IT : A co-operative bank continues to be a co-operative society registered under Co-operative Societies Act, 1912 or under any other law for time being in force in any State for registration of co-operative societies, and, therefore, 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 section 80P(2)(d)

[2018] 94 taxmann.com 15 (Mumbai - Trib.)

IN THE ITAT MUMBAI BENCH 'SMC'

Kaliandas Udyog Bhavan Premises Co-op Society Ltd.

v.

Income-tax Officer-21(2)(1), Mumbai*

G.S. PANNU, ACCOUNTANT MEMBER
AND RAVISH SOOD, JUDICIAL MEMBER
IT APPEAL NO. 6547 (MUM.) OF 2017
[ASSESSMENT YEAR 2014-15]
APRIL 25, 2018

Section 80P of the Income-tax Act, 1961 - Deductions - Income of co-operative societies (Interest) - Assessment year 2014-15 - Assessee was a co-operative society - During relevant year assessee earned interest on deposits kept with co-operative banks - Assessee filed its return claiming deduction under section 80P(2)(d) on interest so earned - Revenue authorities opined that as co-operative banks with which surplus funds of assessee were parked as investments, were neither Primary Agricultural Credit Society nor a Primary Co-operative Agricultural and Rural Development Bank, therefore, interest income earned on such investments would not be entitled for claim of deduction under section 80P(2)(d) - Whether since a co-operative bank continues to be a co-operative society registered under Co-operative Societies Act, 1912 or under any other law for time being in force in any State for registration of co-operative societies, 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 section 80P(2)(d) - Held, yes - Whether in view of aforesaid legal position, assessee's claim for deduction was to be allowed - Held, yes [Para 7] [In favour of assessee]

Circulars and Notifications: Circular No. 14, dated 28-12-2006

FACTS

- The assessee was a co-operative society. During relevant year assessee earned interest on deposits kept with co-operative banks.
- The assessee filed its return claiming deduction under section 80P(2)(*d*) on interest so earned.
- The Assessing Officer opined that interest income by the assessee-credit society was not earned from the activity of providing banking facilities to its members and was outside the purview of 'Principle of Mutuality'. He thus rejected assessee's claim for

deduction.

- The Commissioner (Appeals) was of the view that the interest income earned by the assessee from investments made with a scheduled bank or co-operative bank for a time period could not be said to be for the purpose of the co-operative housing society of the assessee and hence, would not be eligible for claim of deduction under section 80P(2)(*d*). He thus sustained the disallowance made by Assessing Officer.
- On second appeal:

HELD

- The issue involved in the present appeal hinges around the adjudication of the scope and gamut of sub-section (4) of section 80P, as had been made available on the statute by the legislature *vide* the Finance Act, 2006, with effect from 1-4-2007. The lower authorities had taken a view that pursuant to insertion of sub-section (4) of section 80P, the assessee would no more be entitled for claim of deduction under section 80P(2)(*d*) of the interest income earned on the amounts parked as investments with co-operative banks, other than a Primary Agricultural Credit Society or a Primary Co-operative Agricultural and Rural Development Bank. The lower authorities had observed that as the co-operative banks with which the surplus funds of the assessee were parked as investments, were neither Primary Agricultural Credit Society nor a Primary Co-operative Agricultural and Rural Development Bank, therefore, the interest income earned on such investments would not be entitled for claim of deduction under section 80P(2)(*d*). [Para 6]
- From a perusal of the section 80P(2)(*d*) it can safely be gathered that income by way of interest income derived by an assessee cooperative society from its investments held with any other cooperative society, shall be deducted in computing the total income of the assessee. What is relevant for claim of deduction under section 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. Though the observations of the lower authorities are correct that with the insertion of sub-section (4) of section 80P, *vide* the Finance Act, 2006, with effect from 1-4-2007, the provisions of section 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, but their view that the same shall also jeopardise the claim of deduction of a co-operative society under section 80P(2)(*d*) in respect of the interest income on their investments parked with a co-operative bank cannot be accepted.
- 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.* section 80P(2)(*d*) would be duly available. The term 'co-operative society' had been defined under section 2(19) of the Act.
- It is opined that though the co-operative bank pursuant to the insertion of sub-section (4) of section 80P would no more be entitled for claim of deduction under section 80P, but however, as a co-operative bank continues to be a co-operative society registered under the Co-operative Societies Act, 1912 or under any other law for the time being enforced in any State for the registration of cooperative 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 section 80P(2)(*d*). [Para 7]

- Thus in the backdrop of aforesaid observations the view taken by the lower authorities that the assessee would not be entitled for claim of deduction under section 80P(2)(*d*), in respect of the interest income on the investments made with the co-operative bank cannot be accepted. Thus the order of the lower authorities is set aside and it is concluded that the interest income earned by the assessee on the investments held with the co-operative bank would be entitled for claim of deduction under section 80P(2)(*d*). [Para 9]
- In the result, appeal filed by the assessee is allowed. [Para 11]

CASE REVIEW

Lands End Co-operative Housing Society Ltd. v. *ITO* [2016] 46 CCH 52 (Mum.); *Sea Grean Co-operative Housing Society Ltd.* v. *ITO* [IT Appeal No. 1343 (Mum.) of 2017, dated 31-3-2017] and *Merwanjee Cama Park Co-operative Housing Society* v. *ITO* [IT Appeal No. 6139 (Mum.) of 2014, dated 27-9-2017] (para 8) *followed*.

Totgars Co-operative Sale Society Ltd. v. *ITO* [2010] 188 Taxman 282/322 ITR 283 (SC); *Shri Saidatta Co-operative Credit Society Ltd.* v. *ITO* [IT Appeal No. 2379 (Mum.) of 2015, dated 15-1-2016] and *Vaibhav Co-operative Credit Society* v. *ITO* [IT Appeal No. 5819 (Mum.) of 2014, dated 17-3-2017] (para 8) *distingushed*.

CASES REFERRED TO

Bangalore Club v. *CIT* [2013] 29 taxmann.com 29/212 Taxman 566/350 ITR 509 (SC) (para 3), *Totgars Co-operative Sale Society Ltd.* v. *ITO* [2010] 188 Taxman 282/322 ITR 283 (SC) (para 3), *Shri Saidatta Co-operative Credit Society Ltd.* v. *ITO* [IT Appeal No. 2379 (Mum.) of 2015, dated 15-1-2016] (para 4), *Vaibhav Co-operative Credit Society* v. *ITO* [IT Appeal No. 5819 (Mum.) of 2014, dated 17-3-2017] (para 4), *Lands End Co-operative Housing Society Ltd.* v. *ITO* [2016] 46 CCH 52 (Mum.) (para 5), *Sea Grean Co-operative Housing Society Ltd.* v. *ITO* [IT Appeal No. 1343 (Mum.) of 2017, dated 31-3-2017] (para 5), *Merwanjee Cama Park Co-operative Housing Society* v. *ITO* [IT Appeal No. 6139 (Mum.) of 2014, dated 27-9-2017] (para 5), *Pr. CIT* v. *Totgars Co-operative Sale Society Ltd.* [2017] 78 taxmann.com 169/392 ITR 74 (Ker.) (para 5), *State Bank of India (SBI)* v. *CIT* [2016] 72 taxmann.com 64/241 Taxman 163/389 ITR 578 (Guj.) (para 5), *CIT* v. *Thana Electricity Supply Ltd.* [1994] 206 ITR 727 (Bom.) (para 5), *Pr. CIT* v. *Totgars Co-operative Sale Society Ltd.* [2017] 83 taxmann.com 140/395 ITR 611 (Kar.) (para 5) and *K. Subramanian* v. *Siemens India Ltd.* [1983] 15 Taxman 594/[1985] 156 ITR 11 (Bom.) (para 8).

Deepak P. Rikekar and **Ajit Gupte**, CAs *for the Appellant.* **Ms. N. Hemalatha**, Sr. DR *for the Respondent.*

ORDER

Ravish Sood, Judicial Member - The present appeal filed by the assessee is directed against the order passed by the CIT (A)-33, Mumbai, dated 08/08/2017, which in itself arises from the order passed by the Assessing Officer under section 143(3) of the Income Tax Act, 1961 (for short, "Act"), dated 28/10/2016. The assessee assailing the order of the CIT (A) had raised before us the following grounds of appeal:—

"1. On facts, in circumstances of the case and in law, the ld. CIT (A) erred in

confirming the disallowance of deduction under section 80P(2)(d) amounting to Rs. 27,48,553/- in respect of interest received by the appellant from co-operative banks.

2. The appellant craves leave to add, alter, modify or delete the above ground of appeal."

2. Briefly stated, the facts of the case are that the assessee which is a co-operative society had filed its return of income on 23/09/2014, declaring total income of Rs. 10,87,320/- after claiming deduction of Rs. 50,000/- under section 80P of the Act. The case of the assessee was taken up for scrutiny assessment under section 143(2) of the Act.

3. During the course of the assessment proceedings, the Assessing Officer observed that the assessee had earned an amount of Rs. 27,72,529/- from its investments held with co-operative banks and Bank of India. It was observed by the Assessing Officer that the said interest was transferred to various funds and only an amount of Rs. 23,976/- was shown as "income from other sources" in the return of income. The assessee submitted before the Assessing Officer that the interest income on fixed deposits with banks in co-operative sector was not included in the gross total income while computing the taxable income for A.Y. 2014-15, as the same was fully exempt under section 80P(2)(d) of the Act. It was claimed by the assessee that section 80P(2)(d) exempted "sums in respect of any income or dividends derived by the cooperative society from its investments with any other cooperative society". However, the aforesaid explanation of the assessee did not find favour with the Assessing Officer, who was of the view that as the very basis of functioning of any co-operative society was the "Principle of Mutuality", but in the present case there was an element of profiteering in the activities of co-operatives society while earning interest at higher rates, therefore, the surplus would form part of its general reserve fund. The Assessing Officer taking support of the judgment of the Hon'ble Supreme Court in the case of *Bangalore Club* v. *CIT* [2013] 29 taxmann.com 29/212 Taxman 566/350 ITR 509 and in the case of *Totgars Co-operative Sale Society Ltd.* v. *ITO* [2010] 188 Taxman 282/322 ITR 283 (SC) concluded that as the income of Rs. 27,72,529/- earned by the credit society was not earned from the activity of providing banking facilities to its members and was outside the purview of "Principle of Mutuality", therefore, the interest income of Rs. 27,72,529/- was not entitled for claim of deduction under section 80P(2)(d).

4. Aggrieved, the assessee carried the matter in appeal before the CIT (A). The CIT (A) after deliberating on the facts of the case observed that the assessee had earned interest on investments, viz. FDRs which were from co-operative banks and other banks. It was observed by the CIT (A) that section 80P(4) had w.e.f. A.Y. 2007-08 withdrawn the deduction to the co- operative banks, other than the co-operative agriculture society or a primary co-operative agricultural and rural development bank. The CIT (A) was of the view that since the amendment, Explanation (a) below sub- section(4) provided that "Co-operative bank" and "Primary agricultural credit society" shall have the meanings respectively assigned to them in Part V of the Banking Regulation Act, 1949. The CIT (A) further deliberating on the definition of "Primary Cooperative Agricultural and Rural Development Bank", referred to Bxplanation (b) below sub-section (4) of section 80P of the Act, which defined the same as a society having its area of operation confined to a Taluk and the principal objective of which is to provide long term credit for agricultural and rural development activity. It was thus, observed by the CIT (A) that w.e.f 01.04.2007 deduction under section 80P was not available to a co-operative bank which was carrying on banking and financial business. The CIT (A) in order to fortify his aforesaid view, relied on the judgment of the Hon'ble Supreme Court in the case of *Totgars Co-operative Sale Society Ltd.* (*supra*), wherein the Hon'ble Apex Court had held as under:—

"10. At the outset, an important circumstance needs to be highlighted. In the present case, the interest held not eligible for deduction under Section 80P(2)(a)(i) of the Act is not the interest received from the members for providing credit facilities to them. What is sought to be taxed under

Section 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 under Section 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 under Section 56 of the Act, as rightly held by the Assessing Officer. In this connection, we may analyze Section 80P of the Act. This section comes in Chapter VI-A, which, in turn, deals with "Deductions in respect of certain Incomes". The Head note to Section 80P indicates that the said section deals with deductions in respect of income of cooperative Societies. Section 80P(1), inter alia, states that where the gross total income of a cooperative Society includes any income from one or more specified activities, then such income shall be deducted from the gross total income in computing the total taxable income of the assessee-Society. An income, which is attributable to any of the specified activities in Section 80P(2) of the Act, would be eligible for deduction. The word "income" has been defined under Section 2(24)(i) of the Act to include profits and gains. This sub-section is an inclusive provision. The Parliament has included specifically "business profits" into the definition of the word "income". Therefore, we are required to give a precise meaning to the words "profits and gains of business" mentioned in Section 80P(2) of the Act. In the present case, as stated above, assessee-Society regularly invests funds not immediately required for business purposes. Interest on such investments, therefore, cannot fall within the meaning of the expression "profits and gains of business". Such interest income cannot be said also to be attributable to the activities of the society, namely, carrying on the business of providing credit facilities to its members or marketing of the agricultural produce of its members. When the assessee-Society provides credit facilities to its members, it earns interest income. As stated above, in this case, interest held as ineligible for deduction under Section 80P(2)(a)(i) is not in respect of interest received from members. In this case, we are only concerned with interest which accrues on funds not required immediately by the assessee(s) for its business purposes and which have been only invested in specified securities as "investment". Further, as stated above, assessee(s) markets the agricultural produce of its members. It retains the sale proceeds in many cases. It is this "retained amount" which was payable to its members, from whom produce was bought, which was invested in short-term deposits/securities. Such an amount, which was retained by the assessee-Society, was a liability and it was shown in the balance-sheet on the liability-side. Therefore, to that extent, such interest income cannot be said to be attributable either to the activity mentioned in Section 80P(2)(a)(i) of the Act or in Section 80P(2)(a)(iii) of the Act. Therefore, looking to the facts and circumstances of this case, we are of the view that the Assessing Officer was right in taxing the interest income, indicated above, under Section 56 of the Act."

The CIT (A) further relied on the orders of the coordinate benches of the ITAT, Mumbai in the case of (i) *Shri Saidatta Cooperative Credit Society Ltd.* v. *ITO* [IT Appeal No. 2379 (Mum) 2015, dated 15-01-2016); and (ii) *Vaibhav Cooperative Credit Society* v. *ITO* [IT Appeal No. 5819 (Mum) of 2014, dated 17-03-2017]. It was, thus, observed by the CIT (A) that in a case where the funds created by the activities of the co-operative housing society, which are not required immediately for its intended purpose are invested for the purpose of earning interest, than as has been held by the Hon'ble Apex Court in the case of *Totgars Co-operative Sale Society Ltd.* (*supra*) the interest earned by the assessee on such deposits would be liable to be brought to tax under section 56 as "Income from other sources" of the assessee. The CIT (A) applying the ratio laid down by the Hon'ble Apex court in the above referred case, to the facts of the present case, concluded that the interest income earned by the assessee from

investments made with a scheduled bank or co-operative bank for a time period cannot be said to be for the purpose of the co-operative housing society of the assessee and hence, would not be eligible for claim of deduction under section 80P(2)(d) of the Act. The CIT (A) on the basis of his aforesaid observations sustained the disallowance of deduction under Sec. 80P(2)(d) of 27,72,529/- made by the Assessing Officer.

5. The assessee being aggrieved with the order of the CIT (A) had carried the matter in appeal before us. The ld. Authorised Representative (for short, 'A.R') for the assessee at the very outset submitted that the lower authorities had wrongly denied the deduction claimed by the assessee under section 80P of the Act, in respect of interest income of Rs. 27,72,529/-. The ld. A.R in order to drive home his contention that the assessee was duly entitled for claim of deduction under section 80P(2)(d), relied on the following orders of the coordinate benches of the Tribunal:—

(*i*) *Lands End Co-operative Housing Society Ltd.* v. *ITO* [2016] 46 CCH 52 (Mum)

(*ii*) *Sea Grean Co-operative Housing Society Ltd.* v. *ITO* [IT Appeal No. 1343/MUM/2017, dated 31/03/2017].

(*iii*) *Merwanjee Cama Park Co-operative Housing Society* v. *ITO* [IT Appeal No. 6139/MUM/2014, dated 27/09/2017].

The ld. A.R further in order to support his claim that the interest income earned by deposit or investment of surplus funds would not change the character of the income, whether such interest income was received from scheduled bank or a co-operative bank, as a result whereof, in both the situations, the assessee would be entitled for claim of deduction under section 80P(2)(d), relied on the judgment of the Hon'ble High Court of Karnataka in the case of *Pr.CIT* v. *Totgars Co-operative Sale Society Ltd.* [2017] 78 taxmann.com 169/392 ITR 74 (Kar). The ld. A.R further took support of the judgment of the Hon'ble High Court of Guajrat in the case of *State Bank of India (SBI)* v. *CIT* [2016] 72 taxmann.com 64/241 Taxman 163/389 ITR 578 (Guj) and the CBDT Circular No. 14, dated 28/12/2006, wherein the issue as regards withdrawal of tax benefit available to certain co-operative banks had been deliberated upon by the CBDT. Lastly, the ld. AR in order to support his contention that the decision of one High Court is neither a binding precedent for another High Court nor for Courts or Tribunals outside its own territorial jurisdiction, relied on the judgment of the Hon'ble High Court of Bombay in the case of *CIT* v. *Thana Electricity Supply Ltd.* [1994] 206 ITR 727 (Bom)**.** The ld. A.R taking support of the aforesaid judicial pronouncements, submitted that the Hon'ble High Court had observed that in a case there is a conflict between the decisions of the Non-Jurisdictional High Courts, then the view which is in favour of the assessee is to be adopted, in preference to that against him. Per contra, the ld. Departmental Representative (for short, 'D.R') supported the orders of the lower authorities. The ld. D.R relied on the judgment of the Hon'ble High Court of Karnataka in the case of *Pr.CIT* v. *Totgars Co-operative Sale Society Ltd.* [2017] 83 taxmann.com 140/395 ITR 611 (Kar). The ld. D.R to support his contention that the lower authorities had rightly declined to allow claim of deduction under section 80P(2)(d) to the assessee, relied on the order of a co-ordinate bench of the Tribunal in the case of *Vaibhav Co-operative Credit Society* (*supra*). The Ld. D.R submitted that as the appeal of the assessee was devoid of any force, therefore, the same was liable to be dismissed.

6. We have heard the authorised representatives for both the parties, perused the orders of the lower authorities and the material available on record. We find that our indulgence in the present appeal has been sought to adjudicate as to whether the claim of the assessee for deduction under section 80P(2)(d), in respect of interest income earned from the investments made with the co-operative banks is in order or not. We find that 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 by the legislature vide the Finance Act 2006, with effect from 01.04.2007. We find that the lower authorities had taken a

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) of the interest income earned on the amounts parked as investments with co-operative banks, other than a Primary Agricultural Credit Society or a Primary Co-operative Agricultural and Rural Development Bank. We find that the lower authorities had observed that as the co-operative bank with which the surplus funds of the assessee were parked as investments, were neither Primary Agricultural Credit Society nor a Primary Co-operative Agricultural and Rural Development Bank, therefore, the interest income earned on such investments would not be entitled for claim of deduction under Sec. 80P(2)(d) of the Act.

7. We have deliberated at length on the issue under consideration and are unable to persuade ourselves to be in agreement with the view taken by the lower authorities. Before proceeding further, we may herein reproduce the relevant extract of the said 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*) to (*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;"

Thus, from a perusal of the aforesaid Sec. 80P(2)(d) it can safely be gathered that income by way of interest income derived by an assessee co-operative society from its investments held with any other cooperative society, shall be deducted in computing the total income of the assessee. 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 though are in agreement with the observations of the lower authorities 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, but however, are unable to subscribe to their view that the same shall also jeopardise the claim of deduction of a co-operative society under Sec. 80P(2)(d) in respect of the interest income on their investments parked with a co-operative bank. We have given a thoughtful consideration to the issue before us and are of the considered view that 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 may herein observe 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 bank pursuant to the insertion of Sub-section (4) of Sec. 80P would no more be entitled for claim of deduction under Sec. 80P of the Act, but however, 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 enforced 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 had been relied upon by the authorized representatives for both the parties and the lower authorities. We find that the issue that a co-operative society would be entitled for claim of deduction under Sec. 80P(2)(d) for 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.* (*supra*)

(*ii*) *Sea Green Cooperative Housing and Society Ltd.* (*supra*)

(*iii*) *Marwanjee Cama Park Cooperative Housing Society Ltd.* (*supra*).

We further find that the Hon'ble High Court of Karnataka in the case of *Totagars Cooperative Sale Society* (*supra*) and Hon'ble High Court of Gujarat in the case of *State Bank Of India* (*supra*), had also held that the interest income earned by the assessee on its investments held 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, as had been relied upon by the ld. A.R, also makes it clear beyond any scope of doubt, that the purpose behind enactment of sub-section (4) of Sec. 80P was to provide that the co-operative banks which are functioning at par with other banks would no more be entitled for claim of deduction under Sec. 80P(4) of the Act. We are of the considered view that the reliance placed by the CIT (A) on the judgment of the Hon'ble Supreme Court in the case of *Totgars Co-operative Sale Society Ltd.* (*supra*) being distinguishable on facts, thus, 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 parked with a co-operative bank. We further find that the reliance place by the ld. D.R on the order of the ITAT "F" bench, Mumbai in the case of *Vaibhav Cooperative Credit Society* (*supra*) is also distinguishable on facts. We find that the said order was passed by the Tribunal in context of adjudication of the entitlement of the assessee co-operative bank towards claim of deduction under Sec.80P(2)(a)(i) of the Act. We find that it was in the backdrop of the aforesaid facts that the Tribunal after carrying out a conjoint reading of Sec. 80P(2)(a)(i) r.w. Sec. 80P(4) had adjudicated the issue before them. We are afraid that the reliance placed by the ld. D.R on the aforesaid order of the Tribunal being distinguishable on facts, thus, would be of no assistance for adjudication of the issue before us. Still further, the reliance placed by the Ld. D.R on the order of the ITAT 'SMC' Bench, Mumbai in the case of *Shri Sai Datta Co-operative Credit Society Ltd.* (*supra*), would also not be of any assistance, for the reason that in the said matter the Tribunal had set aside the issue to the file of the assessing officer for fresh examination. That as regards the reliance placed by the ld. D.R on the judgment of the Hon'ble High Court of Karnataka in the case of *Totagars co-operative Sale Society* (*supra*), the High Court had concluded that a co-operative society would not be entitled to claim of deduction under Sec. 80P(2)(d). We however find that as held by the Hon'ble High Court of Bombay in the case of *K. Subramanian* v. *Siemens India Ltd.* [1983] 15 Taxman 594/[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. Thus, 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 *Totagars Cooperative Sale Society* (*supra*) and Hon'ble High Court of Gujarat in the case of *State Bank Of India* (*supra*), 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.

9. We thus in the backdrop of our aforesaid observations are unable to persuade ourselves to be in agreement with the view taken by the lower authorities that the assessee would not be entitled for claim of deduction under Sec. 80P(2)(d), in respect of the interest income on the investments made with the co-operative bank. We thus set aside the order of the lower authorities and conclude that the interest income of Rs. 27,48,553/-earned by the assessee on the investments held with the co-operative bank would be entitled for claim of deduction under Sec. 80P(2)(d).

10. The appeal of the assessee is allowed in terms of our aforesaid observations.

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

sunil

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*In favour of assessee.