आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ ।

IN THE INCOME TAX APPELLATE TRIBUNAL,
"C" BENCH, AHMEDABAD

BEFORE SHRI RAJPAL YADAV, JUDICIAL MEMBER
AND
SHRI MANISH BORAD, ACCOUNTANT MEMBER

ITA No.2072/Ahd/2014

निर्धारण वर्ष/ Asstt. Year: 2010-11

ITO, Ward-3(4) Petlad (Baroda)	Vs.	The Alarsa Nagrik Cooperative Bank Society Ltd. Gandhi Chowk, Alarsa Tal-Borsad. PAN : AAATT 3680 P

(Applicant)		(Responent)

Revenue by :	Shri Prasoon Kabra, Sr.DR
Assessee by :	None

सुनवाई की तारीख/**Date of Hearing : 06/04/2017**
घोषणा की तारीख /**Date of Pronouncement: 10/04/2017**

आदेश/O R D E R

PER RAJPAL YADAV, JUDICIAL MEMBER:

Revenue is in appeal before the Tribunal against order of the ld.CIT(A)-I, Baroda dated 16.4.2014 passed for the Asstt.Year 2010-11.

2. In response to the notice of hearing, no one has come present on behalf of the assessee. With the assistance of the ld.DR, we have gone through the record.

3. Solitary grievance of the Revenue is that the ld.CIT(A) has erred in granting exemption under section 80P(2)(a)(i) of the Income Tax Act, 1961 to the assessee.

4. Brief facts of the case are that the assessee has filed its return of electronically on 20.7.2010 declaring total income at NIL. The case of the assessee was selected for scrutiny assessment and notice under section 143(2) was issued and served upon the assessee. On scrutiny of the accounts, it revealed to the AO that the assessee has made fixed deposits in various nationalized banks. It has earned interest income on these FDs., and since it is doing business of banking including providing credit facilities to the members, it is not entitled for deduction under section 80P(2) of the Act. On appeal, the ld.CIT(A) re-appreciated the facts and circumstances and put reliance upon judgment of the Hon'ble Gujarat High Court in the case of CIT Vs. Jafari Momin Vikas Cooperative Credit Society Ltd. and allowed the claim of the assessee.

5. We have gone through the record carefully. A perusal of the impugned order would indicate that neither the AO nor the CIT(A) has made any analytical study. For appreciating this aspect, let us take note of para-5 of the assessment order, which reads as under:

> *"5. After scrutiny of the submission/details filed and facts of the case it is noticed that the captioned society has made F.D. in various nationalized bank. The captioned society has accepted the deposits from its members and has given various types of loans like vehicle loan, home loan, short term loans, cash credit, etc to its members only and earned interest out of these activities. From remaining surplus amount, the society has made F.D in various Banks. From this, it is noticed that this co-op credit society is doing a business of banking including providing credit facilities to its members and claimed deduction u/s. 80P(2)(a)(i).*
>
> *W.E.F 01.04.2007, the definition of income in Section 2(24) has been amended by inserting sub-clause (iia) that the profit or gain of any business of banking (including providing credit facility) carried on by co-op, society with its members.*
>
> *Further, sub-section (4) of section 80-P inserted w.e.f 01.04.2007 read as under:*

'The provision of this section shall not apply in relation to any co-op.bank other than a primary Agricultural Credit Society or a Primary co-op. Agricultural and Rural Development Bank"

6. A perusal of the above paragraph would indicate that the ld.AO was totally confused about whether he was treating the assessee as cooperative bank or cooperative credit society. He has not worked out what is the exact amount of interest earned by the assessee on the FDRs., with the nationalized banks. The ld.AO ought to have taken note of the total interest income shown by the assessee in the accounts i.e. income earned from its members by providing credit facilities as well as the income earned from FDRs., with nationalized banks. His order is totally silent on this issue. On appeal to the ld.CIT(A) this situation has been aggravated more. The ld.CIT(A) though devoted 11 pages to arrive at a conclusion that the assessee is entitled for deduction under section 80P, but nowhere made analytical examination of the facts of the present case. He simply reproduced the assessment order and the judgment of Jafari Momin Vikas Cooperative Credit Society Ltd. He has devoted more energy towards taking cognizance of the facts from the said Jafari Momin Vikas Cooperative Credit Society Ltd. In other words, there is no head-and-tail in the order and no reasons are discernible for arriving at a conclusion that the assessee is entitled for exemption under section 80P(2) of the Act. The ld.DR has brought to our notice judgment of the Hon'ble Gujarat Court in the case of State Bank of India Vs. CIT rendered in Tax Appeal No486 and 487 of 2015 and submitted that the issue required to be re-adjudicated at the level of AO afresh in the light of this decision.

7. We have duly considered rival contentions and gone through the record carefully. We find that a controversy whether cooperative credit society could claim deduction under section 80P(2) of interest income earned by it with investment in nationalized banks has come before the Hon'ble Gujarat

High Court in the case of State Bank of India Vs. CIT (supra). The Hon'ble High Court vide its decision dated 25.4.2016 considered two questions of law. For the purpose of controversy in hand, the question no.2 is the relevant question. It reads as under:

> *"Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was justified in holding that interest income of Rs.16,14,579/- on deposits placed with State Bank of India was not exempt under section 80P(2)(a)(i) of the Income Tax Act, 1961?*

8. Brief facts in this case are that the assessee society was registered under Gujarat Cooperative Societies Act, 1961. It was constituted with object of accepting deposits from salaried persons of the State Bank of India, Gujarat region with a view to encourage thrift and providing credit facility to them. The assessee society has launched various deposits schemes such as term deposits, recurring deposits, aid to family scheme, members' retiring benefit fund etc. It has provided loans to members, such as consumer goods loan, car vehicle loan, food-grain loan and general purposes loan. The assessee society had made deposits with nationalized banks which has resulted interest income of Rs.16,14,579/-. It claimed deduction of this amount under section 80P(2) of the Act.

9. In the background of the above facts, the Hon'ble Court has observed that deduction under section 80P(2) is not available. Finding recorded in para-13 and 14 of the judgment is worth to note. It reads as under:

> *"13. In the opinion of this court, in case of a society engaged in providing credit facilities to its members, income from investments made in banks does not fall in any of the categories mentioned under section 80P(2)(a) of the Act. In the case of Totgars Co-operative Sale Society (supra), as rightly submitted by the learned counsel for the respondent, the court was dealing with two kinds of activities: interest income earned from the amount retained from the amount payable to the members from whom produce was bought*

and which was invested in short-term deposits/securities; and the interest derived from the surplus funds that the assessee therein invested in short-term deposits with the Government securities. This is further clear when one peruses the decision of the Karnataka High Court from which the matter travelled to the Supreme Court wherein it was the case of the assessee that it was carrying on the business of providing credit facilities to its members and therefore, the appellant-society being an assessee engaged in providing credit facilities to its members, the interest received on deposits in business and securities is attributable to the business of the assessee as its job is to provide credit facilities to its members and marketing the agricultural products of its members. This court is, therefore, of the view that the above decision is not restricted only to the investments made by the assessee therein from the retained amount which was payable to its members but also in respect of funds not immediately required for business purposes. The Supreme Court has held that interest on such investments, cannot fall within the meaning of the expression "profits and gains of business" and that such interest income cannot be said to be attributable to the activities of the society, namely, carrying on the business of providing credit facilities to its members or marketing of agricultural produce of its members. The court has held that when the assessee society provides credit facilities to its members, it earns interest income. The interest which accrues on funds not immediately required by the assessee for its business purposes and which has been invested in specified securities as "investment" are ineligible for deduction under section 80P(2)(a)(i) of the Act. For the above reasons, this court respectfully does not agree with the view taken by the Karnataka High Court in Tumkur Merchants Souharda Credit Cooperative Ltd. v. Income Tax Officer Ward-V, Tumkur (supra) that the decision of the Supreme Court in Totgars Co-operative Sale Society (supra) is restricted to the sale consideration received from marketing agricultural produce of its members which was retained in many cases and invested in short term deposit/security and that the said decision was confined to the facts of the said case and did not lay down any law.

14. Thus, in the light of the principles enunciated by the Supreme Court in Totgars Co-operative Sale Society (supra), in case of a society engaged in providing credit facilities to its members, income from investments made in banks does not fall within any of the categories mentioned in section 80P(2)(a) of the Act. However, section 80P(2)(d) of the Act specifically exempts interest earned from funds invested in co-operative societies. Therefore, to the extent of the interest earned from investments made by it with any co-operative society, a co-operative society is entitled to deduction of the whole of such income under section 80P(2)(d) of the Act. However, interest earned from investments made in any bank, not being a co-operative society, is not deductible under section 80P(2)(d) of the Act."

10. A perusal of this judgment would suggest that deduction under section 80P(2)1) is not available on the interest income earned on surplus money deposited with Nationalised Banks. But if assessee has incurred any expenditure, which is attributable to the earning of interest income, then, the AO shall examine that aspect and exclude the interest expenditure if any incurred by the assessee for earning this interest from bank. In other words, the only net interest income is to be excluded from the claim of deduction under section 80P(2) of the Act. Respectfully following the judgment of Hon'ble Gujarat Court we set aside by the orders of the Revenue authorities and restore this issue to the file of the AO for re-adjudication. The ld.AO shall work out net interest income earned by the assessee from the FDRs. with nationalized banks. He thereafter disallow that amount only from the exemption admissible to the assessee under section 80P(2).

11. We make it further clear that the assessee is a credit cooperative society. It is entitled for deduction under section 80P(2)(1) on the interest income earned by it from its members. The interest income earned on the investment of surplus fund with nationalized bank is only to be excluded from the claim of 80P(2)(a)(i) of the Act. The ld.AO shall carry out this exercise after providing due opportunity of hearing to the assessee.

12. In the result appeal of the assessee is allowed for statistical purpose.

Order pronounced in the Court on 10th April, 2017 at Ahmedabad.

Sd/-	**Sd/-**
(MANISH BORAD)	**(RAJPAL YADAV)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Ahmedabad; Dated 10/04/2017