

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'B' अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH, AHMEDABAD

BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER
& SHRI MAHAVIR PRASAD, JUDICIAL MEMBER

आयकर अपील सं./I.T.A. Nos. 1429 & 1430/Ahd/2018
(निर्धारण वर्ष / Assessment Years : 2013-14 & 2014-15)

Shree Vivekanad Co.op. Credit Society Ltd. Gandhi Chowk, Unjha	बनाम/ Vs.	ITO Patan, Ward-4, Unjha, Patan
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AABTS3562J		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से /Appellant by :	Shri Biren Shah, A.R.
प्रत्यर्थी की ओर से / Respondent by :	Shri Samir Tekriwal, Sr. D.R.

सुनवाई की तारीख / Date of Hearing	20/01/2020
घोषणा की तारीख /Date of Pronouncement	27/01/2020

आदेश/ORDER

PER PRADIP KUMAR KEDIA - AM:

The captioned appeals have been filed at the instance of the assessee against the respective orders of the Commissioner of Income Tax, Gandhinagar ('CIT' in short), both dated 23.03.2018 arising in the respective assessment orders dated 28.08.2015 & 26.07.2016 passed by the Assessing Officer (AO) under s. 143(3) of the Income Tax Act, 1961 (the Act) concerning AYs. 2013-14 & 2014-15.

2. The grievances raised being common, both cases were heard together and disposed of by way of the common order.

3. As per grounds of appeal, the assessee has challenged the revisional jurisdiction usurped by the Commissioner of Income Tax under s.263 of the Act in both appeals.

4. In the instant appeals, the CIT in exercise of revisional power vested under s.263 of the Act has held the respective orders of the AO passed under s.143(3) of the Act to be erroneous and prejudicial to the interest of the Revenue on the ground that the interest earned by the assessee society from deposits placed in Scheduled Co.op. Bank is not eligible for deduction under s.80P(2) of the Act.

5. The learned AR for the assessee contended that the assessee is eligible to claim deduction on interest earned from FDs with co-operative banks and the societies under s.80P(2)(d) of the Act. It was pointed out that the issue has been examined threadbare in a recent decision rendered in *Uttar Gujarat Uma Co-op Credit Society Ltd. vs. ITO* ITA Nos. 1670 & 1671/Ahd/2018 order dated 28.02.2019 by the Ahmedabad Tribunal.

6. The learned DR, on the other hand, submitted that the issue has been adjudicated against the assessee by the decision of the Hon'ble Karnataka High Court in *Pr.CIT vs. The Totagars Co-Operative Sale Society* ITA No. 100066/2016 & Ors. (Karnataka). It was also pointed out that after the insertion of the provisions of Section 80P(4) of the Act by the Finance Act, 2006 w.e.f. AY 2007-08, the benefits of deduction under s.80P of the Act is not available to co-operative bank and the credit society except in few situation as mentioned therein. The assessee is therefore not entitled to the deduction claimed under s.80P of the Act on interest income in law. The AO has erroneously allowed the claim in contravention of law which has caused prejudice to the interest of the Revenue. It was also submitted that the department is not entitled to file

an appeal against the order of the AO and therefore, the CIT was constraint to invoke the provisions of Section 263 of the Act to remedy the loss of Revenue on account of the error committed by the AO.

7. We have carefully considered the rival submissions. Section 263 of the Act confers power upon the Pr.CIT/CIT to call for and examine the records of a proceeding under the Act and revise any order if he considers the same to be erroneous and prejudicial to the interests of the Revenue. The Pr.CIT can take recourse to revision under Section 263 of the Act where the assessment order is erroneous as well as prejudicial to the interest of Revenue. The twin conditions are required to be satisfied simultaneously. The Pr.CIT in the present case has purported to act in exercise of power under s.263 of the Act and thereby has sought to cancel the assessment order of the AO passed under s.143(3) of the Act. The Pr.CIT essentially observed that the AO has wrongly allowed deduction under s.80P of the Act to the assessee society in contravention of the provision of the Act. The ground for impugned action under s.263 of the Act is that the AO has failed to make requisite inquiry into the claim of deduction of the assessee under the ambit of s.80P of the Act and in the absence of proper inquiry on the eligibility of deduction involved, the order of the AO is erroneous in so far as prejudicial to the interest of the Revenue.

7.1 As pointed out on behalf of the assessee, two pre-requisites must co-exist before the designated authority to enable him to exercise the revisional jurisdiction conferred on him namely; the order should be (i) erroneous & (ii) the error must be such that it is prejudicial to the interests of the Revenue. However, an erroneous order does not necessarily mean an order with which the Pr.CIT is unable to agree. The AO while passing an order of assessment, performs judicial functions. An order of assessment passed by the AO cannot be interfered only because an another view is also possible on the issue as held in *CIT vs. Greenworld Corporation (2009) 181 Taxman 111 (SC)*. If in given facts and circumstances of the case, two views are possible and one view as

legally plausible has been adopted by the AO then existence of other possible view alone would not be sufficient to exercise powers under s.263 of the Act by the Pr.CIT / CIT concerned. Hence, there can be no doubt that the provision cannot be invoked to correct each and every type of mistake or error committed by the AO. It is only when an order is erroneous and causing prejudice, that the Section will be attracted. An incorrect assumption of facts or incorrect application of law will satisfy the requirements of the order being erroneous.

7.2 In the instant case, it is demonstrated on behalf of the assessee that the issue is squarely covered in favour of the assessee by the decision of the co-ordinate bench in *Uttar Gujarat Uma Co-op Credit Society Ltd. vs. ITO (2019) 70 ITR (Trib) 49 (Ahmedabad)*, wherein the decision rendered by the Hon'ble Karnataka High Court in *The Totagars Co-Operative Sale Society (supra)* relied upon by Revenue has also been considered and all other facets of law in this regard was taken into account. It will be relevant to reproduce the operative para of the order of the Tribunal in *Uttar Gujarat Uma Co-op Credit Society Ltd. (supra)* for easy reference:

“9. We have carefully considered the rival submissions. The dispute concerns section 80P of the Act which provides for deduction of income of a co-operative society engaged in specified activity catalogued in Section 80P(2) of the Act. The principal controversy in the captioned appeal is towards maintainability of deduction under s.80P(2)(d) of the Act in the hands of the credit co-operative society towards interest earned from deposit placed with co-operative banks, more so, in the light of insertion of s. 80P(4) of the Act by Finance Act, 2006. Thus, the incidental point in issue is whether the benefit of S. 80P denied to coop banks by the insertion of 80P(4) adversely impacts the investment in such banks by a co-op society or not? It is common knowledge that a large number of co-op. societies place their surplus with co-op. banks and seek benefit of Section 80P(2)(d) of the Act on interest income derived. Hence, a nuanced understanding of the raging controversy is strongly needed.

9.1 It is predominantly the case of the assessee that the co-operative banks essentially continue to be co-operative societies and while ‘co-operative societies’ is a genus term, the ‘co-operative banks’ are species thereto. Therefore, such co-operative banks are essentially co-operative societies notwithstanding their engagement in banking business. Consequently, it is claimed that the investment in co-operative banks are to be treated at par with investment in co-operative

societies for the purposes of eligibility of deduction under s.80P(2)(d) of the Act. The Revenue, on the other hand, has contended that in view of definition provided for co-operative societies under Section 2(19); deduction provided under Section 80P(2)(d) r.w.s. 80P(4) of the Act is not available to investment in a co-operative bank as such investment cannot be treated at par with the investment in co-operative society. It is also contended on behalf of the Revenue that the provisions of Section 80P of the Act are founded on 'principles of mutuality' i.e. common identity between the contributors and participators. The deposit in the co-operative bank lacks the degree of proximity between the members of the society with that of co-operative bank and thus offends this sacrosanct principle of mutuality. It was thus contended that interest income by a co-operative society from a co-operative bank is not covered in the fold of Section 80P(2) of the Act. It is further case of the assessee that exclusion of co-op banks for eligibility of deduction under S. 80P owing to insertion of S. 80P(4) does not, in any manner, take away the benefit available under S. 80P(2)(d) to an investor society (excluding co-op bank) in a co-op bank which is a co-op society for all intent and purposes while carrying on the functions of a bank. It is thus paddled that while a co-op society functioning as a co-op bank is not entitled to benefit of 80P owing to exclusions made, a co-op society not being a co-op bank remains unaffected by S. 80(4) and can enjoy the benefits of S. 80P(2)(d) conferred on the societies on fulfillment of pre-requisites.

9.2 Before we proceed to deal with the issue in hand, it would be apt to quote the relevant provisions governing the controversy in hand.

9.2.1 Section 2(19) defines the meaning of expression 'Co-op Society' as under:

"co-operative society" means a co-operative society registered under the Co-operative Societies Act, 1912 (2 of 1912), or under any other law for the time being in force in any State for the registration of co-operative societies;

9.2.2 Income under S. 2(24) of the Act also includes:

the profits and gains of any business of banking (including providing credit facilities) carried on by a co-operative society with its members

9.2.3 The relevant portion of S. 80-P governing deduction available to co-operative societies is also quoted hereunder:

“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 :—

(a) *in the case of a co-operative society engaged in—*

(i) *carrying on the business of banking or providing credit facilities to its members; or*

(ii) *a cottage industry ; or*

(iii) ---

(iv) ---

(v) ---

(vi) ---

(vii) ----

*the whole of the amount of **profits and gains of business** attributable to any one or more of such activities :*

(b) -----

(c) -----

(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**;*

(e) -----

(f)

(4) *The provisions of this section shall not apply in relation to any **co-operative bank** other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank.*

Explanation.—For the purposes of this sub-section,—

(a) *"co-operative bank" and "primary agricultural credit society" shall have the meanings respectively assigned to them in Part V of the Banking Regulation Act, 1949 (10 of 1949);*

(b) *"primary co-operative agricultural and rural development bank" means a society having its area of operation confined to a taluk and the principal object of which is to provide for long-term credit for agricultural and rural development activities."*

9.2.4 *Part V of Banking Regulation Act, 1949 defines 'co-operative bank' in Section 5(cci) as under:*

" Co-operative bank' means a state co-operative bank, a central co-operative bank and a primary co-operative bank;

9.2.5 *A 'primary co-operative bank' as per Sectionn 5(ccv) of Part V of Banking Regulation Act, 1949 reads to mean:*

*“(ccv) “primary co-operative bank” means a co-operative society, other than a primary agricultural credit society,-
.....”*

9.2.6 As per clause (ccvii) of Section 5, however, ‘Central Co-op Bank’ and ‘State Co-op Bank’ shall have the same meanings respectively assigned to them in the National Bank for Agriculture and Rural Development (NABARD) Act, 1981. NABARD, in turn defines these two terms as under:

Section 2(d) of NABARD defines ‘central co-operative bank’ means the

“d. “central co-operative bank” means the principal co-operative society in a district in a State, the primary object of which is the financing of other co-operative societies in that district:.....”

u. “State co-operative bank” means the principal co-operative society in a State, the primary object of which is the financing of other co-operative societies in the State:.....”

9.3 Having noted the relevant provisions in earlier para, it would be expedient to firstly refer to the decision of The Citizen Co-Operative Society Ltd. (supra) to gather the rules of interpretation of various sub-sections of the beneficial provision of S. 80P. The Hon’ble Supreme Court inter alia has observed that different heads of exemption enumerated in the Section 80P of the Act should be treated as separate and distinct head of ‘exemption’. If any particular category of an income falls within any one head of ‘exemption’, the assessee would be free from tax notwithstanding that the conditions of other head of exemption are not satisfied and such income is not free from tax under other head of ‘exemption’. Thus, in view of the express judicial dicta, provisions of Section 80P(2)(a) and 80P(2)(d) are mutually exclusive and are to be read independent of each other.

9.4 We are presently concerned with the availability of deduction to a co-op society within the realm of Section 80P(2)(d) of the Act. Two things need to be noted in this regard; firstly, unlike Section 80P(2)(a) or (b) or (c) of the Act where the assessee is qualified for deduction of “profits & gains of business” attributable to one or more of activities enumerated in these sub-sections, Section 80P(2)(d) of the Act, in sharp departure, provides for deduction of “whole of such income” [without any distinction on nature of income] as derived by a co-operative society from its investment with any other co-operative society. Needless to say, in a taxing Act, one has to look merely at what is clearly said. There is no room for any intendment and one has to look fairly at the language used. Thus, scope of benefit under s.80P(2)(d) is not restricted to ‘business income’ alone but also extends to income derived from investments ordinarily falling under the head ‘income from other sources’ as well ; secondly doctrine of mutuality is not necessarily a pre-condition in appropriate circumstances, for instance 80P(2)(a(ii)); and thirdly and quite significantly ; the investment by a co-op society in a co-op society should result in interest or dividend income from its investment. Thus what is pertinent is that the investment by the assessee society should be parked in another ‘co-op society’ for the purposes of sub-clause 2(d) of S. 80P. The moot

question thus naturally emerges is; whether the investment in a co-op bank is to be regarded as investment in-effect in a co-op society or not?

9.5 *At this juncture, we also take simultaneous note of such Section 80P(4) of the Act inserted by Finance Act, 2006 whereby a co-operative bank has been deprived of deduction under s.80P of the Act. To put it slightly differently, with advent of section 80P(4), co-op banks have been brought to tax by denying them the benefit of Section 80P of the Act.*

9.6 *The insertion of Section 80P(4) of the Act has purportedly also obfuscated and cast aspersion on the deductibility of income derived by a co-operative society from investments placed with co-operative bank under S. 80P(2)(d) of the Act. In this context, it would be interesting to note that the aforesaid clause 80P(4) itself holds that a co-operative bank may also possibly include 'a credit society'; for instance, a primary agricultural credit society. Therefore, on an incisive reading of Section 80P(4) of the Act, it appears that co-operative banks can also be co-operative society for the purposes of Section 80P(2)(d) of the Act. Thus, on a conjoint reading of Section 80P(2)(d) and 80P(4), it would appear that while the co-operative banks in certain cases [as specified in Section 80P(4)] may not qualify for deduction under s.80P of the Act, a co-operative society per se would not come within the mischief of sub-section 4 of the Act of Section 80P of the Act and would continue to avail the benefit of Section 80P(2)(d) of the Act. Thus, simply put, while a co-operative bank has been stripped of the benefit of Section 80P of the Act on its various income by insertion of S. 80P(4), the investment in such co-operative bank [bearing the legal trappings of a co-op society] by a co-op society as envisaged in Section 80P(1) of the Act is not divested of such benefit.*

9.7 *Joining the issue in hand, as per Section 80P(2)(d) of the Act, the only requirement is that the income should be received from investment by a co-operative society in other co-operative society and it is claimed that co-operative bank namely 'Ahmedabad District Co-operative Bank', in the present case, is nothing but a co-operative society recognised by the competent authority of the State as contemplated under Section 2(19) of the Act. On these facts, the eligibility of deduction under Section 80P(2)(d) of the Act is required to be evaluated independent of mutuality doctrine taken away by insertion of S. 2(24)(viiia). The assessee society would thus be entitled to benefit of section 80P(2)(d) on interest income from investment in co-op bank. As noticed from the definition of 'co-op bank' with reference to Banking Regulation Act, 1949; read with NABARD Act, it is ostensible that the co-op banks of various types are essentially co-op. societies. Hence, the claim of deduction made under S. 80P(2)(d) by a co-op society in such co-op banks can not be denied notwithstanding that some these co-op banks are not eligible for 80P benefits despite being co-op societies.*

9.8 *Coupled with this, certain observations made by the Hon'ble Gujarat High court in State Bank of India (supra) and in Sabarkantha District (supra) also reinforces that interest earned on fixed deposit with co-operative bank can be said to be qualified for deduction under*

s.80P of the Act notwithstanding that such observations appear to be in the nature of an obiter in the context of those cases.

9.9 *At this stage, it would also be pertinent to again restate that for the purposes of Section 80P of the Act, the principle of mutuality has been obliterated in view of insertion of Section 2(24) (viia) of the Act by Finance Act, 2006 and such principles thus no longer serve as strict guiding principle to test the relief eligible under S. 80P(2)(d) of the Act. Therefore, the plea raised on behalf of the Revenue towards absence of principle of mutuality in such deposits with co-operative banks is a damp squib. Thus, the assessee being a co-operative society as contemplated under s. 80P(1) of the Act, cannot be deprived of benefit of S.80P(2) (d) despite purported absence of mutuality in investment with a co-op bank. We, thus, concur with plea of assessee for allowability of deduction on interest income derived from co-operative society in the form of Co-operative bank on first principles. The issue is accordingly resolved in favour of the assessee and against the Revenue.*

9.10 *We are conscious of the decision of the Hon'ble Karnatka High Court in Pr.CIT vs. Totagars Co.operative Sales Society (2018) 395 ITR 611 (Karn) wherein it was held that interest income not arising from business operations is not eligible for deduction under s.80P of the Act. A reading of the judgment of the Hon'ble High Court shows that it was guided by nature of activity to determine the character of income for the purposes of Section 80P(2)(d) of the Act. Placing reliance upon the judgments rendered in the context of 80P(2)(a)(i) of the Act, the Hon'ble High Court concluded that the deduction of interest income is not permissible unless it arises from business operations. Clearly, the distinction between Section 80P(2)(a) and 80P(2)(d) of the Act of substantial nature (as discussed in para 9.4 of this order) was not brought to the notice of Hon'ble High Court. The deduction under s. 80P(2)(a) or (b) or (c) of the Act is available only on account of income/profits arising from business activity. However, this requirement is not applicable under s.80P(2)(d) of the Act where whole of the income arising from interest or dividend etc. is allowable without such limitation of business activity. This cardinal difference of overwhelming nature was not brought to the notice of the Hon'ble High Court. Consequently, the decision rendered by the Hon'ble High Court appears to be subsilento. Thus, governed by the observations of the Hon'ble Gujarat High Court in the case of Sabarkantha District (supra) and State Bank of India (supra), we have not hesitation to affirm the plea of the assessee for allowability of deduction."*

7.3 Thus, in the light of reasoning of the Tribunal in favour of assessee on eligibility of deduction under s.80P of the Act on interest earned from deposits placed with co-operative banks, the issue cannot be regarded to be free of any debate to the least. In the circumstances, the action of the AO in granting relief under s.80P of the Act cannot be dubbed as erroneous *per se*. Therefore, the twin conditions for invoking provisions of Section 263 of the Act are clearly not satisfied. Thus, the

revisional action of the CIT cannot be regarded to be within the spheres of jurisdiction available under s.263 of the Act. Hence, the order of the CIT under s.263 of the Act is required to be set aside and cancelled.

7.4 In the result, both the appeals of the assessee bearing similar grievances, are required to be allowed for the reasons noted above.

8. In the result, both appeals filed by the assessee are allowed.

This Order pronounced in Open Court on 27/01/2020

Sd/-
(MAHAVIR PRASAD)
JUDICIAL MEMBER
Ahmedabad: Dated 27/01/2020

Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

True Copy

S. K. SINHA

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. राजस्व / Revenue
2. आवेदक / Assessee
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद /
DR, ITAT, Ahmedabad
6. गार्ड फाइल / Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण, अहमदाबाद ।