

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

BEFORE MS. SUCHITRA KAMBLE, JUDICIAL MEMBER

I.T.A. No. 499/Ahd/2020
(Assessment Year: 2017-18)

Shri Arbuda Co. Op. Credit Society Ltd., 54/55, Talika Panchayat Market, Chandan Park Society Road, Vishnagar, Gujarat	Vs.	ITO Ward-5, Patan
[PAN No.AAALS2368B]		
(Appellant)	..	(Respondent)

Appellant by :	Shri H. V. Doshi, A.R.
Respondent by :	Shri Rakesh Jha, Sr. DR
Date of Hearing	12.09.2022
Date of Pronouncement	14.10.2022

ORDER

PER Ms. SUCHITRA KAMBLE - JM:

This appeal is filed by the assessee against the order dated 13.08.2020 passed by the Ld. CIT(Appeals)-Gandhinagar, Ahmedabad for A.Y. 2017-18.

2. The grounds of appeal raised by the assessee read as under:

“1. CIT(A) has erred in law and facts in confirming the order of AO for no allowing deduction u/s 80P(2)(a)(i) by considering interest income of Rs. 2,09,123/- from Nationalized bank as income from other sources u/s 56 of IT Act by wrongly applying SC judgment of Totgar co-op sale society (188 Taxman 282 SC) without considering the facts of different nature or business of appellant and different nature or business of appellant and different nature of credit society.

2. CIT(A) has erred in law and facts in confirming the addition of Rs. 2,09,123/- without computing the proportionate deduction u/s 57 from gross interest income as considered income u/s 56 of IT Act.”

3. The assessee is a Credit Society, registered under the Gujarat Co-operative Societies Act, 1961 engaged in the business of providing credit facilities to members of the society as per the bye-laws of the Society. The assessee society filed return of income on 22.05.2017 at Rs. Nil and claimed deduction under Section 80P amounting to Rs. 13,85,077/-. The Assessing Officer disallowed the deduction under Section 80P of the Act and determined the income of the assessee at Rs. 2,09,120/-.

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

5. As regards to Ground No. 1, the Ld. AR has not pressed the ground. Hence, Ground No. 1 is dismissed.

6. As regards to Ground No. 2, the Ld. AR submitted that the CIT(A) has not considered the facts on record that the Assessing Officer has not pointed out anywhere in assessment order about nexus of the source of the investment out of interest free fund only. The assessee submitted that the decision of Ahmedabad Tribunal in case of Balasinor Vikas Co-op. Credit Society Ltd. (ITA No. 08/Ahd/2018 order dated 04.02.2020) in which working for disallowance of claim under Section 80P in such situation was given but the CIT(A) had not referred the said decision and simply dismissed the ground by relying on assessment order and by referring judgments irrelevant to the assessee's case. The Ld. AR submitted that as such investments as well as procurement of deposits from members are part of business and working capital so nexus of one to one is not practicable to

produce for verification. So it is normal presumption that bank deposit is made out of the mix funds which include interest free funds as well as interest bearing funds. The Ld. AR further submitted that since the assessee did not fall within the provisions of Section 80P(2)(a)(i) of the Act then deduction claim be reduced proportionately in the ratio of nationalized bank interest to total income and thus assessee agree for proportionate disallowance as under:

Sr. No	Particular	Amount
1	Interest earned from nationalized bank	2,09,123
2	Total interest earned by the Society	21,09,199
3	Proportion of (1) and (2)	9.91%
4	Deduction claimed u/s 80P	13,85,077
5	Proportionate deduction to be disallowed (13,85,077*9.91%)	1,37,261

The Ld. AR submitted that the decision of the Hon'ble Karnataka High Court in case of M/s The Totgars Co-operative Sale Society Ltd. vs. ITO (2015) ITL 1022 held that deduction u/s 57(iii) be allowed in respect of expenses proportionate to income. The Ld. AR also relied upon the decision of the Tribunal in case of Abhay Co-op. Credit Society Ltd. vs. ITO ITA No. 1551/Ahd/2019 (Ahd. Tri.). The Ld. AR prayed that the claim for deduction u/s 57 of Income Tax Act, 1961 be allowed in respect of proportionate expenses as its claim did not fall within the provisions of Section 80P(2)(a)(i) of the Act and so deduction of claim be reduced proportionately in the ratio of nationalized bank interest to total income and addition of Rs. 1,37,161/- only be made by making proportionate

disallowance and after considering deduction of Rs. 50,000/- u/s 80P(2)(c)(ii) as allowed by CIT(A), net addition to the extent of Rs. 87,161/- should be restricted.

7. The Ld. DR relied upon the assessment order and the order of the CIT(A).

8. I have heard both the parties and perused all the relevant material available on record. It is pertinent to note from the submissions of the Ld. AR that the assessee has earned interest income from the investment made with nationalized bank which is not allowable for granting deduction u/s 80P(2)(a)(i) of the Act. But the submission of the Ld. AR that the assessee incurred the expenditure to earn the total interest from the actual investment including that of nationalized bank appears to be correct. The finding of the decision in case of Abhay Co-op. Credit Society Ltd. vs. ITO (ITA No. 1551/AHD/2019 order dated 08.12.2021) is apt in assessee's case. The Tribunal held as under:

“7. In the present case, the assessee has earned income from the investment made with nationalized bank. Therefore, such income will not qualify for grant of deduction under Section 80P(2)(a)(i) as well as under section 80P(2)(d) because it is not from cooperative society, in view of the above judgment of Hon'ble Gujarat High Court. However, we find merit in the contention of the assessee that expenditure should be allowed in respect of interest income earned from the investments. If the component of income does not qualify for grant of deduction under Section 80P(2)(a)(i), then such income should be computed on net basis; any expenditure relatable to earning of such income is to be allowed before calculating exclusion of such amount for the purpose of 80P(2)(a)(i) of the Act. Since interest income earned by the assessee was treated to be “income from other sources” under section 56, then, the assessee can claim deduction under section 57 of the Act. Therefore, we direct the AO to allow expenditure for earning such interest income. In other words, the ld. AO has to determine the net interest income earned by the assessee after giving set off expenditure, and only thereafter that net income

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has to be excluded from the admissibility of deduction under section 80P(2) of the Act. Grounds of appeal of the assessee are thus partly allowed for statistical purpose.”

In fact, in the present case as well the assessee had given before us the proportionate deduction to be disallowed which is reproduced in para 6 in the form of Table. Thus, I direct the Assessing Officer to allow expenditure for earning such interest income after considering deduction of Rs. 50,000/- under Section 80P(2)(c)(ii) as allowed by the CIT(A) and restrict the addition accordingly. Hence, Ground No. 2 is partly allowed for statistical purpose.

9. In result, appeal of the assessee is partly allowed for statistical purpose.

This Order pronounced in Open Court on

14/10/2022

Sd/-
(Ms. SUCHITRA KAMBLE)
JUDICIAL MEMBER

Ahmedabad; Dated 14/10/2022

TANMAY, Sr. PS

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आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad