

IN THE INCOME TAX APPELLATE TRIBUNAL
“E” BENCH, MUMBAI
BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER &
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER

ITA No. 2459/Mum/2021 (A.Y 2017-18)

ITA No. 2460/Mum/2021 (A.Y 2016-17)

ITA No. 2461/Mum/2021 (A.Y 2015-16)

ITA No. 2462/Mum/2021 (A.Y 2014-15)

Tulsiani Chambers Premises Cooperative Society Ltd 212, Tulsiani Chambers Free Press journal Marg Mumbai-400021.	Vs.	ITO, Ward – 17(3)(4) Room No. 130, 1 st Floor, Kautilya Bhavan C-41 to 43, G Block, BKC, Bandra (E) Mumbai-400020
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No.:AAAAT8890N		
Appellant	..	Respondent

Appellant by :	Shri Ashok Rao & Shri Manoj Raghani.AR
Respondent by :	Shri B.K. Bagchi.DR

Date of Hearing	04.04.2022
Date of Pronouncement	18.04.2022

आदेश / O R D E R

PER PAVAN KUMAR GADALE JM:

These are the appeals filed by the assessee against the separate orders of the Commissioner of Income Tax (Appeals)-NFAC-Delhi passed u/s 143(3) and 250 of the Act for the A.Y 2014-15, 2015-16 & 2017-18 and for

the A.Y 2016-17 against order passed u/s 143(1) and 250 of the Act.

Since the issues involved in these appeals are similar and identical. Hence are clubbed, heard and consolidated order is passed.

For the sake of convenience, we shall take up the assessee appeal in ITA No. 2462/Mum/2021 for the A.Y 2014-15 as a lead case and the facts narrated. The assessee has raised the following grounds of appeal.

- 1. On the facts and in the circumstances of the case, the learned CT (Appeals) was not justified in disposing off the appeal ex-parte.*
- 2. On the facts and in the circumstances of the case, the learned CIT (Appeals) was not justified in upholding the order of the Assessing Officer disallowing the deduction of Rs. 1,13,55,556/- claimed u/s. 80P(2)(d) of the Act.*
- 3. On the facts and in the circumstances of the case, the learned CIT (Appeals) was not justified in upholding the order of the Assessing Officer charging interest of Rs.77,268/- u/s. 234A of the Act.*
- 4. On the facts and in the circumstances of the case, the learned CIT (Appeals) was not justified in upholding the order of the Assessing Officer in charging interest of Rs.12,74,922/- u/s. 234B of the Act instead of Rs.4,530/-*

as computed in the Return of income.

2. The brief facts of the case are that the assessee is a cooperative Housing society and derives income from house property and income from other sources. The assessee has filed the return of income electronically on 23.09.2014 for the A.Y 2014-15 disclosing a total income of Rs.1,45,770/- after claiming basic deduction u/s 80P(2)(c) of the Act of Rs. 50,000/- and deduction u/s 80P(2)(d) of the Act of Rs.1,13,55,556/- in respect of interest income received on deposits with co-op banks. The return of income was processed u/s 143(1) of the Act. Subsequently the case was selected for scrutiny and notice u/s 143(2) and 142(1) of the Act are issued. In compliance, the Ld.AR of the assessee appeared from time to time and submitted the details and the case was discussed. The A.O on perusal of the financial statements found that the assessee has received interest income from deposits with the cooperative banks aggregating to Rs. 1,13,69,942/- and claimed deduction u/s 80P(2)(d) of the Act. The assessee was called to submit the explanations as to why the deduction u/s 80P of the Act claimed on the interest received from the cooperative banks should

not be disallowed. Whereas the assessee has filed a detailed reply vide letter dated 26.09.2016 explaining the reasons and the provisions of the Act duly supported with the judicial decisions referred at page 2 to page 6 of the A.O order.

3. Whereas the A.O. has dealt on the provisions of Sec. 80P of the Act and observed at page 6 Para 5 of the order, read as under:

The explanation given by the assessee is perused but the same are not acceptable. The clause (d) of sub-section (2) of Section 80-P of the I.T. Act reads that "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;". This provision clearly establishes that the interest income earned by a Co-operative Society from its investments with any other Co-operative Society only is entitled for deduction. In the instant case the interest is received by the assessee from Co-operative Bank and the provisions of section SOP does not extend the deduction to the interest received from the investments made with co-operative banks. The term co-operative society has been defined in the Act in section 2(19) which read as:

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

The above definition, as contained in Sec. 2(19) of the Act speaks only of Cooperative Society and not a cooperative bank. The assessee during the course of assessment proceedings has submitted that the society has received interest from the following banks.

1. *Saraswat Co-operative Bank* *Rs. 59,57,580*
2. *National Co-op Bank* *Rs. 6,42,600*
3. *Sharmrao Vithal co-op Bank* *Rs. 47,55,070*
4. *Bombay district Cental Co-op* *Rs. 306.*

*All these four banks are not Co-operative Societies but Co-operative banks as defined in Part V of the Banking Regulation Act. It is well-settled rule of interpretation that the Legislative mandate should be so read that no word used by the Parliament should be rendered nugatory. If the word "cooperative society" is to read as "Co-operative bank" the same would render the entire provision redundant, otiose and nugatory, an outcome which the Parliament could surely not have intended. It has also been further clarified in *Oswal Aro Mills* case reported in 1993 (66) ELT 37 (S.C.) that "where the words of the statute are plain and clear, there is no room for applying any of the principles of interpretation which are merely presumption in cases of ambiguity in the statute. In short, the principle of interpretation applicable to a taxing statute is concerned; one has to look merely at what is clearly said. Further, the conditions or restrictions contemplated by one statute having a different object and purpose should not be lightly and mechanically imported and applied to a fiscal statute for not Levying tax, thereby causing a toss of revenue. The Hon'ble Supreme court in the case of *Thalappatam Service Coop Bank Ltd. a Cit vs. State Of Kerala a Ors. vide civil Appeal No. 9017 of 201 3(arising**

out of LP(C) No. 24290 of 2019 on definition of public authority under section 2(h) of The Right to Information Act, 2005 have discussed at length about accountability and transparency in co-operative societies in general and formation of Public Information Officer which has no application over judgement on fiscal state like Income-tax because one word occurring in different sections of the Act and have different meaning, if the object of the two sections are different and when both operate in different fields. In the light of the above facts the assessee's contention that co-op bank is to be treated as co-operative society for the purpose of allowing deduction u/s 80P(2)(d) of the Act is not acceptable.

4. Finally the A.O was not satisfied with the claim made by the assessee and observed that the cooperative bank is an urban commercial bank and does not fall under the purview of cooperative society referred in the Sec. 80P(2)(d) of the Act and therefore the interest income from cooperative banks has to be taxed under income from other sources and assessed the total income of Rs.1,15,01,330/- and passed the order u/s 143(3) of the Act dated 27.12.2016.

5. Aggrieved by the order, the assessee has filed an appeal before the CIT(A). Whereas the CIT(A) has considered the grounds of appeal, statement of facts and findings of the assessing officer and issued notice

on 11.10.2021 to the assessee to make submissions on or before 25.10.2021. Since there are no submissions filed by the assessee, the CIT(A) has observed that the assessee was provided sufficient opportunity and decided the case of the assessee relying on the material information and has confirmed the action of the Assessing officer and dismissed the assessee appeal. Aggrieved by the CIT(A) order, the assessee has filed an appeal before the Honble Tribunal.

6. At the time of hearing, the Ld. AR submitted that the CIT(A) has erred in confirming the action of the A.O in treating the interest income from cooperative bank is ineligible for deduction u/s 80P(2)(d) of the Act and the assessee has filed the written submissions before the lower authorities on the applicability. Whereas, the CIT(A) has considered the facts on claim of deduction u/s 80P(2)(d) but took a different view. The Ld.AR emphasized that the claim has to be allowed as the cooperative bank is treated as cooperative society for eligibility of deduction u/s 80P(2)(d) of the Act and supported the submissions with the judicial decisions

and paper book. Contra, the Ld. DR relied on the orders of the lower authorities.

7. We heard the rival submissions and perused the material on record. The sole matrix of the disputed issue emphasized by the Ld. AR in respect of granting of deduction u/s 80P(2)(d) of the Act to the Cooperative Society. The Ld. AR submitted that the interest income derived by a co-operative society from its deposits with the co-operative bank would be entitled for deduction U/sec80P(2)(d) of the Act. Further the co-operative bank pursuant to insertion of sub section (4) to sec80P of the Act would no more be entitled for claim of deduction U/sec80P of the Act but the co-operative bank continues to be a co-operative society registered under the Co-operative Societies Act. The Ld. AR has demonstrated the facts of earning of interest on fixed deposits and utilization. The Ld. AR has supported the submissions relying on the judicial decisions as under:

- 1. Petit Towers CHS Vs. ITO, ITA No. 549/Mum/2021.*
- 2. Solitaire CHS Ltd Vs. PCIT, ITA No. 3155/Mum/2019*
- 3. Land End CHS Ltd Vs. ITO, ITA No. 3566/Mum/2014*
- 4. Sea Green CHS Ltd Vs. ITO, ITA No. 1343/Mum/2017*

5. *Merwanjee Cama Park CHS Ltd Vs. ITO, 6139/Mum/2014*
6. *Kaliandas Udoy Bhavan Premises CHS Ltd Vs. ITO, ITA No. 6547/Mum/2017*
7. *SBI Vs. CIT, (2016), 389 ITR 0578 (Guj)*
8. *PCIT Vs. Totagars Co Sale Society, (2017), 392 ITR 0074 (Kar)*
9. *Citizen Co-operative society Ltd Vs. ACIT, (2017) 397 ITR 0001 (SC)*
10. *The Totgars Co-operative Sale Society Ltd VS ITO, (2010) 322 ITR 0283(SC).*

8. We consider it appropriate to refer to the observations of the Coordinate Bench of the Honble Tribunal in M/s Petit Towers Co-operative Housing Society Ltd Vs. ITO in ITA No.549/Mum/2021 dated 1-09-2021 at page 6 Para 8 of the order, which is read as under:

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). *Marwanjee 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 cooperative 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 subsection (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 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 „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 Cooperative 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 cooperative 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 cooperative 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.

10. 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.

9. Considering the facts, circumstances and the ratio of the judicial decisions. We find the Honble Tribunal has passed the order in the context of the revision order U/sec263 of the Act and relied on the catena of Honble High court and Tribunal decisions were the co-operative society receives/earns interest on deposits with the co-operative bank is eligible for claim of deduction under section 80(2)(d) of the Act. The Ld.AR emphatically substantiated the submissions with the facts, evidences and judicial decisions filed before the lower authorities and find merits in the arguments of the Ld.AR. Accordingly, we set aside the order of the CIT(A) and direct the Assessing officer to allow the claim of deduction u/sec80P(2)(d) of the Act on the interest income received /earned from the co-operative banks and allow the appeal filed by the assessee.

ITA No. 2459/Mum/2021 (A.Y 2017-18)

ITA No. 2460/Mum/2021 (A.Y 2016-17)

ITA No. 2461/Mum/2021 (A.Y 2015-16)

10. As the facts and circumstances in these appeals are identical to ITA No.2462/Mum/2021, for the A.Y 2014-15 and the decision rendered in above paragraphs would apply mutatis mutandis for these cases also. Accordingly, grounds of appeal of the assessee are allowed.

11. In the result, the four appeals filed by the assessee are allowed.

Order pronounced in the open court on 18.04.2022

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated .04.2022

KRK, PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.

*ITA No. 2459 to 2462/Mum/2021
Tulsiani Chambers Premises
Cooperative Society Ltd, Mumbai.*

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3. The CIT(A)
4. Concerned CIT
5. DR, ITAT, Mumbai
6. Guard file.

1.

//True Copy//

आदेशानुसार / BY ORDER,

(Asst. Registrar)
ITAT, Mumbai