

आयकर अपीलिय अधिकरण, अहमदाबाद न्यायपीठ 'A' अहमदाबाद
IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, AHMEDABAD

BEFORE SMT.ANNAPURNA GUPTA, ACCOUNTANT MEMBER
AND
SMT. MADHUMITA ROY, JUDICIAL MEMBER, JUDICIAL MEMBER

ITA No.462/Ahd/2018
Assessment Year : 2014-15

Gujarat State Co-op Agriculture and Rural Development Bank Ltd. C/o. Ketan H. Shah, (Advocate) 903, Sapphire Complex C.G. Road, Navrangpura Ahmedabad. PAN : AAAAG 0281 E	Vs.	ITO, Ward-5(2)(2) Nehru Bridge Ahmedabad.
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अपीलार्थी/ (Appellant)		प्रत्यर्थी/(Respondent)
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Assesseeby :	None
Revenue by :	Shri Vijay Kumar Jaiswal, CIT-DR

सुनवाई की तारीख/**Date of Hearing** : **06/06/2023**
घोषणा की तारीख /**Date of Pronouncement**: **22/06/2023**

आदेश/O R D E R

PER ANNAPURNA GUPTA, ACCOUNTANT MEMBER

Present appeal has been filed by the assessee against order passed by the Id.Commissioner of Income-Tax(A)-5, Ahmedabad [hereinafter referred to as "Id.CIT(A)"] dated 17.2.2018 under section 250(6) of the Income Tax Act, 1961 ("the Act" for short) pertaining to Asst.Year 2014-15.

2. This is a recalled matter. Earlier, the appeal of the assessee was dismissed *ex parte* by the ITAT vide a detailed order dated 24.6.2022, dealing with the issues raised on merits in the light of various judgments of Hon'ble Apex Court and the jurisdictional High

Court. After passing of this *ex parte* order, the assessee moved a Misc. Application bearing No.91/Ahd/2022 seeking recall of the impugned order pleading that the counsel of the assessee could not appear on the date of hearing since he had mistakenly noted incorrect date and on account of this genuine mistake the assessee could not be found faulted. After considering the pleadings of the assessee, though the Tribunal found that the order had been passed after a detailed discussion on merits and also based on the facts on record, but in the interest of justice, the impugned order dated 24.6.2022 was recalled to provide opportunity of hearing to the assessee and matter was fixed for hearing on 15.5.2023.

3. Accordingly, the appeal has come up before us in second round. However, none came present on behalf of the assessee on the date fixed i.e 15-05-2023 and the matter was adjourned to 6.6.2023. Notice was issued to the assessee at the address stated in Form No.36, being that of the counsel for the assessee, Sh Ketan H. Shah, who we have noted had appeared for the assessee in the application filed seeking recall of the earlier order of the ITAT. However, the said notice was returned by postal authority with the endorsement "unclaimed". The same is placed on record. And again the assessee remained unrepresented on the appointed date of hearing.

It is not that the appeal is being heard for the first time. As noted by us above, the appeal is being heard afresh on the acceptance of the assessee's application seeking recall of the earlier order passed by the ITAT. The assessee remained unrepresented in the first round also, when an *ex parte* order was passed. And now again in the second round before us there is no representation before us. Even the notice sent for hearing at the address

mentioned in the Form for filing appeal before us is not being claimed, being returned with the noting “unclaimed”. Also, we have noted from the order sheet entries of hearings before us in the first round, that the assessee’s behaviour of non participation in its own appeal has been a consistent feature. The assessee has consistently sought adjournment on most of the 25 occasions when the appeal was fixed for hearing between 23-10-19 to 06-06-23, when finally the appeal was adjudicated *ex parte*. And after recalling the order, the assessee has continued with its earlier behaviour. It seems the assessee harbours a wrong notion that its duty ends with the filing of appeal and it is for the courts then to catch the appellants and hear them out for imparting justice.

It is the assessee who has come up before us seeking justice and its continuous non participation in both the rounds is indicative of the total disregard and disrespect it has for the judicial system. The assessee has never taken its appeal seriously, not bothering to appear and argue its case after filing appeal in the first round, then admitting to being lax in noting the date of hearing while seeking recall of the order passed by the ITAT and now again not appearing in the second round before us. Despite a detailed speaking order being passed in the first round, the ITAT still reposed trust in the assessee and afforded another opportunity to the assessee to argue its case accepting its plea for recall of the appeal in the MA filed by the assessee. But the assessee has belied the trust reposed on it. This attitude of the assessee is totally unacceptable and is deprecated in the strongest terms.

5. Be that so, we proceed to now adjudicate the appeal again *ex parte*.

6. The grounds raised by the assessee are as under:

“1. Learned Assessing Officer has erred in not allowing the claim u/s 80P(2)(d) amounting to Rs.11,28,91,418/- in view of the facts and circumstances of the case, as well as based on the argument placed before CIT(A), as per para 3.2 and onwards, there is no justification for not allowing the claim and therefore, the claim may please be allowed.

2. The Learned Assessing Officer has erred in not appreciating the facts that, the appellant is entitled to claim exemption in reference to the amount of Rs. 32,61,007 as per the argument placed before CIT(A), order page 7 and therefore necessary direction may please be given to delete this addition.”

7. As is evident from the above, the grievance of the assessee is relating to denial of deduction claimed u/s 80P of the Act. The facts noted in the orders of the authorities below reveal that the assessee is a cooperative society engaged in providing credit facilities to its members for agriculture and allied activities and rural development. That it had claimed deduction of income under section 80P(2) of the Act which was denied on the following incomes since the incomes were found to be not relating to its activity of providing credit facilities to member agriculturists:

- i) Interest income earned from Nationalised banks Rs.11,28,91,418/-;
- ii) Rental income of Rs.4,50,520/-; and Other Misc. income of Rs.32,61,007/-

8. The disallowances were upheld by the ld.CIT(A) after considering in detail the facts of the case and applying the provisions of law to the same. His finding in this regard confirming the disallowance of deduction under section 80P(2)(d) of the Act on interest income earned from nationalised bank amounting to Rs.11,28,91,418/- at para 3.3.2 to 3.3.3 of the order is as under:

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3.3.2. Facts of the case and the submissions are considered. There is no dispute above the fact that the appellant has earned interest income of Rs.11,28,91,418/- from nationalized banks. The AO has applied provisions of Section 80P(2)(d) of the Act and disallowed the claim of deduction of the appellant. The provisions of Section 80P(2)(d) of the Act are reproduced as under:-

"80P(2)(d): Where, in the case of an assessee being a co-operative society, the gross total income includes any income referred to in sub-section (2), there shall be deducted, in accordance with and subject to the provisions of this section, the sums specified in sub-section (2) in computation the total income of the assessee....."

(2)The sums referred to in sub-section (1) shall be the following, namely.... :

(d) in respect of any income by way of interest or dividends derived by the co-operative society from its investments with any other co-operative society, the whole of such income.

The appellant has mainly contended that it is not a co-operative bank as defined under the Act therefore provisions of Section 80P(4) of the Act are applicable to it and the entire income earned by the appellant is exempt. The provisions of Section 80P of the Act are reproduced as under:-

"80P. (1) Where, in the case of an assessee being a co-operative society, the gross total income includes any income referred to in sub-section (2), there shall be deducted, in accordance with and subject to the provisions of this section, the sums specified in sub-section (2), in computing the total income of the assessee.

(2) The sums referred to in sub-section (1) shall be the following, namely :

(a) in the case of co-operative society engaged in –

(i) carrying on the business of banking of providing credit facilities to its members, or

(ii) a cottage industry, or

[(iii) the marketing of agricultural produce grown by its members, or]

(iv) the purchase of agricultural implements seeds, livestock or other articles intended for agriculture for the purpose of supplying them to its members, or

(v) the processing, without the aid of power, of the agricultural produce of its members, [or]

[(vi) the collective disposal of the labour of its members, or



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(vii) fishing or allied activities, that is to say, the catching, curing processing, preserving, storing or marketing of fish or the purchase of materials and equipment in connection therewith for the purpose of supplying them to its members,]

The whole of the amount of profits and gains of business attributable to any one or more of such activities :

[Provided that in the case of a co-operative society falling under sub-clause (vi), or sub-clause (vii), the rules and bye-laws of the society restrict the voting rights to the following classes of its members, namely:-

(1) The individuals who contribute their labour or, as the case may be, carry on the fishing or allied activities;

(2) The co-operative credit societies which provide financial assistance to the society;

(3) The State Government;]

[(b) in the case of a co-operative society, being a primary society engaged in supplying milk, oilseeds, fruits, or raised or grown by its members to –

(i) a federal co-operative society, being a society engaged in the business of supplying milk, oilseeds, fruits, or vegetables, as the case may be; or

(ii) the Government or a local authority; or

(iii) a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956), or a corporation established by or corporation engaged in supplying milk, oilseeds, fruits or vegetables, as the case may be, to the public),

The whole of the amount of profits and gains of such business;]

(C) in the case of a co-operative society engaged in activities other than those specified in clause (a) or clause (b) (either independently of, or in addition to, all or any of the activities so specified), so much of its profits and gains attributable to such activities as [does not exceeds, -

(i) where such co-operative society is a consumers' co-operative society, [one hundred] thousand rupees.

(ii) in any other case, [fifty] thousand rupees.

Explanation.- In this clause, "consumers' co-operative society" means a society for the benefit of the consumers;]

(d) in respect of any income by way of interest of dividends derived by the co-operative society from its investments with any other co-operative society, the whole of such income;

(e) in respect of any income derived by the co-operative society from the letting of godowns or warehouses for storage, processing or facilitating the marketing of commodities, the whole of such income;

(f) in the case of a co-operative society, not being a housing society or an urban consumers' society or a society carrying on transport business or a society engaged in the performance of any manufacturing operations with the aid of power, where the gross total income does not exceed twenty thousand rupees, the amount of any



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income by way of interest on securities [***] or any income from house property chargeable under section 22.

Explanation.- For the purposes of this section, an "urban consumer' co-operative society" means a society for the benefit of the consumers within the limits of a municipal corporation, municipality, municipal committee, notified area committee, town area or cantonment.

(3) In a case where the assessee is entitled also to the deduction under [***] [section 80HH] [or section 80HHA] [or section 80HHB] [or section 80HHC] [or section 80HHD] [or section 80-I] [or section 80-IA], or section 80J [***] [***], the deduction under sub-section (1) of this section, in relation to the sums specified in clause (a) or clause (b) or clause (c) of sub-section (2), shall be allowed with reference to the income, if any, as referred in those clauses included in the gross total income as reduced by the deductions under [***] [section 80HH] [or section 80HHA] [or section 80HHB] [or section 80HHC] [or section 80HHD] [or section 80-I] [or section 80-IA] [section 80J] and section 80JJ].

[(4) The provisions of this section shall not apply in relation to any co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank.

Explanation. - For the purposes of this sub - section, -

(a) "co-operative bank" and "primary agricultural credit society" shall have the meanings respectively assigned to them in Part V of the Banking Regulation Act, 1949 (10 of 1949);

(b) "primary co-operative agricultural and rural development bank" means a society having its area of operation confined to a taluk and the principal object of which is to provide for long-term credit for agricultural and rural development activities.]"

Section 80P provides that in a case of a Co-operative Society there shall be a deduction as provided in sub-section (2) of Section 80P of the Act. From the plain reading of section 80P(2)(a)(i) it is apparent that if the Co-Operative Society is engaged in carrying of business of banking or providing credit facilities to its members, the Co-Operative society is entitled for deduction on whole of the income relating to anyone or more of such business. As per provisions of Section 80P(2)(d) of the Act any income by way of interest or dividends derived by the Co-operative Society from its investments with any other co-operative society shall be allowable as deduction. From the reading of section 80P(4) it is apparent that this section denies deduction to a Co-Operative bank other than a primary agricultural credit society or primary Co-Operative agricultural and rural



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development bank. The provisions of Section 80P(4) was introduced in the statute by the Finance Act, 2006 w.e.f. 1.4.2007. The explanation to the section defines the Co-operative bank and primary agricultural credit society to have the same meaning as assigned to them in part-5 of the Banking Regulation Act, 1949. The appellant is not a primary agricultural credit society or a primary Co-Operative agricultural & Rural Development bank. If we read both the Sections 80P(2)(a)(i) and Section 80P(4) together it is find that provisions of Section 80P(4) mandates that the provisions of Section 80P will not apply to any Co-Operative Bank other than a primary agricultural credit society or primary Co-Operative Agricultural and Rural Development bank but as per the provisions of Section 80P(2)(a)(i), a co-operative society engaged in carrying on the business of banking or providing credit facilities to its members is entitled for deduction. After the insertion of Section 80P(4), the provisions of Section 80P(2)(a)(i) were not amended, rather the cooperative society engaged in carrying on business of banking facilities to its members continued to be entitled for deduction u/s.80P(2)(a)(i) of the Act. Where a co-operative society is engaged in carrying on business of banking facilities to its members and to the public or providing credit facilities to its members or to the public, the income which relates to the business of banking facilities to its members or providing credit facilities to its members will only eligible for deduction u/s.80P(2)(a)(i) of the Act.

- 3.3.3. From the definition of Co-operative bank, it is apparent that Co-operative bank means State Co-Operative Bank, a Central Co-Operative Bank and a primary Co-operative bank. The appellant is a co-operative society and the provisions of Section 80P of the Act are applicable to it. The contention of the appellant that it is not a Co-operative bank as defined under the Act is not tenable as the appellant has failed to establish the same. Nothing was furnished in support of this claim. From the above discussion, it is clear that the provisions of Section 80P(4) are not applicable to the appellant. In such a situation, as per the provisions of Section 80P(2)(d) of the Act, the



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appellant is eligible for deduction of any income by way of interest or dividends derived by it from its investments with any other Co-operative societies only. In the instant case, the assessee has earned interest income from nationalized banks not from other co-operative societies. Further deposits with banks are not the core activity of the society, therefore, interest received on it has to be taxed. Therefore, the interest income earned by the appellant is a taxable income and no deduction can be allowed.

The findings of the Ld.CIT(A) confirming the disallowance of deduction u/s 80P on other income to the tune of Rs.32,61,007/-, at para 3.4 to 3.4.2 of the order is as under:

“3.4. The AO has disallowed an amount of Rs.32,61,007/- on the ground that these income cannot be considered as incidental as it is engaged regularly in these activities and earns this income on regular basis. The disallowance of deduction made by the AO is comprises of rent income and miscellaneous income.

3.4.1. During the course of appellate proceedings, the appellant has contended that the other income and miscellaneous income is nothing but charges collected from members other than interest relating to carrying on financial related activities with them. It is contended that rent income is pertaining to our premises at different places given on rent to ATM or other bank for ease of operation to members and even for us also. This income is only incidental and part of our business of financing and in view of above deduction u/s.80P may be fully allowed.

3.4.2. Facts of the case and the submissions are considered. The appellant's main activity is providing credit facility to members for agriculture and allied activities and rural development. The appellant has earned rental income by providing different places on rent to ATM and other banks providing place on rent and this cannot be incidental to the activity of the appellant's society as the activities of the appellant society is providing credit facilities to members. The appellant has also earning other income which was credited to miscellaneous income which is mainly on account of bank charges etc. recovered from members. The appellant has failed to establish that how this income is incidental to the activities of the appellant. Therefore, the AO has rightly disallowed the same and added to the total income of the assessee.

9. We have gone through the order of the Id.CIT(A) and we have noted that the Id.CIT(A) has upheld the disallowance of deduction claimed by the assessee under section 80P(2)(d) of the Act to the tune of Rs.11,28,91,418/- noting that it pertained to interest income earned from Nationalised banks and as per the provisions of section 80P(2)(d), the assessee was eligible for deduction of any income by way of interest or dividend derived from its investment from any other cooperative societies only. The Id.CIT(A) noted that the impugned interest income had been earned from Nationalised banks and not from other cooperative societies, and therefore, held that the assessee was not eligible for deduction under section 80P(2)(d) of the

Act. He further noted that the deposits with the bank were not core activity of the society, and even otherwise also, as per the provisions of section 80P(2)(a)(i) of the Act, the assessee was not entitled to claim any deduction of the same.

The findings of the Ld.CIT(A) have remained uncontroverted before us both on the facts and law. Even otherwise, we find that the issue of claim of deduction u/s 80P(2)(a)(i) of the Act on interest income earned from banks is squarely covered against the assessee by the following decisions of the Hon'ble Apex Court and the jurisdictional High Court :

- i) Totgars Cooperative Sales Society Ltd. Vs. ITO, (2010) 188 Taxman 282 (SC);
- ii) State Bank of India (SBI) Vs. CIT (2016) 72 taxmann.com 64 (Guj)

10. In view of the above we see no reason to interfere in the order of the ld.CIT(A). Accordingly, the denial of claim of deduction of interest income earned from nationalized banks under section 80P amounting to Rs.11,28,91,418/- is confirmed by us.

11. Similarly, we have gone through order of the ld.CIT(A) dealing with the issue of claim of deduction under section 80P of the Act on other income amounting to Rs.32,61,007/-. As noted by us above, the said income pertains to rental income amounting to Rs.4,50,517/- which the assessee had contended before the ld.CIT(A) as relating to the premises of the assessee at different places given on rent to ATMs or other banks for ease of operation to members and even for the assessee-cooperative society. The remaining income was categorized as misc. income and also contended to be relating to the charges collected from the members,

other than interest, for carrying on financial related activities with them.

12. We have noted that the Id.CIT(A) found that the main activity of the assessee is providing credit facilities to members for agriculture and allied activities for rural area. He therefore held that rental income and Misc. earned by the assessee could not be said to be incidental to the main activities of the assessee-society. Noting so, he confirmed the disallowance of claim of deduction under section 80P of the Act by the AO.

In the absence of any rebuttal to the finding of the Id.CIT(A), either on facts or on law, we see no reason to interfere in the order of the Id.CIT(A). The disallowance of claim of deduction on Misc. income under section 80P of the Act amounting to Rs.32,61,007/- is also confirmed.

All the grounds raised by the assessee are dismissed.

13. In the result, the appeal of the assessee is dismissed.

Order pronounced in the Court on 22nd June, 2023 at Ahmedabad.

Sd/-
(MADHUMITA ROY)
JUDICIAL MEMBER

Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER

Ahmedabad, dated 22/06/2023

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