

THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD "SMC" BENCH

**Before: Shri Waseem Ahmed, Accountant Member  
And Shri Siddhartha Nautiyal, Judicial Member**

**ITA No. 57/Ahd/2022  
Assessment Year 2017-18**

Shri Mahila Co-op. Credit Society Ltd., Botad PAN: AAAAS6307B (Appellant)	Vs	The ACIT, Circle-1, Bhavnagar (Respondent)
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**Assessee by: None**  
**Revenue by: Shri Umesh Agarwal, Sr. D.R.**

Date of hearing : 05-05-2022  
Date of pronouncement : 06-05-2022

**आदेश/ORDER**

**PER : SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER:-**

This is an appeal filed by the assessee against the order of National Faceless Appeal Centre (NFAC), Delhi in DIN & Order No. ITBA/NFAC/S/250/2021-22/1035852091(1) vide order dated 24/09/2021 passed for the assessment year 2017-18.

2. The assessee has taken the following grounds of appeal:

*“1. That the Learned CIT -Appeals is not justified in holding that the Income earned by the appellant credit Co-operative Society amounting to Rs. 4,68,333/- on Fixed Deposits required to be assessed under the head 'Income from Other Sources' u/s 56 of the Income Tax Act and not as part of business of providing credit facility and thereby also holding that the Income of the appellant Society is not entitled for deduction Under provisions of section 80-P of the Act as claimed by the Appellant Society in the Return of Income on the totality of facts and circumstances of the case.*

*2. That the Learned CIT- Appeals has also erred in Law and on the facts of the case in confirming the action of the Learned Assessing Officer holding that the Appellant society that the Bank Interest earned is not deductible and/ or exempted U/s 80-P of the Income tax Act particularly when the Society has invested only the surplus funds to avail banking facility for onwards lending of surplus funds to it's members.*

*3. That the appellant Society craves to add, alter and amend any of the grounds of appeal either before or at the time of hearing of the appeal.”*

3. The brief facts of the case are that the assessee is engaged in the business of granting various credit facilities to its members. On verification of the records, learned AO noticed that the assessee had claimed deduction under section 80P of the Act amounting to ₹ 29, 05, 816/-. The assessee submitted that assessee had earned an interest of INR 4,68,333/- from fixed deposits kept with Bhavnagar District Cooperative Bank. Since the cooperative bank is not a member of the cooperative society, the assessee

claimed deduction u/s 80P(2)(d) of the Act. The learned AO held that in view of ITAT Ahmedabad decision in the case of The Government Servants Cooperative Society v ITO Ward – 3(1), income by way of interest earned by deposit or investment of idle surplus does not change its character irrespective of the fact whether such income of interest is earned from a scheduled bank or a cooperative bank. Accordingly, interest earned from deposits kept with Cooperative Banks are not eligible for deduction under section 80P(2)(d) of the Act. Accordingly, the AO disallowed deduction on interest of ₹ 4,68,333/-earned by the assessee from the fixed deposit with Bhavnagar District Cooperative Bank and charged the same u/s 56 of the Act as income of the assessee.

4. In appeal before Ld. CIT(A), he disallowed the assessee's appeal. While passing the order, Ld. CIT(A) made the following observations:

*“The AO has also relied upon the following case laws:-*

- *judgement of ITAT, Ahmedabad delivered on 31 January, 2019 in the case of The Government Servants Co-operative Society vs The ITO Ward -3(1 )(1), Vadodara which further elaborated on the other judgement.*
- *CIT vs Adarsh Housing Co-op Society 2131 TR 677(Guj.)*
- *Totagars Co-operative sale society Ltd. vs Pr. CIT, Hubballi (2017) 83 taxmann.com 140 (Karnataka)*
- *ITAT, Ahmedabad in the case of The Govt. Servants Co-operative society vs. the ITO Ward-3(1)(1), Vadodara*

*"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 cooperative 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 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."*

6.8 *The above view has also endorsed by the Hon'ble Supreme Court in the matter of Citizen Cooperative Society v. ACIT [397 ITR 1], wherein at para 24, it was held as under:*

*"24) Undoubtedly, if one has to go by the aforesaid definition of 'co-operative bank', the appellant does not get covered thereby. It is also a matter of common knowledge that in order to do the business of a co-operative bank, it is imperative to have a licence from the Reserve Bank of India, which the appellant does not possess. Not only this, as noticed above, the Reserve Bank of India has itself clarified that the business of the appellant does not amount to that of a co-operative bank. The appellant, therefore, would not come within the mischief of sub-section (4) of Section 80P."*

6.9 *In view of the above facts and circumstances, in the case of the appellant society, the AO has rightly held that the interest income of Rs 4,68,333/- earned by the appellant from the FDR with Bhavnagar Dist. Co-operative Bank is Income from other sources and is not*

*eligible for deduction u/s 80P. This ground of appeal is accordingly dismissed.”*

5. In Appeal before us, none appeared on behalf of the assessee. The DR argued that the issue is covered against the assessee and in favour of the revenue and placed reliance on the observations and decisions quoted in the order of Ld. CIT(A).

6. We have heard the arguments of Ld. Departmental Representative and perusal the material on record. The issue for consideration before us is whether the assessee is eligible to claim deduction on interest earned from Co-Operative Banks u/s 80P(2)(d) of the Act. The Hon’ble Gujarat High Court in the case of **State Bank of India Vs. CIT (2016) 389 ITR 578 (Guj)**, held that the interest income earned by a co-operative society on its investments held with a co-operative bank would be eligible for claim of deduction under Sec.80P(2)(d) of the Act. The Honourable Gujarat High Court made following observations in respect of interest earned from deposits kept with a cooperative bank:

*Therefore, it is only the interest derived from the credit provided to its members which is deductible under section 80P(2)(a)(i) of the Act and the interest derived by depositing surplus funds with the StateBank of India not being attributable to the business carried on by the appellant, cannot be deducted under section 80P(2)(a) (i) of the Act.*  
**If the appellant wants to avail of the benefit of deduction of such interest income, it is always open for it to deposit the surplus funds**

**with a co-operative bank and avail of deduction under section 80P(2)(d) of the Act.**

6.1 In the case of **Surat Vankar Sahakari Sangh Ltd. v Assistant Commissioner of Income-tax[2016] 72 taxmann.com 169 (Gujarat)**, the Gujarat High Court held that assessee-co-operative society was eligible for deduction under section 80P(2)(d) of the Act in respect of **gross interest received from co-operative bank without adjusting interest paid to said bank.**

6.2 In the case of **Surendranagar District Co-op. Milk Producers Union Ltd. v Deputy Ld. CIT(A) 111 taxmann.com 69 (Rajkot Bench)** the ITAT held that assessee-co-operative society could not claim benefit of section 80P(2)(d) of the Act in respect of interest earned by it from deposits made with nationalised/private banks, however, **said benefit was available in respect of interest earned on deposits made with co-operative bank.**

6.3 In the case of **Pr. Commissioner of Income Tax and Anr. Vs. Totagars Cooperative Sale Society (2017) 392 ITR 74 (Karn)**, the Karnataka High Court has held that the interest income earned by a co-operative society on its investments held with a co-operative bank would be eligible for claim of deduction under Sec.80P(2)(d) of the Act.

6.4 Respectfully, following the decision of Honourable High Court of Gujarat and other cases cited above, in our view, interest earned by the

assessee on surplus held with cooperative bank would be eligible for deduction under Sec.80P(2)(d) of the Act.

7. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 06-05-2022

**Sd/-**  
**(WASEEM AHMED)**  
**ACCOUNTANT MEMBER**  
**Ahmedabad : Dated 06/05/2022**

**Sd/-**  
**(SIDDHARTHA NAUTIYAL)**  
**JUDICIAL MEMBER**

**आदेश की प्रतिलिपि अग्रेषित / 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 अपीलीय अधिकरण,  
अहमदाबाद