

**IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD “SMC” BENCH, AHMEDABAD**

BEFORE Ms. SUCHITRA KAMBLE, JUDICIAL MEMBER

**ITA No.1373/Ahd/2019
Assessment Year: 2016-17**

Shree Kharwa Kam Karnar Loko
Ni Sahkari Mandli Limited,
Block-7,
Kharwa Colony,
Madanzampa Road,
Opp. Patthar Gate,
Baroda – 390 001.
[PAN – AACAS 0454 M]
(Appellant)

vs.

The Income Tax Officer,
Ward – 3(1)(3), Baroda.

(Respondent)

Appellant by : Ms. Heti J. Tambali, AR
Respondent by : Shri N.J. Vyas, Sr. DR

Date of hearing : 30.08.2022
Date of pronouncement : 21.09.2022

ORDER

This appeal is filed by the Assessee against the order dated 27.06.2019 passed by the CIT(A-3), Vadodara for the Assessment Year 2016-17.

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

- “1) *The Office of CIT (Appeals)-3, Vadodara concurred with the Assessment Order of the Assessing Officer of Ward-3(1)(3), Vadodara to the tune of disallowing the interest income of Rs.5,08,211/- under section 80P(2) of the Income Tax Act, 1961.*
- 2) *The Income of Rs.5,08,211/- comprises of Interest earned from Nationalized Banks to the extent of 71.06% while Balance 28.94% is interest earned from Co-operative Bank.*
- 3) *Hence, the appellant is filing an appeal for claiming the proportionate deduction to the extent of income earned from Co-operative Banks i.e. Rs.1,47,076/- (28.94% of Rs.5,08,211/-)”*

3. The assessee is a co-operative society engaged in the business of providing credit facilities to its members. The return of income was filed on 20.08.2016 declaring total income of nil after claiming deduction under Section 80P(2) of the Act of Rs.5,08,211/-. The case was selected for scrutiny by issue of notice under Section 143(2) of the Act on 23.08.2017 which was duly served. Notice under Section 142(1) read with Section 129 of the Act was issued on 21.06.2018. In response to the above the assessee submitted reply dated 08.08.2018. The Assessing Officer passed assessment order thereby making disallowance in respect of proportionate interest under Section 80P of the Act claimed by the assessee.

4. Being aggrieved by the assessment order, the assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee.

5. The Ld. AR submitted that on verification of assessment order under Section 143(3) of the Act, it was found that deduction under Section 80P of Rs.1,47,076/- was not given to the assessee which was interest received from Co-operative Bank of Rs.8,43,555/- (28.95% of total interest earned on Rs.29,15,188/-). The assessee is eligible to claim deduction of 28.94% of taxable profit under Section 80P. The assessee is a Co-operative Society engaged in the business of providing credit facilities to its members only and, therefore, the Assessing Officer should have allowed the said deduction. The Ld. AR relied upon the decision of the Hon'ble Gujarat High Court in the case of State Bank of India Employees' Co-operative Credit & Supplies Limited vs. CIT, 72 taxmann.com 64. The Ld. AR also relied upon the decision of the Tribunal in the case of The Government Servants Co-operative Credit Society Limited vs. ITO, ITA No.108/Ahd/2017, order dated 31.01.2019.

6. The Ld. DR relied upon the assessment order and the order of the CIT(A) and submitted that the decision of the Hon'ble Apex Court in the case of Totgar's Co-operative Sale Society Limited vs. ITO, 322 ITR 283 is applicable in the present case.

7. I have heard both the parties and perused all the relevant material available on record. It is pertinent to note that the jurisdictional High Court in the case of State bank of India Employees' Co-operative Credit & Supplies Limited (supra) has clearly

held that income by way of interest earned by society or investment of idle or surplus does not change its character irrespective of the fact whether such income of interest is earned from a schedule bank or a co-operative bank and thus clause (d) of Section 80P(2) of the Act would not apply in the facts and the circumstances of the present case. The assessee is engaged in the business of providing credit facilities to its members and no other income accrues to the Society in the form of interest from investment and surplus fund to the co-operative bank. The Hon'ble High Court directed the Assessing Officer to allow primary expenses in respect of interest on deposit held with Nationalised Bank to the assessee for computing deduction under Section 80P after examining/verification and affording adequate opportunity to the assessee. The present assessee's case before us also is identical to that of the issues dealt by the Hon'ble Jurisdictional High Court and, therefore, we direct the Assessing Officer to allow proportionate expenses in respect of interest from deposit held with Nationalised Bank and co-operative bank for computing deduction under Section 80P of the Act after examining/verification and affording adequate opportunity to the assessee.

8. In the result, appeal of the assessee is partly allowed for statistical purpose.
Order pronounced in the open Court on this 21st day of September, 2022.

Sd/-
(SUCHITRA KAMBLE)
Judicial Member

Ahmedabad, the 21st day of September, 2022

PBN/*

Copies to: (1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File

By order

Assistant Registrar
Income Tax Appellate Tribunal
Ahmedabad benches, Ahmedabad