

आयकरअपीलीयअधिकरण,राजकोटन्यायपीठ,राजकोट।
**IN THE INCOME TAX APPELLATE TRIBUNAL
RAJKOT BENCH, RAJKOT
(THROUGH E-COURT)**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER
And
SHRI T.R. SENTHIL KUMAR, JUDICIAL MEMBER**

आयकरअपीलसं./I.T.A. No.143/Rjt/2022
(निर्धारणवर्ष / Assessment Year 2017-18)

Guru Datatrey Sarafi Sahkari Mandli Ltd. Datt Bhavan Sant Kabir Road, Opp. Sardar Patel High School, Rajkot-360003	<u>बनाम/</u> Vs.	Pr. CIT-1 Rajkot
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. : AAAAG3569K		
(अपीलार्थी/ Appellant)		(प्रत्यर्थी / Respondent)

आयकरअपीलसं./I.T.A. No.138/Rjt/2022
(निर्धारणवर्ष / Assessment Year 2017-18)

Kodvav Vividh KaryaSahkari Mandali Ltd. At. Kodvav, Kodvav, Manavadar, Gujarat-362620	<u>बनाम/</u> Vs.	Pr. CIT-1, Rajkot
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. : AAAAK0643A		
(अपीलार्थी/ Appellant)		(प्रत्यर्थी / Respondent)

आयकरअपीलसं./I.T.A. No.148/Rjt/2022
(निर्धारणवर्ष / Assessment Year 2017-18)

Jetpur Kheti V V K S Mandli Ltd. Sahkar Bhavan, Bavavala Para, Sardar Road, Jetpur, Rajkot-360370	<u>बनाम/</u> Vs.	Pr. CIT-1, Rajkot
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. : AAAAK0643A		
(अपीलार्थी/ Appellant)		(प्रत्यर्थी / Respondent)

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अपीलार्थीओरसे/ Appellant by :	Shri Sumit Shingala, A.R
प्रत्यर्थीकीओरसे/ Respondent by:	Shri Shramdeep Sinha, CIT D.R.

सुनवाईकीतारीख/ Date of Hearing	30/03/2023
घोषणाकीतारीख / Date of Pronouncement	21/04/2023

आदेश / O R D E R

PER WASEEM AHMED, ACCOUNTANT MEMBER:

The captioned three appeals have been filed at the instance of different Assessee against the separate orders of the Learned Principal Commissioner of Income Tax-1, Rajkot [Ld.PCIT) in short] dated 18.01.2022, 08.02.2022 & 01.03.2022 arising in the matter of assessment order passed under s.143(3) of the Income Tax Act, 1961 (hereinafter referred to as "the Act") relevant to the Assessment Year (A.Y.) 2017-18.

2. The only interconnected issue raised by the assessee is that the learned Principal CIT under section 263 of the Act erred in holding the assessment framed under section 143(3) of the Act as erroneous insofar prejudicial to the interest of Revenue.

3. The assessee in the year under consideration, besides the other interest income has claimed a deduction under section 80P of the Act amounting to ₹ 6,88,664/- and 62,00,674/- on the FDs made with Raj Co-operative Bank Ltd. and Rajkot Nagrik Sahakari Bank respectively. As per the learned PCIT the impugned interest income was not arising from the activity of financing from the members. Therefore, the assessee is not eligible for deduction for such interest income under the provisions of section 80P of the Act but the AO has allowed the same without the necessary verification and application of mind. Accordingly, the learned PCIT initiated the proceedings under section 263 of the Act vide show

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cause notice dated 9-7-2021 and finally the learned PCIT held the order of the AO as erroneous insofar prejudicial interest of revenue.

4. Being aggrieved by the order of the learned PCIT, the assessee is in appeal before us.

5. The learned AR before us filed a paper book running from pages 1 to 53 and contended that the Rajkot Tribunal in the case of Shree Keshav Co-operative Credit Society Limited versus PCIT in ITA No. 126/RJT/2022 vide order dated 31stMay 2022, involving identical facts and circumstances, has decided the issue in favour of the assessee.

6. On the contrary, the learned DR before us vehemently supported the order of the learned PCIT.

7. We have heard the rival contentions of both the parties and perused the materials available on record. At the outset we note that this tribunal in the case of Shree Keshav Co-operative Credit Society Limited (*supra*) involving identical facts and circumstances has decided the issue in favour of the assessee. The relevant finding of the ITAT is reproduced as under:

We have heard the rival contentions of both the parties and perused the materials available on record. From the preceding discussion, we note that the different Hon'ble High Courts have taken different view with respect to the deduction of the interest income earned by the assessee from the co-operative bank. Some of the judgements are in favour of the assessee and some of them are against the assessee. It is also an admitted fact that the Hon'ble High Court of Gujarat is in favour of the assessee with respect to the interest on deposits made with the co-operative bank. The relevant extract of the judgement of Hon'ble Gujarat High Court in case of in case of CIT vs. Sabarkantha District Cooperative Milk Producers Union Ltd. in Tax Appeal No. 473 of 2014 reads as under:

"Considering Section 80(P)(2)(d) of the Act when the only requirement was that the income should be received from investment in Cooperative Societies and the Cooperative Bank which in the present case has been fulfilled, it cannot be said that the learned Tribunal has committed an error in deleting the disallowance of Rs. 1,42,19,515/- under section 80(P)(2)(d) of the Act."

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Based on the above, it is transpired that the AO has taken one of the possible view for allowing the deduction to the assessee under the provisions of section 80P(2)(d)/80P(2)(a)(i)(a) of the Act. Where two view are possible on the issue and the AO has taken one of the possible view, but the PCIT do not agree with the view adopted by the AO, in such scenario, the order of the AO cannot be held erroneous. In this regard we find support and guidance from the judgment of the Hon'ble Gujarat High Court in the case of CIT vs. Mehsana District Co. Op. Milk Producers Union Ltd. where it was held as under:

It is well-settled that the provisions of section 263(1) cannot be invoked to correct each and every type of mistake or error committed by the Assessing Officer, and it is only when the order is erroneous that the section will be attracted. When two views are possible and the Assessing Officer has taken one view with which the Commissioner does not agree, it cannot be treated as an erroneous order prejudicial to the interest of the revenue unless the view taken by the Assessing Officer is unsustainable in law. It was not shown how the method followed by the assessee to divide the expenses for the purpose of claiming relief under section 80HH was improper or unacceptable. The Assessing Officer as well as the Tribunal had found that the expenses were apportioned on a rational basis and it would not be open for the Court to go beyond that finding which appeared to have been reached on the basis of the material on record which showed that in the earlier years the same proportion for dividing the expenses was consistently followed. The department had not been able to show that for those earlier two years any objection was raised against such apportionment. [Para 7]

In view of the above detailed discussion and judicial precedent, we find no error in the order of AO so as to justify the initiation of proceedings under section 263 of the Act by the Ld. Pr. CIT. Thus, the revisional order passed by the learned PCIT is not sustainable and therefore we quashed the same. Hence, the ground of appeal of the assessee is hereby allowed.

7.1 Before us, no material has been placed on record by the Id. DR to demonstrate that the decision of Tribunal as cited above has been set aside / stayed or overruled by the higher Judicial Authorities. Before us, Revenue has not placed any material on record to point out any distinguishing feature in the facts of the case for the year under consideration and that of the case referred above nor has placed any contrary binding decision in its support.

7.2 In view of the above and after considering the facts in totality, we hold that there is no error in the assessment framed by the AO under section 143(3) causing prejudice to the interest of revenue. Thus, the revisional order passed by the learned PCIT is not sustainable and therefore we quash the same. Hence the ground of appeal of the assessee is allowed.

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7.3 In the result, the appeal filed by the assessee is allowed.

8. Now coming to the other appeal of the assessee bearing **ITA No. 138/Rjt/2022** for **A.Y. 2017-18** in the case of **Kodvav VividhKarya Sahakari Mandali Ltd.**

8.1 At the outset, we note that the issue raised by the assessee in its ground of appeal is identical to the issue raised by the assessee in the case of **Guru Datatrey Sarafi Sahkari Mandali Ltd. bearing ITA No. 143/Rjt/2022** for the Assessment Year **2017-18**. Therefore, the findings given in ITA No. 143/Rjt/2022 shall also be applicable for the issue raised by the assessee in the above-mentioned appeal. The appeal of the Assessee bearing ITA No. 143/Rjt/2022 for A.Y. 2017-18 has been decided by us vide paragraph No. 7 to of this order in favour of the assessee. The learned AR and DR also agreed that whatever will be the findings for the ITA No.143/Rjt/2022 shall also be applied to the appeal on hand i.e.ITA No. 138/Rjt/2022 for the assessment year 2017-18. Hence, the ground of appeal filed by the assessee is hereby allowed.

8.2 In the result, the appeal filed by the assessee is allowed

9. Now coming to the other appeal of the assessee bearing **ITA No. 148/Rjt/2022** for **A.Y. 2017-18** in the case of **Jetpur Kheti V V K S Mandali Ltd.**

9.1 At the outset, we note that the issue raised by the assessee in its ground of appeal is identical to the issue raised by the assessee in the case of **Guru Datatrey Sarafi Sahkari Mandali Ltd. bearing ITA No. 143/Rjt/2022** for the Assessment Year **2017-18**. Therefore, the findings given in ITA No. 143/Rjt/2022 shall also be applicable for the issue raised by the assessee in the above-mentioned appeal. The appeal of the Assessee bearing ITA No.

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143/Rjt/2022 for A.Y. 2017-18 has been decided by us vide paragraph No. 7 of this order in favour of the assessee. The learned AR and DR also agreed that whatever will be the findings for the ITA No.143/Rjt/2022 shall also be applied to the appeal on hand i.e. ITA No. 148 /Rjt/2022 for the assessment year 2017-18. Hence, the ground of appeal filed by the assessee is hereby allowed.

9.2 In the result, the appeal filed by the assessee is allowed.

10. In the combined result, all the three appeals filed by the different assessee are allowed.

This Order pronounced in Open Court on 21/04/2023

**Sd/-
(T. R. SENTHIL KUMAR)
JUDICIAL MEMBER**

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

TRUE COPY

Ahmedabad, Dated 21/04/2023

Tanmay

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent.
3. संबंधितआयकरआयुक्त/ Concerned CIT
4. आयकरआयुक्त(अपील) / The CIT(A)-II, Rajkot
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण,राजकोट/DR,ITAT, Rajkot
6. गार्डफाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायकपंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण,राजकोट / ITAT, Rajkot