

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“D” BENCH, AHMEDABAD**

**BEFORE SHRI PRAMOD KUMAR, VICE PRESIDENT &  
Ms. MADHUMITA ROY, JUDICIAL MEMBER**

I.T.A. No.1869/Ahd/2017  
(Assessment Year : 2014-15)

The Government Servants Co-operative Credit Society Sanstha Vasahat, Raopura, Vadodara – 390 006.	Vs.	The Income Tax Officer, Ward – 3(1)(5), Aayakar Bhavan, Race Course, Vaodara.
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[PAN No. AABAT 5146 J]

(Appellant)

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(Respondent)

<b>Appellant by :</b>	Written Submission
<b>Respondent by :</b>	Shri Vinod Tanvani, Sr. D.R.

<b>Date of Hearing</b>	12.06.2019
<b>Date of Pronouncement</b>	01.07.2019

**ORDER**

**PER Ms. MADHUMITA ROY - JM:**

The instant appeal filed by the Assessee is directed against the order dated 30.05.2017 passed by the Commissioner of Income Tax (Appeals) – 3, Vadodara arising out of the order dated 28.07.2016 passed by the Income Tax Officer, Ward – 3(1)(5), Vadodara under section 143(3) of the Income Tax Act, 1961 (hereinafter referred as to ‘the Act’) for Assessment Year 2014-15 with the following grounds:

- “1. The learned Commissioner of Income Tax (Appeals) - 3, Vadodara [“the CIT(A)”] erred in fact and in law in confirming the action of the learned Income Tax Officer, Ward-3(1)(5), Vadodara (“the AO”) in treating Rs. 1,51,81,968/- as Income from other sources instead of Business Income.*

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2. *The learned CIT(A) erred in fact and in law in confirming the action of the AO in not allowing deduction u/s. 80P of the Act of Rs. 1,51,81,968/-.*
3. *The learned CIT(A) erred in fact and in law in taxing the gross amount instead the net amount.*
4. *The learned CIT(A) erred in fact and in law in confirming the action of AO in charging interest 234B of the Act.*
5. *The learned CIT(A) erred in fact and in law in confirming the action of AO in charging interest 234C of the Act.*
6. *Your Appellant craves the right to add to or alter, amend, substitute, delete or modify all or any of the above grounds of appeal.”*

2. **Ground No.1, 2 and 3** relates to the order passed by the Learned CIT(A) confirming the order in treated Rs.1,51,81,968/- as Income from other sources instead of Business Income. Taxing of gross amount instead of the net income has also been questioned before us.

3. The assessee, a registered Co-operative Society under the Gujarat Co-operative Society Act, 1960, engaged in accepting deposits and providing credit facilities to its members.

During the course of assessment proceeding, from verification of the details filed by the assessee, it is seen that the assessee earned interest income of Rs.1,51,81,968/- from Nationalized Bank. The assessee further claimed deduction under chapter VIA under section 80P(2) of the Act of Rs.1,80,34,441/-. But the interest income was found not to have been derived by the assessee from its activity of providing credit facilities to its members and ultimately, therefore, the same was considered as “income from other

sources” and taxed under section 56 of the Act and accordingly the claim of deduction under section 80P(2)(a)(i) has been disallowed. In view of the judgment passed by the Hon’ble Gujarat High Court in the matter of State Bank of India-vs-CIT, which was confirmed in appeal.

4. At the time of the hearing of the instant appeal though none appeared but the written submission filed by the assessee fairly stated that this ground of appeal is covered against the assessee in view of the said judgment passed by the Jurisdictional High Court in the case of State Bank of India-vs-CIT.

However, so far as the 2<sup>nd</sup> part of the order challenging the disallowance on the gross amount instead of net amount, the assessee relied on the judgment passed by the Hon’ble ITAT in ITA No.108/Ahd/2017 for A.Y.2013-14 in assessee’s own case passed in favour of the assessee. The Learned DR, however, not raised any objection in this regard.

5. Heard the respective parties, perused the relevant materials available on record. It appears that in ITA No.108/Ahd/2017, Hon’ble Co-ordinate Bench observed as follows:

*“4. We have heard the rival contentions and perused the material on record carefully. The assessee is a co-operative society engaged in providing credit facilities to its members. The assessee has claimed deduction u/s. 80P(2)(a)(i) of the act including the amount of interest of Rs. 1,18,21,506/- (nationalized bank Rs. 1,16,54,552/- and cooperative bank Rs. 1,66,954/-) an amount of invested in the fixed deposits. After the perusal of material on records and facts of the case, we are of the view that the assessee is entitled for deduction u/s. 80P(2)(a)(i) on the profit and gains of business attributable to the activity of providing credit facilities to its members and the assessing officer has correctly treated the interest income earned from banks/co-operative banks amounting to Rs. 1,18,21506 as income from other sources u/s. 56 of the act. In this regard, we place reliance on the decision of the Hon’ble Jurisdictional High Court in the case of State Bank of India vs. CIT (2016) 72 taxman.com*

*ITA No.1869/Ahd/2017  
The Govt. Servants Co-op. Credit Society Ltd. vs. ITO  
Assessment Year 2014-15*

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*64 (Guj.) and a number of judicial pronouncements of the Co-ordinate Benches of the ITAT. We have noticed that on 29.08.2018 the Coordinate Bench of the ITAT in a combined order in respect of following cases:-*

<i>Sl. No.</i>	<i>ITA No.</i>	<i>A.Y.</i>	<i>Assessee</i>	<i>Revenue</i>
<i>1</i>	<i>1992/Ahd/2017</i>	<i>2014-15</i>	<i>The Narsanda Mercantile Co.Op. Credit Society Ltd.</i>	<i>DCIT, Nadidad</i>
<i>2</i>	<i>1313/Ahd/2018</i>	<i>2015-16</i>	<i>The Sant Taluka Teachers Co-op. Credit Society Ltd.</i>	<i>ACIT, Panchmahal Circle, Godhra</i>
<i>3</i>	<i>1314/Ahd/2018</i>	<i>2015-16</i>	<i>The Satyaprakash Co-op. Credit Society Ltd</i>	<i>ACIT, Panchmahal Circle, Godhra</i>
<i>4</i>	<i>1295/Ahd/2018</i>	<i>2015-16</i>	<i>Shri Friends Coop. Credit Society Ltd</i>	<i>ITO, Ward3(1)(2), Vadodara</i>
<i>5</i>	<i>1296/Ahd/2018</i>	<i>2015-16</i>	<i>Shri Shramjivi Nagrik Sahakari Mandli Ltd</i>	<i>ITO, Wd3(1)(2), Vadodara</i>

*On identical issues and facts has held as under:-*

*"7. We have heard both the sides and perused the material on record carefully. The assessee is engaged in the business of providing credit facilities to its members. The assessing officer has noticed that in addition to the interest income earned on loan and advances to its members, the assessee has claimed deduction u/s. 80P(2)(a)(i) of the act on interest income earned from fixed deposit maintained with the commercial bank and cooperative banks. As per section 80P(2)(a)(i) of the act the interest income earned on providing credit facility to its members is deductible u/s. 80P(2)(a)(i) of the act. After perusal of the aforesaid provision of the act we observe that deduction u/s 80P(2)(a)(i) is not available on the interest earned on deposit maintained with the commercial bank. We find that the Hon'ble jurisdictional high court has decided the identical issue in favour of the Revenue vide State Bank of India vs. CIT (2016) 72 taxmann.com 64 (Gujarat) wherein it is held that interest income on deposit placed with the commercial banks is not exempt u/s. 80P(2)(a)(i) of the act. In respect of the claim of the Ld. Counsel that interest earned from investment of surplus funds with the cooperative bank is entitled for deduction u/s 80P(2)(d) of the act we have noticed that as per section 80P(2)(d) of the act, the whole of interest and dividend income derived by a co-operative society from its investment in any other co-operative society is*

*deductible u/s. 80P(2)(d). We find that the Hon'ble High Court of Karnataka, in the case of (2017) 83 taxmann.com 140 (Kar) Principal CIT vs. Tatagars Co-operative Sale Society on identical issue and facts has held that it is only primary agricultural credit society with its limited work of providing credit facilities to its member which is governed by ambit and scope of deduction u/s. 80P and further stated that interest income earned from surplus deposit with co-operative bank is not entitled for deduction 80P(2)(d). The relevant part of the decision of the Hon'ble High Court of Karnataka, in the case of (2017) 83 taxmann.com 140 (Kar) Principal CIT vs. Tatagars Co-operative Sale Society on identical issue and facts is reproduced as under:-*

*“Admittedly and undoubtedly, the assessee is a co-operative Society engaged mainly in the activity of marketing of agricultural produces grown by its members. The assessee co-operative society also accepts deposits from its members and provides credit facility to its members, runs Kirana Stores, rice mills, live stocks, van section, medical shops, lodging, plying and hiring of goods carriage, etc. [Para 10] The assessment years involved in the instant appeals are assessment years 2007-08 to 2011-12. The bone of contention is that the deduction under section 80P(2) is now claimed by the assessee under section 80P(2)(d) and not under section 80P(2)(a) of the Act. The reason is that now the investments and deposits after the Supreme Court's decision against the assessee in Totgar's Co-operative Sale Society Ltd. v. ITO [2010] 322 ITR 283/188 Taxman 282 (SC), the assessee herein has shifted the deposits and investments from Schedule Banks to Co-operative Bank and such Co-operative Bank is essentially a Cooperative Society also and clause (d) allows deduction of income by way of interest or dividends derived by the assessee co-operative Society from its investments with any other co-operative Society. [Para 11] The sheet anchor of the contention of the assessee misses two essential points required for claiming the deduction from gross total income for a co-operative society; (i) that the character or nature of income, namely interest on investments or deposits, does not change irrespective of the fact whether it is earned or received from a Schedule Bank or Co-operative Bank, (ii) that What the Supreme Court held in the case of the assessee itself, against assessee, was that such interest income on its surplus and idle funds not immediately required for its business, is not income from business taxable under section 28 of the Act, but was taxable as 'income from other sources' under section 56, whereas for availing the exemption or 100 per cent deduction under section 80P, the income is specified in clauses (a) to (f) of sub section (2) of section 80P which should be its business or operational income. [Para 12] What section 80P(2)(d) which was though not specifically argued and canvassed before the Supreme*

*Court, envisages is that such interest or dividend earned by an assessee co-operative society should be out of the investments with any other co-operative society. The words 'Co-operative Banks' are missing in clause (d) of sub section (2) of section 80P. Even though a cooperative bank may have the corporate body or skeleton of a co-operative society but its business is entirely different and that is the banking business, which is governed and regulated by the provisions of the Banking Regulation Act, 1949. Only the primary agricultural credit society with their limited work of providing credit facility to its members continued to be governed by the ambit and scope of deduction under section 80P of the Act. [Para 13] The banking business, even though run by a Co-operative bank is sought to be excluded from the beneficial provisions of exemption or deduction under section 80P of the Act. The purpose of bringing on the statute book sub-section (4) in section 80P was to exclude the applicability of section 80P altogether to any cooperative bank and to exclude the normal banking business income from such exemption/deduction category. The words used in section 80P(4) are significant. They are: 'The provisions of this section shall not apply in relation to any co-operative bank other than a primary agricultural credit society.....' The words 'in relation to' can include within its ambit and scope even the interest income earned by the assessee, a co-operative society from a Co-operative Bank. This exclusion by section 80P(4) even though without any amendment in section 80P(2)(d) is sufficient to deny the claim of the assessee for deduction under section 80P(2)(d). The only exception is that of a primary agricultural credit society. The depository I.T.A No. 108/Ahd/2017 A.Y. 2013-14 Page No The Government Servants Co-op. Credit Society Ltd. vs. ITO 5 Kanara District Central Bank Limited in the present case is admittedly not such a primary agricultural credit society. [Para 14] The amendment of section 194A(3)(v) excluding the Co-operative Banks from the definition of 'Cooperative Society' by Finance Act, 2015 and requiring them to deduct tax at source under section 194A also makes the legislative intent clear that the co-operative banks are not that specie of genus co-operative society, which would be entitled to exemption or deduction under the special provisions of chapter VIA in the form of section 80P of the Act. [Para 15] If the legislative intent is so clear, then it cannot be contended that the omission to amend clause (d) of section 80P(2) of the Act at the same time is fatal to the contention raised by the revenue before this Court and sub silentio, the deduction should continue in respect of interest income earned from the co-operative bank, even though the Supreme Court's decision in the case of assessee itself is otherwise. [Para 16] As stated above, it is the character and nature of income which determines its taxability or*

*exemption from taxability. It is needless to say that the provisions relating to exemption and deduction need to be strictly construed and no liberal interpretation or intendment can be inferred in such provisions. What was clearly held to be not exempt and not deductible under section 80P(2)(a) by the Supreme Court in the case of assessee, cannot be contrarily held as exempted and deductible now for these years, merely because the depository bank, with whom the investments were made by the assessee happens to be a co-operative bank. One cannot appreciate this distinction so as not to apply the binding precedent of the Supreme Court for subsequent years merely on account of the change of the bank where such deposits were made by the assessee, all other facts remaining the same, particularly the nature and character of the income earned by it. The interest income of assessee continues to be not attributable to its business operations even in these subsequent years. [Para 17] The character of income depends upon the nature of activity for earning that income and though on the face of it, the same may appear to be falling in any of the specified clauses of section 80P(2) of the Act, but on a deeper analysis of the facts, it may become ineligible for deduction under section 80P(2) of the Act. Hence, the income by way of interest earned by deposit or investment of idle or surplus funds does not change its character irrespective of the fact whether such income of interest is earned from a scheduled bank or a co-operative bank and, thus, clause (d) of section 80P(2) of the Act would not apply in the facts and circumstances of the present case. The person or body corporate from which such interest income is received will not change its character, viz. interest income not arising from its business operations, which made it ineligible for deduction under section 80P of the Act. [Para 23] In view of the aforesaid, the appeal filed by the revenue deserves to be allowed.:" [Para 24]*

*In the light of the above facts and legal findings we consider that the income by way of interest earned by deposit or investment of idle or surplus does not change its character irrespective of the fact whether such income of interest is earned from a schedule bank or a co-operative bank and thus clause (d) of section 80P(2) of the act would not apply in the facts and the circumstances of the present case. The assessee has earned interest income on surplus funds deposited with nationalized bank and the cooperative Bank and the same is not attributable to business operation of the assessee co-operative society as interest earned on the fund invested with the commercial bank is not operational income from providing credit facilities to its members. We consider that earning of such interest income either from nationalized or cooperative bank will not change nature and character of the income. On perusal of the provision of section we observe such deduction is pertinent to*

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*the operational income earned by the co-operative society from the activities in which it is engaged and not the other income which accrues to the society in the form of interest from investment of surplus funds with the cooperative bank. After considering the facts and legal finding, we do not find any merit in the appeal of the assessee, therefore, the same is dismissed. However as decided in the various decision of the Co-ordinate Benches of ITAT Ahmedabad we direct the assessing officer to allow pro rata expenses in respect of interest earned from deposit held with nationalized bank to the assessee for computing the deduction u/s. 80P after examining/verification and affording adequate opportunity to the assessee. Therefore, the appeal of the assessee is partly allowed for statistical purposes.*

*8. Assessee's ground of appeal regarding levy of interest u/s. 234A/B/C is of general nature which is to be charged mandatory as per provision of the act. Therefore, the same is dismissed. The other ground of appeal against initiation of penalty proceedings u/s. 271C is premature which do not require any adjudication at this stage, therefore, the same is also dismissed.*

*9. In the result, the appeal of the assessee is partly allowed for statistical purposes.*

*5. Respectfully following the decision of the coordinate bench of the ITAT as supra, we do not find any merit in the appeal of the assessee, therefore, the same is dismissed. However , we direct the assessing officer to allow pro rata expenses in respect of interest earned from deposit held with nationalized bank and cooperative bank for computing the deduction u/s. 80P after examining/verification and affording adequate opportunity to the assessee. Therefore, the appeal of the assessee is partly allowed for statistical purposes. 6. In the result, the appeal of the assessee is partly allowed for statistical purposes.”*

Respectfully relying upon the judgment passed by the Hon'ble Co-ordinate Bench, we find no infirmity in the order impugned passed by the first appellate authority so far as to warrant interference. The question is accordingly answered in the affirmative, i.e. in favour of the assessee and against the revenue. Consequently, the appeal fails and accordingly dismissed.

6. **Ground No.4, 5 & 6** the issues raised by the Assessee in ground No. 4, 5 & 6 are either general or consequential in nature. Therefore no separate

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adjudication is required. Therefore, the grounds raised by the assessee are dismissed.

7. In the result, assessee's appeal is partly allowed.

<b>This Order pronounced in Open Court on</b>	<b>01/07/2019</b>
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Sd/-  
( PRAMOD KUMAR )  
**VICE PRESIDENT**

Sd/-  
( Ms. MADHUMITA ROY )  
**JUDICIAL MEMBER**

Ahmedabad; Dated 01/07/2019  
*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)-XV, Ahmedabad.
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**