

**IN THE INCOME TAX APPELLATE TRIBUNAL  
"SMC" BENCH, AHMEDABAD**

**BEFORE MRS. ANNAPURNA GUPTA, ACCOUNTANT MEMBER**

**ITA Nos. 570 to 573/Ahd/2023**

निर्धारणवर्ष/Assessment Year: 2010-11 to 2013-14

Shree Jay Limbach Co. Op. Credit Society Ltd., M-45, Madhupura Market, Shahibaug, Cantonment S.O., Ahmedabad-380004 PAN : AADTS 8631 A	Vs.	The Income Tax Officer, Ward 1(2)(3), Ahmedabad
---	-----	---

<b>अपीलार्थी/ (Appellant)</b>	<b>प्रत्यर्थी/ (Respondent)</b>
-------------------------------	---------------------------------

Assessee by :	Shri H.V. Doshi, AR
Revenue by :	Shri N.J. Vyas, Sr DR

सुनवाई की तारीख/Date of Hearing : 16.01.2024

घोषणा की तारीख /Date of Pronouncement: 28.03.2024

**आदेश/ORDER**

These four appeals have been filed by the assessee against separate orders of the learned Commissioner of Income-tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as "CIT(A)" for short], all dated 29.05.2023, passed under Section 250 of the Income Tax Act, 1961 [hereinafter referred to as "the Act" for short] for the Assessment Years (AY) 2010-11 to 2013-14.

2. All the present appeals have come up before us against the orders of the Id. CIT(A) wherein the assessee had challenged the rejection of its rectification application filed u/s 154 of the Act to the Assessing Officer in identical facts and circumstances.

3. The assessee is a Co-operative Society engaged in the business of providing short term loans to its members. In short, it is a credit co-operative society providing credit facilities to its members. For all the impugned years, the assessee had filed returns of income claiming deduction of its entire income u/s 80P(2) of the Act, thus filing Nil return of

income. For all the impugned years, i.e. AYs 2010-11 to 2013-14, intimation u/s 143(1) of the Act was made denying grant of deduction u/s 80P(2) of the Act and treating the income as income from other sources subjecting the same to tax. The details of the incomes returned to tax and assessed to tax for the respective assessment years are as under:-

AY	Business Income	Deduction u/s 80P(2) of the Act	Net income as per return	Income assessed u/s 143(1) of the Act
2010-11	1,81,710	1,81,710	Nil	1,81,710
2011-12	2,00,210	2,00,210	Nil	2,00,210
2012-13	2,37,184	2,37,184	Nil	2,37,184
2013-14	2,83,490	2,83,490	Nil	2,83,490

4. Subsequently, demand notices were raised on the assessee, to which the assessee objected repeatedly stating that it had been wrongly denied deduction u/s 80P(2) of the Act. Finally, the assessee filed rectification application u/s 154 of the Act which was rejected by the Assessing Officer stating that it was time barred, which in turn was confirmed by the Id. CIT(A). The Id. CIT(A) also dealt with the claim of the assessee on merits and held that the assessee had been rightly denied claim of deduction u/s 80P(2) of the Act.

5. Aggrieved by the order of the Id. CIT(A), the assessee has come up in appeal before us raising following 7 grounds. They are verbatim same, except variation in the amounts and the assessment years. Therefore, for the facility of reference, we take note of the grounds from Assessment Year 2010-11, which read as under:-

*"1. The Hon'ble CIT(A) has erred in law and on facts in not allowing the deduction u/s. 80P of Rs. 1,81,710/- and confirming the action of the Ld. Assessing Officer who has rejected the Recovery / Rectification Application as it was filed barred by time though the appellant assessee has filed the recovery proceedings / Rectification Application (Deemed to be) within the prescribed time limit and thereafter time to time in total four times. When*

*the application is filed in time and it is pending with the Department and action is barred by time even though the Department has to finalize the application as it is regularly filed as per the Hon'ble C.B.D.T's Circular No. 73 dated January 7, 1972.*

*2. The Hon'ble CIT(A) has also erred in law and on facts not allowing the deduction u / s 80P(2)(a)(i) and deduction u/s. 80P(2)(d) of the I.T. Act, 1961 as the interest income earned by the society is considered by him as income from other sources u/s. 56 and not from business income head u/s. 28 of the Act. Total income is divided u / s 14 under five heads merely for the purpose of computation of income. The Co-operative Society has invested surplus amount to earn income, so the surplus amount could not be kept idle as a wise man.*

*3. Without prejudice to above, the Hon'ble CIT(A) has choose to option that deduction u / s 80P is not allowable to the appellant assessee, than, he should have given, alternatively, direction to the Ld. A.O.*

- (i) Allow the expenses to earn the interest income on pro rata basis as per the Hon'ble I.T.A.T Bangalore Bench in the case of Secretary Hotel Owners Credit Co-op Society Ltd. Vs. I.T.O; (2022); Tax pub. (DT) 1025 and as per the Hon'ble Gujarat High Court's decision in the case of Surat Vankar Sahakari Sangh Ltd. Vs. C.I.T; 79 ITR 722.*
- (ii) He should have also given direction to allow first Rs. 50,000/- from the taxable income as per the provisions of Sec. 80P(2)(c)(ii) of the I.T. Act, 1961.*
- (iii) The Hon'ble CIT(A) should have also given direction to apply slab rate (first Rs. 10,000/-.....10%; Rs. 10,000/- to Rs. 20,000/- ....20% and on balance 30%). The Ld. A.O has applied flat rate at 30% on entire income which is totally wrong.*

*4. The Hon'ble Pune Bench "A" Pune vide its order ITA No. 553/Pun/2023 dated 25/05/2023 in the case of Kai Fakira Jairam Patil Sahakari Patsanstha Maryadit Shahada allowed the deduction u/s. 80P(2)(a)(i). The Hon'ble Panji Bench of the Bombay High Court in T.A No. 76 of 2015 following the decision 377 ITR 275 dated 01/12/2015 allowed the deduction u/s. 80P(2)(a)(i). The Hon'ble Supreme Court has granted Special Leave Petition to the Department on 12/08/2016 (2016), 389 ITR (St.) 3. The Hon'ble Gujarat High Court has not allowed the deduction u/s. 80P(2)(a)(i) and u/s. 80P(2)(d) in the case of State Bank of India Employees Co-op Credit and Supply Society Ltd. Vs. C.I.T. However, the Hon'ble Supreme Court has granted the Special Leave Petition to the assessee on 11/11/2016; (2016); 389*

*ITR (St.) 3. Therefore, the appellant assessee kindly requested your honour to allow both the deductions u/s. 80P of the I.T. Act, 1961.*

*5. The interest income earned by the appellant assessee from the Co-op Bank as well as Schedule Bank on the investment of surplus amount. Sir, we agree and sorry to claim Exemption on interest income from Schedule Bank. It is not allowable. The appellant assessee has now shown bifurcation of the income derived from providing credit facilities to its members and the interest earned by depositing surplus to its members and the interest earned by depositing surplus funds with the bank. This is an apparent mistake by the assessee. This can be set-right as per the Hon'ble Gujarat High Court's decision in the case of C. Parikh & Co. Vs. C.I.T; (1980); 122 ITR 610. This ground of appeal may kindly be considered and for this kind of action as additional evidence bifurcation chart may be entertain as per the Hon'ble Bombay High Court decision in the case of Prabhavati S.Shah Vs. C.I.T; 231 ITR 1.*

*6. The appellant assessee has shown status Code 11 (Co-operative Society) in the return of income for all the years while the Ld. A.O has mentioned different Codes like 11, 4, 7 & 1 for Assessment Years 2010-11, 2011-12, 2012-13 & for A.Y. 2013-14 respectively and has not given credit of T.D.S of Rs. 23,159/- for A.Y. 2011-12 and of Rs. 18,954/- for A.Y. 2012-13. Kindly please direct to the Ld. A.O to set-right the mistakes.*

*7. The appellant assessee craves leave to amend, alter or delete any of the above grounds of appeal on or before the date of appeal hearing."*

6. Submissions were made in writing before us and documents were also filed by way of paper-books.

7. The first argument of Id. Counsel for the assessee before us was against the order of the Id. CIT(A) holding that the Assessing Officer had rightly treated the application of the assessee filed u/s 154 of the Act as being barred by limitation.

8. He first pointed out the facts of the case which lead to the Assessing Officer holding so, pointing out that the intimation u/s 143(1) was dated 27.10.2010 and rectification of the same u/s 154 of the Act was sought by the assessee vide letter dated 15.12.2022; that considering that the application

seeking rectification was apparently filed beyond the period of four years from the end of the financial year in which the order sought to be rectified was passed, the application was treated to be barred by limitation and therefore not entertained by Assessing Officer in terms of Section 154(7) of the Act. Making his arguments, ld. Counsel for the assessee stated that the findings of the ld. AO/CIT(A) were incorrect for the reasons that:-

- (i) The intimation u/s 143(1) was never served on the assessee;
- (ii) It was only through demand notices which were issued to the assessee consequent to the intimation made u/s 143(1) of the Act that the assessee became aware of the intimation made, and therefore objected to the same within the time prescribed u/s 154(7) of the Act vide application dated 19.09.2014. Copy of the same was placed before us at Exhibit-B of the paper-book.

Ld. Counsel for the assessee contended that vide this letter the assessee had pointed out to the Assessing Officer that no intimation u/s 143(1)(a) of the Act had been served to the assessee for all the impugned years; that, therefore, there was no outstanding demand on the assessee, and that in any case adjustment by way of denial of deduction u/s 80P(2) was out of the purview of Section 143(1)(a) of the Act.

9. He, thereafter, pointed out that the Assessing Officer responded to the same by stating that the assessee had claimed deduction on interest income earned from FDs made in Bank of India and State Bank of India which is not permitted in terms of Section 80P(2)(d) of the Act. This communication of the Assessing Officer dated 10.10.2014 was placed before us at Exhibit-C of the paper-book. The ld. Counsel for the assessee thereafter pointed out that the assessee responded to the same by pointing out that no deduction u/s 80P(2)(d) had been claimed by the assessee on the

said incomes, and that deduction, on the contrary, had been claimed u/s 80P(2)(a)(i) of the Act, to which it was eligible. Reference was made to certain decisions also. This letter dated 20.10.2014 was placed before us at Exhibit-D of the paper-book.

10. Ld. Counsel for the assessee pointed out that repeatedly, therefore, the assessee sought rectification of the mistake in the intimation made u/s 143(1) of the Act; and when the same was not done, finally an application u/s 154 was made on 15.12.2022, in which it was stated that to correct the adjustment made to the income of the assessee in the intimation u/s 143(1)(a) of the Act, to which the Assessing Officer responded by saying that it was barred by limitation.

11. The contention of the ld. Counsel for the assessee was that the assessee was unaware firstly of any intimation made to the assessee in the year 2010; that it was only when demand notices were issued to the assessee for the impugned years that the assessee informed the Assessing Officer of not having been served with any intimation and, therefore, seeking the quashing of the demand notices. That in response to the same, when the Assessing Officer informed the assessee of the denial of claim of deduction of the assessee on interest income earned from banks in terms of Section 80P(2)(d) of the Act, that the assessee explained its position that the deduction had not been claimed under the said section but Section 80P(2)(a)(i) of the Act which was allowable as per law; that even when the same was not responded to by the Assessing Officer, the assessee thereafter filed an application seeking rectification of the intimation again on 29.12.2022 which in turn was dismissed by the Assessing Officer as having been filed beyond the time prescribed for the same u/s 154(7) of the Act. The ld. Counsel for the assessee contended that considering its repeated

attempts in the past to rectification, as demonstrated above, that too all within time, the rejection of the assessee's application for being barred by limitation was incorrect.

12. He further pointed out that even on merits it was not the case that the entire income returned by the assessee was by way of interest on FDs made in nationalized banks as noted by the Assessing Officer. That the assessee had also earned interest income from credit facilities provided to members and, therefore, there was a clear mistake apparent from record which needed to be entertained. In this regard, he placed copies of financial statements of the assessee for all the impugned years pointing out there from the aforesaid facts that the assessee had earned interest income, both from banks and also from credit facilities provided to members.

13. Per contra, ld. DR relied heavily on the order of the ld. CIT(A) stating that the assessee's application seeking rectification had been rightly held to have been barred by limitation considering the facts of the case. This despite the fact that, on the direction of the Bench on 07.12.2023 asking the DR to inform whether intimation u/s 143(1) of the Act for all the impugned years was served on the assessee, and if yes then when; a letter was filed of the Assessing Officer who stated to have no records available of the details of service of intimation u/s 143(1) of the Act. This letter is dated 27.12.2023. On merits also, he relied on the order of the ld. CIT(A).

14. We have heard both the parties. The assessee before us is aggrieved with the rejection of its application seeking rectification in the intimation made to him u/s 143(1) of the Act, as per which his claim of deduction of his entire income u/s 80P of the Act was denied in entirety. The rectification application was rejected stating that it is barred by limitation. The assessee has contested this finding of the ld.CIT(A) first before us.

15. We are in agreement with the contention of the Id. Counsel for the assessee that the application seeking rectification in the intimation could not have been rejected as being time barred. As per the provisions of Section 154(7) of the Act, rectification application is to be filed within four years from the end of the financial year in which the order sought to be rectified is passed. In the present case, the assessee has sought rectification in the intimation made u/s 143(1) of the Act and his contention is that the said intimation is never served on him, though it was passed in 2010. The Department admitted, in as many words, that it has no details of service of intimation to the assessee u/s 143(1) of the Act for all the impugned assessment years before us. The clock for the four year limitation seeking rectification starts ticking the moment the assessee is in receipt of the order. Without his being aware of any such order passed, there is no question of the time barring period ticking into motion, for the simple reason that the assessee is in a position to act upon it and seek rectification only when he is aware of such order passed. In the present case, the Department has nothing to prove that the intimation was at any time was served on the assessee. Therefore, there arises no question of calculating the period of limitation of four years from the date of passing of intimation u/s 143(1) of the Act, i.e. from the year 2010 for holding the assessee's application seeking rectification as barred by limitation.

16. Even otherwise, we have noted that the assessee had duly responded to the demand notices which were issued to it in consequence to the intimation made u/s 143(1) of the Act challenging it constantly and well within the period of four years of the intimation made on the assessee. It was only finally, when the Assessing Officer did not do the needful with respect to the demand raised, that it ultimately moved an application in the year 2022 again seeking rectification in the intimation made u/s 143(1) of



the Act. Therefore, for all purposes, the assessee was all along, from the beginning since it became aware of some intimation having been made u/s 143(1) of the Act, seeking rectification in the same, and therefore the rejection of its application as being time barred is not in conformity with law. The order of the Id. CIT(A) holding so, therefore, is set aside. We hold that the assessee's application seeking rectification of the intimation was well within the stipulated time and, therefore, needed to be entertained.

17. On merits, the Id. Counsel for the assessee has demonstrated before us that its claim of deduction u/s 80P(2) of the Act was denied for the reason that the assessee had claimed the same on interest income earned from nationalized banks which was not allowable in terms of Section 80P(2)(d) of the Act. On facts of the case, the Id. Counsel for the assessee has demonstrated before us that its entire profits did not comprise only of interest earned from nationalized banks and it included even profits earned from its activity of providing credit facilities to members. That on facts, therefore, the intimation made u/s 143(1) of the Act contained mistake apparent from record which needed rectification. That the Assessing Officer had given the assessee no opportunity of hearing at all, and even the Id. CIT(A) had failed to consider this fact which was evident from the record. Even otherwise, he has contended that even on law he was entitled to claim deduction u/s 80P(2)(a)(i) of the Act on the interest earned on deposits made in banks since these deposits were made in the course of carrying out the normal activity of the assessee co-operative society of providing credit facility to its members and the interest incomes earned, therefore, constitute income earned from the said activity entitled to deduction u/s 80P(2) of the Act. Reference was made to several case laws. Since the authorities below, we have noted, have failed to adjudicate the issue in the light of the correct facts of the case and the judicial propositions

cited by the Id. Counsel for the assessee before us, we consider it fit to restore the issue back to the Assessing Officer to consider the application of the assessee filed u/s 154 of the Act afresh and decide the same giving due opportunity of hearing to the assessee considering all the facts relating to the issue as also the law on the same.

18. All the appeals of the assessee, therefore, are allowed for statistical purposes in above terms.

19. In effect, all the appeals of the assessee are allowed for statistical purposes in above terms.

Order pronounced in the open Court on 28<sup>th</sup> March, 2024 at Ahmedabad.

Sd/-

(ANNAPURNA GUPTA)  
ACCOUNTANT MEMBER

Ahmedabad; Dated 28/03/2024

\*\*%  
/

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)-
5. विभागीय प्रतिनिधिअधिकरण अपीलीय आयकर ,/DR,ITAT, Ahmedabad,
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

TRUE COPY

सहायक पंजीकार (Asstt. Registrar)  
आयकर अपीलीय अधिकरण  
ITAT, Ahmedabad