

आयकर अपीलीय अधिकरण, राजकोट न्यायपीठ, राजकोट ।
**IN THE INCOME TAX APPELLATE TRIBUNAL
RAJKOT BENCH, RAJKOT**
BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER
And
SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER

1. आयकर अपील सं./I.T.A. No.116/Rjt/2022
(निर्धारण वर्ष / Assessment Year 2017-18)

Galaxy Credit Co-operative Society Limited, Dharmendra Complex, Jinpara Main Road, Wankaner-363621.	बनाम/ Vs.	The Principal Commissioner of Income-Tax, Rajkot-1, Rajkot.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAABG0200C		
(अपीलार्थी /Appellant)		(प्रत्यर्थी / Respondent)

2. आयकर अपील सं./I.T.A. No.156/Rjt/2022
(निर्धारण वर्ष / Assessment Year 2018-19)

Upleta Dudh Utpadak Sahakari Mandli Limited, Jirapara Road, Yadav Road, Upleta-360490.	बनाम/ Vs.	The Principal Commissioner of Income-Tax, Rajkot-1, Rajkot.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAATU2954M		
(अपीलार्थी /Appellant)		(प्रत्यर्थी / Respondent)

3. आयकर अपील सं./I.T.A. No.155/Rjt/2022
(निर्धारण वर्ष / Assessment Year 2017-18)

Shri Rajgor Dhiran & Grahak Sahakari Mandali Limited, Pranav Complex, Raiya Road, Kanaiya Chowk, Rajkot-360007.	बनाम/ Vs.	The Principal Commissioner of Income-Tax, Rajkot-1, Rajkot.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAJTS5400M		
(अपीलार्थी /Appellant)		(प्रत्यर्थी / Respondent)

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AND

4. आयकर अपील सं./I.T.A. No.160/Rjt/2022
(निर्धारण वर्ष / Assessment Year 2017-18)

Shree Gondal Mercantile Credit Co-operative Society Limited, Viradiya Chambers, Gundala Road, 10, Floor, Gondal-360311.	बनाम/ Vs.	The Principal Commissioner of Income-Tax, Rajkot-1, Rajkot.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AABAS7752H		
(अपीलार्थी / Appellant)		(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से / Appellant by :	Smt. Devina Patel, A.R
प्रत्यर्थी की ओर से/ Respondent by :	Shri Aarsi Prasad, CIT. D.R.

सुनवाई की तारीख / Date of Hearing	07/07/2022
घोषणा की तारीख / Date of Pronouncement	08/07/2022

आदेश / O R D E R

PER BENCH:

The captioned four appeals have been filed at the instance of different Assessee against the separate orders of the Learned Principal Commissioner of Income Tax -1, Rajkot [Ld. PCIT) in short] arising in the matter of assessment order passed under s. 263 of the Income Tax Act, 1961 (hereinafter referred to as "the Act") relevant to the Assessment Year (A.Y.) 2017-18 & 2018-19. Since issues involved in all these appeals are identical, we proceed to dispose of all the appeals by this common order for the sake of convenience and brevity.

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First we take **ITA No. 116/Rjt/2022 for A.Y. 2017-18**, an appeal by the assessee in the case of **Galaxy Credit Co-operative Society Limited, Wankaner.**

2. The only interconnected issue raised by the assessee is that the learned Principal CIT erred in holding the assessment framed under section 143(3) of the Act as erroneous insofar prejudicial to the interest of Revenue.

3. The assessee in the year under consideration, besides the other interest income, has claimed a deduction under section 80P(2)(a)(i)/80P(2)(d) of the Act amounting to ₹ 1,32,78,739.00 on the FD made with various Co. op Bank Ltd. However, the assessee has corrected the above figure at Rs.1,34,28,904/- as interest received from Rajkot District Co-op. Bank Ltd. and Rajkot Sahkati Nagrikh Bank Ltd. As per the learned PCIT the impugned interest income was not arising from the activity of financing from the members. Therefore, the assessee is not eligible for deduction for such interest income under the provisions of section 80P(2)(a)(i)/80P(2)(d) of the Act but the AO has allowed the same without the necessary verification and application of mind. Accordingly, the learned PCIT initiated the proceedings under section 263 of the Act vide show cause notice dated 19-1-2022 and finally the learned PCIT held the order of the AO as erroneous insofar prejudicial interest of revenue.

4. Being aggrieved by the order of the learned PCIT, the assessee is in appeal before us.

5. The learned AR before us filed a paper book running from pages 1 to 108 and contended that the Rajkot Tribunal in the case of Shree Keshav Co-operative Credit Society Limited versus PCIT in ITA No. 126/RJT/2022 vide order dated 31

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May 2022, involving identical facts and circumstances, has decided the issue in favour of the assessee.

6. On the contrary, the learned DR before us vehemently supported the order of the learned PCIT.

7. We have heard the rival contentions of both the parties and perused the materials available on record. At the outset we note that this tribunal in the case of Shree Keshav Co-operative Credit Society Limited (*supra*) involving identical facts and circumstances has decided the issue in favour of the assessee. The relevant finding of the ITAT is reproduced as under:

We have heard the rival contentions of both the parties and perused the materials available on record. From the preceding discussion, we note that the different Hon'ble High Courts have taken different view with respect to the deduction of the interest income earned by the assessee from the co-operative bank. Some of the judgements are in favour of the assessee and some of them are against the assessee. It is also an admitted fact that the Hon'ble High Court of Gujarat is in favour of the assessee with respect to the interest on deposits made with the co-operative bank. The relevant extract of the judgement of Hon'ble Gujarat High Court in case of in case of CIT vs. Sabarkantha District Cooperative Milk Producers Union Ltd. in Tax Appeal No. 473 of 2014 reads as under:

"Considering Section 80(P)(2)(d) of the Act when the only requirement was that the income should be received from investment in Cooperative Societies and the Cooperative Bank which in the present case has been fulfilled, it cannot be said that the learned Tribunal has committed an error in deleting the disallowance of Rs. 1,42,19,515/- under section 80(P)(2)(d) of the Act."

Based on the above, it is transpired that the AO has taken one of the possible view for allowing the deduction to the assessee under the provisions of section 80P(2)(d)/80P(2)(a)(i)(a) of the Act. Where two view are possible on the issue and the AO has taken one of the possible view, but the PCIT do not agree with the view adopted by the AO, in such scenario, the order of the AO cannot be held erroneous. In this regard we find support and guidance from the judgment of the

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Hon'ble Gujarat High Court in the case of CIT vs. Mehsana District Co. Op. Milk Producers Union Ltd. where it was held as under:

It is well-settled that the provisions of section 263(1) cannot be invoked to correct each and every type of mistake or error committed by the Assessing Officer, and it is only when the order is erroneous that the section will be attracted. When two views are possible and the Assessing Officer has taken one view with which the Commissioner does not agree, it cannot be treated as an erroneous order prejudicial to the interest of the revenue unless the view taken by the Assessing Officer is unsustainable in law. It was not shown how the method followed by the assessee to divide the expenses for the purpose of claiming relief under section 80HH was improper or unacceptable. The Assessing Officer as well as the Tribunal had found that the expenses were apportioned on a rational basis and it would not be open for the Court to go beyond that finding which appeared to have been reached on the basis of the material on record which showed that in

the earlier years the same proportion for dividing the expenses was consistently followed. The department had not been able to show that for those earlier two years any objection was raised against such apportionment. [Para 7]

In view of the above detailed discussion and judicial precedent, we find no error in the order of AO so as to justify the initiation of proceedings under section 263 of the Act by the Ld. Pr. CIT. Thus, the revisional order passed by the learned PCIT is not sustainable and therefore we quashed the same. Hence, the ground of appeal of the assessee is hereby allowed.

7.1 Before us, no material has been placed on record by the Id. DR to demonstrate that the decision of Tribunal as cited above has been set aside / stayed or overruled by the higher Judicial Authorities. Before us, Revenue has not placed any material on record to point out any distinguishing feature in the facts of the case for the year under consideration and that of the case referred above nor has placed any contrary binding decision in its support.

7.2 In view of the above and after considering the facts in totality, we hold that there is no error in the assessment framed by the AO under section 143(3) of the Act causing prejudice to the interest of revenue. Thus, the revisional order passed

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by the learned PCIT is not sustainable and therefore we quash the same. Hence the ground of appeal of the assessee is allowed.

7.3 In the result, the appeal filed by the assessee is allowed.

Coming to the other appeal of the assessee bearing **ITA No. 156/Rjt/2022 for A.Y 2018-19** in the case of **Upleta Utpadak Sahakari Mandli Limited, Upleta**

8. At the outset, we note that the issues raised by the assessee in its grounds of appeal are identical to the issues raised by the assessee in the case of **Galaxy Credit Co-operative Society Limited, Wankaner bearing ITA No. 116/Rjt/2022** for the assessment year **2017-18**. Therefore, the findings given in ITA No. 116/Rjt/2022 shall also be applicable for the issues raised by the assessee in the above mentioned appeal. The appeal of the Assessee bearing ITA No.116/Rjt/2022 for A.Y. 2017-18 has been decided by us vide paragraph No. 7 to 7.3 of this order in favour of the assessee. The learned AR and DR also agreed that whatever will be the findings for the ITA No. 116/Rjt/2022 shall also be applied to the appeal on hand i.e. ITA No. 156/Rjt/2022 for the assessment year 2018-19. Hence, the ground of appeal filed by the assessee is hereby allowed.

8.1 In the result, the appeal filed by the assessee is allowed

Now coming to the appeal of the assessee bearing **ITA No. 155/Rjt/2022 for A.Y 2017-18**, in the case of **Shri Rajgor Dhiran & Grahak Sahakari Mandali Limited, Rajkot**.

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9. At the outset, we note that the issues raised by the assessee in its grounds of appeal are identical to the issues raised by the assessee in the case of **Galaxy Credit Co-operative Society Limited, Wankaner bearing ITA No. 116/Rjt/2022** for the assessment year **2017-18**. Therefore, the findings given in ITA No. 116/Rjt/2022 shall also be applicable for the issues raised by the assessee in the above mentioned appeal. The appeal of the Assessee bearing ITA No.116/Rjt/2022 for A.Y. 2017-18 has been decided by us vide paragraph No. 7 to 7.3 of this order in favour of the assessee. The learned AR and DR also agreed that whatever will be the findings for the ITA No. 116/Rjt/2022 shall also be applied to the appeal on hand i.e. ITA No. 155/Rjt/2022 for the assessment year 2017-18. Hence, the ground of appeal filed by the assessee is hereby allowed.

9.1 In the result, the appeal filed by the assessee is allowed

Coming to the other appeal of the assessee bearing **ITA No. 160/Rjt/2022 for A.Y 2017-18** in the case of **Shree Gondal Mercantile Credit Co-operative Society Ltd., Gondal.**

10. At the outset, we note that the issues raised by the assessee in its grounds of appeal are identical to the issues raised by the assessee in the case of **Galaxy Credit Co-operative Society Limited, Wankaner bearing ITA No. 116/Rjt/2022 for A.Y. 2017-18** for the assessment year **2017-18**. Therefore, the findings given in ITA No. 116/Rjt/2022 shall also be applicable for the issues raised by the assessee in the above mentioned appeal. The appeal of the Assessee bearing ITA No.116/Rjt/2022 for A.Y. 2017-18 has been decided by us vide paragraph No. 7 to 7.3 of this order in favour of the assessee. The learned AR and DR also agreed that whatever will be the findings for the ITA No. 116/Rjt/2022 shall also be applied to the appeal on hand i.e. ITA No. 160/Rjt/2022 for the assessment year 2017-18. Hence, the ground of appeal filed by the assessee is hereby allowed.

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10.1 In the result, the appeal filed by the assessee is allowed

11. In the combined result, all the four appeals filed by the different assessee are allowed.

This Order pronounced in Open Court on 08/07/2022

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

**Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER**

Rajkot, Dated
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08/07/2022