

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "A" BENCH

**Before: Shri T.R. Senthil Kumar, Judicial Member
And Shri Narendra Prasad Sinha, Accountant Member**

**ITA No. 347/Ahd/2021
Assessment Year 2017-18**

The Bhagyoday Sharafi Sahakari Mandli Ltd. Near Ahmedabad Dist. Co-op. Bank, Near Suthar Fali Chowk Viramgam, Ahmedabad Gujarat-382150 PAN: AAAJT0443J (Appellant)	Vs	The ITO, Ward-3(2)(5), Ahmedabad (Respondent)
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**Assessee Represented: Shri Has Mukh V Doshi, CA,
Revenue Represented: Shri Aashish Rajesh Rewar, Sr.D.R.**

Date of hearing : 21-11-2024
Date of pronouncement : 28-11-2024

आदेश/ORDER

PER : T.R. SENTHIL KUMAR, JUDICIAL MEMBER:-

This appeal is filed by the Assessee as against the appellate order dated 10.10.2019 passed by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, (in short referred to as "CIT(A)"), arising out of the assessment order passed under section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to the Assessment Year 2017-18.

2. The Registry has noted that there is a delay of 24 days in filing the above appeal by the assessee. The assessee by way of a Notarized Affidavit explained that the Consultant failed to verify the ITB Portal, thereby appeal could not be filed within 60 days but with a delay of 24 days and requested to condone the same. Ld. D.R. appearing for the Revenue has no serious objection in condoning the delay. Thus the delay of 24 days in filing the above appeal is hereby condoned.

2. Brief facts of the case is that the assessee is a Cooperative Society engaged in the business of providing credit facilities to its members on which it earned and incurred interest income from banks and members. For the Asst. year 2017-18, assessee filed its Return of Income on 30-10-2017 declaring total income of Rs.31,291/-. The return was taken for scrutiny assessment. The Assessing Officer treated the interest income from banks and Gujarat Electricity Board as income from other sources and rejected the claim of deduction u/s. 80P of the Act as follows:

Name of the banks/institutions	Amount of interest received during F.Y. 2016-17
The Ahmedabad District Co-operative Bank	Rs. 30,65,538/-
Gujarat Electricity Board	Rs. 39,600/-
Mehsana Urban Co-op. Bank Ltd.	Rs. 51,92,405/-
Madhupura Mercantile Co-op. Bank Ltd.	Rs. 51,07,545/-
Rajkot Nagrik Sahkari Bank Ltd.	Rs. 42,22,336/-
Total	RS. 1,76,27,424/-

2.1. Aggrieved against the assessment order, assessee filed an appeal before Ld. CIT(A) who has confirmed the additions made by the Assessing Officer.

3. Aggrieved against the same, the assessee is in appeal before us raising following grounds of appeal:-

1. CIT(A) has erred in law and facts in confirming the order of AO for deduction U/S 80P(2)(a)(i) of The 1. T. Act to the extent of Rs 1,76,58,715/- by way of treating the interest received from bank deposits as income from other sources.

2. CIT(A) has erred in law and facts in confirming the order of AO for making addition of Rs. 1,76,58,715/- without computing the deduction u/s 57 from gross interest income which is considered as income u/s 56 of IT Act and disallowance not restricted to the extent of the working based in proportion of expenses admissible u/s 57.

3. CIT(A) has erred in law and facts in confirming the order of AO for not considering the alternative claim of deduction u/s 80P(2)(d) of IT Act in respect of interest income of Rs. 1,75,87,824/- from Co.Op. banks by not accepting co-operative bank as co-operative society.

4. Without prejudice to above ground No.1,2,3 the Id. CIT(A) has erred in law and facts in confirming the order of AO by not allowing set off of business loss if said interest income is considered under the head Income from other source. After considering the said interest income under head income from other sources, there is loss under the head income from business and profession and accordingly the learned AO be directed to give set off of the loss under the head income from Business and Profession against the Income from other Sources.

5. That the Id. CIT(A) has erred in law and facts in confirming the order of AO for not allowing deduction of claim under section 80 P of the Act of Rs.1,13,84,740/- and therefore the Id AO should be directed to allow the said deduction while computing the total income.

6. CIT(A) has erred in law and facts in confirming the order of AO for not allowing deduction of Rs. 50,000/- u/s 80P(2)(c)(ii) in respect of commission income from GEB and other income.

4. At the outset, Ld. Counsel appearing for the assessee submitted that he is not pressing Ground Nos. 4 & 5 since it is in the nature of repetition of other grounds. Recording the same, Ground Nos. 4 & 5 are hereby dismissed.

5. Regarding Ground No. 1, the Ld. Counsel submitted The Hon'ble Gujarat High Court in the case of Katlary Kariyana Merchant Sahkari Sarafi Mandali Ltd. ACIT reported in (2022) (40 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.

Similar view have been taken by the Benches of ITAT, Ahmedabad in the case of other tax-payers including decision of ITAT Ahmedabad SMC Bench, in the case of The Kalol Co-operative Credit and Supply Society Limited in ITA 135/Ahd/2024 and ITA No. 267/Ahd/2024 vide order dated 18.07 2024.

6. Ld. D.R. appearing for the Revenue could not contravene the above submissions of the assessee. Thus we decide this issue namely interest income earned from deposits with Co-operative Bank shall be allowed as deduction u/s. 80P(2)(d) of the Act, however the J.A.O. is directed to verify the same.

7. Regarding Ground No. 2 in respect of claim of deduction u/s. 57 in respect of deduction of proportionate expenses incurred for earning interest income from bank deposits and Ground No. 6 in

respect of claim of deduction u/s. 80P(2)(c)(ii) of Rs. 50,000/- in respect of income from other activities by Co-operative Societies. Since Ground No. 1 is set aside back to the file of Jurisdictional Assessing Officer for verification, other two grounds are also set aside back to the file of JAO for verification and allow the same in accordance with the provisions of law.

8. In the result, the appeal filed by the Assessee is allowed for statistical purpose.

Order pronounced in the open court on 28-11-2024

Sd/-
(NARENDRA PRASAD SINHA)
ACCOUNTANT MEMBER
Ahmedabad : Dated 28/11/2024

Sd/-
(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER

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