

THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "SMC" BENCH

Before: Shri Ramit Kochar, Accountant Member

**ITA No. 135/Ahd/2024
Assessment Year 2017-18**

<p>The Kalol Co.Op Credit And Supply Society Ltd. 14/17 Shakti Shopping Center, Nr. S.T.Stand Vepari Jin, Kalol-382721, Gujarat, India</p> <p>PAN: AAATK5041K (Appellant)</p>	v.	<p>The Income Tax Officer, Ward-4, Opp. Jain Derasar, Modhera Four Roads, Mehsana- 382715, Gujarat</p> <p>(Respondent)</p>
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**ITA No. 267/Ahd/2024
Assessment Year 2020-21**

<p>Government Employee Co.Op. Credit Society Ltd. Karmyogi Building, Bhidbhanjan Road, Near State Bank Kalana, Bhavnagar, Bhavnagar-364001, Gujarat, India PAN: AAAAG5825A (Appellant)</p>	v.	<p>The Dy. CIT, Circle-1(1), Income Tax office, Bhavnagar- 364001 Gujarat</p> <p>(Respondent)</p>
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Assessee by: Shri Jigneshkumar P Parikh, Advocate

Revenue by: Shri N.J. Vyas, Sr. D.R.

Date of hearing : 27-06-2024

Date of pronouncement : 18-07-2024

आदेश/ORDER

These two appeals filed by respective assessee's , firstly in ITA No. 135/Ahd/2024 for assessment year 2017-18 and secondly in ITA no. 267/Ahd/2024 for assessment year 2020-21, before the Income Tax Appellate Tribunal, Ahmedabad Bench, Ahmedabad. Since , both these appeals raises common issue's, they are heard together and are disposed off by this common order.

2. Firstly, I shall take up appeal of the assessee namely Kalol Co-operative Credit and Supply Society Limited , Kalol in ITA no. 135/Ahd/2024 for assessment year 2017-18 which has arisen from the appellate order dated 20-12-2023 vide DIN & Order No. ITBA/NFAC/S/250/2023-24/1058938675(1) passed by Id. Commissioner of Income-tax(Appeals),NFAC, New Delhi u/s 250 of the Income-tax Act, 1961, which in turn has arisen from the assessment order dated 05-12-2019 passed by the learned Assessing Officer u/s. 143(3) of the 1961 Act vide order no. ITBA/AST/S/143(3)/2019-20/1021708161(1).

3. The grounds of appeal raised by the assessee in Memo of Appeal filed with the ITAT, Ahmedabad Bench, Ahmedabad , reads as under:-

“1. On the facts and in the circumstances of the case as well in law, the (Appeals), NFAC, New Delhi erred in upholding the order of the ITO, Ward 4, Mahesana (for the sake of brevity "The AO") passed u/s 143(3) of the Act, is purely on misleading, misconception, arbitrary and perverse observations and hence, being without jurisdiction, bad in law, in-valid, illegal, unwarranted of facts is liable to be quashed.

2. On the facts and in the circumstances of the case as well in law, both the lower authorities have erred in not allowing deduction u/s 80P of the Act to the extent of Rs. 11,12,839/- and hence, the order passed under complete misconception, misconstruction and misinterpretation of the relevant provisions of law and facts of the case, is liable to be quashed.

3. On the facts and in the circumstances of the case as well in law, both the lower authorities have failed to appreciate that the appellant being the registered co-operative society engaged in the activity of providing credit facilities exclusively to its members, duly eligible for deduction u/s 80P(2)(a)(i) and 80P(2)(d) of the Act and hence, the order passed by the AO denying the deduction u/s 80P(2)(a)(i) and 80P(2)(d) of the Act is, being without jurisdiction, unwarranted of facts, arbitrary, perverse, bad in law, illegal and invalid, liable to be stuck down.

4. The appellant further reserves its right to add, alter, amend or modify any of the aforesaid grounds before or at the time of hearing of an appeal.

3.2 The assessee has also raised additional grounds of appeal vide application filed with ITAT, Ahmedabad Bench, Ahmedabad, on 22.04.2024 (filed on 23.04.2024), which reads as under:

“ While preparing the case, we realized that though the AO has only disallowed the claim of deduction u/s 80P however the assessee has taken ground of disallowance of expense against commission income before Ld. CIT(A) and Ld. CIT(A) has disallowed the expense so incurred against commission income and hence we request your honours to allow us to take following additional grounds.

The CIT Appeals has erred in law and in facts in deciding on an issue which was never subject matter of dispute between Assessee and Ld AO in the Assessment Order.

The Ld CIT Appeals has erred in law and in facts in disallowing the expense incurred to the tune of Rs. 3,98,777/- against the Commission Income from UGVCL”

4. The brief facts of the case are that the assessee is a co-operative society, filed e-return of income on 05.08.2017, declaring total income of Rs.1,14,440/- after claiming deduction u/s 80P of the Act of Rs.11,12,839/-. The case of the assessee was selected by Revenue for framing limited scrutiny under CASS. Statutory notices u/s. 143(2) and 142(1) were issued by the A.O. to the assessee, and the assessee submitted its reply before the A.O. wherein it was submitted that the assessee is a Co-operative society received interest income, interest on investment and other income during the year under consideration. It was observed by the AO during the assessment proceedings, that the assessee has claimed deduction of Rs.11,12,839/- u/s 80P of the Act. The AO observed that the assessee has received total income of Rs.59,12,275/- during the year under consideration , out of which Rs.38,42,268/- were interest received from the members and Rs.16,89,753/- were received from banks as interest from investment in bank FDR's etc.. The AO observed that other income received by the assessee was to the tune of Rs. 3,80,254/- as commission and other income. The A.O. observes that the assessee is entitled for deduction u/s. 80P(2)(a)(i) with respect to interest received from its members. The A.O. observed that while eligibility of claim of deduction u/s 80P, income and expenses from society members are to be considered and any surplus of receipt from members over the expenditure would qualify for deduction u/s 80P. The AO observed that the assessee was not eligible for the claim of deduction u/s. 80P(2)(a)(i) of the Act with respect to interest income received on investment with banks as the same

was not receipts from members of the co-operative society , and the assessee is not eligible for deduction u/s 80P(2)(a)(i) of the 1961 Act w.r.t. interest received totaling to Rs.16,89,750/- . Further, the assessee has itself declared other income in P& L A/c to the tune of Rs.3,80,254/-, and the assessee is not eligible to claim deduction u/s 80P with respect thereto. The A.O. observed that this interest income received by the assessee from banks to the tune of Rs. 16,89,750/- is not covered under the ambit of Section 80P(2)(a)(i) which is income from other sources and the assessee can only claim actual expenses as deduction, and surplus is chargeable to tax. The AO relied upon decision of the Hon'ble Supreme Court in the case of *M/s. Totgar Co-operative Sale Society reported in 322 ITR 283(SC)*, and the addition of Rs. 11,12,839/- was made by the A.O. to the income of the assessee by denying the deduction u/s. 80P(2)(a)(i) of the Act.

5. Aggrieved, the assessee filed first appeal with ld. CIT(A) . The assessee vide grounds of appeal and statement of facts filed in Form No. 35 before ld. CIT(A) claimed that the assessee is entitled for deduction u/s 80P(2)(d) with respect to interest income earned from FD kept with Co-operative banks and also claimed further that the A.O. has not allowed deduction with respect to expenses incurred for earning commission and other income. The assessee filed written submission before the Ld. CIT(A). The assessee submitted Copy of Registration Certificate as a Credit Society with Jilla Registrar of Co-Operative Society , Mehsana and Copy of Balance Sheet and Profit and Loss account as on 31.03.2017 , before ld. CIT(A). The assessee stated that the interest income of Rs.16,89,753/- was received from FDR and Saving Bank Account in Kadi Nagarik Co-operative Bank, Mehsana Urban Co-

Operative Bank, Rajkot Nagarik Co-operative Bank and Kalol Nagarik Co-operative Bank., which is allowable deduction u/s. 80P(2)(d). to claim deduction with respect to aforesaid interest income. It was claimed that so far as the other income of Rs. 1,14,440/- is arrived at after claiming deduction and the same was offered for taxation. The other income of Rs. 3,80,254/- constituted as income received as Consumer Income of Rs. 68,802/- , Paper Lawajam Income of Rs. 72/- , Revenue Stamp income of Rs. 1,373/- , Stationary Income of Rs. 2,410/- and Net UGVCL commission income of Rs. 22,820/- after considering interest on UGVCL deposits, the net income arrived at Rs. 1,14,440/- which is included in the interest income in Profit and Loss Account. The assessee attached copy of Profit and Loss account of UGVCL commission income and Expenditure. The assessee claimed that it showed gross total income of Rs. 12,27,281/- and claimed deduction u/s 80P of Rs. 11,12,839/-, and paid tax on taxable income of Rs. 1,14,442/- which is other income. The assessee submitted that the AO is correct that the other income is taxable , and the assessee has already offered for tax in the statement of account and not claimed net other income as deduction u/s 80P. Thus, the assessee contended that the claim of the assessee for deduction u/s 80P is correct and should not be reduced. The assessee submitted that the assessee has surplus fund of Rs. 10,75,000/- as per Balance Sheet as on 31.03.2017 shown under the head of Profit and Loss Account, while Rs. 1,00,68,351/- are various Reserve and Funds, and the assessee is required to distribute the same as per its Constitution stated at point no. 10, which also included depreciation fund and provision of NPA fund and others required by Constitution. The AO erred in interpreting that Reserve and fund of Rs. 1,00,68,351/- as surplus fund but it is maintained

due to compulsion by law and constitution to reserve the fund. The assessee submitted that as per Balance Sheet , the assessee has invested in FRR's of various co-operative banks to the tune of Rs. 1,72,12,787/- . The assessee relied upon decision of *Hon'ble Gujarat High Court in the case of SBI Employees Co-operative Credit and Supply Society v. CIT , (2016) 389 ITR 0578(Guj HC)*. The assessee submitted before Id. CIT(A) that the assessee is a Co-operative society formed under the *Gujarat Co-operative Societies Act, 1961* for the purposes of encouragement of savings and providing credit facilities to the members of the Society. It was submitted that the assessee is not engaged in any other activity except giving credit facility to its members, and the income generated is mainly on account of differential rate of amount of deposits received from members and the amount of loans given to its members. The assessee submitted that the income generated is only from contribution received from the members and it does not deal in any way with any persons other than the members . During the intervening period , the idle money collected by the assessee is deposited with various Co-operative Banks for the purpose of earning interest. Thus, it was submitted that the deposits of amount with the Banks are, therefore, incurred during the course of business and part of activities of the assessee. The assessee also relied upon certain judicial pronouncements in its submissions before Id. CIT(A) . Thus, the assessee submitted that the assessee has invested in Co-operative Banks FDR's and earning of income is not from surplus funds but part of the business activity, and claim was made for allowing deduction u/s 80P. The Ld. CIT(A) relied upon decision of Hon'ble Supreme Court in the case of *M/s. Totgar Co-operative Sale Society v. ITO (2010) 188 Taxmann 282 (SC)* and observed that the Hon'ble Supreme Court has held that the interest

income earned by the assessee would fall in the category of 'income from other sources' taxable u/s 56 and would not qualify for deduction u/s 80P(2)(a)(i) of the 1961 Act, and hence the assessment order of the AO was upheld by Id. CIT(A) on this issue , and Id. CIT(A) denied the deduction u/s. 80P(2)(a)(i) of the Act and the order of the Ld. A.O. was upheld. So far as the second issue is concerned with respect to allowability of eligible deduction against Commission and other income , the Id. CIT(A) was of the view that the assessee has not disclosed that the expenditure or outgoing sought to be deducted bears the character which has connection with or relation to the particular activity which produces the income or constitutes its source either before the AO or during the appellate proceedings. The Id. CIT(A) observed that the nexus between the activity of earning income and the expenditure in pursuit of such activity of earning income has not been clearly brought out by the assessee, and the Id. CIT(A) dismissed this ground of appeal raised by the assessee.

6. Still aggrieved, the assessee has filed second appeal with the Tribunal. At the outset, it was submitted by Ld. Counsel for the assessee that the assessee is entitled for deduction u/s. 80P(2)(d) with respect of interest earned from deposits made by the assessee in FDR's with Co-operative bank, to the tune of Rs.11,12,839/- which was wrongly denied to the assessee. The Ld. Counsel for the assessee submitted that the assessee is a Co-operative Credit society duly registered under the Gujarat Co-operative Act. The Id. Counsel for the assessee drew my attention to the appellate order passed by the Division Bench of which I was part of the Division Bench in the case of ACIT v. The Sardar Patel Co-operative Credit Society Ltd. in ITA No. 525

& 526/Ahd/2023, dated 02.04.2024 wherein the claim of the assessee for deduction u/s. 80P(2)(d) for the interest income earned from the deposits made in FDR's with Co-operative Banks was allowed by Division Bench.

6.2 The Ld. Counsel for the assessee also relied upon the other decisions of the Ahmedabad Tribunal(SMC) in the case of *The Bhagyalaxmi Co.Op. Credit Society Ltd. v. DCIT, Mehasana in ITA No. 442/Ahd/2022* for assessment year 2018-19, vide appellate order dated 17.03.2023., in which the Tribunal has held that the interest derived by Credit Co-operative Society from deposits made with Co-operative Society Bank shall be eligible for deduction u/s 80P(2)(d). The assessee has also relied upon other cases in which similar view has been taken by the Courts/Tribunal including the decision of *Hon'ble Gujarat High Court in the case of Surat Vankar Sahakari Sangh Ltd. v. ACIT reported in (2016) 72 taxmann.com 169(Guj HC)* and *State Bank of India v. CIT reported in (2016) 72 taxmann.com 64(Guj HC)*.

6.3 The Sr. Ld. D.R. on the other hand relied upon the decision of *Hon'ble Gujarat High Court in the case of Katlary Kariyana Merchant Sahkari Sarafi Mandali Ltd. v. ACIT, reported in (2022) 140 taxmann.com 602(Guj. HC)* to contend that the Hon'ble Jurisdictional High Court has decided this issue in favour of Revenue, and hence interest income received by the assessee from deposits made with Co-operative Banks shall be chargeable to income-tax. At this point, the Ld. Counsel for the assessee submitted that the aforesaid judgment and order of the Hon'ble Gujarat High Court in the case of Katlary(supra) dated 04.01.2022 has already been amended vide MA

order dated 26.04.2024 in R/Special Civil Application No. 20585 of 2019 , and hence the interest earned by Credit Co-operative Society from investments made in Deposits with Co-operative Bank u/s. 80P(2)(d) is to be allowed as deduction u/s 80P(2)(d).

6.4 Regarding additional ground of appeal raised by the assessee before ITAT, it is contended that the AO did not disallow the expenses incurred against earning of commission and other income , but the assessee raised this issue vide ground of appeal filed with Id. CIT(A) in its first appeal, and the same is adjudicated by Id. CIT(A) against the assessee although the AO never disallowed the expenses incurred against earning of commission and other income.

7. I have considered the contentions of both the parties and perused the material on record. I have observed that the dispute between the two parties is in the narrow range as to addition being made by the AO to the tune of Rs.11,12,839/- on account of disallowing of deduction claimed u/s 80P w.r.t. interest income earned by the assessee from the deposits made in the Fixed deposits and saving bank account with Co-operative Banks. The assessee is a Credit Co-operative society and claimed to have earned interest income of Rs. 16,89,753/- from Fixed deposits and saving bank account maintained with Kadi Nagrik Co-operative Bank , Mehsana Urban Co-Operative Bank, Rajkot Nagarik Co-operative Bank and Kalol Nagarik Co-operative Bank, while the assessee has claimed deduction of Rs. 11,12,839/- u/s 80P in the return of income filed with Revenue. The issue is no more res integra as the Hon'ble Jurisdictional High Court in the case of

Surat Vankar Sahakari Sangh Ltd.(supra) and State Bank of India (SBI) (supra) has decided this issue in favour of the tax-payer by holding that interest income received by Credit Co-operative Society from deposits made with Co-operative Bank registered under the Co-operative Societies Act or under the State Act shall be allowed as deduction u/s 80P(2)(d), and the ITAT in several cases has already decided this issue also in favour of the tax-payer , including in the case of *The Sardar Patel Co-operative Credit Society Ltd. v. ACIT* (ITA no. 525 & 526/Ahd/2023 vide order dated 02.04.2024) in which I was one of the Member of the Division Bench which decided the issue in favour of the assessee., by holding as under(ITA No. 525 & 526/Ahd/2023) :-

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 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:

<i>Sr. No.</i>	<i>Name of Bank</i>	<i>Interest receipt (Rs.l</i>
<i>1.</i>	<i>Interest income from Mehsana Urban Co-op. Bank Ltd.</i>	<i>1,59,13,246/-</i>
<i>2.</i>	<i>Interest income from Kukarwada Nagrik Bank Ltd</i>	<i>3,02,706/-</i>
<i>3.</i>	<i>Interest income from Mehsana Dist. Bank</i>	<i>159/-</i>

4.	Interest Income from Vijapur Nagarik Sahakari Bank Ltd.	31.168/-
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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 ld. 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 cooperative 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 cooperative 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.”

The Hon’ble Gujarat High Court in the case of Katlary Kariyana Merchant Sahkari Sarafi Mandali Ltd.(supra) vide order dated 04.01.2022 has decided the issue in favour of Revenue , but by order in MA dated 26.04.2024(supra), the aforesaid order dated 04.01.2022 was modified by Hon’ble Gujarat High Court , and this issue stood decided in favour of the tax-payer . The orders of Hon’ble Jurisdictional High Court as well of ITAT are placed on record in file. I , thus decide this issue in favour of the assessee

that interest income earned from deposits with Co-operative Banks shall be allowed as deduction u/s 80P(2)(d). However, similar directions as were given by Division Bench in the appellate order in the case of *Sardar Patel Co-operative Credit Society Limited (ITA No. 525 & 526/Ahd/2023)* are now given by me to the AO to verify that the four entities from whom the interest income is claimed to have been earned by the assessee namely Kadi Nagarik Co-operative Bank , Mehsana Urban Co-operative Bank , Rajkot Nagarik Co-operative Bank and Kalol Nagarik Co-operative Bank 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 I am directed AO to verify the facts before granting relief to the assessee. Regarding the second issue of disallowability of expenses incurred against commission and other income , which the assessee has now claimed that this issue was never the subject matter of dispute between the assessee and the AO , and the assessee has erroneously taken this ground before Id. CIT(A) in its first appeal filed before Id. CIT(A) and now expenses to the tune of Rs. 3,98,777/- stood disallowed by Id CIT(A), shall also be looked into by the AO on the merits of the contentions of the assessee by verifying the assessment records , and if the AO while framing assessment has not considered this disallowance of this expenses, then the Id. CIT(A) could not have confirmed disallowance of expenses incurred in earning commission and other income, without giving notice of enhancement to the assessee, which as is emerging from the records before me, was not given by Id. CIT(A), and in that scenario, the disallowance made by the Id. CIT(A) towards disallowance of expenses incurred for earning of commission and other income shall stand quashed. Since, there is prima-facie alleged

discrepancy in the disallowance by the AO u/s 80P itself to the tune of Rs. 11,12,839/- as against the claim of the assessee that it earned interest income of Rs. 16,89,753/- from the amount deposited in FDR and saving bank with Co-operative Banks, it became necessary to verify this aspect also. I have observed that one of the plea taken by Revenue before me is that the assessee has claimed deduction u/s 80P(2)(a)(i) and now deduction u/s 80P(2)(d) cannot be allowed to the assessee as the assessee has not filed revised return of income and time for filing revised return of income has already expired, and in this context it will be relevant and suffice here to refer to *department circular No. 14(XL-35) dated 11.04.1955*. Reference is also drawn to the decision of *Hon'ble Delhi High Court in the case of CIT(International Taxation)-2, v. Hedrick and Struggles Inc. , in ITA No. 396/2023, order dated 25.07.2023*(copy placed on record in file). The appeal of the assessee is allowed as indicated above. I order accordingly.

8. In the result, appeal of the assessee in ITA no. 135/Ahd/2024 for assessment year 2017-18 is allowed as indicated above..

ITA No. 267/Ahd/2024 for Asst. Year 2020-21-Government Employees Co-operative Credit Society Limited, Bhavnagar v. The DCIT, Circle 1(1), Bhavnagar

9. Now , I shall take up appeal in ITA no. 267/Ahd/2024 for assessment year 2020-21 filed by the assessee namely Government Employees Co-operative Credit Society Limited, Bhavnagar before the Income Tax Appellate Tribunal, Ahmedabad Bench, Ahmedabad , which has arisen from the

appellate order dated 22-12-2023 vide DIN & Order No. ITBA/NFAC/S/250/2023-24/1058989368(1) passed by Id. CIT(A),NFAC, Delhi u/s 250 of the Income-tax Act, 1961, which in turn has arisen from the assessment order dated 12-09-2022 passed by the learned Assessing Officer u/s. 143(3) read with Section 144B of the Income-tax Act, 1961 , vide DIN ITBA/AST/S/143(3)/2022-23/1045409329(1).

10. The grounds of appeal raised by the assessee in Memo of appeal filed with Income Tax Appellate Tribunal, Ahmedabad Bench, Ahmedabad, reads as under:

“1. On the facts and in the circumstances of the case as well in law, the (Appeals) , NFAC, New Delhi erred in upholding the order of the Assessment Unit, National Faceless Assessment Centre/DCIT Circle 1(1) , Bhavnagar (for the sake of brevity “the AO”) passed u/s 143(3) r.w.s. 144B of the Income-tax Act, 1961.

2. *On the facts and in the circumstances of the case as well in law, the (Appeals), NFAC, New Delhi erred in upholding the action of the AO in making addition of Rs. 46,72,994/- by disallowing the claim of deduction u/s 80P(2)(a)(i)*

3. *On the facts and in the circumstances of the case as well in law, the (Appeals), NFAC, New Delhi erred in upholding the action of the AO in making addition of Rs. 46,72,994/- by disallowing the claim of deduction u/s 80P(2)(d).*

4. *The appellant further reserves its right to add, alter, amend or modify any of the aforesaid grounds before or at the time of hearing of an appeal.”*

11. Similar issue as to allowability of deduction u/s. 80P(2)(d) of the Act w.r.t. to the interest income received by the Credit Co-operative Society from the Co-operative bank has also arisen in this appeal in ITA No. 267/Ahd/2024 for assessment year 2020-21 , which had arisen in ITA No. 135/Ahd/2024 for assessment year 2017-18 , and the said appeal in ITA No. 135/Ahd/2024 has been adjudicated by me in the preceding para’s of this order and my decision in ITA No. 135/Ahd/2024 shall apply mutatis

mutandis to this appeal filed by this assessee in ITA no. 267/Ahd/2024, and thus, I hold that the assessee is entitled for claim of deduction with respect to interest income earned from the FDR's and deposits with Co-operative bank as was decided by me in ITA No. 135/Ahd/2024 in the preceding Para's of this common order. The AO shall make similar verification as were directed by me in ITA no. 135/Ahd/2024 i.e. whether the entities from whom the assessee has claimed to have earned interest income against which deduction u/s 80P(2)(d) is now claimed, are duly registered under the Co-operative Societies Act or under the State Act, before allowing the relief to the assessee. It is also observed in the instant case that the details/breakup of the interest income received by the assessee from deposits with Co-operative Banks and / or other financial institutions, are not emerging from the orders of the authorities below, and the AO shall also verify the breakup accordingly, before allowing deduction u/s 80P(2)(d). I have also observed that one of the plea taken by Revenue before me is that the assessee has claimed deduction u/s 80P(2)(a)(i) in the return of income filed with Revenue, and now deduction u/s 80P(2)(d) cannot be allowed to the assessee as the assessee has not filed revised return of income and time for filing revised return of income has already expired, and in this context it will be relevant and suffice here to refer to *department circular No. 14(XL-35) dated 11.04.1955*. Reference is also drawn to the decision of *Hon'ble Delhi High Court in the case of CIT(International Taxation)-2, v. Hedrick and Struggles Inc.*, in ITA No. 396/2023, order dated 25.07.2023(copy placed on record in file). The appeal of the assessee is allowed as indicated above. I order accordingly.

11. In the result , appeal filed by the assessee in ITA no. 267/Ahd/2024 for assessment year 2020-22 is allowed as indicated above.

12. In the result, both the appeals filed by the Respective Assessee's are allowed as indicated in preceding para's of this common order.

Both the Orders are pronounced in accordance with Rule 34(4) of the Income Tax Appellate Tribunal Rules, 1963 at Ahmedabad on 18.07.2024.

Sd/-
(RAMIT KOCHAR)
ACCOUNTANT MEMBER

Ahmedabad : Dated:18/07/2024

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