

THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "SMC" BENCH

Before: Ms. Suchitra Kamble, Judicial Member

**ITA Nos. 889, 890 & 891/Ahd/2023
A.Ys. 2014-15, 2016-17 & 2017-18**

Citizen Credit Co-operative Society Ltd. Vadodara PAN: AAAAC0414F (Appellant)	Vs	The Dy. CIT, Circle-2(1)(1), Vadodara (Respondent)
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Assessee by: Shri Sakar Sharma, A.R.

Revenue by: Shri Sushil Kumar Katiar, Sr. D.R.

Date of hearing : 01-01-2024

Date of pronouncement : 10-01-2024

आदेश/ORDER

These three appeals filed are against the order dated 15-09-2023 & 30-11-2018 passed by National Faceless Appeal Centre (NFAC), Delhi for assessment years 2014-15, 2016-17 & 2017-18.

2. The grounds of appeal are as under:-

ITA No. 889/Ahd/2023 A.Y. 2014-15

"1. The Ld. CIT(A)-NFAC erred on facts and in law in confirming penalty of Rs. 5,55,622/- u/s 271(1)(c) of the Act for alleged furnishing of inaccurate particulars of income.

2. The Ld. CIT(A)-NFAC erred on facts and in law in not appreciating that the addition to the returned income is only on account of divergent interpretational view of different High Courts as to the admissibility of deduction admissible u/s 80P(2)(a)(i).

3. The Ld. CIT(A)-NFAC erred on facts and in law in not appreciating that the penalty on identical issue stand deleted by the CIT(A) for AY 2013-14 following Supreme Court in reliance Petroproducts Ltd. (210) 322 ITR 158 (SC)

Total Tax Effect: 5,55,622/-

ITA No. 890/Ahd/2023 A.Y. 2016-17

“1. The Ld. CIT(A)-NFAC erred on facts and in law in confirming penalty of Rs. 6,08,634/- u/s 271(1)(c) of the Act for alleged furnishing of inaccurate particulars of income.

2. The Ld. CIT(A)-NFAC erred on facts and in law in not appreciating that the addition to the returned income is only on account of divergent interpretational view of different High Courts as to the admissibility of deduction admissible u/s 80P(2)(a)(i).

3. The Ld. CIT(A)-NFAC erred on facts and in law in not appreciating that the penalty on identical issue stand deleted by the CIT(A) for AY 2013-14 following Supreme Court in reliance Petroproducts Ltd. (210) 322 ITR 158 (SC)

Total Tax Effect: 6,08,634/-

ITA No. 891/Ahd/2023 A.Y. 2017-18

“1. The Ld. CIT(A)-NFAC erred on facts and in law in confirming penalty of Rs. 10,84,036/- u/s 270A of the Act for alleged under reporting of income due to misreporting of income.

2. The Ld. CIT(A)-NFAC erred on facts and in law in not appreciating that the addition to the returned income is only on account of divergent interpretational view of different High Courts as to the admissibility of deduction admissible u/s 80P(2)(a)(i).

3. The Ld. CIT(A)-NFAC erred on facts and in law in not appreciating that the penalty on identical issue stand deleted by the CIT(A) for AY 2013-14 following Supreme Court in reliance Petroproducts Ltd. (210) 322 ITR 158 (SC)

Total Tax Effect: 10,84,036/-

3. Firstly we are taking up ITA No. 889/Ahd/2023 for assessment year 2014-15. The assessee is a co-operative

society engaged in providing credit facilities to its members. The return of income for assessment year 2014-15 declaring total income at Rs. nil was filed by the assessee on 12-12-2014 after claiming deduction u/s. 80P of the Act of Rs. 25,76,709/-. The assessment u/s. 143(3) was completed on 22-07-2016 disallowing deduction u/s. 80P of Rs. 25,39,105/. Penalty proceedings for levy of penalty u/s. 271(1)(c) were initiated in the assessment order and notice u/s. 274 r.w.s. 271(1)(c) was issued and served upon the assessee. After considering the decision of Hon'ble High Court in case of State Bank of India vs. CIT (2016) 72 taxmann.com 64. The Assessing Officer disallowed the deduction u/s. 80P as interest income of Rs. 32,66,821/- owned by the assessee that their investment with bank is held not eligible for deduction u/s. 80P(2)(a)(i). The Assessing Officer levied penalty of Rs. 5,54,622/- in respect of furnishing inaccurate particulars of income.

4. Being aggrieved by the penalty order, the assessee filed before the CIT(A). The CIT(A) dismissed the appeal of the assessee of the assessee.

5. Heard both the parties and perused all the relevant materials available on record. It is pertinent to note that at the time of disallowing the deduction u/s. 80P(2)(a)(i) of the

Act was decided by various courts in two different views across the country. The Jurisdictional High Court also given a finding which was against the assessee but the same was pending before the Hon'ble Supreme Court at that juncture. Thus, the issue was debatable and the assessee has not furnished any inaccurate particulars of income but has simply claimed the deduction. Thus, the penalty itself u/s 271(1)(c) will not be attracted in the present case. Beside this, as per the submissions of the ld. A.R. for assessment year 2013-14, the same addition was deleted. Thus, ITA No. 889/Ahd/2023 is allowed.

6. As regards ITA No. 890/Ahd/2023, the ld. A.R. relied upon the decision of Hon'ble Allahabad High Court in case of PCIT vs. Baroda Uttar Pradesh Gramin Bank wherein the Hon'ble High Court observed that assessee had made a legitimate claim for exemption u/s. 80P(2)(a)(i) which was purely legal in nature and even on rejection of such claim no penalty was leviable as the issue is debatable issue at that juncture. Thus, ITA No. 890/Ahd/2023 for assessment year 2016-17 is allowed.

7. As regards ITA No. 891/Ahd/2023 for assessment year 2017-18, the Assessing Officer has levied penalty u/s. 270A for under reporting of income due to mis-reporting of income.

Herein also, the assessee has claimed deduction u/s. 80P(2)(a)(i) and the same deduction was claimed by the assessee due to the various decisions at that juncture. Thus, this cannot be termed as under reporting of income due the mis-reporting of income. Hence, ITA 891/Ahd/2023 of assessment year 2017-18 is allowed.

8. In the result, all the three appeals filed by the assessee are allowed.

Order pronounced in the open court on 10-01-2024

Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Ahmedabad : Dated 10/01/2024

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद