

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, 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.293 & 294/Ind/2024
(Assessment Years: 2018-19 & 2020-21)

Indore Sahakari Dugdh Sangh Maryadit Dairy Compound Chanda Talawli A.B. Road, Manglia Indore	vs.	ACIT/ITO National e-Assessment Centre, Delhi
(Appellant / Assessee)		(Respondent/ Revenue)
PAN: AAJIO016N		
Assessee by	Shri Suresh Keemti, AR	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	12.09.2024	
Date of Pronouncement	17.09.2024	

ORDER

Per Vijay Pal Rao, JM :

These two appeals by assessee are directed against two separate orders of the Commissioner of Income Tax (Appeal) National Faceless Appeal Centre (NFAC) Delhi, both dated 12.02.2024 for A.Y.2018-19 & 2020-21 respectively. The assessee has raised common grounds in these appeals. The grounds raised for A.Y.2018-19 are reproduced as under:

“1. The learned Assessing Officer has erred in disallowing, allowable Deduction of Interest Income validly Claimed for Rs. 22867733/- by incorrectly interpreting provision of Section 80P(2)(d) and 80P(4).

2. The Learned Assessing Officer has erred in initiating penalty provisions u/s 270A of the Income Tax Act 1961 whereas the Appellant had not under reported Income.

3. The learned Assessing Officer has erred in levy of Interest u/s 234A,2348,234C & 234D.

4. The Appellant Craves leave to add, alter, amend any or all the Grounds of Appeal on or before the date of Hearing.”

2. Solitary common issue arises in these two appeals of the assessee is whether in the facts and circumstances of the case the CIT(A) is justified in upholding the disallowance of deduction claimed u/s 80P(2)(d) of the Act in respect of the interest income received by the assessee from Cooperative Banks (Indore Premier Co-operative Bank Ltd.). Ld. AR of the assessee has submitted that the assessee received interest income of Rs.2,28,67,733/- from Indore Premier Co-operative Bank Ltd. which is a Cooperative Society registered under M.P. Cooperative Societies Act 1960 vide registration No.BPL/HO157 dated 09.12.1977. The entire interest received from Cooperative Bank is allowable as deduction u/s 80P(2)(d) of the Act. The AO as well as the CIT(A) has erred in disallowing the claim of the assessee and referring to the provisions of section 80P(4) which is entire difference from section 80P(2)(d). Section 80P(4) is applicable to the assessee who are Cooperative Bank and not to Cooperative Societies.

In support of his contention he has relied upon the decision of Jaipur Benches of the Tribunal in case of M/s. Jaipur Zila Dugdh Utpadak Sahakari Sangh Ltd. vs. DCIT, in ITA No.1178/JP/2019 and ITANo.1243/JP/2019 dated 04.03.2020 as well as decision of this Tribunal in case of Pr. CIT vs. Bhopal Dugdh Sangh Sahakari Maryadit in ITANo.71/Ind/2023 & CO No.3/Ind/2023 dated 16.01.2024.

3. On the other hand, Ld. DR has relied upon orders of the authorities below.

4. We have considered rival submissions as well as relevant material on record. The AO has recorded the fact that the interest in question is received from Cooperative Banks at page no.2 as under:

“Disallowance out of deduction claimed u/s 80P:-

During the assessment proceeding, on perusal of computation of income for the A.Y. 2018-19 it was noticed that the assessee had claimed deduction u/s 80P(2) of Rs.2,28,67,733/- for interest received from Cooperative Banks. In this regard, a show cause notice has been issued on 14.01.2021. In response to the Notice the assessee furnish his reply dated 17.01.2021.”

4.1 Similar for A.Y.2020-21 the AO has recorded this fact in para 2.3 as under:

“2.3 Summary of information/evidence collected which proposed to be used against it (attach document if required):

During the assessment proceeding, on perusal of computation of income for the A.Y. 2020-21 it was noticed that the assessee

had claimed deduction u/s 80P(2) of Rs. 1,21,72,984/- for interest received from Cooperative Banks. The assessee has derived Income from business of collection of milk from primary societies operating from villages of Indore Division and to supply milk and milk products to public at large at affordable rate by manufacturing and trading of dairy products (milk and milk products) and cattle feeds. The organization is jointly owned by Govt. of India and Govt. of M.P. and is constituted under Cooperative Societies Act. The claim of interest income of Rs.1,21,72,984/- as deduction u/s 80P(2) of the Act is not eligible and the said amount is proposed to be disallowed and added back to the total income of the assessee.

It is noticed that the interest income of the assessee Co-operative Society out of its "investments" with other cooperative banks is not eligible for deduction u/s. 80P(2)(a) as this interest income earned by the assessee Co-operative Society from its investments with co-operative banks do not constitute operational income or business income of the assessee society and should be taxed under the head "Income from Other Sources". What is allowed to be eligible for deduction u/s. 80P(2)(a) is the "Business Income" which arises from the assessee's business of providing credit facilities to its members, wherein the principle of mutuality is fulfilled.

The interest income from investments earned by the assessee society is out of its surplus funds, not immediately required for its business, and that which is parked as "Investments". Thus, the interest income earned by the assessee society from its investments with other Co-operative banks, not being operational income, do not qualify for deduction u/s. 80P(2)(a) of the Act. This component of income earned by the assessee society takes the character of "Other Income" and should be taxed as "Income from Other Sources". Reliance is placed on the Hon'ble Supreme Court decision in the case of Totgars Co-operative Sale Society Ltd., reported in 322 ITR 283 (2010), been held that: wherein it has been held that:

".....What is sought to be taxed u/s. 56 of the Act, is the interest income arising on the surplus invested in short term deposits

and securities which surplus was not required for business purposes. Assessee(s) markets the produce of its members whose sale proceeds at times were retained by it. In this case, we are concerned with the tax treatment of such amount. Since, the fund created by such retention was not required immediately for business purposes, it was invested in specified securities. The question, before us, is whether interest on such deposits/securities, which strictly speaking accrues to the members account, could be taxed as business income u/s. 28 of the Act? In our view, such interest income would come in the category of "Income from Other Sources, hence, such interest income would be taxable u/s. 56 of the Act, as rightly held by the Assessing Officer."

Further, it is to be mentioned here that the interest income earned by the assessee society in the instant cases, cannot be held eligible for deduction u/s. 80P(2)(d) of the Act either, as section 80P(2)(d) specified that the interest income earned by the Co-operative Societies from its investments with any other Co-operative Society would be eligible for deduction under the said section. Interest income earned from investments with Co-operative Banks do not qualify for deduction w/s. 80P(2)(d) of the I.T.Act, 1961. Here, reliance is placed on the decision of the Hon'ble Kamataka High Court in the case of Totgars Co-operative Sale Society Ltd., reported in ITA No. 100066/2016 dated 16/06/2017 wherein vide para 13 it has been held that:

What section 80P(2)(d) of the Act.....envisages is that such interest or dividend earned by the assessee co-operative society should be out of the investments with any other co-operative society. The words "Co-operative Banks" are missing in clause (d) of sub-section (2) of section 80P of the Act. Even though a Co-operative Bank may have the corporate body or skeleton of a co-operative society but its business is entirely different and that is the Banking business, which is govermed and regulated by the provisions of the 'Banking Regulation Act, 1949."

4.2 Thus, there is no dispute that the interest income received by the assessee for these two years were from the deposit made with the

Cooperative Bank which is primarily Cooperative Society registered under M.P.Cooperative Societies Act 1960. At the outset, we note that this Tribunal has considered an identical issue in a series of decision including in case of *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 1**[fifteen 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 ld. A.R, and rightly so, the issue that interest received by a co-operative society on its deposits with co-operative banks would be eligible for deduction w/s 80P(2)(d) of the Act is covered in assessee's favour by orders of the various coordinate benches of the Tribunal in the following cases: (i). M/s Solitaire CHS Ltd. Vs. Pr.CIT-26, Mumbai, ITA No.3155/Mum/2019, dated 29.11.2019 (ii) Land and Cooperative Housing Society Ltd. Vs. ITO (2017) 46 CCH 52 (Mum.) (iii) M/s C. Green Cooperative Housing and Society Ltd. Vs. ITO-21(3)(2), Mumbai (ITA No. 1343/Mum/2017, dated 31.03.2017. (iv) 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 (Gu), 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.”

4.3 Accordingly to maintain the rule of consistency this issue is decided in favour of the assessee and against the revenue and the claim of the assessee u/s 80P(2)(d) is allowed.

5. In the result, the appeals of the assessee are allowed.

Order pronounced in the open court on 17.09.2024.

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

Sd/-
(VIJAY PAL RAO)
Judicial Member

Indore, _ 17.09.2024
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*