आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ

IN THE INCOME TAX APPELLATE TRIBUNAL,
'' SMC" BENCH, AHMEDABAD
(CONDUCTED THROUGH VIRTUAL COURT AT AHMEDABAD)

BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER
And
SHRI SIDDHARATHA NAUTIYAL, JUDICIAL MEMBER

आयकर अपील सं./**ITA No. 27/AHD/2022**
निर्धारण वर्ष/Asstt. Year: 2017-2018

Shri Vajapur Patidar Co. Operative Credit Society Limited, At. Vijapaur Po. Sanghpur, Ta. Vijapaur, Dist. Mehsana **PAN: AAMAS8935M**	Vs.	I.T.O., Ward-5, Patan.

(Applicant)		**(Respondent)**

Assessee by	:	None
Revenue by	:	Shri Umesh Agarwal, Sr.D.R

सुनवाई की तारीख/**Date of Hearing : 05/05/2022**
घोषणा की तारीख /**Date of Pronouncement: 11/05/2022**

आदेश/O R D E R

PER WASEEM AHMED, ACCOUNTANT MEMBER:

The captioned appeal has been filed at the instance of the Assessee against the order of the Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, dated 26/11/2021 arising in the matter of assessment order passed under s. 250 of the Income Tax Act, 1961 (here-in-after referred to as "the Act") relevant to the Assessment Year 2017-2018.

2. When the matter was called for hearing it was noticed that there was none appeared on behalf of the assessee despite the fact that case has already been listed for hearing. It is the trite law that assessee after filing the appeal should be vigilant enough to prosecute the same. But, we find that the assessee is not serious in pursuing the appeal filed by it. In the absence of any co-operation from the side of the assessee, we don't find any reason to keep the matter pending before us. Accordingly, we decide to proceed to adjudicate the appeal after hearing the learned DR appearing on behalf of the Revenue.

3. At the time of hearing, it was also noticed that there was a delay of 3 days in filing the appeal by the assessee. Considering the length of delay, the learned DR did not raise any objection if the same is condoned. Accordingly, we condone the delay and proceed to adjudicate the appeal filed by the assessee on merit.

4. The assessee has raised the following grounds of appeal:

> *1. The Ld. CIT (A) has erred both in law and on facts of the case in confirming addition of Rs. 203120/- on the amount of interest received from Co.Op Banks without appreciating facts that co.op. banks are co.op society and any income received by any co.op society from any co.op society is eligible for deduction u/s 80P(2)(d) of the IT Act. 1961. Hon'ble CIT (A) has confirmed addition on the ground that co.op bank is not a co.op society and considered the status of co.op Bank as bank not eligible to claim deduction u/s SOP. The addition is unwarranted and not legal hence is required to be deleted.*
>
> *2. The Ld. CIT (A) has erred both in law and on facts of the case in confirming addition of Rs. 100000/- on account of basic deduction granted to various co op society on the basis of nature of activities carried out by the society without justifying nature of activities carried out by the appellant for members of the society hence addition made is unwarranted and is required to be deleted.*

5. The only issue raised by the assessee is that the learned CIT-A erred in confirming the order of the AO by sustaining the disallowance of the deduction claimed by the assessee under section 80P(2)(d) of the Act with respect to the interest income from the co-operative banks.

6. The facts in brief are that the assessee in the present case is a co-operative society and engaged in the business of providing credit facilities to its members.

The assessee in the year under consideration besides the income by way of interest from the members, has also shown interest income on the deposits made with Nationalized banks and co-operative banks amounting to ₹ 8,94,493/- only. The assessee on such interest income claimed deduction under section 80P(2)(d) of the Act. However, the AO was of the view that such interest income was not eligible for deduction under section 80P(2)(d) of the Act as the same is not arising from the deposits with the co-operative societies.

7. On appeal, the learned CIT-A upheld the order of the AO.

8. Being aggrieved by the order of the learned CIT-A, the assessee is in appeal before us.

9. The learned DR before us submitted that the assessee wrongly claim the said interest income as deduction u/s 80P(2)(*d*) of the Act, 1961. In this regard the provisions with regard to allowing deduction in respect of interest income earned by a co-operative society are contained in section 80P(2)(*d*) of the Income-tax Act, 1961, which read as under :

> *"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"*

9.1 According to the ld. DR, the provisions of the Act do not extend the deduction further, i.e., interest received from the investments made with co-operative banks. The learned DR vehemently supported the order of the authorities below.

10. We have heard the ld. DR and perused the materials available on record. At the outset, we note that this tribunal in the case of The Uttar Gujarat Uma Co-op Credit Society Ltd. Vs. Income Tax Officer in ITA Nos. 1670 & 1671/Ahd/2018 for the Assessment Years 2014-15 & 2015-16 after due deliberations has decided the issue in favour of the assessee with respect to the interest income from the co-operative bank. But the ITAT in the case cited above has not allowed any benefit to

the assessee with respect to the interest income from the nationalised bank. The relevant and detailed finding of the ITAT reads as under:

> *9. We have carefully considered the rival submissions. The dispute concerns section 80P of the Act which provides for deduction of income of a co-operative society engaged in specified activity catalogued in Section 80P(2) of the Act. The principal controversy in the captioned appeal is towards maintainability of deduction under s.80P(2)(d) of the Act in the hands of the credit co-operative society towards interest earned from deposit placed with co-operative banks, more so, in the light of insertion of s. 80P(4) of the Act by Finance Act, 2006. Thus, the incidental point in issue is whether the benefit of S. 80P denied to coop banks by the insertion of 80P(4) adversely impacts the investment in such banks by a co-op society or not? It is common knowledge that a large number of co-op. societies place their surplus with co-op. banks and seek benefit of Section 80P(2)(d) of the Act on interest income derived. Hence, a nuanced understanding of the raging controversy is strongly needed.*
>
> *9.1 It is predominantly the case of the assessee that the co-operative banks essentially continue to be co-operative societies and while 'co-operative societies' is a genus term, the 'co-operative banks' are species thereto. Therefore, such co-operative banks are essentially co-operative societies notwithstanding their engagement in banking business. Consequently, it is claimed that the investment in co-operative banks are to be treated at par with investment in co-operative societies for the purposes of eligibility of deduction under s.80P(2)(d) of the Act. The Revenue, on the other hand, has contended that in view of definition provided for co-operative societies under Section 2(19); deduction provided under Section 80P(2)(d) r.w.s. 80P(4) of the Act is not available to investment in a co-operative bank as such investment cannot be treated at par with the investment in co-operative society. It is also contended on behalf of the Revenue that the provisions of Section 80P of the Act are founded on 'principles of mutuality' i.e. common identity between the contributors and participators. The deposit in the co-operative bank lacks the degree of proximity between the members of the society with that of co-operative bank and thus offends this sacrosanct principle of mutuality. It was thus contended that interest income by a co-operative society from a co-operative bank is not covered in the fold of Section 80P(2) of the Act. It is further case of the assessee that exclusion of co-op banks for eligibility of deduction under S. 80P owing to insertion of S. 80P(4) does not, in any manner, take away the benefit available under S. 80P(2)(d) to an investor society (excluding co-op bank) in a co-op bank which is a co-op society for all intent and purposes while carrying on the functions of a bank. It is thus paddled that while a co-op society functioning as a co-op bank is not entitled to benefit of 80P owing to exclusions made, a co-op society not being a co-op bank remains unaffected by S. 80(4) and can enjoy the benefits of S. 80P(2)(d) conferred on the societies on fulfillment of pre-requisites.*
>
> *9.2 Before we proceed to deal with the issue in hand, it would be apt to quote the relevant provisions governing the controversy in hand.*
>
> *9.2.1 Section 2(19) defines the meaning of expression 'Co-op Society' as under:*

"co-operative society" 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;

9.2.2 Income under S. 2(24) of the Act also includes:
the profits and gains of any business of banking (including providing credit facilities) carried on by a co-operative society with its members

9.2.3 The relevant portion of S. 80-P governing deduction available to co-operative societies is also quoted hereunder:

"Deduction in respect of income of co-operative societies.

80P. (1) *Where, in the case of an assessee being a co-operative society, the gross total income includes any income referred to in sub-section (2), there shall be deducted, in accordance with and subject to the provisions of this section, the sums specified in sub-section (2), in computing the total income of the assessee.*

(2) The sums referred to in sub-section (1) shall be the following, namely :—

(a) in the case of a co-operative society engaged in—

(i) carrying on the business of banking or providing credit facilities to its members; or

(ii) a cottage industry ; or
(iii) ---
(iv) —--
(v) ---
(vi) ---
(vii) ----

the whole of the amount of ***profits and gains of business*** *attributable to any one or more of such activities :*

(b) ----------
(c) ----------
(d)
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****;*

(e) ----------
(f)

*(4) The provisions of this section shall not apply in relation to any **co-operative bank** other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank.*

Explanation.—For the purposes of this sub-section,—

(a) "co-operative bank" and "primary agricultural credit society" shall have the meanings respectively assigned to them in Part V of the Banking Regulation Act, 1949 (10 of 1949);

(b) "primary co-operative agricultural and rural development bank" means a society having its area of operation confined to a taluk and the principal object of which is to provide for long-term credit for agricultural and rural development activities."

9.2.4 Part V of Banking Regulation Act, 1949 defines 'co-operative bank' in Section 5(cci) as under:

" Co-operative bank' means a state co-operative bank, a central co-operative bank and a primary co-operative bank;

9.2.5 A 'primary co-operative bank' as per Sectionn 5(ccv) of Part V of Banking Regulation Act, 1949 reads to mean:

"(ccv) "primary co-operative bank" means a co-operative society, other than a primary agricultural credit society,- ……..

9.2.6 As per clause (ccvii) of Section 5, however, 'Central Co-op Bank' and 'State Co-op Bank' shall have the same meanings respectively assigned to them in the National Bank for Agriculture and Rural Development (NABARD) Act, 1981. NABARD, in turn defines these two terms as under:

Section 2(d) of NABARD defines 'central co-operative bank' means the

"d. "central co-operative bank" means the principal co- operative society in a district in a State, the primary object of which is the financing of other co-operative societies in that district:……."

u. "State co-operative bank" means the principal co- operative society in a State, the primary object of which is the financing of other co-operative societies in the State:……"

9.3 Having noted the relevant provisions in earlier para, it would be expedient to firstly refer to the decision of The Citizen Co-Operative Society Ltd. (supra) to gather the rules of interpretation of various sub- sections of the beneficial provision of S. 80P. The Hon'ble Supreme Court inter alia has observed that different heads of exemption enumerated in the Section 80P of the Act should be treated as separate and distinct head of 'exemption'. If any particular category of an income falls within any one head of 'exemption', the assessee would be free from tax notwithstanding

that the conditions of other head of exemption are not satisfied and such income is not free from tax under other head of 'exemption'. Thus, in view of the express judicial dicta, provisions of Section 80P(2)(a) and 80P(2)(d) are mutually exclusive and are to be read independent of each other.

9.4 We are presently concerned with the availability of deduction to a co-op society within the realm of Section 80P(2)(d) of the Act. Two things need to be noted in this regard; firstly, unlike Section 80P(2)(a) or (b) or (c) of the Act where the assessee is qualified for deduction of "profits & gains of business" attributable to one or more of activities enumerated in these sub-sections, Section 80P(2)(d) of the Act, in sharp departure, provides for deduction of "whole of such income" [without any distinction on nature of income] as derived by a co-operative society from its investment with any other co-operative society. Needless to say, in a taxing Act, one has to look merely at what is clearly said. There is no room for any intendment and one has to look fairly at the language used. Thus, scope of benefit under s.80P(2)(d) is not restricted to 'business income' alone but also extends to income derived from investments ordinarily falling under the head 'income from other sources' as well ; secondly doctrine of mutuality is not necessarily a pre-condition in appropriate circumstances, for instance 80P(2)(a(ii); and thirdly and quite significantly ; the investment by a co-op society in a co-op society should result in interest or dividend income from its investment. Thus what is pertinent is that the investment by the assessee society should be parked in another 'co-op society' for the purposes of sub-clause 2(d) of S. 80P. The moot question thus naturally emerges is ; whether the investment in a co-op bank is to be regarded as investment in-effect in a co-op society or not ?

9.5 At this juncture, we also take simultaneous note of such Section 80P(4) of the Act inserted by Finance Act, 2006 whereby a co-operative bank has been deprived of deduction under s.80P of the Act. To put it slightly differently, with advent of section 80P(4), co-op banks have been brought to tax by denying them the benefit of Section 80P of the Act.

9.6 The insertion of Section 80P(4) of the Act has purportedly also obfuscated and cast aspersion on the deductibility of income derived by a co-operative society from investments placed with co-operative bank under S. 80P(2)(d) of the Act. In this context, it would be interesting to note that the aforesaid clause 80P(4) itself holds that a co-operative bank may also possibly include 'a credit society'; for instance, a primary agricultural credit society. Therefore, on an incisive reading of Section 80P(4) of the Act, it appears that co-operative banks can also be co-operative society for the purposes of Section 80P(2)(d) of the Act. Thus, on a conjoint reading of Section 80P(2)(d) and 80P(4), it would appear that while the co-operative banks in certain cases [as specified in Section 80P(4)] may not qualify for deduction under s.80P of the Act, a co-operative society per se would not come within the mischief of sub-section 4 of the Act of Section 80P of the Act and would continue to avail the benefit of Section 80P(2)(d) of the Act. Thus, simply put, while a co-operative bank has been stripped of the benefit of Section 80P of the Act on its various income by insertion of S. 80P(4), the investment in such co-operative bank [bearing the legal trappings of a co-op society] by a co-op society as envisaged in Section 80P(1) of the Act is not divested of such benefit.

9.7 Joining the issue in hand, as per Section 80P(2)(d) of the Act, the only requirement is that the income should be received from investment by a co-operative society in other co-operative society and it is claimed that co-operative bank namely 'Ahmedabad District Co-operative Bank', in the present case, is nothing but a co-operative society recognised by the competent authority of the State as contemplated under Section 2(19) of the Act. On these facts, the eligibility of deduction under Section 80P(2)(d) of the Act is required to be evaluated independent of mutuality doctrine taken away by insertion of S. 2(24)(viia). The assessee society would thus be entitled to benefit of section 80P(2)(d) on interest income from investment in co-op bank. As noticed from the definition of 'co-op bank' with reference to Banking Regulation Act, 1949; read with NABARD Act, it is ostensible that the co-op banks of various types are essentially co-op. societies. Hence, the claim of deduction made under S. 80P(2)(d) by a co-op society in such co-op banks can not be denied notwithstanding that some these co-op banks are not eligible for 80P benefits despite being co-op societies.

9.8 Coupled with this, certain observations made by the Hon'ble Gujarat High court in State Bank of India (supra) and in Sabarkantha District (supra) also reinforces that interest earned on fixed deposit with co-operative bank can be said to be qualified for deduction under s.80P of the Act notwithstanding that such observations appear to be in the nature of an obiter in the context of those cases.

9.9 At this stage, it would also be pertinent to again restate that for the purposes of Section 80P of the Act, the principle of mutuality has been obliterated in view of insertion of Section 2(24) (viia) of the Act by Finance Act, 2006 and such principles thus no longer serve as strict guiding principle to test the relief eligible under S. 80P(2)(d) of the Act. Therefore, the plea raised on behalf of the Revenue towards absence of principle of mutuality in such deposits with co-operative banks is a damp squib. Thus, the assessee being a co-operative society as contemplated under s. 80P(1) of the Act, cannot be deprived of benefit of S.80P(2) (d) despite purported absence of mutuality in investment with a co-op bank. We, thus, concur with plea of assessee for allowability of deduction on interest income derived from co-operative society in the form of Co-operative bank on first principles. The issue is accordingly resolved in favour of the assessee and against the Revenue.

9.10 We are conscious of the decision of the Hon'ble Karnatka High Court in Pr.CIT vs. Totagars Co.operative Sales Society (2018) 395 ITR 611 (Karn) wherein it was held that interest income not arising from business operations is not eligible for deduction under s.80P of the Act. A reading of the judgment of the Hon'ble High Court shows that it was guided by nature of activity to determine the character of income for the purposes of Section 80P(2)(d) of the Act. Placing reliance upon the judgments rendered in the context of 80P(2)(a)(i) of the Act, the Hon'ble High Court concluded that the deduction of interest income is not permissible unless it arises from business operations. Clearly, the distinction between Section 80P(2)(a) and 80P(2)(d) of the Act of substantial nature (as discussed in para 9.4 of this order) was not brought to the notice of Hon'ble High Court. The deduction under s. 80P(2)(a) or (b) or (c) of the Act is available only on account of

income/profits arising from business activity. However, this requirement is not applicable under s.80P(2)(d) of the Act where whole of the income arising from interest or dividend etc. is allowable without such limitation of business activity. This cardinal difference of overwhelming nature was not brought to the notice of the Hon'ble High Court. Consequently, the decision rendered by the Hon'ble High Court appears to be subsilentio. Thus, governed by the observations of the Hon'ble Gujarat High Court in the case of Sabarkantha District (supra) and State Bank of India (supra), we have not hesitation to affirm the plea of the assessee for allowability of deduction.

9.11 It is, however, for the assessee to demonstrate on facts that the investee co-operative bank in question is recognised as a co-operative society indeed within the meaning of Section 2(19) of the Act. A self-declaration from the respective co-op. bank in this regard or any other suitable document may discharge the onus of the assessee towards the status of the co-op. bank. Similarly, the assessee is entitled to avail deduction of resultant 'income' derived and not gross receipt of interest under S. 80P(2)(d) of the Act in accord with basic rationale of taxation. Hence, all expenses/losses attributable to such interest income are required to be necessarily deducted and only resultant interest income is eligible for deduction under S. 80P(2)(d) of the Act. The AO would thus be at liberty to ascertain these factual aspects for which the assessee shall provide suitable assistance.

10. The alternative claim of the assessee for allowance of pro-rata expenditure against the interest income from investment in co-operative banks etc. is rendered infructuous in view of the endorsement of the main plea. In view of our findings that the assessee is entitled for deduction under s.80P(2)(d) of the Act for resultant income derived from investments placed with co-operative banks, we do not seek to delineate further. Therefore, AO may allow claim of deduction under s. 80P(2)(d) of the Act on net income from interest after reduction of all incidental expenses incurred to earn such income. The issue is thus remitted back to AO for quantification of deduction of interest income in accordance with law on being satisfied that the receiver co-operative bank satisfies to be a co-operative society equally.

11 The interest income of Rs.1,139/- derived by the assessee society from investment with private bank i.e. Axis Bank is however, neither qualified under s. 80P(2)(a)(i) of the Act in the light of the ratio of The Citizen Co-Operative Society Ltd. (supra) nor under s.80P(2)(d) of the Act. Thus, the assessee is not entitled for deduction or interest derived from the private bank.

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

10.1 The facts of the case on hand are identical to the facts of the case as discussed above. Thus, respectfully following the principles laid down by the order of the ITAT in the case cited above, we hold that the assessee is entitled for deduction under section 80P(2)(*d*) of the Act, 1961 with respect to the interest

income earned by it from the co-operative bank. However, respectfully following the order of the ITAT cited above, we further hold that the assessee shall not be entitled, for the interest income earned from the nationalized bank if any, to be eligible for deduction under section 80P(2)(*d*) of the Act, 1961. Hence the ground of appeal of the assessee is partly allowed.

10.2 Coming to next issue with regard to basic deduction as provided under section 80P(2)(*c*) of the Act and prayed by the assessee in the ground of appeal before us. The provisions of section 80P(2)(*c*) of the Act, provides that a co-operative society engaged in activities other than those specified in clause (*a*) or clause (*b*) of section 80P(2) (either independently of or in addition to all or any of the activities so specified), following deduction shall be allowed from its profits and gains attributable to such activities :

(*i*) Rs. 1,00,000 in case of consumers' co-operative society

(*ii*) Rs. 50,000 in any other case

10.3 The expression 'profits and gains' in clause (*c*) of sub-section (2) of section 80P of the Act is not confined to 'Profits and gains of business'. The Bombay High Court in the case of *CIT* v. *Ratanabad Co-operative Housing Society Ltd.* *[1995] 81 Taxman 257/215 ITR 549 has held as under:*

> *"Letting out of the shops of the assessee-society to persons other than its members did not fall as an activity of the assessee-society either in clause (a) or clause (b) of sub-section (2) of section 80P. It was an activity of the assessee-society other than those specified in clauses (a) and (b) of sub-section (2) of section 80P and as such, the question arose whether the income derived by the assessee-society from letting out the shops to persons other than its members was exempt from tax under section 80P(2)(c)."*

10.4 Thus, in case of co-operative credit society, income to which benefit of section 80P(2)(*a*)(*i*) is not allowed, *e.g.*, rental income, interest income from surplus funds kept in FDs' of banks, etc., basic exemption as provided for in section 80P(2)(*c*) must be granted.

10.5 It also appears that, though the word 'activity' is not defined, yet the investment activity, activity of renting of immovable property, etc., and the consequent income attributable to such activities would be covered under section 80P(2)(c) of the Act. Hence, we direct the AO to allow the deduction under section 80P(2)(c) of the Act. Thus the ground of appeal of the assessee is allowed.

11. In the result appeal of the assessee is partly allowed.

Order pronounced in the Court on 11/05/2022 at Ahmedabad.

Sd/-	**Sd/-**
(SIDDHARATHA NAUTIYAL)	**(WASEEM AHMED)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

(True Copy)

Ahmedabad; Dated 11/05/2022

Manish