आयकर अपीलीय अधिकरण"B"न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH, PUNE

BEFORE SHRI S.S.GODARA, JUDICIAL MEMBER
AND
Dr.DIPAK P. RIPOTE, ACCOUNTANT MEMBER

आयकरअपीलसं. / ITA No.438/PUN/2022
निर्धारणवर्ष / Assessment Year: 2017-18

Sobha Carnation Sahakari Gahrachana Sanstha Maryadit, S.No.19/1/1A/1, Kondhwa Budruk, Pune 411 048 Maharashtra PAN : AAIAS5454R	Vs	Pr.CIT-IV, Pune.
Appellant/ Assessee		Respondent /Revenue

Assessee by	Shri Bhuvanesh Kankani
Revenue by	Shri Rajeev Kumar
Date of hearing	19-12-2022
Date of pronouncement	05-01-2023

आदेश/ ORDER

Per S.S.Godara, JM:

This assessee's appeal for AY 2017-18 arises against the Principal Commissioner of Income-tax, Pune-4's order dated 30.03.2022 passed in case No. ITBA/REV/F/REV5/2021-22/1042039210(1) involving proceedings under 263 of the Income Tax Act, 1961 in short 'the Act'.

2. It emerges during the course of hearing that the learned Pr.CIT's impugned revision directions term the Assessing Officer's

regular assessment dated 18-11-2019 as an erroneous one causing prejudice to the interest of the Revenue for having accepted the assessee's claim involving interest amount of Rs.26,70,364/- derived from parking of funds in various Cooperative Banks involving varying sums, as eligible for section 80P deduction.

3. Learned counsel has placed on record the Pr.CIT's section 263 revision notice as well as the assessee's detailed reply thereto before the Assessing Officer dated 17-03-2022 followed by the membership details etc., that the assessing authority had indeed carried out detailed inquiries before accepting section 80P deduction in issue.

4. The Revenue has drawn strong support from the Pr.CIT's revision discussion reading as follows :

> "2. On examination of the assessment records, it was noticed that interest income of Rs 26,71,398/- received from Co-op Banks is not eligible for deduction u/s 80P(2)(a)(i) or - u/s 80P(2)(d) of the Income-tax Act, 1961. However, during the assessment proceedings, the Assessing Officer allowed the assessee's claim of deduction of Rs 26,70,364/- u/s 80P of the Income-tax Act, 1961. No disallowance on account of interest income received from Co-operative bank, was made u/s 80P of the Act while completing the assessment. Since the assessee's large claim of deduction under chapter VI-A was the reason of selection of its case for scrutiny, the Assessing Officer was required to conduct in-depth verification of the assessee's claim. Since the above mentioned banks are not Cooperative societies, the interest earned from them is not eligible for deduction under Section 80P(2)(a)(i) or 80P(2)(d). Hence, aiiowing of the Deduction by the Assessing Officer under section 80P of the above amount is not as per the provisions of the Income Tax Act,1961.

3. Further, the Society is also in receipt of various miscellaneous income such as Rs. 48,000/- as 'Club House Rent', Rs. 22,000/- as 'Tenant Charges' and Rs. 5,75,439/- as 'Common Amenities'. In this regard, no verification has been made by the AO whether ingredient of mutuality exist i.e. whether Society is in receipt of the above mentioned charges from members or third parties outside of members of Society such as tenant etc. Moreover earning in the name of various charges from outside members is not the object of co-op housing Society. Thus, the claimed deduction does not come under the ambit of 80P of the Act.

4. Failure on the part of the Assessing Officer in examining the above issue (as discussed in preceding Paras) has rendered the assessment order dated 18.11.2019 erroneous in so far as it is prejudicial to the interest of the revenue. This has resulted in under assessment of income to the tune of Rs. 26,71,398/- and consequent short levy of tax.

5. In view of the above, the assessment order dated 18.11.2019 was considered erroneous in so far as it is prejudicial to the interest of the revenue in as much as patent error as mentioned supra had crept in. Accordingly, a show-cause notice was issued to the assessee on 17.03.2022 u/s 263 of the Income-tax Act, 1961 calling upon the assessee to explain as to why the assessment order dated 18.11.2019 should not be set aside u/s 263 of the Income Tax Act, 1961.

6. The assessee has submitted its submission on 24.03.2022. In the written

submission, the assessee contended as under:-

1. Our above referred client (assessee in the instant case) is in receipt of Show Cause Notice u/s 263 of the Income-tax Act, 1961 ('the Act') dated 17/03/2022 seeking explanation why proposed revision of Rs.26,04,404/- be not carried out. Accordingly, we under the instructions of our above referred client, humbly and most respectfully submit as under,
2. Firstly, Sir, the prime fact mentioned in the show cause notice (para 2) that the Assessee is a 'Co-operative Credit Society' is totally incorrect. Sir the Assessee is a Co-operative Housing Society. Registration certificate is enclosed herewith as Enclosure No. 1 for your ready reference.

1.1.1. Thus, we humbly submit that the proposal so made by your goodselves appears to have been made considering the assessee as credit cooperative society and since its not a fact, we humbly request your goodselves to drop the proposal of passing a revisionary order.

Secondly, without prejudice to above fact, the assessee firm has received interest of Rs.26,04,404/- from co-operative societies only which are further categorized as co-operative banks. And according to the provisions of section 80P a deduction of the same is claimed which is duly in compliance of the provisions of the Act.

1. Explanation why Interest income from Cooperative banks should not be taxed.

Did the assessee receive Interest income from Co-operative Society?

3.1.Firstly, we humbly submit that Assessee has claimed impugned interest income of Rs.27,09,845/- as deduction u/s 80P(2)(d) of the Act.

3.2.Said interest income is generated from the Fixed deposits and Saving bank accounts maintained with co-operative societies being co-operative banks.

1. 1. Relevant provision of section 80P(2)(d) of the Act is reproduced herein under for your goodselves ready reference,

Deduction in respect of income of co-operative societies.

80P. (1) Where, in the case of an assessee being a co-operative society, the gross total income includes any income referred to in subsection (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:-

1. **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;**

1. Accordingly, the claim so made is of the Interest income received FROM other co-operative societies being co-operative banks.

1. 1. a Co-operative bank is a Co-operative Society?

1. 1. It is undisputed fact that all the co-operative banks are co-operative societies firstly. As per The Maharashtra Co-operative Societies Act, 1960 a cooperative bank is nothing but a co-operative society, the relevant definition of the Co-operative bank as per The Maharashtra Co-operative Societies Act, 1960 is as under,

Sec 2 (10) "Co-operative bank" means a Co-operative society which is doing the business of banking as defined in clause (b) of subsections (1) of section 5 of the Banking Companies Act, 1949 and includes any society which is functioning or is to function as an Agricultural and Rural Development Bank under Chapter XI;

1. 1. Also, the definition of co-operative societies as provided in section 2(19) of the Act, is reproduced as under,

(19) "co-operative society" means a co-operative society registered under the Co-operative Societies Act, 1912 (2 of 1912), or under any other law for the time being in force in any State for the registration of co-operative societies;

3.7 Thus, the apparent inference drawn by your goodselves i.e., a Co-operative bank is not a Co-operative Society is not in accordance with the Co-operative Societies Act of Maharashtra.

Whether provisions of section 80P(4) are applicable in case of Assessee?

3.8. Sir, a general mis interpretation of section 80P(4) of the Act is being happening. Provisions of section 80P(4) of the Act are applicable only in case IF ASSESSEE IS A Co-operative bank.

3.9 Whereas, in the instant case, our client is not a co-operative bank.

3.10 In the instant case, assessee is on receiving end. I.e., Assessee is receiving interest from Co-operative Banks which are by operation of law have to be a co-operative society first (as explained in para 5.5 to 5.7 above)

1. Thus, provisions of section 80P(4) are also not applicable to the assessee.

Judgments relied upon

1. We humbly highlight that the claim of assessee is u/s 80P(2)(d) and not u/s 80P(2)(1)(a) owing to which the judgments of Totgar co-operative Sale Society ltd. Vs. ITO (2010) 322 ITR 283 (SC) does not gets applicable in the instant case.
2. Further, for claiming the interest as deduction u/s 80P(2)(d) there is no requirement to

have received the interest from the members of the society as it is in the 80P(2)(a)(i)

3. *Further, various courts including High courts and tribunal have held that, even after the insertion of section 80P (4) of the Act, the position of cooperative societies claiming interest income deductible u/s 80P(2)(d) is unchanged. Amongst Catena of judgments, we humbly rely on the following,*
4. *Kaliandas Udyog Bhavan Premises Co-op Society Ltd Vs. ITO ITA No. 6547/MUM/2017 - Mumbai ITAT. In this case, the issue was exactly identical to the issue on hand. In this case, Appellant (being cooperative society) had claimed deduction u/s 80P(2)(d) of interest income received from Cooperative Banks. Ld. AO disallowed the same on the premise that since Cooperative Banks do not function on the principle of Mutuality benefit of section 80P cannot be given. The matter travelled to ITAT, wherein Hon'ble ITAT adjudicated that, even after insertion of section 80P(4) there is no change in the position of co-operative societies claiming interest income received from co-operative banks as deductible u/s 80P(2)(d).*

Para 7,.....

'Thus, from a perusal of the aforesaid Sec. 80P(2)(d) it can safely be gathered that income by way of interest income derived by an assessee cooperative society from its investments held with any other cooperative society, shall be deducted in computing the total income of the assessee. We may herein observe, that what is relevant for claim of deduction under Sec. 80P(2)(d) is that the interest income should have been derived from the investments made by the assessee co-operative society with any other cooperative society. We though are in agreement with the observations of the lower authorities that with the insertion of Subsection (4) of Sec. 80P, vide the Finance Act, 2006, with effect from 01.04.2007, the provisions of Sec. 80P would no more be applicable in relation to any co-operative bank, other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank, but however, are unable to subscribe to their view that the same shall also jeopardise the claim of deduction of a cooperative society under Sec. 80P(2)(d) in respect of the interest income on their investments parked with a cooperative bank. We have given a thoughtful consideration to the issue before us and are of the considered view that as long as it is proved that the interest income is being derived by a co-operative society from its investments made with any other co-operative society, the claim of deduction under the aforesaid statutory provision, viz. Sec. 80P(2)(d) would be duly available. We may herein observe that the term cooperative society" had been defined under Sec. 2(19) of the Act, as under:- "(19) "Co-operative society" means a cooperative society registered under the Co-operative Societies Act, 1912 (2 of 1912), or under any other law for the time being in force in any state for the registration of cooperative societies;"

We are of the considered view, that though the co-operative bank pursuant to the insertion of Sub-section (4) of Sec. 80P would no more be entitled for claim of deduction under Sec. 80P of the Act, ***but however, as a co-operative bank***

continues to be a co-operative society registered under the Co-operative Societies Act, 1912 (2 of 1912), or under any other law for the time being enforced in any state for the registration of cooperative societies, therefore, the interest income derived by a co-operative society from its investments held with a co-operative bank, would be entitled for claim of deduction under Sec.80P(2)(d) of the *Act.'*

Further, Hon'ble ITAT also examined the applicability of the case Totgar co-operative Sale Society ltd. Vs. ITO (2010) 322 ITR 283 (SC) and held that the same is not applicable since Hon'ble Apex court had adjudicated the matter in context of 80P(2)(1)(a) and not in context of 80P(2)(d) of the Act. (relevant part is as under)

Para 8 page no 10 line no.10 from top:

' We are of the considered view that the reliance placed by the CIT(A) on the judgment of the Honble Supreme Court in the case of Totgars Cooperative Sale Society Ltd. vs. ITO (2010) 322 ITR 283(S.C) being distinguishable on facts, thus, had wrongly been relied upon by him. The adjudication by the Honble Apex Court in the aforesaid case was in context of Sec. 80P(2)(a)(i), and not on the entitlement of a cooperative society towards deduction under Sec. 80P(2)(d) on the interest income on the investments parked with a cooperative bank' (Judgment copy enclosed herewith as Enclosure no. 2

1. *In case of ITO Vs. Citiscape Co-op. Housing Society Ltd. (ITA No 5435/Mum/2017), Hon'ble Mumbai ITAT held that in situation where there are conflicting decisions of various High Courts and in absence of any decision of Jurisdictional High Court the decision given by Hon'ble Supreme Court's Decision in case of Vegetable Product (88 ITR 192) should be followed wherein it is held that if two reasonable constructions of a taxing provision are possible that construction which favours the assessee must be adopted.*

This, issue had arisen owing to the following judgments

1. *Hon'ble Karnataka High Court- Totgar Co-operative Sale Society Ltd (ITA No.100066 of 2016 & others pronounced on 16-06-2017- held Co-operative bank is not Co-operative Society*
2. *Hon'ble Himachal Pradesh High Court - CIT Vs. Kangra Co-operative bank Ltd (2009)(309 ITR 106)- Co-operative Bank is a Co-operative Society and thus deduction of 80P(2)(d) is eligible to cooperative societies*

(Judgment copy enclosed herewith as Enclosure no. 3.

1. *Identical issue was Adjudicated by Hon'ble Mumbai ITAT in case of M/s Solitaire CHS Ltd. Vs PCIT (ITA No. 3155/Mum/2019) order pronounced on 29.11.2019. - In favour of assessee. (Judgment copy enclosed herewith as* Enclosure no.4)
2. *Jurisdictional Pune ITAT has also adjudicated the Identical matter in favour of*

assessee in case of Veejmandal's Workers Federation Sahakari Patsanstha Maryadit Vs. ITO (ITA. No. 29/Pun/2014)- (Judgment copy enclosed herewith as Enclosure no.5)

3. Further, we humbly and most respectfully submit that the present show cause notice is received on 17/03/2022 has asked to file our reply on 24/03/2022 i.e., within 3 working days (18th to 20th were holidays) is against the principle of natural justice.

With regard to Applicability of provisions of section 263

1. Sir, we humbly wish to highlight that the original Assessment proceedings were opened for a limited reason of 'Deduction under chapter VIA' relevant notice dated 09/08/2018 is enclosed herewith as Enclosure No. 6.
2. Further, Ld. AO had also asked the Assessee to provide details regarding claim of deduction under chapter VIA. Relevant notice dated. 04/09/2018 is enclosed herewith as Enclosure No. 7.
3. Sir, during the assessment proceedings u/s 143(3) of the Act the Assessee had duly provided the information pertaining to interest income and the corresponding bank account statements also. And thereafter, the then AO had finalized the Assessment order.
4. And since the then AO has adopted one legal view on the present issue of taxation of interest income then the provisions of section 263 cannot be invoked solely to apply another view available,
5. Further, as mentioned above in this submission, the jurisdictional Pune ITAT has ruled in the favour of the Assessee on identical issue and the judgment copy is also enclosed herewith as Enclosure No. 5.
6. Thus, in view of this we humbly request your goodselves to kindly drop the proposal to revise the order.

Summary of above Submission

1. Assessee is not a co-operative credit Society as mentioned by your goodselves in the show cause notice.
2. Assessee has received interest income from Co-operative Bank.
3. As per Maharashtra Co-operative Societies Act 1960 and as per section 2(19) of the Act, a Co-operative Bank is a Co-operative Society.
4. Various Courts including Jurisdictional Pune ITAT, has adjudicated the issue in favour of assessee. It has been held that, Even after insertion of 80P(4)- situation does not change for cooperative societies claiming interest income deductible u/s 80P(2)(d)
5. Apex Courts Judgment in case of Totgar co-operative Sale Society ltd. Vs. ITO (2010) 322 ITR 283 (SC) is not applicable since Hon'ble Apex court had adjudicated the matter in context of 80P(2)(1)(a) and not in context of 80P(2)(d) of the Act.
6. Invoking of provisions of section 263 of the Act is against the theme of section 263 since the AO has already adopted a legal view available with him. Ld. AO had already verified the issue on hand since the original Assessment proceedings were only for verifying the claim under chapter VIA.

4. Thus, in view of our above submission, we humbly and most respectfully submit that, the claim of assessee u/s 80P(2)(d) of the Act is very well within the framework of said section and the interest received from cooperative bank is also covered under section 80P(2)(d) since Cooperative Bank is nothing but a Cooperative Society.

5. We hope that our above submission suffices your goodselves requirement. However, in case any further information is required, sae would be submitted upon intimation to us.

1. Further, this being the first notice and corresponding submission, and in case your goodselves are not in agreement with our view, we humbly request your goodselves to inform us the reasons and grant us an opportunity to make our reply."

Subsequently, the assessee has made another submission vide email dated 26.03.2022 which is as under:

"In continuation to our earlier reply, we humbly wish to seek your kind attention of the recent Judgment by Jurisdictional ITAT in an identical case involving section 80P(2)(d) and 263. Hon'ble ITAT allowed the appeal of the Assessee. Attaching herewith the said Judgment.

Accordingly, we humbly submit that the judgement so relied is a binding judgement and thus the proposal to invoke provision of section 263 be kindly dropped."

The assessee has relied upon the case of Rena Sahakari Sakhar Karkhana Ltd., V/s. Pr. Commissioner of Income-tax 2, Aurangabad in the ITAT Bench 'B' Pune, ITA No.1249//PUN/2018 Assessment Year 2013-14.

7. In this regard, I have examined the case records of the assessee, submissions made and the issues involved. The facts of the case & issue of deduction u/s 80P are dealt with as under:-

1. The Assessee Society is collecting 'Maintenance charges' from its members and incurring expenditure towards providing facilities to members. Excess of Income earned by way of 'Maintenance charges' is put in to deposits with various financial institutions.
2. It was seen from the Profit and Loss account for the period ended 31st march 2017 that the assessee society has received Rs. 85,67,040/- under the head of 'Maintenance charges' along with various miscellaneous receipts

including interest income of Rs. 26,71,398/- from Co-operative banks as against the FDs kept with them. Against this interest income, the assessee has claimed deduction of Rs 26,70,364/- u/s 80P.

3. The Assessing Officer should have examined that the assessee Society is investing its Surplus money which is not required for its activities in to Deposits and hence should have applied the Decision of Hon'ble Supreme Court in the case of **TOTAGARS CO-OPERATIVE SALE SOCIETY LTD vs ITO 322 ITR 283.**

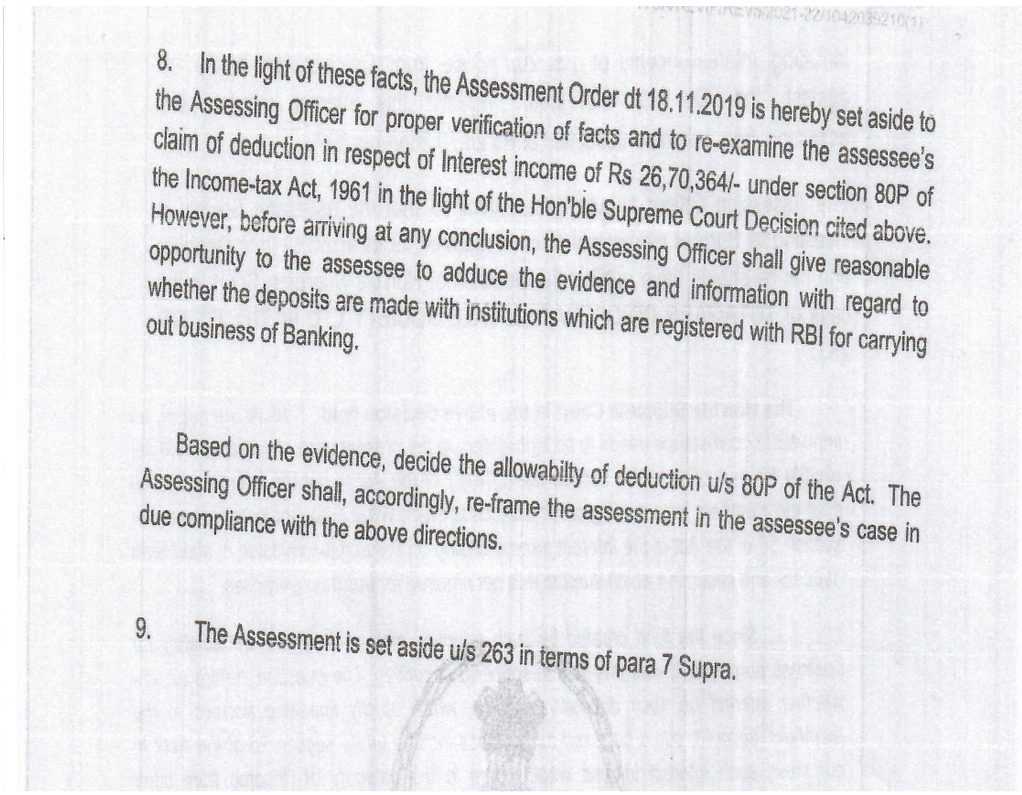
The Hon'ble Supreme Court in the above decision held *" 10. At the outset, an important circumstance needs to be highlighted. In the present case, the interest held not eligible for deduction under section 80P(2)(a)(i) of the Act is not the interest received from the members for providing credit facilities to them. What is sought to be taxed under section 56 of the Act is the interest income arising on the surplus invested in short-term deposits and securities which surplus was not required for business purposes.....*

.....Since the fund created by such retention was not required immediately for business purposes, it was invested in specified securities. The question, before us, is - whether interest on such deposits/securities, which strictly speaking accrues to the members' account, could be taxed as business income under section 28 of the Act? In our view, such interest income would come in the category of "Income from other sources", hence, such interest income would be taxable under section 56 of the Act."

Hence, the interest received on surplus funds and invested in the short term deposit would be assessable under the head ' income from other sources'.

The action of the Assessing officer in not following the law laid down by the Hon'ble Supreme Court has rendered the Assessment erroneous in so far as it is prejudicial to the Interest of Revenue.

4. The Assessing officer has also failed to examine whether the Co-op Banks such as Cosmos Bank, Saraswat Bank & SVC Bank wherein the assessee society has kept fixed deposits, were having License from RBI. If they are registered with RBI then in view of above stated apex court's decision, the interest received from them is not entitled for deduction u/s 80P(2)(d). By not verifying this aspect, the Assessing Officer has allowed the claim of deduction made by the assessee. This also has rendered the assessment erroneous and prejudicial to the Interest of revenue. This has resulted in under assessment of income to the tune of Rs 26,70,364/- and consequent short levy of tax.



8. In the light of these facts, the Assessment Order dt 18.11.2019 is hereby set aside to the Assessing Officer for proper verification of facts and to re-examine the assessee's claim of deduction in respect of Interest income of Rs 26,70,364/- under section 80P of the Income-tax Act, 1961 in the light of the Hon'ble Supreme Court Decision cited above. However, before arriving at any conclusion, the Assessing Officer shall give reasonable opportunity to the assessee to adduce the evidence and information with regard to whether the deposits are made with institutions which are registered with RBI for carrying out business of Banking.

Based on the evidence, decide the allowabilty of deduction u/s 80P of the Act. The Assessing Officer shall, accordingly, re-frame the assessment in the assessee's case in due compliance with the above directions.

9. The Assessment is set aside u/s 263 in terms of para 7 Supra.

5. We have given our thoughtful consideration to vehement rival stands and find no merit in the Revenue's arguments. We make it clear the sole reason what has made the ld. Pr.CIT to exercise his section 263 revision jurisdiction is that the assessee is not eligible for claiming 80P deduction regarding its interest income derived from cooperative banks etc. We note in this factual backdrop that this tribunal's recent coordinate bench order in *ITA No.1249/PUN/2018 in Rena Sahakari Sakhar Karkhana Ltd., vs. Pr. CIT-2, Aurangabad dated 07-01-2022* has rejected the Revenue's identical stand as follows :

> "3. After culmination of the assessment proceedings, the Pr. CIT called for the assessment records of the assessee. It was observed by the Pr. CIT that the assessee had during the year shown interest

income from FDs with Co-operative Banks amounting to Rs.75,38,534/-, against which it had claimed deduction under Sec.80P(2)(d) of the Act. It was observed by the Pr. CIT, that the A.O while framing the assessment had allowed the aforesaid claim of deduction raised by the assessee. Observing, that as co-operative banks were commercial banks and not a co-operative society, therefore, the Pr.CIT was of the view that the assessee was not eligible for claim of deduction under Sec.80P(2)(d). In the backdrop of his aforesaid conviction, the Pr. CIT was of the view that the assessment order passed by the A.O under Sec.143(3), dated 07.03.2016, therein allowing the assesses claim for deduction under Sec. 80P(2)(d), had therein rendered his order as erroneous, insofar it was prejudicial to the interest of the revenue. Accordingly, the Pr.CIT not finding favour with the reply of the assessee, wherein the latter had tried to impress upon him that it was duly eligible for claim of deduction under Sec.80P(2)(d) of the Act, therein "set aside" the order of the A.O with a direction to redecide the issue afresh and reframe the assessment.

4. The assessee being aggrieved with the order of the Pr.CIT has carried the matter in appeal before us. As the present appeal involved a delay of 52 days, therefore, the ld. A.R took us through the reasons leading to the same. It was submitted by the ld. A.R that as the then counsel of the assessee society who was looking after its tax matters, viz. Shr. Ravikiran Pandurang Todkar, Chartered Accountant was taken unwell due to kidney failure and had undergone kidney transplant, therefore, due to his unavailability the appeal could not be filed within the stipulated time period. Our attention was drawn towards the „affidavit" of the assessee society wherein the aforesaid facts were deposed. On the basis of the aforesaid facts, it was submitted by the ld. A.R that the delay involved in filing of the present appeal in all fairness may be condoned. Per contra, the ld. D.R did not object to the seeking of condonation of the delay in filing of the appeal by the assessee society. After giving a thoughtful consideration, we are of the considered view, that as there were justifiable reasons leading to delay on the part of the assessee in filing of the present appeal before us, therefore, the same merits to be condoned.

5. On merits, it was submitted by the ld. A.R, that as the A.O while framing the assessment had after making necessary verifications taken a plausible view, therefore, the Pr. CIT had exceeded his jurisdiction by seeking to review the order passed by him in the garb of the revisional powers vested with him under Sec.263 of the Act. It was submitted by the ld. A.R, that the issue as regards the eligibility of the assessee for claim of deduction under Sec.80P(2)(d) on interest income derived from investments/deposits lying with co-operative banks was squarely covered by the various orders of the coordinate benches of the Tribunal viz., (i). M/s Solitaire CHS Ltd. vs. Pr. CIT, ITA No. 3155/Mum/2019; dated 29.11.2019 (ITAT "G" Bench, Mumbai); Kaliandas Udyog Bhavan Premises Co-op Society Ltd. Vs. ITO-21(2)(1), Mumbai, ITA No. 6547/Mum/2017 (ITAT Mumbai); and (iii). Majalgaon Sahakari Sakhar Karkhana Ltd. Vs. ACIT, Circle-3, Aurangabad, ITA No, 308/Pun/2018 (ITAT Pune). On the basis of his aforesaid contentions, it was averred by the ld. A.R that as the Pr. CIT had exceeded his

jurisdiction and had not only sought to review the plausible view that was taken by the A.O after necessary deliberations which was in conformity with the order of the jurisdictional bench of the Tribunal, therefore, his order may be vacated and that of the A.O be restored.

6. Per contra, the ld. Departmental Representative (for short „D.R") relied on the order passed by the Pr. CIT under Sec.263 of the Act. It was submitted by the ld. D.R, that as the assessee was not eligible for claim of deduction under Sec.80P on the interest income received on the investments/deposits lying with the co-operative banks, therefore, the Pr. CIT finding the assessment order passed by the A.O under Sec.143(3), dated 07.03.2016 as erroneous, insofar it was prejudicial to the interest of the revenue, had rightly „set aside" his assessment with a direction to re-adjudicate the issue therein involved. Our attention was also drawn by the ld. D.R to his written submissions and certain judicial pronouncements in support of his aforesaid contention.

7. We have heard the ld. authorised representatives for both the parties, perused the orders of the lower authorities and the material available on record, as well as the judicial pronouncements relied upon by them. Our indulgence in the present appeal has been sought, for adjudicating, as to whether or not the claim of the assessee for deduction under section 80P(2)(d) in respect of interest income earned from the investments/deposits made with the co-operative banks is in order. In our considered view, the issue involved in the present appeal hinges around the adjudication of the scope and gamut of sub-section (4) of Sec. 80P as had been made available on the statute, vide the Finance Act 2006, with effect from 01.04.2007. On a perusal of the order passed by the Pr. CIT under Sec. 263 of the Act, we find, that he was of the view that pursuant to insertion of sub-section (4) of Sec. 80P, the assessee would no more be entitled for claim of deduction under Sec. 80P(2)(d) in respect of the interest income that was earned on the amounts which were parked as investments/deposits with the co-operative bank, other than a Primary Agricultural Credit Society or a Primary Co-operative Agricultural and Rural Development Bank. Observing, that the co-operative banks from where the assessee was in receipt of interest income were not cooperative societies, the Pr. CIT was of the view that the interest income earned on such investments/deposits would not be eligible for deduction under Sec. 80P(2)(d) of the Act.

8. After necessary deliberations, we are unable to persuade ourselves to concur with the view taken by the Pr. CIT. Before proceeding any further, we may herein cull out the relevant extract of the aforesaid statutory provision, viz. Sec. 80P(2)(d), as the same would have a strong bearing on the adjudication of the issue before us.

"80P(2)(d)

(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).....
(b).....
(c).....

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

On a perusal of Sec. 80P(2)(d), it can safely be gathered that interest income derived by an assessee co-operative society from its investments held with any other co-operative society shall be deducted in computing its total income. We may herein observe, that what is relevant for claim of deduction under Sec. 80P(2)(d) is that the interest income should have been derived from the investments made by the assessee co-operative society with any other co-operative society. We are in agreement with the view taken by the Pr. CIT, that with the insertion of sub-section (4) to Sec. 80P of the Act, vide the Finance Act, 2006 with effect from 01.04.2007, the provisions of Sec. 80P would no more be applicable in relation to any co-operative bank, other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank. However, at the same time, we are unable to subscribe to his view that the aforesaid amendment would jeopardize the claim of deduction of a co-operative society under Sec. 80P(2)(d) in respect of its interest income on investments/deposits parked with a co-operative bank. In our considered view, as long as it is proved that the interest income is being derived by a co-operative society from its investments made with any other co-operative society, the claim of deduction under the aforesaid statutory provision, viz. Sec. 80P(2)(d) would be duly available. We find that the term „co-operative society" had been defined under Sec. 2(19) of the Act, as under:-

> "(19) "Co-operative society" means a cooperative society registered under the Co-operative Societies Act, 1912 (2 of 1912), or under any other law for the time being in force in any state for the registration of co-operative societies;"

We are of the considered view, that though the co-operative banks pursuant to the insertion of sub-section (4) to Sec. 80P would no more be entitled for claim of deduction under Sec. 80P of the Act, but as a cooperative bank continues to be a co-operative society registered under the Co-operative Societies Act, 1912 (2 of 1912), or under any other law for the time being in force in any State for the registration of co-operative societies, therefore, the interest income derived by a co-operative society from its investments held with a co-operative bank would be entitled for claim of deduction under Sec.80P(2)(d) of the Act.

9. In so far the judicial pronouncements that have been relied upon by the ld. A.R are concerned, we find that the issue that a co-operative society would be entitled for claim of deduction under Sec. 80P(2)(d) on the interest income derived from its investments held with a co-operative bank is covered in favour of the assessee in the following cases:

(i). M/s Solitaire CHS Ltd. vs. Pr. CIT, ITA No. 3155/Mum/2019; dated 29.11.2019 (ITAT “G” Bench, Mumbai);

(ii). Majalgaon Sahakari Sakhar Karkhana Ltd. Vs. ACIT, Circle-3, Aurangabad, ITA No, 308/Pun/2018 (ITAT Pune)

(iiii). Kaliandas Udyog Bhavan Pemises Co-op. Society Ltd. Vs. ITO, 21(2)(1), Mumbai

We further find that the Hon'ble High Court of Karnataka in the case of Pr. Commissioner of Income Tax and Anr. Vs. Totagars Cooperative Sale Society (2017) 392 ITR 74 (Karn) and Hon’ble High Court of Gujarat in the case of State Bank Of India Vs. CIT (2016) 389 ITR 578 (Guj), had held, that the interest income earned by the assessee on its investments with a co-operative bank would be eligible for claim of deduction under Sec. 80P(2)(d) of the Act. Still further, we find that the CBDT Circular No. 14, dated 28.12.2006 also makes it clear beyond any scope of doubt that the purpose behind enactment of sub-section (4) of Sec. 80P was that the co-operative banks which were functioning at par with other banks would no more be entitled for claim of deduction under Sec. 80P(4) of the Act. Although, in all fairness, we may herein observe that the Hon'ble High Court of Karnataka in the case of Pr. CIT Vs. Totagars co-operative Sale Society (2017) 395 ITR 611 (Karn), as had been relied upon by the ld. D.R before us, had held, that a co-operative society would not be entitled to claim deduction under Sec. 80P(2)(d); but then, the Hon'ble High Court in the case of Pr. Commissioner of Income Tax and Anr. Vs. Totagars Cooperative Sale Society (2017) 392 ITR 74 (Karn) and Hon’ble High Court of Gujarat in the case of State Bank Of India Vs. CIT (2016) 389 ITR 578 (Guj), had observed, that the interest income earned by a co-operative society on its investments held with a co-operative bank would be eligible for claim of deduction under Sec.80P(2)(d) of the Act. Backed by the aforesaid conflicting judicial pronouncements, we may herein observe, that as held by the Hon'ble High Court of Bombay in the case of K. Subramanian and Anr. Vs. Siemens India Ltd. and Anr (1985) 156 ITR 11 (Bom), where there is a conflict between the decisions of non-jurisdictional High Court"s, then a view which is in favour of the assessee is to be preferred as against that taken against him. Accordingly, taking support from the aforesaid judicial pronouncement of the Hon’ble High Court of jurisdiction, we respectfully follow the view taken by the Hon'ble High Court of Karnataka in the case of Pr. Commissioner of Income Tax and Anr. Vs. Totagars Cooperative Sale Society (2017) 392 ITR 74 (Karn) and that of the Hon’ble High Court of Gujarat in the case of State Bank Of India Vs. CIT (2016) 389 ITR 578 (Guj), wherein it was observed that the interest income earned by a co-operative society on its investments held with a co-operative bank would be eligible for claim of deduction under Sec.80P(2)(d) of the Act.

10. Be that as it may, in our considered view, as the A.O while framing the assessment had taken a possible view, and allowed the assessee"s claim for deduction under Sec. 80P(2)(d) on the interest income earned on its investments/deposits with co-operative banks, therefore, the Pr. CIT was in error in exercising his revisional jurisdiction u/s 263 of the Act for dislodging the same. Accordingly, finding no

> justification on the part of the Pr. CIT, who in exercise of his powers under Sec. 263 of the Act, had dislodged the view that was taken by the A.O as regards the eligibility of the assessee towards claim of deduction under Sec. 80P(2)(d), we set-aside his order and restore the order passed by the A.O under Sec. 143(3), dated 07.03.2016."

6. We adopt the foregoing detailed reasoning *mutatis mutandis* to reverse the ld. Pr.CIT's impugned revision directions. The Assessing Officer's corresponding regular assessment stands restored as the necessary corollary.

7. This assessee's appeal is allowed in above terms.

Order pronounced in the open Court on 05th January, 2023.

Sd/-	**Sd/-**
(Dr. DIPAK P. RIPOTE)	**(S. S. GODARA)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

पुणे / Pune; दिनांक / Dated : 05th January, 2023
Satish

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A) concerned
4. The CIT concerned
5. विभागीय प्रतिनिधि,आयकर अपीलीय अधिकरण, "**B**" बेंच, पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// TRUE COPY //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे/ITAT, Pune.

S.No	Details	Date	Initials	Designation
1	Draft dictated on	28-12-2022		Sr. PS/PS
2	Draft placed before author	30-12-2022		Sr. PS/PS
3	Draft proposed & placed before the Second Member			JM/AM
4	Draft discussed/approved by Second Member			AM/AM
5	Approved Draft comes to the Sr. PS/PS			Sr. PS/PS
6	Kept for pronouncement on			Sr. PS/PS
7	Date of uploading of Order			Sr. PS/PS
8	File sent to Bench Clerk			Sr. PS/PS
9	Date on which the file goes to the Head Clerk			
10	Date on which file goes to the A.R.			
11	Date of Dispatch of order			