

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

ITA No. 251/Srt/2022 (Assessment Year: 2018-19)
(Virtual hearing)

Vapi Marchant Saving And Credit Cooperative Society Limited, Office No. 130, First Floor, Varun Complex, Opp. Reliance Super Market Gide, Vapi (Gujarat). PAN No. AAAAV 3925 E	Vs.	I.T.O., e-assessment Centre, Delhi.
Appellant/ assessee		Respondent/ revenue

Appellant represented by	Shri Mahesh Chhajed, AR
Respondent represented by	Shri Vinod Kumar, Sr. DR
Date of hearing	30/01/2023
Date of pronouncement	30/01/2023

Order under Section 254(1) of Income Tax Act

PER: PAWAN SINGH, JUDICIAL MEMBER:

1. This appeal by the assessee is directed against the order of learned National Faceless Appeal Centre, Delhi (NFAC)/learned Commissioner of Income Tax (Appeals) (in short, the Id. CIT(A) dated 29/03/2022 for the Assessment year (AY) 2018-19. The assessee has raised following grounds of appeal:

- “1. The order passed by the Ld. CIT(A) is bad and illegal as it is in violation of principle of natural justice.
2. The Id. CIT(A) has erred in law and on facts in upholding disallowance of claim made by the appellant U/s 80P of the Act of Rs. 14,37,300/-.
3. The appellant craves liberty to add, amend, alter or modify all or any grounds of appeal before final appeal.”

2. At the outset of hearing, the learned Authorised Representative (Id. AR) of the Assessee submits that the grounds of appeal raised by the

assessee is covered by the various decisions of different Hon'ble High Courts as well as Tribunal wherein it has been held that interest earned by Cooperative Society from Cooperative Bank, which are primarily Cooperative Society is exempt under section 80P(2)(d). The Id. AR of the assessee submits that during the period under consideration, the assessee earned total interest income from its member and other interest income from other cooperative societies/ Cooperative Banks of Rs. 14,41,180/-. The assessee has earned interest income of Rs. 14,37,300/- from other cooperative banks, which is exempt under Section 80P(2)(d) of the Income Tax Act, 1961 (in short, the Act). The Id AR for the assessee submits that he has given complete details of interest income earned from various co-operative banks. To support his submission, the Id. AR of the assessee relied upon the following case laws:

- (i) Pr.CIT Vs Totagars Co-operative Sale Society (2017) 78 taxmann.com 169 (Karnataka).
 - (ii) Kaliandas Udyog Bhavan Premises Co-Op Society Ltd. Vs ITO (2018) 94 taxmann.com 15 (Mum Trib)
 - (iii) Lands End Co-operative Housing Society Ltd. Vs ITO ITA No. 3566/Mum/2014.
 - (iv) M/s Honnali Credit Co-op society Ltd. Vs ITO ITA No. 2752 & 2753/Bang/2017
 - (v) Karnataka State Co-operative Federation Ltd. Vs ACIT (2021) 123 taxmann.com 399 (Bang-Trib)
 - (vi) Mantola Co-operative Thrift & Credit Society Ltd. Vs ITO (2020) 118 taxmann.com 276 (Delhi-Trib).
3. On the other hand, the learned Senior Departmental Representative (Id. Sr. DR) for the Revenue supported the orders of lower authorities.

4. I have considered the submissions of both the parties and have gone through the orders of lower authorities carefully. I find that during the assessment, the Assessing Officer noted that the assessee has claimed deduction under Section 80P(2) of the Act of Rs. 29,04,649/-. The Assessing officer issued show cause notice to justify such deduction. The assessee filed its reply dated 08/12/2020 alongwith certain information and documents. The assessee was asked to furnish audit report, balance sheet and Profit & Loss Account (P&L Account) with computation of income. The assessee filed its response to said show cause notice vide reply dated 04/02/2021. In the reply, the assessee stated that Rs. 14,37,300/- was interest income received on FDRs with Cooperative bank and the assessee is eligible for deduction under Section 80P of the Act within the purview of this Section. The reply of assessee was not accepted by the Assessing Officer. The Assessing Officer noted that the Hon'ble Karnataka High Court in Totagars Co-operative Sale Society, Sirsi 83 taxmann.com 140 (Kar), wherein it was held that co-operative banks are distinct from co-operative societies and interest income from cooperative banks is taxable as income from other sources like interest income from commercial banks. On the basis of such observation, the Assessing Officer treated the interest income at Rs. 14,37,300/- as income from other sources.

5. On appeal before the Id. CIT(A), the action of Assessing Officer was upheld. I find that before the Id. CIT(A), the assessee made similar submission that the assessee is a cooperative society and income earned from cooperative bank which are primarily a cooperative society is exempt. The assessee also relied upon the subsequent decision of Hon'ble Karnataka High Court in Pr.CIT Vs Totagars Co-operative Sale Society (supra) and other decisions of different Benches of the Tribunals. The Id. CIT(A) after considering the submissions of assessee, upheld the action of Assessing Officer. I find that the grounds of appeal raised by assessee is squarely covered by the decision of Division Bench of this Tribunal in a series of decisions, including the decision in Bardoli Vibhag Gram Vikas Co.Op. Credit Society Ltd. vs. Principal Commissioner of Income Tax-2, Surat [2021] 127 taxmann.com 334 (Surat-Trib.) wherein the division bench of this Tribunal has passed following order;

“11. We have considered the rival submission of both the parties. We have also deliberated on the written submission filed by learned AR of the assessee and various case laws relied by him during his submission. We have also gone through the various documentary evidences filed in the form of paper book (PB) by learned AR of the assessee. We have noted that during the assessment the Assessing Officer vide notice under section 143(2)/142(1) of the Act dated 31-8-2015 and 13-4-2016. The assessee filed its reply through its CA (AR) and furnished required details and after examining the issue allowed the deductions under section 80P(2)(d) as discussed in para 4 of the assessment order. The Assessing Officer passed assessment order on 18-10-2016.

12. *The Id. PCIT before passing under section 263 of the Act, identified the issue regarding the claim of deduction under section 80P(2)(d) in its show cause notice dated 6-3-2019. The assessee in its reply dated 7-3-2019 clearly explained that the issue was examined by Assessing Officer and that the assessment order is not erroneous. The assessee also explained that similar disallowances/issues was subject matter in the appeal filed by the revenue before Tribunal in A.Y. 2009-10, 2010-11 and 2012-13 and the assessee was allowed similar deductions.*
13. *The Hon'ble Jurisdictional High Court in Aryan Arcade Ltd. v. Pr. CIT [2019] 412 ITR 277 (Gujarat) held that merely because Commissioner held a different belief that would not permit him to take the order in revision, it if further held that when Assessing Officer made full enquiry, he made up his mind, the notice of revision is not valid. (emphasis added by us). Further, Hon'ble Madras High Court in CIT v. Mepco Industries Ltd. [\[2007\] 163 Taxman 648/294 ITR 121 \(Madras\)](#) held that when two views are possible on an issue and it is not the case of the Commissioner that the view taken by Assessing Officer is not permissible in law, Commissioner cannot invoke his jurisdiction under section 263 of the Act. (emphasis added by us)*
14. *As we have noted above the assessing officer has made enquiries on the allowability of deduction under section 80(P)(2)(d) and passed the assessment order, thus, the Assessing Officer has taken a reasonable and possible view which cannot be held as erroneous.*
15. *The Hon'ble Karnataka High Court in Totagars Cooperative Sales Society (supra) held that for the purpose of section 80P(2)(d) a Co-operative Bank should be considered by a Co-operative Society and interest earned by Co-operative Society from Cooperative Bank would necessarily be deductible under section 80P(1) of the Act. Further, the Hon'ble Jurisdictional High Court in Surat Vankar Sahakari Sangh Ltd. (supra) held that assessee co-operative society is 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.

16. *The Co-ordinate Bench of Rajkot Tribunal in Surendarnagar District Co-operative Milk Producer Union Ltd. v. Dy. CIT [\[2019\] 111 taxmann.com 69/179 ITD 690 \(Rajkot Tribunal\)](#) also held the assessee co-operative society could not claim benefit under section 80P(2)(d) in respect of interest earned by it from deposits made with nationalized/private banks, however, the said benefit was available in respect of interest earned and on deposits made with co-operative bank. Thus, in view of the aforesaid legal discussion we are of the considered view that order passed by Assessing Officer is not erroneous, though it may be prejudicial to the interest of the Revenue. Therefore, the twin conditions that orders is erroneous and so far as prejudicial to the interest of revenue, as prescribed under section 263 is not fulfilled in the present case.*
17. *Moreover, we have seen that in assessee's own case for A.Y. 2009-10, 2010-11 and 2012-13, the similar disallowance under section 80P(2)(d) was made by the assessing officer while passing assessment order under section 143(3), however, on appeal before Ld. CIT(A) , the disallowances were deleted and the order of the Ld. CIT(A) in all years were confirmed.*
18. *The Id. DR for the revenue relied on the case law in Totagars Co-operative Sales Society (second case)/(supra), wherein the Hon'ble Karnataka High Court held that interest earned by a Co-operative Society from surplus deposits kept with Co-operative bank, is not eligible for deduction under section 80P(2)(d). Considering the legal position that when there are conflicting decisions of non-jurisdictional High Courts, on similar issue, the decision of Jurisdictional High Court is having binding precedent. Thus, keeping in view of the decision Hon'ble Jurisdictional High Court in Surat Vankar Sahakari Sangh Ltd. (supra) wherein the assessee-co-operative society is held 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, we conclude that the order passed*

by assessing officer is not erroneous. Hence, the grounds of appeal raised by assessee are allowed.

19. *In the result, appeal of the assessee is allowed."*

6. In view of the aforesaid factual and legal discussion, I find that the grounds of appeal raised by assessee is covered in favour of assessee and against the revenue, therefore, I direct the Assessing Officer to allow deduction of Rs. 14,37,300/- under Section 80P(2)(d) of the Act.
7. In the result, the grounds of appeal raised by the assessee are allowed.
8. In the result, the appeal of assessee is allowed.

Order pronounced in the open court on 30th January, 2023.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Surat, Dated: 30/01/2023

**Ranjan*

Copy to:

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

By order

Sr. Private Secretary, ITAT, Surat