

**IN THE INCOME TAX APPELLATE TRIBUNAL
"G" Bench, Mumbai****Before Shri S.Rifaur Rehman, Accountant Member
and Shri Ravish Sood, Judicial Member****ITA No.3155/Mum/2019
(Assessment Year: 2014-15)**

M/s Solitaire CHS Ltd.
Society Office, Solitaire CHS Ltd.
Hiranandani Gardens, Powai,
Mumbai – 400 076

Principal Commissioner of
Income-tax -26
C-10, 4th Floor,
Vs. Pratyaksha Kar Bhavan,
BKC, Bandra (E)
Mumbai – 400 051

PAN – AAGFS7920R

(Appellant)**(Respondent)**

Appellant by: Shri Rajesh B. Shah, A.R
Respondent by: Shri T. Kipgen, CIT D.R
Date of Hearing: 26.11.2019
Date of Pronouncement: 29.11.2019

ORDER**PER RAVISH SOOD, JM**

The present appeal filed by the assessee is directed against the order passed by the Pr. Commissioner of Income Tax-26, Mumbai, dated 14.03.2019 under Sec.263 of the Income Tax Act, 1961 (for short 'Act'). The assessee has assailed the impugned order on the following grounds of appeal before us:

"Being aggrieved by the order of the learned Principal Commissioner of Income-tax- 26, Mumbai, dated 15.03.2019, the Appellant prays to prefer the present appeal on the following ground:

- (1) That on law and facts and circumstances of the case, the learned Pr. CIT has erred both in law and on facts in invoking the provision of section 263 without appreciating the fact that the order passed by learned Assessing Officer is neither erroneous nor prejudicial to the interest of the revenue as order under 143(3) was passed by Id assessing officer after considering and verifying the claim for deduction based on the submission made by the appellant before passing the assessment order and accordingly order under section 263 passed by Id Pr.CIT needs to be set aside and cancelled.
- (2) That learned Pr.CIT erred in relying on the judgement of Totagor Co-operative Sales V/s ITO. Karnataka (SC) 2010 which was for claiming classification of income as business income or other sources and corresponding deduction U/s.80P(2)(a) and not on Sec.80P(2)(d) for revising the order U/s.263
- 3). For that on the facts and in the circumstances of the case, there was sufficient material available before the AO on the basis of which it was evident that the interest earned on FDs with co-operative society which are also co-operative banks are deductible U/s.80P(2)(d) as claimed by appellant and in that view of the matter the AO had already formed a plausible opinion and had rightly allowed deduction U/s. 80P(2)(d) on such interest in the assessed income of the appellant for A.Y. 2014-15.

- (4) For that on the facts and in the circumstances of the case, the Pr.CIT order u/s 263 directing AO to enhance the assessed income by the sum of Rs.3618.974/- be held to be contrary to the provisions of the law and consequently therefore such direction may kindly be vacated and/or cancelled.
- (5) In the facts and circumstances of the case and in law, the Ld. PCIT erred in exercising jurisdiction u/s 263 of the IT Act, when the Ld. PCIT has merely borrowed the changed opinion formed by the A.O. and has failed to express an independent view on the claim of deduction u/s 80P of the I.T Act by the Appellant.
- (6) The Learned Pr.CIT has erred in Law as well as on facts while passing order u/s 263 of the Income Tax Act. 1961 without considering the fact that the issue of deduction U/s.80P(2)(d) has already being approved by the order of Hon'ble ITAT in the case of *M/s Lands End Cooperative Society Ltd*, ITA No.3566/MUM/2014 and *Sea Green CHS LTD*, ITA No.1343/MUM/2017.
- (7) The appellant craves leave to add, amend, alter or delete all or any of the aforesaid ground(s) of appeal as deemed fit.”

2. Briefly stated, the assessee which is a cooperative society had filed its return of income for A.Y. 2014-15 on 20.09.2014, declaring its total income at Rs.nil. The assessment under Sec.143(3) was framed by the A.O. vide his order dated 143(3), dated 14.09.2016, and the returned income of the assessee was accepted.

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.36,18,974/-, 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 14.09.2016, therein allowing the assessee's 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), therein “set aside” the order of the A.O, with a direction to re-decide the issue afresh.

4. The assessee being aggrieved with the order of the Pr.CIT has carried the matter in appeal before us. It was submitted by the Id. 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 Id. A.R, that on the relevant date on which the assessment was framed by the A.O under Sec.143(3), dated 14.09.2016, 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 order of the jurisdictional Tribunal viz. ITAT “A” Bench, Mumbai in case *Land End Co-operative Housing Society Ltd.*

Vs. ITO, Ward-16(1)(3), Mumbai [ITA No.3566/Mum/2014, dated 15.01.2016]. Also, reliance was placed by the Id. A.R on the order of the ITAT, Mumbai "SMC" bench in the case of Kaliandas Udyog Bhavan Premises Co-operative Society Ltd. Vs. ITO-21(2)(1), Mumbai [ITA 6547/Mum/2017, dated 25.04.2018]. On the basis of his aforesaid contentions, it was averred by the Id. 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.

5. Per contra, the Id. 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 Id. 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 14.09.2016 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.

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 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 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 ‘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 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 Id. A.R. We find that the issue that a co-operative society would be entitled for claim of deduction under Sec. 80P(2)(d) on the interest income derived from its investments held with a 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) Marwanjee Cama Park Cooperative Housing Society Ltd. Vs. ITO-Range-20(2)(2), Mumbai (ITA No. 6139/Mum/2014, dated 27.09.2017.
- (iv). Kaliandas Udyog Bhavan Pemises Co-op. Society Ltd. Vs. ITO, 21(2)(1), Mumbai

We further find that the **Hon'ble High Court of Karnataka** in the case of **Pr. Commissioner of Income Tax and Anr. Vs. Totagars Cooperative Sale Society (2017) 392 ITR 74 (Karn)** and **Hon'ble High Court of Gujarat** in the case of **State Bank Of India Vs. CIT (2016) 389 ITR 578 (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 co-operative 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 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. 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.

10. Resultantly, the appeal filed by the assessee is allowed.

Order Pronounced in the open Court on 29.11.2019

Sd/-

(S. Rifaur Rehman)
Accountant Member

Sd/-

(Ravish Sood)
Judicial Member

मुंबई Mumbai; दिनांक 29.11.2019

Ps. Rohit

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT,
Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai