

IN THE INCOME TAX APPELLATE TRIBUNAL  
RAJKOT BENCH, RAJKOT

[ CONDUCTED THROUGH VIRTUAL COURT ]

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

**ITA No. 04/Rjt/2020  
Assessment Year 2016-17**

Rajkot Jilla Co-Op Cotton Marketing Union Ld. Rajkot PAN: AAAAR4310H (Appellant)	Vs	The ITO, Ward-2(1)(5), Rajkot (Respondent)
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**Assessee by: Shri Gaurang Khakhar, A.R.  
Revenue by: Shri B.D. Gupta, Sr. D.R.**

Date of hearing : 06-10-2022  
Date of pronouncement : 13-12-2022

**आदेश/ORDER**

**PER : SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER:-**

This assessee's appeal for A.Y. 2016-17, arises from order of the CIT(A)-2, Rajkot dated 16-12-2019, 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:-

<i>Sr. No.</i>	<i>Grounds of Appeal</i>	<i>Tax effect relating to each Ground of appeal</i>
1	<i>On the facts and in the circumstances of the case, the order passed by the learned Ld.CIT(A) u/s. 250 of the I.T. Act is ab initio void being bad in law.</i>	
2	<i>On the facts and in the circumstances of the case, the learned CIT(A) erred in confirming disallowance of deduction u/s 80P(2)(d) of the I T Act, 1961 for Dividend Income earned from another Co-Op Society.</i>	<i>Rs. 17,64, 000/-</i>
3	<i>On the facts and in the circumstances of the case, the learned CIT(A) erred in confirming disallowance of deduction u/s 80P(2)(d) of the I T Act, 1961 for Interest Income earned from another Co-Op Society.</i>	<i>Rs. 42,22,641/-</i>
4	<i>Your Honour's Assessee pray to produce any other materials on fact in support of the case during the hearing.</i>	<i>Rs. 59,86,641/-</i>
5	<i>Total Tax Effect</i>	

3. The brief facts of the case are that the assessee is a registered co-operative society engaged in the business of providing pesticides to its members. During the year under consideration, the assessee earned interest and dividend income from its investment in Rajkot District Co-operative Bank Ltd out of its surplus funds. The AO held that the income is neither exempt under section 80P(2)(a)(i) nor under section 80P(2)(d) of the Act. In appeal, Ld. CIT(Appeals) dismissed the assessee's appeal holding that in the instant set of facts, the Karnataka High Court in the case of PCIT v. Totgars Co-operative Sale Society Ltd 83 Taxman.com 140(Kar) has held that it is only primary agricultural credit society with its limited work of providing

credit facilities to its members which is covered by ambit and scope of deduction under section 80P and further stated that interest income earned from surplus deposit with co-operative bank is not entitled for deduction under section 80P(2)(d) of the Act. The Ld. CIT(Appeals) held that the aforesaid decision is directly against the assessee and further held that reliance placed by the assessee on the case of **State Bank of India v CIT (2016) 72 taxmann.com 64 (Gujarat)** cannot be accepted since in this case the remarks made by the jurisdictional Gujarat High Court are by way of *obiter dicta* and hence the same are not binding in the facts of the assessee's case. Accordingly, Ld. CIT(Appeals) dismissed the assessee's appeal with the following observations:

*"6. Decision*

*Brief facts of the case are that the assessee is a registered Cooperative society engaged in activity of providing pesticides to its members, The assessee has earned interest and dividend income from its investments in the Rajkot District Co-operative Bank Limited out of the surplus. The A.O has held that this income is neither exempt u/s 80P(2)(a)(i) nor u/s 80P(2)(d). The assessing officer has brought out that "as per decision of HonWe Karnataka High Court in the case of Principal CIT, Hubli V/s Tatagars Co-Operative Sale Society 83 tamann.com 140 (dated 16.062017) whrerein it was held that interest earned by assessee, a co-operative society, from surplus deposits kept with a co-operative bank was not eligible for deduction u/\$,8GP(2)(d) of the Act Further, the review petition filed in this case was also dismissed by the Hon We Karnataka High Court dated 22.09.2017.*

*Moreover, as per decision of Hon'ble Supreme Court in the case of Totgars Co-operative Sale Society Ltd Vs ITO [2010] 322 283/188 Taxman 282, wherein it was held that the asessee being Co-Operative Society is engaged in providing credit facilities to its members or marketing agricultural product of its members, interest earned by it by investing surplus funds in short term deposits would fall under the head "income from other sources" taxable u/s,S6 of the I.T. Act, and it cannot be said to be attributable to the activities of the Society and therefore, the interest did not qualify-: for deduction u/s. 80P(2)(a)(i) of the I T Act"*

*The assesses on the other hand has contended that these decisions do not apply to the case of assesses as assessee has claimed deduction u/s 80P(2)(d) not u/s 80P(2)(a)(i), Inter-alia assessee has placed reliance upon decision of ITAT Ahmedabad in the case of Uttar Gujarat Uma Co-operative Society Ltd, vs ITO ITA No. 1670 & 1671 dated 28/02/2019 (Supra) wherein the Interest earned on the surplus funds from Co-operative banks/societies has been held to be allowable.*

*I find that the ITAT Ahmedabad in the case of Uttar Gujarat Uma Cooperative Society Ltd. vs ITO ITA No. 1670 & 1671/Ahd/2018 dated, 28/02/2019 (Supra) relied upon by assessee has observed that the Gujarat High Court in the State Bank of India vs CIT (2016) 72 taxmann.com 64 (Gujarat) (Supra) and Sabarkantha Districe Cooperative Milk Producers Union Ltd, in tax Appeal No, 473 of 2014 (Supra) have observed, as obiter dicta, that interest earned on fixed deposits held with Co-operative bank can be said to qualify for deduction u/s SOP of the Act. The ITAT has categorically mentioned that such observations appear to be in the nature of and obiter on the context of those cases. As regards the decision of Hon'ble Karnataka High Court in the case of Totagar's Co-operative Sale Society Ltd. vs. ITO [2010] 322 ITR 283/188 Taxman 282 (SC) (Supra), the ITAT has stated that the Hon'ble Karnataka High Court, in holding that interest income not arising from business operation is not eligible for deduction u/s 80P, was guided by nature of activity to determine the character of the income for the purpose of section 80P(2)(d) and that the decision of Hon'ble High Court appears to be sub-silentio.*

*On the other hand I find that the Hon'ble Karnataka High Court in the case of PCIT vs. Totagar's Co-operative Sale Society Ltd, 83 taxmann.com 140 (KAR) has categorically held that "It Is only primary agricultural credit society with its limited work of providing credit facilities to its member which is governed by ambit and. scope of deduction, u/s SOP and further stated that interest income earned from surplus deposit with co-operative bank is not entitled for deduction 80P(2)(d)."*

*Quoting extensively from this decision the Hon'ble ITAT Ahmedabad In the case of Government Servants Co-Op. vs ITO ITA No.108/Ahd/2017 dated 31/01/2019 (Supra) has held that "the income by wav of interest earned by deposit or investment of idle or surplus funds 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 as such interest income is not attributable to **business** operations of the assesses".*

*I thus find that there are two contrary decisions of Hon'ble ITAT Ahmedabad on the issue. In the decision in the case of Government Servants Co-Op, vs ITO ITA No.108/Ahd/2017 dated 31/01/2019 (Supra) the Hon'ble ITAT has relied upon*

*decision of Karnataka High Court (83 taxmann.com 140) and held that the assessee was not eligible for deduction u/s 80P(2)(d) even if the surplus was invested with the Co-operative bank. In the case of Uttar Gujarat Uma Co-operative Society Ltd, vs ITO ITA No, 1670 & 1671/Ahd/2018 dated 28/02/2019 Hon'ble ITAT, observing that the decision rendered by Hon'ble Karnataka High Court appears to be sub-silentio and that the obiter dicta in cases of State Bank of India and Sabarkantha District Co-operative Milk Producers Union Ltd. in tax Appeal No. 473 of 2014 support their view, the ITAT Ahmedabad has held that the interest earned in the fixed deposits with the Co-operative bank can be said to be qualified for deduction u/s SOP, In other words the decision of the ITAT in the case of Government Servants Co-Op, vs ITO ITA No.108/Ahd/2017 dated 31/01/2019 (Supra) is based statedly on decision of Hon'ble Karnataka High Court while the decision in of Uttar Gujarat Uma Co-operative Society Ltd. vs ITO ITA No. 1670 & 1671/Ahd/2018 dated 28/02/2019 (Supra) is based on obiter dicta of the **Hon'ble** Gujarat High Court and the opinion of ITAT that decision rendered by the Hon'ble Karnataka High Court appears to be sub-silentio.*

*Having considered facts and circumstances of 'the case, In my considered opinion the former decision based on direct decision of Hon'ble Karnataka High Court rather than the latter decision based on obiter dicta carries more weight. Therefore respectfully following former decision of Hon'ble ITAT Ahmedabad, the ground of appeal is rejected.*

*7. For statistical purpose, the appeal of the assesses is to be treated as dismissed.”*

4. The assessee is in appeal before us against the aforesaid order passed by Ld. CIT(Appeals). The issue for consideration before us is whether the assessee is eligible to claim deduction on interest earned from Co-Operative Banks u/s 80P(2)(d) of the Act. In our considered view, Ld. CIT(A) has erred in law in holding that the observations of the Hon'ble Gujarat High Court in the case of **State Bank of India Vs. CIT (2016) 389 ITR 578 (Guj)**, to the effect 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 have no binding effect on the jurisdictional Revenue Authorities. 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.***

4.1 The Kolkata ITAT in the case of **Subhlakshmi Vanijya (P.) Ltd. v. CIT [2015] 60 taxmann.com 60 (Kolkata - Trib.)** has held that even the obiter of the jurisdictional High Court has a binding force on the lower authorities. The ITAT made the following observations in this regard:

*13.s. Be that as it may, even obiter of the jurisdictional High Court cannot be held as non-binding. The Hon'ble Bombay High Court in Tata Iron & Steel Co. Ltd. v. D.V. Bapat , ITO [1975]101 ITR 292, has held that obiter dicta of Supreme Court is binding on all High Courts. When the obiter dicta of Supreme Court is binding on all High Courts, we fail to appreciate as to how obiter dicta of the Hon'ble jurisdictional High Court can be claimed as not binding on*

*all the authorities falling within its jurisdiction. We, therefore, refuse to accept this contention.*

4.2 Therefore, in our view, the Ld. CIT(A) has erred in law and in facts in holding that the above order of the jurisdictional Gujarat High Court in the case of **State Bank of India Vs. CIT (2016) 389 ITR 578 (Guj)** has no binding effect on the jurisdictional Revenue authorities.

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

4.4 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) 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.**

4.5 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.

4.6 Respectfully following the decision of Honourable High Court of Gujarat and other cases cited above, in our view, dividend income and interest earned by the assessee on surplus held with cooperative bank would be eligible for deduction under Sec.80P(2)(d) of the Act.

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

Order pronounced in the open court on 13-12-2022

**Sd/-**  
**(WASEEM AHMED)**  
**ACCOUNTANT MEMBER**  
**Ahmedabad : Dated 13/12/2022**

**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