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

BEFORE SHRI PAVAN KUMAR GADALE (JUDICIAL MEMBER)
AND
MS. PADMAVATHY S. (ACCOUNTANT MEMBER)

I.T.A. No.1592 /Mum/2023
(Assessment year 2018-19)

Sindhudurg Nagari Sahakari Patpedhi Limited, A-Wing 1st Floor , Shivneri Co-op Soc Vardhaman Nagar, Shivajhi Nagar Road, Ambernath, Kalyan, Maharashtra-421 501 **PAN : AAAS0887Q**	vs	Prinipal Commissioner of Income-tax, Thane-1, Ashar I.T.Park, B-Wing, 6th Floor, Waghale Industrial Estate, Thane (West), Maharashtra – 400 604
APPELLANT		**RESPONDENT**

Assessee represented by	Shri Subodh Ratnaparkhi
Department represented by	Shri.Dr. Kishor Dhule – CIT DR

Date of hearing	24-07-2023
Date of pronouncement	25-07-2023

O R D E R

PER : MS PADMAVATHY S. (AM)

This appeal is against the order of the Principal Commissioner of Income-tax, Thane-1 (in short, 'the PCIT') dated 30/03/2023 passed under section 263 of the Income-tax Act (in short, 'the Act') for A.Y. 2018-19. The assessee raised the following grounds of appeal:-

> *"1. The Id Pr. CIT erred in passing ex-parte order u/s 263 of the I.T Act, 1961, alleging failure on the part of the assessee to respond to show cause notice dt 18.03.2023, when in reality the assessee had responded to the said show cause notice u/s 263 on the given date and for this reason the order u/s 263 dt 30.03.2023 is bad in law and void-ab-inito as it breaches*

the salient principles of equity, fair play and natural justice. The appellant prays that the order u/s 263 be quashed and set aside for this reason.

2. The Id Pr. CIT erred in holding the order framed by the assessing officer u/s 143(3) of the I. Tax Act on 09.03.2021 to be erroneous and prejudicial to the interest of revenue as per section 263 of the I.T Act, 1961 and accordingly the assumption of jurisdiction by the Pr. CIT u/s 263 of the I.T Act, 1961 was not valid and justified.

3. The Id Pr. CIT erred in setting aside to the AO, the assessment for A.Y. 2018-19 framed u/s 143(3) on 09.03.2021, with a direction to disallow the entire amount of Rs.79,90,593/- claimed u/s 80P(2), holding that the appellant was not entitled to the said deduction.

4. The Id Pr. CIT erred in not appreciating that the appellant was entitled for deduction u/s 80P(2)(a)(i) of the I.T. Act 1961, in respect of Rs.79,90,593/- being income arising from its business of banking carried on with its members and therefore deduction u/s 80P(2)(a)(i) was fully allowable.

5. The Id Pr. CIT further erred in not appreciating that the appellant was also entitled for deduction u/s 80P(2)(d) of the I.T. Act 1961, in respect of Rs.79,90,593/- being interest income earned from investments in co-operative banks, not appreciating that co-operative banks were also co-operative societies and therefore interest income earned by the appellant from investments with other co-operative banks was entitled for deduction u/s 80P(2)(d) of the I.T. Act, 1961."

2. The assessee is a co-operative society and filed the return of income for the assessment year 2018-19 on 22/09/2018 declaring a total income at Nil after claiming deduction under section 80P(2) of the Act at Rs. 79,90,593/-. The case was selected for scrutiny and the statutory notices were duly served on the assessee. The Assessing Officer, after perusing the submissions made by the assessee completed the assessment under section 143(3) whereby he has accepted the income returned by the assessee.

3. The Principal Commissioner of Income-tax (PCIT), on perusal of assessment records noticed that the assessee has credited interest income out of

deposit / investments with various co-operative banks and other banks aggregating to Rs.1,28,41,962/-. After claiming expenses, gross income of Rs.79,90,593/- is declared and deduction under section 80P of the Act is claimed at Rs.79,90,593/- . In this regard, the PCIT issued a show cause notice under section 263 asking the assessee to explain as to how the income received from other than co-operative society is eligible for deduction under section 80P(2)(d) of the Act. The assessee made a detailed submission before the PCIT justifying the claim of deduction. The PCIT, after considering the submissions of the assessee, held that net income of Rs.79,90,593arising from investments made with co-operative banks and not from any other co-operative society are not eligible for deduction under section 80P(2)(d) of the Act

4. The PCIT, in this regard relied on the decision of the Hon'ble Supreme Court in the case of Totgar Co-operative Sales Society vs ITO 322 ITR 2831 (SC/2010). Accordingly, the PCIT held the assessment passed under section 143(3) by the Assessing Officer to be erroneous and prejudicial to the interest of the revenue and set aside the said order with a direction to examine the applicability of provisions of section 80P(2)(d) and redo the assessment. Aggrieved, the assessee is in appeal before the Tribunal.

4. The Ld.AR of the assessee submitted that the issue under consideration is covered by the orders of the Tribunal in assessee's own case for A.Ys. 2,007-08, 2008-09 & 2009-10 and also for 2017-18 in ITA Nos 5185/Mum/2012 & 1186/Mum/2012 order dated 01/01/2016, ITA No.1935/Mum/2014 order dated 10/09/2015 & ITA No.2834/M/2022 order dated 17/01/2023, respectively. He further submitted that a co-operative bank is a co-operative society holding a

banking licence issued by RBI. For this proposition, he relied on the judgement of the Hon'ble Supreme Court in the case of The Mavilayi Service Co Operative Bank Ltd & Ors vs CIT 431 ITR 1 (SC)(2001). The Ld.DR relied on the order of the PCIT.

5. Undisputedly, assessee has invested its surplus fund with co-operative bank and earned the interest income of Rs.1,28,41,962/-, part of which the assessee claimed as a deduction under section 80P(2)(d) of the Act. The PCIT held that the interest earned by the assessee from investments with cooperative banks are not eligible for deduction under section 80P(2)(d) by relying upon the decision rendered by Hon'ble Supreme Court in the case of Totgars Co-operative Sale Society Ltd (supra). In this regard we notice that this issue is no longer res integra having been decided in favour of the assessee by the co-ordinate bench of Tribunal in case of Palm Court M Premises Co-operative Society Ltd. [2022] 145 taxmann.com 415 (Mumbai - Trib.) 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. The relevant findings of the Hon'ble Tribunal is extracted below:

> ***8.*** *We have heard the rival submissions and perused the materials on record. It is evident that the assessee is a co-operative housing society registered under the Co-operative Housing Societies' Act and that the assessee has earned interest income of Rs. 12,90,210/- which was claimed as deduction under section 80P(2)(d). It is observed that the assessee has invested the surplus funds with co-operative banks and non co-operative banks for which the assessee has received interest income of Rs. 10,39,909/- from non co-operative banks and Rs. 12,90,210/- from co-operative banks, respectively. The Ld. PCIT revised the assessment order passed under section 143(3) of the I.T. Act dated 15-12-2017 on the ground that interest income received by the assessee by way of investment in co-operative banks is not eligible for deduction under section 80P(2)(d) on the ground that the co-*

operative banks will not be classified under 'Co-operativeSocieties' and that the interest earned from co-operative banks are not eligible for deduction under the provisions of section 80P(2)(d). The Ld. PCIT placed his reliance on the decision of Totagars Co-operative Sale Society's case (supra) wherein the Hon'ble High Court held that the amendment to section 194A(3)(v) of the Act excludes co-operative banks from the definition of co-operativesociety by Finance Act, 2015 thereby intending to deduct tax at source under 194A that the said co-operative banks are not speci of genus of co-operativesociety excluding them from exemption or deduction under the provisions of Chapter VIA by virtue of section 80P of the Act. Following the interpretation of the Hon'ble Karnataka High Court in the above said decision, the Ld. PCIT held that the assessee was not entitled to deduction under 80P(2)(d) thereby directing the Assessing Officer to frame assessment de novo. We would like to place our reliance on the decisions relied upon by the Ld. AR in the cases mentioned below:—

1. *Petit Towers Co-op. Housing SocietyLtd. v. ITO [IT Appeal No. 549/MUM/2021]*
2. *Solitaire CHS Ltd. v. Pr. CIT [IT Appeal No. 3155/Mum/2019, dated 29-11-2019]*
3. *Jai Hind Co-operative Housing SocietyLtd. v. ACIT [IT Appeal Nos. 1762 & 1763/Mum/2020]*
4. *Vadasinor Pragati Samaj Co-operative Credit SocietyLtd. v. Pr. CIT [IT Appeal No. 2539/Mum/2019]*
5. *Doshi Palace Co-operative Housing SocietyLtd. v. ACIT [IT Appeal No. 2510/MUM/2019]*
6. *Salsette Catholic Co-operative Housing Ltd. v. ACIT [IT Appeal Nos. 3870 & 3871/Mum/2019]*

These decisions of the co-ordinate benches have reiterated the principle that the interest income derived by a co-operativesociety by way of investment made with a co-operative bank would be entitled to claim of deduction under section 80P(2)(d) of the Act. For this proposition, we would like to place our reliance on the decision of Petit Towers Co-op. Housing SocietyLtd.'s case (supra) wherein the co-ordinate bench has observed as under:—

> *8. We have given a thoughtful consideration to the contentions advanced by the ld. Authorized representatives for both the parties in context of the aforesaid issue under consideration. As stated by the ld. A.R, and rightly so, the issue that interest received by a co-operative society on its deposits with co-operative banks would be eligible for deduction u/s*

80P(2)(d) of the Act is covered in assessee's favour by orders of the various coordinate benches of the Tribunal in the following cases :

(i). M/s Solitaire CHS Ltd. Vs. Pr.CIT-26, Mumbai, ITA No.3155/Mum/2019, dated 29.11.2019

(ii). Land and Cooperative Housing Society Ltd. Vs. ITO (2017) 46 CCH 52 (Mum.)

(iii). M/s C. Green Cooperative Housing and Society Ltd. Vs. ITO-21(3)(2), Mumbai (ITA No. 1343/Mum/2017, dated 31.03.2017.

(iv). Marvwanjee Cama Park Cooperative Housing Society Ltd. Vs. ITO-Range 20(2)(2), Mumbai (ITA NO. 6139/Mum/2014, dated 27.09.2017.

(v). Kaliandas Udyog Bhavan Pemises Co-op. Society Ltd. Vs. ITO, 21(2)(1), Mumbai.

In the aforesaid orders, it has been held by the Tribunal that though the cooperative banks pursuant to the insertion of sub-section (4) to Sec. 80P of the Act would no more be entitled for claim of deduction u/s 80P of the Act, but as a co-operative bank continues to be a co-operative society registered under the Co-operative Societies Act, 1912 (2 of 1912) or under any other law for the time being in force in any State for the registration of co-operative societies, therefore, the interest income derived by a cooperative society from its investments held with a co-operative bank would be entitled for claim of deduction u/s 80P(2)(d) of the Act. We find that the aforesaid issue had exhaustively been looked into by the ITAT, „G" bench, Mumbai in the case of M/s Solitaire CHS Ltd, Vs. Pr.CIT-26, Mumbai ITA No.3155/Mum/2019, dated 29.11.2019, wherein the Tribunal had observed as under :

> *"6. We have heard the authorised representatives for both the parties, perused the orders of the lower authorities and the material available on record, as well as the judicial pronouncements relied upon by them. Our indulgence in the present appeal has been sought, for adjudicating, as to whether the claim of the assessee for deduction under section 80P(2)(d) in respect of interest income earned from the investments/deposits made with the co-operative*

banks is in order, or not. In our considered view, the issue involved in the present appeal revolves around the adjudication of the scope and gamut of sub-section (4) of Sec. 80P as had been made available on the statute, vide the Finance Act 2006, with effect from 01.04.2007. On a perusal of the order passed by the Pr. CIT under Sec. 263 of the Act, we find, that he was of the view that pursuant to insertion of sub-section (4) of Sec. 80P, the assessee would no more be entitled for claim of deduction under Sec. 80P(2)(d) in respect of the interest income that was earned on the amounts which were parked as investments/deposits with co-operative banks, other than a Primary Agricultural Credit Society or a Primary Co-operative Agricultural and Rural Development Bank. Observing, that the co-operative banks from where the assessee was in receipt of interest income were not co-operative societies, the Pr. CIT was of the view that the interest income earned on such investments/deposits would not be eligible for deduction under Sec. 80P(2)(d) of the Act.

7. After necessary deliberations, we are unable to persuade ourselves to be in agreement with the view taken by the Pr. CIT. Before proceeding any further, we may herein reproduce the relevant extract of the aforesaid statutory provision, viz. Sec. 80P(2)(d), as the same would have a strong bearing on the adjudication of the issue before us. "80P(2)(d) (1). Where in the case of an assessee being a co-operative society, the gross total income includes any income referred to in sub-section (2), there shall be deducted, in accordance with and subject to the provisions of this section, the sums specified in subsection (2), in computing the total income of the assessee. (2). The sums referred to in sub-section (1) shall be the following, namely :-

(a).....
(b).....
(c).....

(d) in respect of any income by way of interest or dividends derived by the co-operative society from its investments with any other co-operative society, the whole of such income;"

On a perusal of Sec. 80P(2)(d), it can safely be gathered that interest income derived by an assessee co-operative society from its investments held with any other co-operative society shall be deducted in computing its total income. We may herein observe, that what is relevant for claim of deduction under Sec. 80P(2)(d) is that the interest income should have been derived from the investments made by the assessee co-operative society with any other co-operative society. We are in agreement with the view taken by the Pr. CIT, that with the insertion of sub-section (4) of Sec. 80P, vide the Finance Act, 2006, with effect from 01.04.2007, the provisions of Sec. 80P would no more be applicable in relation to any co-operative bank, other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank. However, at the same time, we are unable to subscribe to his view that the aforesaid amendment would jeopardise the claim of deduction of a co-operative society under Sec. 80P(2)(d) in respect of its interest income on investments/deposits parked with a co-operative bank. In our considered view, as long as it is proved that the interest income is being derived by a co-operative society from its investments made with any other co-operative society, the claim of deduction under the aforesaid statutory provision, viz. Sec. 80P(2)(d) would be duly available. We find that the term „cooperative society" had been defined under Sec. 2(19) of the Act, as under:-

> *"(19) "Co-operative society" means a cooperative society registered under the Cooperative Societies Act, 1912 (2 of 1912), or under any other law for the time being in force in any state for the registration of co-operative societies;"*

We are of the considered view, that though the co-operative banks pursuant to the insertion of subsection (4) to Sec. 80P would no more be entitled for claim of deduction under Sec. 80P of the Act, but as a co-operative bank continues to be a co-operative society registered under the Co-operative Societies Act, 1912 (2 of 1912), or under any other law for the time being in force in any State for the registration of co-operative societies, therefore, the interest

income derived by a co-operative society from its investments held with a co-operative bank would be entitled for claim of deduction under Sec.80P(2)(d) of the Act.

8. We shall now advert to the judicial pronouncements that have been relied upon by the ld. A.R. We find that the issue that a co-operative society would be entitled for claim of deduction under Sec. 80P(2)(d) on the interest income derived from its investments held with a co-operative bank is covered in favour of the assessee in the following cases:

(i) Land and Cooperative Housing Society Ltd. Vs. ITO (2017) 46 CCH 52 (Mum)

(ii) M/s C. Green Cooperative Housing and Society Ltd. Vs. ITO-21(3)(2), Mumbai (ITA No. 1343/Mum/2017, dated 31.03.2017

(iii) Marvwanjee Cama Park Cooperative Housing Society Ltd. Vs. ITO-Range-20(2)(2), Mumbai (ITA No. 6139/Mum/2014, dated 27.09.2017.

(iv). Kaliandas Udyog Bhavan Pemises Co-op. Society Ltd. Vs. ITO, 21(2)(1), Mumbai.

We further find that the Hon'ble High Court of Karnataka in the case of Pr. Commissioner of Income Tax and Anr. Vs. Totagars Cooperative Sale Society (2017) 392 ITR 74 (Karn) and Hon"ble High Court of Gujarat in the case of State Bank Of India Vs. CIT (2016) 389 ITR 578 (Guj), had held, that the interest income earned by the assessee on its investments with a co-operative bank would be eligible for claim of deduction under Sec. 80P(2)(d) of the Act. Still further, we find that the CBDT Circular No. 14, dated 28.12.2006, also makes it clear beyond any scope of doubt that the purpose behind enactment of sub-section (4) of Sec. 80P was that the co-operative banks which were functioning at par with other banks would no more be entitled for claim of deduction under Sec. 80P(4) of the Act. Insofar the reliance placed by the Pr. CIT on the judgment of the Hon"ble Supreme Court in the case of Totgars Co-operative Sale Society Ltd. vs. ITO (2010) 322 ITR 283 (SC) is

concerned, we are of the considered view that the same being distinguishable on facts had wrongly been relied upon by him. The adjudication by the Hon"ble Apex Court in the aforesaid case was in context of Sec. 80P(2)(a)(i), and not on the entitlement of a co-operative society towards deduction under Sec. 80P(2)(d) on the interest income on the investments/deposits parked with a co-operative bank. Although, in all fairness, we may herein observe that the Hon'ble High Court of Karnataka in the case of Pr. CIT Vs. Totagars co-operative Sale Society (2017) 395 ITR 611 (Karn), had concluded that a co-operative society would not be entitled to claim of deduction under Sec. 80P(2)(d). At the same time, we find, that the Hon'ble High Court of Karnataka in the case of Pr. Commissioner of Income Tax and Anr. Vs. Totagars Cooperative Sale Society (2017) 392 ITR 74 (Karn) and Hon"ble High Court of Gujarat in the case of State Bank Of India Vs. CIT (2016) 389 ITR 578 (Guj), had observed, that the interest income earned by a co-operative society on its investments held with a cooperative bank would be eligible for claim of deduction under Sec.80P(2)(d) of the Act. We find that as held by the Hon'ble High Court of Bombay in the case of K. Subramanian and Anr. Vs. Siemens India Ltd. and Anr (1985) 156 ITR 11 (Bom), where there is a conflict between the decisions of non-jurisdictional High Court's, then a view which is in favour of the assessee is to be preferred as against that taken against him. Accordingly, taking support from the aforesaid judicial pronouncement of the Hon"ble High Court of jurisdiction, we respectfully follow the view taken by the Hon'ble High Court of Karnataka in the case of Pr. Commissioner of Income Tax and Anr. Vs. Totagars Cooperative Sale Society (2017) 392 ITR 74 (Karn) and Hon"ble High Court of Gujarat in the case of State Bank Of India Vs. CIT (2016) 389 ITR 578 (Guj), wherein it was observed that the interest income earned by a cooperative society on its investments held with a cooperative bank would be eligible for claim of deduction under Sec.80P(2)(d) of the Act. 9. Be that as it may, in our considered view, as the A.O while framing the assessment had taken a possible view, and therein concluded that the assessee would be entitled for claim of deduction under Sec.

80P(2)(d) on the interest income earned on its investments/deposits with cooperative banks, therefore, the Pr. CIT was in error in exercising his revisional jurisdiction u/s 263 for dislodging the same. In fact, as observed by us hereinabove, the aforesaid view taken by the A.O at the time of framing of the assessment was clearly supported by the order of the jurisdictional Tribunal in the case of Land and Cooperative Housing Society Ltd. Vs. ITO (2017) 46 CCH 52 (Mum). Accordingly, finding no justification on the part of the Pr. CIT, who in exercise of his powers under Sec. 263, had dislodged the view that was taken by the A.O as regards the eligibility of the assessee towards claim of deduction under Sec. 80P(2)(d), we "set aside" his order and restore the order passed by the A.O under Sec. 143(3), date 14.09.2016."

As the facts and the issue involved in the present case before us remains the same as were there before the Tribunal in the case of M/s Solitaire CHS Ltd. (supra), wherein the order passed by the Pr. CIT u/s 263 of the Act was quashed, we, thus, respectfully follow the same. Backed by our aforesaid deliberations, we are unable to uphold the view taken by the Pr. CIT that the failure on the part of the A.O to be disallow the assessee's claim for deduction u/s 80P(2)(d) had rendered the assessment order passed by him u/s 143(3) of the Act, dated 31.08.2017 as erroneous in so far it was prejudicial to the interest of the revenue.

9. Accordingly, on the basis of our aforesaid observations, we herein not finding favor with the view taken by the Pr. CIT that the order passed by the A.O u/s 143(3), dated 31.08.2017 was erroneous in so far it was prejudicial to the interest of the revenue within the meaning of Sec. 263 of the Act set-aside the same and restore the order passed by the A.O u/s 143(3) of the Act, dated 31.08.2017."

9. From the above observation, we are of the view that the facts of the present case are similar to the decisions that have been cited above and by respectfully following the said decisions, we hold that the Ld. PCIT has erred in concluding that the assessment order passed by the Assessing Officer under section 143(3) dated 19-4-2021 was erroneous insofar as it is prejudicial to the interest of the revenue as per the provisions of section 263 of the I.T. Act, 1961, we set aside the order of the Ld. PCIT and restore the order passed by

the Assessing Officer vide order dated 15-12-2017 passed under section 143(3) of the I.T. Act.

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

6. Respectfully following the above order of the coordinate bench we are of the considered view that the PCIT is not correct in holding that the order passed by the A.O u/s 143(3) was erroneous in so far it was prejudicial to the interest of the revenue and accordingly we quash the order passed under section 263 of the Act.

7. In result the appeal of the assessee is allowed.

Order pronounced in the open court on 25/07/2023.

Sd/- **sd/-**

(PAVAN KUMAR GADALE)	**(PADMAVATHY S)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Mumbai, Dt : 25th July, 2023
Pavanan

प्रतिलिपि अग्रेषितCopy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुबंई/DR, ITAT, Mumbai
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BY ORDER,

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Asstt. Registrar / Senior Private Secretary
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