

आयकरअपीलीयअधिकरण,इंदौरन्यायपीठ,इंदौर  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
INDORE BENCH, INDORE**  
**BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER**  
**AND**  
**SHRI B.M. BIYANI, ACCOUNTANT MEMBER**

**ITA No.326 & 327/Ind/2023**  
**(Assessment Years: 2018-19 & 2020-21)**

MP Police Co-operative Credit Society 25 <sup>th</sup> Batalion SAF, Bhadbhada Raod, Bhopal (Appellant / Assessee)	Vs.	NFAC Delhi (Respondent/ Revenue)
<b>PAN: AABTM8314J</b>		

Assessee by	Ms. Nisha Lahoti, AR
Revenue by	Shri Ashish Porwal, Sr-DR
Date of Hearing	05.06.2024
Date of Pronouncement	06.06.2024

**ORDER**

**Per Bench:**

These two appeals by the assessee are directed against two separate orders of Commissioner of Income Tax (Appeal) National Faceless Appeal Centre(NFAC) Delhi both dated 11.07.2023 for A.Ys.2018-19 & 2020-21 respectively. The assessee has raised common grounds in these two appeals except the quantum of

disallowance made by the AO. The grounds raised for A.Y.2018-19 are reproduced as under:

*“1.That on the facts and in the circumstances of the case and in law. The findings of the learned CIT (A) that disallowance of exemption claimed u / s 80(P)(2) are wholly wrong and contrary to the provisions of law and therefore be quashed.*

*2. That on the facts and in the circumstances of the case and in law the CIT(A)/NFAC is not justified in sustaining the addition of interest income of Rs.13199423/- as claimed exemption u/s. 80(P)(2) of IT Act was wholly unlawful and unjustified and therefore be deleted.*

*3.That on the facts and the circumstances of the case and in law the CIT(A)/NFAC is unjustified in not allowing the full deduction claimed in the return of income u / s 80 (P)(2) at Rs. 1,55,45,182/- hence be kindly allowed.*

*4.That on the facts and in the circumstances of the case and in law, that the levy of interest u/s.234A, 234B and 234C is interest u/s.234A, 234B and 234C is unlawful and, therefore, the said levy be kindly deleted.”*

2. The assessee is a primary Cooperative Credit Society carrying out the business of accepting deposits and providing credit facility to its members. In the return of income the assessee has claimed deduction u/s 80P of the Act of Rs. 1,55,45,182/-. The AO noted that the assessee earned interest income of Rs.1,00,77,742/- on its deposits held in Bhopal Cooperative Central Bank and balance amount is received from the deposits made with State Bank of India. The AO held that the deduction u/s 80P(2)(a)(i) is available only to the income which is attributable to the business operation of the assessee cooperative society i.e. providing credit facility to its members and consequently the claim of deduction u/s 80P was

denied by the AO on the interest income earned by the assessee on the deposits made with Bhopal Cooperative Central Bank as well as State Bank of India. Aggrieved by the order of the AO the assessee filed appeal before the CIT(A). The CIT(A) has confirmed the disallowance of deduction u/s 80P by holding that only the interest income earned by cooperative society from cooperative society/cooperative bank not having Reserved Bank of India license is allowable u/s 80P(2)(a)(i)/80P(2)(d) of the Act and therefore, the interest earned by the assessee from the Schedule Bank as well as Bhopal Cooperative Central Bank Ltd. is not eligible for deduction u/s 80P(2)(d).

3. Before the Tribunal the ld. AR of the assessee has submitted that the interest income received by the assessee from Bhopal Central Cooperative Bank is eligible u/s 80P(2)(d) as it is an interest received by the assessee from deposits made in the Cooperative Society. In support of her contention she has relied upon the decision of this Tribunal dated 16.01.2024 in case of Pr. CIT vs. Bhopal Dugdh Sangh Sahakari Maryadit in ITANo.71/Ind/2023 and CO No.03/Ind/2023. Thus, the Ld. AR has submitted that the interest income received from the Bhopal Cooperative Central Bank is eligible for deduction u/s 80P(2)(d) as a Cooperative Bank is also a Cooperative Society for the purpose of section 80P(2)(d).

3.1 As regards the interest income from State Bank of India the Ld. AR has submitted that as per section 43(2) of M.P. Cooperative Societies Act 1960 a cooperative society is required to transfer an

amount not less than 25% of the profit of the year to the reserve funds unless such society is exempted in this behalf by registrar of society by specific or general order. Therefore, the deposits made with State Bank of India equivalent 25% of the profits of the year is in compliance of statutory requirements and the same is eligible for deduction u/s 80P(2)(a)(i). In support of her contention she has relied upon the decision of Coordinate Bench of the Tribunal dated 07.12.2019 in case of M.P. Police Sakh Sahkarita Maryadit 15<sup>th</sup> Battalion vs. ITO in ITANo.422/ind/2017 and ITANo.649/Ind/2018. Thus, the Ld. AR has submitted that in the identical facts in case of Credit Cooperative Society of 15<sup>th</sup> Battalion of M.P. Police this Tribunal has decided this issue in favour of the assessee.

4. On the other hand, Ld. DR has submitted that the CIT(A) has considered this issue by following the judgments of Hon'ble Supreme Court and held that the interest income earned by the assessee from deposits made with the Bhopal Central Cooperative Bank and other schedule banks is an income from other sources assessed as per section 56 of the Act which is not eligible for deduction u/s 80P(2)(a)(i). Thus, he has relied upon the orders of the authorities below and particularly the finding of the CIT(A) in para 5 to 8 of the impugned order.

5. We have considered the rival submissions as well as relevant material on record. The AO has recorded the facts regarding interest income in para 6.1 as under:

*“6.1 It is noticed from the information submitted by the assessee that during the previous year under consideration, the assessee has claimed a total of Rs. 1,55,45,182/- u/s 80P. During the year, the assessee has earned an interest income of Rs. 1,00,77,742/-, Rs. 13,63,176 and Rs. 18,16,393/- on its deposits held with Bhopal Co-op Central Bank Ltd, State Bank of India MLA Rest House Branch & State Bank of India, Bhopal Main Branch and has claimed this interest income as deduction u/s 80P(2)(a)(i) / 80P(2)(d) of the Income-tax Act, 1961.”*

5.1 Accordingly the AO proposed to disallow the claim of deduction u/s 80P in view of judgment of Hon'ble Supreme Court in case of Totgars, Co-operative Sale Society Ltd. vs. Income Tax Officer, Karnataka 188 taxman 282. The AO finally made disallowance of entire claim of the assessee u/s 80P in respect of the interest income of Rs.1,55,45,182/-. The concluding finding of the AO in para 7 is as under:

*“7. From the above judicial pronouncements and facts of the case, it is clear that the deduction u/s 80P(2)(a) is available only to the income which is attributable to the business operation of the assessee co-operative society, i.e., providing credit facilities to its members. Depositing / investing funds in a co-operative bank / commercial bank is not a part of the business of providing credit facilities to its members. Such an interest income is not the 'operational income' of assessee-society from providing credit facilities to its members. Consequently, the interest income has to be treated as 'income from other sources' not eligible for deduction u/s 80P of the Act. Respectfully following all of the aforesaid legal precedents, I hold that such interest income earned by the assessee is not eligible for deduction u / s 80P(2)(a)(i) of the Act.”*

5.2 The CIT(A) has upheld the order of the AO in para 7 & 8 as under:

*“7. It may be observed that the AO has allowed other exemptions claimed by the assessee u/s 80P of the Act except the interest income earned from the investments from BCCB bank, Axis bank, SBI and ICICI bank.*

*As per the decisions of the Supreme Court in the case of Mavilayi Service Cooperative bank and the ITATs discussed in para 6, 6.1 and 6.2 it is only the interest income earned by the Co-operative societies from the Co-operative society/Co-operative banks not having RBI license is allowed u / s 80P(2)(a)(i) / 80P(2)(d) of the Act. Whereas in the instant case the interest income has been earned from the banks like Axis bank, SBI, ICICI Bank and BCCB bank, who is also an RBI license holder. Hence, I find no reason to go against the order of the Assessing Officer.*

*8. Respectfully following the decisions cited above the AO is directed to verify and allow the deduction u/s 80 P (2) (d) only on the Interest Income earned from the Co- operative Societies/Co-operative Banks not holding license issued by RBI. However the interest received from any Scheduled banks/Co-operative banks having RBI license as "other income" u/s 56 of the Act.”*

5.3 Thus, both the AO as well as the CIT(A) has treated interest income earned by the assessee from Bhopal Cooperative Central Bank as well as the deposits in the SBI as income from other sources not eligible for deduction u/s 80P(2)(a)(i)/80P(2)(d) of the Act. It is pertinent to note that the interest income received from the deposits with the Bhopal Cooperative Central Bank is interest received by the assessee from another Cooperative Society and therefore, same is eligible u/s 80P(2)(d) of the Act. An identical

issue has been considered by this Tribunal in case Pr. CIT vs. Bhopal Dugdh Sangh Sahakari Maryadit (supra) in para 5 to 7 as under:

*“5. We have considered rival submissions as well as relevant material on record. The AO has disallowed the claim of deduction u/s 80P(2)(d) of the Act in respect of the interest income received by the assessee on the fixed deposit made with Bhopal Co-operative Central Bank on the ground that the only interest or dividend received on the investment made with the other Co-operative Society is eligible for deduction u/s 80P(2)(d) of the Act. On appeal the CIT(A) has allowed the claim of the assessee by accepting Co-operative Bank for the purpose of section 80P(2)(d) of the Act as Co-operative Society. We further note that the Pune Benches of the Tribunal in case of Rena Sahakari Sakhar Karkhana vs. Pr. CIT (supra) has considered an identical issue in para 7 & 8 as under:*

*“7. We have heard the ld. authorised representatives for both the parties, perused the orders of the lower authorities and the material available on record, as well as the judicial pronouncements relied upon by them. Our indulgence in the present appeal has been sought, for adjudicating, as to whether or not the claim of the assessee for deduction under section 80P(2)(d) in respect of interest income earned from the investments/deposits made with the co-operative banks is in order. In our considered view, the issue involved in the present appeal hinges around the adjudication of the scope and gamut of sub-section (4) of Sec. 80P as had been made available on the statute, vide the Finance Act 2006, with effect from 01.04.2007. On a perusal of the order passed by the Pr. CIT under Sec. 263 of the Act, we find, that he was of the view that pursuant to insertion of sub-section (4) of Sec. 80P, the assessee would no more be entitled for claim of deduction under Sec. 80P(2)(d) in respect of the interest*

*income that was earned on the amounts which were parked as investments/deposits with the co-operative bank, other than a Primary Agricultural Credit Society or a Primary Co-operative Agricultural and Rural Development Bank. Observing, that the co-operative banks from where the assessee was in receipt of interest income were not cooperative societies, the Pr. CIT was of the view that the interest income earned on such investments/deposits would not be eligible for deduction under Sec. 80P(2)(d) of the Act.*

*8. After necessary deliberations, we are unable to persuade ourselves to concur with the view taken by the Pr. CIT. Before proceeding any further, we may herein cull out the relevant extract of the aforesaid statutory provision, viz. Sec. 80P(2)(d), as the same would have a strong bearing on the adjudication of the issue before us. "80P(2)(d) (1). Where in the case of an assessee being a co-operative society, the gross total income includes any income referred to in sub-section (2), there shall be deducted, in accordance with and subject to the provisions of this section, the sums specified in sub-section (2), in computing the total income of the assessee. (2). The sums referred to in sub-section (1) shall be the following, namely :-*

*(a).....*

*(b).....*

*(c)..... (d) in respect of any income by way of interest or dividends derived by the cooperative society from its investments with any other co-operative society, the whole of such income;" On a perusal of Sec. 80P(2)(d), it can safely be gathered that interest income derived by an assessee co-operative society from its investments held with any other co-operative society shall be deducted in computing its total income. We may herein observe, that what is relevant for claim of deduction under Sec. 80P(2)(d) is that the interest income should have been derived from the investments made by the assessee co-operative society with any other co-operative society. We are in agreement with the view taken by the Pr. CIT, that with the insertion of sub-section (4) to Sec. 80P of the Act, vide the Finance Act, 2006 with effect from 01.04.2007, the provisions of Sec. 80P would no more be applicable in relation to any co-operative bank, other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank. However, at the same time, we are unable to subscribe to his view that the aforesaid amendment would jeopardize the claim of deduction of a co-operative society under Sec. 80P(2)(d) in respect of its interest income on investments/deposits parked with a co-operative bank. In our considered*

*view, as long as it is proved that the interest income is being derived by a co-operative society from its investments made with any other co-operative society, the claim of deduction under the aforesaid statutory provision, viz. Sec. 80P(2)(d) would be duly available. We find that the term „co-operative society“ had been defined under Sec. 2(19) of the Act, as under:- “(19) “Co-operative society” means a cooperative society registered under the Co-operative Societies Act, 1912 (2 of 1912), or under any other law for the time being in force in any state for the registration of co-operative societies;” We are of the considered view, that though the co-operative banks pursuant to the insertion of sub-section (4) to Sec. 80P would no more be entitled for claim of deduction under Sec. 80P of the Act, but as a cooperative bank continues to be a co-operative society registered under the Co-operative Societies Act, 1912 (2 of 1912), or under any other law for the time being in force in any State for the registration of co-operative societies, therefore, the interest income derived by a co-operative society from its investments held with a co-operative bank would be entitled for claim of deduction under Sec.80P(2)(d) of the Act.”*

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

“9.We have considered the facts, rival submissions and perused the record placed before us. The assessee is a Credit Cooperative Society and during the year under consideration, it has earned interest income of Rs. 10,77,910/- on FDRs. The assessee has shown the interest income on FDR under the head “income from other sources” and against such interest income has claimed incidental expenses including interest paid to depositors at Rs. 5,38,955/-, commissioner paid to Collection Agent at Rs. 4,71,586/- and stationery and printing expenses at Rs. 28,450/-. Both the lower authorities have held that the incidental expenses claimed are in the nature of business expenditure and needs to be

allowed against business receipts and have also observed that FDR interest being income from other sources is not eligible for deduction u/s 80-P of the Act.

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

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

**80P.** (1) *Where, in the case of an assessee being a co-operative society, the gross total income includes any income referred to in sub-section (2), there shall be deducted, in accordance with and subject to the provisions of this section, the sums specified in sub-section (2), in computing the total income of the assessee.*

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

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

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

(ii) *a cottage industry, or*

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

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

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

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

(c) *in the case of a co-operative society engaged in activities other than those specified in clause (a) or clause(b) [either independently of, or in addition to, all or any of the activities so specified], so much of its profits*

*and gains attributable to such activities as does not exceed 15 thousand rupees];*

*(d) in respect of any income by way of interest or dividends derived by the co-operative society from its investments with any other co-operative society, the whole of such income;*

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

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

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

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

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

11. From specifically going through the provisions of Section 80P(2)(d) of the Act, we find that the assessee is eligible for deduction u/s 80P(1) in respect of the income derived by way of interest or dividend from its investment with any cooperative bank society. In the instant case, though the interest has been received from Cooperative Bank, but basically it is a Cooperative Society, which has taken a banking license. Recently in Coordinate Bench of Mumbai in the case of *Amore Commercial Premises Co-Op. Society Limited vs. Central Processing Centre, I.T.A.Nos. 2873 & 2874/M/2022 dated 17.01.2023* has dealt with the similar issue and after placing reliance on the judgement of Hon'ble High Court of Karnataka in the case of *Pr. CIT and Others vs. Totgars Co-operative Society Limited, (2017) 292/ITR 74 (Karnataka)* and judgement of Hon'ble Gujarat High Court in the case of *State Bank of India vs. CIT, (2016) 389 ITR 578 (Guj)* has held that interest income earned by

Cooperative Society on its investment held with Cooperative Bank would be eligible for claim of deduction u/s 80P(2)(d). Relevant portion of the decision of the Coordinate Bench, Mumbai in the case of *Amore Commercial Premises Co-Op. Society Limited vs. Central Processing Centre, (supra)* reads as follows :-

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

*“8. We have given a thoughtful consideration to the contentions advanced by the Id. Authorized representatives for both the parties in context of the aforesaid issue under consideration. As stated by the 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.) (iii) M/s C. Green Cooperative Housing and Society Ltd. Vs. ITO-21(3)(2), Mumbai (ITA No. 1343/Mum/2017, dated 31.03.2017. (iv) Marwanjee Cama Park Cooperative Housing Society Ltd. V’s. ITO-Range 20(2)(2), Mumbai (ITA NO. 6139/Mum/2014, dated 27.09.2017. (v)Kaliandas Udyog Bhavan Pemises Co-op. Society Ltd. Vs. ITO, 21(2)(1), Mumbai. In the aforesaid orders, it has been held by the Tribunal that though the cooperative banks pursuant to the insertion of sub-section (4) to Sec. 80P of the Act would no more be entitled for claim of deduction u/s 80P of the Act, but as a co-operative bank continues to be a co-operative society registered under the Co-operative Societies Act, 1912 (2 of 1912) or under any other law for the time being in force in any State for the registration of co-operative societies, therefore, the interest income derived by a cooperative society from its investments held with a co-operative bank would be entitled for claim of deduction w/s 80P(2)(d) of the Act. We find that the aforesaid issue had exhaustively been looked into by the ITAT, “G” bench, Mumbai in the case of M/s Solitaire CHS Ltd, Vs. Pr.CIT-26, Mumbai ITA No.3155/Mum/2019, dated 29.11.2019, wherein the Tribunal had observed as under: “6. We have heard the authorized*

representatives for both the parties, perused the orders of the lower authorities and the material available on record, as well as the judicial pronouncements relied upon by them. Our indulgence in the present appeal has been sought, for adjudicating, as to whether the claim of the assessee for deduction under section. 80P(2)(d) in respect of interest income earned from the investments/deposits made with the co-operative banks is in order, or not. In our considered view, the issue involved in the present appeal revolves around the adjudication of the scope and gamut of sub-section (4) of Sec. 80P as had been made available on the statute, vide the Finance Act 2006, with effect from 01.04.2007. On a perusal of the order passed by the Pr.CIT under Sec. 263 of the Act, we find, that he was of the view that pursuant to insertion of sub-section (4) of Sec. 80P, the assessee would no more be entitled for claim of deduction under Sec. 80P(2) (d) in respect of the interest income that was earned on the amounts which were parked as investments/deposits with cooperative banks, other than a Primary Agricultural Credit Society or a Primary Co-operative Agricultural and Rural Development Bank. Observing, that the co-operative banks from where the assessee was in receipt of interest income were not co-operative societies, the Pr. CIT was of the view that the interest income earned on such investments/deposits would not be eligible for deduction under Sec. 80P(2)(d) of the Act. 7. After necessary deliberations, we are unable to persuade ourselves to be in agreement with the view taken by the Pr. CIT. Before proceeding any further, we may herein reproduce the relevant extract of the aforesaid statutory provision, viz. Sec. 80P(2) (d), as the same would have a strong bearing on the adjudication of the issue before us. “80P(2) (d) (1). Where in the case of an assessee being a co-operative society, the gross total income includes any income referred to in sub- section (2), there shall be deducted, in accordance with and subject to the provisions of this section, the sums specified in subsection (2), in computing the total income of the assessee. (2). The sums referred to in sub-section (1) shall

be the following, namely:- (a)

.....  
(b) .....

(c) ..... (d) in respect of any income by way of interest or dividends derived by the co-operative society from its investments with any other co-operative society, the whole of such income;” On a perusal of Sec. 80P(2)(d), it can safely be gathered that interest income derived by an assessee co-operative society from its investments held with any other cooperative society shall be deducted in computing its total income. We may herein observe, that what is relevant for claim of deduction under Sec. 80P(2)(d) is that the interest income should have been derived from the investments made by the assessee co-operative society with any other co-operative society. We are in agreement with the view taken by the Pr. CIT, that with the insertion of sub-section (4)

of Sec. 80P, vide the Finance Act, 2006, with effect from 01.04.2007, the provisions of Sec. 80P would no more be applicable in relation to any co-operative bank, other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank. However, at the same time, we are unable to subscribe to his view that the aforesaid amendment would jeopardise the claim of deduction of a co-operative society under Sec. 80P(2)(d) in respect of its interest income investments/deposits parked with a co-operative bank. In our considered view, as long as it is proved that the interest income is being derived by a cooperative society from its investments made with any other co-operative society, the claim of deduction under the aforesaid statutory provision, viz. Sec. 80P(2)(d) would be duly available. We find that the term cooperative society” had been defined under Sec. 2(19) of the Act, as under:- “(19) “Co-operative society” means a cooperative society registered under the Cooperative Societies Act, 1912 (2 of 1912), or under any other law for the time being in force in any state for the registration of cooperative societies;” We are of the considered view, that though the cooperative banks pursuant to the insertion of subsection (4) to Sec. 80P would no more be entitled for claim of deduction under Sec. 80P of the Act, but as a cooperative bank continues to be a co-operative society registered under the Co-operative Societies Act, 1912 (2 of 1912), or under any other law for the time being in force in any State for the registration of co-operative societies, therefore, the interest income derived by a cooperative society from its investments held with a cooperative bank would be entitled for claim of deduction under Sec.80P(2) (d) of the Act. 8. We shall now advert to the judicial pronouncements that have been relied upon by the Id. A.R. We find that the issue that a co-operative society would be entitled for claim of deduction under Sec. 80P(2)(d) on the interest income derived from its investments held with a cooperative bank is covered in favour of the assessee in the following cases: (i) Land and Cooperative Housing Society Ltd. Vs. ITO (2017) 46 CCH §2 (Mum) (ii) M/s C. Green Cooperative Housing and Society Ltd. Vs. ITO-21(3)(2), Mumbai (ITA No. 1343/Mum/2017, dated 31.03.2017 (iii) Marwanjee Cama Park Cooperative Housing Society Ltd. Vs. ITO-Range-20(2)(2). Mumbai (ITA No. 6139/Mum/2014, dated 27.09.2017. (iv). Kaliandas Udyog Bhavan 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.”

9. Hon’ble High Court of Karnataka in case of Pr. CIT & Anr.Vs. Totgar’s Co-operative Sale Society Ltd. (2017) 292 ITR 74 (Kar.) and Hon’ble Gujarat High Court in case of State Bank of India vs. CIT (2016) 389 ITR 578 (Guj.) had held that interest income earned by a co-operative society on its investment held with cooperative bank would be eligible for claim of deduction under section 80P(2)(d) of the Act.”

10. So following the decision rendered by Hon’ble Karnataka High Court (supra) and Hon’ble Gujarat High Court (supra), we are of the considered view that assessee society who has earned an amount of Rs. 6,96,725/- from its investment of surplus fund with cooperative banks is entitled for deduction under section 80P(2)(d) of the Act. Resultantly, the Ld. CIT(A) has erred in upholding the denial of deduction by the AO to the assessee under section 80P(2)(d) of the Act. 8. In view of but has been discussed above, I am of the consider view that Ld. CIT(A) has erred in upholding the denial of deduction claimed by the Assessee Society u/s. 80P (2)(d) of the Act, hence Assessing Officer is directed to allow the same.”

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

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

5.4 Accordingly the interest income received from cooperative bank which is primarily a Cooperative Society is eligible for deduction u/s 80P(2)(d) of the Act. Hence, by following earlier decisions of this tribunal this issue is decided in favour of the assessee and against the revenue.

5.5. So far as, the interest received by the assessee from deposits with the State Bank of India is concerned at the outset, we note that Coordinate Bench of this Tribunal in case of MP Police Sakh Sahkarita Maryadit (supra) vide order dated 17.12.2019 has considered an identical issue in para 8 &9 as under:

*“8. We have heard the rival submissions, perused the materials available on records and gone through the orders of the authorities below. The only basis of declining claim of deduction u / s 80P(2) by the A.O. is that the surplus funds deposited in bank account would partake character of income from other sources' but not income from business'. We have perused the case laws as relied by the Ld. Counsel for the assessee. The Hon'ble Karnataka High Court in the case of Guttigedarara Credit Co-operative Society Ltd. Vs. ITO (supra) has held as under:*

8. In this regard, it is necessary to notice the relevant provision of law Le, Section 80P(2) (a) (i):

*"Deduction in respect of income of cooperative societies:*

*80P (1) Winere, in the case of an assessee being a co-operative society, the gross total income includes any income referred to in subsection (2), there shall be deducted, in accordance with and subject to the provisions of this section, the sums specified in sub-section (2), in computing the total income of the assessee,*

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

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

*(1) carrying on the business of banking or providing credit facilities to its merabers, or*

*(ii) xxx (ii) xxx (iv) xxx (v) xxx (vi) kai (vε) xxx the whole of the amount of profits and gains of business attributable to any one or more of such activities.*

9. The word 'actu butable used in the said Section is of great importance. The Apex Court had an occasion to consider the meaning of the word 'attributable' as supposed to derive from its use in various other provisions of the statute in the case of *Cambay Electric Supply Industrial Co. Ltd. Vs. Commissioner of Income Tax, Gujarat-II*, reported in *ITR VOL. 113 (1978) 84 (ar page 93)* as under:-"As regards the aspect emerging from the expression "ztributable to occurring in the phrase "profits sod gains attributable to the business of the specified industry (here generation and distribution of electricity) on which the learned Solicitor-General relied, it will be pertinent to observe that the legislature has deliberately used the expression "attributable t\_{0} deg and not the expression "derived from". It cannot be disputed that the expression "attributable to" is certainly wider in import than the expression "derived from". Had the expression "derived from" been used, it could have with some force been contended that a balancing charge arising from the sale of old machinery and bulldings cannot be regarded as

*profits and gains derived from the conduct of the business of generation and distribution of electricity. In this connection, it may be pointed out that whenever the legislature wanted to give a restricted meaning in the manner suggested by the learned Solicitor-General, it has used the expression "derived from", as, for instance, in section 80J. In our view, since the expression of wider import, namely, "attributable to", has been used, the legislature intended to cover receipts from sources other than the actual conduct of the business of generation and distribution of electricity."*

*10. 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 Co-operative 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, the society 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.*

*11. In this context when we look at the judgment of the Apex Court in M/s. Totgars Co-operative Sale Society's Case (cited supra), on which reliance is placed, the Supreme Court was dealing with a case where the assessee/Co-operative 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) (0) of the Act or under Section 80P(2) (a) (i) 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 la

12. 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 its 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 Commissioner of Income Tax-III, Hyderabad Vs. Andhra Pradesh State Cooperative Bank Ltd., reported in (2011) 200 Taxman 220/ 12.

In that view of the matter, the order passed by the appellate authorities denying the benefit of deduction of the aforesaid coat is unsustainable in law. Accordingly it is hereby set aside. The substantial questions of law are answered in favour of the assessee and against the revenue. Hence, we pass the following order:

9. In the present case, the undisputed fact is that the assessee society is required to deposit 25% of its profit as mandated by section 43(2) of the M.P./Chattisgarh Societies Act, 1960.

*Hence, the assessee is under legal obligation to keep 25% of its profits as reserves. Any interest accrued there on would certainly, in our considered view partake character of business income of the assessee. Hence, it would be eligible for deduction. Therefore, the A.O. is directed to allow deduction on the interest earned out of amount so reserved by the assessee i.e. 25% of profit transferred to reserves.”*

5.6 The Tribunal has held that as per the provisions of section 43(2) of the M.P./Chhattisgarh Co-operative Societies Act 1960. The assessee is under legal obligation to keep 25% of its profit as reserves and interest accrued/earned on such reserves was held to be in the nature of business income of the assessee eligible for deduction u/s 80P(2)(a)(i) of the Act. Therefore, on principle we follow the earlier order of this tribunal and decide this in favour of the assessee that interest income on the reserves maintained by the assessee in compliance to the provisions of section 43 of the M.P./Chhattisgarh Co-operative Societies Act, 1960 is eligible for deduction u/s 80P(2)(a)(i) being business income of the assessee. However, the quantum of the interest which is eligible for deduction is required to be verified as this issue was not before the authorities below. Accordingly in the facts and circumstances of the case this issue of quantum of interest income for maintaining statutory reserves as per section 43(2) of the M.P./Chhattisgarh Co-operative Societies Act 1960 is required to be verified by considering the profit for the year under consideration and opening balance if any and then allow the deduction to the extent of interest on such reserves to be maintained by the assessee. Accordingly we set aside this issue to the record of the AO for verification and computation of the

interest income eligible for deduction u/s 80P(2)(a)(i) of the Act. The AO is directed to compute the eligible interest income on the reserves and surplus maintained by the assessee in compliance of section 43(2) of the M.P/Chhattisgarh Cooperative Societies Act 1960. Hence, both common issues involved in the A.Y.2018-19 & 2020-21 stands disposed of.

6. In the result, the appeals of the assessee are partly allowed.

Order pronounced in the open court on 06.06.2024.

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

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

**Indore, \_ 06.06.2024**  
**Patel/Sr. PS**

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

*By order*

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