

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

आयकर अपील सं./ITA No.506/SRT/2023

Assessment Year: (2020-21)

(Physical Hearing)

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| 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) |

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| Appellant by | Shri P. M. Jagasheth, CA |
| Respondent by | Shri Vinod Kumar, Sr. DR |
| Date of Hearing | 19/10/2023 |
| Date of Pronouncement | 30/10/2023 |

आदेश / ORDER

PER DR. A. L. SAINI, AM:

Captioned appeal filed by the assessee, pertaining to Assessment Year (AY) 2020-21, 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 30.05.2023, which in turn arises out of an assessment order passed by Assessing Officer u/s 143(3) r.w.s. 144B of the Income Tax Act, 1961 (hereinafter referred to as “the Act”), dated 19.09.2022.

2. 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.

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)***, wherein 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 aforesaid 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. Apart from this, on identical and similar facts, the issue is covered in favour of assessee by the judgment of SMC Bench, Surat in assessee's own case in ITA No.478/SRT/2023, order dated 20.09.2023 for AY.2017.18.

7. 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 in assessee's own case 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 Coordinate Bench; I delete the addition made by Assessing Officer.

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

Order is pronounced on 30/10/2023 in the open court.

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

सूरत /Surat

दिनांक/ Date: 30/10/2023

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

By Order

// TRUE COPY //

Assistant Registrar/Sr. PS/PS
ITAT, Surat