

**IN THE INCOME TAX APPELLATE TRIBUNAL
"D" BENCH, AHMEDABAD**

**BEFORE DR. B.R.R. KUMAR, VICE-PRESIDENT
MS. SUCHITRA KAMBLE, JUDICIAL MEMBER**

I.T.A. Nos. 923 to 925/Ahd/2023
(Assessment Year: 2013-14, 2014-15 & 2017-18)

Assistant Commissioner of Income-tax, Circle-2(1)(1), Ahmedabad	Vs.	The Gujarat State Co. Op. Housing Finance Copn Ltd., 1, Gruh Nirman, Nr. Bata Showroom, Ashram Road, Ahmedabad-38009 [PAN : AAAAT 3851 F]
(Appellant)	..	(Respondent)

Appellant by :	Shri Aarsi Prasad, CIT-DR
Respondent by:	Shri Pritesh Shah, CA

Date of Hearing	03.12.2024
Date of Pronouncement	05.12.2024

ORDER

PER DR. B.R.R. KUMAR, VICE-PRESIDENT:-

These three appeals have been filed by the Revenue against the orders of the National Faceless Appeal Centre (NFAC), Delhi, (in short 'the CIT(A)'), all dated 26.09.2023 for the Assessment Years (A.Y.) 2013-14, 2014-15 & 2017-18. Since the issue involved in all three appeals are identical, they were heard together and are being disposed of vide this common order.

2. The solitary grievance raised by the Revenue in all these appeals is as under :-

""CIT(A) has erred in allowing the disallowance u/s 80P(2)(d) of the I.T. Act of Rs.3,57,16,601/- (AY 2013-14), Rs.2,36,50,687/- (AY 2014-15) and Rs.10,69,52,357/- (AY 2017-18) being interest received from GSC Bank Ltd. when interest earned from investment made in any bank,

not being co-operative society is not deductible under Section 80P(2)(d)."

3. Heard the arguments of both the parties and perused the material available before us. In these cases, the order for the relevant Assessment Years, i.e. 2013-14, 2014-15 and 2017-18, have been passed by the ACIT, Circle 5(2)(1), Ahmedabad u/s. 143(3) r.w.s. 147/263 of the Act, disallowing the interest income earned by the assessee by way of FD investment in other Co-op. Society, i.e. Gujarat State Co-op. Bank Ltd. (GSCB) and the rental income from HUDCO and SHARK Systems, which were claimed by the assessee u/s 80P(2)(d) of the Act.

4. Aggrieved, the assessee filed appeal before the Id. CIT(A) who deleted the additions made by the Assessing Officer in these assessment years, relying the order of the Hon'ble High Courts in the cases of Totgar's Sale Society Ltd. (2017) 292 ITR 74 (Kar.) and State Bank of India (2016) 389 ITR 578 (Guj.).

5. Aggrieved by the order of the Id. CIT(A), the Revenue is now in appeal before the Tribunal.

6. The provisions of section 80P(2)(d) of the Act are as under:-

"[Deduction in respect of income of co-operative societies.

80P. (1) Where, in the case of an assessee being a co-operative society, the gross total income includes any income referred to in sub-section (2), there shall be deducted, in accordance with and subject to the provisions of this section, the sums specified in sub-section (2), in computing the total income of the assessee.

(2) The sums referred to in sub-section (1) shall be the following, namely

*(d) in respect of any income by way of **interest** or dividends derived by the co-operative society from its investments with **any other co-operative society, the whole of such income;***

7. In this case, the undisputed facts are as under:-

- The assessee is a Co-operative Society,
- The assessee had deposits as FDs in GSCB,
- The assessee earned income as interest,
- The GSCB is a Co-operative Society as per Co-operative Societies Act, registered in 1960 with registration No. 560 under Urban Co-operative Bank,
- Thus, the assessee who is a co-operative society earned interest out of the FDs made in another co-operative society.

8. The only legal issue involved in this case is that whether the assessee is eligible for deduction u/s 80P(2)(d) of the Act on the interest earned on Fixed Deposits made in a Co-operative Bank (GSCB) or not.

9. On this issue, we are guided by the judgment of Hon'ble jurisdictional High Court in the case of PCIT Vs. Ashwinkumar Arban Co-Operative Society Ltd, [2024] 168 taxmann.com 314 (Gujarat). For the sake of ready reference, snippets of the said order is reproduced below:-

“Section 80P, read with section 263 of the Income-tax Act, 1961 Deductions Income of co-operative societies (Interest from co-operative bank) Assessment year 2018-19- Principal Commissioner invoked revisional powers under section 263 on ground that Assessing Officer had allowed deduction on interest earned by assessee, a

cooperative society, from investment made with a cooperative bank under section 80P(2)(d) which was erroneous and prejudicial to Interest of revenue Tribunal reversed Principal Commissioner's order holding that cooperative bank was a cooperative society registered under Gujarat State Cooperative Societies Act and, therefore, interest earned by assessee from said bank was eligible for deduction under section 80P(2)(d) - Whether deduction under section 80P(2)(d) is available to cooperative societies on income earned as interest on investment made with cooperative bank which in turn, is a cooperative society itself - Held, yes - Whether exclusion of applicability of section 80P to cooperative banks by section 80P(4) would not disentitle assessee from claiming deduction under section 80P(2)(d) in absence of any amendment in said section - Held, yes - Whether thus, provisions of section 80P(2)(d) would be applicable to instant case and Principal Commissioner was not justified in invoking revisional powers under section 263 which was rightly reversed by Tribunal - Held, yes [In favour of assessee]

- *The controversy sought to be canvassed with regard to deduction under section 80P(2)(d) is no more res integra in view of the decision of this Court in case of *Katlary Kariyana Merchant Sahkari Sarafi Mandali Ltd. v Asstt. Commissioner of Income Tax [2022] 140 taxmann.com 602 (Guj.)* as well as in case of *State Bank of India v Commissioner of Income Tax (2018) 389 ITR 578 (Guj.)* wherein it was held that the deduction under section 80P(2)(d) 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. [Para 28]*
- *Reliance placed by the revenue on decisions of the Karnataka High Court in *Totgars' Cooperative Sale Society (2017) 395 ITR 611* and Supreme Court in case of *Totgars Cooperative Sale Society Ltd v. Income Tax Officer 322 ITR 283 (S.C)*, the Karnataka High Court appears to have taken into consideration the amendment in section 194A(3)(v) 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 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) is concerned, on perusal of section 194A (3), it appears that it provides for exemption from deducting Tax Deducted at Source 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. [Para 29]

- *Moreover, as reliance placed on the aforesaid decision for applicability of section 80P(4) in the facts of the case is also not possible to accept as section 80P(4) 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. Therefore, the exclusion of applicability of section 80P to cooperative banks by section 80P (4) would not disentitle the respondent-assessee from claiming deduction under section 80P(2)(d) 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. [Para 30]*
- *The Apex Court in case of Kerala State Co-operative Agricultural & Rural Development Bank Ltd. v. Assessing Officer in 458 ITR 184 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) would not be applicable to a cooperative bank which is not a bank as per the provisions of the Banking Regulation Act, 1949.[Para 31]*
- *In view of the above the provisions of section 80P(2)(d) would be applicable in the facts of the case and the Principal Commissioner was not justified in invoking revisional powers under section 263 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) 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. [Para 33]

- i. In view of the foregoing reasons the question is answered in favour of the assessee and against the revenue. Tax Appeals being devoid of any merit are dismissed [Para 34]."*

10. Similar view has been taken by this Tribunal in the case of :-

- (i) Ratneshwari Co. Op. Credit Society Limited Vs. ACIT [ITA No. 1409/Ahd/2024 dated 29.11.2024],
(ii) Shree Vivekanand Co-op. Credit Society Limited Vs. ITO [ITA No. 1003/Ahd/2024 dated 22.11.2024],
(iii) The Deesa Merchantile Co. Society Ltd. Vs. PCIT [ITA No. 382/Ahd/2024 dated 05.11.2024],
(iv) Sai Prerna Co-operative Society Ltd. Vs. CIT [ITA No. 5741/Mum/2018 dated 03.12.2018].

11. In the absence of any change in the factual matrix and legal proposition, respectfully following the order of the Hon'ble jurisdictional High Court, the appeals of the Revenue are hereby dismissed.

The order is pronounced in the open Court on 05.12.2024

Sd/-

**(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

Ahmedabad; Dated 05/12/2024

btk

Sd/-

**(DR. B.R.R. KUMAR)
VICE-PRESIDENT**

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

True Copy

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad