

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ "डी", अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
" D " BENCH, AHMEDABAD

श्री टी.आर. सेन्थिल कुमार, न्यायिक सदस्य एवं
श्री मकरंद वसंत महादेवकर, लेखा सदस्य के समक्ष।

BEFORE SHRI T.R. SENTHIL KUMAR, JUDICIAL MEMBER
AND
SHRI MAKARAND V. MAHADEOKAR, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.513/Ahd/2023
निर्धारण वर्ष / Assessment Year : 2020-21

Gandhinagar District Co- op.Milk Producers Union Ltd. K. Road, GIDC Electronics Estate Sector-25, Gandhinagar Gujarat - 382 024	<u>बनाम/</u> <u>v/s.</u>	The Asst.CIT Circle, Gandhinagar
स्थायी लेखा सं./PAN: AAAJG 1061 B		
(अपीलार्थी/ Appellant)		(प्रत्यर्थी/ Respondent)
Assessee by :	Shri Tushar Hemani, Sr.Advocate & Shri Parimalsinh B. Parmar, AR	
Revenue by :	Shri Rignesh Das, Sr.DR	

सुनवाई की तारीख/Date of Hearing : 25/09/2024
घोषणा की तारीख /Date of Pronouncement: 03/10/2024

आदेश/ORDER

PER MAKARAND V. MAHADEOKAR, AM:

This appeal by the assessee arises from the order passed by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi (hereinafter referred to as "CIT(A)"), dated 24-04-2023, confirming the assessment order under Section 143(3) read with Section 144B of the Income Tax Act, 1961(hereinafter referred to as "the Act"), passed by the Assessing Officer (hereinafter referred to as "AO") on 26/09/2022.

Facts of the case:

2. The assessee is a co-operative society, registered under Gujarat Co-operative Societies Act, 1961, engaged in the collection of raw milk from primary milk cooperative societies. The assessee filed its return of income for AY 2020-21 declaring a total income of Rs.3,12,33,210/- after claiming deductions under Section 80P of the Act amounting to Rs.1,44,48,096/-. The case was selected for scrutiny under CASS, and the AO disallowed deductions claimed under Section 80P(2)(d) and treated government grants of Rs.50,00,000/- received during the year as revenue receipts. The disallowed amount u/s 80P(2)(d) of the Act comprised:

- Interest from Ahmedabad District Co-Op Bank: Rs.1,04,14,746/-.
- Dividend received from Gujarat Co-Op Milk Marketing Federation Ltd. (GCMMF Ltd.): Rs. 40,25,100/-.
- Dividend from Ahmedabad District Co-Op Bank: Rs. 8,250/-.

2.1. The AO concluded that the phrase “Co-operative Society” in Section 80P(2)(d) of the Act does not include cooperative banks. Since the income in question was earned from cooperative banks and not directly from cooperative societies, the AO disallowed the deduction. The AO emphasized that cooperative banks are distinct entities engaged in banking business governed by the Banking Regulation Act, 1949, and are explicitly excluded from Section 80P benefits by virtue of Section 80P(4) of the Act. The AO relied on the decision of the Karnataka High Court in *Principal Commissioner of Income-tax, Hubballi vs. Totagars Co-operative Sale Society* [2017] 83 *taxmann.com* 140 (Karnataka), which held that cooperative banks are not

equivalent to co-operative societies for the purpose of claiming deductions under Section 80P(2)(d) of the Act.

2.2. The AO observed that the grant of Rs.50,00,000/- was deposited in a joint account in the name of the project but had not been utilized during the year. The AO held that the grant was intended to make the assessee's business more profitable and should be treated as a revenue receipt, assessable as income under the mercantile method of accounting. The AO reasoned that despite being kept in a joint account, the grant accrues as income to the assessee since the funds were meant for the project's implementation, and there was no substantial evidence to treat the grant as a capital receipt.

3. The assessee preferred an appeal before the CIT(A) against the order of the AO. The CIT(A) confirmed the AO's disallowance of the deduction claimed under Section 80P(2)(d) of the Act, amounting to Rs.1,44,48,096/-. The CIT(A) also upheld the AO's addition of Rs.50,00,000/- as revenue income.

4. Aggrieved by the order of CIT(A), the assessee is in appeal before us with following grounds of appeal:

1. *Ld. CIT(A) has erred in law and on facts in confirming action of the Ld. AO in disallowing deduction u/s. 80P(2)(d) of the Act amounting to Rs. 1,04,22,996/- in respect of interest and dividend earned from the Ahmedabad Dist. Co. Op. Bank Limited.*
2. *The Ld. CIT(A) has erred in law and on facts in confirming action of the Ld. AO in disallowing deduction u/s. 80P(2)(d) of the Act amounting to Rs. 40,25,100/- in respect of dividend earned from the Gujarat Co. Op.*

Milk Marketing Federation Ltd (GCMMF Ltd.). Both the lower authorities erroneously considered the GCMMF Ltd. as a cooperative bank while disallowing deduction u/s. 80P(2)(d) of the Act.

3. *Both the lower authorities have erred in law and on facts in not allowing the appellant with deduction of Rs. 50,000/- u/s. 80P(2)(c) of the Act.*
4. *The Ld. CIT(A) has erred in law and on facts in confirming action of the Ld. AO in treating the government grant of Rs. 50,00,000/- received by the appellant as a revenue receipt.*
5. *The Ld. CIT(A) has erred in law and on facts in confirming action of the Ld. AO in confirming the denial of deduction u/s 80P of the Act in the sum of Rs. 1,44,48,096/-. In the facts and circumstances of the case, intimation u/s 143(1)(a) wherein such claim was denied has merged into assessment order framed u/s 143(3) of the Act, Id. CIT(A) ought to have adjudicated upon the same.*
6. *Both the lower authorities have passed the orders without properly appreciating the facts and they further erred in grossly ignoring various submissions, explanations and information submitted by the appellant from time to time which ought to have been considered before passing the impugned order. The action of the lower authorities is in clear breach of law and Principles of Natural Justice and therefore deserves to be quashed.*
7. *The Ld. CIT(A) has erred in law and on facts of the case in confirming action of the Ld. AO in levying interest u/s. 234A/B/C/D of the Act.*
8. *The Ld. CIT(A) has erred in law and on facts of the case in confirming action of Ld. AO in levying penalty u/s. 270A of the Act.*
9. *The Appellant craves leave to add, amend, alter, edit, delete, modify or change all or any of the grounds of appeal at the time of or before the hearing of the appeal.*

5. During the course of hearing before us, the Authorised Representative (AR) of the assessee argued that under Section 80P(2)(d) of the Act, income earned by a cooperative society from its investments with other co-operative

societies, including cooperative banks, qualifies for deduction. He further argued that both the AO and the CIT(A) erroneously disallowed the deduction by treating cooperative banks as distinct from cooperative societies.

5.1. The AR relied on several judicial pronouncements that support the eligibility of income from cooperative banks for deduction under Section 80P(2)(d), as listed below:

- a. The Khedbrahma Taluka Primary Teachers Co. Op. Society Ltd., ITA 115/Ahd/2023.
- b. The Kalol Co. Op. Credit and Supply Society Ltd. vs. ITO, ITA 135/Ahd/2024.
- c. Katlary Kariyana Merchant Sahkari Sarafi Mandali Ltd. vs. ACIT, SCA 20585 of 2019 (Gujarat).
- d. CIT vs. Sabarkantha District Co. Op. Milk Producers Union Ltd., Tax Appeal No.473 of 2014 (Gujarat).
- e. The Gujarat Rajya Handloom Handicrafts & Audhyogic Sahkari Federation Ltd., ITA 321/Ahd/2023.

5.2. The AR also stated that the assessee claimed a standard deduction of Rs.50,000/- under Section 80P(2)(c)(ii) of the Act before CIT(A), which allows a deduction for cooperative societies engaged in activities other than those specified under Section 80P(2)(a) or (b) but the CIT(A) failed to specifically address this deduction and disallowed it without providing a detailed analysis or any specific reasoning. The AR argued that the statutory provision explicitly allows this deduction, and the denial by the lower authorities is

arbitrary and not supported by any factual or legal analysis. The assessee's activities qualify for this deduction, and it should be allowed as per law.

5.3. The AR further stated that the assessee received a government grant of Rs.50,00,000/- under an MOU dated 13.12.2018 with the Department of Horticulture, Gujarat State, for implementing specific projects under Rashtriya Krishi Vikas Yojna (RKVY). This grant was placed in a joint account with the government and was not utilized during the year. The terms of the MOU explicitly stated that unutilized funds **must be returned to the government**, indicating that the assessee had no control, ownership, or free disposal of these funds. The Tax Audit Report clearly disclosed the grant as a capital receipt, and it was not credited to the Profit and Loss Account. The AR also stated that during the subsequent financial year 2020-21 and 2021-22, the assessee utilized the grant for the specified project activities, as detailed in the MOU. The AR placed reliance on following judicial precedents:

- a. ACIT vs. Gujarat State Road Development Corporation Ltd. [(2023) 202 ITD 510 / 153 taxmann.com 744 (Ahd.)]:
- b. ACIT vs. Gujarat Rural Industries Marketing Corporation [ITA 2597/Ahd/2013]:

5.4. The Departmental Representative (DR) on the other hand relied on the order of lower authorities. The DR stated that the grant is taxable in accordance with section Sub-Clause (xviii) in Section 2(24) of the Act. In rebuttal, the AR stated that the question is not whether it is taxable or not but the timing when it is taxed in the hands of recipient and the same is decided by the term of MOU.

6. We have heard the rival contentions and perused the material available on records. The primary issues in this appeal involve the disallowance of deductions under Sections 80P(2)(d) and 80P(2)(c) of the Act and the treatment of a government grant as revenue income.

6.1. Ground numbers 1,2,3 and 5 deal with deduction u/s 80P of the Act. The main contention in this set of grounds pertain to the disallowance of deductions claimed by the assessee under Section 80P(2)(d) of the Act and Section 80P(2)(c) of the Act. We have carefully reviewed the submissions, facts, judicial precedents, and findings of the AO and the CIT(A) to reach its conclusions. The assessee claimed deductions for interest and dividend income earned from the Ahmedabad District Co-Op Bank Rs.1,04,14,746/-) and GCMMF Ltd. Rs. 40,25,100/-). The income was earned from investments made with cooperative banks and societies. The AO disallowed the deduction, relying on the Karnataka High Court's decision in **Principal Commissioner of Income-tax, Hubballi vs. Totagars Co-operative Sale Society**, which held that cooperative banks are distinct from cooperative societies and do not qualify under Section 80P(2)(d). The CIT(A) upheld this disallowance. We find that the AO and CIT(A) relied on non-jurisdictional decisions, specifically from the Karnataka High Court, which are not binding within the jurisdiction of Gujarat. We give precedence to relevant jurisdictional decisions of Hon'ble Gujarat High Court and the Co-ordinate bench, which have consistently allowed such deductions. Jurisdictional precedents, including *CIT vs. Sabarkantha District Co-Op. Milk Producers Union Ltd.* and *The Kalol Co. Op. Credit and Supply Society Ltd. vs. ITO*, support the eligibility of income earned from cooperative banks for

deduction under Section 80P(2)(d). These decisions along with other decisions relied on, affirm that cooperative banks are considered cooperative societies for the purpose of Section 80P(2)(d), thereby making the assessee's interest and dividend income eligible for deduction. **In the case of Katlary Kariyana Merchant Sahkari Sarafi Mandali Ltd., the Hon'ble Gujarat High Court** initially ruled against the assessee, denying the deduction under Section 80P(2)(d) of the Act for interest earned from deposits with co-operative banks. However, this decision was later amended (by MA dated 26-04-2024), allowing the deduction on the grounds that such interest income qualifies under Section 80P(2)(d) when derived from investments in other co-operative societies or co-operative banks.

6.2. We find that both interest and dividend income earned by the assessee from Co-operative Banks and other Co-operative Societies qualify for deduction under Section 80P(2)(d) of the Act . This deduction is granted to promote cooperative financial activity, and there is no legal basis to exclude cooperative banks from this benefit. Allowing the deduction is consistent with the legislative intent to foster the growth and sustainability of cooperative societies by providing tax incentives on income earned from mutual investments. The income from cooperative banks, whether as interest or dividends, remains within the cooperative framework, justifying the tax relief. Jurisdictional precedents from the Gujarat High Court and Co-ordinate bench consistently support the view that income earned from cooperative banks should be deductible under Section 80P(2)(d) of the Act.

6.3. Section 80P(2)(c) of the Act provides a standard deduction for co-operative societies engaged in activities that are not specifically covered

under Section 80P(2)(a) or (b). Specifically, it allows a deduction of up to Rs.50,000/- for any co-operative society other than those involved in banking, providing credit facilities to members, or the other activities explicitly listed under clauses (a) or (b). The assessee, being a cooperative society engaged in collecting and marketing milk, primarily falls under activities that are not directly specified in Section 80P(2)(a) or (b) of the Act. Therefore, the assessee qualifies for the standard deduction of Rs.50,000/- under Section 80P(2)(c)(ii) of the Act. The CIT(A) denied the deduction of Rs.50,000/- claimed under Section 80P(2)(c)(ii) without providing any substantive reasoning or analysis of the statutory provisions. The provision clearly mandates a deduction for cooperative societies engaged in activities other than those specified under Section 80P(2)(a) or (b) of the Act. The statutory language does not impose additional conditions or exclusions that would disqualify the assessee from this benefit. The disallowance of this deduction by the AO and CIT(A) is hereby set aside, and the deduction is allowed in full.

6.4. In view of the detailed findings and analysis, the appeal on grounds 1, 2, 3, and 5 are allowed, and the order of the lower authorities is set aside. The appeal of the assessee is allowed in full.

7. Ground Number 4 is pertaining to a government grant of Rs.50,00,000/- under the Rashtriya Krishi Vikas Yojana (RKVY) project, specifically for implementing infrastructure and development activities for agricultural upliftment. The grant was credited to a joint account controlled by the assessee and the Department of Horticulture, as per the terms of the MOU. We note that the grant was tied to strict conditions outlined in the MOU, including mandatory utilization for specific project-related activities

and the return of any unutilized funds to the government. The assessee did not have unrestricted control over the funds, and they could not be used for general business purposes. We also note the argument of DR that the grant received by the assessee falls under the definition of "income" as per Section 2(24)(xviii) of the Act, which includes assistance in the form of subsidies or grants received from the government or any other authority and they should be taxed as income under the provisions of the Act.

7.1. We have noted the condition in the MOU that if the funds were not utilized according to the specified terms, they were to be refunded to the government immediately, underscoring that the funds were not available for the assessee's discretionary use. The income should result in an economic benefit to the recipient. The grant did not confer such a benefit in the year of receipt, as it was not fully accessible or usable for the assessee's business activities. Moreover, the grant was utilized only in subsequent years strictly in accordance with the project guidelines, further demonstrating that it was not available as income in the year it was received. We further note that the Tax Audit Report clearly disclosed the status of the grant. The Audit Report indicated that the grant of Rs.50,00,000/- was unutilized at the end of the financial year and was classified under "Reserve Fund & Other Funds" in the Balance Sheet. This classification confirmed that the grant was not treated as income and was not reflected in the Profit & Loss Account. Clause 13(f) and Clause 16(e) of the Tax Audit Report specifically mentioned that the grant is a Capital Receipt, and it will be recognised as revenue when it becomes due. In both the decisions of Co-ordinate bench in case of Gujarat State Road Development Corporation Ltd. and Gujarat Rural Industries Marketing Corporation Ltd., it was held that government grants received for specific

purposes and unutilized at the end of the financial year are not recognized as income and it will gain the character of income only when they are put to intended use.

7.2. Considering the detailed discussions and findings above, we conclude that the government grant of Rs.50,00,000/- received by the assessee under the RKVY did not confer an unconditional economic benefit to the assessee and, as such, did not qualify as income under Section 2(24)(xviii) of the Act, at the time of receipt. Judicial precedents consistently support the position that grants restricted by purpose and subject to refund obligations are to be treated as capital receipts until they are actually utilized for the designated purposes. The addition made by the AO and confirmed by the CIT(A), treating the grant as taxable income, is erroneous and lacks legal justification. Therefore, the appeal on Ground No. 4 is allowed, and the addition of Rs.50,00,000/- is hereby deleted.

8. Ground number 6, 7 are general and ground number 7 and 8 are consequential hence not adjudicated separately.

9. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the Open Court on 03rd October , 2024 at Ahmedabad.

Sd/-
(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER

Sd/-
(MAKARAND V. MAHADEOKAR)
ACCOUNTANT MEMBER

अहमदाबाद / Ahmedabad, दिनांक / Dated 03/10/2024

टी. सी. नायर, व. नि. स. / T.C. NAIR, Sr. PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-(NFAC), Delhi
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण , राजकोट/DR, ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

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