

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI "G" BENCH : MUMBAI

BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND
SHRI OMKARESHWAR CHIDARA, ACCOUNTANT MEMBER

Sl.No.	ITA.No.	A.Y.	Name of Appellant	Name of Respondent	NFAC, Delhi's DIN & Order No.ITBA/NFAC /S/250/2023-24	Proceedings in u/sec.
1.	4297/MUM./2023	2014-15	The Income Tax Officer, Ward-41(2)(5), Room No.629, Kautilya Bhavan, Bandra-Kurla Complex, Bandra East, Mumbai.	Shivkrupa Sahakari Patpedhi Limited, Kai, Namdevrao Patane Smruti Bhavan, Gomsawadi, Station Road, Vikroli (East), Mumbai - 400 083.	1056682593(1) dated 30.09.2023	143(3) r.w.s.263 of the Income Tax Act, 1961.
2.	4242/MUM./2023	2017-18			National Faceless Assessment Centre, Delhi's DIN ITBA/PNL/F/270A/2021-22/1035916529(1) dated 27.09.2021	270A of the Income Tax Act, 1961.
3.	4245/MUM./2023	2017-18	PIN - 400 051. Maharashtra.	Maharashtra. PAN AAAAS3870K	1056686657(1) dated 30.09.2023	143(3) of the I.T. Act, 1961.
4.	2407/MUM./2024	2018-19	Shivkrupa Nagari Sahakari Pat Ltd., Shop No.8, Om Shriji Cooperative Hsg. Society, Shinde Ali, Shivaji Chowk, Kulgaon, Badlapur, Maharashtra. PIN 421 503 PAN AAGTS3112D	PCIT, Thane-1, Ashar IT Park, Wagale Estate, Thane West, Mumbai. PIN 400 601 Maharashtra.	ITBA/COM/F/17/2023-24/1062386508 dated 11.03.2024	263 of I.T. Act, 1961

For Revenue :	Shri Dr. Kishor Dhule, CIT-DR
For Assesseees :	Ms. Kimaya Kudva (Sl.No.1 to 3) Shri Shekhar Patwardhan (Sl.No.4)

Date of Hearing :	24.07.2024
Date of Pronouncement :	26.07.2024

ORDER**PER SATBEER SINGH GODARA, J.M.**

The instant batch of four appeals pertains to twin assessee viz., Shivkrupa Sahakari Patpedhi Limited and Shivkrupa Nagari Sahakari Pat Limited. All other relevant details stands duly tabulated hereinabove.

2. It emerges during the course of hearing that the sole identical substantive issue in these cases is that of allowability of these twin assessee's claim(s) of sec.80P deduction in their respective cases.

3. We note in this factual backdrop that there are three appeals pertaining to the former assessee namely Shivkrupa Sahakari Patpedhi Limited filed by the Revenue i.e., ITA.Nos.4297/MUM./2023 [A.Y.2014-2015] in sec.143(3) r.w.s.263; ITA.No. 4242 & 4245/MUM./2023 [for latter A.Y. 2017-2018] involving sec.270A penalty proceedings 143(3) assessment and the latter assessee Shivkrupa Nagari Sahakari Pat Limited's appeal

ITA.No.2407/MUM./2024; involving sec.263 revision proceedings by Pr. CIT, Thane-1, Thane, respectively.

4. It emerges during the course of hearing that the Revenue's appeal ITA.No.4297/MUM./2023 in former assessee's case pleads that the CIT(A)-NFAC's lower appellate findings have erred in law and on facts in reversing Assessing Officer's assessment disallowing sec.80P deduction claim involving interest income on cooperative bank(s) deposits etc., amounting to Rs.24,75,98,759/- and other income of Rs.13,78,137/-; respectively. We find that the Assessing Officer had framed his impugned assessment in pursuance to the PCIT's sec.263 revision directions terming the said former round of assessment as an erroneous one causing prejudice to the interest of Revenue for the reason that he had not disallowed the assessee's above stated sec.80P claim. And that this tribunal in assessee's appeal ITA.No.1692/MUM./2019 decided on 12.07.2021 has already reversed the said revision directions as discussed in para-4 of the CIT(A)-NFAC's detailed discussion. That being the case, we are of

the considered opinion that once the impugned assessment herein framed as per the PCIT's sec.263 revision directions itself stands annulled; this consequential assessment framed by the Assessing Officer forming subject matter of Revenue's appeal herein has no legs to stand going by '*sublato fundamento cadit opus*' i.e., when the foundation itself does not exist, the superstructure raised thereupon also follows the suit. We thus decline the Revenue's instant first and foremost appeal in former assessee's case ITA.No.4297/MUM./2023 in very terms.

5. The Revenue's twin appeals ITA.Nos.4245 & 4242/MUM./2023 in former assessee's case in assessment year 2017-2018 involving sec.143(3) assessment and sec.270A proceedings.

6. Suffice to say, the Revenue's above quantum appeal seeks to disallow the assessee's sec.80P deduction claim of Rs.37,78,74,035/- thereby treating it as a cooperative bank than a cooperative society so as to be eligible for the impugned deduction. It's vehement argument

during the course of hearing before us is that this assessee deserves to be treated as a cooperative bank only since carrying out regular banking business and therefore, the CIT(A)-NFAC has erred in law and on facts in treating it as a cooperative society for the purpose of allowability of sec.80P deduction. We find no merit in the Revenue's instant sole substantive ground for the precise reason once the assessee is admittedly a cooperative society registered under such cooperative law which has been held to be a decisive factor in *Mavilayi Service Co-operative Bank Ltd., vs., CIT* [2021] 431 ITR 1 (SC). Their lordships' have settled the law that it is the assessee's corresponding registration under the cooperative law which only deserves to be considered in sec.80P deduction issue. We thus reject the Revenue's instant quantum appeal ITA.No.4245/MUM./2023 for latter assessment year 2017-2018 in very terms.

7. The Revenue's penalty appeal ITA.No.4242/MUM/2023 also follows the suit being consequential in nature.

8. Lastly comes the latter assessee M/s. Shivkrupa Nagari Sahakari Pat Limited's appeal ITA.No.2407/MUM./2024 for assessment year 2018-2019 which is directed against the learned PCIT's sec.263 revision directions holding the Assessing Officer's corresponding assessment dated 20.05.2021 as an erroneous one causing prejudice to interest of Revenue. We observe at the cost of repetition that the former assessee hereinabove has already succeeded in such an instance wherein the learned CIT(A)-NFAC/PCIT's as the case may be; had sought to disallow the corresponding interest income derived from deposits in cooperative bank(s) as not eligible for sec.80P deduction in assessment year 2014-2015 (supra).

9. Faced with this situation, learned CIT-DR vehemently contended that case law Totagars Co-operative Sales Society Ltd. vs. ITO, 188 taxmann.com 282 (SC) and Katlary Kariyana Merchant Sahkari Sarafi Mandali Ltd., vs. ACIT [2022] 140 taxman 602 (Guj.) (HC) against the assessee. We note that The Vaveru Co-operative Rural Bank Ltd., vs. CCIT [2017] 396 ITR 371 (AP) has treated the

interest income from nationalized banks as well as eligible for sec.80P deduction. All these divergent judicial opinions from various hon'ble non-jurisdictional high courts and absence of the issue being decided in hon'ble jurisdictional high court; make it clear that the instant issue of interest income from cooperative banks as eligible for sec.80P deduction is indeed a debatable one and therefore, the Assessing Officer's regular assessment dated 20.05.2021 herein could not be termed as an erroneous one causing prejudice to the interest of Revenue in light of Malabar Industrial Co. Ltd. vs. CIT [2000] 243 ITR 83 (SC). We thus accept the latter assessee's instant appeal ITA.No.2407/MUM./2024 in very terms. Ordered accordingly.

10. To sum-up, the Revenue's three appeals ITA.Nos.4297, 4242 & 4245/Mum./2023 in case of the former assessee [Shivkrupa Sahakari Patpedhi Limited] are dismissed and the latter assessee's appeal ITA.No.2407/MUM./2024 [Shivkrupa Nagari Sahakari Pat

Ltd.] is allowed in above terms. A copy of this common order be placed in the respective case files.

Order pronounced in the open Court on 26.07.2024

Sd/-
[OMKARESHWAR CHIDARA]
ACCOUNTANT MEMBER

Sd/-
[SATBEER SINGH GODARA]
JUDICIAL MEMBER

Mumbai, Dated 26th July, 2024

VBP/-

Copy to

1.	The applicant
2.	The respondent
3.	The Pr. CIT, Mumbai concerned
4.	D.R. ITAT, "G" Bench, Mumbai.
5.	Guard File.

//By Order//

//True Copy //

Assistant Registrar, ITAT, Mumbai Benches,
Mumbai.