

IN THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD "B" BENCH

**Before: Shri Waseem Ahmed, Accountant Member  
And Shri T.R. Senthil Kumar, Judicial Member**

**ITA No. 562/Ahd/2019  
Assessment Year 2014-15**

The Ekta Co-Operative Credit Society Ltd. At; Sokhada, Taluka : Vijapur, District: Mehsana PAN No: AAAAT4874A (Appellant)	Vs	The Pr. Commissioner of Income Tax, Gandhinagar (Respondent)
---	----	---

**Appellant by : Shri Sunil H. Talati, A.R.  
Respondent by : Shri James Kurian, CIT/D.R.**

Date of hearing : 17-08-2022  
Date of pronouncement : 24-08-2022

**आदेश/ORDER**

**PER : T.R. SENTHIL KUMAR, JUDICIAL MEMBER:-**

The present appeal has been filed by the Assessee against the order dated 11.03.2019 passed by the Ld. Principal Commissioner of Income Tax, Gandhinagar under section 263 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to the Assessment Year (A.Y) 2014-15.

2. The assessee before us is a Co-operative credit society, provide credit facility to its members by giving loan & advances and accepting deposits from members of the society. For the Assessment Year, 2014-15, the assessee filed its Return of Income was e-filed on 26/11/2014 declaring total income at Rs. NIL after claiming deduction of Rs. 1,04,56,923/- u/s 80P of the Act. The return was processed u/s 143(1) and then scrutiny assessment was completed by making addition on account of interest receipt of Rs. 15,595/- and addition of interest on refund received u/s 244A of the Act of Rs. 21,980/-. Thus assessed the total income as Rs. 37,575/-.

2.1. It is thereafter a show cause notice u/s 263 dated 22/01/2019 was issued on the ground that the Assessing Officer has allowed interest amounting to Rs. 31,64,097/- earned from Nationalized Bank. However interest from Co-Operative Banks was allowed which was not allowable in the light of principles enunciated by Hon'ble Karnataka High Court in Totgars Co-Operative Sale Society, [2017] 83 taxmann.com 140 (Karnataka). Therefore, interest income earned from Co-Operative Bank is also not entitled for deduction u/s. 80P(2) of the Act, which is required to be disallowed.

2.2. As against this show cause notice, the assessee vide its letter dated 04/02/2019 filed a detailed reply both on the ground of invoking Revision proceedings u/s 263 as well as on merits of the case more particularly that the Karnataka High Court judgment in

the case of Totgars Co-Operative Sale Society was not available at the time of passing of the original assessment order. Thus, there is no error or mistake whatsoever in the assessment order passed by the assessing officer. The assessee also relied on People's Co.Op. Credit Society Ltd. & Banaskantha District Co.Op. Milk Producers Union Ltd. decisions rendered by Jurisdictional Tribunal in ITA No. 1891/Ahd/2014 & 2987/Ahd/2015 and ITA No. 1090 & 1582/Ahd/2015 which decisions considered the judgment of the Hon'ble Karnataka High Court in the case of Totgars Co-Operative Sale Society and held that for the purpose of allowability deduction u/s. 80P(2)(d) of the Act, any income earned in the form interest and dividend from investment made with Co.Op. Bank be considered as income earned from Co.Op. Society and accordingly eligible for deduction u/s. 80P(2)(d) of the Act. Therefore the assessee requested to drop the Revision proceedings initiated by the Ld. PCIT.

2.3. The Ld. PCIT by this impugned order dated 11.03.2019 held that the issue with regard to deduction of interest from Co-operative Bank is fully dealt in by the Hon'ble Karnataka High Court which has not been rebutted by the assessee in any way. The assessee has relied upon the judgment in the case of State Bank of India rendered by Hon'ble Gujarat High Court, where the issue is in respect of the deduction of the interest income on the deposits placed with State Bank of India u/s. 80P(2)(a)(i) of the Act. While in the present case, the issue of deduction u/s. 80P(2)(d) on the interest income from the co-operative bank wherein the Hon'ble

Gujarat High Court dismissed the appeal filed by the assessee upholding the 263 order. The assessee's reliance on various decisions of the Hon'ble ITAT and other Courts are not applicable. However Hon'ble Karnataka High Court judgment is directly on the issue in favour of the Revenue, which is higher judicial authority as compared to ITAT and hence the judgment of Hon'ble High Court of Karnataka is binding as per the judicial discipline and therefore directed the Assessing Officer to reframe the assessment de-novo in accordance with the provisions of the Act and after considering the position of law as explained above in the judgment of the Karnataka High Court in the case of Totgars Co-Operative Sale Society after granting proper opportunities of being heard to the assessee.

3. Aggrieved against the same, the assessee is before us raising the following Grounds of Appeal:

*1. The learned Pr. C.I.T. has erred in holding that the assessee is not eligible for deduction of interest income of Rs.30,60,500/- u/s 80P(2)(d) of the Act received from investment made with Co.Op. Bank. The Ld. Pr. CIT has not considered the explanations/submissions furnished by your appellant during the course of assessment proceedings as well as proceedings before him in true perspective. It is submitted that the view so taken of holding the assessment order passed by A.O. as erroneous and prejudicial to the interest of Revenue is incorrect and illegal and accordingly the direction to set aside the original assessment order and passing the fresh assessment order be cancelled. It be so held now.*

*2. The learned Pr. CIT has erred in relying the decision of Karnataka High Court and giving incorrect direction to the Ld AO to reframe the assessee de-novo. It is submitted the Hon'ble Jurisdictional High Court is in the favour of the assessee on identical issue. The same be held now and order passed by Ld Pr. CIT invoking the provisions of Section 263 of the Act be quashed and set aside.*

3. Without prejudice to the above, the learned Pr. CIT has erred in following decision of Karnataka High Court while passing the order u/s 263 of the Act. It is submitted that the decision of Karnataka High Court against assessee was not available at the time of passing order by Ld AO u/s 143(3) of the Act and in fact numerous favorable decisions were there on record. It is further submitted the order passed by Ld AO is not at all prejudicial to the interest of revenue and absolutely correct and as per the law prevailing at that time. Thus order passed by learned Pr. CIT giving directions to AO u/s 263 of the Act is completely incorrect and unlawful and be quashed and set aside. The same be held now.

4. The order passed by the learned Pr. C.I.T.is bad in law and contrary to the provisions of law and facts. It is submitted that the same be held so now.

5. Your appellant craves leave to add, alter and/or to amend all or any of the grounds before the final hearing.

3.1. Ld. Representative of the assessee Shri Sunil H Talati filed a Paper Book, which contains Show cause notice issued u/s 263, Reply filed by the assessee, Statement of break-up of interest income, reply filed before the Assessing Officer and various case laws rendered by the Appellate Tribunal. Ld. Representative also filed before us very recent decision of the Co-ordinate Bench judgment in the case of The Sardar Patel Co-operative Credit Society Ltd. vs. PCIT in ITA No. 575/Ahd/2019 dated 17.06.2022 as well as Shree Ashapura Co-op. Credit Society Ltd. vs. PCIT, Gandhinagar in ITA No. 856/Ahd/2019 dated 06/07/2022 wherein the Co-ordinate Bench of this Tribunal has quashed the revision proceedings initiated u/s. 263 on similar set of facts. Following the same ratio rendered by the Co-ordinate Bench of this Tribunal, the present Revision order is directed to be quashed and prayed to allow the appeal filed by the assessee.

4. Per contra, the Ld. D.R. appearing for the Revenue could not produce any contra judgment in support of his argument, but however relied upon the order of the PCIT and requested to uphold the same.

5. We have given our thoughtful consideration and perused the materials available on record including the Paper Book filed by the assessee. As rightly argued by the Ld. Representative of the assessee, this issue is being dealt by the Co-ordinate Bench of the Tribunal in its decision in the case of The Sardar Patel Co-operative Credit Society Ltd (cited supra), wherein its held as follows:

*4. We have heard the arguments of both the sides and also perused the relevant material available on record. As submitted by the learned Counsel for the assessee, the assessment completed by the Assessing Officer under Section 143(3) of the Act allowing the similar claim of the assessee for deduction under Section 80P(2) of the Act in respect of interest income earned on the deposits with Mehsana Urban Co-operative Bank was set aside by the same learned PCIT vide his order passed under Section 263 of the Act in the case of the People Co-op. Credit Society Ltd by relying on the decision of Hon'ble Karnataka High Court in the case of Totgars Cooperative Sale Society (supra) and, on appeal by the assessee, the Coordinate Bench of this Tribunal vide its order dated 21.02.2022 passed in ITA No.384/Ahd/2020 set aside the order passed by the learned PCIT under Section 263 of the Act restoring that of the Assessing Officer by relying inter alia on the decision of the Hon'ble jurisdictional High Court in the case of State Bank of India (supra). Copy of the said order of the Tribunal is also placed on record and perusal of the same shows that a similar issue was decided by the Tribunal vide paragraph No.7 of its order as under:-*

*"7. We have heard both the parties and perused all the relevant material available on record. It is pertinent to note that the entire details called for during the assessment proceedings were submitted by the assesses at the time of assessment under Section 143(3) of the Act and the Assessing Officer was very well aware that section 80P claim was reflected in the details of the assessee. The assessee vide letter dated 22.05.2017 submitted the details regarding deduction under Section 80P of the Act which was claimed in the return of income which included in the interest income from Mehsana Urban Co-operative Bank. The PCIT has issued the*

*show cause notice under Section 263 on 14.02.2020 on the very same issue which was verified by the Assessing Officer in Section 143(3) proceedings itself. Once the issue verified by the Assessing Officer and the jurisdictional Court has allowed the said claim related to interest income earned from Co-operative Bank, the PCIT cannot exercise Section 263 of the Act. The Id. A.R. aptly relied upon the decision of State Bank of India vs. CIT (2016) 72 Taxmann.com 64 dated 25.04.2016. On the basis of Hon'ble Karnataka High Court decision in the case of Totqars Co-operative Sales Society (supra), the PCIT cannot invoke provisions of section 263 of the Act. Thus, Section 263 does not sustain and appeal of the assessee is allowed.*"

4.1. Further the Co-ordinate Bench judgment in the case of People's Co.Op. Credit Society Ltd. (cited supra) held as follows:

*4. We now advert to the lead issue of Section 80(P)(2) disallowance of Rs.27,97,019/- in respect of assessee's interest income derived from its deposits with the Banas Co-operative Bank. Both the lower authorities quote the legislative amendment vide Finance Act, 2006 w.e.f. 01.04.2007 inserting subsection 4 in Section 80P as well as CBDT's explanatory notes to the above Finance Act dated 28.12.2006 in holding that the impugned interest income derived from co-operative bank is not eligible for deduction. Learned Departmental Representative vehemently contends that hon'ble Karnataka high court's recent decision in (2017) 83 taxmann.com 140 (Karnataka) PCIT vs. Totagars Co-operative Sale Society has settled the law that such an income is not allowable as Section 80P deduction in view of the legislative amendment hereinabove. Mr. Kabra thereafter files hon'ble apex court's judgment in (2017) 397 ITR 1 (SC). The Citizen Co-operative Society Ltd. vs. ACIT settling Section 80P deduction issue in respect of ordinary and nominal members. We however find that the above former decision goes contrary to hon'ble jurisdictional high court's judgment in Tax Appeal No. 473 of 2014 CIT vs. Sabarkantha District Cooperative Milk Producers Union Ltd. declining Revenue's identical question of law challenging tribunal's decision allowing Section 80P deduction in respect of interest earned on fixed deposits with a cooperative bank in assessment year 2009-10 i.e. post Section 80P(4) amendment w.e.f. 01.04.2007. Their lordships' reasoning to this effect reads as under:*

*"4.0. Now, so far as proposed question no. B i.e. whether the Appellate Tribunal has substantially erred in upholding the order of the CIT(A) in deleting the disallowances of Rs.1,42,19,5157- under Section 80(P)(2)(d) of the Act is concerned, it is required to be noted that the assessee claimed deduction under Section 80(P)(2)(d) of the Act on the interest*

*earned on the fixed deposit with Cooperative Bank and the Societies and it has been found that as such the income was received from the investment in Cooperative Societies and Cooperative Bank. 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 any error in deleting disallowance of Rs.1,42,19,515/- under section 80(P)(2)(d) of the Act. We are in complete agreement with the view taken by the learned Tribunal. Under the circumstances, proposed question B is also answered against the revenue."*

*We therefore follow hon'ble jurisdictional high court's judgment than hon'ble Karnataka high court's decision. Coming to hon'ble apex court's decision in the Citizen Co-operative Society Ltd. (supra), we find that there is no dispute about the category of members as it was before their lordships. We thus conclude in view of all these facts and circumstances that hon'ble jurisdictional high court's judgment is binding on us. We accordingly delete the impugned disallowance of Rs.27,97,019/- in question. This lead appeal ITA No. 1891/Ahd/2014 is partly accepted.*

4.2. We therefore respectfully following the above decisions of the Co-ordinate Bench of this Tribunal, which has followed jurisdictional High Court judgment and we hereby quash the impugned order passed by the Ld. PCIT u/s. 263 of the Act and restore the assessment order passed by the Assessing Officer u/s. 143(3) of the Act. Thus, the grounds raised by the assessee are hereby allowed.

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

Order pronounced in the open court on 24-08-2022

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

**Sd/-**  
**(T.R. SENTHIL KUMAR)**  
**JUDICIAL MEMBER**

**Ahmedabad : Dated 24/08/2022**

**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