

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

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER
AND
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER**

**ITA No.1871/M/2023
Assessment Year: 2018-19**

M/s. Thane Postal Employees Co-operative Credit Society Ltd., Basement, Thane R.S. Post Office Bldg., Thane Station Area, Thane - 400601 PAN: AABAT1008K	Vs.	Principal Commissioner Of Income Tax (PCIT), Thane 6 th Floor, B Wing, Ashar IT Park, Road No.16Z, Wagle Industrial Estate, Thane (West), Maharashtra – 400 604
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Sanjeev V. Joshi, A.R.
Revenue by : Shri Biswanath Das, D.R.

Date of Hearing : 23 . 08 . 2023
Date of Pronouncement : 24 . 08 . 2023

O R D E R

Per : Kuldip Singh, Judicial Member:

The appellant Postal Employees Cooperative Credit Society Limited (hereinafter referred to as the assessee) by filing the present appeal sought to set aside the impugned order passed by Principal Commissioner of Income Tax (PCIT) under section 263 of the Income Tax Act, 1961 (for short 'the Act') by in invoking the revisionary jurisdiction qua the assessment order dated 25.03.2021

framed by the Assessing Officer (AO) under section 143(3) of the Act on the grounds inter-alia that :

“1. The learned Principal Commissioner of Income Tax, Thane -1, (the learned PCIT) erred in passing an order u/s. 263 on 30.03.2023 & directing the AO to disallow the entire amount of Rs. 24,88,896/- claimed by the assessee u/s. 80P(2) and pass the assessment order afresh after giving a reasonable opportunity of hearing to the assessee.

1.1. The learned PCIT-1 ignored the fact that the learned AO had, on perusal of facts & submissions made by the assessee, held that the assessee is entitled to deduction u/s. 80P(2)(a)(i) as well as deduction u/s. 80P(2)(d) and therefore, the order passed by the learned AO was neither erroneous nor prejudicial to the interest of the revenue.

1.2 The learned PCIT ignored the fact that the learned AO had taken the only possible legal view in the facts of the case & the assessment order was legally valid.

1.3 The learned PCIT erred in passing order u/s. 263 on 30-03-2023 without giving the assessee any opportunity of being heard.

2. The Appellant craves leave to add to, alter, delete or modify any of the grounds of appeal.”

2. Briefly stated facts necessary for consideration and adjudication of the issues at hand are : the assessee Postal Employees Cooperative Credit Society Limited in its return of income has shown the interest income of Rs.1,96,09,505/- within the normal banking business of providing credit facility to its members. The assessee society has also claimed deduction of Rs.24,88,896/- under section 80P(2)(d) as well as 80P(2)(a)(i) of the Act being the interest income earned on its deposit/investments with the cooperative banks. The AO has allowed the interest claimed by the assessee society while framing the assessment under section 143(3) of the Act.

3. However, Ld. PCIT by invoking the revisionary jurisdiction flagged the issue that the interest income of Rs.24,88,896/- earned

by the assessee from its investment with cooperative banks and claimed as deduction under section 80P(2)(d) of the Act is not an allowable deduction. On failure of the assessee to file any submissions Ld. PCIT reached the conclusion that the deduction claimed by the assessee under section 80P(2)(d) is not an allowable deduction hence the assessment order (supra) passed by the AO is erroneous and prejudicial to the interest of the revenue and thereby set aside the same to the file of the AO with a direction to disallow the entire amount of Rs.24,88,896/- claimed by the assessee under section 80P(2)(d) of the Act and to pass the fresh assessment order.

4. Aggrieved with the impugned order passed by the Ld. PCIT under section 263 of the Act the assessee has come up before the Tribunal by way of filing present appeal.

5. We have heard the Ld. Authorised Representatives of the parties to the appeal, perused the orders passed by the Ld. Lower Revenue Authorities and documents available on record in the light of the facts and circumstances of the case and law applicable thereto.

6. Undisputedly the assessee has claimed deduction of Rs.24,88,896/- under section 80P(2)(d) of the Act being the interest earned from its deposits/investments with the cooperative banks during the year under consideration. First of all the short issue arises to be determined by the Bench is as to whether:

“Assessee society which is only catering to its members is entitled for deduction of Rs.24,88,896/- claimed under section 80P(2)(d) being the interest income earned from depositing/investing its funds with the cooperative funds?”

7. The Ld. A.R. for the assessee challenging the impugned order contended inter-alia that the order passed by the AO is neither erroneous nor prejudicial to the interest of the revenue as issue to the deduction claimed by the assessee under section 80P(2)(d) is no longer res-integra. However, on the other hand, the Ld. D.R. for the Revenue relied upon the order passed by the Ld. CIT(A).

8. We are agreed with the contention raised by the Ld. A.R. for the assessee as the issue as to the deduction claimed by the assessee under section 80P(2)(d) has been decided by the co-ordinate Bench of the Tribunal in favour of the assessee in case of Palm Court M Premises Co-operative Society Ltd. in ITA No.561/M/2021 order dated 09.09.2022.

9. The co-ordinate Bench of the Tribunal in case of Palm Court M Premises Co-operative Society Ltd. (supra) decided the issue in favour of the assessee by distinguishing the judgment rendered by Hon'ble Supreme Court in case of Totgar's Co-operative Sale Society Ltd. (supra) and by discussing the decision rendered by Hon'ble Bombay High Court and Hon'ble Gujarat High Court wherein it is held that interest income earned by the Co-operative Society on its investment made with co-operative bank would be eligible for claim of deduction under section 80P(2)(d) of the Act by returning following findings:

“8. We have given a thoughtful consideration to the contentions advanced by the 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.”

10. Hon’ble High Court of Karnataka in case of Pr. CIT & Anr. Vs. Totgar’s Co-operative Sale Society Ltd. (2017) 292 ITR 74 (Kar.) and Hon’ble Gujarat High Court in case of State Bank of India vs. CIT (2016) 389 ITR 578 (Guj.) had held that interest income earned by a co-operative society on its investment held with co-operative bank would be eligible for claim of deduction under section 80P(2)(d) of the Act.

11. So following the decision rendered by Hon’ble Karnataka High Court (supra) and Hon’ble Gujarat High Court (supra), we are of the considered view that assessee society who has earned an amount of Rs.99,10,567/- from its investment of surplus fund with co-operative banks is entitled for deduction under section 80P(2)(d) of the Act.

12. In view of what has been discussed above in the preceding paras we are of the considered view that the case of assessee is clearly falls under section 80P(2)(d) of the Act and Ld. PCIT has misconceived the facts and invoked the revisionary jurisdiction under section 263 of the Act. When the assessee society is found to be eligible for deduction claimed for the interest income earned by it during the year under consideration by depositing its funds with the cooperative banks the order passed by the AO under section 143(3) of the act is neither erroneous nor prejudicial to the interest of the revenue.

13. Consequently the impugned order passed by Ld. PCIT under section 263 of the Act by invoking the revisionary jurisdiction is not sustainable in the eyes of law hence hereby quashed.

14. Resultantly the appeal filed by the assessee is hereby allowed.

Order pronounced in the open court on 24.08.2023.

**Sd/-
(GAGAN GOYAL)
ACCOUNTANT MEMBER**

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

Mumbai, Dated: 24.08.2023.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.