

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

**BEFORE Ms. SUCHITRA KAMBLE, JUDICIAL MEMBER AND
SHRI WASEEM AHMED, ACCOUNTANT MEMBER**

**ITA Nos.1529 & 1530/Ahd/2019
Assessment Years: 2014-15 & 2013-14**

Asstt. Commissioner of Income Tax, vs. Visnagar Taluka Majoor Sahakari
Patan Circle, Patan. Mandli Limited,
Darbar Road, Visnagar
[PAN – AAALV 00006 H]
(Appellant) (Respondent)

Assessee by : Shri H.V. Doshi, AR
Revenue by : Shri Atul Pandey, Sr. DR

Date of hearing : 06.09.2022
Date of pronouncement : 07.10.2022

ORDER

PER SUCHITRA KAMBLE, JUDICIAL MEMBER :

These appeals are filed by the Revenue against two different orders, both dated 08.08.2019, passed by the CIT(A), Gandhinagar, Ahmedabad for the Assessment Years 2014-15 & 2013-14.

2. The Assessee has raised the following grounds of appeal:

ITA No.1529/Ahd/2019 for Assessment Year 2014-15:

- “i) Whether, the Ld. Commissioner of Income Tax (Appeals) has erred in law and on facts in deleting the interest earned u/s.80P(2)(d) of the Act to the tune of Rs.2,55,842/-.*
- ii) On the facts and circumstances of the case, the Ld. Commissioner of Income Tax (Appeals) ought to have upheld the order of the Assessing Officer.*
- iii) It is, therefore prayed that the order of the Ld. Commissioner of Income Tax (Appeals) may be set aside and that of the Assessing Officer be restored.”*

ITA No.1530/Ahd/2019 for Assessment Year 2013-14:

- “i) Whether, the Ld. Commissioner of Income Tax (Appeals) has erred in law and on facts in deleting the interest earned u/s.80P(2)(d) of the Act to the tune of Rs. 16,02,299/-.*
- li) On the facts and circumstances of the case, the Ld. Commissioner of Income Tax (Appeals) ought to have upheld the order of the Assessing Officer.*
- iii) It is, therefore prayed that the order of the Ld. Commissioner of Income Tax (Appeals) may be set aside and that of the Assessing Officer be restored.”*

3. The assessee is a Co-operative Society and filed its return of income on 30.09.2014 declaring total income at Rs.1,89,56,840/- for A.Y. 2014-15. The Assessing Officer observed that the deduction under Section 80P(2)(a)(i) of the Income Tax Act, 1961 of Rs.2,55,842/- being interest income received from Co-operative Bank is not eligible. The PCIT vide order under Section 263 of the Act dated 23.03.2018 directed the Assessing Officer to reframe the assessment *denovo* after considering the position of law and as held by the Hon'ble High Court of Karnataka in PCIT vs. Totgars Co-operative Sale Society Limited (188 taxman 282). The assessee submitted that the assessee is a co-operative credit society and its main activity is providing credit facilities to its members by accepting deposits, savings etc. and providing loan and advances to its members only. The Assessing Officer disallowed the claim of Rs.2,55,842 under Section 80P(2)(d) of the Act.

4. Being aggrieved by the assessment order, the assessee filed appeal before the CIT(A). The CIT(A) allowed the appeal of the assessee.

5. The Ld. DR submitted that as per the decision of the Hon'ble Supreme Court in the case of Totgars Co-operative Sales Society Limited vs. ITO (188 taxman 282 – SC) interest income earned from Nationalised Bank is to be taxed under the head “income from other sources” as provided under Section 56 of the Act. Income from other sources is not the business of the assessee, therefore, not eligible for deduction under the provisions of Section 80P of the Act. The Ld. DR further submitted that the CIT(A) erred in deleting the interest earned under Section 80P(2)(d) of the Act and

prayed that the disallowance of deduction was rightly done by the Assessing Officer. Ld. DR relied upon the decision of the Hon'ble Supreme Court in the case of Pandian Chemicals Limited (227 ITR 414).

6. The Ld. AR submitted that the Hon'ble Jurisdictional High Court in the case of State Bank of India (SBI) vs.CIT, 389 ITR 578 clearly held that in case of Society engaged in providing credit facilities to its members, it is only interest derived from credit provided to its members which is deductible under Section 80P(2)(a)(i) of the Act. Thus, the Ld. AR submitted that the CIT(A) rightly allowed the appeal of the assessee.

7. We have heard both the parties and perused all the relevant material available on record. It is pertinent to note that the decision of Hon'ble Apex Court in the case of Totgars Co-operative Sale Society Limited (supra) the issue was related to interest income earned from Nationalised Bank which is taxed under the income from other sources. But in case of co-operative credit societies/cooperative banks which has different setup altogether where deduction under Section 80P(2)(a)(i) of the Act is allowable when the interest is derived from credit provided to its members. The same cannot be equated with Nationalised Bank which has dealt by the Apex Court. In the present case the assessee society had received interest income from co-operative banks only and the assessee is a credit society and funds received from its members only thus the deduction is properly claimed by the assessee. The decision of Hon'ble Gujarat High Court and the ratio laid down by the Hon'ble Jurisdictional High Court is applicable in assessee's case. In fact, the decision of Hon'ble Apex Court has also not debarred for claiming deduction under Section 80P wherein the credit facilities are given to the members and is directly related to the business while deriving interest. Thus, the appeal filed by the Revenue is dismissed.

8. As regards ITA No.1530/Ahd/2019 for A.Y. 2013-14, the issue is similar and hence the appeal filed by the Revenue is dismissed.

9. In the result, both the appeal filed by the Revenue are dismissed.

Order pronounced in the open Court on this 7th day of October, 2022.

Sd/-
(WASEEM AHMED)
Accountant Member

Sd/-
(SUCHITRA KAMBLE)
Judicial Member

Ahmedabad, the 7th day of October, 2022

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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