

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE "A" BENCH : PUNE [VIRTUAL HEARING]

BEFORE SHRI RAMA KANTA PANDA, VICE PRESIDENT
AND
SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER

I.T.A.No.1191/PUN./2023 [E-APPEAL]
Assessment Year 2020-2021

The Income Tax Officer, Ward-2, Aayakar Bhavan, Behind Natraj Hotel, Aurangabad Road, Ahmednagar-414 001 Maharashtra.	vs.	Goreshwar Gramin Bigar Sheti Sahakari Pat Sanstha Maryadit, Parner, Goregaon, Ahmednagar, Maharashtra. PIN – 414 103 PAN AAATG7073K
(Appellant)		(Respondent)

For Revenue :	Shri Ramnath P Murkunde
For Assessee :	-None-

Date of Hearing :	03.06.2024
Date of Pronouncement :	04.06.2024

ORDER

PER BENCH :

This Revenue's appeal, for assessment year 2020-2021, arises against the order of the National Faceless Appeal Centre [in short the "NFAC"] Delhi's Din and Order No. ITBA/NFAC/S/250/2023-24/1056593957(1), dated 27.09.2023, involving proceedings u/s. 143(3) of the Income Tax Act, 1961 (in short "the Act").

Case called twice. None appears at assessee's behest. It is accordingly proceeded ex-parte.

2. The Revenue pleads the following substantive grounds in the instant appeal :

1. *“On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in allowing the deduction u/s.80P(2)(d) of the Act, as the assessee claimed deduction u/s.80P(2)(d) in respect of the interest income from investment, which is not the operational income.*
2. *On the facts and in the circumstances of the case and in law, the Ld. CIT-(Appeals) erred in allowing the deduction u/s.80P(2)(d) of the Income Tax Act of Rs.2,34,48,433/- without considering the decision of Hon'ble High Court of Karnataka in the case of Principal Commissioner of Income-tax, Hubballi Vs Totagars Co-operative Sale Society [395 1TR 611] dated 16/06/2017.*
3. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in allowing the deduction u/s.80P(2)(a)(d) of the Act, without proper verification of the facts as to how the investments made by the assessee with other cooperative banks generated the operational income of the assessee, considering the facts that the business operations of the assessee is to provide credit facilities to its members and accepts deposits from them.*
4. *The appellant craves leave to add, alter, amend and modify any of the above or all grounds raised at time of*

proceedings before the Hon'ble Tribunal which may please be granted.”

3. Learned DR next invited our attention to the NFAC's detailed discussion accepting the assessee's 80P deduction claim as under :

24. I have considered the written submission of the appellant and the order of AO. The only issue in this case is of non-grant of deduction u/s 80P(2)(d). The AO in his order disallowed the deduction claimed stating that activities of the Society were with sole motive to earn interest and thus, commercial in nature.

25. There is no denial of the fact that the appellant is a Cooperative Credit Society registered since 1994 under the Maharashtra Cooperative

Societies Act, 1960 and provides credit facility to its members only, as per its version.

26. The appellant has inter-alia placed reliance on:-

"Issue as to the allow-ability of the deduction claimed by the Assessee u/s. 80P (2)(d) of the Act, is no longer Res-Integra having being decided by the co-ordinate Bench of the Tribunal in case of Palm Court M Premises Co-operative Society Ltd. in ITA No.561/M/2021 order dated 09.09.2022 by settling the issue in favour of the assessee by distinguishing the judgment rendered by Hon'ble Supreme Court in case of Totgar's Co-operative Sale Society Ltd. Vs. Income Tax Officer, 188 Taxman 282(SC) and by discussing the decision rendered by Hon'ble Bombay High and Hon'ble Gujarat High Court wherein it is held that interest income earned by the Co-operative Society on its investment made with cooperative bank would be eligible for claim of deduction under section 80P(2)(d) of the Act by returning following findings:

"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 Id. 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.)

- 1. Land and Cooperative Housing Society Ltd. Vs. ITO (2017) 46 CCH 52 (Mum.)*
- 2. M/s C. Green Cooperative Housing and Society Ltd. Vs. ITO-21(3)(2), Mumbai (ITA No. 1343/Mum/2017, dated 31.03.2017.*
- 3. 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)Kallandas 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

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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.*"

27. Further, the Hon'ble Apex Court in the case of *Mavilayi Service Co-operative Bank Ltd. Vs CIT, Calicut dated 12.01.2021 431 ITR 1 (2021)* on the issue of allowability of deduction u/s 80P(2)(a)(i) of the Act in case of Co-operative Society providing credit facilities to its members, has laid down several principal, which are as under:-

(i) Sec 80P of the IT Act, being a benevolent provision enacted by parliament to encourage and promote the credit of the cooperative sector in general must be read liberally and reasonably, and if there is ambiguity, in favour of the assessee.

(ii) A deduction that is given without any reference to any restriction or limitation cannot be restricted or limited by adding the word "agriculture" into section 80P(2)(a)(i) when it is not there.

(iii) Section 80P(4) is to be read as a proviso, which proviso now specifically excludes cooperative banks which are cooperative societies engaged in banking business i.e. engaged in lending money to members of the public, which has license in this behalf from the RBI.

(iv) That Co-operative Societies are entitled to the benefit of deduction u/s 80P(2)(a)(i) on giving loans to their members which are not related to agriculture.

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(v) Loans given to non-members by a Co-operative Credit Society is not illegal. However, deduction of profits attributable to loan given to nonmembers cannot be claimed as deduction u/s 80P(2)(a)(i).

28. Further, even if the nature of deduction is claimed u/s 80P(2)(d), then ordinarily in view of decision of Hon'ble ITAT Cochin in the case of **The Paravur Service Co-Operative Bank Ltd. vs. ITO 96 taxmann.com 654 (2018)** and in view of **Pr. Commissioner of Income Tax and Anr. Vs. Totagars Cooperative Sale Society (2017) 395 ITR 611** deduction if any, under 80P(2)(d) is to be denied, if interest is earned out of investments from cooperative banks, which are not cooperative societies. However, the same was allowed in the case of **PCIT vs. Totagars Cooperative Sale Society (2017) 392 ITR 74** and in the latest decisions of Hon'ble ITAT, **Mumbai in the case of Palm Court M. Premier Co-operative Society Ltd. vs. PCIT 145 taxmann.com 415 (2022)** and **ITAT, Panji Bench [ITA No. 103/PAN/2018] on 17.11.2021** wherein it is held that interest from cooperative banks is also entitled for deduction, as these are also cooperative Society registered under the Cooperative Societies Act, 1972 or under any other law for the time of being in force in any state. In the instant case, it is the Maharashtra Cooperative Societies Act, 1960. This investment income is to be held exempt from income tax u/s 80P(2)(d) of the Act in the light of the decision of Karnataka High Court in the case of **PCIT vs. Totagars Co-Operative Sale Society (2017) (392 ITR 74)** and **Tumkur Merchants Souharda Credit Co-operative Ltd. Vs. ITO (2015) 55 taxmann.com 447**. This is more so in view of **Hon'ble High Court of Bombay decision of 1985 in 156 ITR 11 in the case of K. Subramaniam vs. Siemens India Ltd.** in case of conflicting decisions of non-jurisdictional High Court's, then view in favour of assessee is be preferred. Further, the Apex Court has also observed that section 80P must be read literally and reasonably, and if there is any ambiguity, in favour of the assessee, in the case of **Mavilaye Service Co Operative Bank Ltd. and Others vs. CIT and Another (2021) 431 ITR 1 (SC)**.

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29. A prudent business practice is not to keep the surplus funds idle and thus, parked with other banks for future need and by law of Maharashtra State Cooperative Act put-limit for the amount of cash balance that can be kept with the appellant in liquid form. In the case of ITO vs. Irula Snake Catchers Industrial Co-operative Society Ltd. 140 taxmann.com 494 (Chennai-ITAT) (2022) – it was held that interest earned by assessee from Cooperative Bank does not come under Income from other sources and is eligible for deduction u/s 80P(2).

30. Reliance is further placed on rationale held in Hon'ble ITAT Surat Bench in the case of *Sachin Udyog Nagar Sahakari Mandli Ltd. vs. ITO, for the A.Y. 2015-16 and 2017-18 to 2018-19* in favour of the appellant. The relevant part of the ITAT's recent order dated 07.02.2023 is reproduced as below:-

"5. We see no reason to take any other view of the matter then the view so taken by the Division Bench of this Tribunal in assessee's own case vide order dated 06.10.2022. In this order, the Tribunal has inter alia observed as follows:

"4. Aggrieved by the order of Assessing Officer the assessee carried the matter in appeal before Ld. CIT(A) who has deleted the addition made by Assessing Officer observing as follows:-

"... relied on the decision of Hon. High Court of Karnataka in the case of CIT vs. Totagars Co-Op Sale Society. However, the aforesaid decision is not applicable to the facts of the appellant's case as the appellant-society has claimed deduction u/s 80P(2)(d) and not u/s 80P(2)(a) of the Act. Deduction u/s 80(P)(2)(a) is available only in respect of income which is assessable as business income and not as income from other sources. whereas in distinction to this, the provisions of Section 80(P)(2)(d) of the Act provides for deduction in respect of income of a co-op society by way of interest or dividend from its investments with

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other co-op society if such income is included in the gross total income of the such Co-op society. In other words, Section 80(P)(2)(d) allows the deduction of interest received by a cooperative society from any other cooperative society which may also be a cooperative bank without any further restriction, condition or limitation. This section doesn't bar the deduction of interest received by cooperative society from a cooperative bank. The deduction was being allowed for several preceding assessment years in the case of the appellant society. The AR has referred to decisions of the jurisdictional High Court and jurisdiction ITAT Benches wherein the issue of deduction of interest income from Dist. Co.Op. bank was held allowable u/s 80(P)(2)(d).

- a) Guj. HC in SBI vs. CIT (2016) 72 Taxmann.com 64 (Guj. HC)
- (b) Guj. HC in CIT vs. Sabarkantha Dist. Co-op. Milk Producers Union Ltd in Tax Appeal no. 473 of 2014
- (c) Guj. HC in the Surat Vankar Sahakar Sangh Ltd. TA No. 93-96 of 2008 dt 12.07.2016722 taxmann.com 169 (Guj.)
- (d) ITAT Ahmedabd in Sabarkantha Dist. Co-op. Milk Union 1905/Ahd/2016 dtd 06.06.2018
- (e) ITAT Ahmedabad Peoples Co-op. Credit Society and others ITA No.1891/Ahd/2014 dtd 23.01.2018
- (f) ITAT Surat Bardoli Vibhag Gram Vikas Co-op Credit Society Ltd ITA2582/Ahd/2014/SRT dtd 28.06.2018 & ITANo.2166/Ahd/2014/SRT dtd 18.04.2017
- (g) ITAT Surat Dist. Co-op Milk Producers Union Ltd ITA No.1498/Ahd/2012/SRT, ITA 1706 & 1211/Ahd/2015/SRT dtd 03.08.2018
- (h) ITAT Ahmedabad The Commercial Co-operative Credit Society Ltd. ITA No.2227/Ahd/2017 dtd 13.07.2018
- (i) ITAT Ahmedabad the Saroday Credit cum Consumer Co-op society Ltd ITA No.1875/Ahd/2015 dt.11.07.2018
- (j) ITAT Ahmedabad The Uttar Gujarat Uma Co-op Credit Society Ltd ITA No.1670 & 1671/Ahd/2018 dtd 28.02.2019.

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In all these cases, it was held that interest income earned by assessee coOperative Bank is eligible for deduction u/s 80P(2)(d). The Hon Guj. High Court in Sl. No.(c) above has held that "assessee co-op. society was eligible for deduction u/s 80P(2)(d) in respect of gross interest received from Surat Dist. Co-Op. Bank without adjusting interest paid to the said bank."

The AR referred to the various legal decisions on the matter including the decision of the CIT(A)-4, Surat in the case of Shree Kumkotar Dudh Utpadak Sahakari Mandli Limtied vide order no CIT(A), Surat4/10180/2018-19 dtd. 14.05.2019 wherein Shree Kumkotar Dudh Utpadak Sahakari Mandli had earned interest from Surat District Co-op bank and had claimed deduction u/s 80P(2)(d). However, the AO had disallowed the deduction u/s 80P(2)(d) by relying on the case of CIT vs. Totagars Co-op Sale Society. Thereafter the CIT(A) in its order relied on the judgements of the jurisdictional High Court and ITAT benches wherein it was held that interest income earned by assessee co-op credit society from Dist. Co-operative bank is eligible for deduction u/s 80P(2)(d). The AR also referred to the decision of the jurisdictional ITAT, Surat in the case of Bardoli Vibhag Gram Vikas Co-Op. Credit Society Ltd ITA 2166/Ahd/2014, ITA No.2582/Ahd/2014/2014/SRT & ITANo.2617/Ahd/2016 dated 18.04.2017, 28.06.2018 and 18.12.2018 wherein it was held that interest received by Co-Operative Society from the Surat District Co-Operative bank is eligible for deduction u/s 80(P)(2)(d) of the Act.

Considering the facts of the case and binding legal decisions of jurisdictional ITAT as well as Hon'ble Gujarat High Court, the interest income of Rs.1,57,50,379/- is held to be eligible for deduction u/s 80P(2)(d) as this interest amount was received from District Cooperative Bank. The AO is hereby directed to allow the same. This ground is allowed in the favour of the appellant."

5. Aggrieved by the order of Ld. CIT(A) the Revenue is in appeal before us.
6. Learned DR for the Revenue has primarily reiterated the stand taken by the

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Assessing Officer, which we have already noted in our earlier para and is not being repeated for the sake of brevity.

7. On the other hand, Ld. Counsel for the assessee defended the order passed by the Ld. CIT(A).

8. We have heard both the parties and perused the materials available on record. We note that issue under consideration is squarely covered by the judgment of Hon'ble jurisdictional High Court of Gujarat in the case of Surat Vankar Sahakari Sangh Ltd. Vs. ACIT (supra) as relied on by Id CIT(A), wherein it was held that assessee-co-operative society was eligible for deduction under section 80P(2)(d) of the Act, in respect of gross interest received from cooperative bank. Hence, we note that assessee is a co-operative society and therefore is entitled to claim deduction in respect of interest received from another co-operative bank under section 80(P)(2)(d) of the Act. Therefore, respectfully following the binding precedent of Hon'ble jurisdictional High Court of Gujarat (supra), we confirm the order passed by the Id CIT(A) and dismiss the appeal of Revenue.

9. In the result, the appeal of the Revenue is dismissed.

6. As the issue is squarely covered in favour of the assessee by the decision of Co-ordinate Bench in assessee's own case and there is no change in facts and law and the Revenue is unable to produce any material to controvert the above said findings of the Co-ordinate Bench (supra). We find no reason to interfere in the said order of Tribunal, therefore respectfully following the binding judgment of Co-ordinate Bench in assessee's own case, we delete the addition made by the Assessing Officer for AY.2017-18 (in ITA No.438) at Rs.2,15,13,865/- and for AY.2018-19 (in ITA No.439) at Rs.2,50,50,799/-."

4. Suffice to say, the Revenue's sole substantive grievance canvassed in the instant appeal is only for reviving the learned Assessing Officer's action disallowing the assessee's sec.80P deduction claim representing interest income from co-operative society(ies)/bank(s)/nationalized bank(s) involving varying sums; as the case may be. It is in this factual backdrop that we first of all note that the tribunal in The Rena Sahakari Sakhar Karkhana Ltd. vs. PCIT's case has already rejected the Revenue's stand regarding interest

income derived from co-operative bank(s)/institution(s) in ITA.No.1249/PUN./2018 dated 07.01.2022 reading as under :

“3. After culmination of the assessment proceedings, the Pr. CIT called for the assessment records of the assessee. It was observed by the Pr. CIT that the assessee had during the year shown interest income from FDs with Co-operative Banks amounting to Rs.75,38,534/-, against which it had claimed deduction under Sec.80P(2)(d) of the Act. It was observed by the Pr. CIT, that the A.O while framing the assessment had allowed the aforesaid claim of deduction raised by the assessee. Observing, that as co-operative banks were commercial banks and not a co-operative society, therefore, the Pr.CIT was of the view that the assessee was not eligible for claim of deduction under Sec.80P(2)(d). In the backdrop of his aforesaid conviction, the Pr. CIT was of the view that the assessment order passed by the A.O under Sec.143(3), dated 07.03.2016, therein allowing the assessee's claim for deduction under Sec. 80P(2)(d), had therein rendered his order as erroneous, insofar it was prejudicial to the interest of the revenue. Accordingly, the Pr.CIT not finding favour with the reply of the assessee, wherein the latter had tried to impress upon him that it was duly eligible for claim of deduction under Sec.80P(2)(d) of the Act, therein “set

aside” the order of the A.O with a direction to redecide the issue afresh and reframe the assessment.

4. The assessee being aggrieved with the order of the Pr.CIT has carried the matter in appeal before us. As the present appeal involved a delay of 52 days, therefore, the ld. A.R took us through the reasons leading to the same. It was submitted by the ld. A.R that as the then counsel of the assessee society who was looking after its tax matters, viz. Shr. Ravikiran Pandurang Todkar, Chartered Accountant was taken unwell due to kidney failure and had undergone kidney transplant, therefore, due to his unavailability the appeal could not be filed within the stipulated time period. Our attention was drawn towards the „affidavit“ of the assessee society wherein the aforesaid facts were deposed. On the basis of the aforesaid facts, it was submitted by the ld. A.R that the delay involved in filing of the present appeal in all fairness may be condoned. Per contra, the ld. D.R did not object to the seeking of condonation of the delay in filing of the appeal by the assessee society. After giving a thoughtful consideration, we are of the considered view, that as there were justifiable reasons leading to delay on the part of the assessee in filing of the present appeal before us, therefore, the same merits to be condoned.

5. On merits, it was submitted by the ld. A.R, that as the A.O while framing the assessment had after making necessary verifications taken a plausible view, therefore, the Pr. CIT had exceeded his jurisdiction by seeking to review the order passed by him in the garb of the revisional powers vested with him under Sec.263 of the Act. It was submitted by the ld. A.R, that the issue as regards the eligibility of the assessee for claim of deduction under Sec.80P(2)(d) on interest income derived from investments/deposits lying with co-operative banks was squarely covered by the various orders of the coordinate benches of the Tribunal viz., (i). M/s Solitaire CHS Ltd. vs. Pr. CIT, ITA No. 3155/Mum/2019; dated 29.11.2019 (ITAT "G" Bench, Mumbai); Kaliandas Udyog Bhavan Premises Co-op Society Ltd. Vs. ITO-21(2)(1), Mumbai, ITA No. 6547/Mum/2017 (ITAT Mumbai); and (iii). Majalgaon Sahakari Sakhar Karkhana Ltd. Vs. ACIT, Circle-3, Aurangabad, ITA No, 308/Pun/2018 (ITAT Pune). On the basis of his aforesaid contentions, it was averred by the ld. A.R that as the Pr. CIT had exceeded his jurisdiction and had not only sought to review the plausible view that was taken by the A.O after necessary deliberations which was in conformity with the order of the jurisdictional bench of the Tribunal, therefore, his order may be vacated and that of the A.O be restored.

6. *Per contra, the ld. Departmental Representative (for short "D.R") relied on the order passed by the Pr. CIT under Sec.263 of the Act. It was submitted by the ld. D.R, that as the assessee was not eligible for claim of deduction under Sec.80P on the interest income received on the investments/deposits lying with the co-operative banks, therefore, the Pr. CIT finding the assessment order passed by the A.O under Sec.143(3), dated 07.03.2016 as erroneous, insofar it was prejudicial to the interest of the revenue, had rightly „set aside“ his assessment with a direction to re-adjudicate the issue therein involved. Our attention was also drawn by the ld. D.R to his written submissions and certain judicial pronouncements in support of his aforesaid contention.*

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 subsection (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 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 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.

9. *In so far the judicial pronouncements that have been relied upon by the ld. A.R are concerned, 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). M/s Solitaire CHS Ltd. vs. Pr. CIT, ITA No. 3155/Mum/2019; dated 29.11.2019 (ITAT “G” Bench, Mumbai);

(ii). *Majalgaon Sahakari Sakhar Karkhana Ltd. Vs. ACIT, Circle-3, Aurangabad, ITA No, 308/Pun/2018 (ITAT Pune)*

(iii). *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. Although, in all fairness, we may herein observe that the Hon'ble High Court of Karnataka in the case of Pr. CIT Vs. Totagars co-operative Sale Society (2017) 395 ITR

611 (Karn), as had been relied upon by the ld. D.R before us, had held, that a co-operative society would not be entitled to claim deduction under Sec. 80P(2)(d); but then, the Hon'ble High Court 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 co-operative bank would be eligible for claim of deduction under Sec.80P(2)(d) of the Act. Backed by the aforesaid conflicting judicial pronouncements, we may herein observe, 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 that of the 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.

10. *Be that as it may, in our considered view, as the A.O while framing the assessment had taken a possible view, and allowed the assessee's claim for deduction under Sec. 80P(2)(d) on the interest income earned on its investments/deposits with co-operative banks, therefore, the Pr. CIT was in error in exercising his revisional jurisdiction u/s 263 of the Act for dislodging the same. Accordingly, finding no justification on the part of the Pr. CIT, who in exercise of his powers under Sec. 263 of the Act, 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), dated 07.03.2016."*

5. So far as the assessee's interest income from nationalized bank(s) and "treasury" is concerned, it goes without saying that the learned NFAC has already directed exclusion thereof which has nowhere been disputed in the instant appeal. We hardly need to adopt the same in the Revenue's instant appeal in very terms. Ordered accordingly.

6. This Revenue's appeal is dismissed in above terms.

Order pronounced in the open Court on 04.06.2024

Sd/-
[R.K. PANDA]
ACCOUNTANT MEMBER

Sd/-
[SATBEER SINGH GODARA]
JUDICIAL MEMBER

Pune, Dated 04th June, 2024

VBP/-

Copy to

1.	The applicant
2.	The respondent
3.	The NFAC, Delhi
4.	The Pr. CIT, Pune concerned
5.	D.R. ITAT, "A" Bench, Pune.
6.	Guard File.

//By Order//

//True Copy //

Sr. Private Secretary, ITAT, Pune Benches,
Pune.