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

BEFORE SHRI PAVAN KUMAR GADALE, JM &
MS PADMAVATHY S, AM

I.T.A. No. 2675 & 2676/Mum/2023
(Assessment Years: 2007-08)

I.T.A. No. 2673 & 2674/Mum/2023
(Assessment Years: 2009-10)

I.T.A. No. 2671 & 2672/Mum/2023
(Assessment Years: 2010-11)

I.T.A. No. 2669 & 2670/Mum/2023
(Assessment Years: 2013-14)

I.T.A. No. 2667 & 2668/Mum/2023
(Assessment Years: 2014-15)

Hillway Sadhna Co-operative Housing Society Ltd. Flat No. 1 D, Ground Floor, Hillway Sadhna Co-op Hsg. Soc. Ltd., N. Gamadia Road, Opera House, Mumbai-400026. **PAN : AAABH0100J**.	Vs.	**Deputy Commissioner of Income Tax, CPC, Bangalore** Piramal Chamber, Parel, Mumbai-400012.
Appellant)	:	**Respondent)**

Appellant/Assessee by	:	Shri K Shivram, AR
Revenue/Respondent by	:	Shri Joginder Singh, Sr. DR
Date of Hearing	:	15.11.2023
Date of Pronouncement	:	20.11.2023

O R D E R

Per Bench:

These bunch of appeals are against the separate orders of Commissioner of Income Tax(Appeals)-41, Mumbai all orders dated 31.07.2019 for Assessment Years (AY) 2007-08, 2009-10, 2010-11, 2013-14 and AY 2014-15 **(ITA. No. 2668, 2670, 2672, 2674 & 2676/Mum/2023)** and against the separate orders of Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (for short 'CIT(A)' all orders dated 05.06.2023 for the same Assessment Years **(ITA. No. 2667, 2669, 2671, 2673 & 2675/Mum/2023)**. The only issue contented in all these 10 appeals is the denial of deduction under section 80P(2)(d) of the Income Tax Act, 1961 (in short 'the Act'). Since the issue contended is common for all these appeals, they were heard together and disposed of through this common order.

2. The assessee is a co-operative society and has filed the return of income declaring Nil income after claiming deduction under section 80P(2)(d) of the Act towards interest received as per details given below:

Assessment Year	80P(2)(d) deduction claimed
2007-08	1,73,290/-
2009-10	1,99,010/-
2010-11	3,45,670/-
2013-14	2,33,954/-
2014-15	6,07,312/-

3. The return of the assessee for all the AYs were processed under section 143(1) of the Act wherein the deduction claimed by the assessee under section 80P(2)(d) of the Act has been disallowed. Against the intimation under section 143(1) of the Act the assessee filed an appeal before the CIT(A)-41 on March 13,

2019. The assessee also filed rectification application before the Assessing Officer (AO) under section 154 of the Act on March 19, 2019. The assessee filed a letter dated 27.06.2019 before the CIT(A)-41 withdrawing the appeal stating that the AO has agreed for rectification with regard to the denial of deduction under section 80P(2)(d) of the Act and based on the same the CIT(A)-41 passed an order dated 31.07.2019 dismissing the appeal for statistical purposes stating that the assessee since has withdrawn the appeal the grounds have become infructuous. Subsequently the AO did not rectify the mistake to allow the deduction under section 80P(2)(d) of the Act and therefore, the assessee filed fresh set appeals on March 3rd 2020 before the CIT(A)/NFAC. The CIT(A)/NFAC did not condone the delay and dismiss the appeal stating that the assessee on the same issue had already withdrawn the ground in the earlier appeal before the CIT(A)-41. Accordingly, the CIT(A)/NFAC did not admit the appeals for adjudication. Before the Tribunal, the assessee has now raised two sets of appeal for all the AY under consideration one against the order of the CIT(A)-41 dismissing the appeal **(ITA. No. 2668, 2670, 2672, 2674 & 2676/Mum/2023)**, the second against the order of the CIT(A)/NFAC not admitting the appeal for adjudication **(ITA. No. 2667, 2669, 2671, 2673 & 2675/Mum/2023)**. The ld AR during the course of hearing submitted that if the appeals against the order of the CIT(A)-41, is decided in favour of the assessee then the appeal against the order of the CIT(A)/NFAC would become infructuous. Therefore we will first consider the appeal against the order of CIT(A)-41 for adjudication.

ITA. No. 2668, 2670, 2672, 2674 & 2676/Mum/2023

4. It is noticed that the appeals filed against the order of the CIT(A)-41 are filed with the delay of 1376 days. The ld. AR in this regard submitted that the assessee did not prefer appeal against the order of the CIT(A)-41 for the reason that

the assessee had filed the rectification petition under section 154 of the Act before the AO for which reason the appeal before the CIT(A)-41 was withdrawn, and that the AO informed the Authorized Representative of the assessee only in late 2019 that he would not be in opposition to rectify the orders passed by CPC, Bangalore under section 143(1) of the Act. The ld. AR further submitted that the assessee was under the bonafide belief that the issue would be resolved by the rectification order allowing the deduction under section 80P(2)(d) of Act and therefore, did not prefer an appeal against the order of the CIT(A)-41. However, once the assessee came to know that the order of rectification is not going to be passed by the AO, the assessee filed an appeal against the order of the CIT(A)-41 which was dismissed by the CIT(A)-41 for the reason that the assessee has filed a letter withdrawing the appeal. The ld. AR further submitted that an affidavit by the Chartered Accountant (CA) who is the AR of the assessee is filed before the Tribunal stating the chronology of events and that the delay in filing the appeal is due to the unavoidable circumstances as mentioned in the affidavit.

5. The ld. DR on the other hand vehemently opposed condoning the delay of appeal filed before the Tribunal.

6. We have heard the parties and perused the material on record. We notice that the assessee has submitted a letter before the CIT(A)-41 dated 27.06.2019 stating that the AO has agreed for the rectification under section 154 of the Act to allow deduction under section 80P(2)(d). On perusal of the Affidavit filed by the counsel of the assessee, we notice that the AO subsequently had stated that the rectification was not possible. Therefore in our considered view, there is merit in the submission that there was a bonafide belief that the issue would be resolved at AO's level and hence the appeal against the order of CIT(A)-41 was not filed before the

Tribunal. The Hon'ble Supreme Court, in the case of Collector, Land Acquisition v. Mst. Katiji and Ors. (167 ITR 471), has explained the principles that need to be kept in mind while considering an application for condonation of delay. The Hon'ble Apex Court has emphasized that substantial justice should prevail over technical considerations. The Court has also explained that a litigant does not stand to benefit by lodging the appeal late. The Court has also explained that every day's delay must be explained does not mean that a pedantic approach should be taken. The doctrine must be applied in a rational common sense and pragmatic manner. In the case of Shakuntala Hegde, L/R of R.K. Hegde v. ACIT, ITA No.2785/Bang/2004 for the A.Y. 1993-94, the Tribunal condoned the delay of about 1331 days in filing the appeal wherein the plea of delay in filing appeal due to advice given by a new counsel was accepted as sufficient. The Hon'ble Karnataka High Court in the case of CIT v. ISRO Satellite Centre, ITA No. 532/2008 dated 28.10.2011 has condoned the delay of five years in filing appeal before them which was explained due to delay in getting legal advice from its legal advisors and getting approval from Department of Science and PMO. In the aforesaid decision, the Hon'ble Court found that the very liability of the assessee was non-existent and therefore condoned the delay in filing appeal. In condoning the delay in filing the appeals, the expression 'sufficient cause' should receive liberal construction and advancement of substantial justice is of prime importance. Discretion of condoning the delay has to be exercised on the facts of each case. Keeping in mind the aforesaid principles, we find that the explanation of the assessee for delay in filing the appeals put forth before the CIT(A)-41 are bonafide and genuine reasons which constitute 'sufficient cause' for the delay. The number of days of delay cannot be looked in isolation and the reasons or explanation of the assessee for the delay have to be considered in the light of the test of bonafide reasons constituting sufficient cause for the delay in a

pragmatic manner. We therefore condone the delay in filing these appeals before us and consider the issue for adjudication on merits.

7. During the course of hearing the bench queried the maintainability of the appeal before the Tribunal against the order of CIT(A)-41, since the appeal dismissed for the reason that the same is withdrawn by the assessee. The ld AR in this regard submitted that in the case of M. Loganathan v. ITO (2003) 350 ITR 373 (Mad) (HC) ,the Hon'ble Court held that the assessee has no option to withdraw appeal from CIT(A) as a matter of right and that the CIT(A) should dispose of the appeal only after considering the merits. The ld AR further submitted that a similar view is held by the jurisdictional High Court in the case of CIT vs Premkumar Arjundas Luthra (HUF) (2016) 240 Taxman 133 (Bom)(HC) and also by the SMC bench of the Mumbai Tribunal in the case of Deekay Gears vs ACIT (ITA No.2366/Mum/2018, AY 2009-10, dated 16.01.2019). The ld AR accordingly submitted that the CIT(A)-41 is not correct in dismissing the appeal as infructuous without deciding the issues on merits.

8. We notice that SMC bench in the case of Deekay Gears (supra) has considered the issue of CIT(A) dismissing the appeal without considering the merits for the reason that the assessee has withdrawn the appeal and held that –

> *"7. Explaining the reason for withdrawal of appeal filed before the first appellate authority, the learned Authorised Representative submitted, as the Partner looking after the Income Tax matters was not able to attend to it due to his continuous illness, the other Partner since was completely occupied with the main business activity and was not aware of Income Tax compliances and pending litigations, decided to withdraw the appeal filed before the learned Commissioner (Appeals). He submitted, he filed the letter of withdrawal before the first appellate authority without properly knowing the merits of the issue and the consequences which may follow after*

withdrawal of appeal. He submitted, for the very same reason the said partner also decided against filling any appeal challenging the order of the learned Commissioner (Appeals) which resulted in delay in filing the present appeal. He submitted, only after the main Partner who was looking after the Income Tax matters partly recovered from his illness, he came to know about withdrawal of appeal and decided to contest the issue on merit by filing the appeal before the Tribunal. The learned Authorised Representative submitted, notwithstanding the fact that the assessee has filed a letter seeking withdrawal of the appeal, however, as per the provisions of section 251 of the Act, the learned Commissioner (Appeals) was incompetent to dismiss the appeal in limine without deciding it on merits. Therefore, he submitted, since learned Commissioner (Appeals) has not decided the appeal of the assessee on merit, the order passed has to be set-aside with a direction to decide assessee's appeal on merit. In support of his contention, the learned Authorised Representative relied upon the following decisions;-

i) CIT v/s Rai Bahadur Hardutroy Motilal Chamaria, [1967] 66 ITR 443 (SC);
ii) Biswaranjan Bysack v/s CIT, 1967] 66 ITR 452 (SC);
(ii) CIT v/s Premkumar Arjundas Luthra (HUF), ITA no.2336 of 2013, dated 25.04.2016; [2017] 297 CTR 614 and
v) M. Loganathan v/s ITO, [2013] 350 ITR 373 (Mad.).

8. The learned Departmental Representative submitted, since the assessee filed a letter seeking withdrawal of appeal, it was not necessary for the learned Commissioner (Appeals) to decide the appeal on merit.

9. I have considered rival submissions and perused material on record. I have also applied my mind to the decisions relied upon by the learned Authorised Representative. Undisputedly, in the course of proceedings before the first appellate authority the assessee had filed letter dated 19th September 2017, seeking withdrawal of the appeal. Taking note of the said letter, learned Commissioner (Appeals) dismissed assessee's appeal in limine without deciding it on merit. Therefore, the issue which arises for consideration before me is, whether as per the provisions of section 251 of the Act, learned Commissioner (Appeals) can permit withdrawal of the appeal by dismissing it in limine without deciding on merits. As per the

provisions of section 251(1)(a) of the Act, the first appellate authority is conferred with the powers to decide an appeal against an order of assessment by confirming, reducing, enhancing or annulling the assessment. Even, the power to set-aside an assessment order was taken away from the first appellate authority by the amendment brought to the statute in Finance Act, 2001, w.e.f. 1st June 2001. Therefore, while deciding an appeal filed by the assessee under section 246A of the Act, learned Commissioner (Appeals) has to act within the parameters laid out in section 251(1)(a) of the Act. Interpreting the aforesaid statutory provision, the Hon'ble Jurisdictional High Court in Premkumar Arjundas Luthra (HUF) (supra) has held as under:-

> *"8. From the aforesaid provisions, it is very clear once an appeal is preferred before the CIT(A), then in disposing of the appeal, he is obliged to make such further inquiry that he thinks fit or direct the Assessing Officer to make further inquiry and report the result of the same to him as found in Section 250(4) of the Act. Further Section 250(6) of the Act obliges the CIT(A) to dispose of an appeal in writing after stating the points for determination and then render a decision on each of the points which arise for consideration with reasons in support. Section 251(1)(a) and (b) of the Act provide that while disposing of appeal the CIT(A) would have the power to confirm, reduce, enhance or annul an assessment and/or penalty. Besides Explanation to sub-section (2) of Section 251 of the Act also makes it clear that while considering the appeal, the CIT(A) would be entitled to consider and decide any issue arising in the proceedings before him in appeal filed for its consideration, even if the issue is not raised by the appellant in its appeal before the CIT(A). Thus once an assessee files an appeal under Section 246A of the Act, it is not open to him as of right to withdraw or not press the appeal. In fact the CIT(A) is obliged to dispose of the appeal on merits. In fact with effect from 1st June, 2001 the power of the CIT(A) to set aside the order of the Assessing Officer and restore it to the Assessing Officer for passing a fresh order stands withdrawn. Therefore, it would be noticed that the powers of the CIT(A) is co-terminus with that of the Assessing Officer i.e. he can do all that Assessing Officer could do. Therefore just as it is not open to the*

Assessing Officer to not complete the assessment by allowing the assessee to withdraw its return of income, it is not open to the assessee in appeal to withdraw and/or the CIT(A) to dismiss the appeal on account of non-prosecution of the appeal by the assessee. This is amply clear from the Section 251(1)(a) and (b) and Explanation to Section 251(2) of the Act which requires the CIT(A) to apply his mind to all the issues which arise from the impugned order before him whether or not the same has been raised by the appellant before him. Accordingly, the law does not empower the CIT(A) to dismiss the appeal for non-prosecution as is evident from the provisions of the Act."

10. Similar view was expressed by the Hon'ble Madras High Court in M. Loganathan (supra). If the ratio laid down in the aforesaid decisions is carefully examined, it clearly emerges that learned Commissioner (Appeals), notwithstanding the fact that the assessee has filed an application seeking withdrawal of the appeal, is obliged and duty bound under the Act to decide the appeal on merits within the parameters of section 251(1)(a) of the Act. Thus, following the ratio laid down in the aforesaid decision, I have to hold that while dismissing assessee's appeal in limine without deciding on merit, learned Commissioner (Appeals) has not exercised his power in consonance with the provisions of section 251(1)(a) of the Act. Accordingly, I am inclined to set-aside the impugned order of the learned Commissioner (Appeals). However, since, the issues raised in the said appeal have not been decided on merit, I restore all the issues raised in the present appeal to the learned Commissioner (Appeals) for de novo adjudication. Consequently, the appeal filed by the assessee before the learned Commissioner (Appeals) is restored back to its original position. It is open for the assessee to raise all such issues before the first appellate authority for contesting the assessment order passed by the Assessing Officer. Needless to mention, the learned Commissioner (Appeals) must afford reasonable opportunity of being heard to the assessee before deciding the appeal. With the aforesaid observations, the grounds raised are allowed for statistical purposes."

The ratio laid down by the SMC Bench of the Tribunal is that the CIT (A) has not exercised his power in consonance with the provisions of section 251(1)(a) of the

Act while dismissing assessee's appeal in limine without deciding on merit. The facts in assessee's case are identical and therefore in our considered view, the ratio laid down is applicable to assessee's case and accordingly we are of the view that the CIT(A)-41 is not correct in dismissing the appeal in limine without deciding on merit.

9. On merits, the ld. AR submitted that it is a settled position that the Co-operative Housing Society is entitled for deduction under section 80P(2)(d) on interest received from other co-operative societies. The ld. AR in this regard relied on the decision of Bhoomi Classic Co-op HSG Soc. Ltd. V/s ITO in ITA No. 981/Mum/2023 dated 14.06.2023 and Laxmi Co-operative Housing Soc. Ltd. V/s ITO in ITA No. 1748 to 1749/Mum/2023 dated 24.08.2023.

10. We heard the parties. We notice that in the case of Bhoomi Classic Co-op HSG Soc. Ltd (supra) a similar issue has been considered where it is held that –

> *5. Heard the rival submissions and perused the material on record. The sole matrix of the disputed issue emphasized by the Ld.AR is in respect of granting of deduction u/s 80P(2)(d) of the Act to the Cooperative Society. The Ld. AR submitted that the interest income derived by a co-operative society from its deposits with the co-operative banks would be entitled for deduction U/sec 80P(2)(d) of the Act. The cooperative bank continues to be a co-operative society registered under the Co-operative Societies Act. Whereas the Coordinate Bench of the Honble Tribunal in the case of M/s Amore Commercial Premises Co-op Society Ltd vs. CPC Karnataka in ITA No. 2873 & 2874/Mum/2022 dated 17-01- 2023 has dealt on the taxability of interest earned on the deposits with the Co-operative Banks at page 2 Para 3 of the order, which is read as under:*
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> > *3. Briefly stated facts necessary for consideration an adjudication of the issues at hand are :- Assessee being a CoOperative Society has claimed disallowance/deduction u/s. 80P (2)(d) in respect of the interest of Rs. 6,96,725/- for parking its funds with Saraswat Co-Operative Bank, Sham Vithal Rao CoOperative Bank and district central CoOperative Bank.*

However, centralized processing centre (CPC)/ Assessing Officer has disallowed the deduction Claimed by the Assessee u/s 143(1).

4. Assessee carried the matter before the Ld.CIT(A) by way of filing Appeals who has confirmed the addition by dismissing Appeals. Filling aggrieved Assessee has come up before the Tribunal by way of filing present Appeal.

5. We have heard the Ld. Authorized Representative of the parties to the Appeals, perused the order passed by the Lower Revenue Authorities and documents available on record in the light of the law applicable thereto.

6. Undisputedly Assessee Society has invested is surplus funds with Co-Operative banks and earned the interest income to the tune of Rs. 6,96,725/- and claimed it is deduction u/s. 80P (2)(d) of the Act, which has been disallowed by Assessing Officer & confirmed by the Ld.CIT(A) by relying upon decision rendered by Hon'ble Karnataka High Court in case of principle Ld.CIT Vs. Totgar's Co-Operative Sales Society Ltd.

7. Issue as to the allow-ability of the deduction claimed by the Assessee u/s. 80P (2)(d) of the Act, is no longer Res-Integra having being decided by the co-ordinate Bench of the Tribunal in case of Palm Court M Premises Co-operative Society Ltd. in ITA No.561/M/2021 order dated 09.09.2022 by settling 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. Vs. Income Tax Officer, 188 Taxman 282(SC) and by discussing the decision rendered by Hon'ble Bombay High 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 Id. 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 w/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. V's. 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 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 cooperative 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 w/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 authorized 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 cooperative 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 cooperative 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 cooperative 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 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 cooperative 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) "Cooperative 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 cooperative societies;" We are of the considered view, that though the cooperative 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 cooperative bank continues to be a co-operative 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 cooperative societies, therefore, the interest income derived by a cooperative society from its investments held with a cooperative 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 Id. 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 cooperative bank is covered in favour of the assessee in the following cases: (i) Land and Cooperative Housing Society Ltd. Vs. ITO (2017) 46 CCH $2 (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. ITORange-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 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 cooperative 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 observe that the Hon'ble High Court of Karnataka in the case of Pr. CIT Vs. Totagars cooperative Sale Society (2017) 395 ITR 611 (Karn), had concluded that a cooperative 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 nonjurisdictional 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."

8. 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 cooperative bank would be eligible for claim of deduction under section 80P(2)(d) of the Act. 9. 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. Rs. 6,96,725/- from its investment of surplus fund with cooperative banks is entitled for deduction under section 80P(2)(d) of the Act. Resultantly, the Ld. CIT(A) has erred in upholding the denial of deduction by the AO to the assessee under section 80P(2)(d) of the Act.

6. Considering the facts, circumstances and the ratio of the judicial decisions. The Honble Tribunal has passed the order and relied on catena of judicial decisions were the cooperative society receives/earns interest on deposits with the co-operative bank is eligible for claim of deduction under section 80(2)(d) of the Act. Accordingly, fallow the judicial precedence, and set aside the order of the CIT(A) and direct the Assessing officer to allow the claim of deduction u/sec 80P(2)(d) of the Act on the interest income from the cooperative banks. And the grounds of appeal filed by the assessee are allowed.

11. The facts in assessee's case being identical, respectfully following the above decision, we hold that the assessee is entitled for deduction under section 80P(2)(d) and accordingly direct the AO to allow the deduction.

12. In result the appeal of the assessee against the orders of the CIT(A)-41 for AY 2007-08, 2009-10, 2010-11, 2013-14 and AY 2014-15 are allowed.

ITA. No. 2667, 2669, 2671, 2673 & 2675/Mum/2023

13. Since we have held the appeal raised by the assessee against the order of the CIT(A)-41 in favour of the assessee, the appeals filed by the assessee against the

order of the CIT(A), NFAC for AY 2007-08, 2009-10, 2010-11, 2013-14 and AY 2014-15 has become infructuous and hence dismissed accordingly.

14. In result the appeals in **ITA. No. 2668, 2670, 2672, 2674 & 2676/Mum/2023** are allowed and the appeals in **ITA. No. 2667, 2669, 2671, 2673 & 2675/Mum/2023** are dismissed.

Order pronounced in the open court on 20-11-2023.

Sd/-	***Sd/-***
(PAVAN KUMAR GADALE)	**(MS. PADMAVATHY S)**
Judicial Member	**Accountant Member**

**SK, Sr. PS*

Copy of the Order forwarded to :

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

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai