

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'SMC' BENCH
MUMBAI**

**BEFORE: SHRI M.BALAGANESH, ACCOUNTANT MEMBER
&
SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER**

**ITA No.3285/Mum/2022
(Assessment Year :2020-21)**

&

**ITA No.3269/Mum/2022
(Assessment Year :2021-22)**

M/s. Ishwar Bhavan Co-operative Housing Society Ltd Ishwar Bhavan A-Road, Churchgate Mumbai – 400 020	Vs.	CIT(A), NFAC Delhi
PAN/GIR No.AAAAI1470K		
(Appellant)	..	(Respondent)

Assessee by	Shri Ashok Rao
Revenue by	Shri Rajeev Kumar Singh
Date of Hearing	22/02/2023
Date of Pronouncement	24/02/2023

आदेश / ORDER

PER M. BALAGANESH (A.M):

These appeals in ITA No.3285/Mum/2022 & 3269/Mum/2022 for A.Y.2020-21 & 2021-22 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-National Faceless Appeal Centre in appeal No. NFAC/2019-20/10176411 & NFAC/2020-21/10176414 dated 20/12/2022 & 14/12/2022 respectively (Id. CIT(A) in short) against the order of

assessment passed u/s.143(1) of the Income Tax Act, 1961 (hereinafter referred to as Act) dated 24/12/2021 & 30/09/2022 respectively by the Id. DCIT/ACIT, CPC-Bangalore (hereinafter referred to as Id. AO).

Identical issues are involved in both these appeals and hence, they are taken up together and disposed of by this common order for the sake of convenience.

2. The only effective issue to be decided in this appeal is as to whether the assessee would be eligible for deduction u/s.80P(2)(d) of the Act in respect of interest received from Co-operative banks in the facts and circumstances of the instant case.

3. We have heard rival submissions and perused the materials available on record. It is not in dispute that assessee is a co-operative housing society and eligible for deduction u/s.80P of the Act. It is not in dispute that assessee during the A.Y. 2020-21 had received interest income from Maharashtra State Co-operative bank amounting to Rs.1,04,981/- and Saraswat Co-operative Bank amounting to Rs.7,21,808/-, both totalling to Rs.8,26,789/-. The assessee in the return of income claimed deduction u/s.80P(2)(d) of the Act in respect of this sum of interest of Rs.8,26,789/- The Id. CPC while processing the return u/s.143(1)of the Act denied deduction u/s.80P(2)(d) of the Act in respect of interest income derived from co-operative bank amounting to Rs.8,26,789/-. The assessee preferred an appeal before the Id. CIT(A). The Id. CIT(A) by placing reliance on the decision of the Hon'ble Supreme Court in the case of Totgars Co-operative Society Ltd vs ITO reported in 322 ITR 283 and the decision of the Hon'ble Supreme Court in the case of Mavilayi Service Co-operative Bank Ltd. and others vs. CIT reported in 431 ITR 1 held that assessee would not be entitled for deduction

u/s.80P(2)(d) of the Act in respect of interest earned from co-operative banks. The Id. CIT(A) also reproduced the provisions of Section 80P(2)(d) of the Act and concluded that the said clause shall apply only if the interest is earned from co-operative societies and not from co-operative banks. The appeal for the A.Y. 2021-22 was also decided by the Id. CIT(A) in an identical manner. Aggrieved by the said orders, the assessee is in appeal before us for both the years.

4. At the outset, we find that the issue in dispute is squarely covered by the decision of the co-ordinate Bench of the Tribunal in the case of Tulsiani Chambers Premises Co-operative Society Ltd vs ITO in ITA Nos.2459-2462/Mum/2021 dated 18/04/2022 wherein the same issue was decided in favour of the assessee by holding as under:-

2. "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 ITA No. 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) 397ITR 0001 (SC)*

10. *The Totgars Co-operative Sale Society Ltd VS ITO, (2010) 322 ITR 0283(SC).*

3. *We consider it appropriate to refer to the observations of the Coordinate Bench of the Hon'ble 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). *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) (i i) 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.

4.1. When this was put to the Id. DR, the Id. DR said that the assessee's case falls under the aforesaid two decisions of the Hon'ble Supreme Court relied upon by the Id.CIT(A) in his order. We have gone through the said decisions of the Hon'ble Supreme Court referred to supra. Firstly, the decision in the case of Totgars Cooperative Housing Society was rendered

in the context of eligibility to claim deduction u/s.80P(2)(d) of the Act. Hence, reliance placed on the said decision would not advance the case of the Revenue. Moreover the said decision has already been considered in the aforesaid decision of the Tribunal relied upon by the Id. AR and distinguished on facts.

4.2. Now coming to yet another decision relied upon by the Id. DR of the Hon'ble Supreme Court reported in 431 ITR 1 in the case of Mavilayi Service Co-operative Bank Ltd. and others, we find on perusal of the said decision that this case also was concerned with claim of deduction u/s.80P(2)(a)(i) of the Act. The main crux of the said decision is that if the co-operative society carries on banking business without getting itself registered with RBI, it would be entitled for deduction u/s.80P(2)(a)(i) of the Act and it would not be construed as a co-operative bank. Accordingly, it would not be hit by the provisions of Section 80P(4) of the Act. In that case, deduction u/s.80P(2)(a)(i) was denied by that Id. AO to Mavilayi Service Co-operative Bank Ltd by applying the provisions of Section 80P(4) of the Act. The Hon'ble Supreme Court held that co-operative banks / co-operative societies which are carrying on banking business which are registered with RBI alone would fall within the definition of cooperative bank. For them alone, the provisions of Section 80P(4) of the Act would apply. For cooperative banks or cooperative societies which are carrying on banking business but not registered with RBI, they would be entitled for deduction u/s.80P(2)(a)(i) of the Act and would not be hit by the provisions of Section 80P(4) of the Act. The Hon'ble Supreme Court had taken cognizance of the CBDT Circular dated 28/12/2006 containing the explanatory notes on provisions contained in the Finance Act 2006 and the CBDT clarification dated 09/05/2008 while laying down the aforesaid proposition. The fact of co-operative societies investing in co-operative banks were never disturbed by this decision.

Hence, we hold that the reliance placed by the Id. DR on the aforesaid decision of the Hon'ble Supreme Court would not advance the case of the Revenue as they are factually distinguishable. Accordingly, by placing reliance on the co-ordinate Bench decision of this Tribunal in the case of Tulsiani Chambers Premises Co-operative Society Ltd vs ITO in ITA Nos.2459-2462/Mum/2021 dated 18/04/2022 which are reproduced hereinabove, we hold that assessee society would be entitled for deduction u/s.80P(2)(d) of the Act in respect of interest received from co-operative banks. Accordingly, the ground raised by the assessee on this issue is allowed for both the years.

5. The next issue raised by the assessee is only challenging the levy of interest u/s.234B and 234C of the Act which are consequential in nature and does not require any specific adjudication.

6. In the result, both the appeals of the assessee are allowed.

Order pronounced on 24/02/2023 by way of proper mentioning in the notice board.

Sd/-
(SANDEEP SINGH KARHAIL)
JUDICIAL MEMBER

Mumbai; Dated 24/02/2023
KARUNA, sr.ps

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai