

**IN THE INCOME TAX APPELLATE TRIBUNAL  
"SMC" BENCH, AHMEDABAD**

**BEFORE Ms. SUCHITRA R. KAMBLE, JUDICIAL MEMBER**

**ITA No. 279/Ahd/2023  
Assessment Year: 2018-19**

Jafari Momin Vikas Co-op. Credit Society Limited, At & Post Kakoshi, Tal. Siddhpur, Dist. Patan, Kakoshi, Gujarat PAN : AAAAJ 1053 F	Vs	Income Tax Officer, Ward-4 (Present Ward-1), Patan
<b>अपीलार्थी/ (Appellant)</b>		<b>प्रत्यर्थी/ (Respondent)</b>
Assessee by :		Shri Hasmukh V. Doshi & Shri Mehal H. Doshi, ARs
Revenue by :		Shri Purushottam Kumar, Sr DR

सुनवाई की तारीख/**Date of Hearing** : **08/01/2024**  
घोषणा की तारीख /**Date of Pronouncement** : **19/01/2024**

**ORDER**

This appeal filed by the assessee is directed against the order of the Commissioner of Income-tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as "CIT(A)" for short] dated 17.03.2023 passed under Section 250 of the Income Tax Act, 1961 [hereinafter referred to as "the Act" for short] for the Assessment Year (AY) 2018-19.

2. The solitary ground raised by the assessee in its appeal reads as under:-

*"Ld. CIT(A) has erred in confirming the order of AO in not considering the claim of deduction u/s 80P(2)(d) of IT Act in respect of net interest income of Rs.1,86,285/- from Co. Op. banks."*

3. The assessee is a co-operative society and filed its return of income for Assessment Year 2018-19 declaring a total income of Rs. Nil. The assessee claimed deduction of Rs.57,71,324/- u/s 80P of the Act. The assessee has earned interest income of Rs.6,71,081/- from nationalized/co-operative bank and claimed deduction u/s 80P(2)(a)(i) of the Act. The case of the assessee was selected for complete scrutiny on the issues of disallowance u/s 40A(9) [contribution to fund, etc.],

Investment/Advances/Loans, Disallowance u/s 40A(7) [Gratuity provision] and deduction from total income under Chapter VI-A. After taking cognizance of the reply of the assessee, the Assessing Officer made addition of Rs.1,86,285/- thereby disallowing the interest income earned from the co-operative bank and treated the same as income from other sources u/s 56 of the Act.

4. Being aggrieved by the assessment order, the assessee filed appeal before the CIT(A). The CIT(A) partly allowed the appeal of the assessee.

5. The Ld. AR submitted that, in the decision of Hon'ble Gujarat High Court in the case of CIT Vs. Sabarkantha District Co-operative Milk Producers Union Ltd. in Tax Appeal No. 473 of 2014, it has categorically mentioned that the fixed deposit with banks and interest earned thereon will come under the purview of Section 80P(2)(d) of the Act. The ld. AR also relied upon the decision of the Tribunal in the case of the SACO Bank Staff Co-op. Credit Society Ltd. Vs. ITO (ITA No.441/Ahd/2023 order dated 03.11.2023).

6. The ld. DR submitted that the decision of Hon'ble Karnataka High Court which was decided in case of PCIT Vs. Totagars Co-operative Sale Society, [2017] 392 ITR 74 (Karnataka) will not be applicable in assessee's case as the latest decision of Hon'ble Supreme Court in the case of Mavilayi Service Co-operative Bank Ltd. vs. CIT (Civil Appeal Nos. 7343-7350 of 2019 dated 12.01.2021), the co-operative banks are excluded from the ambit of Section 80P of the Act. Thus, the interest income derived from deposits/investments in co-operative banks are not eligible for deduction u/s 80P(2)(d) of the Act. The ld. DR further submitted that the Hon'ble Supreme Court in the case of Citizen Co-operative Society Ltd. Vs. ACIT, (2017) 84 taxmann.com 114 (SC), has upheld this view as well, and another decision of Hon'ble Supreme Court in the case of Bangalore Club Vs. CIT, 29 taxmann.com 29, has also supported this decision. The ld. DR further submitted that the Constitution Bench of Hon'ble Supreme Court in Civil Appeal No.3327 of 2007, in the case of Commissioner of Customs (Import), Mumbai Vs. Dilip Kumar & Co. & Others, delivered on 30.07.2018,

has categorically held that the exemption statutes have to be interpreted strictly, and in case of ambiguity, it must be interpreted in favour of the Revenue.

7. Heard both the parties and perused all the relevant material available on record. It is pertinent to note that the assessee is earning interest income from Mehsana District Co-op. Bank Ltd., which is a registered co-operative bank under Gujarat Co-operative Societies Act and is a member of the Co-operative Society; and the interest earned thereon comes under the purview of Section 80P(2)(d) of the Act as held by the Hon'ble Gujarat High Court in the case of Sabarkantha Dist. Co-op. Milk Producers Union Ltd. (supra). Therefore, the assessee is eligible for deduction u/s 80P(2)(d) of the Act. As relates to the decisions of Hon'ble Apex Court in the cases of Citizen Co-operative Society Ltd (supra), Bangalore Club (supra) and the decision of Hon'ble Karnataka High Court in the case of PCIT vs. Totagars Co-operative Sale Society, [2017] 83 taxmann.com 140 (Karnataka), will not be applicable in the light of decision of Hon'ble Apex Court in the case of The Mavilayi Service Co-op. Bank Ltd. (supra) which clearly held that the deduction u/s 80P will exclude only co-operative banks, which are co-operative societies who must possess a licence from the RBI to do banking business. In fact, the interpretation taken by the Revenue appears to be on the wrong footing, and the co-operative banks which are the members of co-operative societies and the deposits made by the co-operative societies in such cooperative banks are eligible for deduction u/s 80P(2)(d) of the Act.

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

Order pronounced in the open Court on this 19<sup>th</sup> day of January, 2024.

*Sd/-*

**(SUCHITRA KAMBLE)**  
Judicial Member

**Ahmedabad, the 19<sup>th</sup> day of January, 2024**

*Bt\**

Copies to: (1) *The appellant*  
(2) *The respondent*  
(3) *CIT*  
(4) *CIT(A)*  
(5) *Departmental Representative*  
(6) *Guard File*

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*By order*

*Assistant Registrar*  
*Income Tax Appellate Tribunal*  
*Ahmedabad benches, Ahmedabad*