

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD “C” BENCH
(Conducted Through Virtual Court)
Before: Shri Amarjit Singh, Accountant Member
And Ms. Madhumita Roy, Judicial Member

ITA No. 370/Ahd/2020
Assessment Year 2014-15

The Bharuch District Co- op Milk Producers’ Union Ltd. PAN: AAAAT1470A (Appellant)	Vs	Principal Commissioner of Income Tax-3, Vadodara (Respondent)
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Revenue by: Shri O.P. Sharma, CIT-D.R.
Assessee by: Shri Hardik Vora, A.R.

Date of hearing : 28-07-2021
Date of pronouncement : 31-08-2021

आदेश/ORDER

PER : AMARJIT SINGH, ACCOUNTANT MEMBER:-

This assessee’s appeal for A.Y. 2014-15, arises from order of the Principal CIT-3, Vadodara dated 11-05-2020, in proceedings under section 263 of the Income Tax Act, 1961; in short “the Act”.

2. The assessee has raised following grounds of appeal:-

“1. On the facts and circumstances of the case as well as law on the subject, the revision order passed by the learned Principal Commissioner of Income Tax u/s 263 of the Act for assessment year 2014-15 is erroneous, contrary to law, equity, facts and circumstances of the present case and the materials available on record.

2. *On the facts and circumstances of the case as well as law on the subject, the learned Principal Commissioner of Income Tax erred in setting aside the assessment order of the Assessing Officer u/s 143(3) of the Act observing that the contentions raised by the assessee necessitate reverification of the matter without commenting anything on order being erroneous as well as prejudicial to the interest of revenue."*

3. The fact in brief is that the assessee filed return of income on 28th Nov, 2014 declaring total income at Rs. nil after claiming deduction of Rs. 98,69,898/- u/s. 80P(2) of the act. The case was subject to scrutiny assessment and assessment u/s. 143(3) of the act was completed on 29th December, 2017 and total income was assessed at Rs. 4,08,470/-. Subsequently, the Pr. CIT issued a show cause notice u/s. 263 of the act on 19th March, 2020 that Assessing Officer has failed to carry out enquiries as warranted by the facts and circumstances of the case in respect of claim of deduction u/s. 80P(2)(d) of the Act. The relevant part of the notice is reproduced as under:-

"2. In your case, the case records for the A. Y. 2014-15 were called for and examined. The return of income for the A. Y. 2014-15 was filed by you on 20.11.2014, declaring total income of Rs.NIL after claiming deduction of Rs. 98,69,895/- u/s.80P(2) of the I.T. Act. The case was assessed under section 143(3) on 29.12.2017 by determining total income of Rs.4,08,470/-after allowing deduction of Rs. 98,69,895/- u/s. 80P(2) of I. T. Act.

3. On scrutiny of Balance Sheet, Profit and Loss account and Computation of income revealed that the assessee had offered income of Rs.NIL after claiming deduction u/s.80P(2) amounting to Rs.98,69,895/- which included Rs.84,99,892/- as fixed deposit interest earned from The Bharuch District Central Co-operative Bank Ltd and the same was allowed during the assessment. As per section 80P(2)(d) it was required to be disallowed by the AO but by not doing so it resulted in under assessment of Rs.84,99,892/-. Therefore, the order passed u/s. 143(3) of the Act is both erroneous and prejudicial to the interests of revenue.

4. From the above, it is clear that the Assessing Officer has failed to carry out enquiries as warranted by the facts and circumstances of the case and assessment has been completed without examining all aspects which were required to be looked into for determining the total income of the assessee. it has been held in number of cases by the Hon'ble Courts that unlike the Civil Court which is neutral to give a decision on the basis of evidence produced before it, the Assessing Officer is not only an adjudicator but also an investigator. He cannot remain passive on the face of a return, which is apparently in order but calls for further enquiry. It is his duty to establish the truth of the facts stated in the return of income when the circumstances of the case are such as to provoke enquiry- If there is failure to make such enquiry, the order is erroneous and prejudicial to the interest of revenue, In this regard useful references may be made to the following cases:

Gee Vee Enterprises Vs. Addl. CIT, 99 ITR 375(DEL) Rampyari Devi Saraogi Vs. Commissioner of Income-tax, 67 ITR 84(SC) Malabar Industrial Co. Ltd Vs. CIT, (2000) 243 ITR 83 (SC) Rajaiakshmi Mills Ltd Vs. ITO 2009, ITOL-317-ITAT-MAD-SB

5. It may further be stated that Explanation 2 has been inserted below subsection (1) of Section 263 wherein it has been declared that an order passed by the Assessing Officer shall be deemed to be erroneous in so far as it is prejudicial to the interests of the revenue, if, in the opinion of the Principal Commissioner or Commissioner of Income-tax, the order is passed without making enquiries or verification which should have been made.

6. In view of the above facts, clear provisions of the Act and the authorities, you are hereby required to show cause as to why the assessment order passed by the Assessing Officer on 29.12.2017 should not be set aside for de novo consideration as per the provisions of the section 263 of the Act."

In response to the show cause notice, the assessee has explained as under:-

"We bring to your notice that as per section 2(19) of the Act a "Co-operative Society" means a Co-operative Society registered under the Co-operative Societies Act, 1912, or any other law for the time being in force in any state for the registration of the Co-operative Societies.

Since the Co-operative banks are also registered under the Co-operative /Societies Act hence as per the definition of co-operative society as stated above co-operative banks are also to be treated as co-operative society-Further it should be noted that the Co-operative Society can be of different nature, and can be involved in different activities, the Co-operative society bank is merely a variety of the Co-operative Societies. Thus, the Co-operative Bank which is a species of the genus Co-operative societies would necessarily be covered by the word "co-operative society" and since, clause 80P(2)(d) of the Act permits such 100% deduction in respect of the income by way of interest or dividends derived by the Co-operative Society (Assessee} from its investments with any other co-operative society (including co-operative bank) and the whole of such interest income is eligible for 100% deduction."

However, the Id. Pr. CIT has not agreed with the submission of the assessee stating that contention raised by the assessee was required re-verification. Therefore, entire issue was restored to the file of Assessing Officer for fresh adjudication.

4. During the course of appellate proceedings before us, Id. counsel has submitted paper book comprising details and copies of documents furnished before the Assessing Officer at the time of assessment and before the Pr. CIT during the course of proceedings u/s. 263 of the Act. The Id. counsel referred page no. 4 of the paper book containing detailed submission made by the assessee vide letter dated 18-12-2017 and vide letter dated 19-12-2017 in response to the query raised by the Assessing Officer for claiming

deduction u/s. 80P of the Act. Vide the above referred letter the assessee has made detailed submission in support of claim of deduction u/s. 80P(2)(d) along with reference of judicial pronouncements. The ld. counsel further contended that the ld. Pr. CIT has erroneously held that issue is required re-verification without contradicting detailed verification/examination already made by the Assessing Officer during the course of assessment proceedings. The ld. counsel also submitted that similar deduction u/s. 80P(2)(d) was also allowed in earlier assessment years to the assessee. The ld. counsel also referred page no. 18 of the paper book vide which the ld. Pr. CIT was informed that during the course of assessment made u/s. 143(3), the Assessing Officer has already made detailed verification and considered the submission and documentary evidences produced by the assessee in support of its claim of deduction u/s. 80P(2)(d) of the act. The assessee has also referred various judicial pronouncements in support of its claim of deduction u/s. 80P(2)(d) before the ld. Pr. CIT. On the other hand, the ld. Departmental Representative has supported the order of Pr. CIT.

5. Heard both the sides and perused the material on record. The case was subject to scrutiny assessment and order u/s. 143(3) of the act was finalized on 29th December, 2017 and Assessing Officer has allowed the claim of deduction u/s. 80P(2)(d) of the Act. Subsequently, the Ld. Pr. CIT held that assessment order passed was erroneous and prejudicial to the interest of revenue since the Assessing Officer has failed to carry out enquiries/verification in respect of claim of deduction made u/s. 80P(2)(d) of the Act. In this regard, we have perused the copy of notice u/s. 142(1) dated 10th October, 2017 issued by the Assessing Officer during the course of

assessment proceedings u/s. 143(3) of the act as per annexure of questionnaire enclosed with the above referred notice. It is observed that at serial no. 15 of the questionnaire the Assessing Officer has asked the assessee to furnish details in justification of the claim of deduction u/s. 80P. Vide letter dated 18th December, 2017 the assessee has made detailed submission in respect of claim of deduction u/s. 80P of the Act. The assessee has also explained that this was not the first year of claiming the deduction and similar claims of deduction u/s. 80P(2)(d) of the Act were allowed by the revenue in its case also in the earlier year. During the course of original assessment, the detailed submission of the assessee vide letter dated 08.12.2017 is reproduced as under:-

"In continuation with the earlier submission for the A.Y. 2014-15 and in response to your quarry regarding the deduction claimed by the assessee under section 80P(2)(D) we would like to submit as under-

Assessee had shown the interest income earned from co operative bank under the head income from other source and claimed the deduction for the same under section 80P(2)(d) of the income tax act and not u/s 80P(2)(a)(i) so, the Judgment passed by the Supreme court in case of Totgar's Co-operative Sale

Society Limited v. Income Tax Officer is not applicable to the assessee.

It is also worthwhile to note that this is not the first year when assessee is claiming the deduction under this section. Assessee is claiming this deduction since long back and the judgment of Supreme Court is also not a newly passed order. The Assessing Authority itself had allowed the claim of the assessee under Section 80P(2)(d) of the Act and the Revenue has not contested the matter further.

Even in the assessment year 2013-14 the order u/s 143(3) was passed and in that year also we had claimed the deduction u/s 80P(2)(D) and same was allowed to us by the A.O. There is no change in the facts of the case so the same view needs to be followed this year also.

Section 80P(2)(D) of the Act reads as under:-

"In respect of any income by way of interest or dividends deriyedj3y the co-operative society from its investments with any other co-operative society, the whole of such income"

We like to ring to your notice that as per section 2(19) of the Act a "Cooperative Society" means a Co-operative Society registered under the Co- operative Societies Act, 1912, or any other law for the time being in force in any State for the registration of the Co-operative Societies.

Since the Co-operative banks are also registered under the Co-operative Societies Act hence as per the definition of co operative society as stated above Co-operative banks are also to be treated as Co-operative society.

Further it should be noted that the Co-operative Society can be of different nature, and can be involved in different activities; the Co-operative Society Bank is merely a variety of the Co-operative Societies. Thus, the Co-operative Bank which is a species of the genus Co-operative societies would necessarily be covered by the word 'Co-operative Society' and since, clause 80P(2)(d) of the Act permits such 100% deduction in respect of the income by way of interest or dividends derived by the Co- operative Society (Assessee) from its investments with any other Co-

operative Society (including Co-operative Bank) and the whole of such interest income is eligible for 100% deduction.

Regarding the above matter Gujarat high court in the case of *Surat Vankar Sahakari Sangh Ltd. v. Assistant Commissioner of Income-tax* held that-

"Section 80P(2)(d) of the Act allows whole deduction of an income by way of interest or dividends derived by the co-operative society from its investment with any other co-operative society. This provision does not make any distinction in regard to source of the investment because this Section envisages deduction in respect of any income derived by the co-operative society from any investment with a co-operative society. It is immaterial whether any interest paid to the co-operative society exceeds the interest received from the bank on investments. The Revenue is not required to look to the nature of the investment whether it was from its surplus funds or otherwise. The Act does not speak of any adjustment as sought to be made out by learned counsel for the Revenue. The provision such adjustment in regard to interest derived from the co-operative society from its investment in any other co-operative society. Therefore, we do not agree with the argument advanced by learned counsel for the Revenue. In our opinion the learned Tribunal was right in law in allowing deduction under Section 80P(2)(d) of the Income-tax Act, 1961 in respect of interest of RS. 4,00,919 on account of interest received from Nawanshaln Central Co-operative Bank without adjusting the interest paid to the bank. Therefore, the reference is answered against the Revenue in the affirmative and in favour of the assessee."

Copy of the Gujarat high court judgment is attached herewith for your ready reference.

Further the Karnataka high court in case of *Principal Commissioner of Income-tax, Hubli v. Totagars Co-operative Sale Society* held that-

"The issue whether a Co-operative Bank is considered to be a Co-operative Society is no longer res Integra. For the said issue has been decided by the Tribunal itself in different cases. Moreover, the word 'Co-operative Society' are the words of a large extent, and denotes a genus, whereas the word 'Co-operative Bank' is a word of limited extent, which merely demarcates and identifies a particular species of the genus Co-operative Societies. Co-operative Society can be of different nature, and can be involved in different activities; the Co-operative Society Bank is merely a variety of the Co-operative Societies. Thus, the Co-operative Bank which is a species of the genus Co-operative societies would necessarily be covered by the word 'Co-operative Society'.

Furthermore, section 56(i)(ccv) of the Banking Regulations Act, 1949, defines a primary Co-operative society bank as the meaning of Co-Operative Society. Therefore, a Co-operative Society Bank would be included in the words 'Cooperative Society'.

Admittedly, the interest which the assessee-respondent had earned was from a Co-operative Society Bank. Therefore, according to section 80P(2)(d), the said amount of interest earned from a Co-operative Society Bank would be deductible from the gross income of the Co-operative Society in order to assess its total income. Therefore, the Assessing Officer was not justified in denying the said deduction to the assessee-respondent."

Copy of the Karnataka high court judgment is attached herewith for your reference.

Punjab & Hariyana high court in case of *CIT v. Doaba Cooperative Sugar Mills Ltd.* [1998] 96 Taxman 509/230 ITR 774 held that -

"Interest derived by the assessee co-operative sugar mill from its investment in cooperative bank would qualify for deduction in its entirety under Section 80P(2)(d), without adjustment of interest paid by the assessee to the co-operative bank."

So, as per the above various judgments of high courts and mainly based on the Gujarat High court decision it can be inferred that Interest income earned by co-operative society from the co-operative bank is allowed as a deduction u/s 80P(2)(d) of the Act."

During the course of original assessment proceedings, the assessee has also made submission that its claim of deduction was also allowed by Id. CIT(A) in respect of assessment year 2011-12 to 2013-14 and there was no further appeal made by the Revenue against the order of Id. CIT(A). The relevant part of the submission dated 12th December, 2017 made by the assessee during the course of assessment on this issue is reproduced as under:-

"In continuation with the earlier submission dated 07.12.2017 for the A.Y. 2014-15 and in response to your query regarding the deduction claimed by the assessee under section 80P(2)(D) we would like to further submit as under -

As per provision of section 80P(2)(d), interest earned by us from the investment in co-operative society/bank is deductible u/s 80P(2)(d). Ours is a co-operative society engaged in manufacturing of the milk and milk products. The milk is being supplied by the members of the society and this milk is processed in our plant and different dairy products such as toned milk, Shakti milk, cheese, butter, ghee are produced and the same is marketed by the apex body Gujarat co-operative milk marketing federation. This is the typical Amul model which was put in force by Dr. Verghese Kurien and it is quite successful.

Now as regards claim of deduction u/s 80P(2)(d) is considered, this deduction is claimed by us right from the beginning of the Interest earned by us from the cooperative banks only.

A co-operative society can claim deduction under section 80P. By virtue of the sub section 4 to section 80P, no deduction is, however, available under section 80P to any co-operative bank. Here co-operative bank means a co-operative society having a primary object or principal business of which is the transaction of banking business. So, other than the co-operative banks all other co-operative societies can claim deduction u/s 80P of the Act.

Assessee had invested its surplus fund which is not required immediately in a cooperative bank. Out of that investment assessee had earned Interest income. Since the investment is not for the purpose of the business assessee had shown the interest income earned from co operative bank under the head income from other source u/s 56 of the Act and not under the head PGBP.

As assessee had shown the interest income under the head other source accordingly dairy had claimed the deduction for the same under section 80P(2)(d) of the income tax act and not under section 80P(2)(a)(i)

While the judgment passed by the Supreme Court in case of Sale Society Limited is mainly of such society which is providing credit to its members.

As per section 80P(2)(a)(i) a co-operative society which is engaged in the business of banking or providing credit facilities to its members is eligible to claim the income from carrying on banking business to its member or income from providing credit facilities to its member as deduction under section 80P(2)(a)(i). While our society is not engaged in the business of the providing credit to its members so this judgment is not applicable to us.

In the judgment Supreme Court had held that "In the in case, the interest held not eligible for deduction under section 80P(2)(a)(i) was not the interest received from the members for providing credit facilities to them. What was sought to be taxed under section 56 was the interest income arising on the surplus invested in short-term deposits and securities which surplus was not required for business purposes. The head note to section 80P indicates that the said section deals with deductions in respect of income of co-operative societies. Section 80P(1), inter alia, states that where the gross total income of a cooperative society includes any income from one or more specified activities, then such income shall be deducted from the gross total income in computing the total taxable income of the assessee-society. An income, which is attributable to any of the specified activities in section 80P(2) would be eligible for deduction."

As the fact of the case of Supreme Court judgment is not similar to the fact of our case so, the judgment of the Supreme Court in case of Totgar's Co-operative Sale Society Limited is not applicable to us.

As per section 80P(2)(d) of the Act "the whole of interest and dividend income derived by a co-operative society from its investment in any other co-operative society is deductible under section 80P(2)(d).

In above respect we like to bring to your notice that as per section 2(19) of the Act a "Co-operative Society" means a Co-operative Society registered under the Co-operative Societies Act, 1912, or any other law for the time being in force in any State for the registration of the Co-operative Societies. Since the Co-operative banks are also registered under the Co-operative Societies Act hence as per the definition of co operative society as stated above Co-operative banks are also to be treated as Co-operative society.

Further it should be noted that the Co-operative Society can be of different nature, and can be involved in different activities; the Co-operative Society Bank is merely a variety of the Co-operative Societies. Thus, the Co-operative Bank which is a species of the genus Co-operative societies would necessarily be covered by the word 'Co-operative Society and since, clause 80P(2)(d) of the Act permits such 100% deduction in respect of the income by way of interest or dividends derived by the Co- operative Society (Assessee) from its investments with any other Co-operative Society (including Co-operative Bank) and the whole of such interest income is eligible for 100% deduction.

Gujarat high court in the case of Surat Vankar Sahakari Sangh Ltd. v. Assistant Commissioner of Income-tax where High court had held that "In our opinion, the learned Tribunal was right in law in allowing deduction under Section 80P(2)(d) of the Income- tax Act, 1961 in respect of interest of Rs. 4,00,919 on account of interest received from Nawanshaln Central Co-operative Bank without adjusting the interest paid to the bank. Therefore, the reference is answered against the Revenue in the affirmative and in favor of the assessee/

Further High Court Of Gujarat Kaira District Co-op. Milk Producers Union Ltd. v. Deputy Commissioner of Income-tax held that "The petitioner had earned interest income of Rs.2.29 crores which was earned out of investment of amount received on sale of milk, milk products from GCMML. It was pointed out that since the interest was received from the cooperative bank, society and earned out of investment made from its own fund, the assessee was entitled to full deduction under section 80P(2)(d) of the Act. It was further clarified that such interest was earned on short term deposits with the cooperative banks or from Cooperative societies. It was stated that no expenditure in the form of interest was incurred for earning such interest.

According to Allahabad High court in case of CIT Vs. U.P. Co operative sugar factories "Net income from interest received from cooperative societies ;co operative banks computed after deducting expenses debited to income and expenditure account relatable to earning of such income is deductible under section 80P(2)(d).

Even Punjab & Hariyana court had held that Interest derived by the assessee cooperative sugar mill from its investment in co-operative bank would qualify for deduction in its entirety under section 80P(2)(d), without adjustment of interest paid by the assessee to co-operative bank."

Since the co-operative society being engaged in the business of manufacturing had invested its surplus fund in the bank and had earned interest income out of it and the same was shown as the income from other source. Here as co-operative society had earned interest income from other co operative society (including Co-operative bank) same is deductible u/s 80P(2)(d) of the IT Act.

Even in case of "M/s Baroda District Co. op. Milk producer's union ltd." ITO had disallowed the deduction of interest and dividend income from co-operative society u/s 80P(2)(d). While later on the CIT-[A] in appeal proceedings had allowed the same deduction to the assessee and it is worthwhile to note that there is no further appeal made by the AO against the order of CIT-[A], We also have the copy of the Assessment Order and order giving effect to the order of CIT-(A).

Copy of order giving effect to the order of CIT-[A] in the A.Y. 2013-14, 2012-13 & 2011-12 is attached herewith.

In view of the above facts and the distinction of our case from the supreme court judgment as mentioned above and the various judgments of high courts and the applicability of the same in our case it can be very well said that Interest income earned by co-operative society from the other co-operative society is allowed as a deduction u/s 80P(2)(d) of the Act.

Further it is worthwhile to note that to follow the consistency in the allowance of the deduction and as such there is no change is made in the Rule or Act, in A.Y. 2015-16 so, deduction u/s 80P(2)(d) which was also allowed earlier should be allowed in this year also.

As per the above facts and the judgments it is requested to you to that the deduction of interest income from investment with co-operative society be allowed to us u/s 80P(2)(d) of the IT Act.

2. In the matter of interest subvention we had shown the Interest yearly and only after the asset put to use.

Extract of the agreement in this matter is as under-

"GCMMF will pay the 80% interest subsidy cost of members union with maximum limit of Rs. 10 crore for the total loan period and maximum of 7 years."

Copy of agreement as a supporting of this is attached herewith for your kind reference.

3. During the year under consideration total addition of Rs. 52,13,272/- was made and this whole addition is of crates only and no crans were purchased during the year under consideration. Details of the addition were already submitted to you in the point no. 2 of our earlier submission dated 24.11.2017.

Further with regards to the depreciation of the crates we would like to state that crates are made of plastic materials and are used for the purpose of the transportation of the goods produced by dairy from one place to another place. Since the crates are going in various hands it is used very roughly and becomes useless for us in the same year itself. So, it does not have a life of more than a year for us. Due to this it becomes a consumable item for us and so we had depreciated the same at the rate of 100% i.e. in the same year itself.

Further High court of the Gujarat in case of Commissioner of Income-tax v. Saurashtra Bottling (P.) Ltd has held that "assessee was entitled to depreciation at the rate of 100 per cent as cost of each bottle and crate was less than Rs. 750."

Copy of the Gujarat high court judgment is attached herewith.

In view of the above fact and the judgment of the Gujarat high court it is requested to you that as the crates made of plastic material and goes in various hands, becomes useless for us in the same year itself so, depreciation on the same be allowed to us at the rate of 100% i.e. full cost of the crates are depreciated in the same year.

Any further details required will be submitted after hearing from you. Kindly accept our submission and oblige."

Looking to the above facts and submission of the assessee, it is demonstrated that the Assessing Officer has categorically made specific verification on the impugned issue of claim of deduction u/s. 80P of the Act which was the basis for an action under section 263 of the Act. The Assessing Officer has considered the submission and documentary evidences produced by the assessee during the course of assessment proceedings. In the light of the facts and findings as elaborated supra in this order, we consider that order passed under section 263 of the Act is not sustainable in law, therefore, order

passed u/s. 263 is quashed. Accordingly, the appeal of the assessee is allowed.

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

Order pronounced in the open court on 31-08-2021

Sd/-
(MADHUMITA ROY)
JUDICIAL MEMBER

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

Ahmedabad : Dated 31/08/2021

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

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद