

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "बी" , चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH "B", CHANDIGARH

श्री आकाश दीप जैन, उपाध्यक्ष एवं श्री विक्रम सिंह यादव, लेखा सदस्य
BEFORE: SHRI. AAKASH DEEP JAIN, VP & SHRI. VIKRAM SINGH YADAV, AM

आयकर अपील सं. / ITA NO. 210/CHD/2023
निर्धारण वर्ष / Assessment Year : 2018-19

The Jagadhri Co-operative Marketing Cum Processing Society Ltd. C/o Shri Tejmohan Singh, Advocate # 527, Sector 10D, Chandigarh	बनाम	The Pr. CIT Panchkula
स्थायी लेखा सं. / PAN NO: AAAAT0667R		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारित की ओर से / Assessee by : Shri Tejmohan Singh, Advocate
राजस्व की ओर से / Revenue by : Smt. Kusum, CIT, DR

सुनवाई की तारीख / Date of Hearing : 14/12/2023
उद्घोषणा की तारीख / Date of Pronouncement : 12/01/2024

आदेश / Order

PER VIKRAM SINGH YADAV, A.M. :

This is an appeal filed by the Assessee against the order of the Ld. PCIT, Panchkula dt. 31/03/2023 pertaining to Assessment Year 2018-19.

2. In the present appeal, the assessee has raised the following grounds of appeal:

1. "That the Ld. Principal Commissioner of Income Tax has wrongly assumed jurisdiction under section 263 of the Act to set-aside the assessment order dated 13.03.2021 passed by the Assessing Officer in as much as the order is neither erroneous nor prejudicial to the interest of Revenue and as such the assumption of jurisdiction under section 263 of the Act is beyond his competence.

2. That the Ld. Principal Commissioner of Income Tax has failed to appreciate that the issue in respect of deduction claimed under section 80P, on interest income had been discussed threadbare by the Assessing Officer at the time of assessment proceedings and as such assumption of jurisdiction under section 263 of the Act is uncalled for.

3. That the Ld. Principal Commissioner of Income Tax has only substituted her opinion over the plausible opinion taken by the Assessing Officer and as such assumption of jurisdiction is arbitrary and unjustified.

4. *That the Ld. Commissioner of Income Tax has erred in failing to consider the various replies and submissions placed on record in proceedings before her in the correct perspective which is arbitrary and unjustified.*

5. *That the appellant craves leave to add or amend the grounds of appeal before the appeal is finally heard or disposed off.*

6. *That the order of Principal Commissioner of Income tax is erroneous, arbitrary, opposed to the facts of the case and is unsustainable in law."*

3. Briefly the facts of the case are that the assessee is a cooperative society and during the year under consideration, it derives income from marketing of agriculture produce, service charges for purchase of wheat and paddy for HAFED, income from supplying weedicides and fertilizer to its members, interest income on FDRs, dividend income from KHRIBCO, IFFCO etc. and rent from godowns etc. It filed its return of income under section 139(1) declaring NIL income after claiming deduction under Section 80(P) amounting to Rs. 77,67,945/- which include deduction under section 80P(2)(d) amounting to Rs. 50,25,234/-/. The case of the assessee was selected for limited scrutiny through CASS to verify claim of large deduction under Chapter VIA after calling for the necessary information and documentation.

4. The assessment was completed under section 143(3) vide order dt. 13/03/2021 at a total income of Rs. 15,91,832/-. In the assessment order, the AO held that interest income of Rs. 15,91,832/- earned from Scheduled Commercial banks was not eligible for deduction under Section 80P(2)(d) of the Act as it was not earned from any co-operative society and has adverted to the decision of Hon'ble Supreme Court in case of PCIT Vs. the Totgars Co-operative Sales Society Ltd. dt. 08/02/2010 reported in 322 ITR 283, CIT Vs. Punjab State Cooperative Federation of Housing Building Societies Ltd. 11 Taxmann.com 448 (P&H) and Mavilayi Service Co-operative Bank Ltd. Vs. CIT reported in 431 ITR 1 (SC) and the deduction under section 80P(2)(d) was restricted to Rs 34,33,402/- as against Rs. 50,25,234/- claimed by the assessee society.

5. Subsequently, the assessment records were called for and examined by the Ld. Pr. CIT and it was held that the AO has erred in not correctly appreciating the decision of the Hon'ble Supreme Court (*Supra*), Hon'ble Punjab & Haryana High Court (*Supra*) and Hon'ble Karnataka High Court in case of PCIT Vs. the Totgars Co-operative Sales Society Ltd. dt. 16/06/2017 reported in 395 ITR 611 (Karnataka) and deduction under Section 80P(2)(d) has been wrongly allowed on interest income of Rs. 13,58,969/- received from Yamuna Nagar Central Co-op Bank Ltd. and it was accordingly held that the order so passed by the AO is erroneous in so far as prejudicial to the interest of the Revenue and a show cause was issued to the assessee as to why the assessment order so passed should not be set-aside.

6. In response, the assessee society filed its submissions which were considered by the Ld PCIT but not found acceptable and the assessment order was set aside to the file of the AO with a direction to pass a fresh assessment order for applying the correct provision of law and after giving due opportunity to the assessee.

7. Against the said findings and the directions of the Ld. Pr. CIT, the assessee is in appeal before us.

8. During the course of hearing, the Ld. AR submitted that the matter regarding claim of deduction under Section 80P has been thoroughly examined by the AO during the course of assessment proceedings. In this regard, our reference was drawn to the notice dt. 22/09/2019 issued under section 143(2) and the response filed by the assessee dt. 04/10/2019, subsequent notice dt. 07/12/2020 issued under section 142(1) and the response filed by the assessee dt. 20/12/2020, thereafter another notice dt. 28/01/2021 and response submitted by the assessee dt. 12/02/2021 and thereafter the showcause dt. 09/03/2021 and reply to the show cause dt. 11/03/2021. It was submitted that after thorough examination of the factual position and considering the decisions of the Hon'ble

Supreme Court in case of Totgars Co-operative Sale Society Ltd. (*Supra*) and Mavilayi Service Co-operative Bank Ltd. (*Supra*) as well as Hon'ble Punjab and Haryana High Court CIT Vs. Punjab State Cooperative Federation of Housing Building Societies Ltd (*Supra*), the AO has restricted the claim of deduction under Section 80P(2)(d) of the Act in respect of interest income received from the Schedule Commercial Banks and at the same time, deduction in respect of interest income received from the Yamuna Nagar Central Co-op Bank Ltd. was duly allowed as the same being in compliance with the provisions of Section 80P(2)(d) of the Act and the aforesaid decisions.

9. It was accordingly submitted that it is incorrect on the part of the Ld. Pr. CIT to hold that the AO has not examined the claim of the assessee under Section 80P(2)(d) and further the AO has not appreciated the decision rendered by various Courts in this regard.

10. It was further submitted that in the decision of Hon'ble Supreme Court in case of Totgars Co-operative Sale Society Ltd. Vs. ITO (*Supra*), the matter pertains to claim of deduction under Section 80P(2)(a)(i) and not claim of deduction 80P(2)(d) and that too, in respect of interest income on amount invested not with a Cooperative bank and as such the facts are distinguishable. It was submitted that there is a latter decision of the Hon'ble Supreme Court in case of Mavilayi Service Co-operative Bank Ltd. (*Supra*) which has been followed by the AO and the order of the Id PCIT is totally silent on the same.

11. It was further submitted that the Hon'ble Karnataka High Court in case of PCIT Vs. Totgars Co-operative Sale Society reported in 392 ITR 74 has held that for the purpose of Section 80P(2)(d), the Cooperative bank should be considered as a Cooperative society and in the said decision, the Hon'ble Karnataka High Court has considered and distinguished the aforesaid decision of the Hon'ble Supreme Court.

12. It was further submitted that the case of the assessee is squarely covered by the decision of Hon'ble Jurisdictional High Court in case of CIT Vs. Doaba Co-op Sugar Mills Limited reported in 230 ITR 774 wherein it has been held that 80P(2)(d) allows whole deduction of an income by way of interest or dividend derived by the cooperative society from its investment with another cooperative society being the interest received from a cooperative bank and which has been duly considered by the AO while passing the assessment order. It was submitted that the said decision has since been followed by the Hon'ble Gujarat High Court in case of Surat Vankar Sahakari Sangh Limited reported in 421 ITR 134.

13. Further reliance was placed on various Coordinate Benches decisions where consistent view has been taken on the interest income earned by the cooperative society from its investment with any other cooperative banks as eligible for deduction under section 80P(2)(d) of the Act. In this regard, our reference was drawn to the findings of the ITAT Pune Benches in case of Rena Sahakari Sakhar Karkhana Ltd. Vs. PCIT reported in 138 Taxmann.com 532 and decision of ITAT Raipur Benches in case of Gramin Sewa Shakari Samiti Maryadit Vs. ITO reported in 138 Taxmann.com 476.

14. Per contra, the Ld. CIT/DR has relied on the findings of the Ld. Pr. CIT and we deem it appropriate to reproduce the said findings which read as under:

"(ii) I have considered the facts of the case. It is true that as per Section 80P(2)(d), interest income derived by a co-operative society from its investments held with any other co-operative society shall be deducted in computing its total income. Further that with the insertion of sub-section (4) of sec. 80P, vide the Finance Act, 2006 with effect from 1-4-2007, the provisions of sec. 80P are no more applicable in the case of a co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank. However, the aforesaid amendment does not 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 cooperative bank.

(iii) However, it is also trite law that each case needs to be decided on its own facts. Further that the ratio decidendi or the principle that a case establishes needs to be followed.

The issue before Hon'ble Supreme Court in Pr.CIT Vs. the Totgars Cooperative Sales Society Ltd 9 (322 ITR 283 (SC) 2010), pertained to claim of deduction u/s 80P(2)(a)(i) not 80P(2)(d) of the Act. However, the ratio of the decision is that income by way of interest earned on deposits or investment of idle or surplus funds not immediately required for the business of the cooperative society could not be treated as its business income or income from the specified activities of the co-operative society as per sub-section (2) of Section 80P of the Act. Karnataka High Court in the case of Pr.CIT vs. The Totgars Co-operative Sale Society Ltd., dated 16.06.2017 in ITA No. 100066/2016, has interpreted the decision of Hon'ble Supreme Court and held that Co-operative Societies are not eligible to claim deduction u/s 80P(2)(d) of the Income tax Act, 1961 in respect of interest income earned on deposits or investments of idle surplus funds , whether these are kept with Schedule Commercial banks or with Co-operative Banks.

The assessee Society "The Jagadhri Co-operative Marketing Cum Processing Society" derives income from Arhat/commission from marketing of the agricultural produce, service charges for purchase of wheat and paddy for HAFED, income from supplying weedicides and fertilizers to its members, dividend income from KHRIBCO, IFFCO etc., rent from godowns. This is the 'specified activity' or the core activity for which it has been set up.

As per Balance sheet, it is seen that the assessee has large idle and surplus funds which are not being utilized for the purpose of the Cooperative society. The position of funds is as under:

XXXXXXXXXXXX

The cooperative society had large idle surplus funds which were neither used for the purpose for which it has been set up nor distributed to its members. It was not the purpose of the cooperative society to accumulate funds and earn interest thereupon. For instance, it had

Reserve funds & others	: Rs. 28198816.27
Undistributed profit	: Rs. 17819222.77

In view of above position too, interest income was not eligible for deduction u/s 80P(2)(d) of the Act as it was not earned from any specified co-operative activity but from investment of surplus and idle funds with Commercial and Cooperative Banks.

However, while passing the above assessment order, the AO erred in not following the ratio of the decisions of Hon'ble Supreme Court in Pr.CIT Vs. the Totgars Co-operative Sales Society Ltd. 322 ITR 283 (SC) 2010, and of the

jurisdictional Hon'ble P&H High Court in Commissioner of Income tax II Chandigarh Vs. Punjab State Co-operative Federation of Housing Building Society Ltd., correctly and completely.

(iv) The assessment order passed in the case of the assessee is considered to be erroneous in so far as it is prejudicial to the interest of revenue in terms of clause (d) of the Explanation 2 to section 263 of the Income Tax Act, 1961 as the order has not been passed in accordance with the ratio of the decision of jurisdictional Hon'ble P&H High Court in Commissioner of Income tax II Chandigarh Vs. Punjab State Co-operative Federation of Housing Building Society Ltd. which is adverse to the assessee. In this case, Hon'ble High court reiterated the ratio of the decision of Hon'ble Supreme Court in Pr.CIT Vs. the Totgars Co-operative Sales Society Ltd 9 (322 ITR 283 (SC) 2010) holding that interest on bank deposits or govt, securities derived by a co-operative society could not be attributed to the activities of the society of providing various facilities to its members. After duly advertent to the decision of Hon'ble Supreme Court in the case of Pr.CIT Vs. the Totgars Co-operative Sales Society Ltd 9 (322 ITR 283 (SC) 2010), the Karnataka High Court in Pr.CIT vs. The Totgars Co-operative Sale Society Ltd., dated 16.06.2017 (ITA No. 100066/2016) has held that Co-operative Societies are not eligible to claim deduction u/s 80P(2)(d) of the Income tax Act, 1961 in respect of interest income earned on deposits or investments of idle surplus funds, whether these are kept with Scheduled Commercial banks or with Co-operative Banks .

(v) The assessee has cited Hon'ble P&H HC decision in Commissioner Of Income-Tax vs Doaba Co-Operative Sugar Mills . The question before Hon'ble HC for answering in this case was different. It was whether deduction under Section 80P(2)(d) is to be allowed on the gross interest received from Cooperative Bank or after netting it off or adjusting it against interest paid to the same bank.

5. In view of the foregoing, it is held that the assessment order dated 13.03.2021 passed by the Assessing Officer is erroneous in so far as it is prejudicial to the interest of the revenue as per clause (d) of Explanation 2 to Section 263 of the Act."

15. We have heard the rival submissions and perused the material available on record. The limited dispute relates to claim of deduction under Section 80P(2)(d) of the Act in respect of interest income of Rs. 13,58,969/- received by the assessee cooperative society on deposits placed with Yamuna Nagar Central Co-op Bank Ltd.

16. As per the provisions of section 80P(1) of the Act, the income referred to in sub-section (2) to section 80P shall be allowed as a deduction to an assessee being a Co-operative Society. Further, Section 80P(2)(d) of the Act provides for deduction 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. Thus, for the purpose of Section 80P(2)(d) of the Act, there are only two conditions which are required to be cumulatively satisfied, i.e, the income should be by way of interest or dividend earned by a Co-operative Society from its investments, and secondly, such investments should be with any other Co-operative Society. Besides these two conditions, there are no other condition(s) which has been provided in the statute as apparent from the plain reading of the provisions of Section 80P(2)(d) of the Act.

17. The term “co-operative society” as defined under section 2(19) of the Act (19) means 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.

18. As per the Id PCIT own findings, as per Section 80P(2)(d), interest income derived by a co-operative society from its investments held with any other co-operative society shall be deducted in computing its total income. Further, she has referred to the amendment by way of insertion of sub-section (4) of sec. 80P, vide the Finance Act, 2006 with effect from 1-4-2007 where the provisions of sec. 80P are no more applicable in the case of a co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank. As per the Id PCIT, the aforesaid amendment does not jeopardise the claim of deduction of a co-operative society under Section 80P(2)(d) in respect of its interest income on investments/deposits parked with a cooperative bank.

19. In the present case, there is no dispute that the assessee is a Co-Operative Society. There is also no dispute that Yamuna Nagar Central Co-op Bank Ltd. is also a Co-operative society. Further, during the course of assessment proceedings, we find that the AO while examining the claim of the assessee under Section 80P observed that out of total claim of Rs 76,77,246/-, the

assessee has claimed Rs 50,25,234/- under section 80P(2)(d) of the Act. The AO noted that said claim under section 80P(2)(d) consist of dividend income from KHRIBHCO, IFFCO and HAFED, interest income on deposits placed with HDFC Bank, ICICI Bank, AXIS Bank and Yamuna Nagar Central Co-operative Bank Ltd and referring to the provisions of section 80P(2)(d) of the Act, a show-cause was issued as to why claim of deduction in respect of interest income on deposits placed with HDFC Bank, ICICI Bank, AXIS Bank should not be disallowed and thereafter, after considering the submissions of the case, has returned a finding that such interest income has not been earned from any other Cooperative society but from Scheduled commercial banks and the deduction so claimed from Scheduled commercial banks was denied and while doing so, the AO has allowed the claim of deduction in respect of Yamuna Nagar Central Co-operative Bank Ltd, being the deduction in respect of interest income on deposits with any other Co-operative Society. We therefore find that the AO has duly examined the facts of the present case and has allowed the deduction in respect of interest income received from the Yamuna Nagar Central Co-op Bank Ltd. as being in compliance with the provisions of Section 80P(2)(d) of the Act. Where the facts in the present case and legal position is not in dispute, we therefore don't understand how the Id PCIT in the same breath hold that the assessee shall not be eligible for claim of deduction under section 80P(2)(d) of the Act.

20. Now, coming to the decision of the Hon'ble Punjab and Haryana High Court in case of **CIT Vs. Punjab State Cooperative Federation of Housing Building Societies Ltd** (*Supra*), the question for consideration before the Hon'ble High Court was whether the Tribunal was right in holding that interest income from commercial banks, being attributable to business activity of the assessee qualifies for deduction u/s 80P(2)(a)(i) of the Act ignoring the fact that direct source of income is not the loans advanced to members of the society and it is only the interest income from commercial banks in form of fixed deposits and

saving bank accounts. Referring to the decision of the Hon'ble Supreme Court in case of case of Totgars Co-operative Sale Society Ltd (*Supra*), it was held that since the judgment of the Tribunal was prior to the judgment of the Hon'ble Supreme Court, the Tribunal did not have the advantage of the said judgment and the matter was decided in favour of the Revenue. We therefore find that the Hon'ble Punjab and Haryana High Court following the decision of the Hon'ble Supreme Court which was also rendered in the context of section 80P(2)(a)(i) held that interest income from commercial banks was not eligible for claim of deduction under section 80P(2)(a)(i) of the Act. Therefore, the said decision rendered in the context of section 80P(2)(a)(i) is distinguishable and doesn't support the case of the Revenue and has been wrongly referred in support while challenging the assessee's claim of deduction on interest income under section 80P(2)(d) of the Act in respect of deposits placed with Yamuna Nagar Central Co-op Bank Ltd

21. Now, coming to another decision of the **Hon'ble Punjab and Haryana High Court** in case of **CIT Vs. Doaba Co-op Sugar Mills Ltd.** (*Supra*). Briefly the facts of the case were that the assessee, a cooperative society, filed its return of income claiming deduction in respect of interest income received from the cooperative bank. The assessment was completed after making disallowance of the deduction claimed which on appeal has been allowed by the Tribunal and thereafter, the question of law which was proposed by the Revenue for the opinion of the Hon'ble High Court was "whether on the facts and circumstances of the case, the Tribunal is right in law in allowing deduction under section 80P(2)(d) of the Act in respect of interest of Rs. 4,90,919/- on account of interest received from Nawanshahr Central Co-operative Bank without adjusting interest paid to the bank and in that background, the Hon'ble High Court has held as under:

"5. The contention of Mr. Gupta, the learned counsel appearing for the revenue, is that the Tribunal was wrong in allowing deduction under section 80P(2)(d)

because it is not established that the assessee had derived interest by investing all the amount of surplus funds. It is further contended by Mr. Gupta that the assessee has paid interest to Jalandhar Central Co-operative Bank and has also received interest from the said co-operative bank, thereby showing that the assessee has on the aggregate paid interest to the bank and, therefore, no deduction under section 80P(2)(d) can be allowed. To appreciate this argument, we have to look to the provisions of section 80P(2)(d). For facility of reference, it is reproduced as under:

"(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;"

So far as the principle of interpretation applicable to a taxing statute is concerned, we can do no better than to quote the by now classic words of Rowlatt, J., in *Capce Brandy Syndicate v. IRC* [1921] 1 KB 64 :

"... In a taxing Act, one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used." (p. 71)

The principle laid down by Rowlatt, J., has also been time and again approved and applied by the Supreme Court in different cases including the one *Hansraj Gordhandas v. H.H. Dave, Assistant Collector of Central Excise & Customs* AIR 1970 SC 755 at p. 759.

6. Section 80P(2)(d) allows whole deduction of an income by way of interest or dividends derived by the co-operative society from its investment with any other co-operative society. This provision does not make any distinction in regard to the source of the investment because this section envisages deduction in respect of any income derived by the co-operative society from any investment with a co-operative society. It is immaterial whether any interest paid to the co-operative society exceeds the interest received from the bank on investments. The revenue is not required to look to the nature of investment whether it was from its surplus funds or otherwise. The Act does not speak of any adjustment as sought to be made out by the learned counsel for the revenue. The provision does not indicate any such adjustment in regard to interest derived from the co-operative society from its investment in any other co-operative society. Therefore, we do not agree with the argument advanced by the learned counsel for the revenue. In our opinion, the Tribunal was right in law in allowing deduction under section 80P(2)(d) in respect of interest of Rs. 4,90,919 on account of interest received from Nawanshahr Central Co-operative Bank without adjusting interest paid to the bank. Therefore, the reference is answered against the revenue, *i.e.*, in the affirmative, and in favour of the assessee."

22. In the aforesaid decision, the Hon'ble Jurisdictional High Court has referred to the provisions of Section 80P(2)(d) and held that the said provisions does not make any distinction with regard to the source of the investment because this section envisages deduction in respect of any income derived by the co-operative society from any investment with a co-operative society. It was

held that it is immaterial whether any interest paid to the co-operative society exceeds the interest received from the bank on investments and the Revenue is not required to look to the nature of investment whether it was from its surplus funds or otherwise. The Hon'ble High Court thus held that the nature and source of investment is not relevant for claiming deduction under Section 80P(2)(d) of the Act, and what is relevant to examine is whether there is any income derived by a cooperative society from any investment with another co-operative society. In the instant case, we therefore find that it is not relevant to examine whether interest income is earned from any specified co-operative activity or it is a case of deployment of surplus funds by the assessee society so long as the interest income is earned from deposits placed with a co-operative society. Where the AO has allowed the claim of the assessee under section 80P(2)(d) of the Act after due examination of the facts of the case, he has rightly followed the dicta laid down by the Hon'ble Jurisdictional High Court and therefore, the order so passed by the AO cannot be held as erroneous in so far as prejudicial to the interest of Revenue.

23. Now, coming to the decisions of the Hon'ble Karnataka High Court, we find that there are two decisions in case of Pr. CIT v. Totagars Co-operative Sale Society and in both of these decisions, the Hon'ble Karnataka High Court has referred to the decision of the Hon'ble Supreme Court in case of Totagars Co-operative Sale Society vs ITO (Supra). In case of first decision referred by the Id AR, it was held that according to section 80P(2)(d) of the Act, the amount of interest earned from a Co-operative Society Bank would be deductible from the gross income of the Co-operative Society in order to assess its total income. In the latter decision referred by the Id PCIT (he has not referred to the earlier decision), it was held that interest earned by the assessee, a Co-operative Society, from surplus deposits kept with a Co-operative Bank, was not eligible for deduction under Section 80P(2)(d) of the Act. We therefore find that there are divergent views of the non-jurisdictional High Court on the issue of eligibility of

deduction under Section 80P(2)(d) of the Act in respect of interest earned from Co-operative Bank as against the decision of the Jurisdictional Punjab and Haryana High Court in case of CIT vs Doaba Co-operative Sugar Mills Ltd and the latter shall be our guiding force as far as the present proceedings are concerned.

24. Having said that, we find that in the latter decision of Hon'ble Karnataka High Court in case of PCIT vs. Totgars Co-operative Sale Society (Supra), the Hon'ble High Court has basically laid great emphasis on the provision of Section 80P(4) of the Act and basis interpretation of Section 80P(4) of the Act, the deduction under section 80P(2)(d) has been held to be not eligible. In this regard, we find that the Hon'ble Supreme Court in case of Mavilayi Service Co-operative Bank Ltd. Vs. CIT (supra) while analyzing the provision of Section 80P(4) of the Act has held that Section 80P(4) is a proviso to the main provision contained in Section 80P(1) and 80P(2) and excluded only cooperative banks which are cooperative society and also possesses a licence from RBI to do banking business. The Hon'ble Supreme Court further held that the limited object of section 80P(4) is to exclude Co-operative Banks that function at par with other commercial banks i.e. which lend money to members of the public. Therefore Section 80P(2)(4) is relevant only where the assessee is a cooperative bank and who claimed the deduction under section 80P of the Act which is not the facts of the present case. Therefore the said decision of the Hon'ble Karnataka High Court is distinguishable and in any case, the later decision of Hon'ble Supreme Court in case of Mavilayi Service Co-operative Bank Ltd. Vs. CIT (Supra) wherein the correct legal preposition has been laid down by the Hon'ble Supreme Court has to be followed. Interestingly, as per the Id PCIT own findings, section 80P(4) does not jeopardise the claim of deduction of a co-operative society under Section 80P(2)(d) in respect of its interest income on investments/deposits parked with a cooperative bank and at the same time, she has placed reliance on the said decision of Hon'ble Karnataka High Court. As against that, we find

that the AO has referred to the said decision in case of Mavilayi Service Co-operative Bank Ltd. Vs. CIT (Supra) and has thus followed the dicta laid down by the Hon'ble Supreme Court and thus, the order so passed cannot be held as erroneous in so far as prejudicial to the interest of Revenue.

25. In light of aforesaid discussion and in the entirety of facts and circumstances of the case, we find that there is no legal and justifiable basis to invoke the provisions of section 263 by the Id PCIT and therefore, the order so passed u/s 263 is hereby set-aside and that of the AO who has rightly allowed the deduction u/s 80(P)(2)(d) is sustained.

26. In the result, the appeal of the assessee is allowed.

Order pronounced in the open Court on 12/01/2024.

Sd/-

आकाश दीप जैन
(AAKASH DEEP JAIN)
उपाध्यक्ष / VICE PRESIDENT

Sd/-

विक्रम सिंह यादव
(VIKRAM SINGH YADAV)
लेखा सदस्य/ ACCOUNTANT MEMBER

AG

Date: 12/01/2024

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar