

THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD DIVISION BENCH, "A" BENCH, AHMEDABAD

**Before: Shri Ramit Kochar, Accountant Member &
Shri T R Senthil Kumar, Judicial Member**

**ITA No. 115/Ahd/2023
Assessment Year 2018-19**

The Khedbrahma Taluka Primary Teachers Co-operative Credit Society Limited Station Road, Near Dave Hospital, Khedbrahma-383255 Gujarat PAN: AABTT2489D (Appellant)	v.	The Income Tax Officer, Ward-1 Himatnagar Income Tax Office, Near Gandhi Town Hall, SH-76A, Sabarkanta, Himatnagar- 383001, Gujarat (Respondent)
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Assessee by: Shri Rushin Patel, AR
Revenue by: Ms. Bhavnasingh Gupta, Sr. D.R.

Date of hearing : 31-07-2024
Date of pronouncement : 01-08-2024

आदेश/ORDER

This appeal in ITA No. 115/Ahd/2023 for assessment year 2018-19 is filed by the assessee before Income Tax Appellate Tribunal, Ahmedabad Bench, Ahmedabad , which

has arisen from the appellate order dated 21-12-2022 vide DIN & Order No. ITBA/NFAC/S/250/2022-23/1048137719(1) passed by Id. Commissioner of Income-Tax(Appeals), NFAC, Delhi u/s 250 of the Income-tax Act, 1961, which in turn has arisen from the assessment order dated 09-02-2021 passed by learned Assessing Officer u/s. 143(3) , 143(3A) AND 143(3B) of the Income-tax Act, 1961(Order No. ITBA/AST/S/143(3)/2020-21/10304713151).

2. At the outset, it is observed that this appeal is filed belatedly by 9 days beyond the time stipulated u/s 253(3) of the 1961 Act. The assessee has filed Affidavit praying for condonation of delay, wherein it is averred that there is a delay of 9 days in filing this appeal belatedly with Tribunal as the concerned accountant was given the appellate order but he forgot to file the appeal in time , and when it was enquired by the Secretary of the assessee Society , then he recalled that the appeal is not filed and then immediate steps were taken to file this appeal with Tribunal , but by that time of filing there was delay of 9 days in filing this appeal belatedly with Tribunal. Prayers are made that this delay of 9 days be condoned. The Id. Sr. DR did not have serious objection if the delay of 9 days are condoned by Bench . The appellate order of the Ld. CIT(A) is dated 21.12.2022 , and the appeal ought to have been filed by the assessee with Tribunal within 60 days

of service of the order of the Ld. CIT(A) , which as per Form 36 was received by the assessee on 21.12.2022 itself. Thus the appeal ought to have been filed with Tribunal on or before 19th February 2023 , but has been filed on 28.02.2023 belatedly by 9 days beyond the time stipulated u/s 253(3). The reason for delay in filing appeal is inadvertent mistake by the concerned accountant, who forgot to file the appeal with Tribunal in time. Thus, the assessee pleaded that the aforesaid delay of 9 days may be condoned. The Ld. D.R. did not have serious objection to the condonation of delay by Tribunal . We have considered the contention of both the parties, and we are of the considered view that the assessee has shown reasonable and sufficient cause for filing this appeal belatedly with ITAT of 9 days being inadvertent mistake of concerned accountant of the assessee. Under these facts and circumstances, we are of the considered view that the assessee has shown reasonable and sufficient cause in filing this appeal belatedly with ITAT beyond the time stipulated u/s 253(3), and delay needs to be condoned and the appeal be heard on merits. When technicalities are pitted against the substantial justice, the Courts will lean towards advancement of substantial justice rather than technicalities, unless the malafide on the part of the assessee is at writ large. Under the facts and circumstances, we do not find any malafide on the part of the assessee in filing this appeal belatedly, and in the interest of

justice, we condone the delay of 9 days and proceed to adjudicate this appeal on merits in accordance with law. Reference is drawn to the decision of Hon'ble Supreme Court in the case of **Collector of Land Acquisition, Anantnag v. Mst. Katiji (1987 AIR 1353(SC))**.

3. The grounds of appeal raised by the assessee in Memo of Appeal filed with the ITAT, Ahmedabad Bench, Ahmedabad, reads as under:-

- 1) *The Learned Commissioner of Income Tax(Appeals) has erred in law and on facts of the case in sustaining the disallowance of deduction u/s. 80P(2)(d) of the Income Tax Act, 1961.*
- 2) *The appellant craves leave to add, amend , alter or delete the grounds of appeal at the time of hearing, if need arises."*

4. The brief facts of the case are that the case of the assessee was selected by Revenue for framing limited scrutiny through CASS. Reasons for selecting the case of the assessee for framing limited scrutiny assessment are specified by the AO in its assessment order at page no. 1 and 2. One of the reason for selection of case for limited scrutiny assessment , and which is relevant for us in this appeal, was the deduction from Total Income(Chapter VI-A deductions) claimed by the assessee in its return of income filed with the Revenue. The assessee is Co-operative society having filed its return of income on

29.10.2018 declaring Nil Income after claiming deduction u/s 80P to the tune of Rs. 37,16,371/- . The AO issued statutory notices u/s 143(2) and 142(1), during the course of assessment proceedings. The assessee filed its reply, during the course of assessment proceedings. The AO while framing assessment made additions to the tune of Rs. 2,55,000/- by denying the deduction u/s 80P with respect to interest received by the assessee from The Sabarkantha District Central Co-operative Bank, Khedbrahma.

5. Aggrieved, the assessee filed first appeal with ld. CIT(A), which stood dismissed by Ld. CIT(A) by mainly relying on the judgment and order of Hon'ble Supreme Court in the case of *The Totgar Co-operative Sale Society Limited v. ITO(2010) 188 Taxmann 282(SC)*. However, the ld. CIT(A) observed that the assessee is entitled for deduction of pro-rata expenses u/s 57, by relying on the order of ITAT, Ahmedabad in *The Uttar Gujarat Uma Co-operative Credit Society Limited v. ITO in ITA No. 1670 & 1671/Ahd/2018*.

6. Still aggrieved, the assessee has now filed second appeal with the Tribunal , and the learned counsel for the assessee relied upon the appellate order dated 27.10.2023 passed by ITAT, Ahmedabad Bench, Ahmedabad in ITA no. 499/Ahd/2022 in its own case for immediately preceding

assessment year i.e. 2017-18 , read with Corrigendum dated 20.03.2024, in which one of us being Hon'ble Judicial Member is part of the Division Bench who pronounced the said order. The ld. Counsel for the assessee also relied upon the Ahmedabad SMC Bench order in the case of *Kalol Co-operative Credit and Supply Society Limited v. ITO in ITA no. 135/Ahd/2024 and ITA No. 267/Ahd/2024, dated 18.07.2024*, in which one of us being Hon'ble Accountant Member was the Member of SMC who pronounced the said order. It is also submitted that the Ahmedabad Tribunal in several cases have decided this issue in favour of the assessee, relying on the judgment(s) and order(s) of Hon'ble Gujarat High Court in the case of *SBI v. CIT, reported in (2016) 389 ITR 578(Guj) , Surat Vankar Sahkari Sangh Limited v. ACIT, reported in (2016) 72 taxmann.com 169(Guj.) and Katlary Kariyana Merchant Sahkari Sarafi Mandali Limited , reported in (2022) 140 taxmann.com 602(Guj.)* which judgment and order in *Katlary(supra)* stood modified by the order of Hon'ble Gujarat High Court vide order in MA dated 26.04.2024 in *R/Special Civil Application No. 20585 of 2019*. It is submitted that the assessee is a Credit Co-operative society and is eligible for deduction u/s. 80P(2)(d) of the Act, with respect to interest received from deposits with Co-operative Banks.

6.2 The Sr. Ld. D.R. on the other hand relied upon the orders of authorities below , and prayed that the appellate order of ld. CIT(A) be confirmed.

7. We have considered rival contentions and perused the material on record. The solitary issue in this appeal which has arisen for our adjudication is with respect to allowability of deduction of Rs. 2,55,000/- u/s. 80P(2)(d) of the 1961 Act, with respect to interest received by the assessee from the Co-operative Bank i.e. The Sabarkantha District Central Co-operative Bank, Khedbrahma. The issue before us is of deduction of interest on deposits earned by Credit Co-operative society from deposits with Co-operative Banks which is no more res integra , as the Hon'ble Jurisdictional High Court in the case of *Surat Vankar Sahakari Sangh Ltd. v. ACIT* reported in (2016) 72 taxmann.com 169(Guj HC) and *State Bank of India v. CIT* reported in (2016) 72 taxmann.com 64(Guj HC) has decided this issue in favour of the tax-payer by holding that interest income received by Credit Co-operative Society from deposits made with Co-operative Bank registered under the Co-operative Societies Act or under the State Act, shall be allowed as deduction u/s 80P(2)(d), and the ITAT in several cases has already decided this issue in favour of the tax-payer , including in the case of the assessee itself for immediately preceding assessment year i.e. 2017-18 in ITA No.

499/Ahd/2022 , dated 27.10.2023 read with Corrigendum dated 20/03/2024 , in which one of us being Hon'ble Judicial Member was part of the Division Bench who pronounced the said order, as well in the case of *The Sardar Patel Co-operative Credit Society Ltd. v. ACIT* (ITA no. 525 & 526/Ahd/2023 vide order dated 02.04.2024) in which one of us being Hon'ble Accountant Member was part of the Division Bench which decided the issue in favour of the assessee., by holding as under(ITA No. 525 & 526/Ahd/2023) :-

“7. We have considered rival contentions and perused the material on record. We have observed that the assessee is Co-operative Credit Society engaged in providing credit facility to its members. The case of the assessee was selected by Revenue for framing limited scrutiny assessment under CASS.

7.2 The assessee has also claimed deduction u/s 80P(2)(d) of Rs. 1,62,24,334/- towards interest earned from deposits made with Co-operative banks , detailed hereunder:

<i>Sr. No.</i>	<i>Name of Bank</i>	<i>Interest receipt (Rs.l</i>
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1.	<i>Interest income from Mehsana Urban Co-op. Bank Ltd.</i>	<i>1,59,13,246/-</i>
2.	<i>Interest income from Kukarwada Nagrik Bank Ltd</i>	<i>3,02,706/-</i>
3.	<i>Interest income from Mehsana Dist. Bank</i>	<i>159/-</i>
4.	<i>Interest Income from Vijapur Nagarik Sahakari Bank Ltd.</i>	<i>31.168/-</i>

The AO has denied the deduction u/s 80P(2)(d) to the assessee by following the decision of Hon'ble Karnataka High Court in the case of PCIT v. Totgar Co-operative Sale Society(supra), while ld. CIT(A) had allowed the deduction by following the decision of ITAT , Ahmedabad Bench in the assessee's own case for assessment year 2016-17. The tribunal while allowing the claim of the assessee for assessment year 2016-17(immediately preceding assessment year) has followed the decision(s) of Hon'ble Gujarat High Court in the case of State Bank of India v. CIT , reported in (2016) 389 ITR 578(Guj.) and Surat Vankar Sahakari Sangh Limited v. ACIT , reported in (2016) 72 taxmann.com 169(Guj) . The Tribunal in ITA No 1404/Ahd/2019 in assessee's own case for assessment

year 2016-17 allowed the relief to the assessee , by holding as under :

“5.1 The issue for consideration before us is whether the assessee is eligible to claim deduction on interest earned from Co-Operative Banks u/s 80P(2)(d) of the Act. The Hon’ble Gujarat High Court in the case of State Bank of India Vs. CIT (2016) 389 ITR 578 (Guj), held that that the interest income earned by a co-operative society on its investments held with a cooperative bank would be eligible for claim of deduction under Sec.80P(2)(d) of the Act. The Honourable Gujarat High Court made following observations in respect of interest earned from deposits kept with a cooperative bank:

Therefore, it is only the interest derived from the credit provided to its members which is deductible under section 80P(2)(a)(i) of the Act and the interest derived by depositing surplus funds with the State Bank of India not being attributable to the business carried on by the appellant, cannot be deducted under section 80P(2)(a) (i) of the Act. If the appellant wants to avail of the benefit of deduction of such interest income, it is always open for it to deposit the surplus funds with a co-operative bank and avail of deduction under section 80P(2)(d) of the Act.

5.2 In the case of Surat Vankar Sahakari Sangh Ltd. v Assistant Commissioner of Income-tax [2016] 72 taxmann.com 169 (Gujarat), the Gujarat High Court

held assessee-co-operative society was eligible for deduction under section 80P(2)(d) in respect of gross interest received from cooperative bank without adjusting interest paid to said bank.

5.3 In the case of Surendranagar District Co-op. Milk Producers Union Ltd. v Deputy Ld. CIT(A) 111 taxmann.com 69 (Rajkot Bench) the ITAT held that assessee-co-operative society could not claim benefit of section 80P(2)(d) in respect of interest earned by it from deposits made with nationalised/private banks, however, said benefit was available in respect of interest earned on deposits made with co-operative bank.

5.4 In the case of Pr. Commissioner of Income Tax and Anr. Vs. Totagars Cooperative Sale Society (2017) 392 ITR 74 (Karn), the Karnataka High Court has held that the interest income earned by a cooperative society on its investments held with a co-operative bank would be eligible for claim of deduction under Sec.80P(2)(d) of the Act.

5.5 Respectfully, following the decision of Honourable High Court of Gujarat and other cases cited above, in our view, interest earned by the assessee on surplus held with cooperative banks would be eligible for deduction under Sec.80P(2)(d) of the Act.

6. In the result, the appeal of the revenue is dismissed.”

Respectfully following the aforesaid decision of ITAT, Ahmedabad Bench (which has followed the decision of jurisdictional High Court), in assessee's own case , for assessment year 2016-17 which is immediately preceding year, and in order to maintain consistency , we allow the claim of the assessee for deduction u/s 80P(2)(d) with respect to interest income earned from Co-operative Banks . However, none of the authorities below have given a finding that these four entities from whom the interest income is earned by the assessee are Co-operative Banks which are co-operative societies duly registered under the Co-operative Societies Act or under the State Act and to this limited extent we are directing AO to verify the facts before granting relief to the assessee. While allowing the claim of the assessee, we note that principles of res judicate are not applicable to the income tax proceedings, but principles of consistency is to be maintained. Reference is drawn to the decision of Hon'ble Supreme Court in the case of Radhasoami Satsang v. CIT, reported in (1992) 193 ITR 321(SC). The assessee succeeds on this issue in the manner as indicated above. We order accordingly."

The Hon'ble Gujarat High Court in the case of Katlary Kariyana Merchant Sahkari Sarafi Mandali Ltd. v. ACIT , reported in (2022) 140 taxmann.com 602(Guj. HC) vide order dated 04.01.2022 has decided the issue in favour of Revenue , but by order in MA dated 26.04.2024 in R/Special Civil Application No. 20585 of 2019, the aforesaid order dated 04.01.2022 was modified by Hon'ble Gujarat High Court , and this issue stood decided in favour of the tax-payer . Similar view have been taken by the Benches of

ITAT, Ahmedabad in the case of other tax-payers including decision of ITAT, Ahmedabad SMC Bench, in the case of *The Kalol Co-operative Credit and Supply Society Limited* in ITA no. 135/Ahd/2024 and ITA No. 267/Ahd/2024 , vide order dated 18.07.2024 , in which one of us being Hon'ble Accountant Member was the member of SMC Bench who pronounced the said orders . We , thus decide this issue in favour of the assessee that interest income earned from deposits with Co-operative Banks shall be allowed as deduction u/s 80P(2)(d). However, similar directions as were given by Division Bench in the appellate order in the case of *Sardar Patel Co-operative Credit Society Limited (ITA No. 525 & 526/Ahd/2023)* are now given by us to the AO to verify that the entity from whom the interest income of Rs. 2,55,000/- is claimed to have been earned by the assessee namely The Sabarkantha District Central Co-operative Bank, Khedbrahma which is claimed to be a Co-operative societies is duly registered under the Co-operative Societies Act or under the State Act , and to this limited extent, we are directed AO to verify the facts before granting relief to the assessee. The appeal of the assessee is allowed as indicated above. We order accordingly

8. In the result, appeal of the assessee in ITA no. 115/Ahd/2023 for assessment year 2018-19 is allowed as indicated above.

9. Order pronounced in accordance with Rule 34(4) of the Income Tax Appellate Tribunal Rules, 1963 at Ahmedabad on 01.08.2024.

Sd/-
(T R Senthil Kumar)
JUDICIAL MEMBER

Sd/-
(RAMIT KOCHAR)
ACCOUNTANT MEMBER

(True Copy)

Ahmedabad : Dated 01/08/2024

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