**आयकर अपीलीय अधिकरण,चण्डीगढ़ न्यायपीठ , चण्डीगढ़**

**IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH**
**BENCH 'B' CHANDIGARH**

**BEFORE: SHRI A.D.JAIN, VICE PRESIDENT AND**
**SHRI KRINWANT SAHAY, ACCOUNTANT MEMBER**

**आयकर अपील सं./ ITA No. 515/CHD/2017 &**
**ITA No. 569/CHD/2018**

निर्धारण वर्ष / A.Y. : 2012-13, 2013-14

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| The Mullanpur Garibdas Co-operative Multipurpose Society, Mullanpur, Tehsil – Kharar (Mohali). | बनाम VS | The PCIT-II, Chandigarh. |
| स्थायी लेखा सं./PAN /TAN No: AACAT9961G | | |
| अपीलार्थी/Appellant | | प्रत्यर्थी/Respondent |

निर्धारिती की ओर से/Assessee by : Shri Tej Mohan Singh, Advocate

राजस्व की ओर से/ Revenue by : Smt. Garima Singh, CIT, DR

**आयकर अपील सं./ ITA No. 645/CHD/2019**

निर्धारण वर्ष / A.Y. : 2012-13

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| The Mullanpur Garibdas Co-operative Multipurpose Society, Mullanpur, Tehsil – Kharar (Mohali). | बनाम VS | The DCIT, Circle 6(1), Mohali. |
| स्थायी लेखा सं./PAN /TAN No: AACAT9961G | | |
| अपीलार्थी/Appellant | | प्रत्यर्थी/Respondent |

निर्धारिती की ओर से/Assessee by : Shri Tej Mohan Singh, Advocate

राजस्व की ओर से/ Revenue by : Shri Dharam Vir, JCIT, Sr.DR

तारीख/Date of Hearing : 02.05.2024

उदघोषणा की तारीख/Date of Pronouncement : 16.05.2024

**HYBRID HEARING**

**आदेश/ORDER**

**PER A.D.JAIN, VICE PRESIDENT**

**ITA 515/CHD/2017**

This is assessee's appeal for the assessment year 2012-13 against the order dated 28.2.2017, passed by the learned PCIT-2, Chandigarh, under section 263 of the Income Tax Act. The following Grounds have been raised:

> *"1. That the learned Principle Commissioner of Income Tax has heard in law in issuing notice and thereafter passing the order under section 263 only on the basis of an audit objection which is not permissible and as such the order passed is illegal, arbitrary and unjustified, which merits annulment.*
>
> *2. Without prejudice to the above, the learned Principle Commissioner of Income Tax has wrongly assumed jurisdiction under section 263 of the Act to set aside the assessment order dated 31.1.2015 passed by the Assessing Officer in as much as the order is neither erroneous nor prejudicial to the interests of the Revenue and as such, the assumption of jurisdiction under section 263 of the Act is beyond his competence. That the order of revision has been passed by the Principle Commissioner of Income Tax ignoring the settled law on the deductions under section 80P(2)(d) of the Income Tax Act.*
>
> *3. That the assessment order having been passed by the Assessing Officer after due application of mind and taking into consideration the various replies and material on*

*record, the action resorted to by the Principle Commissioner of Income Tax is unwarranted and uncalled for.*

*4. That the reasons mentioned in the notice issued by the Principle Commissioner of Income Tax for initiation of proceedings under section 263 are based on suspicion, conjectures and surmises with no material whatsoever on record to substantiate the action so initiated which, in any case, has been duly countered during the course of proceedings before him, clearly establishing that the order sought to be revised is neither erroneous nor prejudicial to the interests of the Revenue."*

2. At the outset, the learned Counsel for the assessee has stated at the bar that he does not wish to press Ground Number 1. Rejected as not pressed.

3. Apropos Ground Numbers 2 to 4, the learned Principle Commissioner of Income Tax issued show Cause Notice dated 10.02.2017, a copy whereof has been placed at APB 8 to 9, to the assessee, stating that the profit and loss account of the assessee showed that the assessee had reflected interest income of Rs. 82,13,316/- earned on long term fixed deposits with banks and had claimed deduction under section 80P on the said interest income. It was stated that interest earned on funds not required immediately for business purpose is

taxable under Section 56, under the head 'income from other sources' and is not eligible for deduction under section 80P. It was stated that the assessment order showed that the AO had not disallowed deduction under section 80P on the interest income earned from the FDs maintained in the banks. It was stated that however, the assessee was not eligible for deduction under section 80P on this interest income. It was stated that the issue had not been examined by the AO, nor the assessee had offered any detail regarding claiming deduction of such income during the assessment proceedings.

4. In response, the assessee filed reply dated 27.02.2017. A copy thereof has been placed at APB 10 to 13. The assessee stated that the deduction under section 80P was rightly claimed and allowed by the AO, that the AO had called for the details of the FDRs held by the assessee, that the same were submitted to the AO vide reply to the Questionnaire, that a copy of the reply was being enclosed, that the deduction had been claimed under section 80P(2)(d), under the main head of section 80P, that the sum specified in section 80P(2)(d) is any income by way of interest or dividends derived by the cooperative society from its investments with any other cooperative society, the whole of which income is exempt, that the assessee is a cooperative society, which fact is

clearly mentioned in the assessment order dated 31.01.2015, that the balance sheet of the assessee, a copy of which was being enclosed, showed that the society had invested an amount of Rs. 72 lacs as FDR with CCB Mullanpur and Rs. 9,35,92,380/- with CCB Parol, that 'CCB' stood for SAS 'Central Cooperative Bank', that copies of the bank certificates regarding holding of the FDRs in these banks were also being appended, that according to the Reserve Bank of India Act, 1934, as amended by the Banking Laws (Applicable to Cooperative Societies) Act, 1965, 'Central Cooperative Bank' means the principle cooperative society in a district in a state, the primary object of which is the financing of other cooperative societies in that district, that there is no dispute to the fact that the assessee is a cooperative society and had deposited the amount with cooperative banks, that the only dispute was as to whether the cooperative banks qualify to be cooperative societies, that the expression 'cooperative society' is an expression with bigger connotations and 'cooperative bank' refers to a cooperative society doing a special kind of business only, that further, all cooperative banks are registered under the Cooperative Societies Act, 1912, or under any other law for the time being in force in any state for the registration of cooperative societies, that in short, the provisions of various Acts governing cooperative

societies are applicable to cooperative banks, since these banks are also cooperative societies within the meaning of these various Acts governing cooperative societies, that cooperative banks fall within the definition of the term 'cooperative society', that thus, interest received by the cooperative society form a cooperative bank is nothing but interest received from a cooperative society, and that even the Banking Regulation Act, in section 56(i)(ccv) defines 'primary cooperative society bank' as a cooperative society. Reliance was placed on the decision of the Hon'ble Karnataka High Court in the case of 'Pr. CIT Vs. Totagars Cooperative Sale Society', 392 ITR 74 (Karn). It was stated that therefore, the condition that the Assessment Order is prejudicial to the interests of the Revenue, was not fulfilled, as the interest on FDRs with cooperative banks qualified for exemption under section 80P(2)(d) of the Income Tax Act. The learned PCIT was, as such, requested to drop the proceedings under section 263 of the Income Tax Act.

5. By virtue of the impugned order, however, the learned PCIT revised the Assessment Order. It was observed that the interest earned on FDRs from banks and dividend had been earned on funds collected by the society from its members over and above the requirement for the common goal of the members, that the excess amount collected and

remaining unutilized year after year had been deposited in different bank accounts, that this was just like a deposit made by any person with a bank, as once the sum received from the members of the society was placed in the bank, the mutuality between the society and its members was broken, since the interest income was earned from a third party, which was not a member of the society. It was held that in the case of 'Bangalore club Versus CIT', vide order dated 14.01.2013, the Hon'ble Supreme Court had held interest earned on a fixed deposit even with a member Bank to be a taxable receipt. It was held that failure to make proper enquiry to arrive at the correct and complete facts and to apply the correct law makes the Assessment Order erroneous and prejudicial to the interests of the Revenue. In this regard, reliance was placed on various case laws. Reference was also made to explanation 2(a) of section 263, inserted with effect from 01.06.2015. It was observed that the assessee is a cooperative society and the function of the society, since its inception, is to provide short and medium term loans to its members for agricultural production, dairy farming, poultry and piggery, and to provide agricultural inputs like fertilizers and insecticides to its members on a no profit no loss basis. It was observed that during the year under consideration, the society had shown income from business, rent,

dividend and interest from FDRs with banks. It was observed that the society had claimed exemption under section 80P(2)(a)(i) under Chapter VIA of the Income Tax Act, as the activities of the society were to provide short term loans to its members for agricultural production, dairy farming, poultry and piggery, and to provide agricultural inputs like fertilizers and insecticides to the members on a no profit no loss basis, that the society was for the mutual benefit of the members and the profits, if any, were to be distributed amongst the members only, and that the functioning of the society was covered under the provisions of section 80P(2)(a)(i) of the Income Tax Act. It was held that the funds collected for the objective of the society had not been advanced to any one or more of the members without interest, or on a concessional interest, or at a commercial rate, or above the commercial rates available, but had been placed at the disposal of a non-member, that is, the Banks, which was a purely commercial activity of the non-member Bank having nothing to do with the mutual benefit of the members of the society, or the society as such. It was observed that as per the assessment record and the replies submitted by the society before the AO during the assessment proceedings in response to the AO's Questionnaire dated 31.07.2014/4.8.2014 (Question Number 13), the society had itself

submitted that it had claimed exemption under section 80P(2)(a)(i), under Chapter VIA of the Income Tax Act, as the activity of the society was to provide short and medium term loans to its members for agricultural production, dairy farming, poultry and piggery, and to provide agricultural inputs like fertilizers and insecticides to its members on a no profit no loss basis. It was observed that the function of the society was, therefore, covered under the provisions of section 80P(2)(a)(i) of the Income Tax Act, deduction under which is available in the case of a cooperative society engaged in carrying on the business of banking or providing credit facilities to its members. It was observed that the facts in the case of 'M/s Totagars Cooperative Sale Society', rendered by the Honorable Karnataka High Court, were clearly distinguishable and the said judgement was not applicable for allowing any claim of deduction under section 80P(2)(a)(i). It was observed that rather, the decision of the Honorable Supreme Court in the case of 'M/s Totagars Cooperative Sale Society Limited Vs. Income Tax Officer', 322 ITR 283 (SC) was in favour of the Department, as in that case, it had been held that to say that the source of income is not relevant for deciding the applicability of section 80P of the Act would not be correct, because the words 'the whole of the amount of profits and gains of business' need to be given weightage,

attributable to one of the activities specified in section 80P(2)(a), that it had been held that these words emphasize that the income in respect of which deduction is sought must constitute the operational income and not the other income which accrues to the society. It was held that therefore, the interest income earned by the society on investment with banks was not eligible for deduction under section 80P(2)(a)(i) and it was to be charged to tax as income under section 56 of the Act. It was observed that it had been submitted on behalf of the assessee during the proceedings under section 263 of the Act, that deduction had been claimed under section 80P(2)(d), that by citing the provisions and terminology of various other Acts, it had been tried to be established that SAS Central Cooperative Bank is a cooperative society and hence, the income earned by the society is eligible for deduction under section 80P(2)(d), that this contention of the society was totally opposite to the plea taken during the assessment proceedings, where the society had claimed deduction under section 80P(2)(a)(i), and not under section 80P(2)(d). It was observed that further, without prejudice, even if the contention of the society was to be considered, the fact remained that a cooperative bank other than a primary agricultural credit society, or a primary cooperative agricultural and rural development bank have been

excluded from the scope of section 80P(4) of the Act, as per which, the provisions of this section shall not apply in relation to any cooperative bank other than a primary agricultural credit society or a primary cooperative agricultural and rural development bank. It was observed that further, perusal of the assessment record clearly showed that the society, during the year under consideration, had invested in fixed deposits of a cooperative bank and not with a cooperative society, and that hence also, it was not eligible for deduction under section 80P(2)(d). It was observed that it was thus evident that the income earned by the society was not by way of advancing any credit facility to one or more of its members from out of collections made from its members, but the money had been advanced or placed at the disposal of a commercial bank which had no concern with the welfare or activity of any member or the society as a whole. It was observed that the income earned was, therefore, not the surplus generated from mutual activities of the members or of the society. It was observed that funds had travelled beyond the privity of the mutuality. It was observed that therefore, the principle of mutuality was not applicable on this interest income. It was observed that the interest income earned from banks is not exempt under the principle of mutuality, as held by the Honorable Supreme

Court in the case of 'CIT versus Bangalore Club'. It was held that in that case, the Honorable Supreme Court had even not found the interest income earned from banks in respect of a person who was a member of a club, as exempt income in the hands of the club. It was observed that in the present case, the issue was also not of the Assessing Officer adopting a possible view out of more than one views possible, but in the present case, the Assessing Officer had failed to form a view and had passively accepted the contention put forward by the society, as was evident from the assessment record and from the fact that the Assessing Officer had even not considered the applicability of the judgement of the Honorable Supreme Court in the 'Bangalore Club' case. It was observed that the Assessing Officer had also not considered the applicability of the decision of the Honorable Supreme Court in the case of 'M/s Totagars Cooperative Sale Society Limited Versus ITO', 322 ITR 283 (SC). It was held that therefore, the Assessing Officer had failed to gather the complete facts of the case and to correctly apply the law while making the assessment, which had resulted in the framing of an erroneous order which was also prejudicial to the interests of the Revenue.

6. Challenging the impugned order, the learned Counsel for the assessee has contended that the learned PCIT has wrongly assumed

jurisdiction under section 263 of the Income Tax Act to set aside the Assessment Order, whereas the Order is neither erroneous, nor prejudicial to the interests of the Revenue and as such, the assumption of jurisdiction under section 263 is beyond his competence. It has been contended that the Order of revision has been passed ignoring the settled law with regard to deductions under section 80P(2)(d) of the Income Tax Act. It has been contended that the Assessment Order was passed by the Assessing Officer after due application of mind and taking into consideration the various replies and material on record. It is submitted that therefore, the action resorted to by the learned PCIT is unwarranted and uncalled for. It has been submitted that the reasons mentioned in the notice issued by the PCIT for initiation of proceedings under section 263 are based on suspicion and conjectures and surmises, with no material whatsoever on record to substantiate the action so initiated.

7. The learned DR, on the other hand, has placed strong reliance on the impugned order.

8. We have heard the parties and have perused the material on record. It is seen that in the assessment proceedings, the Assessing Officer, through Questionnaire dated 31.07.2014/04.08.2014, vide

Question Number 13, specifically asked the assessee society about the deduction claimed to the tune of Rs. 36,41,848/-. A copy of the said Questionnaire has been filed at APB 1-3. Question Number 13 reads as follows: "

> *13. A perusal of records reveals that you have claimed deduction to the tune of Rs.36,41,848/- under Chapter VIA. Kindly state the specific provisions/section vide which the said deduction has been claimed. Also provide a detailed note elaborating as to how the conditions specified in the Act which entitled you to claim deduction under Chapter VIA are satisfied/met.*"

In response, the assessee society stated that ; *it had claimed exemption under section 80P(2)(a)(i) under Chapter VIA of the Income Tax Act, as the activity of the society is to provide short and medium term loans to its members for agricultural production, dairy farming, poultry and piggery, and to provide agricultural inputs like fertilizers and insecticides to its members on a no profit no loss basis.* A copy of the reply filed by the assessee society is at APB 4-6. The answer to Question Number 13 states that:

*"The assessee society has claimed exemption under section 80P(2)(a)(i) under Chapter VIA of the Income Tax Act, as the activity of the society is to provide short and medium term loans to its members for agricultural production, dairy farming, poultry and piggery and to provide agricultural inputs like fertilizers and insecticides to its members on a no profit no loss basis. The society is for the mutual benefit of the members and the profits if any are to be distributed amongst the members only. The functioning of the society is covered under the provisions of section 80P(2)(a)(i) of the Income Tax Act. Reliance is placed on the cases of 'Messrs Yashwant Credit Cooperative Society Limited Bengaluru Versus Department of Income Tax', reported as ITA Number 737/bang/2011 and 'ITO Versus Punjab State Cooperative Bank', reported as 300 ITR 24 (P&H). The income of the society, being for mutual benefits of its members, is also exempt from tax. Your kind attention is invited to the case of 'Bankipur Club Limited', 140 CTR 102 (SC) and 'Canara Bank Golden Jubilee Staff Welfare Fund Versus DCIT', 308 ITR 202 (Kerala) and 'Chemsford Club Limited', reported as 243 ITR 89."*

By way of Question Number 5, the Assessing Officer asked the assessee society to give complete details of all bank accounts, including FD

accounts, maintained by the society, giving the name of the bank and branch with completed address, account number and type of account, that is, whether current account, OD, loan, FDR, term, etc. The assessee society was also asked to provide its monthly bank reconciliation statement. In response, the assessee society filed complete details of the bank accounts, as well as the FDRs maintained.

9. The Assessment Order states that the returned income of the society was accepted after discussion with the Counsel of the assessee from time to time and examination of details and books of account.

10. In the notice issued under section 263 of the Income Tax Act, it was stated that the assessee society had reflected interest income of Rs. 82,13,316/- earned on FDRs maintained with Banks, which was not eligible for deduction under section 80P of the Act. A copy of this notice is at APB 8-9.

11. The assessee society filed a reply. A copy of the reply is at APB 10-13. The assessee society stated that deduction was claimed under section 80P(2)(d). It was stated that the society is a cooperative society and it had invested an amount of Rs.72 lakh with the Central Cooperative Bank Mullanpur and an amount of Rs. 9,35,92,380/- with

the Central Cooperative Bank Parol. It was stated that according to the Reserve Bank of India Act, 1934, as amended by the Banking Laws (Applicable to Cooperative Societies) Act, 1965, 'Central Cooperative Bank' means the principle cooperative society in a district in a state, the primary object of which is the financing of other cooperative societies in the district. It was stated that ;

> *"... It may be mentioned that the deduction under section 80P was rightly claimed and allowed by the ld. AO while assessing the case. The AO had called for the details of the FDRs held by the assessee. The same was submitted to the AO vide his reply to the questionnaire. Copy of the reply filed is enclosed herewith. It may be mentioned that the deduction under section 80P under the limb 80P(2)(d) had been claimed. It was claimed under the main head section 80P. Section 80P(2)(d) reads as under:–*
>
> *Section 80P(2)(d) in the Income Tax Act, 1995*
>
> *(d) in respect of any income by way of interest or dividends derived by the cooperative society from its investments with any other cooperative society, the whole of such income;*
>
> *Since the assessee is a cooperative society and this fact is clearly mentioned in the assessment order dated 31.01. 2015, passed by the worthy AO. It is eligible for deduction under sub clause (d) of section 80P(2) of the Income Tax Act. Please find enclosed herewith copy of the Balance Sheet which depicts that the assessee society*

*had invested the amount of Rs. 72,00,000/- as FDR with CCB Mullanpur and Rs. 935,92,380/- with CCB Parol. Here the CCB stands for SAS Central Cooperative Bank. The copy of the Balance Sheet and copies of the bank certificates regarding holding of the FDRs in these banks are appended herewith. According to Reserve Bank of India 1934 as amended by Banking Laws (Applicable to Co-Operative Societies) Act, 1965 'Central Cooperative Bank' means the principle cooperative society in a district in a State, the primary object of which is the financing of other cooperative societies in that district.*

*There is no dispute as to the fact that the assessee is a cooperative society and had deposited the amount with Cooperative Bank. The only point to be seen is as to whether the Cooperative Banks qualify to be Cooperative society. It may be mentioned that the word Cooperative society is a word with bigger connotation and the Cooperative Bank refers to the cooperative society doing special kind of business only. Further, all the cooperative banks are registered under Cooperative Societies Act, 1912 or under any other law for the time being in force in any state for the registration for cooperative societies. In short, the provisions of various Acts governing cooperative societies are applicable to co-operative banks since these banks are also cooperative societies within the meaning of these various Acts, governing cooperative societies. It will be observed that the cooperative bank fall within the definition of the term cooperative society. Thus, interest received by cooperative society from*

*cooperative bank is nothing but interest received from cooperative society.*

*Even under the Banking Regulation Act according to Section 56(i)(ccv) defines a primary cooperative society bank as a cooperative society. Therefore the Cooperative Society Bank would be included in the definition of the cooperative society. Section 56(i)(ccv) Banking Regulation Act reads as under:–*

*Section 56 (ccv) in Banking Regulation Act, 1949*

*(ccv) 'primary co-operative bank' means a cooperative society other than a primary agricultural credit society,*

*(1) the primary object or principal business of which is the transaction of banking business;*

*(2) the paid-up share capital and reserves of which are not less than one lakh of rupees; and*

*(3) the bye-laws of which do not permit admission of any other cooperative society as a member:*

*Provided that this sub-clause shall not apply to the admission of a cooperative bank as a member by reason of such cooperative bank subscribing to the share capital of such cooperative society out of funds provided by the State Government for the purpose;*

*In a latest judgement the Hon'ble High Court of Karnataka in the case of Pr. CIT versus Totagar Cooperative Sale Society decided exactly the same issue as to whether the interest earned from FDR with Cooperative Bank would qualify for the deduction under section 80P(2)(d) of the Income Tax Act or not. It was decided in favour of the assessee that the cooperative society earning interest from FDR with*

*Cooperative Bank would get the deduction under section 80P(2)(d) of the Income Tax Act. It may be mentioned that the revenue had gone in appeal before the High Court in view of the earlier judgement by the Honorable Supreme Court of India in the earlier year of the same assessee, where the deduction under section 80P(2)(i) was disallowed as the FDR was not with the cooperative bank. It was categorically held by the Hon'ble High Court of Karnataka that since the deposits in the current year are with the cooperative bank the deduction claimed is rightly claimed and allowed under section 80P(2)(d) of the Income Tax Act. Copies of both High Court and Supreme Court judgement are appended herewith.*

*In view of the above submissions it is submitted that the condition that the order is prejudicial to the interest of the revenue is not fulfilled as the interest on FDRs with Cooperative Bank are qualified for exemption under section 80P(2)(d) of the Income Tax Act. You are requested to drop the proceedings under section 263 of the Income Tax Act and oblige..."*

12. These submissions of the assessee society also stand reproduced in Para 2 of the Order under appeal.

13. The PCIT has observed that the contention of the assessee is totally opposite to the plea taken during the assessment proceedings where the assessee had claimed deduction under section 80P(2)(a)(i) and not under section 80P(2)(d); that any cooperative bank other than a

primary agricultural credit society or a primary cooperative agricultural and rural development bank have been excluded from the scope as per section 80P(4) of the Act; and that the assessee had invested with a cooperative bank and not with a cooperative society and hence, it was not eligible for deduction under section 80P(2)(d). To reject the claim of the assessee society, the PCIT has placed reliance on the decision in 'Bangalore Club', 350 ITR 509 (SC) and that in 'M/s Totagars Cooperative Sale Society Limited', 322 ITR 283 (SC).

14. The assessee society, on the other hand, has sought to place reliance on 'PCIT Versus Totagars Cooperative Sale Society', 392 ITR 74 (Karnataka) and 'Doaba Co-operative Sugar Mills Limited', 322 ITR 283 (P&H).

15. In the Assessment Order, the AO has observed as follows:

> *" The assessee filed its return of income on 30.03.2013 declaring a gross taxable income of Rs. NIL by claiming the benefit of exemption under section 80P(2). The return was processed under section 143(1) and subsequently, the case was selected for scrutiny. Statutory notice under section 143(2) was issued and was duly served upon the assessee on 27.09.2013. Subsequently, notices under sections 143(2) and 142(1) along with detailed questionnaire were issued on 04. 08.2014 and were duly served upon the assessee.*

*In response, Shri DS Sandhu, Advocate, attended the assessment proceedings from time to time and furnished the requisite details and documents which were examined.*

*The assessee is a cooperative society. The main function of the society is to provide short and medium term loans to its members for agricultural production, dairy farming, poultry and piggery and to provide agricultural inputs like fertilizers, insecticides, etc.*

*The society was registered on 14.11.1957 by the Assistant Register, Cooperative Societies, Ambala.*

*During the assessment proceedings, the books of account were examined and no adverse inference has been drawn and exemption claimed by the assessee under section 80P is allowed."*

16. A bare perusal of the Assessment Order evinces that indeed, while passing the Assessment Order, the AO has applied his mind, as rightly contended. It contains recitals of statutory notices alongwith detailed questionnaire having been issued to and served on the assessee. The case is stated to have been attended by the assessee's Advocate in the assessment proceedings from time to time. He has been stated to have furnished the requisite details and documents. These details and documents have been stated to have been examined by the AO. It has been categorically stated that during the assessment proceedings, the books of account were examined and no adverse inference was drawn,

and that the exemption claimed by the assessee under section 80P was being allowed. As such, it has correctly been submitted on behalf of the assessee, that everything stands examined by the Assessing Officer in the assessment proceedings and that there is no new issue pointed out by the PCIT, due to which, the revision proceedings are unsustainable.

17. In this regard, in 'CIT Versus Anil Kumar Sharma', 335 ITR 83 (Delhi), it was held that it was apparent that the Tribunal had arrived at a conclusive finding that though the Assessment Order did not patently indicate that the issue in question had been considered by the AO, the record showed that the AO had applied his mind; that once application of mind by the AO was discernible from the record, the proceedings under section 263 would fall into the area of the Commissioner having a different opinion; that their Lordships were of the view that the findings of fact arrived at by the Tribunal did not warrant any interference; that that being the position, the case would not be one of lack of enquiry and, even if the enquiry was termed as inadequate, following the decision in 'M/s Sunbeam Auto Limited', that would not, by itself, give occasion to the Commissioner to pass orders under section 263 of the Act merely because he has a different opinion in the matter. It was held that no substantial question of law arose for their Lordships' consideration. The

Appeal was dismissed. In the case at hand, as observed hereinbefore, the AO's application of mind is clearly evincible from the Assessment Order itself. Further, such application of mind is also discernible from the record, i.e., the Questionnaire issued to the assessee by the AO, in response to which, the assessee furnished the complete information sought for by the AO. It was only on the basis thereof, that having examined the same and having become satisfied with it, the AO passed the Assessment Order, accepting the returned income of the assessee society. Therefore, there was no occasion for the revisionary provisions to have been invoked by the ld. PCIT.

18. In 'CIT Versus Hindustan Marketing and Advertising Cor. Ltd.', 341 ITR 180 (Del), it was held that the Tribunal had rightly held that the case was not a case where the enquiries were not made by the AOs or the relevant material was not collected before framing the Assessment Orders; that the observation of the Commissioner that the Income Tax Officers did not make sufficient enquiry was totally subjective; that it was not a case of lack of enquiry; that the Commissioner judged the sufficiency of the enquiry by subjective standards; that it appeared that according to the Commissioner, more enquiries should have been made; and that the observations of the Commissioner were general in nature,

namely, that there was lack of proper enquiry or investigation or cosmetic treatment was given by the ITOs. In the present case also, as observed, we find that it was not a case of no enquiry and the learned PCIT has gone wrong in holding it to be so.

19. In 'CIT versus Late Shri Vijay Kumar Koganti', 195 DTR 428 (Madras), it has been held that both the issues which were the basis of exercise of power under section 263 were, in fact, the issues which were considered by the AO in the limited scrutiny, culminating in the order of assessment and that the assessee had given proper explanation, which was taken note of by the AO while completing the assessment under section 143(3) and that therefore, revision by the CIT was not sustainable. In the present case also, the assessee has given proper explanation on pertinent questions asked by the AO. Therefore, invocation of the provisions of section 263 was not proper.

20. In 'Shri Varinder Kumar Gupta Versus ITO', vide Order dated 06.05.2020, in ITA Number 754/CHD/2018, the Chandigarh Bench of the Tribunal has held that the PCIT did not even consider the reply and details furnished by the assessee and did not call for any enquiry; that the PCIT just repeated the contents of the show cause notice and set

aside the assessment order on the ground that the AO should have made more enquiries; that he directed the AO to make further fishing and roving enquiries which were even not germain to the facts and issues involved; that the Supreme Court, in the case of 'CIT Versus GM Mittal Stainless Steel (P) Limited', (2003) 263 ITR 255 (SC), has observed that the satisfaction by the Commissioner must be one objectively justifiable and based on material either legal or factual, when available, it cannot be the mere ipse dixit of the Commissioner; that therefore, the Order of the Commissioner exercising jurisdiction under section 263 of the Act could not be held to be sustainable in law. In the present case also, as seen, jurisdiction under section 263 of the Act has been exercised wrongly despite due enquiry by the AO.

21. In 'Surendra Enterprises Versus ITO', 18 ITR 325(AT-Chd.)(2012), the Chandigarh Bench of the Tribunal has held that where the Assessing Officer allowed discount paid to sub-dealer after making due enquiry and verification, invocation of the provisions of section 263 was not justified. In the case before us, it was after due enquiry, that the AO accepted the returned income of the assessee society and allowed the claim. Therefore, the revisionary power was wrongly exercised.

22. Further, as rightly contended, as held by the jurisdictional High Court in 'Hari Iron Trading Company Versus CIT', 263 ITR 437 (P&H), the assessee has no control over the way the assessment order is drafted. For arriving at the conclusion as to whether the AO has examined any issue or not, the entire record needs to be examined. Generally, issues which are accepted do not find mention in the Assessment Order and only such points are taken note of, on which, the assessee's explanations are rejected and additions or disallowances are made. The present case is a case in point, wherein, the claim of the assessee has been allowed by the AO after enquiry by way of a succinct order.

23. In 'Ganpati International Vs PCIT', (2023) 105 ITR-TRIB (Trib) 266 (CHD), (authored by one of us, the V.P.), as per the Pr. Commissioner of Income Tax, the AO, on the issue of unsecured loan received by the assessee, did not look into it, thereby completely failing to look into the three mandatory parameters of identity, credit worthiness and genuineness of the transaction. It was held that clearly, the assessee had not discharged its onus of establishing the genuineness of the transactions and the AO did not make even very basic enquiry on it. The Tribunal observed that the AO had specifically noted the requisite information/documents, as called for vide questionnaire and ordersheet,

had been produced, which were gone through and that after going through all the facts and documents available on file, the case was discussed with the counsel of the assessee and after discussion, the returned income of the assessee was accepted; that the assessee filed evidence before the AO and also before the Pr. CIT, which proved the identity of the creditors and genuineness of the transactions, alongwith sources. It was in these circumstances, that the Tribunal held that the order passed by the AO could not be said to have been passed without application of mind; that the Pr. CIT had tried to substitute the plausible view taken by the AO, with his own view; that this course of action is not permissible under the revisionary provisions u/s 263 of the Act; and that hence, the revisionary proceedings initiated u/s 263 were vitiated in law. While holding so, the decisions in 'CIT Vs Chandan Magrag Parmar', (2022) 445 ITR 674 (Bom), 'A.G.Mannesmann Demag Vs Dy. CIT' (1995) 53 ITD 533 (Del); and 'CIT Vs Sohana Woollen Mills' (2008) 296 ITR 238 (P&H) were relied on.

23.1 Further still, in 'Sh. Narain Singla Versus Principal Commissioner of Income Tax (Central) Ludhiana', 62 taxman.com 255, the Chandigarh Bench of the Tribunal has held that if there was an enquiry, even inadequate, that would not, by itself, give occasion to the Commissioner

to pass an order under section 263 of the Act, merely because he has a different opinion in the matter.

24. Regarding the merits of the issue of deduction claimed under section 80P, the ld. Counsel for the assessee has contended that the assessee is entitled to exemption under section 80P(2)(a)(i) as well as section 80P(2)(d); that section 80P(2)(a)(i) deals with deduction in respect of profits and gains of business in the case of a cooperative society carrying on the business of banking or providing credit facilities to its members, if the said income is assessable as income from business, whereas section 80P(2)(d) provides for deduction in respect of income by way of interest or dividend derived by the assessee from its investments with any other cooperative society; that the assessee is a cooperative society and had invested an amount of Rs.72 lacs with Central Cooperative Bank, Mullanpur and Rs.9,35,92,380/- with Central Cooperative Bank, Parol, both being members of SAS Central Cooperative Bank; that according to the Reserve Bank of India Act, 1934, as amended by the Banking Laws (Applicable to Cooperative Societies) Act, 1965, 'Central Cooperative Bank' means the principal cooperative society in a district in a state, the primary object of which is the financing of other cooperative societies in the district; that the PCIT has applied the

decision of the Honorable Supreme Court in the case of 'Totagars Cooperative Sale Society Limited', 322 ITR 283 (SC), which is not applicable to the facts of the assessee's case; that in the case before the Honorable Supreme Court, the issue pertained to claiming of deduction under section 80P(2)(a)(i) in respect of interest income and not under section 80P(2)(d) being amount not invested with a cooperative bank; that as such, the facts are distinguishable; that in the case of 'PCIT Versus Totagars Cooperative Sale Society', 392 ITR 74 (Karnataka), it has been held that for the purposes of section 80P(2)(d), a cooperative bank should be considered as a cooperative society; that while holding so, the Hon'ble High Court has considered and distinguished the decision of the Honorable Supreme Court in the case of 'Totagars Cooperative Sale Society'.

25. The learned Counsel has also sought to place reliance on the decision of the jurisdictional High Court in the case of 'CIT Versus Doaba Cooperative Sugar Mills Limited', 230 ITR 774 (P&H). It has been stated that this decision has been followed by the Honorable Gujarat High Court in the case of 'Surat Vanker Sahakari Sangh Limited', 421 ITR 134 (Gujarat).

26. It has been contended that the learned PCIT has gone wrong in applying the provisions of Section 80P(4) of the Act, though the same are not applicable to the case; that this is so, because the assessee is not a cooperative bank licenced by the Reserve Bank of India to carry on banking business and so, Section 80P(4) is not at all applicable. In this regard, reliance has been sought to be placed on the following decisions:

*i 'Mavilayi Cooperative Bank Limited and Others Versus Commissioner of Income tax and Another', 431 ITR 1 (SC)*

*ii 'Borivali Jankalyan Sahkari Patpedhi Limited Versus ITO', Order dated 3.3.2021, passed by the Mumbai Bench of the Tribunal, in ITA Number 5230/MUM/2019, for AY 2015-16*

*iii 'Vavveru Cooperative Rural Bank Limited', 396 ITR 371 (Telangana and Andhra Pradesh)*

*iv 'Kaliandas Udyog Bhawan Premises Cooperative Society Limited Versus ITO', 94 taxmann.com 15 (Mumbai-Trib.)*

*v. 'Rena Sahakari Sakhar Karkhana Limited Versus PCIT", 138 taxmann.com 532 (Pune-Trib.)*

*vi. 'Gramin Sewa Sahakari Samiti Maryadit Versus ITO', 138 taxmann.com 476 (Raipur-Trib.)*

*vii. 'Lokmangal Nagri Sahakari Path Sanstha Maryadit Versus PCIT–4, Pune', ITA Number 231/Pune/2022*

*viii. 'Vibhag Gram Vikas Cooperative Credit Society Limited Versus PCIT', 189 ITD 601 (Surat)*

*ix. 'Lands End Cooperative Housing Society Limited Versus ITO', Order dated 15.1.2016, passed by the Mumbai Bench of the Tribunal in ITA Number 3566/MUM/2014, for AY 2009-10*

*x. 'ITO Versus Shree Keshorai Patan Sahakari Sugar Mill', Order dated 31.1.2018, passed by the Jaipur Bench of the Tribunal in ITA Numbers 418 and 419/JP/2017 and CO Numbers 23 and 24/JP/2017, for a AYs 2013-14 and 2014-15*

*xi. 'Shiksha Vibhag Karmacharigan Sahakari Samiti Limited Versus ITO', Order dated 17.6.2019, passed by the Jaipur Bench of the Tribunal in ITA Numbers 281 and 282/JP/2017*

*xii. 'Shahpura Gram Seva Sahakari Samiti Limited Versus ITO', Order dated 15.10.2020, passed by the Jaipur SMC Bench of the Tribunal in ITA Number 767/JP/2019, for AY 2015-16.*

27. The learned DR, on the other hand, has placed strong reliance on the impugned order. It has been stated that as correctly observed by the learned PCIT, the assessee society is a cooperative society and its function, since its inception, is to provide short and medium term loans to its members for agricultural production, dairy farming, poultry and piggery, and to provide agricultural inputs, like fertilizers and insecticides to its members, on a no profit no loss basis; that during the year under consideration, the society had shown income from business, rent, dividend and interest from FDR with banks; that the society claimed exemption under section 80P(2)(a)(i) under Chapter VIA of the Income Tax Act because of its activities; that the society is for the mutual benefit of the members and the profits, if any, are to be distributed amongst the members only; that the functioning of the society is under the provisions of section 80P(2)(a)(i) of the Act; that the funds collected

for the objective of the society have not been advanced to any one or more of the members without interest, or on a concessional interest, or at a commercial rate, or above the commercial rates available, but have been placed at the disposal of non-members, that is, banks, for a purely commercial activity of the non-member Banks, having nothing to do with the mutual benefit of the members of the society, or the society as such; that in its reply to the AO's Questionnaire, the assessee had itself submitted in Para 13, that it had claimed exemption under section 80P(2)(a)(i) of the Act; that the function of the society is, therefore, covered under the provisions of section 80P(2)(a)(i) of the Act; that the decision of the Karnataka High Court in the case of 'Totagars Cooperative Sale Society' is distinguishable; that the said decision is not applicable for allowing any claim of deduction under section 80P(2)(a)(i); that rather, the decision of the Honorable Supreme Court in the case of 'Totagars Cooperative Sale Society Limited Versus Income Tax Officer', 322 ITR 283 (SC) is in favour of the Department; that in that case, the Honorable Supreme Court has held that to say that the source of income is not relevant for deciding the applicability of section 80P of the Act would not be correct, because the words 'the whole of the amount of profits and gains of business' are required to be given weightage to, as these words

emphasize that the income, in respect of which deduction is sought, must constitute the operational income, and not the other income which accrues to the society; that in view of this decision of the Hon'ble Supreme Court, the interest income earned by the society on investment with banks is not eligible for deduction under section 80P(2)(a)(i) and it is to be taxed under Section 56 of the Act; that in such facts, the society is wrong in contending that SAS Central Cooperative Bank is a cooperative society and that hence, the income earned by the Mullanpur Garibdas Cooperative Multipurpose Society is eligible for deduction under section 80P(2)(d); that this contention is totally opposite to the plea taken during the assessment proceedings, where the society had claimed deduction under section 80P(2)(a)(i), and not under section 80P(2)(d); that otherwise also, even if such contention is considered, the fact remains that any cooperative bank other than a primary agricultural credit society or a primary cooperative agricultural and rural development bank have been excluded from the scope of section 80P(4) of the Act; that as per the provisions of section 80P(4), the provisions of section 80P shall not apply in relation to any cooperative bank other than a primary agricultural credit society and rural development bank; that from the assessment record, during the year under consideration, the assessee had invested in

fixed deposit of a cooperative bank and not in a cooperative society, and therefore also, it is not eligible for deduction under section 80P(2)(d) of the Act; that therefore, evidently, the income earned by the society is not by way of advancing any credit facility to one or more members from out of collections made by the society from its members, but the money has been advanced or placed at the disposal of commercial banks, which have no concern with the welfare or activity of any member, or the society as a whole; that therefore, the income earned is not the surplus generated from mutual activities of the members or of the society; that funds have travelled beyond the privity of the mutuality; that therefore, the principle of mutuality is not applicable on this interest income; that therefore, the interest income earned from a bank is not exempt under the principle of mutuality, as held by the Honorable Supreme Court in the case of 'CIT Versus Bangalore Club'; that in that case, interest income earned from Bank in respect of a person who was also a member of a club, was not found to be exempt income in the hands of the club; that in the present case, the issue is also not of adopting a possible view out of more than one possible views; that in fact, in the present case, the AO had failed to form a view and had merely passively accepted the contention of the assessee society, even not taking into consideration the

applicability of the Supreme Court judgement in the case of 'Bangalore Club'; that the AO has also not considered the applicability of the judgement of the Honorable Supreme Court in the case of 'The Totgars Cooperative Sale Society Limited Versus Income Tax Officer, Karnataka', 322 ITR 283 (SC); and that the AO failed to gather the complete facts of the case and to correctly apply the law while framing the assessment, resulting in the framing of an erroneous order which was also prejudicial to the interests of the Revenue and which was rightly set aside by the PCIT.

28. Having considered the matter in the light of the rival contentions and the material placed on record, we find that it has been mentioned in the Assessment Order that after the issuance and service of the notice under section 143(2) of the Act, notices under sections 143(2) and 142(1), along with detailed Questionnaire were served on the assessee, in response to which, the proceedings were attended from time to time by the Advocate of the assessee and the requisite details and documents were furnished, which were examined. It has been stated that the assessee is a cooperative society; that the main function of the society is to provide short and medium term loans to its members for agricultural production, dairy farming, poultry and piggery, and to provide

agricultural inputs like fertilizers and insecticides, et cetera; that the society was registered on 14.11.1957 by the Assistant Registrar, Cooperative Societies, Ambala; that during the assessment proceedings, the books of account of the society were examined and no adverse inference had been drawn; and that the exemption claimed by the society under section 80P was being allowed.

29. In 'Hari Iron Trading Company Versus CIT', 263 ITR 437 (P&H), it has been held by the jurisdictional High Court that the entire record has to be examined before arriving at the conclusion as to whether the AO has examined any issue or not; that generally, the issues which are accepted do not find mention in the assessment order and only such points are taken note of, as on which the assessee's explanations are rejected and additions or disallowances are made.

30. The record in the present case shows that as per the Questionnaire (APB 1-3) issued by the AO, the following Question Number 13 was asked:

> *"13. A perusal of records reveals that you have claimed deduction to the tune of Rs. 36,41,848/- under Chapter VIA. Kindly state the specific provisions/section vide which the said deduction has been claimed. Also provide a detailed note elaborating as to how the conditions specified in the Act which entitled you to claim deduction under chapter VIA are satisfied/met."*

31. The assessee society, vide reply (APB 4-6), responded as follows:

*"13. The assessee society has claimed exemption under section 80P(2)(a)(i) under Chapter VIA of the Income Tax Act, as the activity of the society is to provide short and medium term loans to its members for agricultural production, dairy farming, poultry and piggery, and to provide agricultural inputs like fertilizers and insecticides to its members on a no profit no loss basis. The society is for the mutual benefit of the members and the profits if any are to be distributed amongst the members only. The functioning of the assassee society is covered under the provisions of section 80P(2)(a)(i) of the Income Tax Act. Reliance is placed on the cases of 'M/s Yashwant Credit Coop Society Limited Bengaluru Versus Department of Income Tax', reported as ITA Number 737/Bang/2011 and 'ITO Versus Punjab State Coop Bank', reported as 300 ITR 24 (P&H).*

*The income of the society being for mutual benefits of its members, is also exempt from tax. Your kind attention is invited to the case of 'Bankipur Club Limited', 140 CTR 102 (SC) and 'Canara Bank Golden Jubilee Staff Welfare Fund Versus DCIT', 308 ITR 202 (Kerala) and 'Chemsford Club Limited', reported as 243 ITR 89".*

32. It is, therefore, seen from the examination of the record, that indeed, as rightly stated by the society, the AO has examined the issue of its claim of deduction under section 80P of the Act. In Para 2 of the Assessment Order, the AO has recorded that the requisite details and

documents were furnished from time to time and the same were examined. In Para 5, it has been stated that during the assessment proceedings, the books of account were examined and no adverse inference was drawn and the exemption claimed under section 80P was allowed.

33. As observed in 'Hari Iron Trading Co.' (supra), the issue having been accepted, the same was not discussed elaborately in the assessment order, as is generally the case. Moreover, again, as observed in 'Hari Iron Trading Co.' (supra), the assessee had no control over as to how the assessment order was drafted or framed.

34. In 'CIT Versus Anil Kumar Sharma', 335 ITR 83 (Delhi), it has been observed that the Tribunal arrived at a conclusive finding that though the assessment order did not patently indicate that the issue in question had been considered by the AO, the record showed that the AO had applied his mind; that once such application of mind is discernible from the record, the proceedings under section 263 would fall into the area of the Commissioner having a different opinion; that the case would not be one of lack of enquiry and even if the enquiry was termed as inadequate, following the decision in 'M/s Sunbeam Auto Limited' that

would not, by itself, give occasion to the Commissioner to pass orders under section 263 of the Act, merely because he has a different opinion in the matter. Similar is the position in the case at hand, as discussed. The application of mind by the AO is discernible from the record and the power under section 263 of the Act was exercised on the basis of a mere difference in opinion with the AO, rendering such exercise of revisionary power to be invalid.

35. In 'CIT Versus Hindustan Marketing and Advertising Cor. Ltd.', 341 ITR 180 (Delhi), it was held that the Tribunal had rightly held that the case was not a case where enquiries were not made by the AO, or the relevant material was not collected before framing the Assessment Orders; that the observation of the Commissioner that the Income Tax Officers did not make sufficient enquiry was totally subjective; that it was not a case of lack of enquiry; that the Commissioner judged the sufficiency of enquiry by subjective standards; that it appeared that according to the Commissioner, more enquiries should have been made; and that the observations of the Commissioner were general in nature, namely, that there was lack of proper enquiry, or investigation, or cosmetic treatment was given by the ITOs. Likewise, here also, it is not a case where enquiries were not made by the AO, or the relevant material

was not collected before framing the Assessment Order. The relevant material was collected by enquiry through Questionnaire. The material submitted i7jn response to the same was examined and it was only thereafter, that the Assessment Order was framed, allowing the claim made. The conclusion that the AO did not make enquiry was a subjective conclusion, rendering the invocation of the revisionary power to be unsustainable in law.

36. In 'CIT Versus Late Sh. Vijay Kumar Koganti', 195 DTR 428 (Madras HC), it was held that both the issues which were the basis of the exercise of power under section 263 were, in fact, the issues which were considered by the AO in the limited scrutiny, culminating in the order of assessment under section 143(3); that the assessee had given proper explanation which was taken note of by the AO; and that therefore, revision by the CIT was not sustainable. In the present case too, the issue which was the basis of exercise of revisionary power was, in fact, the issue considered by the AO in the scrutiny assessment proceedings, culminating in the Assessment Order passed under section 143(3) of the Act. The assessee had given proper explanation, which was taken due note of by the AO while framing the Assessment Order. Therefore, the revisionary proceedings are unsustainable.

37. In 'Shri Varinder Kumar Gupta Versus ITO', the Chandigarh Bench of the Tribunal, vide Order dated 6.5.2020, passed in ITA Number 754/CHD/2018, has held that the learned PCIT did not even bother to consider the reply and details furnished by the assessee, what to talk of calling for any enquiry, etc.; that he just repeated the contents of the show cause notice and set aside the Assessment Order on the ground that the AO should have made more enquiries; that he had directed the AO to make further fishing and roving enquiries, which were not germane to the facts and issues involved; that the Supreme Court, in the case of 'CIT Versus GM Mittal Stainless Steel (P) Limited', 263 ITR 255 (SC), has observed that the satisfaction by the Commissioner must be one objectively justifiable and based on material, legal or factual, when available, and it cannot be the mere ipse dixit of the Commissioner; and that so, the order of the Commissioner exercising jurisdiction under section 263 of the Act could not be held to be sustainable in law. Similarly, here also, the satisfaction of the Commissioner is not based on any material available. Rather, it is against the material available on record, that is, the Questionnaire issued by the AO and the reply file thereto by the society alongwith all the requisite details and information,

which were duly examined by the AO before passing the Assessment Order.

38. In 'Surindra Enterprises Versus ITO', 18 ITR 325 (AT) (Chd.), under similar circumstances, it was held that where the AO had allowed discount paid to sub-dealer after making due enquiry and verification, invocation of the provisions of section 263 was not justified.

39. It was held in 'CIT Versus Deepak Mittal', 324 ITR 411 (P&H), that the Tribunal had found that the AO had given a categorical finding that the assessee was engaged in the process of manufacturing of products and, accordingly, he had granted concession under section 80-IB; that the claim of the assessee had been found to be genuine; that the AO had also examined the various workers of the assessee and had then recorded the finding; that the AO was justified in granting the special deduction under section 80-IB; and that the order of revision disallowing the special deduction was not valid. In the present case, the AO had examined the material placed on record by the society in response to the Questionnaire issued. The claim of the society was found to be justified. It was thereupon that the claim was allowed. Therefore, invocation of revisionary power was uncalled for.

40. In 'Sh. Narain Singla Versus Principal Commissioner of Income Tax (Central), Ludhiana', 62 taxmann.com 255, the Chandigarh Bench of the Tribunal has held that if there was an enquiry, even inadequate, that would not, by itself, give occasion to the Commissioner to pass order under section 263 of the Act merely because he has a different opinion in the matter. In the present case, as seen, there has been an enquiry conducted by the AO. As such, there was no occasion for power under section 263 of the Act to be invoked.

41. No decision contrary to the above decisions has been brought to our notice.

42. In view of the above, we find the assessee to be correct in contending that as available from the record, the AO had duly applied his mind to the issue of the assessee's claim of deduction under section 80P of the Income Tax Act and he had only thereafter allowed it while passing the Assessment Order; and that therefore, the learned PCIT has erred in invoking powers under section 263 of the Act and setting aside the Assessment Order. This grievance of the assessee society is accepted.

43. Now, coming to the merits of the issue of deduction claimed under section 80P(2)(d) of the Income Tax Act, the learned PCIT has held that

the AO had failed to consider the applicability of the decision of the Hon'ble Supreme Court in the case of 'The Totgar's Cooperative Sale Society Limited Versus Income Tax Officer', 322 ITR 283 (SC), in which, the Supreme Court held that the words 'the whole of the amount of profits and gains of business' emphasize that the income, in respect of which deduction is sought, must constitute the operational income and not the other income which accrues to the society; that interest income earned on funds not required for business purposes at the given point of time falls in the category of 'other income', which is taxable under section 56 of the Act. It has been held that any cooperative bank other than a primary agricultural credit society, or a primary cooperative agricultural and rural development bank, have been excluded from the scope of section 80P(4) of the Act. It has been observed that during the year under consideration, the society invested in fixed deposits of cooperative banks and not with a cooperative society, and that so, it is not eligible for deduction under section 80P(2)(d). It has been held that evidently, the income earned by the society is not by way of advancing any credit facility to one or more members from out of collections made from its members, but the money has been advanced to, or placed at the disposal of, commercial banks, which have no concern with the welfare of any

member, or the society as a whole. It was held that therefore, the income earned is not the surplus generated from mutual activities of the members, or of the society; that funds have travelled beyond the privity of the mutuality; that therefore, the principle of mutuality is not applicable on this interest income; that the interest income earned from a bank is, as such, not exempt under the principle of mutuality, as held by the Honorable Supreme Court in the case of 'Bangalore Club'.

44. It is seen that section 80P(2)(d) provides for deduction in respect of income by way of interest or dividend derived by the assessee from its investments with any other cooperative society. The assessee is a cooperative society. It had invested amounts with the Central Cooperative Bank, Mullanpur and the Central Cooperative Bank, Parol. Both these Banks are members of the SAS Central Cooperative Bank. It remains undisputed that as per the Reserve Bank of India Act, 1934, as amended by the Banking Laws (Applicable to Cooperative Societies) Act, 1965, 'Central Cooperative Bank' means the principle cooperative society in a district in a state, the primary object of which is the financing of other cooperative societies in the district. This being so, the investment made by the assessee society is nothing other than investment with

another cooperative society and, therefore, interest earned thereon is entitled to deduction under section 80P(2)(d) of the Act.

45. Further, so far as regards the decision of the Honorable Supreme Court in the case of 'The Totgar's Cooperative Sale Society Limited', 322 ITR 283 (SC), the said decision is undisputedly not applicable so far as regards the claim of exemption under section 80P(2)(d).In that case, the assessee was a cooperative credit society. During the relevant assessment years it had surplus funds which it invested in short term deposits with banks and in government securities. On such investments, interest accrued to the assessee. The assessee provided credit facilities to its members and also marketed the agricultural produce of its members. The substantial question of law which arose was as to whether such interest income would qualify for deduction as business income under section 80P(2)(a)(i) of the Income Tax Act.

46. Therefore, evidentially, the decision of the Honorable Supreme Court in 'The Totgars Cooperative Sale Society Limited Versus Income Tax Officer, Karnataka ' (supra) is not applicable to the facts of the present case, as rightly contended on behalf of the assessee society.

47. In 'Principal Commissioner of Income Tax and Another Versus Totagars Cooperative Sale Society', 392 ITR 74 (Karnataka), the issue involved was deductibility or otherwise, under section 80P(2)(d), of interest earned from deposits in a cooperative bank, as is the case herein. It was observed that the word 'cooperative society' is a word of a large extent and it denotes a genus, whereas the word 'cooperative bank' is a word of limited extent which merely demarcates and identifies a particular species of the genus 'cooperative societies'; that cooperative society can be of different nature and can be involved in different activities; that cooperative society or bank is merely a variety of cooperative societies; that therefore, cooperative bank, which is a species of the genus, would necessarily be covered by the word 'cooperative society'; that furthermore, section 56(i)(ccv) of the Banking Regulations Act, 1949 defines primary cooperative society or bank as the meaning of 'cooperative society'; and that therefore, under section 80P(2)(d) of the Income Tax Act, 1961, the amount of interest earned from a cooperative society or bank would be deductible. It was held that the decision of the Honorable Supreme Court in the case of 'The Totgar's Cooperative Sale Society Limited Versus Income Tax Officer, Karnataka', 322 ITR 283 (SC) was not applicable, since that case dealt with the interpretation and the

deduction which would be applicable under section 80P(2)(a)(i) of the Income Tax Act, whereas in the case before the Honorable High Court, the interpretation required was of section 80P(2)(d) of the Income Tax Act and not of section 80P(2)(a)(i) of the Income Tax Act. It was held that therefore, neither the substantial question of law, as to whether the Tribunal was justified in deleting the additions made by the assessing authority, being the disallowed deduction claimed under section 80P(2)(d) of the Income Tax Act, and in the light of the decision of the Supreme Court with regard to the same exact assesse, namely, the Totgar's Cooperative Sale Society Limited, in Civil Appeal Numbers 1622 to 1629 of 2010, decided by the Apex Court on 8.2.2010, reported as 322 ITR 283 (SC), nor the substantial question of law as to whether the Tribunal was justified in not following the said decision rendered by the Honorable Supreme Court, wherein, the Apex Court had held that the words used in section 80P, 'the whole of the amount of profits and gains of business' emphasize that the income in respect of which deduction is sought, must constitute the operational income and not the other income which accrues to the society and such interest earned on funds which are not required for business purposes falls under the category of 'other

income' taxable under the Income Tax Act, even arose in the case before the Honorable High Court.

48. This aspect of the matter has wrongly not been considered by the learned PCIT while passing the order under appeal.

49. In 'Commissioner of Income Tax Versus Doaba Co-op. Sugar Mills Limited' 230 ITR 774 (P&H), it has been held by the jurisdictional High Court, that interest received by a cooperative society on any investment in another cooperative society qualifies for deduction under section 80P(2)(d). While holding so, it was observed that section 80P(2)(d) allows whole deduction of an income by way of interest or dividend derived by the cooperative society from its investment with any other cooperative society; and that this provision does not make any distinction in regard to the source of the investment because this section envisages deduction in respect of any income derived by the cooperative society from any investment with a cooperative society.

50. 'Doaba Cooperative Sugar Mills' (supra) has been followed in 'Surat Vankar Sahakari Sangh Limited Versus Assistant Commissioner of Income Tax', 421 ITR 134 (Gujarat).

51. No decision to the contrary has been cited before us.

52. Then, the learned PCIT has applied the provisions of section 80P(4). This has been challenged before us. It is seen that section 80P(4) states that the provisions of section 80P shall not apply in relation to any cooperative bank other than a primary agricultural credit society or a primary cooperative agricultural and rural development bank, both defined in the Explanation to section 80P(4). Section 80P deals with deduction in respect of income of cooperative societies. So, the exclusion in section 80P(4) is obviously with regard to the income earned by a cooperative bank. The assessee, on the other hand, is not a cooperative bank, it is a cooperative society. The income earned by it is interest income from cooperative banks and it is this income for which deduction is being sought under the section. Therefore, section 80P(4) is not applicable to the income of the society. The learned PCIT, hence, has wrongly applied it to the present case.

53. In this regard, The Honorable Supreme Court, in 'Mavilayi Service Cooperative Bank Limited and Others Versus Commissioner of Income Tax and Another', 431 ITR 1 (SC), has held that the limited object of section 80P(4) is to exclude cooperative banks that function at par with other commercial banks, that is, which lend money to members of the public.

54. In 'Borivali Jankalyan Sahakari Patpedhi Limited Versus ITO' (supra), the Mumbai Bench of the Tribunal held that the bone of contention therein was the interest income earned from investment of surplus funds with cooperative banks, as to whether such income was not eligible for deduction under section 80P(2)(d) or 80P(2)(a)(i) of the Income Tax Act. It was observed that in 'CIT Versus Kalpadi Cooperative Township Limited', (2016) 74 taxmann.com 226 (Madras), the Honorable Madras High Court had held that a cooperative credit society providing credit facilities to its members alone and not to the general public at large, not receiving money by way of deposits on the general public, would not be treated as a cooperative bank, it would be entitled to deduction under section 80P. It was observed that in 'CIT Versus Nilgiris Cooperative Marketing Societies Limited', 77 taxmann.com 23 (Madras), again, the Hon'ble Madras High Court had held that where the assessee cooperative credit society was providing credit facilities to its members alone and not to the general public at large and it also did not receive monies deposited on the general public, it would not be termed as a cooperative bank. It was observed that further, the Honorable Karnataka High Court, in 'PCIT and Another Versus Totagars Cooperative Sale Society', 392 ITR 74 (Karnataka), it was held that the issue whether a

cooperative bank is considered to be a cooperative society is no longer res integra, for the said issue has been decided by the ITAT itself in different cases; that moreover, the words 'cooperative society' are the words of a large extent and denote a genus, whereas the words 'cooperative bank' are words of a limited extent which merely demarcate and identify a particular species of the genus 'cooperative society'; that cooperative society can be of different nature and can be involved in different activities, whereas 'cooperative bank' is merely a variety of cooperative societies; and that thus, 'cooperative bank', which is a species of the genus, would necessarily be covered by the words 'cooperative society'; that furthermore, even under section 56 (i)(ccv) of the Banking Regulations Act, 1949, 'primary cooperative society bank' has been defined as the meaning of 'cooperative society'; that therefore, 'cooperative society bank' would be included in the words 'cooperative society'; that admittedly, the interest which the assessee had earned was from a cooperative society bank; that therefore, according to section 80P(2)(d) of the Income Tax Act, the said amount of interest earned from a cooperative society bank would be deductible from the gross income of the cooperative society in order to assess its total income; and that therefore, the AO was not justified in denying the said deduction. It was

observed that therefore, the Honorable Karnataka High Court had held that for the purposes of section 80P(2)(d), a cooperative bank should be considered as a cooperative society. It was observed that in 'Mavilayi Service Cooperative Bank Limited Versus CIT', (2021) 123 taxmann.com 161 (SC), it has been held that the material would clearly indicate that the limited object of Section 80P(4) is to exclude cooperative banks that function at par with other commercial banks, that is, which lend money to members of the public; that therefore, if the Banking Regulation Act, 1949 is to be seen, what is clear from section 3 read with section 56 is that a primary cooperative bank cannot be a primary agricultural credit society, as such a cooperative bank must be engaged in the business of banking as defined by Section 5(b) of the Banking Regulation Act, 1949, which means the accepting, for the purpose of lending or investment, of deposits of money from the public; that likewise, under section 22(1)(b) of the Banking Regulation Act, 1949 as applicable to cooperative societies, no cooperative society shall carry on banking business in India unless it is a cooperative bank and holds a licence issued in that behalf by the RBI; that as opposed to this, a primary agricultural credit society is a cooperative society, the primary object of which is to provide financial accommodation to its members for agricultural purposes, or for purposes

connected with agricultural activities; that therefore, the ratio decidendi of 'Citizen Cooperative Society Limited', 397 ITR 1 (SC) must be given effect to; that section 80P of the Income Tax Act, being a benevolent provision enacted by the parliament to encourage and promote the credit of the cooperative sector in general, must be read liberally and reasonably and if there is ambiguity, in favour of the assessee; that a deduction that is given without any reference to any restriction or limitation, cannot be restricted or limited by implication, as was sought to be done by the Revenue in that case by adding the word 'agriculture' in section 80P(2)(a)(i), when it was not there; that further, section 80P(4) is to be read as a proviso, which proviso now specifically excludes cooperative banks which are cooperative societies engaged in the banking business, that is, engaged in lending money to members of the public, which have a licence in this behalf from the RBI; that judged by this touchstone, it was clear that the impugned Full Bench judgement was wholly incorrect in its reading of 'Citizen Cooperative Society Limited'; that clearly, therefore, once section 80P(4) was out of harm's way, all the assessees in that case were entitled to the benefit of the deduction contained in section 80P(2)(a)(i), notwithstanding that they may also be giving loans to their members, which were not related to agriculture; and

that also, in case it was found that there were instances of loans being given to non-members, profits attributable to such loans obviously could not be deducted. It was held that to summarise, it could be said that the limited object of section 80P(4) is to exclude cooperative banks that function at par with commercial banks, that is, which lend money to members of the public.

55. In 'Vavveru Cooperative Rural Bank Limited' (Telangana and Andhra Pradesh), it was held that if there is a cooperative society which is carrying on several activities including those activities listed in sub clauses (i) to (vii) of section 80P(2)(a) of the Income Tax Act, 1961, the benefit under clause (a) will be limited only to the profits and gains of business attributable to any one or more of such activities; that but, if the same cooperative society has an income not attributable to any one or more of the activities listed in sub-clauses (i) to (vii) of clause (a), it may go out of the purview of clause (a), but still, the cooperative society may claim the benefit of clause (d) or (e) of section 80P(2) of the Act, either by investing the income in another cooperative society, or investing the income in the construction of a godown or warehouse and letting it out; that the assessee was an agricultural cooperative credit society engaged in the sale of fertilizers to its members; that a portion of the

income derived therefrom was deposited in nationalized banks; that the income derived by way of interest on fixed deposits made by the assessee with banks was treated by the assessee as income attributable to the profits and gains of business eligible for deduction under section 80P(2)(a) of the Act; that the Assessing Officer had treated the income as income from other sources not eligible for deduction; that the investment made by the assessee in fixed deposits in nationalised banks was of its own monies; that if the assessee had invested those amounts in fixed deposits in other cooperative societies, or in the construction of godowns and warehouses, the Department would have granted the benefit of deduction under clause (d) or (e) of section 80P(2) of the Act; that the original source of the investment made by the assessee in nationalised banks was admittedly the income that the assessee derived from the activities listed in sub-clauses (i) to (vii) of clause (a) of section 80P(2); that the character of such income might not be lost, especially when the statute uses the expression 'attributable to' and not 'derived from' or 'directly attributable to'; and that thus, the assessee was entitled to deduction under section 80P(2)(a) of the Act.

56. In 'Kalian Das Udyog Bhawan Premises Cooperative Society Limited Versus ITO', 94 taxmann.com 15 (Mumbai), it was held that the

issue that a cooperative society would be entitled for claim of deduction under section 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 decisions in 'Land End Cooperative Housing Society Limited', 'Sea Green Cooperative Housing Society Limited' and 'Marwanjee Park Cooperative Housing Society Limited'; that the Hon'ble High Court of Karnataka, in the case of 'Totagars Cooperative Sale Society' and the Hon'ble High Court of Gujarat, in the case of 'State Bank of India', had also held that the interest income earned by the assessee on its investments held with a cooperative bank would be eligible for deduction under section 80P(2)(d) of the Act; that still further, CBDT Circular Number 14 dated 28.12.2006 also makes it clear beyond any scope of doubt that the purpose behind the enactment of subsection 4 of section 80P was to provide that the cooperative banks which are functioning at par with other banks would no more be entitled for the claim of deduction under Section 80P(4) of the Act; that the decision of the Honorable Supreme Court in the case of 'Totagars Cooperative Sale Society Limited' was distinguishable on facts; that the said decision was in the context of section 80P(2)(a)(i), and not on the entitlement of a cooperative society towards deduction under section 80P(2)(d), on the

interest income on the investment with a cooperative bank; that the decision of the Mumbai Tribunal in the case of 'Vaibhav Cooperative Credit Society' was also distinguishable on facts; that the order in that case was in the context of adjudication of the entitlement of the assessee cooperative bank towards claim of deduction under section 80P(2)(a)(i) of the Act; that it was in the background of the said facts that the Tribunal, after carrying out a conjoint reading of section 80P(2)(a)(i) and Section 80P(4), had decided the issue before them; that still further, the order of the Mumbai Bench of the Tribunal in the case of 'Sri Sai Datta Cooperative Credit Society Limited' was also not of any help, since in that case, the Tribunal had set aside the issue to the file of the AO for fresh examination; that in the case of 'Totagars Cooperative Sale Society', the Honorable Karnataka High Court had concluded that a cooperative society would not be entitled to the claim of deduction under section 80P(2)(d); that however, as held by the Honorable Bombay High Court in the case of 'K Subramanian Versus Siemens India Limited', (1985) 156 ITR 11 Bombay, where there is a conflict between decisions of non-jurisdiction High Courts, the view which is in favour of the assessee is to be preferred as against that taken against them; that therefore, the view taken by the Honorable Karnataka High Court in the case of 'Totagars

Cooperative Sale Society' and that of the Honorable High Court of Gujarat in the case of 'State Bank of India', in which, it was observed that the interest income earned by a cooperative society on its investments held with a cooperative bank would be eligible for the claim of deduction under section 80P(2)(d) of the Act; that therefore, it could not be held 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 cooperative bank; and that therefore, the interest income earned by the assessee on the investments held with the cooperative bank would be entitled for the claim of deduction under section 80P(2)(d) of the Income Tax Act.

57. In 'Rena Sahakari Sakhar Karkhana Limited Versus PCIT', 138 taxmann.com 532 (Pune-Trib.), it was held that in that case indulgence had 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 or deposits made with the cooperative banks was in order; that the issue involved hinged around the adjudication of the scope and gamut of subsection 4 of section 80P as made available on the statute vide the Finance Act, 2006, with effect from 1.4.2007; that the PCIT, while passing order under section 263 of

the Act, was of the view that pursuant to the insertion of subsection 4 of section 80P, the assessee would no more be entitled for the claim of deduction under section 80P(2)(d) in respect of the interest income earned on the amounts which were parked as investments or deposits with a Cooperative Bank, other than a primary agricultural credit society or a primary cooperative agricultural and rural development bank; that observing that the cooperative banks from where the assessee was in receipt of interest income were not cooperative societies, the PCIT was of the view that the interest income earned on such investments or deposits would not be eligible for deduction under section 80P(2)(d) of the Act; that on a perusal of section 80P(2)(d), it could safely be gathered that interest income derived by an assessee cooperative society from its investments held with any other cooperative society shall be deducted in computing its total income; that what is relevant for a claim of deduction under section 80P(2)(d) is that the interest income should have been derived from the investments made by the assessee cooperative society with any other cooperative society; that the PCIT was correct in holding that with the insertion of subsection 4 in section 80P of the Act, 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 cooperative bank

other than a primary agricultural credit society or a primary cooperative agricultural and rural development bank; that however, at the same time, the PCIT was not correct in holding that the aforesaid amendment would jeopardize the claim of deduction of a cooperative society under section 80P(2)(d) in respect of its interest income on investments or deposits parked with a cooperative bank; that as long as it is proved that the interest income is being derived by a cooperative society from its investments made with any other cooperative society, the claim of deduction under section 80P(2)(d) would be duly available; that has per section 290 of the Act, 'Cooperative Society' means a cooperative society registered under the Cooperative Societies Act, 1912, or under any other law for the time being in force in any state for the registration of cooperative societies; that though cooperative banks, pursuant to the insertion of subsection 4 in section 80P, would no more be entitled for claim of deduction under section 80P of the Act, as a cooperative bank continues to be a cooperative society registered under the Cooperative Societies Act, 1912, or under any other law for the time being in force in any state for the registration of cooperative societies, the interest income derived by a cooperative society from its investments held with a cooperative bank would be entitled for the claim of deduction under

section 80P(2)(d) of the Act; that the issue that a cooperative society would be entitled for the claim of deduction under section 80P(2)(d) on the interest income derived from its investments held with a cooperative bank, is covered in favour of the assessee in 'Solitaire CHS Limited', 'Majalgaon Sahakari Sakhar Karkhana Limited' and 'Kaliandas Udyog Bhavan Premises Cooperative Society Limited'; that the Honorable High Court of Karnataka, in the case of 'Principle CIT Versus Totagars Cooperative Sale Society', (2017) 392 ITR 74 (Karnataka) and the Honorable High Court of Gujarat, in 'State Bank of India Versus CIT', (2016) 389 ITR 578 (Gujarat), had held that the interest income earned by the assessee on its investments with a cooperative bank would be eligible for the claim of deduction under section 80P(2)(d) of the Act; that still further, CBDT Circular Number 14, dated 28.12.2006 also makes it clear beyond any scope of doubt, that the purpose behind the enactment of subsection 4 of section 80P was that the cooperative banks which were functioning at par with other banks would no more be entitled for the claim of deduction under Section 80P(4) of the Act; that although, in all fairness, the Honorable High Court of Karnataka in the case of 'Principle CIT Versus Totagars Cooperative Sale Society', (2017) 395 ITR 611 (Karnataka) had held that a cooperative society would not be entitled to

claim deduction under section 80P(2)(d), the Honorable High Court of Karnataka, in that case, and the Honorable High Court of Gujarat, in 'State Bank of India' head 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 section 80P(2)(d) of the Act; that as held by the Honorable High Court of Bombay in the case of 'K Subramanian Versus Siemens India Limited' (1983) 156 ITR 11 (Bombay), where there is a conflict between the decisions of non jurisdictional High Courts, the view in favour of the assessee is to be preferred as against that taken against them; that accordingly, following the view taken by the Honorable High Court of Karnataka in the case of 'Totagars Cooperative Sale Society' and that of the Honorable High Court of Gujarat in the case of 'State Bank of India', 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 the claim of deduction under 80P(2)(d) of the Act; and that be that as it may, as the Assessing Officer, while framing the assessment, had taken a possible view and had allowed the assessee's claim for deduction under section 80P(2)(d) on the interest income earned on its investments or deposits with cooperative banks, the Principle CIT was in error in exercising

revisional jurisdiction under section 263 of the Act for dislodging the same.

58. In 'Gramin Seva Sahakari Samiti Maryadit Versus ITO', 138 taxmann.com 476 (Raipur), it was held that adverting to the claim that the CIT (Appeals) had erred in conforming the rejection of the assessee's claim for deduction under section 80P(2)(d) of the Act, that is, deduction of the dividend income received on the shares of a cooperative bank, namely, Jila Sahakari Kendriya Bank, Raipur, perusal of the Assessment Order showed that the Assessing Officer, holding a conviction that as the said Bank was not a cooperative society, held that the dividend income received by the assessee on the shares of the said Bank was not eligible for deduction under section 80P(2)(d) of the Act; that in order to fortify his said conviction, the Assessing Officer had drawn support from subsection 4 of section 80P of the Act, as per which, the entitlement to deduction under section 80P of the Act is available to cooperative banks with effect from AY 2007-08; that on such observation, the Assessing Officer had declined the assessee's claim for deduction under section 80P(2)(d) of the Act; that the view taken by the lower authorities could not be concurred with, since a cooperative bank falls within the realm of the definition of 'cooperative society' as contemplated in section 2(19) of

the Act, the view that dividend income received by the assessee from the said bank, which was a cooperative bank, would not be eligible for deduction under section 80P(2)(d) of the Act could not be sustained; that this view was fortified by the order of the Mumbai Bench of the Tribunal in the case of 'Solitaire CGHS Limited', wherein, on an elaborate discussion, after considering various decisions, it had been held that the interest income derived by the assessee cooperative society from its investments held with the Cooperative Bank would be entitled for claim of deduction under section 80P(2)(d) of the Act.

59. In 'Lokmangal Nagri Sahakari Path Sanstha Maryadit Versus PCIT-4, Pune', vide Order dated 29.11.2022, passed by the Pune Bench of the Tribunal, in ITA Number 231/Pune/2022, for AY 2017-18, it was held that 'cooperative bank is also a specie of 'cooperative society' and therefore, the interest income earned by the cooperative society from the cooperative bank qualifies for deduction under section 80P(2)(d) of the Act; that such interest also qualifies for exemption under section 80P(2)(a)(i), as held by the Pune Bench of the Tribunal in the case of 'Nashik Road Nagari Sahakari Pat Sanstha Limited', Order dated 27.12.2021 passed in ITA Number 1700/Pune/2017, observing that admittedly, the assessee was a cooperative society formed under the

provisions of the Maharashtra Cooperative Societies Act, 1960 with the objective of accepting deposits and lending money to its members; that the money which was not immediately required for the purpose of lending to the members, was deposited with the Bank of Baroda in the form of fixed deposit; that the question was as to whether the interest so earned qualified for exemption under section 80P(2)(a)(i) of the Act; that the AO, as well as the CIT(A) were of the opinion that the interest earned from third parties or non-members did not qualify for exemption under section 80P; that it was an admitted position that the interest so earned should be taxed as income from other sources; that there was a cleavage of judicial opinion amongst several High Courts on the issue of eligibility of this kind of income for exemption under section 80P(2)(a)(i) of the Act; that the Honorable Punjab and Haryana High Court, in the case of 'CIT Versus Punjab State Cooperative Federation of House Building Societies Limited', 11 taxmann.com 448 (P&H), the Honorable Gujarat High Court, in the case of 'State Bank of India Versus CIT', 389 ITR 28 (Gujarat), the Honorable Delhi High Court in the case of 'Mantola Cooperative Thrift and Credit Society Limited versus CIT', 50 taxmann.com 278 (Delhi), the Honorable Punjab and Haryana High Court, in the case of 'CIT Versus Punjab State Cooperative Agricultural Development Bank Limited', 389

ITR 68 PH and the Honorable Kolkata High Court, in the case of 'Southern Eastern Employees Cooperative Credit Society Limited', 390 ITR 524 (Kolkata), took a view that the income arising on the surplus invested in short term deposits and securities cannot be attributed to the activities of the society and, therefore, it was not eligible for exemption under section 80P of the Act; that however, the Honorable Karnataka High Court, in the case of 'Tumkur Merchants Soharda Credit Cooperative Limited Versus ITO', (2015) 230 taxmann 309 (Karnataka) and the Honorable Telangana and Andhra Pradesh High Court, in the case of 'Vaveru Cooperative Rural Bank Limited Versus CIT', (2017) 396 ITR, took a view that such interest income is attributable to the activities of the society and, therefore, it is eligible for exemption under section 80P(2)(a)(i) of the Act; that the coordinate Pune Bench of the Tribunal, in the case of 'M/s Ratnatray Gramin Bigar Sheti Sahakari Pat Sanstha Maryadit Versus ITO', vide order dated 11.12.2018, passed in ITA Numbers 559 and 560/Pune/2018, had taken a view in favour of the assessee, following the judgement of the Honorable Karnataka High Court in 'Tumkur Merchants Souharda Credit Cooperative Limited', and that following the same, it was being held that the interest income earned on the investment of surplus money with banks was also eligible

for exemption under section 80P(2)(a)(i) of the Act. It was held that therefore, the issue which was the subject matter of the revision was covered in favour of the assessee by the said judicial presidents; that therefore, it could not be said that the Assessment Order was erroneous or prejudicial to the interests of the Revenue; and that therefore, the order of revision passed under section 263 of the Act could not be sustained in the eye of the law.

60. In 'Bardoli Vibhag Gram Vikas Cooperative Credit Society Limited Versus Principal Commissioner of Income Tax-2, Surat', (2021) 189 ITD 601 (Surat-Trib.), it was held that where the assessee was a cooperative society in the business of providing credit facility to its members by accepting deposits from them and lending money to them too, and it claimed deduction under section 80P of the Act, and where the Assessing Officer noted that the assessee derived interest income from savings bank accounts with HDFC Bank and UTI Bank, and held that since as per section 80P(2)(a)(d), interest earned out of investments or deposits with cooperative societies or cooperative banks are only eligible for deduction, interest income earned from other banks was not eligible for deduction under section 80P and the Commissioner opined that the interest income did not fall within the meaning of the exemption under

section 80P(2)(d) and, therefore, he revised the AO's order as being erroneous, since the assessee cooperative society was eligible for deduction under section 80P(2)(d) in respect of the gross interest received from the Cooperative Bank and the Assessing Officer had made enquiries on the allowability of the deduction under Section 80P(2)(d) and had passed the Assessment Order taking, therefore, a reasonable and possible view, such Order of the Assessing Officer was not erroneous and, so, the revision was unjustified.

61. In 'Lands End Cooperative Housing Society Limited Versus ITO', by virtue of order dated 15.1.2016, passed in ITA Number 3566/Mumbai/2014, for AY 2009-10, the Mumbai Bench of the Tribunal has held that the CIT(A) enhanced the income of the assessee by rejecting the deduction claimed under section 80P(2)(d) of the Act, being interest on investment with other cooperative banks, by following the decision in the case of 'Bandra Samruddhi Cooperative Housing Society Limited', which was passed on the basis of the decision of the Honorable Supreme Court in the case of 'Totgars Cooperative Sale Society Limited'; that in the case of 'Totagars Cooperative Sale Society Limited' while interpreting provisions of the section 80P(2)(a)(i) of the Act, the Honorable Supreme Court held that surplus funds not immediately required in the

business and invested in the short term deposit would be accessible under the head of 'income from other sources' where the cooperative society is engaged in carrying on the business of banking or providing credit facilities to its members and, consequently, no deduction is available under section 80P(2)(a)(i) of the Act; that but, in the case before the Bench, the issue was whether a cooperative society, which has derived income on investment with cooperative banks, is entitled to deduction under section 80P(2)(d); that the provisions of section 80P(2)(d) of the Act provide for deduction in respect of income by way of interest or dividend on investments made with other cooperative societies; that from a close perusal of the provisions of section 80P(2)(a(i) and section 80P(2)(d), it was clear that the former deals with deduction in respect of profits and gains of business in the case of a cooperative society carrying on the business of banking or providing credit facilities to its members, if the said income is accessible as income from business, whereas the **later** provides for deduction in respect of income by way of interest or dividend derived by the assessee from its investments with any other cooperative society; that therefore, it was amply clear that a cooperative society can only avail deduction under section 80P(2)(a)(i) in respect of its income accessible as business income, and not as income from other sources, if

it carries on the business of banking or providing credit facility to its members and has income assessable under the head of business, whereas for claiming deduction under section 80P(2)(d), it must have income of interest or dividend on investments with any other cooperative society which may or may not be engaged in the business of banking or providing credit facilities to its members, and the head under which the income is assessable is not material for the claim of deduction under this section; that the Honorable Supreme Court, in the case of 'Totagars Cooperative Sale Society Limited', held that if a society has surplus funds which are invested in short term deposits where the society is engaged in the business of banking or providing credit facilities to its members, the said income from short term deposits shall be treated and assessed as income from other sources and deduction under section 80P(2)(a)(i) would not be available, meaning thereby, that deduction under section 80P(2)(a)(i) is available only in respect of income which is assessable as business income, and not as income from other sources and in distinction to this, the provisions of section 80P(2)(d) provide for deduction in respect of income of a cooperative society by way of interest or dividend from its investments with any other cooperative society, if such income is included in the gross total income of such cooperative

society; that in this view of the matter, the assessee was entitled to the deduction in respect of interest received or derived by it on deposits made with cooperative banks.

62. In 'Income Tax Officer, Bundi Versus Shree Keshorai Patan Sahakari Sugar Mill', order dated 31.1.2018, passed in ITA Numbers 418 and 419/JP/2017 and CO Numbers 23 and 24/JP/2017, for AYs 2013-14 and 2014-15, by the Jaipur bench of the Tribunal, it was observed that the entire income of the assessee for the year under consideration was only from interest on deposits made with bank as well as cooperative banks; that in its computation of income, the assessee had given the details of the interest income, which comprised, inter alia, interest earned on deposits made with cooperative banks. The assessee had claimed deduction under section 80P(2)(d) in respect of the interest earned from cooperative banks; that the Assessing Officer disallowed the claim on the ground that the assessee was not in the business of banking or of providing credit facilities to its members. The CIT(A) allowed the claim by following various High Court and Tribunal orders. The Tribunal held that where any income by way of interest or dividend is derived by a cooperative society from its investment with any other cooperative society, the whole of such income is allowable for deduction

under section 80P(1); that therefore, there is no condition for the assessee society to be engaged either in the business of banking, or in the activity of providing credits to its members, for availing the deduction under section 80P(2)(d) read with section 80P(1); that so far as regards the proposition that a cooperative bank shall be treated as a cooperative society for the purpose of the interest income on investment in such cooperative bank, under section 80P(2)(d), the Mumbai Bench of the Tribunal, in the case of 'Lands End Cooperative Housing Society Limited Versus ITO', after considering the decision of the Honorable Supreme Court in the case of 'Totagars Cooperative Sale Society Limited Versus ITO', had held that the provisions of section 80P(2)(d) provide for deduction in respect of income by way of interest or dividend on investments made with any other cooperative society, if such income is included in the gross total income of such cooperative society; that therefore, the assessee was entitled to deduction in respect of interest received or derived by it on deposits with cooperative banks.

63. It was held that in the case of 'CIT Versus Rajasthan Rajya Sahakari Kray Vikray Sangh Limited', the Honorable jurisdictional Rajasthan High Court, vide order dated 1.9.2016, passed in DB ITA Numbers 139 of 2002, 20 of 2004 24 of 2004 and 27 of 2004, following

the decision of the Honorable Gujarat High Court in the case of 'Surat Vankar Sahakari Sangh Limited Versus ACIT', 72 taxmann.com 169 (Gujarat), has held that the decisions cited for the assessee shall be applicable.

64. It was held that in the case of 'Doaba Cooperative Sugar Mills Limited', the Punjab and Haryana High Court has held that section 80P(2)(d) of the Act allows whole deduction of an income by way of interest or dividends derived by the cooperative society from its investment with another cooperative society.

65. It was held that the Honorable Karnataka High Court, in the case of 'PCIT and Another Versus Totagars Cooperative Sale Society', 392 ITR 74 (Karnataka), has held that a cooperative bank is considered to be a cooperative society for the purposes of Section 80P(2)(d), and that so, the CIT(A) had correctly allowed the claim of the assessee under section 80P(2)(d) in respect of interest income from deposits or FDRs with the cooperative banks.

66. In 'Shiksha Vibhag Karmacharigan Sahakari Samiti Limited, Kota Versus The Income Tax Officer, Ward-2(3), Kota vide Order dated 17.6.2019, the Jaipur Bench of the Tribunal, in ITA Numbers 281 and

282/JP/2017 and 87/JP/2018, for Assessment Years 2012-13, 2013-14 and 2014-15, following the decision of the Jaipur Bench of the Tribunal in the case of 'Shree Keshorai Patan Sahakari Sugar Mill, Bundi (supra), decided the issue in favour of the assessee and allowed the deduction under section 80P/80P(2)(d) in respect of interest earned on deposits made with the banks/cooperative banks.

67. In 'Shahpura Gram Seva Sahakari Samiti Limited, Shahpura Versus The Income Tax Officer, Ward-4(1), Jaipur, vide Order dated 15.10.2020, passed in ITA Number 767/JP/2019, for Assessment Year 2015-16, the Jaipur SMC bench of the Tribunal held that in 'ITO Versus Shri Keshorai Patan Sahakari Sugar Mill, Bundi' (supra), the Jaipur Tribunal had held that a cooperative bank would be considered as a cooperative society for the purposes of Section 80P(2)(d) of the Act; and that accordingly, in view of the fact that the Jaipur Central Cooperative Bank is a cooperative society registered under the Cooperative Societies Act, interest received by the assessee from the said Cooperative Bank is eligible for deduction under section 80P(2)(d) of the Act.

68. In 'The Jagadhri Co-operative Marketing-cum-Processing Society Ltd. Vs the Pr. CIT, Panchkula' (co-authored by one of us, the V.P.), vide

order dated 12.01.2024, passed in ITA No.210/CHD/2023, for the assessment year 2018-19, the issue was as to whether the ld. PCIT had failed to appreciate that the issue in respect of deduction claimed u/s 80P of the Income Tax Act, on interest income, had been discussed threadbare by the AO, at the time of assessment proceedings, or not, and as such, assumption of jurisdiction u/s 263 of the Act, whereby the ld. PCIT had only allegedly substituted her opinion over the plausible opinion taken by the AO, was uncalled for.

68.1 It was held as follows :

> *"16. As per the provisions of section 80P(1) of the Act, the income referred to in sub-section (2) to section 80P shall be allowed as a deduction to an assessee being a Co-operative Society. Further, Section 80P(2)(d) of the Act provides for deduction 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. Thus, for the purpose of Section 80P(2)(d) of the Act, there are only two conditions which are required to be cumulatively satisfied, i.e, the income should be by way of interest or dividend earned by a Co-operative Society from its investments, and secondly, such investments should be with any other Co-operative Society. Besides these two conditions, there are no other condition(s) which has been provided in the statue as apparent from the plain reading of the provisions of Section 80P(2)(d) of the Act.*
>
> *17. The term "co-operative society" as defined under section 2(19) of the Act (19) means 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.*
>
> *18. As per the ld PCIT own findings, as per Section 80P(2)(d), interest income derived by a co-operative society from its investments held with any other co-operative society shall be deducted in computing its total income. Further, she has referred to the amendment by way of insertion of sub-section (4) of sec. 80P, vide the Finance Act, 2006 with effect from 1-4-2007 where the provisions of sec. 80P*

*are no more applicable in the case of a co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank. As per the ld PCIT, the aforesaid amendment does not jeopardise the claim of deduction of a co-operative society under Section 80P(2)(d) in respect of its interest income on investments/deposits parked with a cooperative bank.*

*19. In the present case, there is no dispute that the assessee is a Co-Operative Society. There is also no dispute that Yamuna Nagar Central Co-op Bank Ltd. is also a Co-operative society. Further, during the course of assessment proceedings, we find that the AO while examining the claim of the assessee under Section 80P observed that out of total claim of Rs 76,77,246/-, the assessee has claimed Rs 50,25,234/- under section 80P(2)(d) of the Act. The AO noted that said claim under section 80P(2)(d) consist of dividend income from KHRIBHCO, IFFCO and HAFED, interest income on deposits placed with HDFC Bank, ICICI Bank, AXIS Bank and Yamuna Nagar Central Co-operative Bank Ltd and referring to the provisions of section 80P(2)(d) of the Act, a show-cause was issued as to why claim of deduction in respect of interest income on deposits placed with HDFC Bank, ICICI Bank, AXIS Bank should not be disallowed and thereafter, after considering the submissions of the case, has returned a finding that such interest income has not been earned from any other Cooperative society but from Scheduled commercial banks and the deduction so claimed from Scheduled commercial banks was denied and while doing so, the AO has allowed the claim of deduction in respect of Yamuna Nagar Central Co-operative Bank Ltd, being the deduction in respect of interest income on deposits with any other Co-operative Society. We therefore find that the AO has duly examined the facts of the present case and has allowed the deduction in respect of interest income received from the Yamuna Nagar Central Co-op Bank Ltd. as being in compliance with the provisions of Section 80P(2)(d) of the Act. Where the facts in the present case and legal position is not in dispute, we therefore don't understand how the ld PCIT in the same breath hold that the assessee shall not be eligible for claim of deduction under section 80P(2)(d) of the Act.*

*20. Now, coming to the decision of the Hon'ble Punjab and Haryana High Court in case of* ***CIT Vs. Punjab State Cooperative Federation of Housing Building Societies Ltd*** *(Supra), the question for consideration before the Hon'ble High Court was whether the Tribunal was right in holding that interest income from commercial banks, being attributable to business activity of the assessee qualifies for deduction u/s 80P(2)(a)(i) of the Act ignoring the fact that direct source of income is not the loans advanced to members of the society and it is only the interest income from commercial banks in form of fixed deposits and saving bank accounts. Referring to the decision of the Hon'ble Supreme Court in case of case of Totgars Co-operative Sale Society Ltd (Supra), it was held that since the judgment of the Tribunal was prior to the judgment of the Hon'ble Supreme Court,*

*the Tribunal did not have the advantage of the said judgment and the matter was decided in favour of the Revenue. We therefore find that the Hon'ble Punjab and Haryana High Court following the decision of the Hon'ble Supreme Court which was also rendered in the context of section 80P(2)(a)(i) held that interest income from commercial banks was not eligible for claim of deduction under section 80P(2)(a)(i) of the Act. Therefore, the said decision rendered in the context of section 80P(2)(a)(i) is distinguishable and doesn't support the case of the Revenue and has been wrongly referred in support while challenging the assessee's claim of deduction on interest income under section 80P(2)(d) of the Act in respect of deposits placed with Yamuna Nagar Central Co-op Bank Ltd.*

*21. Now, coming to another decision of the* ***Hon'ble Punjab and Haryana High Court*** *in case of* ***CIT Vs. Doaba Co-op Sugar Mills Ltd.*** *(Supra). Briefly the facts of the case were that the assessee, a cooperative society, filed its return of income claiming deduction in respect of interest income received from the cooperative bank. The assessment was completed after making disallowance of the deduction claimed which on appeal has been allowed by the Tribunal and thereafter, the question of law which was proposed by the Revenue for the opinion of the Hon'ble High Court was "whether on the facts and circumstances of the case, the Tribunal is right in law in allowing deduction under section 80P(2)(d) of the Act in respect of interest of Rs. 4,90,919/- on account of interest received from Nawanshahr Central Co-operative Bank without adjusting interest paid to the bank and in that background, the Hon'ble High Court has held as under:*

***"5.*** *The contention of Mr. Gupta, the learned counsel appearing for the revenue, is that the Tribunal was wrong in allowing deduction under section 80P(2)(d) because it is not established that the assessee had derived interest by investing all the amount of surplus funds. It is further contended by Mr. Gupta that the assessee has paid interest to Jalandhar Central Co-operative Bank and has also received interest from the said co-operative bank, thereby showing that the assessee has on the aggregate paid interest to the bank and, therefore, no deduction under section 80P(2)(d) can be allowed. To appreciate this argument, we have to look to the provisions of section 80P(2)(d). For facility of reference, it is reproduced as under:*

*"(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;"*

*So far as the principle of interpretation applicable to a taxing statute is concerned, we can do no better than to quote the by now classic words of Rowlatt, J., in Capce Brandy Syndicate v. IRC [1921] 1 KB 64 :*

*"... In a taxing Act, one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a*

*tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used." (p. 71)*

*The principle laid down by Rowlatt, J., has also been time and again approved and applied by the Supreme Court in different cases including the one Hansraj Gordhandas v. H.H. Dave, Assistant Collector of Central Excise & Customs AIR 1970 SC 755 at p. 759.*

***6.*** *Section 80P(2)(d) allows whole deduction of an income by way of interest or dividends derived by the co-operative society from its investment with any other co-operative society. This provision does not make any distinction in regard to the source of the investment because this section envisages deduction in respect of any income derived by the co-operative society from any investment with a co-operative society. It is immaterial whether any interest paid to the co-operative society exceeds the interest received from the bank on investments. The revenue is not required to look to the nature of investment whether it was from its surplus funds or otherwise. The Act does not speak of any adjustment as sought to be made out by the learned counsel for the revenue. The provision does not indicate any such adjustment in regard to interest derived from the co-operative society from its investment in any other co-operative society. Therefore, we do not agree with the argument advanced by the learned counsel for the revenue. In our opinion, the Tribunal was right in law in allowing deduction under section 80P(2)(d) in respect of interest of Rs. 4,90,919 on account of interest received from Nawanshahr Central Co-operative Bank without adjusting interest paid to the bank. Therefore, the reference is answered against the revenue, i.e., in the affirmative, and in favour of the assessee."*

*22. In the aforesaid decision, the Hon'ble Jurisdictional High Court has referred to the provisions of Section 80P(2)(d) and held that the said provisions does not make any distinction with regard to the source of the investment because this section envisages deduction in respect of any income derived by the co-operative society from any investment with a co-operative society. It was held that it is immaterial whether any interest paid to the co-operative society exceeds the interest received from the bank on investments and the Revenue is not required to look to the nature of investment whether it was from its surplus funds or otherwise. The Hon'ble High Court thus held that the nature and source of investment is not relevant for claiming deduction under Section 80P(2)(d) of the Act, and what is relevant to examine is whether there is any income derived by a cooperative society from any investment with another co-operative society. In the instant case, we therefore find that it is not relevant to examine whether interest income is earned from any specified co-operative activity or it is a case of deployment of surplus funds by the assessee society so long as the interest income is earned from deposits placed with a co-operative society. Where the AO has allowed the claim of the assessee under section 80P(2)(d) of the Act after due examination of the facts of the case, he has rightly followed the dicta laid down by the Hon'ble*

*Jurisdictional High Court and therefore, the order so passed by the AO cannot be held as erroneous in so far as prejudicial to the interest of Revenue.*

*23. Now, coming to the decisions of the Hon'ble Karnataka High Court, we find that there are two decisions in case of Pr. CIT v. Totagars Co-operative Sale Society and in both of these decisions, the Hon'ble Karnataka High Court has referred to the decision of the Hon'ble Supreme Court in case of Totagars Co-operative Sale Society vs ITO (Supra). In case of first decision referred by the ld AR, it was held that according to section 80P(2)(d) of the Act, the amount of interest earned from a Co-operative Society Bank would be deductable from the gross income of the Co-operative Society in order to assess its total income. In the latter decision referred by the ld PCIT (he has not referred to the earlier decision), it was held that interest earned by the assessee, a Co-operative Society, from surplus deposits kept with a Co-operative Bank, was not eligible for deduction under Section 80P(2)(d) of the Act. We therefore find that there are divergent views of the non-jurisdictional High Court on the issue of eligibility of deduction under Section 80P(2)(d) of the Act in respect of interest earned from Co-operative Bank as against the decision of the Jurisdictional Punjab and Haryana High Court in case of CIT vs Doaba Co-operative Sugar Mills Ltd and the latter shall be our guiding force as far as the present proceedings are concerned.*

*24. Having said that, we find that in the latter decision of Hon'ble Karnataka High Court in case of PCIT vs. Totgars Co-operative Sale Society (Supra), the Hon'ble High Court has basically laid great emphasis on the provision of Section 80P(4) of the Act and basis interpretation of Section 80P(4) of the Act, the deduction under section 80P(2)(d) has been held to be not eligible. In this regard, we find that the Hon'ble Supreme Court in case of Mavilayi Service Co-operative Bank Ltd. Vs. CIT (supra) while analyzing the provision of Section 80P(4) of the Act has held that Section 80P(4) is a proviso to the main provision contained in Section 80P(1) and 80P(2) and excluded only cooperative banks which are cooperative society and also possesses a licence from RBI to do banking business. The Hon'ble Supreme Court further held that the limited object of section 80P(4) is to exclude Co-operative Banks that function at par with other commercial banks i.e. which lend money to members of the public. Therefore Section 80P(2)(4) is relevant only where the assessee is a cooperative bank and who claimed the deduction under section 80P of the Act which is not the facts of the present case. Therefore the said decision of the Hon'ble Karnataka High Court is distinguishable and in any case, the later decision of Hon'ble Supreme Court in case of Mavilayi Service Co-operative Bank Ltd. Vs. CIT (Supra) wherein the correct legal preposition has been laid down by the Hon'ble Supreme Court has to be followed. Interestingly, as per the ld PCIT own findings, section 80P(4) does not jeopardise the claim of deduction of a co-operative society under Section 80P(2)(d) in respect of its interest income on investments/deposits parked with a cooperative bank and at the same time, she has placed reliance on the said*

*decision of Hon'ble Karnataka High Court. As against that, we find that the AO has referred to the said decision in case of Mavilayi Service Co-operative Bank Ltd. Vs. CIT (Supra) and has thus followed the dicta laid down by the Hon'ble Supreme Court and thus, the order so passed cannot be held as erroneous in so far as prejudicial to the interest of Revenue.*

*25. In light of aforesaid discussion and in the entirety of facts and circumstances of the case, we find that there is no legal and justifiable basis to invoke the provisions of section 263 by the ld PCIT and therefore, the order so passed u/s 263 is hereby set-aside and that of the AO who has rightly allowed the deduction u/s 80(P)(2)(d) is sustained.*

*26. In the result, the appeal of the assessee is allowed."*

69. While deciding the mater, it is seen, the Tribunal considered and followed, inter-alia, the decision of the Hon'ble jurisdictional High Court in 'CIT Vs Doaba Co-operative Sugar Mills Ltd.' 230 ITR 774 (P&H).

70. It does not stand disputed that all the above decisions, as discussed one by one, are squarely applicable to the facts of the present case. Therefore, following the said decisions, we hold that the assessee society, being a cooperative society, is entitled to the exemption claimed under section 80P(2)(d) of the Income Tax Act, in respect of income by way of interest derived by it from its investments with the cooperative banks.

71. Accordingly, the revisionary order passed by the learned Principle Commissioner of Income Tax is set aside and cancelled and the assessment order is revived.

72. Hence, the assessee's appeal in ITA No. 515/Chandi/2017, for Assessment Year 2012-13 is partly allowed, as indicated.

**ITA 569/CHD/2018**

73. This is assessee's appeal for the assessment year 2013-14 against the order dated 23.03.2018, passed by the ld. PCIT-2, Chandigarh, u/s 263 of the Income Tax Act.

74. The assessee has raised the following grounds of appeal :

> *1. That the Ld. Commissioner of Income Tax has erred in law in issuing notice and thereafter passing the order under section 263 only on the basis of an audit objection which is not permissible and as such the order passed is illegal, arbitrary, unjustified which merits annulment.*
>
> *2. Without prejudice to the above, the Ld. Commissioner of Income Tax has wrongly assumed jurisdiction under section 263 of the Act to set-aside the assessment order dated 30.10.2015 passed by the Assessing Officer in as much as the order is neither erroneous nor prejudicial to the interest of Revenue and as such the assumption of jurisdiction under section 263 of the Act is beyond his competence.*
>
> *3. That the assessment order having been passed by the Assessing Officer after due application of mind and taking into consideration the various replies and material on record, the action resorted by the Commissioner of Income Tax is unwarranted and uncalled for.*

*4. That the order of Commissioner of Income tax is erroneous, arbitrary, opposed to the facts of the case and is unsustainable in law.*

75. As the issues, facts and circumstances of ITA No. 569/CHD/2018 are identical to ITA No. 515/CHD/2017, therefore, our findings given in ITA No. 515/CHD/2017 would apply mutatis-mutandis to ITA No.569/CHD/2018. Accordingly, the appeal of the assessee in ITA No.569/CHD/2018 is also partly allowed.

**ITA No. 645/CHD/2019**

76. This is assessee's appeal for the assessment year 2012-13 against the order dated 06.02.2019, passed by the ld.CIT(A)-II, Chandigarh.

77. The assessee has raised the following grounds of appeal :

*i) That the Ld. Commissioner of Income Tax (Appeals) has erred in law as well as on facts in upholding the disallowance of deduction claimed u/s 80P(2)(d Resulting in an addition of Rs.82,13,316/- which is arbitrary and unjustified.*

*ii) That the Ld. Commissioner of Income Tax (Appeals) has further erred in upholding the contention of the Assessing Officer that the interest income is to be taxed as "Income from Other Sources" u/s 50 which is arbitrary and unjustified.*

*iii) That the Ld. Commissioner of Income Tax (Appeals) has further erred in holding that the claim of the assessee as to being covered under the provisions of Section 80P (2)(d) fails in the light of decision of Supreme Court repotted in 322 ITR 283 in as much the said decision is not in the context of Section 80P(2)(d) and as such order passed is arbitrary and unjustified.*

*iv) That the Ld. Commissioner of Income Tax (Appeals) has further erred in holding that cooperative banks do not fall within the ambit of co-operative society and as such the assessee was not eligible for deduction u/s 80P of the Act which is arbitrary and unjustified.*

*v) That the Ld. Commissioner of Income Tax(Appeals) has further erred in holding that, the Assessing Officer's actions in denying claims made by the assessee are upheld (even though on additional grounds)which is arbitrary and unjustified.*

*vi) That the Principle of Mutuality as applied by the Assessing Officer is not applicable in the case of the assessee, as the same is in the context of Section 80P(2)(a)(i) and 80P(2)(d) which aspect has not been discussed threadbare by the Commissioner of Income Tax (Appeals), though he dismissed all the grounds taken before him and as such the order passed is arbitrary and unjustified.*

78. It is seen that as rightly contended, this appeal arises out of the Assessing Officer's order dated 30.11.2017, passed in consequence to the order dated 28.02.2017 passed u/s 263 of the Act, by the Pr. CIT-2, Chandigarh. This order dated 28.02.2017 passed u/s 263 is subject matter of ITA No.515/CHD/2017, which we have dealt with in extenso herein above, setting aside and reversing the said revisionary order dated 28.02.2017.

79. Accordingly, the order presently under appeal no longer survives.

80. In view of the above, this appeal is dismissed as infructuous.

81. In the result, the assessee's appeals in ITA No.515/CHD/2017 and ITA No.569/CHD/2018 are partly allowed and assessee's appeal in ITA No.645/CHD/2019 is dismissed as infructuous.

Order pronounced on 16.05.2024.

**Sd/-** **Sd/-**

**(KRINWANT SAHAY)** **(A.D.JAIN )**
**ACCOUNTANT MEMBER** **VICE PRESIDENT**

**FIT FOR PUBLICATION**

**(KRINWANT SAHAY)** **(A.D.JAIN )**
**ACCOUNTANT MEMBER** **VICE PRESIDENT**