

THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "SMC" BENCH

Before: Shri Ramit Kochar, Accountant Member

**ITA No. 612 /Ahd/2024
Assessment Year 2017-18**

The Salestax Employees Co- Operative Credit Society Ltd., C-5, Bahumali Building, Apna Bazaar, Lal Darwaja, Ahmedabad-380001 Gujarat PAN: AABAT1830D (Appellant)	v.	The ACIT, Circle-1(3), Ahmedabad, Gujarat (Respondent)
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Assessee by: Shri Pradeep G Tulsian, AR
Revenue by: Shri Sanjay Jain, Sr. D.R.

Date of hearing : 08-07-2024
Date of pronouncement : 30-07-2024

आदेश/ORDER

This appeal in ITA No. 612/Ahd/2024 for assessment year 2017-18 is filed by the assessee before Income Tax Appellate Tribunal, Ahmedabad Bench, Ahmedabad , which has arisen from the appellate order dated 16-10-2023 in DIN

& Order No. ITBA/APL/S/250/2023-24/1057104725(1) passed by Id. Commissioner of Income-Tax(Appeals),Addl/JCIT(A),2 Coimbatore u/s 250 of the Income-tax Act, 1961, which in turn has arisen from the assessment order dated 17-12-2019 passed by learned Assessing Officer u/s. 143(3) of the Income-tax Act, 1961(Order No. ITBA/AST/S/143(3)/2019-20/1022556312(1).

2. At the outset, it is observed that this appeal is filed belatedly by 111 days beyond the time stipulated u/s 253(3) of the 1961 Act. The assessee has filed application for condonation of delay in which it is stated that the assessee made an application u/s. 154 of the 1961 Act with Id. CIT(A) on 18.11.2023 , as there was a mistake apparent from records in the appellate order dated 16.10.2023 passed by Id. CIT(A). The Id. CIT(A) dismissed the appeal of the assessee on the grounds that the assessee received interest income from FDR from Axis Bank Limited on Rs. 86,730/-, but the assessee claimed that in-fact received interest from Co-operative Bank namely Ahmedabad District Co-operative Bank , which factual error led to dismissal of the appeal of the assessee by Id. CIT(A), and hence rectification application was filed u/s 154 with Id. CIT(A) seeking amendment to the appellate order dated 16.10.2023 passed by Id. CIT(A). Such rectification application u/s 154 was filed on 18.11.2023 vide application

no. 518356300181123 , and the said rectification application was dismissed by NFAC, Delhi vide orders dated 31.05.2024 vide DIN and Order No. ITBA/NFAC/F/154/2024-25/1065306849(1). It is stated in the condonation application that the assessee did not file appeal before the Tribunal, as the aforesaid rectification application was pending with the ld. CIT(A). The appeal was filed by the assessee before ITAT on 04th April, 2024. The relevant orders are placed on record in file. The appellate order of the Ld. CIT(A) is dated 16.10.2023 , and the appeal ought to have been filed with Tribunal within 60 days of service of the order of the Ld. CIT(A) , which as per Form 36 was received by the assessee on 16.10.2023 itself. Thus the appeal ought to have been filed with Tribunal on or before 16th December 2023 , but has been filed on 04.04.2024 belatedly by 111 days beyond the time stipulated u/s 253(3). The reason for delay in filing appeal with ITAT is the pendency of rectification application filed by the assessee u/s 154 with ld. CIT(A). Thus the claim of the assessee is that the assessee has bonafidely filed rectification application u/s. 154 with Ld. CIT(A) as the Ld. CIT(A) considered the interest received by the assessee on FDR with Ahmedabad District Co.Operative Bank as interest received by the assessee on FDR with Axis Bank, which led to dismissal of appeal of the assessee. Thus, the assessee pleaded bonafide in filing this appeal belatedly with ITAT. The Ld. D.R. did not oppose the condonation application

but submitted that there is a lacuna in the system wherein the orders of Ld. CIT(A) could not be retrieved/available on record under the faceless scheme, which led to dismissal of the rectification application u/s 154 filed by the assessee, I have considered the contention of both the parties, and I am of the considered view that the assessee bonafidely filed its rectification application u/s 154 of the 1961 Act with Ld. CIT(A) seeking to correct mistake apparent from records in the appellate order dated 16.10.2023 passed by Ld. CIT(A) instead of filing appeal with ITAT. The assessee has shown reasonable and sufficient cause for filing this appeal belatedly with ITAT. The assessee has ultimately filed appeal with ITAT even before dismissal of its rectification application u/s 154. Under these facts and circumstances, I am of the considered view that the assessee has shown reasonable and sufficient cause in filing this appeal belatedly with ITAT beyond the time stipulated u/s 253(3), and delay needs to be condoned and the appeal be heard on merits. When technicalities are pitted against the substantial justice, the Courts will lean towards advancement of substantial justice rather than technicalities, unless the malafide on the part of the assessee is at writ large. Under the facts and circumstances, I do not find any malafide on the part of the assessee in filing this appeal belatedly, and in the interest of justice, I condone the delay of 111 days and proceed to adjudicate this appeal on merits in accordance with

law. Reference is drawn to the decision of Hon'ble Supreme Court in the case of **Collector of Land Acquisition, Anantnag v. Mst. Katiji (1987 AIR 1353(SC))**.

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

1) The assessee maintains the savings bank account with Axis Bank just to facilitate the members of the society, where no surplus fund was invested, it is the interest of Rs. 32755/- which was earned in the routine balance which was lying in the account and therefore, the interest earned is in the due course of business only.

2) Your good self should appreciate that the Honorable ITAT Ahmedabad, in the assessee's own case for the AY 2014-15 has treated the Saving Bank Interest as business income and allowed the deduction under Section 80P. A copy of the ITAT order dated 08/02/2023 is attached herewith for your ready reference. Further, the relevant para is reproduced herewith for your ready reference.

"7. Heard both the parties and perused all the relevant material available on record. The fact remains that the assessee Co-operative Society has maintained its account with Axis Bank which is not a Co-operative Bank but the interest income of Rs. 28,911/- derived from a savings Bank account maintained with Axis Bank as business income of the assessee. But as per the decision of the Hon'ble Apex Court in case of Totgar's Co-operative Sales Society Limited vs. ITO. 352 ITR 283 (SC), the surplus fund which immediately not required for the business purpose has been invested for the short period

and such investment upon which interest is derived is not eligible for deduction under Section 80P of the Act. In the present case, the assessee Cooperative Credit Society has those savings bank accounts with Axis Bank and, therefore, the interest income received thereon is eligible under Section 80P of the Act. As regards interest derived from loans given to staff, the same is also eligible for deduction under Section 80P of the Act as the staff are the members of Co-operative Credit Society as they are employees of Axis Bank. Thus, the Assessing Officer as well as the CIT(A) was not right in rejecting the deduction under Section 80P of the Act."

3) CIT (A) has not allowed the deduction of Rs. 32,755/- of saving bank interest received from axis bank. According to CIT(A) the twin test of income attributable to activity and mutuality principle has to be applied. While the first limb is satisfied, interest accrued attributable/incident to the specified activity, the second limb is not fulfilled. The Axis bank is not a member of the appellant society. But he failed to appreciate that the saving bank account is not an investment and the interest earned on saving bank accounts is the assessee's day to day activity and interest earned is an incidental to the same and hence it is attributable to the business activity. CIT(A) has also ignored the fact that Honorable ITAT Ahmedabad, has already allowed the same u/s 80P while passing an order for the AY 2014-15. (A copy of the same is attached herewith for ready reference).

4) Interest of Rs. 86730/- earned from the fixed deposit which was maintained by the assessee with the Ahmadabad District Co-operative Bank against which the assessee has taken the overdraft facility and has paid Rs. 88956/-. Therefore, the assessee has incurred the net interest expenses of Rs. 2,226/-. Therefore, there is no interest income after a set off the interest paid. Since the interest earned is from another cooperative society, the same is allowed for deduction under section 80P

and further the expenses incurred against the income has to be set off. Therefore, not allowing the deduction under section 80P is bad in law and therefore, should be allowed.

5) The Honorable CIT(A) has made an error while considering the FD interest was earned from Axis bank which is not a Co-operative Bank. Whereas the interest on FD was received from the Ahmadabad District Co-operative Bank. If he has considered the actual facts, then CIT(A) might have allowed the deduction u/s 80P and not made such an mistake as he has simply denied the deduction on the ground of mutuality as the assessee is not a member of the Axis bank, which is a based on wrong facts. Therefore, the assessee is hereby humble request your good self to please allow the deduction u/s 80P on the interest income of Rs. 86730/- earned on FD maintained with Ahmadabad District Co-operative Bank.

6) Moreover, AO while passing the order u/s 143(3) is of the opinion that the Co-operative Banks cannot be treated as Co-operative society as the section has specifically mentioned the deductions only for the cooperative societies. Further, the AO has given reference of various judgements on the law of interpretation but failed to consider the definition of Co-operative Societies as given in the Income Tax Act. Section 2(19) is specifically defined the meaning of Co-operative Society, which is reproduced herewith for ready reference:

Section 2(19) of the Income Tax Act, "Co-operative society" means a co-operative society registered under the Co-operative Societies Act, 1912 (2 of 1912), or under any other law for the time being in force in any State for the registration of co-operative societies."

AO has ignored the facts that all the co-operative banks are registered under the Co-operative Societies Act, 1912 or under

any other law for the time being in force in any state for the registration of co-operative societies.

7) According to the above, AO while passing the order u/s 143(3) has failed to consider that co-operative bank falls within the definition of the term cooperative society. Thus, interest received by a co-operative society from a co-operative bank is nothing, but interest received from a co-operative society and eligible for deduction u/s 80P(2)(d).

8) Learned A.O is not justified in denying the deduction of Rs. 1,19,485/- (Rs. 86730 on FD and Rs. 32755/- on saving bank interest) u/s 80P of the I.T Act and consequently erred in making addition of Rs. 1,19,485/- to the total income of the assessee.

9) The addition made by the AO is bad in law and therefore, requires to be quashed.

10) That on the facts and in the circumstances of the case, the ld. Assessing Officer grossly erred in charging interest u/s 234A and 234B, of the Income Tax Act.

11) Further learned AO also initiated penalty proceedings u/s 270A stated that Assessee has underreported the income whereas this is not the case of underreporting of income. It is based on the AO opinion and deduction has been reduced to that extent. No penalty proceedings should be initiated.

12) The appellant craves leave to add, alter , modify or amend any ground on or before the date of hearing.”

4. The brief facts of the case are that the assessee filed its return of income on 05.10.2017, declaring NIL income. The case of the assessee was selected by Revenue for framing

limited scrutiny assessment under CASS. Statutory notices u/s. 143(2) and u/s. 142(1) were issued by the AO. During the course of assessment proceedings, the A.O. observed from the perusal of income and expenditure account as well as reply filed by the assessee during the course of assessment proceedings that the assessee has earned interest income on FDR of Rs. 86,730/- and Saving Bank Interest of Rs. 32,755/-. The assessee has claimed with respect to aforesaid interest income, deduction u/s. 80P of the Act. The A.O. relied upon the decision of Hon'ble Supreme Court in the case of *Totgar Co-operative Sales Society Ltd. (322 ITR 283)*, and observed that interest on bank deposits does not qualify for deduction u/s. 80P of the Act. Show cause notice was issued by the AO to the assessee as to why the aforesaid income from FDR and saving Bank account be not treated as income from other sources u/s 56 of the 1961 Act. The assessee submitted that the assessee is maintaining saving bank account with Axis Bank to deposit the amount received from members and to issue the cheques to members and for other expenses. The assessee further claimed that the assessee is maintaining Loan CC account with Ahmedabad District Co.Op. Bank Ltd. and the interest is paid on the said loan. The assessee also submitted that the facts in the case before Hon'ble Supreme Court in the case of *Totgar Co-operative Sales Society Limited(supra)* are distinguishable. The A.O. was of the view

that as per provisions of Section 80P(2)(d) of the Act , income by way of dividends or interest earned by the Co-operative society from its investment with any other co-operative society is exempt from tax. But this deduction cannot be extended to the interest income and dividend earned from the investment in any Co-operative bank. Thus the A.O. disallowed the deduction of Rs. 86,730/- being amount of interest from FDR and Rs. 32,755/- received as saving bank interest , claimed by the assessee u/s. 80P of the Act, and was added to the income of the assessee.

5. Aggrieved, the assessee filed first appeal with ld. CIT(A), which stood dismissed by Ld. CIT(A) by holding that interest received from FD in Axis Bank to the tune of Rs. 86,730/- is not allowable. Although as per the grounds of appeal and statement of fact(SOF) filed by the assessee before ld. CIT(A), the assessee has stated that the said interest on FDR to the tune of Rs. 86,730/- was received from Ahmedabad District Co-Operative Bank Ltd. The assessee also stated that the assessee has maintained Loan CC account(against FDR) with the Ahmedabad District Co-operative Bank Limited and paid interest of Rs. 88,956/- on the same. The assessee stated that the facts of the decision of Hon'ble Supreme Court in the case of Totgar(supra) were different. The ld. CIT(A) dismissed the appeal by holding that the interest income from FDR from Axis

Bank which is a scheduled bank is not deductible u/s 80P(2)(d)(while the claim of the assessee was that interest income on FDR were earned w.r.t. FDR maintained by the assessee with Ahmedabad District Co-operative Bank and not with Axis Bank). Further, the ld. CIT(A) held that no deduction u/s 80P(2)(i) shall also be allowed as the Axis Bank is not member of the society. As there was apparently mistake on the part of the Ld. CIT(A) by considering the said interest as interest on FDR with Axis Bank as claimed by the assessee, instead of claim of the assessee that the said interest on FDR was interest on FDR with Ahmedabad District Co-operative Bank Limited, the assessee filed rectification application u/s. 154 which was dismissed by ld. CIT(A) vide order dated 31.05.2024 by holding that the appellate order dated 16.10.2023 passed by Ld. CIT(A) is not retrievable/available on record.

6. Still aggrieved, the assessee has now filed second appeal with the Tribunal , and the assessee has claimed that the Ld. CIT(A) has erred in holding that the assessee has received interest on FDR with Axis Bank but the fact of the matter is that the assessee received interest of Rs. 86,730/- from Ahmedabad District Co-Operative Bank Ltd and not from Axis Bank. It is submitted that the assessee is a credit co-operative society and is eligible for deduction u/s. 80P(2)(d) of the Act.

The Ld. Counsel for the assessee also relied upon the other decisions of the Ahmedabad Tribunal(SMC) in its own case *in Sales Tax Employees Co-operative Credit Society Limited v. ITO in ITA no. 750/Ahd/2018 for assessment year 2014-15.*

6.2 The Sr. Ld. D.R. on the other hand relied upon the orders of authorities below , and prayed that the matter may be set aside to the file of ld. CIT(A).

7. I have considered rival contentions and perused the material on record. I have observed that the assessee is a credit co-operative society. The brief facts and background are culled out by me in preceeding para's of this order and are not repeated. The issue arisen in this appeal is with respect to allowability of deduction u/s 80P of the 1961 Act, with respect to interest income earned by the assessee from FDR maintained with Ahmedabad District Co-operative Bank Limited to the tune of Rs. 86,730/- and also interest on saving bank account to the tune of Rs. 32,755/-. The assessee has also stated that the assessee availed CC Loan account from Ahmedabad District Co-operative Bank Limited against the security of FDR maintained with Ahmedabad District Co-operative Bank Limited, and paid interest of Rs. 88,956/- to Ahmedabad District Co-operative Bank Limited . The AO applied decision of Hon'ble Supreme Court in the case of

Totgar(supra) and disallowed the deduction claimed u/s 80P. The ld. CIT(A) erred in holding that the assessee earned interest on FDR maintained with Axis Bank despite being clearly spelled out by the assessee in Grounds of Appeal/SOF filed before ld. CIT(A), and hence the same is not allowable as deduction u/s 80P as the Axis Bank is a scheduled bank and is also not member of the assessee's credit co-operative society. The assessee filed rectification application u/s 154 before ld. CIT(A), and the said application stood dismissed on the ground that the appellate order u/s 250 originally passed by ld. CIT(A) on 16.10.2023 is not retrievable/available on record. The ld. Sr. DR stated before the Bench that this is a deficiency in the system under faceless regime , that once the appellate orders are passed by ld. CIT(A), it became non retrievable/not available on record. Be that it may be so , there is no reason why the assessee suffers owing to deficiency in the system of the department, and the assessee's cannot be made to run from pillar to post and incur costs and time owing to deficiency in the system of department. The Department and its officers are Authorities who must act diligently so that the tax-payers do not suffer un-necessary and un-called for difficulties, for no fault of them. The AO is directed to bring this deficiency to the notice of ld. CCIT so that this issue can be taken up at an appropriate level, so that this deficiency can be removed/corrected at the earliest. Going further, the issue

is of deduction of interest on FDR earned by Credit Co-operative society from deposits with Co-operative Banks is no more res integra as the Hon'ble Jurisdictional 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) 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:

Sr. No.	Name of Bank	Interest receipt (Rs.l
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 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. v. ACIT*, reported in (2022) 140 *taxmann.com* 602(Guj. HC) vide order dated 04.01.2022 has decided the issue in favour of Revenue, but by order in MA dated 26.04.2024 in R/Special Civil Application No. 20585 of 2019, 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. 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 entity from whom the interest income is claimed to have been earned by the assessee namely Ahmedabad District Co-operative Bank is Co-operative Bank which is a 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. So far as interest income received by assessee from saving bank account maintained with Axis Bank is concerned, the same shall not be allowed as deduction, keeping in view decision of Hon'ble Supreme Court in the case of *Totgar(supra)* as well decision of Division Bench of ITAT in the case of *Sardar Patel*

Co-operative Credit Society Limited(supra). The assessee has claimed that it has not invested surplus funds in its bank account, but there is no evidence to support its contentions. The appeal of the assessee is partly allowed as indicated above. I order accordingly

8. In the result, appeal of the assessee in ITA no. 612/Ahd/2024 for assessment year 2017-18 is partly allowed as indicated above.

9. Order pronounced in accordance with Rule 34(4) of the Income Tax Appellate Tribunal Rules, 1963 at Ahmedabad on 30.07.2024.

Sd/-
(RAMIT KOCHAR)
ACCOUNTANT MEMBER

(True Copy)
Ahmedabad : Dated 30/07/2024