



**IN THE INCOME TAX APPELLATE TRIBUNAL, RAJKOT BENCH, RAJKOT
BEFORE DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER.**

&

DINESH MOHAN SINHA, JUDICIAL MEMBER

आयकरअपीलसं./ITA No.200/RJT/2024

निर्धारणवर्ष/ Assessment Year: (2014-15)

(Hybrid Hearing)

Shri Bhakti Nagar Co Operative Housing Society LTD. (Bhaktinagar Circle, Meghani Rang Bhavan, Rajkot) A D Vyas & Co, Chartered Accounts, Kotecha Nagar Main Road, Opp Kotecha Girl's School, Off Kalawad Road. Rajkot - 360001	Vs.	Income Tax Officer, Ward 3(1)(1) Aaykar Bhawan, Race Course Rong Road, Rajkot - 360001
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AAAAS2363M		
(Appellant)		(Respondent)

Cross Objection (CO): 03/RJT/2024

निर्धारणवर्ष/ Assessment Year: (2014-15)

(Hybrid Hearing)

Income Tax Officer, Ward 3(1)(1) Aaykar Bhawan, Race Course Ring Road, Rajkot - 360001	Vs.	Shri Bhakti Nagar Co Operative Housing Society LTD. (Bhaktinagar Circle, Meghani Rang Bhavan, Rajkot) A D Vyas & Co, Chartered Accounts, Kotecha Nagar Main Road, Opp Kotecha Girl's School, Off Kalawad Road. Rajkot - 360001
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AAAAS2363M		
(Appellant)		(Respondent)

Appellant by : ShriGautam Acharya, Ld. AR

Respondent by : Shri Abhimanyu Singh Yadav, Ld. Sr. DR

Date of Hearing : 13 /02 /2025

Date of Pronouncement : 08 /05 /2025



आदेश / ORDER

PER DINESH MOHAN SINHA JM;

Captioned appeal filed by assessee and Cross Objection filed by the revenue, pertaining to same Assessment Year (AY) 2014-15, are directed against orders passed by Commissioner Of Income Tax (Appeal), vide order dated 29/01/2024, which in turn arises out of an orders passed by the Assessing Officer dated 14/11/2019 u/s 271(1)(c) of the Income Tax Act, 1961.

2. The Grounds of Appeals raised by the assessee are as follows: -

1. The grounds mentioned here are without prejudice to one another.

2. On the facts and in the circumstances of the case and in law, the order passed by the learned CIT(A) confirming the order of learned ITO u/s. 271(1)(c) of the I.T. Act is ab initio void being bad in law.

3. On the facts and in the circumstances of the case and in law, learned CIT(A) forgot to appreciate the facts that the assessee has nothing concealed and therefore penalty for concealment should not be levied.

4. On the facts and in the circumstances of the case in law, the learned CIT(A) erred in confirming the penalty levied by learned ITO, as Assessee is eligible for getting exemption as per Notification No. SRO 998 Dated: 02/12/1950 as amended by Notification No. SRO 1800 Dated: 14/11/1951.

5. On the facts and in the circumstances of the case and in law, during Assessment proceedings, assessee has concealed nothing and no concealed documents and/or records found by the Department, Penalty initiated merely based on the belief that the assessee is not eligible for the exemption, though they are eligible for the exemption.

6. On the facts and in the circumstances of the case and in law, learned CIT(A) erred in confirming the order of learned ITO, based on the perception that the assessee is not liable to get deduction under section 80P of the IT Act, and forgot to verify the fact that Assessee never claimed any deduction under section 80P of the IT Act. Assessee claimed exemption as per SRO 998 and SRO 1800 and not deduction under section 80P.



7. Your assessee craves your honor's permission to add/alter/modify/delete any or all of the grounds mentioned here.

3. Brief facts of the Case that the assessee had e-filed its return of income on 30-03-2016 showing therein NIL income. The income was NIL due to claim of deduction u/s 80P of the I.T Act. Later, the case was selected for Limited Scrutiny under CASS and the assessment proceedings of the Income Tax Act has been completed by the ITO, Ward 3(1)(1), Rajkot passing order u/s 143(3) of the Income Tax Act on 26/12/2016 accepting the returned income of the assessee. Subsequently, the Id. Pr. CIT-3 Rajkot passed order u/s 263 of the I.T Act and had drawn adverse inference on account of the failure of the AO to verify the issue in respect of claim of deduction u/s 80P of the IT Act. Accordingly, vide notices issued on 27.02.2019 and 05.03.2019, the assessee was asked to explain why the claim of deduction u/s 80P should not be denied. The assessee had submitted his reply on 25.03.2019. The reply of the assessee has been carefully perused, but the same was not acceptable. Verification of the case records reveals that the assessee has received rent income of Rs. 24,25,613/- from house property and interest income of Rs. 10,02,837/- from the fix deposits held with State bank of India and Indian Overseas Bank. This income was claimed as deduction u/s 80P of the Act. In respect of claim of deduction u/s 80P(2)(c) of the IT Act, it is seen from the assessment record that the assessee has let out the building/wadi/hoarding. The commercial asset was exploited in the course of its activity. Hence, letting out of the property is other than one specified in section 80P(2)(d) and 80P(2) (c) of the Act. Further, it is seen from the assessment record that the assessee has earned interest income of Rs. 10,02,837/- from the fixed deposits held with State Bank of India and Indian Overseas Bank and claimed deduction u/s 80P(2)(d) of the Act against this interest income of Rs. 10,02,837/-. In this regard, the provisions with regard to allowing deduction



in respect of interest income earned by a co-operative society are contained in section 80P(2)(d) of the Income Tax Act, 1961, which read as under:

“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”.

(i). From the above, it is clear that the section refers to interest and dividends earned from investments in another co-operative society only. Thus, this deduction cannot be extended to the interest income earned from the investment in any cooperative bank. Hence, the interest income received from any bank, not being a cooperative society, by the assessee has to be assessed as Income from Other Sources and it is not eligible for deduction u/s 80P(2)(a)(i)/80P(2)(d) of the Act. The issue of taxability of interest earned from surplus funds decided by the Hon'ble Supreme Court in the case of Totgars' Co-operative Sale Society Ltd. v/s ITO [2010] 322 ITR 283/188 Taxman 282, wherein it was held that the assessee being co-operative society is engaged in providing credit facilities to its members of marketing agricultural products of its members, interest earned by it by investing surplus funds in short term deposits would fall under the head "income from other sources" taxable u/s 56 of the IT Act and it cannot be said to be attributable to the activities of the Society and therefore, the interest did not qualify for deduction u/s 80P(2)(a)(i) of the IT Act. Therefore, the assessee is not eligible for claim of deduction and the same has been treated as income from other sources. The same is added back to the income of the assessee in the year under consideration by passing order u/s 143(3) r.w.s. 263 of the I.T. Act on 10.06.2019. Consequently, penalty proceedings u/s 271(1)(c) of the I.T. Act was initiated by issuing a notice to the assessee on 10.06.2019 and dully served upon the assessee. Further, due to change of incumbent an opportunity of being heard was given by the undersigned vide letter dated 14.11.2019 with request to submit his reply by



22.11.2019. In this regard no compliance has been received from the assessee till date.

(ii) In view of the above facts and circumstances, I am of the opinion that this is a fit case for levy of penalty. Considering the full facts and circumstances of the case, I hereby levy minimum penalty @100% of the tax sought to be evaded, which works out to be at Rs. 810682/- and maximum penalty @ 300% of the tax sought to be evaded, which works out to be at Rs. 2432046/-. Taking into account the facts of the case, I hereby levy a penalty of Rs. 810682/-being minimum penalty @100% of the tax sought to be evaded u/s. 271(1)(c) of the Income-tax Act, 1961.

4. That the assessee filed an appeal against the order of penalty dated: 16/12/2019 in the office of the CIT(A) the appeal has dismissed. The appeal with following observation:

“After considering all the facts of the case, I am of the view that this is a fit case for levy of penalty. Therefore, the assessee is not eligible for claim of deduction and the same has been treated as income from other sources. There is nothing on record to suggest that claim of the appellant is Bonafide. I find no reason to interfere with the decision of AO in imposing penalty u/s 271(1)(c) of the Act. Accordingly, AO's action in imposing penalty under section 271(1)(c) amounting to Rs 8,10,682/- is justified. The ground of appeal in this regard is dismissed.”

5. Feeling aggrieved by the order of the CIT(A), order dated 29/01/2024. The assessee is an appeal before us.

6. At the outset, the Ld. Counsel of the assessee submitted that in the assessee's case under consideration the quantum appeal has been dismissed by the Authorities. On the quantum appeal, the assessing officer imposed the penalty u/s. 271(1)(c) of the Act. The Ld. Counsel of the assessee also took us through the paper-book page no. 67 and stated that the case under consideration was



registered under old provision, that the fact, Ld. Counsel of the assessee has submitted that survey of the registration before the Bench, which is placed on paper book page no 45. The Ld. Counsel also submitted that assessee under consideration was enjoying the benefit under the old exemption, which is old Act was in the exemption provided in the old Act should continue in the new Act. The Ld. Counsel submitted that although the quantum appeal of the assessee is disallowed. however, the penalty proceedings which different from the quantum proceedings, therefore, the assessee submitted more convenient evidences in the defense against the penalty order.

7. On the other hand, the Learned Senior Department Representative (hereinafter referred to as the “Ld. Sr. DR”) for the revenue submitted that this issue under consideration requires interpretation of the various amendments take place before the India get independence and after independence.

8. We have heard both the parties and perused the material available on record. We note that quantum proceedings have been not decided yet. Therefore, we remitted the issue back to the file of the assessee, with the direction of the assessing officer to adjudicate the penalty appeal of the assessee under section 271(1)(c) of the Act as per the outcome of the quantum proceedings, therefore, we set aside the order of the Ld. CIT(A) and matter remitted back to the file of the Ld. Assessing Officer to imposed the penalty if in as per the outcome of the quantum proceedings. Department has filed the Cross Objection(CO) No. 03/Rjt/2024 for AY 2014-15, wherein the department has raised the legal plea which is legal grounds, since, we have remitted the matter back to the file of the assessing officer, therefore, the adjudication of the Cross Objection of the revenue does not required.



In the result the appeal filed by the assessee (ITA No. 200/Rjt/2024 for AY 2014-15) and Cross objection (CO No. 03/Rjt/2024 for AY 2014-15) filed by the revenue, are allowed for statistical purposes.

Order pronounced in the open court on 08/ 05/2025.

**Sd/-
(Dr. A.L. SAINI)
ACCOUNT MEMBER**

Rajkot

दिनांक/ Date: 08/05/2025

Copy of the Order forwarded to

1. The Assessee
2. The Respondent
3. The CIT(A)
4. Pr. CIT
5. DR/AR, ITAT, Rajkot
6. Guard File

(True Copy)

**Sd/-
(DINESH MOHAN SINHA)
JUDICIAL MEMBER**

By Order

Assistant Registrar/Sr. PS/PS
ITAT, Rajkot