

THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD "SMC" BENCH

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

**ITA No. 537/Ahd/2019  
Assessment Year 2015-16**

Vikas Co-op Credit Soc. Ltd. 1, Kalyan Park Society Mal Godown Road Mehsana- 384002 PAN: AAAJT1175H (Appellant)	Vs	ITO, Ward-3, Mehsana (Respondent)
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**Assessee by: Shri Samir Vora, A.R.  
Revenue by: Shri Purshottam Kumar, Sr. D.R.**

Date of hearing : 19-05-2022  
Date of pronouncement : 24-06-2022

**आदेश/ORDER**

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

This is an appeal filed by the assessee against the order of the Id. Commissioner of Income Tax (Appeals), Gandhinagar, Ahmedabad in Appeal no. CIT(A)/GNR/347/2017-18 vide order dated 24/09/2018 passed for the assessment year 2015-16.

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

*“1.1 The order passed u/s.250 on -9-2018 for A.Y.2015-16 by CIT(A)-GNR , Abad upholding the disallowance of deduction u/s 80P of interest income of Rs. 3,81,570/- made by AO is wholly illegal, unlawful and against the principles of natural justice.*

*1.2 The Ld. CIT(A) has grievously erred in law and or on facts in not considering fully and properly the submissions made and evidence produced by the appellant with regard to the Impugned disallowance.*

*2.1 The Ld. CIT(A) has grievously erred in law and on facts in confirming disallowance of deduction u/s 80P of interest income of Rs. 3,81,570/-*

*2.2 That in the facts and circumstances of the case as well as in law, the Ld. CIT(A) ought not to have upheld the disallowance of deduction u/s 80P of interest income of Rs. 3,81,570/-.*

*It is, therefore, prayed that the disallowance of deduction u/s 80P of Interest income of Rs. 3,81,570/- upheld by the CIT(A) may kindly be deleted.”*

3. The brief facts of the case are that the assessee is a primary cooperative credit Society registered under the Gujarat Co-Operative Society Act whose main purpose is to provide credit facility and saving deposit schemes to members of the society by accepting deposits, savings etc. from members and providing loan advance to its members. During the year under consideration, the assessing officer held that interest income of ₹ 3,81,570/- earned by the assessee out of deposits kept with cooperative bank was not eligible for deduction under section 80P(2)(d) of the Act by relying on the decision of the honourable Supreme Court in the case of **Totgar's Cooperative Sale Society Ltd v. ITO (2010)**. In the appeal filed by the assessee against the assessment order, Ld. CIT(A) dismissed the appeal of the assessee with the following observations:

*“6.3. Here it would be pertinent to refer to the decision of the Hon'ble jurisdictional High Court of Gujarat vide Tax Appeal No.486 /487 of 2015, in the case of State Bank of India (SBI) Employees Cooperative Society versus Commissioner of Income Tax in its order dated 25-04-2016 - which has also been referred to by the AO in his order - wherein it has been mentioned as under-*

*"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."*

*However, what is to be noted is that in this case, while adjudicating the first ground of appeal against order u/s 263 of the Act, the Hon'ble Gujarat HC upheld the invocation of section 263 by the Pr CIT as upheld by ITAT. Further with respect to the second question of law before it also the Court has decided in favour of the Revenue that interest income from funds invested in State Bank of India are not eligible for deduction under section 80P(2)(d) of the Act (supra). The phrase as last line of para 16 "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 cooperative bank and avail of deduction under section 80P(2)(d) of the Act." is **only as obiter by the Court and not the ratio decidendi as this was not a question of law before the Hon'ble High Court and hence it does not lead to any binding precedent**, in contrast the **Karnataka HC (Dharwad Bench) decision is directly on the specific question on availability of deduction u/s 80P(2)(d) of interest earned on funds in Cooperative Banks** which is in favour of Revenue and the ratio is based on the interpretation of the binding precedent laid down by the Hon'ble Supreme Court in the decision of the case **Totgar's Co-operative Sale Society Limited vs. Income Tax Officer, reported in (2010) 322 ITR 283 SC.***

*6.4. Considering all these facts and the detailed discussion above, I am of the view that the AO has correctly held that interest income from surplus funds in cooperative banks will not eligible for deduction u/s 80P(2)(d) of the Act. The addition of Rs.3,81,570/- is confirmed.*

7. *In the result, appeal is dismissed.”*

4. At the outset, we note that the appeal is time-barred by 106 days. The assessee has submitted an affidavit stating that the appeal could not be filed within time since the consultant did not convey about the order passed by the Ld. CIT(A) to the assessee and the assessee came to know about the order passed by the appellate authority on commencement of recovery proceedings only. Consequently, the assessee changed its tax consultant. The process of non-receipt of appellate order and appointing a new consultant has taken time which resulted in late filing of appeal by 106 days. We have heard the assessee's contentions and perused the material on record. In our considered view, the assessee has good case in merits. The 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. The Supreme Court in **N. Balakrishnan v. M. Krishnamurthy 2008 (228) ELT 162**, while condoning the delay of 883 days in filing an application for setting aside the ex parte decree held "That the purpose of Limitation Act was not to destroy the rights. It is founded on public policy fixing a life span for the legal remedy for the general welfare. The primary function of a Court is to adjudicate disputes between the parties and to advance substantial justice. The time limit fixed for approaching the Court in different situations is not because on the expiry of such time a bad cause would transform into a good cause. The object of providing legal remedy is to repair the damage caused by reason of legal injury. If the explanation given does not smack mala fides or is not shown to have been put forth as a part of a dilatory strategy, the Court must show utmost consideration to the suitor." In a considered view, in view of the factual situation presented before us, in the interests of justice, we are condoning the delay in filing the appeal.

5.1 On merits, 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. In our considered view, Ld. CIT(A) has erred in law in holding that the observations of the Hon'ble Gujarat High Court in the case of **State Bank of India Vs. CIT (2016) 389 ITR 578 (Guj)**, to the effect 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 have no binding effect on the jurisdictional Revenue Authorities. 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 State Bank 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.*

5.2 The Kolkata ITAT in the case of **Subhlakshmi Vanijya (P.) Ltd. v. CIT [2015] 60 taxmann.com 60 (Kolkata - Trib.)** has held that even the obiter of the jurisdictional High Court has a binding force on the lower authorities. The ITAT made the following observations in this regard:

*13.s. Be that as it may, even obiter of the jurisdictional High Court cannot be held as non-binding. The Hon'ble Bombay High Court in Tata Iron & Steel Co. Ltd. v. D.V. Bapat , ITO [1975]101 ITR 292, has held that obiter dicta of Supreme Court is binding on all High Courts. When the obiter dicta of Supreme Court is binding on all High Courts, we fail to appreciate as to how obiter dicta of the*

*Hon'ble jurisdictional High Court can be claimed as not binding on all the authorities falling within its jurisdiction. We, therefore, refuse to accept this contention.*

Therefore, in our view, the Ld. CIT(A) has erred in law and in facts in holding that the above order of the jurisdictional Gujarat High Court in the case of **State Bank of India Vs. CIT (2016) 389 ITR 578 (Guj)** has no binding effect on the jurisdictional Revenue authorities.

5.3 It may further be noted that in the case of **Surat VankarSahakari 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.**

5.4 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.**

5.5 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.

5.6 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 amounting to Rs. 3,81,570/- would be eligible for deduction under Sec.80P(2)(d) of the Act.

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

Order pronounced in the open court on 24-06-2022

**Sd/-**  
**(WASEEM AHMED)**  
**ACCOUNTANT MEMBER**  
**Ahmedabad : Dated 24/06/2022**

**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