interest income from the State Bank of India was not exempt u/s.80P(2)(d). On appeal, the tribunal held that interest income earned on extending credit facilities by the assessee to its members would be business income as there existed nexus between the income and the business of the society, which was extending credit facilities to its members. The Tribunal further held that however it could not be said that there was such nexus between the interest earned on deposits made in State Bank of India and therefore such interest would not be exempt u/s. 80P. The assessee filed an appeal N to the High Court of Gujarat against the order of the Tribunal. The question arose before the Hon'ble High Court of Gujarat as to whether in the case of Society engaged in providing credit facilities to its members, it is only interest derived from credit provided to its members which is deductible u/s.80P(2)(a)(i) and interest derived by depositing surplus funds with the bank not being attributable to business carried on by the society, cannot be deducted u/s.80P(2)(a)(i). The answer of the Hon'ble High Court of Gujarat was 'yes'. In other words, as per the Hon'ble High Court of Gujarat interest derived by the Co-Operative society by depositing surplus fund with the bank not being attributable to business carried on by the society cannot be deducted u/s 80P.

5.1 The Hon'ble High Court of Gujarat in the case of SBI vs. CIT as referred to in just earlier paragraph of this appeal order has discussed the decision of Hon'ble Supreme Court as given in the case of Totgar's Co-Operative sale society vs. ITO (2010) 233 ITR 383 and in the light of observation of Hon'ble Supreme Court it has held that in the case of society engaged in providing credit facilities to its members, income from investments

made in the banks does not fall in any of the categories mentioned u/s 80P(2)(a). The Hon'ble High Court of Gujarat has held that in the light of the principles enunciated by the Supreme Court in Totgars Co-operative Sale Society (supra), in case of a society engaged in providing credit facilities to its members, income from investments made in banks does not fall within any of the categories mentioned in section 80P(2)(a). As per the Hon'ble High Court of Gujarat however, section 80P(2)(d) specifically exempts interest earned from funds invested in co-operative societies. As per the Hon'ble High Court of Gujarat therefore, to the extent of the interest earned from investments made by it with any co-operative society, a co-operative society is entitled to deduction of the whole of such income under section 80P(2)(d). As per the Hon'ble High Court of Gujarat however, interest earned from investment made in any bank, not being a co-operative society, is not deductible under section 80P(2)(d).

5.2 In view of decision of Hon'ble High Court of Gujarat as given in the case of State Bank of India vs. Commissioner of Income Tax, 72 Taxmann.com 64, it is held that the AO has correctly made disallowance of claim of deduction of Rs. 10,64,672/- of the appellant as made u/s 80P of the IT Act by treating the same as income from other sources on the ground that this amount of interest income as earned on deposits with Bank of Baroda and MGVCL is not the business income which is eligible for deduction u/s 80P and therefore such disallowance is hereby confirmed. Thus, the grounds of appeal of the appellant as reproduced in initial paragraph of this appeal order are dismissed.

In result, the appeal of the appellant is dismissed."

6. During the course of appellate proceedings before us, Id. departmental representative has contended that in view of the decision of hon'ble Gujarat High Court in the case of State Bank of India vs. CIT (2016) 72 taxmann.com 64, this issue has been decided in favour of the revenue. At this stage, the Id. counsel has contended that benefit of netting of interest should be provided to the assessee as provided by the different benches of the ITAT on identical issues.

7. We have heard both the sides and perused the material on record carefully. We observed that Hon'ble High Court of Gujarat in the case of State Bank of India (SBI) vs. Commissioner of Income tax (2016) 72 Taxmann.com 64 has held that interest derived by the Co-Operative society by depositing surplus fund with the bank not being attributable to business carried on by the society cannot be

deducted u/s 80P. As per the Hon'ble High Court of Gujarat interest earned from investment made in any bank, not being a co-operative society, is not deductible under section 80P(2)(d). In view of decision of Hon'ble High Court of Gujarat as supra we considered that the AO has correctly made disallowance of claim of deduction of Rs. 10,64,672/- u/s 80P of the IT Act by treating the same as income from other sources on the ground that this amount of interest income as earned on deposits with Bank of Baroda and MG VCL is not the business income which is eligible for deduction u/s 80P of the act.

The Id. counsel has contended that benefit of netting of interest should be provided to the assessee as provided by the different benches of the ITAT on identical issues therefore, we have considered the decision of the Co-ordinate Bench of the ITAT in the case of Dhan Laxmi Credit Co-operative Society vide ITA No. 2426/Ahd/2013 dated 24th Jan, 2017. In the above decision, the Co-ordinate Bench has decided on identical issue on the claim of the assessee for pro rata expenses for earning interest income. The relevant part of the decision is reproduced as under:-

“10. We further observe that during the course of hearing before us, Id. AR accepted that assessee is not eligible to claim deduction u/s 80P(2)(a)(i) of the Act on the interest earned on surplus deposits/investments held with Scheduled/Nationalized bank but urged for allowing deduction on pro rata expenses incurred for earning the interest income and also for allowing statutory deduction of Rs.50,000/- u/s 80P(2)(c)(ii) of the Act. Id. AR also submitted that a total expenses incurred for the year stood at Rs.28,60,298/- and pro rata expenses for earning interest income of Rs.8,55,854/- as against total interest income of Rs.42,39,515/- will be calculated at Rs.5,77,423/-.

11. We observe that Id. AR has referred to the decision of the Co-ordinate Bench in the case of Kherava Co-op. Credit Society Ltd. vs. ITO, Ward-4, Mehsana in ITA No.2704/Ahd/2015 for Asst. Year 2012-13 wherein similar issue of allowing pro rata expenses and allowing statutory deduction of Rs.50,000/- u/s 80P(2)(c)(ii) of the Act has been adjudicated by the Co-ordinate Bench by observing as under :-

10. From going through the alternate submissions made by the assessee we find that major portion of interest income is from government securities and are not in the nature of short term deposits. Therefore, the facts of the case are clearly distinguishable from

the facts discussed in the case of Totagars Co-op. Sale Society Ltd. vs. ITO (supra) and that of co-ordinate bench in the case of Jafari Momin Vikas Co-op. Credit Society Ltd. (supra) as well as in the case of Dhanalaxmi Credit Co-op. Society Ltd. vs. ITO (supra). This interest income is on investments not of short term nature except bank interest which too includes interest on Fixed Deposits. In these circumstances, we are of the view that as the assessee suo moto has given a proposition of taxing the interest and commission income on investments to be taxed u/s 56 of the Act and has also shown that proportionate expenses of Rs.3,31,828/- have been incurred to earn the above income and the same has duly been accepted by the assessing authority, so we find it justified that Assessing Officer has rightly taxed the interest income of Rs.2,16,689/- as income from other sources. However, deduction u/s 80P(2)(c) ought to have been allowed to the assessee as section 80P(2)(c) reads as under:-

Section 80P(2)(c)

(c) in the case of a co-operative society engaged in activities other than those specified in clause (a) or clause (b) (either independently of, or in addition to, all or any of the activities so specified), so much of its profits and gains attributable to such activities as does not exceed,-

(i) where such co-operative society is a consumers' co-operative society, one hundred thousand rupees; and

(ii) in any other case, fifty thousand rupees.

Explanation.- In this clause, "consumers" co-operative society" means a society for the benefit of the consumers;]

From going through the above provisions it is very clear that the assessee is eligible for deduction of Rs.50,000/- u/s 80P(2)(a)(i) of the Act and the same should have been allowed by the Assessing authority..

11. Therefore, in view of our above discussion, we quash the order of Id. CIT(A) enhancing the addition and also partly allow the appeal of assessee and accordingly the addition made by Assessing Officer shall be reduced to Rs.1,68,305/- [Rs.2,16,689/- minus Rs.50,000/- deduction u/s 80P(2)(c)].

11. Respectfully following the judgment of Hon. Jurisdictional High Court and examining the facts of the case as also in the light of decision of the Co-ordinate Bench discussed in the above paragraphs, we are of following view :-

(1) Assessee is not eligible for deduction u/s 80P(2)(a)(i) of the Act on the interest income earned from surplus deposits held with Nationalized/Scheduled banks.

(2) Assessee will be eligible to statutory deduction of Rs.50,000/-u/s 80P(2)(ii) of the Act.

(3) Assessee will also be eligible to claim pro rata expenses for earning interest income of Rs.8,55,854/- assessee's claim of pro rata expenses of Rs.5,77,423/- against the interest income of Rs.8,55,854/- after due verification by the learned Assessing Officer.

We, therefore, direct the Assessing Officer to verify assessee's claim of pro rata expenses by examining the record to be shown for verification by the assessee. Needless to mention proper opportunity of being heard is to be given to the assessee. We order accordingly. The appeal of the assessee is partly allowed for statistical purposes."

In view of the above mentioned facts and decision of the Co-ordinate Bench of ITAT, we direct the assessing officer to verify assessee's claim on pro rata expenses after examination of record to be

produced by the assessee for computing the deduction u/s. 80P in respect of interest earned from deposit held with Bank of Baroda and MGVCCL. Therefore, the appeal of the assessee is partly allowed for statistical purposes.

8. In the combined result, all the three appeals of the assessee are partly allowed for statistical purposes.

Order pronounced in the open court on 21-12-2017

Sd/-
(MAHAVIR PRASAD)
JUDICIAL MEMBER
Ahmedabad : Dated 21/12/2017

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

आदेश क० त० म० अ० म० / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपील म० अधिकरण,
अहमदाबाद