IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "B" BENCH

Before: Smt. Annapurna Gupta, Accountant Member
And Shri T.R. Senthil Kumar, Judicial Member

ITA No. 1122/Ahd/2023
Assessment Year 2020-21

The DCIT, Gandinagar Circle, Gandhinagar **(Appellant)**	Vs	The Sardar Patel Cooperative Credit Society Limited Block No. 14, Roon No. 405, 4th Floor, Udhyog Bhavan, Sector-11, Gandhinagar-382011, Gandhinagar, Gujarat **PAN: AABCT9663N** **(Respondent)**

Revenue Represented: Shri Sanjay Kumar, Sr.D.R.
Assessee Represented: Shri Hasmukh V Doshi,CA

Date of hearing : 26-11-2024
Date of pronouncement : 29-11-2024

आदेश/ORDER

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

This appeal is filed by the Assessee as against the appellate order dated 03.11.2023 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 2020-21.

2. The Grounds of Appeal raised by the Revenue reads as under:

(a) The Ld.CIT (A) has erred in law and on facts in allowing the deduction of Rs2,27,33,574/- claimed u/s 80P(2)(d) of the IT Act in respect of the interest received from Bank deposits from Co-operative Banks and Nationalized Bank.

(b) The Ld.CIT (A) has erred in law and on facts in allowing the deduction of u/s 80P(2)(a)(i) of the IT Act without considering the provisions of section 57 of the IT Act.

(c) The appellant craves leave to add, alter and/or to amend all or any of the ground before the final hearing of the appeal.

3. Brief facts of the case is that the assessee is a Cooperative Society and is engaged in providing credit facilities to its members only from the deposits received from them. During the year under consideration, the assessee declared total income of Rs. 'Nil' after claiming deduction section 80P(2)(a)(i), 80P(2)(c)(ii) and 80P(2)(d) of the Act of Rs.3,23,92,639/-. During the course of assessment proceedings, the AO noted that the assessee has earned interest income from cooperative banks as well as nationalized banks and claimed deduction under section 80P of the Act on the same, the details are as under:

Sr. No.	Name of the Bank	Amount of interest
1	The Bank of Baroda	Rs. 12,190
2	The Denu Guj. Gramin Bank	Rs. 67
3	The Kukarwad Nagrik Sah. Bank	Rs. 5088
4	The Mehsana Dis. Bank	Rs. 183
5	State Bank of India	Rs. 1022
6	The Mehsana Urbank Bank Sah. Bank	Rs. 2,27,23,500
7	The Vijapur Nagrik Sha. Bank	Rs. 4,803
	Total	Rs. 2,27,46,853

3.1. The assessing officer denied the claim of deduction under section 80P of the Act in totality and taxed the interest income as "income from other sources" under section 56 of the Act. Further, the assessing officer also denied deduction of proportionate expenses incurred for earning the aforesaid interest income.

4. On appeal against the Asst. order, the Ld. CIT(A) accepted the assessee's contention and allowed deduction under section 80P(2)(d) of the Act and held that that the income earned by the appellant is not allowable u/s 80P of the Act in respect of interest earned from investment of surplus funds kept in nationalized banks. However, deduction u/s. 80P(2)(d) was allowed in respect of interest received on surplus funds deposited with other co-operative banks.

5. In support of the grounds raised by the Revenue, Ld. D.R. relying upon the order passed by the Assessing Officer requested to uphold the addition.

6. Per contra, Ld. Counsel appearing for the assessee submitted that this issue is already covered in favour of the assessee in its own case for the Asst. Year 2016-17 in ITA No. 1404/Ahd/2019 dated 20-05-2022 following Gujarat High Court judgment in the case of State Bank of India Vs. CIT, 389 ITR 578, Surat Vankar Sahakari Sangh Ltd. Vs. ACIT 72 taxmann.com 169 and Others. Further very recently Hon'ble Gujarat High Court in the case of PCIT Vs. Ashwinkumar Arban Cooperative Society Ltd. in Tax Appeal No. 538 of 2024 and Ors. vide judgment dated 24-09-2024 held that the assessee is entitled for deduction u/s. 80P(2)(d) of the

Act on the interest income earned from Cooperative Society which are carried out banking activities. Thus pleaded the Revenue appeal is liable to be dismissed.

7. We have given our thoughtful consideration and perused the materials available on record. This issue is no more res integra by the very recent Jurisdictional High Court judgment in the case of Ashwinkumar Arban Cooperative Society Ltd. (cited supra) which has considered Karnataka High Court and Supreme Court judgment in the case of Totagars Coopeartive Sale Society and amendment in Section 194C(3)(v) of the Act and held that the interest earned on the investment made with the Coopearitve Society which was carried out the banking business, the assessee cannot be denied the deduction u/s. 80P(2)(d) of the Act by observing as follows:

> 28. Having heard learned advocates for the respective parties and considering the controversy arising in these tax appeals, we are of the opinion that the controversy sought to be canvassed with regard to deduction under section 80P(2)(d) of the Act is no more res integra in view of the decision of this Court in case of Katlary Kariyana Merchant Sahkari Sarafi Mandali Ltd. as well as in case of State Bank of India (supra) wherein it was held that the deduction of under section 80P(2)(d) of the Act is available to the cooperative societies on the income earned as interest on the investment made with the cooperative bank which in turn, is a cooperative society itself.
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> 29. Reliance placed by the learned advocate for the revenue on decisions of the Hon'ble Karnataka High Court and Hon'ble Supreme Court in case of Totgars' Cooperative Sale Society Ltd, the Hon'ble Karnataka High Court appears to have taken into consideration the amendment in section 194A(3)(v) of the Act wherein the cooperative bank is excluded from the applicability of tax to be deducted at source. However, it appears that the interpretation made by the Hon'ble Karnataka High Court to the effect that the cooperative banks have been excluded from the definition of the cooperative societies by Finance Act,2015 by amending section 194A(3)(v)

of the Act is concerned, on perusal of section 194A (3) of the Act, it appears that it provides for exemption from deducting Tax Deducted at Source ['TDS' for short] from the income on interest other than interest on securities as the cooperative societies other than cooperative banks meaning thereby that the cooperative banks are liable to deduct TDS from the interest other than interest on securities. Therefore it cannot be said that cooperative banks are excluded from the definition of cooperative societies by such an amendment.

30. Moreover, as reliance placed on the aforesaid decision for applicability of section 80P(4) of the Act in the facts of the case is also not possible to accept as section 80P(4) of the Act would be applicable to the cooperative bank when the cooperative bank is liable to pay tax under the provisions of the Act and in such eventuality, the provision of section 80P would not be applicable as per the amendment of sub-section (4) of section 80P of the Act. Therefore, the exclusion of applicability of section 80P to cooperative banks by section 80P (4) of the Act would not disentitle the respondent-assessee from claiming deduction under section 80P(2)(d) of the Act in absence of any amendment in the said section and that would not be sufficient to deny the claim of the respondent-assessee for deduction of interest earned from investment made in a cooperative bank which is also a cooperative society from the total income.

31. The Hon'ble Apex Court in case of Kerala State Co-operative Agricultural & Rural Development Bank Ltd. vs. Assessing Officer (supra) while considering various provisions of the Banking Regulation Act read with provisions of the Income Tax Act has held that the provision of section 80P(4) of the Act would not be applicable to a cooperative bank which is not a bank as per the provisions of the BR Act,1949, as under:

> "5. Interpretation.— In this Act, unless there is anything repugnant in the or context, X X X
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> (b) "banking" means the accepting, for the purpose of lending or investment, of deposits of money from the public, repayable on demand or otherwise, and withdrawal by cheque, draft, order or otherwise;
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> (c) "banking company" means any company which transacts the business of banking in India. Explanation.—Any company which is engaged in the manufacture of goods or carries on any trade and which accepts deposits of money from the public merely for the purpose of financing its business as such manufacturer or trader

shall not be deemed to transact the business of banking within the meaning of this clause;"

32. After considering the above interpretation of various provisions and the Case laws, the Hon'ble Apex Court has analyzed the provisions as under:

"14.1. In Apex Co-operative Bank of Urban Bank of Maharashtra and Goa Ltd., it was categorically held that under Section 56 of the BR Act, 1949 only three co-operative banks have been defined, namely, state co-operative bank, central co-operative bank and primary co-operative bank which are covered under Section 56 (cci) read with (ccvii) read with the provisions of the NABARD Act, 1981. Thus, it is only these three banks which are co-operative banks which require a licence under the BR Act, 1949 to engage in banking business. If any bank does not fall within the nomenclature of the aforesaid three banks as defined under the NABARD Act, 1981, it would not be a co-operative bank within the meaning of Section 56 of BR Act, 1949 irrespective of whatever nomenclature it may have structure it may possess or incorporated under any Act. It was further stated that if a bank has to be a state co- operative bank, there has to be a declaration made by the State Government in terms of Section 2(u) of NABARD Act, 1981. Hence, it is necessary to go into the question as to, whether, the appellant herein has been so declared as a state co operative bank. This question would need not detain us for long as the Kerala High Court in A.P. Varghese had categorically stated that the "Kerala State Co-operative Bank" is a "state co-operative bank" as defined under the NABARD Act, 1981. Therefore, the appellant bank has not been declared as a state co- operative bank under the provisions of NABARD Act, 1981. Further, in the case of Mavilayi Service Co-operative Bank, this Court observed that a co-operative bank would engage in banking business on obtaining a licence under Section 22(1b) of the BR Act, 1949. In the instant case, the appellant herein is not a co-operative bank having regard to the aforesaid conspectus of the provisions so as to require a licence under the aforesaid provision for carrying on banking business. In the circumstances, the question could still arise as to whether the appellant herein is entitled to benefit of deduction under Section 80P of the Act.

14.2. In Mavilayi Service Co-operative Bank, it has been observed that Section 80P of the Act is a beneficial provision which was

enacted in order to encourage and promote the growth of the co-operative sector generally in the economic life of the country and therefore, has to be read liberally in favour of the assessee. That once the assessee is entitled to avail of deduction, the entire amount of profits and gains of business that are attributable to any one or more activities mentioned in sub- section (2) of Section 80P must be given by way of deduction vide Citizen Co operative Society. This is because sub-section (4) of Section 80P is in the nature of a proviso to the main provision contained in sub- sections (1) and (2) of Section 80P. The proviso excludes co-operative banks, which are co-operative societies which must possess a licence from the Reserve Bank of India to do banking business. In other words, if an entity does not require a licence to do banking business within the definition of banking under Section5(b) of the BR Act, 1949, then it would not fall within the scope of sub-section (4) of Section 80P.

14.3. While analysing Section 80P of the Act in depth, the following points were noted by this Court:
i) Firstly, the marginal note to Section 80P which reads "Deduction in respect of income of co-operative societies" is significant as it indicates the general "drift" of the provision. ii) Secondly, for purposes of eligibility for deduction, the assessee must be a "co-operative society".
iii) Thirdly, the gross total income must include income that is referred to in sub-section (2).
iv) Fourthly, sub-clause (2)(a)(i) speaks of a co-operative society being "engaged in", inter alia, carrying on the business of banking or providing credit facilities to its members.
v) Fifthly, the burden is on the assessee to show, by adducing facts, that it is entitled to claim the deduction under Section 80P.
vi) Sixthly, the expression "providing credit facilities to its members" does not necessarily mean agricultural credit alone. It was highlighted that the distinction between eligibility for deduction and attributability of amount of profits and gains to an activity is a real one. Since profits and gains from credit facilities given to non-members cannot be said to be attributable to the activity of providing credit facilities to its members, such amount cannot be deducted.
vii) Seventhly, under Section 80P(1) (c), the co-operative societies must be registered either under Co-operative Societies Act, 1912, or a State Act and may be engaged in activities which may be termed as residuary activities i.e. activities not covered by sub-clauses (a)

and (b), either independently of or in addition to those activities, then profits and gains attributable to such activity are also liable to be deducted, but subject to the cap specified in sub-clause (c).
viii) Eighthly, sub-clause (d) states that where interest or dividend income is derived by a co-operative society from investments with other co-operative societies, the whole of such income is eligible for deduction, the object of the provision being furtherance of the co-operative movement as a whole.

14.4. In paragraph 42 of Mavilayi Service Co-operative Bank, this Court observed that the object and purpose of sub-section (4) of Section 80P is to exclude only co-operative banks that function on par with other commercial banks i.e. which lend money to members of the public. That on a reading of Section 3 read with Section 56 of the BR Act, 1949, the primary co-operative bank cannot be a primary agricultural credit society. As such co-operative bank must be engaged in the business of banking as defined by Section 5(b) of the BR Act, 1949, which means accepting, for the purpose of lending or investment, of deposits of money from the public. Also under Section 22(1)(b) of the BR Act, 1949, no co- operative society can carry on banking business in India, unless it is a co-operative bank and holds a licence issued in that behalf by Reserve Bank of India. It was pointed out that as opposed to the above, a primary agricultural credit society is a co-operative society, the primary object of which is to provide financial accommodation to its members for agricultural purposes or for purposes connected with agricultural activities.
14.5. It was further observed in the said case that some primary agricultural credit societies had sought for banking licence from Reserve Bank of India but the same was turned down by observing that such a society was not carrying on the business of banking and that it did not come under the purview of Reserve Bank of India requiring a licence for its business.
14.6. Thereafter in paragraph 48 of the judgment, it was observed that a deduction that is given without any reference to any restriction or limitation cannot be restricted or limited by implication. That sub-section (4) of Section 80P which is in the nature of a proviso specifically excludes co-operative banks which are co-operative societies engaged in banking business i.e. engaged in lending money to members of the public, which have a licence in this behalf from Reserve Bank of India."

> 33. In view of the above dictum of law as well as the provisions of the Act which are considered we are of the opinion that the provisions of section 80P(2)(d) would be applicable in the facts of the case and the PCIT was not justified in invoking revisional powers under section 263 of the Act which is rightly reversed by the Tribunal holding that the cooperative bank is a cooperative society registered under the Gujarat State Cooperative Societies Act and in view of the various decisions of the Court, the Tribunal after following the same has come to the conclusion that the assessment was not erroneous allowing deduction of section 80P(2)(d) of the Act which is in consonance with the various decisions of the Court as a twin condition invoking section 263 as to the assessment being erroneous and prejudicial to the interest of the revenue are not being fulfilled.
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> 34. In view of the foregoing reasons we answer the question in favour of the assessee and against the Revenue. Tax Appeals are being devoid of any merit accordingly dismissed. No order as to costs."

8. Respectfully following the above judicial precedents, the Grounds of Appeal raised by the Revenue is devoid of merits and the same is hereby rejected.

9. In the result, the appeal filed by the Revenue is hereby dismissed.

Order pronounced in the open court on 29 -11-2024

Sd/-	**Sd/-**
(ANNAPURNA GUPTA)	**(T.R. SENTHIL KUMAR)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Ahmedabad : Dated 29/11/2024

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