IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "C" MUMBAI

BEFORE SHRI S.RIFAUR RAHMAN (ACCOUNTANT MEMBER) AND
SHRI RAVISH SOOD (JUDICIAL MEMBER)

ITA No.549/MUM/2021
(Assessment Year: 2015-16)

M/s Petit Towers Co-op. Housing Society Ltd. CS 597 and 598, Petit Towers, August Kranti Marg, Bomani Petit Road, Cumballa Hill, Kemps Corner, Mumbai – 400 036	Vs.	Income Tax Officer, 19(2)(5) Matru Mandir, Mumbai - 400 007

PAN No. AAAAP5446J

(Assessee)	**(Revenue)**

Assessee by : Shri Vijay Mehta, A.R
Revenue by : Shri R. K. Sahu, D.R

Date of Hearing : 26/08/2021
Date of pronouncement : 01/09/2021

ORDER

PER RAVISH SOOD, J.M:

The present appeal filed by the assessee is directed against the order passed by the Pr. Commissioner of Income Tax, Mumbai-19 (for short "Pr. CIT"), u/s 263 of the Income Tax Act, 1961 (for short 'Act'), dated 17.02.2021, which in turn arises from the order passed by the A.O u/s 143(3) of the Act, dated 31.08.2017. The assessee has assailed the impugned order on the following grounds of appeal:

"Jurisdiction of PCIT

1. The learned PCIT has erred in holding that the order passed by the Assessing Officer was erroneous and prejudicial to the interests of the revenue. The order passed by the learned PCIT is without jurisdiction.

Deduction u/s 80P of the Act

2. The learned PCIT ought to have appreciated that the appellant, a cooperative society, was eligible to claim deduction u/s 80P(2)(d) of the Act in respect of interest on fixed deposits earned from Co-operative bank.

3. The learned PCIT ought to have appreciated that the Assessing Officer has allowed deduction u/s 80P(2)(d) of the Act after considering the detailed replies filed by the appellant society during the course of assessment proceedings.

4. The learned PCIT ought to have appreciated that the view adopted by Assessing Officer cannot be said to be unsustainable or impossible view.

Disallowance u/s 40(a)(ia) of the Act

5. The learned PCIT ought to have appreciated that the provisions of S. 40(a)(ia) of the Act are not applicable to the appellant society as it does not have any business income nor it has claimed any deduction on account of business expenditure. In any case, the issue of disallowance u/s 40(a)(ia) was not within the limited scrutiny jurisdiction and hence could not have been made base of revision u/s 263 of the Act.

The appellant crave leave to add, to alter and/or amend the afore stated grounds of appeal."

2. Briefly stated, the assessee society had filed its return of income for A.Y. 2015-16 on 28.09.2015, declaring an income of Rs.12,25,020/-. The return of income was initially processed as such u/s 143(1) of the Act. Subsequently, the case of the assessee was selected for 'Limited scrutiny' assessment u/s 143(2) of the Act. Original assessment was thereafter framed by the A.O vide his order passed u/s 143(3) dated 31.08.2017 and the returned income of the assessee society was accepted as such.

3. After culmination of the assessment proceedings, the Pr. CIT called for the assessment records of the assessee society. It was observed by the Pr. CIT that the A.O while framing the assessment u/s 143(3), dated 31.08.2017 had failed to

disallow the assessee's claim for deduction u/s 80P(2)(d) qua the interest income of Rs. 11,86,979/- that was received on its deposits lying with co-operative Banks. Also, the Pr. CIT was of the view that the A.O had failed to disallow u/s 40(a)(ia) 30% of the amount Rs.51,40,287/- that was paid by the assesssee society without deduction of tax at source. Backed by his aforesaid observations, the Pr. CIT issued a 'Show cause' notice (SCN), dated 09.03.2020 therein calling upon the assessee to explain as to why the assessment order passed by the A.O u/s 143(3), dated 31.08.2017 may not be set-aside u/s 263 of the Act. As the reply filed by the assessee did not find favor with the Pr. CIT, therefore, vide order passed u/s 263 of the Act, dated 17.02.2021 he held the order passed by the A.O u/s 143(3), dated 31.08.2017 as erroneous in so far it was prejudicial to the interest of the revenue and set-aside the assessment order to the file of the A.O, with a direction to frame a fresh assessment after giving an opportunity of being heard to the assessee.

4. Aggrieved, the assessee has assailed before us the order passed by the Pr. CIT u/s 263 of the Act, dated 17.02.2021.

5. We have heard the ld. Authorized Representatives for both the parties, perused the orders of the lower authorities and the material available on record, as well as considered the judicial pronouncements that have been pressed into service by the ld. A.R to drive home his contentions. Admittedly, it is a matter of fact borne from the record that the case of the assessee was selected for 'Limited scrutiny' assessment u/s 143(2) of the Act for the purpose of examining the assessee's claim for deduction under Chapter VI-A of the Act. In the backdrop of the aforesaid fact, we find substantial force in the claim of the ld. A.R that now when the jurisdiction of the A.O qua the assessment in question was limited to scrutinizing/examining the assessee's claim for deduction under Chapter VI-A of the Act, therefore, the assessment order passed by him u/s 143(3), dated 31.08.2017 could not have been held to be erroneous, for the

reason, that he had failed to make a disallowance u/s 40(a)(ia) of the Act. In this regard, we may herein clarify that on a specific query by the bench it was stated by the ld. A.R that the case of the assessee at no stage was converted into full scrutiny with the approval of the CIT/Pr.CIT. Backed by the aforesaid facts, we are of a strong conviction that now when the jurisdiction of the A.O while framing assessment was in itself circumscribed and limited qua examination of the assessee's claim for deduction under Chapter VI-A of the Act, therefore, by no means the Pr. CIT could have held the order passed by the A.O u/s 143(3), dated 31.08.2017 as erroneous, for the reason, that he had not carried out an addition/disallowance which fell beyond the realm of the reasons on the basis of which the assessee's case was selected for limited scrutiny. In sum and substance, what the A.O could not do in exercise of his limited jurisdiction vested u/s 143(2) of the Act could not have thereafter been done by the Pr. CIT in the garb of his revisional jurisdiction u/s 263 of the Act. Our aforesaid view is fortified by the order of a coordinate bench of the Tribunal in the case of M/s R&H Property Developer Pvt. Ltd, Mumbai Vs. Pr.CIT-11, Mumbai, ITA No. 1906/Mum/2019, dated 30.07.2019. Involving identical facts, the Tribunal in the aforementioned case had quashed the order passed u/s 263 of the Act by the Pr.CIT who had held the order passed by the A.O u/s 143(3), dated 10.10.2016 as erroneous, for the reason, that the latter had failed to deal with certain other issues which though were not the subject matter for selection of the assessee's case for limited scrutiny under Sec. 143(2) of the Act. The Tribunal while observing as hereinabove had held as under:

> "8. We shall now in the backdrop of our aforesaid observations deliberate on the validity of the order passed by the Pr. CIT under Sec. 263. As observed by us hereinabove, the Pr. CIT had held the order passed by the A.O under Sec. 143(3), dated 10.10.2016 as erroneous, in so far it was prejudicial to the interest of the revenue, for the reason, that he had failed to carry out proper investigation as regards the allowability of the expenditure claimed by the assessee to have been incurred for the purpose of its business. We are of a strong conviction that now when the case of the assessee was selected for limited scrutiny for the reason viz. "large investment in property (AIR) as compared to total income", therefore, no infirmity could be attributed to the assessment

framed by the A.O on the ground that he had failed to deal with other issues which did not fell within the realm of the limited reason for which the case of the assessee was selected for scrutiny assessment. In other words, the Pr. CIT in the garb of his revisional jurisdiction u/s 263 cannot be permitted to traverse beyond the jurisdiction that was vested with the A.O while framing the assessment. To sum up, revisional jurisdiction cannot be exercised for broadening the scope of jurisdiction that was vested with the A.O while framing the assessment. As a matter of fact, what cannot be done directly cannot be done indirectly. Accordingly, in terms of our aforesaid observations, we are of the considered view that as the A.O had aptly confined himself to the issue for which the case of the assessee was selected for limited scrutiny, therefore, no infirmity can be attributed to his order, for the reason, that he had failed to dwell upon certain other issues which were clearly beyond the realm of the reason for which the case of the assessee was selected for limited scrutiny as per the AIR information. We thus not being able to concur with the view taken by the Pr. CIT that the order passed by the A.O under Sec. 143(3), dated 10.10.2016 is erroneous, therefore, set aside his order and restore the order passed by the A.O. As we have quashed the order passed by the Pr. CIT under Sec. 263 on the ground of invalid assumption of jurisdiction by him, therefore, we refrain from adverting to and therein adjudicating the contentions advanced by the ld. A.R on the merits of the case, which thus are left open."

Accordingly, in the backdrop of our aforesaid deliberations, we are unable to persuade ourselves to accept the view taken by the Pr. CIT that the order passed by the A.O u/s 143(3), dated 31.08.2017 was erroneous, for the reason, that he had failed to carry out disallowance of certain expenses u/s 40(a)(ia) of the Act.

6. Now, this take us to the second reason on the basis of which the Pr. CIT had revised the order passed by the A.O u/s 143(3), dated 31.08.2017. As observed by us hereinabove, the Pr.CIT was of the view that as the A.O had failed to disallow the assessee's claim for deduction u/s 80P(2)(d) qua the interest income of Rs.11,86,974/- that was received by it from co-operative Banks, therefore, the assessment order passed by him u/s 143(3), dated 31.08.2017 was also rendered as erroneous in so far it was prejudicial within the meaning of Sec. 263 of the Act. Before us, it was submitted by the ld. A.R that as the assessee's claim for deduction u/s 80P(2)(d) qua the interest received on its deposits lying with co-operative Banks was in order, therefore, the Pr.CIT had wrongly held the allowing of the assessee's claim for deduction by the A.O as erroneous within the meaning of Sec. 263 of the Act. It was submitted by the ld. A.R 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 u/s 80P of the Act, but 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 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 u/s 80P(2)(d) of the Act. It was submitted by the ld. A.R that the aforesaid issue was squarely covered in assessee's favour by the order of coordinate bench of the Tribunal, viz. ITAT, 'G' bench, Mumbai in the case of M/s Solitaire CHS Ltd. Vs. Pr.CIT-26, Mumbai, ITA No. 3155/Mum/2019, dated 29.11.2019. Backed by his aforesaid contention, it was submitted by the ld. A.R that as the assessee's claim for deduction u/s 80P(2)(d) was in conformity with the settled position of law, therefore, the Pr.CIT was divested of his jurisdiction of dubbing the assessment order passed by the A.O u/s 143(3), dated 31.08.2017 as erroneous in so far it was prejudicial to the interest of the revenue within the meaning of Sec. 263 of the Act.

7. Per contra, the ld. Departmental Representative (for short 'D.R') relied on the orders of the lower authorities.

8. We have given a thoughtful consideration to the contentions advanced by the ld. Authorized representatives for both the parties in context of the aforesaid issue under consideration. As stated by the ld. A.R, and rightly so, the issue that interest received by a co-operative society on its deposits with co-operative banks would be eligible for deduction u/s 80P(2)(d) of the Act is covered in assessee's favour by orders of the various coordinate benches of the Tribunal in the following cases :

(i). M/s Solitaire CHS Ltd. Vs. Pr.CIT-26, Mumbai, ITA No. 3155/Mum/2019, dated 29.11.2019

(ii). Land and Cooperative Housing Society Ltd. Vs. ITO (2017) 46 CCH 52 (Mum.)

(iii). M/s C. Green Cooperative Housing and Society Ltd. Vs. ITO-21(3)(2), Mumbai (ITA No. 1343/Mum/2017, dated 31.03.2017.

(iv). Marvwanjee Cama Park Cooperative Housing Society Ltd. Vs. ITO-Range 20(2)(2), Mumbai (ITA NO. 6139/Mum/2014, dated 27.09.2017.

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

In the aforesaid orders, it has been held by the Tribunal that though the co-operative banks pursuant to the insertion of sub-section (4) to Sec. 80P of the Act would no more be entitled for claim of deduction u/s 80P of the Act, but 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 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 u/s 80P(2)(d) of the Act. We find that the aforesaid issue had exhaustively been looked into by the ITAT, 'G' bench, Mumbai in the case of M/s Solitaire CHS Ltd, Vs. Pr.CIT-26, Mumbai ITA No.3155/Mum/2019, dated 29.11.2019, wherein the Tribunal had observed as under :

> "6. We have heard the 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 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, or not. In our considered view, the issue involved in the present appeal revolves 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 co-operative banks, 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 co-operative 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.

7. After necessary deliberations, we are unable to persuade ourselves to be in agreement with the view taken by the Pr. CIT. Before proceeding any further, we may herein reproduce 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 co-operative 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) 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. However, at the same time, we are unable to subscribe to his view that the aforesaid amendment would jeopardise 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 „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 co-operative societies;"

We are of the considered view, that though the co-operative banks pursuant to the insertion of subsection (4) to Sec. 80P would no more be entitled for claim of deduction under Sec. 80P of the Act, but 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 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.

8. We shall now advert to the judicial pronouncements that have been relied upon by the ld. A.R. 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) Land and Cooperative Housing Society Ltd. Vs. ITO (2017) 46 CCH 52 (Mum)
(ii) M/s C. Green Cooperative Housing and Society Ltd. Vs. ITO-21(3)(2), Mumbai (ITA No. 1343/Mum/2017, dated 31.03.2017
(iii) Marvwanjee Cama Park Cooperative Housing Society Ltd. Vs. ITO-Range-20(2)(2), Mumbai (ITA No. 6139/Mum/2014, dated 27.09.2017.
(iv). 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. Insofar the reliance placed by the Pr. CIT on the judgment of the Hon'ble Supreme Court in the case of Totgars Co-operative Sale Society Ltd. vs. ITO (2010) 322 ITR 283 (SC) is concerned, we are of the considered view that the same being distinguishable on facts had wrongly been relied upon by him. The adjudication by the Hon"ble Apex Court in the aforesaid case was in context of Sec. 80P(2)(a)(i), and not on the entitlement of a co-operative society towards deduction under Sec. 80P(2)(d) on the interest income on the investments/deposits parked with a co-operative bank. 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), had concluded that a co-operative society would not be entitled to claim of deduction under Sec. 80P(2)(d). At the same time, we 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 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. We find 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 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 cooperative 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.

9. Be that as it may, in our considered view, as the A.O while framing the assessment had taken a possible view, and therein concluded that the assessee would be entitled for claim of 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 for dislodging the same. In fact, as observed by us hereinabove, the aforesaid view taken by the A.O at the time of framing of the assessment was clearly supported by the order of the jurisdictional Tribunal in the case of Land and Cooperative Housing Society Ltd. Vs. ITO (2017) 46 CCH 52 (Mum). Accordingly, finding no justification on the part of the Pr. CIT, who in exercise of his powers under Sec. 263, 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), date 14.09.2016.

As the facts and the issue involved in the present case before us remains the same as were there before the Tribunal in the case of M/s Solitaire CHS Ltd. (supra), wherein the order passed by the Pr. CIT u/s 263 of the Act was quashed, we, thus, respectfully follow the same. Backed by our aforesaid deliberations, we are unable to uphold the view taken by the Pr. CIT that the failure on the part of the A.O to be disallow the assessee's claim for deduction u/s 80P(2)(d) had rendered the assessment order passed by him u/s 143(3) of the Act, dated 31.08.2017 as erroneous in so far it was prejudicial to the interest of the revenue.

9. Accordingly, on the basis of our aforesaid observations, we herein not finding favor with the view taken by the Pr. CIT that the order passed by the A.O u/s 143(3), dated 31.08.2017 was erroneous in so far it was prejudicial to the interest of the revenue within the meaning of Sec. 263 of the Act set-aside the same and restore the order passed by the A.O u/s 143(3) of the Act, dated 31.08.2017.

10. Resultantly, the appeal filed by the assessee is allowed in terms of our aforesaid observations.

Order pronounced in the open court on 01.09.2021

Sd/-	Sd/-
(S. Rifaur Rahman)	(Ravish Sood)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

Mumbai;
Dated: 01.09.2021
*PS: Rohit

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

BY ORDER,
//True Copy//

(Sr. Private Secretary)
ITAT, Mumbai