**आयकर अपीलीय अधिकरण“B”न्यायपीठ पुणे में ।**
**IN THE INCOME TAX APPELLATE TRIBUNAL**
**“B” BENCH, PUNE**

**BEFORE SHRI S.S.GODARA, JUDICIAL MEMBER**
**AND**
**Dr.DIPAK P. RIPOTE, ACCOUNTANT MEMBER**

**आयकरअपीलसं. / ITA No.428/PUN/2022**
**निर्धारणवर्ष / Assessment Year: 2017-18**

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| Shri Siddeshwar Gramin Bigar Sheti Sahkari Patsanstha Maryadit, A/P. Pandare, Ta. Baramati, Maharashtra – 413 130<br>PAN : AAGTS2342K | Vs | Pr.CIT, Pune-4. |
| Appellant/ Assessee | | Respondent /Revenue |

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| Assessee by | Shri Pramod Shingte |
| Revenue by | Shri Rajeev Kumar |
| Date of hearing | 19-12-2022 |
| Date of pronouncement | 05-01-2023 |

**आदेश/ ORDER**

**Per S.S.Godara, JM:**

This assessee’s appeal for AY 2017-18 arises against the Principal Commissioner of Income-tax, Pune-4’s order dated 28.03.2022 passed in case No. ITBA/REV/F/REV5/2021-22/1041810023(1) involving proceedings under 263 of the Income Tax Act, 1961 in short ‘the Act’.

2. It emerges during the course of hearing that the learned Pr.CIT’s impugned revision directions term the Assessing Officer’s regular assessment dated 22-11-2019 as an erroneous one causing

prejudice to the interest of the Revenue for having accepted the assessee's claim involving interest amount of Rs.1,03,75,626/- derived from parking of funds in various Cooperative Banks involving varying sums, as eligible for section 80P deduction.

3. Learned counsel has submitted that the assessing authority had indeed carried out detailed inquiries before accepting section 80P deduction in issue and therefore, the impugned revision proceedings u/s.263 need to be vacated.

4. The Revenue has drawn strong support from the Pr.CIT's revision discussion reading as follows :

> 2. On examination of the assessment records, it was noticed that the assessee's gross total income of Rs. 90,62,060/- is mainly on account of interest income amounting to Rs 1,03,75,626/- received from banks. The Fixed deposits are made with Cooperative. It is not clear whether these cooperative banks are registered with RBI or not. If they are registered with RBI then the interest received from them is not entitled for deduction u/s 80P(2)(d).

3. Further, in the case of Totgar's Cooperative Sale Society Ltd. Vs. ITO [2010] 188 Taxman 282 (SC), the Hon'ble Supreme Court has held that funds not required immediately for providing credit facilities and interest earned on such fund would come under the category of Income from Other Sources taxable u/s 56 of the Income-tax Act, 1961. Also, the Hon'ble Karnataka High Court in the case of Pr. Commissioner of Income Tax, Hubali Vs. Totgars Cooperative Sale Society (2017) has held that interest earned on deposit or investment of surplus funds is income not arising from business operations cannot be allowed deduction under section 80P. In the instant case, the assessee society has accepted deposits from its members. However, not all deposits were used by the society in its business of providing credit facilities to its members. Instead they are put in to deposits to earn interest. This act of making deposits out of the deposits received from members cannot be considered to attributable to the business of carrying on of the business of providing credit facilities to its members. In view of the aforesaid decisions of the Hon'ble Supreme Court & Karnantaka High Court, Interest earned on such deposits kept with Scheduled Bank/Cooperative Bank cannot be allowed as deduction under section 80P of the Act and such interest should be brought to tax. Therefore, the income from interest earned by the assessee Co-op. Credit Society from its deposits made out of its surplus funds with other Co-operative Society/ Co-op. Bank is required to be assessed under the head 'Income from Other Sources' as laid down u/s 56 of the Income-tax Act, 1961, by rejecting deduction u/s 80P of the Income-tax Act, 1961. The Assessing Officer has not caused any verification of this issue and allowed the assessee's entire claim of deduction of Rs. 90,62,060/- u/s 80P of the Income-tax Act, 1961. No disallowance was made in the claim u/s 80P of the assessee while completing the assessment. Since the assessee's large claim of deduction under chapter VI-A was the reason of selection of its case for scrutiny; the Assessing Officer was required to conduct in-depth verification of the assessee's claim. Hence, allowing of the deduction by the Assessing Officer under section 80P for the above amount is not as per the provisions of the Income Tax Act, 1961.

4. Failure on the part of the Assessing Officer in examining the above issue (as discussed in preceding Para) has rendered the assessment order dated 22.11.2019 erroneous in so far as it is prejudicial to the interest of the revenue.

5. In view of the above, the assessment order dated 22.11.2019 was considered erroneous in so far as it is prejudicial to the interest of the revenue in as much as patent error as mentioned supra had crept in. Accordingly, a show-cause notice was issued to the assessee on 09.03.2022 u/s 263 of the Income-tax Act, 1961 calling upon the assessee to explain as to why the assessment order dated 22.11.2019 should not be set aside u/s 263 of the Income Tax Act, 1961.

6. The assessee has submitted its submission on 23.03.2022. In the written submission, the assessee contended as under:-

***Considering the all above points given in notice for revision of order***

***U/s 263, we would like to submit our explanation as under:***

1. *Our's is credit cooperative society registered under the Maharashtra Cooperative Societies Act, 1960. As per provision of Maharashtra*

*Cooperative Societies Act, 1960, every credit cooperative society should transfer 25% of its profit to general reserve (Statutory Reserve) and should deposit with District Co-operative Banks only. Further to above compulsion, to maintain liquidity of funds, every society should invest 20% of deposits received from members with cooperative banks only. It is statutory and compulsory requirement under the law for Society to maintain deposit and investment with other cooperative banks (Society). From statutory investment with other cooperative banks, society is receiving interest and dividend on investment. It is part and parcel of business activity and business income. It cannot be said that it is income from other sources. Main activity of society is providing credit facility to members. Interest receipts on loan to members and investment with other cooperative banks is main business income source.*

*Further to above, we would like to mention that funds invested with cooperative banks are from deposit amounts received from members of society and not only surplus fund in hand of society. Society is required to pay interest on such deposit to the members. Interest on deposit to members is always paid at high rate against interest rate received from banks. Thus, whole deposits with banks are not from surplus fund of society. During the year under consideration, society had interest income of Rs.84,88,276 and not of Rs. 10375626 on deposit (Statutory investment) with cooperative banks as mentioned in notice.*

1. ***Provision of Section 80P of the Act:***

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 **the whole of the amount of profits and gains of business attributable to any one or more of such activities.**

(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**;

As per above provision of the section 80P, it is clear that whole of the profit including interest income received on deposit /investment with other Co-operative Society (Co-operative Banks) is fully deductible. Question of disallowance does not arise.

The Claim of deduction U/s 80P cannot be restricted on the quantum of interest received on from members only as interest income received from deposit with banks is also part of business activity. As per provision of law it is not possible to carry business by society for providing credit facility without maintaining deposits with other banks. It is also difficult to make bifurcation of expenses incurred by the society with interest income received from deposit of members and from own fund. As per Balance Sheet as on 31.3.2017, there is deposits received from members of Rs. 17.99 Cr and investment / deposit with banks is Rs. 9.32 Cr. Thus it is clear that fund invested in banks is out of deposit from members. Members deposits carries cost to the society and it is not cost free. It is pure business income and question of showing income under the head "Income from Other Sources" does not arise.

We would like to submit that every Cooperative Bank is first society, registered under the Cooperative Act and then license from RBI is received to carry banking business. **It cannot be denied that every Co-operative banks is first Co-operative Society and administered and governed by the Commissioner of Cooperative under the state cooperative Act.** Interest/dividend income received from other Cooperative Banks is fully deductible U/s 80P (2) (d) of the Act.

1. **Non applicability of case laws of Totgars Co-operative Sale Society Ltd. Vs. income-tax Officer, Karnataka [2010] 188 Taxman 282 (SC) to our society:**

As per our view, idea of revision of order U/s 263 of the Act, is taken from decision of the Hon,ble Supreme Court in Totgar Society case. We would like to submit that nature of business of Totgars Cooperative Sale Society Ltd and our society are not the same. Business of the Totgars Co-operative Sale Society Ltd was marketing of the agricultural produce of its members and income from interest on deposit with other banks was not business receipts but as other source.

In case of our society, main business is providing credit facility to members and deriving interest income on advances to members and deposit/investment with other banks. Nature of business and activity of the society are completely different. Thus, decision of the Hon,ble Supreme Court in Totgar Society case is not applicable with reference to fact of the case. Following points can be viewed for the same:

1. At the first instance, the decision in case of Totgars Co-op. Sale Society, as observed by Supreme Court itself, was confined only to the facts of the case before it & accordingly cannot be applied in general to all kinds of co-op. societies.
2. In the case of Totgars, the Hon'ble Supreme Court had not spelt out anything with regard to operational funds in the hands of pure Co-operative Credit Societies and the ratio was applicable to cooperative sale societies only.
3. Assessee in Totgars case had admitted that it had invested surplus funds, which were not immediately required for the purpose of its business, in short term deposits;
4. The surplus funds arose out of the amount retained from marketing the agricultural produce of the members;
5. Assessee in Totgars case carried on two activities, namely, (i) acceptance of deposit and lending by way of deposits to the members; and (ii) marketing the agricultural produce; and (d) that the surplus had arisen emphatically from marketing of agricultural produces. Whereas, in the case of co-op. credit societies, generally, it doesn't carry out any activity except in providing credit facilities to its members and that the funds are operational funds. The only fund available with the pure credit societies is deposits from its members and, thus, there are no surplus funds as such. By considering all the above clinching dissimilarities, recently Hon'ble ITAT Ahmedabad bench in **Jafari Momin Vikas Co-op Credit Society Ltd., vs. ITO** [ITA No.1491/Ahd/2012 for A.Y. 2009-10], rightly held that ratio laid down by the Hon'ble Supreme Court in the case of Totgars Co-op Sale Society Ltd (supra) cannot be applied to the facts of the appellant credit society and accordingly deduction u/s 80P was allowed against interest income from deposits with nationalized banks.
6. In case of **Jaipur Zila Dugdh Utpadak Sahakari Sangh Ltd. Vs DCIT (ITAT Jaipur)**, it was held that during the year under consideration, assessee had received interest on FDRs placed with the Cooperative Bank on which deduction u/s 80P was claimed. It was held even though co-operative bank pursuant to insertion of sub-section (4) of section 80P would no more be entitled for claim of deduction under section 80P, however, **for the purposes of section 80P(2)(d) of the Act, Cooperative Bank Ltd shall be treated as a co-operative society**. Therefore, interest on FDRs placed by the assessee society with such cooperative society would be eligible for deduction u/s

*80P(2)(d).*

7. *In case of* ***Jawala Cooperative Urban Thrift & Credit Society Ltd. Vs ACIT (ITAT Delhi),*** *it was held that Funds kept in bank could be said to be ready for utilization by the assessee, cooperative society, in its business of providing credit facilities to its members, and therefore, the income from such monies, kept in bank, were attributable to the business of providing credit facilities, so as to fall within the ambit of section 80P (2) (a) (i ).*

1. *In view of the above elaborate explanation and facts of the case, the assessment order passed U/s 143(3) of the I.T. Act, 1961 by the learned Assessing Officer, cannot be prima-facie erroneous and prejudicial to the interests of the Revenue. It is as per law and considered all provisions applicable to society. Therefore, proposed revision would be bad in law.*

*We hope you will be satisfied from the above detail explanation and request you to drop the idea of proposed revision order U/s 263 of the Act."*

7. I have examined the submission made by the assessee and issues involved therein. I have also gone through various case laws filed and relied upon by the assessee in support of claim of Rs. 90,62,060/- u/s 80P.

The contention raised by the assessee are examined with reference to assessment record and it is found that Assessing officer has arrived at decision without properly examining the eligibility of assessee to claim deduction u/s 80P of the Act. As per provisions of section 80P(2)(a)(i), the Society is required to substantiate the principle of mutuality with respect to the loans taken from members to loan advanced/ investment made by it. To come to a conclusive discussion, the AO should have verified whether the loans/ deposit taken are given back to the members as loans/ advances or not. The assessment order does not indicate whether this exercise has been done or not. The non-verification of principle of mutuality by the Assessing Officer has rendered the view taken by him regarding allowability of deduction u/s 80P of the Act is legally unsustainable. Since the view taken by the Assessing Officer is unsustainable, the assessment order passed by the Assessing Officer is liable for revision u/s 263 of the Act.

8. As seen from the Balance Sheet, the assessee has received deposits amounting to Rs. 24.06 Cr, Paid up capital at Rs. 4 Cr. and reserve fund at Rs. 4.92 Cr. as on 31.03.2017. Against the same, the assessee has advanced Rs. 23.74 Cr only to its members. Thus, around Rs. 9.24 Cr have not been utilized for the activity of lending to the members by the assessee and have been invested in time deposits with various banks. Further, from submissions of assessee it is observed that investment in co-operative banks are made out of deposits from members and that interest income earned from members has also been utilized for making deposits

with banks. The total interest income of Rs. 1,03,75,626/- shown in the Profit & Loss account, has been received by way of dividend received and interest on deposits made with banks. Thus, in the assessee's case, a major portion of its income is earned by way of interest on deposits made with other nationalized/co-operative banks. As has been held by the Hon'ble Supreme Court in the case of Totgar's Cooperative Sale Society Ltd. Vs. ITO (supra) and also by Hon'ble Karnataka High Court in the case of Pr. Commissioner of Income Tax, Hubali Vs. Totgars Cooperative Sale Society (supra) this act of making deposits out of the deposits received from members cannot be considered to be attributable to the business of carrying on of the business of providing credit facilities to its members. In view of the aforesaid decisions of the Hon'ble Supreme Court & Karnantaka High Court, Interest earned on such deposits kept with Scheduled Bank/Cooperative Bank cannot be allowed as deduction under section 80P of the Act and such interest should be brought to tax.

a. In this regard, the Assessment record has been verified in detail. The submissions made before the Assessing Officer regarding the deposits made with different bank/institution are seen to have been given without details as to when they were made and whether they were made out of the Deposits of the members or otherwise from out of the surplus generated.

b. Also, the assessee has claimed that it accept deposits from its members only. However, no requisite details were furnished by the assessee either before the Assessing Officer or during the present proceedings. The Assessing Officer also has not verified this aspect.

9. It is seen from the Profit and Loss account that the assessee has received interest income of Rs. 1.03 Cr. on fixed deposits investments made with various co-operative banks. It is not clear whether these co-operative banks are registered with the RBI or not. If it is registered with the RBI then the interest received from the bank is not entitled for deduction u/s 80P(2)(d). The Assessing Officer has not caused any verification of this issue.

10. Since the assessee's large claim of deduction under chapter VI-A was the reason of selection of its case for scrutiny; the Assessing Officer was required to conduct in-depth verification of the assessee's claim. Since the above mentioned bank is not a cooperative society, the interest earned is not eligible for deduction under Section 80P(2)(a)(i) or 80P(2)(d). Hence, allowing of the deduction by the Assessing Officer under section 80P for the above amount is not as per the provisions of the Income Tax Act,1961.

In Para 10 of the Hon'ble Karnataka High Court decision in the case of

Tumkur Merchants Souharda Credit Co-op Society Ltd V CIT (2017) 396 ITR, the Hon'ble Court has held that " *the amount which was invested in banks to earn interest was not an amount due to any members. It was not the liability. It was not shown as liability in their account."* In the case of the present assessee, it was stated that the society accepts deposits only from its members which means deposits in banks are made out of deposits made by members. These deposits are liable to be returned back to the members and hence, are to be shown as liability in the balance sheet. These deposits from members are invested in the fixed deposits and interest income is earned from them.

As mentioned in Para 8, the assessee received deposits from members Rs. 24.06 Cr, Paid up capital at Rs. 4 Cr. and reserve fund at Rs. 4.92 Cr. and advanced only Rs. 23.74 Cr to its members.

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| Loans/Advances/Deposits received from members by the society including paid up capital & reserve fund | 32.98 Cr. |
| Loans/Advances given to members by the society | 23.74 Cr. |
| Excess of Loans/Advances/Deposits from members available with the society | 9.24 Cr. |

It implies that the deposits accepted from the members were not used by the society in its business of providing credit facilities to its members. Instead they are put in to deposits to earn interest.

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| Investments made in FDs with institutions by the society out of Loans/Advances made by members | 11.17 Cr. |

This act of making deposits out of the deposits received from members cannot be considered to be attributable to the business of providing credit facilities to its members. Thus, making deposits to the bank out of the deposits received from Members is not in accordance to the principles of mutuality.

11. In the light of these facts, the Assessment Order dt 22.11.2019 is hereby set aside to the Assessing Officer for proper verification of facts and to re-examine the assessee's claim of deduction under section 80P of the Income-tax Act, 1961. However, before arriving at any conclusion, the Assessing Officer shall give reasonable opportunity to the assessee to adduce the evidence and information with regard to:

a. the Source of deposits made with all institutions from which interest income is earned with specific details and nexus as to whether those deposits are made from the deposits received from the members which are returnable to the members or from out of the surplus funds arising from profits and gains.

b. Whether the deposits are made with institutions which are registered with RBI for carrying out business of Banking.

c. Whether the Principle of Mutuality is satisfied to allow deduction u/s 80P in respect of income earned from deposits made with Co-op Banks.

d. Based on the evidence, decide the allowability of deduction u/s 80P.

The Assessing Officer shall, accordingly, re-frame the assessment in the assessee's case in due compliance with the above directions.

12. The Assessment is set aside u/s 263 in terms of para 11 Supra.

5. We have given our thoughtful consideration to vehement rival stands and find no merit in the Revenue's arguments. We make it clear the sole reason what has made the ld. Pr.CIT to exercise his section 263 revision jurisdiction is that the assessee is not eligible for claiming 80P deduction regarding its interest income derived from cooperative banks etc. We note in this factual backdrop that this tribunal's recent coordinate bench order in *ITA No.1249/PUN/2018 in*

*Rena Sahakari Sakhar Karkhana Ltd., vs. Pr. CIT-2, Aurangabad dated 07-01-2022* has rejected the Revenue's identical stand 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 Co-operative 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 co-operative banks were commercial banks and not a co-operative 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.
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> 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.
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> 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 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.

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 co-operative 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 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. 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."

6. We adopt the foregoing detailed reasoning *mutatis mutandis* to reverse the ld. Pr.CIT's impugned revision directions. The Assessing Officer's corresponding regular assessment stands restored as the necessary corollary.

7. This assessee's appeal is allowed in above terms.

Order pronounced in the open Court on $05^{th}$ January, 2023.

| | |
|---|---|
| **Sd/-** | **Sd/-** |
| **(Dr.DIPAK P. RIPOTE)** | **(S. S. GODARA)** |
| **ACCOUNTANT MEMBER** | **JUDICIAL MEMBER** |

पुणे / Pune; दिनांक / Dated : $05^{th}$ January, 2023
Satish

**<u>आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :</u>**

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A) concerned
4. The CIT concerned
5. विभागीयप्रतिनिधि,आयकरअपीलीयअधिकरण, "**B**" बेंच, पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// TRUE COPY //

Senior Private Secretary
आयकरअपीलीयअधिकरण, पुणे/ITAT,Pune.

| S.No | Details | Date | Initials | Designation |
|---|---|---|---|---|
| 1 | Draft dictated on | 28-12-2022 | | Sr. PS/PS |
| 2 | Draft placed before author | 30-12-2022 | | 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 | | | |