

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ
IN THE INCOME TAX APPELLATE TRIBUNAL,
"SMC" BENCH, AHMEDABAD

BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER

And

SHRI T.R. SENTHIL KUMAR, JUDICIAL MEMBER

आयकर अपील सं./ITA Nos. 175 & 504/AHD/2020
निर्धारण वर्ष/Asstt. Years: 2018-2019 & 2019-2020

The Allahabad Bank Employees Co-operative Credit Society Limited, Allahabad Bank, Near Navrangpura Railway Crossing, Naranpura, Ahmedabad-380013. PAN: AACAT1600J	Vs.	D.C.I.T., C.P.C., Bengaluru.
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(Applicant)		(Respondent)
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Assessee by :	Shri P.F. Jain, A.R
Revenue by :	Shri Ravindra, Sr. DR

सुनवाई की तारीख/**Date of Hearing** : **24/06/2022**
घोषणा की तारीख /**Date of Pronouncement**: **09/09/2022**

आदेश/ORDER

PER WASEEM AHMED, ACCOUNTANT MEMBER:

The captioned two appeals have been filed at the instance of the Assessee against the separate orders of the Learned Commissioner of Income Tax (Appeal)-3, Ahmedabad, dated 22/01/2020 & 24/09/2020 arising in the matter of Assessment Order passed under s. 143(1) of the Income Tax Act, 1961 (here-in-after referred to as "the Act") relevant to the Assessment Years 2018-2019 and 2019-20.

ITA No. 504/Ahd/2020 for A.Y. 2019-120

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

1. The Id. CIT(A) has erred in law and on facts in treating the exempt income of the assessee being credit society as taxable income without properly appreciating the nature of business of the Co-operative Credit Society.

2 He has erred in law and on facts in treating the income of co-operative credit society of Rs 2,95,860/- as taxable inasmuch as that the same is exempt u/s.80P of the Act.

3. The income being fully exempt as provided in Section SOP of the I.T. Act, it should not have been treated as taxable.

4. He has erred in law and on facts, in upholding the addition u/s. 143(1) by A.O. without appreciating the fact that no show cause notice was issued to the assessee making the addition erroneous factually as well as legally.

5. On the facts of the assessee, no interest u/s.234A, 234B , 234C and 234F ought to have been levied as the income was claimed as non-taxable.

6. The appellant craves leave to add, to alter and/or to modify any grounds of appeal.

3. The only interconnected issue raised by the assessee is that the learned CIT-A erred in confirming the order of the AO by sustaining the addition of ₹ 2,95,607/- by disallowing the deduction claimed under section 80P(2)(a)(i) of the Act.

4. The facts in brief are that the assessee in the present case is a co-operative society and engaged in the activity of providing credit facilities to the members. In the year under consideration the assessee declared the taxable income of Rs. 1000 after claiming the deduction of Rs. 2,95,607/- under the provision of section 80P(2)(a)(i) of the Act. The AO-CPC while processing the return under section 143(1) of the Act disallowed the impugned deduction claimed by the assessee.

4.1 The assessee carried the matter before the learned CIT(A) and submitted that it being a credit co-operative society providing credit facility to member is entitled to deduction of income earned under section 80P(2)(a)(i) of the Act. The provision of section 80P(4) will not be applied to it as it is not a co-operative bank but a credit co-operative society. The assessee in support of its contention placed

reliance on the order of Hon'ble Gujarat High Court in case of Ekta Co-Op Credit Society Ltd reported in 402 ITR 85.

5. However, the learned CIT(A) confirmed the disallowance of deduction claimed by the assessee under section 80P(2)(a)(i) of the Act by following the judgment of Hon'ble Gujarat High court in case of SBI Employees Co. Op Ltd vs. CIT reported in 72 taxmann.com 64 that interest income from nationalized bank is not eligible for deduction u/s 80P(2)(a)(i) of the Act.

6. Being aggrieved by the order of the learned CIT (A) the assessee is in appeal before us.

7. The learned AR before us filed a paper book running from pages 1 to 21 and reiterated the submissions made before the authorities below.

8. On the other hand the learned DR vehemently supported the order of the authorities below.

9. We have heard the rival contentions of both the parties and perused the materials available on record including the case law cited by the learned AR for the assessee. The provisions of section 80P(2)(a)(i) of the Act provides the deduction to a co-operative society engaged in the business of banking or providing credit facilities to its members. The provisions of the section are without any ambiguity. In other words, the income from the activity of financing from the members is only eligible for deduction under section 80P(2)(a)(i) of the Act. If there is any income arising to the co-operative society from the non-members that will not be subject to deduction under section 80P(2)(a)(i) of the Act. In holding so we draw support and guidance from the judgment of the Hon'ble Gujarat High Court in the case of State Bank of India versus CIT reported in 72 Taxmann.com 64 wherein it was held as under:

The Income Tax Appellate Tribunal was also justified in holding that interest income of Rs. 16,14,579/- and Rs. 32,83,410/- respectively on deposits placed with State Bank of India was not exempt under section 80P(2)(a)(i) of the Income Tax Act, 1961.

9.1 In view of the above, 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 Banks other than cooperative bank is not being attributable to the business as envisaged under the provisions of the Act. Thus the same cannot be deducted under section 80P(2)(a)(i) of the Act.

9.2 Coming to the fact of the case on hand. On perusal of the income & expenditure account of the appellant assessee for the year placed on page 8 of paper book, we find that the gross total income of the appellant assessee is of Rs. 18,74,845/- which included interest income of Rs. 3,32,906/- on investment and Rs. 25,991/- on saving bank account. In view of the above, there remains no ambiguity that income earned by the assessee for ₹ 3,32,906/- on the money invested and Rs. 25,991/- on money deposited in saving bank is not eligible for deduction under section 80P(2)(a)(i) of the Act. However the assessee will be entitle to setoff of corresponding direct expenses against these income. Hence the AO is directed to allow the setoff of the expenses which were directly connected to such interest income.

9.3 Now coming to the case law cited by the assessee, in the case of PCIT vs. Ekta Co-Op Credit Society Ltd (supra) wherein it was held that the credit co-operative society providing credit facility to member is not a co-operative bank for the purpose of provision of section 80P(4) of the Act. The pertinent observation of the Hon'ble Court is reproduced as under:

4. As can be seen from the order passed by the Commissioner (Appeals), he has recorded that the provisions of sub-section (4) of section 80P of the Act would be attracted in case of a cooperative bank other than primary agricultural credit society or a primary cooperative agricultural and rural bank. In terms of clause (a) of the Explanation to section 80P(4), cooperative bank and primary agricultural credit society shall have the meanings respectively assigned to them in Part V of the Banking Regulation Act, 1949. The Commissioner (Appeals) has recorded that the assessee society being a cooperative credit society limited is not a bank as contemplated under the Banking Regulation Act and hence, the provisions of sub-section (4) of section 80P of the Act would not be applicable to it.

5. The Tribunal has concurred with the view adopted by the Commissioner (Appeals). The above view of the Tribunal is fortified by a decision of this court in the case of CIT v. Surat Vankar Sahakari Sangh Ltd., [2014] 225 Taxman 162/43 taxmann.com 431 (Guj.), wherein the court has repelled the contention of the revenue that section 80P(4) would exclude not only the cooperative banks other than those fulfilling description contained therein but also credit societies, which are not cooperative banks. In the facts of the said case, the assessee was a credit cooperative society and not a cooperative bank. The court held that the exclusion clause of sub-section (4) of section 80P of the Act would, therefore, not apply. The above decision would be squarely applicable to the facts of the present case.

6. The impugned order passed by the Tribunal being in consonance with the view adopted by this court in the above decision, does not suffer from any legal infirmity so as to give rise to a question of law, much less, a substantial question of law, warranting interference. The appeal, therefore, fails and is, accordingly, summarily dismissed.

9.4 Thus, the profits and gains attributable to activity of providing credit facilities to the members was held to be allowable deduction under Section 80P(2)(a)(i) of the Act. As such the question of income arising which is not attributable to the credit provided to member was the subject matter before the court in the aforesaid case i.e. PCIT vs. Ekta Co-Op Credit Society Ltd (supra). Thus, we do not find any merits in the argument advanced by the learned counsel for the assessee. Thus, we hold that there is no infirmity in the order of the learned CIT (A), requiring any interference subject to the direction stated above. Hence, the ground of appeal of the assessee is partly allowed.

9.5 In the result, the appeal filed by the assessee is **partly allowed**.

Coming to ITA No. 175/Ahd/2020 an appeal by the assessee corresponding to A.Y. 2018-19

10. The assessee has raised following grounds of appeal

1. *The Id.C.I.T.(Appeals) has erred in law and on facts in passing ex-parte order on the ground of non-compliance treating the e-mail filed on 07/01/2020 as non-authorized inasmuch as that the appeal was filed from the office of A.R.*

2. *The Id.C.I.T.(Appeals) has erred in law and on facts in not deciding the facts on merit and not allowing deduction u/s.80P(2)(a)(i) for Rs.3,03,010/-.*

3. *He has erred in law and on facts in not treating the income of credit society as fully exempt u/s.80P of the Act.*

4. *On the facts of the assessee, no interest ought to have been levied inasmuch as that the income is fully exempt.*

5. *The appellant craves, leave to add, to alter and/or modify any ground of appeal.*

11. At the outset we note that the issues raised by the assessee in its ground of appeal for the AY 2018-19 are identical to the issues raised by the Assessee in ITA No. 504/AHD/2020 for the assessment year 2019-20. Therefore, the findings given in ITA No. 504/AHD/2020 shall also be applicable for the year under consideration i.e. AY 2018-19. The appeal of the Assessee for the assessment 2019-20 has been decided by us vide paragraph Nos. 9 to 9.5 of this order partly in favor of the assessee subject to direction given as discussed above. For detail discussion, please refer the aforementioned paragraph. The learned AR and the DR also agreed that whatever will be the findings for the assessment year 2019-20 shall also be applied for the year under consideration i.e. AY 2018-19. Hence, the ground of appeal filed by the assessee is partly allowed.

11.1 In the result the appeal filed by the assessee is partly allowed.

12. In the combined results both the appeals of the assessee are **partly allowed.**

Order pronounced in the Court on 09/09/2022 at Ahmedabad.

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

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

Ahmedabad; Dated (True Copy)
09/09/2022
Manish