

IN THE INCOME TAX APPELLATE TRIBUNAL
RAJKOT BENCH, RAJKOT

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

**ITA No. 166/Rjt/2022
Assessment Year 2017-18**

Shree Jetpur Market Yard Vepari Sharafi Sahakari Mandali Ltd., Office Building No.3, Under Khedut Guest House Market Yard Jetpur-360370 PAN: AANAS9645P (Appellant)	Vs	Pr. CIT, Rajkot-1 (Respondent)
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**Assessee by: Shri Mehul Ranpura, A.R.
Revenue by: Shri Aarsi Prasad, CIT-D.R.**

Date of hearing : 08-07-2022
Date of pronouncement : 14-09-2022

आदेश/ORDER

PER BENCH:-

This is an appeal for A.Y. 2017-18 filed by the assessee against the order of the Principal Commissioner of Income Tax, PCIT, Rajkot-1 dated 08-03-2022, in DIN & Order No. ITBA/REV/F/REV5/2021-22/1040457759(1), in proceedings under section 143(3) of the Income Tax Act, 1961; in short “the Act”.

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

“1. The grounds of appeal mentioned hereunder are without prejudice to one another.

2. The order passed by Pr. Commissioner of Income-tax, Rajkot-1 [hereinafter referred as to the "PCIT"] is bad in law, invalid and requires to be quashed, the same may kindly be quashed.

3. The Ld. PCIT erred in law and on facts in arriving at a conclusion that the assessment order passed by the AO was erroneous as well as prejudicial to the interest of the revenue as the same was passed without verifying allowability of deduction u/s. 80P(2)(d) of the Income-tax Act, 1961 [hereinafter referred as to the "Act"] in respect of interest on FDRs held with other co-operative bank. The order passed by PCIT requires to be quashed and may kindly be quashed.

4. The learned Pr. CIT erred on facts as also in law in setting aside the assessment order dated 16.11.2019 passed u/s. 143(3) of the I.T. Act, directing the A.O. to pass a fresh assessment order. The order passed u/s. 263 of the Act by the learned Pr. CIT is totally unjustified on facts as also in law therefore the same may kindly be quashed.

5. Your Honour's appellant craves leave to add, to amend, alter, or withdraw any or more grounds of appeal on or before the hearing of appeal.”

3. The brief facts in relation to this case are that the assessee is an AOP and is a Sahakari Mandli engaged in the activity of giving credit facilities to its members. The assessee filed its return of income for the year under consideration declaring total income of ₹ “Nil” after claiming deduction of Chapter VI-A of ₹ 19,09,537/-along with audit report and requisite form. In

the original assessment, the claim of the assessee was accepted by the AO vide order dated 16-11-2019. The Principal CIT initiated 263 proceedings on the ground that the assessee had shown total interest income at ₹ 16,43,287/- including interest on fixed deposits received from RDC cooperative bank and also dividend income of ₹ 2,66,250/- from Rajkot district cooperative Bank Ltd on which deduction under section 80P(2)(a)(i)/80P(2)(d) of the Act was claimed by the assessee.

4. During the course of 263 proceedings, the assessee submitted that it had not received any interest income from the cooperative bank except the dividend income of ₹ 2,66,250/- on investment from shares in Rajkot District Cooperative Bank Ltd. on which deduction has been claimed under section 80P of the Act. Further, the assessee submitted that the interest income has been received only from members and not from any cooperative bank and therefore there was no error in passing of the order by the AO u/s 143(3) of the Act.

5. The Principal CIT however held that whether the interest income has been received from co-operative bank or only from its members is a subject matter of verification. He further held that the assessee is also not eligible for deduction under section 80P(2)(d) of the Act on interest earned on money lent to its members, since deduction under section 80P(2)(d) of the Act is available on interest derived from investments and not from loans /advances. Further, Principal CIT held that the dividend income of ₹ 2,66,250/- earned from Rajkot district cooperative Bank Ltd is not an allowable deduction relying upon the decision of the Karnataka High Court

in the case of Principal CIT v. Hubbali Totagars 83 Taxman.com 140. Accordingly, Principal CIT set aside the order u/s 263 of the Act on the ground that the order is erroneous and prejudicial to the interests of the revenue.

6. The issue for consideration before us whether firstly the AO made sufficient enquiries at the time of original assessment and secondly whether the view taken by the AO on appreciation of facts of the case is a legally sustainable view. We observe that the AO issued notice dated 06-09-2018 in which he had specifically inquired into the aspect of claim of deduction under Chapter-VIA of the Act. Further, the AO issued another notice dated 07-09-2019 in which he raised the below queries with respect to claim of deduction under section 80-P of the Act. The query put forth by the AO is reproduced for reference:

“1. Please provide the copy of the constitution/ Memorandum of Association /Articles of Association of your credit co - operative society.

2. Please provide list of the members mentioning following details

a) Amount of total loan/advances given to them and closing balance as on 31.03.2017.

b) PAN, Address and mobile number of such members.

3. Please provide copy of Computation of Total Income and Tax Audit Report for A.Y. 2017-18.

4. From the perusal of the ROI it is gathered that the assessee has total loans & advances of Rs. 8,76,24,597/- and long term investments of Rs. 17,75,000/- in unlisted equities. However against such huge loan & advances and bank balances assessee has shown very less total income (Including Exempt Income) in the ITR. In this regard you are hereby requested to give details of all the income arising from the investments, Loans & Advances etc. along with an

explanation for the lower ration of income to the investments loans & Advances etc. along with an explanation for the lower ration of income to the investments, loans & advances etc. in the ITR.

5. On going through the ITR, earned dividend amounting to Rs. 2,66,250/- and interest income of Rs. 96,55,358/- during the year under assessment and claimed deduction u/s 80P of Rs. 19,09,537/-. Please justify your claim in the light of decision of Hon'ble Supreme Court in the case of Totagars Co-Operative Sale Society Vs ITO [2010] 322 ITR 283/188 Taxmann 282.

Your reply should reach this office within the stipulated time period. If you fail to submit the explanation in this regard, it would be presumed that there is nothing to say in the matter and assessment will be finalized on the basis of facts and material available on the record.”

7. In response, the assessee filed reply dated 23-10-2019 before the AO, in which the assessee gave a detailed explanation regarding the claim of deduction under section 80-P of the Act. Therefore, from the perusal of records, it is evident that the AO had made sufficient enquiry into the aspect of claim of deduction under section 80-P of the Act.

8. Regarding the disallowance of dividend income earned on shares held by the assessee in RDC District Cooperative Bank, we observe that the Hon'ble Gujarat High Court in the case of **State Bank of India Vs. CIT (2016) 389 ITR 578 (Guj)**, 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. 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.

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 that assessee-co-operative society was eligible for deduction under section 80P(2)(d) of the Act in respect of **gross interest received from co-operative bank without adjusting interest paid to said bank.** 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) of the Act 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.** 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.

9. In view of the above, we are of the considered view that AO had made sufficient enquiries at time of passing of original assessment order. The assessee had given to the replies in response to the queries raised by the AO. Before us, the assessee has also duly explained that in that no interest was earned by the assessee from any bank, but such interest received from its members only. Further, the assessee had earned dividend income to the tune of ₹ 2,66,250/- on account of shares held in Rajkot District Cooperative Bank, on which deduction has been claimed under section 80P of the Act, which is eligible in view of the plain language of section 80P(d). Therefore, we are of the view that in the instant set of facts, there is no infirmity in the order assessment passed by the AO. Accordingly, order passed under section 263 of the Act is liable to be set aside.

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

Order pronounced in the open court on 14-09-2022

Sd/-

(WASEEM AHMED)
ACCOUNTANT MEMBER
Ahmedabad : Dated 14/09/2022

Sd/-

(SIDHHARTHA 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,

Assistant Registrar,
Income Tax Appellate Tribunal,
Rajkot