

**आयकर अपीलीय अधिकरण, सुरत न्यायपीठ, सुरत**  
IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT “SMC” BENCH,  
SURAT

BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER

**आ.अ.सं./ITA No.141/SRT/2023** (AY 2014-15)

(Hearing in Physical Court)

Shree Madhi Surali Vibhag Nagri Sahakari Dhiran Mandali Ltd., AT & P.O( Madhi, Tal. Bardoli, Surat-395006 <b>PAN No: AADAS 5644 L</b>	Vs	Deputy Commissioner of Income Tax, Circle-2(3), Surat Aaykar Bhavan, Majura Gate, Surat- 395002
<b>अपीलार्थी/</b> Appellant		<b>प्रत्यर्थी /</b> Respondent

निर्धारिती की ओर से /Assessee by	Shri Yogesh S. Gamit, Advocate
राजस्व की ओर से /Revenue by	Shri Vinod Kumar, Sr-DR
अपील पंजीकरण/Appeal instituted on	22.02.2023
सुनवाई की तारीख/Date of hearing	21.04.2023
उद्घोषणा की तारीख/Date of pronouncement	15.06.2023

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

**PER PAWAN SINGH, JUDICIAL MEMBER:**

1. This appeal by assessee is directed against the order of National Faceless Appeal Centre, Delhi [for short to as “NFAC/Ld. CIT(A)”] dated 23.12.2022 for assessment year 2014-15, which in turn arises from the addition made by the DCIT, Circle-2(3), Surat / Assessing Officer in assessment order passed under section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as ‘the Act’) dated 16.11.2016. The assessee has raised the following grounds of appeal:-

*“1. That on the facts and in the circumstances of the case, the Ld. Commissioner of Income Tax (Appeals)-NFAC, Delhi [here-in-after referred to as Ld. CIT(Appeals)] was not justified and grossly erred by without considering the facts, legal cases and documents submitted by the appellant.*

*That on the facts and in the circumstances of the case, the Ld. CIT(Appeals) was not justified and grossly erred in confirming the action of the A.O order passed u/s 143(3) of the I.T Act 1961 which is incomplete and also bad on facts.*

*2. That on the facts and in the circumstances of the case, the Ld. CIT(Appeals) erred in confirming the action of the Ld. A.O wherein AO has rejecting the claim for deduction u/s 80P(2)(d) of the Act made in respect of interest income amounting to Rs.13,62,958/- derived by appellant made under Chapter IV of Section 80P of the I.T. Act, 1961.*

*3. That on the facts and in the circumstances of the case, Ld. CIT(Appeals) confirming the action of Ld. AO and addition made by the Ld. AO should be deleted / nullified and consequently relief of interest should be granted to appellant.*

*4. That the appellant craves leave to add, to amend, modify, rescind, supplement or alter any of the grounds stated here-in-above, either before or at the time of hearing of this appeal.”*

2. Brief facts are that assessee is a Co-Operative Society and engaged in the business of providing credit facilities exclusively to its members by accepting deposits from its members and lending to them. The assessee filed its return of income for assessment year 2014-15 on 29.11.2014 declaring nil income after setting off the deduction under section 80P of the Act. The case was selected for scrutiny. During the assessment, the Assessing Officer noted that

assessee has derived interest income of Rs.4.66 crores out of which assessee has derived interest income other than co-operative society to the tune of Rs.13,62,958/- from Nationalized Banks and other Institutions. The Assessing Officer was of the view that interest income earned from other than co-operative society are taxable in the hand of assessee. On the basis of his view the Assessing Officer issued show cause notice to assessee on 09.11.2016 and asked the assessee as to why the aggregate interest income of Rs.13,62,958/- derived from Nationalized Bank *i.e.*, Rs.5,33,998/- from Dena Bank; Rs.4,19,644/- from Bank of Baroda and Rs.4,09,316/- from State Bank of India should not be added back to the income of assessee. The assessee filed its reply dated 15.11.2016. In the reply, the assessee by referring the provision of Sec 80P submits that they have made term deposits from various Nationalized Banks and co-operative banks with intention of members of the co-operative society that they have received interest income from such Nationalized Bank is also allowable under section 80P(2)(d) of the Act and reasons for making deposits with Nationalized Bank was earning some extra interest and

security for the benefit of the members of the society. The motive behind such investment was towards the object of the society. So income earned out of investment made for the benefit of society at large is allowable as deduction under section 80P of the Act. The reply of assessee was not accepted by Assessing Officer and he held that assessee is not eligible for interest income earned from other than co-operative society. The Assessing Officer disallowed of Rs.13,62,958/- and treated the same as “income from other source” in the assessment order dated 16.11.2016.

3. Aggrieved by the addition in the assessment order the assessee filed appeal before Ld. CIT(A). The appeal of assessee migrated before NFAC/Ld. CIT(A). Before NFAC/Ld. CIT(A) the assessee repeated the similar submission as made before Assessing Officer. The submission of assessee is recorded in para-3 and 4 of the order of NFAC/Ld. CIT(A). The assessee also relied upon the order of co-ordinate Bench of this Tribunal in the case of Begumpura Nagrik Dhiran Sahakari Mandli Ltd. Vs DCIT, Circle-2(2), Surat in ITA No.2799/AHD/2015 dated 04.10.2018. The NFAC/Ld. CIT(A) after considering the

submission of assessee upheld the action of Assessing Officer by referring following decision of Hon'ble Apex Court in the case of Totgars Co-operative Sale Society Ltd. vs. Income Tax Officer, Karnataka [2010] 188 Taxman 282 (SC). Further aggrieved the assessee has filed present appeal before the Tribunal.

4. I have heard the submission of Ld. Authorized Representative (Ld. AR) for the assessee and Ld. Senior Departmental Representative (Ld. Sr-DR) for the Revenue. The Ld. AR for the assessee submits that assessee made deposits with Nationalized Banks for earning more interest income and such interest income earned for Nationalized Bank is also exempt under section 80P(2)(d) of the Act. The Ld. AR for the assessee submits that assessee has filed written submission and same may be considered while deciding the grounds of appeal raised by assessee. I have gone through the written submissions of the assessee and find that the assessee has also relied on one more decision in its submissions in Shri Basavaraj, CEO Primary Agriculture Credit Co-operative Society Vs CIT (ITA No. 867/Bang/2017) dated 31.05.2017.

5. On the other hand, Ld. Sr-DR for the Revenue submits that assessee claimed exempt / deduction against the statutory provision under section 80P(2)(d) of the Act it is settled law that the assessee is only entitled for eligible for deduction of interest income earned from co-operative society only and not interest income earned from Nationalized Bank.
6. I have considered the submissions of both the parties and have gone through the orders of lower authorities carefully. The assessing officer disallowed deduction of interest income earned from other than co-operative society, without specifying any clause of section 80P of the Act. Before ld CIT(A) the assessee raised grounds of appeal that the assessee is eligible of deduction of interest income from Nationalised Bank under section 80P(2)(d). The ld CIT(A) also upheld the action of assessing officer by taking view that the assessee is eligible for deduction of interest income only from the interest earned form other co-operative society. The main submission of Ld. AR for the assessee is that assessee is also eligible for interest income derived from Nationalized Bank and vehemently relied upon the decision of co-ordinate Bench of this Tribunal in the case of

Begumpura Nagrik Dhiran Sahakari Mandli Ltd. (supra) and in Shri Basavaraj, CEO Primary Agriculture Credit Co-operative Society Vs CIT (supra). Both the decisions relate to deduction under section 80P(2)(a)(i), however, the assessee right from the beginning is claiming deduction of interest income earned from Nationalised Bank. Section 80P(2)(a) specifically deals with the activities of the co-operative society which is being carried out in consonance with their object. During the hearing of the appeal the assessee was specifically confronted with the facts and the provisions of clause (d) of subsection (2) of section 80P specifically deals with the interest income earned from other co-operative society. The ld AR for the assessee, instead of appreciating the facts stated that he has already filed his written submissions and the same may be considered at the time of passing the order.

7. I am conscious of the facts that no tax be levied or collected without authority of law as has been mandated by Article 265 of Constitution of India, similarly the assessee should not suffer prejudice, due to the ignorance of specific provisions in the Income Tax Act, if the assessee is

otherwise eligible for such deduction. Therefore, the ground No.2 of appeal raised by the assessee is dismissed at this stage. However, by invoking inherent power of appellate authority, the appeal is restored back to the file of assessing officer to examine the claim of deduction of interest income earned from Nationalised Bank under section 80P(2)(a)(i). Needless to direct that before passing the order afresh the assessing officer shall grant opportunity of hearing to the assessee. The assessee is also directed to substantiate its claim by filing appropriate submissions and evidences.

8. In the result, the appeal of the assessee is partly allowed.

Order pronounced on 15/06/2023 in open court.

**Sd/-**

**(PAWAN SINGH)**

**[न्यायिक सदस्य JUDICIAL MEMBER]**

सूरत/Surat, Dated: 15/06/2023

*Dkp. Out Sourcing Sr.P.S*

Copy to:

1. Appellant-
2. Respondent-
3. CIT(A)-
4. CIT
5. DR
6. Guard File

// True Copy //

By order

Senior Private Secretary/ Private  
Secretary/Assistant Registrar, ITAT,  
Surat