

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
INDORE BENCH, INDORE**

**BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER**  
**AND**  
**SHRI B.M. BIYANI, ACCOUNTANT MEMBER**

**ITA No.188/Ind/2023**  
**(Assessment Year: 2018-19)**

Sankalp Sakh Sahkari Sanstha Maryadit 1, C/o Smriti Nagrik Sahkari Bank Dayamandir Road Goshala Market, Mandsaur (Appellant / Assessee)	Vs.	Pr. CIT-1 Indore (Respondent/ Revenue)
<b>PAN: AAEAS0312G</b>		
Assessee by	Shri Anil Kamal Garg, AR	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	25.01.2024	
Date of Pronouncement	30.01.2024	

**ORDER**

**Per Vijay Pal Rao, JM:**

This appeal by the by the assessee is directed against the order dated 27.03.2023 of Pr. Commissioner of Income Tax passed u/s 263 for A.Y.2018-19. The Assessee has raised following grounds of appeal:

*“Grounds of Income-Tax Appeal before the Hon'ble Income-Tax Appellate Tribunal, Indore Bench, Indore, against the Order passed by the Id. Pr. Commissioner of Income- Tax -1, Indore, u/s. 263 of the Income-Tax Act, 1961, pertaining to the assessment year 2018-19.*

*1(a) That, on the facts and in the circumstances of the case, the learned Pr. CIT grossly erred in law in invoking the provisions of section 263 of the Income-Tax Act, 1961 [in short, 'the Act'] in the appellant's case without considering the material fact that the Assessment Order passed by the learned Assessing Officer, under s.143(3) r.w.s. 143(3A) & 143(3B) of the Act, was neither erroneous nor prejudicial to the interest of the Revenue.*

*1(b) That, the learned Pr. CIT grossly erred, both on facts and in law, in assuming the jurisdiction u/s. 263 of the Income-Tax Act, 1961 without considering the material fact that during the course of the original assessment proceedings, the learned AO vide his notices dated 22-12-2020 and 19-01-2021, had specifically raised queries on the subject issue i.e. eligibility of the appellant to claim deduction under s.80P of the Act in respect of the interest income derived by it from deposits made with cooperative banks, and in response, the appellant had duly furnished the necessary explanation along with documentary evidences which were duly verified and accepted by the AO after proper application of his mind and therefore, the invocation of the provisions of s.263 merely on the ground that the AO ought to have taken some other view is not legally warranted and justifiable.*

*2.That, without prejudice to the above, the learned Pr. CIT grossly erred, both on facts and in law, in passing the impugned Order without considering and appreciating the appellant's detailed submission to the effect that it was fully eligible for making a claim for deduction under s.80P of the Act in respect of the interest income from deposits with cooperative banks under the provisions of clause (d) of sub-section (2) to section 80P of the Act.*

*3.That, without prejudice to the above, the learned Pr. CIT grossly erred, both on facts and in law, in setting aside the assessment order passed by Assessing Officer under section 143(3) r.w.s. 143(3A) & 143(3B) of the Income-Tax Act, 1961 merely for re-examination of the issue without first forming any objective satisfaction that the original Assessment Order passed by the AO*

*was prejudicial to the interest of the Revenue and as also, without conducting any independent enquiry at his own.*

2. We have heard Ld. AR as well as Ld. DR and considered the relevant material on record. The assessment was completed u/s 143(3) r.w. section 143(3A) & 143(3B) of the Act on 10.02.2021 accepting total income of the assessee at nil after allowing the claim of deduction u/s 80P of the Act. The assessee is a Co-operative Society registered under the Madhya Pradesh Co-operative Societies Act 1960 and engaged in the business of credit facilities to the members. The assessee has earned interest income of Rs.29,41,561/- from deposit in the Co-operative Bank and claimed deduction u/s 80P(2)(d) which was allowed by the AO while passing scrutiny assessment. Thereafter, the Pr. CIT had gone through the assessment record and observed that the AO has not considered some of the points selected for scrutiny through CASS and issued show cause notice u/s 263 on 04.03.2023. the Pr. CIT has taken up the issue of deduction u/s 80P(2)(d) in respect of interest income earned from deposit in Co-operative Bank in para 4 of the show cause notice as under:

*“4. On the perusal of Assessment records, it is found that the assessee society had eamed interest income on deposits and fixed deposits in Banks and out of this interest earned, claimed deduction of Rs. 29 ,41,561/- u/s 80P(2)(d) of the IT Act. However, the interest earned by the assessee from investment or deposits in Co- operative banks is not allowable for deduction u/s 80P (2)(d) of the IT Act. 1961. In view of the above, deduction of Rs 29,41,561/- as claimed u / s 80P(2) (d) of the Act was required to be disallowed and added back to the total*

*income of the assessee which was not done at the time of assessment.”*

3. Thus, the Pr. CIT was of the view that interest income is required to be disallowed by the AO and added back to the total income of the assessee which was not done by the AO at the time of assessment. Consequently Pr. CIT has set aside the assessment order and directed the AO to re-examine only this issue of deduction u/s 80P in respect of interest income after conducting necessary investigation and providing due opportunity of hearing to the assessee.

3.1 Ld. AR of the assessee has referred to the notice u/s 142(1) dated 11.1.2020 & 22.12.2020 whereby the AO has specifically raised a question about the allowability of deduction u/s 80P in respect of the interest income received on deposit with Co-operative bank as under:

#### *ANNEXURE*

*In connection with scrutiny assessment proceedings for AY 2018-19 (FY 2017-18) in the case of your own, it is brought to your notice as under:*

*In your return of income filed for the AY 208-19, you have claimed a sum of Rs. 66,06,742/- as Chapter VI-A deduction u/s 80P. On perusal of Form 26AS it is noticed that you have earned interest income of Rs.27,86,438/- from Smriti Nagrik Co-operative Bank Ltd. Section 80(P)(2)(d) of the Income tax Act, 1961 reads as under.*

*80P. (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 sub-section (2), in computing the total income of the assessee.*

*(2) The sums specified referred to in sub-section (1) shall be the following, namely:*

*(a) in the case of a co-operative society engaged in-*

*(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.*

*Section 80P(2)(d) envisages deduction for interest income earned only from co-operative societies and not from co-operative banks. However, you have earned interest Income of Rs.27,86,438/- from a co-operative bank. In view of the above, you are requested to explain why the amount of Rs.27,86,438/- as interest income earned from a co-operative bank should not be disallowed and brought to tax. The above may be furnished on or before 29.12.2020.*

*Yours faithfully,*

*Additional/Joint/Deputy/Assistant Commissioner of Income Tax/*

*Income-tax Officer,*

*National e-Assessment Centre, Delhi*

4. Thus, it is clear that the AO has conducted specific inquiry on this issue of allowability of deduction u/s 80P(2)(d) in respect of the interest income earned from the deposit made with Co-operative Bank. The assessee duly replied to the said notice vide letter which are placed at page no.25 to 30 of the paper book. Thus, the assessee has claimed in the reply that fixed deposits were made

with Smriti Nagrik Co-operative Bank Ltd. which is registered under Co-Operative Act and governed by the Co-operative Society Act. Therefore, the assessee claimed before the AO that the interest received from the deposits in the Co-operative Bank falls within the ambit of section 80P(2)(d). The AO after considering the reply has allowed the claim of the assessee and therefore, it is not a case of lack of inquiry or inadequate inquiry on the part of the AO but the AO has duly conducted an inquiry and taken a possible view on this issue. Ld. AR has relied upon various decisions of this tribunal on this issue wherein the Tribunal has decided this issue in favour of the assessee by holding that the interest received by the assessee from the Co-operative Bank is eligible for deduction u/s 80P(2)(d).

5. Ld. DR has not disputed that this tribunal has taken view on this issue and decided this claim in favour of the assessee.

6. Having considered the rival submission as well as relevant material on record at the outset, we note that in the recent decision dated 16.01.2024 this tribunal in case of Pr. CIT vs. *Bhopal Dugdh Sangh Sahakari Maryadit in ITANo.71/Ind/2023 and CO No.03/Ind/2023* has considered and decided this issue in para 5 to 7 as under:

*“5. We have considered rival submissions as well as relevant material on record. The AO has disallowed the claim of deduction u/s 80P(2)(d) of the Act in respect of the interest income received by the assessee on the fixed deposit made with Bhopal Co-operative Central Bank on the ground that the only interest or dividend received on the investment made with the other Co-operative Society is eligible for deduction u/s 80P(2)(d)*

*of the Act. On appeal the CIT(A) has allowed the claim of the assessee by accepting Co-operative Bank for the purpose of section 80P(2)(d) of the Act as Co-operative Society. We further note that the Pune Benches of the Tribunal in case of Rena Sahakari Sakhar Karkhana vs. Pr. CIT (supra) has considered an identical issue in para 7 & 8 as under:*

*“7. We have heard the ld. 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 or not 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. In our considered view, the issue involved in the present appeal hinges 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 the co-operative bank, 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.*

*8. After necessary deliberations, we are unable to persuade ourselves to concur with the view taken by the Pr. CIT. Before proceeding any further, we may herein cull out 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 sub-section (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 cooperative 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) to Sec. 80P of the Act, 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 jeopardize 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 „co-operative society” had been defined under Sec. 2(19) of the Act, as under:- “(19) “Co-operative society” means 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 co-operative societies;” We are of the considered view, that though the co-operative banks pursuant to the insertion of sub-section (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 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.”*

6. Thus, the Tribunal has referred and relied upon the various decisions on the point wherein the interest income earned by Co-operative Society on the investment held in Co-operative Bank was eligible for claim of deduction u/s 80P(2)(d) of the Act. We further note that Indore Bench of this Tribunal in case of Indore Pragatishil Sahakari Sakh Sanstha Maryadit vs. ITO in ITANo. 317/Ind/2023 vide order dated 10.01.2024 has considered and decided this issue in para 9 to 12 as under:

“9. We have considered the facts, rival submissions and perused the record placed before us. The assessee is a Credit Cooperative Society and during the year under consideration, it has earned interest income of Rs. 10,77,910/- on FDRs. The assessee has shown the interest income on FDR under the head “income from other sources” and against such interest income has claimed incidental expenses including interest paid to depositors at Rs. 5,38,955/-, commissioner paid to Collection Agent at Rs. 4,71,586/- and stationery and printing expenses at Rs. 28,450/-. Both the lower authorities have held that the incidental expenses claimed are in the nature of business expenditure and needs to be allowed against business receipts and have also observed that FDR interest being income from other sources is not eligible for deduction u/s 80-P of the Act.

10. We, however, on perusal of computation of income filed in the paper book at page no.11 noticed that the alleged FDR interest income has been received by the assessee from deposits made with Indore Premier Cooperative Bank Limited. Though during the course of hearing, the Ld. Counsel for the assessee has not made any specific contention regarding the eligibility of the deduction u/s 80P(2)(d) in respect of any income by way of interest or dividend derived by the Cooperative Society from its investment with any other Cooperative Society. However, since we have come across this fact which are discernible from the paper book filed before us, it remains undisputed fact that the alleged FDR interest income of Rs. 1077,910/- has been received from FD held with Cooperative Bank. Before moving further, we would like to go through the provisions of Section 80P of the Act, which reads as under :-

**“ Deduction in respect of income of co-operative societies**

**80P.** (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 sub-section (2), in computing the total income of the assessee.

(2) The sums referred to in sub-section (1) shall be the following, namely :-

(a) in the case of a co-operative society engaged in—

(i) carrying on the business of banking or providing credit facilities to its members, or

(ii) a cottage industry, or

(iii) the marketing of the agricultural produce of its members, or

(iv) the purchase of agricultural implements, seeds, livestock or other articles intended for agriculture for the purpose of supplying them to its members, or

(v) the processing, without the aid of power, of the agricultural produce of its members, the whole of the amount of profits and gains of business attributable to any one or more of such activities ;

(b) in the case of co-operative society, being a primary society engaged in supplying milk raised by its members to a federal milk co-operative society, the whole of the amount of profits and gains of such business;

(c) in the case of a co-operative society engaged in activities other than those specified in clause (a) or clause(b) [either independently of, or in addition to, all or any of the activities so specified], so much of its profits and gains attributable to such activities as does not exceed 1**[fifteen thousand rupees]**;

(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;

(e) in respect of any income derived by the co-operative society from the letting of godowns or warehouses for storage, processing or facilitating the marketing of commodities, the whole of such income;

(f) in the case of a co-operative society, not being a housing society or an urban consumers' society, or a society carrying on transport business or a society engaged in the performance of any manufacturing operations with the aid of power, where the gross total income does not exceed twenty thousand rupees, the amount of any income by way of interest on securities chargeable under [section 18](#) or any income from house property chargeable under [section 22](#).

*Explanation.—For the purposes of this section, an urban consumers' co-operative society means a society for the benefit of the consumers within the limits of a municipal corporation, municipality, municipal committee, notified area committee, town area, or cantonment.*

(3) In a case where the assessee is entitled also to the deduction under [section 80H](#) or [section 80J](#), the deduction under sub-section (1) of this section, in relation to the sums specified in clause (a) or clause (b) or clause (c) of sub-section (2), shall be allowed with reference to the income, if any, as referred to in those clauses included in the gross total income, as reduced by the deductions under [section 80H](#) and [section 80J](#).

**[(4) Nothing contained in this section shall apply to a co-operative society carrying on insurance business in respect of the profits and gains of that business computed in accordance with [section 44.J](#).]**

11. From specifically going through the provisions of Section 80P(2)(d) of the Act, we find that the assessee is eligible for deduction u/s 80P(1) in respect of the income derived by way of interest or dividend from its investment with any cooperative bank society. In the instant case, though the interest has been received from Cooperative Bank, but basically it is a

*Cooperative Society, which has taken a banking license. Recently in Coordinate Bench of Mumbai in the case of Amore Commercial Premises Co-Op. Society Limited vs. Central Processing Centre, I.T.A.Nos. 2873 & 2874/M/2022 dated 17.01.2023 has dealt with the similar issue and after placing reliance on the judgement of Hon'ble High Court of Karnataka in the case of Pr. CIT and Others vs. Totgars Co-operative Society Limited, (2017) 292/ITR 74 (Karnataka) and judgement of Hon'ble Gujarat High Court in the case of State Bank of India vs. CIT, (2016) 389 ITR 578 (Guj) has held that interest income earned by Cooperative Society on its investment held with Cooperative Bank would be eligible for claim of deduction u/s 80P(2)(d). Relevant portion of the decision of the Coordinate Bench, Mumbai in the case of Amore Commercial Premises Co-Op. Society Limited vs. Central Processing Centre, (supra) reads as follows :-*

*“7. Issue as to the allowability 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) Marwanjee 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 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 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 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 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) “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 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 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 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) Marwanjee 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 Pemeses 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 co-operative society would not be entitled to claim of deduction under Sec. 80P(2) (d). At the same time, we find, that the Hon'ble High Court of Karnataka in the case of Pr. Commissioner of Income Tax and Anr. Vs. Totagars Cooperative Sale Society (2017) 392 ITR 74 (Karn) and Hon'ble High Court of Gujarat in the case of State Bank Of India Vs. CIT (2016) 389 ITR 578 (Guj), had observed, that the interest income earned by a co-operative society on its investments held with a cooperative bank would be eligible for claim of deduction under Sec. 80P(2) (d) of the Act. We find that as held by the Hon'ble High Court of Bombay in the case of K. Subramanian and Anr. Vs. Siemens India Ltd. and Anr (1985) 156 ITR 11 (Bom), where there is a conflict between the decisions of non-jurisdictional High Court's, then a view which is in favour of the assessee is to be preferred as against that taken against him. Accordingly, taking support from the aforesaid judicial pronouncement of the Hon'ble High Court of jurisdiction, we respectfully follow the view taken by the Hon'ble High Court of Karnataka in the case of Pr. Commissioner of Income Tax and Anr. Vs. Totagars Cooperative Sale Society (2017) 392 ITR 74 (Karn) and Hon'ble High Court of Gujarat in the case of State Bank Of India Vs. CIT (2016) 389 ITR 578 (Guj), wherein it was observed that the interest income earned by a cooperative society on its investments held with a cooperative bank would be eligible for claim of deduction under Sec.80P(2)(d) of the Act. 9. Be that as it may, in our considered view, as the A.O while framing the assessment had taken a possible view, and therein concluded that the assessee would be entitled for claim of deduction under Sec. 80P(2) (d) on the interest income earned on its*

investments/deposits with cooperative banks, therefore, the Pr. CIT was in error in exercising his revisional jurisdiction u/s 263 for dislodging the same. In fact, as observed by us hereinabove, the aforesaid view taken by the A.O at the time of framing of the assessment was clearly supported by the order of the jurisdictional Tribunal in the case of Land and Cooperative Housing Society Ltd. Vs. ITO (2017) 46 CCH 52 (Mum). Accordingly, finding no justification on the part of the Pr. CIT, who in exercise of his powers under Sec. 263, had dislodged the view that was taken by the A.O as regards the eligibility of the assessee towards claim of deduction under Sec. 80P(2)(d), we “set aside” his order and restore the order passed by the A.O under Sec. 143(3), date 14.09.2016.” As the facts and the issue involved in the present case before us remains the same as were there before the Tribunal in the case of M/s Solitaire CHS Ltd. (supra), wherein the order passed by the Pr. CIT u/s 263 of the Act was quashed, we, thus, respectfully follow the same. Backed by our aforesaid deliberations, we are unable to uphold the view taken by the Pr. CIT that the failure on the part of the A.O to be disallow the assessee’s claim for deduction u/s 80P(2)(d) had rendered the assessment order passed by him u/s 143(3) of the Act, dated 31.08.2017 as erroneous in so far it was prejudicial to the interest of the revenue. 9. Accordingly, on the basis of our aforesaid observations, we herein not finding favor with the view taken by the Pr. CIT that the order passed by the A.O u/s 143(3), dated 31.08.2017 was erroneous in so far it was prejudicial to the interest of the revenue within the meaning of Sec. 263 of the Act set-aside the same and restore the order passed by the A.O u/s 143(3) of the Act, dated 31.08.2017.”

9. 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.”

10. 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. 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. 8. In view of but has been discussed above, I am of the consider view that Ld. CIT(A) has erred in upholding the denial of deduction claimed by the Assessee Society u/s. 80P (2)(d) of the Act, hence Assessing Officer is directed to allow the same.”

*12. On examination of facts of the instant case, we find that the above referred decision is squarely applicable and, therefore, respectfully following the same, we are inclined to hold that the assessee is eligible for deduction u/s 80P(2)(d) of the Act at Rs. 10,77,910/- in respect of FDR interest received from Cooperative Bank. Thus, the finding of the Ld. CIT(A) is set-aside and the impugned addition/disallowance stands deleted. Ground nos. 1, 2 & 3 of the assessee's appeal stand allowed. "*

*7. Accordingly in view of the decision of this Tribunal referred above we do not find any error or illegality in the impugned order of the CIT(A) in allowing deduction u/s 80P(2)(d) of the Act on the interest received by the assessee from the deposit made in Bhopal Co-operative Central Bank. The revenue is devoid of any merits.*

7. Accordingly in view of the above discussion as well as the decisions of this tribunal cited above we find that the Pr. CIT has no jurisdiction to invoke the provisions of section 263 when the AO has taken a possible view on this issue. Hence, the impugned order of the Pr. CIT passed u/s 263 is set aside.

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

Order pronounced in the open court on 30.01.2024.

**Sd/-**  
**(B.M. BIYANI)**  
Accountant Member

**Sd/-**  
**(VIJAY PAL RAO)**  
Judicial Member

**Indore, 30 .01.2024**

**Patel/Sr. PS**

*Copies to:* (1) *The appellant*  
(2) *The respondent*  
(3) *CIT*  
(4) *CIT(A)*  
(5) *Departmental Representative*  
(6) *Guard File*

*By order*

*Sr. Private Secretary*  
*Income Tax Appellate Tribunal*  
*Indore Bench, Indore*