

**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**MUMBAI BENCH "G" MUMBAI**

**BEFORE SHRI KULDIP SINGH (JUDICIAL MEMBER)**  
**AND**  
**SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)**

**ITA Nos. 217, 220 & 221, 218 & 219, 215, 214/MUM/2023**  
**Assessment Years: 2013-14, 2016-17, 2017-18, 2018-19,**  
**2020-21**

Sai Prerana Co-op Credit  
Society Ltd.,  
317, Puran Aasha Bldg, Gr. Fl.  
Narashi Natha Street, Katha  
Bazar Masjid Bunder (W),  
Mumbai-400 009.

**PAN No. AADTS 5638 M**

**Appellant**

ITO-17(3)(2),  
Room No. 126, 1<sup>st</sup> floor,  
Kautilya Bhavan, C-41 to C-  
43, G Block Bandra Kurla  
Complex, Bandra (East),  
Mumbai-400051.

**Vs.**

**Respondent**

**ITA Nos. 192, 193, 194 & 195/MUM/2023**  
**Assessment Year: 2016-17, 2017-18, 2018-19 & 2020-21**

ITO-26(2)(1),  
Room No. 127, 1<sup>st</sup> floor, G-  
Block, Kautilya Bhavan,  
Bandra Kurla Complex,  
Mumbai-400051.

**Appellant**

**Vs.**

Sai Prerana Co-op Credit Society  
Ltd.,  
317, Puran Aasha Bldg, Gr. Fl.  
NarashiNatha Street, Katha  
Bazar Masjid Bunder (W),  
Mumbai-400 009.

**PAN No. AADTS 5638 M**

**Respondent**

**Assessee by** : Mr. Bharat Kumar, AR  
**Revenue by** : Mr. Milind S. Chavan, DR

Date of Hearing : 24/03/2023  
Date of pronouncement : 27/04/2023



## **ORDER**

### **PER BENCH**

These appeals by the assessee and the Revenue are directed against separate orders passed by the Ld. First Appellate Authority i.e. the Commissioner of Income-tax (appeals) -National Faceless Appeal Centre, Delhi [ in short the ld CIT(A) ] , for assessment years from AY 2013-14 to AY 2020-21 except AY 2014-15 , 2015-16 and 2019-20. These appeals being connected with same assessee and involving common issue, same were heard together and disposed off by way of this consolidated order for convenience and avoid repetition of facts.

2. First of all, we take up the appeal of the assessee for assessment year 2013-14. The grounds raised by the assessee in its appeal are reproduced as under:

- 1. On the facts and circumstances of the case in Law. Ld. CIT (A) erred in confirming reopening of the case on the same facts and circumstances which is change in opinion.*
- 2. On the facts and circumstances of the case in Law, Ld. CIT (A) erred in confirming of the reopening which was open after four years without established failure on the part of the assessee which is bad in Law.*
- 3. On the facts and circumstances of the case in Law, Ld. CIT (A) erred in disallowing 80P deduction on account of interest received from other than cooperative bank.*



*4. The Appellant keep its right reserve to add/ modify/ delete the any grounds of appeal.*

3. Briefly stated, facts of the case are that the assessee is a 'credit co-operative society' constituted under the Maharashtra Co-operative Society Act, 1960. For the year under consideration, the assessee filed return of income u/s 139(1) of the Income-tax Act, 1961 (in short 'the Act') on 19.09.2013 declaring total income at Rs. Nil. The assessment u/s 143(3) of the Act was completed on 07.03.2016 wherein total income was assessed at Rs.1,18,440/-. Subsequently, the case was reopened u/s 147 of the Act. The Assessing Officer recorded reasons to believe that income escaped assessment due to wrong claim of the assessee for deduction u/s 80P(2)(d) of the Act on the interest received from fixed deposits with 'co-operative' as well as 'nationalized banks'. The Assessing Officer in the reassessment order passed u/s 147 read with section 143(3) of the Act on 03.12.2019, denied the deduction u/s 80P(2)(d) of the Act in respect of interest income of Rs.97,49,707/- earned by the assessee's society from banks (co-operative bank as well as nationalized bank) and assessed the said interest income under the head 'income from other sources. According to the Assessing Officer the scope of deduction under section 80P(2)(d) is restricted to deposit made with 'cooperative society' and 'cooperative bank' are distinct from the cooperative society, no deduction can be allowed for deposits with Cooperative Bank. The Ld Assessing officer relied on the decision of Hon'ble Karnataka High Court in the case of **CIT**



**vs. Totgars Cooperative Society limited 83 taxmann.com 140 (2017) dated 16/06/2017**, a SLP filed against which has been rejected by the Hon'ble Supreme Court.

4. On further appeal, the Ld. CIT(A) though upheld the validity of the reassessment proceedings, however on the merit allowed the deduction u/s 80P(2)(d) of the Act in respect of income earned from deposits kept with the co-operative banks. In respect of interest from deposits with Nationalized Banks, no finding has been given by the ld CIT(A).

5. Aggrieved, the assessee has challenged the finding of the Ld. CIT(A) before us on the validity of the reassessment as well as deduction u/s 80P(2)(d) of the Act in respect of interest received from banks other than co-operative banks i.e. the Nationalized banks

6. We have heard rival submission of the parties on the issue-in-dispute and perused the relevant material on record. Regarding the Ground No. 1 and 2 of the appeal related to the reassessment proceeding, we find that in the case assessment has been reopened beyond the period of four years from the end of the relevant assessment year. As per the provisions of the Act, an assessment cannot be reopened beyond the period of four years from end of the relevant assessment year unless there is a failure on the part of the assessee to disclose fully and truly all material facts necessary for



completion of assessment. In the case, in the regular assessment year completed u/s 143(3) of the Act, the assessee was allowed deduction u/s 80P of the Act in respect of interest income earned from the nationalized as well as co-operative bank. The Assessing Officer has reopened the assessment based on the same material which was available before the Assessing Officer during original assessment proceedings, which is evident from the reasons recorded by the Assessing Officer ( i.e. reproduced by the Assessing Officer on page 1 of the assessment order). For ready reference same is reproduced as under:

*"The assessee, Sai Prerna Co-op. Credit Society Ltd., is assessed to tax in this charge. Assessee e filed its return of income for AY 2013-14 on 08.09.2012 showing income of Rs. Nil. The case was duly concluded vide order us 143(3) dated*

*07.03.2016 at Rs NIL/-. Assessee is a co operative credit society.*

*2. Subsequently, in this case, it is found that assessee has claimed deduction under section 80P(2) of the Act of R\$ 97,49,7071- and the same was also allowed in the order.*

*3. As per the records from Profit & Loss Alc, it was noticed that assessee received interest on FD of Rs 163,45,298/-. The FD's as seen from the Balance sheet were mainty with co operative banks and not with co operative society. This clearly showed that assessee has earned income from co operative banks and not from society. Section 80P(2)(d) does not extend the benefit of deduction for interest received from investments made with co operative banks, hence the deduction was required to be disallowed.*

*4. Assessee claimed deduction u/s 800(2) which is clearly in contravention to provisions of the Act. The income from FD was required to be offered under the head "income from other*



*sources" as per the provisions of the Act as, co operative bank is a urban commercial bank and does not fall under the purview of co operative society referred to section 80P(2)(d) of the Act. The claim of assessee for deduction clearly shows that there is failure on part of assessee in making true and full disclosure of its particulars of income for AY 2012-13.*

*5. Section 147 of the Act states that If AO has reason to believe that any income chargeable to tax has escaped assessment for any assessment year, he may subject to provisions of section 148 to 153, assessee or reassess such income and also any other income which has escaped assessment and which comes to his notice subsequently in the course of proceedings under this section."*

6.1 On perusal of the above reasons recorded, it is evident that there is no tangible new information or material from either 'internal' or 'external' source to form reasons to believe that income escaped assessment. The Assessing Officer has merely re-appreciated the information which was available before him in original assessment proceedings and therefore, the reasons recorded are based on merely 'change of opinion'. In para 4 of the reasons recorded though the Assessing Officer mentioned that there was a failure on the part of the assessee in making true and fully disclosure, however, he has not pointed out which information was not disclosed fully and truly by the assessee. The interest income earned by the assessee from fixed deposits was duly explained before the Assessing Officer in original assessment proceedings and therefore, contention of the Assessing Officer in reason recorded of failure on the part of the assessee in making full and true disclosure, is devoid of merit and in the nature of an incorrect



allegation only. Relying on the decision of the Hon'ble Jurisdictional High Court in the case of **Sunjewels India (P.) Ltd. reported in [2022] 141 taxmann.com 72 (Bombay)** reassessments based on appreciating same facts, which were available during original assessment proceedings, is bad in law on the reason of 'change of opinion'. In writ petition no. 3048 of 2022 in the case of **Mumbai Postal Employees Co-operative Credit Society Ltd Vs ITO**, the Hon'ble Bombay High Court held *that satisfaction recorded by the AO in the reasons recorded was not based upon any material other than obtained on amount of 'perusal of the record', and hence it was based on change of opinion.* The relevant finding of the Hon'ble High Court is reproduced as under:

*"8. We have heard learned Counsel for the parties.*

*9. It is no longer res integra that the action of the A.O. in initiating reassessment proceedings have to be tested on the touch stone of the reasons recorded. On a perusal of the reasons recorded as have been reproduced partially in the preceding paragraphs, it is clear that the A.O. felt that the claim of deduction under Section 80P(2)(d) of the Act which had been allowed in favour of the Petitioner was not in conformity with the provisions of the said section, which consequently had resulted in an under assessment of income of Rs.92,08,876/- and a consequent short levy of tax of Rs.28,45,542/-. This satisfaction recorded by the A.O. in the reasons was not based upon any material other than obtained on account of 'perusal of the record'.*

*10. It can be noticed that in the present case the assessment was under Section 143(3) of the Act, during which the Petitioner had been served with the notice under Section 142(1) of the Act dated 27th September, 2016 asking the Petitioner to explain with documentary evidence the claim of*



*deduction under Chapter VI-A of the Act, reply thereto was submitted by the Petitioner on 10th October, 2016 with an explanation that the Petitioner get fulfilled the conditions of eligibility under Section 80P of the Act, whereafter the order of assessment came to be passed on 23rd November, 2016. It is therefore clear that the issue stood considered as only a part of the deduction under Section 80P of the Act while disallowing the same in regard to income from holiday home charges.*

*11. The A.O. therefore did not have any tangible material with him based upon which he could form his reason to believe that income had escaped assessment. The entire basis for reopening is nothing but a change of opinion on the part of the A.O. that the benefit of deduction under Section 80P of the Act of Rs.92,08,876/- ought not to have been allowed at all. As between the date of the assessment order under Section 143(3) of the Act and the date when the reasons were recorded, there has been neither any change in law nor any new material has been shown to have come to the knowledge of the A.O.. This therefore is nothing but a clear case of change of opinion as was rightly urged by Mr. Mistry and, therefore, impermissible for reopening the assessment. Apart from this, the assessment is sought to be reopened beyond the period of four years from the end of the relevant assessment year 2014-15 and, therefore, it was incumbent upon the A.O. to establish that the Petitioner had failed to disclose fully and truly all material facts necessary for assessment during the relevant assessment proceedings. No such averment is made in the*

*12. In the case of Hindustan Lever Ltd. V/s. R. B. Wadkar, Assistant Commissioner of Income-Tax and others 1, it was held:*

*“.....The reasons recorded should be clear and unambiguous and should not suffer from any vagueness. The reasons recorded must disclose his mind. The reasons are the manifestation of the mind of the Assessing Officer. The reasons recorded should be self-explanatory and should not keep the assessee guessing for the reasons. Reasons provide the link between conclusion and evidence. The reasons recorded must be based on evidence. The Assessing Officer, in the event of challenge to the reasons, must be able to justify the same*



*based on material available on record. He must disclose in the reasons as to which fact or material was not disclosed by the assessee fully and truly necessary for assessment of that assessment year, so as to establish the vital link between the reasons and evidence. That vital link is the safeguard against arbitrary reopening of the concluded assessment.*

*In the aforementioned case the Court set aside the notice under Section 148 of the Act impugned therein, on the ground that the jurisdictional requirement of the proviso to Section 147 of the Act had not been complied with as the A.O. had nowhere stated in the reasons recorded that there was failure on the part of the assessee to disclose fully and truly all material facts. Similar facts situation exists even in the present case where the reasons recorded do not at all alleged any such failure on the part of the assessee which was a condition prerequisite for invoking jurisdiction for reopening in addition to the condition of 'reasons to believe' as this was a case of reopening beyond the period of four years.*

*13. For the reasons mentioned hereinabove, we have no hesitation in holding that in the facts and circumstances of the present case, the reopening of the assessment is unsustainable. Be that as it may, the present petition is allowed. The notice under Section 148 of the Act as also the order of assessment dated 30th March, 2022 passed under Section 147 r/w Section 144B of the Act are set aside.”*

6.2 Similar finding has been given by the Hon'ble Bombay High Court while deciding the **writpetition no. 1809 of 2022 in the case of Tahnee Heights CHS Ltd Vs ITO**. The relevant finding of the Hon'ble High Court is reproduced as under:

*“8. In the present case although the A.O. has recorded in the reasons that there was failure on the part of the assessee to disclose fully and truly material facts, it failed to identify as to what was that material fact which was not disclosed by the assessee which if so disclosed could have prevented the escapement of income. The alleged failure to disclose appears*



*to be nothing but a statement to somehow overcome the hurdle of reopening the assessment beyond four years.*

*Apart from the above, the A.O. could have proceeded to reopen the assessment only if he had reason to believe that 'income had escaped assessment'.*

9. In *CIT V/s. Kelvinator of India Ltd.* 2 the Supreme Court held:

*“ The Assessing Officer has no power to review; he has the power to reassess. But reassessment has to be based on fulfillment of certain precondition and if the concept of “change of opinion” is removed, as contended on behalf of the Department, then, in the garb of re-opening the assessment, review would take place. One must treat the concept of “change of opinion” as an in-built test to check abuse of power by the Assessing Officer. Hence, after 1-4-1989, Assessing Officer has power to reopen, provided there is “tangible material” to come to the conclusion that there is escapement of income from assessment. Reasons must have a live link with the formation of the belief.”*

10. In *Jindal Photo Films Ltd. Vs. Deputy Commissioner of Income Tax 3*, the Court, in the light of the facts before it and in the background of section 147 of the Act, observed :

*“.....all that the Income-tax Officer has said is that he was not right in allowing deduction under Section 80I because he had allowed the deductions wrongly and, therefore, he was of the opinion that the income had escaped assessment. Though he has used the phrase "reason to believe" in his order, admittedly, between the date of the orders of assessment sought to be reopened and the date of forming of opinion by the Income-tax Officer nothing new has happened. There is no change of law. No new material has come on record. No information has been received. It is merely a fresh application of mind by the same Assessing Officer to the same set of facts. While passing the original orders of assessment the order dated February 28, 1994, passed by the Commissioner of Income-tax (Appeals) was before the Assessing Officer. That order stands till today. What the Assessing Office has said about the order of the Commissioner*



*of Income-tax (Appeals) while recording reasons under Section 147 he could have said even in the original orders of assessment. Thus, it is a case of mere change of opinion which does not provide jurisdiction to the Assessing Officer to initiate proceedings under Section 147 of the Act.*

*It is also equally well settled that if a notice under Section 148 has been issued without the jurisdictional foundation under Section 147 being available to the Assessing Officer, the notice and the subsequent proceedings will be without jurisdiction, liable to be struck down in exercise of writ jurisdiction of this court. If "reason to believe" be available, the writ court will not exercise its power of judicial review to go into the sufficiency or adequacy of the material available. However, the present one is not a case of testing the sufficiency of material available. It is a case of absence of material and hence the absence of jurisdiction in the Assessing Officer to initiate the proceedings under Section 147/148 of the Act."*

*11. Even in the present case there appears to be no tangible material with the A.O. as can be seen from the reasons recorded and that the reference was made only to the records of the assessment. It thus appears that between the date of the order of assessment and the date of the issuance of notice, nothing new had happened. There was no new information received by the Assessing Officer nor was any reference made to any new material on record. The A.O. was simply attempting to accord a fresh consideration on the issue of deduction under Section 80P of the Act claimed and allowed in favour of the Petitioner.*

*12. We cannot forget that the order of assessment passed in the case of the assessee was under Section 143(3) of the Act. The Petitioner had specifically claimed the deduction under Section 80P of the Act which was not only reflected in the return of income but also gone into specifically as can be seen from the notice issued under Section 142(1) of the Act where by the details of various deductions and exemptions along with documentary evidence had been sought for by the A.O., which finally led to the passing of the order of assessment where by while certain disallowances were made in respect to certain items, the claim of deduction under Section 80P was allowed. It is settled law that if a query is raised during the*



*assessment proceedings and the assessee submits a reply thereto, leading to the passing of the order of assessment, a reopening in the absence of any new tangible material would be nothing but a change of opinion, which would not furnish to the A.O. a basis for his 'reasons to believe' that income chargeable to tax had escaped assessment.*

*13. Be that as it may, we are of the opinion that the impugned notice is unsustainable on account of these jurisdictional errors committed by the A.O.. Consequently, the petition is allowed. The impugned notice dated 30th March, 2021 under Section 148 of the Act and the impugned order dated 10th March, 2022 are held to be unsustainable and are accordingly quashed."*

6.3 In the case of **Surat District Co-op Milk Producers Union Ltd Vs ITO in (2013) 29 taxmann.com 81 (Gujrat)**, Hon'ble high Court of Gujrat held that *when the assessee had given full details of dividend income, interest income, essential requirement to reopen assessment after four years was not satisfied.* The relevant finding of the Hon'ble High Court is reproduced asunder:

*"12. Having thus heard learned counsel for the parties and having perused the materials on record, we notice that in the return filed by the petitioner, in addition to claiming deduction of gross income of interest and dividend of Rs.1,81,27,606 under Section 80P(2)(d) of the Act, the petitioner further provided various details. For example, in the Annexure-VII to the return, such deduction under Section 80P(2)(d) was bifurcated into dividend income of Rs.53,71,450 and interest income of Rs.1,27,56,156. Further, the petitioner had also supplied the full details of the statement showing dividend and interest income received from cooperative societies along with dividend counters in the original. Additionally, along with Tax Audit Report under Section 44AB of the Act the petitioner had given details of the dividend income, interest income as well as interest expenses for the said year, which included*



*interest expenditure on fixed deposit, interest expenditure on the Society Savings, Employee Savings, etc.*

13. Thus, it can be seen that full details with respect to petitioner's claim for deduction under Section 80P(2)(d) of the Act was very much before the Assessing Officer in the original return accompanied by the audited accounts of the petitioner society. There was, thus, no failure on the part of the petitioner to disclose fully and truly all the material facts necessary for assessment. The essential requirement to enable the Assessing Officer to reopen the assessment and the period of four years is, thus, not satisfied. Therefore, without going into the further question of the very maintainability of the belief of the Assessing Officer that the assessee's income has escaped assessment within the meaning of section 147 of the Act, we find sufficient justification in the petitioner's questioning the reopening the process only on the ground that there was no failure on the part of the petitioner to disclose truly and fully all the material facts.

6.4 The contention of the Id DR that explanation below the section 147 of the Act prescribing 'producing books of amount does not amount to full and true disclosure of material facts', is not relevant in the case as the AO has not pointed out any material fact, which was not disclosed during regular assessment proceedings.

6.5 In view of the above discussion, the reassessment proceedings cannot be sustained, **firstly**, due to the reason that reassessment proceeding are based on mere 'change of opinion', **secondly**, no disclosure of full and true material facts by the assessee before the assessing officer, has not been substantiated by the Assessing officer, **thirdly**, there being no internal or external material to trigger the reopening of assessment or for recording the reasons to



believe that income escaped assessment, the action is a kind of review of assessment already completed, for which the AO is not permitted. Hence, the reassessment proceeding u/s 147 of the Act is quashed as *void ab initio*. The ground No. 1 and 2 of the appeal of the assessee are accordingly allowed.

7. In ground No. 3, the assessee is seeking deduction u/s 80P of the Act in respect of interest received from other than co-operative banks. Since we have already quashed the reassessment proceedings, therefore, the issue is rendered merely academic and therefore, we are not adjudicating upon the same in this appeal.

8. Now we take up the appeal of the assessee in ITA No. 220/M/2023 for assessment year 2016-17. The relevant grounds of the assessee are reproduced as under:

*1. On the facts and circumstances of the case in Law, CPC made disallowance of 80P deduction which is not permissible while passing order u/s 143(1) which is bad in Law.*

*2. On the facts and circumstances of the case in Law, no addition is permissible while processing return u/s 143(1) on debatable issue.*

*3. On the facts and circumstances of the case in Law, Ld. CIT(A) erred in disallowing*

*80P deduction on account of interest received from other than cooperative bank.*

*4. The Appellant keep its right reserve to add/modify/ delete the any grounds of appeal.*



9. We find that in the case, the Computer Processing Center (CPC) Bangalore of the Income-tax Department, while processing the return of income vide intimation order u/s 143(1) of the Act dated 12.01.2017, made adjustment to the returned income for deduction u/s 80P of the Act amounting to Rs. 1,65,88,880/-. The assessee sought rectification of the adjustment and the Assessing Officer passed order u/s 154 of the Act dated 06.07.2019. Since the assessee preferred appeal against the said rectification order u/s 154 of the Act also, the Ld. CIT(A) rejected the appeal of the assessee against the adjustment made u/s 143(1) of the Act, observing as under:

*“5.0 It is found from records that the assessee had filed an appeal against a subsequent Order u/s 154 rectifying the instant Order under Appeal passed by the CPC, Bangalore for the same A. Yr. By virtue of the Doctrine of Merger, the intimation u/s 143(1) dated 12/01/2017 had merged with the rectification Order u/s 154 dated 06/07/2019.”*

10. We have heard rival submission of the parties on the issue-in-dispute and perused the relevant material on record. We find that the Ld. CIT(A) has dismissed the appeal merely for the reason that issue-in-dispute has already been merged in the rectification order dated 06.07.2019 u/s 154 of the Act against which the assessee also filed appeal before the Ld. CIT(A). In view of the fact that against rectification order passed by the Assessing Officer, the assessee had already preferred appeal before the Ld. CIT(A), we concur with the finding of the Ld. CIT(A) that no separate



adjudication is required on the issue of adjustment made u/s 143(1) when the same adjustment for disallowance of deduction u/s 80P was raised in appeal filed with relation to consequent rectification order. The grounds of appeal of the assessee are accordingly dismissed.

12. Now we take up the cross appeals of the assessee and the Revenue against order of the ld CIT(A) dated 30/11/2022 in relation to order u/s 154 of the Act passed by the Assessing Officer for assessment year 2016-17. The grounds raised by the Revenue in ITA No. 192/mum/2023 are reproduced as under:

*1. "Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) was correct in allowing deduction u/s.80P(2)(d) of the Income Tax Act in respect of interest earned from deposits in cooperative bank ignoring the amendment made by Finance Act, 2015 in section 194A(3)(v) of the Act which excludes the Cooperative Banks from the definition of "Co- operative Society" and requiring them to deduct income tax at source under Section 194A of the Act that also makes the legislative intent clear that the Co-operative Banks are not that specie of genus co-operative society, which are entitled to claim deduction under the special provisions of Chapter VIA in the form of Section 80P of the Act."*

*2. "Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) was correct in allowing deduction u/s.80P(2)(d) of the Income Tax Act in respect of interest earned from deposits in cooperative bank ignoring firstly, the purpose of bringing on the statute book sub-section (4) in Section 80P of the Act to exclude the applicability of Section 80P of the Act altogether to any co-operative bank and secondly, ignoring the fact that words used in section 80P(4) are "in relation to" that can include within its ambit and*



*scope even the interest income earned by the respondent assessee, a co-operative Society from a Co-operative Bank and this exclusion by Section 80P(4) of the Act even though without any amendment in Section 80P(2)(d) of the Act is sufficient to deny the claim of the assessee for deduction under Section 80P(2)(d) of the Act."*

*3. "Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) was correct in allowing deduction u/s.80P(2)(d) of the Income Tax Act in respect of interest earned from deposits in cooperative bank ignoring that whether the deposits and investment of surplus funds of assessee not immediately required for its purposes, is made with Scheduled Bank or Nationalized Banks or with co-operative Banks does not make a difference as far as the character of the income earned by assessee is concerned and it does not partake the character of its operational income from its activity as cooperative housing society, the same would continue to be fully taxable and will not be eligible for deduction under section 80P(2)(d) of the Act."*

*4. "Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) was correct in allowing deduction /s.80P(2)(d) of the Income Tax Act in respect of interest earned from deposits, though Hon'ble Karnataka High Court in a detailed judgment discussing the law and various related issues in the case of PCIT Vs Totagar's Cooperative Sales Society(392 IT 74) has specifically decided the Question of Law about the allowability of interest earned from deposits- with Cooperative Bank u/s. 80P(2)(d) of the Income Tax Act in favour of the Revenue."*

12.1 The grounds raised by the assessee in ITA No. 221/Mum/2023 are reproduced as under:

- 1. On the facts and circumstances of the case in Law, Ld. CIT(A) erred in disallowing 80P deduction on account of interest received from other than cooperative bank.*
- 2. The Appellant keep its right reserve to add/modify/ delete the any grounds of appeal.*



13. Facts in brief of the case are that during the year under consideration, the assessee earned interest of Rs.2,85,18,226/- from deposits with co-operative banks of Rs.39,28,73,877/- and interest of Rs.4,53,592/- from deposits of Rs.46,03,225/- with nationalized banks. The Assessing Officer in the rectification order rejected the claim of the assessee of deduction u/s 80P(2)(d) of the Act in respect of both interest from co-operative bank as well as nationalized bank. On further appeal, the Ld. CIT(A) allowed the claim of the assessee u/s 80P(2)(d) of the Act in respect of interest earned from deposits kept with co-operative banks however did not give any finding in respect of interest from nationalized banks.

14. Before us, the Revenue is aggrieved with respect to deduction allowed by the Ld. CIT(A) in respect of interest from cooperative bank whereas the assessee is aggrieved with deduction not allowed in respect of interest from the nationalized bank.

15. We have heard rival submission of the parties on the issue-in-dispute and perused the relevant material on record. As far as ground of appeal of the Revenue are concerned, we find that the Tribunal in the case of the assessee for assessment year 2014-15 in ITA No. 5741/Mum/2018, after considering the decision of the Hon'ble Karnataka High Court in the case of **PCIT v. Totagar's Cooperative Sales Society (392 ITR 74)**, which was relied upon



by the Assessing Officer, has allowed the claim of the assessee observing as under:

*“7. Having heard the rival contentions, we noticed that there is merit in the contentions of the assessee as it is supported by the order passed by the SMC Bench in the case of Citiscape Co-operative Housing Society Ltd. (supra) and also the decision rendered by the Division Bench in the case of Sea Green Co-operative Housing Society Ltd. (supra). For the sake of convenience, we extract below the operative portion of the order passed by the Division Bench in the case of Sea Green Co-operative Housing Society Ltd.(supra):*

*“5. We have carefully considered the rival submissions. The facts lie in a narrow compass, inasmuch as, the appellant is a Cooperative society, whose income, inter-alia, included interest earned on deposits with another Cooperative bank. Accordingly, such income was claimed as exempt under section 80P(2)(d) of the Act. The claim has been denied primarily on account of the fact that section 80P(2)(d) of the Act relates to the income earned from a Co-operative society. In this context, the decision of the Mumbai Tribunal in the case of Lands End Co-operative Housing Society Ltd. (supra) is rendered under identical circumstances and the following discussion is relevant:-*

*“8.3 We have heard the rival submissions and perused the material on record. We find that the CIT(A) enhanced the income of the assessee by rejecting the deduction u/s 80P(2)(d) of the Act of Rs.14,88,107/- being interest on investment with other Coop. banks by following the decision in the case of Bandra Samruddhi Cooperative Housing Society Ltd.(Supra) which was passed on the basis of the decision passed by the Hon’ble Supreme Court in the case of Totagar’s Cooperative Sale Society Ltd. In the case of Totagar’s Co-operative Sale Society Ltd v/s ITAT (supra) the Hon’ble Supreme Court while interpreting the section 80P(2)(a)(i) of the Act held that surplus funds not immediately required in the business and invested in the short term deposit would be assessable under the head “income from other sources” where the Cooperative society is engaged in*



carrying on business of banking or providing credit facilities to its members and consequently no deduction is allowable u/s 80P(2)(a)(i) of the Act. Whereas in the case before us the issue is whether a co-operative society which has derived income on investment with cooperative banks is entitled to deduction u/s 80P(2)(d). The provisions of Section 80P(2)(d) of the Act provide deduction in respect of income by way of interest or dividend on investments made with other Cooperative society. For the purposes of better proper understanding of these two provisions the relevant extract of the section are reproduced below: 80P: Deduction in respect of income of co-operative Societies.

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 sub-section (2), in computing the total income of the assessee.

2. The sums referred to in sub-section (1) shall be the following, namely:- (a) In the case of a co-operative society engaged in-

(i) Carrying on the business of banking or providing credit facilities to its members. The whole of the amount of profits and gains of business attributable to any one or more of such attributes.

(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.”

From the close perusal of the provisions of u/s 80P(2)(a)(i) and 80P(2)(d) it is clear that the former deals with deduction in respect of profits and gain of business in case of the co-operative society carrying on business of banking or providing credit facilities to its members if the said income is assessable as income from business whereas latter provides for deduction in respect of income by way interest and dividend derived by assessee from its investments with other cooperative society. Thus it is amply clear that a cooperative society can only avail deduction u/s 80P(2)(d)(i) in respect of



*its income assessable as business income and not as income from other sources if it carries on business of the banking or providing credit facilities to its members and has income assessable under the head business whereas for claiming u/s 80P(2)(d) it must have income of interest and dividend on investments with other Co-operative society may or may not be engaged in the banking for providing credit facilities to its members and the head under which the income is assessable is not material for the claim of deduction under this section. Now will evaluate the assessee's case in the light of the decision of the Hon'ble Supreme court. The Honble Supreme Court in the case of Totagar's Co-operative Sale Society Ltd.(Supra) held that a society has surplus funds which are invested in short term deposits where the society is engaged in the business of banking or providing credit facilities to its members in that case the said income from short term deposits shall be treated and assessed as income from other sources and deduction u/s 80(P)(2)(a)(i) would not be available meaning thereby that deduction u/s 80(P)(2)(a)(i) is available only in respect of income which is assessable as business income and not as income from other sources. Whereas in distinction to this , the provisions of section 80(P)(2)(d) of the Act provides for deduction in respect of income of a coop society by way of interest or dividend from its investments with other coop society if such income is included in the gross total income of the such coop society. In view these facts and circumstances we are of the considered view that the assessee is entitled to the deduction of Rs. 14,88,107/- in respect of interest received/derived by it on deposits with coop. banks and therefore the appeal of the assessee is allowed by reversing the order of the CIT(A). The AO is directed accordingly.*

*5.1 It is clear that the Tribunal in the case of Lands End Cooperative Housing Society Ltd. (supra) has considered a similar situation and allowed the claim of the assessee. We find that the CIT(A) has placed reliance on the decision of the Ahmedabad Bench of the Tribunal in the case of State Bank of India Employees Co-operative Credit Society Ltd 57 taxman.com 367. It is further noted by the CIT(A) that the said decision of the Ahmedabad Bench of the Tribunal has been referred to by the SMC Bench of Mumbai Tribunal in the case of Shri Saidatta Cooperative Credit Society Ltd. (supra).*



*In our view, the reliance placed by the CIT(A) on the judgment of the Ahmedabad Bench of the Tribunal is quite untenable, inasmuch as, in the said case the interest income in question was earned from deposits kept with State Bank of India. Obviously, State Bank of India is not a Co-operative society so as to justify the claim that such interest earnings fall within the scope of section 80P(2)(d) of the Act. Further, the reliance placed by the CIT(A) on the decision of the SMC Bench of Mumbai Tribunal in the case of Shri Saidatta Cooperative Credit Society Ltd.(supra) is also of no avail, inasmuch as, the Bench merely set-aside the matter to the file of the Assessing Officer for examination afresh, whereas in the case of Lands End Co-operative Housing Society Ltd(supra), the claim of exemption under section 80P(2)(d) of the Act with respect to the interest earned from a Co-operative bank has been upheld. Therefore, in view of the said precedent, the claim of the assessee deserves to be allowed. We hold so.*

*8. In view of the foregoing, we set aside the order passed by the learned CIT(A) and direct the Assessing Officer to allow deduction u/s 80P(2)(d) of the Act in respect of interest earned by the assessee from the deposits kept with Co-operative Banks.”*

15.1 Respectfully following the finding of the Tribunal (supra) in the case of the assessee itself, we do not find any error in the order of the Ld CIT(A) on the issue-in-dispute for following the binding precedents. The grounds of appeal of the Revenue are accordingly dismissed.

15.2 As far as grounds of the assessee seeking deduction u/s 80P(2)(d) of the Act for interest from other than cooperative bank i.e nationalized bank, are concerned, the ld counsel relied on the decision of the Tribunal in ITA No. 604/Pun/2014 in the case of **Shri Laxmi Narayan Nagri Sahkari Pat Sansthan Maryadait** for



assessment year 2010-11 and decision of hon'ble **High Court of Calcutta in the case of PCIT Vs Gunja Samabay Krishi Unnayan Samity Ltd reported in (2013) 147 taxmann.com 518 (Calcutta).**

On perusal of the said decisions, we find that interest from short-term deposits with scheduled bank has been held as eligible by the Tribunal (supra) and Calcutta High Court (supra) under section 80P(2)(a)(i) of the Act and not under the section 80P(2)(d) of the Act. We are of the view that the Ld. CIT(A) has not adjudicated the issue in dispute of eligibility of deduction of interest from scheduled bank u/s 80P(2)(d) of the Act, therefore the assessee should be given one more opportunity to appear before the Ld CIT(A) so that he can give his finding on the matter. In the interest of the natural justice, we feel it appropriate to restore this issue back to the file of the Ld. CIT(A) for deciding after providing adequate opportunity of being heard to the assessee. In the circumstances, the ground of appeal of the assessee is accordingly allowed for statistical purposes.

16. Now we take up the cross-appeals of the assessee and the Revenue for assessment year 2017-18 in ITA No. 219 & 193/M/2023 respectively. The grounds raised by the Revenue are reproduced as under:

1. *"Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) was correct in allowing deduction u/s.80P(2)(d) of the Income Tax Act in respect of interest earned from deposits in cooperative bank ignoring the amendment made by Finance Act, 2015 in section 194A(3)(v) of the Act which excludes the Cooperative Banks from the*



definition of "Co- operative Society" and requiring them to deduct income tax at source under Section 194A of the Act that also makes the legislative intent clear that the Co-operative Banks are not that specie of genus co-operative society, which are entitled to claim deduction under the special provisions of Chapter VIA in the form of Section 80P of the Act."

2. "Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) was correct in allowing deduction u/s.80P(2)(d) of the Income Tax Act in respect of interest earned from deposits in cooperative bank ignoring firstly, the purpose of bringing on the statute book sub-section (4) in Section 80P of the Act to exclude the applicability of Section 80P of the Act altogether to any co-operative bank and secondly, ignoring the fact that words used in section 80P(4) are "in relation to that can include within its ambit and scope even the interest income earned by the respondent assessee, a co-operative Society from a Co-operative Bank and this exclusion by Section 80P(4) of the Act even though without any amendment in Section 80P(2)(d) of the Act is sufficient to deny the claim of the assessee for deduction under Section 80P(2)(d) of the Act."

3. "Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) was correct in allowing deduction u/s.80P(2)(d) of the Income Tax Act in respect of interest earned from deposits in cooperative bank ignoring that whether the deposits and investment of surplus funds of assessee not immediately required for its purposes, is made with Scheduled Bank or Nationalized Banks or with co-operative Banks does not make a difference as far as the character of the income earned by assessee is concerned and it does not partake the character of its operational income from its activity as cooperative housing society, the same would continue to be fully taxable and will not be eligible for deduction under section 80P(2)(d) of the Act."

4. "Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) was correct in allowing deduction u/s.80P(2)(d) of the Income Tax Act in respect of interest earned from deposits, though Hon'ble Karnataka High Court in a detailed judgment discussing the law and various



*related issues in the case of PCIT Vs Totagar's Cooperative Sales Society(392 ITR 74) has specifically decided the Question of Law about the allowability of interest earned from deposits with Cooperative Bank u/s. 80P(2)(d) of the Income Tax Act in favour of the Revenue."*

16.1 The ground raised by the assessee is reproduced as under:

*1. On the facts and circumstances of the case in law, Ld. CIT(A) erred in disallowing 80P deduction on account of interest received from other than cooperative bank.*

17. The grounds raised by the assessee and Revenue in above appeals are identical to grounds raised in cross-appeals for AY 2016-17 and therefore, same are adjudicated *mutatis mutandis*.

18. Now we take up the appeal of the assessee bearing ITA No.218/Mum/2023 for AY 2017-18 in relation to penalty u/s 272A(1)(d) of the Act. The relevant ground is reproduced as under:

*1. On the facts and circumstances of the case in law, Ld. CIT(A) erred in confirming penalty of Rs.50,000/- u/s 270A of the Act.*

19. Briefly stated facts of the case are that during assessment proceedings u/s 143(3) of the Act, the Assessing Officer issued statutory notices u/s 142(1) of the Act dated 09.08.2018; 21.08.2018; 25.09.2018; 28.01.2019 and 30.09.2019. According to the Assessing Officer those notices were not responded/complied by the assessee. It was contended by the assessee that counsel of the assessee was busy on some occasions in complying filing of return/audit and on other occasions, he had undergone eye



operation and therefore, no compliance was made. But the Id AO rejected the contention of the assessee and imposed penalty of @ of Rs.10,000/- for each default totaling to Rs.50,000/-.

20. On further appeal, the Ld. CIT(A) also upheld the penalty observing that there was no reasonable cause for failure on the part of the assessee. The relevant finding of the Ld. CIT(A) is reproduced as under:

*“4.0 The records of the assessee and its submissions were duly perused. It is found that Notice u/s 142(1) were issued and served on the assessee on 09/8/2018, 21/08/2018, 25/09/2018, 28/01/2019 and 30/09/2019, fixing the dates for hearing on 23/8/2018, 10/10/2018, 06/02/2019, 07/10/2019 and 12/12/2019 respectively but there was no compliance on the part of the assessee. As per Page 2 of the assessment order, assessment proceedings were completed as per provisions of Section 144 of the I.T. Act, 1961. Show cause notice u/s 274 r.w.s. 272A(1)(d) dated 17/12/2019 was issued and served on the assessee. Fresh opportunity was provided by issue of notice u/s 274 r.w.s. 272A(1)(d) dated 22/12/2020 and 25/03/2021. However, the assessee had put in a reply only on 06/01/2020 which reads inter alia as follows: "Dear Sir Our advocate went through eye operation therefore he did not appear same time he submitted reply for the A. Yr 2012-13 and A. Yr 2013-14."*

*4.1 The assessee also submitted a prescription from an eye specialist, perusal of which reveals that the purported Authorized Representative of the assessee had undergone a cataract operation on 26/01/2019 and was advised rest for 3 weeks.*

*5.0 The plea taken by the assessee that the purported Authorized Representative was busy in finalization of accounts etc. or that he had undergone a cataract surgery does not appear to be a reasonable cause for failure on the*



*part of the assessee / purported authorized representative to comply with the Notices issued over a period of more than one year and / or request for online adjournments. Even this basic work was not carried out. The reasons for non-compliance to Notices are general in nature and without sufficient cause. The assessee had thus not demonstrated with documentary evidence any reasonable and just cause for failure on its part to carry out its duties of compliance. There was a total non-cooperation on the part of the assessee during the entire course of assessment proceedings and the reasons put forth are not sufficient enough to exempt the assessee from the clutches of the provisions of section 272A(1)(d).*

*5.2 In the facts and under the circumstances of the case, I do not find any merit in the submissions of the assessee and as such the instant appeal is hereby disposed off as "DISMISSED."*

21. We have heard rival submission of the parties on the issue-in-dispute and perused the relevant material on record. We find that the Assessing Officer has levied penalty u/s 272A of the Act for non-compliance on the part of the assessee for various notices issued u/s 142(1) of the Act. We find that regarding the notices u/s 142(1) of the Act dated 09.08.2018, 21.08.2018 and 25.09.2018, it was submitted by the assessee that the authorized representative of the assessee was busy in preparation of profit and loss account and balance sheet for tax payers as the due date of filing for income-tax return for assessment year 2018-19 in the case of non-tax audit taxes was 31.07.2019 and in the case of tax audit , was on 30.09.2018 ,therefore, due to rush of filing income-tax returns, he could not respond to the Assessing Officer. Regarding the notice dated 28.01.2019, it was submitted that representative of the



assessee was operated by a doctor for eye surgery and therefore said notice could not be complied.

21.1 Regarding the notice for 30.09.2019, it was submitted that due to date of filing of return of income for non-tax audit cases, he could not respond to the notice. It was submitted on the part of the assessee that there was no deliberate intention to non-cooperate to the Assessing officer. Before us, the Ld. Counsel of the assessee relied on the decision of the Tribunal in the case of **Triumph International Finance India Ltd in ITA No. 1870/Mum/2020**. The relevant finding of the Tribunal(supra) is reproduced as under:

*“4. We have heard the submissions made by rival sides. The Assessing Officer vide order dated 21/12/2019 has levied penalty of Rs.10,000/- under section 272A(1)(d) of the Act for non-compliance of the notice issued under section. 142(1) of the Act. Undisputedly, no explanation was furnished by the assessee before the Assessing Officer for non-compliance of the notice under section 142(1) of the Act. As per the contentions of ld. Authorized Representative of the assessee, the notice under section 142(1) of the Act was served on the assessee electronically. The Department was gradually moving towards e-assessments and the notices were being served to the assessee online/electronically and the year 2019 being the first year of this shift from physical to electronic mode coupled with the fact that assessee was not carrying out any business operations during the relevant period and hence, was working on minimal employees, the employees of the assessee failed to take note of the notice issued electronically. We are satisfied that the assessee has been able to show reasonable cause for not responding to the initial notice issued under section 142(1) of the Act. It is pertinent to mention here that subsequently on learning about ongoing assessment proceedings, the assessee appeared before the Assessing Officer and furnished the*



*requisite details. The Assessing Officer after taking note of the documents/submissions of the assessee has passed the assessment order under section 143(3) of the Act . It is not a case of absolute non-appearance of the assessee before the Assessing Officer.*

*5. The first appellate authority has rejected the explanation furnished by the assessee for non-compliance of the notice issued under section 142(1) of the Act merely for the reason that during penalty proceedings under section 272A(1)(d) of the Act, the assessee has not stated the reasonable cause. We are not in agreement with the findings of CIT(A). The assessee has explained that about ongoing assessment proceedings the assessee came to know only on receipt of order u/s. 272A(1)(d) of the Act and demand notice. The explanation furnished by the assessee before the CIT(A) and before the Tribunal is consistent. We are satisfied that nonappearance of the assessee in response to the initial notice under section 142(1) of the Act was not deliberate. The year 2019 being the initial year of shift towards digital and electronic mode, the mistake appears to be bonafide. The assessee has been able to show reasonable cause for the failure to comply with statutory notice u/s. 142(1) of the Act. Thus, in our view penalty levied u/s. 272A(1)(d) of the Act is unsustainable. The Assessing Officer is directed to delete the penalty.”*

21.1.1 In the case of BU Bhandari Auto P ltd in ITA No. 324/PUN/2022 also the Tribunal deleted the penalty u/s 272A(1)(d) observing as under:

*“6. We have carefully gone through the impugned orders and find that on receipt of notice u/s 142(1) dated 05.09.2019, the appellant sought time for 15 days to file the required details and the requisite details were filed on 04.11.2019. From the material on record, it appears that when the appellant sought time to file the details, the said application was not disposed of by the Assessing Officer either rejecting the said application or granting time. We also find that ultimately the assessment was completed by the Assessing Officer u/s 143(3) of the Act accepting the returned income.*



*Thus, it will conclusively prove that no prejudice was caused to the Assessing Officer on account of non-complying with the notice u/s 142(1) issued on 05.09.2019 and inaction of the Assessing Officer on the adjournment petition moved by the assessee would also enable the appellant to believe that the time to comply with the extension of time as prayed was granted. Therefore, in the circumstances, we are of the considered opinion that it cannot be said that the appellant is guilty of contumacious conduct to comply with the notice u/s 142(1) of the Act. Thus, it is not a fit case for levy of penalty u/s 272A(1)(d) of the Act. Accordingly, we direct the Assessing Officer to delete the penalty of Rs.10,000/-. Hence, the ground of appeal raised by the assessee in the present appeal stands allowed.”*

21.2 In the instant case before us also the assessee could not comply with the issue of notices due to the reason that the authorized representative of assessee was occupied in regulatory compliance on some occasions and on one occasion, he could not respond due to medical emergency. In our opinion, the assessee should not be penalized for any *bonafide* non-compliance on the part of the authorized representative of the assessee. The assessee has duly explained the reasons for non-compliance. In our opinion, the failure in compliance to the notices is not deliberate on the part of the assessee. The reasons cited by the assessee for failure in compliance of the statutory notices u/s 142(1) of the Act are not malafide. Also, we note that ultimately the assessment order has been passed u/s 143(3) of the Act. The circumstances of the instant case being identical to the cases cited by the Ld. Counsel of the assessee. Therefore, respectfully following the same, we set aside the order of the Ld. CIT(A) on the issue-in-dispute and direct to



delete the penalty levied u/s 272A of the Act by the Assessing Officer.

22. Now we take up the cross-appeals of the assessee and the Revenue for AY 2018-19. The grounds raised by the Revenue are reproduced as under:

*"1. "Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) was correct in allowing deduction u/s.80P(2)(d) of the Income Tax Act in respect of interest earned from deposits in cooperative bank ignoring the amendment made by Finance Act, 2015 in section 194A(3)(v) of the Act which excludes the Cooperative Banks from the definition of "Co- operative Society" and requiring them to deduct income tax at source under Section 194A of the Act that also makes the legislative intent clear that the Co-operative Banks are not that specie of genus co-operative society, which are entitled to claim deduction under the special provisions of Chapter VIA in the form of Section 80P of the Act."*

*2. "Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) was correct in allowing deduction u/s.80P(2)(d) of the Income Tax Act in respect of interest earned from deposits in cooperative bank ignoring firstly, the purpose of bringing on the statute book sub-section (4) in Section 80P of the Act to exclude the applicability of Section 80P of the Act altogether to any co-operative bank and secondly, ignoring the fact that words used in section 80P(4) are "in relation to" that can include within its ambit and scope even the interest income earned by the respondent assessee, a co-operative Society from a Co-operative Bank and this exclusion by Section 80P(4) of the Act even though without any amendment in Section 80P(2)(d) of the Act is sufficient to deny the claim of the assessee for deduction under Section 80P(2)(d) of the Act."*

*3. "Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) was correct in allowing deduction*



*u/s.80P(2)(d) of the Income Tax Act in respect of interest earned from deposits in cooperative bank ignoring that whether the deposits and investment of surplus funds of assessee not immediately required for its purposes, is made with Scheduled Bank or Nationalized Banks or with cooperative Banks does not make a difference as far as the character of the income earned by assessee is concerned and it does not partake the character of its operational income from its activity as cooperative housing society, the same would continue to be fully taxable and will not be eligible for deduction under section 80P(2)(d) of the Act."*

*4. "Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) was correct in allowing deduction u/s.80P(2)(d) of the Income Tax Act in respect of interest earned from deposits, though Hon'ble Karnataka High Court in a detailed judgment discussing the law and various related issues in the case of PCIT Vs Totagar's Cooperative Sales Society(392 IT 74) has specifically decided the Question of Law about the allowability of interest earned from deposits with Cooperative Bank u/s. 80P(2)(d) of the Income Tax Act in favour of the Revenue.'*

22.1 The grounds raised by the assessee are reproduced as under:

- 1. On the facts and circumstances of the case in Law, Ld. CIT(A) erred in confirming disallowing 80P deduction on account of interest received from other than cooperative bank.*
- 2. On the facts and circumstances of the case in Law, Ld. CIT(A) erred in confirming addition of Rs. 16,53,669/-*

23. As far as ground No. 1 of the appeal of the assessee and ground No. 1 to 4 of the appeal of the Revenue are concerned same are identical to the cross-appeals of the assessee for assessment year 2016-17 and therefore, same are adjudicated *mutatis mutandis*.



23.1 As far as ground No. 2 of the appeal of the assessee is concerned, the assessee has raised the issue of addition of Rs.16,53,669/- as other receipts shown under the head “ income from other sources”. The relevant table reproduced by the Assessing Officer in para 5, is extracted as under:

<b>Sr. No.</b>	<b>Particulars</b>	<b>Amount (in Rs.)</b>
1.	Interest from FD in Bank	3,50,60,858/-
2.	Interest on bank savings	9,817/-
3.	Dividend received from Mumbai Dist. Central Co-op. Bank	5,246/-
4.	Other receipts	16,53,669/-

24. However, we find that ultimately in the assessment order, the Assessing Officer has assessed income u/s 56 of the Act in respect of interest earned from deposits with bank amounting to Rs.3,50,60,858/- and after reducing the corresponding expenses of Rs.1,20,70,152/- , he made addition of Rs.2,46,59,438/-. Therefore, no addition has been made by the Assessing Officer in respect of other receipts of Rs.16,53,669/- and therefore, the ground No. 2 raised by the assessee being infructuous, same is rejected.

25. Now, we take up the cross appeals filed by the assessee and the Revenue for AY 2020-21. The grounds raised by the Revenue are reproduced as under:

1. "Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) was correct in allowing deduction u.s.80P(2)(d) of the Income Tax Act in respect of interest earned from deposits in cooperative bank ignoring the



*amendment made by Finance Act, 2015 in section 194A(3)(v) of the Act which excludes the Cooperative Banks from the definition of "Co-operative Society" and requiring them to deduct income tax at source under Section 194A of the Act that also makes the legislative intent clear that the Co-operative Banks are not that specie of genus co-operative society, which are entitled to claim deduction under the special provisions of Chapter VIA in the form of Section 80P of the Act."*

2. *"Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) was correct in allowing deduction u/s.80P(2)(d) of the Income Tax Act in respect of interest earned from deposits in cooperative bank ignoring firstly, the purpose of bringing on the statute book sub-section (4) in Section 80P of the Act to exclude the applicability of Section 80P of the Act altogether to any co-operative bank and secondly, ignoring the fact that words used in section 80P(4) are "in relation to" that can include within its ambit and scope even the interest income earned by the respondent assessee, a co-operative Society from a Co-operative Bank and this exclusion by Section 80P(4) of the Act even though without any amendment in Section 80P(2)(d) of the Act is sufficient to deny the claim of the assessee for deduction under Section 80P(2)(d) of the Act."*

3. *"Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) was correct in allowing deduction u/s.80P(2)(d) of the Income Tax Act in respect of interest earned from deposits in cooperative bank ignoring that whether the deposits and investment of surplus funds of assessee not immediately required for its purposes, is made with Scheduled Bank or Nationalized Banks or with co-operative Banks does not make a difference as far as the character of the income earned by assessee is concerned and it does not partake the character of its operational income from its activity as cooperative housing society, the same would continue to be fully taxable and will not be eligible for deduction under section 80P(2)(d) of the Act."*

4. *"Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) was correct in allowing deduction us.80P(2)(d) of the Income Tax Act in respect of interest*



*earned from deposits, though Hon'ble Karnataka High Court in a detailed judgment discussing the law and various related issues in the case of PCIT Vs Totagar's Cooperative Sales Society(392 IT 74) has specifically decided the Question of Law about the allowability of interest earned from deposits. with Cooperative Bank u/s. 80P(2)(d) of the Income Tax Act in favour of the Revenue."*

25.1 The ground raised by the assessee is reproduced as under:

*"1. On the facts and circumstances of the case in Law, Ld. CIT(A) erred in confirming disallowing 80P deduction on account of interest received from other than cooperative bank.*

*2. On the facts and circumstances of the case in Law, Ld. CIT(A) erred in confirming addition of Rs. 23,16,155/-."*

26. The grounds raised by the assessee and the Revenue in the above appeals are identical to grounds raised in assessment year 2018-19 therefore, same are adjudicated *mutatis mutandis*.

27. In the result, appeals of the assessee and the Revenue are decided as under:

<b>Sr. No.</b>	<b>ITA No.</b>	<b>Assessment Year</b>	<b>Result</b>
1.	217/M/2023	2013-14	allowed
2.	220 /M/2023	2016-17	dismissed
3.	221/M/2023	2016-17	Allowed for statistical purposes
4.	218/M/2023	2017-18	allowed
5.	219/M/2023	2017-18	Allowed for statistical purposes
6.	214M/2023	2020-21	Allowed partly for



			statistical purposes
7.	215/M/2023	2018-19	Allowed partly for statistical purposes
8.	192/M/2023	2016-17	dismissed
9.	193/M/2023	2017-18	dismissed
10.	194/M/2023	2018-19	dismissed
11.	195/M/2023	2020-21	dismissed

**Order pronounced in the open Court on 27/04/2023.**

**Sd/-**  
**(KULDIP SINGH)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(OM PRAKASH KANT)**  
**ACCOUNTANT MEMBER**

Mumbai;

Dated: 27/04/2023

Rahul Sharma, Sr. P.S.

**Copy of the Order forwarded to :**

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

//True Copy//

BY ORDER,

(Assistant Registrar)  
**ITAT, Mumbai**