

**IN THE INCOME TAX APPELLATE TRIBUNAL
RAJKOT BENCH, RAJKOT
(Conducted through E-Court at Ahmedabad)**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER &
SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER**

I.T.A. No.115/Rjt/2023
(Assessment Year: 2018-19)

TIFS Credit Cooperative Society Ltd., Poonam Apartment, Sadar Bazar, Rajkot-360001	Vs.	The Principal Commissioner of Income Tax, Rajkot-1
[PAN No.AAAAT2411M]		
(Appellant)	..	(Respondent)

Appellant by :	Shri Darshak Thakkar, A.R.
Respondent by:	Shri Shramdeep Sinha, CIT DR

Date of Hearing	10.08.2023
Date of Pronouncement	23.08.2023

ORDER

PER SIDDHARTHA NAUTIYAL, JM:

This appeal has been filed by the assessee against the order passed by the Ld. Principal Commissioner of Income Tax-1, (in short “Ld. PCIT”), Rajkot in Order No. ITBA/REV/M/REV-5/2022-23/10512106691(1) vide order dated 24.03.2023 passed for Assessment Year 2018-19.

2. The assessee has taken the following grounds of appeals:-

“1. The grounds of appeal mentioned hereunder are without prejudice to one another.

2. The order passed by Pr. Commissioner of Income-tax, Rajkot-1 [hereinafter referred as to the “PCIT”] is bad in law, invalid and requires to be quashed, the same may kindly be quashed.

3. *The learned PCIT has failed to appreciate that the impugned issue was duly examined by the assessing officer by way of specific inquiry/notice and reply thereto, while finalizing assessment proceedings u/s.143(3) of the Act and case of your appellant was taken up specifically for verification of deduction u/s.80P of the Act in respect of interest income earned from co-operative bank.*

4. *The learned PCIT has erred in setting aside the assessment order framed u/s. 143(3) read with sections 143(3A) & 143(3B) of the Income-tax Act, 1961 by holding that the AO did not conduct any inquiries or verification in respect of eligibility of deduction claimed by your appellant of interest income u/s 80P(2)(a)(i) / 80P(2)(d) of the Act.*

5. *Your Honour’s appellant craves leave to add, to amend, alter, or withdraw any or more grounds of appeal on or before the hearing of appeal.”*

3. The brief facts of the case are that the assessee filed return of income for A.Y. 2018-19 declaring total income of Rs. NIL. The assessment was finalized under Section 143(3) of the Act determining total assessed income at Rs. NIL. Subsequently, the Principal Commissioner of Income Tax (in short “PCIT”), Rajkot-1 initiated 263 proceedings primarily on the ground that during the impugned year under consideration, the assessee had shown interest income on fixed deposits held with Co-operative Bank amounting to Rs. 98,96,163/- on which the assessee had claimed deduction under Section 80P(2) of the Act. The PCIT was of the view that the assessee had incorrectly claimed deduction under Section 80P(2) of the Act in respect of the aforesaid interest income earned from fixed deposits kept with Co-operative Banks. The PCIT

was of the view that once such income is taxed as “income from other sources”, the assessee society will not be entitled to deduction under Section 80P(2) of the Act as claimed in the return of income. According to the Ld. PCIT, in view of the decision of **Totgars Cooperative Society 188 taxman 282** such interest income could not be said to be attributable to the activities of society carrying on business of providing credit facilities to its members. Accordingly, the Ld. PCIT set-aside the assessment order on the ground that Assessing Officer erred in allowing the claim of deduction under Section 80P(2) of the Act with respect to the aforesaid income.

4. The assessee is in appeal before us against the order passed by Ld. PCIT setting-aside the assessment order as being erroneous and prejudicial to the interest of the Revenue. The arguments of the Ld. Counsel for the assessee before us are two folds. Firstly, the Counsel for the assessee drew our attention to Page 7 to 9 of the Paper Book (Query No. 7), wherein the Assessing Officer had inquired into the eligibility of assessee’s claim for deduction under Section 80P of the Act. Secondly, the Counsel for the assessee drew our attention to Pages 10 to 25 of the Paper Book, in which the assessee had filed detailed reply in response to the query raised by the Assessing Officer. Accordingly, the Counsel for the assessee submitted that the Assessing Officer had examined this issue in detail and therefore, it is not a case where there is a lack of enquiry on part of the Assessing Officer during the course of assessment proceedings. Secondly, the Counsel for the assessee submitted that in various judicial precedents, the Courts and Tribunals have taken a consistent view that the assessee is eligible for claim of deduction under Section 80P(2) of the Act with respect to interest income earned from deposits kept with other Co-operative Banks. Therefore, the Counsel for the

assessee submitted that the Assessing Officer took a legally plausible view after taking into consideration the submissions placed on record by the assessee during the course of assessment proceedings. Accordingly, the assessment order is not liable to be set-aside as being erroneous and prejudicial to the interest of the Revenue, looking into the facts of the instant case.

5. In response, Ld. D.R. submitted that the Gujarat High Court in the case of **Katlary Kariyana Merchant Sahkari Sarafi Mandali Ltd. 140 taxman.com 602 (Gujarat)**, has clearly opined that interest earned from Co-operative Banks is not eligible for claim of deduction under Section 80P(2) of the Act. Therefore, in light of the aforesaid decision rendered by the Gujarat High Court on the specific issue, the assessment order is clearly erroneous and prejudicial to the interest of the Revenue.

6. We have heard the rival contentions and perused the material on record. We observe that the Assessing Officer vide notice dated 22.09.2019 (Page 7 to 9 of Paper-Book) had specifically enquired into this aspect of eligibility for claim of deduction under Section 80P(2) of the Act. Further, the assessee also filed reply dated 02.01.2020 (refer Page 10 to 25 of Paper-Book), in which the assessee had filed a Written Submission in support of its eligibility for claim of deduction under Section 80P(2) of the Act. Accordingly, evidently this issue has been examined by the Assessing Officer during the course of assessment proceedings, and after taking the submissions of the assessee on record, the Assessing Officer allowed the claim of the assessee.

7. The second issue for consideration is whether the view taken by the Assessing Officer is a legally plausible view. In the case of **Surendranagar District Co-op. Milk Producers Union Ltd. 111 [taxmann.com](#) 69 (Rajkot -**

Trib.), the Rajkot ITAT held that Assessee-co-operative society could not claim benefit of Section 80P(2)(d) in respect of interest earned by it from deposits made with nationalized / private banks, however, said benefit was available in respect of interest earned on deposits made with co-operative bank. In the case of **Surat Vankar Sahakari Sangh Ltd. 72 taxmann.com 169 (Gujarat)**, the Hon'ble High Court held that Assessee-co-operative society was 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. In the case of **Prime Co Op Bank Ltd. 49 taxmann.com 16 (Gujarat)**, the High Court held that Interest income received by a co-operative bank on its voluntary reserve in bank, bonds and small scale industrial corporation is eligible for deduction under Section 80P. The Hon'ble Gujarat High Court in the case of **State Bank of India Vs. CIT (2016) 389 ITR 578 (Guj)**, held that the interest income earned by a co-operative society on its investments held with a co-operative bank would be eligible for claim of deduction under Sec.80P(2)(d) of the Act. The Hon'ble Gujarat High Court made following observations in respect of interest earned from deposits kept with a cooperative bank:

*“Therefore, it is only the interest derived from the credit provided to its members which is deductible under section 80P(2)(a)(i) of the Act and the interest derived by depositing surplus funds with the State Bank of India not being attributable to the business carried on by the appellant, cannot be deducted under section 80P(2)(a) (i) of the Act. **If the appellant wants to avail of the benefit of deduction of such interest income, it is always open for it to deposit the surplus funds with a co-operative bank and avail of deduction under section 80P(2)(d) of the Act.**”*

In the case of **Bardoli Vibhag Gram Vikas Co.Op. Credit Society Ltd. 127 [taxmann.com](#) 334 (Surat-Trib.)**, the ITAT held that where Assessing Officer had made enquiries on allowability of deduction under Section 80P(2)(d) and passed assessment order in respect of gross interest received from co-operative bank and thus, had taken a reasonable and possible view which cannot be held as erroneous, Commissioner was not justified in revising said order. In the case of **Kaliandas Udyog Bhavan Premises Co-op Society Ltd. 94 [taxmann.com](#) 15 (Mumbai - Trib.)**, the ITAT held that a co-operative bank continues to be a co-operative society registered under Co-operative Societies Act, 1912 or under any other law for time being in force in any State for registration of co-operative societies, and, therefore, interest income derived by a co-operative society from its investments held with a co-operative bank, would be entitled for claim of deduction under Section 80P(2)(d). In the case of **BEE Co-op Credit Society Ltd Vs ITO (ITAT Bangalore) in ITA No. 366/Bang/2023**, the ITAT held that Interest earned by co-operative society from investment with any other co-operative society deductible under Section 80P(2)(d). In the case of **Amore Commercial Premises Co-Op Society Ltd. Vs Central Processing Centre (ITAT Mumbai) in ITA No.2873 & 2874 /M/2022**, the ITAT held that Section 80P(2)(d) deduction eligible to co-op society on Interest income on investment of fund with co-op banks.

8. Accordingly, in so far as this issue with respect eligibility for deduction under Section 80P(2)(d) is concerned, in our view, the order passed by the Assessing Officer is not erroneous and prejudicial to the interests of the Revenue for the reason that firstly, the Assessing Officer had examined this issue during the course of assessment proceedings and secondly, various judicial precedents as highlighted above have also adjudicated on this issue in

favour of the assessee including the jurisdictional Gujarat High Court and the jurisdictional Rajkot ITAT. We also need to be mindful of the fact that in 263 proceedings, the scope of proceedings is not as vast as in the case of original assessment proceedings and would the assessment order can be set-aside only within the framework provided under Section 263 of the Act. In the case of **Shreeji Prints (P.) Ltd. 130 taxmann.com 294 (SC)**, the Hon'ble Supreme Court made the following observations on the scope of 263 proceedings:

“We thus find merit in the plea of the assessee that the Revisional Commissioner is expected show that the view taken by the AO is wholly unsustainable in law before embarking upon exercise of revisionary powers. The revisional powers cannot be exercised for directing a fuller inquiry to merely find out if the earlier view taken is erroneous particularly when a view was already taken after inquiry. If such course of action as interpreted by the Revisional Commissioner in the light of the Explanation 2 is permitted, Revisional Commissioner can possibly find fault with each and every assessment order without himself making any inquiry or verification and without establishing that assessment order is not sustainable in law. This would inevitably mean that every order of the lower authority would thus become susceptible to section 263 of the Act and, in turn, will cause serious unintended hardship to the tax payer concerned for no fault on his part. Apparently, this is not intended by the Explanation. Howsoever wide the scope of Explanation 2(a) may be, its limits are implicit in it. It is only in a very gross case of inadequacy in inquiry or where inquiry is per se mandated on the basis of record available before the AO and such inquiry was not conducted, the revisional power so conferred can be exercised to invalidate the action of AO. The AO in the present case has not accepted the submissions of the assessee on various issues summarily but has shown appetite for inquiry and verifications. The AO has passed after

making due enquiries issues involved impliedly after due application of mind. Therefore, the Explanation 2 to section 263 of the Act do not, in our view, thwart the assessment process in the facts and the context of the case. Consequently, we find that the foundation for exercise of revisional jurisdiction is sorely missing in the present case.”

9. In view of the facts of the instant case and in light of the decision of Hon’ble Supreme Court in the case of Shreeji Prints (P.) Ltd. (supra) outlining the scope and powers of applicability of Section 263 of the Act, we are of the considered view that Ld. PCIT erred in facts and in law in setting-aside the assessment order as being erroneous and prejudicial to the interest of the Revenue in the instant case.

10. In view of the above, the appeal of the assessee is allowed.

This Order pronounced in Open Court on	23/08/2023
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Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER
Ahmedabad; Dated 23/08/2023

TANMAY, Sr. PS

TRUE COPY

आदेश की प्रतिलिपि अग्रहित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, राजकोट / DR, ITAT, Rajkot
6. गार्ड फाईल / Guard file.

Sd/-
(SIDDHARTHA NAUTIYAL)
JUDICIAL MEMBER

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, राजकोट / ITAT, Rajkot