

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT  
BEFORE SHRI PAWAN SINGH, JM & DR. A. L. SAINI, AM

आयकर अपील सं./ITA No.672/SRT/2023

Assessment Year: (2017-18)

(Hybrid Hearing)

The Amroli Vibhag Vividh Karyakari Sahkari M. Ltd., Utran Amroli, Taluka Choryasi, Surat – 394105.	Vs.	The DCIT, Circle – 2(3), Surat
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AAAAT3043M		
(Appellant)		(Respondent)

Appellant by	Shri Mehul K. Patel, AR
Respondent by	Shri Vinod Kumar, Sr. DR
Date of Hearing	18/12/2023
Date of Pronouncement	21/12/2023

**आदेश / O R D E R**

**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 ‘NFAC’), dated 28.08.2023, 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 18.12.2019.

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

*“1. That on facts, and in law, the learned NFAC has grievously erred in confirming the action of AO in treating the income from Interest and Dividend from Co-operative Banks of Rs.7,65,483/- as income from other sources and in confirming the disallowance of deduction u/s 80P of the Act on the same of Rs.6,49,886/-, after allowing only proportionate expenses.*

2. That on facts, and in law, the learned NFAC has grievously erred in confirming the action of AO in treating the rental income of Rs.3,94,590/- as income from other sources and in confirming the disallowance of deduction u/s 80P of the Act on the same, whereas, the appellant has offered this income to tax and has never claimed such deduction on this income.

3. That on facts, and in law, the learned NFAC has grievously erred in confirming the action of AO in treating the income from sale of Crackers of Rs.78,02,133/- as income from other sources and in confirming the disallowance of deduction u/s 80P of the Act on the same of Rs.75,68,160/-, after allowing only proportionate expenses, whereas, the appellant has offered this income to tax and has never claimed such deduction on this income.

4. That on facts, and in law, it ought to have been held that out of the eligible deduction u/s 80P(2)(a)(iii), 80P(2)(a)(iv), 80P(2)(d) and 80P(2)(c)(i) totaling to Rs.22,35,169/-, the appellant has claimed deduction to the extent of gross total income of Rs.20,61,093/-.

5. The appellant craves liberty to add, any ground of appeal.”

3. Now, we shall take all these grounds one by one.

4. Ground No.1 raised by the assessee, relates to disallowance of deduction under section 80P(2)(d) of the Act to the tune of Rs.6,49,886/-.

5. So far as the ground no.1 is concerned, Ld. Counsel for the assessee invited our attention to the judgment passed by the Hon'ble jurisdictional Gujarat High Court in the case of **Surat Vankar Sahakari Sangh Ltd. vs. ACIT, 72 taxmann.com 169 (Guj.)**, wherein issue relating to deduction under section 80P(2)(d) in respect of gross interest receipt/dividend from Co-operative Bank have been discussed and adjudicated in favour of the assessee. The Ld. Counsel for the assessee submitted that the present ground no.1 is squarely covered by the aforesaid judgment of the Hon'ble Gujarat High Court, a copy of which is also placed before the Bench.

6. On the other hand, learned Senior Departmental Representative (ld. Sr. DR) for the Revenue relied upon the orders of the lower authorities.

7. We see no reason to take any other view of the matter then the view so taken by the Hon'ble High Court of Gujarat in the case of **Surat Vankar Sahakari Sangh Ltd. vs. ACIT** (supra). In this order, the Hon'ble High Court of Gujarat has *inter alia* observed as follows:

*“8. We have considered the decisions cited by learned advocate for the assessee as well as the revenue. We feel that the decisions cited by the learned advocate for the assessee shall be applicable on the facts of the present case. In the case of K. Nandakumar v. ITO [1993] 204 ITR 856/[1994] 72 Taxman 223 (Ker.), the Kerala High Court has held as under:*

*'4. The effect of Section 80AB is that, for the purpose of computing the deduction under Section 80L, the amount of income of that nature as computed in accordance with the provisions of the Act shall alone be deemed to be the amount of income of that nature. What the section means is that the net income by way of interest computed in the manner provided by the provisions of the Act shall alone be taken into account for computing the benefit. But it must be noted that payment of interest under a loan transaction incurred for the purpose of deriving income from business is not an item which arises in the computation of interest income "in accordance with the provisions" of the Act. The said amount has to be paid irrespective of whether any interest income is otherwise received or not. Though the interest is payable to the same bank, the fact remains that the amount of income by-way of interest is not calculated under the provisions of the Act with reference to such outgoings which fall under different heads. The assessee is entitled to deduction under Section 37 of all expenditure incurred for the purpose of deriving the business income, and it is under that head that the interest paid on the loan taken from the bank is deducted. The net amount of interest contemplated by Section 80AB should take in the net amount arrived at after meeting the expenses deductible from that item under the provisions of the Act as explained above. That is not the case here. Therefore, Section 80AB has no application to the facts of these cases. The interest paid on the loan transactions has to be deducted from the business income, and not from the interest received from the bank on the fixed deposits. The assessee were therefore right in the submissions which they made before the Commissioner of Income-tax in the revision petitions which they filed. This aspect of the matter has been overlooked by the Commissioner in passing the order, exhibit P-5.'*

**8.1** Similarly, in the case of Doaba Co-operative Sugar Mills Ltd (*supra*), the Punjab & Haryana High Court has held as under:

'5. The contention of Mr. Gupta, learned counsel appearing for the Revenue, is that the Tribunal was wrong in allowing deduction under Section 80P(2) (d) of the Act because it is not established that the assessee had derived the interest by investing all the amount of surplus funds. It is further contended by Mr. Gupta that the assessee has paid interest to Jalandhar Central Co-operative Bank and has also received interest from the said co- operative bank, thereby showing that the assessee has on the aggregate paid interest to the bank and, therefore, no deduction under Section 80P(2)(d) can be allowed. To appreciate this argument, we have to look to the provisions of Section 80P(2)(d) of the Act, For facility of reference, it is reproduced as under :

"80P. (2)(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."

6. So far as the principle of interpretation applicable to a taxing statute is concerned, we can do no better than to quote the by-now classic words of Rowlatt J., in *Cape Brandy Syndicate v. IRC* [1921] 1 KB 64, 71 :

"...In a taxing Act, one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used,"

7. The principle laid down by Rowlatt J., has also been time and again approved and applied by the Supreme Court in different cases including the one, *Hansraj Gordhandas v. H. H. Dave, Assistant Collector of Central Excise and Customs*, AIR 1970 SC 755, 759.

8. Section 80P(2)(d) of the Act allows whole deduction of an income by way of interest or dividends derived by the co-operative society from its investment with any other co-operative society. This provision does not make any distinction in regard to source of the investment because this Section envisages deduction in respect of any income derived by the co-operative society from any investment with a co-operative society. It is immaterial whether any interest paid to the co- operative society exceeds the interest received from the bank on investments. The Revenue is not required to look to the nature of the investment whether it was from its surplus funds or otherwise. The Act does not speak of any adjustment as sought to be made out by learned counsel for the Revenue. The provision does not indicate any such adjustment in regard to interest derived from the co-operative society from its investment in any other co-operative society. Therefore, we do not agree with the argument advanced by learned counsel for the Revenue. In our opinion, the learned Tribunal was right in law in allowing deduction under Section 80P(2)(d) of the Income-tax Act, 1961. in respect of interest of RS. 4,00,919 on account of interest received from Nawanshaln Central Co-operative Bank without adjusting

*the interest paid to the hank. Therefore, the reference is answered against the Revenue in the affirmative and in favour of the assessee.'*

*8.2 Moreover, the Bombay High Court in the case of Bai Bhuriben Lallubhai (supra) has held that the purpose for which the assessee borrowed money had no connection whether direct or indirect with the income which she earned from the fixed deposit and that she was not entitled to the deduction claimed under Section 12(2). The High Court held that if an assessee had no option except to incur an expenditure in order to make the earning of an income possible, then undoubtedly the exercise of that option is compulsory and any expenditure incurred by reason of the exercise of that option would come within the ambit of section 12(2) of the Indian Income-Tax Act but where the option has no connection with the carrying on of the business or the earning of the income and the option depends upon personal considerations or upon motives of the assessee, that expenditure cannot possibly come within the ambit of Section 12(2). In the present case, the loan was taken for business purpose more particularly purchase of yarn and not for fixed deposits.*

*9. In view of the above, the questions raised in the present appeals are answered in favour of the assessee and against the revenue. The order passed by the Tribunal is accordingly quashed and set aside.”*

8. As the issue is squarely covered in favour of the assessee by the decision of the Hon'ble Gujarat High Court in the case of **Surat Vankar Sahakari Sangh Ltd. vs. ACIT** (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 judgment of the Hon'ble Gujarat High Court (supra). The issue is also covered by the order of the jurisdictional Co-ordinate Bench of ITAT, Ahmedabad in the case of **The Deesa Mercantile Co-operative Society Limited vs ACIT**, in ITA No.2100/Ahd/2014 for AY.2011-12, order dated 17.06.2022.

9. Therefore, respectfully following the binding judgment of the Hon'ble Gujarat High Court, we delete the addition sustained by the Id. CIT(A) to the tune of Rs.6,49,886/-.

10. In the result, ground no.1 is raised by the assessee is allowed.

11. Ground No.2 raised by the assessee relates to disallowance of rental income to the tune of Rs.3,94,590/-.

12. Brief facts *qua* the issue are that Assessing Officer made addition of Rs.3,94,590/- in respect of rental income earned by the assessee. On appeal, ld. CIT(A) confirmed the addition.

13. Aggrieved by the order of ld. CIT(A), the assessee is in appeal before us.

14. The Ld. Counsel for the assessee submitted before us that rental income to the tune of Rs.3,94,590/- as not claimed as a deduction under section 80P of the Act. The Ld. Counsel for the assessee submitted that since the assessee has not claimed any deduction under section 80P of the Act in respect of the rental income, therefore no disallowance should be made. The Ld. Counsel took us through paper book page no.1 and stated that in the computation of total income, the assessee has shown income from house property separately and paid the tax thereon, therefore question of disallowance under section 80P does not arise.

15. On the other hand, ld. Sr. DR for the Revenue stated that rental income is not a part of deduction under section 80P of the Act, however the assessee, being a Co-operative Society, the rental income should be shown separately.

16. 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 ld. CIT(A) and other material brought on record. We note that assessee has not claimed

deduction under section 80P(2)(d) of the Act of rental income of Rs.3,94,590/-. The rental income has been shown by the assessee in the computation of total income separately and paid the taxes thereon as per the income tax rate applicable, therefore the question of disallowance does not arise. We note that deduction under section 80P is available activity-wise and the rental income is not defined as per the section 80P of the Act, however assessee has shown the rental income separately and paid the taxes thereon. Hence, the question of disallowance under section 80P of the Act does not arise, specifically when the assessee has never claimed deduction under section 80P of the Act in respect of the rental income. Therefore, we delete the addition of Rs.3,94,590/-.

17. In the result, ground no.2 raised by the assessee is allowed.

18. Ground No.3 raised by the assessee relates to income from sale of crackers to the tune of Rs.78,02,133/-.

19. Brief facts *qua* the issue are that during the year under consideration, the Assessing Officer made disallowance to the tune of Rs.78,02,133/- stating that assessee has claimed the deduction under section 80P of the Act. On appeal, ld. CIT(A) allowed proportionate expenses. Aggrieved, the assessee is in further appeal before us. The Ld. Counsel submitted that assessee-society offered this income separately for taxation and assessee-society has never claimed deduction under section 80P of the Act on account of income from crackers to the tune of Rs.70,02,133/-, therefore the question of disallowance under section 80P of the Act, does not arise.

20. On the other hand, Id. Sr. DR for the Revenue submitted that assessee has no doubt derive the income from sale of crackers of Rs.78,02,133/-. Since the assessee-society is not maintaining separate books of accounts for this activity and therefore deduction claimed by the assessee under section 80P of the Act may not be allowed to the extent of Rs.78,02,133/-.

21. 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 is maintaining separate books of accounts for sale of crackers and offered the same for tax separately. We note that assessee has never claimed the deduction under section 80P of the Act on account of sale of crackers, hence the question of disallowance does not arise. The Ld. Counsel took us through the paper book page no.10, wherein he has stated that the assessee-society is maintaining separate books of accounts for sale of crackers. The Ld. Counsel also took us through paper book page no.31 and stated that assessee has shown the crackers sale separately and the sale of crackers has not included in computing deduction under section 80P of the Act. The assessee has never claimed deduction under section 80P in respect of sale of crackers, therefore disallowance under section 80P of the Act does not arise. Therefore, we delete the addition of Rs.78,02,133/-.

22. In the result, ground no.3 raised by the assessee is allowed.

23. Ground No.4 raised by the assessee is general in nature, hence does not require any adjudication.

24. In the result, appeal filed by the assessee is allowed.

Order is pronounced on 21/12/2023 in the open court.

**Sd/-**  
**(PAWAN SINGH)**  
**JUDICIAL MEMBER**

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

सूरत /Surat

दिनांक/ Date: 21/12/2023

*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