

**IN THE INCOME TAX APPELLATE TRIBUNAL  
JODHPUR BENCH, JODHPUR**

**BEFORE: DR. S. SEETHALAKSHMI, JM  
&  
SHRI RATHOD KAMLESH JAYANTBHAI, AM**

**ITA Nos. 395/Jodh/2019  
(ASSESSMENT YEAR- 2016-17)**

Income Tax Officer, Ward-1(5), Jodhpur.	Vs	Pustikar Sakh Sahakari Samiti Ltd. 4F-71, New Power House Road, Jodhpur.
<b>(Appellant)</b>		<b>(Respondent)</b>
<b>PAN NO. AADAP 0396 G</b>		

**ITA Nos. 90/Jodh/2020  
(ASSESSMENT YEAR- 2017-18)**

Income Tax Officer, Ward-1(5), Jodhpur.	Vs	Pustikar Sakh Sahakari Samiti Ltd. 4F-71, New Power House Road, Jodhpur.
<b>(Appellant)</b>		<b>(Respondent)</b>
<b>PAN NO. AADAP 0396 G</b>		

(Virtual hearing)

<b>Assessee By</b>	Shri Rajendra Purohit –C.A.
<b>Revenue By</b>	Shri Lovish Kumar, CIT-DR
<b>Date of hearing</b>	04/07/2023
<b>Date of Pronouncement</b>	07/07/2023

**ORDER**

**PER: Dr. S. Seethalakshmi, JM**

These two appeals are filed by the Revenue against the orders of the Learned Commissioner of Income Tax (Appeals)-1, Jodhpur [herein after

“Ld.CIT(A)”] both dated 24. 09.2019 & 25.02.2020 for the assessment years 2016-17 & 2017-18 respectively.

2. Since, the facts of both the cases are identical, we have heard these cases together and passing the order together. The facts and grounds are taken from the folder of Pustikar Sakha Sahakari Samiti Ltd. in ITA No. 395/Jodgh/2019 and this case is taken as lead case. In this appeal the Revenue has raised following grounds:-

*“1. Whether on the facts and in the circumstances of the case, the Ld. CIT(Appeals) is justified in law in holding that the assessee is entitled to the deduction u/s 80P of the IT Act, 1961 by ignoring that the assessee is a primary co-operative bank as per section 56(c)(1)(cca) of the Banking Regulation Act, 1946.*

*2. Whether on the facts and in the circumstances of the case, the Ld. CIT(Appeals) is justified in law in holding that the assessee is not cooperative bank by ignoring that the assessee fulfilled conditions applicable to cooperative banks as per Part V of the Banking Regulation act, 1949, and is therefore, not eligible for such deduction as provided u/s 80P(4) of the I.T. Act, 1961.*

*3. Whether on the facts and in the circumstances of the case, the Ld. CIT(Appeals) is justified in allowing deduction u/s 80P(2)(a)(i) by ignoring the fact that the assessee society itself admitted doing banking business and therefore, as per Explanation (a) to section 80P(4) such deduction is not admissible to it.”*

3. Brief facts of the case are that the assessee society is engaged in banking business and provides credit facilities to its members. It e-filed the return of income for the assessment year 2016-17 on 16.10.2016 admitting the total income at Rs. Nil. The return was selected for scrutiny under CASS and notice u/s 143(2) of the Act was issued on 04.07.2017. After hearing the assessee, the assessment was completed u/s 143(3) of the Act on 21.11.2018 determining the total income at Rs. 5,36,23,507/- after the disallowance of deduction u/s 80(2)(a)(i) in respect of profit of Rs. 5,36,23,507/- of the Society by considering the status of the society as a Co-operative Bank.

4. Being aggrieved by the order of the ld. AO, the assessee carried the matter in appeal before the ld. CIT(A) and the findings are reproduced as under:-

“ 5. The appellant has vehemently contested the disallowance made by the AO. The crux of the appellant's submission is that the assessee is a co-operative society registered under the Co-operative Societies Act. It is not a bank as it only accepts deposits from members and grants loans only to members. The society is neither granting loans nor accepting any deposits from persons who are not members of the society. The object of the society is to carry out the banking business but by merely having the object of carrying out banking business the status of society cannot be changed from that of society to a co-operative Bank. The assessee society is neither a central or state or a primary co-operative bank and has the status of society only. The appellant society does not fall under the definition of bank as per Banking Regulation Act as no license from RBI is issued to it. The appellant society by producing its Bye-law tried to fortify its claim that it is only co-operative society and eligible for deduction u/s 80P(2)(a)(i). The appellant has also

referred to various judicial decisions in support of its contentions. It was pointed out by the AR that similar issue was decided against the assessee society by the CIT(A), Jodhpur in AY 2007-08 to 2011-12, against which the appellant went in appeal before the Hon'ble ITAT. It was further pointed out by the AR that the Hon'ble ITAT vide their common orders dated 15-03-2016 in ITA Nos. 146 to 149/JODH/2015 for AY 2007-08 & 2009-10 to 2011-12, vide its order dated 05-05-2017 in ITA Nos. 428/Jodh/2016 for AY 2014-15 and vide its common orders dated 24-04-2017 in ITA Nos 248 & 247/Jodh/2016 for AY 2008-09 & 2013-14 decided the issue of allowability of deduction u/s 80p in favour of the appellant society. The appellant furnished copies of the above mentioned orders of the Hon'ble ITAT in aforesaid ITA Nos. and assessment years respectively and requested that the issue may be decided in favour of the appellant.

6. I have carefully considered the AO's order and submissions of the appellant. I find that the issue under consideration is squarely covered in favour of the appellant by the orders of the Hon'ble Jurisdictional ITAT in appellant's own case in ITA Nos. 146 to 149/JODH/2015 for AY 2007-08 & 2009-10 to 2011-12 dated 15-03-2016, in ITA Nos. 428/Jodh/2016 for AY 2014-15 dated 05-05-2017 and in Nos 246 and 247/Jodh/2016 for AY 2008-09 & 2013-14 dated 24-04-2017 The operative part of the Hon'ble ITAT's order in ITA Nos. 146 to 149/JODH/2015 is reproduced as below:-

“7. We find that the issue is now covered by the decision of the Hon'ble Karnataka High Court in favour of the assessee in the case of CIT Vs. Sri Biluru Gurubasava Pattina Sahakari Sangha Niyamitha, Bagalkot, in ITA No.5006/2013 dated 05-02-2014, which was followed in the cases of General Insurance Employees Co-operative Credit Society Ltd. and in the case of Vasavi Multipurpose Souharda Sahakari Niyamitha, ITA No.505/2013 dated 27/06/2014, has clearly held that a co-operative society registered as co-operative society, providing credit facilities to members and not registered with the RBI cannot be denied the exemption under section 80P(1) of the IT Act. The operative part of the judgment reads as follows:-

"Therefore, the intention of the legislature is clear, if a co-operative bank is exclusively carrying on banking business, then the income derived from the said business cannot be deducted in computing the total income of the assessee. The said income is liable for tax. A co-operative bank as defined under the Banking regulation Act includes the primary agricultural credit society or a primary co-operative agricultural and rural development bank.

The legislature did not want to deny the said benefits to a primary agricultural credit society or a primary co-operative agricultural and rural development bank. They did not want to extend the said benefit to a co-operative bank which is exclusively carrying on banking business ie the ITA No.1149/Bang/2015 Shri Holehucheshwar Co-op Credit Society Ltd. Page 4 of 6 purpose of this amendment. Therefore, as the assessee is not a Co-operative bank carrying on exclusively banking business and as it does not possess a licence from Reserve Bank of India to carry on business, it is not a co-operative bank. It is a co-operative society which also carries on the business of lending money to its members which is covered under section 80P(2)(a)(i) Le carrying on the business of banking for providing credit facilities to its members. The object of the aforesaid amendment is not to exclude the benefit extended under section 80P(1) to such society, in the instant case, when the status of the assessee is a co-operative society and is not a co-operative bank, the order passed by the Assessing authority extending the benefit of exemption from payment of tax under section 80P(2)(a)(i) of the Act is correct

Respectfully following the same, we uphold that the assessee is a cooperative society and not a cooperative bank and, therefore, entitled to deduction under sec. 80P of the Act. We therefore, set aside the orders of the lower authorities and direct the Assessing Officer to allow deduction under sec. 80P of the Act to the assessee."

Respectfully following the order of the Hon'ble ITAT, Jodhpur Bench, it is held that the appellant society is entitled to deduction u/s. 80P. This issue is decided in favour of the appellant and the addition made at Rs. 5.36.23.5071- is hereby deleted. The appellant gets relief of same amount. The appellant succeeds on these grounds."

5. Feeling dissatisfied from the order of the ld. CIT(A), the Revenue has filed the appeal as per grounds so raised. Before us the ld. AR for the assessee as filed detailed submissions the same is reproduced hereinebelow:-

“The facts of this case are as below:

1. That the assessee, being a Co-operative Society, is engaged in "Carrying on the business of banking or providing credit facilities to its Members" as mentioned in section 80P(2)(a)(i) of the Income Tax Act, 1961 and is registered with the Central Registrar of Co-operative Societies, Government of India, Ministry of Agriculture (Department of Agriculture and Co-operation);
2. That the Honuorable Assessing Officer has passed the order determining the income of the assessee for the above referred Assessment year to Rs. 5,49,73,323 and raising a demand of Rs2,50,00,635 including interest under section 234;
3. That on appeal by the assessee against the order of the Honorable Assessing Officer, the appeal was allowed by the Honourable Commissioner of Income Tax (appeals)-1, Jodhpur. While allowing the appeal the order of Income Tax Appellate Tribunal, Jodhpur Bench was followed by the Honourable Commissioner of Income Tax (appeals)-1, Jodhpur;
4. That the Revenue preferred above referred appeal against the order of the Commissioner of Income Tax (appeals)-1, Jodhpur.

#### B. SUBMISSIONS

The Appellant humbly beg to submit as under:

That in the assessee's own case (for the assessment years 2007-08 2009-10 to 2011-12, 2008-09 and 2013-14, 2014-15 and 2015-2016) the Honourable Income Tax Appellate Tribunal, Jodhpur Bench has set aside the orders of the lower authorities and directed the Assessing Officer to allow the deduction under section 80P of the Income Tax Act, 1961. The copy of order of the Income Tax Appellate Tribunal, Jodhpur Bench is enclosed herewith as annexure 1. While allowing the appeal, the of Income Tax Appellate Tribunal, Jodhpur Bench has held that-

"We find that the issue is now covered by the decision of the Hon'ble Karnatka High court in favour of the assessee in the case of CIT Vs. Sri Bilurur Gurubasava Pattina Sahakari Sangha Niyamatha, Bagalkot, in ITA No.5006/2013 dated 05.02.2014, which was flowed in the cases of General Insurance Employees Co- operative Credit Socitey Ltd. and in the case of Vasavi Multipurpose Souharda Sahakari Niyamitha, ITA no.505/2013 dated 27.06.2014, has clearly held that a co-operative society registered as Co-operative Society, providing credit facilities to members and not registered with the RBI cannot be denied the exemption under section 80P(1) of the IT Act. The operative part of the judgment reads as follows:

"therefore, the intention of the legislature is clear, if a co-operative bank is exclusively carrying on banking business, then the income derived from the said business cannot be deducted in computing the total income of the assessee. The said income is liable for tax. A co-operative bank as defined under the Banking Regulation Act includes the primary agricultural credit society or a primary co- operative agricultural and rural development ban. They did not want to extend the said benefit to a co-operative bank which is

exclusively carrying on the banking business i.e. the ITA No. 1149/Bang/2015 Shri Holehucheshwar Co-op Credit Society Ltd. page 4 of 6 purpose of this amendment. Therefore, as the assessee is not a co-operative bank carrying on exclusively banking business and it does not possess a license from the Reserve Bank of India to carry on business, it is not Co-operative Bank. It is a co-operative society which also carried on the business of lending money to its member which is covered under section 80P(2)(a)(i) i.e. carrying on the business of banking for providing credit facilities to its members. The object of the aforesaid amendment is not to exclude the benefit extended under section 80P(1) to such society..... in the instant case, when the status of the assessee is a co-operative society and is not a co-operative bank, the order passed by the Assessing authority extending the benefit of exemption from payment of tax under section 80P(2)(a)(i) of the Act is correct".

Respectfully following the same, we uphold that the assessee is a co-operative society and not a co-operative bank and, therefore, entitled to deduction under section 80P of the act. We therefore, set aside the orders of the lower authorities and direct the Assessing Officer to allow deduction under sec. BOP of the Act to the assessee."

It is, therefore, evident that Honourable Commissioner of Income Tax (Appeals)-1 Jodhpur has rightly allowed the appeal of the assessee for the assessment year 2016-17 by following the order of the Honuorable Income Tax Appellate Tribunal, Jodhpur Bench in the assessee's own case for different assessment years as mentioned above. It is further, very humbly, submitted that the facts of the case are identical to the facts of the case of the assessment years 2007-08, 2009-10,2010-11 and 2011-12, 2008-09 and 2013-2014 and 2014-15 and 2015-2016.

In view of above, your Honour is very humbly requested to consider the submissions and oblige.”

6. In support, reliance was placed on the following decisions in assessee own case which is reproduced as under:-

- ITA No. 146 to 149/Jodh/2015 Pushtikar Laghu Vyaparik Partisthan Bachat Evam Sakh Sahakari Samiti Ltd. vs. ITO dated 15.03.2016.
- ITA No. 246 & 247/Jodh/2016 ITO vs Pushtikar Laghu Vyaparik Partisthan Bachat Evam Sakh Sahakari Samiti Ltd dated 24.04.2017.

- ITA No. 223/Jodh/2016 ITO vs. Pushtikar Laghu Vyaparik Partisthan Bachat Evam Sakh Sahakari Samiti Ltd dated 05.07.2017.
- 428/Jodh/2016 ITO vs. M/s Pushtikar Sakh Sahakari Samiti Ltd. dated 05.05.2017.
- ITA No. 176/Jodh/2018 ITO vs. M/s Pushtikar Sakh Sahakari Samiti Ltd. DATED 19.03.2020.

7. Only the grievance of the Revenue relates to action of the ld. CIT(A) in deleting the addition made by the ld. AO declining the claim of deduction u/s 80P of the Act.

8. We have heard the both parties and perused the materials available on record. We find that the issue is decided in favour of the assessee and squarely covered by the assessee's own case in ITA No. 176/Jodh/2018 for the Assessment Year 2015-16 dated 19.03.2020 which is reproduced as under:-

“4. We observe that the ld. CIT(A) has allowed the appeal of the assessee wherein it has claimed deduction U/s 80P of the Act by following the order of the Tribunal in assessee's own case passed in ITA Nos. 146 to 149/Jodh/2015 for the A.Y. 2007-08 & 2009-10 to 2011-12 dated 15/3/2016. The precise observation of the ld. CIT(A) is as under:

“6. I have carefully considered the AO’s order and submissions of the appellant. I find that the issue under consideration is squarely covered in favour of the appellant by the order of the Hon’ble Jurisdictional ITAT in the case of M/s Pushtikar Sakh Sahakari Samiti Ltd., in ITA Nos. 146 to 149/JODH/2015 for AY 2007-08 & 2009-10 to 2011-12 dated 15-03-2016. The operative part of the Hon’ble ITAT’s order is reproduced as below:-

"7. We find that the issue is now covered by the decision of the Hon'ble Karnataka High Court in favour of the assessee in the case of CIT Vs. Sri Biluru Gurubasavl Pattina Sahakari Sangha Niyamitha, Bagalkot, in ITA No.5006/2013 dated 05-02-2014, which was followed in the cases of General Insurance Employees Co-operative Credit Society Ltd. and in the case of Vasavi Multipurpose Souharda Sahakari Niyamitha, ITA No.505/2013 dated 27/06/2014, has clearly held that a co-operative society registered as co-operative society, providing credit facilities to members and not registered with the RBI cannot be denied the exemption under section 80P(1) of the IT Act. The operative part of the judgment reads as follows:-

“Therefore, the intention of the legislature is clear, if a cooperative bank is exclusively carrying on banking business, then the income derived from the said business cannot be deducted in computing the total income of the assessee. The said income is liable for tax. A co-operative bank as defined under the Banking regulation Act includes the primary agricultural credit society or a primary cooperative agricultural and rural development bank. The legislature did not want to deny the said benefits to a primary agricultural credit society or a primary co-operative agricultural and rural development bank. They did not want to extend the

said benefit to a co-operative bank which is exclusively carrying on banking business i.e. the ITA No.1149/Bang/2015 Shri Holehucheshwar Coop Credit Society Ltd. Page 4 of 6 purpose of this amendment. Therefore, as the assessee is not a Co-operative bank carrying on exclusively banking business and as it does not possess a licence from Reserve Bank of India to carry on business, it is not a cooperative bank. It is a co-operative society which also carries on the business of lending money to its members which is covered under section 80P(2)(a)(i) i.e. carrying on the business of banking for providing credit facilities to its members. The object of the aforesaid amendment is not to exclude the benefit extended under section 80P(1) to such society.....in the instant case, when the status of the assessee is a co-operative society and is not a cooperative bank, the order passed by the Assessing authority extending the benefit of exemption from payment of tax under section 80P(2)(a)(i) of the Act is correct”.

Respectfully following the same, we uphold that the assessee is a cooperative society and not a cooperative bank and, therefore, entitled to deduction under sec. 80P of the Act. We therefore, set aside the orders of the lower authorities and direct the Assessing Officer to allow deduction under sec. 80P of the Act to the assessee."

5. The Id. Departmental Representative fairly conceded the fact that the issue is covered by the order of the Tribunal in assessee's own case.

6. As the facts and circumstances of the case during the year under consideration are same, therefore, respectfully following the order of the Tribunal in assessee's

own case, I do not find any infirmity in the order of the ld. CIT(A) for allowing the claim of deduction U/s 80P of the Act.

7. In the result, the appeal of the revenue is dismissed.”

We do not find any infirmity with the order of the ld. CIT(A) since he has adjudicated these issues on the basis of decisions of the ITAT Jodhpur bench which has held in the assessee's own case that the assessee society is entitled to deduction u/s 80P of the Act and the Ld DR did not contravert the submissions made by the assessee. We are concluding that the assessee is a co-operative society and not a co-operative bank and, therefore, entitled to deduction under section 80P of the act. We therefore, uphold the order of ld. CIT(A) and we see no merits in the grounds so taken and therefore the appeal filed by the Revenue is dismissed.

9. The Bench feels that the facts in the case of ITA No. 90/Jodh/2020 is exactly similar to the fact ITA No. 395/Jodh/2019 and therefore, it is not imperative to repeat the fact in ITA No. 90/Jodh/2020. The decision taken by us in ITA No. 395/Jodh/2019 shall apply mutatis mutandis to ITA No. 90/Jodh/2020.]

In the result, the appeals of the Revenue are dismissed .

Order pronounced in the open court on 07/07/2023.

Sd/-

(RATHOD KAMLESH JAYANTBHAI)  
ACCOUNTANT MEMBER

Sd/-

(DR. S. SEETHALAKSHMI)  
JUDICIAL MEMBER

Dated : 07/07/2023

*\*Santosh*

Copy to:

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

Assistant Registrar  
Jodhpur Bench