आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ - अहमदाबाद ।

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD – BENCH 'SMC'

BEFORE SHRI RAJPAL YADAV, VICE-PRESIDENT

आयकर अपील सं./ ITA No. 08/Ahd/2018

निर्धारण वर्ष/Assessment Year: 2014-15

Balasinor Vikas Co-p. Credit Society Ltd. Rajpuri Darwaja Balasinor 388 255 Dist. Mahisagar. PAN : AAAAB 4748 H	Vs	DCIT, Panchmahal Circle Godhra Dist. Panchmahal.

अपीलार्थी/ (Appellant)		**प्रत्यर्थी/** (Respondent)

Assessee by :	Shri Sunil Talati, AR
Revenue by :	Shri Dilipkumar S.DR

आयकर अपील सं./ ITA No. 2906/Ahd/2017

निर्धारण वर्ष/Assessment Year: 2014-15

Shri Jalaram Mahila Co-op Credit Society Ltd. Jalaram Eye Hospital Compound Alipura, Bodeli 391 135 Dist. Chhotaudepur PAN : AABAS 5194 D	Vs	DCIT, Cir.3(1) Baroda.

आयकर अपील सं./ ITA No. 285/Ahd/2018

निर्धारण वर्ष/Assessment Year: 2014-15

Anand Catholic Co-op. Credit Society Ltd. Nr.D-Cabin, Gamdi Tal. & Dist. Anand 388 001. PAN : AAAAA 5138 Q	Vs	ITO, Ward-2 Anand.

अपीलार्थी/ (Appellant)		**प्रत्यर्थी/** (Respondent)

Assessee by :	None
Revenue by :	Shri Dilipkumar S.DR

सुनवाई की तारीख/Date of Hearing : 03/02/2020
घोषणा की तारीख /Date of Pronouncement : 04/02/2020

ORDER

Present three appeals are directed against separate orders of the ld.CIT(A) passed in the cases of respective assessee for the Asstt.Year 2014-15. Common issue involved in all these three appeals relates to quantification of deduction admission under section 80P(2)(a)(i) and 80P(2)(d) of the Income Tax Act, 1961, therefore, I proceed to dispose of all these appeals by this consolidated order.

2. As far as ITA No.285/Ahd/2018 and 2906/Ahd/2017 are concerned, in response to the notice of hearing, none has come present on behalf of the assessee. Therefore, these appeals are heard *ex parte*. In the case of Balasinor Vikas Co-op Credit Society Ltd., Shri S.N. Talati has advanced arguments on behalf o the assessee. First, I take ITA No.8/Ahd/2018.

3. Brief facts of the case are that the assessee is a cooperative society engaged in the business of providing credit facilities to its members as per byelaws of the Society. On scrutiny of the accounts, it revealed to the AO that the assessee has shown interest income on FDR kept with scheduled and cooperative bank. The assessee has claimed deduction under section 80P of the Act and shown net income at Rs.NIL in the return filed electronically on 26.9.2014. The break-up of the interest income shown by the assessee has been noticed in para-4 of the assessment order, which reads as under:

"State Bank of India	*Rs.1010526/-*
Bank of Baroda	*Rs.2088349/-*
Total	***Rs.3098875/-***
K.D.C.C. Bank Ltd	*Rs. 877059/-*
Axis Bank	*Rs. 84S69/-*
MGVCL	*Rs. 23001 /-*
Total	***Rs. 984629/-***

Total (2098875+984629 = 4083504)"

4. The ld.AO did not allow deduction to the assessee after following the decision of Hon'ble Gujarat High Court in the case of State Bank of India Vs. CIT, 72 taxmann.com 64 (Guj). He made an addition of Rs.40,83,504/-. Appeal to the CIT(A) did not bring any relief to the assessee.

5. The ld.counsel for the assessee submitted that there are two components which have been considered by the AO. The first component is the interest income earned by the assessee on the deposit made with scheduled bank. As far as allowability of such interest income for deduction under section 80P(2)(a)(i) of the Act is concerned, that issue has been resolved by the Hon'ble jurisdictional High Court in the case of State Bank of India (supra), wherein it has been held that such interest income will not qualify for deduction under section 80P(2)(a)(i) of the Act. In this connection he submitted that only net interest income be excluded from the eligibility amount for grant of deduction. With regard to second component, he submitted that as far interest income earned from cooperative bank is concerned, this has been held as eligible for grant of deduction under section 80P(2)(d) of the Act. In this connection he made reference to earlier orders of the Tribunal on similar issue in the case of Vir Transport Operator Co-op

Credit & Services Society Ltd. and Another in ITA No.2018/Ahd/2017. It reads as under:

> *"4. With the assistance of ld.representatives, we have gone through the record carefully. It emerges out from the record that both the assessees are credit cooperative societies, which has been entertaining deposits from their members, and providing credit facilities. The assessees have earned two types of interest income viz. (a) interest income from nationalised banks, and (b) interest income from cooperative societies/cooperative banks. The ld.counsel for the assessee submitted that computation of deduction made under section 80P(2)(a)(i) as well as under section 80P(2)(d). She contended that as far as interest income from scheduled bank is concerned, the assessee is not entitled for deduction under section 80P(2)(a)(i) in view of judgment of Hon'ble jurisdictional High Court in the case of state Bank of India Vs.CIT, 72 taxmann.com 64 (Guj). She pleaded that while working out the amount out of interest income from scheduled bank, its net interest income ought to be disallowed. If any expenditure relatable to earning of such interest income, deserves to be set off against the interest income, and thereafter, net is to be excluded from the deduction. As far as interest income from cooperative bank/society is concerned, this issue is covered in favour of the assessee by various decisions. She relied upon latest order of the Tribunal passed in ITA No.1132/Ahd/2018 in the case of Sahyog Co-op. Credit Society Ltd. The Tribunal has decided this appeal on 29.11.2019. While dealing with this issue, the Tribunal has decided as under:*
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> *"6. As regards Ground No.3, it concerns eligibility of deduction claimed under s.80P(2)(d) of the Act on account of interest income received from investment made with co-operative banks. It was submitted on behalf of the assessee that the issue is squarely covered in favour of the assessee in the case of Banaskantha District Co-operative Milk Producers Union Ltd. vs. AC1T ITA No.l090/Ahd/2015 wherein the co-ordinate bench has held in favour of assessee by making reference to the decision of the Hon'ble Gujarat High Court in the case of CIT vs. Sabarkantha District cooperative Milk Producers Union Ltd. Tax Appeal No. 473 of 2014. It was pointed out on behalf of the assessee that K.D.C.C. Bank is a co-operative bank registered under Co-operative Society Act and investment made in this bank and interest earned. This investment is eligible for deduction under s.80P(2)(d) of the Act.*
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> *7. In the given facts as noted above, the claim of the assessee under s.80P(2)(d) of the Act appears to be in consonance with the plain language of the Act. We thus find merit in the claim of the assessee*

for deduction under s.80P(2)(d) of the Act in respect of income earned from K.D.C.C. Bank."

5. On the strength of the above, she contended that interest income from any cooperative bank/credit societies be allowed as deduction under section 80P(2)(d) of the Act. She drew our attention towards computation and submitted that in the case of the Lunawada Taluka Primary School Teachers Cooperative Credit Society Ltd. for the Asstt.Year 2014-15, this interest income from cooperative bank is Rs.36,08,164/-. Similarly, for the Asstt.Year 2013-14 in the account of the society, the interest income under section 80P(2)(d) from the cooperative bank is of Rs.35,71,014/-. She prayed that these income be allowed as deduction under section 80P(2)(d) of the Act. In the case of Vir Transport Operators Co-op Credit Society, such amount has been quantified at Rs.2,91,959/-.

6. The ld.DR on the other hand, relied upon orders of the Revenue authorities, and submitted that the assessee is not entitled for deduction on interest income from scheduled bank as well as cooperative bank under section 80P(2)(a)(i) as well as under section 80P(2)(d) of the Act.

7. On due consideration of the above facts and circumstances, we are of the view that as far as the issue regarding admissibility of deduction of interest income from scheduled bank under section 80P(2)(a)(i) is concerned this has been settled by the Hon'ble Jurisdictional High Court in the case of State Bank of India (supra), and the assessee is not entitled for such deduction. This proposition was not even disputed by the ld.counsel for the assessee. Only thing which requires to be done is re-determination or quantification of amount which is to be disallowed out of interest income from the scheduled bank. The ld.AO shall work out the net interest income from the deposits with scheduled bank, and thereafter exclude that amount from the computation of deduction claimed under section 80P(2)(a)(i) of the Act. As far as interest income from cooperative bank/society is concerned in view of the decision of co-ordinate Bench, such income will qualify for grant of deduction under section 80P(2)(d) of the Act. The ld.AO shall work out net amount of such interest income, and thereafter grant deduction under section 80(2)(d) of the Act."

7. In view of the above decision of the Coordinate Bench of the Tribunal on similar issue, I direct the AO to allow the claim of the

assessee in accordance with the decision of the Tribunal cited (supra), particularly para-7 of the order be followed.

8. Now I take ITA No.2906/Ahd/2017.

9. Brief facts of the case are that assessee has filed its return of income at NIL after claiming deduction under section 80P(2)(a)(i) of the Act at Rs.27,54,301/-. The ld.AO made an addition of Rs.2,98,907/-. This addition has been made on the ground that the assessee has claimed deduction with respect to income earned from deposits made with scheduled bank.

10. With the assistance of the ld.DR, I have gone through the record carefully. A perusal of the record would indicate that the ld.AO has not specified the exact amount. He has devoted much energy for addressing discussion on law point. A perusal of page no.6 would reveal that the assessee has given break of the interest income as under:

Sr. No.	*Name of Institution*	*Amount of Deposit*	*Interest Received*
1	*Prime Co Op Bank Ltd- Exempted under section 80P(2)(d)*	*1,06,92,519*	*190263*
2	*Union Bank of India*	*12,33,422*	*107954*
3	*Bank of Baroda*	*30,00,000*	*690*
	TOTAL		*298907*

11. It appears that some of the interest is relatable to deposits with cooperative bank and will qualify for exemption under section 80P(2)(d). Therefore, following of my observation while dealing with the case of

Balasinor Vikas Coop. Credit Society Ltd. (ITA No.8/Ahd/2018) (supra), I direct the AO to re-adjudicate the issue and only exclude net interest income from nationalised bank from computation of income admissible under section 80P(2) of the Act. The AO shall adjudicate this issue after providing due opportunity of hearing to the assessee.

ITA No.285/Ahd/2018

12. As the facts emerge out from the record, in this case also assessee is a cooperative society earning income from providing credit facilities to its members. It has filed return on 9.9.2014 declaring NIL income. In the scrutiny assessment the ld.AO noticed that he assessee has received interest income of Rs.50,47,835/-. The ld.AO show caused as to why interest income of Rs.50,47,835/- and other income of Rs.26,055/- should not be treated as income from other source and tax accordingly in view of judgment of Hon'ble jurisdictional High Court in the case of State Bank of India Employees Co-op Credit Society Vs. CIT, 72 taxmann.com 64. Assessee explained that since it has surplus funds, as a prudent practice it deposited the same with scheduled banks so that assessee-society would not face any liquidity problem while carrying out its day-to-day activities. The assessee, however, submitted that in case its claim did not fall within the provisions of section 80P(2)(a)(i) of the Act, then deduction claim be reduced proportionately in the ratio of nationalized bank interest to total income. In short, assessee agreed to proportionate disallowance, as under:

Sl	*Particulars*	*Amount*
i.	*Interest earned from nationalized bank*	*50,47,835*
ii.	*Total interest earned by the society*	*87,79,837*

iii	*Proportion of[i)/(ii)*	*57.49%*
Iv	*Deduction claimed u/s.80P*	*10,90,906*
v	*Proportionate deduction to be disallowed*	*6,27,200*

Assessee further claimed an amount of Rs.338/- being the interest earned from deposits of the cooperative bank, and statutory standard deduction of Rs.50,000/- under section 80(2)(c)(ii) of the Act. The ld.AO considered submissions of the assessee and made a disallowance of Rs.6,53,250/- [Rs.6,27,200/- plus Rs.10,600/- being form fee income plus Rs.15,455/- being room rent income]. This disallowance was confirmed by the ld.CIT(A). Against this addition, assessee is before the Tribunal.

13. On due consideration of the above facts and circumstances, I find that the assessee is covered by the decision of Hon'ble jurisdictional High Court in the case of State Bank of India Employees Coop Credit Ltd. (supra) wherein it has been held by that cooperative society would not be eligible under section 80P(2) of the Act for deduction of interest income earned from scheduled bank. Further, assessee has agreed to proportionate disallowance to the extent of bank interest to total income. Therefore, disallowance of Rs.6,27,200/- is upheld.

14. So far as the disallowance of Rs.10,600/- which the assessee has received from its members towards form fee, cannot doubted to be not attributable to and/or arising from assessee's day-to-day activities of the assessee. Therefore, I allow this claim of the assessee and delete disallowance.

15. As regards allowance of standard deduction of Rs.50,000/- claimed by the assessee under section 80P(2)(c) of the Act, the same being statutory deduction, the assessee will be entitled for the same. The ld.AO is directed to allow such claim in accordance with the law.

16. In the result, all three appeals are partly allowed for statistical purpose.

Pronounced in the Open Court on 4th February, 2020.

Sd/-
(RAJPAL YADAV)
VICE-PRESIDENT

Ahmedabad; Dated, 04/02/2020