

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT (SMC) BENCH
BEFORE DR. A. L. SAINI, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.478/SRT/2023

Assessment Year: (2017-18)

(Physical Hearing)

Shri Nehrunagar Co.Op. Housing Society, Umang Hall, Nehrunagar Society, Ichchanath Road, Surat – 395007.	Vs.	The ITO, Ward – 1(3)(5), Surat
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AABAS2271H		
(Appellant)		(Respondent)

Appellant by	Shri P. M. Jagasheth, CA
Respondent by	Shri Vinod Kumar, Sr. DR
Date of Hearing	06/09/2023
Date of Pronouncement	20/09/2023

आदेश / ORDER

PER DR. A. L. SAINI, AM:

Captioned appeal filed by the assessee, pertaining to Assessment Year (AY) 2017-18, is directed against the order passed by the Learned Commissioner of Income Tax (Appeals), Surat [in short “the Id. CIT(A)”], National Faceless Appeal Centre (in short ‘the NFAC’), Delhi, dated 17.05.2023, which in turn arises out of an assessment order passed by Assessing Officer u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as “the Act”), dated 10.12.2019.

2. The grounds of appeal raised by the assessee are as follows:

“1. On the facts and in the circumstances of the case as well as the law on the subject, the learned Commissioner of the Income Tax (Appeals) has erred in confirming the action of the Assessing Officer in making addition of Rs.10,99,260/ in non-granting the deduction of interest

income claimed u/s.80P(2)(d) of the Income Tax Act, 1961 of Rs.26,48,946/- of the I.T. Act, 1961.

2. On the facts and in the circumstances of the case as well as the law on the subject, it is ought to have be held that the deduction u/s 80P(2)(d) of the Act be allowed to the co-operative society in respect of interest income received from co-operative banks, irrespective of the facts whether it is held as income from other sources or under any other source of income.

3. On the facts and in the circumstances of the case as well as the law on the subject, the learned Commissioner of the Income Tax (Appeals) has erred in confirming the action of the Assessing Officer in initiating penalty proceedings u/s.274 r.w.s. 270A(1) of the Income Tax Act, 1961.

4. It is therefore prayed that the above addition may please be deleted as learned members of the Tribunal may deem it proper.

5. Appellant craves leave to add, alter or delete any ground(s) either before or in the course of the hearing of the appeal.”

3. When this appeal was called out for hearing, Shri P. M. Jagasheth, Learned Counsel for the assessee invited my attention to the order dated 10.07.2023, passed by the Division Bench of this Tribunal in the case of Shree Madhi Vibhag Khand Udyog Sahakari Mandli Ltd. vs. PCIT, (2023) 152 taxmann.com 548 (Surat Trib.), whereby the issue relating to deduction under section 80P(2)(d) of the Act, in respect of interest income received from co-operative banks, was decided in favour of assessee. That is, deduction u/s 80P(2)(d) of the Act be allowed to the co-operative society in respect of interest income received from co-operative banks. Since the issue relating to interest income received by co-operative society from co-operative bank has been adjudicated in favour of assessee by the Division Bench of this Tribunal, therefore ld. Counsel for the assessee submitted that the present appeal is squarely covered by the aforesaid order of Tribunal, a copy of which was also placed before the Bench.

4. On the other hand, Learned Senior Departmental Representative (ld. Sr. DR) for the Revenue nevertheless relied on the order of authorities below and furnished the written submissions which are reproduced below:

“Section 80P of the IT Act is inserted for providing deductions to Co-operative societies.

2. The provision of section 80P of the IT Act is as under:

Deduction in respect of income of co-operative societies.

80P. (1) Where, in the case of an assessee being a co-operative society, the gross total income includes any income referred to in sub-section (2), there shall be deducted, in accordance with and subject to the provisions of this section, the sums specified in sub-section (2), in computing the total income of the assessee.

(2) The sums referred to in sub-section (1) shall be the following, namely :—

(a) in the case of a co-operative society engaged in—

(i) carrying on the business of banking or providing credit facilities to its members, or

(ii) a cottage industry, or

(iii) the marketing of agricultural produce grown by its members, or

(iv) the purchase of agricultural implements, seeds, livestock or other articles intended for agriculture for the purpose of supplying them to its members, or

(v) the processing, without the aid of power, of the agricultural produce of its members, or

(vi) the collective disposal of the labour of its members, or

(vii) fishing or allied activities, that is to say, the catching, curing, processing, preserving, storing or marketing of fish or the purchase of materials and equipment in connection therewith for the purpose of supplying them to its members, the whole of the amount of profits and gains of business attributable to any one or more of such activities :

Provided that in the case of a co-operative society falling under sub-clause (vi), or sub-clause (vii), the rules and bye-laws of the society restrict the voting rights to the following classes of its members, namely:—

(1) the individuals who contribute their labour or, as the case may be, carry on the fishing or allied activities;

(2) the co-operative credit societies which provide financial assistance to the society;

(3) the State Government;

- (b) in the case of a co-operative society, being a primary society engaged in supplying milk, oilseeds, fruits or vegetables raised or grown by its members to—
- (i) a federal co-operative society, being a society engaged in the business of supplying milk, oilseeds, fruits, or vegetables, as the case may be; or
 - (ii) the Government or a local authority; or
 - (iii) a Government company¹¹ as defined in section 617 of the Companies Act, 1956 (1 of 1956), or a corporation established by or under a Central, State or Provincial Act (being a company or corporation engaged in supplying milk, oilseeds, fruits or vegetables, as the case may be, to the public), the whole of the amount of profits and gains of such business;
- (c) in the case of a co-operative society engaged in activities other than those specified in clause (a) or clause (b) (either independently of, or in addition to, all or any of the activities so specified), so much of its profits and gains attributable to such activities as does not exceed,—
- (i) where such co-operative society is a consumers' co-operative society, one hundred thousand rupees; and
 - (ii) in any other case, fifty thousand rupees.

Explanation.—In this clause, "consumers' co-operative society" means a society for the benefit of the consumers;

- (d) in respect of any income by way of interest or dividends derived by the co-operative society from its investments with any other co-operative society, the whole of such income;
- (e) in respect of any income derived by the co-operative society from the letting of godowns or warehouses for storage, processing or facilitating the marketing of commodities, the whole of such income;
- (f) in the case of a co-operative society, not being a housing society or an urban consumers' society or a society carrying on transport business or a society engaged in the performance of any manufacturing operations with the aid of power, where the gross total income does not exceed twenty thousand rupees, the amount of any income by way of interest on securities or any income from house property chargeable under section 22.

Explanation.—For the purposes of this section, an "urban consumers' co-operative society" means a society for the benefit of the consumers within the limits of a municipal corporation, municipality, municipal committee, notified area committee, town area or cantonment.

In this section, clause 80P(2)(d) is allowed the deduction of interest income received by Co-operative Societies from its investment in another Co-operative Society.

There are no definition of Co-operative Society mentioned in this clause i.e. 80P(2)(d). Further, in the section 80P(4) of the IT Act, there are

mention of Co-operative society is inserted and as per that mention the provisions of the section 80P cannot be applicable to Co-operative Bank. The provision of Section 80P also include clause 80P(2)(d) of the IT Act.

In view of the fact that Co-operative Society has not been defined in section 80P or in clause 80P(2)(d). The word Co-operative Society should be interpretate in the same meaning for whole of the section 80P which also include 80P(2)(d). Therefore, the provisions of this section cannot be applicable to Co-operative Banks.

The word Co-operative Society has been used in two time in clause 80P(2)(d). As per the rule of interpretation, the word Co-operative Society should be construed/interpreted in the same meaning for both words of Cooperative Society used in 80P(2)(d).

In absence of any specific definition of Co-operative Society, mentioned in section SOP, the interpretation of both word (Co-operative Society) used in section 80P(2)(d) cannot be construed in two different meaning.

If the first word of Co-operative Society used in the 80P(2)(d) has not included the Co-operative Bank in its meaning, then the later word used in 80P(2)(d) shall also not included Co-operative Bank in the meaning of Cooperative Society.

The rule of interpretation of statue are very clear in this regard and accordingly to that if a particular word is used in different parts of a statute, there is a presumption that the word is used in the same sense throughout. If the word Co-operative society is used twice in the provision 80P(2)(d) of the Act, it articulates the same meaning at both times. It cannot be presumed that first time used the word 'co-operative society' means having another implication and second time used different meaning. This was so held in Boghilal Pandya v. State of Bombay and followed in other cases as well. Lord MacDermott pointed out that this principle was to ensure an orderly and consistent use of language (Madras Electric Supply Corporation Ltd v. Boarland.

Reliance is placed on the order of Calcutta High Court in the case of Madras Electric Supply Corporation Ltd v. Boarland.

Reliance is also placed on the order of Supreme Court of India in the case of Boghilal Pandya v. State of Bombay.

3. In the light of above submission, I pray before your honour the addition of Rs.10,99,259/- made by the A.O. may kindly be sustained.”

5. I see no reasons to take any other view of the matter than the view so taken by the Division Bench of this Tribunal in the case of

Shree Madhi Vibhag Khand Udyog Sahakari Mandli Ltd. (supra). In this order, the Tribunal has inter alia observed as follows:

“7. We have considered the rival submissions of both the parties and also perused the orders of lower authorities carefully. We have also deliberated on the various case laws relied by ld representatives. The assessee before us, is a cooperative society registered under the provisions of Gujarat Co-operative Societies Act-1961. The assessee filed its return of income for AY 2018-19 on 16-10-2018. Initially return of income was processed under section 143(1) on 16-5-2019. later on It was selected for scrutiny by issuing notice under section 143(2) on 23-9-2019. The case was selected for scrutiny for examination of deduction of Chapter-VIA. We find that during the assessment order the assessing officer issued specific show cause notice for examination of deduction under Chapter VIA. The assessee filed its reply and explained the admissibility of deduction under section 80P, specifically about the deduction of Rs. 2.01 Crore claimed under section 80P(2)(d). No doubt, there is no reference about the examination of such issue, however, admittedly the issue was examined by the assessing officer. We further find that the ld PCIT revised the assessment order on the issue of deduction under section 80P(2)(d). On careful considerations of grounds of appeal and the facts of the case, we find that on similar grounds of appeal on similar set of facts, this combination has this Tribunal allowed similar relief to that assessee, thus in our view, the grounds of appeal raised by the assessee are square covered in favour of assessee and against the revenue. For completeness of order, the relevant part of decision in Bardoli Vibhag Gram Vikas Co-op Credit Society Ltd. (supra) is extracted below:

"11. We have considered the rival submission of both the parties. We have also deliberated on the written submission filed by learned AR of the assessee and various case laws relied by him during his submission. We have also gone through the various documentary evidences filed in the form of paper book (PB) by learned AR of the assessee. We have noted that during the assessment the Assessing Officer vide notice under section 143(2)/142(1) of the Act dated 31-8-2015 and 13-4-2016. The assessee filed its reply through its CA (AR) and furnished required details and after examining the issue allowed the deductions under section 80P(2)(d) as discussed in para 4 of the assessment order. The Assessing Officer passed assessment order on 18-10-2016.

12. The ld. PCIT before passing under section 263 of the Act, identified the issue regarding the claim of deduction under section

80P(2)(d) in its show cause notice dated 6-3-2019. The assessee in its reply dated 7-3-2019 clearly explained that the issue was examined by Assessing Officer and that the assessment order is not erroneous. The assessee also explained that similar disallowances/issues was subject matter in the appeal filed by the revenue before Tribunal in A.Y. 2009-10, 2010-11 and 2012-13 and the assessee was allowed similar deductions.

13. The Hon'ble Jurisdictional High Court in *Aryan Arcade Ltd., v. PCIT* (2019) 412 ITR 277 (Gujarat) held that merely because Commissioner held a different belief that would not permit him to take the order in revision, it if further held that when Assessing Officer made full enquiry, he made up his mind, the notice of revision is not valid. (emphasis added by us). Further, Hon'ble Madras High Court in *CIT v. Mepco Industries Ltd.*, (2007) 207 CTR 462 (Madras) held that when two views are possible on an issue and it is not the case of the Commissioner that the view taken by Assessing Officer is not permissible in law, Commissioner cannot invoke his jurisdiction under section 263 of the Act. (emphasis added by us)

14. As we have noted above the assessing officer has made enquiries on the allowability of deduction under section 80(P)(2)(d) and passed the assessment order, thus, the Assessing Officer has taken a reasonable and possible view which cannot be held as erroneous.

15. The Hon'ble Karnataka High Court in *PCIT v. Totagars Co-operative Sales Society* [2017] 78 taxman.com 169 (Karnataka) held that for the purpose of section 80P(2)(d) a Co-operative Bank should be considered by a Co-operative Society and interest earned by Co-operative Society from Co-operative Bank would necessarily be deductible under section 80P(1) of the Act. Further, the Hon'ble Jurisdictional High Court in *Surat Vankar Sahakari Sangh Ltd., v. ACIT* [2016] 72 taxmann.com 169 (Guj) held that assessee co-operative society is 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.

16. The Co-ordinate Bench of Rajkot Tribunal in *Surendarnagar District Co-operative Milk Producer Union Ltd., v. DCIT* [2019] 111 taxmann.com 69 (Rajkot Tribunal) also held the assessee co-operative society could not claim benefit under section 80P(2)(d) in respect of interest earned by it from deposits made with nationalized/private banks, however, the said benefit was available

in respect of interest earned and on deposits made with co-operative bank. Thus, in view of the aforesaid legal discussion we are of the considered view that order passed by Assessing Officer is not erroneous, though it may be prejudicial to the interest of the Revenue. Therefore, the twin conditions that orders is erroneous and so far as prejudicial to the interest of revenue, as prescribed under section 263 is not fulfilled in the present case.

17. Moreover, we have seen that in assessee's own case for A.Y. 2009-10, 2010-11 and 2012-13, the similar disallowance under section 80P(2)(d) was made by the assessing officer while passing assessment order under section 143(3), however, on appeal before Ld. CIT(A) , the disallowances were deleted and the order of the Ld. CIT(A) in all years were confirmed.

18. The ld. DR for the revenue relied on the case law in PCIT v. Totagars Co-operative Sales Society (second case)/(supra), wherein the Hon'ble Karnataka High Court held that interest earned by a Co-operative Society from surplus deposits kept with Co-operative bank, is not eligible for deduction under section 80P(2)(d). Considering the legal position that when there are conflicting decisions of non-jurisdictional High Courts, on similar issue, the decision of Jurisdictional High Court is having binding precedent. Thus, keeping in view of the decision Hon'ble Jurisdictional High Court in Surat Vankar Sahakari Sangh Ltd., v. ACIT (supra) wherein the assessee-co-operative society is held 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, we conclude that the order passed by assessing officer is not erroneous. Hence, the grounds of appeal raised by assessee are allowed."

8. Considering the afforesaid decision of this combination on similar set of facts, on similar grounds of appeal, wherein this combination has already considered all the objection as raised by ld CIT-DR for the revenue, thus, the grounds of appeal raised by the assessee are allowed in favour of the assessee and against the revenue. Thus, we hold that the order of ld PCIT dated 02/03/2023, passed under section 263 is not justified, and the same is set aside/quashed. In the result, the grounds of appeal raised by the assessee are allowed."

6. As the issue is squarely covered in favour of the assessee by the decision of the Coordinate Bench, in the case of Shree Madhi Vibhag

Khand Udyog Sahakari Mandli Ltd (supra) and there is no change in facts and law and the Revenue is unable to produce any material to controvert the aforesaid findings of the Coordinate Bench (supra). I find no reason to interfere in the said order of the Coordinate Bench (supra) therefore, respectfully following the binding judgment of the Coordinate Bench, I delete the addition made by the Assessing Officer.

7. In the result, appeal of the assessee is allowed.

Order is pronounced on 20/09/2023 in the open court.

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

सूरत /Surat

दिनांक/ Date: 20/09/2023

SAMANTA

Copy of the Order forwarded to

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

// TRUE COPY //

By Order

Assistant Registrar/Sr. PS/PS
ITAT, Surat