

## **ITAT: Sec.80P deduction allowable to housing society on interest from co-op banks**

**Dec 03, 2022**

Mittal Court Premises Co-operative Society Ltd. [TS-931-ITAT-2022(Mum)]

### **Conclusion**

Mumbai ITAT dismisses Revenue's appeal, allows Assessee the deduction of Rs.2.04 Cr under Section 80P(2)(d) and holds that interest income earned by the co-operative society from the investments made with the co-operative banks is eligible for claim of deduction under Section 80P(2)(d) by relying on co-ordinate bench ruling in [Palm Court](#) and Karnataka HC ruling in [Totagar's Cooperative](#); Assessee, a co-operative society, constituted by members for maintaining the Mittal Court Building, filed its return of income for AY 2014-15, declaring taxable income of Rs.3.34 Lacs and claimed deduction of Rs.2.04 Cr under Section 80P(2)(d) on the interest received on deposit from four cooperative banks; Revenue disallowed deduction on the ground that interest earned from cooperative banks is not eligible for deduction under Section 80P(2)(d); CIT(A) deleted the disallowance holding interest income earned by the Assessee from deposits made with the co-operative banks is eligible for claim of deduction under Section 80P(2)(d); Aggrieved with the CIT(A) order Revenue preferred the present appeal; Before ITAT, Assessee submitted that in absence of a jurisdictional HC rulings, Karnataka HC ruling taking a view in favour of the Assessee shall be adopted in the light of SC ruling in [Vegetable Products](#); ITAT relies on co-ordinate bench ruling in *Palm Court* and Karnataka HC ruling in *Totagar's Cooperative*, wherein it was held 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); Thus upholds the CIT(A) order and allows Assessee's claim of deduction under Section 80P(2)(d):ITAT Mum

### **Decision Summary**

The ruling was delivered by the Division Bench of Mumbai ITAT comprising Shri Aby T. Varkey, Judicial Member and Shri Amarjit Singh, Accountant Member.

Advocate Sunil M. Lala appeared for the Assessee while Revenue was represented by Ms. Mahita Nair.

**IN THE INCOME TAX APPELLATE TRIBUNAL "D" BENCH, MUMBAI**

**BEFORE SHRI ABY T. VARKEY, JM AND SHRI AMARJIT SINGH, AM**

आयकर अपील सं/ I.T.A. Nos.1535 to 1537/Mum/2022

(निर्धारण वर्ष / Assessment Years: 2015-16, 2014-15 & 2016-17)

ITO-17(2)(1) 1 <sup>st</sup> Floor, Room No. 115, Kautilya Bhavan, G. Block, Bandra Kurla Complex, Bandra (E), Mumbai- 400051.	<b>बनाम /</b> Vs.	Mittal Court Premises Co. Op. Society Ltd Basement Mittal Court, 224, Nariman Point, Mumbai-400021.
<b>स्थायी लेखा सं. /जीआइआर सं. /PAN/GIR No. : AAAAM1738L</b>		
(अपीलार्थी / <b>Appellant</b> )	..	(प्रत्यर्थी / <b>Respondent</b> )

Assessee by:	Shri Sunil M. Lala
Revenue by:	Ms. Mahita Nair (Sr. AR)

सुनवाई की तारीख / Date of Hearing: 13/10/2022

घोषणा की तारीख /Date of Pronouncement: 31/10/2022

**आदेश / ORDER**

**PER ABY T. VARKEY, JM:**

These are appeals preferred by the revenue against the order of the Ld. Commissioner of Income Tax (Appeals)/NFAC, Delhi dated 31.03.2021 for AY. 2015-16, for AY. 2014-15 and for AY. 2016-17 respectively.

2. Since both sides agree that the issues in all the three (3) assessment years/appeals of the revenue are similar, we take the revenue appeal for AY. 2014-15 as the lead appeal which decision of ours will be followed for other two appeals for AY. 2015-16 and AY. 2016-17. The grounds of appeal raised by revenue (for AY. 2014-15) are as under: -

“1. Whether on the facts and circumstances of the case and in law the Ld CIT(A) was correct in allowing deduction u/s.80P(2)(d) of the Income Tax Act in respect of interest earned from deposits as cooperative bank ignoring that whether the deposits and investment of



*ITA No.1535 to 1537/Mum/2022  
A.Y. 2014-15 to 2016-17  
Mittal Court Premises Co-op. Soc. Ltd.*

surplus funds of assessee not immediately required for its purposes made with Scheduled Bank or Nationalized Banks or with co-operative Banks does not make a difference as far as the character of the income earned by assessee is concerned and thus it does not partake the character of its operational income from its activity as cooperative housing society but such interest income falls in the category of Other Income which needs to be taxed u/s. 56 of Income Tax Act and therefore the provision of 80P not applicable on it”

2. Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) was correct in allowing deduction u/s 80P(2)(d) of the Income Tax Act in respect of interest earned from deposits in cooperative bank ignoring the harmonious interpretation coming out from conjoined reading of various relevant sections i.e. 80P(2)(d), 194A(3)(v) and 80P(4).

3 "Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) was correct in allowing deduction u/s.80P(2)(d) of the Income Tax Act in respect of interest earned from deposits in cooperative bank ignoring the amendment made by Finance Act, 2015 in section 194A(3)(v) of the Act which excludes the Cooperative Banks from the definition of "Co operative Society and requiring them to deduct income tax at source under Section 194A of the Act that also makes the legislative intent clear that the Co-operative Banks are not that specie of genus co-operative society, which are entitled to claim deduction under the special provisions of Chapter VIA in the form of Section 80P of the Act."

4. "Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) was correct in allowing deduction u/s.80P(2)(d) of the Income Tax Act in respect of interest earned from deposits in cooperative bank ignoring the fact that



*ITA No.1535 to 1537/Mum/2022  
A.Y. 2014-15 to 2016-17  
Mittal Court Premises Co-op. Soc. Ltd.*

words used in section 80P(4) are "in relation to" that can include within its ambit and scope even the interest income earned by the co-operative Society from a Co-operative Bank and will also be applicable to provision of section 80P(2)(d)."

4 "Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) has erred in relying on the decision of Hon'ble ITAT Mumbai in the case of Kaliandas Udyog Bhavan Premises Co-op Society Ltd in ITA No. 6547/MUM/2017 (94 taxmann.com. 15) in which the Hon'ble Mumbai Tribunal has erroneously relied on the Hon'ble Karnataka high court order in the case of PCIT VS Totagar's Cooperative Sales Society(392 ITR 74) for allowing the deduction u/s 80P(2)(d) of the Income Tax Act in respect of interest earned from deposits in cooperative bank, though in the said order, the Karnataka high court has specifically decided the Question of Law about the allowability of interest earned from deposits with Cooperative Bank u/s 80P(2)(d) of the Income Tax Act in favour of the Revenue."

5 "Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) was correct in allowing deduction u/s 80P(2)(d) of the Income Tax Act in respect of interest earned from deposits though Hon'ble Karnataka High Court in a detailed judgment discussing the law and various related as the case of PCIT Vs Totagar's Cooperative Sales Society(392 ITR 74) has specifically decided the Question of Law about the allowability of interest earned from deposits with Cooperative Bank u/s. 80P(2)(d) of the Income Tax Act in favour of the Revenue."



*ITA No.1535 to 1537/Mum/2022  
A.Y. 2014-15 to 2016-17  
Mittal Court Premises Co-op. Soc. Ltd.*

6 The appellant craves leave to amend or alter or add a new ground which may be necessary.”

3. From a perusal of the aforesaid grounds, it is noted that the issue raised by revenue is only against the action of the Ld. CIT(A) deleting the addition of Rs.2,04,21,374/- which was disallowed by the AO u/s 80P(2)(d) of the Income Tax Act, 1961 (hereinafter “the Act”).

4. Brief facts the AO noted was that the assessee is Co-operative Society constituted by members (office tenement owners) for maintaining the Mittal Court Building. The assessee society returned income declaring in its return of income taxable income of Rs.3,34,640/-. The AO noted that the assessee had invested funds as FDR with the Saraswat Co-op. Bank Ltd, Abhudaya Co-op Bank Ltd. National Co-op Bank Ltd. and the Shamrao Vithal Co-op Bank Ltd. The AO noted that the assessee had received interest income from the deposit made with the aforesaid Co-op. Bank to the tune of Rs.2,04,21,374/- on which it claimed deduction u/s 80P(2)(d) of the Act. So the AO issued notice and asked for justification for the claim of deduction u/s 80P(2)(d) of the Act. Pursuant to the same, the assessee submitted detailed explanation before the AO. However, the AO being not satisfied with the reply of the assessee disallowed deduction claimed by holding as under: -

“4.3 In view of the above, it is clear that a co-operative bank is a urban commercial bank and does not fall under the purview of a “Co-operative Society” referred in section 80P(2)(d) of the Income tax Act, 1961. In the present case, the assessee has earned interest income from such co-



ITA No.1535 to 1537/Mum/2022  
A.Y. 2014-15 to 2016-17  
Mittal Court Premises Co-op. Soc. Ltd.

operative banks to the tune of Rs. 2,04,21,374/-. The same has been claimed as deduction u/s 80P(2)(d) of the Act. In view of the above discussion, the deduction u/s 80P(2)(d) of the Act, of Rs. 2,04,21,374/- claimed by the assessee is not allowed as the provision relating to concessions are ordinarily expected to be rigidly interpreted and therefore added to the total income of the assessee.

5. Aggrieved, the assessee preferred an appeal before the Ld. CIT(A)/NFAC which has allowed the claim of assessee by holding as under: -

**“6. Ground No. 1 :-** The only issue involved in the case is disallowance of deduction claimed by the appellant of Rs.2,04,21,374/- u/s 80P(2)(d) of the Act. The identical issue has been decided by the undersigned for AY 2015-16 vide Appeal No. CIT(A)-28, Mumbai/10189/2017-18 dated 31.03.2022 in which the appeal of the assessee on this issue has been allowed. The extract of the order is as under:-

*“5.1 Ground No. 1:- The facts of the case and submission of the appellant have duly been considered. The appellant has claimed deduction of Rs.2,66,13,755/-u/s 80P of the Act, which has been disallowed u/s 143(3) of the Act dated 31.10.2017. Against the said disallowance u/s 143(3), the appellant has filed this appeal. It is submitted that the appellant is a cooperative housing society and engaged in mainly providing facilities to its members such as work associated with Municipal Corporation (BMC), electricity, water, parking, maintenance of building and etc. by charging its prescribed fees. The assessee has filed return of income on 31.10.2015. The case was selected for scrutiny. It was submitted before AO that section 80P(2)(d) specifically provides for deduction pursuant to deposits placed with other co-operative banks so that interest was earned by way of placing deposits with other cooperative banks, which were registered co-*



*ITA No.1535 to 1537/Mum/2022  
A.Y. 2014-15 to 2016-17  
Mittal Court Premises Co-op. Soc. Ltd.*

*operative societies and copies of their registration certificates were submitted. The AO was not satisfied with the reply of the assessee and disallowance were made for the reason that deduction is not available to deposits placed with co-operative banks by virtue of section 80P(4) of the Act. Finally, AO made addition towards disallowance of interest u/s 80P of the Act of Rs.2,66,13,755/-.*

*5.2 In the appellate proceeding, the appellant made a detailed submission in which it is submitted by the appellant that section 80P(2)(d) specifically provides for deduction pursuant to deposits placed with other co-operative banks so that interest was earned by way of placing deposits with other cooperative banks, which were registered co-operative societies and also submitted copies of their registration certificates of cooperative banks. The appellant further submitted that Hon'ble Mumbai bench had an occasion to deal with identical facts of the case which was decided in favour of the assessee. It is submitted that the entire issue remain covered by the decision of Mumbai tribunal in the matter of Kaliandas Udyog Bhavan Premises Co-op Society Ltd (94 taxmann.com 15) wherein the decisions of Bangalore Club v. CIT, State Bank of India (SBI) v. CIT, Totgars Co-operative Sale Society Ltd and etc. were followed.*

*5.3 The matter has been examined. In this regard, it is pertinent to note that in the following decisions, including the decisions of the jurisdictional Mumbai Bench of the 'Hon'ble ITAT (relied upon by the appellant), it has been held that a Cooperative Bank is a Cooperative Credit Society and interest income earned by the Cooperative Society from the investments made with the Cooperative Banks is eligible for claim of deduction u/s 80P(2)(d) of the Act:-*

- 1. Pr.CIT VS. Totgars Co-operative Sale Society (2017) 392ITR 74 (Karn)*
- 2. State Bank of India vs. CIT (2016) 389 ITR 578 (Guj)*
- 3. Lady Ratan Tower Cooperative Housing Society Ltd. vs. ITO in ITA No. 1152/Mum/2018 in decision dated 09.08.2018.*
- 4. Shree Mahadeshwar Sahakari Patpedhi Maryadit vs. ITO in ITA No. 374/Mum/2018 dated 06.03.2019.*
- 5. Kaliandas Udyog Bhavan Premises Co-operative Society vs. ITO in ITA No. 6547/Mum/2017 dated 25.04.2018.*



ITA No.1535 to 1537/Mum/2022  
A.Y. 2014-15 to 2016-17  
Mittal Court Premises Co-op. Soc. Ltd.

6. *ITO vs. M/s Oberoi Spring Co-operative Housing Society in ITA no. 786/Mum/2019*

*5.4 In the case of Kaliandas Udyog Bhavan Premises Co-operative Society vs. ITO [2018] 94 taxmann.com 15 (Mumbai) [25-04-2018], the Jurisdictional Mumbai Bench of the ITAT held that 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) of the Act.*

*5.5 The AO had disallowed the claim u/s 80P of the Act on the ground that interest earned from cooperative banks by the appellant is not eligible for deduction u/s 80P(2)(d) of the Act. In view of the above discussion and following the above-mentioned decisions of Hon'ble High Court and jurisdictional Mumbai Bench of the ITAT, the deduction claimed by the appellant u/s 80P(2)(d) of the Act is allowed. Accordingly, Ground No. 1 of appeal is allowed."*

6. Aggrieved by the aforesaid action of the Ld. CIT(A)/NFAC, the revenue is before us.

7. Having heard both parties and after perusal of the records, we note that the assessee is Co-operative Society and claimed deduction u/s 80P(2)(d) of the Act to the tune of Rs.2,04,21,374/-on the interest received from deposit at four Co. operative banks which was disallowed by AO. On appeal, the Ld. CIT(A)/NFAC allowed the claim of the assessee by relying on the decision of this Tribunal. The Ld. DR assailing the action of the Ld. CIT(A)/NFAC relied on the decision of the Hon'ble Karnataka High Court in the case of PCIT Vs.





*ITA No.1535 to 1537/Mum/2022  
A.Y. 2014-15 to 2016-17  
Mittal Court Premises Co-op. Soc. Ltd.*

Totagar's Co-operative Sales Society (395 ITR 611 (Kar) which according to her was in revenue's favour. Per contra, the Ld. AR of the assessee brought to our notice that the Hon'ble Karnataka High Court has passed another order which is in favour of the assessee in PCIT Vs. Totagar's Co-operative Sales Society (392 ITR 74). Therefore, according to him, when there is no decision of the Hon'ble Jurisdictional High Court on this issue, then by applying the principle laid down by the Hon'ble Supreme Court in the case of CIT Vs. Vegetables Products Ltd. 88 ITR 192, the decision in favour of assessee may be adopted by the Tribunal. And therefore according to Ld. AR since there is a decision in favour of the assessee by the Hon'ble Karnataka High Court in the case of PCIT Vs. Totagar's Co-operative Sales Society (supra), the action of the Ld. CIT(A)/NFAC adopting the same is a plausible view and should not be disturbed.

**8.** Having heard both the parties and after perusal of the records, we note that the issue is no longer res-integra; and the Tribunal in a recent decision in the case of Palm Court M. Premises Co-operative Society Ltd Vs. PCIT for AY. 2015-16 held vide order dated 09.09.2022, after considering the decision cited by the Ld. DR in the case of PCIT Vs. Totagar's Co-operative Sales Society (395 ITR 611 (Kar) has held in favour of assessee as under: -

"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



*ITA No.1535 to 1537/Mum/2022  
A.Y. 2014-15 to 2016-17  
Mittal Court Premises Co-op. Soc. Ltd.*

received interest income of Rs.10,39,909/- from non cooperative 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 cooperative banks from the definition of co-operative society by Finance Act, 2015 thereby intending to deduct tax at source under 194A that the said cooperative banks are not specifying of genus of co-operative society excluding 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 Id. Authorized representatives for both the parties in context of the aforesaid issue under consideration. As stated by the Id. 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



*ITA No.1535 to 1537/Mum/2022  
A.Y. 2014-15 to 2016-17  
Mittal Court Premises Co-op. Soc. Ltd.*

- 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). Marwanjee 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 cooperative 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.



*ITA No.1535 to 1537/Mum/2022  
A.Y. 2014-15 to 2016-17  
Mittal Court Premises Co-op. Soc. Ltd.*

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



*ITA No.1535 to 1537/Mum/2022  
A.Y. 2014-15 to 2016-17  
Mittal Court Premises Co-op. Soc. Ltd.*

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) 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



*ITA No.1535 to 1537/Mum/2022*  
*A.Y. 2014-15 to 2016-17*  
*Mittal Court Premises Co-op. Soc. Ltd.*

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 cooperative 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."



ITA No.1535 to 1537/Mum/2022  
A.Y. 2014-15 to 2016-17  
Mittal Court Premises Co-op. Soc. Ltd.

9. Respectfully following the ratio laid by the Co-ordinate bench (supra), we are inclined to confirm the action of the Ld. CIT(A) and dismiss the appeal of the revenue. Therefore, all the appeals of revenue are dismissed.

10. In the result, the appeals of the revenue are dismissed.

Order pronounced in the open court on this 31/10/2022.

Sd/-

(AMARJIT SINGH)  
ACCOUNTANT MEMBER

Sd/-

(ABY T. VARKEY)  
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 31/10/2022.  
Vijay Pal Singh, (Sr. PS)

**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.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार / (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai