

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

BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
MS. KAVITHA RAJAGOPAL (JUDICIAL MEMBER)

ITA No. 3377/MUM/2023

Assessment Year: 2015-16

&

ITA No. 3376/MUM/2023

Assessment Year: 2020-21

Sangam Sahakari Patpedhi
Maryaditnagari, Navi Mumbai,
Office No. 227, Central Facility
Building, 3rd floor, Sector-19,
Turbhe,
Navi Mumbai-400705.

PAN NO. AACAS 6296 B

Appellant

Mumbai-W-91,
IT-Office, Vashi Railway Station
Building Navi Mumbai-400703.

Vs.

Respondent

Assessee by

: Mr. Vijay Kumar Shinde

Revenue by

: Ms. Kakoli Ghosh, Sr. DR

Date of Hearing

: 31/01/2024

Date of pronouncement

: 31/01/2024

ORDER

PER OM PRAKASH KANT, AM

These appeals by the assessee are directed against two separate orders both dated 31.07.2023, passed by the Ld. Commissioner of Income-tax (Appeals) – National Faceless Appeal Centre, Delhi [in short ‘the Ld. CIT(A)’] for assessment years 2015-16 and 2020-21 respectively.



2. As common issue in dispute is involved in these appeal, therefore same were heard together and disposed off by way of this consolidated order for convenience and avoid repetition of facts.

3. In grounds raised, the assessee is aggrieved with sustaining of disallowance of claim of deduction u/s 80P(2)(a)(i) of the Income-tax Act, 1961 (in short 'the Act') for the interest income received from deposits in co-operative banks, by the Ld CIT(A). The alternative claim of the assessee for deduction u/s 80P(2)(d) of the Act was also denied by the lower authorities and therefore, assessee has alternatively challenged the finding of the Ld. CIT(A) in respect of deduction u/s 80P(2)(d) of the Act.

4. Briefly stated facts of the case are that the assessee, a Co-operative bank credit society registered under Maharashtra Co-operative Acts, 1960. It is wholly and exclusively engaged in providing credit facilities to its member and no business is transacted with the persons other than member of the society. The assessee deposited its surplus fund for short term duration with two co-operative banks namely (i) GS Mahanagar Co-op. Bank Ltd. and (ii) Thane District Co-operative Bank Ltd. In assessment year 2015-16, the assessee received interest income of Rs.59,203/- whereas in assessment year 2020-21, the assessee received interest income of Rs.2,84,356/-. The assessee claimed interest income received from the co-op. banks as deduction u/s 80P(2)(a)(i) of the Act and also alternatively claimed deduction u/s 80P(2)(d) of the



Act. The Assessing Officer and the Ld. CIT(A) disallowed the claim of deduction u/s 80P(2)(a)(i) of the Act holding that the said interest income was not in the nature of 'business income' of the assessee, therefore, same was not eligible for deduction under the provisions of the said sections. Similarly, the alternative claim for the deduction u/s 80P(2)(d) of the Act was also disallowed holding that those co-operative banks were not purely as co-operative society, and they were having license for running the banking activity. The relevant finding of the Ld. CIT(A) for assessment year 2015-16 is reproduced for ready reference:

6.1 The above grounds of appeal and submissions of the appellant are carefully considered. The fact of the case is that the appellant Co-operative society has earned interest income of Rs. 59,203/- from GS Mahanagar Co-Operative Bank Limited which is undisputed. The appellant has claimed the said income is deductible u/s 80P which has been denied by the AO on two counts. The AO has concluded that i) the interest income of Rs.59,203/- received from GS Mahanagar Co-Operative Bank Limited is not attributable to the business activities of the assessee and the same cannot be claimed as deduction under any provisions of Sec. 80P of the Income-tax Act, 1961. And (ii) that the person or body corporate (in this case, cooperative bank) from which such interest income is derived will not change the character of income, viz., the income from other sources, which is ineligible for deduction under section 80P(2)(d) of the Act. He has drawn his conclusion predominantly from the decision of the Hon'ble Supreme Court in Totgar's Cooperative Sale Society Ltd. v ITO 322 ITR 283 and the decision of the Hon'ble High Court of Karnataka in the case of Principal Commissioner of Income-tax, Hubballi vs. Totagars Co-operative Sale Society [2017] 83 taxmann.com 140 (Karnataka). Being aggrieved, the assessee is in appeal.

6.2 The appellant has challenged the order relying on different decisions particularly the decision of the Hon'ble Apex Court in the case of Annasaheb Patil Mathadi Kamgar Sahakri Patpedhi Ltd and Hon'ble Mumbai Highn Court judgment in the case of Quepem Co-operative Credit Society as well as other High Court Judgments and ITaT decisions mentioned in the statement of Fact as aforesaid, and binding precedents, and finally, concluded the argument that the appellant assessee is not a Co-operative Bank but a Co-operative Credit Society and therefore, entitled to claim deduction of whole of income of Rs.1,95,242/ including interest income of Rs.59,203/- (which is attributable to the business



income only) u/s 80P (2)(a)(i) of the Act, and hence the same should be allowed to the appellant Society."

6.3 The first issue is whether the AO was correct in deciding that the interest income is assessable u/s 56 as income from other sources or it should be treated as business income assessable u/s 28 as contended by the appellant. The undisputed fact is that the very origin of income is from investment of surplus or idle funds which are not immediately required to provide loan to the members of the appellant co-operative society and investments have been made to non-members to earn interest income. Thus, the interest income has neither direct or immediate nexus with the predominant activity of the appellant i.e. providing credit facility to its members nor related, in any way, to its proclaimed objectives for which the society was formed. There is no dispute that the appellant has absolute right to keep the surplus funds in short-term deposits in order to earn interest but the nature, source and circumstances under which the income is earned are miles away from the business of the assessee i.e. to provide credit facilities to its members to earn interest income. Under no stretch of imagination, the interest income of the appellant from bank deposits can be brought under the head 'business conducted by the appellant' to be assessed u/s 28. The matter has been decided by the Hon'ble Supreme Court long back in the case of Tuticorin Alkali Chemicals v. CIT [1997] 93 Taxman 502 wherein it is held that keeping the surplus fund in short-term deposits in order to earn interest income, such interests will be chargeable under section 56. The High Court of Kerala has rendered the same decision in the case of CIT v. Vaikundam Rubber Co. Ltd 241 ITR 50 and CIT v. Cochin Shipyard Ltd 108 Taxman 112. A recent judgment of the Hon'ble Gujarat HC in the case of SBI Vs CIT reported in 389 ITR 578 also supports the above view. In the case of Totgars Co-operative Sales Society reported in 322 ITR 283 (SC) the case before the Supreme Court was in respect of a Co-operative Credit Society, which was also marketing the agricultural produce of its members. As seen from the facts disclosed in the decision of the Karnataka High Court in Totgars case, out of which the decision of the Supreme Court arose, the assessee was carrying on the business of marketing agricultural produce of the members of the Society. It is also found from Paragraph-3 of the decision of the Karnataka High Court that the business activity other than marketing of the agricultural produce actually resulted in net loss to the Society. Therefore, it appears that the assessee was carrying on some of the activities listed in Clause (a) along with other activities. This is perhaps the reason that the assessee did not pay to its members the proceeds of the sale of their produce, but invested the same in banks. As a consequence, the investments were shown as liabilities, as they represented the money belonging to the members. The income derived from the investments made by retaining the monies belonging to the members cannot certainly be termed as profits and gains of business. The AO has rightly relied on this judgment while arriving at his decision that interest income was assessable as income from other sources.

6.4 Perusal of the above case laws and facts of the instant case led me to conclude that it cannot be inferred that the interest income earned on deposit of surplus fund kept with a co-operative bank would qualify as



"income from business or profession". The appellant is admittedly not engaged in any business of depositing money with banks and other financial institutions for interest earning activity. The dominant/sole object of the appellant is promotion of economic upliftment of its members by providing credit facilities. The appellant has not brought forth any argument or material to show that its investments of surplus fund to earn interest income is, in any way, related to its objectives set forth in laws and bye-laws of the society which may qualify such interest income as business income. The earning of interest on surplus funds not incidental to its dominant objective i.e. to provide credit facilities to members, itself cannot qualify as a business income. Therefore, in my considered view, interest income earned from surplus funds has been rightly considered by the AO as income from Other Sources.

6.5 Now the question has come up as to whether the appellant has derived income from its members or from non-members. The Hon'ble Supreme Court in the case of *The Mavilayi Service Coop. Bank Ltd. & Ors. vs. CIT.* in Civil Appeal Nos. 7343-7350 of 2019 Judgment dated 12.01.2021 has clearly held that income of a cooperative society from its members, irrespective of its dominant activities, is eligible to get deduction u/s 80P(2)(a)i) but income from loans given to non-members are not qualified for the purpose. In the present case before me, the AO made a categorical finding that the appellant society had derived interest income of Rs. 59,203/- from G S Mahanagar Co-operative Bank Limited which is not controverted by the appellant. However, the appellant has failed to bring any material before me to show that the said G S Mahanagar Co-operative Bank Limited is its member. Instead, it has tried to justify that interest income was incidental to its business activities. But what is noticed that income was derived from a non-member of the appellant. Thus, such interest income from non-member is not qualified for deduction u/s 80P (2)(a)(i) as per the decision of the Hon'ble Supreme Court dated 12.01.2021 in the case of *The Mavilayi Service Co-operative Bank Ltd (supra)* and the decisions relied upon by the appellant in this regard is of no rescue. It is, accordingly, held that the interest income of Rs. 59,203/- is not eligible for deduction u/s 80P(2)(a)i) of the Act.

6.6 The next issue involved in the present appeal is whether such interest income assessable u/s 56 shall be qualified for deduction u/s 80P(2)(d) or not. The AO has held that interest income being income from other sources shall not be qualified for deduction under any of the provision u/s 80P. From a perusal of the section 80P(2)(d) it can safely be gathered that income by way of interest income derived by an assessee cooperative society from its investments held with any other cooperative society, shall be deducted in computing the total income of the assessee. What is relevant for claim of deduction under section 80P(2)(d) is that the interest income should have been derived from the investments made by the assessee cooperative society with any other cooperative society. 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. section 80(2)(d) would be duly available as the term 'cooperative society' has been defined under section 2(19) of the Act. The



assessability of the interest income u/s 28 or u/s 56 is absolutely immaterial in the operation and applicability of the provision u/s 80P(2)(d). Thus, in the backdrop of aforesaid observations the view taken by the AO that the appellant would not be entitled for claim of deduction under section 80P(2)(d), in respect of the interest income on the investments made with the co-operative bank cannot be accepted. In arriving at this decision, I take support from following decisions:-

- Karnataka State Co-operative Federation Ltd. [2021] 123 taxmann.com 399 - ITAT Bangalore (Para-12)
- Mantola Co-operative Thrift & credit Society Ltd [2020] 118 taxmann.com 276 - ITAT Delhi (para-18).
- Kaliandas Udyog Bhavan Premises Co-operative Society Ltd [2018] 94 taxmann.com 15 - ITAT Mumbai (Para 7 & 8)
- Sant Motiram Maharaj Sahakari Pat Sanstha Ltd [2020] 120 taxmann.com (Para-9)
- Surat Vankar Sahakari Sangh Ltd [2016] 72 taxmann.com 169 (Para 8 & 8.1)

6.7 However, the applicability of section 80P(2)(d) needs adjudication within the scope and gamut of sub-section (4) of section 80P, as had been made available on the statute by the legislature vide the Finance Act, 2006, with effect from 1-4-2007. The AO has taken a view that pursuant to insertion of sub-section (4) of section 80P, the appellant would no more be entitled for claim of deduction under section 80P(2)(d) of the interest income earned on the amounts parked as investments with a Co-operative bank i.e., G S Mahanagar Co-operative Bank Ltd as the interest income from a co-operative bank is specifically excluded from the provision u/s 80P (4), meaning thereby, interest earned from investments made in any bank or any other financial institutions, not being a co-operative society, is not deductible u/s 80P(2)(d). There are divergent opinions on this issue and the dispute is whether Cooperative Societies and Co-operative banks can be placed at par. There are decisions to hold that Co-operative Banks are primarily and necessarily Co-operative Societies and if they don't have a RBI banking license, interest income from such cooperative banks is eligible for deduction u/s 80P(2)(d). This opinion has now affirmed by the Hon'ble Supreme Cour in its recent judgment dated 12.01.2021 in the case of The Mavilayi Service Co-operative Bank Ltd & Ors. v. CIT in Civil Appeal no. 7343 to 7350 of 2019 reported in 123 taxmann.com 161 (supra). It is held that-

"Section 80P(4) is to be read as a proviso, which proviso now specifically excludes co-operative banks which are co-operative societies engaged in banking business i.e. engaged in lending money to members of the public, which have a license in this behalf from the RBI." Para 45

Thus, the Hon,ble Apex Court has placed the co-operative societies having a banking license at par with other commercial banks within single bracket while other co-operative societies those do not have a banking license in another bracket and therefore it can safely be said that interest income from a Co-operative bank having a banking license shall not be qualified for deduction u/s 80P(2)(d) for the reason that such



co-operative banks would no more be 'Co-operative Society' for the purpose of 80P(2)(d) read with section 80P(4) of the Act.

6.8 Now, the question is confined to single point as to whether the appellant has derived its interest income from the party falling in the first bracket or in the second bracket or both. If the interest income has been earned from any co-operative society having a banking license or from any commercial banks or from any entities other than a co-operative society, such interest income shall not be eligible for deduction u/s 80P(2)(d). Otherwise, appellant is eligible to the benefit of deduction u/e 80(2)(d) in respect of interest income derived only from a co-operative society having no banking license irrespective of its predominant activities of providing credit facilities or banking whatsoever. There is nothing brought on record from either side as to whether or not the GS Mahanagar Co-operative Bank Ltd (wherefrom the appellant derived its interest income) is holding a banking license granted by the RBI. However, I find this critical information in the home page of official website www.mahanagarbank.net of the aforesaid co-operative bank wherein it is stated as under:-

" The Bank was initially set up to help Mill workers from Kalachowki and Lalbaug area and Dock workers from Carnac Bunder, Fruit, Vegetable and Flower vendors from Crawford market, Byculla and Dadar market. Fish vendors from Colaba and small number of shop keepers and self employed persons.

In the later stages, the Bank has changed its object and decided to cater the needs of common people from all sectors of the society. To obtain this, the bank has decided to change the name from "The Ahmednagar Sahakari Bank Ltd." to The Mahanagar Co-operative Bank Ltd." The new name came into force with effect from 21st January, 1998.

Thanks to the sustained and assiduous efforts over 43 years after its inception, the bank had gained Strong foundation in terms of its membership, resources, assets and profits. During this period the bank grew from strength to strength. The Bank has grown in stature, progressed in its social and economic objectives and produced an image of what an ideal bank should be. It is secured 'A' grade classification for all the years from the beginning. Resultantly the Reserve Bank of India awarded scheduled status to the Bank on 30th January 1998. This also boosted the confidence of our members, account holders and depositors of the Bank."

It undisputedly proves that the GS Mahanagar Co-operative Bank Ltd is having a banking license granted by the RBI and therefore, interest income of Rs. 59,203/- derived by the appellant from the said co-operative bank shall not be qualified for deduction u/s 80P. Thus, no error has been committed by the AO in declining claim of deduction either u/s 80P(2)(a)(i) or u/s 80P(2)(d), albeit on different reasoning. I confirm the disallowance of deduction for the reasons discussed above. Ground No 1 and 2 are therefore dismissed. Ground No 3 is with regard to initiation of the penalty proceedings, which being outside the scope of the



present appeal, is not adjudicated. Substantive grounds having been decided as above, ground no. 4 being academic in nature are also dismissed.”

5. We have heard rival submission of the parties on the issue in dispute and perused the relevant material on record. Regarding the deduction u/s 80P(2)(a)(i) of the Act is concerned, the deduction is allowed to a co-operative society engaged in carrying on business of banking or providing credit facilities to its members. According to the lower authorities, earning of interest from deposits of surplus funds with the co-operative banks is not in the nature of business of providing credit facilities to its members. The Ld. counsel for the assessee on the other hand relied on the decision of the Hon'ble Supreme Court in the case of **PCIT-17, Mumbai v. M/s Annasaheb Patil Mathadi Kamgar Sahakari Pathpedi Ltd. in Civil Appeal No. 8719/2022** wherein *it is held that there is a vast difference between the credit societies giving credit to their own members only and the banks providing banking services including the credit to the public at large also and therefore, such credit societies were held to be eligible u/s 80P(4) of the Act.* Further, the Tribunal in the case of **the Sarvoday Co-operative Credit Ltd. v. ITO in ITA No. 292/Mum/2022** for assessment year 2017-18, after considering the various decisions on the issue in dispute held that interest received by assessee on the fixed deposits with co-operative banks is in the nature of the business income attributable to its activity of credit cooperative society of accepting deposits and providing credit



to its members. The relevant finding of the Tribunal (supra) is reproduced as under:

“8. We have heard rival submission on the issue in dispute and perused the relevant material on record. The issue in dispute whether the interest income earned on fixed deposits with banks by a Credit Cooperative Society is in the nature of business income attributable to its activity of the credit corporate society of accepting deposits and providing credits to its members. The issue in dispute before us is squarely covered by the finding of the coordinate bench of Tribunal in the case of Jaoli Taluka Sahkari Patpedi Maryadit (supra). The relevant part of the said decision is reproduced as under :

“9. I heard the parties and perused the record. In my view, the decision rendered by Hon’ble Karnataka High Court in the case of Tumkur Merchants Souharda Credit Cooperative Ltd (supra) squarely applies to the facts of the present case. In the case before the Hon’ble Karnataka High Court also, the assessee claimed deduction u/s 80P(2)(a)(i) on the interest income earned from deposits kept with banks on the reasoning that the same shall form part of its business income. The Hon’ble High Court upheld the said view by duly considering the decision rendered by Hon’ble Supreme Court in the case of Totgars Cooperative Sale Society Ltd (supra). For the sake of convenience, I extract below the observations made by the Hon’ble Karnataka High Court:-

“8. Therefore, the word "attributable to" is certainly wider in import than the expression "derived from". Whenever the legislature wanted to give a restricted meaning, they have used the expression "derived from". The expression "attributable to" being of wider import, the said expression is used by the legislature whenever they intended to gather receipts from sources other than the actual conduct of the business. A Cooperative Society which is carrying on the business of providing credit facilities to its members, earns profits and gains of business by providing credit facilities to its members. The interest income so derived or the capital, if not immediately required to be lent to the members, they cannot keep the said amount idle. If they deposit this amount in bank so as to earn interest, the said interest income is attributable to the profits and gains of the business of providing credit facilities to its members only. The society is not carrying on any separate business for earning such interest income. The income so derived is the amount of profits and gains of business attributable to the activity of carrying on the business of banking or providing credit facilities to its members by a co-operative society and is liable to be deducted from the gross total income under Section 80P of the Act.

9. In this context when we look at the judgment of the Apex Court in the case of M/s. Totgars Co-operative Sale Society Ltd., on



which reliance is placed, the Supreme Court was dealing with a case where the assessee-Cooperative Society, apart from providing credit facilities to the members, was also in the business of marketing of agricultural produce grown by its members. The sale consideration received from marketing agricultural produce of its members was retained in many cases. The said retained amount which was payable to its members from whom produce was bought, was invested in a short-term deposit/security. Such an amount which was retained by the assessee - Society was a liability and it was shown in the balance sheet on the liability side. Therefore, to that extent, such interest income cannot be said to be attributable either to the activity mentioned in Section 80P(2)(a)(i) of the Act or under Section 80P(2)(a)(iii) of the Act. Therefore in the facts of the said case, the Apex Court held the assessing officer was right in taxing the interest income indicated above under Section 56 of the Act. Further they made it clear that they are confining the said judgment to the facts of that case. Therefore it is clear, Supreme Court was not laying down any law.

10. In the instant case, the amount which was invested in banks to earn interest was not an amount due to any members. It was not the liability. It was not shown as liability in their account. In fact this amount which is in the nature of profits and gains, was not immediately required by the assessee for lending money to the members, as there were no takers. Therefore they had deposited the money in a bank so as to earn interest. The said interest income is attributable to carrying on the business of banking and therefore it is liable to be deducted in terms of Section 80P(1) of the Act. In fact similar view is taken by the Andhra Pradesh High Court in the case of CIT v. Andhra Pradesh State co-operative Bank Ltd., [2011] 200 Taxman 220/12 taxmann.com66. In that view of the matter, the order passed by the appellate authorities denying the benefit of deduction of the aforesaid amount is unsustainable in law. Accordingly it is hereby set aside. The substantial question of law is answered in favour of the assessee and against the revenue. Hence, we pass the following order:”

10. Respectfully following the decision rendered by Hon’ble Karnataka High Court, referred above, I set aside the order of Ld CIT(A) on this issue and direct the AO to allow deduction u/s 80P of the Act.”

8.1 In the instant case before us also being identical facts, interest earned from fixed deposits is held to be “attributable” to the business of the assessee credit cooperative society and accordingly eligible for deduction under section 80P(2)(a)(i) of the Act. The finding of the Ld. CIT(A) on the issue in dispute are accordingly set aside and the ground No. one of the appeal of the assessee is allowed.”



5.1 Further, the Co-ordinate Bench of the Tribunal in **ITA No. 604/Pun/2014 in the case of Shri Laxmi Narayan Nagrisahkari Pat Sansthan Maryadait** for assessment year 2010-11 and the Hon'ble High Court of Calcutta in the case of **PCIT v. Gunja Samabay Krishi Unnayan Samit Ltd. reported (2013) 147 taxmann.com 518 (Calcutta)** held that *interest from short term deposits with scheduled bank is eligible for deduction u/s 80P(2)(a)(i) of the Act of the Act*. In view of the decision of the Co-ordinate Bench (supra), we set aside the finding of the Ld. CIT(A) and direct the Assessing Officer to allow the deduction claimed u/s 80P(2)(a)(i) of the Act. Further, the alternative claim of the assessee for deduction u/s 80P(2)(d) of the Act is also allowable because in various decisions the Tribunal has consistently held that the co-operative banks are primarily co-operative society . The finding of Co-ordinate Bench of Tribunal in the case of Amore commercial Co-op Society Ltd Vs CPC in ITA No. 2873 & 2874/Mum/2022 is reproduced as under:

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 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) 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 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, (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 co-operative society from its investments made with any other co-operative society, the claim of deduction under the aforesaid statutory provision, viz. Sec. 80P(2)(d) would be duly available. We find that the term cooperative society” had been defined under Sec. 2(19) of the Act, as under:- “(19) “Co-operative society” means a cooperative society registered under the Cooperative Societies Act, 1912 (2 of 1912), or



under any other law for the time being in force in any state for the registration of 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 co-operative bank is covered in favour of the assessee in the following cases: (i) Land and Cooperative Housing Society Ltd. Vs. ITO (2017) 46 CCH \$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 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 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." 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. 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 allowed the same.

5.2 Further, we note that Hon'ble Madras High Court in Writ petition No. 11172 and 11180 of 2023 vide decision dated 10/10/23 observed as under:

8. The main issue is to decide in the present case is as to whether the petitioner Co-operative Society is entitled for a deduction for the interest income received from the Co-operative Bank? 9. It would be appropriate to extract hereunder the relevant portion of Section 80P(2)(d). "80 P. Deduction in respect of income of cooperative societies: (1) (2) The sums referred to in sub-section (1) shall be the following, namely :— (a) to (c) (d) "in respect of any income by way of interest or dividends derived by the co-operative society from its investment with any other co-operative society, the whole of such income" 9. A reading of the above said provision makes it clear that in the event if any Co-operative Society derived income by way



of interest from investment made in any other Co-operative Society the whole such interest is eligible for deduction. Now the issue is as to whether the Co-operative Bank would fall within the purview of the term 'Co-operative Society'. In the present case, the petitioner produced a document to show that the Co-operative Bank, where they have made investments was registered under the Tamil Nadu Co-operative Societies Act, 1983 on 20.5.2003. In this regard, he also produced a copy of the Certificate of Incorporation of the said Co-operative Bank. Therefore, it is clear that the investment made by the petitioner is a Co-operative Bank registered under the Co-operative Societies Act. The Income Tax Act, 1961 has also defined 'Co-operative Society' under Section 2(19) as follows: "2(19). "Co-operative society" 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. 10. A reading of the above definition would make it clear that 'Co-operative Society' means a Co-operative Society registered under Co-operative Societies Act, 1912. Thus, a Co-operative Society referred therein is only a co-operative society as defined under the Act, be it a Co-operative Society carrying on banking business or Co-operative Society carrying on the other businesses or a Co-operative bank. 11. The learned counsel for the respondent



referred to the judgment of the Hon'ble Supreme Court rendered in *Totgars Co-operative Sale Society Ltd., v. Income-tax Officer, Karnataka*", wherein the issue came up for consideration as to whether the interest income received by a Co-operative Bank from its members by way of providing the credit facilities to its members is eligible for deduction or not. Ultimately the Hon'ble Supreme Court found that under Section 80P(2)(a)(i), the same is eligible for deduction. Therefore, the law laid down by the Hon'ble Supreme Court is not applicable for in the present case as the eligibility of deduction of interest has to be decided under Section 80P(2)(d) and not under Section 80P(2)(a)(i). The learned counsel has also relied upon other judgments which are not applicable for the present facts of the present case.

12. At this juncture, it would be appropriate to refer a judgment passed by a Division Bench of this Court in "*Commissioner of Income Tax Salem v. The Salem Agricultural Producers Co-operative Marketing Society Ltd*" in Tax Case Appeal No.5 of 2015, wherein, apart from other substantial issues, the following issue has been framed for consideration, which reads as under: "Whether on the facts and in the circumstances of the case, the Tribunal was right in holding that the assessee is to be treated as primary agricultural society and is carrying on the business of banking or providing credit facilities to its members and is



entitled for deduction under Section 80P(2)(a)(i) of the Income Tax Act, 1961 with respect to the interest received from Class B members who were involved in non-agricultural society?”. While answering to the above, the Division Bench held that the respondent therein, which is a Co-operative considered.

5.3 Respectfully following the precedents discussed above, we are of opinion that under the provisions of section 80P(2)(d) of the Act, the assessee is eligible for deduction u/s 80P(2)(d) of the Act in respect of interest received from concerned co-operative societies. Accordingly, the alternative claim of the assessee is also allowed.

5.4 In view of the above aforesaid discussion both the grounds of the appeal of the assessee are allowed.

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

Order pronounced in the open Court on 31/01/2024.

Sd/-
(KAVITHA RAJAGOPAL)
JUDICIAL MEMBER

Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER

Mumbai;
Dated: 31/01/2024
Rahul Sharma, Sr. P.S.



Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,
(Assistant Registrar)
ITAT, Mumbai