

**IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, HON'BLE JUDICIAL MEMBER AND
DR. A. L. SAINI, HON'BLE ACCOUNTANT MEMBER
(Physical Hearing)**

Sl. No.	ITA No.	Asst. Year	Name of Appellant	Name of Respondent
1.	129/SRT/2023	2007-08	The ACIT, Navsari	Gandevi Taluka Khedut Sahakari Sangh Ltd., Char Rasta, National Highway, Gandevi, Navsari – 396360 PAN: AAAAG0647C
2.	130/SRT/2023	2008-09	The ACIT, Navsari	Gandevi Taluka Khedut Sahakari Sangh Ltd., Char Rasta, National Highway, Gandevi, Navsari – 396360 PAN: AAAAG0647C
3.	137/SRT/2023	2007-08	Gandevi Taluka Khedut Sahakari Sangh Ltd., Gandevi Char Rasta, At & Post – Gandevi, Navsari – 396321. PAN: AAAAG0647C	The ITO, Ward-2, Navsari
4.	138/SRT/2023	2008-09	Gandevi Taluka Khedut Sahakari Sangh Ltd., Gandevi Char Rasta, At & Post – Gandevi, Navsari – 396321. PAN: AAAAG0647C	The ITO, Ward-2, Navsari

Date of Hearing:	07/06/2023
Date of Pronouncement:	26/06/2023
Appellant by:	Shri Vinod Kumar, Sr. DR
Respondent by:	Shri Suresh K. Kabra, CA

आदेश / O R D E R

PER DR. A. L. SAINI, AM:

This is the bunch of four cross appeals, out of which two appeals filed by Assessee and two appeals filed by the Revenue, pertaining to assessment years 2007-08 and 2008-09, respectively, are directed against the separate orders passed by the Learned Commissioner of Income Tax (Appeals), [in short 'the Ld. CIT(A)'], National Faceless Appeal Centre [in short 'the NFAC'], Delhi, which in turn arise out of separate

assessment orders passed by the Assessing Officer under section 143(3) r.w.s. 254 of the Income Tax Act, 1961 [hereinafter referred to as ‘the Act’].

2. Since, the issues involved in all the appeals are common and identical; therefore, these appeals have been heard together and are being disposed of by this consolidated order for the sake of convenience and brevity. The facts as well as the grounds narrated in Assessee’s/Revenue’s appeals, in ITA No.137/SRT/2023 and ITA No.129/SRT/2023, have been taken into consideration for deciding these appeals *en masse*.

3. The grounds of appeal raised by assessee, in ITA No.137/SRT/2023 for AY.2007-08, are as follows:

“1. Regarding the relief of the section 80P(2)(a)(iv)/80P(2)(c)(ii)

A. As per the order of Learned Commissioner (Appeals), the Learned assessing Officer has not verified our books properly as per the direction of the ITAT. He has not determined any adverse point against the maintenance of the books separately for exempt and not exempt activities as per plain reading of the Learned Commissioner (Appeals) order. In short, there is indirect allowability of the benefit of the relief. So, the addition is required to be deleted fully of Rs.64,66,977/- concluding the maintenance of the books separately.

B. The Learned Commissioner (Appeals) has confirmed the ratio calculated by the Learned assessing Officer but it is implemented wrongly by the Learned assessing Officer regarding the relief of section 80P(2)(a)(iv). We have provided the details fully. In fact, it is a mathematical mistake to be rectified will result into the deletion of Rs.33,66,477/- from the addition.

C. the Learned Commissioner (Appeals) has considered the interest expense as the administrative expense and determined less relief of section 80P(2)(A)(iv). In fact, the interest expense is for fully non-exempt items explained. So, it is required to be removed and this will result into deletion of Rs.14,94,737/- from the addition.

D. The relief is not calculated in the assessment order correctly by applying rule - 3.

E. Relief of section 80P(2)(c)(ii) – Additional Ground

We could not claim, before the Learned CIT-(A), the deduction of Rs.50,000/- allowable u/s 80P(2)(c)(ii) due to oversight. Being a legal deduction available to our society, it is requested to admit and allow.

2. Interest u/s 234B

The Learned Commissioner (Appeals) has not considered our submissions regarding calculation of estimated income, non-issue of the demand notice from the department, the cases etc. for deleting the interest or wrong calculation of the interest.

3. The assessee craves leave to amend, alter or delete any of the above grounds of appeal.”

4. The grounds of appeal raised by Revenue, in ITA No.129/SRT/2023 for AY.2007-08, are as follows:

“1. On the facts and circumstances of the case and in law, the Ld. CIT(A)/NFAC has erred in directing the assessing Officer to verify the expenses claimed by the assessee, which is the exceeding his power as per Section 251(1)(a) of the I.T. Act.

2. On the facts and in the circumstances of the case and in law, the ld. CIT(A) ought to have upheld the addition made by the assessing Officer.

3. It is therefore, prayed that the order of the CIT(A), be set aside and that of the Assessing Officer be restored.

4. The assessee craves to add, modify or alter any grounds during the course of appeal proceedings.”

5. Brief facts *qua* the issue are that the assessee, is a Co-op. Society and filed its return of income on 28/10/2007, declaring total income at Rs. Nil/-, after claiming deduction u/s 80P of the Income Tax Act to the tune of Rs.87,95,076/-. The assessment u/s 143(3) of the Act was finalised on 30/11/2009 and the total income of the assessee was determined at Rs.26,28,071/-. Thereafter, the assessing officer has passed order under section 143(3) r.w.s. 254 of the Act, after giving appeal effect of the order of ITAT, vide Hon'ble ITAT "A" Bench Ahmedabad order dated 12-12-2014. The assessing Officer after going through the submission of the assessee, vide para 7 of the assessment order observed that the most important question needed for verification was maintenance of separate books of accounts for the agricultural

activities which had been maintained or not. It was noted by the assessing Officer that separate profit and Loss Accounts were maintained and the loose sheets of papers for two months for the accounting periods were produced for verification by the assessee. However, the assessee had not produced books of accounts for the entire period of 12 months. The assessing Officer accordingly observed that it was apparent from the records that the loose sheets maintained for the agricultural activities had not been subjected to Tax Audit. In the Tax Audit Report, there was no mention about separate books of accounts. In the final accounts, separate Balance Sheet for the agricultural income had not been reflected nor it was stated that Balance Sheet of agricultural activities were part of consolidated Balance Sheet. The assessing Officer also contended that although the assessee had claimed that a consolidated Balance Sheet was inclusive of Balance Sheet for the agricultural activities, it was not explained and demonstrated, as to how and whether consolidated Balance Sheet had included the Balance Sheet of the agricultural activities. The assessing Officer also noted that the books of accounts if at all maintained could not be regarded as the books of accounts maintained in the proper shape which was verifiable. Therefore, the claim of the assessee of maintenance of separate books of accounts for agricultural activities was rejected by the assessing Officer. The assessing Officer further had disallowed a sum of Rs. 13,87,547/- on account of donation, penalty and amount determined by the Tax Auditors. The assessing Officer noted that on this issue the Hon'ble ITAT vide para 7, page no. 4 of the Order dated 12/12/2014 had restored the issue back to the assessing Officer for verification. The assessing Officer referred to the explanation sought dated 07/12/2016 in this regard and the assessee reply filed on 15/12/2016 claiming that the said amount was included in the net profit of Rs.29,82,310/-. However, ongoing through the Computation of

Income made by the assessing Officer's predecessor in the assessment order passed on 30/11/2009, page no. 9, in the entire computation of income which was recast, no such addition was found of Rs. 13,87,547/-. The assessing Officer observed that the assessee had furnished a Computation of Total Income which was quite opposite. Since there was no reconciliation between the Computation of Total Income prepared by the predecessor of the assessing Officer and the computation filed by the assessee, the assessing Officer had rejected the assessee's claim that the said amount was included in the net profit disclosed by the assessee. The assessing Officer accordingly had assessed the total income at Rs.34,77,800/- in the assessment order passed u/s. 143(3) r.w.s 254 owing to the ITAT's Order as mentioned below:

		PAN: AAAAG0647C
Gross Total income considering to the Order u/s 154 of the I. T. Act dated 03/03/2010.		Amount (in Rs.)
Add:		1,38,36,006/-
i) Inadmissible expenses debited to P & L account		13,87,548/-
	Amount (in Rs.)	
• Donation	10,90,627/-	
• Tax Refund	213/-	
• Exhibit C as per Audit Report	1,95,846/-	
• Exhibit J as per Audit Report	64,862/-	
• Misc Administrative Expenses.	36,000/-	
Gross Total Income before allowing deduction of the I.T. Act.		1,52,23,554/-
Less: Deduction u/s 80P of the I.T. Act.		
Income from Warehouse u/s 80(P)(2)(e)	1,33,000/-	1,15,62,712/-
Income from interest & dividend u/s 80P(2)(d)	54,67,902/-	
Commission on paddy u/s. 80P(2)(a)(iii)	1,73,364/-	
Workshop Profit u/s. 80P(2)(a)(iv)	56,88,446/-	
Consumer Activity u/s. 80P(2)(c)	1,00,000/-	
Gross Total income after allowing deduction u/s 80P of the I.T. Act.		36,60,842/-
Less: Deduction u/s 80G of the I.T. Act		
Donation Qualifying Amount @ 10% of 36,60,842/- =		1,83,042/-
3,66,084/- @ 50% = 1,83,042/-		
Total Assessed Income as per giving effect to the Hon'ble ITAT's Order		34,77,800/-

6. Aggrieved by the order of Assessing Officer, the assessee carried the matter in appeal before the Ld. CIT(A), who has allowed the appeal of the assessee for statistical purposes, observing as follows:

“5.2 I have perused the assessment order and the submissions of the assessee as above carefully. I find that the assessing Officer had decided the issue relating to rejection of assessee’s claim of maintenance of books, if accounts without giving sufficient and cogent reasons merely because the assessee had furnished / produced before the assessing Officer two months loose sheets and not of the entire year though the assessee had furnished before the assessing Officer the audited consolidated Profit & Loss Accounts and Balance Sheet. No such discrepancy whatsoever in the same details / evidences furnished / produced before the assessing Officer could be detected or pointed out by the assessing Officer. The assessee categorically mentioned in the submission dated 15/12/2016 that it was maintaining Profit & Loss Account separately, for different activities and the said Profit & Loss Account had been furnished in course of assessment proceedings completed earlier (i.e. earlier assessment order passed u/s. 143(3) on 30/11/2009, the copy of which had also been furnished by the assessee during appellate proceedings). As apparent from the said assessment order, no adverse inference had been drawn by the said assessing Officer (the predecessor of the assessing Officer who had passed the order u/s. 143(3) r.w.s, 254 of the Act) regarding the non-maintenance of separate accounts / books of accounts, though in para 5.4 of the said assessment order, relating to the books of account and Profit & Loss Account maintained by the assessee had been described as below; -

“5.4 It is seen from the audited accounts and 591.h Annual Report of the society that it maintains mix records of books of accounts of ail the activities such as sale of hardware items, agricultural Items, non-agricultural items, petrol, diesel etc. The society does not prepare different account for the different items being dealt by it: It has one trading account and one P&L a/c. It has debited all the trading expenses of a/I items in trading account and credited sale of all items in trading account. Since, the assessee sales the goods traded by it both to member and non-members, it is difficult to deduce as to how much profit is earned from sale made to members and sale made to non-members. In the P&L a/c, the society has taken over the grand gross profit and credited gross profit of the different items such as super ma riot profit, workshop profit, interest income, weigh-bridge income, truck-rent income, rent income etc. On the other hand, in debit side of the P&L a/c, the society has debited entire expenditures incidental to all the trading and other activities and thereby drew-out the net profit of Rs.4,30,000/- as net profit from the all activities being carried out by the assessee society. This method of maintaining books of account reveals that the assessee is not maintaining separate trading a/c and PAL a/c for different activity.”

5.2.1 After appreciating the above facts in the case of the assessee, the said assessing Officer in the assessment order passed u/s. 143(3) on 30/11/2019

had computed the total income of the assessee at Rs.26,28,071/- after detailed discussion of the facts and claim of the assessee of deduction 80P in paras 5.5 and 5.6 of the said Order. I further find that the assessing Officer while passing the re-assessment order owing to the Hon'ble ITAT's Instruction, had not considered properly the submission of the assessee as stated in para 6 of the ass-seamen;, order further that it had maintained books of accounts in the computerized system; the accounts were checked and finalized by the managements internal auditors, tax auditors and c-operative society; the assessee was maintaining separate as well as consolidated accounts and the books of accounts were printed on loose sheets and thereafter the said sheets were binded as per the requirements and the books of accounts maintained were showing correct profit and Loss Account and Balance Sheet. It is seen that in para 7 of the assessment order the assessing Officer has submitted of furnishing of all the above details by the assessee but as the assessee had not furnished / produced the loose sheets papers for entire 12 months but had furnished for 2 months before the assessing Officer, the assessing Officer found that no separate books of accounts, it had been maintained by the assessee for agricultural and non-agricultural activities. I am constrained to say that the assessing Officer made no effort to call for all such documents which he was required to give justice to the assessee in pursuance to the ITAT's Instructions for giving the effect of the said order of the Hon'ble ITATs. As regard the claim of the assessee about the amount of donation, penalty of Rs.13,87,547/- included the net profit of Rs.29,82,310/- as made in the submission before the assessing Officer on 15/12/2016, I find that the assessing Officer had been casual in only referring to the assessment order passed by his predecessor u/s. 143(3) dated 30/11/2009 contending that in the entire computation of page no. 9 therein no such amount was mentioned. It was the issue before the Hon'ble ITAT which had directed to examine this aspect vide para 7, page no. 4 of their order dated 12/12/2014. The assessing Officer, as apparent from the above discussion, made no effort for making any independent enquiry about the claim of the assessee made before the ITAT and the veracity of the same and its allowability as claimed, while passing the re-assessment order which is under appeal before the undersigned. All these things prove beyond doubt that necessary verification had not been made by the assessing Officer about the details and evidences furnished before him and further about the assessee claim of maintaining books of accounts for agricultural and non-agricultural activities which resulted in preparing the Profit & Loss Accounts separately. The issue relating to the amount of Rs.13,87,548/- added by the assessing Officer on account of donation, tax refund, Exhibit C and J as per Audit Report and miscellaneous administrative expenses claimed by the assessee also had not been properly examined by the assessing Officer with reference to the direction of the Hon'ble ITAT, The assessing Officer is accordingly directed to look into all the above aspects in general and particularly restrain himself for passing an Order on the line of the direction given by the Hon'ble ITAT in the order dated 12/12/2014 in the case of the assessee and thereafter shall give the appeal effect of this order accordingly after necessary verification. The assessee is required to furnish / produce necessary details for giving this appeal effect so that necessary order can be passed by the assessing Officer as per law. Ground nos. 1 to 3 rained by the assessee are accordingly **allowed for statistical purpose.**”

7. Aggrieved by the order of the Ld. CIT(A), the Assessee as well as Revenue both are in appeal before us.

8. The Learned Departmental Representative (Ld. DR) for the Revenue argued that Ld. CIT(A) does not have power to set aside the order of assessing officer and remit the issue back to the file of the assessing officer for statistical purposes to adjudicate the issue afresh. The Ld.CIT(A), NFAC vide order dated 26.12.2022 has directed as under:

".....The assessing Officer is accordingly directed to look into all the above aspects in general and particularly restrain himself for passing an Order on the line of the direction given by the Hon'ble ITAT in the order dated 12/12/2014 in the case of the assessee and thereafter shall give the appeal effect of this order accordingly after necessary verification. The assessee is required to furnish /produce necessary details for giving this appeal effect so that necessary order can be passed by the assessing Officer as per law....."

Thus, Ld. DR contended Ld.CIT(A), NFAC has considered that assessing Officer has not made necessary verification of the details and evidences furnished before him and further about the assessee claim of maintaining books of accounts for agricultural and non-agricultural activities which resulted in preparing the Profit and Loss Accounts separately. The issue relating to the amount of Rs. 13,87,548/- added by the assessing Officer on account of donation, tax refund, Exhibit C and J as per Audit Report and miscellaneous administrative expenses claimed by the assessee also had not been properly examined by the assessing Officer with reference to the direction of the Hon'ble ITAT. The Ld.CIT(A), NFAC vide order dated 26.12.2022 has directed assessing Officer to give effect of Hon'ble ITAT order dated 12.12.2014 after due verification and directed the assessee to furnish / produce necessary details for giving this appeal effect so that necessary order can be passed by the assessing Officer as per law. Thus, Ld. DR pointed out that the decision of Ld. CIT(A) is not

acceptable on merit. In the matter it was submitted by ld DR that section 251(1)(a) of the Act does not provide power to the Ld. CIT(A) for setting aside the matter to the file of the Ld. assessing Officer. The power given to the Ld. CIT(A) in terms of section 251(1)(a) of the Act relates to confirming, reducing, enhancing or annulling the assessment. The relevant portion of the section is extracted as under:

“251(1) in disposing of an appeal, the Commissioner (Appeals) shall have the following powers:

(a) In an appeal against an order of assessment, he may confirm, reduce, enhance or annul the assessment.”

The reliance is also placed upon the decision of Hon'ble ITAT 'D' Bench, Chennai bearing ITA N0.2244/CHNY/2018 in the case of ACIT vs Shri Mohamed Hassan. Since, the direction of the Ld. CIT(A) to examine the whole issue is nothing but set aside the matter for fresh assessment which is the perversity of power in view of section 251(1)(a) of the Act, therefore, the direction of Ld. CIT(A) to examine the issue fresh is not acceptable, hence matter may be remitted back to the file of the ld CIT(A) for fresh adjudication. Without prejudice, ld DR finally argued that assessee's appeal is dismissed and addition made by the assessing officer should be confirmed.

9. On the other hand, Ld. Counsel for the assessee, pleaded that assessee is in second round of appeal before this Tribunal and all facts of the assessee is on record therefore the matter should not be remitted back to the file of the Ld. CIT(A), although there is violation of provisions of section 251(1)(a) of the Act. The Ld. Counsel contended that there should be finality in this assessee's matter under consideration otherwise there will be never ending process, if the assessee's matter is remitted back to the file of the assessing officer. The Ld. Counsel submitted before us the following documents and evidences for AY.2007-08:

- (i) Copy of computation for the AY.2007-08 (vide PB.1 to 2)
- (ii) Revised calculation of proportionate Disallowance (As per Method of 'assessing Officer') (vide PB. 3)
- (iii) Details of Expenses considered for Disallowance (vide PB.4)
- (iv) Calculation sheet of proportionate disallowance (Net Income Method) (vide PB.5 to 8)
- (v) Copy of Trading, Profit and Loss and Balance sheet of Power Tillers Department (English Translation) for the AY.2007-08 (vide PB.9 to 12)
- (vi) Copy of Trading, Profit and Loss and Balance sheet of Power Tillers Department (Gujarati) for the AY.2007-08 (vide PB.13 to 15)
- (vii) Copy of Trading, Profit and Loss and Balance sheet of General Department (English Translation) for the AY.2007-08 (vide PB.15 to 21)
- (ix) Copy of Trading, Profit and Loss and Balance sheet of General Department (Gujarati) for the AY.2007-08 (vide PB.22 to 29)
- (x) Copy of consolidated accounts (Gujarati) for the AY.2007-08 (vide PB.30 to 38)
- (xi) Copy of original Assessment order u/s. 143(3) of the Act for the A.Y.2007-08 (vide PB.39 to 49)

10. The Ld. Counsel for the assessee submitted that the same facts and circumstances, are also existed in assessment year 2008-09, hence, Ld. Counsel contended that an appropriate proportionate disallowance of expenses may be made by the Tribunal to ensure finality to all issues of the assessee.

11. We have heard both the parties and carefully gone through the submissions put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the facts of the case including the findings of the Id. CIT(A) and other material brought on record. We note that assessee's matter is fifteen year's old, pertaining to assessment year 2007-08, and assessee is in second round of appeal before this Tribunal and all facts of the assessee is on record therefore as per Id Counsel, the matter should not be remitted back to the file of the Id CIT(A), although there is violation of provisions of section 251(l)(a) of the Act. We agree with the proposition canvassed by the Id Counsel that there should be finality in this assessee's matter under consideration otherwise there will be never ending process, if the assessee's matter is remitted back to the file of the assessing officer, as the assessee does not have any other new evidence to submit before the lower authorities. Hence, it will not serve any purpose if the matter is remitted back to the file of the Id CIT(A) for fresh adjudication, just because there is violation of provisions of section 251(l)(a) of the Act, as the assessee does not have any new evidence/new argument to submit before lower authorities. Whatever, the documents and evidences are there before this Tribunal, would be there if the matter is set aside to the file of Id CIT(A). Therefore, considering the principle of natural justice, the matter should be decided at the Tribunal level. That the concept of natural justice should at all stages guide those who discharge judicial functions is not merely an acceptable but is an essential part of the philosophy of the law. We often speak of the rules of natural justice. But there is nothing rigid or mechanical about them. What they comprehend has been analysed and described in many authorities. But any analysis must bring into relief rather their spirit and their inspiration than any precision of definition or precision as to application. We do not search for prescriptions which will

lay down exactly what must, in various, divergent situations, be done. The principles and procedures are to be applied which, in any particular situation or set of circumstances, are right and just and fair. Natural justice, it has been said, is only "fair play in action". Nor do we wait for directions from Parliament. The common law has abundant rich there may we find what Bylaes J called "the justice of the common law. The above proposition was held by Lord Morris of Borth-y-Gest, *Wisemjan v. Borneman* 45 TC 540, 554 (HL), [1970] 75 ITR 652, 657.

12. The Hon'ble Supreme Court in the case of *Parashuram Pottery Works Co. Ltd. vs. ITO* (1977) 106 ITR 1 (SC) observed that there should be finality in the legal proceedings. The relevant observation of the Hon'ble Court is reproduced below:

"It has been said that the taxes are the price that we pay for civilization. If so, it is essential that those who are entrusted with the task of calculating and realizing that price should familiarize themselves with the relevant provisions and become well-versed with the law on the subject. Any remissness on their part can only be at the cost of the national exchequer and must necessarily result in loss of revenue. At the same time, we have to bear in mind that the policy of law is that there must be a point of finality in all legal proceedings, that stale issues should not be reactivated beyond a particular stage and that lapse of time must induce repose in and set at rest judicial and quasi judicial controversies as it must in other spheres of human activity. "

13. As the assessee does not have any new evidence/new argument to submit before lower authorities, therefore it will not serve any purpose to remit this lis back to the file of the lower authorities. ***We also note that Ld. CIT(A) has discussed the assessee's case on merit also and it is not an ex-parte order of Ld. CIT(A).*** Therefore, we should adjudicate the issue on merit. We note that third innings should not be given to the assessee, and for argument sake, suppose third innings is granted to the assessee, then also considering the same set of facts, evidences and circumstances, there would not be any finality in the legal proceedings.

Therefore, based on the documents and evidences available before us, we proceed to adjudicate the assessee`s appeal.

14. We note that Ld. Counsel for the assessee submitted the following written submissions and explanations for AY.2007-08, which are reproduced below:

“SEPARATE BOOKS OF ACCOUNT for TILLER DIVISION and OTHER DIVISION

01. The assessee maintains that the BOOKS OF ACCOUNT for TILLER DIVISION and OTHER ITEMS DIVISION are kept separately. Therefore the Profit as per tiller division should be allowed as deduction u/s 80P in full without any variation.

APPLICABILITY of SECTION 14A

02. Section 14A applies to the INCOME included in the Computation of Total Income and not for INCOME deductible under Chp. VIA.

03. CHAPTER VIA deduction is not INCOME EXEMPT.

JUDICIAL PRONOUNCEMENTS:

04. ACIT vs SURAT DIST CO-OP MILK PRODUCERS UNION LTD 97 Taxmann.com 382 (SURAT-T)

05. CIT vs Banaskantha Dist. Co. Op. Milk Producers' Union Ltd. 45 TAXMANN.COM 152 (GUJ)

06. CIT vs KRIBHCO 23 TAXMANN.COM 312 (DELHI)

PROPORTINATE DISALLOWANCE

07. FOR PROPORTINATE DIVISION of EXPENSES

a) The Ld Assessing Officer had divided the TOTAL TURNOVER of the Appellant in TWO groups.

b) ONE - TURNOVER of AGRICULTURE ACTIVITIES

c) SECOND- TURNOVER of NON-AGRICULTURE ACTIVITIES

d) The groups have been made considering the eligibility of deduction u/s 80P.

e) The Appellant submits that the GROUPING is ERRONEOUS as the same should be grouped according to the DEDUCTION "claimed" or "not claimed".

The REVISED GROUPING as per APPELLANT is as per the EXCEL sheet separately filed as Annexure "A"

ALTERNATE SUBMISSION

*ONLY PROFIT CONSIDERED IN COMPUTATION to **BE** CONSIDERED for DEDUCTION **and** NOT GROSS PROFIT.*

08. At page No 6 & 7, the assessee had calculated the ACTUAL GROSS PROFIT as per books of account submitted at Page No 10 / 16 / 17 of the PAPER BOOK. Considering the TOTAL INCOME declared in Computation Statement of Total Income under the BUSINESS HEAD at Rs 29,82,311/-. The Total of Expenses has been worked out after deducting the Total Income declared (29,82,311) from the GROSS MARGIN to arrive at the TOTAL AMOUNT of EXPENSES to be allocated in the ratio of TURNOVER. Thus arriving at the component of the Total Income declared at Rs 29,82,311/-. The calculation is at Page No 8 of the PAPER BOOK.

09. The revised calculation of deduction u/s 80P is as per Page No 5 of the PAPER BOOK.

INTEREST AS COMMON EXPENSE

10. The INTEREST PAYMENT is for the DIVISIONS other than TILLER DIVISION. This is therefore not liable to be included in the common expenses.

11. The TRILLER DIVISION is having SURPLUS and the DIVISION has given funds to the Other DIVISION or Main Office. That shows that the TRILLER DIVISION is DEBT FREE.

MANNER of ADDITION

12. To the extent of allocation of Expenses from the common pool, the deduction u/s 80P(2)(a)(iv) should have been reduced. There should not be direct addition on account of disallowance. The proportionate allocation is internal calculation for determining the deduction u/s 80P(2)(a)(iv).

15. The following chart is submitted by the assessee for assessment year 2007-08, to work out the ratio on total turnover, with reference to turnover belonging to power Triller Division (deduction under section 80P to be claimed) and turnover for other activities (where deduction u/s 80P should not be claimed by assessee):

GANDEVI TALUKA KHEDUT SAHKARI SANGH LTD AY 2007-08					
ITA/137/SRT/2023					
TURNOVER / PROPORTIONATE EXP					
Page No of PB	Power Triller Division (DEDUCTION u/s 80P CLAIMED)	OTHER ACTIVITIES (NO DEDUCTION u/s 80P CLAIMED)			Page No of PB
10	46,33,196.49	Tiller Spare part Sale	Cement	2,00,95,726.00	16
10	6,26,95,150.00	Tiller Sale	Steel	3,96,83,090.18	16
11	8,46,995.00	Tiller Repair			
		Income	Cement Sheet	1,37,45,775.26	16
			Tyre & Tube	67,835.00	16
			PVC Pipe	2,72,064.75	16
			Levi Sugar	45,19,581.90	16
			Starter Switch	85,178.00	16
			Chuno-Niru-Sagol	34,613.00	16
			Petrol	6,07,90,520.12	16
			Diesel	4,51,60,445.84	16
			OIL	19,62,316.30	16
			Cooking Gas	4,36,778.00	16
				18,68,53,924.35	
			Seeds	8,13,090.00	16
			Fertiliser	3,14,27,423.45	16
			Mix Fertiliser	1,08,49,347.50	16
			Organisc Fertiliser	15,47,622.00	16
			Pesticide	15,20,833.02	16
			Micrinutrient	1,99,635.00	16
				4,63,57,950.97	
			TOTAL	23,32,11,875.32	16
			Medical Stores	1,71,04,063.70	32
			Super Market	33,58,424.76	32
46	6,81,75,341.49		GRAND TOTAL	25,36,74,363.78	46
			DEDUCTION CLAIMED TURNOVER	6,81,75,341.49	
			NO-DEDUCTION CLAIMED TURNOVER	25,36,74,363.78	
			TOTAL TURNOVER	32,18,49,705.27	

	TOTAL EXPENSES (P&L)	57,35,859.03	4 & 33
	Add: INTEREST	42,70,676.00	33
	Less: INCOME TAX	-57,338.00	33
	TOTAL EXP considered by AO	99,49,197.03	47
	Less:DISALLOWED		
	Flood Relief Exp	90,627.00	1 & 4
	Donation	10,00,000.00	1 & 4
		10,90,627.00	
	NET EXP (as per APPELLANT)	88,58,570.03	

RATIO of TURNOVER between DEDUCTION CLAIMED / NO-DEDUCTION CLAIMED			
AS PER ASESSMENT ORDER		RATIO	EXPENSES
TURNOVER ON WHICH DEDUCTION is CLAIMED	11,45,33,292.46	35.00	34,82,220.00
TURNOVER ON WHICH NO DEDUCTION is CLAIMED	20,73,16,412.81	65.00	64,66,977.00
TOTAL	32,18,49,705.27	100.00	99,49,197.00
AS PER APPELLANT		RATIO	EXPENSES
TURNOVER ON WHICH DEDUCTION is CLAIMED	6,81,75,341.49	21.18	18,76,245.00
TURNOVER ON WHICH NO DEDUCTION is CLAIMED	25,36,74,363.78	78.82	69,82,325.00
TOTAL	32,18,49,705.27	100.00	88,58,570.00

16. From the above chart, it is vivid that ratio of turnover on which deduction is claimed is at 21.18%, whereas ratio of turnover on which deduction is not claimed is at 78.82%, against 35% and 65% respectively computed by the assessing officer.

17. Then after, the assessee submitted the calculation sheet of proportionate disallowance and disallowance made by Assessing Officer, which is placed at paper book page no.3 and the same is reproduced below:

**GANDEVI TALUKA KHEDUT SAHAKARI SANGH LTD GANDEVI
ASSESSMENT YEAR 2007-08**

SR. No.	PARTICULARS	AMOUNT (In Rs.)	AMOUNT (In Rs.)
1)	INTEREST AND ADMINISTRATIVE EXPENSES AS PER THE ORDER OF THE LEARNED AO		99,49,197.00
	LESS: DISALLOWED ITEMS		
	DONATION	10,00,000.00	
	FLOOD RELIEF EXPENSES	90,627.00	10,90,627.00
	NET EXPENSES CLAIMED		88,58,570.00
2)	AGRICULTURAL ITEMS		
	EXEMPT ACTIVITY – POWER TRILLER SALE	6,91,75,341.00	21.18
	TOTAL SALES AS PER THE ORDER OF THE LEARNED AO	32,18,49,700.00	
3)	DISALLOWANCE – Rs.88,58,570/- @ 21.18% DISALLOWANCE AS PER ASSESSEE		18,76,245.00
4)	DISALLOWANCE AS per AO		64,66,977.00
	DIFFERENCE (64,66,977 – 18,76,245)		45,90,732.00

18. We have examined the above chart, submitted by the assessee, with supporting evidences and documents and noted that disallowance as per assessee comes at Rs.18,76,245/-, however the disallowance computed by the Assessing Officer was to the tune of Rs.64,66,977/-, therefore, the assessee is entitled for the benefit / relief to the extent of

Rs.45,90,732 (64,66,977 – 18,76,245). Therefore, considering these factual position, the Assessing Officer is hereby directed to give relief to assessee at Rs.45,90,732/-.

19. In the result, appeal filed by the assessee in ITA No.137/SRT/2023 for AY.2007-08 is allowed to the extent indicated above, whereas appeal filed by the Revenue in ITA No.129/SRT/2023 is dismissed.

20. We note that Ld. Counsel for the assessee submitted the following written submissions and explanations for AY.2008-09, which are reproduced below:

“SEPARATE BOOKS OP ACCOUNT for TILLER DIVISION and OTHER DIVISION

13. The assessee maintains that the BOOKS OF ACCOUNT for TILLER DIVISION and OTHER ITEMS DIVISION are kept separately. Therefore the Profit as per tiller division should be allowed as deduction u/s 80P in full without any variation.

APPLICABILITY of SECTION 14A

14. Section 14A applies to the INCOME included in the Computation of Total Income and not for INCOME deductible u/Chp VIA.

15. CHAPTER VIA deduction is not INCOME EXEMPT.

JUDICIAL PRONOUNCEMENTS:

16. ACIT vs SURAT DIST CO-OP MILK PRODUCERS UNION LTD 97 Taxmann.com 382 (SURAT-T)

17. CIT vs Banaskantha Dist. Co. Op. Milk Producers' Union Ltd. 45 TAXMANN.COM 152 (GUJ)

18. CIT vs KRIBHCO 23 TAXMANN.COM 312 (DELHI)

PROPORTINATE DISALLOWANCE

19. FOR PROPORTINATE DIVISION of EXPENSES

f) The Ld Assessing Officer had divided the TOTAL TURNOVER of the Appellant in TWO groups.

g) ONE - TURNOVER of AGRICULTURE ACTIVITIES

h) SECOND- TURNOVER of NON-AGRICULTURE ACTIVITIES

i) The groups have been made considering the eligibility of deduction u/s 80P.

j) The Appellant submits that the GROUPING is ERRONEOUS as the same should be grouped according to the DEDUCTION "claimed" or "not claimed". The REVISED GROUPING as per APPELLANT is as per the EXCEL sheet separately filed as Annexure "A"

ALTERNATE SUBMISSION

ONLY PROFIT CONSIDERED IN COMPUTATION to BE CONSIDERED for DEDUCTION and NOT GROSS PROFIT.

20. At page No 6 & 7, the assessee had calculated the ACTUAL GROSS PROFIT as per books of account submitted at Page No 10 / 16 / 17 of the PAPER BOOK. Considering the TOTAL INCOME declared in Computation Statement of Total Income under the BUSINESS HEAD at Rs 25,53,012/- (2517012+36000). The Total of Expenses has been worked out after deducting the Total Income declared (25,53,012) from the GROSS MARGIN to arrive at the TOTAL AMOUNT of EXPENSES to be allocated in the ratio of TURNOVER. Thus, arriving at the component of the Total Income declared at Rs 25,53,012/-. The calculation is at Page No 8 of the PAPER BOOK.

21. The revised calculation of deduction u/s 80P is as per Page No 5 of the PAPER BOOK.

INTEREST AS COMMON EXPENSE

22. The INTEREST PAYMENT is for the DIVISIONS other than TILLER DIVISION. This is therefore not liable to be included in the common expenses.

23. The TRILLER DIVISION is having SURPLUS and the DIVISION has given funds to the Other DIVISION or Main Office. That shows that the TRILLER DIVISION is DEBT FREE.

MANNER of ADDITION

24. To the extent of allocation of Expenses from the common pool, the deduction u/s 80P (2) (a) (iv) should have been reduced. There should not be direct addition on account of disallowance. The proportionate allocation is internal calculation for determining the deduction u/s 80P(2) (a) (iv).

21. The following chart is submitted by the assessee for assessment year 2008-09, to work out the ratio on total turnover, with reference to turnover belonging to power Tiller Division (deduction under section 80P

to be claimed) and turnover for other activities (where deduction u/s 80P should not be claimed by assessee):

GANDEVI TALUKA KHEDUT SAHKARI SANGH LTD AY 2008-09				
ITA/138/SRT/2023				
TURNOVER / PROPORTIONATE EXP				
Pg No of PB	Power Triller Division (DEDUCTION u/s 80P CLAIMED)	OTHER ACTIVITIES (NO DEDUCTION u/s 80P CLAIMED)		Page No of PB
10	48,37,280.00	Tiller Spare part Sale	Cement	2,10,24,687.00
10	3,16,68,425.00	Tiller Sale	Steel	4,44,43,493.44
10	8,31,506.00	Tiller Spare Part	Cement Sheet	85,39,317.27
10	93,33,325.00	Udwada Sale	Tyre & Tube	59,870.00
11	3,26,279.40	Tiller Repair Income	Levi Sugar	50,59,531.87
11	18,235.00	Tiller Repair Income Udwada	PVC Pipe	4,00,321.00
			Petrol	5,70,90,620.47
			Diesel	3,83,98,895.09
			Starter Switch	3,80,525.00
			Chuno-Niru-Sagol	29,693.00
			OIL	19,78,844.00
			Cooking Gas	5,18,932.00
				17,79,24,730.14
			Seeds	5,60,899.50
			Fertiliser	3,97,65,568.38
			Mix Fertiliser	1,33,44,497.50
			Organisc Fertiliser	18,68,267.00
			Pesticide	18,51,983.00
			Micrinutrient	1,86,385.00
				5,75,77,600.38
			TOTAL	23,55,02,330.52
			Medical Stores	2,04,39,195.50
			Super Market	36,68,401.00
63	4,70,15,050.40		GRAND TOTAL	25,96,09,927.02
			DEDUCTION CLAIMED TURNOVER	4,70,15,050.40
			NO-DEDUCTION CLAIMED TURNOVER	25,96,09,927.02
			TOTAL TURNOVER	30,66,24,977.42

	TOTAL EXPENSES (P&L)	81,64,833.27	3
	Add: INTEREST	38,16,815.00	
	Add: Adm Exp		
	Claimed in Workshop	7,77,545.00	11
	TOTAL EXP considered by AO	1,27,59,193.27	64
	Less:DISALLOWED		1 & 3
	TDS Exp	1,82,119.00	
	Donation	10,17,000.00	
	FBT Exp	6,610.00	
	Power Tiller Rebate	14,000.00	
		12,19,729.00	
	NET EXP (as per APPELLANT)	1,15,39,464.27	
RATIO of TURNOVER between DEDUCTION CLAIMED / NO-DEDUCTION CLAIMED			
	AS PER ASSESSMENT ORDER	RATIO	EXPENSES
TURNOVER on WHICH DEDUCTION is CLAIMED (Page No 63/10/11)	10,45,92,650.78	36.00	45,93,309.00
	STOCK:65,28,858.00		
	11,11,21,508.78		
Total of CREDIT SIDE on Page 10	48,37,280 +		
	3,16,68,425 +		
	8,31,506 +		
	93,33,325 +		
	65,28,858.20 =5,31,99,394.20		
Tiller Repair Sale + Tiller Repair Income Udwada (page No 11)	3,26,279.40 + 18,235 = 3,44,514.40		
Total for TRILLER DIVISION considered by AO	5,31,99,394 + 3,44,514 = 5,35,43,908		
TURNOVER on WHICH NO DEDUCTION is CLAIMED	20,20,32,326.64	64.00	81,65,883.00
TOTAL	31,31,53,835.42	100.00	1,27,59,192.00

AS PER APPELLANT		RATIO	EXPENSES
TURNOVER on WHICH DEDUCTION is CLAIMED	4,70,15,050.40	15.33	17,69,000.00
TURNOVER on WHICH NO DEDUCTION is CLAIMED	25,96,09,927.02	84.67	97,70,464.00
TOTAL	30,66,24,977.42	100.00	1,15,39,464.00

22. From the above chart, it is clear that ratio of turnover on which deduction is claimed is at 15.33%, whereas ratio of turnover on which deduction is not claimed is at 84.67%, against 36% and 64% respectively computed by the assessing officer.

23. Then after, the assessee submitted the calculation sheet of proportionate disallowance, which is placed at paper book page no. 5 and the same is reproduced below:

ASSESSMENT YEAR 2008-09

1)	<i>INTEREST AND ADMINISTRATIVE EXPENSES AS PER THE ORDER OF THE LEARNED AO</i>		<i>AMOUNT IN RS.</i> <i>Rs.1,27,59,193</i>
	<i>LESS: ADMMIN EXPENSES OF TILLER DIVISION</i>		<i>7,77,548</i>
	<i>LESS CONSIDERED TWICE TIME</i>		<i>1,19,81,645</i>
	<i>DONATION</i>	<i>RS.10,17,000/-</i>	
	<i>TDS</i>	<i>RS.1,82,119/-</i>	
	<i>POWER TILLER REBATE</i>	<i>RS.14,000/-</i>	
	<i>FBT EXPENSES</i>	<i>RS.6,610/-</i>	<i>12,19,729</i>
			<i>1,07,61,916</i>
2)	<i>AGRICULTURAL ITEMS</i>		
	<i>EXEMPT ACTIVITY – POWER TILLER SALE SHOWN BY THE LEARNED AO</i>	<i>RS.5,35,43,908/-</i>	
	<i>LESS: CLOSING STOCK WRONGLY CONSIDERED IN TURNOVER</i>	<i>RS.65,28,858/-</i>	
	<i>EXEMPT ACTIVITY – POWER TILLER SALE AS PER BOOKS OF ACCOUNTS</i>	<i>RS.4,70,15,050/-</i>	<i>15.33</i>
	<i>OTHER THAN POWER TILLER</i>	<i>RS.25,96,09,924/-</i>	
	<i>TOTAL SALES</i>	<i>RS.36,66,97,740/-</i>	
3)	<i>DISALLOWANCE – RS.1,07,61,916 @ 15.33%</i>		<i>RS.16,49,802</i>
4)	<i>RELIEF</i>		<i>RS.45,93,309</i>
	<i>LESS: DISALLOWANCE</i>		<i>RS.16,49,802</i>

	<i>TO BE REDUCED FROM THE INCOME (A)</i>		<i>RS.29,43,507</i>
5)	<i>ASSUMING INTEREST EXPENSES NOT RELATED TO EXEMPT ACTIVITY</i>	<i>RS.38,16,815/-</i>	
	<i>FURTHER RELIEF RS.38,16,815 @ 15.33% (B)</i>		<i>RS.5,85,118</i>
6)	<i>DEDUCTION U/S 80P(2)(c)(i)</i>		
	<i>OTHER THAN RS.50,000/- (C)</i>		<i>RS.1,00,000</i>
	<i>TOTAL RELIEF (A+B+C)</i>		<i>RS.36,28,625/-</i>

24. We have gone through the above chart, submitted by assessee for AY.2008-09 with supporting evidences and documents submitted by assessee. We observe that as per assessee, the disallowance of expenses comes to Rs.16,49,802/-, therefore as per above calculation, the assessee is entitled to claim relief to the extent of Rs.29,43,507/- (*Rs.45,93,309 - Rs.16,49,802*). Therefore, we direct the Assessing Officer to provide relief to the assessee to the tune of Rs.29,43,507/-.

25. Since, deduction under section 80P is allowed activity-wise, we note that as per sub-clause (i) of clause (c) of sub-section (2) of section 80P of the Act, the assessee is performing activity as a consumer co-operative society also, therefore assessee is entitled to claim the deduction of Rs.1,00,000/-. Hence, we direct the Assessing Officer to provide deduction to the assessee to the tune of Rs.1,00,000/- under sub-clause (i) of clause (c) of sub-section (2) of section 80P of the Act.

26. In the result, appeal filed by the assessee in ITA No.138/SRT/2023 for AY.2008-09 is allowed to the extent indicated above, whereas the appeal filed by Revenue in ITA No.130/SRT/2023 is dismissed as infructuous.

27. The both assessee`s appeals are adjudicated by us taking into account special facts and circumstances, as narrated above, therefore, it is

made clear that instant adjudication shall not be treated as a precedent in any preceding or succeeding assessment year.

28. In the result, appeals filed by the assesseees (in ITA Nos. 137/SRT/2023 and 138/SRT/2023 for AYs.2007-08 & 2008-09) are allowed to the extent indicated above, whereas the appeals filed by Revenues (in ITA Nos.129 & 130/SRT/2023 for AYs.2007-08 and 2008-09) are dismissed.

Registry is directed to place one copy of this order in all appeals folder / case file(s).

Order is pronounced on 26/06/2023 in the open court.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Surat / दिनांक/ Date: 26/06/2023

SAMANTA

Copy of the Order forwarded to:

1. The Assessee
2. The Respondent
3. The CIT(A)
4. Pr.CIT
5. DR/AR, ITAT, Surat
6. Guard File

Sd/-
(Dr. A. L. SAINI)
ACCOUNTANT MEMBER

By Order

// TRUE COPY //

Assistant Registrar/Sr. PS/PS
ITAT, Surat