

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "F", MUMBAI**

**BEFORE SHRI PRASHANT MAHARISHI (ACCOUNTANT MEMBER)  
AND  
SHRI KULDIP SINGH (JUDICIAL MEMBER)**

ITA Nos.3229 & 3230/Mum/2022  
(Assessment Years 2013-14 & 2018-19)

Jansevak Co-op Credit Society Ltd, K-14/8, Municipal Colony Barve Nagar, Bhatwadi, Ghatkopar (W), Mumbai-400 084 <b>PAN : AAAAJ4674N</b>	vs	Income-tax Officer, Ward-27(1)(5), Mumbai 410, 4 <sup>th</sup> Floor, Tower No.6, Vashi Railway Station Complex, Vashi Navi Mumbai-400 703
<b>APPELLANT</b>		<b>RESPONDENT</b>

Assessee represented by	ShriKumar Kale
Department represented by	Vrinda U Matkarni SR AR

Date of hearing	09/02/2023
Date of pronouncement	23/02/2023

**ORDER**

**PER: KULDIP SINGH (JM):**

Aforesaid appeals bearing common question of law and facts pertaining to Assessment years 2013-14 & 208-19 are being taken up for disposal by way of composite order in order to avoid repetition of discussion.

2. The Appellant, Jansevak Co-op Credit Society Ltd (hereinafter referred to as the 'assessee') by filing the present appeals, sought to set

aside the impugned orders both dated 26/10/2022 passed by the National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as the 'CIT(A)'] qua the assessment orders for Assessment Years 2013-14 and 2018-19 on the identically worded grounds except difference in figure of addition / disallowance (grounds of A.Y. 2013-14 are taken for the sake of brevity) interalia that:-

*“Being aggrieved by the order dated 26.10.2022 passed by the learned Commissioner of Income Tax (Appeals), Income Tax Department, National Faceless Assessment Centre, Delhi [“Ld. CIT(A)”] u/s 250 of the Income-tax Act, 1961 (“Act”), your appellant prefers this appeal, among others, on the following grounds of appeal, each of which is without prejudice to, and independent of, the other:*

*1. On the facts and in the circumstances of the case, and also in law, the Ld. CIT(A) erred in confirming the addition of Rs.16,76,460/- made by the Ld. AO being disallowance of deduction u/s. SOP claimed by the appellant. Your appellant, therefore, prays that deduction u/s. SOP of Rs.16,76,460/- be allowed to it.*

*Your appellant craves leave to alter, modify, amend or delete any of the above grounds of appeal, or to add one or more new ground(s), as may be necessary”*

2. Briefly stated, facts necessary for consideration and adjudication of the issues at hand are : The assessee company is a co-operative credit limited society and has filed its returns of income which were processed under section 143(1) of the Income-tax Act, 1961 (in short, “the Act) by disallowing the deduction claimed by the assessee to the tune of Rs.16,76,460/- and Rs.87,93,570/- for A.Ys 2013-14 & 2-18-19, respectively under section 80P of the Act and thereby raised the demand.

3. Assessee carried the matter before the Ld.CIT(A) by way of filing appeal who has confirmed the disallowance by dismissing the appeals filed by the assessee. Feeling aggrieved with the impugned order passed by the

Ld.CIT(A), assessee has come up before the Tribunal by way of filing the present appeals.

4. So far as question of disallowing the deduction claimed by the assessee society under section 80P(2)(a)(i) of the Act by relying upon the decision rendered by the Hon'ble Supreme Court in case of Totgars Co-operative Sale Society Ltd. vs. ITO (2010) 322 ITR 283 (SC) is concerned, now this issue is no longer res-integra having already been decided by the coordinate Bench of the Tribunal in the light of the decision rendered by the Hon'ble Supreme Court in case of Totgars Co-operative Sale Society Ltd. (supra) in favour of the assessee.

5. Undisputedly, assessee society has invested its surplus fund with co-operative bank and earned the interest income of Rs.16,76,460/- and Rs.87,93,570/- for A.Y. 2013-14 and A.Y. 2018-19, respectively, which was disallowed by the CPC / AO being he deduction claimed under section 80P of the Act. We have perused the order passed by the Ld.CIT(A), who has decided the issue against the assessee by relying upon the decision rendered by Hon'ble Supreme Court in case of Totgars Co-operative Sale Society Ltd. vs. ITO (2010) 322 ITR 283 (SC).

6. However, now this issue is longer res integra having been decided in favour of the assessee in case of Palm Court M Premises Co-operative Society Ltd. in ITA No.561/M/2021 order dated 09.09.2022 by the coordinate bench of Tribunal by distinguishing the judgement rendered by Hon'ble Supreme Court in case of Totgars Co-operative Sale Society Ltd (supra) and by discussing the decision rendered by Hon'ble Bombay High

Court and Hon'ble Gujarat High Court wherein it is held that interest income earned by the Co-operative Society on its investment made with co-operative bank would be eligible for claim of deduction under section 80P(2)(d) of the Act by returning following findings:

*"8. We have given a thoughtful consideration to the contentions advanced by the Id. Authorized representatives for both the parties in context of the aforesaid issue under consideration. As stated by the Id. 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 Id. 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."*

7. Hon'ble High Court of Karnataka in case of Pr. CIT & Anr. Vs. Totgar's Co-operative Sale Society Ltd. (2017) 292 ITR 74 (Kar.) and Hon'ble Gujarat High Court in case of State Bank of India vs. CIT (2016) 389 ITR 578 (Guj.) had also held that interest income earned by a co-operative society on its investment held with co-operative bank would be eligible for claim of deduction under section 80P(2)(d) of the Act. We are of the considered view that the Ld. CIT(A) has erred in upholding the denial of deduction by the AO to the assessee under section 80P(2)(d) of the Act.

8. So following the decision rendered by Hon'ble Karnataka High Court (supra) and Hon'ble Gujarat High Court (supra) and order passed by the coordinate Bench of the Tribunal discussed in preceding paras, we are of the considered view that assessee society who has earned an amount of Rs.16,76,460 and Rs.87,93,570/- for A.Y. 2013-14 and A.Y. 2018-19 respectively from its investment of surplus fund parked with co-operative banks is entitled for deduction under section 80P(2)(d) of the Act.

9. In view of what has been discussed above, we are of the considered view that the Ld. CIT(A) has erred in upholding the denial of deduction by the AO to the assessee society claimed under section 80P(2)(d) of the Act, hence, AO is directed to allow the same.

9. Resultantly, appeals filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 23/02/2023.

Sd/-

sd/-

<b>(PRASHANT MAHARISHI)</b>	<b>(KULDIP SINGH)</b>
<b>ACCOUNTANT MEMBER</b>	<b>JUDICIAL MEMBER</b>

Mumbai, Dt : 23<sup>rd</sup> February, 2023

Pavanan

Copy to :

1. The appellant
2. The respondent
3. The CIT concerned
4. The CIT(A)
5. DR, SMC Bench
6. Guard File  
(True Copy)

By order

Dy.Registrar / Asst.Registrar  
ITAT, Mumbai Benches