

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND
DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER

ITA No. 50/Srt/2022 (Assessment Year: 2017-18)
(Hearing in Physical Court)

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| Abrama Seva Sahakari Mandli Limited, At & PO Abrama, Tal. Jalalpore, Dist. Navsari-396445. PAN No. AAAAA 1075 G | Vs. | I.T.O., Navsari Circle, Navsari. |
| Appellant/ assessee | | Respondent/ revenue |

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|---------------------------|---------------------------|
| Assessee represented by | Shri Sujesh Suratwala, CA |
| Department represented by | Shri Vinod Kumar, Sr.DR |
| Date of hearing | 08/09/2022 |
| Date of pronouncement | 08/09/2022 |

Order under section 254(1) of Income Tax Act

PER: PAWAN SINGH, JUDICIAL MEMBER:

1. This appeal by the assessee is directed against the order of learned National Faceless Appeal Centre, Delhi (NFAC) dated 06/10/2021 for the Assessment year 2017-18. The assessee has raised following grounds of appeal:

"1. In Finance Act, 2006, the insertion of Section 80P(4) to the actd as explained by the then Honorable Finance Minister in his budget speech is to withdrawal of exemption given to the co-op Bank and not to levy the tax on interest and Dividend earned by the primary co-op Credit society. Hence, learned AO as well as CIT(A)/NFAC interpreted the law completely against the purpose of insertion of section 80P(4) which is unjustified to the assessee and required to be deleted.

2. *On facts and circumstances of the case as also law on subject, the learned AO as well as CIT(A)/NFAC has erred in making addition of income of Rs.11,28,789/- which was eligible for deduction u/s 80P(2)(d) of the Act, which is unjustified, bad in law. Hence, requires to be deleted.*

3. *On facts and circumstances of the case as also law on the subject, the learned AO as well as CIT(A)/NFAC has made the addition on the basis of judgment made by Honorable Karnataka High Court is not ruling court for the assessee but the CIT(A)/NFAC has grossly ignored the judgment given by Honorable ITAT Ahmedabad and Honorable ITAT Surat in the case of Uttar Gujarat Uma Co-op Credit Society Ltd. and Bardoli Vibhag Gram Vikas Co-operative Credit Society Ltd. respectively hence, making addition of interest and dividend earned from co-op bank is void ab initio required to be deleted.”*
4. *The appellant craves leave to add, alter, delete amend or rescined any of the above grounds of appeal as and when necessary with the permission of ITAT.”*

2. At the outset of hearing the Id. Authorised Representative (AR) of the Assessee has submitted that the assessing officer while passing the assessment order made disallowance under section 80P(2)(d) of Rs. 24,000/- as interest earned from cooperative bank and other interest income of Rs. 11,04,789/- earned from Valsad District Cooperative Bank. The Id CIT(A) confirmed the addition. The Id AR for the assessee submits that the ground of appeal raised by assessee are covered in favour of assessee and against the revenue by the decision of the Tribunal in assessee’s own case for A.Y. 2015-16 in ITA No. 178/Srt/2021 dated 27/06/2022. The Ld. AR for the assessee further submits that the Tribunal while granting relief to the assessee in A.Y. 2015-16 followed the order of the Tribunal in the case of Bardoli Vibhag Gram Vikas Co-Op Credit Society in ITA No. 283/Srt/2019 dated 12/05/2021.

3. The Id AR for the assessee further submits that there is technical delay in filing of 88 days in filing the present appeal. The delay in filing of the appeal was due to the Covid-19 pandemic period. There is no intentional delay in filing the appeal, rather it occurred due to the situation, which was out of control of the assessee. The Id AR for the assessee submits that the Hon'ble Supreme Court in Suo Moto Writ Petition No. (C) No. 3 of 2022 has directed to condoned the delay between the period of 15.03.2020 to 28.02.2022 and further granted 90 days' time from 01.03.2022. the assessee has filed its appeal with the grace period allowed by Apex Court. The Id AR for the assessee prayed to condone the delay.
4. On the other hand, the Id. Senior departmental representative (Sr-DR) for the Revenue after going through the grounds of appeal and the decision of Tribunal in assessee's own case in ITA No. 178/Srt/2021 for the A.Y. 2015-16 dated 27/06/2022 submits that he relied upon the order of Assessing Officer. On the plea of condonation, the Id DR for the revenue submits that the bench may take decision in accordance with law.
5. We have considered the rival submissions of both the parties on the plea of condonation of delay and find that the assessee has filed its appeal

within the grace period allowed by Hon'ble Apex Court in Suo Moto Writ Petition No. (C) No. 3 of 2022. Therefore, respectfully following the directions of the Hon'ble Apex Court, the delay in filing the present appeal is condoned.

6. Now advertng to the grounds of appeal raised by the assessee. We find that in the present appeal, the assessee has challenged the addition of Rs. 11,28,789/- added under section 80P(2)(d) of the Act. We find thie grounds of appeal raised by the assessee is covered by the order of Tribunal in assessee's own case for AY 2015-16 in ITA No. 178/Srt/2021 dated 27/06/2022, wherein combination of this bench has passed the following order:

"5. We see no reasons to take any other view of the matter than the view so taken by the Division Bench of this Tribunal in the case of Bardoli Vibhag Gram Vikas Co-Op. Credit Society Ltd. (supra) vide order dated 12.05.2021. In this order, the Tribunal has inter alia observed as follows:

"8. We have heard the submission of learned authorized representative (Id.AR) of the assessee and the learned Commissioner of Income tax-Departmental representative (Id. CIT-DR) for the Revenue and perused the assessment order as well as order passed by Id. PCIT. The Ld. AR for the assessee submits that the order passed by assessing officer under section 143(3) in allowing deduction under section 80P(2)(d) is not erroneous. The assessing officer during the assessment examined the issue in detail and took a possible and a reasonable view on the claim made by assessee. The finding of the assessing officer in the assessment order about the examination of this issue is clearly discernable. The learned PCIT by examining the record, may have a different view, thus the revision order passed by learned PCIT is not valid in the eyes of law. The learned AR for the assessee submits that for revising the assessment order, twin condition as provided under section 263 must be fulfilled simultaneously, that is the assessment order is erroneous and insofar

as prejudicial to the interest of revenue. The order passed by assessing officer is not at all erroneous; the order is in accordance with the decision of various Tribunals and order passed by jurisdictional High Court on similar issue. The learned AR for the assessee also invited our attention on para 4 of the assessment, wherein the consideration of the issue under reference is clearly discernable. The learned AR for the assessee further submits that the assessing officer while issuing show cause notice dated 6-3-2019 raised a specific query on this issue. The assessee furnished its explanation with regard to the claim of deduction under section 80P(2)(d). The assessee explained before Ld. PCIT that assessee is claiming statutory deduction. The learned AR for the assessee further submitted that it is settled law that once assessing officer made enquiry on a particular point and after deliberation allow deduction, on that very point, the proceeding under section 263 cannot exist to form a different view. The Id.AR for assessee further submits that assessee claim similar deduction was disallowed by the assessing officer while passing the assessment order in A.Y. 2009-10, 2010-11 and again in 2012-13. However on appeal before Ld. CIT(A) the assessee was allowed deductions under section 80P(2)(d). On further appeal by the revenue before the Tribunal the appeal of the revenue was dismissed in ITA No. 2166/Ahd/2014 dated 18-4-2017, ITA No. 2582/Ahd/2014 dated 28-6-2018 and in ITA No. 2617/Ahd/2016 dated 18-12-2018 for A.Y. 2009-10, 2010-11 and 2012-13 respectively. The copies of the decisions of Tribunal are placed on record. The Id.PCIT for the first time revised the assessment order on the issue.

9. *On merit of the case the learned AR for the assessee submits that the assessee earned interest from its investment in cooperative bank. The cooperative banks are primarily a cooperative society, as has been held by various benches of Tribunal. Cooperative societies interest income from deposit with the cooperative bank is eligible for claim of deduction under section 80P(2)(d). The learned AR of the assessee further submits he has also furnished his written submission and the same may be considered in support of his various other submissions. In support of his submission the learned AR of the assessee relied upon the following decisions:*

Surat Vankar Sahkari Sangh v. Asstt. CIT [2016] 72 taxmann.com 169/[2020] 421 ITR 134 (Gujarat),

CIT v. Sabarkantha District Co-operative Milk Producers Union Ltd. [Tax Appeal No. 473 of 2014 dated 16-6-2014]

Merwanjee Cama Park Co-operative Housing Society v. ITO [IT Appeal No. 6139 (Mum.) of 2014, dated 27-9-2017]

Kaliandas Udyog Bhavan Premises Co-operative Society Ltd. v. ITO [2018] 94 taxmann.com 15 (Mum. - Trib),

Veer Co-operative Group Housing Society Ltd. v. ITO [2018] 67 ITR (Trib.) 268 (Delhi),

Pr. CIT v. Totgars Co-operative Sales Society Ltd. [2017] 78 taxmann.com 169/392 ITR 74 (Ker.),

Totgars Cooperative Sales Society Ltd. v. ITO [2010] 188 Taxman 282/322 ITR 283 (SC),

Uttar Gujarat Uma Co-operative Society Ltd. v. ITO [IT Appeal No. 1670 & 1671 (Ahd.) of 2018, dated 28-2-2019

Menasi Seemeya group Gramagala Seva Sahakari Sangh Niyamitha Venalli v. CIT [IT Appeal No. 609 & 610 (Bang.) of 2014, dated 06-2-2015],

Solitaire CGHS v. Pr. CIT [IT Appeal No. 3155 (Mum.) of 2019, dated 29-11-2017],

Sasme Co-op Society v. Pr. CIT [IT Appeal No. 185 (SRT) of 2020, dated 3-3-2021]

- 10.** *On the other hand the learned CIT-DR for the revenue supported the order of learned PCIT. The learned DR further submits that the order passed by assessing officer is not only erroneous but it is prejudicial to the interest of revenue as well. The assessing officer simply allowed the deduction under section 80P(2)(d) without discussing the issue in details and the nature of interest earned by assessee on deposit with cooperative banks. The order is not in accordance with the decision of Hon'ble Karnataka High Court Totagars cooperative sales society (second Totagars case) (supra). Thus, the order passed by in allowing deduction under section 80P(2)(d) assessing officer is certainly prejudicial to the interest of revenue. The twin conditions of section 263 that assessment order is erroneous and insofar as prejudicial to the interest of revenue, clearly available in this case. The learned CIT prayed for upholding the order passed by learned PCIT by dismissing the appeal filed by the assessee.*
- 11.** *We have considered the rival submission of both the parties. We have also deliberated on the written submission filed by learned AR of the assessee and various case laws relied by him during his submission. We have also gone through the various documentary evidences filed in the form of paper book (PB) by learned AR of the assessee. We have noted that during the assessment the Assessing Officer vide notice under section 143(2)/142(1) of the Act dated 31-8-2015 and 13-4-2016. The assessee filed its reply through its CA (AR) and furnished required details and after examining the issue allowed the deductions under section 80P(2)(d) as discussed in para 4 of the assessment order. The Assessing Officer passed assessment order on 18-10-2016.*

- 12.** *The Id. PCIT before passing under section 263 of the Act, identified the issue regarding the claim of deduction under section 80P(2)(d) in its show cause notice dated 6-3-2019. The assessee in its reply dated 7-3-2019 clearly explained that the issue was examined by Assessing Officer and that the assessment order is not erroneous. The assessee also explained that similar disallowances/issues was subject matter in the appeal filed by the revenue before Tribunal in A.Y. 2009-10, 2010-11 and 2012-13 and the assessee was allowed similar deductions.*
- 13.** *The Hon'ble Jurisdictional High Court in Aryan Arcade Ltd. v. Pr. CIT [2019] 412 ITR 277 (Gujarat) held that merely because Commissioner held a different belief that would not permit him to take the order in revision, it if further held that when Assessing Officer made full enquiry, he made up his mind, the notice of revision is not valid. (emphasis added by us). Further, Hon'ble Madras High Court in CIT v. Mepco Industries Ltd. [\[2007\] 163 Taxman 648/294 ITR 121 \(Madras\)](#) held that when two views are possible on an issue and it is not the case of the Commissioner that the view taken by Assessing Officer is not permissible in law, Commissioner cannot invoke his jurisdiction under section 263 of the Act. (emphasis added by us)*
- 14.** *As we have noted above the assessing officer has made enquiries on the allowability of deduction under section 80(P)(2)(d) and passed the assessment order, thus, the Assessing Officer has taken a reasonable and possible view which cannot be held as erroneous.*
- 15.** *The Hon'ble Karnataka High Court in Totagars Cooperative Sales Society (supra) held that for the purpose of section 80P(2)(d) a Co-operative Bank should be considered by a Co-operative Society and interest earned by Co-operative Society from Cooperative Bank would necessarily be deductible under section 80P(1) of the Act. Further, the Hon'ble Jurisdictional High Court in Surat Vankar Sahakari Sangh Ltd. (supra) held that assessee co-operative society is 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.*
- 16.** *The Co-ordinate Bench of Rajkot Tribunal in Surendarnagar District Co-operative Milk Producer Union Ltd. v. Dy. CIT [\[2019\] 111 taxmann.com 69/179 ITD 690 \(Rajkot Tribunal\)](#) also held the assessee co-operative society could not claim benefit under section 80P(2)(d) in respect of interest earned by it from deposits made with nationalized/private banks, however, the said benefit was available in respect of interest earned and on deposits made with co-operative bank. Thus, in view of the aforesaid legal discussion we are of the considered view that order passed by Assessing Officer is not erroneous, though it may be prejudicial to the interest of the Revenue. Therefore, the twin conditions that orders is erroneous and so far as prejudicial to the interest of revenue, as prescribed under section 263 is not fulfilled in the present case.*

17. *Moreover, we have seen that in assessee's own case for A.Y. 2009-10, 2010-11 and 2012-13, the similar disallowance under section 80P(2)(d) was made by the assessing officer while passing assessment order under section 143(3), however, on appeal before Ld. CIT(A) , the disallowances were deleted and the order of the Ld. CIT(A) in all years were confirmed.*

18. *The Id. DR for the revenue relied on the case law in Totagars Co-operative Sales Society (second case)/(supra), wherein the Hon'ble Karnataka High Court held that interest earned by a Co-operative Society from surplus deposits kept with Co-operative bank, is not eligible for deduction under section 80P(2)(d). Considering the legal position that when there are conflicting decisions of non-jurisdictional High Courts, on similar issue, the decision of Jurisdictional High Court is having binding precedent. Thus, keeping in view of the decision Hon'ble Jurisdictional High Court in Surat Vankar Sahakari Sangh Ltd. (supra) wherein the assessee-co-operative society is held 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, we conclude that the order passed by assessing officer is not erroneous. Hence, the grounds of appeal raised by assessee are **allowed.**"*

6. *As the issue is squarely covered in favour of the assessee by the decision of the Coordinate Bench, in the case of Bardoli Vibhag Gram Vikas Co-Op. Credit Society Ltd. (supra) and there is no change in facts and law and the Revenue is unable to produce any material to controvert the aforesaid findings of the Coordinate Bench (supra). We find no reason to interfere in the said order of the Coordinate Bench, therefore, respectfully following the binding judgment of the Coordinate Bench in the case of Bardoli Vibhag Gram Vikas Co-Op. Credit Society Ltd. (supra) we delete the addition made by Assessing Officer. Therefore, grounds raised by the assessee are **allowed.**"*

7. Considering the facts and circumstances of the case, we hold that the issue is squarely covered in favour of the assessee by the decision of the Coordinate Bench in assessee's own case for the A.Y. 2015-16 and there is no change in facts and law and the Revenue is unable to produce any material to controvert the aforesaid findings of the Bench

(supra). Therefore, following the principle of consistency, the grounds of appeal raised by assessee for AY 2017-18 is also allowed with similar observation.

8. In the result, this appeal of the assessee is allowed.

Order pronounced in the open court on 8th September, 2022 at the time of hearing of this appeal.

Sd/-
(Dr. ARJUN LAL SAINI)
ACCOUNTANT MEMBER

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Surat, Dated: 08/09/2022

**Ranjan*

Copy to:

1. Assessee –
2. Revenue -
3. CIT(A)
4. CIT
5. DR
6. Guard File

By order

Sr.Private Secretary, ITAT, Surat