

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

**BEFORE SMT. ANNAPURNA GUPTA, ACCOUNTANT MEMBER &  
SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER**

I.T.A. No.187/Ahd/2022  
(Assessment Year: 2016-17)

Vijay Credit and Supply Cooperative Society, Ghanchi Dhal, Lodhi Limda, Dholka-382225	Vs.	Principal Commissioner of Income Tax, Ahmedabad-3, Ahmedabad
[PAN No.AAAAV4982F]		
(Appellant)	..	(Respondent)

<b>Appellant by :</b>	Shri S. N. Divetia, A.R.
<b>Respondent by:</b>	Shri A. P. Singh, CIT-DR

<b>Date of Hearing</b>	18.04.2024
<b>Date of Pronouncement</b>	30.04.2024

**ORDER**

**PER SIDDHARTHA NAUTIYAL - JUDICIAL MEMBER:**

This appeal has been filed by the Assessee against the order passed by the Ld. Principal Commissioner of Income Tax-3, (in short “Ld. PCIT”), Ahmedabad vide order dated 25.03.2021 passed for A.Y. 2016-17.

2. The assessee has raised the following grounds of appeal:-

*“1.1 The order passed by U/s.263 passed on 25.03.2021 by PCIT.Ahmedabad-3, holding that the assessment order passed u/s.143(3) on 18/12/2018 by AO was erroneous and prejudicial to the interest of revenue in as much as deduction u/s.80P(2)(d) was not admissible in respect of interest income from ADC Bank and Bank of Baroda is wholly illegal, unlawful and against the principles of natural justice.*

*2.1 The ld. PCIT has grievously erred in law and or on facts in invoking the provisions of sec.263 of the Act on the ground that the assessment order passed u/s.143(3) on 18/12/2018 by AO was erroneous and prejudicial to the interest of revenue in as much as deduction u/s.80P(2)(d) was not admissible in respect of interest income from ADC Bank and Bank of Baroda, though the condition precedent for invoking revision u/s.263 were not fulfilled.*

2.2 *That the in the facts and circumstances of the ld. PCIT ought not to have held that the assessment order passed u/s. 143(3) on 18/12/2018 by AO was erroneous and prejudicial to the interest of revenue .*

3.1 *That in the facts and circumstances of the case as well as the law, the ld. PCIT has failed to appreciate that ADC Bank was a co-operative bank and interest income therefrom was deductible u/s.80P(2)(d) and the provisions of sec.80P(4) were not applicable.*

3.2 *The ld. PCIT has grievously erred in law and or on facts in holding that interest income from ADC Bank as well as Bank of Baroda was not admissible for deduction u/s.80P.*

*It is, therefore, prayed that the order of revision passed by PCIT may kindly be quashed or in the alternative, the deduction u/s.80P in respect of interest income may be allowed.”*

3. At the outset, we observe that there is delay of 360 days in filing of the present appeal. The assessee has submitted an affidavit dated 01.11.2023 and has submitted before us that if one were to exclude the Covid period then the effective delay in filing of the present appeal is only for a period of approximately two and a half months. Further, it was submitted that the applicant society is working in a remote mofussil area and managed by a committee consisting of members were not aware about the complicated and ever changing tax laws. Further, there is no consistency in the staff of the accounts department which is also not highly qualified. It was submitted that when the order of revision under Section 263 dated 25.03.2021 was e-received, the head accountant was of the view that no action was required in respect of this order, since no tax demand has been raised on the assessee. It was only subsequently when the notice of demand, creating demand of 34.09 lakhs was received by the assessee that the assessee rushed to a tax consultant, and was advised to file appeal against the 263 order. Accordingly, it was submitted that in view of the aforesaid facts highlighted above, there is a genuine reason for the delay in filing of the present appeal, which may kindly be condoned.

4. In response, Ld. D.R. objected to the condonation of the delay in filing of the present appeal on the ground that the arguments given by the assessee

for delay in filing of the present appeal are standard arguments, which were forwarded by the assessee in all cases and this is not a fit case for condoning delay for filing in the present appeal.

5. In our considered view, looking into the instant facts, the assessee has made out a reasonable case for delay in filing of the present appeal. Further, if we were to exclude the Covid pandemic period, then the effective delay in filing of the present appeal is hereby condoned. We find that the reasons stated by the assessee for seeking condonation of delay fall within the parameters for grant of condonation laid down by the Hon'ble Supreme Court in the case of **Collector Land Acquisition, Anantnag vs. MST Katiji and others, 1987 SCR (2) 387**. It is well established that rules of procedure are handmaid of justice. When substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred. In the present case, the assessee did not stand to benefit from the late filing of the appeal. In view of the above and having perused the application duly supported by an affidavit, we are of the considered view that there exists sufficient cause for not filing the present appeal within the limitation period and therefore, we condone the delay in filing the appeal by the assessee.

6. The brief facts of the case are that the assessee had filed return of income for A.Y. 2016-17 declaring total income at Rs. NIL and had claimed deduction under Section 80P of Rs. 79,59,325/-.

7. The case was selected for scrutiny and the assessment was completed on 18.12.2018 accepting the returned income filed by the assessee. Subsequently, on verification of case records, the PCIT observed that assessee had received interest income of Rs. 11,91,098/- from Ahmedabad District Cooperative Bank

(in short “ADCB”) and Rs. 20,35,064/- from Bank of Baroda (in short “BOB”) during the impugned assessment year, in which deduction was allowed while computing total income, under Section 80P of the Act. The PCIT observed that as per Section 80P(2)(d) any income by way of interest or dividends derived by assessee from its investments with any other Cooperative Society only, is eligible for deduction while computing total income. However, ADC Bank and Bank of Baroda do not fall in the category of Cooperative Society as specified in Section 80P(2)(d) of the Act. Further, as per Section 80P(2)(a)(i), interest income earned on fixed deposit made in banks by Cooperative Society is also not deductible since the said income is not emerging out of business activity of the assessee. In view of the above, the Assessing Officer failed to verify the allowability of deduction under section 80P(2)(d) r.w.s. 80P(2)(a)(i) of Rs. 32,24,162/- on interest income derived by the assessee from entities other than Cooperative Societies. Accordingly, the PCIT was of the view that the assessment order is erroneous and prejudicial to the interest of the Revenue. The PCIT made the following observation while passing the order:-

*“10. The assessee has also contended that the claim of deduction u/s 80P is allowable on merits. I do not agree with the contention of the assessee. In the present case, the assessee-Society regularly invests funds not immediately required for business purposes. Interest on such investments, therefore, cannot fall within the meaning of the expression "profits and gains of business". Such interest income cannot be said also to be attributable to the activities of the society, namely, carrying on the "business of providing credit facilities to its members or marketing of the agricultural produce of its members. When the assessee-Society provides credit facilities to its members, it earns interest income? As stated above, in this case, interest held as ineligible for deduction under Section 80P(2)(a)(i) is not in respect of interest received from members. To say that the source of income is not relevant for deciding the applicability of Section 80P of the Act would not be correct because the words "the whole of the amount of profits and gains of business" attributable to one of the activities specified in Section 80P(2)(a) of the Act. An important point needs to be mentioned. The words "the whole of the amount of profits and gains of business" emphasis that the income in respect of which deduction is sought must constitute the operational income and not the other income which accrues to the Society. In this particular case, the evidence shows that the assessee- Society earns interest on funds which are not required for business purposes at the given point of time. Therefore, on the facts and circumstances of this case, in our view, such interest income falls in the category of "Other Income" and liable to be taxed u/s 56 of the Act.*

11. Without prejudice to the above, it may also be relevant to examine whether the assessee is eligible for deduction u/s 80P(2)(d) on its income by way of interest derived from its investments. As per the provisions of section 80(P) (d) the cooperative societies are eligible for deduction u/s 80P(2)(d) on any income by way of interest or dividends derived by the co-operative society from its investments with any other co-operative society. The interest income in the assessee's case is from with nationalized banks and cooperative banks. As far as the issue of deduction under sec.80P in the case of cooperative societies from interest on deposits in nationalized banks is concerned the issue has been finally settled by the Hon'ble Supreme court in the case of **Totgar Co-op. Sales Society Ltd. Vs. ITO in 188 Taxmann282 (2010) (SC) dated 8<sup>th</sup> February, 2010**. In this case the issue before the Hon'ble Supreme Court was whether the interest earned on funds deposited in nationalised banks is eligible for deduction u/s.80P(2)(a)(i). The Hon'ble Supreme Court held that the interest earned from investments in nationalised banks do not fall under the provisions of sec.80P(2)(a)(i) as this was not the interest received from the members for providing credit facilities to them. The Hon'ble Supreme Court held that such interest would not be business income but would fall under the category of income from other sources and would be taxable under sec.56ofthe I.T. Act.

12. As regards the issue of deduction under sec.80P in the case of cooperative societies from interest on deposits in cooperative banks is concerned, it has been a matter of litigation in a large number of cases. In some of the recent decisions the Hon'ble jurisdictional ITAT has held that the co-op, society is not eligible for deduction u/s.80P(2)(d) on interest earned from investments with the nationalized banks as well as the Co-op, banks. The relevant cases on these sections are discussed as under :

i) **PCIT Vs. Totgar Co-op. Sales Society Ltd. Taxmnn.com 140 (2017) Karnataka dated 16<sup>th</sup> January, 2017.**

*In this case the issue before the Hon'ble High Court was whether a Co-op, society deriving interest income from deposits made with Co-op, banks was eligible for deduction u/s.80P(2)(d). The Hon'ble High Court held that the deduction u/s.80P(2)(d) is allowable only with regard to the interest earned from investment made with co-op, societies and that a co-op, bank was not a co-op, society and as such interest on deposits was made with co-op, banks was not eligible for deduction u/s.80P(2)(d). The Hon'ble High Court referred to the provision of sec.80P(4) as also to the amendment of section 194A(3)(v) in this regard.*

ii) **The Government Servants Co-operative Credit Society Sanstha Vasahat dated 01.07.2019 (IT A No. 1869/Ahd/2017),**

*The relevant part of the decision dated 29.08.2018 in these cases is reproduced as under:*

*“In the light of the above facts and legal findings we consider that the income by way of interest earned by deposit or investment of idle or surplus does not change its character irrespective of the fact whether such income of interest is earned from a schedule bank or a co-operative bank and thus clause (d) of section 80P(2) of the act would not apply in the facts and the circumstances of the present case. The assessee has earned interest income on surplus funds deposited with nationalized bank and the cooperative Bank and the same is not attributable to business operation of the assessee co-operative society as interest earned on the fund invested with the commercial bank is not operational income from providing credit facilities to its members. We consider that earning of such interest income*

*either from nationalized or cooperative bank will not change nature and character of the income. On perusal of the provision of section we observe such deduction is pertinent to the operational income earned by the co-operative society from the activities in which it is engaged and not the other income which accrues to the society in the form of interest from investment of surplus funds with the cooperative bank. After considering the facts and legal finding, we do not find any merit in the appeal of the assessee, therefore, the same is dismissed. However as decided in the various decision of the Co-ordinate Benches of ITAT Ahmedabad we direct the assessing officer to allow pro rata expenses in respect of interest earned from deposit held with nationalized bank to the assessee for computing the deduction u/s. 80P after examining/verification and affording adequate opportunity to the assessee. Therefore, the appeal of the assessee is partly allowed for statistical purposes.”*

**iii) *Shriram Co-op. Credit Society Vs. ITO. In its order dated 30<sup>th</sup> January, 2020 in ITA No.98/Ahd/2017:***

*In this case the Hon'ble jurisdictional ITAT once again referred to the aforesaid decisions and held that the co-op. society is not eligible for deduction u/s. 80P(2)(d) on interest earned from investments with the nationalized banks as well as the Co-op. banks.*

**iv) *The Mahalaxmi Cr. Co. Op. Society Ltd vs ITO dated 31.01.2020 (ITA No. 153/Ahd/2019)***

*Similar view has been taken in this case.*

13. *In view of the aforesaid legal position, it is clear that the co-op, societies are not eligible for any deduction u/s.80P(2)(d) on interest earned on investments made with the Co-op. Banks.*

14. *After having considered the position of law and facts and circumstances of the instant case, I am of the considered opinion that the assessment order passed by the A.O. is erroneous in so far as it is prejudicial to the interest of revenue in accordance with the **Explanation 2(c) below section 263 (1) of the Act** as the order is passed without or verification which should have been made and hence it has made the assessment order passed not only erroneous but also" prejudicial to the interests of revenue. Accordingly, the impugned assessment order is set aside with a direction to the Assessing Officer to make requisite inquiries and proper verification with regard to the issues mentioned above and redo the assessment de-novo after due consideration of the facts and law in this regard. The assessee is at liberty to adduce the facts as deemed relevant before the assessing officer at the time of assessment proceedings in consequence to this order and the Assessing officer shall allow the assessee adequate opportunity of being heard and to make relevant submissions. It may be ensured that the fresh assessment order is passed within the prescribed time limit as stipulated under section 153(3) of the Act.”*

8. The assessee is in appeal before us against the aforesaid order passed by the Ld. PCIT holding the assessment order to be erroneous and prejudicial to the interest of the Revenue.

9. Before us, the arguments of the Counsel for the assessee were two fold. Firstly, the Counsel for the assessee drew our attention to letter/submission dated 07.12.2018, in which the issue of grant of deduction under section 80P of the Act was discussed and it was submitted that the Assessing Officer, after due application of mind had agreed to grant of deduction under Section 80P(2)(a)(i) of the Act to the assessee. Secondly, it was submitted that the Assessing Officer had taken a legally plausible view in the matter and accordingly, the assessment order is not erroneous and prejudicial to the interest of the Revenue.

10. In response, the Ld. D.R. placed reliance on the observations made by the PCIT in 263 order.

11. We have heard the rival contentions and perused the material on record.

12. In the instant case, we note that the assessee has filed submission dated 07.12.2018 in which, the assessee had submitted that the income of the assessee is exempt under Section 80P(2)(a)(i) of the Act. In the said submission, the assessee submitted that income of the assessee is attributable to business of giving credit facility to it's members hence, surplus funds were parked in Ahmedabad District Cooperative Bank and Bank of Baroda for purpose of earning interest income. Accordingly, since interest income from bank deposits is attributable to carrying on business of banking or providing credit facilities to it's members, the same is eligible for claim of deduction as per Section 80P(2)(a)(i) of the Act. However, on going through the facts of the

case, we firstly observe that the assessee had made no specific submission with regards to eligibility for grant of deduction under Section 80P(2)(d) of the Act. In terms of Section 80P(2)(d) of the Act, income of a Cooperative Society is eligible for deduction which has been received by way of interest or dividends from investments made with any other Cooperative Society. However, in the instant case, the surplus funds were parked with Nationalised Bank i.e. the Bank of Baroda on which interest income of Rs. 20.35 lakhs was received by the assessee. Admittedly, this interest income earned from Nationalised Bank is not eligible for deduction under Section 80P of the Act in terms of various judicial precedents on this issue and also in terms of the plain language of the Statute. Secondly, even in case of interest income earned by the assessee from deposits made with Ahmedabad District Cooperative Bank amounting to Rs. 11.91 lakhs, neither was any submission made with respect to claim of deduction in terms of deduction under Section 80P(2)(d) of the Act and neither was this issue examined by the Ld. Assessing Officer while allowing the claim of deduction under Section 80P(2)(d) of the Act to the assessee. Accordingly, in the instant facts, in our considered view, the Assessing Officer has not examined the claim of deduction in respect of interest income received from Nationalised Banks and Cooperative Banks in terms of Section 80P(2)(d) of the Act. Further, admittedly, the assessee is also not eligible for claim of grant of deduction under Section 80P of the Act with respect to interest income earned from surplus funds parked with Nationalised Banks. However, the Assessing Officer, without examining the above aspects granted claim of deduction to the assessee on the entire interest income earned by the assessee.

13. Accordingly, looking into the instant facts as pointed above, we are of the considered view that Ld. PCIT has not erred in facts and in law in holding

that order passed in the instant case is erroneous and prejudicial to the interest of the Revenue, and hence is liable to be set-aside.

14. In the result, the appeal of the assessee is dismissed.

<b>This Order pronounced in Open Court on</b>	<b>30/04/2024</b>
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**Sd/-**  
**(ANNAPURNA GUPTA)**  
**ACCOUNTANT MEMBER**

Ahmedabad; Dated 30/04/2024

TANMAY, Sr. PS

**TRUE COPY**

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2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
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