आयकर अपीलीय अधिकरण, सुरत न्यायपीठ, सुरत

INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND
Dr. ARJUN LAL SAINI, ACCOUNTANT MEMBER
(Virtual Hearing)

आ.अ.सं./I.T.A No.283/SRT/2019

निर्धारण वर्ष/Assessment Year: 2014-15

Bardoli Vibhag Gram Vikas Co.Op. Credit Society Ltd., Sahakar Sadan, Station Road, Bardoli, Surat. **[PAN: AAATB 8135 B]**	Vs	The Principal Commissioner of Income Tax-2, Surat.
अपीलार्थी / Appellant		**प्रत्यर्थी/Respondent**

निर्धारितीकीओर से **/Assessee by**	Shri Mitesh Modi – CA
राजस्वकीओर से **/Revenue by**	Shri Ritesh Mishra – CIT-DR

सुनवाई की तारीख/ Date of hearing:	29.04.2021
उद्घोषणा की तारीख/Pronouncement on:	12.05.2021

<u>आदेश /O R D E R</u>

<u>PER PAWAN SINGH, JUDICIAL MEMEBER:</u>

1. This appeal by the Assessee is directed against the order of ld. Principal Commissioner of Income Tax-2, Surat hereinafter referred as “Ld. PCIT”, passed under section 263 of Income-tax Act (Act) dated 26.03.2019 for the Assessment Year (AY) 2014-15.

2. Brief facts of the case are that the assessee is a Co-operative Society engaged in the business of providing credit facility to its members by accepting the deposits from members and lending money them too. The assessee filed its Return of Income for A.Y. 2014-15 on 21.08.2013 declaring Nil income. In the computation of income, the assessee claimed deduction 80P of the Act of Rs.7,03,56,728/-. The return of income was

selected for scrutiny. The assessment was completed under section 143(3) of the Act on 18.02.2016. During the assessment, the Assessing Officer (AO) noted that assessee derived interest income from savings bank account with HDFC Bank and UTI Bank. The AO was of the view that as per section 80P(2)(a)(d) of the Act, the interest earned out of the investment /deposits Co-op Societies or Co-operative Banks are only eligible for deduction. The interest income earned from other banks, are not eligible for deduction under section 80P. The assessee has earned interest income of Rs.12,497/- from the other than Co-operative Banks are not eligible for deduction 80P(2)(d) of the Act and accordingly disallowed Rs.12,497/-.

3. The assessment order was revised by ld. PCIT vide its order passed under section 263 of the Act dated 26.03.2019 by taking view that order passed by AO is erroneous and in so far as prejudicial to the interest of the Revenue. The ld. PCIT before revising the order issued show cause notice under section 263 of the Act dated 06.03.2019. In the show cause notice, the ld. PCIT noted that on perusal of assessment order, Profit and Loss account, Balance Sheet it was noted that assessee earned interest of Rs.6.14 crore on deposits made with Co-operative and private banks, the details of which are as under:

Sr.	*Name of Banks & Coop.*	*Deposit into*	*Interest (Rs.)*

No	*Societies*	*Bank (Rs.)*	
1	*Surat Dist. Coop. Bank Ltd. (FD)*	*1,00,00,000*	*8,80,000*
2	*Surat Dist. Coop. Bank Ltd. (01 year FD)*	*85,08,,99,681*	*6,05,26,353*
3	*HDFC Bank*		*11,336*
4	*UTI Bank*		*1,161*
	Total	*86,08,99,681*	*6,14,18,850*

4. The ld. PCIT was of the view that interest income of Rs.6.14 crore does not fall within the meaning of exemption under section 80P(2)(d) of the Act. The ld. PCIT further held that Clause (b) of Explanation 2 of section 263 is also applicable in the present case.

5. The assessee filed its reply to the show cause vide its reply dated 17.03.2019. The contents reply of assessee is extracted by ld. PCIT in its order. In the reply, the assessee stated that the assessee has claimed deduction under section 80P(2)(d) of the Act of Rs.7.03 crore being interest and dividend income from investment with Cooperative Societies. The assessee also stated that during the course of assessment proceedings, the AO examined the issue of deduction under section 80P(2)(d) in depth on application of fair and judicious mind and also considered the evidence passed the order under section 143(3) of the Act and allow deduction under section 80P(2)(d) of the Act.

6. The assessee also furnished the copy of notice under section 142(1) of the Act dated 13.04.2016, its reply dated 26.04.2016, further notice under section 142(1) of the Act dated 07.10.2016 and its reply dated 16.10.2016, wherein the

AO raised quarries about the deduction of claim under section 80P(2)(d). The assessee also submits that similar deductions were claimed in earlier years and was allowed in favour of assessee. The assessee prayed for dropping the proceedings under section 263 of the Act.

7. The reply furnished by the assessee was not accepted by ld. PCIT. The ld. PCIT took his view that Hon'ble Supreme Court in Totagars Co-operative Sale Society held that assessee is not entitled for deduction under section 80P(2)(d) of the Act. The ld. PCIT further in para 4.1 of the order recorded that Hon'ble Karnataka High Court in CIT Vs Totagars Co-operative Sale Society (2017) 83 taxmann.com 140 (Kar) dated 16.06.2017, held the cooperative societies are not eligible for deduction of interest earn on deposits with Cooperative Bank under section 80P(2)(d) of the Act. The Cooperative Societies and Co-operative Banks are two separate entities and Cooperative Banks are not species of genes Cooperative Societies. The assessment orders dated 18.10.2016 was set-aside and the AO was directed to pass the assessment order afresh by giving opportunity to the assessee. Aggrieved by the order of ld. PCIT, the assessee has filed present appeal before this Tribunal.

8. We have heard the submission of learned authorized representative (ld.AR) of the assessee and the learned Commissioner of Income tax-Departmental representative

(ld.CIT-DR) for the Revenue and perused the assessment order as well as order passed by ld. PCIT. The Ld. AR for the assessee submits that the order passed by assessing officer under section 143(3) in allowing deduction under section 80P(2)(d) is not erroneous. The assessing officer during the assessment examined the issue in detail and took a possible and a reasonable view on the claim made by assessee. The finding of the assessing officer in the assessment order about the examination of this issue is clearly discernable. The learned PCIT by examining the record, may have a different view, thus the revision order passed by learned PCIT is not valid in the eyes of law. The learned AR for the assessee submits that for revising the assessment order, twin condition as provided under section 263 must be fulfilled simultaneously, that is the assessment order is erroneous and insofar as prejudicial to the interest of revenue. The order passed by assessing officer is not at all erroneous; the order is in accordance with the decision of various Tribunals and order passed by jurisdictional High Court on similar issue. The learned AR for the assessee also invited our attention on para 4 of the assessment, wherein the consideration of the issue under reference is clearly discernable. The learned AR for the assessee further submits that the assessing officer while issuing show cause notice dated 06.03.2019 raised a specific quarry on this issue. The assessee furnished its explanation with regard to the claim of deduction under section 80P(2)(d). The assessee explained before Ld.PCIT that assessee is claiming statutory deduction. The learned AR for the assessee further submitted that it is settled law that once assessing officer made enquiry on a particular point and after deliberation allow deduction, on that very point, the proceeding under section 263 cannot exist to form a different view. The ld.AR for assessee further submits that assessee claim similar deduction was disallowed by the assessing officer while passing the assessment order in A.Y. 2009-10, 2010-11 and again in 2012-13. However on appeal before Ld. CIT(A) the assessee was allowed deductions under section80P(2)(d). On further appeal by the revenue before the Tribunal the appeal of the revenue was dismissed in ITA No. 2166/Ahd/2014 dated 18.04.2017, ITA No. 2582/Ahd/2014 dated 28.06.2018 and in ITA No.2617/Ahd/2016 dated 18.12.2018 for A.Y. 2009-10, 2010-11 and 2012-13 respectively. The copies of the decisions of Tribunal are placed on record. The ld.PCIT for the first time revised the assessment order on the issue.

9. On merit of the case the learned AR for the assessee submits that the assessee earned interest from its investment in cooperative bank. The cooperative banks are primarily a

cooperative society, as has been held by various benches of Tribunal. Cooperative societies interest income from deposit with the cooperative bank is eligible for claim of deduction under section 80P(2)(d). The learned AR of the assessee further submits he has also furnished his written submission and the same may be considered in support of his various other submissions. In support of his submission the learned AR of the assessee relied upon the following decisions:

- Surat Vankar Sahkari Sangh Vs ACIT [2016] 72 taxmann.com 169 (Gujarat),
- CIT Vs Sabarkantha District Co-operative Milk Producers Union (Tax Appeal No. 473 of 2014 dated 16/06/2014,
- Merwanjee Cama Park Co-operative Housing Society Vs ITA in ITA No. 6139/Mum/2014,
- Kanilndass Udyog Bhawan Premises Co-operative Society Ltd Vs ITO [2018) taxmann.com 15 (Mumbai Trib),
- Veer Cooprative Groupm Housing Society Vs ITO [2018] 67 ITR (trib) ITAT (Del),
- PCIT Vs Totgars Co-oprative Sales Society ltd. [2017] 78 taxmann.com 169(Knt),
- Totgars Cooprative Sales Society ltd Vs ITO [2010] 188 Taxman 282 (SC),
- The Uttar Gujarat Uma Co-operative Society Vs ITO (ITA No. 1670 &1671/Ahd/2018 dated 28/02/2019,
- Menasi Seemeya group Gramagala Seva Sahakari Sangh Niyamitha Venalli Vs CIT (ITA No. 609 & 610/ BNG/2014 dated 06/02/2015,
- Solitaire CGHS Vs PCIT (ITA No. 3155/Mum/2019),
- Sasme Co-op Society Vs PCIT (ITA No. 185/SRT/2020 dated 03.03.2021).

10. On the other hand the learned CIT-DR for the revenue supported the order of learned PCIT. The learned DR further submits that the order passed by assessing officer is not only erroneous but it is prejudicial to the interest of revenue as well. The assessing officer simply allowed the deduction under section 80P(2)(d) without discussing the issue in details and the nature of interest earned by assessee on deposit with cooperative banks. The order is not in accordance with the decision of Hon'ble Karnataka High Court Totagars cooperative sales society (second Totagars case) (supra). Thus, the order passed by in allowing deduction under section 80P(2)(d) assessing officer is certainly prejudicial to the interest of revenue. The twin conditions of section 263 that assessment order is erroneous and insofar as prejudicial to the interest of revenue, clearly available in this case. The learned CIT prayed for upholding the order passed by learned PCIT by dismissing the appeal filed by the assessee.

11. We have considered the rival submission of both the parties. We have also deliberated on the written submission filed by learned AR of the assessee and various case laws relied by him during his submission. We have also gone through the various documentary evidences filed in the form of paper book (PB) by learned AR of the assessee. We have noted that

during the assessment the Assessing Officer vide notice under section 143(2)/142(1) of the Act dated 31.08.2015 and 13.04.2016. The assessee filed its reply through its CA (AR) and furnished required details and after examining the issue allowed the deductions under section 80P(2)(d) as discussed in para 4 of the assessment order. The Assessing Officer passed assessment order on 18.10.2016.

12. The ld. PCIT before passing under section 263 of the Act, identified the issue regarding the claim of deduction under section 80P(2)(d) in its show cause notice dated 06.03.2019. The assessee in its reply dated 7.03.2019 clearly explained that the issue was examined by Assessing Officer and that the assessment order is not erroneous. The assessee also explained that similar disallowances /issues was subject matter in the appeal filed by the revenue before Tribunal in A.Y. 2009-10, 2010-11 and 2012-13 and the assessee was allowed similar deductions.

13. The Hon'ble Jurisdictional High Court in Aryan Arcade Ltd., vs PCIT (2019) 412 ITR 277 (Gujarat) held that merely because Commissioner held a different belief that would not permit him to take the order in revision, it if further held that when Assessing Officer made full enquiry, he made up his mind, the notice of revision is not valid. (*emphasis added by us*). Further, Hon'ble Madras High Court in CIT Vs Mepco

Industries Ltd., (2007) 207 CTR 462 (Madras) held that when two views are possible on an issue and it is not the case of the Commissioner that the view taken by Assessing Officer is not permissible in law, Commissioner cannot invoke his jurisdiction under section 263 of the Act. (*emphasis added by us)*

14. As we have noted above the assessing officer has made enquiries on the allowability of deduction under section 80(P)(2)(d) and passed the assessment order, thus, the Assessing Officer has taken a reasonable and possible view which cannot be held as erroneous.

15. The Hon'ble Karnataka High Court in PCIT Vs. Totagars Co-operative Sales Society [2017] 78 taxman.com 169 (Karnataka) held that for the purpose of section 80P(2)(d) a Co-operative Bank should be considered by a Co-operative Society and interest earned by Co-operative Society from Co-operative Bank would necessarily be deductible under section 80P(1) of the Act. Further, the Hon'ble Jurisdictional High Court in Surat Vankar Sahakari Sangh Ltd., vs. ACIT [2016] 72 taxmann.com 169 (Guj) held that assessee co-operative society is eligible for deduction under section 80P(2)(d) in respect of gross interest received from co-operative bank without adjusting interest paid to said bank.

16. The Co-ordinate Bench of Rajkot Tribunal in Surendarnagar District Co-operative Milk Producer Union Ltd., vs. DCIT [2019] 111 taxmann.com 69 (Rajkot Tribunal) also held the assessee co-operative society could not claim benefit under section 80P(2)(d) in respect of interest earned by it from deposits made with nationalized/private banks, however, the said benefit was available in respect of interest earned and on deposits made with co-operative bank. Thus, in view of the aforesaid legal discussion we are of the considered view that order passed by Assessing Officer is not erroneous, though it may be prejudicial to the interest of the Revenue. Therefore, the twin conditions that orders is erroneous and so far as prejudicial to the interest of revenue, as prescribed under section 263 is not fulfilled in the present case.

17. Moreover, we have seen that in assessee's own case for A.Y. 2009-10, 2010-11 and 2012-13, the similar disallowance under section 80P(2)(d) was made by the assessing officer while passing assessment order under section 143(3), however, on appeal before Ld. CIT(A) , the disallowances were deleted and the order of the Ld. CIT(A) in all years were confirmed.

18. The ld. DR for the revenue relied on the case law in PCIT Vs. Totagars Co-operative Sales Society (second case)/(supra), wherein the Hon'ble Karnataka High Court held that interest

earned by a Co-operative Society from surplus deposits kept with Co-operative bank, is not eligible for deduction under section 80P(2)(d). Considering the legal position that when there are conflicting decisions of non-jurisdictional High Courts, on similar issue, the decision of Jurisdictional High Court is having binding precedent. Thus, keeping in view of the decision Hon'ble Jurisdictional High Court in Surat Vankar Sahakari Sangh Ltd., vs. ACIT (supra) wherein the assessee-co-operative society is held eligible for deduction under section 80P(2)(d) in respect of gross interest received from co-operative bank without adjusting interest paid to said bank, we conclude that the order passed by assessing officer is not erroneous. Hence, the grounds of appeal raised by assessee are allowed.

19. In the result, appeal of the assessee is allowed.

Order pronounced on 12th May, 2021 by placing the result on the notice board.

Sd/-	**Sd/-**
(Dr. ARJUN LAL SAINI)	**(PAWAN SINGH)**
(लेखा सदस्य/**ACCOUNTANT MEMBER**)	(न्यायिक सदस्य/**JUDICIAL MEMBER**)

सुरत/ **Surat,** दिनांक **Dated:** 12th May, 2021
#SGR Sr PS
Copy of order sent to-
Assessee/AO/Pr. CIT/ CIT (A)/ ITAT (DR)/Guard file of ITAT.

By order

// TRUE COPY //

Assistant Registrar, Surat