

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH (SMC), SURAT  
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER

ITA No. 189/Srt/2022 (Assessment Year: 2014-15)  
(Virtual hearing)

A.C.I.T., Circle-1(3), Surat.	Vs.	Sarjan Cooperative Society Ltd., Sarjan Bhavan, Athwalines, Surat-395007 <b>PAN No. AADAS 2575 C</b>
Appellant/ assessee		Respondent/ revenue

Department represented by	Shri Vinod Kumar, Sr. DR
Assessee represented by	Shri Esmayeel Seherwala, A.R.
Date of hearing	03/01/2023
Date of pronouncement	03/01/2023

**Order under Section 254(1) of Income Tax Act**

**PER: PAWAN SINGH, JUDICIAL MEMBER:**

1. This appeal by the revenue is directed against the order of National Faceless Appeal Centre, Delhi (in short, the NFAC)/learned Commissioner of Income Tax (Appeals) (in short, the Id. CIT(A) dated 11/05/2022 for the Assessment year (AY) 2014-15. The revenue has raised following grounds of appeal:

*“(i) On the facts and in the circumstances of the case and in law, the learned Commissioner of income Tax (Appeals) has erred in deleting the addition made by the AO on account of disallowance of deduction claimed by the assessee U/s 80P(2)(d) of the Act of Rs, 31,57,772/- as the interest received from the Surat District Co Operative bank does not qualify for the deduction U/s 80P(2)(d) of the Act.*

*(ii) On the facts and circumstances of the case and in Law, the Ld. CIT(A) has erred in deleting the addition made by the AO ignoring the decision of Hon'ble Supreme Court in the case of Totgars Co Operative Sale Society Ltd reported in 322 ITR 283, wherein it was held that interest earned from*

*investment made in any bank not being Cooperative society , is not eligible for deduction U/s 80P(2)(d) of the Act.*

- (iii) On the facts and in the circumstances of the case and in Law, Ld. CIT(A) has erred in not appreciating the fact that such interest income on its surplus and idle funds not immediately required for its business , is not income from business taxable U/s 28 of the Act but taxable as income from others sources U/s 56 of the Act, whereas for availing the exemption or 100% deduction U/s 80P of the Act, the income specified in clauses (a) to (f) of sub section (2) of section 80P which should be its business or operational income.*
- (iv) On the facts and circumstances of the case and in Law, the Ld. CIT(A) has erred in deleting the addition made by the AO ignoring the decision of Hon'ble High Court of Karnataka in the case of Totgars Cooperative sale society (2017)395 ITR, has held that the intention of legislature is clear that cooperative banks are not specie of genus cooperative society , which would entitle to exemption or deduction under the special provisions of chapter VI-A in the form of section 80P of the Act. This finding has also been approved by the Hon'ble High Court judgment of the Hon'ble High Court of Gujarat in the case of Katlary Kariyana Merchant Sahkari Sarafi mandali Ltd for A.Y 2015-16 in R/SCA No.20585 of 2019.*
- (v) It is therefore, prayed that the order of the Ld. CIT(A) may be set aside and that of assessing officer may be restored to the above extent.*
- (vi) The appellant craves leave to add, alter, amend and/or withdraw any ground(s) of appeal either before or during the course of hearing of the appeal."*

2. At the outset of hearing, the learned Authorised Representative (Id. AR) of the assessee submits that the grounds of appeal raised by revenue are covered in favour of assessee by the decision of this Tribunal in assessee's own case in ITA No. 718/Srt/2018 dated 23/08/2021. The Id. AR of the assessee submits that the addition in the assessment order under section

143(3) rws 263 dated 28/06/2018 was made by the Assessing Officer in pursuance of direction of Id. Principal Commissioner of Income-tax (Pr.CIT) under Section 263 of the Act dated 10/10/2018. The Id. AR further submits that the order of Id. Pr. CIT under Section 263 dated 10/10/2018 was challenged by the assessee before the Tribunal vide ITA No. 718/Srt/2018 wherein said was quashed/set aside, therefore, the addition made in assessment order has become *void ab initio*. The Id. CIT(A) deleted the addition by following the order of Tribunal dated 23/08/2021 in ITA 718/Srt/2018. The Id. AR submits that he has already placed on record copy of decision of Tribunal in ITA No. 718/Srt/2018 (supra).

3. On the other hand, the learned Senior Departmental Representative (Id. Sr. DR) for the revenue submits that the order of Tribunal in quashing/setting aside the order dated 10/10/2018 is already challenged before the Hon'ble Jurisdictional High Court, therefore, to keep the issue alive, the present appeal is filed. The Id. Sr. DR submits that he relied on the order of Id. Pr. CIT dated 10/10/2018 and the assessment order dated 28/06/2018.
4. I have considered the submissions of both the parties and have gone through the orders of lower authorities carefully. I have also perused the order of Division Bench of this Tribunal in ITA No. 718/Srt/2018 (supra) wherein the order of Id. Pr.CIT passed under Section 263 dated 10/10/2018 was set aside. Considering the fact that once the revision

order dated 10/10/2018 is quashed/set aside, consequent assessment order passed, while giving effect to revision order is thereafter *void ab initio*. Hence, I do not find any merit in the grounds of appeal raised by the revenue and same is dismissed.

5. In the result, this appeal of revenue is dismissed.

Order pronounced in the open court on 3<sup>rd</sup> January, 2023.

Sd/-  
**(PAWAN SINGH)**  
**JUDICIAL MEMBER**

Surat, Dated: 03/01/2023

*\*Ranjan*

Copy to:

1. Assessee
2. Revenue
3. CIT(A)
4. CIT
5. DR
6. Guard File

By order

Sr.Private Secretary, ITAT, Surat