IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "A", PUNE

BEFORE SHRI R. K. PANDA, VICE PRESIDENT
AND
MS ASTHA CHANDRA, JUDICIAL MEMBER

ITA Nos.1109 & 1110/PUN/2024
Assessment Years : 2018-19 & 2020-21

N Sai Multi State Cooperative Credit Society Ltd., A 70/3, MIDC, Latur – 413512	**Vs.**	ITO, Ward 1, Latur
PAN : AABAN6426F		
(Appellant)		**(Respondent)**

Assessee by	**:**	Shri Girish Ladda (through virtual)
Department by	**:**	Shri Ramnath P Murkunde
Date of hearing	**:**	18-09-2024
Date of pronouncement	**:**	24-09-2024

O R D E R

PER BENCH:

The above 2 appeals filed by the assessee are directed against the separate orders dated 22.03.2024 of the CIT(A) / NFAC, Delhi relating to assessment years 2018-19 and 2020-21, respectively. Since identical grounds have been raised in both the appeals, therefore, for the sake of convenience, these appeals were heard together and are being disposed of by this common order.

2. Although a number of grounds have been raised by the assessee in both these appeals, however, these all relate to the order of the CIT(A) / NFAC in confirming the disallowance of Rs.1,40,26,680/- for assessment year 2018-19 and Rs.3,53,92,935/- for assessment year 2020-21 in respect of interest income earned

on fixed deposits kept with the banks and claimed as deduction u/s 80P of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').

3. First, we take up ITA No.1109/PUN/2024 as the lead case. Facts of the case in brief, are that the assessee is a Co-operative credit society, registered under the Central Registrar of Co-operative Societies as per provisions of Multi State Co-operative Societies Act, 2002. It filed its return of income on 02.10.2018 declaring total income at Rs.1,40,26,680/-. After claiming deduction of Rs.1,40,26,680/- u/s 80P of the Act, the taxable income was declared at zero. The case was selected for limited scrutiny to examine the following issues:

S. No.	*Issues*
i.	*Investments / Advances / Loans*
ii.	*Unsecured Loans*
iii.	*Expenses incurred for earning exempt income*
iv	*Deduction from total income under Chapter VI-A*

4. Accordingly statutory notices u/s 143(2) and 142(1) of the Act were issued and served on the assessee, to which the assessee filed the requisite details before the Assessing Officer from time to time. In the assessment order the Assessing Officer made the disallowance of Rs.1,40,26,680/- in respect of the income from interest earned from the banks on investments by rejecting the claim of deduction u/s 80P(2)(a)(1) / 80P(2)(d) of the Act.

5. In appeal, the CIT(A) / NFAC upheld the action of the Assessing Officer.

6. Aggrieved with such order of the CIT(A) / NFAC, the assessee is in appeal before the Tribunal.

7. The Ld. Counsel for the assessee at the outset submitted that the issue stands decided in favour of the assessee by the decision of the Co-ordinate Bench of the Tribunal.

8. The Ld. DR fairly conceded that the issue stands decided in favour of the assessee by the decision of the Tribunal.

9. After hearing both the sides, we find an identical issue had come up before the Tribunal in the case of Shrikrupa Nagari Sahakari Pathsanstha Maryadit vs. ITO vide ITA No.1252/PUN/2023 for assessment year 2017-18 order dated 02.02.2024, where the Tribunal after considering various decisions has held as under:

> *"3. It is in this factual backdrop that we have heard the department as well regarding correctness of the impugned disallowance itself during the course of hearing today and find that the instant issue is no more res integra in light of Rena Sahakari Sakhar Karkhana Ltd. Vs. Pr.CIT (ITA No.1249/PUN/2018) decided on 07-01-2022 as follows :*
>
> > *"3. After culmination of the assessment proceedings, the Pr. CIT called for the assessment records of the assessee. It was observed by the Pr. CIT that the assessee had during the year shown interest income from FDs with Cooperative Banks amounting to Rs.75,38,534/-, against which it had claimed deduction under Sec.80P(2)(d) of the Act. It was observed by the Pr. CIT, that the A.O while framing the assessment had allowed the aforesaid claim of deduction raised by the assessee. Observing, that as cooperative banks were commercial banks and not a cooperative society, therefore, the Pr.CIT was of the view that the assessee was not eligible for claim of deduction under Sec.80P(2)(d). In the backdrop of his aforesaid conviction, the Pr. CIT was of the view that the assessment order passed by*

the A.O under Sec.143(3), dated 07.03.2016, therein allowing the assesses claim for deduction under Sec. 80P(2)(d), had therein rendered his order as erroneous, insofar it was prejudicial to the interest of the revenue. Accordingly, the Pr.CIT not finding favour with the reply of the assessee, wherein the latter had tried to impress upon him that it was duly eligible for claim of deduction under Sec.80P(2)(d) of the Act, therein "set aside" the order of the A.O with a direction to redecide the issue afresh and reframe the assessment.

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

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

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

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

8. After necessary deliberations, we are unable to persuade ourselves to concur with the view taken by the Pr. CIT. Before proceeding any further, we may herein cull out the relevant extract of the aforesaid statutory provision, viz. Sec. 80P(2)(d), as the same would have a strong bearing on the adjudication of the issue before us. "80P(2)(d) (1). Where in the case of an assessee being a cooperative 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 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 cooperative society. We are in agreement with the view taken by the Pr. CIT, that with the insertion of subsection (4) to Sec. 80P of the Act, vide the Finance Act, 2006 with effect from 01.04.2007, the provisions of Sec. 80P would no more be applicable in relation to any co-operative bank, other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank. However, at the same time, we are unable to subscribe to his view that the aforesaid amendment would jeopardize the claim of deduction of a co-operative society under Sec. 80P(2)(d) in respect of its interest income on investments/deposits parked with a co-operative bank. In our considered view, as long as it is proved that the interest income is being derived by a 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 „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 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 co-operative society from its investments held with a co-operative bank would be entitled for claim of deduction under Sec.80P(2)(d) of the Act.

9. In so far the judicial pronouncements that have been relied upon by the ld. A.R are concerned, we find that the issue that a co-operative society would be entitled for claim of deduction under Sec. 80P(2)(d) on the interest income derived from its investments held with a cooperative bank is covered in favour of the assessee in the following cases:

(i). M/s Solitaire CHS Ltd. vs. Pr. CIT, ITA No. 3155/Mum/2019; dated 29.11.2019 (ITAT "G" Bench, Mumbai); (ii). Majalgaon Sahakari Sakhar Karkhana Ltd. Vs. ACIT, Circle-3, Aurangabad, ITA No, 308/Pun/2018 (ITAT Pune) (iiii). 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 subsection (4) of Sec. 80P was that the co-operative banks which were functioning at par with other banks would no more be entitled for claim of deduction under Sec. 80P(4) of the Act. Although, in all fairness, we may herein observe that the Hon'ble High Court of Karnataka in the case of Pr. CIT Vs. Totagars co-operative Sale Society (2017) 395 ITR 611 (Karn), as had been relied upon by the ld. D.R before us, had held, that a co-operative society would not be entitled to claim deduction under Sec. 80P(2)(d); but then, the Hon'ble High Court in the case of Pr. Commissioner of Income Tax and Anr. Vs. Totagars Cooperative Sale Society (2017) 392 ITR 74 (Karn) and Hon'ble High Court of Gujarat in the case of State Bank Of India Vs. CIT (2016) 389 ITR 578 (Guj), had observed, that the interest income earned by a co-operative society on its investments held with a co-operative bank would be eligible for claim of deduction under Sec.80P(2)(d) of the Act. Backed by the aforesaid conflicting judicial pronouncements, we may herein observe, that as held by the Hon'ble High Court of Bombay in the case of K. Subramanian and Anr. Vs. Siemens India Ltd. and Anr (1985) 156 ITR 11 (Bom), where there is a conflict between the decisions of non-jurisdictional High Court"s, then a view which is in favour of the assessee is to be preferred as against that taken against him. Accordingly, taking support from the aforesaid judicial pronouncement of the Hon"ble High Court of jurisdiction, we respectfully follow the view taken by the Hon'ble High Court of Karnataka in the case of Pr. Commissioner of Income Tax and Anr. Vs. Totagars Cooperative Sale Society (2017) 392 ITR 74 (Karn) and that of the Hon'ble High Court of Gujarat in the case of State Bank Of India Vs. CIT (2016) 389 ITR 578 (Guj), wherein it was observed that the interest income earned by a co-operative society on its investments held with a co-operative bank would be eligible for claim of deduction under Sec.80P(2)(d) of the Act.

> *10. Be that as it may, in our considered view, as the A.O while framing the assessment had taken a possible view, and allowed the assessee"s claim for deduction under Sec. 80P(2)(d) on the interest income earned on its investments/deposits with co-operative banks, therefore, the Pr. CIT was in error in exercising his revisional jurisdiction u/s 263 of the Act for dislodging the same. Accordingly, finding no justification on the part of the Pr. CIT, who in exercise of his powers under Sec. 263 of the Act, had dislodged the view that was taken by the A.O as regards the eligibility of the assessee towards claim of deduction under Sec. 80P(2)(d), we set-aside his order and restore the order passed by the A.O under Sec. 143(3), dated 07.03.2016."*

4. We adopt the foregoing detailed discussion mutatis mutandis to accept the assessee's arguments in it's main appeal ITA.No.1252/PUN./2023 itself in the larger interest of justice. The same stands accepted. Stay application SA.No.6/PUN./2023 is rendered infructuous very terms.

5. This assessee's stay application SA.No.6/PUN./ 2023 is dismissed as rendered infructuous and it's main appeal ITA.No.1252/PUN./2023 is allowed in above terms. A copy of this common order be placed in the respective case files."

10. Since the facts of the instant case are identical to the facts of the case already decided by the Tribunal, therefore, respectfully following the decision of the Co-ordinate Bench of the Tribunal (supra), we hold that the CIT(A) / NFAC was not justified in denying the claim of deduction u/s 80P(2)(d) of the Act in respect of the interest income earned from the banks on investments. We, therefore, set aside the order of the CIT(A) / NFAC and the Assessing Officer is directed to delete the addition. The grounds raised by the assessee are accordingly allowed.

11. Identical grounds have been raised in ITA No.1110/PUN/2024. We have already decided the issue and the grounds raised in ITA No.1109/PUN/2024 have been allowed. Following similar reasoning, the grounds raised in ITA

No.1110/PUN/2024 are also allowed. Both the appeals filed by the assessee are accordingly allowed.

12. In the result, both the appeals filed by the assessee are allowed.

Order pronounced in the open Court on 24th September, 2024.

Sd/-	**Sd/-**
(ASTHA CHANDRA)	(R. K. PANDA)
JUDICIAL MEMBER	VICE PRESIDENT

पुणे Pune; दिनांक Dated : 24th September, 2024

GCVSR

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order is forwarded to:

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent
3. DR, ITAT, 'A' Bench, Pune
4. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण ,पुणे
/ ITAT, Pune

S.No.	Details	Date	Initials	Designation
1	Draft dictated on	18.09.2024		Sr. PS/PS
2	Draft placed before author	23.09.2024		Sr. PS/PS
3	Draft proposed & placed before the Second Member			JM/AM
4	Draft discussed/approved by Second Member			AM/AM
5	Approved Draft comes to the Sr. PS/PS			Sr. PS/PS
6	Kept for pronouncement on			Sr. PS/PS
7	Date of uploading of Order			Sr. PS/PS
8	File sent to Bench Clerk			Sr. PS/PS
9	Date on which the file goes to the Head Clerk			
10	Date on which file goes to the A.R.			
11	Date of Dispatch of order			