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

SHRI NARENDRA KUMAR BILLAIYA, ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER

ITA No. 56/MUM/2024
(Assessment Year: 2018-19)
&
ITA No. 57/MUM/2024
(Assessment Year: 2020-2021)

Sadhana Sahakari Patpedhi Limited, Sadhana Bhavan, Acton, Sandor, Vasai West, Dist- Palghar - 401201 PAN: AABAS0562K]	.....	**Appellant**
Income Tax Officer, **Ward 4(4), Thane,** Room No. 8, 6th Floor, Ashar IT Park, No. 162, Wagle Ind, Thane (West)	Vs	**Respondent**

Appearance

For the Appellant/Assessee	:	Shri Unmesh Narvekar
For the Respondent/Department	:	Dr. Kishor Dhule

Date

Conclusion of hearing	:	08.05.2024
Pronouncement of order	:	22.05.2024

O R D E R

Per Rahul Chaudhary, Judicial Member:

1. These are 2 appeals pertaining to Assessment Years 2018-19 and 2020-2021 preferred by the Assessee against two separate orders, each dated 08/11/2023, passed by the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as 'the CIT(A)']. Since the appeals involve common issues the same were heard together and are being disposed by way of a common order.

ITA No. 56/Mum/2024 (Assessment Year 2018-19)

2. We would first take up appeal for the Assessment Year 2018-19 which has been preferred by the Assessee challenging the order, dated 08/11/2023, passed by the CIT(A), whereby the Ld. CIT(A) had dismissed the appeal of the Assessee against the Assessment, dated 16/04/2023, passed under Section 143(3) read with Sections 143(3A) & 143(3B) of the Income Tax Act, 1961 [hereinafter referred to as 'the Act'].

3. The Appellant has raised following grounds of appeal:

"1. The Hon'ble CIT-(A), NFAC has aggrieved your appellant by confirming the additions made by the learned A.O. for Rs.2,46,43,418/- by disallowing deduction claimed u/s 80P(2)(d) of The Income Tax Act, 1961.

2. The Hon'ble CIT-(A), NFAC has also aggrieved your appellant by agreeing with the learned A.O. of not allowing the deductions of Rs. 1,43,20,990/- claimed u/s 80P(2)(a)(i) of Income Tax Act, 1961 by holding the appellant to be debarred from claiming the said deduction on the account of application of section 80P(4) of the Act, which conclusion is factually and legally erroneous.

3. The Hon'ble CIT-(A), NFAC has aggrieved your appellant by drawing the conclusion that the appellant co-operative society is not entitle for deduction u/s 80P(2)(d) of The Income Tax Act, 1961 in respect of interest earned on the investment made in nationalized and co-operative banks.

4. Hon'ble CIT-(A), NFAC has erroneously passed the order with pre-conceived notion and overlooking the various judgments of Hon'ble High Courts & ITAT benches wherein deduction u/s 80P(2)(d) of The Income Tax Act, 1961 is allowed to credit societies in respect of interest earned on the investment made in co-operative banks on the grounds that Co-operative bank is a species of co-operative credit society.

5. Alternatively, on the facts and in law, the Hon'ble CIT-(A), NFAC and the learned A.O. erred in not appreciating that the appellant is entitled for deduction u/s 80P(2)(d) of The IT Act 1961, in respect of Rs. 2,46,43,418/- for interest earned from co-operative banks as such

interest income is qualified and entitle for deduction u/s 80P(2)(d) and now it is a settle position of law after the various judgments of Hon'ble High Courts & ITAT benches.

6. *On the facts and in law, the learned A.O. erred in not appreciating that if the intention of the Income Tax Act/Law Makers was to deny the deduction u/s 80P to a co-operative society carrying on the activity of providing banking/credit facilities with its members, then section 80P(2)(a) (i) / 80P(2)(d) would not be on the statue book. The deduction of Rs. 1,43,20,990/- claimed u/s 80P(2)(a) (i) and Rs 2,46,43,418/- u/s 80P(2)(d) may kindly be allowed.*

7. *Without prejudice to the above, the case laws relied by the CIT-(A) NFAC, are not applicable to the facts of the appellant and hence the order of the CIT-(A) NFAC may be quashed.*

8. *Your appellant also humbly submits & prays for granting stay against the entire demand, penalty and all recovery proceedings including automatic adjustments of refunds of the future years by the CPC which is initiated or may be initiated in future against your appellant in this respect till the disposal of this appeal."*

4. Brief facts of the case are that the Assessee, a co-operative credit society, filed return of income for the Assessment Year 2018-19 on 30/10/2018 declaring total income at INR 3,90,13,911/- after claiming deduction of INR 1,43,20,990/- under Section 80P(2)(a)(i), INR 2,46,43,418/- under Section 80P(2)(d) and INR 49,503/- under Section 80P(2)(c) of the Act. The return of income was processed under Section 143(1) of the Act on 08/02/2020. Subsequently, the case of the Appellant was selected for scrutiny and order under Section 143(3) read with Section 143(3A) and 143(3B) of the Act was passed on 16/04/2021. The Assessing Officer computed the assessed income of the Appellant at INR 3,89,64,408/- disallowing (a) deduction of INR 2,46,43,418/- claimed under Section 80P(2)(d) of the Act; and (b) deduction of INR 1,43,20,990/- under Section 80P(2)(a)(i) of the Act.

5. Being aggrieved, the Assessee preferred appeal before the CIT(A) against the Assessment Order, dated 16/04/2021, challenging the

above disallowances. The CIT(A) agreed with the Assessing Officer and vide, order dated 08/11/2023, dismissed the appeal preferred by the Appellant.

6. Being aggrieved, the Appellant has preferred the present appeal against the order passed by the CIT(A) on the grounds reproduced in paragraph 3 above. All the grounds raised by the Appellant are directed against the disallowance of deduction claimed under Section 80P(2)(a)(i) and 80P(2)(d) of the Act and are, therefore, taken up together hereinafter.

7. The Learned Authorised Representative for the Appellant placed reliance on the Written Submission, dated 04/01/2024 and the judicial precedents cited therein. Per Contra, the Learned Departmental Representative supported the stand taken by the Assessing Officer by placing reliance on the judgment of the Hon'ble Karnataka High Court in the case of Principal Commissioner of Income Tax, Hubli Vs. Totagar Co-operative Sales Society: [2017] 695 ITR 611 (Karnataka), the judgment of Hon'ble Gujarat High Court in the case of Katlary Kariyana Sahkari Sarafi Mandli Ltd Vs, ACIT: [2022] 140 Taxmann.com 602 (Gujarat), dated 04/01/2022, and the judgment of the Hon'ble Supreme Court in the case of Citizen Co-operative Society Vs. ACIT, Circle 9(1), Hyderabad: 397 ITR 1 (SC) as well as the provisions contained in Section 80P(4) of the Act.

8. We have given thoughtful consideration to the rival submission, perused the material on record and considered the position in law. We find that the issues raised in the present appeal are no longer res-integra.

9. The Assessing Officer and the CIT(A) have concluded that the Assessee is not entitled to claim deduction under Section 80P(2)(a)(i) of the Act as it is engaged in the business of banking and therefore, hit by the provisions of Section 80P(4) of the Act. Reliance in this regard was placed on the judgment of Hon'ble Supreme Court in the case of Citizen

Co-operative Society Ltd. vs. ACIT Circle 9(1), Hyderabad : 397 ITR 1 (SC). In this regard, we find that vide letter dated 15/01/2021 filed before the Assessing Officer *(placed at page 50 of 96 of documents filed with the appeal)*, the Assessee had stated that the Appellant does not carry on any business activities with non-members and therefore, the concept of mutuality is satisfied in the case of the Assessee. The Society had 11,484 members and it carried on transactions only with these members. Further, reliance was placed by the Appellant on the judgment in the case of of **Mavilayi Service Co-operative Bank Ltd. vs. Commissioner of Income Tax, Calicut: [2021] 431 ITR 1 (SC)[12-01-2021]**. In the aforesaid judgment, after considering the judgment of the Hon'ble Supreme Court in the case of Citizen Co-operative Society Ltd. (supra), the Hon'ble Supreme Court has held as under:

> *"20. We now come to the judgment of this Court in Citizen Cooperative Society Ltd. (supra). This judgment was concerned with an assessee who was established initially as a mutually aided cooperative credit society, having been registered under section 5 of the Andhra Pradesh Mutually Aided Cooperative Societies Act, 1995. As operations of the assessee began to spread over States outside the State of Andhra Pradesh, the assessee got registered under the Multi-State Cooperative Societies Act, 2002 as well. The question that the Court posed to itself was as to whether the appellant was barred from claiming deduction in view of Section 80P(4) of the Income-tax Act - see paragraph 5. After setting out the findings of fact in that case, and the income tax authorities concurrent holding that the society is carrying on banking business and for all practical purposes acts like a co-operative bank, this Court then held as follows:*
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> *xx xx*
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> *21. An analysis of this judgment would show that the question of law that was reflected in paragraph 5 of the judgment was answered in favour of the assessee. The following propositions may be culled out from the judgment:*
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> *(I) That section 80P of the IT Act is a benevolent provision, which was enacted by Parliament in order to encourage and promote the growth of the co-operative sector generally in the economic life of the country and must, therefore, be read liberally and in favour of the assessee;*

(II)That once the assessee is entitled to avail of deduction, the entire amount of profits and gains of business that are attributable to any one or more activities mentioned in sub-section (2) of section 80P must be given by way of deduction;

(III) That this Court in Kerala State Cooperative Marketing Federation Ltd. (supra) has construed section 80P widely and liberally, holding that if a society were to avail of several heads of deduction, and if it fell within any one head of deduction, it would be free from tax notwithstanding that the conditions of another head of deduction are not satisfied;

(IV) This is for the reason that when the legislature wanted to restrict the deduction to a particular type of co-operative society, such as is evident from section 80P(2)(b) qua milk co-operative societies, the legislature expressly says so - which is not the case with section 80P(2)(a)(i);

(V) That section 80P(4) is in the nature of a proviso to the main provision contained in section 80P(1) and (2). This proviso specifically excludes only co-operative banks, which are cooperative societies who must possess a licence from the RBI to do banking business. Given the fact that the assessee in that case was not so licenced, the assessee would not fall within the mischief of section 80P(4)

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26. Applying the aforesaid decisions, it is clear that the ratio decidendi in Citizen Cooperative Society Ltd. (supra) would not depend upon the conclusion arrived at on facts in that case, the case being an authority for what it actually decides in law and not for what may seem to logically follow from it. Thus, the statement of the principles of law applicable to the legal problems disclosed by the facts alone is the binding ratio of the case, which as has been stated hereinabove, is contained in paragraphs 18 to 23 of the judgment. Paragraphs 24 to 26, being the judgment based on the combined effect of the statements of the principle of law applicable to the material facts of the case cannot be described as the ratio decidendi of the judgment. Nor can it be said that it would logically follow from the finding on facts that the assessing officer can go behind the registration of a society and arrive at a conclusion that the society in question is carrying on illegal activities. On this score alone, the Full Bench's understanding of this judgment has to be faulted and is set aside.

27. However, this does not conclude the issue in the present case. We now turn to the proper interpretation of section 80P of the Income-tax

Act. Firstly, the marginal note to section 80P which reads "Deduction in respect of income of co-operative societies" is important, in that it indicates the general "drift" of the provision. This was so held by this Court in K.P. Varghese v. ITO [1981] 7 Taxman 13/131 ITR 597 as follows:

> *"9. This interpretation of sub-section (2) is strongly supported by the marginal note to Section 52 which reads "Consideration for transfer in cases of understatement". It is undoubtedly true that the marginal note to a section cannot be referred to for the purpose of construing the section but it can certainly be relied upon as indicating the drift of the section or, to use the words of Collins, M.R. in Bushel v. Hammond [1904] 2 KB 563 to show what the section is dealing with. It cannot control the interpretation of the words of a section particularly when the language of the section is clear and unambiguous but, being part of the statute, it prima facie furnishes some clue as to the meaning and purpose of the section (vide Bengal Immunity Company Limited v. State of Bihar [1955] 2 SCR 603])."*

28. Secondly, for purposes of eligibility for deduction, the assessee must be a "co-operative society". A co-operative society is defined in Section 2(19) of the IT Act, as being a co-operative society registered either under the Co-operative Societies Act, 1912 or under any other law for the time being in force in any State for the registration of co-operative societies. This, therefore, refers only to the factum of a co-operative society being registered under the 1912 Act or under the State law. For purposes of eligibility, it is unnecessary to probe any further as to whether the co-operative society is classified as X or Y.

29. Thirdly, the gross total income must include income that is referred to in sub-section (2).

30. Fourthly, sub-clause (2)(a)(i) with which we are directly concerned, then speaks of a co-operative society being "engaged in" carrying on the business of banking or providing credit facilities to its members. What is important qua sub-clause (2)(a)(i) is the fact that the co-operative society must be "engaged in" the providing credit facilities to its members. As has been rightly pointed out by the learned Additional Solicitor General, the expression "engaged in", as has been held in CIT v. Ponni Sugars & Chemicals Ltd. [2008] 174 Taxman 87/306 ITR 392 (SC), would necessarily entail an examination of all the facts of the case. This Court in Ponni Sugars & Chemicals Ltd. (supra) held:

> *"20. In order to earn exemption under section 80P(2) a cooperative society must prove that it had engaged itself in carrying on any of the several businesses referred to in sub-section (2). In that connection, it is important to note that under sub-section (2), in the context of cooperative society, Parliament has stipulated that the*

society must be engaged in carrying on the business of banking or providing credit facilities to its members. Therefore, in each case, the Tribunal was required to examine the memorandum of association, the articles of association, the returns of income filed with the Department, the status of business indicated in such returns, etc. This exercise had not been undertaken at all."

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35. Eighthly, sub-clause (d) also points in the same direction, in that interest or dividend income derived by a co-operative society from investments with other co-operative societies, are also entitled to deduct the whole of such income, the object of the provision being furtherance of the co-operative movement as a whole.

36. Coming to the provisions of section 80P(4), it is important to advert to speech of the Finance Minister dated 28-2-2006, which reflects the need for introducing section 80P(4). Shri P. Chidambaram specifically stated:

"166. Cooperative Banks, like any other bank, are lending institutions and should pay tax on their profits. Primary Agricultural Credit Societies (PACS) and Primary Cooperative Agricultural and Rural Development Banks (PCARDB) stand on a special footing and will continue to be exempt from tax under section 80P of the Income-tax Act. However, I propose to exclude all other cooperative banks from the scope of that section."

37. Likewise, a Circular dated 28-12-2006, containing explanatory notes on provisions contained in the Finance Act, 2006, is also important, and reads as follows:

"Withdrawal of tax benefits available to certain cooperative banks

** ** **

22.2 The cooperative banks are functioning at par with other commercial banks, which do not enjoy any tax benefit. Therefore section 80P has been amended and a new sub-section (4) has been inserted to provide that the provisions of the said section shall not apply in relation to any cooperative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank. The expressions 'co-operative bank', 'primary agricultural credit society' and 'primary co-operative agricultural and rural development bank' have also been defined to lend clarity to them."

38. A clarification by the CBDT, in a letter dated 9-5-2008, is also important, and states as follows:

"Subject: Clarification regarding admissibility of deduction under section 80P of the Income-tax Act, 1961.

** ** **

2. In this regard, I have been directed to state that sub-section (4) of section 80P provides that deduction under the said section shall not be allowable to any co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank. For the purpose of the said sub-section, co-operative bank shall have the meaning assigned to it in part V of the Banking Regulation Act, 1949.

3. In part V of the Banking Regulation Act, "Co-operative Bank" means a State Co-operative bank, a Central Co- operative Bank and a primary Co-operative bank.

4. Thus, if the Delhi Co-op Urban T & C Society Ltd. does not fall within the meaning of "Co-operative Bank" as defined in part V of the Banking Regulation Act, 1949, sub-section(4) of section 80P will not apply in this case.

5. Issued with the approval of Chairman, Central Board of Direct Taxes."

39. The above material would clearly indicate 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. Thus, if the Banking Regulation Act, 1949 is now to be seen, what is clear from section 3 read with section 56 is that a primary co-operative bank cannot be a primary agricultural credit society, as such co-operative bank must be engaged in the business of banking as defined by section 5(b) of the Banking Regulation Act, 1949, which means the accepting, for the purpose of lending or investment, of deposits of money from the public. Likewise, under section 22(1)(b) of the Banking Regulation Act, 1949 as applicable to co-operative societies, no co-operative society shall carry on banking business in India, unless it is a co-operative bank and holds a licence issued in that behalf by the RBI. As opposed to this, a primary agricultural credit society is a co-operative society, the primary object of which is to provide financial accommodation to its members for agricultural purposes or for purposes connected with agricultural activities.

40. As a matter of fact, some primary agricultural credit societies applied for a banking licence to the RBI, as their bye-laws also contain as one of the objects of the Society the carrying on of the business of banking. This was turned down by the RBI in a letter dated 25-10-2013 as follows:

"Application for license

Please refer to your application dated April 10, 2013 requesting for a banking license. On a scrutiny of the application, we observe that you are registered as a Primary Agricultural Credit Society (PACS).

In this connection, we have advised RCS vide letter dated UBD (T) No. 401/10.00/16A/2013-14 dated October 18, 2013 that in terms of Section 3 of the Banking Regulation Act, 1949 (AACS), PACS are

not entitled for obtaining a banking license. Hence, your society does not come under the purview of Reserve Bank of India. RCS will issue the necessary guidelines in this regard

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45. To sum up, therefore, the ratio decidendi of Citizen Co-operative *Society Ltd. (supra), must be given effect to. Section 80P of the IT Act, being a benevolent provision enacted by Parliament to encourage and promote the credit of the co-operative sector in general must be read liberally and reasonably, and if there is ambiguity, in favour of the assessee. A deduction that is given without any reference to any restriction or limitation cannot be restricted or limited by implication, as is sought to be done by the Revenue in the present case by adding the word "agriculture" into section 80P(2)(a)(i) when it is not there. Further, 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 licence in this behalf from the RBI. Judged by this touchstone, it is clear that the impugned Full Bench judgment is wholly incorrect in its reading of Citizen Cooperative Society Ltd. (supra). Clearly, therefore, once section 80P(4) is out of harm's way, all the assessees in the present case are entitled to the benefit of the deduction contained in section 80P(2)(a)(i), notwithstanding that they may also be giving loans to their members which are not related to agriculture. Also, in case it is found that there are instances of loans being given to non-members, profits attributable to such loans obviously cannot be deducted." (Emphasis Supplied)*

9.1. On perusal of the above extract of the judgment in the case of Mavilayi Service Co-operative Bank Ltd (supra), it is clear that the provision of Section 80P(4) are attracted only in case of co-operative society holding a banking license issued by the Reserve Bank of India (RBI). The Assessee is not registered with RBI under Banking Regulation Act, 1949 and does not hold any license issued by RBI. Accordingly, we hold that provisions of Section 80P(4) are not attached in the case of the Appellant and that the Assessee is entitled to claim deduction under Section 80P(2)(a)(i) of the Act being a cooperative society not holding a license issued by Reserve Bank of India and transacting only with its members.

10. Next issue that arises for consideration is whether deduction under

80P(2)(d) of the Act would be available to the Appellant in respect of interest income received from co-operative bank. The contention of the Revenue is that the interest income is in the nature of 'Income from Other Sources' and therefore, deduction under Section 80P(2)(a)(i) of the Act would not be available to the Assessee. It has also been contended by the Revenue that deduction from interest income would not be available under Section 80P(2)(d) of the Act since the same has been received from a co- co-operative bank which is not a co-operative society. In our view, even if for the sake of arguments the first contentions of the Revenue is accepted, the Assessee would still be able to claim deduction under Section 80P(2)(d) of the Act. The judgment of the Hon'ble Supreme Court in the case of **Totgars Cooperative Sale Society Ltd. vs. ITO (2010) 322 ITR 283 (SC)** was rendered in the context of Section 80P(2)(a) of the Act (wherein expression '*the whole of the amount of profits and gains of business attributable to any one or more of ssuch activities*' has been used), whereas in Section 80P(2)(d) of the Act expression used is '*any income by way of interest*'. Thus, the nature of income is not a relevant consideration while considering the eligibility for deduction under Section 80P(2)(d) of the Act. Further, the Impact of insertion of Section 80P(4) of the Act is that a co-operative bank would no more be entitled for claim of deduction under Section 80P of the Act, however, the interest income derived by a co-operative society from a co-operative bank would continue to be eligible for deduction under Section 80P(2)(d) of the Act irrespective of the fact that such interest income is in the nature of '*profits and gains of business*' or '*income from other sources*' as Section 80P(2)(d) uses the expression 'any income' and not 'profits & gains of business'. Our view draws strength from the decision of the Tribunal in the case of ***Kaliandas Udyog Bhavan Premises Co-operative Society Ltd. vs. ITO: ITA No. 6547/Mum/2017, dated 24.04.2018*.** In that case, after examining the judgment of the Hon'ble Supreme Court in the case of Totgars Cooperative Sale Society Ltd. vs. ITO (2010) 322 ITR 283

(SC) which was followed by the Hon'ble Karnataka High Court in the case of Pr.CIT vs. Totgars Co-operative Sale Society Ltd.: 2017 395 ITR 611 (Kar), and taking into account the insertion of Section 80P(4) of the Act vide the Finance Act, 2006, the Mumbai Bench of the Tribunal held that a co-operative society would be eligible to claim deduction under Section 80P(2)(d) of the Act in respect of interest received from a co-operative bank as such cooperative bank continues to be a co-operative society. In the aforesaid decision it was observed by the Tribunal that the aforesaid judgment of the Hon'ble Supreme Court in the case of Totgars Cooperative Sale Society Ltd vs. ITO: (supra) had been wrongly relied upon by the Revenue as the same was rendered in the context of Section 80P(2)(a)(i) of the Act, and not on the issue of entitlement of a co-operative society to claim deduction under Section 80P(2)(d) of the Act in respect of the interest income received from co-operative bank. The relevant extract of the decision of the Tribunal reads as under:

> *"7. We have deliberated at length on the issue under consideration and are unable to persuade ourselves to be in agreement with the view taken by the lower authorities. Before proceeding further we may herein reproduce the relevant extract of the said 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.*
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> *(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"*

Thus, from a perusal of the aforesaid Sec. 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. 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 cooperative society. We though are in agreement with the observations of the lower authorities 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, but however, are unable to subscribe to their view that the same shall also jeopardise the claim of deduction of a co-operative society under Sec. 80P(2)(d) in respect of the interest income on their investments parked with a co-operative bank. We have given a thoughtful consideration to the issue before us and are of the considered view that 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 may herein observe 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 cooperative societies;"*

We are of the considered view, that though the co-operative bank pursuant to the insertion of Sub-section (4) of Sec. 80P would no more be entitled for claim of deduction under Sec. 80P of the Act, but however, 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 enforced in any state for the registration of cooperative societies, therefore, the interest income derived by a co-operative society from its investments held with a co-operative bank, would be entitled for claim of deduction under Sec.80P(2)(d) of the Act.

8. We shall now advert to the judicial pronouncements that had been relied upon by the authorized representatives for both the parties and the lower authorities. We find that the issue that a co-operative society would be entitled for claim of deduction under Sec. 80P(2)(d) for 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 32 (Mum)

(ii) M/s Sea Green Cooperative Housing and Society Ltd. Vs. ITO21(3)(2), Mumbai (ITA No. 1343/Mum/2017, dated 31.03.2017

(iii) Marvwanjee Cama Park Cooperative Housing Society Ltd. Vs. ITORange-20(2)(2), Mumbai (ITA No. 6139/Mum/2014, dated 27.09.2017.

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 also held that the interest income earned by the assessee on its investments held 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, as had been relied upon by the ld. A.R, also makes it clear beyond any scope of doubt, that the purpose behind enactment of sub-section (4) of Sec. 80P was to provide that the cooperative banks which are functioning at par with other banks would no more be entitled for claim of deduction under Sec. 80P(4) of the Act. ***We are of the considered view that the reliance placed by the CIT(A) 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 (S.C.) being***

distinguishable on facts, thus, had wrongly been relied upon by him. The adjudication by the Hon'ble Apex Court in the aforesaid case was in context of Sec. 80P(2)(a)(i), and not on the entitlement of a co-operative society towards deduction under Sec. 80P(2)(d) on the interest income on the investments parked with a co-operative bank. *We further find that the reliance place by the ld. D.R on the order of the ITAT "F" bench, Mumbai in the case of M/s Vaibhav Cooperative Credit Society Vs. ITO-15(3)(4) (ITA No. 5819/Mum/2014, dated 17.03.2017 is also distinguishable on facts. We find that the said order was passed by the Tribunal in context of adjudication of the entitlement of the assessee co-operative bank towards claim of deduction under Sec.80P(2)(a)(i) of the Act. We find that it was in the backdrop of the aforesaid facts that the Tribunal after carrying out a conjoint reading of Sec, 80P(2)(a)(i) r.w. Sec. 80P(4) had adjudicated the issue before them. We are afraid that the reliance placed by the ld. D.R on the aforesaid order of the Tribunal being distinguishable on facts, thus, would be of no assistance for adjudication of the issue before us. Still further, the reliance placed by the Ld. D.R on the order of the ITAT 'SMC' Bench, Mumbai in the case of Shri Sai Datta Co-operative Credit Society Ltd. Vs. ITO (ITA No. 2379/Mum/2015, dated 15.01.2016, would also not be of any assistance, for the reason that in the said matter the Tribunal had set aside the issue to the file of the assessing officer for fresh examination,* ***That as regards the reliance placed by the ld. D.R on the judgment of the Hon'ble High Court of Karnataka in the case of Pr. CIT Vs. Totagars co-operative Sale Society (2017) 395 ITR 611 (Karn), the High Court had concluded that a co-operative society would not be entitled to claim of deduction under Section 80P(2)(d). We however 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. Thus, 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 co-operative society on its investments held with a co operative bank would be eligible for claim of deduction under Sec.80P(2)(d) of the Act.

9. We thus in the backdrop of our aforesaid observations are unable to persuade ourselves to be in agreement with the view taken by the lower authorities that the assessee would not be entitled for claim of deduction under Sec. 80P(2)(d), in respect of the interest income on the investments made with the co-operative bank. We thus set aside the order of the lower authorities and conclude that the interest income of Rs.27,48,553/- earned by the assessee on the investments held with the co-operative bank would be entitled for claim of deduction under Sec. 80P(2)(d)." (Emphasis supplied)

10.1. On perusal of the above, it can be seen that it was held by the Tribunal that even after insertion of Section 80P(4) of the Act, deduction under Section 80P(2)(d) of the Act was allowable in respect of interest received by a co-operative society from a co-operative bank.

10.2. During the course of hearing strong reliance was placed by the Learned Departmental Representative on the decision of the Hon'ble Gujarat High Court in the case of **Katlary Kariyana Merchant Sahkari Sarafi Mandali Ltd**. (supra). However, in our view, the aforesaid judgment supports the case of the Assessee. In paragraph 13 & 14 the Hon'ble Gujarat High Court has observed as under:

"13. Similar issue arose for consideration before the Hon'ble High court of Karnataka (Dharwad Bench) in the case of Pr. CIT v. Totagars Co-operative Sale Society [2017] 83 taxmann.com 140/395 ITR 611. The substantial questions of law which arose for consideration as recorded in Para 1 are reproduced as under:

xx xx

That while holding the aforesaid issues in favour of the revenue department, the Court followed the decision of the Hon'ble Supreme Court in the case of same assessee which was later on followed by this Court in the case of State Bank of India v. CIT [2016] 72 taxmann.com 64/241 Taxman 163/389 ITR 578, relevant paras are reproduced as under:

"16. In case where the co-operative society is a bank, one of its objects would be to carry on the general business of banking. Like other banks, money would be its stock-in-trade or circulating capital and its normal business is to deal in money and credit. The business of such a bank does not consist only of receiving deposits and lending money to its members or such other societies as are mentioned in the objects. When such a society lends out its monies so that they may be readily available to meet the demands of its depositors if and when they arise, it is a legitimate mode of carrying on its banking business. In case of a credit society like the present one, the business of the society is limited to providing credit to its members and the income that is earned from providing such credit facilities to its members is deductible under section 80P(2)(a)(i) of the Act. However, investing its surplus funds with the State Bank of India is no part of the business of the appellant of providing credit to its members and hence, it cannot be said that the interest income derived from depositing surplus funds with the State Bank of India is profits and gains of business attributable to the activities of the appellant society. The character of the interest is different from the income attributable to the business of the society of providing credit facilities to its members. The interest income derived from investing surplus funds with the State Bank of India must be closely linked with the business of providing credit facilities for it to be held that it is attributable to the business of the assessee. Therefore, the profits and gains can be said to be directly attributable to the business of providing credit facilities to its members if there is a direct and proximate connection between the profits gains and the business of the appellant. In the present case there is no obligation upon the appellant to invest its surplus funds with the State Bank of India. Investing surplus funds in a bank is no part of the business of the assessee of providing credit facilities to its members. Therefore, it is only the interest derived from the credit provided to its members which is deductible under section 80P(2)(a)(i) of the Act and the interest derived by depositing surplus funds with the State Bank of India not being attributable to the business carried on by the appellant, cannot be deducted under section 80P(2)(a)(i) of the Act. If the appellant wants to avail of the benefit of deduction of such interest income, it is always open for it to deposit the surplus funds with a co-operative bank and avail of deduction under section 80P(2)(d) of the Act.

17. Section 71 of the Gujarat Co-operative Societies Act, 1961 permits a society to invest or deposit its fund in the State Bank of India. Therefore, while investment in the State Bank of India is permissible under section 71 of that Act, there is no statutory obligation cast upon the appellant to deposit funds as a part of its business. The said provision also permits investment of funds in any co-operative bank or any banking company approved for this purpose by the Registrar on such conditions as the Registrar may from time to time impose. However, insofar as the

provisions of the Income-tax Act are concerned, under section 80P(2)(d) thereof, it is only the income by way of interest or dividends derived by a cooperative society from its investments with any other cooperative society which is required to be deducted while computing the total income of the assessee."

Thus, following the decision of the Hon'ble Supreme Court in the case of Totagars Co-operative Sale Society Ltd. v. ITO [2010] 188 Taxman 282/322 ITR 283 it was held that interest earned from investments made in any bank, not being co-operative society, is not deductible under section 80P(2)(d) of the act.

14. This Court further finds that by virtue of amendment in section 194A(3)(v) of the Income-tax act, it has also excluded the co-operative banks from the definition of "co-operative society" by the Finance act, 2015. The High Court of Karnataka has taken note of this amendment in the case of Totagars Co-op/sale society (supra) thereby holding that the effect of the aforesaid amendment explicitly makes clear intention of legislation that co-operative banks are not specie of genus co-operative society, which would entitled to exemption or deduction under the special provisions of Chapter VI-A in the form of section 80P of the Act." (Emphasis Supplied)

10.3. In view of the above, we hold that the Appellant is entitled to claim deduction under Section 80P(2)(d) of the Act in respect of interest income from co-operative banks amounting to INR 2,46,43,418/-.

11. Accordingly, the order passed by Assessing Officer and CIT(A) is overturned and the Assessing Officer is directed to allow deduction of INR 1,43,20,990/- and INR 2,46,43,418/- as claimed by the Appellant under Section 80P(2)(a)(i) and 80P(2)(d) of the Act, respectively. Thus, Ground No. 1 to 3 raised by the Appellant are allowed while rest of the Grounds raised by the Appellant are dismissed as being infructuous.

ITA No. 57/Mum/2024 (Assessment Year 2020-21)

12. We would now take up appeal for the Assessment Year 2020-21 which has been preferred by the Assessee challenging the order, dated 08/11/2023, passed by the CIT(A), whereby the Ld. CIT(A) had dismissed the appeal of the Assessee against the Assessment, dated

16/09/2022, passed under Section 143(3) read with Sections 144B of the Income Tax Act, 1961 [hereinafter referred to as 'the Act'].

13. Both the sides agreed that there being no change in facts and circumstances of the case and the applicable legal position, our reasoning, findings and adjudication in appeal for the Assessment Year 2018-19 shall apply mutatis mutandis to corresponding grounds raised in appeal for the Assessment Year 2020-21. On perusal of the orders passed by the authorities below we find that the deduction of INR 82,40,604/- claimed by the Appellant under Section 80P(2)(d) of the Act has been denied on the ground that the same has been received from a co-operative bank. While adjudicating appeal for the Assessment Year 2018-19 we have held that the Appellant is entitled to claim deduction under Section 80P(2)(d) of the Act in respect of interest income from co-operative banks. Accordingly, in view of paragraph 9.1 to 10.3 above, we overturn the order passed by Assessing Officer and CIT(A) and direct the Assessing Officer to allow deduction of INR 82,40,604/- as claimed by the Appellant under Section 80P(2)(d) of the Act. Thus, the sole issue raised in the appeal is decided in favour of the Appellant.

14. In result, in terms of paragraph 11 and 14 above, both the appeals preferred by the Assessee are allowed.

Order pronounced on 22.05.2024.

Sd/-	***Sd/-***
(Narendra Kumar Billaiya)	**(Rahul Chaudhary)**
Accountant Member	**Judicial Member**

मुंबई Mumbai; दिनांक Dated : 22.05.2024
Alindra, PS

<u>आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to</u> :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त/ The CIT
4. प्रधान आयकर आयुक्त / Pr.CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार /(Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai