

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

BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.37/AHD/2022
निर्धारण वर्ष/Asstt. Year:2017-2018

Suramya Adobe Co-operative Housing Services Society Limited, B-701 Safal Pegasus, Near Auda Garden, Prahladnagar, Ahmedabad-380015. PAN: AAFAS5167G	Vs.	Income Tax Officer, Ward-3(3)(5), Ahmedabad.
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(Applicant)		(Respondent)
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Assessee by :	Shri S.N. Divatia, A.R
Revenue by :	Shri Atul Pandey, Sr. D.R

सुनवाई की तारीख / **Date of Hearing** : **29/09/2022**
घोषणा की तारीख / **Date of Pronouncement**: **31/10/2022**

आदेश/ORDER

PER WASEEM AHMED, ACCOUNTANT MEMBER:

The captioned appeal has been filed at the instance of the Assessee against the order of the Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC) Delhi, dated 17/12/2021 arising in the matter of assessment order passed under s. 143(3) of the Income Tax Act, 1961 (here-in-after referred to as "the Act") relevant to the Assessment Year 2017-18.

2. The assessee has raised following grounds of appeal:

The learned CIT(A) erred in confirming the action of A.O ward 3(3)(5) in holding that the deduction claimed by the assessee u/s.80P amounting to Rs.23,06,907/- is not allowable.

Reliance is placed on Honourable Gujarat High Court decision in the case of CIT II vs. Sabarkantha District Cooperative Milk Producers Union Ltd.- tax appeal no.473/2014 dated 16.6.2014.

3. The 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 ₹ 23,06,907/- by disallowing the deduction claimed under section 80P(2)(d) of the Act.

4. The facts in brief are that the assessee in the present case is a Housing Co-operative society and works for the benefit of members as mutual concern. In the year under consideration the assessee has shown interest income of Rs. 23,06,907/- from advances given to other co-operative society namely M/s Nandoli Annex Co-op Housing Society Ltd. The assessee claimed 100% deduction of the same under the provision of section 80P(2)(d) of the Act. As per the AO, the impugned amount of interest was not arising to the assessee from the activities of collecting maintenance fee/deposit from member and incurring the same for the benefit of member. The AO also found that the assessee on one hand accepted interest free unsecured loan from M/s Raintree Café LLP and same transferred was to Nandoli Annex Co-op Housing Society Ltd and collected interest income of Rs. 23,06,907/-. These transaction between these 3 parties carried out for whole year. Thus, the AO was of the view that the assessee is carrying out business activity which is taxable as there is no concept of mutuality in earning impinged income as there is no contribution from the member for the specified activity. Thus, the AO held that the interest income of ₹ 23,06,907/- earned on the loan and advances to a person other than member is not eligible for deduction under section 80P(2)(d) of the Act.

5. Aggrieved assessee preferred an appeal to the learned CIT (A) who confirmed the order of the AO.

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

7. The learned AR before us submitted that the interest income on the deposits made with the co-operative society is eligible for deduction under section 80P(2)(d) of the Act.

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

9. I 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)(d) of the Act provides the deduction to a co-operative society in respect of interest and dividend income derived from investment made in other co-operative society. In the case on hand interest income derived by the assessee from advance given to other cooperative society namely Nandoli Annex Co-op Housing Society Ltd. The question before me arise whether such income is eligible for deduction under section 80P(2)(d) of the Act. In my considered opinion, the assessee is eligible to claim deduction against such income. In holding so, we find support and guidance from the judgment of Hon'ble Gujarat High Court in case *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.

9.1 We also find that in 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 nationalized/private banks, however, said benefit was available in respect of interest earned on deposits made with co-operative bank. Likewise, 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 cooperative 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.

9.2 In view of the above and respectfully, following the decision of Hon'ble High Court of Gujarat and other cases cited above, we hold that interest earned by the assessee on surplus held with cooperative society would be eligible for deduction under Sec. 80P(2)(d) of the Act. Hence the grounds of appeal of the assessee is hereby allowed.

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

Order pronounced in the Court on 31/10/2022 at Ahmedabad.

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

Ahmedabad; Dated
Manish

(True Copy)
31/10/2022

आदेश की प्रतिलिपि ग्रेषित/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 / DR,
ITAT,
6. गार्ड फाइल / Guard file.

आदेशानुसार/ BY ORDER,

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