

**IN THE INCOME TAX APPELLATE TRIBUNAL
“D” BENCH, MUMBAI**

**BEFORE SHRI ABY T VARKEY, JUDICIAL MEMBER &
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

**ITA No.1236/Mum/2022
(A.Y.2018-19)**

Alka Co-operative Housing Society Limited Plot No. 296A Shivaji Colony, Off Andheri Kurla Road, Chakrala Andheri East – 400099	Vs.	Ward 24(1)(1) Piramal Chamber, Lalbaug, Parel, Mumbai - 400012
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AACAA9218R		
Appellant	..	Respondent

Appellant by :	Hemant Singh
Respondent by :	Mahita Nair

Date of Hearing	13.10.2022
Date of Pronouncement	21.10.2022

आदेश / O R D E R

Per Amarjit Singh (AM):

The present appeal filed by the assessee is directed against the order passed by the NFAC, Delhi which in turn arises from the order passed by the rectification order A.O u/s 154 of the Act for A.Y. 2018-19.

The assessee has raised the following grounds before us:

- “1. *Holding that the return has been filed late i.e beyond the due date without appreciating the fact that, the return of income has been filed within the extended due date of filing of Income tax Return for AY 2018-19 on 13th October 2018.*

2. *Disallowing the claim of deduction under section 80P(2)(d) of the Income Tax Act, 1961 by holding that the return has been filed beyond the due date u/s 139.*
3. *Disallowing the deduction claimed under section 80P(2)(d) for interest earned from investments with co-operative bank amounting to Rs 4,09,161.*
4. *In holding that has not complied with the provisions u/s 119(2)(b) of the Income Tax Act, 1961 without appreciating the fact that the return has been filed within the due date prescribed u/s 139 of the Act by the assessee.*
5. *Your appellant craves leave to add, alter, modify and submit any other grounds during the course of hearing without prejudice.”*

2. The fact in brief is that assessee is a cooperative housing society registered under Maharashtra Housing Society Registration Act. The assessee has filed return of income within the extended due date of filing of Income Tax return for assessment year 2018-19 on 13.10.2018. The CPC has disallowed the deduction for interest earned from investment with cooperative bank amounting to Rs.4,09,161/- by holding that return had been filed beyond the due date u/s 139.

3. The assessee filed the appeal before the ld. CIT(A). The ld. CIT(A) has dismissed the appeal of the assessee.

4. During the course of appellate proceedings before us the ld. Counsel has particularly referred to the copy of order [F.No.225/358/2018/ITA II], dated 24.09.2018 issued by the CBDT u/s 119 of the Act as per which due date for filing of Income Tax return as well as of report of audit was extended from 30.09.2018 to 15.10.2018. The ld. Counsel has also placed reliance on the decision of coordinate bench in the case of New Ideal Cooperative Housing Society ltd. Vs. ITO, ITA No. 2681/Mum/2019, dated 03.02.2021 wherein held that order of denying the deduction u/s 80P(2)(d) is not sustainable.

On the other hand, the ld. D.R supported the order of the CIT(A).

5. Heard both the sides and perused the material on record. The assessee is a cooperative housing society. The assessee has claimed deduction u/s 80P(2)(d) for interest earned from investment with Co-operative bank amounting to Rs.4,09,161/- u/s 80P(2)(d) of the Act. The CPC vide intimation u/s 143(ia) of the Act has disallowed the claim of deduction u/s 80P(2)(d) of the Act holding that return has been filed beyond due date. The rectification application of the assessee that due date of filing return of income was extended from 30.09.2018 to 31.10.2018 was also dismissed. On perusal of the copy of notice i.e Order [F.No.225/358/2018/ITA.II] dated. 08.10.2018 it is noticed that due date for filing the return of income was indeed extended from 30.09.2018 to 15.10.2018. We have also perused the decision of ITAT in the case of Palm Court M. Premises Co-operative Society Ltd. Vs. Pr.CIT-30 for A.Y. 2015-16, dated 09.09.2022 wherein after taking into consideration the other decision of the Mumbai benches the issue adjudicated in favour of the assessee. The relevant operating part of the decision is reproduced as under:

“8. We have heard the rival submissions and perused the materials on record. It is evident that the assessee is a co-operative housing society registered under the Co-operative Housing Societies’ Act and that the assessee has earned interest income of Rs.12,90,210/- which was claimed as deduction under section 80P(2)(d). It is observed that the assessee has invested the surplus funds with co-operative banks and non co-operative banks for which the assessee has received interest income of Rs.10,39,909/- from non cooperative banks and Rs.12,90,210/- from co-operative banks, respectively. The Ld.PCIT revised the assessment order passed under section 143(3) of the I.T. Act dated 15/12/2017 on the ground that interest income received by the assessee by way of investment in co-operative banks is not eligible for deduction under section 80P(2)(d) on the ground that the co-operative banks will not be classified under ‘Co-operative Societies’ and that the interest earned from co-operative banks are not eligible for deduction under the provisions of section 80P(2)(d). The Ld.PCIT placed his reliance on the decision of PCIT vs Totagars Co-operative Sale Society (supra) wherein the Hon’ble High Court held that the amendment to section

194A(3)(v) of the Act excludes cooperative banks from the definition of co-operative society by Finance Act, 2015 thereby intending to deduct tax at source under 194A that the said cooperative banks are not speci of genus of co-operative society excluding them from exemption or deduction under the provisions of Chapter VIA by virtue of section 80P of the Act. Following the interpretation of the Hon'ble Karnataka High Court in the above said decision, the Ld.PCIT held that the assessee was not entitled to deduction under 80P(2)(d) thereby directing the Assessing Officer to frame assessment de novo. We would like to place our reliance on the decisions relied upon by the Ld.AR in the cases mentioned below:-

1. *M/s Petit Powers Co-op. Housing Society Ltd vs ITO (ITA No.549/MUM/2021)*
2. *M/s Solitaire CHS Ltd Society Office, Solitaire CHS Ltd vs PCIT (ITA No.3155/Mum/2019)*
3. *Jai Hind Co-operative Housing Society Ltd vs ACIT-25(2) (ITA No.1762 & 1763/Mum/2020)*
4. *M/s Vadasinor Pragati Samaj Co-operative Credit Society Ltd vs PCIT-18 (ITA No.2539/Mum/2019)*
5. *M/s Doshi Palace Co-operative Hsg Soc. Ltd vs ACIT-19(1) (ITA No.2510/MUM/2019)*
6. *The Salsette Catholic Co-operative Housing Ltd vs ACIT Circle-23(3) (ITA No.3870 & 3871/Mum/2019.*

These decisions of the co-ordinate benches have reiterated the principle that the interest income derived by a co-operative society by way of investment made with a co-operative bank would be entitled to claim of deduction under section 80P(2)(d) of the Act. For this proposition, we would like to place our reliance on the decision of *M/s Petit Towers Co-op. Housing Society Ltd vs ITO (supra)* wherein the co-ordinate bench has observed 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 cooperative 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 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 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 cooperative 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."

9. From the above observation, we are of the view that the facts of the present case are similar to the decisions that have been cited above and by respectfully following the said decisions, we hold that the Ld.PCIT has erred in concluding that the assessment order passed by the Assessing Officer under section 143(3) dated 19/04/2021 was erroneous insofar as it is prejudicial to the interest of the revenue as per the provisions of section 263 of the I.T. Act, 1961, we set aside the order of the Ld.PCIT and restore the order passed by the Assessing Officer vide order dated 15/12/2017 passed under section 143(3) of the I.T. Act.”

Following the decision of the coordinate bench as supra, we direct the A.O to allow the claim of deduction u/s 80P(2)(d) of the Act, therefore, te appeal of the assessee is allowed.

6. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 21.10.2022

Sd/-
(Aby T Varkey)
Judicial Member

Sd/-
(Amarjit Singh)
Accountant Member

Place: Mumbai

Date 21.10.2022

Rohit: PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,
Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण/ ITAT, Bench, Mumbai.