

**IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH , AHMEDABAD BENCHES, AHMEDABAD**

**BEFORE SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER
AND
MS. SUCHITRA KAMBLE, JUDICIAL MEMBER**

ITA No. 525 & 526/AHD/2023
Assessment Year(s): 2017-18 & 2018-19

The Assistant Commissioner of Income-tax, Gandhinagar Circle, Gandhinagar, 4 th Floor, Block No. 14, Udyog Bhavan Sector-11, Gandhinagar- 382011, Gujarat	v.	The Sardar Patel Co-operative Credit Society Limited, 1 st Floor Shreeji Arcade, Nr. HDFC Bank TB Road Vijapur 382870, Gujarat
		PAN:AAAAT4741N
(Appellant)		(Respondent)

Assessee by:	Sh. Hasmukh V Doshi & Sh. Mehal H Doshi, CA
Revenue by:	Sh. Vipul Chavda, Sr. DR
Date of hearing:	17.01.2024
Date of pronouncement:	02 .04.2024

ORDER

PER SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER:

These two appeals, both filed by Revenue, arising out of the separate appellate orders passed by learned CIT(A), Ahmedabad both dated 14.02.2023 for the assessment years 2017-18 and 2018-19 respectively (DIN & Order No. ITBA / NFAC/S/250/2022-23/1049720425(1) & ITBA/NFAC/S/250/2022-23/10497355 67(1) respectively), which in turn has arisen out of separate assessment order(s) dated 28.11.2019 and 04.06.2021 respectively , passed u/s 143(3) of the Income-tax Act, 1961(hereinafter called “the Act”) for assessment year 2017-18 , and under Section 143(3) read with 144B for assessment year 2018-19, respectively . Since the issues involved in both the appeals are common, both these appeals were heard together and are disposed of by this Common Order. First , we shall take up appeal of the Revenue in ITA no. 525/Ahd/2023 for assessment year 2017-18.

ITA No. 525/Ahd/2023-Assessment Year:2017-18

2. The Revenue has raised following grounds of appeal in Memo of Appeal filed with the Income Tax Appellate Tribunal, Ahmedabad (hereinafter called “the tribunal”) w.r.t. Appeal in ITA no. 525/Ahd/2023 for the assessment year 2017-18 :-

“(a) The Ld.CIT (A) has erred in law and on facts in allowing the deduction of Rs. 32,449/- claimed u/s 80P(2)(a)(i) of the IT Act in respect of the interest received from the Nationalized Banks.

“(b) The Ld.CIT (A) has erred in law and on facts in allowing the deduction of Rs. 1,62,24,334/- claimed u/s 80P(2)(d) of the IT Act in respect of the interest received from the Co-operative Banks.

“(c) The Ld.CIT (A) has erred in law and on facts in allowing the deduction of u/s 80P(2)(a)(i) of the IT Act without considering the provisions of section 56 of the IT Act.

“(d) The appellant craves leave to add, alter and/or to amend all or any of the ground before the final hearing of the appeal.”

3. The brief facts of the case are that the assessee is a Co-operative Credit Society engaged in providing credit facility to its members. The assessee filed its return of income on 21.08.2017 declaring total income at Rs. Nil after claiming deduction of Rs. 2,19,39,346/- under section 80P of the Act. The assessee’s return of income was processed by Revenue under section 143(1) of the 1961 Act, and thereafter the case of the assessee was selected for framing limited scrutiny assessment through CASS. The notices under section 143(2) and section 142(1) were issued to the assessee by Revenue. The assessee filed submissions from time to time before the AO during assessment proceedings. The AO during the course of assessment proceedings observed that the assessee has received total interest income of Rs. 32,449/- from Nationalized Banks / other institutions, which was claimed as deduction u/s 80P(2)(a)(i) of the 1961 Act, as per following details:-

Sr. No.	Name of Bank	Amount
----------------	---------------------	---------------

		(Rs.)
1.	Interest income from Dena Gujarat Gramin Bank	426/-
2.	Interest income from State Bank of India	855/-
3.	Interest income from Bank of Baroda	31,168/-

3.2 The AO observed that as per section 80P(2)(a)(i), the assessee is not eligible for deduction with respect to interest received from nationalized banks / non members. The AO referred to decision of Hon'ble Gujarat High Court in the case of State Bank of India(SBI) v. CIT(2016) 72 taxmann.com 64(Guj. HC). The AO asked the assessee to explain the same. The assessee submitted that the funds are lying with the bank as part of liquidity for doing the business of credit society which is also required as per statutory conditions issued by Registrar of Cooperative Society, Gujarat. The assessee submitted that the decision of Hon'ble Gujarat High Court in the case of *State Bank of India v. CIT (2016) 72 taxmann.com 64(Guj. HC)* is not applicable to the assessee. The assessee submitted that *SBI Employee Credit Society* is only for employees of the Bank , while the assessee society is for all the members of the jurisdictional area. The AO rejected the contentions of the assessee and observed that these banks / institutions are not members of the cooperative society and hence they are out of ambit of section 80P(2)(a)(i) and hence the said amount was added to the income of the assessee by the AO and deduction u/s 80P(2)(a)(i) of the 1961 Act was denied to the assessee. Further, the AO observed that in view of decision of *Hon'ble Supreme Court* in the case of *M/s Totgar Co-operative Sale Society (2010) 322 ITR 283 (SC)*, the income earned from surplus invested in short term deposits and securities is to be brought to tax under section 56 of the Act and hence the addition was made by the AO by denying the deduction under section 80P(2)(a)(i) of the Act while bringing the same as income chargeable to tax under section 56 of the Act to the tune of Rs. 32,449/-.

Disallowance out of deduction under section 80P(2)(d) of the Act.

3.3 The AO further observed during assessment proceedings that the assessee has received interest income of Rs. 1,62,24,334/- from Co-operative Banks, which was claimed as deduction u/s 80P of the 1961 Act, as detailed hereunder:-

Sr. No.	Name of Bank	Interest receipt (Rs.)
1.	Interest income from Mehsana Urban Co-op. Bank Ltd.	1,59,13,246/-
2.	Interest income from Kukarwada Nagrik Bank Ltd	3,02,706/-
3.	Interest income from Mehsana Dist. Bank	159/-
4.	Interest Income from Vijapur Nagarik Sahakari Bank Ltd.	31,168/-

3.4. The AO observed that as per the decision of Hon'ble Karnataka High Court in the case of *PCIT v. Totgar Cooperative Sale Society (2017) 83 taxman.com 140(Kar.)*, deduction of interest income earned from deposit with Co-operative Bank is not allowable deduction under section 80P(2)(d) of the Act. The assessee was asked by the AO to explain the same. The assessee submitted that the assessee has received interest income from Co-operative Banks , and these Cooperative Banks are also Co-operative Societies , and hence interest income from Co-operative banks are eligible for deduction under section 80P(2)(d) of the Act. The assessee relied upon the decision of *Hon'ble Gujarat High Court in the case of State Bank of India v. CIT 241 Taxman 163 (2016)*, and submitted before the AO that *Hon'ble Gujarat High Court* has observed that interest income earned from investment made in any bank not being a Co-operative Society is not deductible under section 80P(2)(d) and at para

16 , it was observed by *Hon'ble Gujarat High Court* that in order to avail the benefit of deduction of such interest income, it is always open for the Co-operative Society to deposit the surplus fund with a Co-operative bank and avail deduction under section 80P(2)(d) of the Act. It was submitted that *Hon'ble Karnataka High Court* judgment in *Totgar Co-operative Sale Society(supra)* is contrary to judgment of *Hon'ble Gujarat High Court* in the case of *State Bank of India(SBI)(supra)*, and that the *Hon'ble Gujarat High Court* is jurisdictional High Court which is to be followed. The assessee also relied upon the following decision of the Tribunal as under:-

- “1. ITA No.2229/Ahd/2017 (*The Kalol Peoples Co-op Credit Society Ltd. v. CIT-4, Vadodara*)
2. ITA No. 1875/Ahd/2015 (*The Sarvoday Credit Cum Consumers Co-operative Society Ltd. v. The ACIT B.K. Circle, Palanpur*)
3. ITA No. 1891/Ahd/2014(*The Peoples Co-operative Credit Society Limited v. ACIT, Palanpur*)”

3.5 The assessee also stated before the AO that *Hon'ble CIT(A)* , Gandhinagar has allowed the deduction under section 80P(2)(d) in respect of interest income earned from Co-operative Bank in many credit societies and hence prayers were made before the AO to allow the deduction. The assessee also raised an alternative plea before the AO by submitting that its claim for deduction under section 57 of the Act in respect of the proportionate expenses as decided by the *Hon'ble Karnataka High Court* in the case of *Totgar Cooperative Sale Society Ltd. v. ITO (2015)231 taxman 794(Kar.)* ,and also per decision of *ITAT, Ahmedabad* in the case of *Kalol Peoples Cooperative Credit Society Limited v. CIT-4 , Vadodra in ITA No. 2229/Ahd/2017* and it was submitted that the claim for deduction for proportionate expenses u/s 57 is to be allowed as under:-

Sr. No.	Particulars	Amount
1.	Gross Receipts as per P & L a/c.	4,26,45,889/-
2.	Gross income as per Computation of	2,19,39,346/-

	income	
3.	Expense claimed from gross receipts (1-2) out of total expenses of Rs. 3,74,95,389/- debited in P & L account	2,07,06,543/-
4.	Interest on investment with co-op banks	1,62,24,334/-
5.	Proportionate expenses available as deduction u/s. 57 of the I.T. Act. 20706543*(16224334/42645889)	78,77,661
6.	Income from other sources (4-5)	83,46,673/-
7.	Deduction u/s 80P(2)(d)	83,46,673/-

3.6 The assessee also submitted that the assessee is entitled for aggregate deduction under section 80P(2)(c)(ii) of Rs. 50,000/- from interest income earned from the Nationalized Banks and also interest income from Co-operative Banks.

3.7 The AO rejected the contention of the assessee by holding that the interest income is chargeable to tax under section 56 of the Act under the head income from other sources. The AO relied upon the decision of Hon'ble Karnataka High Court in the case of *PCIT v. Totgar Cooperative Sale Society* (2017) 83 taxmann.com 140, and held that only interest and dividend income earned by Cooperative society out of investment with any other primary agriculture credit society with the limited work of providing credit facility to member will be covered by section 80P(2)(d). Thus any interest income earned from members, other primary agriculture cooperative society is eligible for said deduction under section 80P. The AO concluded that interest earned on deposit with nationalized bank, cooperative bank/ other primary agriculture cooperative societies are not eligible for the said deduction as it is income from other sources under section 56 of the Act, but, however, legitimate expenses are to be allowed under section 57 of the Act. The AO relied upon the decision of Hon'ble Gujarat High Court in the case of *SBI v. CIT reported in (2016) 389 ITR 578*, and also decision of Hon'ble Karnataka High Court in the case of *PCIT v. Totgar Cooperative Sale Society* (2017) 83 taxman. com 140, to hold that interest

income from investments made in banks will not fall in any of the category of Section 80P(2)(a) and is only the interest income earned from the cooperative society shall be exempt u/s 80P(2)(d), but not the interest earned from Cooperative banks. The AO also relied upon the decision of *Hon'ble Supreme Court in the case of Totgar Cooperative Sale Society Ltd. v. ITO (2010) 188 taxman 282(SC)* and decision of Hon'ble Karnataka High Court (supra) , and held that the interest income of Rs. 1,62,24,334/- earned by the assessee from cooperative banks is an income chargeable to tax u/s 56 and no deduction can be claimed by the assessee under section 80P of the Act, and the AO brought to tax the said income of Rs. 1,62,24,334/- under section 56 of the Act under the head income from other sources.

4. The assessee filed first appeal with Id. CIT(A) who allowed the claim of assessee under section 80P(2)(d) of the Act , by holding as under:-

"5. I have carefully perused the materials on record. The first issue in this appeal is regarding disallowance out of deduction claimed u/s 80(2)(d) of the I.T. Act. I find this issue to be squarely covered in favour of the assessee by the decision of ITAT in assessee's own case for the Assessment Year 2016-17 vide ITA No.1404/Ahd/2019. The ITAT deleted the disallowance with the following finding:

"5.1 The issue for consideration before us is whether the assessee is eligible to claim deduction on interest earned from Co-Operative Banks u/s 80P(2)(d) of the Act. The Hon'ble Gujarat High Court in the case of State Bank of India Vs. CIT (2016) 389 ITR 578 (Guj), held that that the interest income earned by a co-operative society on its investments held with a co-operative bank would be eligible for claim of deduction under Sec. 80P(2)(d) of the Act. The Honourable Gujarat High Court made following observations in respect of interest earned from deposits kept with a cooperative bank:

Therefore, it is only the interest derived from the credit provided to its members which is deductible under section 80P(2)(a)(i) of the Act and the interest derived by depositing surplus funds with the State Bank of India not being attributable to the business carried on by the appellant, cannot be deducted under section 80P(2)(a)(i) of the Act. If the appellant wants to avail of the benefit of deduction of such interest income, it is always open for it to deposit the surplus funds with a co-operative bank and avail of deduction under section 80P(2)(d) of the Act.

5.2 In the case of Surat Vankar Sahakari Sangh Ltd. vs Assistant Commissioner of Income-tax [2016] 72 taxmann.com 169 (Gujarat), the Gujarat High Court held assessee-co-operative society was 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.

5.3 In the case of Surendranagar District Co-op. Milk Producers Union Ltd. v Deputy Ld. CIT(A) 111 taxmann.com 69 (Rajkot Bench) the ITAT held that assessee-co- operative society could not claim benefit of section 80P(2)(d) in respect of interest earned by it from deposits made with nationalized/private banks, however, said benefit was available in respect of interest earned on deposits made with co- operative bank.

5.4 In the case of Pr. Commissioner of Income Tax and Anr. Vs. Totgars Cooperative Sale Society (2017) 392 ITR 74 (Karn), the Karnataka High Court has held that the interest income earned by a co-operative society on its investments held with a co- operative bank would be eligible for claim of deduction under Sec. 80P(2)(d) of the Act.

5.5 Respectfully, following the decision of Honourable High Court of Gujarat and other cases cited above, in our view, interest earned by the assessee on surplus held with cooperative banks would be eligible for deduction under Sec.80P(2)(d) of the Act."

6. Hence, following the ITAT order, I am of the view that the assessee is eligible for deduction under section 80P(2)(d) of the Act and allow this ground raised by the assessee."

4.2. Thus, the ld. CIT(A) allowed the claim of the assessee for deduction u/s 80P(2)(d) by relying ,inter-alia, upon the decision of the Tribunal in assessee's own case for assessment year 2016-17 in ITA No. 1404/Ahd./2019.

4.3 The ld. CIT(A) allowed the claim of the assessee for deduction u/s 80P(2)(a)(i) of Rs. 32,449/- , by relying upon the Tribunal's decision in assessee's own case in ITA No. 1723/Ahd/2012 along with C.O. No. 161/Ahd/2012 for assessment year 2009-10 as well for assessment year 2010-11 in ITA No. 2941/Ahd/2013, by holding as under:-

"7. The other issue raised for consideration is disallowance out of deduction claimed u/s 80(2)(a)(i) of I.T. Act. On perusal of the record, I observe that the A.O. has concluded the assessment stating "The assessee has wrongly claimed deduction to the extent of interest income earned from above bank/institution during the year which comes to Rs.32,449/-. The interest earned from the bank/institution as enumerated above which inter-alia has claimed as deduction u/s 80P of I.T.Act, is not eligible for such deduction. Therefore, the deduction claimed by the assessee to the extent of Rs.32,449/- is disallowed treating the same as income u/s 56 of I.T. Act and added to the income declared for the year under consideration."

7.1 Again, I find this issue of the appellant to be squarely covered in favour of the appellant by the decision of ITAT in assessee's own case for the Assessment Year

2009-10 vide ITA No. 1723/Ahd/2012 Along with C.O.No. 161/Ahd/2012 holding that:

"we find that there is force in the argument of the assessee that the assessee not a co-operative Bank, but its nature of business was coupled with banking with its members, as it accepts deposits from and lends the same to its members. To meet any eventuality, the assessee was required to maintain some liquid funds. That was why, it was submitted by the assessee that it had invested in short-term deposits. Furthermore, the assessee had maintained overdraft facility with Dena Bank and the balance as at 31.3.2009 was Rs. 13,69,955/-. In overall consideration of all the aspects, we are of the considered view that the ratio laid down by the Hon'ble Supreme Court in the case of Totgars Co-op Sale Society Ltd (supra) cannot in any way come to the rescue of either the Ld. CIT (A) or the Revenue. In view of the above facts, we are of the firm view that the learned CIT (A) was not justified in coming to a conclusion that the sum of Rs.9,40,639/- was to be taxed u/s 56 of the Act."

7.2 Also it is seen that the appellant had preferred an appeal before the Hon'ble ITAT for the A.Y. 2010-11 on the identical issue which has been settled in favour of the appellant by the Hon'ble ITAT, Ahmedabad in ITA No.2941/Ahd/2013.

7.3 Thus in view of the decisions of the Hon'ble ITAT in the assessee's own case for the A.Y. 2009-10 and 2010-11, this ground of the appellant is also allowed."

5. Aggrieved by the decision of learned CIT(A), the Revenue has filed an appeal with the Tribunal. This appeal has been filed by Revenue with ITAT,Ahmedabad Bench, which is filed belatedly by 73 days beyond the time stipulated u/s 253(3) . The Revenue has filed an affidavit dated 11.08.2023 executed by Sh. Chirag Jhirwal, DCIT, Gandhinagar Circle, Gandhinagar. In this affidavit, the Department has averred that the appeal is filed belatedly by 73 days due to administrative reasons such as taking decision and getting approval for filing the appeal, and prayers were made to condone the delay . The assessee has not raised any serious objection to the condonation of delay in filing this appeal belatedly by Revenue . After hearing both the parties, we condone the delay of 73 days in filing this appeal belatedly by Revenue by 73 days with ITAT, Ahmedabad , and proceed to hear this appeal on merits, in accordance with law.

6. The ld. DR opened argument before the Bench and submitted that the assessee is a Cooperative Credit Society , and the assessee has claimed deduction under section 80P(2) of the Act which was denied by the AO but allowed by ld.

CIT(A). The Id. DR submitted that as per *Hon'ble Karnataka High Court* in the case of *Totgars Co-operative Sale Society (supra)*, the assessee is not entitled for deduction under section 80P(2)(d) of the Act as the assessee has not received interest income from the Cooperative Society, but has received interest income from investment made in Cooperative Banks. The Id. Counsel for the assessee drew our attention to section 2(19) and to section 80P(2)(d) of the Act. He submitted that as per decision of *Hon'ble Gujarat High Court* in the case of *CIT v. Sabarkantha District Milk Cooperative Producers Union Ltd.* in Tax Appeal No. 473 of 2014 order dated 16.06.2014, the interest income earned from Cooperative Bank is to be allowed as deduction. It was submitted that the *Tribunal* has followed this decision in many cases. The Id. Counsel for the assessee also relied upon the judgment of *Hon'ble Kerela High Court* in the case of *PCIT v. Peroorkada Service Cooperative Bank Ltd.*(442 ITR 141), in which the claim of deduction is allowed by *Hon'ble Kerela High Court*, and Id. Counsel for the assessee also relied upon other decision as per the paper book filed. The Id. AR submitted that with respect of interest of Rs. 32,449/- earned from the nationalized banks, the same cannot be allowed, keeping in view the decision of *Hon'ble Gujarat High Court* in the case of *SBI v. CIT(supra)* in favour of Revenue. The Id. Counsel for the assessee submitted that since it is an amount of Rs. 32,449/-, and as per section 80P(2)(c)(ii) deduction of upto Rs. 50,000/- is allowed, and it was submitted that the claim of deduction of Rs. 32,449/- is to be allowed.

The Id. Counsel for the assessee relied upon the following decisions:-

1. *Sabarkantha Cooperative District Milk Producers Union LTD (GUJ-HC) (ITA No. 473 of 2014) Dated - 16-06- 2014.*
2. *Totgars co-operative sale society (Kar HC) (2017 392 ITR 74) Dated - 05- 01-2017.*
3. *SBI v/s CIT (GUJ - HC) 398 ITR 578(2016) Dated - 25-04-2016*
4. *Pr. CIT v. Peroorkada Service Co-Operative Bank Ltd. (Ker-HC) 442 ITR 141 Dated -01/11/2021*
5. *Thorapadi Urban Co-op Credit Society Limited (W.P.Nos. 11172, 11177 and 11174, 11180 of 2023) as well as Virupachipuram Urban Co-op Credit Society Limited (Madras high court) (W.M.P.Nos. 11034, 11038,11044 and 11048 of 2023) Dated 10-10- 2023*

6. *The Vijaynagar Nagrik Sarafi Sahakari Mandali Limited v/s The Income Tax Officer, S.K. Ward - 2 (ITA No.391/Ahd/2023) Dated-03-11-2023*

7. *The SACO Bank Staff Co- op Credit Society Limited v/s The ITO Ward-1, Himatnagar (ITA No. 441/AHD/2023) Dated- 03-11-2023*

8. *The Khedbrahma Taluka Primary Teachers Co-op Credit Society Ltd. v/s The ITO Officer, Ward-1, Himatnagar (ITA No. 499/AHD/2022) Dated 27-10-2023*

9. *Bhagya Laxmi co. op. credit society limited (ITA NO. 422/Ahd/2022) Dated - 17-03-2023*

10. *Laxmi Bachat Sharafi Sahkari Mandli LTD. (ITA No. 963/Ahd/2019) Dated -31-8-2022*

11. *The ACIT, Patan Circle, Patan Vs. The Sardar Patel Coop. Credit Society Ltd. (ITA No. 1404/Ahd/2019) Dated - 20-05-2022 (Own case of Assessee)*

7. We have considered rival contentions and perused the material on record. We have observed that the assessee is Co-operative Credit Society engaged in providing credit facility to its members. The case of the assessee was selected by Revenue for framing limited scrutiny assessment under CASS.

7.2 The assessee has claimed deduction u/s 80P(2)(a)(i) of the 1961 Act to the tune of Rs. 32,449/- being interest income from Banks as detailed hereunder:

Sr. No.	Name of Bank	Amount (Rs.)
1.	Interest income from Dena Gujarat Gramin Bank	426/-
2.	Interest income from State Bank of India	855/-
3.	Interest income from Bank of Baroda	31,168/-

The AO denied the above deduction by relying on the decision of *Hon'ble Gujarat High Court* in the case of *State Bank of India v. CIT* , reported in (2016) 72 taxmann.com 64(Guj.) and decision of *Hon'ble Supreme Court* in the case of *Totgar Cooperative Sale Society(2010) 322 ITR 283(SC)*. The ld. CIT(A) allowed the appeal of the assessee on this issue by following the decision of ITAT, Ahmedabad Bench in ITA no. 1723/Ahd/2012 along with CO No. 161/Ahd./2012 for ay:2009-10 in

assessee's own case. The ITAT has also decided this issue in favour of the assessee for ay:2010-11. The Revenue has come in appeal before the ITAT against the decision of Id. CIT(A) granting relief to the assessee for the impugned assessment year. It is abundantly clear that the assessee has deposited its surplus funds with aforesaid banks, and these banks/institutions are not members of the assessee co-operative credit society nor these banks are credit societies, but rather these banks are commercial banks. The interest income arising from deposit of surplus funds made with banks/institution is chargeable to tax u/s 56 of the 1961 Act, and is not an income arising from the business of providing credit facilities to its members. The decision of Hon'ble Supreme Court in the case of *Totgar Co-operative Sale Society(supra)* is relevant. The assessee's claim u/s 80P(2)(a)(i) is not maintainable. There is no evidence on record to substantiate /prove that these funds were invested by the assessee with the Commercial Banks under any statutory requirement with respect to its business activity of providing credit facilities to its members. Now, the assessee has raised an alternative claim u/s 80P(2)(c)(ii) and prayed for allowing the aforesaid deduction. This claim of the assessee cannot be accepted because of the simple and plain language of the statute. Section 80P(2)(c)(ii) is reproduced hereunder:

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 :—

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

The assessee by depositing its surplus funds with banks /institutions who are not members of the assessee nor are these banks are credit societies but are commercial banks, has earned interest income which is income from other sources chargeable to tax u/s 56 , and the assessee cannot be considered to be engaged in any 'activities' other than those specified in clause (a) or clause (b) (either independently of, or in addition to , all of any of the activities so specified) from which profit or gains attributable to such activities have arisen, as is required u/s 80P(2)(c)(ii) , rather it is the surplus funds deposited by the assessee with these banks/institution which generated interest income chargeable to tax u/s 56 . Reference is drawn to the decision of Hon'ble Kerala High Court in the case of *Kottayam Co-operative Land Mortgage Bank Limited v. CIT* , reported in (1988) 172 ITR 443(Ker. HC). No evidence is brought on record to substantiate that these amounts were deposited with commercial banks under the statutory requirements with respect to its business activities of providing credit facilities to its members, and are not merely surplus funds placed with these commercial banks with a view to earn interest income . Under these facts and circumstances, the claim of the assessee for deduction u/s 80P(2)(c)(ii) for deduction of Rs. 32,449/- is not maintainable in the eyes of law, and hence the addition as made by ld. AO is sustained, and the appellate order of ld. CIT(A) is set aside so far as adjudication of this issue is concerned. The Revenue succeeds on this issue. We order accordingly.

7.2 The assessee has also claimed deduction u/s 80P(2)(d) of Rs. 1,62,24,334/- towards interest earned from deposits made with Co-operative banks , detailed hereunder:

Sr. No.	Name of Bank	Interest receipt (Rs.)
1.	Interest income from Mehsana Urban Co-op. Bank Ltd.	1,59,13,246/-
2.	Interest income from Kukarwada Nagrik Bank Ltd	3,02,706/-
3.	Interest income from Mehsana Dist. Bank	159/-
4.	Interest Income from Vijapur Nagarik Sahakari Bank Ltd.	31,168/-

The AO has denied the deduction u/s 80P(2)(d) to the assessee by following the decision of Hon'ble Karnataka High Court in the case of *PCIT v. Totgar Co-operative Sale Society(supra)*, while Id. CIT(A) had allowed the deduction by following the decision of ITAT , Ahmedabad Bench in the assessee's own case for assessment year 2016-17. The tribunal while allowing the claim of the assessee for assessment year 2016-17(immediately preceding assessment year) has followed the decision(s) of Hon'ble Gujarat High Court in the case of *State Bank of India v. CIT* , reported in (2016) 389 ITR 578(Guj.) and *Surat Vankar Sahakari Sangh Limited v. ACIT* , reported in (2016) 72 taxmann.com 169(Guj) . The Tribunal in ITA No 1404/Ahd/2019 in assessee's own case for assessment year 2016-17 allowed the relief to the assessee , by holding as under :

"5.1 The issue for consideration before us is whether the assessee is eligible to claim deduction on interest earned from Co-Operative Banks u/s 80P(2)(d) of the Act. The Hon'ble Gujarat High Court in the case of *State Bank of India Vs. CIT* (2016) 389 ITR 578 (Guj), held that that the interest income earned by a co-operative society on its investments held with a co-operative bank would be eligible for claim of deduction under Sec.80P(2)(d) of the Act. The

Honourable Gujarat High Court made following observations in respect of interest earned from deposits kept with a cooperative bank:

Therefore, it is only the interest derived from the credit provided to its members which is deductible under section 80P(2)(a)(i) of the Act and the interest derived by depositing surplus funds with the State Bank of India not being attributable to the business carried on by the appellant, cannot be deducted under section 80P(2)(a) (i) of the Act. If the appellant wants to avail of the benefit of deduction of such interest income, it is always open for it to deposit the surplus funds with a co-operative bank and avail of deduction under section 80P(2)(d) of the Act.

5.2 In the case of *Surat Vankar Sahakari Sangh Ltd. v Assistant Commissioner of Income-tax* [2016] 72 taxmann.com 169 (Gujarat), the Gujarat High Court held assessee-co-operative society was 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.

5.3 In the case of *Surendranagar District Co-op. Milk Producers Union Ltd. v Deputy Ld. CIT(A)* 111 taxmann.com 69 (Rajkot Bench) the ITAT held that assessee-co-operative society could not claim benefit of section 80P(2)(d) in respect of interest earned by it from deposits made with nationalised/private banks, however, said benefit was available in respect of interest earned on deposits made with co-operative bank.

5.4 In the case of *Pr. Commissioner of Income Tax and Anr. Vs. Totagars Cooperative Sale Society* (2017) 392 ITR 74 (Karn), the Karnataka High Court has held that the interest income earned by a cooperative society on its investments held with a co-operative bank would be eligible for claim of deduction under Sec.80P(2)(d) of the Act.

5.5 Respectfully, following the decision of Honourable High Court of Gujarat and other cases cited above, in our view, interest earned by the assessee on surplus held with cooperative banks would be eligible for deduction under Sec.80P(2)(d) of the Act.

6. In the result, the appeal of the revenue is dismissed.”

Respectfully following the aforesaid decision of ITAT, Ahmedabad Bench (which has followed the decision of jurisdictional High Court), in assessee’s own case , for assessment year 2016-17 which is immediately preceding year, and in order to maintain consistency , we allow the claim of the assessee for deduction u/s 80P(2)(d) with respect to interest income earned from Co-operative Banks . However, none of the authorities below have given a finding that these four entities from whom the interest income is earned by the assessee are Co-operative Banks which are co-operative societies duly registered under the Co-operative Societies Act or under the State Act and to this limited extent we are directing AO to verify the facts before granting relief to the assessee. While allowing the claim of the assessee, we note that principles of res judicate are not applicable to the income tax

proceedings , but principles of consistency is to be maintained. Reference is drawn to the decision of Hon'ble Supreme Court in the case of *Radhasoami Satsang v. CIT*, reported in (1992) 193 ITR 321(SC). The assessee succeeds on this issue in the manner as indicated above . We order accordingly.

7.3. In the result, the appeal of the Revenue for assessment year 2017-18 is partly allowed as indicated above. We order accordingly

ITA No. 526/Ahd/2023-Assessment year 2018-19

8. The issue's involved in this appeal filed by Revenue are similar to the issues in ITA No. 525/Ahd/2023 for assessment year 2017-18, which appeal is already adjudicated by us vide this common order, and hence our decision in ITA no. 525/Ahd/2023 for assessment year 2017-18 shall apply mutatis mutandis to the issues in ITA no. 526/Ahd/2023 for assessment year 2018-19. The Appeal of the Revenue in ITA No. 526/Ahd/2023 for assessment year 2018-19 is partly allowed . We order accordingly.

Order pronounced At Ahmedabad in the Open Court on 02/04/2024

Sd/-

[SUCHITRA KAMBLE]
JUDICIAL MEMBER

DATED: 02/04/2024

Sh

Sd/-

[RAMIT KOCHAR]
ACCOUNTANT MEMBER

Copy forwarded to:

1. Appellant –
2. Respondent –
3. CIT DR , ITAT,
4. CIT,
5. The CIT(A)