

THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "SMC" BENCH

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

**ITA No. 125/Ahd/2021
Assessment Year 2017-18**

The Dhanera Nagarik Sahakari Mandali Ltd., Banaskantha PAN: AAABT2382G (Appellant)	Vs	The ACIT, Circle Palanpur (Respondent)
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**Assessee by: Shri Manthan Khokhani, A.R.
Revenue by: Shri V.K. Singh, Sr. D.R.**

Date of hearing : 18-05-2022
Date of pronouncement : 19-05-2022

आदेश/ORDER

PER : SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER:-

This is an appeal filed by the assessee against the order of the Hon'ble CIT(A), National Faceless Appeal Centre (NFAC), Delhi in DIN & Order No. ITBA/NFAC/S/250/2020-21/1031671223(1) vide order dated 23/03/2021 passed for the assessment year 2017-18.

2. The assessee has raised the following grounds of appeal:-

“1. In law and in the circumstances of the case the Hon. CIT(A) NFAC has erred in upholding the addition made by the Ld. A.O. and disentitling the assessee of deduction u/s. 80P of the Income-tax Act, 1961.

The assessee craves leave to add to amend, alter, delete and /or withdraw any of the above grounds of appeal on or before the final hearing.”

3. At the outset, we note that the appeal is time barred by 02 days. The Hon'ble Supreme Court in the case of **Collector, Land Acquisition v. Mst. Katiji 1987 taxmann.com 1072**, analyzed the provisions of law qua limitation Act and held that the expression 'sufficient cause' employed by the legislature in the Limitation Act is adequately elastic to enable the Courts to apply the law in a meaningful manner which sub-serves the ends of justice—that being the life purpose for the existence of the institution of Courts. **It was further observed that a liberal approach is requires to be adopted on principle as ordinarily a litigant does not stand to benefit by lodging an appeal late. Further refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this when delay is condoned the highest that can happen is that a cause would be decided on merits after hearing the parties.** The Apex Court further held that when substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to

have vested right in injustice being done because of a non-deliberate delay. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so. Therefore, considering the period of delay in filing of appeal (which is just 02 in the instant case) and relying on the decision of **Collector, Land Acquisition v. Mst. Katiji 1987 taxmann.com 1072** referred to above, in the interests of justice, we are hereby condoning the delay of 02 days in filing the appeal.

4. The brief facts of the case are that the assessee is a credit Co-Operative Society engaged in the business of providing credit facilities to its members and taking deposits from its members. The assessee filed return of income for A.Y. 2017-18 on 21.02.2018 declaring total income of Rs. 1,89,000/- after claiming deduction u/s 80P of the Income Tax Act, 1961 (hereinafter referred to as the 'Act') of Rs. 46,24,283/-. During the course of assessment proceedings, Ld. Assessing Officer observed that the assessee has claimed deduction of Rs.46,24,283/- u/s 80P(2)(a)(i) of the act. Details of the same is as under:

Interest from loan to members	Rs.31 , 05,395/-
Security interest from members	Rs.1,11,853/-
FD Interest income from Banaskantha Dist. Co-operative Bank	Rs. 12,87,267/-

Interest income from Banaskantha Dist. Co-operative Bank saving a/c	Rs.1, 19,768/-
Total	Rs.46,24,283/-

4.1 The Ld. Assessing Officer held that the interest income of Rs.14,07,035/- (12,87,267 + 1,19,767/-) received by the assessee from Banaskantha Dist. Co-operative Bank and claimed deduction u/s 80P(2)(a)(i) of the Act does not qualify for deduction u/s 80P of the Act. The AO also relied upon the judgment of Hon'ble Karnataka High Court in the case of Pr.CIT, Hubballi Vs. Tatagars Co-Op. (2017) 83 taxman.com 140 which has held that only interest and dividend earned by a co-operative society out of investment with any other Primary agricultural Credit societies with their limited work of providing credit facility to its members will be governed by the ambit and scope of deduction u/s 80P(2)(d). Therefore, interest earned on deposits with nationalized bank, Co-operative Bank/ persons other than primary agricultural co-operative societies are not eligible for the said deduction.

5. In appeal, Ld. CIT(A), dismissed the assessee's appeal with the following observations:

The amendment of section 194A(3)(v) excluding the co-operative Banks from the definition of Co-operative Society by finance At, 2015 and requiring them to deduct tax at source under section 194A also makes the legislative intent clear that the cooperative banks are not

that specie of genus co-operative society, with would be entitled to exemption or deduction under the special provisions of chapter VI-A in the form of section 80P of the Act. Hence, the submission of the appellant that it is eligible for deduction u/s 80P is not correct. The addition of the AO is fully justified, keeping in view the facts and circumstances of the case and the interest earned is clearly taxable under the head Income from Other Sources.”

6. The issue for consideration before us is whether the assessee is eligible to claim deduction on interest earned from Co-Operative Bank 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 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 assessee-co-operative society was eligible for deduction under section 80P(2)(d) 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) 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 amounting to Rs. 14,07,035/- on surplus held with Banaskantha

Dist. Co-operative 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 19-05-2022

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER
Ahmedabad : Dated 19/05/2022

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