

**IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD “B” BENCH, AHMEDABAD**

**BEFORE Ms. SUCHITRA KAMBLE, JUDICIAL MEMBER AND
SHRI MAKARAND VASANT MAHADEOKAR, ACCOUNTANT MEMBER**

**ITA Nos.533 & 666/Ahd/2023
Assessment Years: 2017-18 & 2014-15 respectively**

The Income Tax Officer, Ward – 5(3)(1), Ahmedabad.	Vs.	Ahmedabad District Co-op. Milk Producers Union Limited, Gomtipur, Sukhram Nagar, Ahmedabad City, Ahmedabad – 380 021. [PAN – AAAJA 0783 E]
(Appellant)		(Respondent)
Assessee by	S/Shri Manish J. Shah, Rushin Patel & Jimi Patel, ARs	
Revenue by	Shri Sudhendu Das, CIT-DR & Smt. Malarkodi R, Sr. DR	
Date of Hearing	19.06.2024	
Date of Pronouncement	09.08.2024	

ORDER

PER SUCHITRA KAMBLE, JUDICIAL MEMBER:

These two appeals are filed by the Revenue against two separate orders dated 04.05.2023 & 04.07.2023 passed by the CIT(A), National Faceless Appeal Centre (NFAC), Delhi for the Assessment Years 2017-18 & 2014-15 respectively.

2. The Revenue has raised the following grounds of appeal :-

ITA No.533/Ahd/2023 for A.Y. 2017-18

- “1. CIT(A) has erred in allowing the disallowance under Section 80P(2)(d) of the IT Act of Rs.6,35,19,390/- being interest and dividend received from Ahmedabad District Co-op. Bank and The Gujarat State Co-operative Bank Limited when interest earned from investment made in any bank, not being co-operative society is not deductible under Section 80P(2)(d).
2. The appellant craves leave to amend or alter any ground or add a new ground which may be necessary.

3. *It is, therefore, prayed that the order of Ld. CIT(A) may be set aside and that of the Assessing Officer be restored."*

ITA No.666/Ahd/2023 for A.Y. 2014-15

- “1. *CIT(A) has erred in allowing the disallowance under Section 80P(2)(d) of the IT Act of Rs.1,42,75,240/- being interest and dividend received from Ahmedabad District Co-op. Bank and The Gujarat State Co-operative Bank Limited when interest earned from investment made in any bank, not being co-operative society is not deductible under Section 80P(2)(d).*
2. *The appellant craves leave to amend or alter any ground or add a new ground which may be necessary.*
3. *It is, therefore, prayed that the order of Ld. CIT(A) may be set aside and that of the Assessing Officer be restored."*

3. Firstly, we are taking up Assessment Year (A.Y.) 2014-15 which is filed by the Revenue. The assessee filed return of income on 29.11.2014 declaring total income at Rs.82,40,873/-. The case was reopened on the basis of reasons recorded as the assessee offered income of Rs.82,40,873/- after claiming deduction under Section 80P(2) of the Income Tax Act, 1961 amounting to Rs.1,93,38,659/- which included dividend income of Rs.7,68,870/- and interest income of Rs.1,35,06,370/-. But as per Section 80P(2)(d) of the Act, dividend income and fixed deposit interest are required to be disallowed and, therefore, proceedings under Section 147 of the Act was initiated and notice under Section 148 of the Act was issued to the assessee. In response to the said notice, the assessee did not file return of income. The assessee was issued show cause notice dated 21.12.2019 and the assessee replied the same. After taking cognisance of the same, the Assessing Officer disallowed the claim of the assessee under Section 80P of the Act to the extent of Rs.1,42,75,240/-.

4. Being aggrieved by the Assessment Order, the assessee filed appeal before the CIT(A). The CIT(A) partly allowed the appeal of the assessee.

5. The Ld. DR submitted that those Banks are working under Banking Regulation and, therefore, the exemption claimed by the assessee Co-op. Bank/Society cannot be held as deduction under Section 80P of the Act as those Banks are not Co-op. Societies and not the Member of the assessee society. The Ld. DR relied upon the

decision of Hon'ble Apex Court in the case of Totgar's Co-operative Sale Society vs. ITO (2010) 322 ITR 283 (SC).

6. The Ld. AR, at the time of hearing, submitted that as per Rule 27 of the Income Tax (Appellate Tribunal) Rules, 1963, the Tribunal should first decide that notice under Section 148 of the Act is bad in law because reopening is based on change of opinion. The Ld. AR also filed the application under Rule 27 of the Income Tax (Appellate Tribunal) Rules, 1963. The Ld. AR submitted that the original assessment order was passed under Section 143(3) of the Act vide order dated 07.12.2016 on the same issue which was actually examined and, therefore, the reopening itself is bad in law and in fact the reopening is a change of opinion and reassessment proceedings under Section 147 of the Act itself are bad in law.

7. The Ld. DR submitted that the CIT(A) has categorically decided this issue thereby observing that the assessee is challenging validity of the proceedings under Section 144 read with Section 147 has become infructuous as the assessee's appeal was decided on merit.

8. We have heard both the parties and perused all the relevant material available on record. It is pertinent to note that the reasons for reopening was in fact dealing with deduction claimed by the assessee asunder Section 80P(2)(d) of the Act and the original assessment has also dealt with this issue as the return of income was filed by the assessee on 29.11.2014 which was incorrectly mentioned in the reassessment proceedings that the assessee has not filed the return of income. The notices issued alongwith questionnaire categorically mentioned information called upon the assessee relating to dividend from Co-op Society and interest from Co-op Society for which the assessee has given the detailed reply alongwith its submissions. Thus, the CIT(A) merely by deciding the case on merit cannot ignore legal aspect and state that it is infructuous. The reopening is on very same issue and, therefore, it is second opinion. Thus, application under Rule 27 of the Income Tax (Appellate Tribunal) Rules, 1963 is allowed. Since the assessment itself becomes bad in law, the issues contested by the Revenue in the present appeal does not require any comment. Hence, ITA No.666/Ahd/2023 for A.Y. 2014-15 filed by the Revenue is dismissed.

9. Now coming to the ITA No.533/hd/2023 for A.Y. 2017-18, the assessee filed return of income on 31.10.2017 declaring total income at Rs.1,99,76,710/- after claiming deduction of Rs.7,03,37,668/- under Chapter VI-A. The assessment was completed under Section 143(3) of the Act vide order dated 30.12.2019 after denial of deduction under Section 80P(2)(d) of the Act. The Assessing Officer observed that the assessee on interest and dividend income totalling to Rs.6,35,19,390/- from Co-op. Banks which do not fall under the category of Co-op. Society.

10. Being aggrieved by the said Assessment Order, the assessee filed appeal before the CIT(A). The CIT(A) allowed the appeal of the assessee.

11. The Ld. DR relied upon the Assessment Order.

12. The Ld. AR submitted that in the light of the decision of Hon'ble Gujarat High Court in case of Surat District Co-op. Milk Producers Union vs. ACIT (SCA No.5931 of 2022) wherein the decision of Hon'ble Apex Court in the case of Bhagyodaya Co-op. Bank Limited vs. ACIT (Special Civil Application No.17849 of 2021 - Order dated 22.08.2023) and the decision of Hon'ble High Court of Gujarat in the case of Katlary Kariyana Merchant Sahkari Sarafi Mandali Limited vs. ACIT (2022) 140 taxmann.com 602 (Gujarat) has been considered and categorically mentioned that the interest received from Co-op. Banks are also registered Society under the Co-op. Societies Act governing the State Societies are Members of the Society and, therefore, the deduction under Section 80P(2)(d) of the Act is rightly allowed.

13. We have heard both the parties and perused all the relevant material available on record. After going through the decision of Hon'ble Gujarat High Court in the case of Surat District Co-op. Milk Producers Union vs. ACIT (supra) (Special Civil Application No. 5931 of 2022), the CIT(A) has categorically mentioned that the Ahmedabad District Co-op. Bank Limited and the Gujarat State Co-operative Bank Limited are Co-operative Societies registered under Gujarat Co-operative Societies Act, 1961 and, therefore, the word Co-operative Society mentioned in Section 80P(2)(d) of the Act includes these Co-operative Societies also and, therefore, the interest earned and dividend income from these Co-operative Societies/Banks should be taken into account while granting deduction under Section 80P(2)(d) of the Act.

There is no need to interfere with the finding of the CIT(A). Thus, ITA No.533/Ahd/2023 for A.Y. 2017-189 filed by the Revenue is also dismissed.

14. In the result, both the appeals filed by the Revenue are dismissed.

Order pronounced in the open Court on this 9th August, 2024.

Sd/-
(MAKARAND VASANT MAHADEOKAR)
Accountant Member

Sd/-
(SUCHITRA KAMBLE)
Judicial Member

Ahmedabad, the 9th August, 2024

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Copies to:

- (1) *The appellant*
- (2) *The respondent*
- (3) *CIT*
- (4) *CIT(A)*
- (5) *Departmental Representative*
- (6) *Guard File*

By order

*Assistant Registrar
Income Tax Appellate Tribunal
Ahmedabad benches, Ahmedabad*