

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.108/AHD/2021
निर्धारण वर्ष/Asstt. Year:2017-2018

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| Jilla Panchayat Na Karmacharioni Dhiran Ane Grahak Sahakari Mandali Ltd., 0, Motibaug Road, Near Town Hall, Bhavnagar-364001. PAN: AACAJ3104B | Vs. | The A.C.I.T., Circle-1, Bhavnagar. |
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| (Applicant) | | (Respondent) |
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| Assessee by : | Shri Parimalsinh B. Parmar, A.R |
| Revenue by : | Shri Atul Pandey, Sr. D.R |

सुनवाई की तारीख / **Date of Hearing** : **12/10/2022**
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 24/03/2021 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:

1. *The learned CIT(A) has erred both in law and on the facts of the case in confirming the action of AO in changing the head of income and treating business income of Rs.3,11,334/- as income from other sources u/s.56 of the Act.*

2. *The learned CIT(A) has erred both in law and on the facts of the case in confirming the disallowance of deduction of interest income of Rs.3,11,334/- u/s.80P(2)(a)(i) of the Act.*

3. *Ld. CIT(A) has erred in law and on facts in not appreciating that the deposit in question was placed with Saurashtra Gramirj Bank and Bhavnagar District Co-op Bank out of commercial expediency, for maintaining liquidity ratio and in connection with business needs of the appellant. Therefore, interest income earned on such deposit is entitled for deduction u/s 80P(2)(a)(i) of the Act.*

4. *Alternatively and without prejudice, only net interest income can be excluded from the business income while computing deduction u/s 80P(2)(a)(i) of the Act and not the gross interest receipt*

5. *Alternatively and without prejudice, the Id. CIT(A) has erred in law and on facts in not allowing the interest received from co-operative banks as deduction u/s.80P(2)(d) of the Act.*

6. *Both the lower authorities have passed the orders without properly appreciating the facts and they further erred in grossly ignoring various submissions, explanations and information submitted by the appellant from time to time which ought to have been considered before passing the impugned order. This action of the lower authorities is in clear breach of law and Principles of Natural Justice and therefore deserves to be quashed.*

7. *The learned CIT(A) has erred in law and on facts of the case in confirming action of the Id.AO in levying interest u/s.234A/B/C of the Act.*

8. *The learned CIT(A) has erred in law and on facts of the case in confirming action of the Id.AO in initiating penalty u/s.270A of the Act.*

9. *The appellant craves leave to add, amend, alter, edit, delete, modify or change all or any of the grounds of appeal at the time of or before the hearing of the appeal.*

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 ₹ 3,11,334/- by disallowing the deduction claimed under section 80P(2)(a)(i) of the Act as well

as, without prejudice, proportionate expenses against such income should be allowed.

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 apart from interest income earned from credit facilities provided to its member, also earned interest of ₹ 3,11,334/- from the fixed deposit made with Saurashtra Gramin Bank (₹ 1,62,356/-) and Bhavnagar District Co-Operative Bank (₹ 1,48,978). As per the AO, the impugned amount of interest was not arising to the assessee from the activities of providing credit facility to the members. Thus, the AO held that the interest income of ₹ 3,11,334/- earned on the fixed deposits is not eligible for deduction under section 80P(2)(a)(i) of the Act. The AO also held that the impugned income also not deductible under section 80P(2)(d) of the Act as the provision of section 80P(2)(d) restricts the deduction only to the income derived by a cooperative society from investment in other cooperative society, whereas cooperative bank is not a cooperative society for reason that same is governed by the RBI Act rather state cooperative Act. The cooperative society is allowed to accept deposit and extend credit only to member whereas cooperative bank can accept deposit and extend credit facility to non-member also. Hence, the concept of mutuality lost in case of cooperative bank. The AO in this regard placed reliance on the judgment of Hon'ble Gujarat High Court in case of CIT vs. Adarsh Housing Co-op Society Ltd reported in 213 ITR 677. The AO also held that the cooperative bank expressly held outside the ambit of cooperative society by the provision of section 80P(4) of the Act. The AO in this regard also referred the judgment of Hon'ble Karnataka High Court in case of Totagars Co-operative Sale Society Ltd vs. PCIT reported in 83 taxmann.com 140. Thus, the AO in view of the above treated income from fixed deposit as taxable income from other source under section 56 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 ITAT.

7. The learned AR before me filed a paper book running from pages 1 to 40 and submitted that the assessee is eligible for deduction in respect of the interest income from the co-operative bank 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)(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 Now coming to the fact of the case on hand where interest income derived by the assessee from fixed deposit made with cooperative bank and the question before me arises whether such income is eligible for deduction under section 80P(2)(d) of the Act. In this regard we note that the Hon'ble Gujarat High Court in case of Surat Vankar Sahakari Sangh Ltd. v Assistant Commissioner of Income-tax [2016] 72 taxmann.com 169 (Gujarat), has 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.

9.3 I 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.

9.4 In view of the above and respectfully, following the decision of Hon'ble High Court of Gujarat and other cases cited above, in my view, interest earned by the assessee on surplus held with cooperative bank 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