

IN THE INCOME-TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI DINESH MOHAN SINHA, JUDICIAL MEMBER AND
SHRI BIJAYANANDA PRUSETH, ACCOUNTANT MEMBER

आयकर अपील सं./ITA Nos.499/SRT/2024

Assessment Year: (2017-18)

(Hybrid Hearing)

DCIT, Circle – 2(1)(1), Surat	Vs.	The Pursottam Farmers Co-op. Cotton Grnning and Pressing Soc. Ltd., Jahangirpura Gin., Jahangirpura, Rander – 395009,
स्थायीलेखासं./जीआइआरसं./PAN/GIR No: AAAAT3000A		
(Appellant)		(Respondent)

आयकर अपील सं./ITA Nos.523/SRT/2024

Assessment Year: (2017-18)

The Pursottam Farmers Co-op. Cotton Grnning and Pressing Soc. Ltd., Jahangirpura Gin., Jahangirpura, Rander – 395009,	Vs.	DCIT, Circle – 2(1)(1), Surat
स्थायीलेखासं./जीआइआरसं./PAN/GIR No: AAAAT3000A		
(Appellant)		(Respondent)

Appellant by	Shri Ajay Uke, Sr. DR
Respondent by	Shri Akshay M. Modi, CA
Date of Hearing	23/07/2025
Date of Pronouncement	19/08/2025

आदेश / ORDER

PER BIJAYANANDA PRUSETH, AM:

These cross-appeals by the assessee and revenue emanate from the order passed under section 250 of the Income-tax Act, 1961 (in short, 'the Act') dated 05.03.2024 by the learned Commissioner of Income Tax (Appeals),

National Faceless Appeal Centre (NFAC), Delhi [in short, 'CIT(A)'] for the Assessment Year (AY) 2017-18.

2. The grounds of appeal raised by the revenue are as under:

"1. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in allowing deduction u/s. 80P(2)(d) of the Act of Rs.1,83,67,473/- ignoring the decision of Hon'ble Supreme Court in the case of Totgars Cooperative Sale Society Ltd. reported in 322 ITR 283, wherein it was held that interest earned from investments made in any bank not being cooperative society, is not deductible under section 80P(2)(d) of the Act.

2. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in allowing deduction u/s. 80P(2)(d) of the Act. without appreciating the facts that the deposit in Co-operative Banks lacks the degree of proximity between the members of the society with that of cooperative bank and thus offends this sacrosanct principle of mutuality.

3. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in ignoring Hon'ble Gujarat High Court's observation in Katlary Kariyana Merchant Sahakari Sarafi Mandali in SCA No.20585 of 2019 that by virtue of amendment in section 194A(3)(v) of the Income tax act, it has also excluded the co-operative banks from the definition of "co-operative society" by the Finance Act, 2015.

4. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in allowing deduction u/s. 80P(2)(d) of the Act without appreciating the facts that the Co-operative Banks are entirely different species than those of Co-operative Societies, and for deduction u/s 80P(2)(d) of the Act the income must be derived from investment with any other co-operative society only, as held by the Hon'ble Karnataka High Court in the case of Principal Commissioner of Income-tax, Hubballi vs. Totagars Co-operative Sale Society, reported in, (2017) 83 taxmann.com 140 (Karnataka) and Hon'ble Supreme Court in the case of Totagar's Co-operative Sales Society Ltd reported in (2010) ITR 283 (SC).

5. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in allowing deduction u/s. 80P(2)(d) of the Act and has not appreciated that the introduction of sub-section (4) was to exclude the Cooperative Banks from availing the benefits of deductions under section 80P and the section 80P(4) is in the nature of a proviso to the main provision contained in section 80P(1) and (2) consequently, the exclusion of Cooperative Banks extends to Section 80P(2)(d) as well as held by Hon'ble Supreme Court in the case of Mavilayi Service Co-Operative Bank Ltd Vs Commissioner of Income Tax (2021) 431 ITR 1 (SC).

6. On the basis of the facts and circumstances of the case and in law, the Id. CIT(A) ought to have upheld the order of the Assessing Officer.

7. It is therefore prayed that the order of Id. CIT(A) may kindly be set aside that of the Assessing Officer be restored.”

3. The grounds of appeal raised by the assessee are as under:

“1. On the facts and in the circumstances of the case as well in law, the CIT (Appeals) erred in upholding the order passed by ACIT, Circle 2(2), Surat (for the sake of brevity "The AO") u/s 143(3) of the Act for the income assessed at Rs. 1,83,67,473/- against the returned income at Rs. Nil denying the deductions claimed under Chapter VIA of the Act for the aggregate amount of Rs. 2,65,23,665/- (subject to the availability of Gross Total Income), purely on misinterpretation and misconstruction of the provisions of law, misleading, mis-conceptual, arbitrary and perverse observations and hence, is liable to be quashed or annulled in toto.

2. On the facts and in the circumstances of the case as well in law, both the lower authorities have grievously failed to see and appreciate that the appellant society's claim of deduction u/s 80P(2)(d) of the Act had been towards the income earned by way of dividend and interest from investments with other co-operative societies for the aggregate amount of Rs.2,32,57,862/- (restricted to the availability of Gross Total Income) and therefore, the CIT (Appeals)'s action confirming the AO's order u/s 143(3) of the Act denying the deduction claimed under Chapter VIA of the Act merely on irrational inferences contained in Para 6.5 of the order, being perverse, arbitrary and under gross misinterpretation of the provisions of the law, is without jurisdiction, bad in law, in-valid, illegal, unwarranted of facts and therefore, liable to be quashed.

3. On the facts and in the circumstances of the case as well in law, both the lower authorities ought to have appreciated from the past assessment records and the orders of the appellate authorities that the appellant co-operative society is in existence under the status of registered co-operative society and the income earned by way of dividend and interest was exclusively from investments with co-operative societies, within the meaning and definition of Section 2(19) of the Act and therefore, the CIT (Appeals)'s order confirming the AO's action denying the deduction claimed under Chapter VIA of the Act to the extent of Rs. 1,98,49,258/- (subject to the Gross Total Income) on misconceived and an erroneous inference and purely on misinterpretation of the law settled on the issue of deduction u/s 80P(2)(d) of the Act in favour of the co-operative societies, is without jurisdiction, perverse, bad in law, void ab initio, unsustainable and hence, liable to be quashed.

4. On the facts and in the circumstances of the case as well in law, both the lower authorities have erred in denying the benefit of deduction u/s 80P(2)(d)

of the Act claimed for Rs. 2,32,57,862/- (subject to the Gross Total Income) under gross misinterpretation, misconstruction, misconceived and mis-conceptual application of the judicial pronouncements of the Apex Court in Totagars Co-operative Sale Society Ltd. Vs. ITO (2010) 322 ITR 283 (SC) holding that "We are confining this judgment to the facts of the present case." and hence, the order of the AO being without jurisdiction, unwarranted of facts, arbitrary, baseless, conjectural and patently in contravention to the law laid down by the jurisdictional High Court of Gujarat resulting into judicial indiscipline, is liable to be struck down.

5. On the facts and in the circumstances of the case as well in law, the learned AO has grievously failed to appreciate in the right, lawful and proper perspectives, the documentary evidences available in the assessment and/or appeal records and the detailed explanations substantiated by the documentary, authentic and cogent evidences submitted during the course of assessment and/or appeal proceedings, while arbitrarily and subjectively relied upon the Totagar's case contrary to the facts and circumstances of the case but ignoring the judicial pronouncements elements of the jurisdictional High Court/Tribunals on the same issue of claim of deduction u/s 80P(2)(d) of the Act and therefore, the orders of the lower authorities denying the claim of deduction u/s 80P(2)(d) of the Act, being patently in violation of "Rule of Consistency" is bad in law, without jurisdiction, illegal, arbitrary, and thus, liable to be quashed.

6. Your appellant further reserves its rights to add, alter, amend or modify any of the aforesaid grounds before or at the time of hearing of an appeal."

4. The facts of the case in brief are that the assessee e-filed its return of income for AY 2017-18 on 25.09.2017, declaring total income of Rs. Nil after claiming deduction under Chapter VIA of Rs.2,65,23,665/-, which was restricted to the gross total income. The case was selected for limited scrutiny on the following issues: (i) deduction under Chapter VIA, (ii) bonus for commission paid to employees and (iii) disallowance of payment of gratuity. The assessee had claimed deduction of Rs.2,32,57,862/- as deduction u/s 80P(2)(d) of the Act. As per the said section, deduction is available in respect of income by way of dividend and interest received by the co-operative society on its investment with any other co-operative society. The assessee

had received interest income from the Surat District Co-operative Bank Ltd. of Rs.2,26,96,240/-, dividend from the same bank of Rs.9,750/- and dividend from other co-operative banks of Rs.5,51,872/-. The assessee submitted that the Surat Dist. Co-op. Bank Ltd. is a Co-operative Society registered under Gujarat Co-operative Societies Act, 1961 and the said bank is also assessed in the status of a Co-operative Society. However, the Assessing Officer (in short, 'AO') did not allow the deduction by holding that section 80P(2)(d) of the Act does not provide for deduction if interest income and dividend received by the assessee Co-op. society is from its investment with Co-op. Bank in view of the restriction provided in sub-section (4) of section 80P of the Act. The AO has discussed provisions of section 80P of the Act and after relying on the decision in case of Totagars' Co-operative Sale Society Ltd. vs. ITO, Karnataka (2010) 188 Taxman 288 (SC) and Totagars' Co-operative Sale Society Ltd. vs. PCIT, (2017) 83 taxmann.com 143 (Karnataka), SBI vs. CIT, (2016) 389 ITR 578 (Guj.), Tumkur Merchants Souhardha Credit Co-operative Ltd. vs. ITO, 55 taxmann.com 447 (Kar.), Milk Producers Union Ltd. vs. CIT, TA No.473 of 2014, dated 16.06.2014 (Guj.) and some other decisions held that interests and dividend income earned by the assessee from its investment in Surat District Co-operative Bank Ltd. totalling to Rs.2,27,05,990/-, which was claimed as deduction u/s 80P(2)(d) of the Act, was not allowable. Accordingly, he disallowed the same and added Rs.2,27,05,990/-. The AO allowed dividend of Rs.5,51,872/- u/s 80P(2)(d) of the Act, being the dividend received from other Co-operative Society and godown rent of Rs.9,29,913/- u/s 80P(2)(e) of

the Act. Accordingly, total income of the assessee was determined at Rs.1,83,67,473/- against returned income of Rs. Nil.

5. Aggrieved by the order of AO, the assessee filed the appeal before the CIT(A). The appellant raised a ground regarding disallowance of claim of Rs.1,83,67,473/- u/s 80P of the Act and also a ground that interest and dividend income received from co-operative bank may be allowed as deduction u/s 80P(2)(d) of the Act. After considering the submission of the appellant, the CIT(A), at para 6.5 of the appellate order, directed the AO to grant deduction u/s 80P(2)(a)(i) of the Act on the income earned from activity of providing credit facilities to its member. However, the same will not include income earned from activity of providing credit to associate/nominal members. Further, appellant will get deduction u/s 80P(2)(d) on the interest received from the deposits/savings account kept with other co-operative societies/banks, which are not governed by RBI Banking Regulation Act. However, such deduction will not be available to interest received from Scheduled Commercial Banks. He directed the AO to allow these deductions after verifying the respective amounts from appellant's books of account. Accordingly, the appeal was partly allowed by CIT(A).

6. Aggrieved by the order of CIT(A), both the assessee and revenue have filed appeal before the Tribunal. The learned Authorized Representative (Id. AR) of the assessee filed a paper book and relied on the decisions in cases of (i) Kutch District Co-op. Milk Producers Union Ltd. vs. ACIT, (2025) 173 taxmann.com 495 (Guj.), (ii) PCIT vs. Ashwinkumar Arban Co-operative Society

Ltd., (2024) 168 taxmann.com 314 (Guj.), (iii) PCIT vs. Shree Madhi Vibhag Khand Udhayog Sahakari Mandali Ltd., (2025) 171 taxmann.com 22 (Guj.), (iv) Surat Vankar Sahakari Sangh Ltd. vs. ACIT, (2016) 72 taxmann.com 169 (Guj.), (v) Thorapadi Urban Co-op. Credit Society Ltd. vs. ITO, (2023) 156 taxmann.com 419 (Mad.) and (vi) PCIT vs. Aradhana Urban Co-operative Credit Society Ltd., (2025) 172 taxmann.com 537 (Guj.). He submitted that the Hon'ble Gujarat High Court in case of Ashwanikumar Arban Co-operative Society Ltd. (supra) has considered and distinguished the order passed by the Hon'ble Supreme Court in case of Totagars Co-operative Sales Society Ltd. (supra) and held that deduction u/s 80P(2)(d) is available to Co-operative Societies on income earned as interest on investment made with co-operative bank, which in turn is a co-operative society itself.

7. On the other hand, the learned Commissioner of Income-tax – Departmental Representative (Id. CIT-DR) relied on the orders of the lower authorities and the decision of Hon'ble Supreme Court in case of Totagars Co-operative Sale Society Ltd. (supra).

8. We have heard both the parties and perused the material available on record. We have also deliberated upon the decisions relied upon by both sides. The grounds raised by the parties are inter-related and pertain to the deduction of Rs.2,26,96,240/- claimed u/s 80P(2)(d) of the Act on account of interest on investment held with Surat District Co-operative Bank Ltd. There is no dispute that the Surat District Co-operative Bank Ltd. is a co-operative society duly registered under Gujarat Co-operative Societies Act, 1961. The Id.

AR has relied on the decisions of the Hon'ble jurisdictional High Court in case of Ashwinkumar Arban Co-operative Society Ltd. (supra) and Kutch District Co-operative Milk Producers Union Ltd. (supra), wherein the Hon'ble jurisdictional High Court held that deduction u/s 80P(2)(d) is available to co-operative societies on income earned as interest on investment made with co-operative bank, which in turn is a co-operative society. In case of Ashwanikumar Arban Co-op. Society Ltd. (supra), it was held as under:

“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. (supra) 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.

.....

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.”

9. In the subsequent decision in case of Kutch District Co-operative Milk Producers Union Ltd. (supra), the Hon'ble jurisdictional High Court followed the above decision in case of Ashwinikumar Arban Co-operative Society Ltd. (supra) and held that where assessee society earned interest income on fixed deposit kept with co-operative bank, assessee was eligible for deduction u/s

80P(2)(d) on the said interest income. The facts of the instant case are similar to the facts of the case discussed above. Hence, respectfully following the decisions cited supra, the grounds raised by the assessee are allowed and grounds raised by the revenue are dismissed.

10. In the result, the appeal of the assessee is allowed, whereas the appeal of the revenue is dismissed.

Order is pronounced under provision of Rule 34 of ITAT Rules, 1963 on 19/08/2025.

Sd/-
(DINESH MOHAN SINHA)
JUDICIAL MEMBER

Surat

दिनांक/ Date: 19/08/2024

SAMANTA

Copy of the Order forwarded to

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

Sd/-
(BIJAYANANDA PRUSETH)
ACCOUNTANT MEMBER

By Order

// TRUE COPY //

Assistant Registrar/Sr. PS/PS
ITAT, Surat