

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

**BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER
AND
SMT. RENU JAUHRI, ACCOUNTANT MEMBER**

**ITA No.4764/Mum/2023
Assessment Year: 2013-14**

**ITA No.4763/Mum/2023
Assessment Year: 2014-15**

**ITA No.4762/Mum/2023
Assessment Year: 2018-19**

**ITA No.4761/Mum/2023
Assessment Year: 2019-20**

M/s. Usha Janakalyan Nagar CHS Ltd., 211, Kharodi, Marver Road, Malad (West), Mumbai - 400 095 PAN: AAAAU1039J	Vs.	The Income Tax Officer-30(1)(1), Kautilya Bhavan, Bandra Kurla Complex, Bandra (East), Mumbai - 400 051
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Kunal Dilip Lunawat, A.R.

Revenue by : Shri Nagnath Pasale, D.R.

Date of Hearing : 30 . 05 . 2024

Date of Pronouncement : 26 . 06 . 2024

O R D E R

Per : Narender Kumar Choudhry, Judicial Member:

These appeals have been preferred by the assessee against the orders even dated 24.10.2023, impugned herein, passed by the National Faceless Appeal Center (NFAC)/ Ld. Commissioner of Income Tax (Appeals) (in short Ld. Commissioner) under section 250 of the Income Tax Act, 1961 (in short 'the Act') for the A.Y. 2013-14, A.Y. 2014-15, A.Y. 2018-19 & A.Y. 2019-20.

2. As the issue involved in all the four appeals is identical, therefore for the sake of brevity the same were heard together and are being disposed of by this composite order and considering ITA No.4764/M/2023 as a lead case and result of the same shall apply mutatis mutandis to all the four appeals under consideration.

3. Coming to ITA no.**4764/M/2023**, we observe that the assessee by filing its return of income had claimed the deduction under section 80P(2)(d) of the Act, to the tune of Rs.1,13,325/- on account of interest income earned from Janakalyan Nagar Sahakari Bank Ltd. and Mumbai District Consumer Co-operative Bank Ltd. on fixed deposits and savings bank account, which was disallowed by the CPC vide intimation dated 06.10.2014 under section 143(1) of the Act, against which the assessee preferred a rectification petition under section 154 of the Act on 30.01.2018, however, the same was dismissed vide order dated 28.09.2018.

4. The assessee, being aggrieved, challenged the rectification order dated 28.09.2018 passed under section 154 read with section 143(1) of the Act before the Ld. Commissioner, who vide impugned order dismissed the appeal filed by the assessee mainly on the reason that the impugned claim of deduction under section 80P denied originally vide intimation under section 143(1) of the Act, cannot be challenged by the assessee through present appeal against the order under section 154 of the Act.

5. We have given thoughtful considerations to the peculiar facts and circumstances of the case. No doubt the assessee was supposed to challenge the intimation dated 06.10.2014 issued under section 143(1) of the Act, by which the deduction claimed under section 80P of the Act was denied originally by the CPC, however, instead of challenging the

said intimation, the assessee preferred to file a rectification application only on 30th January 2018 i.e. after more than three and half years from the date of receipt of the intimation dated 06.10.2014 under section 143(1) which goes to show that the assessee was negligent as well as lethargic in its approach to pursue the legal remedies. However, after dismissal of its rectification application on 28.09.2018 preferred first appeal on 29.10.2018 which is under consideration before us.

6. The issue under consideration relates to the interest income earned from the cooperative banks which was claimed as exempt u/s 80P(2)(d) of the Act was disallowed by the Authorities below. We observe that the Hon'ble Co-ordinate Bench of the Tribunal, recently in the case of M/s. Aurum Grande Co-operative Housing Society Ltd. in ITA No.4412/M/2013 for A.Y. 2020-21 has dealt with the identical issue as involved in this case and ultimately allowed the deduction claimed qua interest income earned on the deposit/savings bank account maintained with the co-operative banks, as exempt under section 80P(2)(d) of the Act. For ready reference and clarity, the conclusion drawn by the co-ordinate Bench of the Tribunal in assessee's own case for the A.Y. 2014-15 is reproduced herein below:

“5. We heard the rival submissions and perused the material on record. The sole matrix of the disputed issue envisaged by the Ld.AR is in respect of granting of deduction u/s 80P(2)(d) of the Act to the Cooperative Society. The Ld. AR submitted that the interest income derived by a co-operative society from its deposits with the co-operative bank would be entitled for deduction U/sec 80P(2)(d) of the Act. The assessee has received interest on fixed deposits with two cooperative banks referred to Page3 of the CIT(A) order. The co-operative bank continues to be a cooperative society registered under the Co-operative Societies Act. The Ld.AR has mentioned the facts of earning of interest on fixed deposits and utilization. We Find the Coordinate Bench of the Honble Tribunal in Amore Commercial Premises Co-op Society Ltd vs. CPC Karnata in ITA No. 2873 & 2874/Mum/2022 dated 17-01-2023 has dealt on the taxability of interest earned on the deposits with the Co-operative Banks at page 2 Para 3 of the order, which is read as under:

3. Briefly stated facts necessary for consideration an adjudication of the issues at hand are :- Assessee being a Co-Operative Society has claimed disallowance/deduction u/s. 80P (2)(d) in respect of the interest of Rs. 6,96,725/- for parking its funds with Saraswat Co-Operative Bank, Sham Vithal Rao Co-Operative Bank and district central CoOperative Bank. However, centralized processing centre (CPC)/ Assessing Officer has disallowed the deduction Claimed by the Assessee u/s 143(1).

4. Assessee carried the matter before the Ld.CIT(A) by way of filing Appeals who has confirmed the addition by dismissing Appeals. Filing aggrieved Assessee has come up before the Tribunal by way of filing present Appeal.

5. We have heard the Ld. Authorized Representative of the parties to the Appeals, perused the order passed by the Lower Revenue Authorities and documents available on record in the light of the law applicable thereto.

6. Undisputedly Assessee Society has invested its surplus funds with Co-Operative banks and earned the interest income to the tune of Rs.6,96,725/- and claimed it is deduction u/s. 80P (2)(d) of the Act, which has been disallowed by Assessing Officer & confirmed by the Ld.CIT(A) by relying upon decision rendered by Hon'ble Karnataka High Court in case of principle Ld.CIT Vs. Totgar's Co-Operative Sales Society Ltd.

7. Issue as to the 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 Cooperative 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:

"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). Marvwanjee Cama Park Cooperative Housing Society Ltd. V's. ITORange 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 w/s 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 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 Cooperative 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. 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 cooperative society from its investments with any other cooperative 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 cooperative 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 cooperative 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 Pemesis Coop. 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 cooperative 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 nonjurisdictional High Court's, then a view which is in favour of the assessee is to be preferred as against that taken against him. Accordingly, taking support from the aforesaid judicial pronouncement of the Hon'ble High Court of jurisdiction, we respectfully follow the view taken by the Hon'ble High Court of Karnataka in the case of Pr. Commissioner of Income Tax and Anr. Vs. Totagars Cooperative Sale Society (2017) 392 ITR 74 (Karn) and Hon'ble High Court of Gujarat in the case of State Bank Of India Vs. CIT (2016) 389 ITR 578 (Guj), wherein it was observed that the interest income earned by a cooperative society on its investments held with a cooperative bank would be eligible for claim of deduction under Sec.80P(2)(d) of the Act. 9. Be that as it may, in our considered view, as the A.O while framing the assessment had taken a possible view, and therein concluded that the assessee would be entitled for claim of deduction under Sec. 80P(2) (d) on the interest income earned on its investments/deposits with cooperative banks, therefore, the Pr. CIT was in error in exercising his revisional jurisdiction u/s 263 for dislodging the same. In fact, as observed by us hereinabove, the aforesaid view taken by the A.O at the time of framing of the assessment was clearly supported by the order of the jurisdictional Tribunal in the case of Land and Cooperative Housing Society Ltd. Vs. ITO (2017) 46 CCH 52 (Mum).

Accordingly, finding no justification on the part of the Pr. CIT, who in exercise of his powers under Sec. 263, had dislodged the view that was taken by the A.O as regards the eligibility of the assessee towards claim of deduction under Sec. 80P(2)(d), we "set aside" his order and restore the order passed by the A.O under Sec. 143(3), date 14.09.2016." As the facts and the issue involved in the present case before us remains the same as were there before the Tribunal in the case of M/s Solitaire CHS Ltd. (supra), wherein the order passed by the Pr. CIT u/s 263 of the Act was quashed, we, thus, respectfully follow the same. Backed by our aforesaid deliberations, we are unable to uphold the view taken by the Pr. CIT that the failure on the part of the A.O to be disallow the assessee's claim for deduction u/s 80P(2)(d) had rendered the assessment order passed by him u/s 143(3) of the Act, dated 31.08.2017 as erroneous in so far it was prejudicial to the interest of the revenue. 9. Accordingly, on the basis of our aforesaid observations, we herein not finding favor with the view taken by the Pr. CIT that the order passed by the A.O u/s 143(3), dated 31.08.2017 was erroneous in so far it was prejudicial to the interest of the revenue within the meaning of Sec. 263 of the Act set-aside the same and restore the order passed by the A.O u/s 143(3) of the Act, dated 31.08.2017."

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

9. So following the decision rendered by Hon'ble Karnataka High Court (supra) and Hon'ble Gujarat High Court (supra), we are of the considered view that assessee society who has earned an amount of Rs. Rs. 6,96,725/- from its investment of surplus fund with cooperative banks is entitled for deduction under section 80P(2)(d) of the Act. Resultantly, the Ld. CIT(A) has erred in upholding the denial of deduction by the AO to the assessee under section 80P(2)(d) of the Act.

6. We considering the facts, circumstances and the ratio of the judicial decisions. The Honble Tribunal has passed the order relied on catena of judicial decisions were the co-operative society receives/earns interest on deposits with the co-operative bank is eligible for claim of deduction under section 80(2)(d) of the Act. Accordingly, we follow the judicial precedence and set aside the order of the CIT(A) and direct the Assessing officer to allow the claim of deduction u/sec 80P(2)(d) of the Act on the interest income received /earned from the co-operative banks and basic exemption u/sec 80P of the Act. And we allow the grounds of appeal in favour of the assessee."

7. Admittedly the issue involved in this case is exactly similar to the issue decided by the Co-ordinate Bench of the Tribunal in the aforesaid case, hence respectfully following the judgment passed in the aforesaid case, we are inclined to allow the claim of deduction u/s 80P(2)(d) of the Act qua interest income earned by the assessee from the co-operative banks. Consequently ITA No. **4764/M/2023** is allowed.

8. In the result, all the four appeals filed by the assessee which are under consideration are allowed on the same terms.

Order pronounced in the open court on 26.06.2024.

**Sd/-
(RENU JAUHRI)
ACCOUNTANT MEMBER**

**Sd/-
(NARENDER KUMAR CHOUDHRY)
JUDICIAL MEMBER**

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.