IN THE INCOME TAX APPELLATE TRIBUNAL
"D" BENCH, MUMBAI

BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER &
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER

ITA No. 730/Mum/2021

(A.Y: 2015-16)

The Mysore Co-Op Housing Society Ltd, GateNo2, Mysore Colony, Near RCF Factory, Anik,Off Majul Road, Chembur, Mumbai-400074	Vs.	Pr.CIT-27, Room no -401, 4 th Floor, Tower-6, Vashi Railway Station Commercial Complex, Vashi,Navi Mumbai-400073.
PAN/GIR No. : AACFT7837N		
Appellant	..	Respondent

Appellant by :	Mr.M.Subramanian.& Ms.Varsha Nanwani.AR
Respondent by :	Mr. Ajay. CIT DR

Date of Hearing	08.08.2022
Date of Pronouncement	10.08.2022

आदेश / O R D E R

PER PAVAN KUMAR GADALE JM:

The assessee has filed an appeal against the order of the Principal Commissioner Of Income Tax (Pr.CIT), Mumbai passed u/s 263 of the Act dated 17.03.2021.

2. The brief facts of the case are that the assesse is a cooperative Housing society and derives income house property, and interest from bank and provides credit facilities to its members. The assessee has filed the return of income for the A.Y 2015-16 electronically on 26.10.2015 disclosing a total income of Rs.43,08,320/- after claiming deduction u/s 80P(2)(d) of the Act of Rs.85,80,391/-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 Limited scrutiny through CASS for verification of (i)Income from heads of income other than Business/profession mismatch(ii)sales turnover Mismatch and (iii) Deduction Under Chapter VI-A. The Assessing Officer (A.O.) issued notice u/s 143(2) and 142(1) of the Act along with the questionnaire. In compliance, the Ld.AR of the assessee appeared from time to time, produced the Books of Accounts and submitted the relevant details & documents and the case was discussed.

3. The A.O on perusal of the financial statements found that the assessee has received interest income from deposits with the cooperative banks, income from

location charges, new shed location charges etc. The A.O. find that there is difference in offering of interest income of Rs.41,220/-. The assessee has filed the detailed submissions in respect of queries raised in the notice on various dates. The A.O. made additions on account of short credit of value of services of Rs.3,030/- and income tax payment expenses disallowance of Rs.6,700/- and assessed the total income of Rs.43,59,270/- and passed the order U/sec143(3) of the Act dated 1-11-2017.

4. Subsequently, the Pr.CIT on perusal of the facts and the assessment record observed that the A.O has not made any enquiry/ verified the facts that the assesse has claimed the deduction u/sec80(P)(2)(d) of Rs 85,80,391/- of interest income from deposits with the urban co-operative bank which is not allowed, as the income earned from co-operative banks is not eligible for claim. The Pr.CIT is of the opinion that the assessment order passed u/s 143(3) of the Act is erroneous and prejudicial to the interest of revenue and issued notice u/s 263 of the Act dated 04.03.2021. In compliance to notice,the assessee has filed the submissions on the disputed issue of eligibility of

claim of deduction u/sec80P(2)(d) of the Act.Whereas the Pr.CIT was not satisfied with the explanations and observed that the order passed U/sec143(3) of the Act is erroneous and prejudicial to the interest of revenue and has set aside the assessment and issued directions to the A.O to pass a fresh assessment order. Aggrieved by the revision order, the assessee has filed an appeal before the Hon'ble Tribunal.

5. At the time of hearing, the Ld.AR submitted that the Pr.CIT has erred in set aside the order u/s 143(3) of the Act, which does not satisfy the twin conditions of erroneous and prejudicial to the interest of the revenue and direct the A.O to do a fresh assessment. The Ld.AR submitted that the explanation 2 to sec 263 of the Act ought to be considered only when the AO has not applied his mind, the facts are to be verified and no enquiry is conducted. The Ld. AR emphasized that the assessee has complied with the notices and the clarifications were filed. The A.O. has dealt on the facts in respect of the issues raised by the Pr.CIT but there are no observations in the assessment order. Further the Pr.CIT has erred in observing that 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 in the assesseement proceedings. The Ld.AR emphasized that the A.O. having satisfied with the provisions of Act has allowed the claim, were the cooperative bank is treated as cooperative society for eligibility of deduction u/s 80P(2)(d) of the Act and substantiated the submissions with the judicial decisions and factual paper book and prayed for allowing the appeal. Contra, the Ld.DR supported the order of the Pr.CIT and made submissions on the application of the provisions and explanation2 to section 263 of the Act.

6. We heard the rival submissions and perused the material available on record. The Ld.AR contentions are that the order passed by the A.O. does not satisfy the twin conditions that (i) erroneous and (ii) prejudicial to the interest of the revenue. The Ld. AR further submitted that the Pr.CIT is of the opinion that the AO has not conducted proper inquiries, investigation and examination on the aspects of claim of deduction u/sec80(P)(d)(2) of the Act with respect to interest on deposits earned from the co-operative Banks. 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.

7. The Ld.AR has demonstrated the facts of earning of interest on fixed deposits and application for the benefits of members and referred to the Audited financial statements, in particular, the Audited Income & Expenditure Account for the year ended 31 March 2015 at page 51 of the paper book. We find that the assessee has complied with the notice u/se 143(2) of the Act and the specific query notice dated 01-11-2017. The Ld.AR in the course of hearing has demonstrated the submissions made on the deduction u/sec80P(2)(d) of the Act under Chapter VI A of the Act at page 65 & 69 of the paper book. Further the Ld.AR highlighted that the A.O. has issued the Notice U/sec142(1) of the Act dated 21-07-2017 with

Annexure –A in particular S,No.7- "Kindly produce the details & evidences of deductions claimed by you under Chapter VIA of the I T Act 1961". Whereas, the asseessee has filed detailed reply on specific query in the letter dated 14-09-2017 at Para 2 placed at page 66 of the Paper book. The Ld.AR also submitted that the assessing officer after satisfaction and verification of facts has passed the Assessement order. We find the submissions of the Ld. AR are realistic duly supported with the material information and judicial decisions.

8. We support our view relying on the ratio of decision of the Coordinate Bench of the Honble Tribunal decision 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). 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 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.

1. *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. 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. We find that the Pr.CIT has not considered the facts that the A.O has called for the information and the case was discussed and there cannot be any non application of mind by the A.O. We find that the A.O has considered one of the possible views based on the information and it is not necessary that the A.O should put all the discussions/observations in the assessment order, as per explanations (2) to sec 263 of the Act the authority has to invoke provisions only when there is no verification and enquiry conducted by the A.O. Whereas the A.O has applied his mind and verified the facts. The Ld. AR referred to the submissions,

financial statements and explanations filed before the Assessing Officer.

10. We find the Hon'ble High Court of Bombay in CIT Vs. Gabriel India Ltd. 203 ITR 108.(Bom) has observed as under:

> *Section 263 of the Income-tax Act, 1961 - Revision - Of orders prejudicial to interests of revenue - Assessment year 1973-74 - Assessee claimed a sum of Rs. 99,326 described 'as plant relay out expenses' as revenue expenditure and ITO, after making enquiries in regard to nature of said expenditure and considering explanation furnished by assessee in that regard, allowed assessee's claim - Subsequently, Commissioner, exercising powers under section 263, cancelled order of ITO observing that order of ITO did not contain discussion in regard to allow ability of claim for deduction which indicated non-application of mind and that claim of assessee required examination as to whether expenditure in question was a revenue or capital expenditure and directed ITO to make a fresh assessment on lines indicated by him - Whether under section 263 substitution of judgment of Commissioner for that of ITO is permissible - Held, no - Whether ITO's conclusion can be termed as erroneous simply because Commissioner does not agree with his conclusion - Held, no - Whether ITO's order could be held to be 'erroneous' simply because in his order he did not make an elaborate discussion - Held, no - Whether provisions of section 263 were applicable to instant case and Commissioner was justified in setting aside assessment order - Held, no*

We Considering the overall facts, circumstances, ratio of the judicial decision and the details submitted in the course of hearing are of the view that the if any query is raised in the assessement proceedings and it was

responded by the assessee, mere fact that it is not dealt with by the A.O. in the order cannot implied that there is no application of mind. Hence, the Pr.CIT action cannot be acceptable as the order passed by the A.O. does not satisfy the twin conditions of erroneous and prejudicial to the interest of the revenue. Accordingly, we set aside the order of the Pr.CIT and allow the grounds of appeal in favour of the assessee.

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

Order pronounced in the open court on 10.08.2022.

Sd/-	Sd/-
(AMARJIT SINGH)	(PAVANKUMAR GADALE)
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Mumbai, Dated 10.08.2022

KRK, PS

Copy of the Order forwarded to :

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

आदेशानुसार/ BY ORDER,

//True Copy//

1.

(Asst. Registrar)
ITAT, Mumbai