TaxGuru®
Complete tax solution

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "C", MUMBAI

BEFORE SHRI AMARJIT SINGH (ACCOUNTANT MEMBER) &
SMT. KAVITHA RAJAGOPAL (JUDICIAL MEMBER)
ITA 561/Mum/2021
(Assessment year 2015-16)

Palm Court M Premises Co-operative Society Limited Ground Floor, Palm Court M Premises Co-operative Housing Link Road, Malad (West), Mumbai-400 064 **PAN : AAAAP8737K**	vs	Principal Commissioner of Income-tax-30, Mumbai Room No.540, 5th Floor, Kautilya Bhavan, C-41 to C-43, G Block, Bandra Kurla Complex, Bandra (East), Mumbai-400 051

Assessee represented by	Shri Anuj Kisnadwala
Department represented by	Shri Dharam Veer Singh, CIT DR

Date of hearing	15/06/2022
Date of pronouncement	09/09/2022

ORDER

Per Kavitha Rajagopal (JM):

This appeal has been filed by the assessee as against the order of the Learned Principal Commissioner of Income-tax-30, Mumbai, dated 16/03/2020 passed under section 263 of the Income-tax Act, 1961 relevant to assessment year 2015-16.

2. There is a delay of 329 days in filing of the appeal. The Ld.AR for the assessee contended that the assessee's case was squarely be covered by the decision of the Hon'ble Apex Court in Suo Motu Writ Petition (C) No.3 of 2020 judgement dated January 10, 2022 whereby the same would be covered under

the Covid Protocol due to pandemic declared by the Hon'ble Supreme Court while determining the period of limitation.

3. Having heard the rival parties and perused the materials on record, we are of the considered view that the assessee's case would be covered under the decision of the Hon'ble Apex Court in extending the period of limitation due to Covid Protocol, we hereby condone the delay of 329 days for filing the present appeal.

4. Grounds of appeal are as under:-

> *"1. On the facts and circumstances of the case and in law, the order passed by the Learned Pr.Commissioner of Income Tax-30 is bad in law.*
>
> *2. On the facts and circumstances of the case and in law, the order passed by the Learned Pr.Commissioner of Income Tax-30 erred in not accepting the contention of the appellant that it is entitled to deduction u/s 80P(2)(d) of the Income Tax Act, 1961.*
>
> *3. On the facts and circumstances of the case and in law, the order passed by the Learned Pr.Commissioner of Income Tax-30 erred in not considering the fact that the appellant is a Co-operative Society not engaged in any business and there cannot be any disallowance of payments u/s 40(a)(ia) r.w.s. 194C of the Income Tax Act."*

5. Briefly stated, the assessee is a co-operative housing society (AOP) and filed its return of income for assessment year 2015-16 on 12/10/2015 declaring total income at Rs.10,49,310/-. The assessee's case was selected for limited scrutiny and assessment order under section 143(3) of the I.T. Act, 1961 dated 15/12/2017 was passed whereby the Assessing Officer accepted the returned income of Rs.10,49,310/-. The Ld.PCIT observed that the assessee has received interest income from co-operative banks of an amount of Rs.12,90,210/- for which the assessee has claimed deduction under section 80P(2)(d) of the I.T. Act. The Ld.PCIT has held that the Assessing Officer has erroneously allowed the deduction under section 80P(2)(d) which does not

apply to the assessee on the ground that the interest received from investment was made with co-operative banks as the same is not eligible for deduction under section 80P(2)(d). The Ld.PCIT revised the assessment order dated 15/12/2017 on the ground that it is erroneous insofar as it is prejudicial to the interest of the revenue and that the assessment order was concluded without making proper verification thereby directing the Assessing Officer to verify the deduction under section 80P(2)(d) and on TDS payments and thereby to frame the assessment de novo in accordance with law. Aggrieved by this, the assessee is in appeal before us.

6. The Ld.AR for the assessee contended that the assessee's case was selected for limited scrutiny for the purpose of verification of (1) Income from heads of income other than business / profession mismatching; (2) Deduction under chapter VIA. The Ld.AR stated that the Assessing Officer had passed the assessment order and that there was nothing erroneous insofar as it is prejudicial to the interest of the revenue as alleged by the Ld.PCIT vide his order dated 16/03/2020 passed under section 263 of the Income Tax Act. The Ld.AR further submitted that the assessee was entitled to the deduction under section 80P(2)(d) of the Act and relied on the order of the Assessing Officer.

7. The Ld.DR, on the other hand, alleged that assessee's case was selected for limited scrutiny, but the Assessing Officer failed to make any enquiry pertaining to deduction under section 80P(2)(d) and relied on the decision of the Ld.PCIT. The Ld.DR also relied on the decision of the Hon'ble Karnataka High Court in the case of PCIT vs Totagars Co-operative Sale Society (2017) 395 ITR 611 (Kar).

8. We have heard the rival submissions and perused the materials on record. It is evident that the assessee is a co-operative housing society registered under the Co-operative Housing Societies' Act and that the assessee has earned interest income of Rs.12,90,210/- which was claimed as deduction under section 80P(2)(d). It is observed that the assessee has invested the surplus funds with co-operative banks and non co-operative banks for which the assessee has received interest income of Rs.10,39,909/- from non co-operative banks and Rs.12,90,210/- from co-operative banks, respectively. The Ld.PCIT revised the assessment order passed under section 143(3) of the I.T. Act dated 15/12/2017 on the ground that interest income received by the assessee by way of investment in co-operative banks is not eligible for deduction under section 80P(2)(d) on the ground that the co-operative banks will not be classified under 'Co-operative Societies' and that the interest earned from co-operative banks are not eligible for deduction under the provisions of section 80P(2)(d). The Ld.PCIT placed his reliance on the decision of PCIT vs Totagars Co-operative Sale Society (supra) wherein the Hon'ble High Court held that the amendment to section 194A(3)(v) of the Act excludes co-operative banks from the definition of co-operative society by Finance Act, 2015 thereby intending to deduct tax at source under 194A that the said co-operative banks are not *speci of genus of co-operative society ex*cluding them from exemption or deduction under the provisions of Chapter VIA by virtue of section 80P of the Act. Following the interpretation of the Hon'ble Karnataka High Court in the above said decision, the Ld.PCIT held that the assessee was not entitled to deduction under 80P(2)(d) thereby directing the Assessing

Officer to frame assessment de novo. We would like to place our reliance on the decisions relied upon by the Ld.AR in the cases mentioned below:-

1. M/s Petit Powers Co-op. Housing Society Ltd vs ITO (ITA No.549/MUM/2021)
2. M/s Solitaire CHS Ltd Society Office, Solitaire CHS Ltd vs PCIT (ITA No.3155/Mum/2019)
3. Jai Hind Co-operative Housing Society Ltd vs ACIT-25(2) (ITA No.1762 & 1763/Mum/2020)
4. M/s Vadasinor Pragati Samaj Co-operative Credit Society Ltd vs PCIT-18 (ITA No.2539/Mum/2019)
5. M/s Doshi Palace Co-operative Hsg Soc. Ltd vs ACIT-19(1) (ITA No.2510/MUM/2019)
6. The Salsette Catholic Co-operative Housing Ltd vs ACIT Circle-23(3) (ITA No.3870 & 3871/Mum/2019

These decisions of the co-ordinate benches have reiterated the principle that the interest income derived by a co-operative society by way of investment made with a co-operative bank would be entitled to claim of deduction under section 80P(2)(d) of the Act. For this proposition, we would like to place our reliance on the decision of M/s Petit Towers Co-op. Housing Society Ltd vs ITO (supra) wherein the co-ordinate bench has observed as under:-

> *"8. We have given a thoughtful consideration to the contentions advanced by the ld. 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 u/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. Vs. 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 co-operative society from its investments held with a co-operative bank would be entitled for claim of deduction u/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 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 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 co-operative 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 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) 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 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 „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 co-operative societies;"

We are of the considered view, that though the co-operative banks pursuant to the insertion of subsection (4) to Sec. 80P would no more be entitled for claim of deduction under Sec. 80P of the Act, but as a 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 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.

8. We shall now advert to the judicial pronouncements that have been relied upon by the ld. 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 co-operative bank is covered in favour of the assessee in the following cases:
(i) Land and Cooperative Housing Society Ltd. Vs. ITO (2017) 46 CCH 52 (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) Marvwanjee 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 same 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 co-operative 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 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), 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 co-operative 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. From the above observation, we are of the view that the facts of the present case are similar to the decisions that have been cited above and by respectfully following the said decisions, we hold that the Ld.PCIT has erred in concluding that the assessment order passed by the Assessing Officer under section 143(3) dated 19/04/2021 was erroneous insofar as it is prejudicial to the interest of the revenue as per the provisions of section 263 of the I.T. Act, 1961, we set aside the order of the Ld.PCIT and restore the order passed by the Assessing Officer vide order dated 15/12/2017 passed under section 143(3) of the I.T. Act.

10. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open Court on 09th day September, 2022.

Sd/-	sd/-
(AMARJIT SINGH)	**(KAVITHA RAJAGOPAL)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Mumbai, Dated: 09/09/2022
Pavanan

Copy of the Order forwarded to :

1. The Appellant ,
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar)
ITAT, Mumbai