

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

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER &  
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

**ITA Nos.1050 & 1051/Mum/2023  
(A.Ys. 2015-16 & 2016-17)**

Mumbai Postal Employees Co-operative Credit Society Limited, GPO Building, Fort, Mumbai – 400001	Vs.	Income Tax Officer, Ward 17(2)(1) Room No. 115, 1 <sup>st</sup> Floor, Kautilya Bhavan, C-41 to C-43, G Block, Bandra Kurla Complex, Bandra (East), Mumbai – 400051
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AAAJM0032G		
Appellant	..	Respondent

Appellant by :	Madhur Agarwal & Fenil Bhatt
Respondent by :	Neena Jeph

Date of Hearing	24.07.2023
Date of Pronouncement	16.08.2023

आदेश / O R D E R

**Per Amarjit Singh (AM):**

Both these appeals filed by the assessee for assessment year 2015-16 & 2016-17 are based on identical issue on similar facts, therefore, for the sake of convenience both these appeals are adjudicated together by taking ITA No.1050/Mum/2023 as a lead case and its finding will be applied mutatis mutandis to ITA No.1051/Mum/2023.

**ITA No.1050/Mum/2023**

- “1. *On the facts and in the circumstances of the case, the Learned PCII, Mumbai 400017 erred in exercising jurisdiction under section 263 of the Act, when the jurisdictional condition in the said section has not been fulfilled.*
2. *On the facts and in the circumstances of the case, the Learned PCIT, Mumbai 400017 erred in exercising jurisdiction under section 263 of the Act, by invoking Explanation 2 to section 263 of the Act to conclude that the assessment order passed by the Assessing Officer was erroneous in so far as prejudicial to the interest of the Revenue.*
3. *On the facts and in the circumstances of the case, the Learned PCII, Mumbai 400017 erred in concluding that the income received by the appellant by way of interest and dividend from Mumbai District Central Co-operative bank in the previous year was not eligible for deduction u/s 80P(2)(a)(1) of the Income-tax Act.*
4. *Without prejudice to Ground no. 3, on the facts and in the circumstances of the case, the Learned PCIT, Mumbai 400017 erred in concluding that the appellant is not entitled to any deduction u/s 80P(2)(d) of the Income-tax Act in respect of interest and dividend received from Mumbai District Central Co-operative Bank.*
5. *On the facts and in the circumstances of the case, the Learned PCTT, Mumbai 400017 erred in concluding the provisions of section 80P(4) of the Income-tax Act will be applicable to the interest and dividend income received by the Appellant from the Mumbai District Central Co-operative Bank.*

*The appellant craves leave to add to or delete or alter any of the above ground as considered more appropriate to the case.”*

2. Fact in brief is that return of income declaring nil income was filed on 30.09.2015. The case was subject to scrutiny assessment and notice u/s 143(2) of the Act was issued on 11.08.2018. The assessee is a Co-operative Credit Society registered under the Maharashtra Cooperative Society Act. It is engaged in providing credit to its members and for the year under consideration it has shown net profit of Rs.17,73,07,795/-. The assessee has claimed deduction u/s 80P(2)(a)(i) of the Act. The assessing officer after verification of the details and submission filed by the assessee has allowed the claim of deduction.

3. Subsequently, the ld. Pr.CIT on perusal of the assessment record noticed that assessee has earned dividend income of Rs.17.61,959/-, interest of Rs.107,52,999/- aggregating to Rs.125,14,958/- and

claimed deduction u/s 80P(2)(d) of the Act. The ld. Pr.CIT observed that assessee has also claimed deduction on the aforesaid interest and dividend income and same was not offered to tax. During the course of 263 proceedings the assessee has not made any compliance to the show cause notice issued on 16.03.2020, 28.12.2026 and 07.01.2021. Since, no compliance was made therefore, vide order u/s 263 of the Act dated 22.01.2021 the order passed u/s 143(3) dated 28.04.2017 was held to be erroneous and prejudicial to the interest of the revenue as the assessing officer failed to make necessary inquiry as to the issue of taxability of interest income. Thereafter, ITAT vide order ITA No. 682/Mum/2021 dated 14.09.2021 restored the matter back to the file of the Pr.CIT for deciding afresh after considering the submission of the assessee.

3. Therefore, opportunity was given to the assessee vide notice dated 08.06.2022. In response the assessee has submitted as under:

*“The action u/s 263 is proposed to deny deduction to interest income of Rs.1,07,52,999/- and dividend income of Rs.17,61,959/- both received from “Mumbai District Central Cooperative Bank Ltd. (MDCC Bank) by the assessee during above AY.*

*A. 1. Before we make our submissions, we put on record that this case does not attract action u/s 263 of the Act for following reasons:*

*a. At original assessment stage, the AO had directed the assessee by notices issued u/s 142(1) of the Act, to explain how the assessee was entitled to deduction of entire income u/s 80P of the Act?*

*b. The assessee made detailed submissions to justify its claim for deduction of entire income including Interest & Dividend referred above u/s 80P(2)(a)(i) of the Act,*

*c. In support of its contentions, the assessee relied upon judicial pronouncements including that of jurisdictional High Court and CBDT circular explaining how a cooperative credit society was entitled to deduction of its entire income including interest and dividend earned from a co-operative bank u/s 80P(2)(a)(i) of the Act.*

*d. The section 80P(2)(a)(i) referred to the deduction of entire "income attributable to the described activities" under the said section and not just the direct income from those activities Through the written submissions it was explained that:*

*i. activities which generated income from Interest and Dividend were part of and inseparable from principal business,*

*ii. said income was integral part of the business of providing credit to members by the assessee society. iii. Several judgments of higher authorities relied upon were also referred for consideration.*

*A. 2. After considering the written submissions, the Assessing Officer allowed the claim for deduction u/s 80P(2)(a)(i) of the Act of entire income including interest and Dividend referred above in the assessment completed u/s 143(3) of the Act.*

*A. 3. Sec. 263 of the Act, under which the revision is proposed now, contemplates two situations A. order is erroneous and B the error must be prejudicial to the revenue. Both these conditions need to be simultaneously attracted for revision u/s 263. Refer Malabar Industrial Co Ltd Vs CIT, 243 ITR 83 (SC) and CIT VS. Kwality Steel Suppliers Complex 395 ITR 1 (SC).*

*Annexure 1 & 2 resp. In the assessee's case, leave aside attracting both the conditions but even one is not attracted. This is explained below:*

*i. the order proposed to be revised was not erroneous as it was based on several reported decisions of the High Courts including jurisdictional High Court and Tax Tribunals. Thus, AO's decision to allow deduction had enough support of higher authorities.*

*ii. the order was not prejudicial to the interest of the revenue as there was no grievous error in original assessment order, which was subversive of the administration of revenue. The word prejudicial is to be interpreted not in terms of possible loss of tax but damage to the tax administration. Mere unfavourable orders leading to the loss of tax cannot be brought under the scope of sec. 263. The deduction allowed by several judicial authorities was legitimately followed by AO in original assessment. We rely on Bismillah Trading Co. Vs. Intelligence Officer 248 ITR 292 (Ker.) & Venkatakrisna Rice Co. Vs. CIT 163 ITR 129 (Mad). Refer Annexure 3&4.*

*iii. in the proposed action, you have interpreted scope of sec. 80P in a completely different way and concluded that the original assessment order suffered inherent deficiencies. This interpretation is farfetched, absurd and simply amounts to change of opinion to support proposed action u/s 263, We rely on CIT Vs Greenworld Corporation 181 Taxmann 111 (SC) Refer Annexure 5.*

*iv. The judgment of the Bombay High Court in Quepem Urban Co-operative Credit Society Ltd. vs. ACIT (2015) 377 ITR 272 (Bom) - Refer Annexure 7- was relied upon by the assessee in written submissions besides the decisions in other cases. There is no reason to believe that the AO did not consider and follow all these referred cases while passing assessment order, especially when this was the issues covered under CAS assessment. We rely on CIT VS G. M. Mittal Stainless Steel Pvt. Ltd. 130 Taxmann 67 (SC) Refer Annexure 7*

v. The order of AO was in conformity with the principle explained by the jurisdictional Bombay High Court in *Quepem Urban Co-operative Credit Society Ltd. vs. ACIT (2015) 377 ITR 272 (Bom)*. No action against said order could legitimately be initiated u/s 263 as the said order was not erroneous and prejudicial to the interest of the Revenue. - *CIT VS. Paul Brothers 216 ITR 548 (Bom.)*. Refer Annexure 8.

vi. The assessment order also followed principle laid down in several ITAT judgments that the total income of a co-operative credit society dealing exclusively with its members is fully deductible u/s 80P(2)(a)(1) of the Act. This further supports the contention that the order was neither Erroneous nor Prejudicial to the interest of the revenue as the conclusion of AO in assessment orders was supported by several ITAT decisions. Refer *Russel Properties P. Ltd. Vs. Addl. CIT 109 ITR 229 (Cal)*, Annexure 9, which has clarified that where the order is based on ITAT decisions cannot be revised u/s 263 of the Act.

vii. Merely because the assessment order does not contain any specific discussions and or reasoning for accepting deduction in full in respect of both the incomes, which now proposed to be denied benefit of deduction u/s 80P(2)(a)(1) of the Act, cannot be a ground for resorting to action u/s 263. Refer *CIT VS. Goyal Private Family Specific Trust 171 ITR 698 & CIT VS. Gabriel India 203 ITR 108 Annexure 10 & 11*.

All the judgments relied upon by the assessee and further additional decisions are stated at the end of these submissions. (Page 15 onwards). Copies of all these judgments are enclosed for ready reference.

Therefore, in our view, the revision u/s 263 proposed by you, is against the laid down principles and law and therefore need not be proceeded with

During the hearing before Hon. ITAT in the appeal against your first order u/s 263, all these points as also merit of the case was explained. As can be seen from appeal order, the DR did not refute any of these submissions. He pleaded for principle of Natural Justice as none of those submissions were made before the Ld. PCIT in the hearings fixed before order u/s 263 was passed. The assessee had not received the notice of hearing and therefore those submissions could not be made at that stage. The Hon. ITAT granted this request of the DR and therefore the order passed u/s 263 earlier was set aside and case was remanded back to you for an order after considering all related issues

B. 1. We now explain that your fresh action u/s 263 to revise original assessment order and assess to tax Interest and Dividend received from MDCC Bank would be erroneous even on merit of the case. The relevant issues to examine are: 1. Whether the above stated entire Interest income and Dividend income were part of and attributable to the business of the assessee, and eligible for deduction u/s 80P(2)(a)(1) of the Act? and II. Without prejudice to the above, Whether the entire Interest income and Dividend Income, were also eligible for deduction u/s 80P(2)(d) of the Act?

B. 2. The Admitted Facts in the assessment stage as also your notice are:

- *The assessee is a co-operative credit society registered under Maharashtra Cooperative Societies Act,*
- *The assessee society carried out the business of providing credit (loans) only with its members during relevant previous year and*
- *In the original assessment and even in revision proceedings, entire income from core business was accepted as eligible for deduction u/s 80P(2)(a)(0) of the Act.*

*B.3. In your view, the Interest income of Rs. 1,07,52,999/- and the Dividend of Rs. 17,61,959/- both received from MDCC bank, were not eligible for deduction either u/s 80P(2)(a)(i) or even sec. 80P(2)(d) of the Act. The later confers deduction of the entire interest and dividend income received by one co-operative Society from the other co-operative society. This also is proposed to be denied. We completely disagree with you on above interpretation and place our submissions to bring out the facts and consequential legal position concerning these incomes*

*We now make submissions on issues described in B.1. above:*

*C. Interest on deposits and Dividend on shares earned from "Mumbai District Central Cooperative Bank Ltd." (MDCC Bank) were attributable to the business of the assessee Society and eligible for deduction u/s 80P(2)(a)(1) of the Act.*

*Separate submissions are made for both these incomes*

*C.1. Interest income of Rs. 1,07,52,999/- How attributable to the business and covered by sec. 80P(2)(a)(1) of the Act*

*a. The business of the assessee was to provide credit (loans) to the members. This business called for certain financial discipline and was also subjected to certain legal compulsions. All these were required to be followed up for smooth and uninterrupted business continuity.*

*b. Sec. 66 of the Governing Act viz. "Maharashtra State Co-Op Societies Act" requires every society to set aside profits up to 25% to "Statutory Reserve" before declaring dividend to members. The amounts so set aside are required to be invested in bank deposits u/s 70 of the said Governing Act. Copies of these are enclosed as Annexure 12 & 13 respectively for ready reference.*

*c. The assessee society had transferred applicable profits every year to "Statutory Reserve- compliance of sec. 66 of Governing Act and placed these in deposits with the MDCC bank-compulsion of sec. 70 of the Governing Act.*

*The below table will bring out relationship between rise in Statutory Reserve & Bank Deposit during the year.*

	<i>Statutory Reserve</i>	<i>Bank Deposits</i>
<i>Op Balance</i>	<i>9,52,54,708</i>	<i>7,57,61,000</i>
<i>Add: Profits Transferred</i>	<i>2,54,50,265</i>	
<i>Entrance &amp; Nominal Members fee</i>	<i>5,796</i>	
<i>Fresh FDs (net) made</i>		<i>4,48/97,000</i>

Cl. Balance	12,07,10,769	12,06,58,000
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*The funds invested in bank deposit were less than the amount, which ought to have been invested. The entire interest income of Rs. 1,07,52,999/- was earned on these deposits. The above data can be verified from audited accounts and Form 26AS of the above year. Audited Accounts of above year are enclosed as Annexure 14A & 14B. Copy of Form 26AS is enclosed as Annexure 15*

*d. It is clarified that bank account with State Bank of India was a current account. This account did not earn interest. Copy of bank account statement is enclosed as Annexure 16 to show that it was a Current Account. No other bank account was maintained by the assessee. Thus, entire interest income was earned from MDCC Bank*

*e. Above clarification brings out that the funds deposited with the MDCC Bank were out of the balance in Statutory Reserve Fund. These deposits were not of surplus or idle funds with the assessee. The funds were set aside in Statutory Reserve as required by the Governing Act. This can establish that the funds invested were neither Surplus nor Idle Funds.*

*f. The investment of funds originating from the business out of legal compulsion, was an integral part of the business and the interest earned on these deposits was therefore attributable to the business of the assessee viz. providing credit to members as specified in sec 80P(2)(a)(1) of the Act. Supreme Court has held this in the case of CIT v/s Karnataka State Co-operative Apex bank 118 Taxman 321. Refer Annexure 17. C. 2. Dividend income of Rs. 17,61,959/- How attributable to the business and covered by sec. 80P(2)(1) of the Act*

*a. The assessee earned above Dividend income on shares of the MDCC bank. The need to invest in shares arose because funds collected from members by way of various deposits etc. and available for lending were short of the demand for loan from members. To tide over this shortfall, the assessee availed loan from above bank*

*b. Every co-operative Society has to avail loan from Apex Co-operative Bank. This is a directive of the administering authority to strengthen the co-operative movement. The rules of the MDCC bank mandated the borrower to purchase shares of the said bank at specified ratio of borrowing Certificate from the bank of this requirement is enclosed as Annexure 33.*

*c. In earlier years, the assessee society availed Term Loan and Overdraft (loan) from MDCC Bank. The total borrowing as at end of March 2015 from MDCC Bank was Rs. 55.18 crores. The assessee society had invested Rs. 7.50 crores in shares of the said bank at the time of availing loan in earlier year and the said investment continued as at 31.03.2015. The borrowed amount was advanced to members as loans at rates higher than the rate of interest paid on Overdraft to bank. The dividend of Rs. 17,61,959/- was received on the investment of these shares. The rate of dividend was just 2.35%*

*d. The transaction of availing loan was an act of business exigencies, this mandated investment in shares of the lending bank and the dividend was earned on shares so bought. Thus, all of these were part of the business activity.*

*e. If the investment is made as business exigencies, income arising from said investment is business income and not income from other sources. It was held in CIT vs. Chinna Nachimuthu Constructions 297 ITR 70 (Kar) - (Refer Annexure 18). that if FDs were placed with bank for availing bank guarantee for utilizing in the business, interest on such bank fixed deposits was treated as business income and not income from other sources. Applying the same*

*ratio, the dividend earned on shares bought for the purpose of availing loan, which was utilised in the business, was a Business income.*

*C 3. Combined reading of sec. 80P (1) & (2)(a)(0) state that "the whole of the amount of Profits and Gains of the business attributable to the business of providing credit facilities to its members shall be deducted in computing total income of the assessee"*

*a. What is the scope of the wordings "income attributable to the business" As reported under "Admitted Facts" at the start of these submissions, the assessee society carried on only business of providing credit (loans) to its members during the relevant AY.*

*b. We have explained in C. 2 and C.3. above, individually what relationship the earning of interest and dividend had with the core business of the assessee. In below paras we explain how the said relationship makes both fall into the category of "income attributable to the business"*

*c. The term "profits and gains attributable" has wide connotation than "profits and gain derived from or arising from The Interest from the MDCC bank was earned on deposits placed with it by the assessee as per the mandate of the Governing Act. The Dividend on shares of MDCC Bank arose out of the contractual arrangement, to make available additional funds for utilization in business and that required purchase of shares. The deposits with MDCC bank and the shares of the MDCC bank were not separable from the business and were integral part of the business. Had these two not been made, the business of the assessee would have suffered materially. Consequently, income earned from these investments related to the business and as such integral and inseparable from business These therefore were "attributable to the main business of the assessee.*

*The sec. 80P(2)(a) clearly uses the term "profits and gains attributable" and not "profits and gains derived from or arising from Even if any source of income is distinct from the core activity but if the said source has nexus to the core activity, it is deemed to be attributable to the core activity.*

*d. The interest on deposits and dividend from MDCC Bank were not eamed from any independent act of investing surplus and or idle funds unconnected with the business of providing credit. The interest arose from compliance with applicable provision of Governing Act, and Dividend arose out of the commercial expediency of raising additional funds to meet the demand for loan as a requirement of normal business activity. The earning of interest and dividend therefore were earned while conducting the said business and fully attributable to the said business.*

e. The term "attributable to the business is explained by Apex Court in *Cambay Electric Supply Industrial Co Ltd v/s CIT 113 ITR 84*, which is produced here under:

*"it will be pertinent to observe that the legislature, has deliberately used the expression "attributable to" and not the expression "derived from" It cannot be disputed that the expression "attributable to" is certainly wider in import than the expression "derived from" Had the expression "derived from" been used, it could have with some force been contended that a balancing charge arising from the sale of old machinery and buildings cannot be regarded as profits and gains derived from the conduct of the business of generation and distribution of electricity In this connection, it may be pointed out that whenever the legislature wanted to give a restricted meaning in the manner suggested by the learned Solicitor-General, it has used the expression "derived from", as, for instance, in section-80J In our view, since the expression of wider import, namely, "attributable to", has been used, the legislature intended to cover receipts from sources other than the actual conduct of the business of generation and distribution of electricity Refer Annexure 19.*

- *In *Tumkur Merchants Souharda Credit Co-operative Ltd v/s ITO 55 taxmann.com 447* relying on above Supreme Court judgment the Court held that in case of a co-operative credit society, engaged in providing credit facilities to its members, incidental income in the nature of interest on fixed deposits with banks was attributable to the business of providing credit facilities to its members and therefore eligible for deduction u/s 80P(2)(a)(i) Refer Annexure 20. The case of dividend income in the instant case is still stronger as the act of investment in shares fetching Dividend had provided funds to carry on main business. These funds were utilised in core business of lending to the members and interest earned on these loans was accepted eligible for deduction u/s 80P (2)(a)(1) of the Act. The Dividend income arose on shares which made available these additional funds and therefore it was also "Attributable to the main business" of providing credit to members.*
- *Supreme Court in case of *CIT v/s Karnataka State Co-operative Apex bank - 251 ITR 194; 118 Taxman 321 (SC)* has held that where placement of such funds being imperative for purpose of carrying on business, income derived therefrom was income from assessee's business falling under section. 80P(2)(a)(i). This decision of the Supreme Court is squarely applicable to the assessee and has been relied upon by various High Courts and Tribunals thereafter-Refer Annexure 17.*

*f. Income earned from the compliance with Governing Act is attributable to the business Interest earned by a co-operative Society carrying on banking business, in compliance of the Governing Act/ Regulation is eligible for deduction u/s 80P.*

- *Com of Income-fax v. Nawanshahar Central Co-op Bank-25 Taxmann Com 273 (S. C.) Refer Annexure 21 If a co-operative bank, carrying on business of banking, is statutorily required to place a part of its fund in approved securities income arising from such investment is deductible under section us 80P(2)(a)(0).*

*The insertion of sec 80P (4) from AY 2007-08 would presently deny co-operative banks benefit of these decisions. However, the principle explained in these will*

*continue to be valid even today and the assessee being not a co-operative Bank, will be fully eligible for the benefit of these decisions.*

**D. The decision of the Apex Court in Totgars Co-operative Sales Society:**

*This decision is reported in 188 Taxmann 282 (SC) -Annexure 22 and has been relied upon in proposing action u/s 263 in this case Based on this decision, a conclusion is drawn that deduction u/s 80P(2)(a)(i) was not available to a co-operative credit Society in respect of income by way of Interest from Bank and Dividend on shares. It is submitted that this decision cannot be applied to the assessee's case for the following reasons*

*i. The facts of the Totgars Co-operative Sales Society were completely different from the facts of the assessee The Totgars Co-operative Sales Society was an agriculture produce marketing society. Its principal business was marketing of agricultural produce of members It held back part of such sale proceeds and invested that in bank deposits. The Totgars society had two businesses while assessee was in only business of providing credit facilities to its members.*

*ii. The amounts invested by the Totgars Co-operative Sales Society was part of sale proceeds of members' agriculture produce which was invested in fixed deposits with banks. Deduction was claimed u/s 80P(2)(a)(i) of the Act in respect of this income, which was denied by the Apex court by treating this interest as assessable to tax under other sources. The amount invested was surplus originated from other business and those amounts were the property of concerned members. As against this the assessee invested its own set aside profits, as required by Governing Act, in deposits with co-operative bank, which earned interest. The interest earned by the Totgars Co-operative Sales Society was on surplus funds with the society not required for business and were deployed for earning interest. In case of the assessee, the funds invested were not surplus but utilised from the business out of legal obligation. This is a material deviation of facts impacting determination of nature of income-whether Business income OR Income from Other Sources. Further its deployment with a co-operative bank also arose out of discharging legal compulsion. Refer sec 66 & 70 of the Governing Act viz. Maharashtra State Co-operative Society's Act referred above. I*

*iii. The interest earned by Totgars Co-operative Sales Society was the property of the members whose money was withheld and invested and therefore was a liability of the said society. Totgars Co-operative Sales Society accounted this as its income and claimed deduction u/s 80P of the Act. In case of the Assessee, the amount invested in deposits with MDCC Bank was its own money and therefore the interest earned was its own income*

*iv. As regards Dividend Income, as explained in "C.2" above, the investment which fetched the dividend was made to avail loans for further lending to members. This act added up to loans given and earned additional interest on loans, which was the income of the prime business of the assessee. This income therefore was out of business exigencies*

*v. The investment in shares of MDCC Bank was not in the nature of investment activity in its True sense. The business compulsion required this investment and therefore commercial considerations normally examined in any investment in shares were beside the point. The shares of MDCC bank were not listed. These*

*were encashable only at cost with the issuing bank. The Dividend was declared at 2.35% of Face Value. This return was even lower than the rate of interest paid on deposits by the said bank. The real issue in this investment was availability of additional funds for normal business. This enabled the assessee society to retain its members' business to itself and provided incremental income to the assessee.*

*vi. The Apex Court observed in the case of Totgars Co-operative Sales Society that the funds invested were surplus funds and were idle funds at relevant point in time. These features did not apply to the assessee society's funds invested in deposits and in shares. Therefore, the decision of the Apex Court cannot be applied per se as facts are completely different.*

*vii. In view of the peculiarity of the case, the Apex Court made it clear that the judgment was confined to the facts of the case. Refer second para in clause 11 of the judgment. The Apex Court has further observed that to qualify for the deduction of whole of the amount, the income concerned must constitute "operational income". It is explained in the earlier para that the Interest and the Dividend from co-op. Bank were fully attributable to the operations of the assessee and therefore these were "operational income" of the assessee. The income from direct operations is accepted as eligible for 100% deduction and therefore these income by way of Interest and Dividend should also be eligible for 100% deduction. If these incomes were independent of the operations of the assessee eligible for deduction i, e. unconnected with the eligible business, these would not have been eligible for deduction*

*In Totgars case, the said society had invested surplus funds of the members lying with it. This activity was completely unconnected with its business of marketing agricultural produce of its members. As against this in this case, the investment with banks fetching interest arose out of legal compulsion imposed by the governing Act and dividend earning arose out of purely commercial activity. Both these acts were related to the main business. Thus, though the source of origin of income was not earning from main business of lending to members, these sources were integral, interconnected and inseparable from the main business.*

*It is therefore concluded that the business of the assessee inclusive of interest income on Bank Fixed deposits with MDCC Bank was a complete and composite business and the Interest income on Fixed Deposits held with MDCC Bank and Dividend received on shares of the said bank were income attributable to the main business being inseparable. The assessee therefore, was fully justified in claiming deduction u/s 80P(2)(a)(i) of the Act even on this income and based on prevailing decisions of the Hon. Apex Court cited above and also jurisdictional Hon. High Court, and other High Courts the assessing officer did not commit any error in not denying deduction u/s 80P(2)(a)(i) to the Interest and Dividend Income earned by the assessee society during above AY from MDCC Bank*

*In the proposed action an issue is made of the assessment order being silent on accepting assessee's claim for deduction u/s 80P(2)(a)(i) in respect of Interest Income & Dividend Income. It is submitted that this has come to center stage at this stage due to "Change in Opinion" which is now formed. Please note in proceedings u/s 263, "Change of Opinion" is certainly out of the scope and cannot occupy center stage.*

**II. Without prejudice to above, the interest on deposits and the dividend from MDCC bank received by the assessee are covered by sec. 80P(2)(d) of the Act**

*If submissions made before, justifying eligibility of deduction u/s 80P (2)(a)(1) of the Act to the entire income including interest on bank deposits and dividend income in the circumstances explained above, is not accepted for any reason, alternate claim for deduction u/s 80P(2)(d) of the Act is made in respect of the said income earned from MDCC Bank*

*The Mumbai District Central Co-Operative Bank (MDCC bank) is a Co-operative Bank, registered under Maharashtra State Co-Operative Societies Act. Since its objects provided for undertaking banking business, it additionally obtained registration under banking Regulation Act, without forgoing/cancelling its original registration under Maharashtra State Co-Operative Societies Act. In view of its continued registration as a co-operative society its name still indicates word "Co-Operative" This word is a testimony of its continued status as "co-operative society"*

*Section 80(P)(2)(d) reads as under "in respect of any income by way of interest or dividends derived by the co-operative society from its investment with any other cooperative society, the whole of such income".*

*i. Section 2(19) of Income Tax Act, 1961 defines "co-operative society to mean a cooperative 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 the co-operative societies" Thus, any entity registered under Co-operative Society law of any State would be "co-operative society" within the meaning of section 2(19) of Income Tax Act, 1961*

*ii. The Co-operative Societies in the State of Maharashtra are governed by The Maharashtra State Co-operative Societies Act, 1960. Section 2(10) of Maharashtra State Co-operative Societies Act, 1960 (MSC Act) defines "co-operative bank" as a society, which is doing the business of banking as defined in clause (b) of sub-section (1) of section 5 of Banking Companies Act, 1949 and includes any society which is functioning or is to function as an (Agriculture and Rural Development Bank) under Chapter XI. Section 2(27) of Maharashtra Co-operative Societies Act, 1960 defines "society as a co-operative society registered or deemed to be registered, under this Act Copies of sec 2(10) and sec. 2 (27) of the MSC Act are enclosed as Annexure 23 & 24 resp. Thus, co-operative society is a wider term covering housing society, credit society or any society carrying on business of banking and includes co-operative bank.*

*iv. The assessee society has received interest of Rs.1,07,52,999/- and Dividend of Rs.17,61,959/- from Mumbai District Central Co-operative (MDCC) bank. This bank was registered as co-operative society in the year 1974 and started its activity of banking from 1975 Even today it continues to be a co-operative Society. The very fact that its name includes the word "Co-operative" is testimony of its continuing as co-operative Society. If it ceases to be a co-operative Society, the word "Cooperative" would get eliminated from its name. The fact that even today it is a co-operative society is available on the web site of the bank and being a public document it is verifiable by anybody.*

iv. To sum up, all the co-operative banks continue to be registered under the Co-operative Societies Act of the relevant State and as such are "Co-operative Societies" besides the "co-operative Bank" and therefore continue to be "Co-operative Societies" within the meaning of section 2(19) of the Income Tax Act, 1961.

v. It is not in dispute that assessee is a co-operative society. As explained above all the co-operative banks are "co-operative societies" In this case the MDCC bank continued to be registered under Maharashtra State Co-op Societies Act. Hence interest income of Rs. 1,07,52,999/- and Dividend income of Rs. 17,61,959/- received by the appellant society from another co-operative society are eligible for deduction u/s 80P(2)(d) of the Act.

**Judicial Pronouncements supporting assessee's case**

**Deduction permissible u/s 80P(2)(a)(i) of the Act to entire Income:**

i. *The Quepem Urban Co-operative Credit Society Ltd vs. ACIT (2015) 377 ITR 272 (Bom)- Annexure 6.*

ii. *Guttigendarara Credit Co-Op. Society Vs CIT-60 Taxmann Com 215-Annexure 25*

**Deduction permissible u/s 80P(2)(d) of the Act:**

i. *Principal Commissioner of Income Tax vs Totgars Co-operative Sale Society reported in (2017) 392 ITR 74 (Kar)-Annexure 26*

ii. *Surat Vankar Sahakari Sangh Vs. ACIT 72 Taxmann.Com 169 (Guj) – Annexure 27*

iii. *Lands End Co-operative Housing Society Ltd. vs. ITO (2016) 46 CCH 0052 (Mum Trib)- Annexure 28*

iv. *CIT Vs UP. Co-Op Sugar Factories 219 Taxmann 33 (Allahabad) - Annexure 29.*

v. *CIT Vs. Haryana State Co-Op Hsg. Society 234 ITR 714 (Punjab & Haryana)-Annexure 30.*

vi. *Kaira Dist. Co-Op. Milk Producers Union Vs. DCIT 387 ITR 183 (Gu) - Annexure 31*

vii. *Kaliandas Udyog Bhavan Premises Co-op Socy. Ltd. vs. IT.O. 21(2)(1) ITA No. 6547/Mum/2017 dated 25.04.2018 Copy marked as Annexure-32*

*The last two decisions, after considering the decision of Karnataka High Court in Pr. CIT vs Totgars Co-operative Sale Society Ltd (2017) 395 ITR 611. have decided the issue in favour of the assessee after relying on decision of Jurisdictional High Court in K. Subramanian ITO vs Siemens India Ltd & Anr. (1985) 156 ITR 11 where it was held that 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.*

*Thus, The Bombay High Court and all the Benches of Hon. ITAT-Mumbai have consistently held that u/s 80P(2)(a)(i) entire profits and gains attributable to the business of providing credit to the members of the co-operative society and u/s 80P(2)(d) whole of the amount of interest and dividend received from a co-operative bank are deductible in computing total income of the co-operative society. The assessee being a co-operative society is fully covered by these decisions and therefore in its case u/s 80P(2)(a)(i) of the Act, entire income by way of interest and dividend from a cooperative bank, being attributable to its main business, is fully deductible. Alternatively entire said income is deductible u/s 80P(2)(d) of the Act.*

*Jurisdictional High Court in Bank of Baroda vs H. C. Shrivastava (2002) 256 ITR 385 has held as follows "Judgment delivered by the Tribunal is binding on the AO; it is necessary for the judicial unity and discipline that all the authorities below the Tribunal must accept as binding the judgment of the Tribunal". Thus learned A.O was duty bound to follow the decision of the Tribunals as well besides the jurisdictional High Court The original assessment order passed in conformity with above principle therefore is valid and cannot be tampered with us 263 by interpreting relevant sections differently.*

**Summary of submissions & Conclusions:**

**Summary of submissions:**

*A. Order of assessment cannot be revised:*

- 1. Prejudice must be to revenue administration money & not loss of revenue in*
- 2. Where another view is possible, revision is not possible,*
- 3. Where AO has followed decision of jurisdictional High Court, revision is not possible,*
- 4. If order is passed following binding decision, it cannot be revised,*
- 5. If order has followed ITAT decisions, it cannot be revised.*
- 6. The unfavourable orders cannot be revised to collect more revenue.*

*B. Deduction permissible u/s 80P(2)(a)(i) of the Act to the entire income:*

- 1. Interest received from Co-Operative Bank Fixed Deposits with MDCC Bank were made to comply with specific direction of the governing Act. These Fixed deposits earned interest, which was incidental to the investment, was not separable from main business and therefore was an integral part and attributable to the core business of providing credit to members*
- 2. Dividend received from Co-Operative Bank Investment in shares of MDCC Bank was made to avail additional funds by way of loan, which was used in principal business Dividend was earned on those shares as incidental income and therefore was integral part and attributable to the core business of the assessee,*

3. *Any income/expenditure not separable from main activity becomes integral part of the said activity and therefore it is held to be attributable to that business.*

4. *The decision of Apex Court in Totgars case was a restrictive decision and there were several dissimilarities of facts of two cases and hence it could not be relied upon to determine taxability of certain income in the assessee's case. Without prejudice to the above:*

*C. The assessee Society was also entitled to deduction u/s 80P(2)(d) without any ceiling to the interest and dividend income, both earned from a co-operative bank as the assessee and also the co-operative bank (MDCC bank) paying this income are cooperative societies registered under Maharashtra State Co-Operative Societies Act and therefore are co-operative societies within the meaning of sec. 5 (19) of the Act.*

**Conclusions:**

1. *Respected PCIT is requested to accept that the original assessment order was in no way suffered any deficiency and further it was not inconsistent with the applicable law and therefore it should not be subjected to any revision u/s 263.*

2. *Respected PCIT is requested to allow the claim of the appellant society regarding deduction of interest received from co-operative bank u/s 80P(2)(a)(i) or alternatively u/s 80P(2)(d) of the Act in the light of above submissions and the decisions.”*

4. However, the ld. Pr.CIT has not agreed with the submission of the assessee. The ld. Pr.CIT observed that provisions of subsection (4) of Sec. 80P is attracted to the case of the assessee. In subsection (4) it is mentioned that the provision of this section shall not apply in relation to any cooperative bank other than the primary agricultural credit society or a Primary Cooperative Agricultural and Rural Development Bank. The ld. Pr.CIT further stated that the assessee was not eligible for deduction claimed in view of the provision of Sec. 80P(4) inserted by the Finance Act 2006 w.e.f 01.04.2007 which specifically excludes cooperative banks from the definition of cooperative society. The ld. Pr.CIT observed that for getting 100% deduction u/s Sec. 80P(2)(d) of the Act, the income claimed to be exempt including interest income should be in the nature of business income and should be in the nature of any income as mentioned in the provisions of Sec. 80P(2) of the Act.

The Id. Pr.CIT has also referred the decision of Pr.CIT, Hubballi Vs. Totagars Co-operative Sale Society of the Hon'ble High Court of Karnataka (83 Taxmann.com 140 that assessee is ineligible for claim of deduction u/s 80P of the Act. It is further stated that the deduction u/s 80P(2)(d) cannot be given where there is investment in any cooperative bank and the income from investment made by the assessee in the cooperative bank is not eligible to deduction. The Id. Pr.CIT has also referred the following judicial pronouncement wherein action u/s 263 is held valid on the ground that the AO failed in making due verification and enquiry:

- i. *Hon'ble High Court in the case of Ballarpur Industries Ltd. (85 taxmann.com 10).*
- ii. *Rajalakshmi Mill Ltd. Vs. ITO, Coimbatore (2009) 31 SOT 353 (Chennai) (SB).*
- iii. *Dr. Rabindra Kumar Singh Vs. CIT (Central), Patna (2011) 131 ITD 39 (Ranchi)."*

The Id. Pr. CIT has also referred the following judicial pronouncement where in held that mere filing of an explanation was not sufficient if there is not further enquiries carried out:

- (i) *Jeevan Investment & Finance (P) Ltd. 88 taxman.com 552 Bom)*
- (ii) *Gee Vee Enterprises V. Addl. CIT (1975) 99 ITR 375 (Del)*
- (iii) *Ambika Agro Supplies Vs. ITO Jalagon (2005) 95 ITD 326*
- (iv) *Remeshchandra Maleram Varma Vs. DCIT (2002) 121 Taxman 29 (Ahd).*
- (v) *Mahalakshmi Ligor Promoters (P) Ltd. Vs. CIT (2013) 29 taxmann.com 74*

and the assessing officer is directed to frame the assessment de novo after due verification.

5. During the course of appellate proceedings before us the Id. Counsel furnished paper book comprising detail and copies of documents filed during the course of assessment proceedings and

proceeding before the ld. Pr. CIT. The ld. Counsel submitted that during the course of assessment the assessing officer has made specific inquiry by issuing of notice u/s 142(1) dated 17.02.2017 wherein as per question no. 10 of the annexure the AO has asked documentary evidences in support of deduction claimed under Chapter-VIA of the Act. In respect of claim of deduction under chapter ViA, the assessee has made detailed submission along with relevant evidences as per annexure 4 of the submission dated 6.03.2017.

On the other hand, the ld. D.R supported the order of Pr.CIT.

6. Heard both the side and perused the material on record. The assessee is a cooperative society registered under the Maharashtra Cooperative Society Act. It is engaged in providing credit to its members. During the year the assessee has shown net profit of Rs.17,73,07,795/- against which it has claimed deduction u/s 80P(2)(a)(i) of the Act. The income earned by the assessee is comprised business of providing loans to members, interest on deposit maintained with Mumbai District Central Co-op Bank and dividend on shares of that bank. The ld. Pr.CIT was of the view that such interest income and dividend income are not profits and gains of business of providing credit facilities to its members as mandated by section 80P(2)(a)(i) of the Act. The ld. Pr.CIT also observed that even deduction u/s 80P(2)(d) cannot be given when there is investment in any cooperative bank and that the income from investment in the cooperative bank after insertion of sub-section (4) of the section 80P is not eligible to deduction. However, we consider though the Cooperative Bank pursuant to the insertion of sub-section (4) of Sec. 80P is no more be entitled for claim of deduction u/s 80P of the Act, but a cooperative bank continue to be a cooperative society registered under the Co-operative Society Act. Even the interest income derived by a cooperative society from its investment held with a

cooperative bank would be entitled for claim of deduction u/s 80P(2)(d) of the Act as held in the various decisions of the coordinate benches of the ITAT Mumbai.

During the course of assessment proceedings the AO vide notice dated 143(2) has specified that case of the assessee has been selected under limited scrutiny for examination of claim of deduction under chapter VI-A of the Act. The AO vide notice u/s 142(1) of the Act dated 17.02.2017 asked the assessee to explain with supporting documentary evidences the claim of deduction under chapter VI-A of the Act. In response the AO vide submission dated 06.03.2017 has provided the details as referred in the Annexure 4 to the submission as placed at page 15 to 24 of the paper book filed by the assessee. The assessee explained that it provides loans to its members therefore, it falls under section 80P(2)(a)(i) of the Act. It is also explained that assessee society is not in the business of banking therefore it cannot be treated as bank and provision of Section 80P(4) are not attracted to the assessee at all. The Id. Counsel has placed reliance on the decision of Hon'ble High Court of Telangana and Andhra Pradesh in the case of Vavveru Co-operative Rural Bank Ltd. Vs. Chief Commissioner of Income Tax (2017) 88 taxmann.com 728 (Andhra Pradesh & Telangana) dated 15.03.2017 wherein held that the co-operative society may claim the benefit of clause (d) or (e) either by investing the income in another co-operative society or investing the income in the construction of godown or warehouse and letting out the same.

The Id. Counsel has also referred the decision of ITAT Mumbai in the case of Ceat Employee Co-operative Credit Society Vs. ITO Vide ITA No. 159/Mum/2023 dated 26.04.2023 wherein after following the decision of ITAT Mumbai in the case of Navbharat Urban Co-operative Credit Society Ltd. Vs. CIT Vide ITA No. 5288-5289/Mum/2018 dated 25.11.2021 and the decision of ITAT Mumbai in the case of Jaoli Taluka

Sahkari Patpedhi Maryadit Vs. ITO (2017) 83 taxman.com 247 (Mum) claim of deduction u/s 80P(2)(a)(i) for interest income earned on depositing of surplus funds with the co-operative Banks was allowed.

It is evident from the submission of the assessee that the AO has made detailed enquiries and mere fact that the same has not been referred in the assessment order could not make the order passed u/s 143(3) of the Act on 28.04.2017 as erroneous and prejudicial to the interest of revenue.

In view of the facts and following the decisions as discussed supra we consider that the ld. Pr. CIT is not justified in treating the order passed u/s 143(3) of the Act dated 28.04.2017 as erroneous and prejudicial to the interest of the Revenue. Therefore, we set aside the order of the ld. PCIT and restore the order passed by the AO dated 28.04.2017. Therefore, the appeal of the assessee is allowed.

**ITA No. 1051/Mum/2023**

7. Since the facts and issue involved in this appeal are similar to the ITA No. 1050/Mum/2023 as supra therefore applying the finding of ITA No.1050/Mum/2023 as mutatis mutandis this appeal of the assessee is also allowed.

8. In the result, both the appeal of the assessee are allowed.

Order pronounced in the open court on 16.08.2023

Sd/-  
(Amit Shukla)  
Judicial Member

Sd/-  
(Amarjit Singh)  
Accountant Member

Place: Mumbai

Date 16.08.2023

Rohit: PS

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

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

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

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