

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "SMC" BENCH

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

**ITA No. 1977/Ahd/2024
Assessment Year. 2012-13**

Shri Modheshwari Bachat Dhiran Ane Grahak Sahakari Mandali Ltd. D-112, Shital Shopping Centre, Palanpur, Dist. Banaskantha- 385001 PAN: AAEAS5329M (Appellant)	Vs	Income Tax Officer Ward-1, Ahmedabad (Previously Ward-5) Palanpur-385001 (Respondent)
--	----	---

**Assessee Represented: Shri S.N. Divatia, A.R. &
Shri Samir Vora, A.R.**

Revenue Represented: Shri Prateek Sharma, Sr. D.R

Date of hearing : 06-02-2025

Date of pronouncement : 26-03-2025

आदेश/ORDER

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

This appeal is filed by the Assessee as against the appellate order dated 27.09.2024 passed by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, (in short referred to as "CIT(A)"), arising out of the reassessment order passed under section 143(3) r.w.s. 147 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to the Assessment Year 2012-13.

2. At the outset, Ld. Counsel for the assessee submitted that Ld. CIT(A) erroneously considered that there is a delay of 314 days in filing the above appeal thereby refused to condone the delay and dismissed the appeal. Whereas the appeal was filed on 18-01-2020 and hearing notices were given by Ld. CIT(A) on 17-08-2020, 27-08-2020, 29-12-2020 and 23-10-2022 where written submissions were filed by the assessee. However the Ld. CIT(A) wrongly noted that the appeal was filed on 18-11-2020 thereby a delay of 314 days and without calling for any explanation from the assessee and without going into the merits of the case as submitted in the written submissions dismissed the appeal. Even on merits of the case, the assessee is eligible for deduction u/s. 80P(2)(d) of the Act on the interest earned on fixed deposits made in Cooperative Bank namely Mehsana Urban Cooperative Bank Ltd. as held by the Jurisdictional High Court judgment in the case of PCIT vs. Ashwinkumar Arban Cooperative Society Ltd. reported in [2024] 168 taxmann.com 314 (Guj.).

3. Aggrieved against the appellate order, the Assessee is in appeal before us raising the following Grounds of Appeal:

[1] The Ld. CIT(A), NFAC, Delhi was grievously erred in not admitting the appeal by rejecting accordingly and confirmed the addition of Rs. 3,88,405/- made by the Ld. A.O. which is not correct.

[2] The Ld. CIT(A), NFAC, Delhi due to oversight has confirmed the date of filing of appeal as 18.11.2020 instead of actual filing of appeal on 18.01.2020 and confirmed that the appeal was filed after a period of 314 days of delay for which no reason sought by the appellant for condonation of delay which is illegal and bad-in-law.

[3] The appellant therefore requests your Honour to kindly delete the addition of Rs. 3,88,405/- being the interest amount received from the co.op. bank made by the Ld. A.O. as this is an apparent mistake on the part of the Ld. CIT(A), NFAC, Delhi in considering the date of filing of appeal.

[4] The appellant craves leave to add, amend, alter, edit, delete, modify or change all or any of the grounds of appeal at the time of or before the hearing of the appeal.

4. Brief facts of the case is that the assessee is Cooperative Society has not filed its Return of Income for the Asst. Year 2012-13. The assessee was issued a notice u/s. 148 of the Act on 28-03-2019. In response, the assessee filed a return on 27-08-2019 declaring total income Nil and after setting off of claiming deduction u/s. 80P of Rs. 3,88,405/-. The assessee has received interest of Rs.7,20,137/- from Mehsana Urban Cooperative Bank Ltd. out of which Rs. 3,88,405/- claimed as deduction u/s. 80P of the Act. The Assessing Officer held that the investments/deposits made with Nationalized Banks/Cooperative Banks are not eligible for deduction u/s. 80P thereby added as the income of the assessee.

5. Aggrieved against the reassessment order, assessee filed appeal before Ld. CIT(A) who has erroneously dismissed the appeal as time barred by 314 days without properly looking into the date of filing of the appeal by the assessee on 18-01-2020 for which required appellate fee paid by the assessee on 11-01-2020 itself.

6. We have hard rival submissions and perused the materials available on record. The appellate order passed by Ld. CIT(A) is without application of mind and verifying the date of filing of the appeal namely 18-01-2020 following which hearing opportunities

were given on 17-08-2020 and 27-08-2020 by the office of CIT(A) itself. In response, the assessee filed his written submissions, without looking into the same and without giving opportunity of hearing on the so called delay, Ld. CIT(A) dismissed the appeal which is highly arbitrary in nature and without verification of his own office records. Thus the impugned order passed by the Ld. CIT(A) is hereby set aside.

6.1. Even on merits of the case, interest earned on fixed deposits made in Co-operative Bank his covered in favour of the assessee by the Jurisdictional High Court in a recent judgment in the case of Ashwinkumar Arban Co-operative Society Ltd. (cited supra), the Hon'ble High Court held as follows:

"14.3. While analysing Section 80P of the Act in depth, the following pains 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 is", 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 Cooperative 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 cooperative 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. The subsection (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 Le, 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.**

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.

6.2. Respectfully following the above Jurisdictional High Court judgment, the addition made by reopening of assessment itself is bad in law and the same is liable to be deleted.

7. In the result, the appeal filed by the Assessee is hereby allowed.

Order pronounced in the open court on 26 -03-2025

Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER

Ahmedabad : Dated 26/03/2025

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.

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

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद