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ಪ್ರಕಟಣೆ :
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'ನಿರ್ಮಾಣ ಭವನ', ಡಾ.ರಾಜಕುಮಾರ ರಸ್ತೆ, 1ನೇ ಬ್ಲಾಕ್, ರಾಜಾಜಿನಗರ, ಬೆಂಗಳೂರು – 560010
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ಪ್ರತಿಗಳು : 300

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ಗಮನಿಸಿ: ಈ ಕೈಪಿಡಿಯಲ್ಲಿ ನೀಡಿರುವ ತೆರಿಗೆ ಸಂಬಂಧಿಸಿದ ತೀರ್ಪುಗಳು ಆಯಾ ಸಹಕಾರಿಗಳ ಕಾರ್ಯಚಟುವಟಿಕೆಗಳ ಮೇಲೆ ಆಧಾರವಾಗಿರುತ್ತವೆ. ತೆರಿಗೆ ಕಾಯ್ದೆಗಳಿಗೆ ಸಂಬಂಧಿಸಿದ ವಿಷಯಗಳು, ಸದರಿ ಕಾಯ್ದೆಗಳು ಕಾಲ ಕಾಲಕ್ಕೆ ಆಗುವ ತಿದ್ದುಪಡಿ ಅಥವಾ ಅಧಿಸೂಚನೆಯಲ್ಲಿ ನಮೂದಿಸಲ್ಪಡುವ ಬದಲಾವಣೆಯ ನಿಬಂಧನೆಗೊಳಪಟ್ಟಿರುತ್ತವೆ.



ಮೊದಲ ಮಾತು

ಸೌಹಾರ್ದ ಸಹಕಾರಿಗಳು ವಿವಿಧ ಕಾರ್ಯಚಟುವಟಿಕೆಗಳನ್ನು ಅಳವಡಿಸಿಕೊಂಡು ವೇಗವಾಗಿ ಬೆಳೆಯುತ್ತಿರುವುದು ಸಹಕಾರ ಕ್ಷೇತ್ರಕ್ಕೆ ವೇಗವನ್ನು ತಂದಿರುವುದು ಸಂತಸದ ವಿಷಯ. ಸಂಯುಕ್ತ ಸಹಕಾರಿಯ ಅಧ್ಯಕ್ಷನಾಗಿ ರಾಜ್ಯದಾದ್ಯಂತ ನಾನು ಪ್ರವಾಸ ಮಾಡುತ್ತಿರುವ ಸಂದರ್ಭದಲ್ಲಿ ಹಾಗೂ ಸೌಹಾರ್ದ ಸಹಕಾರಿಗಳಿಗೆ ಭೇಟಿ ನೀಡುತ್ತಿರುವ ಸಂದರ್ಭದಲ್ಲಿ ಸೌಹಾರ್ದ ಸಹಕಾರಿಗಳ ಗುಣಮಟ್ಟದ ಬೆಳವಣಿಗೆಯು ಕಂಡುಬರುತ್ತಿರುವುದು, ಈ ಕ್ಷೇತ್ರದ ಯಶಸ್ಸಿನಲ್ಲಿ ಸಹಕಾರಿಗಳು ಸಕ್ರೀಯವಾಗಿ ಭಾಗವಹಿಸುತ್ತಿರುವುದನ್ನು ಗಮನಿಸಿದ್ದೇನೆ. ಈ ಕ್ಷೇತ್ರವನ್ನು ಬೆಳೆಸುತ್ತಿರುವ ಸಹಕಾರಿಗಳ ಪ್ರಯತ್ನ ಶ್ಲಾಘನೀಯ. ಆದರೆ, ಇದೇ ಸಂದರ್ಭದಲ್ಲಿ ಆದಾಯ ತೆರಿಗೆ ಇಲಾಖೆಯಿಂದ ನಿರಂತರ ನೋಟೀಸ್‌ಗಳು ಬರುತ್ತಿವೆ ಎನ್ನುವ ಕೂಗು ಕೂಡ ನನ್ನ ಗಮನಕ್ಕೆ ಬಂದಿದೆ. ಇದು ಗಂಭೀರವಾಗಿ ಪರಿಗಣಿಸಬೇಕಾದ ವಿಷಯವಾಗಿದೆ. ಸಹಕಾರಿಗಳು ತಮ್ಮ ಲೆಕ್ಕಪತ್ರ ನಿರ್ವಹಣೆಯಲ್ಲಿ ಇನ್ನಷ್ಟು ಶಿಸ್ತನ್ನು ರೂಢಿಸಿಕೊಳ್ಳುವ ಅಗತ್ಯತೆ ಇದೆ ಎಂದು ನನಗೆ ಅನ್ನಿಸುತ್ತದೆ.

ಸಂಯುಕ್ತ ಸಹಕಾರಿಯ ಅಧ್ಯಕ್ಷನಾಗಿ ನಾನು, ಉಪಾಧ್ಯಕ್ಷರು ಹಾಗೂ ಆಡಳಿತ ಮಂಡಲಿಯ ಸದಸ್ಯರು ಆದಾಯ ತೆರಿಗೆ ಇಲಾಖೆಯಿಂದ ಸಹಕಾರಿಗಳಿಗೆ ಆಗುತ್ತಿರುವ ತೊಂದರೆಗಳನ್ನು ತಪ್ಪಿಸಲು ನಿರಂತರ ಪ್ರಯತ್ನ ಮಾಡುತ್ತಿದ್ದೇವೆ. ಮಾನ್ಯ ಸಂಸದೀಯ ವ್ಯವಹಾರಗಳ ಸಚಿವರಾದ ಶ್ರೀ ಅನಂತಕುಮಾರ್‌ರವರ ನೆರವಿನಿಂದ ಕೇಂದ್ರ ಹಣಕಾಸು ಸಚಿವರಾದ ಶ್ರೀ ಅರುಣ ಜೇಟ್ಲಿಯವರನ್ನು ನಿಯೋಗದೊಂದಿಗೆ ಭೇಟಿ ಮಾಡಿ ಮನವಿ ಸಲ್ಲಿಸಲಾಗಿದೆ. ಮಾನ್ಯ ಕೇಂದ್ರ ಹಣಕಾಸು ರಾಜ್ಯ ಸಚಿವರಾದ ಶ್ರೀ ಶಿವಪ್ರತಾಪ ಶುಕ್ಲಾರವರು ಸಂಯುಕ್ತ ಸಹಕಾರಿಯ ಕೇಂದ್ರ ಕಛೇರಿಗೆ ಭೇಟಿ ನೀಡಿದ್ದ ಸಂದರ್ಭದಲ್ಲಿ ಈ ಸಮಸ್ಯೆಗಳ ಬಗ್ಗೆ ಅವರ ಗಮನ ಸೆಳೆಯಲಾಗಿದೆ. ಆದಾಯ ತೆರಿಗೆ ಪ್ರಧಾನ ಮುಖ್ಯ ಆಯುಕ್ತರಾದ ಶ್ರೀ ರಜನೀಶರವರನ್ನು ಭೇಟಿ ಮಾಡಿ ಈ ಬಗ್ಗೆ ಚರ್ಚಿಸಲಾಗಿದೆ. ಈ ಬಗ್ಗೆ ನಡೆಸುವ ಪ್ರಯತ್ನಗಳು ನಿರಂತರ ಪ್ರಕ್ರಿಯೆಯಾಗಿದೆ.

ಸಹಕಾರಿಗಳಿಗೆ ಆದಾಯ ತೆರಿಗೆ ಇಲಾಖೆಯಿಂದ ನೋಟೀಸುಗಳು ಬಂದಾಗ ಲೆಕ್ಕಪರಿಶೋಧಕರ ಮೂಲಕ ಸಂಬಂಧಪಟ್ಟ ಪ್ರಾಧಿಕಾರದಲ್ಲಿ ಅಫೀಲು ಸಲ್ಲಿಸಬೇಕಾಗುತ್ತದೆ. ಅಂತಹ ಸಂದರ್ಭದಲ್ಲಿ, ಈಗಾಗಲೇ ಆದಾಯ ತೆರಿಗೆ ಕುರಿತು ಬಂದಿರುವ ತೀರ್ಪುಗಳು ಸಹಕಾರಿಗಳಲ್ಲಿ ಇದ್ದಲ್ಲಿ ಮುಂದುವರೆಯಲು ಅನುಕೂಲವಾಗುತ್ತದೆ ಎನ್ನುವ ಭಾವನೆಯಿಂದ ಈ ಪುಸ್ತಕವನ್ನು ಪ್ರಕಟಿಸಲಾಗುತ್ತಿದೆ. ಸಹಕಾರಿಗಳಿಗೆ ಇದು ಪ್ರಯೋಜನಕಾರಿಯಾಗುತ್ತದೆಂದು ಭಾವಿಸುತ್ತೇನೆ.

ಬಿ ಹೆಚ್ ಕೃಷ್ಣಾರೆಡ್ಡಿ

ಅಧ್ಯಕ್ಷರು

ಮುನ್ನುಡಿ

ಆತ್ಮೀಯ ಸಹಕಾರಿ ಬಂಧುಗಳೇ,

ರಾಜ್ಯದಲ್ಲಿ ಸೌಹಾರ್ದ ಸಹಕಾರಿ ಚಳುವಳಿ ಪ್ರಾರಂಭವಾಗಿ 18 ವರ್ಷಗಳು ಕಳೆದಿವೆ. ಸ್ವಾಯತ್ತತೆ, ಸ್ವಯಂ ನಿಯಂತ್ರಣ, ಸ್ವಯಂ ಆಡಳಿತದ ತಳಹದಿಯ ಮೇಲೆ ಕಾರ್ಯನಿರ್ವಹಿಸುತ್ತ ಸಹಕಾರಿ ಕ್ಷೇತ್ರಕ್ಕೆ ಹೊಸ ಚೈತನ್ಯವನ್ನು ತುಂಬುವಲ್ಲಿ ಹಾಗೂ ರಾಜ್ಯದ ಜನತೆಯ, ಸಹಕಾರಿಗಳ, ಸರಕಾರದ ಮಾನ್ಯತೆಯನ್ನು ಪಡೆಯುವಲ್ಲಿ ಸೌಹಾರ್ದ ಸಹಕಾರಿ ಕ್ಷೇತ್ರ ಯಶಸ್ವಿಯಾಗಿದೆ. ಸೌಹಾರ್ದ ಸಹಕಾರಿಗಳು ಸಹಕಾರಿ ಕ್ಷೇತ್ರದ ಸಾಂಪ್ರದಾಯಕ ಚಟುವಟಿಕೆಗಳಿಂದ ಹೊರಬಂದು ವಿಭಿನ್ನ ರೀತಿಯ ಚಟುವಟಿಕೆಗಳನ್ನು ಹಮ್ಮಿಕೊಂಡು ಅದ್ಭುತ ಪ್ರಗತಿಯನ್ನು ಸಾಧಿಸಿ ಕಾರ್ಯನಿರ್ವಹಿಸುತ್ತಿರುವುದು ವಿಶೇಷ.

ಸೌಹಾರ್ದ ಸಹಕಾರಿಗಳಿಗೆ ಆದಾಯ ತೆರಿಗೆ ಇಲಾಖೆಯ ಅಧಿಕಾರಿಗಳು ತೆರಿಗೆ ಪಾವತಿಸುವಂತೆ ನೋಟೀಸ್ ನೀಡುತ್ತಿರುವುದು, ಈ ಬಗ್ಗೆ ಸೌಹಾರ್ದ ಸಹಕಾರಿಗಳು ಸಂಯುಕ್ತ ಸಹಕಾರಿಯನ್ನು ಸ್ಪಷ್ಟನೆ ಕೋರಿ ಸಂಪರ್ಕಿಸುತ್ತಿರುವುದು ಇತ್ತೀಚೆಗಿನ ದಿನಗಳಲ್ಲಿ ಹೆಚ್ಚಾಗಿದೆ. ನೋಟೀಸು ಬಂದ ಸಂದರ್ಭದಲ್ಲಿ ಸಹಕಾರಿಗಳು ಆದಾಯಕ್ಕೆ ತೆರಿಗೆ ವಿನಾಯಿತಿ ಕೋರಿ ತಮ್ಮ ಲೆಕ್ಕಪರಿಶೋಧಕರ ಮೂಲಕ ಸಂಬಂಧಪಟ್ಟ ಪ್ರಾಧಿಕಾರವನ್ನು ಸಂಪರ್ಕಿಸುವಾಗ, ಅನುಕೂಲವಾಗಲೆಂದು ಸಹಕಾರ ಕ್ಷೇತ್ರಕ್ಕೆ ಅನ್ವಯವಾಗುವ ಆದಾಯ ತೆರಿಗೆ ಸಂಬಂಧಿತ ತೀರ್ಪುಗಳ ಈ ಪುಸ್ತಕವನ್ನು ಪ್ರಕಟಿಸಲಾಗುತ್ತಿದೆ. ಸೌಹಾರ್ದ ಸಹಕಾರಿಗಳಿಗೆ ಉಪಯೋಗವಾಗುವ ದೃಷ್ಟಿಯಿಂದ ಈ ಕೈಪಿಡಿಯಲ್ಲಿ ಆದಾಯ ತೆರಿಗೆ ವಿಷಯಕ್ಕೆ ಸಂಬಂಧಿಸಿದ ನ್ಯಾಯಾಲಯದ ತೀರ್ಪುಗಳನ್ನು ಕ್ರೋಢೀಕರಿಸಿ ಒಂದೆಡೆ ದೊರೆಯುವಂತೆ ಈ ಪ್ರಯತ್ನ ಮಾಡಲಾಗಿದೆ.

ಸಂಯುಕ್ತ ಸಹಕಾರಿಯ ಉದ್ದೇಶವನ್ನು ಅರಿತು ಈ ಕೈಪಿಡಿಗೆ ಅಗತ್ಯವಾದ ಮಾಹಿತಿಗಳನ್ನು ಸಂಪಾದಿಸಿ ಕೊಟ್ಟಿರುವ ಸನ್ನದು ಲೆಕ್ಕಪರಿಶೋಧಕರಾದ ಶ್ರೀ ಬಿ ವಿ ರವೀಂದ್ರನಾಥ, ಸಾಗರ ಹಾಗೂ ಸನ್ನದು ಲೆಕ್ಕಪರಿಶೋಧಕರಾದ ಶ್ರೀ ಮಧುಕರ ಹೆಗಡೆ, ಬೆಂಗಳೂರು ಇವರ ಪ್ರಯತ್ನಕ್ಕೆ ಸಂಯುಕ್ತ ಸಹಕಾರಿಯ ಹಾಗೂ ಎಲ್ಲ ಸೌಹಾರ್ದ ಸಹಕಾರಿಗಳ ಪರವಾಗಿ ಕೃತಜ್ಞತೆಗಳು.

ತಾವುಗಳು ಈ ಪುಸ್ತಕದಿಂದ ಪ್ರಯೋಜನ ಪಡೆದುಕೊಂಡರೆ, ತೆರಿಗೆಗೆ ಸಂಬಂಧಿಸಿದಂತೆ ಸ್ಪಷ್ಟತೆಯನ್ನು ಪಡೆದುಕೊಂಡು ಅಗತ್ಯ ಕಾರ್ಯನಿರ್ವಹಿಸಲು ಅನುಕೂಲವಾದರೆ ಸಂಯುಕ್ತ ಸಹಕಾರಿಯ ಈ ಪ್ರಯತ್ನ ಸಾರ್ಥಕ. ಈ ಪ್ರಕಟಣೆಯ ಬಗ್ಗೆ ತಮ್ಮ ಅನಿಸಿಕೆಗಳನ್ನು ಹಾಗೂ ಸಲಹೆಗಳನ್ನು ಸ್ವಾಗತಿಸುತ್ತೇವೆ.

– ವ್ಯವಸ್ಥಾಪಕ ನಿರ್ದೇಶಕರು

ಪರಿವಿಡಿ

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01	ಪತ್ತಿನ ಚಟುವಟಿಕೆ ನಡೆಸುವ ಸೌಹಾರ್ದ ಸಹಕಾರಿಗಳಿಗೆ ಆದಾಯ ತೆರಿಗೆ ಪಾವತಿಯಿಂದ ವಿನಾಯಿತಿ ನಿರ್ಧರಿತ ಪ್ರಕರಣಗಳು ಮತ್ತು ಅವುಗಳ ವಿಶ್ಲೇಷಣೆ	**7 - 12**
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03	ದಿ ಸಿಟಿಜನ್ ಕೋ ಆಪ್‌ರೇಟಿವ್ ಸೊಸೈಟಿ ಲಿ, ಹೈದರಾಬಾದ್ ಪ್ರಕರಣದಲ್ಲಿ "ಮಾನ್ಯ ಸರ್ವೋಚ್ಚ ನ್ಯಾಯಾಲಯದ ತೀರ್ಪು ಮತ್ತು ಅದರ ಪರಿಣಾಮ"	**163 - 166**
04	Income Tax related Judgements affecting the cooperatives – 12 Judgements	**167 - 256**

ಪತ್ತಿನ ಚಟುವಟಿಕೆ ನಡೆಸುವ ಸೌಹಾರ್ದ ಸಹಕಾರಿಗಳಿಗೆ ಆದಾಯ ತೆರಿಗೆ ಪಾವತಿಯಿಂದ ವಿನಾಯಿತಿ ನಿರ್ಧರಿತ ಪ್ರಕರಣಗಳು ಮತ್ತು ಅವುಗಳ ವಿಶ್ಲೇಷಣೆ

ಇತ್ತೀಚಿನ ದಿನಗಳಲ್ಲಿ ಪತ್ತಿನ ಚಟುವಟಿಕೆ ನಡೆಸುತ್ತಿರುವ ಸೌಹಾರ್ದ ಸಹಕಾರಿಗಳ ಬಾಯಲ್ಲಿ ಕೇಳಿ ಬರುತ್ತಿರುವ ಮಾತು ಒಂದೆ ಸಹಕಾರಿಗೆ ಆದಾಯ ತೆರಿಗೆ ಇಲಾಖೆಯಿಂದ ತೆರಿಗೆ ಪಾವತಿಸುವಂತೆ ನೋಟೀಸ್ ಬಂದಿರುತ್ತದೆ ಏನು ಮಾಡಬೇಕು ದಯವಿಟ್ಟು ಸಲಹೆ ನೀಡಿ, ಮಾರ್ಗದರ್ಶನ ಮಾಡಿ ಎಂಬುದಾಗಿತ್ತು ಈ ಎಲ್ಲಾ ಪ್ರಶ್ನೆಗಳಿಗೆ ನಾವು ನೀಡುತ್ತಿದ್ದ ಉತ್ತರ ಆದಾಯ ತೆರಿಗೆ ಕಲಂ 80(ಪಿ)(2)(ಎ)(ಐ) ಅಡಿಯಲ್ಲಿ ಪತ್ತಿನ ಚಟುವಟಿಕೆ ನಡೆಸುವ ಸಹಕಾರಿಗೆ ಆದಾಯ ತೆರಿಗೆ ಅನ್ವಯಿಸುವುದಿಲ್ಲ ಆದ್ದರಿಂದ ಆದಾಯ ತೆರಿಗೆ ಪಾವತಿಸಬೇಕಾದ ಅವಶ್ಯಕತೆಯಿರುವುದಿಲ್ಲ ಈ ವಿಷಯವನ್ನು ಅಸೆಸಿಂಗ್ ಅಧಿಕಾರಿಗೆ ಮನವರಿಕೆ ಮಾಡಿಕೊಡಿ ಎಂದು ತಿಳಿಸಲಾಗುತ್ತಿತ್ತು. ಹೀಗೆ ತಿಳಿಸಿ ಕೆಲವು ದಿನಗಳ ನಂತರ ಮತ್ತೆ ಅದೇ ಸಹಕಾರಿಯಿಂದ ದೂರವಾಣಿ ಕರೆ, ನೀವು ತಿಳಿಸಿರುವಂತೆ ಅಸೆಸಿಂಗ್ ಅಧಿಕಾರಿಗೆ ಮನವರಿಕೆ ಮಾಡಿಕೊಡಲು ಪ್ರಯ್ನಿಸಿದೆವು ಆದರೆ ಅಸೆಸಿಂಗ್ ಅಧಿಕಾರಿ ನಮ್ಮ ಸಹಕಾರಿಯನ್ನು 'ಬ್ಯಾಂಕ್' ಎಂದು ಪರಿಗಣಿಸಿ ನಿಮ್ಮ ಸಹಕಾರಿಗೆ ತೆರಿಗೆ ಆದಾಯ ತೆರಿಗೆ ಕಲಂ 80(ಪಿ)(2)(ಎ)(ಐ) ವಿನಾಯಿತಿ ಅನ್ವಯಿಸುವುದಿಲ್ಲ ಆದ್ದರಿಂದ ಆದಾಯ ತೆರಿಗೆ ಪಾವತಿಸುವಂತೆ ತಿಳಿಸಿರುತ್ತಾರೆ ಎಂದು ತಿಳಿಸುತ್ತಾರೆ. ಇದು ಸಾಮಾನ್ಯವಾಗಿ ಸಂಭವಿಸುತ್ತಿರುವ ಘಟನಾವಳಿಗಳು. ಇಂತಹ ಅನುಭವ ನಿಮ್ಮ ಸಹಕಾರಿಗೂ ಸಹ ಆಗಿರಬಹುದು.

ಸಹೃದಯ ಸಹಕಾರಿಗಳೇ ದೃತಿಗೆಡಬೇಕಿಲ್ಲ, ನಿರಾಶರಾಗಬೇಕಿಲ್ಲ, ಹೇದರಬೇಕಿಲ್ಲ ಕಾಯ್ದೆ, ಕಾನೂನುಗಳು ಇರುವುದು ತೊಂದರೆಯ ನಿವಾರಣೆಗೆ ಹೊರತು ತೊಂದರೆ ನೀಡುವುದಕ್ಕಲ್ಲ. ಆಂಗ್ಲ ಭಾಷೆಯಲ್ಲಿ ಒಂದು ಮಾತಿದೆ **'If any law is an evil, then can't be enforceable'** ಸಹಕಾರಿಗಳಿಗೆ ಸಂತಸದಾಯಕವಾದ ಸುದ್ದಿಯೊಂದಿದೆ. ಶ್ರೀ ಜಸ್‌ಬೀರ್‌ಸಿಂಗ್ ಚೌಹಾಣ್, ಬೆಳಗಾವಿ ಆದಾಯ ತೆರಿಗೆ ಆಯುಕ್ತರು (ಮೇಲ್ಮನವಿ) ಇವರು ಈ ಕೆಳಗಿನ ಪ್ರಕರಣಗಳಲ್ಲಿ ಸಹಕಾರಿಗಳ ಪರವಾಗಿ ನೀಡಿರುವ ತೀರ್ಪುಗಳು ಹಲವಾರು ಸೌಹಾರ್ದ ಸಹಕಾರಿಗಳ ಮುಂದಿನ ಹೋರಾಟಕ್ಕೆ ದಾರಿ ದೀಪವಾಗಿದೆ.

1. ದಿ ಯಮಕನಮರಡಿ ಲಕ್ಷ್ಮೀ ಅರ್ಬನ್ ಕ್ರೆಡಿಟ್ ಸೌಹಾರ್ದ ಸಹಕಾರಿ ನಿ., ಯಮಕನಮರಡಿ (ITA No.97/BGM/12-13)
2. ಶ್ರೀ ಮಹಾವೀರ್ ವಿವಿದೋದ್ದೇಶಗಳ ಸೌಹಾರ್ದ ಸಹಕಾರಿ ನಿ., ಹುಕ್ಕೇರಿ (ITA No.98/BGM/12-13)
3. ಶ್ರೀ ಬ್ರಹ್ಮದೇವ ಅರ್ಬನ್ ಕ್ರೆಡಿಟ್ ಸೌಹಾರ್ದ ಸಹಕಾರಿ ನಿ., ಯಮಕನಮರಡಿ (ITA No.101/BGM/12-13)
4. ಶ್ರೀ ನಾಮದೇವ ಕೋ–ಆಫರೇಟಿವ್ ಕ್ರೆಡಿಟ್ ಸೊಸೈಟಿ ಲಿ., ಸಂಕೇಶ್ವರ (ITA No.144/BGM/12-13)
5. ಶ್ರೀ ಮಹಾವೀರ ಕೋ–ಆಫರೇಟಿವ್ ಕ್ರೆಡಿಟ್ ಸೊಸೈಟಿ ಲಿ., ಹುಕ್ಕೇರಿ (ITA No.147/BGM/12-13)
6. ಶ್ರೀ ಶಂಕರಲಿಂಗ ಕೋ–ಆಫರೇಟಿವ್ ಕ್ರೆಡಿಟ್ ಸೊಸೈಟಿ ಲಿ., ಸಂಕೇಶ್ವರ (ITA No.151/BGM/12-13)

ಈ ಮೇಲಿನ ಎಲ್ಲಾ ತೀರ್ಪುಗಳನ್ನು ಬೆಳಗಾವಿಯ ಆದಾಯ ತೆರಿಗೆ ಆಯುಕ್ತರು (ಮೇಲ್ಮನವಿ) ಇವರು ನೀಡಿದ್ದು, ಅವರು ತಮ್ಮ ತೀರ್ಪಿನಲ್ಲಿ ಸಹಕಾರಿಗಳು ಆದಾಯ ತೆರಿಗೆಯಿಂದ ಆದಾಯ ತೆರಿಗೆ ಕಲಂ 80(ಪಿ)(2)(ಎ)(ಐ) ರಡಿ ಹೇಗೆ ವಿನಾಯಿತಿ ಹೊಂದಿರುತ್ತವೆ ಎಂಬುದನ್ನು ತಿಳಿಸಿರುತ್ತಾರೆ (Ratio Decidendi). ಅದನ್ನು ನಾವು ಗಮನಿಸೋಣ. ಮಾನ್ಯ ಆದಾಯ ತೆರಿಗೆ ಆಯುಕ್ತರು (ಮೇಲ್ಮನವಿ) ಇವರ ತೀರ್ಪಿಗೂ ಪೂರ್ವದಲ್ಲಿ ತೀರ್ಪು ನೀಡಿದ್ದ ಅಸೆಸಿಂಗ್ ಅಧಿಕಾರಿ ಸಹಕಾರಿಗೆ ಆದಾಯ ತೆರಿಗೆ ಅನ್ವಯಿಸುತ್ತದೆ ಎಂಬುದಕ್ಕೆ ಈ ಕೆಳಗಿನ ಕಾರಣಗಳ ನೀಡಿರುತ್ತಾರೆ (The

Assessing Officer had disallowed the deduction under section 80P (2)(a)(i) of the Income Tax Act, 1961 for below mentioned reasons)

1. ಸಹಕಾರಿಯು ಬ್ಯಾಂಕಿಂಗ್ ಚಟುವಟಿಕೆಯಲ್ಲಿ ನಿರತವಾಗಿದ್ದು ಬ್ಯಾಂಕಿಂಗ್ ನಿಯಂತ್ರಣ ಅಧಿನಿಯಮ, 1949ರ ಕಲಂ 5(ccv)ರನ್ವಯ ಪ್ರಾಥಮಿಕ ಸಹಕಾರಿ ಬ್ಯಾಂಕ್ ಆಗಿರುತ್ತದೆ.
2. ಸಹಕಾರಿಯು ಒಂದು ಲಕ್ಷಕ್ಕಿಂತ ಹೆಚ್ಚಿನ ಪಾವತಿಯಾದ ಶೇರು ಬಂಡವಾಳ ಹೊಂದಿರುವ ಸಹಕಾರಿಯು ತನ್ನಿಂತಾನೆ ಬ್ಯಾಂಕ್ ಆಗಿ ಪರಿವರ್ತನೆ ಹೊಂದುತ್ತದೆ.
3. ಆದಾಯ ತೆರಿಗೆ ಅಧಿನಿಯಮ,1961ರ ಕಲಂ 2(24)ರನ್ವಯ ಆದಾಯ ತೆರಿಗೆ ಕಲಂ 80(ಪಿ)(2)(ಎ)(ಐ)ಯಲ್ಲಿನ ವಿನಾಯಿತಿಯು ಕೇವಲ ಪ್ರಾಥಮಿಕ ಕೃಷಿ ಪತ್ತಿನ ಸಹಕಾರಿಗಳಿಗೆ ಮತ್ತು ಪ್ರಾಥಮಿಕ ಕೃಷಿ ಮತ್ತು ಗ್ರಾಮೀಣಾಭಿವೃದ್ಧಿ ಬ್ಯಾಂಕ್‌ಗಳಿಗೆ ಮಾತ್ರ ಅನ್ವಯಿಸುತ್ತದಯೇ ಹೊರತು ಉಳಿದ ಸಹಕಾರಿಗಳಿಗಲ್ಲ.
4. ಪ್ರಾಥಮಿಕ ಸಹಕಾರಿಯು ಈ ಕೆಳಗಿನ ಪ್ರಮುಖ ಉದ್ದೇಶಗಳನ್ನು ಹೊಂದಿದ್ದು ಅದರ ಆಧಾರದ ಮೇಲೆ ಪ್ರಾಥಮಿಕ ಸಹಕಾರ ಬ್ಯಾಂಕ್ ಎಂದು ಪರಿಗಣಿಸಬೇಕಾಗುತ್ತದೆ, ಹಾಗೆ ಪ್ರಾಥಮಿಕ ಸಹಕಾರಿಯು ಸಹಕಾರ ಬ್ಯಾಂಕ್ ಎಂದು ಪರಿಗಣಿಸಲು ಕಾರನವಾಗುವ ಪ್ರಮುಖ ಅಂಶಗಳು;

    a) ಬ್ಯಾಂಕಿಂಗ್ ಚಟುವಟಿಕೆ ನಡೆಸುವುದು ಪ್ರಮುಖ ಉದ್ದೇಶವಾಗಿರುವ

    b) ಒಂದು ಲಕ್ಷಕ್ಕಿಂತ ಹೆಚ್ಚಿನ ಪಾವತಿಯಾದ ಶೇರು ಬಂಡವಾಳ ಹೊಂದಿರುವ

    c) ಸಹಕಾರಿಯ ಉಪವಿಧಿಯು ಇನ್ನೊಂದು ಸಹಕಾರಿಯ ಸದಸ್ಯತ್ವ ಹೊಂದಲು ಅವಕಾಶವಿಲ್ಲದ

ಈ ಮೇಲಿನ ಕಾರಣಗಳಿಗಾಗಿ ಸಹಕಾರಿಗೆ ಆದಾಯ ತೆರಿಗೆ ಕಲಂ 80ಪಿ(2)(ಎ)(ಐ)ರಡಿ ವಿನಾಯಿತಿ ಇರುವುದಿಲ್ಲವೆಂದು ತೀರ್ಪನ್ನು ನೀಡಿರುತ್ತಾರೆ.

ಈ ತೀರ್ಪಿನ ವಿರುದ್ದ ಬಾಧಿತ ವ್ಯಕ್ತಿಗಳು (ತೀರ್ಪು ಋಣಿಗಳು) ಮಾನ್ಯ ಆದಾಯ ತೆರಿಗೆ ಆಯುಕ್ತರು (ಮೇಲ್ಮನವಿ) ಇವರಿಗೆ ಮೇಲ್ಮನವಿ ಸಲ್ಲಿಸಿರುತ್ತಾರೆ. ಸದರಿ ಮೇಲ್ಮನವಿಯಲ್ಲಿ ತೀರ್ಪು ಋಣಿಗಳು ತಮ್ಮ ಸಮರ್ಥನೆಯನ್ನು ಸಲ್ಲಿಸಿದ್ದು ಮಾನ್ಯ ಆದಾಯ ತೆರಿಗೆ ಆಯುಕ್ತರು (ಮೇಲ್ಮನವಿ) ಇವರು ಸದರಿ ವಾದವನ್ನು ಪುರಸ್ಕರಿಸಿ ಪತ್ತಿನ ಚಟುವಟಿಕೆ ನಡೆಸುತ್ತಿರುವ ಸಹಕಾರಿಗಳು ಆದಾಯ ತೆರಿಗೆ ಕಲಂ 80ಪಿ(2)(ಎ)(ಐ)ರಡಿ ವಿನಾಯಿತಿ ಹೊಂದಿರುತ್ತವೆ ಎಂದು ತೀರ್ಪನ್ನು ನೀಡಿರುತ್ತಾರೆ.

<u>ತೀರ್ಪಿನ ಪ್ರಮುಖ ಅಂಶಗಳು:</u>

1. ದಿನಾಂಕ 01.07.2007ರಿಂದ ಜಾರಿಗೆ ಬಂದಿರುವ ಆರ್ಥಿಕ ಅಧಿನಿಯಮ,2006ರ ಮೂಲಕ ಸಹಕಾರ ಬ್ಯಾಂಕುಗಳನ್ನು ಆದಾಯ ತೆರಿಗೆ ಪಾವತಿಯ ವ್ಯಾಪ್ತಿಯಲ್ಲಿ ತರಲಾಗಿರುತ್ತದೆ. ಕಲಂ 80ಪಿ(4)ನ್ನು ಹೊಸದಾಗಿ ಸೇರ್ಪಡೆ ಮಾಡುವ ಮೂಲ ಉದ್ದೇಶ ಪಟ್ಟಣ ಸಹಕಾರ ಬ್ಯಾಂಕುಗಳಿಗೆ ಆದಾಯ ತೆರಿಗೆ ವಿಧಿಸುವುದಾಗಿರುತ್ತದೆ. ಇದರಿಂದ ಪಟ್ಟಣ ಸಹಕಾರಿ ಬ್ಯಾಂಕುಗಳಿಗೆ ಮಾತ್ರ ಆದಾಯ ತೆರಿಗೆ ಅನ್ವಯವಾಗುವುದು ಮತ್ತು ಉಳಿದ ಸಹಕಾರಿಗಳು ಆದಾಯ ತೆರಿಗೆ ವಿನಾಯಿತಿ ಹೊಂದಿರುವುದು ಸ್ಪಷ್ಟವಾಗುತ್ತದೆ ಮತ್ತು ಪ್ರಾಥಮಿಕ ಸಹಕಾರಿಗಳನ್ನು ಆದಾಯ ತೆರಿಗೆ ವ್ಯಾಪ್ತಿಯಲ್ಲಿ ತರುವುದಿದ್ದರೆ ಕಲಂ 80ಪಿ(2)(ಎ)(ಐ)ಯನ್ನು ರದುಗೊಳಿಸಬಹುದಿತ್ತೆ ವಿನಃ ಕಲಂ 80ಪಿ(4)ನ್ನು ಹೊಸದಾಗಿ ಸೇರ್ಪಡೆಗೊಳಿಸುವ ಅವಶ್ಯಕತೆ ಇರಲಿಲ್ಲ. ಅಲ್ಲದೆ ಕಲಂ 80ಪಿ(4)ನ್ನು ಸೇರ್ಪಡೆಗೊಳಿಸುವಾಗಿನ ಕೇಂದ್ರ ಆರ್ಥಿಕ ಮಂತ್ರಿಗಳಾಗಿದ್ದ ಶ್ರೀಯುತ ಪಿ.ಚಿದಂಬರಂರವರು ಆಯ–ವ್ಯಯದ ಮೇಲಿನ ಭಾಷಣದಲ್ಲಿ ಕಲಂ 80ಪಿ(4)ಗಿನ ಸೇರ್ಪಡೆ ಕುರಿತು ಈ ಕೆಳಗಿನಂತೆ ಸಂಸತ್ತಿನಲ್ಲಿ ಭಾಷಣ ಮಾಡಿರುತ್ತಾರೆ;

Shri P. Chidambaram Sir, the next issue, on which there are some questions raised on Direct Taxes, is Section 80(P). Let me take a few minutes on dealing with this issue. We have not removed the exemption to co-operatives in general. We have only removed it for certain co-operative banks. All Co-operatives which are in dairy, weaving and in other co-operatives where the principle of mutuality applies continue to enjoy exemption under Section 80(P). We have removed exemption for one category of co-operative banks. Why? Today, there are 1,08,791 institutions which, do one form of banking or another. Out of these 1,08,791 institutions, 1,05,735 institutions are primary agricultural credit societies which are expressly exempt. Therefore, nobody should have any fear that there are being taxed. Then we have 768 Primary Co-operative Agricultural & Rural Development Banks which are also expressly exempt. These leave ***only 2,288 banks falling under four categories-urban Co-operative Banks, State Co-operative Banks, Central Co-operative Banks and State Co-operative Agricultural Rural Development Banks, that is banks at the Apex level and banks at the district level****. These are 2,288 in number.*

Sir, today Member after Member have met me and said that these banks are mismanaged; there is malfeasance and misfeasance; the monies of the depositors are not paid and they requested me to pay to the depositors out of the Credit Insurance Corporation. In Gujarat we have finally released Rs.1,00,000/- per depositor. Hundreds of Members have met me and said that the whole thing is in the hands of worst people in this country. Why? It is because they are not subjected to any kind of regulation. Today all that they have say is that they are banks and are covered under Section 80(P). They do not even file their income tax returns and audited statement of accounts. They are under State Regulators. Now, we all know that State Regulators have failed. In Gujarat, dozens of banks collapsed; In Maharashtra, dozens of banks have collapsed. In Madurai, the Urban City Bank has collapsed. In my own district, the DCCB is under moratorium by the Reserve Bank of India. Now, the only way we can bring in some discipline and save these Banks is to make them file proper audited income and expenditure statement which can be scrutinized by the Income Tax Department. Today out of the 2288 banks, which have now been brought under the Income Tax net, one half of them, are reporting losses and so they are not paying any income tax. They would pay tax only when they are working profits. But, I do not believe that one half of them are making losses. One half of them are reporting losses because nobody is questioning them, nobody is looking at them. Now let me say with humility, if we allow this situation continues, then all of them will one day make losses. We have to bring some discipline. They are banks and the ***principle of mutuality does not apply*** *there because they are lending even to non-members. Public deposits are taken and they are lending to even non-members. What they do is that they take certain categories of members and call them nominal members. They take rupee one from them and begin to lend them. These banks are like any other banks.*

Many of them are scheduled banks also because they are in the schedule to the RBI Act. We are bringing only these banks under taxation under Section 80(P). If you make a profit, please pay taxes. Whether you are making profit or not, I can find them only if you are required to file an audited income and expenditure

statement. I think it is important step in order to bring some financial and management discipline into these Banks. I humbly appeal to the House to allow me to do this…..

2. ನೆಗೋಶಿಯಬಲ್ ಇನ್ಸ್ಟ್ರುಮೆಂಟ್ ಅಧಿನಿಯಮವು ಅನ್ವಯವಾಗುವುದಿಲ್ಲವಾದ ಕಾರಣ ಮತ್ತು ಸಹಕಾರಿಯು ಬ್ಯಾಂಕಿಂಗ್ ಚಟುವಟಿಕೆ ನಡೆಸಲು ಪರವಾನಗಿ ಪಡೆದಿಲ್ಲದ ಕಾರಣ ಅಸೆಸಿಂಗ್ ಅಧಿಕಾರಿಯು ಅಭಿಪ್ರಾಯಪಟ್ಟಿರುವಂತೆ ಪ್ರಾಥಮಿಕ ಸಹಕಾರಿಯು 'ಬ್ಯಾಂಕ್' ಆಗಿರುವುದಿಲ್ಲ. ಅಲ್ಲದೆ ಯಾವುದನ್ನೆ ಆಗಲೀ ಬ್ಯಾಂಕ್ ಎಂದು ಪರಿಗಣಿಸಲು ಈ ಕೆಳಗಿನ ಮೂರು ಪ್ರಮುಖ ಅಂಶಗಳು ಅಗತ್ಯವಾಗಿದ್ದು ಅದರ ಹೊರತಾಗಿ ಬ್ಯಾಂಕ್ ಎಂದು ಪರಿಗಣಿಸಲು ಸಾಧ್ಯವಿರುವುದಿಲ್ಲ.

   a) ಸಾರ್ವಜನಿಕರಿಂದ ಠೇವಣಿಯನ್ನು ಸಾಲ ಮತ್ತು ಹೂಡಿಕೆಯ ಉದ್ದೇಶಕ್ಕಾಗಿ ಸ್ವೀಕರಿಸಿರುವ;

   b) ಸಾರ್ವಜನಿಕರ ಠೇವಣಿ ಹಣವನ್ನು ಕೇಳಿದಾಗ ಮರುಪಾವತಿಸುವ;

   c) ಹಣವನ್ನು ಚೆಕ್, ಡ್ರಾಫ್ಟ್, ಆದೇಶ ಮತ್ತು ಇನ್ಯಾವುದರ ಮೂಲಕ ಪಡೆದುಕೊಳ್ಳು ಅವಕಾಶವಿದ್ದಲ್ಲಿ ಅದನ್ನು ಬ್ಯಾಂಕ್ ಎಂದು ಪರಿಗಣಿಸಬಹುದಾಗಿರುತ್ತದೆ. ಆದರೆ ಒಂದು ಪ್ರಾಥಮಿಕ ಸಹಕರಿ ಸಂದರ್ಭದಲ್ಲಿ ಮೇಲಿನ ಈ ಮೂರು ಅಂಶಗಳು ಸಾಧ್ಯವಿಲ್ಲದ ಕಾರಣ ಮತ್ತು ಕೇವಲ ಒಂದು ಲಕ್ಷ ರೂಪಾಯಿಗಳ ಪಾವತಿಯಾದ ಶೇರು ಬಂಡವಾಳ ಇದ್ದ ಮಾತ್ರಕ್ಕೆ ಸಹಕಾರಿಯನ್ನು ಬ್ಯಾಂಕ್ ಎಂದು ಪರಿಗಣಿಸಲು ಸಾಧ್ಯವಿರುವುದಿಲ್ಲ.

3. ಸಹಕಾರಿಯು ಇನ್ನೊಂದು ಸಹಕಾರಿಯನ್ನು ತನ್ನ ಸದಸ್ಯನಾಗಿ ಹೊಂದಲು ಅವಕಾಶವಿರುತ್ತದೆ. ಸಹಕಾರಿಯು ತನ್ನ ಉಪವಿಧಿಯಲ್ಲಿ **'ಸಹಕಾರಿಯ ಕಾರ್ಯವ್ಯಾಪ್ತಿಯಲ್ಲಿ ವಾಸಿಸುವ ಅಥವಾ ವ್ಯವಹಾರ ಅಥವಾ ವ್ಯಾಪಾರವನ್ನು ಹೊಂದಿರುವ'** ಎಂಬ ಶಬ್ದವು ಒಂದು ಸಹಕಾರಿಯು ಇನ್ನೊಂದು ಸಹಕಾರಿಯನ್ನು ಸದಸ್ಯನಾಗಿ ಹೊಂದಲು ಅವಕಾಶ ಕಲ್ಪಿಸುತ್ತದೆ.

   ಈ ಮೇಲಿನ ಕಾರಣಗಳ ಆಧಾರದ ಮೇಲೆ ಸಹಕಾರಿಯು ಆದಾಯ ತೆರಿಗೆ ಅಧಿನಿಯಮ, 1961ರ ಕಲಂ 80ಪಿ(2)(ಎ)(ಐ)ರಡಿಯಲ್ಲಿ ಆದಾಯ ತೆರಿಗೆ ಪಾವತಿಯಿಂದ ವಿನಾಯಿತಿ ಹೊಂದಿರುತ್ತದೆ ಎಂದು ಅಭಿಪ್ರಾಯ ಪಟ್ಟಿರುತ್ತಾರೆ.

ಆದಾಯ ತೆರಿಗೆ ಇಲಾಖೆಯ ಅಸೆಸಿಂಗ್ ಅಧಿಕಾರಿಗಳು ಪ್ರತಿಯೊಂದು ಸಹಕಾರಿಯ ಪ್ರಕರಣವು ಭಿನ್ನವೆಂದು ಪರಿಗಣಿಸಿ ಬೇರೆಯದೆ ಆದ ನಿರ್ವಚನ ಮಾಡಿ ಸಹಕಾರಿಗೆ ಆದಾಯ ತೆರಿಗೆ ವಿಧಿಸುತ್ತಿದ್ದಾರೆ. ಅಂತಹ ಸಂದರ್ಭಗಳಲ್ಲಿ ಸಹಕಾರಿಗಳು ಆದಾಯ ತೆರಿಗೆ ಪಾವತಿಸದೆ ಸಂಬಂಧಿಸಿದ ಪ್ರಾಧಿಕಾರದ ಮುಂದೆ ಪ್ರಕರಣವನ್ನು ದಾಖಲಿಸುವ ಮೂಲಕ ಆದಾಯ ತೆರಿಗೆ ಪಾವತಿಯಿಂದ ವಿನಾಯಿತಿ ಪಡೆಯಬಹುದಾಗಿರುತ್ತದೆ.

ಪತ್ತಿನ ಚಟುವಟಿಕೆ ನಡೆಸುವ ಸಹಕಾರಿಗಳು ಆದಾಯ ತೆರಿಗೆ ಪಾವತಿಯ ವಿನಾಯಿತಿಯಿಂದ ಹೊಂದಿರುವ ಕುರಿತಂತೆ ನಿರ್ಧರಿತ ಪ್ರಕರಣಗಳು ಈ ಕೆಳಗಿನಂತಿದೆ.

1. The Commissioner of Income Tax v/s Vasavi Souharda Multipurpose Souharda Sahakari Ni.,(ITA No.505/2013)(High Court of Karnataka)
2. The Commissioner of Income Tax v/s Sri Biluru Gurubasava Pattina Sahakar Sangha Ni., (ITA No.5006/2013) (High Court of Karnataka)
3. The Assistant Comissioner of Income Tax Circle 391, Bangalore v/s Bangalore Commercial Transport (ITA No:1069/Bang/2010. (AY 2007-08)

4. Commissioner of Income Tax Circle Panaji v/s Dwaraka Souharda Credit Sahakari Ltd., 9ITA No.202/203/204/DCIT/cc Panaji/CIT(A)-VI/2010-11) (Assesment Year 2007-08, 2008-09 and 2009-10)
5. ಯಶವಂತಪುರ ಕ್ರೆಡಿಟ್ ಕೋ–ಆಫರೇಟಿವ್ ಸೊಸೈಟಿ ಲಿ., (ITA No:737/Bang/2011) (Assesment Year 2007-08)
6. ಜಯಲಕ್ಷ್ಮೀ ಮಹಿಳಾ ವಿವಿದೋದ್ದೇಶ ಸೌಹಾರ್ದ ಸಹಕಾರಿ ನಿ., ಅಂಕೋಲಾ (ITA No:01 to 03/PNJ/2012 dated 31.03.2012 Assesment Year 2007-08, 2008-09 and 2009-10)
7. ದ್ವಾರಕ ಸೌಹಾರ್ದ ಕ್ರೆಡಿಟ್ ಸಹಕಾರಿ ಲಿ., ಅಂಕೋಲಾ (ITA Nos:04 to 06/LNJ/2012 dated 31.03.2012 Assesment Year 2007-08, 2008-09 and 2009-10)
   ಈ ಪ್ರಕರಣದಲ್ಲಿ ಸಹಕಾರಿಯ ಪರವಾಗಿ ಸನ್ನದು ಲೆಕ್ಕಪರಿಶೋಧಕರಾದ ಶ್ರೀಯುತ ಸುಬ್ರಹ್ಮಣ್ಯ ಹೆಗಡೆಯವರು ವಾದಿಸಿರುತ್ತಾರೆ. ಹೆಚ್ಚಿನ ಮಾಹಿತಿಗಾಗಿ ಅವರ ದೂರವಾಣಿ ಸಂಖ್ಯೆ 9448136855 ಸಂಪರ್ಕಿಸಬಹುದಾಗಿರುತ್ತದೆ.
8. ಸಮರ್ಥ ಅರ್ಬನ್ ಕೋ–ಆಫರೇಟಿವ್ ಸೊಸೈಟಿ ಲಿ., ಬೆಳಗಾವಿ (ITA Nos:662/BGM/2010-11 dated 28.11.2011 Assesment Year 2008-09)
9. ಕೇರಳಾ ಕೋ–ಆಫರೇಟಿವ್ ಕಂಜ್ಯೂಮರ್ಸ್ ಫೇಡರೇಶನ್ ಲಿ., v/s CIT 170 ITR 455.
10. ಅಡಿಷನಲ್ ಸಿಐಟಿ v/s ಯುಪಿ ಕೋ–ಆಫರೇಟಿವ್ ಕೆನೆ ಯೂನಿಯನ್ 114 ಐಟಿಆರ್ 70
11. ಸಿಐಟಿ v/s ಕೋ–ಆಫರೇಟಿವ್ ಸಪ್ಲೈ ಅಂಡ್ ಕಮೀಷನ್ ಶಾಫ್ ಲಿ., 204 ಐಟಿಆರ್ 713.
12. Asistant Commissioner of Income tax, Circle iv V/S Buldana Urban Credit Society Ltd., (ITA Nos:151 to 153 and 179 to 181 (NAG) of 2012 dated 23.11.2012)
13. ಶ್ರೀ ವೇಮನ ಸೌಹಾರ್ದ ಕ್ರೆಡಿಟ್ ಕೋ–ಆಫರೇಟಿವ್ ಲಿ., (ITA.NO 71-73/AC-3(1)/CIT(A)-II/11-12) (Assesment Year 2007-08, 2008-09 and 2010-11) ಈ ಪ್ರಕರಣದಲ್ಲಿ ಸಹಕಾರಿಯ ಪರವಾಗಿ ಸನ್ನದು ಲೆಕ್ಕಪರಿಶೋಧಕರಾದ ಶ್ರೀಯುತ ಮಧುಕರ ಹೆಗಡೆಯವರು ವಾದಿಸಿರುತ್ತಾರೆ. ಹೆಚ್ಚಿನ ಮಾಹಿತಿಗಾಗಿ ಅವರ ದೂರವಾಣಿ ಸಂಖ್ಯೆ 9448151454 ಸಂಪರ್ಕಿಸಬಹುದಾಗಿರುತ್ತದೆ.
14. ಶ್ರೀ ಅರಿಹಂತ ಕ್ರೆಡಿಟ್ ಸೌಹಾರ್ದ ಸಹಕಾರಿ ನಿ., ಬೋರಗಾಂವ್ (ITA.NO 145/BGM/11-12) (Assesment Year 2009-10)

ಆದಾಯ ತೆರಿಗೆ ಇಲಾಖೆಯು ಸಹಕಾರಿಗಳಿಗೆ ಆದಾಯ ತೆರಿಗೆ ಪಾವತಿಗೆ ನೋಟೀಸ್ ನೀಡುತ್ತಿರುವುದರ ಕುರಿತು ಸಂಯುಕ್ತ ಸಹಕಾರಿಯು ಈಗಾಗಲೇ ಪರೋಕ್ಷವಾಗಿ ಕಾನೂನು ಸಮರವನ್ನು ನಡೆಸುತ್ತಿದೆ ಮತ್ತು ಸಂಬಂಧಪಟ್ಟ ಸಚಿವರಿಗೆ ಮತ್ತು ಪ್ರಾಧಿಕಾರಕ್ಕೆ ಪತ್ರವನ್ನೂ ಬರೆದಿರುತ್ತದೆ. ಅಲ್ಲದೆ ಆದಾಯ ತರಿಗೆ ಪ್ರಾಧಿಕಾರದ ಅಧಿಕಾರಿಗಳನ್ನೂ ಸಹ ಬೇಟಿ ಮಾಡಿ ಚರ್ಚಿಸಿರುತ್ತದೆ. ಸಹಕಾರಿಗಳು ಆದಾಯ ತೆರಿಗೆ ಪಾವತಿ ಕುರಿತಂತೆ ಯಾವುದೇ ನೋಟೀಸ್ ಬಂದಲ್ಲಿ ಸಂಯುಕ್ತ ಸಹಕಾರಿಯನ್ನು ಸಂಪರ್ಕಿಸಿ. ಸಂಯುಕ್ತ ಸಹಕಾರಿಯು ಆದಾಯ ತೆರಿಗೆ ಕುರಿತಂತೆ ಅಗತ್ಯ ನೆರವು ನೀಡಲು ಸಿದ್ದವಿದ್ದು, ಸಹಕಾರಿಗಳು ಸಂಯುಕ್ತ ಸಹಕಾರಿಯನ್ನು ಸಂಪರ್ಕಿಸಬಹುದಾಗಿರುತ್ತದೆ.

Gist of Income Tax cases effecting the cooperatives

1. SC-Totgars_coop_society_interest_surplus (08-02-2010)

ANALYSIS OF THE FACTS

(1) The Assessee is a Cooperative Society registered under KCS Act

(2) The Assessee is into the business of marketing of agricultural produce of its members and providing credit facilities to them.

(3) The assessee had surplus funds invested in short-term deposits with the Banks and in Government securities, on which interests accrued to the assessee(s).

ISSUES RAISED :

(1) Whether the benefit of deduction, u/s 80P(2)(a)(i), could be allowed to the assessee?

(2) Whether such interest income would qualify for deduction as business income under Section 80P(2)(a)(i) of the Income Tax Act, 1961?

(3) Whether the such income could be brought to tax u/s 56 under the head “Income from other sources”

(4) If so, whether the assessee is entitled to claim deduction under section 57 towards the cost of funds

JUDGEMENT :

(1) The income earned by the assessee by investing the funds immediately not required for the business of the assessee does not qualify for deduction u/s 80P(2)(1) as business income and is to be taxed as income from other sources

(2) The case is remitted back to the lower authorities to decide as to the admissability of expenditure u/s 57

(3) In the result, the above questions are answered in favour of the revenue and the present appeal of the assessee is dismissed.

2. HC-Ahmedabad-Jafari Momin Vikas Cr co op (15-01-2014)

ANALYSIS OF THE FACTS

(1) The Assessee is a Cooperative Society registered under Gujarath CS Act

(2) The Assessee is into the business of accepting deposits from and providing credit facilities to its members.

(3) The assessee claimed deduction in respect of income earned from its credit business u/s 80P(2)(a)

(4) The AO had dis-allowed the claim of the assessee under the pretext that the assessee is a co operative bank and not a co operative society with the operation of newly inserted sec 80P(4).

ISSUES RAISED :

(1) Whether the assessee is a c-operative society or a co-operative bank in terms of section 80P(4)?

(2) Whether the provision of Section 80P(4) are applicable to credit co-operative societies also, which are engaged in business of banking, including providing credit facilities to their members?

JUDGEMENT :

(1) In view of the clarification from the CBDT, it was held that section 80P(4) would exclude only the co-operative banks and not the credit societies, which are not cooperative banks.

(2) The respondent assessee is not a credit co-operative bank but a credit co-operative society. Exclusion clause of sub-section(4) of section 80P, therefore, would not apply.

(3) Appeals are dismissed. Held in favour of the assessee and against the revenue.

3. HC-Karnataka-Sri Biluru Gurubasava Pattina Sahakara Sangha (05-02-2014)

ANALYSIS OF THE FACTS

(1) The Assessee is a Cooperative Society registered under KCS Act carrying on the business of accepting deposits from and providing credit facilities to its members.

(2) The assessee claimed deduction in respect of income earned from its credit business u/s 80P(2)(a) which was partially allowed by the AO

(3) The CIT invoked Sec 263 and set aside the order taking the view that the assessee is a co operative bank and not a co operative society with the operation of newly inserted sec 80P(4).

ISSUES RAISED :

(1) Whether the assessee is a c-operative society or a co-operative bank in terms of section 80P(4)?

(2) Whether the provision of Section 80P(4) are applicable to credit co-operative societies also, which are engaged in business of banking, including providing credit facilities to their members?

JUDGEMENT :

(1) The assessee is a Co-operative society and not a Co-operative bank

(2) Therefore, the said issue was held in favour of the assessee and against the revenue.

4. HC-Kar-Bng-80P(2)(a)- B'lore Commercial Transport Credit Co-op Society Ltd (27-06-2014)

ANALYSIS OF THE FACTS

(1) The Assessee is a Cooperative Society registered under KCS Act

(2) The Assessee is into the business of accepting deposits from and providing credit facilities to its members.

(3) The assessee claimed deduction in respect of income earned from its credit business u/s 80P(2)(a)

(4) The AO had dis-allowed the claim of the assessee under the pretext that the assessee is a co operative bank and not a co operative society with the operation of newly inserted sec 80P(4).

ISSUES RAISED :

(1) Whether the assessee is a c-operative society or a co-operative bank in terms of section 80P(4)?

(2) Whether the provision of Section 80P(4) are applicable to credit co-operative societies also, which are engaged in business of banking, including providing credit facilities to their members?

(3) As the main motto of the co-operative society is lending for its members which is in the nature of banking transaction, the assessee treated on par as per the new clause introduced in 80P(4) of the Act as inserted in Finance Act 2006 with effect from 01.04.2007

JUDGEMENT :

(1) If the assessee is not a Co-operative bank carrying on exclusively banking business and if it does not possess a license from the Reserve Bank of India to carry on business, then it is not a Co-operative bank. It is a Co-operative society which also carries on the business of lending money to its members which is covered under Section 80P(2)(a)(i)

(2) Therefore, the said issue was held in favour of the assessee and against the revenue.

5. ITA307-14 Tumkur Merchants Souharda coop Ltd (28-10-2014)

ANALYSIS OF THE FACTS

(1) The assessee is a Cooperative registered under the Karnataka Souharda Sahakari Act, 1997. It is engaged in the activity of carrying on the business of providing credit facilities to its members.

(2) The assessee filed its ROI declaring a total income of Rs. NIL after claiming a deductions under the provisions of Section 80P of the Act.

(3) The AO declined to extend the benefit of deduction under Section 80P(2)(i) and passed an order of assessment, determining a total income of Rs.42,02,079.

(4) The assessee preferred an appeal to the CIT (Appeals) who held that assessee's activity is not in the nature of banking and consequently the benefit of deduction u/s 80P is allowed.

(5) However, insofar as the income of the assessee consisting of interest earned from short-term deposits with Banks was held to be liable to income tax

(6) Aggrieved by that portion of the order, assessee preferred an appeal to the Tribunal which has dismissed

(7) Aggrieved by the said order, this appeal is preferred by the assessee.

ISSUES RAISED :

(1) The short-term deposits were only investment in the course of activity of providing credit facilities to members and that the same cannot be considered as investment made for the purpose of earning interest income

(2) The interest earned on such deposits is to be considered as income earned in ordinary course of business and hence eligible for deduction u/s 80P(2)(a)

JUDGEMENT :

(1) The interest income is attributable to carrying on the business of banking and therefore it is liable to be deducted in terms of Section 80P(1) of the Act.

(2) The society is not carrying on any separate business for earing such interest income.

(3) The order passed by the appellate authorities denying the benefit of deduction of the aforesaid amount is unsustainable in law.

(4) Accordingly it is hereby set aside.

(5) The substantial question of law is answered in favour of the assessee and against the revenue.

(6) Hence, the appeal is allowed.

6. HC-Kar-Bng-80 P(2)(d) Guttigedarara Credit Co-operative Society Limited (09-06-2015)

ANALYSIS OF THE FACTS

(1) The Assessee is a Cooperative Society registered under KCS Act carrying on the business of accepting deposits from and providing credit facilities to its members.

(2) The Assessee had invested its funds, not immediately required for its business, in banks and co operative institutions

(3) The assessee claimed deduction in respect of income earned from its credit business u/s 80P(2)(a)

(4) The AO had dis-allowed the claim of the assessee under the pretext that the income is not from the business in its ordinary course and hence it is not to be treated as business income

ISSUES RAISED :

(1) Whether the the interest earned on short-term deposits in banks were only investment in the course of activity of providing credit facilities to members?

(2) Whether the short-term deposits in banks can be considered as investment made for the purpose of earning interest income?

(3) Whether the interest earned on the deposits in banks qualifies for deduction under Section 80P(2)(a)(i)

(4) If at all the interest earned from deposits with scheduled banks is not attributable to the activity of providing credit to members, then whether the assessee can claim the expenditure incurred to earn such interest from interest income?

JUDGEMENT :

(1) The amount which was invested in banks to earn interest was not an amount due to any members. It was not the liability. It was not shown as liability in their account. In fact this amount which is in the nature of profits and gains, was not immediately required by the assessee for lending money to its members, as there were no takers. Therefore they had deposited the money in a bank so as to earn interest.

(2) The said interest income is attributable to carrying on the business of banking and therefore it is liable to be deducted in terms of Section 80P(1) of the Act.

(3) The order passed by the appellate authorities denying the benefit of deduction of the aforesaid amount is unsustainable in law. Accordingly it is hereby set aside.

(4) The substantial questions of law are answered in favour of the assessee and against the revenue.

7. HC-Drwr-ITA100096-Sri Renuka Coop Credit Society Belagavi (21-09-2015)

ANALYSIS OF THE FACTS

(1) The Assessee is a Cooperative Society registered under KCS Act carrying on the business of accepting deposits from and providing credit facilities to its members.

(2) The assessee claimed deduction in respect of income earned from its credit business u/s 80P(2)(a)

(3) The AO had dis-allowed the claim of the assessee under the pretext that the assessee is a co operative bank and not a co operative society with the operation of newly inserted sec 80P(4).

ISSUES RAISED :

(1) Whether the benefit of deduction, u/s 80P(2)(a)(i), could be allowed to the assessee?

(2) Whether the assessee is a Cooperative Society, or a co-operative bank?

(3) Whether the Authorities under the IT Act were competent and possessed the jurisdiction to resolve the controversy as to whether the assessee was a co-operative society or co-operative bank, as defined under the provisions of the BR Act?”

JUDGEMENT :

(1) The view expressed by this court, however, as to the assessee being a co-operative society and not a co-operative bank in terms of Section 80P (4) of the IT Act, shall hold the field and shall bind the authorities unless held otherwise by the Reserve Bank of India.

(2) In the result, the above questions are answered in favour of the assessee and the present appeal of the revenue is dismissed.

8. Lambra Kangri Multipurpose Co-operative Service Society (22-04-2016)

ANALYSIS OF THE FACTS

(1) The assessee is a Cooperative Society registered under the Punjab Co-operative Societies Act. It is engaged in the multipurpose co-operative service activities alongwith providing credit facilities to its members.

(2) The assessee filed its ROI declaring a total income of Rs. NIL after claiming a deductions under the provisions of Section 80P of the Act.

(3) The AO declined to extend the benefit of deduction for interest earned on deposits with nationalised banks under Section 80P(2)(i)

(4) Aggrieved by the said order, this appeal is preferred by the assessee.

ISSUES RAISED :

(1) The short-term deposits were only investment in the course of activity of providing credit facilities to members and that the same cannot be considered as investment made for the purpose of earning interest income

(2) The interest earned on such deposits is to be considered as income earned in ordinary course of business and hence eligible for deduction u/s 80P(2)(a)

JUDGEMENT :

(1) The interest income is attributable to carrying on the business of providing credit facilities to its members and therefore it is liable to be deducted in terms of Section 80P(1) of the Act.

(2) The order passed by the appellate authorities denying the benefit of deduction of the aforesaid amount is unsustainable in law.

(3) Accordingly it is hereby set aside.

(4) The substantial question of law is answered in favour of the assessee and against the revenue.

(5) Hence, the appeal is allowed.

9. HC-Kar-Drwr-Totagars Sales Society Ltd (16-06-2017)

ANALYSIS OF THE FACTS

(5) The Assessee is a Cooperative Society registered under KCS Act caarying on the business of marketing of agricultural produce of its members and providing credit facilities to them.

(6) The assessee had surplus funds invested in short-term deposits with the Banks and in Government securities, on which interests accrued to the assessee(s).

(7) The assessee claimed deduction in respect of interest earned from its investments in Co operative banks u/s 80P(2)(d)

ISSUES RAISED :

(1) Whether the benefit of deduction, u/s 80P(2)(d), could be allowed to the assessee?

JUDGEMENT :

(1) The income earned by the assessee by investing the funds immediately not required for the business of the assessee does not qualify for deduction u/s 80P(2)(1) as business income and is to be taxed as income from other sources

(2) The case is remitted back to the lower authorities to decide as to the admissability of expenditure u/s 57

(3) In the result, the above questions are answered in favour of the revenue and the present appeal of the assessee is dismissed.

10. SC-Citizen Coop Society Ltd, Hyderabad (08-08-2017)

ISSUES RAISED :

(1) Whether the assessee is a Cooperative Society, or an AOP?

(2) Whether the benefit of deduction, u/s 80P, could be allowed to the assessee?

(3) Whether the Authorities under the IT Act were competent and possessed the jurisdiction to resolve the controversy as to whether the assessee was a co-operative society or co-operative bank, as defined under the provisions of the BR Act?"

SOCIETY PROFILE :

(1) Started in 1997 as a Credit co op society under AP Mutually Aided Co op Society Act

(2) Converted into a Multi State Co-operative Society operating in five states.

(3) 25 Branches with more than Rs.700 crores of Business.

(4) Received National level "Excellence Award"

(5) Recognized as a Model society by The Government of Andhra Pradesh.

ANALYSIS OF THE FACTS

(1) Citizen Society was a AMAC Society

(2) Later converted into to a MSC Society

(3) The MSC Act does not permit a MSC to accept deposit from nominal members and non members

(4) The society was carrying on the banking business for public at large and its operation was not confined to its members but outsiders as well outsiders as well.

(5) The MSC Act does not permit a MSC to lend loan to nominal members and non members

(6) The MSC Act does not permit a MSC to deposit funds in mutual funds

VIOLATIONS BY THE SOCIETY

(1) The cooperative society has advertised publicly

(2) The cooperative society has accepted deposits from nominal members and non members

(3) The cooperative society has violated the provisons of Sec 269SS & 269T of IT Act

(4) The cooperative society has lent loans to nominal members and non members

(5) The cooperative society has invested its funds in ING Mutual Fund which is not approved.

JUDGEMENT :

(1) In conclusion, the cooperative society has violated all the basic conditions of the Act under which it is registered

(2) In fact, it is operating more like a NBFC than a coop society

(3) Hence the benefit of section 80P is rightly denied to the society

(4) Therefore the entire income is to be taxed as if it is an AOP

11. ITA1590-2016-Lalitamba Pattina Souharda Sahakari Niyamita (31-08-2017)

ANALYSIS OF THE FACTS

(1) The Assessee is a Cooperative registered under Karnataka Souharda Sahakari Act.

(2) The Assessee is into the business of accepting deposits from and providing credit facilities to its members.

(3) The assessee claimed deduction in respect of the expenses in respect of the interest income earned from its investments in other banks u/s 57

ISSUES RAISED :

(1) Whether the benefit of deduction, u/s 57, could be allowed to the assessee?

JUDGEMENT :

(1) The income earned by the assessee by investing the funds immediately not required for the business of the assessee does not qualify for deduction u/s 80P(2)(1) as business income and is to be taxed as income from other sources

(2) The case is dismissed without examining the issues raised i.e., the admissability of expenditure u/s 57

(3) In the result, the above questions were not answered at all and the present appeal of the assessee is dismissed.

12. HC-Ahmedabad-Jafari Momin Vikas Cr co op Society (28-08-2018)

ANALYSIS OF THE FACTS

(1) The Assessee is a Cooperative Society registered under Gujarath CS Act

(2) The Assessee is into the business of accepting deposits from and providing credit facilities to its members.

(3) The assessee had deposited funds not required immediately for business in Banks and had claimed deduction in respect of income earned on such bank deposits as business income u/s 80P(2)(a)

(4) The AO had dis-allowed the claim of the assessee under the pretext that the income earned on bank deposits claimed by assessee u/s 80P(2)(a) is not allowable

ISSUES RAISED :

(1) Whether the benefit of deduction, u/s 80P(2)(a)(i), could be allowed to the assessee?

(2) Whether such interest income would qualify for deduction as business income under Section 80P(2)(a)(i) of the Income Tax Act, 1961?

(3) If not, whether the assessee can claim proportionate expenses towards earning such income u/s 57?

JUDGEMENT :

(1) The cooperative society engaged in the business of providing credit facilities to its members which earns interest income on the surplus funds parked with the nationalised banks, is not eligible for deduction under section 80P(2)(a)(i) of the Act.

(2) Since impugned orders of Revenue authorities are in consonance with judgment of the Hon'ble High Court cited supra, no interference thereof is required

(3) However, the proportionate administrative and financial expenses incurred for earning such interest/investment income be allowed to the assessee.

(4) In the result, Appeals are dismissed.

(5) Therefore, the said issue was held partially in favour of the revenue and partially in favour of the assessee

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REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.1622 OF 2010
(Arising out of S.L.P. (C) No.7572 of 2009)

M/s. The Totgars' Cooperative Sale Society Limited ...Appellant(s)

Versus

Income Tax Officer, Karnataka ...Respondent(s)

W I T H

Civil Appeal No.1623/2010 @ S.L.P. (C) No.10489 of 2009
Civil Appeal No.1624/2010 @ S.L.P. (C) No.10490 of 2009
Civil Appeal No.1625/2010 @ S.L.P. (C) No.10491 of 2009
Civil Appeal No.1626/2010 @ S.L.P. (C) No.10492 of 2009
Civil Appeal No.1627/2010 @ S.L.P. (C) No.10494 of 2009
Civil Appeal No.1628/2010 @ S.L.P. (C) No.10497 of 2009
Civil Appeal No.1629/2010 @ S.L.P. (C) No.10498 of 2009

J U D G M E N T

S.H. KAPADIA,J.

Heard learned counsel on both sides.

Leave granted.

Assessee(s) is a cooperative credit society. During the relevant assessment years in question, it had surplus funds which the assessee(s) invested in short-term deposits with the Banks and in Government securities. On

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such investments, interests accrued to the assessee(s). Assessee(s) provides credit facilities to its members and also markets the agricultural produce of its members. The substantial question of law which arises in this batch of civil appeals is – Whether such interest income would qualify for deduction as business income under Section 80P(2)(a)(i) of the Income Tax Act, 1961?

According to the impugned judgement, which affirms the decision of the Income Tax Appellate Tribunal [`Tribunal', for short], such interest income would fall under the Head "Income from other sources" under Section 56 and not under Section 28 of the Income Tax Act, 1961 [`Act', for short], and, consequently, the assessee-Society would not be entitled to deduction under Section 80P(2)(a)(i) of the Act.

The bunch of civil appeals filed by the assessee-Society concerns Assessment Years 1991-1992 to 1999-2000 [excluding Assessment Year 1995-1996]; however, the lead matter is civil appeal arising out of S.L.P. (C) No.7572 of 2009 which relates to Assessment Year 1991-1992.

The assessee-Society was assessed to tax as a cooperative society. The assessee is the appellant in all eight civil appeals. For all the above Assessment Years 1991-1992 to 1999-2000 [except Assessment Year 1995-1996], assessee(s) filed its Returns disclosing income from business, i.e., marketing of agricultural produce of its members and providing credit facilities to them. Assessee(s) also filed its Profits and Loss Accounts and its balance-sheets along with its Returns. In respect of

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above-mentioned interest income, assessee(s) claimed deduction under Section 80P(2)(a)(i) of the Act. The assessment(s) for the afore-stated period stood re-opened by issue of notice(s) under Section 148 of the Act. In this case, we are only concerned with interest income on short-term Bank deposits and securities. On the basis of the balance-sheets for the relevant assessment years, under instructions from the Assessing Officer, assessee(s) submitted a chart to the Assessing Officer giving break-up of assets and liabilities. We re-produce hereinbelow the said chart [See Annexure `B' under the caption `Liabilities']:

LIABILITIES

Asstt. Year	Capital Reserve Fund + Other Funds + Profits	Asami A/c + Purchasers A/c	Deposits, Loans, Interest Payable	Other Liabilities & Expenditure	Total (3), (4) & (5)
1	2	3	4	5	6
1991-92	79,200,553.00	39,341,647.00	45,772,398.00	3,948,442.00	89,176,115.00
1992-93	97,769,923.00	41,684,890.00	59,071,490.00	902,856.00	101,659,132.00
1993-94	116,354,655.00	37,674,924.00	68,927,247.00	2,893,519.00	109,494,694.00
1994-95	133,817,620.00	42,882,786.00	86,462,118.00	1,440,446.00	142,886,414.00
1995-96	156,948,290.00	46,898,160.00	107,201,490.00	4,189,923.00	158,289,580.00
1996-97	180,468,526.00	53,274,684.00	125,289,995.00	3,568,644.00	182,133,326.00
1997-98	211,686,266.00	52,510,175.00	142,529,130.00	46,694,814.00	241,734,125.00
1998-99	253,295,055.00	66,074,107.00	175,757,230.00	17,342,956.00	259,174,281.00
1999-00	269,520,510.00	124,571,325.00	209,202,203.00	25,199,555.00	358,973,088.00

The Assessing Officer held, on the facts and circumstances of these cases, that the interest income which the assessee(s) had disclosed under the Head "Income from business' was liable to be taxed under the Head "Income from other sources". In this connection, the

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Assessing Officer held that the assessee-Society had invested the surplus funds as, and by way of, investment by an ordinary investor, hence, interest on such investment has got to be taxed under the Head "Income from other sources". Before the Assessing officer, it was argued by the assessee(s) that it had invested the funds on short-term basis as the funds were not required immediately for business purposes and, consequently, such act of investment constituted a business activity by a prudent businessman; therefore, such interest income was liable to be taxed under Section 28 and not under Section 56 of the Act, and, consequently, the assessee(s) was entitled to deduction under Section 80P(2)(a)(i) of the Act. This argument was rejected by the Assessing Officer as also by the Tribunal and the High Court, hence, these civil appeals have been filed by the assessee(s).

It was the case of the assessee(s) before us that the assessee(s) is a cooperative credit society. It's business is to provide credit facilities to its members and to market the agricultural produce of its members. According to the assessee(s), it's activity constituted "eligible activity" under Section 80P(2)(a)(i) of the Act, hence, it was entitled to the benefit of deduction from its gross total income. In this connection, it was urged that, under Section 80P(2) of the Act, the whole of the amount of "business profits" attributable to any one of the enumerated activities is entitled to deduction. According to the assessee(s), one need not go by the source/head of such interest income because no sooner

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interest income accrued to the assessee(s) on above-mentioned specified deposits/securities, it became business income attributable to the activity carried on by the assessee(s) by providing credit facilities to its members or marketing of agricultural produce of its members and no sooner such interest income falls under the head "business profits" attributable to one or more of such eligible activities, such interest income became eligible for deduction under the said section. The assessee(s) further contended, before us, that, under Regulations 23 and 28 read with Sections 57 and 58 of the Karnataka Cooperative Societies Act, 1959, a statutory obligation was imposed on cooperative credit societies to invest its surplus funds in specified securities and, in view of such statutory obligation, the above-mentioned interest income derived from short-term deposits and securities must be considered as income derived by the assessee(s) from its business activities. In the alternative, it was submitted that, even assuming for the sake of argument that such interest income is held to be covered by Section 56 of the Act under the head "Income from other sources", even then the assessee-Society was entitled to the benefit of Section 80P(2)(a)(i) of the Act. In this connection, learned counsel for the assessee(s) submitted, placing reliance on numerous judgements, that the source or head of income was irrelevant for deciding the question as to whether a given item is eligible for deduction under Section 80P of the Act. According to the assessee(s), once interest income

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accrues on specified investments, particularly when a local enactment makes it statutorily incumbent on the society to invest in specified investments, the interest income is automatically eligible for deduction irrespective of the source or head under which such income would fall. In this connection, learned counsel for the assessee(s) submitted that one needs to compare the language of Section 80P(2)(a)(i) and (iii) of the Act with Explanation (baa) to Section 80HHC, the language used in Section 80HHD(3) and the words used in Section 80HHE(5) of the Act. In this connection, it was urged that there is a wide contrast in the language between Section 80P(2)(a) on one hand and the language used in Section 80HHC read with Explanation (baa), Section 80HHD(3) and Section 80HHE(5) as also the language used in Sections 72 and 32AB of the Act. According to the assessee(s), if one keeps this contrast in mind, it is clear that the concept of head of income or source of income will not apply to the provisions of Section 80P(2) of the Act because wherever Parliament intended to emphasise the applicability of such concept, it has expressly so stated in the relevant section. According to the assessee(s), by way of illustration, under Explanation (baa) to Section 80HHC or under Section 80HHD(3) or under Section 80HHE(5), etc., the words used are, "`profits of the business' means the profits of the business as computed under the head "Profits and gains of business". Therefore, according to the assessee(s), when such words do not find place in Section 80P(2) of the Act, it is clear that the concept of

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source of income or head of income is not inbuilt in Section 80P(2) of the Act and, consequently, such a concept cannot be read into the said section. As stated above, according to the assessee(s), no sooner surplus funds are invested in specified securities, interest income from such investment is automatically eligible for deduction under Section 80P(2)of the Act.

In order to determine the issue involved in these civil appeals, we need to re-produce hereinbelow the relevant provision of Section 80P of the Act, as it stood at the material time. It reads thus:

> "Deduction in respect of income of co-operative societies.
>
> 80P.(1) Where, in the case of an assessee being a co-operative society, the gross total income includes any income referred to in sub-section (2), there shall be deducted, in accordance with and subject to the provisions of this section, the sums specified in sub-section (2), in computing the total income of the assessee.
>
> [2] The sums referred to in sub-section (1) shall be the following, namely:--
>
> [a] in the case of a co-operative society engaged in--
>
> [i] carrying on the business of banking or providing credit facilities to its members, or
>
> [ii] a cottage industry, or
>
> [iii] the marketing of the agricultural produce of its members, or

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[iv] the purchase of agricultural implements, seeds, livestock or other articles intended for agriculture for the purpose of supplying them to its members, or

[v] the processing, without the aid of power, of the agricultural produce of its members, or

[vi] the collective disposal of the labour of its members, or

[vii] fishing or allied activities, that is to say, the catching, curing, processing, preserving, storing or marketing of fish or the purchase of materials and equipment in connection therewith for the purpose of supplying them to its members,

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

At the outset, an important circumstance needs to be highlighted. In the present case, the interest held not eligible for deduction under Section 80P(2)(a)(i) of the Act is not the interest received from the members for providing credit facilities to them. What is sought to be taxed under Section 56 of the Act is the interest income arising on the surplus invested in short-term deposits and securities which surplus was not required for business purposes. Assessee(s) markets the produce of its members whose sale proceeds at times were retained by it. In this case, we are concerned with the tax treatment of such amount. Since the fund created by such retention was not

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required immediately for business purposes, it was invested in specified securities. The question, before us, is - whether interest on such deposits/securities, which strictly speaking accrues to the members' account, could be taxed as business income under Section 28 of the Act? In our view, such interest income would come in the category of "Income from other sources", hence, such interest income would be taxable under Section 56 of the Act, as rightly held by the Assessing Officer. In this connection, we may analyze Section 80P of the Act. This section comes in Chapter VI-A, which, in turn, deals with "Deductions in respect of certain Incomes". The Headnote to Section 80P indicates that the said section deals with deductions in respect of income of cooperative Societies. Section 80P(1), inter alia, states that where the gross total income of a cooperative Society includes any income from one or more specified activities, then such income shall be deducted from the gross total income in computing the total taxable income of the assessee-Society. An income, which is attributable to any of the specified activities in Section 80P(2) of the Act, would be eligible for deduction. The word "income" has been defined under Section 2(24)(i) of the Act to include profits and gains. This sub-section is an inclusive provision. The Parliament has included specifically "business profits" into the definition of the word "income". Therefore, we are required to give a precise meaning to the words "profits and gains of business" mentioned in Section 80P(2) of the Act. In the present case, as stated above,

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assessee-Society regularly invests funds not immediately required for business purposes. Interest on such investments, therefore, cannot fall within the meaning of the expression "profits and gains of business". Such interest income cannot be said also to be attributable to the activities of the society, namely, carrying on the business of providing credit facilities to its members or marketing of the agricultural produce of its members. When the assessee-Society provides credit facilities to its members, it earns interest income. As stated above, in this case, interest held as ineligible for deduction under Section 80P(2)(a)(i) is not in respect of interest received from members. In this case, we are only concerned with interest which accrues on funds not required immediately by the assessee(s) for its business purposes and which have been only invested in specified securities as "investment". Further, as stated above, assessee(s) markets the agricultural produce of its members. It retains the sale proceeds in many cases. It is this "retained amount" which was payable to its members, from whom produce was bought, which was invested in short-term deposits/securities. Such an amount, which was retained by the assessee-Society, was a liability and it was shown in the balance-sheet on the liability-side. Therefore, to that extent, such interest income cannot be said to be attributable either to the activity mentioned in Section 80P(2)(a)(i) of the Act or in Section 80P(2)(a)(iii) of the Act. Therefore, looking to the facts and circumstances of this case, we are of the view that the

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Assessing Officer was right in taxing the interest income, indicated above, under Section 56 of the Act.

An alternative submission was advanced by the assessee(s) stating that, if interest income in question is held to be covered by Section 56 of the Act, even then, the assessee-Society is entitled to the benefit of Section 80P(2)(a)(i) of the Act in respect of such interest income. We find no merit in this submission. Section 80P(2)(a)(i) of the Act cannot be placed at par with Explanation (baa) to Section 80HHC, Section 80HHD(3) and Section 80HHE(5) of the Act. Each of the said sections has to be interpreted in the context of its subject-matter. For example, Section 80HHC of the Act, at the relevant time, dealt with deduction in respect of profits retained for export business. The scope of Section 80HHC is, therefore, different from the scope of Section 80P of the Act, which deals with deduction in respect of income of cooperative Societies. Even Explanation (baa) to Section 80HHC was added to restrict the deduction in respect of profits retained for export business. The words used in Explanation (baa) to Section 80HHC, therefore, cannot be compared with the words used in Section 80P of the Act which grants deduction in respect of "the whole of the amount of profits and gains of business". A number of judgements were cited on behalf of the assessee(s) in support of its contention that the source was irrelevant while construing the provisions of Section 80P of the Act. We find no merit because all the judgements cited were cases relating to Cooperative Banks

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and assessee-Society is not carrying on Banking business. We are confining this judgement to the facts of the present case. 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 we need to give weightage to the words "the whole of the amount of profits and gains of business" attributable to one of the activities specified in Section 80P(2)(a) of the Act. An important point needs to be mentioned. The words "the whole of the amount of profits and gains of business" emphasise 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. In this particular case, the evidence shows that the assessee-Society earns interest on funds which are not required for business purposes at the given point of time. Therefore, on the facts and circumstances of this case, in our view, such interest income falls in the category of "Other Income" which has been rightly taxed by the Department under Section 56 of the Act.

Apart from the substantial question of law which we have answered, assessee-Society has challenged the re-opening of assessment under Section 148 of the Act.

In this connection, it was urged on behalf of the assessee(s) that, for the relevant assessment years in question, the Assessing Officer was required to obtain prior approval of the Joint Commissioner of Income Tax before issuance of notice under Section 148 of the Act. According to the assessee(s), the proposal for re-opening

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was made on 31st May, 2001, it was not sent through fax to the office of the Additional Commissioner of Income Tax, Panaji, and the fax report indicates the time of 5.18 p.m., which establishes the fact that service of notice on 31st May, 2001, on the assessee(s) was done prior to the sending of fax for approval. According to the assessee(s), the approval was given by the Additional Commissioner of Income Tax on 8th June, 2001. The notice under Section 148 of the Act was served on 31st May, 2001, i.e., prior to the approval of the Additional Commissioner of Income Tax. In the circumstances, it was urged that the notice under Section 148 of the Act was invalid and consequential re-assessment under Section 147 read with Section 144A of the Act was bad in law. We find no merit in this argument. At the outset, we may state that the point raised on validity of the notice under Section 148 of the Act essentially concerns factual aspect. The Tribunal is the final fact finding Authority under the Income Tax Act. It has given a finding of fact that, though the written communication of the sanction, which has no prescribed format, was received by the Assessing Officer on 8th June, 2001, yet, it cannot be said that sanction was not accorded prior to 31st May, 2001. The Tribunal has recorded a finding of fact that there was a detailed correspondence between the concerned officers prior to 31st May, 2001, in the context of re-opening of assessment. It may also be mentioned that there is a vital difference between grant of sanction and communication of such sanction. As stated by the Tribunal, no particular form has been prescribed in the

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matter of grant of sanction. For the afore-stated reason, the Tribunal came to the conclusion that approval/sanction for re-opening of assessment in terms of Section 148 of the Act read with Section 151 existed even prior to 31st May, 2001. We see no reason to interfere with this finding of fact given by the Tribunal.

In this matter, one question advanced by the assessee(s) before the Authorities below has remained un-answered. That question is as follows:

> "Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the income by way of interest on deposits held with scheduled banks, bonds and other securities was chargeable to tax under section 56 under the head `Income from other sources' without allowing any deduction in respect of cost of funds and proportionate administrative and other expenses under section 57?"

The above question requires an answer. It involves interpretation of Section 56 and Section 57 of the Act. It also involves applicability of the said sections to the facts of the present case. We, accordingly, remit the said question to the High Court for consideration in accordance with law.

Subject to what is stated above, these civil appeals filed by the assessee(s) are dismissed with no order as to costs.

.....J.
[S.H. KAPADIA]

.....J.
[AFTAB ALAM]

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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

TAX APPEAL NO. 442 of 2013
With
TAX APPEAL NO. 443 of 2013
With
TAX APPEAL NO. 863 of 2013

==========

COMMISSIONER OF INCOME TAX, GANDHINAGAR....Appellant(s)
Versus
JAFARI MOMIN VIKAS CO-OP CREDIT SOCIETY LTD....Opponent(s)

==========

Appearance:
MR SUDHIR M MEHTA, ADVOCATE for the Appellant(s) No. 1
MR.HARDIK V VORA, ADVOCATE for the Opponent(s) No. 1

==========

CORAM: **HONOURABLE MR.JUSTICE AKIL KURESHI**
and
HONOURABLE MS JUSTICE SONIA GOKANI

Date : 15/01/2014

ORAL ORDER
(PER : HONOURABLE MR.JUSTICE AKIL KURESHI)

1. All the assessees' Tax Appeals involve identical question.

2. Revenue has challenged the judgment of the Income Tax Appellate Tribunal (for short "the Tribunal") raising following question for our consideration:-

> " Whether the Hon'ble Tribunal is correct in allowing deduction under section 80P(2)(a)(i) to assessee's society even though same is

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covered under section 80P(4) rws 2(24) (viia) being income from providing credit facilities carried on by a co-operative society with its member?"

3. Issue pertains to interpretation of section 80P(2) and 80P(4) of the Income Tax Act, 1964 ("the Act" for short). Respondent assessee is a Cooperative Credit Society and claims benefit of deduction under section 80P(1) of the Act by virtue of the provisions contained in section 80P(2)(a)(i) of the Act. As is well known under sub-section(1) of section 80P certain co-operative societies are granted deductions of the sum specified in sub-section(2) in computing the total income. As per section 80P(2)(a)(i), the sums referred in sub-section(1) would be in case of a co-operative society engaged in carrying on the business of banking or providing credit facilities to its members the whole of the amount of profits and gains of business attributable to any one or more of such activities. Revenue, however, contends that by virtue of newly amended sub-section(4) of section 80P inserted with effect from 1.4.2007 by Finance Act, 2006, section 80P would not apply to the respondent assessee. Section 80P(4) in the present form refers as under:-

"(4) The provisions of this section shall not

> apply in relation to any co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank.
> Explanation-For the purposes of this sub-section,-
>
> (a) "co-operative bank" and "primary agricultural credit society" shall have the meanings respectively assigned to them in Part V of the Banking Regulation Act, 1949(10 of 1949);
>
> (b) "primary co-operative agricultural and rural development bank" means a society having its area of operation confined to a taluk and the principal object of which is to provide for long-term credit for agricultural and rural development activities."

4. As per section 80P(4), the provisions of section 80P would not apply in relation to any co-operative bank other than primary agricultural credit society or primary co-operative agricultural and rural development bank. As per the explanation, the terms "co-operative bank" and "primary agricultural credit society" shall have the meanings respectively assigned to them in Part V of the Banking Regulation Act, 1949.

5. Assessing Officer held that by virtue of section 80P(4), the respondent assessee would not be entitled to benefits of deduction under section 80P. CIT(Appeals) as well as the Tribunal reversed the decision of the Assessing Officer on the premise that

the respondent assessee not being a bank, exclusion provided in sub-section(4) of section 80P would not apply. This, irrespective of the fact that the respondent would not fall within the expression "primary agricultural credit society".

6. Had this been the plain statutory provisions under consideration in isolation, in our opinion, the question of law could be stated to have arisen. When, as contended by the assessee, by virtue of sub-section(4) only co-operative banks other than those mentioned therein were meant to be excluded for the purpose of deduction under section 80P, a question would arise why then Legislature specified primary agricultural credit societies along with primary co-operative agricultural and rural development banks for exclusion from such exclusion and in other words, continued to hold such entity as eligible for deduction. However, the issue has been considerably simplified by virtue of CBDT circular No.133 of 2007 dated 9.5.2007. Circular provides as under:-

> "Subject: Clarification regarding admissibly of deduction under section 80P of the Income-Tax Act, 1961.
>
> 1. Please refer to your letter no.DCUS/30688/2007, dated 28.03.2007 addressed to Chairman, Central Board of Direct Taxes, on

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the above given subject.

2. In this regard, I have been directed to state that sub-section(4) of section 80P provides that deduction under the said section shall not be allowable to any co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank. For the purpose of the said sub-section, co-operative bank shall have the meaning assigned to it in part V of the Banking Regulation Act, 1949.

3. In part V of the Banking Regulation Act, "Co-operative Bank" means a State Co-operative bank, a Central Co-operative Bank and a primary Co-operative bank.

4. Thus, if the Delhi Co op Urban T & C Society Ltd. does not fall within the meaning of "Co-operative Bank" as defined in part V of the Banking Regulation Act, 1949, sub-section(4) of section 80P will not apply in this case.

5. The issues with the approval of Chairman, Central Board of Direct Taxes."

7. From the above clarification, it can be gathered that sub-section(4) of section 80P will not apply to an assessee which is not a co-operative bank. In the case clarified by CBDT, Delhi Coop Urban Thrift & Credit Society Ltd. was under consideration. Circular clarified that the said entity not being a co-operative bank, section 80P(4) of the Act would not apply to it. In view of such clarification,we cannot entertain the Revenue's contention that section 80P(4) would exclude not only the co-operative banks other than those fulfilling the description contained

therein but also credit societies, which are not co-operative banks. In the present case, respondent assessee is admittedly not a credit co-operative bank but a credit co-operative society. Exclusion clause of sub-section(4) of section 80P, therefore, would not apply. In the result, Tax Appeals are dismissed.

(AKIL KURESHI, J.)

(MS SONIA GOKANI, J.)

SUDHIR

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Karnataka High Court
The Commissioner Of Income Tax vs Sri. Biluru Gurubasava Pattina on 5 February, 2014
Author: N.Kumar & C.R.Kumaraswamy

:1:

IN THE HIGH COURT OF KARNATAKA
DHARWAD BENCH

DATED THIS THE 5TH DAY OF FEBRUARY 2014

PRESENT

THE HON'BLE MR.JUSTICE N.KUMAR

AND

THE HON'BLE MR.JUSTICE C.R.KUMARASWAMY

INCOME TAX APPEAL NO.5006/2013

BETWEEN:

1. THE COMMISSIONER OF INCOME TAX
DR. B. R. AMBEDKAR ROAD
BELGAUM

2. THE INCOME TAX OFFICER
WARD I, BAGALKOT ...APPELLANTS

(BY SRI. Y. V. RAVIRAJ, ADVOCATE)

AND:

SRI BILURU GURUBASAVA PATTINA
SAHAKARI SANGHA NIYAMITHA
BAGALKOT ...RESPONDENT

(BY SRI. A. SHANKAR, ADVOCATE)

THIS APPEAL IS FILED UNDER SECTION 260A OF THE INCOME-TAX ACT, 1961 AGAINST THE ORDER PASSED IN ITA.NO.514/BANG./2012 DATED

:2:

28.02.2013 ON THE FILE OF THE INCOME TAX APPELLATE TRIBUNAL, BANGALORE BENCH 'B', BANGALORE, ALLOWING THE APPEAL FILED BY THE ASSESSEE'S FOR ASSESSMENT YEAR 2007-08.

THIS APPEAL COMING ON FOR ADMISSION THIS DAY, N.KUMAR J., DELIVERED THE FOLLOWING:

JUDGMENT

The Revenue has preferred this appeal against the order passed by the Tribunal setting-aside the order passed by the Commissioner of Income Tax under Section 263 of the Income Tax Act, 1961 (hereinafter referred to as the 'Act').

2. The assessee is a Credit Co-operative Society engaged in providing credit facilities to its members. It has filed returns of the income for the assessment year 2007-08 claiming deduction under Section 80P(2)(a)(i) amounting to Rs.2,04,03,878/- (Rupees Two Crore Four Lakh Three Thousand Eight Hundred and Seventy Eight only). The Assessing Officer has passed assessment under Section 143(3) of the Act on 29.12.2009 disallowing to the tune of Rs.1,66,47,180/- (Rupees One Crore Sixty Six Lakh Forty Seven Thousand One Hundred and Eighty only) in respect of interest received from Gem Sugars Limited, Bilagi Sugars Limited and Nirani Cements Limited. However, the Assessing Officer allowed deduction under Section 80P(2)(a)(i) to the extent of Rs.1,93,73,000/- (Rupees One Crore Ninety Three Lakh Seventy Three Thousand only).

3. The Commissioner of Income Tax invoking his power under Section 263 of the Act, issued notice to the assessee calling upon him to show-cause as to why the order of assessment should not be set-aside in view of Section 80P(4) of the Act. After service of notice, the assessee entered appearance and brought to the notice of the authority that the assessee is not a Co-operative bank and therefore, Section 80P(4) has no application to the case of the assessee. However, the Revisional Authority was of the view that the assessing authority has not considered the application of Section 80P(4) which was inserted with effect from 01.04.2007 and therefore, he set-aside the order of assessment and remanded the matter back to the Assessing Authority to consider the applicability of the aforesaid provision.

4. Aggrieved by the said order, the assessee preferred an appeal before the Tribunal.

5. The Tribunal held that as the assessee is not a Co-operative Bank, Section 80P(4) has no application. Moreover, the power under Section 263 of the Act could be invoked by the Revisional Authority only, if the order is erroneous and thereby is prejudicial to the interest of revenue. In the instant case, as the assessee is not a Co-operative Bank i.e. there is no error committed by the Assessing authority much less, the said order was prejudicial to the interest of revenue and therefore, the order passed by the Revisional Authority was set-aside.

6. Aggrieved by the said order, the Revenue has preferred this appeal.

7. The only substantial question of law which arises for our consideration in this appeal is:-

In the facts and circumstances of this case, whether the Revisional Authority was justified in invoking his power under Section 263 of the Act without the foundational fact of assessee being

Co-operative bank was not there?

8. In the assessment order, the Assessing authority has clearly stated that the assessee is a Co-operative society and has not obtained any banking license. The business of the assessee is to provide credit facilities to its members. Since the assessee cannot carry on any banking business, the interest on investment is taxable as income from other source. Therefore, the aforesaid facts, which is not in dispute clearly establishes that it is not a Co-operative Bank. Infact, the Revisional Authority also in its order has categorically stated that the assessee is a Co-operative society, which provides credit facilities. Section 80P of the Act deals with the deduction of income of a society. In the case of any assessee being a Co-operative society, the whole of the amounts of profits and gains of business attributable to any of other activities referred to sub-section (2) of Section 80P shall be deducted in computing the total income of the assessee. In other words, the said income is not taxable. It is a benefit given to the Co-operative society. Section 80P(4) was introduced by Finance Act, 2006 with effect from 01.04.2007 excluding the said benefit to a Co-operative Bank. The said provision reads as under:-

> "(4) The provisions of this section shall not apply in relation to any co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank.

(a) "co-operative bank" and "primary agricultural credit society" shall have the meanings respectively assigned to them in Part V of the Banking Regulation Act, 1949 (10 of 1949);

(b) "primary co-operative agricultural and rural development bank" means a society having its area of operation confined to a taluk and the principal object of which is to provide for long-term credit for agricultural and rural development activities."

Therefore, the intention of the legislature is clear. If a Co-operative Bank is exclusively carrying on banking business, then the income derived from the said business cannot be deducted in computing the total income of the assessee. The said income is liable for tax. A Co-operative bank as defined under the Banking Regulation Act includes the primary agricultural credit society or a primary co-operative agricultural and rural development bank. The Legislature did not want to deny the said benefits to a primary agricultural credit society or a primary co-operative agricultural and rural development bank. They did not want to extend the said benefit to a Co-operative bank which is exclusively carrying on banking business i.e. the purport of this amendment. Therefore, as the assessee is not a Co- operative bank carrying on exclusively banking business and as it does not possess a licence from Reserve Bank of India to carry on business, it is not a Co-operative bank. It is a Co-operative society which also carries on the business of lending money to its members which is covered under Section 80P(2)(a)(i) i.e. carrying on the business of banking for providing credit facilities to its members. The object of the aforesaid amendment is not to exclude the benefit extended under Section 80P(1) to such society. Therefore, there was no error committed by the Assessing Authority. The said order was not prejudicial to the interest of the Revenue. The condition precedent for the commissioner to invoke the power under Section 263 is that the twin condition should be satisfied. The order should be erroneous and it should be prejudicial to the interest of the

revenue.

9. This Court had an occasion to consider Section 263 of the Act in the case of - COMMISSIONER OF INCOME-TAX AND ANOTHER V. DIGITAL GLOBAL SOFT LTD. [2013] 354 ITR 489 (Karn) where paragraph-18, it has held as under:

> "As is clear from the wording in section 263, the Commissioner gets the jurisdiction to revise any proceedings under this Act if he considers that any order passed therein by the Assessing Officer is erroneous in so far as it is prejudicial to the interests of the Revenue. Therefore, it is clear that he cannot exercise the power of revision solely on the ground that the order passed is erroneous. He gets jurisdiction only if such erroneous order is prejudicial to the interest of the Revenue. "Prejudicial to the Revenue" means, lawful revenue due to the State has not been realized or cannot be realized. In other words, by the order of the assessing authority if the lawful revenue to the State has not been realized or cannot be realized, as the said order is prejudicial to the interests of the Revenue and also erroneous, he gets jurisdiction to interfere with the said order under section 263. Therefore, for attracting section 263, the condition precedent is (a) the order of the Assessing Officer sought to be revised is erroneous, and (b) it is prejudicial to the interests of the Revenue. If one of them is absent, i.e., if the order of the Income-tax Officer is erroneous but is not prejudicial to the Revenue, recourse cannot be had to section 263(1) of the Act. The satisfaction of both the conditions stipulated in the section is the sine qua non for the Commissioner to exercise his jurisdiction under Section 263."

In the instant case, when the status of the assessee is a Co-operative society and is not a Co-operative bank, the order passed by the Assessing Authority extending the benefit of exemption from payment of tax under Section 80P(2)(a)(i) of the Act is correct. There is no error. When there is no error, the question of order being prejudicial would not arise. The Tribunal has rightly entertained the appeal and set- aside the order. Therefore, the said order is in accordance with law and cannot be found fault with. The substantial question of law is answered in favour of the assessee and against the revenue.

SD/-

JUDGE SD/-

JUDGE LB

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 27TH DAY OF JUNE, 2014

PRESENT

THE HON'BLE MR. JUSTICE N KUMAR

AND

THE HON'BLE MR. JUSTICE B MANOHAR

ITA No. 599/2013

BETWEEN:

1. Commissioner of Income Tax-IV, C.R. Building, Queens Road, Bangalore.
2. Income Tax Officer, Ward-3(3), C.R. Building, Queens Road, Bangalore.

...Appellants

(By Sri G. Kamaladhar, Adv.)

AND

M/s. Bangalore Commercial Transport Credit Co-operative Society Limited
No.2, I Cross, Chikkanna Garden, Chamrajpet, Bangalore 560 018.

...Respondent

(By Sri A. Shankar, Sri S. Annamalai
& Sri M. Lava, Advs.)

****

This ITA filed under Section 260-A of I.T. Act, 1961 arising out of order dated 07.06.2013 passed in ITA No.1649/Bang/2012, for the Assessment year 2009-10, praying to (i) formulate the substantial questions of law stated therein; (ii) allow the appeal and set aside the order dated 07.06.2013 passed by the ITAT, Bangalore in ITA No. 1649/Bang/2012 confirming the order of the Appellate Commissioner and confirm the order passed by the Income Tax Officer, Ward-3(3), Bangalore.

This ITA coming on for hearing this day, N. KUMAR J delivered the following:

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J U D G M E N T

This appeal is preferred by the revenue challenging the order passed by the Tribunal, wherein it is held that sub-section (4) of Section 80P of the Income Tax Act, 1961 is applicable only to co-operative banks and not to credit co-operative societies.

2. The substantial questions of law which are raised in the appeal are as under:

(i) "Whether the Tribunal was correct in upholding the CIT(A)'s order directing the assessing officer to grant deduction under Section 80P(2)(a)(i) of the Act of Rs.70,58,624/- for assessment year 2009-10 by relying on the earlier order of ITAT on identical issue without appreciating that the revenue had not accepted the said order and an appeal under Section 260A is pending before this Hon'ble Court for adjudication?

(ii) Whether the Tribunal is correct in holding that the assessee is not a Co-operative Bank but only a Co-operative society engaged in providing credit facilities to its members?

(iii) Whether the Tribunal was correct in not appreciating the facts that the main motto of the co-operative society is lending for its members which is in the nature of banking transaction, treated on par as per the new clause introduced in the definition of income to section 2(24)(viia) and comes under the purview of 80P sub-section (4) of the Act as inserted in Finance Act 2006 with effect from 01.04.2007?

(iv) Whether the Tribunal was correct in holding that the provision of sub-section (4) of Section 80P of the Income-tax Act are applicable only to co-operative banks and not to credit co-operative societies, which are engaged in business of banking, including providing credit facilities to their members?

(v) Whether the Tribunal was correct in holding that the assessee is a c-operative society and not a co-operative bank in terms of sub-section (4) of Section 80P of the Income Tax Act without considering the meaning of Co-operative Bank as envisaged under Part V of Banking Regulation Act, 1949 wherein it is defined that Co-operative Bank includes primary co-operative Bank, which is further defined as co-operative society with the primary object of transactions of Banking business?"

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3. The Tribunal in its order has set out the difference between the co-operative bank and society as under:

Nature	Cooperative Society registered under Banking Regulation Act, 1949	Cooperative society registered under Karnataka Cooperative Societies Act, 1959.
Registration	Under the Banking Regulation Act, 1949 and Co -operative Societies Act, 1959.	Cooperative Societies Act, 1959.
Nature of business	• As defined in section 6 of Banking Regulation Act. • Can open savings bank account, current account, overdraft account, cash credit account, issue letter of credit, discounting bills of exchange, issue cheques, demand drafts (DD), pay order, gift cheque, lockers, bank guarantees etc • Cooperative bank can act as clearing agent for cheques, DDs, pay orders and other forms. • Banks are bound to follow the rules regulations and direction issued by Reserve Bank of India(RBI).	• As per the bye laws of the cooperative society. • Society cannot open savings bank account, current account, issue letter of credit, discounting bills of exchange, issue cheques, demand drafts, pay orders, gift cheques, lockers, bank guarantees etc. • Society cannot act as a clearing agent for cheques DDs, pay orders and other forms • Society are bound by rules and regulatio*ns as specified by in the cooperative societies act*
Filing of returns	Cooperative banks have to submit annual return to RBI every year-	Society has to submit the annual return to Registrar of Societies.
Inspection	RBI has the power to inspect accounts and overall functioning of the bank.	Registrar has the power to inspect accounts and overall functioning of the bank.
Part V	Part V of the Banking Regulation Act is applicable to cooperative banks.	Part V of the Banking Regulation Act is not applicable to cooperative banks.
Use of words	The word 'bank', 'banker', 'banking' can be used by a cooperative bank.	The word 'bank', 'banker', 'banking', cannot be used by a cooperative society.

4. This Court had an occasion to consider the said question in ***ITA No.5006/2013 dated 05.02.2014*** in the case of ***THE COMMISSIONER OF INCOME TAX vs. SRI BILURU GURUBASAVA PATTINA SAHAKARI SANGHA NIYAMITHA, BAGALKOT***, where, after referring to the relevant provisions of the Income Tax Act, and the banking Regulation Act, held as under:

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"If a Co-operative Bank is exclusively carrying banking business, then the income derived from the said business cannot be deducted in computing the total income of the assessee. The said income is liable for tax. A Co-operative bank as defined under the Banking Regulation Act includes the primary agricultural credit society or a primary co-operative agricultural rural development bank. The Legislature did not want to deny the said benefit to a primary agricultural credit society or a primary cooperative agricultural and rural development bank. They did not want to extend the said benefit to a co-operative bank which is exclusively carrying on banking business i.e., the purport of the amendment. If the assessee is not a Co-operative bank carrying on exclusively banking business and if it does not possess a license from the Reserve Bank of India to carry on business, then it is not a Co-operative bank. It is a Co-operative society which also carries on the business of lending money to its members which is covered under Section 80P(2)(a)(i) i.e., carrying on the business of banking for providing credit facilitates to its members. The object of the aforesaid amendment is not to exclude the benefit extended under Section 80P(i) to the society."

Therefore, the said issue was held in favour of the assessee and against the revenue.

5. The said judgment answers the issues in this case also. Accordingly, we pass the following order.

The appeal is dismissed. The substantial questions of law are answered in favour of the assessee and against the revenue.

(SD/-)
JUDGE

(SD/-)
JUDGE

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IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 28TH DAY OF OCTOBER 2014

PRESENT

THE HON'BLE MR.JUSTICE N. KUMAR

AND

THE HON'BLE MR. JUSTICE B. MANOHAR

I.T.A. No. 307 OF 2014

BETWEEN:

TUMKUR MERCHANTS SOUHARDA CREDIT
COOPERATIVE LIMITED
REP. BY ITS PRESIDENT
SHRI M.S.JAYAKUMAR, 1ST FLOOR
VEERASHAIVA KALYANA MANTAP BUILDING
J.C.ROAD, TUMKUR - 572101

... APPELLANT

(BY SRI. A. SHANKAR AND M. LAVA, ADVS.)

AND:

THE INCOME TAX OFFICER
WARD-1, AAYAKAR BHAVAN
RAMAKRISHNA NAGAR, KUNIGAL ROAD
TUMKUR - 572105

... RESPONDENT

(BY SRI. K.V.ARAVIND, ADV.)

THIS ITA IS FILED UNDER SECTION 260-A OF I.T.ACT, 1961, PRAYING TO FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW AND SET ASIDE THE FINDINGS TO THE EXTENT AGAINST THE APPELLANT IN THE ORDER PASSED BY THE INCOME TAX APPELLATE TRIBUNAL, BANGALORE IN ITA No.

1622/BANG/2012 DATED 21/02/2014 FOR THE ASSESSMENT YEAR 2009-10 (ANNEXURE-A); AND ETC.

THIS ITA COMING ON FOR ADMISSION THIS DAY, N. KUMAR J. DELIVERED THE FOLLOWING:

JUDGMENT

The assessee has filed the appeal challenging the order passed by the Tribunal.

2. This appeal is admitted to consider the following substantial question of law:

> *"Whether the Tribunal failed in law to appreciate that the interest earned on short-term deposits were only investment in the course of activity of providing credit facilities to members and that the same cannot be considered as investment made for the purpose of earning interest income and consequently passed a perverse order?"*

3. The assessee is a Cooperative Society registered under the provisions of Section 7 of the Karnataka Co-operative Societies Act, 1959. It is engaged in the activity of carrying on the business of

providing credit facilities to its members. It is governed by the provisions of the Karnataka Co-operative Societies Act, 1959, and the Karnataka Co-operative Societies Rules, 1960. The assessee filed its return of income for the assessment year 2009-10 on 30/09/2008 under the provisions of Section 139(1) of the Income Tax Act, 1961 (for short hereinafter referred to as the 'Act'), declaring a total income of Rs. NIL after claiming a deduction of Rs.42,02,079/- under the provisions of Section 80P of the Act. The assessee's case was selected for scrutiny and statutory notice under the provisions of Section 143(2) was issued. The assessee produced all the information to substantiate its claim. The assessing authority, taking note of the insertion of Section 80P(4) of the Act, declined to extend the benefit of deduction under Section 80P(2)(i) and passed an order of assessment, determining a total income of Rs.42,02,079/-, as against the declared income of Rs.NIL. Aggrieved by the said order, the

assessee preferred an appeal to the Commissioner of Income Tax (Appeals)-II. The appellate authority held that assessee's activity is not in the nature of banking and consequently the benefit of deduction under Section 80P of the Act cannot be denied. However, insofar as the income of the assessee consisting of interest earned from short-term deposits with M/s. Allahabad Bank of Rs.1,55,300/- and savings bank account with M/s. Axis Bank of Rs.22,005/-, totaling to Rs.1,77,305/- was held to be liable to income tax in view of the judgment of the Apex Court in the case of **M/S. TOTGARS COOPERATIVE SALE SOCIETY LTD.,** reported in **322 ITR 283 (SC)**. Aggrieved by that portion of the order, assessee preferred an appeal to the Tribunal which has dismissed the appeal following the judgment of the Apex Court in the aforesaid case. Aggrieved by the said order, this appeal is preferred by the assessee.

4. The learned counsel for the assessee assailing the impugned order contended, the interest accrued in a

sum of Rs.1,77,305/- is from the deposits made by the assessee in a nationalized bank out of the amounts which was used by the assessee for providing credit facilities to its members and therefore the said interest amount is attributable to the credit facilities provided by the assessee and forms part of profits and gains of business and therefore he submits the appellate authorities were not justified in denying the said benefit in terms of Sub-sec.(2) of Section 80P of the Act. In support of his contentions, he relied on several judgments and pointed out that the Apex Court in the aforesaid judgment has not laid down any law.

5. Per contra, learned counsel for the Revenue strongly relied on the said judgment of the Supreme Court and submitted, the case is covered by that judgment of the Apex Court and no case for interference is made out.

6. From the aforesaid facts and rival contentions, the undisputed facts which emerges is, the sum of Rs.1,77,305/- represents the interest earned from short-term deposits and from savings bank account. The assessee is a Cooperative Society providing credit facilities to its members. It is not carrying on any other business. The interest income earned by the assessee by providing credit facilities to its members is deposited in the banks for a short duration which has earned interest. Therefore, whether this interest is attributable to the business of providing credit facilities to its members, is the question. In this regard, it is necessary to notice the relevant provision of law ie., Section 80P(2)(a)(i):

> ***"Deduction in respect of income of co-operative societies:***
>
> ***80P*** *(1) Where, in the case of an assessee being a co-operative society, the gross total income includes any income referred to in sub-section (2), there shall be deducted, in accordance with and subject to the provisions of this section, the sums specified in sub-*

section (2), in computing the total income of the assessee.

(2) The sums referred to in sub-section (1) shall be the following, namely:

(a) in the case of co-operative society engaged in –

(i) carrying on the business of banking or providing credit facilities to its members, or

(ii) xxx
(iii) xxx
(iv) xxx
(v) xxx
(vi) xxx
(vii) xxx

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

7. The word 'attributable' used in the said section is of great importance. The Apex Court had an occasion to consider the meaning of the word 'attributable' as supposed to derive from its use in various other provisions of the statute in the case of **CAMBAY ELECTRIC**

SUPPLY INDUSTRIAL CO. LTD. VS. COMMISSIONER OF INCOME-TAX, GUJARAT-II reported in **ITR VOL. 113 (1978) PAGE 842** at page 93 as under:

> *"As regards the aspect emerging from the expression "attributable to" occurring in the phrase "profits and gains attributable to the business of" the specified industry (here generation and distribution of electricity) on which the learned Solicitor-General relied, it will be pertinent to observe that the legislature has deliberately used the expression "attributable to" and not the expression "derived from". It cannot be disputed that the expression "attributable to" is certainly wider in import than the expression "derived from". Had the expression "derived from" been used, it could have with some force been contended that a balancing charge arising from the sale of old machinery and buildings cannot be regarded as profits and gains derived from the conduct of the business of generation and distribution of electricity. In this connection, it may be pointed out that whenever the legislature*

wanted to give a restricted meaning in the manner suggested by the learned Solicitor-General, it has used the expression "derived from", as, for instance, in section 80J. In our view, since the expression of wider import, namely, "attributable to", has been used, the legislature intended to cover receipts from sources other than the actual conduct of the business of generation and distribution of electricity."

8. Therefore, the word "attributable to" is certainly wider in import than the expression "derived from". Whenever the legislature wanted to give a restricted meaning, they have used the expression "derived from". The expression "attributable to" being of wider import, the said expression is used by the legislature whenever they intended to gather receipts from sources other than the actual conduct of the business. A Cooperative Society which is carrying on the business of providing credit facilities to its members, earns profits and gains of business by providing credit

facilities to its members. The interest income so derived or the capital, if not immediately required to be lent to the members, they cannot keep the said amount idle. If they deposit this amount in bank so as to earn interest, the said interest income is attributable to the profits and gains of the business of providing credit facilities to its members only. The society is not carrying on any separate business for earning such interest income. The income so derived is the amount of profits and gains of business attributable to the activity of carrying on the business of banking or providing credit facilities to its members by a co-operative society and is liable to be deducted from the gross total income under Section 80P of the Act.

9. In this context when we look at the judgment of the Apex Court in the case of M/s. Totgars Co-operative Sale Society Ltd., on which reliance is placed, the Supreme Court was dealing with a case where the

assessee-Cooperative Society, apart from providing credit facilities to the members, was also in the business of marketing of agricultural produce grown by its members. The sale consideration received from marketing agricultural produce of its members was retained in many cases. The said retained amount which was payable to its members from whom produce was bought, was invested in a short-term deposit/security. Such an amount which was retained by the assessee - Society was a liability and it was shown in the balance sheet on the liability side. Therefore, to that extent, such interest income cannot be said to be attributable either to the activity mentioned in Section 80P(2)(a)(i) of the Act or under Section 80P(2)(a)(iii) of the Act. Therefore in the facts of the said case, the Apex Court held the assessing officer was right in taxing the interest income indicated above under Section 56 of the Act. Further they made it clear that they are confining the said judgment to the facts of

that case. Therefore it is clear, Supreme Court was not laying down any law.

10. In the instant case, the amount which was invested in banks to earn interest was not an amount due to any members. It was not the liability. It was not shown as liability in their account. In fact this amount which is in the nature of profits and gains, was not immediately required by the assessee for lending money to the members, as there were no takers. Therefore they had deposited the money in a bank so as to earn interest. The said interest income is attributable to carrying on the business of banking and therefore it is liable to be deducted in terms of Section 80P(1) of the Act. In fact similar view is taken by the Andhra Pradesh High Court in the case of **COMMISSIONER OF INCOME-TAX III, HYDERABAD VS. ANDHRA PRADESH STATE COOPERATIVE BANK LTD.,** reported in **(2011) 200 TAXMAN 220/12**. In that view of the matter, the order passed by the appellate authorities denying the benefit of deduction of

the aforesaid amount is unsustainable in law. Accordingly it is hereby set aside. The substantial question of law is answered in favour of the assessee and against the revenue. Hence, we pass the following order:

Appeal is allowed.

The impugned order is hereby set aside. Parties to bear their own cost.

SD/-
JUDGE

SD/-
JUDGE

Rd/-

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 9th DAY OF JUNE, 2015

PRESENT

THE HON'BLE MR.JUSTICE M. SHANTANAGOUDAR

AND

THE HON'BLE MR.JUSTICE ARAVIND KUMAR

I.T.A. NO.29/2015

BETWEEN :

M/s. Guttigedarara Credit
Co-operative Society Limited
Rep. by its Secretary
Shri K.L. Mohan
Mysore MUDA Office Premises
JLB Road
Mysore-570005

. . . . . Appellant

(By Sri A. Shankar and Sri M. Lava, Advs.,)

AND :

The Income Tax Officer
Ward-2(2)
No.55/1, Shilpashree
Vidyaranya Complex
Vishweswaranagar
Mysore-570008

. . . . .Respondent

(By Sri K.V. Aravind, Standing Counsel.,)

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This appeal is filed under Section 260-A of Income Tax Act 1961, arising out of order dated 19.09.2014 passed in ITA No.1526/Bang/2013, for the assessment year 2010-20.11, praying to formulate the substantial question of law as stated above and answer the same in favor of the appellant to allow the appeal land set aside the findings to the extent against the appellant in the order passed by the Income Tax Appellate Tribunal, Bangalore 'C Bench, Bangalore.

This appeal coming on for admission, this day, MOHAN M. SHANTANAGOUDAR, J., delivered the following:-

JUDGMENT

The assessee has filed this appeal questioning the order dated 19.9.2014 passed by the Income Tax Appellate Tribunal in ITA.No.1526/Bang/2013.

2. This appeal is admitted to consider the following substantial questions of law:-

   i) Whether the Tribunal failed in law to appreciate that the interest earned on short-term deposits in banks were only investment in the course of activity of providing credit facilities to members and that the same cannot-be considered as investment made for the purpose of earning interest income and consequently passed a perverse order?

   ii) Whether the Tribunal is correct in law in holding that the interest earned on the deposits in banks by the appellant/co-operative society does not qualify for deduction under Section 80P(2)(a)(i) of the Income Tax Act, 1961 on the facts and circumstances of the case?

   iii) Without prejudice, whether the tribunal is justified in not holding that if at all the interest earned from deposits with scheduled banks is held to be not attributable to the activity of providing credit to members, then the whole of such income is not liable to tax but only the net income after reducing the expenditure incurred to earn such interest

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income would be liable to tax on the facts and'-circumstances of the case?

3. The assessee is a Cooperative Society registered under the provisions of Section 7 of the Karnataka Co-operative Societies Act, 1959. It is engaged in the activity of carrying on the business of providing credit facilities to its members. It is governed by the provisions of the Karnataka Co-operative Societies Act, 1959, and the Karnataka Co-operative Societies Rules, 1960.

4. The assessee filed its return of income for the assessment year 2010-11 on 15.10.2010 under the provisions of Section 139(1) of the Act, declaring a total income of Rs. NIL after claiming a deduction of Rs.85,67,640/- under the provisions of Section 80P(2)(a)(i) of the Act. The assessee's case was selected for scrutiny and statutory notice under the provisions of Section 143(2) was issued. The assessee produced all the information to substantiate its claim.

   The Assessing Officer, taking note of the insertion of Section 80P(4) of the Act, declined to extend the benefit of deduction under Section 80P(2)(i) and passed an order of assessment, determining a total income of Rs.85,95,028/-, as against the declared income of Rs.NIL. Aggrieved by the said order, assessee preferred an appeal to the Commissioner of Income Tax (Appeals). The appellate authority held that assessee's activity is not in the nature of banking and consequently it is entitled to deduction under Section 80P(2)(a)(i) of the Act. However, insofar as the amount of interest is concerned, it is held that assessee is liable to income tax in view of the judgment of the Apex Court in the case of M/s. Totgars Co-operative Sale Society Limited Vs. Income Tax Officer, reported in 322 ITR 283 (SC).

   Aggrieved by that portion of the order, assessee preferred an appeal to the Commissioner of Income Tax (Appeals) which has dismissed the appeal

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following the judgment of the Apex Court in the aforesaid case. Aggrieved by the said order, this appeal is preferred by the assessee.

5. Learned counsel for the assessee assailing the impugned order contended that the interest accrued from the deposits made by the assessee in a nationalized bank out of the amounts which was used by the assessee for providing credit facilities to its members and therefore the said interest amount is attributable to the credit facilities provided by the assessee and forms part of profits and gains of business and therefore he submits that the appellate authorities were not justified in denying the said benefit in terms of sub-Section(2) of Section 80P of the Act. In support of his contentions, he relied on several judgments and pointed out that the Apex Court in the aforesaid judgment has not laid down any law.
6. Per contra, learned counsel for the Revenue strongly relied on the said judgment of the Supreme Court and submitted that the case is covered by that judgment of the Apex Court and no case for interference is made out.
7. From the aforesaid facts and rival contentions, the undisputed facts which emerge are,, certain sums of interest were earned from short-term deposits and from savings bank account. "The assessee is a Co-operative Society providing credit facilities to its members. It is not carrying on any other business. The interest income earned by the assessee by providing credit facilities to its members is deposited in the banks for a short duration which has earned interest. Therefore, whether this interest is attributable to the business of providing credit facilities to its members, is the question.
8. In this regard, it is necessary to notice the relevant provision of law i.e., Section 80P(2)(a)(i):-

   "*Deduction in respect of income of co-operative societies*:

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80P (1) Where, in the case of an assessee being a co-operative society, the gross total income includes any income referred to in sub¬section (2), there shall be deducted, in accordance with and subject to the provisions of this section, the sums specified in sub-section (2), in computing the total income of the assessee.

(2) The sums referred to in sub-section (1) shall be the following, namely:

(a) in the case of co-operative society engaged in-"-

(i) carrying on the business of banking or providing credit facilities to its members, or

(ii) xxx

(iii) xxx

(iv) xxx

(v) xxx

(vi) xxx

(vii) xxx

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

9. The word 'attributable' used in the said Section is of great importance. The Apex Court had an occasion to consider the meaning of the word 'attributable' as supposed to derive from its use in various other provisions of the statute hi the case of Cambay Electric Supply Industrial Co. Ltd., Vs. Commissioner of Income Tax, Gujarat-II, reported in ITR VOL. 113 (1978) 84 (at page 93) as under:-

"As regards the aspect emerging from the expression "attributable to" occurring in the phrase "profits and gains attributable to the business of" the specified industry (here generation and distribution of electricity) on which the learned Solicitor-General relied, it will be pertinent to observe that

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the legislature has deliberately used the expression "attributable to" and not the expression "derived from". It cannot be disputed that the expression "attributable to" is certainly wider in import than the expression "derived from". Had the expression "derived from" been used, it could have with some force been contended that a balancing charge arising from the sale of old machinery and buildings cannot be regarded as profits and gains derived from the conduct of the business of generation and distribution of electricity. In this connection, it may be pointed out that whenever the legislature wanted to give a restricted meaning in the manner suggested by the learned Solicitor-General, it has used the expression "derived from", as, for instance, in section 80J. In our wew, since the expression of wider import, namely, "attributable to", has been used, the legislature intended to cover receipts from sources other than the actual conduct of the business of generation and distribution of electricity."

10. Therefore, the word "attributable to" is certainly wider in import than the expression "derived from". Whenever the legislature wanted to give a restricted meaning, they have used the expression "derived from". The expression "attributable to" being of wider import, the said expression is used by the legislature whenever they intended to gather receipts from sources other than the actual conduct of the business. A Co-operative Society which is carrying on the business of providing credit facilities to its members, earns profits and gains of business by providing credit facilities to .its members. The interest income so derived or the capital, if not immediately required to be lent to the members, the society cannot keep the said amount idle. If they deposit this amount in bank so as to earn interest, the said interest income is attributable to the profits and gains of the business of providing credit facilities to its members only. The society is not carrying on any separate business for earning such interest income. The

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income so derived is the amount of profits and gains of business attributable to the activity of carrying on the business of banking or providing credit facilities to its members by a co-operative society and is liable to be deducted from the gross total income u/s 80P of the Act.

11. In this context when we look at the judgment of the Apex Court in M/s. Totgars Co-operative Sale Society's Case (cited supra), on which reliance is placed, the Supreme Court was dealing with a case where the assessee/Co-operative Society, apart from providing credit facilities to the members, was also in the business of marketing of agricultural produce grown by its' members. The sale consideration received from marketing agricultural produce of its members was retained in many cases. The said retained amount which was payable to its members from whom produce was bought, was invested in a short-term deposit/security. Such an amount which was retained by the assessee - Society was a liability and it was shown in the balance sheet on the liability side. Therefore, to that extent, such interest income cannot be said to be attributable either to the activity mentioned in Section 80P(2)(a)(i) of the Act or under Section 80P(2)(a)(iii) of the Act. Therefore in the facts of the said case, the Apex Court held the assessing officer was right in taxing the interest income indicated above under Section 56 of the Act. Further they made it dear that they are confining the said judgment to the facts of that case. Therefore it is clear, Supreme Court was not laying down any law.

12. In the instant case, the amount which was invested in banks to earn interest was not an amount due to any members. It was not the liability. It was not shown as liability in their account. In fact this amount which is in the nature of profits and gains, was not immediately required by the assessee for lending money to its members, as there were no takers. Therefore they had deposited the money in a bank so as to earn interest. The said interest

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income is attributable to carrying on the business of banking and therefore it is liable to be deducted in terms of Section 80P(1) of the Act. In fact similar view is taken by the Andhra Pradesh High Court in the case of Commissioner of Income Tax-Ill, Hyderabad Vs. Andhra Pradesh State Co-operative Bank Ltd., reported in (2011) 200/Taxman 220/12.

In that view of the matter, the order passed by the appellate authorities denying the benefit of deduction of the aforesaid amount is unsustainable in law.

Accordingly it is hereby set aside. The substantial questions of law are answered in favour of the assessee and against the revenue. Hence, we pass the following order:-

Appeal is allowed. The impugned order dated 19.9.2014 is set aside.

Parties to bear their own costs.

Sd/-

JUDGE

Sd/-

JUDGE

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IN THE HIGH COURT OF KARNATAKA
DHARWAD BENCH

DATED THIS THE 21ST DAY OF SEPTEMBER, 2015

PRESENT

THE HONOURABLE MR.JUSTICE ANAND BYRAREDDY

AND

THE HONOURABLE MRS.JUSTICE S.SUJATHA

INCOME TAX APPEAL NO.100096 OF 2014

BETWEEN

Sree Renuka Co-operative Credit
Society Ltd.,
Hotel Keerti Campus,
P.B. Road,
Belgaum,
Represented by its Secretary
Mr. Shankar Oejappa Shetty,
Aged 60 years.

... APPELLANT.

(By Shri: H.R. Kambiyavar, Advocate)

AND

1. The Income Tax Officer,
Ward No.2(2),
Belgaum.

2. Commissioner of Income Tax (Appeals),
Belgaum. ... RESPONDENTS.

(By Shri Y.V. Raviraj, Advocate)

This ITA is filed under Section 260A of the Income Tax Act, 1961 against the order passed in ITA No.04/PNJ/2014 dated 13.06.2014 on the file of the Income Tax Appellate Tribunal, Panaji Bench, Panaji, dismissing the appeal filed by the assessee.

This appeal having been heard and reserved, and coming on for pronouncement of judgment, this day, Anand Byrareddy J., delivered the following:

JUDGMENT

This appeal is by the assessee under the Income Tax Act, 1961 (Hereinafter referred to as the 'IT Act, for brevity). The assessee is said to be a Co-operative Society registered under the Karnataka State Co-operative Societies Act, 1956, (Hereinafter referred to as the 'KCS Act', for brevity).

2. The appeal pertains to the Assessment year 2010-11. The appellant - Society had filed its return of income for the assessment year 2010-11, and after claiming deduction under Section 80 P(2) (a) (i) of the IT Act, the total income was declared as 'nil'.

The Assessing Officer had however, opined that the assessee was not entitled to the deduction, as claimed, for the reason, inter alia, that the activity of the appellant was covered

by Section 2 (24 (vii a) of the IT Act, which requires the inclusion of profits and gains of any business of banking (including providing credit facilities) carried on by a co-operative society.

Reference was made to the Explanation appended to Section 80 P (4) - which lays down that a co-operative bank and a primary agricultural credit society, shall have the same meaning assigned to them in Part V of the Banking Regulation Act, 1949 (Hereinafter referred to as the 'BR Act' , for brevity.) It was held that the Bye -laws of the Assessee indicated that their primary object was transactions that were apparently in the nature of banking. In that, the assessee was receiving deposits from its members and providing loans to other members and hence it satisfied all the three conditions contemplated under Section 56 (ccv) of the BR Act. For this premise, the Assessing Officer had proceeded on the basis that a primary co-operative bank, meant a Co-operative Society. Therefore, the Assessing Officer held that the appellant society being a primary co-

operative bank, was not eligible for deduction under Section 80 P of the IT Act.

3. The appellant - Society had then preferred an appeal before the Commissioner of Income Tax (Appeals) challenging the above order of the Assessing Officer. The same was said to have been partly allowed.

The appellant had then approached the Income Tax Appellate Tribunal. The Tribunal having affirmed the concurrent findings of the above authorities, the appellant is before this court.

4. The questions of law that arise for our consideration in this appeal are :

i. Whether the benefit of deduction, under Section 80 P (2) (a) (i) of the IT Act, could be denied to the assessee on the footing that, though the appellant was said to be a Co-operative Society, it was in fact a co-operative bank, within the meaning as assigned to such bank under Part V of the BR Act.

ii. Whether the Authorities under the IT Act were competent and possessed the jurisdiction to resolve the

controversy as to whether the assessee was a co-operative society or co-operative bank, as defined under the provisions of the BR Act?"

5. In addressing the above, it would be useful to extract the relevant provisions for ready reference.

> *"80P. (1) Where, in the case of an assessee being a co-operative society, the gross total income includes any income referred to in sub-section (2), there shall be deducted, in accordance with and subject to the provisions of this section, the sums specified in sub-section (2), in computing the total income of the assessee.*
>
> ***(2) The sums referred to in sub-section (1) shall be the following, namely :—***
> ***(a) in the case of a co-operative society engaged in—***
>
> ***(i) carrying on the business of banking or providing credit facilities to its members, or***
>
> (ii) x x x x x
>
> (iii) x x x x x
>
> x x x x x

(4) The provisions of this section shall not apply in relation to any co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank.

Explanation.-- For the purposes of this sub-section,

(a) "co-operative bank" and "primary agricultural credit society" shall have the meanings respectively assigned to them in Part V of the Banking Regulation Act, 1949 (10 of 1949);

(b) "primary co-operative agricultural and rural development bank" means a society having its area of operation confined to a taluk and the principal object of which is to provide for long-term credit for agricultural and rural development activities.]"

"Section 56 of the BR Act:-

***Act to apply to co-operative societies subject to modifications**. —The provisions of this Act, as in force for the time being, shall apply to, or in relation to, co-operative societies as they apply to, or in relation to banking companies subject to the following modifications, namely:—*

(a) throughout this Act, unless the context otherwise requires,—

(i) references to a "banking company" or "the company" or "such company" shall be construed as references to a co-operative bank;

(ii) references to "commencement of this Act" shall be construed as references to commencement of the Banking Laws (Application to Co-operative Societies) Act, 1965 (23 of 1965);

(b) in section 2, the words and figures "the Companies Act, 1956 (1 of 1956) and" shall be omitted;

(c) in section 5,—

[(i) after clause (cc), the following clauses shall be inserted, namely:—

(cci) "Co-operative bank" means a state co-operative bank, a central co-operative bank and a primary co-operative bank;

(ccii) "co-operative credit society" means a co-operative society, the primary object of which is to provide financial accommodation to its members and includes a co-operative land mortgage bank;

(cciia) "co-operative society" means a society registered or deemed to have been registered under any Central Act for the time being in force relating to the multi-State co-operative societies, or any other Central or State law relating to co-operative societies for the time being in force;]

(cciii) "director" in relation to a co-operative society, includes a member of any committee or body for

the time being vested with the management of the affairs of that society;

[(cciiia) "multi-State co-operative bank" means a multi-State co-operative society which is a primary co-operative bank;]

[(cciiib) "multi-State co-operative society" means a multi-State co-operative society registered as such under any Central Act for the time being in force relating to the multi-State co-operative societies but does not include a national co-operative society and a federal co-operative;]

(cciv) "primary agricultural credit society" means a co-operative society,—

(1) the primary object or principal business of which is to provide financial accommodation to its members for agricultural purposes or for purposes connected with agricultural activities (including the marketing of crops); and

(2) the bye-laws of which do not permit admission of any other co-operative society as member:

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

(ccv) "primary co-operative bank" means a co-operative 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 co-operative society as a member: Provided that this sub-clause shall not apply to the admission of a co-operative bank as a member by reason of such co-operative bank subscribing to the share capital of such co-operative society out of funds provided by the State Government for the purpose;

(ccvi) "primary credit society" means a co-operative 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 less than one lakh of rupees; and

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

Provided that this sub-clause shall not apply to the admission of a co-operative bank as a member by reason of such co-operative bank subscribing to the share capital of such co-operative socie-ty out of funds provided by the State Government for the purpose.

Explanation.— If any dispute arises as to the primary object or principal business of any co-operative

society referred to in clauses (cciv), (ccv) and (ccvi), a determination thereof by the Reserve Bank shall be final;

x x x x x x

6. In so far as the first question of law is concerned, there are a series of decisions of this court wherein it has been repeatedly answered in favour of the assessee. Two of the said decisions are as follows :

1. *CIT v. Sri Biluru Gurubasava Pattina Sahakari Sangha Niyamitha in ITA No.5006/2013*
2. *CIT vs. Bangalore Commercial Transporter Credit Society in ITA No.351/2011 & ITA No.599/2013*

In interpreting Section 80 P (4) in *CIT v. Sri Biluru Gurubasava Pattina Sahakari Sangha Niyamitha* of the I T Act, it was held as follows :

> *"If a Co-operative Bank is exclusively carrying on banking business, then the income derived from the said business cannot be deducted in computing the total income of the assessee. The said income is liable for tax. A Co-operative bank as defined under the Banking Regulation Act*

includes the primary agricultural credit society or a primary co-operative agricultural and rural development bank. The Legislature did not want to deny the said benefits to a primary agricultural credit society or a primary co-operative agricultural and rural development bank. They did not want to extend the said benefit to a Co-operative bank which is exclusively carrying on banking business i.e. the purport of this amendment. Therefore, as the assessee is not a Co-operative bank carrying on exclusively banking business and as it does not possess a licence from Reserve Bank of India to carry on business, it is not a Co-operative bank. It is a Co-operative society which also carries on the business of lending money to its members which is covered under Section 80P(2)(a)(i) i.e. carrying on the business of banking for providing credit facilities to its members. The object of the aforesaid amendment is not to exclude the benefit extended under Section 80P(1) to such society. Therefore, there was no error committed by the Assessing Authority."

In *CIT vs. Bangalore Commercial Transporter Credit Society (supra),* this court has cited with approval the following differences between a co-operative society and a co-operative bank - as depicted by the Tribunal, in tabular form thus :

Nature	Co-operative society registered under Banking Regulation Act, 1949	Co-operative Society registered under Karnataka Co-operative Society Act, 1959
Registration	Under the Banking Regulation Act, 1949 and Co-operative Societies Act, 1959	Co-operative Societies Act, 1959
Nature of business	1. As defined in Section 6 of Banking Regulation Act. 2. Can open savings bank account, current account, overdraft account, cash credit account, issue letter of credit, discounting bills of exchange, issue cheques, demand drafts (DD), Pay orders, Gift cheques, lockers, bank guarantees etc. 3. Co-operative Banks can act as clearing	1. As per the bye laws of the co-operative society. 2. Society cannot open savings bank account, current account, issue letter of credit, discounting bills of exchange, issue cheque, demand drafts, pay orders, gift cheques, lockers, bank guarantees etc. 3. Society cannot act clearing agent, for cheques, DDs, pay

	agent for cheques, DDs, pay orders and other forms. 4. Banks are bound to follow the rules, regulations and directions issued by Reserve Bank of India (RBI).	orders and other forms. 4. Society are bound by rules and regulations as specified by in the co-operative societies act.
Filing of returns	Co-operative banks have to submit annual return to RBI every year.	Society has to submit the annual return to Registrar of Societies.
Inspection	RBI has the power to inspect accounts and overall functioning of the Bank.	Registrar has the power to inspect accounts and overall functioning of the bank.
Part V	Part V of the Banking Regulation Act is applicable to co-operative banks.	Part V of the Banking Regulation Act is not applicable to co-operative banks.
Use of words	The word 'bank', 'banker', 'banking' can be used by a co-operative bank.	The word 'bank', 'banker', 'banking' cannot be used by a co-operative society.

And this court had dismissed the appeal of the revenue following the decision in *CIT v. Sri Biluru Gurubasava Pattina Sahakari Sangha Niyamitha* (supra).

The same view has been taken in the following decisions :

1. *CIT vs. Bangalore Credit Co-operative Society Ltd. in ITA No.598/2013*
2. *CIT vs. Yeshwanthpur Credit Co-operative Society Ltd. in ITA 237/2012*
3. *CIT vs. Mysore University Employees Co-operative Credit Society Ltd. in ITA 298/2013*
4. *CIT vs. Vasavi Credit Co-operative Society Ltd. in ITA No.118/2012*
5. *CIT vs. Sri Vasavi Multi Purpose Souharda Sahakari Sangha Niyamitha in ITA No.505/2013*
6. *CIT vs. General Insurance Employees Co-operative Society Ltd. in ITA No.273/2013.*

7. The learned counsel Shri A. Shankar while drawing attention of this court to the tenor of the relevant provisions of law and the above decisions, would contend that this court has categorically held that the assessee, as a co-operative society, was entitled to the benefit of deduction under Section 80 P (2) (a) (i) of the IT Act. Notwithstanding the aforesaid decisions of

this court, the Tribunal which was bound by the same, has ignored the said decisions.

It is also pointed out that though other benches of the Appellate Tribunal had followed the dictum of this court, and which circumstance was brought to the attention of the Tribunal, it had not chosen to distinguish the said decisions nor has it chosen to refer the matter to a special bench, as propriety demanded.

It is hence contended that the point of law as to the entitlement of deduction under Section 80 P (2) (a) (i) in so far as the assessee is concerned, would have to be held in its favour.

He would contend that all co-operative banks may be co-operative Societies, but all co-operative Societies are not necessarily co-operative banks.

It is further contended that the activity of "banking", is defined under Section 5 (b) of the BR Act as follows :

> "5(b) "banking" means the accepting, for the purpose of lending or investment, of deposits of money from the public, repayable on demand or otherwise, and withdrawal by cheque, draft, order or otherwise;

It is asserted that the assessee did not carry on any such activity. And if they did carry on any such activity, it would be illegal and becomes subject to the rigour of Section 37 of the BR Act. It is further contended that even if there was a disputed question as to whether the assessee was indeed a co-operative bank. The authorities under the IT Act were not competent and did not have the jurisdiction to arrive at a finding in that regard and attention is drawn to the Explanation appended to clause (ccvi) to Section 56 of the BR Act, which reads as follows :

> "Explanation- If any dispute arises as to the primary object or principal business of any co-operative society referred to in clauses (cciv), (ccv) and (ccvi), a determination thereof by the Reserve Bank shall be final;"

It is hence contended that the appeal be allowed and the judgment of the Tribunal be set aside.

8. On the other hand, the learned counsel Shri Y.V. Raviraj, appearing on behalf of the Revenue contends as follows :

Section 80P(2)(a)(i) provides deduction of income of co-operative societies "carrying on the business of banking or providing credit facilities to its members".

However, an exception to this is provided under Section 80P(4) which provides that this deduction will not be available to any co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank.

For the purpose of sub-section 80P(4), a co-operative bank has been given a meaning assigned to them in Part V of the Banking Regulation Act, 1949.

In Part V of the Banking Regulation Act, 1949, section 5(b), a "co-operative bank" means a State Co-operative Bank, a Central Co-operative Bank and a Primary Co-operative Bank.

A Primary Co-operative Bank is defined in section 5(ccv) of the Banking Regulation Act, 1949 as the co-operative society which fulfills three conditions namely:

i) The primary object or principal business of which is transaction of banking business.

ii) The paid-up share capital and reserves of which are not less than one lakh of rupees and

iii) The bye-laws of which do not permit admission of any other co-operative society as a member.

If a co-operative society fulfills all the above three conditions, it is to be treated as a co-operative bank for the purpose of section 80P(4) and the benefit of deduction under Section 80P(2)(a)(i) is denied.

After insertion of Section 80P(4), the provisions of Section 80P(2)(a)(i) were not amended and the co-operative

societies engaged in carrying on business in banking with its members continued to be entitled for deduction.

The embargo put under Section 80P(4) are applicable only to a co-operative society, treated as a bank by a legal fiction created under Section 80P(4) as defined in the Explanation to the said section with reference to Part V of the Banking Regulation Act, 1949.

However, if an assessee society does not fulfill any of the above three conditions as defined under Section 5(ccv) of Banking Regulation Act, 1949, it cannot be treated as a 'primary co-operative bank' and as such will be eligible to get the deduction under Section 80P(2)(a)(i)

Attention is also drawn to the relevant portion of the Finance Minister's Budget Speech explaining the reasons for withdrawal of tax benefits to some Societies by way of insertion of sub-section 80P(4) and insertion of new sub-clause (viia) in clause (24) of Section 2 definition of "income" by the Finance Act, 2006, with effect from 1.4.2007, is as under:

"The Co-operative banks are functioning at par with other commercial banks, which do not enjoy any tax benefits. It is, therefore proposed to amend section 80P by inserting a new sub-section (4) so as to provide that the provisions of the said section shall not apply in relation to any co-operative bank other than primary credit society or a primary co-operative agricultural and rural development bank. It is also proposed to define the expressions "co-operative bank", "primary agricultural credit society" and "primary co-operative agricultural and rural development bank".

It is also proposed to insert a new sub-clause (viia) in clause (24) of the Section 2 so as to provide that ttheprofits and gains of any business of banking (including providing credit facilities) carried on by a co-operative society with its members shall be included in the definition of "income".

Section 2(24(viia) of the Income Tax Act inserted by the Finance Act, 2006, with effect from 1.4.2007 includes the following in its definition of "income" as under:

"profits and gains of any business of banking (including providing credit facilities) carried on by a co-operative society with its members."

The relevant portion of Section 80P is as under:

"80P(1): Where, in the case of an assessee being a co-operative society, the gross total income includes any income referred to in sub-section (2), there shall be deducted, in accordance with an subject to the provisions of this section, the sums specified in sub-section (2), in computing the total income of the assessee.

(2) The sum referred to in sub-section (1) shall be the following, namely:-

(a) the case of a co-operative society engaged in :-

(i) Carrying on the business of banking or providing credit facilities to its memebrs, or ……

(ii) ……..

(iii) ……..

(iv) ……

(v) ……..

(vi) ……..

(vii) ……..

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

Section 80P(4) which came to be introduced in the statute by the Finance Act, 2006, with effect from 1.4.2007, reads as under:

> 80P(4) The provisions of this section shall not apply in relation to any co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank.
>
> Explanation:- For the purposes of this sub-section,
>
> (a) "co-operative bank" and "primary agricultural credit society" shall have the meanings respectively assigned to them in Part V of the Banking Regulation Act, 1949 (10 of 1949);
>
> (b) "primary co-operative agricultural and rural development bank" means a society having its area of operation confined to a taluk and the principal object of which is to provide for long-term credit for agricultural and rural development activities.

Part V of the Banking Regulation Act, 1949, section 5(cci): In order to examine in a given case of an assessee society whether it is a co-operative bank or not as defined in Part V of the Banking Regulation Act, 1949, of the said Act has to be looked into. Section 5(cci) states as under:

> "Co-operative bank" means a state co-operative bank, a central co-operative bank and a primary co-operative bank."

The primary co-operative bank is defined under Section 5(ccv) of the BR Act as under:

""primary co-operative bank" means a co-operative society, other than a primary agricultural credit society—

(1) The primary object or principal business of which is 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 co-operative society as a member:

Provided that this sub-clause shall not apply to the admission of a co-operative bank as a member by reason of such co-operative bank subscribing to the share capital of such Co-operative society out of funds provided by the State Government 'for the purpose'".

Section 5(cciia) of Banking Regulation Act, 1949 defines a Co-operative Society as under:

"Co-operative Society means a society registered or deemed to have been registered under any Central Act for the time being in force relating to the multi-State co-operative societies or any other Central or State law relating to co-operative societies for the time being in force;"

Section 5(b) of the Banking Regulation Act, will also have to be looked into to examine whether the primary object or principal business of the co-operative society is transaction of banking business. The section is as under:

> "banking" means the accepting, for the purpose of lending or investment, of deposits of money from the public, repayable on demand or otherwise, and withdrawable by cheque, draft, order or otherwise"

The learned counsel would incidentally contend that the Tribunal while taking the cue from the decisions of this Court in *CIT v. Sri Biluru Gurubasava Pattina Sahakari Sangha Niyamitha* and other cases. in certain other appeals apart from the present has also formed an opinion on certain further propositions, namely:

Proposition: Assessee society has not fulfilled the third condition mentioned in Section 5(ccv) of the BR Act and as such, cannot be treated as a primary co-operative bank as defined therein:

The Tribunal has referred to section 16 of the Karnataka State Co-operative Societies Act, 1959 and held that the said provisions permit admission of any other co-operative society as a member. The Tribunal however has erred in not examining whether the bye-laws of the assessee society permits other co-operative society to become member as per Section 5(ccv) of the Banking Regulation Act, 1949. Provisions of Section 16(1) and 16(2) of the Karnataka State Co-operative Societies Act, 1959 does not help in any way to come to the conclusion that the bye-laws in the case of a particular assessee society permits admission of any other co-operative society as a member.

Proposition: The Tribunal has referred to section 20 to 21A of the Karnataka Souhardha Sahakari Co-operative Societies Act, 1997, and held that the said provisions permit admission of any other co-operative society as a member.

The Tribunal however ought to have examined into the aspect as to whether the bye-laws in the case of a particular assessee society permits admission of any other co-operative society as a member.

Proposition: Referring to the bye-laws of the assessee society, the Tribunal has observed that the Societies registered under the Karnataka Societies Registration Act, 1960 are allowed to become members.

The Tribunal had failed to appreciate that a society registered under the Karnataka Societies Registration Act, 1960 is established or created for different purposes and cannot be treated as that of the one registered under the Karnataka Co-operative Societies Act, 1959 or that registered under the Karnataka Souhardha Sahakari Co-operative Societies Act, 1997.

Proposition: The issue is covered by the decision of a Division Bench of this Hon'ble Court in the case of *Sri. Biluru Gurubasava Pattina Sahakari Sangha Niyamitha, Bagalkot in ITA No.5006/2013 dated 5th February 2014:*

The substantial question of law pleaded on behalf of the Revenue in the said case was as follows:

> "In the facts and circumstances of this case, whether the Revisional Authority was

> justified in invoking his power under Section 263 of the Act without the foundational fact of assessee being co-operative bank was not there?"

It is pointed out that this Court, in the above case, had not examined the applicability of the provisions of the definition of a co-operative bank as per Part V of the Banking Regulation Act, 1949 by reading Explanation to section 80P(4). The facts of the above case are clearly distinguishable and are not applicable. However, a Review Petition was filed in the said case and subsequently, a memo had been filed to withdraw the said Review Petition, which is pending. It is submitted that the matter is being taken up by the Revenue in appeal before the Hon'ble Apex Court.

It is also stated that in some matters, the Tribunal has granted relief by holding that Section 80P(4) is not applicable, by referring to one circular of CBDT No.133 of 2007 dated 9.5.2007 which provided as under:-

"Subject: clarification regarding admissibility of deduction under Section 80P of the Income Tax Act, 1961.

1. Please refer to your letter No.DCUS/30688/2007, dated 28.03.2007 addressed to the Chairman, Central Board of Direct Taxes, on the above given subject.

2. In this regard, I have been directed to state that sub-section (4) of section 80P provides that deduction under the said section shall not be allowable to any co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank. For the purpose of the said sub-section, co-operative bank shall have the meaning assigned to it in part V of the Banking Regulations Act, 1949.

3. In part V of the Banking Regulation Act, "Co-operative Bank" means a State co-operative bank, a Central Co-operative Bank and a primary Co-operative bank.

4. Thus, if the Delhi Co-op Urban T and C Society Ltd. does not fall within the meaning of "Co-operative Banks" as defined in part V of the Banking Regulation Act, 1949, sub-section (4) of Section 80P will not apply in this case.

5. The issues with the approval of Chairman, Central Board of Direct Taxes."

The learned counsel contends that the above circular has only clarified that if the societies do not fall within the meaning of the co-operative bank as per Part V of the Banking Regulation Act, 1949, then exception under Section 80P(4) will not apply.

Proposition: The assessee Society has not obtained Banking Licence from the R.B.I:

It is contended that it is also pertinent to note that it is necessary that a co-operative society should have a banking licence as per the definition under the Income Tax Act, for carrying on banking business and if the required licence is not obtained as per other laws, it can only be termed as an illegal banking business under a particular statute prescribing the same. Income Tax Act, however is concerned with the taxing of "income" as per the provisions of the Income Tax Act and "income" if any, has to be taxed whether it is from a legal or illegal business.

Hence, it is contended by the learned counsel that, by the insertion of Section 2(24(viia) and Section 80P(4), by adopting the words 'primary co-operative bank' means a co-operative society other than …' in clause (ccv) of BR Act, the Legislature has created a legal fiction for the purpose of taxing under certain circumstances, a Society which is to be treated as a 'bank' for the purposes of the Income Tax Act, 1961 while dealing with the issue of its claim of deduction under Section 80P.

Further, when a Statute enacts that something shall be deemed to be treated as something else, which in fact is not true, the Court shall appreciate and ascertain for what purposes the statutory fiction is resorted and then give full effect to the statutory fiction to carry it to the logical conclusion.

Therefore, in the case of an assessee – Co-operative Society claiming deductions under Section 80P, an examination of the factual aspects will have to be conducted by the Revenue authorities on the basis of the facts and materials on record to

conclude whether the assessee – Society is to be treated as a 'primary co-operative bank' which fulfills the above three conditions.

9. In the light of the above contentions and on an examination of the relevant legal provisions, it is to be noticed at the outset that this court in the appeal in *ITA 351/ 2011, CIT v. Bangalore Commercial Transport Credit Co-operative Society Limited, decided on 27.6.2014*, had framed the following substantial questions of law :

> "(i) Whether the Tribunal was correct in holding that the provision of sub-section (4) of Section 80P of the Income Tax Act are applicable only to co-operative Banks and not to credit Co-operative Societies, which are engaged in business of banking, including providing credit facilities to their members?
>
> (ii) Whether the Tribunal was correct in holding that the assessee is a co-operative society and not a co-operative Bank in terms of sub-section (4) of Section 80P of the Income Tax Act without considering the meaning of co-operative Bank as envisaged under Part V of the Banking Regulation Act, 1949, wherein it is

> defined that co-operative Bank includes primary co-operative Bank, which is further defined as co-operative Society with the primary object of transactions of Banking business?"

The said issues were answered in favour of the Assessee.

10. We are in respectful agreement with the general view taken as to the interpretation of the relevant provisions of law, by the co-ordinate bench of this court, in the above and several other judgments adopting the same view. However, it is to be noticed that there is a seriously disputed question of fact which the Authorities under the IT Act have taken upon themselves to interpret in the face of the BR Act prescribing that in the event of a dispute as to the primary object or principal business of any co-operative society referred to in clauses (cciv), (ccv) and (ccvi) of Section 56 of the BR Act, a determination thereof by the Reserve Bank shall be final, would require the dispute to be resolved by the Reserve Bank of India, before the authorities could term the assessee as a co-operative bank, for purposes of Section 80 P of the IT Act. Any opinion expressed therefore is

tentative and is not final. The view expressed by this court, however, as to the assessee being a co-operative society and not a co-operative bank in terms of Section 80P (4) of the IT Act, shall hold the field and shall bind the authorities unless held otherwise by the Reserve Bank of India.

In the result, the above questions are answered in favour of the assessee and the appeal is allowed as prayed for.

Sd/-
JUDGE

Sd/-
JUDGE

KS*

Income Tax Appellate Tribunal - Amritsar
Lambra Kangri Multipurpose , ... vs Assessee on 22 April, 2016

IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH; AMRITSAR (SMC).

BEFORE SH. A.D. JAIN, JUDICIAL MEMBER

ITA Nos.607 & 419(Asr)/2015
Assessment years: 2009-10 & 2010-11
PAN: AABTT3233HH

The Lambra Kangri Multipurpose Co-operative Service Society, V&PO Lambra Kangri, District Hoshiarpur. (Appellant)	vs.	Deputy Commr. of Income Tax, Hoshiarpur Circle, Hoshiarpur. (Respondent)

Appellant by:Sh.Sandeep Vijh, CA
Respondent by: Sh. R.K. Sharda, DR

Date of hearing: 24/02/2016
Date of pronouncement: 22/04/2016

ORDER

These two appeals filed by the assessee are directed against the separate orders of the ld. CIT(A), Jalandhar, dated 13.08.2015 & 01.06.2015 for the assessment years 2009-10 & 2010-11 respectively.

2. First, we will deal with ITA No.607(Asr)/2015 for the assessment year 2009-10. The assessee has taken the following grounds:

> "1. That the ld. CIT(A), has erred in upholding the action of the Assessing Officer in denying the deduction claimed and allowable u/s 80P(2)(a)(i) in respect of the interest of Rs.8,52,314/- earned from banks. The factual as well as the legal position has not been appreciated.
>
> A.Ys. 2009-10 & 2010-11
>
> 2. Without prejudice to the contention raised in ground no.1, having held that deduction u/s 80P(2)(a)(i) was not allowable, the CIT(A) has erred in not allowing the adjustment of interest paid and other costs attributable to interest earned. Only the net amount after set off/adjustment could have been taxed as income from other sources."

3. The facts of the case are that the assessee Society is engaged in multipurpose co-operative services. For the year under consideration, it claimed its entire income as exempt under section 80P of the I.T. Act, on interest income of Rs.8,52,314/-, which amount had stated to have been earned by the assessee Society on its FDRs and savings bank account kept by it with nationalized bank (s). The AO was of the opinion that the assessee was not entitled to deduction claimed in respect of interest income, unless and until such interest income was earned from another Co-operative Society. The deduction claimed was, therefore, disallowed.

4. The ld. CIT(A) confirmed the disallowance by observing as follows:

> "6. I have carefully considered the submissions and the legal position. In view of the decision of Hon'ble Supreme Curt in the case of Totgars Co-operative Sale Society Ltd. vs. ITO 322 ITR 283, I have no hesitation in holding that the interest income of the nature as is added to the total income is taxable in the hands of the assessee."

5. Thus, the ld. CIT(A) has held the facts of the present case to be covered by the decision of the Hon'ble Supreme Court in the case of 'Totgars Co-operative Sale Society Ltd. vs. ITO', 322 ITR 283 (SC). The assessee has challenged this action of the ld. CIT(A) before this Bench.

6. The ld. counsel for the assessee has contended that 'Totgars Co- operative Sale Society Ltd. vs. ITO' (supra) stands considered in 'Tumkur A.Ys. 2009-10 & 2010-11 Merchants Souharda Credit Co-operative Ltd.', 55 Taxman .Com. 447 (Karnataka) (copy at APB 27 to 31), which has not been correctly appreciated by the ld. CIT(A).

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

8. In 'Totgars Co-operative Sale Society Ltd. vs. ITO' (supra), the assessee was a Co-operative Society, where, apart from providing credit facilities to the members, it was also in the business of marketing of agricultural produce grown by its members. The sale consideration received from marketing agricultural produce of its members was retained by the Society in many cases. Such retained amount, which was payable by the Society to its members from whom agricultural produce was brought, was invested by the Society in a short-term deposit/security. This amount was shown by the Society in its balance sheet on the liability side. On these facts, the Hon'ble Supreme Court held the AO to be right in taxing the interest income, as indicated, under section 56 of the Act. All these facts were duly taken note of by the Hon'ble Karnataka High Court vide its order dated 28.10.2014, passed in 'Tumkur Merchants Souharda Credit Co-operative Ltd.' (supra). In 'Tumkur Merchants Souharda Credit So-operative Ltd.' (supra), it was held as follows:

> "In the instant case, the amount which was invested in banks to earn interest was not an amount due to any members. It was not shown as liability in their account. In fact, this amount which is in the nature of profits and gains, was not immediately required by the A.Ys. 2009-10 & 2010-11 assessee for lending money to the members, as there were no takers. Therefore, they had deposited the money in a bank so as to earn interest. The said interest income is attributable to carrying on the business of

> banking and therefore it is liable to be deducted in terms of Section 80P(1) of the Act. In fact similar view is taken by the Andhra Pradesh High Court in the case of CIT vs. Andhra Pradesh State Co-operative Bank Ltd., [2011] 200 Taxman 220/12 taxmann. Com 66. In that view of the matter, the order passed by the appellate authorities denying the benefit of deduction of the aforesaid amount is unsustainable in law. Accordingly, it is hereby set aside. The substantial question of law is answered in favour of the assessee and against the revenue."

9. The Hon'ble High Court also took note of the fact that their Lordships of the Hon'ble Supreme Court, in 'Totgars Co-operative Sale Society Ltd.' (supra), had made it clear that they were confining the said judgment to the facts of that case and that, therefore, it was clear that the Hon'ble Supreme Court was not laying down any law.

10. The facts in the present case, it is seen, are entirely akin to those in 'Tumkur Merchants Souharda Credit Co-operative Ltd.' (supra). As noted by the ld. CIT(A) in para 11 of the impugned order, the activities of the present assessee Co-operative Society are as follows:

> "1. To encourage thrift and saving among its members by accepting deposits and offering other suitable facilities.
>
> 2. To provide adequate short, medium term and long term credit agricultural productions, dairying, poultry, piggery to its members on as convenient and easy term as practicable and raise funds for the purpose.
>
> 3. To making arrangement for the supply of agricultural requirements of its members such as manure fertilizers improved seeds implements, insecticides and other production requisites etc. with a view to promoting increased agricultural production to provide consumption loans to non agriculturist members.
>
> A.Ys. 2009-10 & 2010-11
>
> 4. To construct and hire/godowns shops and other premises pro viding strong and marketing facilities to its members and arrange for the sale of their agricultural products and to make advance to the members on the security of their produce with the society.
>
> 5. To purchase or hire vehicle or delivery vans for transport of goods from one place to another."

10. Therefore, like in 'Tumkur Merchants Souharda Credit Co- operative Ltd.' (supra), the amount invested by the assessee Society in banks to earn interest, was not due to any of its members. It was not a liability of the assessee Society, nor was it shown as such in their account. The assessee-Society, as noted by the AO in the assessment order itself and reiterated by the ld. CIT(A) in para-11 of the impugned order, is carrying on the business of providing credit facilities to its

members. It earns profits and gains of business by providing said credit facilities to its members. The interest income so derived, or the capital, if and when not immediately required to be lent to the members, was deposited by the assessee Society in banks so as to earn interest. As such, in keeping with 'Tumkur Merchants Souharda Credit Co-operative Ltd.' (supra), the interest from the banks on deposit of the interest income received by the assessee Society from its members, is attributable to the profits and gains of business of providing credit facilities to its members only. As in 'Tumkur Merchants Souharda Credit Co-operative Ltd.' (supra), in the present case also, the assessee Society is not carrying on any separate business for earning such interest income. The A.Ys. 2009-10 & 2010-11 income so derived is the amount of profits and gains of business attributable to the activity of carrying on the business of banking or providing credit facilities to its members and the same is entitled to be deducted from the gross total income u/s 80P of the Act. The amount deposited in banks, which was in the nature of profits and gains, was not required by the assessee Society, as in 'Tumkur Merchants Souharda Credit Co-operative Ltd.' (supra), for lending money to the members, as there were no takers and it was, therefore, that the amounts had been deposited in the banks so as to earn interest. Pertinently, in 'Tumkur Merchants Souharda Credit Co-operative Ltd.' (supra), 'CIT vs. Andhra Pradesh State Co-operative Bank Ltd.', 200 Taxman 220 (AP), to the same effect, was referred to by the Hon'ble Karnataka High Court, while setting aside the action of denying the benefit of deduction. No decision to the contrary has been brought to our notice.

11. Accordingly, the ld. CIT(A) has clearly erred in relying on 'Totgars Co-operative Sale Society Ltd.' (supra).

12. Apropos the order of the ITAT, Amritsar Bench, in the assessee's own case for the assessment year 2007-08, therein the facts were entirely different in as much as for that year, a categorical finding of the ITAT was that the assessee, despite being queried as to whether there was anything on record to establish that the assessee was carrying on the business of banking or providing credit facilities to its members, the assessee could not establish such fact with the help of any documentary A.Ys. 2009-10 & 2010-11 evidence, or otherwise. For the year under consideration, as noted hereinabove, both the AO as well as the ld. CIT(A) have made specific note of the activities of the assessee Society, as per which, the assessee Society is carrying on the business of providing credit facilities to its members. Therefore, the order dated 18.03.2014, passed by the Tribunal in assessee's case for the assessment year 2007-08 is of no detriment to the assessee for the year presently under consideration.

13. For the above discussion, finding merit in Ground no. 1 raised by the assessee, the same is accepted and it is held that the action of the AO, as confirmed by the ld. CIT(A), in denying the deduction claimed and allowable u/s 80P(2)(a)(i) of the Act in respect of interest of Rs.8,52,314/- earned from the banks, is erroneous. The same is reversed. The claim is allowed.

14. Since Ground no. 1 has been accepted, Ground no.2, which is without prejudice to Ground no.1, is no longer surviving for adjudication and it is rejected, as such.

15. ITA No.419(Asr)/2015 for the A.Y. 2010-11.

This is the assessee's appeal for the assessment year 2010-11. The grievance of the assessee is the same as that raised in ITA No.607(Asr)/2015 for the AY 2009-10, but for the amount of interest claimed as allowable under section 80P(2)(a)(i) of the Act. In this year, this amount is of Rs.3,81,094/-.

A.Ys. 2009-10 & 2010-11

16. The issue has been decided in favour of the assessee while accepting Ground no.1 in ITA No. 607(Asr)/2015. The facts for assessment year 2010-11 being clearly in pari materia with those for the AY 2009-10, Ground no.1 for A.Y. 2010-11 is also accepted, whereas Ground no.2 is rejected as no longer surviving for adjudication in view of the acceptance of Ground no.1.

17. In the result, both the appeals are partly allowed, as indicated above.

Order pronounced in the open court on 22/04/ 2016.

Sd/-

(A.D. JAIN)
JUDICIAL MEMBER

/SKR/
Dated: 22/04/2016

Copy of the order forwarded to:

1. The Assessee:The Lamba Kangri Multipurpose Co-operative Society Ltd., Hoshiarpur.

2. The Dy. CIT, Hoshiarpur Circle, Hoshiarpur.

3. The CIT(A), Jalandhar.

4. The CIT, Jalandhar.

5. The SR DR, ITAT, Amritsar.

True copy By order (Assistant Registrar) Income Tax Appellate Tribunal, Amritsar Bench: Amritsar.

Karnataka High Court
The Pr. Commissioner Of Income ... vs The Totagars Co-Operative Sale ... on 16 June, 2017
Author: Dr.Vineet Kothari Sastry

1/57

Date of Judgment: 16.06.2017
ITA No.100066/2016 & Connected cases
The Pr. Commissioner of Income Tax,
C R Building, Navanagar, Hubballi. & Anr. Vs.

R
The Totagars Co-Operative Sale Society, Sirsi.

IN THE HIGH COURT OF KARNATAKA
DHARWAD BENCH

DATED THIS THE 16th DAY OF JUNE 2017

PRESENT

THE HON'BLE DR. JUSTICE VINEET KOTHARI
AND
THE HON'BLE DR. JUSTICE H. B. PRABHAKARA SASTRY

INCOME TAX APPEAL No.100066 of 2016
Connected with
INCOME TAX APPEAL Nos.100064, 100065, 100067,
100068 & 100051-100054 of 2016

IN ITA No.100066/2016:
BETWEEN:

1. THE PR. COMMISSIONER OF
INCOME TAX,
C R BUILDING, NAVANAGAR,
HUBBALLI.

2. INCOME TAX OFFICER,
WARD-1, SIRSI,
AACAT 0251 D.

...APPELLANTS

(By Sri. Y. V. RAVIRAJ, ADV.)

AND:

2/57

Date of Judgment: 16.06.2017
ITA No.100066/2016 & Connected cases
The Pr. Commissioner of Income Tax,
C R Building, Navanagar, Hubballi. & Anr. Vs.
The Totagars Co-Operative Sale Society, Sirsi.

THE TOTAGARS CO-OPERATIVE
SALE SOCIETY,
TSS ROAD, NEW MARKET YARD,
SIRSI.

... RESPONDENT

(By Sri. A. SHANKAR, M. LAVA &
S. S. HEGDE, ADVS.)

THIS APPEAL IS FILED UNDER SECTION 260A OF THE INCOME-TAX ACT, 1961 PRAYING TO:

i. FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW STATED ABOVE.

ii ALLOW THE APPEAL AND SET ASIDE THE ORDERS PASSED BY THE INCOME TAX APPELLATE TRIBUNAL, BANGALORE BENCH 'C' IN ITA NO.706/BANG/2015 DTD: 22.01.2016 AND CONFIRM THE ORDER PASSED BY THE INCOME TAX OFFICER, WARD-1 SIRSI, IN THE INTEREST OF JUSTICE AND EQUITY.

IN ITA No.100064/2016:
BETWEEN:
1. THE PR. COMMISSIONER OF INCOME TAX,
C R BUILDING, NAVANAGAR,
HUBBALLI.

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Date of Judgment: 16.06.2017
ITA No.100066/2016 & Connected cases
The Pr. Commissioner of Income Tax,
C R Building, Navanagar, Hubballi. & Anr. Vs.
The Totagars Co-Operative Sale Society, Sirsi.

2. INCOME TAX OFFICER,
WARD-1, SIRSI,
AACAT 0251 D.

... APPELLANTS

(By Sri. Y. V. RAVIRAJ, ADV.)

AND:

THE TOTAGARS CO-OPERATIVE
SALE SOCIETY,
TSS ROAD, NEW MARKET YARD,

SIRSI.

... RESPONDENT

(By Sri. A. SHANKAR, M. LAVA &
S. S. HEGDE, ADVS.)

THIS ITA IS FILED U/SEC.260A OF THE INCOME TAX ACT, 1961, PRAYING TO:

i. FORMULATE THE SUBSTANTIAL QUESTION OF LAW STATED ABVOE.

ii. ALLOW THE APPEAL AND SET ASIDE THE ORDERS PASSED BY THE INCOME TAX APPELLATE TRIBUNAL, BANGALORE BENCH "C" IN ITA NO.704/BANG/2015, DATED 22.01.2016 AND CONFIRM THE ORDER PASSED BY THE INCOME TAX OFFICER, WARD-I, SIRSI.

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Date of Judgment: 16.06.2017
ITA No.100066/2016 & Connected cases
The Pr. Commissioner of Income Tax,
C R Building, Navanagar, Hubballi. & Anr. Vs.
The Totagars Co-Operative Sale Society, Sirsi.

IN ITA No.100065/2016:
BETWEEN:

1. THE PR. COMMISSIONER OF INCOME TAX,
C R BUILDING, NAVANAGAR,
HUBBALLI.

2. INCOME TAX OFFICER,
WARD-1, SIRSI,
AACAT 0251 D.

... APPELLANTS

(By Sri. Y. V. RAVIRAJ ADV.)

AND:

THE TOTAGARS CO-OPERATIVE
SALE SOCIETY,
TSS ROAD, NEW MARKET YARD,
SIRSI.

... RESPONDENT

(By Sri. A. SHANKAR, M. LAVA &
S. S. HEGDE, ADVS.)

THIS ITA IS FILED U/SEC.260A OF THE INCOME-TAX ACT, 1961, PRAYING TO:

i. FORMULATE THE SUBSTANTIAL QUESTION OF LAW STATED ABOVE.

ii. ALLOW THE APPEAL AND SET ASIDE THE ORDERS PASSED BY THE INCOME-TAX APPELLATE TRIBUNAL, BENGALURU BENCH "C" IN ITA 5/57

Date of Judgment: 16.06.2017
ITA No.100066/2016 & Connected cases
The Pr. Commissioner of Income Tax,
C R Building, Navanagar, Hubballi. & Anr. Vs.
The Totagars Co-Operative Sale Society, Sirsi.

NO.705/BANG/2015, DATED:22.01.2016 AND CONFIRM THE ORDER PASSED BY THE INCOME TAX OFFICER, WARD-1 SIRSI.

IN ITA No.100067/2016:
BETWEEN:

1. THE PR. COMMISSIONER OF INCOME TAX,
C R BUILDING, NAVANAGAR,
HUBBALLI.

2. INCOME TAX OFFICER,
WARD-1, SIRSI,
AACAT 0251 D.

... APPELLANTS

(By Sri. Y. V. RAVIRAJ ADV.)

AND:

THE TOTAGARS CO-OPERATIVE
SALE SOCIETY,
TSS ROAD, NEW MARKET YARD,
SIRSI.

... RESPONDENT

(By Sri. A. SHANKAR, M. LAVA &
S. S. HEGDE, ADVS.)

THIS ITA IS FILED U/SEC.260A OF THE INCOME-TAX ACT, 1961, PRAYING TO:

i. FORMULATE THE SUBSTANTIAL QUESTION OF LAW AS STATED ABOVE.

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Date of Judgment: 16.06.2017
ITA No.100066/2016 & Connected cases
The Pr. Commissioner of Income Tax,
C R Building, Navanagar, Hubballi. & Anr. Vs.
The Totagars Co-Operative Sale Society, Sirsi.

ii. ALLOW THE APPEAL AND SET ASIDE THE ORDERS PASSED BY THE INCOME-TAX APPELLATE TRIBUNAL, BENGALURU BENCH 'C' IN ITA NO.707/Bang/2015, DATED 22.01.2016 AND CONFIRM THE ORDER PASSED BY THE ONCOME TAX OFFICER, WARD-1, SIRSI.

IN ITA No.100068/2016:
BETWEEN:

1. THE PR. COMMISSIONER OF INCOME TAX,
C R BUILDING, NAVANAGAR,
HUBBALLI.

2. INCOME TAX OFFICER,
WARD-1, SIRSI,
AACAT 0251 D.

... APPELLANTS

(By Sri. Y. V. RAVIRAJ, ADV.)

AND:

THE TOTAGARS CO-OPERATIVE
SALE SOCIETY,
TSS ROAD, NEW MARKET YARD,
SIRSI.

... RESPONDENT

(By Sri. A. SHANKAR, M. LAVA &
S. S. HEGDE, ADVS.)

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Date of Judgment: 16.06.2017
ITA No.100066/2016 & Connected cases
The Pr. Commissioner of Income Tax,
C R Building, Navanagar, Hubballi. & Anr. Vs.
The Totagars Co-Operative Sale Society, Sirsi.

THIS ITA IS FILED U/SEC.260A OF THE INCOME-TAX ACT, 1961, PRAYING TO:

i. FORMULATE THE SUBSTANTIAL QUESTION OF LAW AS STATED ABOVE.

ii. ALLOW THE APPEAL AND SET ASIDE THE ORDERS PASSED BY THE INCOME-TAX APPELLATE TRIBUNAL, BENGALURU BENCH 'C' IN ITA NO.708/BANG/2015, DATED 22.01.2016 AND CONFIRM TEH ORDER PASSED BY THE INCOME TAX OFFICER, WARD-1, SIRSI.

IN ITA Nos.100051-100054/2016:
BETWEEN:

M/S THE TOTGARS
CO-OPERATIVE SALE SOCIETY,
REP. BY ITS GENERAL MANAGER
SRI.RAVEESH ACHUT HEGDE,
TSS BUILDING, NEW MARKET YARD,
SIRSI 581402.

... APPELLANT

(By Sri. A SHANKAR, M. LAVA
AND S. S. HEGDE ADVS.)

AND:

INCOME TAX OFFICER,
WARD-1, KAMATH BUILDING,
TSS ROAD, SIRSI - 581402.

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Date of Judgment: 16.06.2017
ITA No.100066/2016 & Connected cases
The Pr. Commissioner of Income Tax,
C R Building, Navanagar, Hubballi. & Anr. Vs.
The Totagars Co-Operative Sale Society, Sirsi.

... RESPONDENT

(BY SRI. Y.V. RAVIRAJ ADV.)

THESE ITAs ARE FILED U/SEC.260A OF THE INCOME-TAX ACT, 1961, PRAYING TO:

i) FORMULATE THE SUBSTANTIAL QUESTIONS OF LAW STATED ABOVE AND ANSWER THE SAME IN FAVOUR OF THE APPELLANT.

ii) ALLOW THE APPEAL AND SET ASIDE

THE FINDINGS, TO THE EXTENT AGAINST THE APPELLANT IN THE ORDER PASSED BY THE INCOME TAX APPELLATE TRIBUNAL, 'C' BENCH, BENGALURU IN CORSS OBJECTION Nos.179 TO 182 / BANG / 2014 DATED:22.01.2016 RELATING TO ASSESSMENT YEARS 2007-2008 TO 2010-2011 FILED IN ITA Nos.704 TO 707/BANG/2015, TO MEET THE ENDS OF JUSTICE.

JUDGMENT RESERVED ON : 12.06.2017.
JUDGMENT PRONOUNCED ON : 16.06.2017.

THESE APPEALS COMING ON FOR FINAL HEARING ON 12TH JUNE 2017 AND THE SAME HAVING BEEN HEARD AND RESERVED FOR PRONOUNCEMENT OF JUDGMENT, THIS DAY, DR. VINEET KOTHARI, J., PRONOUNCED THE FOLLOWING:

Date of Judgment: 16.06.2017
ITA No.100066/2016 & Connected cases
The Pr. Commissioner of Income Tax,
C R Building, Navanagar, Hubballi. & Anr. Vs.
The Totagars Co-Operative Sale Society, Sirsi.

JUDGMENT

Mr.Y.V.Raviraj, Adv. for Revenue.

Mr. A Shankar, Mr.M. Lava & Mr.S. S. Hegde Advs. for assessee.

1. The aforesaid five Income Tax Appeals are filed by the Revenue while another set of five appeals have been filed by the assessee and all the ten appeals are being disposed of by this common judgment.

2. The substantial questions of law involved in the present appeals filed by the Revenue are as follows:

(I) " Whether the assessee, Totagar Co-

operative Sale Society, Sirsi, is entitled to 100% deduction under Section 80P(2)(d) of the Income Tax Act, 1961 (for short 'the Act') in respect of whole of its income by way of interest earned by it during the relevant Assessment Years from 2007-2008 to 2011-2012 on the deposits or investments made by it during these years with a Co-

> Date of Judgment: 16.06.2017 ITA No.100066/2016 & Connected cases The Pr. Commissioner of Income Tax, C R Building, Navanagar, Hubballi. & Anr. Vs. The Totagars Co-Operative Sale Society, Sirsi.
>
> operative Bank, M/s.Kanara District Central Co-operative Bank Limited?

(II) Whether the Supreme Court decision in the case of the present respondent assessee, Totgar Co-operative Sale Society Limited itself rendered on 08th February 2010, in Totgar's Co-operative Sale Society Limited vs. Income Tax Officer, reported in (2010) 322 ITR 283 SC : (2010) 3 SCC 223 for the preceding years, namely Assessment Years 1991-1992 to 1999-2000 (except Assessment Year 1995-1996) holding that such interest income earned by the assessee was taxable under the head 'Income from Other Sources' under Section 56 of the Act and was not 100% deductible from the Gross Total Income under Section 80P(2)(a)(i) of the Act, is not applicable to the present Assessment Years 2007-2008 to 2011-2012 involved in the present appeals and therefore, whether the Income Tax Appellate Tribunal as well as CIT (Appeals) were justified in holding that such interest income Date of Judgment: 16.06.2017 ITA No.100066/2016 & Connected cases The Pr. Commissioner of Income Tax, C R Building, Navanagar, Hubballi. & Anr. Vs. The Totagars Co-Operative Sale Society, Sirsi.

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was   100%     deductible       under        Section
80P(2)(d) of the Act? "
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3. The ratio decidendi of the Supreme Court decision in the case of assessee, Totagar's Co-operative Sale Society Limited itself, was that such interest income earned by the assessee was not the income from the business as a Co-

operative Society, but was income from other sources taxable under Section 56 of the Act, whereas Section 80P(2)(a) of the Act included and permitted such 100% deduction if such income is earned by the co-operative society by carrying on the business of banking or providing credit facilities to its members or a cottage industry or the marketing of the agricultural produces grown by its members, etc.

4. The relevant portion of the judgment of the Hon'ble Supreme Court is quoted below for ready reference:

> "At the outset, an important circumstance needs to be highlighted. In the present case, the interest Date of Judgment: 16.06.2017 ITA No.100066/2016 & Connected cases The Pr. Commissioner of Income Tax, C R Building, Navanagar, Hubballi. & Anr. Vs. The Totagars Co-Operative Sale Society, Sirsi.

held not eligible for deduction under Section 80P(2)(a)(i) of the Act is not the interest received from the members for providing credit facilities to them. What is sought to be taxed under Section 56 of the Act is the interest income arising on the surplus invested in short-term deposits and securities which surplus was not required for business purposes. Assessee(s) markets the produce of its

members whose sale proceeds at times were retained by it. In this case, we are concerned with the tax treatment of such amount. Since the fund created by such retention was not required immediately for business purposes, it was invested in specified securities. The question, before us, is - whether interest on such deposits/securities, which strictly speaking accrues to the members' account, could be taxed as business income under Section 28 of the Act? In our view, such interest income would come in the category of "Income from other sources", hence, such interest income would be taxable under Section 56 of the Act, as rightly held by the Assessing Officer.

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In this connection, we may analyze Section 80P of the Act. This section comes in Chapter VI- A, which, in turn, deals with "Deductions in respect of certain Incomes". The Heading of Section 80P indicates that the said section deals with deductions in respect of income of cooperative Societies. Section 80P(1), inter alia, states that where the gross total income of a Co- operative Society includes any income from one or more specified activities, then such income shall be deducted from the gross total income in computing the total taxable income of the assessee-Society. An income, which is attributable to any of the specified activities in Section 80P(2) of the Act, would be eligible for deduction. The word "income" has been defined under Section 2(24)(i) of the Act to include profits and gains. This sub- section is an inclusive provision. The Parliament has included specifically "business profits" into the definition of the word "income". Therefore, we are required to give a precise meaning to the words "profits and gains of business" mentioned in Section 80P(2) of the Act.

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In the present case, as stated above, assessee-Society regularly invests funds not immediately required for business purposes. Interest on such investments, therefore, cannot fall within the meaning of the expression "profits and gains of business". Such interest income cannot be said also to be attributable to the activities of the society, namely, carrying on the business of providing credit facilities to its members or marketing of the agricultural produce of its members. When the assessee-Society provides credit facilities to its members, it earns interest income. As stated above, in this case, interest held as ineligible for deduction under Section 80P(2)(a)(i) is not in respect of interest received from members. In this case, we are only concerned with interest which accrues on funds not required immediately by the assessee(s) for its business purposes and which have been only invested in specified securities as "investment".

Further, as stated above, assessee(s) markets the agricultural produce of its members. It retains the sale proceeds in many cases. It is this Date of Judgment: 16.06.2017 ITA No.100066/2016 & Connected cases The Pr. Commissioner of Income Tax, C R Building, Navanagar, Hubballi. & Anr. Vs. The Totagars Co-Operative Sale Society, Sirsi.

"retained amount" which was payable to its members, from whom produce was bought, which was invested in short-term deposits/securities. Such an amount, which was retained by the assessee-Society, was a liability and it was shown in the balance-sheet on the liability-side. Therefore, to that extent, such interest income cannot be said to be attributable either to the activity mentioned in Section 80P(2)(a)(i) of the Act or in Section 80P(2)(a)(iii) of the Act. Therefore, looking to the facts and circumstances of this case, we are of the view that the Assessing Officer was right in taxing the interest income, indicated above, under Section 56 of the Act.

An alternative submission was advanced by the assessee(s) stating that, if interest income in question is held to be covered by Section 56 of the Act, even then, the assessee-Society is entitled to the benefit of Section 80P(2)(a)(i) of the Act in respect of such interest income. We find no merit in this submission. Section 80P(2)(a)(i) of the Act cannot be placed at par with Explanation (baa) to Section 80HHC, Section 80HHD(3) and Section Date of Judgment: 16.06.2017 ITA No.100066/2016 & Connected cases The Pr. Commissioner of Income Tax, C R Building, Navanagar, Hubballi. & Anr. Vs. The Totagars Co-Operative Sale Society, Sirsi.

80HHE(5) of the Act. Each of the said sections has to be interpreted in the context of its subject-matter. For example, Section 80HHC of the Act, at the relevant time, dealt with deduction in respect of profits retained for export business. The scope of Section 80HHC is, therefore, different from the scope of Section 80P of the Act, which deals with deduction in respect of income of cooperative Societies. Even Explanation (baa) to Section 80HHC was added to restrict the deduction in respect of profits retained for export business. The words used in Explanation (baa) to Section 80HHC, therefore, cannot be compared with the words used in Section 80P of the Act which grants deduction in respect of "the whole of the amount of profits and gains of business". A number of judgements were cited on behalf of the assessee(s) in support of its contention that the source was irrelevant while construing the provisions of Section 80P of the Act. We find no merit because all the judgements cited were cases relating to Cooperative Banks and assessee-Society is not carrying on Banking business.

Date of Judgment: 16.06.2017 ITA No.100066/2016 & Connected cases The Pr. Commissioner of Income Tax, C R Building, Navanagar, Hubballi. & Anr. Vs. The Totagars Co-Operative Sale Society, Sirsi.

We are confining this judgement to the facts of the present case. 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 we need to give weightage to the words "the whole of the amount of profits and gains of business" attributable to one of the activities specified in Section 80P(2)(a) of the Act. An important point needs to be mentioned. The words "the whole of the amount of profits and gains of business" emphasise 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. In this particular case, the evidence shows that the assessee- Society earns interest on funds which are not required for business purposes at the given point of time. Therefore, on the facts and circumstances of this case, in our view, such interest income falls in the category of "Other Income" which has been rightly taxed by the Department under Section 56 of the Act."

Date of Judgment: 16.06.2017 ITA No.100066/2016 & Connected cases The Pr. Commissioner of Income Tax, C R Building, Navanagar, Hubballi. & Anr. Vs. The Totagars Co-Operative Sale Society, Sirsi.

5. Before adverting to the rival contentions raised by both the sides before us, we consider it necessary to reproduce the provisions of Section 80P of the Act with its heading from its Chapter VIA of the Act of 1961. Chapter VIA provides for deductions in respect of certain income from the gross total income for computing net taxable income of the Co-operative Societies .

6. Section 80P of the Act reads as under:

" 80P. Deduction in respect of income of co- operative societies.

(1) Where, in the case of an assessee being a co- operative society, the gross total income includes any income referred to in sub-section (2), there shall be deducted, in accordance with and subject to the provisions of this section, the sums specified in sub-section (2), in computing the total income of the assessee.

(2) The sums referred to in sub-section (1) shall be the following, namely:-

(a) in the case of a co-operative society engaged in-

(i) carrying on the business of banking or providing credit facilities to its members, or
Date of Judgment: 16.06.2017 ITA No.100066/2016 & Connected cases The Pr. Commissioner of Income Tax, C R Building, Navanagar, Hubballi. & Anr. Vs. The Totagars Co-Operative Sale Society, Sirsi.

(ii) a cottage industry, or

(iii) the marketing of the agricultural produce grown by its members, or

(iv) the purchase of agricultural implements, seeds, livestock or other articles intended for agriculture for the purpose of supplying them to its members, or

(v) the processing, without the aid of power, of the agricultural produce of its members, or

(vi) the collective disposal of the labour of its members, or

(vii) fishing or allied activities, that is to say, the catching, curing, processing, preserving, storing or marketing of fish or the purchase of materials and equipment in connection therewith for the purpose of supplying them to its members, the whole of the amount of profits and gains of business attributable to any one or more of such activities:

Provided that in the case of a co-operative society falling under sub-clause (vi), or sub-clause

(vii), the rules and bye-laws of the society restrict the voting rights to the following classes of its members, namely:-

Date of Judgment: 16.06.2017 ITA No.100066/2016 & Connected cases The Pr. Commissioner of Income Tax, C R Building, Navanagar, Hubballi. & Anr. Vs. The Totagars Co-Operative Sale Society, Sirsi.

(1) the individuals who contribute their labour or, as the case may be, carry on the fishing or allied activities;

(2) the co-operative credit societies which provide financial assistance to the society;

(3) the State Government;

(b) in the case of a co-operative society, being a primary society engaged in supplying milk, oil seeds, fruits or vegetables raised or grown by its members to-

(i) a federal co-operative society, being a society engaged in the business of supplying milk, oilseeds, fruits or vegetables, as the case may be; or

(ii) the Government or a local authority;

or

(iii) a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956), or a corporation established by or under a Central, State or Provincial Act (being a company or corporation engaged in supplying milk, oilseeds, fruits or vegetables, as the case may be, to the public), the whole of the amount of profits and gains of such business;

(c) in the case of a co-operative society engaged in activities other than those specified in clause (a) or Date of Judgment: 16.06.2017 ITA No.100066/2016 & Connected cases The Pr. Commissioner of Income Tax, C R Building, Navanagar, Hubballi. & Anr. Vs. The Totagars Co-Operative Sale Society, Sirsi.

clause (b) (either independently of, or in addition to, all or any of the activities so specified), so much of its profits and gains attributable to such activities as does not exceed,-

(i) where such co-operative society is a consumers' co-operative society, one hundred thousand rupees; and

(ii) in any other case, twenty fifty thousand rupees.

Explanation.- In this clause,"consumers' co- operative society" means a society for the benefit of the consumers;

(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;

(e) in respect of any income derived by the co- operative society from the letting of godowns or warehouses for storage, processing or facilitating the marketing of commodities, the whole of such income;

(f) in the case of a co-operative society, not being a housing society or an urban consumers' society or a society carrying on transport business or a society engaged in the performance of any manufacturing operations with the aid of power, where the gross total income does not exceed twenty thousand rupees, the amount of any income by way of interest on securities or any income from house property chargeable under section 22.

Date of Judgment: 16.06.2017 ITA No.100066/2016 & Connected cases The Pr. Commissioner of Income Tax, C R Building, Navanagar, Hubballi. & Anr. Vs. The Totagars Co-Operative Sale Society, Sirsi.

Explanation.- For the purposes of this section an "urban consumers' co- operative society" means a society for the benefit of the consumers within the limits of a municipal corporation, municipality, municipal committee, notified area committee, town area or cantonment.

(3) In a case where the assessee is entitled also to the deduction under section 80HH or section 80HHA or section 80HHB or section 80HHC or section 80HHD or section 80-I or section 80IA or section 80J, the deduction under subsection (1) of this section, in relation to the sums specified in clause (a) or clause (b) or clause (c) of sub- section (2), shall be allowed with reference to the income, if any, as referred to in those clause included in the gross total income as reduced by the deductions under section 80HH, section 80HHA, section 80HHB, section 80HHC, section 80HHD, section 80-I, section 80-IA, section 80J and section 80JJ.

(4) The provisions of this section shall not apply in relation to any co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank.

Explanation.--For the purposes of this sub- section,--

(a) "co-operative bank" and "primary agricultural credit society" shall have the meanings respectively assigned to them in Date of Judgment: 16.06.2017 ITA No.100066/2016 & Connected cases The Pr. Commissioner of Income Tax, C R Building, Navanagar, Hubballi. & Anr. Vs. The Totagars Co-Operative Sale Society, Sirsi.

Part V of the Banking Regulation Act, 1949 (10 of 1949);

(b) "primary co-operative agricultural and rural development bank" means a society having its area of operation confined to a taluk and the principal object of which is to provide for long-term credit for agricultural and rural development activities. "

CONTENTIONS OF THE APPELLANTS / REVENUE:

7. Mr.Y.V.Raviraj, learned counsel appearing for the Revenue has made the following submissions:-

(i) That the controversy stands covered by the Supreme Court's decision in the case of assessee Co-operative Society itself in 'Totgar's Co-operative Sale Society Limited vs. Income Tax Officer, reported in (2010) 322 ITR 283 SC :

(2010) 3 SCC 223, and the Income Tax Tribunal as well as CIT (Appeals), have erred in allowing the deductions in respect of the whole of the interest income earned by the respondent-

assessee for Assessment Years 2007-08 to 2011-12 under consideration merely because such interest was earned from the Date of Judgment: 16.06.2017 ITA No.100066/2016 & Connected cases The Pr. Commissioner of Income Tax, C R Building, Navanagar, Hubballi. & Anr. Vs. The Totagars Co-Operative Sale Society, Sirsi.

deposits and investments made by the respondent-assessee with another Co-operative Bank, namely, M/s.Kanara District Central Co-operative Bank. He submitted that whether the deposits and investments of surplus funds of the respondent-

assessee not immediately required for business purposes, is made with the Scheduled Banks or Nationalised Banks or whether Co-operative Banks does not make a difference, as far as the character of the income earned by the respondent-

assessee is concerned and if it does not partake the character of its business operational income from its business as a co-

operative Society, the same would continue to be fully taxable and will not be eligible for 100% deduction under Section 80P(2) of the Act, as held by the Hon'ble Supreme Court.

(ii) The learned counsel for the Revenue further urged that shifting of its claim for 100% deduction from Section 80P(2)(a) of the Act to 80P(2)(d) of the Act does not make a difference because sub-section (4) inserted in Section 80P(2)(d) Date of Judgment: 16.06.2017 ITA No.100066/2016 & Connected cases The Pr. Commissioner of Income Tax, C R Building, Navanagar, Hubballi. & Anr. Vs. The Totagars Co-Operative Sale Society, Sirsi.

of the Act with effect from 01st April 2007 by Finance Act, 2006 excludes Co-operative Banks other than Primary Agricultural Credit Society or a Primary Co-Operative Agricultural and Rural

Development Bank as defined under the Banking Regulation Act, 1949 from the applicability of Section 80P of the Act and therefore, even the interest income earned by the respondent-assessee from the deposits from investments made by it with the Co-operative Bank, namely M/s.Kanara District Central Co-operative Bank Limited would not be exempted or 100% deductible under clause (d) of the Section 80P(2) of the Act, which stipulates that the income by way of interest or dividends derived by a Co-operative Society from its investments with any other co-operative society, would be so deductible.

The learned counsel for the Revenue submitted that the Co-operative Bank even though might be registered as a Co-

operative Society is not a Co-operative Society eligible for Date of Judgment: 16.06.2017 ITA No.100066/2016 & Connected cases The Pr. Commissioner of Income Tax, C R Building, Navanagar, Hubballi. & Anr. Vs. The Totagars Co-Operative Sale Society, Sirsi.

receiving the benefit of exemption or 100% deduction under Section 80P of the Act, as its Banking business is governed by the provisions of a special law like Banking Regulation Act, 1949.

(iii) The learned counsel for the Revenue further urged that the amendment of Section 194A(3)(v) of the Act by Finance Act, 2015 with effect from 01st June 2015 excluding the Co-operative Banks from the genus category of Co-

operative Societies and making it liable to deduct income tax at source on the interest paid by it to other persons, further indicates that the legislative intent is to exclude Co-operative Banks from the beneficiary category of co-operative societies entitled to exemption or 100% deduction of its income under Section 80P of the Act.

(iv) The learned counsel for the Revenue further submitted that the income of a Co-operative Society entitled for 100% deduction under Section 80P of the Act, as referred to Date of Judgment: 16.06.2017 ITA No.100066/2016 & Connected cases The Pr. Commissioner of Income Tax, C R Building, Navanagar, Hubballi. & Anr. Vs. The Totagars Co-Operative Sale Society, Sirsi.

Clauses (a) to (f) of Sub-section (2) of Section 80P of the Act, are its business income earned from the co-operative activities like providing credit facilities to its members, running a cottage industry, marketing of agricultural produces, agricultural implements, seeds, livestock, collective disposal of labour, fishing or allied activities or supply of milk and oil seeds, fruits, vegetables, etc. and the income derived from renting godowns or warehouses, etc. He, therefore, submitted that in order to promote the co-operative movement, these deductions from gross total income were provided in Section 80P of the Act to promote such co-operative movement, whereas the interest income earned on investments or deposits of surplus funds was never intended to be given the benefit of exemption or 100% deduction and therefore, not only the decision rendered by the Hon'ble Supreme Court in the case of respondent assessee itself covers the field even for these assessment years from 2007-

2008 to 2011-2012, but subsequently, the legislative amendments also makes the legislative intent explicit that the Date of Judgment: 16.06.2017 ITA No.100066/2016 & Connected cases The Pr. Commissioner of Income Tax, C R Building, Navanagar, Hubballi. & Anr. Vs. The Totagars Co-Operative Sale Society, Sirsi.

income earned by the Co-operative Bank or even through or from the Co-operative Banks are not entitled for such exemption or 100% deduction.

CONTENTIONS OF THE ASSESSEE:

8. Mr.A.Shankar, learned counsel appearing for the respondent-assessee made the following submissions at Bar:

(I) That the Supreme Court's decision in the case of the assessee itself for the preceding years is not applicable to the present Assessment Years in question, because, the assessee Co-operative Society shifted its deposits and investments in scheduled banks, which was the fact available before the Hon'ble Supreme Court, to a Co-operative Bank, Kanara District Central Co-operative Bank Limited, which, undoubtedly, is also a co-operative society and therefore, the deduction under Section 80P(2)(d) of the Act is clearly available to the assessee Co-operative Society under Section 80P(2)(d) of the Act, which was not the claim of deduction Date of Judgment: 16.06.2017 ITA No.100066/2016 & Connected cases The Pr. Commissioner of Income Tax, C R Building, Navanagar, Hubballi. & Anr. Vs. The Totagars Co-Operative Sale Society, Sirsi.

made before the Hon'ble Supreme Court as the deposits were not with the Co-operative Society / Co-operative Bank and interest income was not received from another Co-operative Society but Scheduled Banks.

(II) The learned counsel for the assessee also urged that the Co-operative Society is a genus term and the co-operative Bank is also a specie of Co-operative Society and since, clause 80P(2)(d) of the Act permits such 100% deduction in respect of the income by way of interest or dividends derived by the Co-

operative Society (Assessee) from its investments with any other Co-operative Society (including Co-operative Bank) and the whole of such interest income is eligible for 100% deduction.

(III) It was also urged that the provisions of Section 80P(4) of the Act inserted by the Finance Act 2006 with effect from 01st April 2007, excluding the applicability of Section 80P of the Act to any Co-operative Bank other than a Primary Date of Judgment: 16.06.2017 ITA No.100066/2016 & Connected cases The Pr. Commissioner of Income Tax, C R Building, Navanagar, Hubballi. & Anr. Vs. The Totagars Co-Operative Sale Society, Sirsi.

Agricultural Credit Society or a Rural Development Bank, is not applicable in the present case because the Assessee Co-

operative Society is not a Co-operative Bank, but is only a Co-

operative Society registered under the provisions of Co-

operative Society Act as defined under Section 2(19) of the Act.

The learned counsel for the assessee also urged that Section 2(19) of the Act defines a "Co-operative Society" to mean a Co-operative Society registered under the Co-operative Societies Act, 1912, or any other law for the time being in force in any State for the registration of the Co-operative Societies.

He submitted that there is no dispute or doubt that the respondent Society is duly registered Co-operative Society and therefore, exclusion of Co-operative Banks under subsection (4) of Section 80P of the Act does not hit the respondent Assessee.

(IV) It was also urged that one of the appeals against this Respondent assessee, namely ITA No.100069 of 2016 for Assessment Year 2012-2013 in the case of CIT Vs. Totagar's Date of Judgment: 16.06.2017 ITA No.100066/2016 & Connected cases The Pr. Commissioner of Income Tax, C R Building, Navanagar, Hubballi. & Anr. Vs. The Totagars Co-Operative Sale Society, Sirsi.

Co-operative Sale Limited, has already been dismissed by a co-

ordinate Bench of this Court on 05th January 2017 holding that the aforesaid Supreme Court's decision relied upon by the Revenue is not applicable to the Assessment Year 2012-2013 in question, because the said decision dealt with the interpretation of the deduction under Section 80P(2)(a)(i) of the Act and not under Section 80P(2)(d) of the Act and the Court has held that the Co-operative Bank is a specie of the genus term Co-

operative Society and therefore, the present appeals filed by the Revenue also deserves to be similarly dismissed.

(V) That for the five appeals filed by the assessee on the limited ground of rejection of its cross-objections by the Income Tax Appellate Tribunal on the issue of justifiability of the reassessment under Section 147 / 148 of the Act for some of the Assessment Years, the learned counsel for the assessee urged that if the question of exemption / deduction is decided against the assessee by this Court, the right to agitate the Date of Judgment: 16.06.2017 ITA No.100066/2016 & Connected cases The Pr. Commissioner of Income Tax, C R Building, Navanagar, Hubballi. & Anr. Vs. The Totagars Co-Operative Sale Society, Sirsi.

justifiability of reassessment under Section 147 / 148 of the Act may be kept open. However, if such issue on exemption / deduction under Section 80P(2)(d) of the Act is decided in favour of the assessee, then the said question in cross-objection would only be academic.

(VI) It was also urged that for certain Assessment Years falling between the Assessment Years 2000-2001 to 2006-2007, the Assessing Authority itself had allowed the claim of the assessee under

Section 80P(2)(d) of the Act and the Revenue has not contested the matter further.

However, in the absence of any such material placed before us, we are unable to verify the same and in the absence of any such question raised before us for those Assessment Years, the answer to the questions raised before us cannot depend upon that.

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9. We have heard the learned counsels at length and perused the record and the judgments cited at the Bar.

10. Admittedly and undoubtedly, the respondent assessee is a Co-operative Society engaged mainly in the activity of marketing of agricultural produces grown by its members. The assessee co-operative society also accepts deposits from its members and provides credit facility to its members, runs Kirana Stores, rice mills, live stocks, van section, medical shops, Areca-nut trading section, lodging, plying and hiring of goods carriage, etc.

11. The Assessment Years involved in the present batch of appeals are Assessment Years 2007-2008 to 2011-

2012. The bone of contention is that the deduction under Section 80P(2) of the Act is now claimed by the respondent assessee under Section 80P(2)(d) of the Act and not under Section 80P(2)(a) of the Act. The reason is that now the investments and deposits after the Supreme Court's decision Date of Judgment: 16.06.2017 ITA No.100066/2016 & Connected cases The Pr. Commissioner of Income Tax, C R Building, Navanagar, Hubballi. & Anr. Vs. The Totagars Co-Operative Sale Society, Sirsi.

against the assessee reported in (2010) 322 ITR 283 (SC), the assessee has shifted the deposits and investments from Schedule Banks to Co-operative Bank and such Co-operative Bank is essentially a Co-operative Society also and Clause (d) allows deduction of income by way of interest or dividends derived by the assessee Co-operative Society from its investments with any other Co-operative Society.

12. The sheet anchor of the contention of the learned counsel for the assessee misses two essential points required for claiming the exemption or 100% deduction from gross total income for a co-operative society: (i) that the character or nature of income, namely interest on investments or deposits, does not change irrespective of the fact whether it is earned or received from a Schedule Bank or Co-operative Bank. (ii) that What the Hon'ble Supreme Court held in the case of the respondent assessee itself, against the assessee, was that such interest income on its surplus and idle funds not immediately Date of Judgment: 16.06.2017 ITA No.100066/2016 & Connected cases The Pr. Commissioner of Income Tax, C R Building, Navanagar, Hubballi. & Anr. Vs. The Totagars Co-Operative Sale Society, Sirsi.

required for its business, is not income from business taxable under Section 28 of the Act, but was taxable as "income from other sources" under Section 56 of the Act, whereas for availing the exemption or 100% deduction under Section 80P of the Act the income is specified in clauses (a) to (f) of Subsection (2) of Section 80P of the Act should be its business or operational income.

13. What Section 80P(2)(d) of the Act, which was though not specifically argued and canvassed before the Hon'ble Supreme Court, envisages is that such interest or dividend earned by an assessee co-operative society should be out of the investments with any other co-operative society. The words 'Co-operative Banks' are missing in clause (d) of subsection (2) of Section 80P of the Act. Even though a co-

operative bank may have the corporate body or skeleton of a co-operative society but its business is entirely different and that is the banking business, which is governed and regulated Date of Judgment: 16.06.2017 ITA No.100066/2016 & Connected cases The Pr. Commissioner of Income Tax, C R Building, Navanagar, Hubballi. & Anr. Vs. The Totagars Co-Operative Sale Society, Sirsi.

by the provisions of the Banking Regulation Act, 1949. Only the Primary Agricultural Credit Societies with their limited work of providing credit facility to its members continued to be governed by the ambit and scope of deduction under Section 80P of the Act.

14. The banking business, even though run by a Co-

operative bank is sought to be excluded from the beneficial provisions of exemption or deduction under Section 80P of the Act. The purpose of bringing on the statute book sub-section (4) in Section 80P of the Act was to exclude the applicability of Section 80P of the Act altogether to any co-operative bank and to exclude the normal banking business income from such exemption / deduction category. The words used in Section 80P(4) are significant. They are: "The provisions of this section shall not apply in relation to any co-operative bank other than a primary agricultural credit society .....". The words "in relation to" can include within its ambit and scope Date of Judgment: 16.06.2017 ITA No.100066/2016 & Connected cases The Pr. Commissioner of Income Tax, C R Building, Navanagar, Hubballi. & Anr. Vs. The Totagars Co-Operative Sale Society, Sirsi.

even the interest income earned by the respondent-assessee, a co-operative Society from a Co-operative Bank. This exclusion by Section 80P(4) of the Act even though without any amendment in Section 80P(2)(d) of the Act is sufficient to deny the claim of the respondent assessee for deduction under Section 80P(2)(d) of the Act. The only exception is that of a primary agricultural credit society. The depository Kanara District Central Bank Limited in the present case is admittedly not such a primary agricultural credit society.

15. The amendment of Section 194A(3)(v) of the Act excluding the Co-operative Banks from the definition of "Co-

operative Society" by Finance Act, 2015 and requiring them to deduct income tax at source under Section 194A of the Act also makes the legislative intent clear that the Co-operative Banks are not

that specie of genus co-operative society, which would be entitled to exemption or deduction under the special Date of Judgment: 16.06.2017 ITA No.100066/2016 & Connected cases The Pr. Commissioner of Income Tax, C R Building, Navanagar, Hubballi. & Anr. Vs. The Totagars Co-Operative Sale Society, Sirsi.

provisions of Chapter VIA in the form of Section 80P of the Act.

16. If the legislative intent is so clear, then it cannot contended that the omission to amend Clause (d) of Section 80P(2) of the Act at the same time is fatal to the contention raised by the Revenue before this Court and sub silentio, the deduction should continue in respect of interest income earned from the co-operative bank, even though the Hon'ble Supreme Court's decision in the case of Respondent assessee itself is otherwise.

17. As stated above, it is the character and nature of income which determines its taxability or exemption from taxability. It is needless to say that the provisions relating to exemption and deduction need to be strictly construed and no liberal interpretation or intendment can be inferred in such provisions. What was clearly held to be not exempt and not deductible under Section 80P(2)(a) of the Act by the Hon'ble Date of Judgment: 16.06.2017 ITA No.100066/2016 & Connected cases The Pr. Commissioner of Income Tax, C R Building, Navanagar, Hubballi. & Anr. Vs. The Totagars Co-Operative Sale Society, Sirsi.

Supreme Court in the case of respondent assessee, cannot be contrarily held as exempted and deductible now for these years, merely because the depository bank, with whom the investments were made by the respondent assessee happens to be a co-operative bank. We cannot appreciate this distinction so as not to apply the binding precedent of the Hon'ble Supreme Court for subsequent years merely on account of the change of the Bank where such deposits were made by the respondent assessee, all other facts remaining the same, particularly the nature and character of the income earned by it.

The interest income of assessee continues to be not attributable to its business operations even in these subsequent years.

18. The contention of the learned counsel for the assessee that a co-ordinate bench of this Court dismissed the Revenue's appeals by referring, but not applying the decision of the Hon'ble Supreme Court, we observe with greatest respects that we do not find any detailed discussion of the facts and law Date of Judgment: 16.06.2017 ITA No.100066/2016 & Connected cases The Pr. Commissioner of Income Tax, C R Building, Navanagar, Hubballi. & Anr. Vs. The Totagars Co-Operative Sale Society, Sirsi.

pronounced by the Hon'ble Supreme Court in the case of the respondent assessee in the said order passed by the co-ordinate Bench and therefore, we are unable to follow the same in the face of the binding precedent laid by the Hon'ble Supreme Court. We find in paragraph 8 of the said order passed by a co-

ordinate bench that the learned Judges have observed that "the issue whether a co-operative bank is considered to be a co-

operative society is no longer res integra, for the said issue has been decided by the Income Tax Appellate Tribunal itself in different cases.....". No other binding precedent was discussed in the said judgment. Of course, the Bench has observed that a Co-operative Bank is a specie of the genus co-

operative Society, with which we agree, but as far as applicability of Section 80P(2) of the Act is concerned, the applicability of the Supreme Court's decision cannot be restricted only if the income was to fall under Section 80P(2)(a) of the Act and not under Section 80P(2)(d) of the Act.

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19. In our opinion, it would not make a difference, whether the interest income is earned from investments / deposits made in a Scheduled Bank or in a Co-operative Bank.

Therefore, the said decision of the Co-ordinate Bench is distinguishable and cannot be applied in the present appeals, in view of the binding precedent from the Hon'ble Supreme Court.

20. In Udaipur Sahakari Upbhokta Thok Bhandar Limited Vs. Commissioner of Income Tax, (2009) 315 ITR 21 (SC), the Hon'ble Supreme Court while dealing with a case falling under Section 80P(2)(e) of the Act also negatived the claim of this special deduction to a co-operative society, while holding that the income derived by the Co-operative Society from the letting of the godowns or the warehouses was eligible for this deduction under Section 80P(2) of the Act only if such income was derived by such letting of godowns and warehouses for storage, processing or facilitating the marketing of Date of Judgment: 16.06.2017 ITA No.100066/2016 & Connected cases The Pr. Commissioner of Income Tax, C R Building, Navanagar, Hubballi. & Anr. Vs. The Totagars Co-Operative Sale Society, Sirsi.

commodities. Where the rental income was derived by the assessee, where the income claimed as deduction under Section 80P(2)(e) of the Act was by way of netting / difference between the sale of own trade stock stored in such warehouses or godowns was claimed as deductible, the Hon'ble Supreme Court denied the said claim, holding that the burden was on the assessee to establish that the income comes within the four corners of Section 80P(2)(e) of the Act. The relevant portion of the said judgment from the Head Note is quoted below for ready reference:

> " HELD, affirming the decision of the High Court, that the burden was on the assessee under section 80P(2)(e) to establish that the income comes within the four corners of section 80P(2)(e) of the Act. The exemption was available in respect of income derived from the letting of godowns or warehouses, only where the purpose of letting was storage, processing or facilitating the marketing of commodities. If the

> godown was let out (including user) for any purpose besides storing, processing Date of Judgment: 16.06.2017 ITA No.100066/2016 & Connected cases The Pr. Commissioner of Income Tax, C R Building, Navanagar, Hubballi. & Anr. Vs. The Totagars Co-Operative Sale Society, Sirsi.

or facilitating the marketing of commodities, then the assessee was not entitled to such exemption. Any income derived by the society unconnected with such letting or use of the godown would not fall under clause (e). The High Court was right in coming to the conclusion that the assessee was storing the commodities in question in its godowns as part of its own trading stock and hence, it was not entitled to claim the deduction under Section 80P(2)(e). In this case, the issue price was set off against the sale price which clearly indicated that the netting/difference between the two prices constituted receipt on a commercial basis or net profit.

A.Venkata Subbarao Vs. State of Andhra Pradesh AIR 1965 SC 1773 applied.

CIT vs. South Arcot District Co-operative Marketing Society Ltd., (1989) 176 ITR 117 (SC) distinguished.

Surath Venkar Sahakari Sangh Ltd Vs. CIT (1971) 79 ITR 722 (Guj) approved.

Decision of the Rajsthan High Court in CIT Vs. Udaipur Shahakari Upbhokta Thok Bhandara Ltd. (2007) 295 ITR 164, Affirmed. "

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21. The aforesaid decision of the Hon'ble Supreme Court in the case of Totgar was followed by a Division Bench of the Gujarat High Court in the case of State Bank of India Vs. Commissioner of Income-Tax, reported in [2016] 389 ITR 578 (Guj.) and the Division Bench of the Gujarat High Court has held as under:

> "(ii) That the assessee did not carry on any banking business and its objects did not contemplate investment of surplus funds received from its members. The business of a credit society like that of the assessee was limited to providing credit to its members and the income that was earned by providing such credit facilities to its members was deductible under section 80P(2)(a)(i). The character of interest was different from the income attributable to the business of the assessee-society providing credit facilities to its members. The interest income derived from investing surplus funds with the bank must be closely linked with the business of Date of Judgment: 16.06.2017 ITA No.100066/2016 & Connected cases The Pr. Commissioner of Income Tax, C R Building, Navanagar, Hubballi. & Anr. Vs. The Totagars Co-Operative Sale Society, Sirsi.

providing credit facilities for it to be held attributable to the business of the assessee. Therefore, the profits and gains could be said to be directly attributable to the business of providing credit facilities to its members if there was a direct and proximate connection between the profits and gains and the business of the assessee. There was no obligation on the assessee to invest its surplus funds with the bank. Investing surplus funds in a bank was no part of the business of the assessee providing credit facilities to its members and hence it could not be said that the interest derived from depositing its surplus funds with the bank was profits and gains of business attributable to the activities of the assessee. It was only the interest income derived from the credit provided to its members which was deductible under section 80P(2)(a)(i) and the interest income derived by depositing the surplus funds with the bank not being attributable to the business carried on by the assessee could not be deducted under section 80P(2)(a)(i) . There was no infirmity in the orders of the Appellate Tribunal warranting interference.

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TOTGAR'S CO-OPERATIVE SALE SOCIETY LTD. v. ITO [2010] 322 ITR 283 (SC) followed."

xxx " Thus, in the light of the principles enunciated by the Supreme Court in Totgar's Co- operative Sale Society (supra), in case of a society engaged in providing credit facilities to its members, income from investments made in banks does not fall within any of the categories mentioned in section 80P(2)(a) of the Act. However, section 80P(2)(d) of the Act specifically exempts interest earned from funds invested in co- operative societies. Therefore, to the extent of the interest earned from investments made by it with any co-operative society, a co-operative society is entitled to deduction of the whole of such income under section 80P(2)(d) of the Act. However, interest earned from investments made in any bank, not being a co- operative society, is not deductible under section 80P(2)(d) of the Act. "

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22. Again, the Division Bench of Punjab and Haryan High Court in still a later decision reported in the same volume of ITR in the case of Commissioner of Income-Tax Vs. Punjab State Co-operative Agricultural Development Bank Limited, reported in [2016] 389 ITR 607 (P&H) concurred with the aforesaid view of the Gujarat High Court, distinguishing the view taken by the Andhra Pradesh High Court and Karnataka High Court, held in the following terms:

> " 30. We are entirely in agreement with the judgment of the Gujarat High Court especially the observation that the judgment of the Supreme Court is not restricted only to the investments made by the assessee from the amounts retained by it which were payable to its members and that the judgment also applies in respect of other funds not immediately required for business purposes.

> We reproduced paragraph 15 of the judgment only to indicate that we uphold the Date of Judgment: 16.06.2017 ITA No.100066/2016 & Connected cases The Pr. Commissioner of Income Tax, C R Building, Navanagar, Hubballi. & Anr. Vs. The Totagars Co-Operative Sale Society, Sirsi.

appellant's case only on the ground that the assessee is not entitled to the said deduction on the basis that it is engaged in carrying on the business of providing credit facilities to its members. We do not express any opinion as to whether the appellant would be entitled to the said benefit in the event of it being held that the assessee is also engaged in carrying on the business of banking. That is an issue that the Tribunal would decide upon remand pursuant to this order.

31. Mr. Bansal relied upon the judgment of the Andhra Pradesh High Court in CIT v. A. P. State Co-operative Bank Ltd. [2011] 336 ITR 516 (AP). The judgment is distinguishable. In that case, the respondent-assessee was a co-operative society engaged in the business of banking and it was held that the assessees were subject to the regulations of the Reserve Bank of India Act, 1934 and the Banking Regulation Act, 1949. The Division Bench distinguished the judgment of the Supreme Court in Totgar's case (supra) on the Date of Judgment: 16.06.2017 ITA No.100066/2016 & Connected cases The Pr. Commissioner of Income Tax, C R Building, Navanagar, Hubballi. & Anr. Vs. The Totagars Co-Operative Sale Society, Sirsi.

ground that the Supreme Court was not dealing with the case relating to co-operative banks. The present appeal is not being considered on the basis that banking is the assessee's business either.

32. Mr. Bansal relied upon the judgment of the Karnataka High Court in Tumkur Merchants Souharda Credit Co-operative Ltd. v. ITO [2015] 55 taxmann.com 447 (Karn). In that case, the assessee-co-operative society provided credit facilities to its members and earned interest from short- term deposits with banks and from savings bank accounts. The interest income earned by the assessee by providing credit facilities to its members was deposited in banks for a short duration which earned interest. The question was whether this interest was attributable to the business of providing credit facilities to the members. The Division Bench held as follows :

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"8. Therefore, the word 'attributable to' is certainly wider in import than the expression 'derived from'. Whenever the Legislature wanted to give a restricted meaning, they have used the expression 'derived from'. The expression 'attributable to' being of wider import, the said expression is used by the Legislature whenever they intended to gather receipts from sources other than the actual conduct of the business. A co-operative society which is carrying on the business of providing credit facilities to its members, earns profits and gains of business by providing credit facilities to its members. The interest income so derived or the capital, if not immediately required to be lent to the members, they cannot keep the said amount idle. If they deposit this amount in bank so as to earn interest, the said interest income is attributable to the profits and gains of the business of providing

credit facilities to its members only. The society is not carrying on any separate business for earning such interest income. The income so derived is the amount of profits and Date of Judgment: 16.06.2017 ITA No.100066/2016 & Connected cases The Pr. Commissioner of Income Tax, C R Building, Navanagar, Hubballi. & Anr. Vs. The Totagars Co-Operative Sale Society, Sirsi.

gains of business attributable to the activity of carrying on the business of banking or providing credit facilities to its members by a co-operative society and is liable to be deducted from the gross total income under section 80P of the Act.

9. In this context when we look at the judgment of the apex court in the case of Totgar's Co-operative Sale Society Ltd., on which reliance is placed, the Supreme Court was dealing with a case where the assessee-co-operative society, apart from providing credit facilities to the members, was also in the business of marketing of agricultural produce grown by its members. The sale consideration received from marketing agricultural produce of its members was retained in many cases. The said retained amount which was payable to its members from whom produce was brought, was invested in a short-term deposit/security. Such an amount which was retained by the assessee-society was a liability and it was shown in the balance-sheet on the liability side. Therefore, to that extent, such Date of Judgment: 16.06.2017 ITA No.100066/2016 & Connected cases The Pr. Commissioner of Income Tax, C R Building, Navanagar, Hubballi. & Anr. Vs. The Totagars Co-Operative Sale Society, Sirsi.

interest income can not be said to be attributable either to the activity mentioned in section 80P(2)(a)(i) of the Act or under section 80P(2)(a)(iii) of the Act. Therefore in the facts of the said case, the apex court held the Assessing Officer was right in taxing the interest income indicated above under section 56 of the Act. Further they made it clear that they are confining the said judgment to the facts of that case. Therefore it is clear, Supreme Court was not laying down any law.

10. In the instant case, the amount which was invested in banks to earn interest was not an amount due to any members. It was not the liability. It was not shown as liability in their account. In fact this amount which is in the nature of profits and gains, was not immediately required by the assessee for lending money to the members, as there were no takers. Therefore they had deposited the money in a bank so as to earn interest. The said interest income is attributable to carrying on the business of banking and Date of Judgment: 16.06.2017 ITA No.100066/2016 & Connected cases The Pr. Commissioner of Income Tax, C R Building, Navanagar, Hubballi. & Anr. Vs. The Totagars Co-Operative Sale Society, Sirsi.

therefore it is liable to be deducted in terms of section 80P(1) of the Act. In fact similar view is taken by the Andhra Pradesh High Court in the case of CIT v. A. P. State Co-operative Bank Ltd. reported in [2011] 336 ITR 516 (AP) ; [2011] 200 Taxman 220/12 taxmann.com 66. In that view of the matter, the order passed by the appellate authorities denying the benefit of deduction of the aforesaid amount is unsustainable in law. Accordingly it is hereby set aside. The substantial question of law is answered in favour of the assessee and against the Revenue. Hence, we pass the following order.

Appeal is allowed."

(The reproduction is from the original website of the Karnataka High Court).

There is an important distinction. The Division Bench expressly held in paragraph 10 that interest income was attributable to the business of banking and, therefore, liable to be deducted under section 80P(2)(a)(i) of the Act. At Date of Judgment: 16.06.2017 ITA No.100066/2016 & Connected cases The Pr. Commissioner of Income Tax, C R Building, Navanagar, Hubballi. & Anr. Vs. The Totagars Co-Operative Sale Society, Sirsi.

the cost of repetition, we have not considered whether the assessee carries on the business of banking. If it is established upon remand that the assessee carries on the business of banking the result may be different. In any event assuming that the judgment is not distinguishable on this ground, we would with respect disagree with the same in view of the judgments that we have already referred to and on the basis of our interpretation of Totgar's case. In any event, we are with respect unable to agree with the observations that the Supreme Court in Totgar's case (supra) did not lay down any law.

33. For the same reason, the judgment of the Karnataka High Court in Guttigedarara Credit Co-operative Society Ltd. v. ITO [2015] 377 ITR 464 (Karn) ; [2015] 60 taxmann.com 215 (Karn) is of no assistance to the respondent- assessee."

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23. Thus, the aforesaid judgments supports the view taken by this Court that character of income depends upon the nature of activity for earning that income and though on the face of it, the same may appear to be falling in any of the specified Clauses of Section 80P(2) of the Act, but on a deeper analysis of the facts, it may become ineligible for deduction under Section 80P(2) of the Act. The case in Udaipur Sahakari (supra) was that of Section 80P(2)(e) of the Act, whereas in the present case, it is under Section 80P(2)(d) of the Act. Hence, the income by way of interest earned by deposit or investment of idle or surplus funds does not change its character irrespective of the fact whether such income of interest is earned from a schedule bank or a co-operative bank and thus, clause (d) of Section 80P(2) of the Act would not apply in the facts and circumstances of the present case. The person or body corporate from which such interest income is received will not change its character, viz. interest income not arising from its business operations, which made it ineligible Date of Judgment: 16.06.2017 ITA No.100066/2016 & Connected cases The Pr. Commissioner of Income Tax, C R Building, Navanagar, Hubballi. & Anr. Vs. The Totagars Co-Operative Sale Society, Sirsi.

for deduction under Section 80P of the Act, as held by the Hon'ble Supreme Court.

24. In view of the aforesaid, we are of the opinion that the appeals filed by the Revenue deserve to be allowed and the appeals filed by the assessee deserve to be dismissed.

25. The issue relating to the justifiability of the reassessment under Section 147 / 148 of the Act also becomes academic once the conclusion is arrived at that the deduction under Section 80P(2) of the Act was not available to the assessee for these Assessment Years.

26. The substantial questions of law framed above are thus answered in favour of the Revenue and against the assessee and it is held that the income by way of interest earned by the assessee co-operative society during the Assessment Years 2007-2008 to 2011-12 on the investments made in the co-

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operative bank are not eligible for deductions under Section 80P(2)(d) of the Act.

27. The appeals of the Revenue are accordingly allowed and those of the assessee are dismissed. No order as to costs.

Sd/-

JUDGE Sd/-

JUDGE RK/-

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 10245 OF 2017
(ARISING OUT OF SLP (C) NO. 20044 OF 2015)

THE CITIZEN CO-OPERATIVE SOCIETY LIMITED, THROUGH ITS MANAGING DIRECTOR, HYDERABAD .....APPELLANT(S)

VERSUS

ASSISTANT COMMISSIONER OF INCOME TAX, CIRCLE -9 (1), HYDERABAD .....RESPONDENT(S)

J U D G M E N T

A.K. SIKRI, J.

Leave granted.

2) The appellant herein, after losing in all the fora below, has knocked the doors of this Court by means of the present appeal seeking the benefit of Section 80P of the Income Tax Act, 1961 (hereinafter referred to as the 'Act'). The Assessing Officer held that deduction in respect of income of co-operative societies under Section 80P of the Act is not admissible to the appellant as the benefit of deduction, as contemplated under the said provision is, inter alia, admissible to those co-operative

societies which carry on business of banking or providing credit facilities to its members. On the contrary, the appellant society was carrying on the banking business for public at large and for all practical purposes it was acting like a co-operative bank governed by the Banking Regulation Act, 1949, and its operation was not confined to its members but outsiders as well.

3) It may be noted at this stage itself that Section 80P of the Act provides for certain deduction in respect of incomes of the co-operative societies. A co-operative society is defined by Section 2(19) of the Act. Where the gross total income of such co-operative societies includes any income referred to in sub-section (2) of Section 80P, the sums specified in sub-section (2) are allowed as deduction in accordance with and subject to the provisions of the said Section, while computing the total income of the assessee. The profit exempted is the net profit included in the total income and not the gross profit of the business. Sub-section (2) enlists those sums which are allowed as deductions. Clause (a) of sub-section (2) includes seven kinds of co-operative societies which are entitled to this benefit, and in respect of the co-operative societies engaged in the activities mentioned in those seven classes, the whole of the amount of profits and gains of business attributable to anyone or more of such activities is exempted from income by allowing the said income as deduction. We are concerned with sub-clause (i) of clause (a) of

sub-section (2) of Section 80P which enlists a co-operative society engaged in carrying on the business of banking or providing credit facilities to its members. For the sake of better understanding, we reproduce below the aforesaid portion of Section 80P:

> "**80P. Deduction in respect of income of co-operative societies. –** (1) Where, in the case of an assesee being a co-operative society, the gross total income includes any income referred to in sub-section (2), there shall be deducted, in accordance with and subject to the provisions of this section, the sums specified in sub-section (2), in computing the total income of the assessee.
>
> (2) The sums referred to in sub-section (1) shall be the following, namely:-
>
> (a) in the case of a co-operative society engaged in -
>
> (i) carrying on the business of banking or providing credit facilities to its members, or
>
> xx xx xx
>
> the whole of the amount of profits and gains of business attributable to any one or more of such activities:
>
> xx xx xx"

4) Section 80P was amended by the Finance Act, 2006 with effect from April 01, 2007 and sub-section (4) was inserted thereto. This sub-section (4) reads as under:

> "(4) The provisions of this section shall not apply in relation to any co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank.
>
> *Explanation.* – For the purposes of this sub-section, -
>
> (a) "co-operative bank" and "primary agricultural

credit society" shall have the meanings respectively assigned to them in Part V of the Banking Regulation Act, 1949 (10 of 1949);

(b) "primary co-operative agricultural and rural development bank" means a society having its area of operation confined to a taluk and the principal object of which is to provide for long-term credit for agricultural and rural development activities."

5) As would be seen from the facts hereafter, the appellant is a co-operative society. However, it has been denied the benefit of Section 80P on the ground that it is a co-operative society of the nature covered by sub-section (4) of Section 80P and, therefore, becomes disentitled to get the benefit. The question, therefore, is as to whether the appellant is barred from claiming deduction in view of Section 80P(4) of the Act. In order to ascertain the answer to this question, relevant facts are enumerated hereinbelow:

(i) The assessee was established on May 31, 1997 initially as a Mutually Aided Co-operative Credit Society having been registered, under Section 5 of Andhra Pradesh Mutually Aided Co-operative Societies Act, 1995 with Registration No. AMC/RR/DCO/9714 by Registrar of Mutually Aided Co-operative Societies, Ranga Reddy. As operations of assessee over the years had increased manifold and as its operations were spread over States of erstwhile Andhra Pradesh, Maharashtra and Karnataka, the assessee got registered under the Multi State

Co-operative Societies Act, 2002 in terms of certificate dated July 26, 2005 issued by Office of Central Registrar of Co-operative Societies, Krishi Bhawan, New Delhi.

(ii) The assessee is being assessed to income tax since its inception. It has been claiming exemption under Section 80P of the Act which was being allowed by the Income Tax Authorities. As per the assessee, in course of its operations, members deposit cash into their accounts with the society and they withdraw the same. It is claimed that earlier, none of Income Tax Authorities had pointed out that acceptance of deposits from its members in cash and withdrawal thereof by them in cash would violate the provisions of Sections 269SS and 269T of the Act. Sections 269SS and 269T of the Act relate to mode of taking or accepting certain loans and deposits and their repayment respectively.

(iii) The assessee as Co-operative Society and assessee under PAN No. AAAAT3952F had filed return of income before Assistant Commissioner of Income Tax, Circle-9(I), Hyderabad for the Assessment Year 2009-10, for the year ending March 31, 2009 on September 30, 2009 declaring NIL income. In the return filed for the Assessment Year 2009-10, year ending with March 31, 2009, the assessee claimed a sum of Rs.4,26,37,081/- as deduction under Section 80P of the Act. Return filed by the assessee was

taken up for scrutiny under CASS (Computer Assisted Selection of Cases for Scrutiny) and notice under Section 143(2) of the Act was issued. In response thereto, books of account were produced by the assessee society and information called for was submitted. The Assessing Officer had arrived at Rs.19,57,32,920/- as the net amount of tax payable by the assessee in terms of his order dated December 19, 2011 by working out as hereunder:

Income Returned by the assesee (After claiming deduction u/s 80P)	:	Rs. Nil
Add: Disallowance u/s 68 as discussed in para no.2, 2.1 and 2.2 above	:	Rs.38,53,72,794/-
Add: Disallowance of deduction claimed u/s 80P	:	Rs.4,26,37,817/-
Total assessed income	:	Rs.42,80,09,880/-
Tax there on	:	(as per computation Form enclosed).
Tax payable	:	Rs.19,57,32,920/-

6) It may be pointed out that in the appeal before Commissioner of Income Tax (Appeals) {CIT(A)}, the order of the Assessing Officer making disallowance under Section 68 of the Act was reversed and that addition was deleted. Therefore, we are not concerned with that aspect of the mater which has attained finality.

7) Insofar as disallowance of deduction claimed under Section 80P of the Act is concerned, the CIT(A) rejected the claim for deduction thereby upholding the order of the Assessing Officer. While doing so, the CIT(A)

followed the order of the Income Tax Appellate Tribunal (ITAT) in the case of the appellant itself in respect of Assessment Years 2007-08 and 2008-09. CIT(A) quoted the following discussion from the said order of the ITAT:

> "22. For Assessment Year 2007-08 and 2008-09, we have to consider the amendment brought out to the section with effect from 1.4.2007 by Finance Act, 2006 whereby section 80P(4) was inserted. The amendment clearly barred all the cooperative banks other than primary agricultural credit society or a primary cooperative agricultural and rural development banks from claiming exemption under the section. The primary activity of the society is to provide banking facilities to its members. The Society is dealing like a bank while accepting deposits from its members. This issue was examined by the ITAT in the assessee's own case while deleting the penalty u/s. 27ID and 27IE. The ITAT held as under:
>
> > "If the carrying on baking business is not approved by the RBI or the assessee is not having requisite license to carry out the banking business, the authorities could have taken action against the society or stop the society activity. Once the assessee is allowed to carry on the banking business, then the assessee is bound by the relevant provisions of the Banking Regulations Act. The bank for all its banking activities is strictly governed by the Banking Regulations Act, 1949."
>
> 23. The Society is carrying on the banking business and for all practical purpose it acts like a co-op bank. The ITAT observed that the society is governed by the Banking Regulations Act. Therefore, the Society being a co-op bank providing banking facilities to members is not eligible to claim the deduction u/s. 80P(2)(i)(a) after the introduction of sub-section (4) to Section 80P.
>
> 24. In view of the above, we are of the opinion that the society is not eligible to claim deduction u/s. 80P(2)(a)(i). Therefore, we are of the opinion that the assessee is not entitled for deduction u/s. 80P(2)(a)(i) for Assessment Year 2006-07, 2007-08 and 2008-09 and allowed the ground raised by the Revenue and dismiss the ground taken by the

assessee on this issue.

5.2 The facts in the present appeal being identical, respectfully following the decision of the ITAT in the assessee's own case for the preceding years, the appeal of the assessee is dismissed on the issue of deduction u/s. 80P."

8) Further appeal to the ITAT met the same fate as ITAT also referred to its aforesaid order and dismissed the appeal of the appellant. Undeterred, the appellant approached the High Court in the form of appeal under Section 260A of the Act. This appeal has been dismissed by the High Court with the observations that there is no illegality or infirmity in the order passed by the ITAT.

9) Referring to the provisions of Section 80P of the Act, Mr. V. Shekhar, learned senior counsel appearing for the appellant, made a passionate plea to the effect that the entire purport and objective to enact the said provision was to encourage and promote growth of co-operative sector in the economic life of the country in pursuance of the declared policy of the Government. This is so recognised by various judgments of this Court firmly laying down the rule that a provision for direction, exemption or relief should be interpreted liberally, reasonably and in favour of the assessee and it should be so construed as to effectuate the object of the legislature and not to defeat it. He referred to the objects for which the assessee society has been established and submitted that the principal object of the society is to promote interest of all its members to attain

their social and economic betterment through self help and mutual aid in accordance with the co-operative principles and keeping in view the same the assessee society can engage in certain specified forms of business stipulated in the objective clause of the society. The purpose, therefore, was to promote the interest of its members and, therefore, it cannot be said that primary object of the assessee is transaction of banking business.

10) The learned senior counsel drew the attention of the Court to Section 5(b) of the Banking Regulation Act, 1949, which defines 'banking business' as under:

> "(b) "banking" means the accepting, for the purpose of lending or investment, of deposits of money from the public, repayable on demand or otherwise, and withdrawable by cheque, draft, order or otherwise."

11) Predicated on the aforesaid definition, he submitted that banking business means accepting for the purpose of lending or investment of deposits of money from the public repayable on demand or otherwise which is withdrawable by cheque, draft, order or otherwise. According to him, the assessee was not accepting any money from the public, except its members. Therefore, it was totally wrong on the part of the authorities below to come to a conclusion that assessee was doing banking business as stipulated in the Banking Regulation Act. It was also argued that in any case the assessee was not authorised and

competent to carry on any banking business without possessing a licence from the Reserve Bank of India. He, thus, sought to draw the distinction between a co-operative bank and a co-operative society in the following manner:

	CO-OPERATIVE BANK	CO-OPERATIVE SOCIETY
Nature of business	1. As defined in Section 6 of Banking Regulation Act. 2. Banks are bound to follow the rules, regulations and directions	1. As per bye laws of the cooperative society. 2. Society is bound by rules issued by Reserve Bank of India and regulations as specified by (RBI), if any applicable.
Inspection	RBI has the power to inspect accounts and overall functioning of the bank.	Registrar has the power to inspect accounts and overall functioning of the bank.
Part V	Part V of the Banking Regulation Act is applicable to cooperative banks.	Part V of the Banking Regulation Act is not applicable to cooperative societies.
Use of words	The word 'bank', 'banker', 'banking' can be used by a cooperative bank.	The word 'bank', 'banker', 'banking' cannot be used by a cooperative society.

It was also pointed out that even Central Board of Direct Taxes – CBDT – vide circular No. 133/2007 dated 9.5.2007 had clarified that Section 80P(4) of the Act provides that deduction shall not allowable to any Co-operative Bank other than Agricultural Credit Society or Primary Co-operative Agricultural and Rural Development Bank. Submission was that since the assessee does not fall within the meaning of Co-operative Bank as defined in Part-V of the Banking Regulation Act, 1949 and Section 80P(4) will not, therefore, apply to the assessee.

12) Continuing with the aforesaid line of argument, Mr. Shekhar further submitted that courts below ought to have appreciated that purpose of exemption under Section 80P is to provide employment of as much capital as possible for financing and extending the scope of fundings etc. The true test for applying deduction under Section 80P of the Act is whether income earned is attributable to the utilisation of circulating capital of the cooperative society engaged in the activity of business of banking. Once the assessee had earned income from the loans advanced to various members, the income so related to the banking activities is liable for exemption under Section 80P(2)(a)(i) of the Act. He submitted that this interpretation is supported by various decisions of this Court. For this purpose, he referred to the decision of this Court in ***Commissioner of Income Tax, Bangalore*** v. ***Bangalore Distt. Coop. Central Bank Ltd.***[1] wherein it was held that interest on Government securities and dividends earned by a Co-operative Society engaged in banking business is eligible for deduction under Section 80P of the Act, though said income was not earned from the credit facility provided to its members. Also, in ***Commissioner of Income Tax, Jalandhar*** v. ***Nawanshahar Central Cooperative Bank Limited***[2] this Court held that a Co-operative Society carrying a business of banking would be entitled for deduction under Section 80P of the Act. Plea of the appellant was

1 (1998) 6 SCC 129
2 (2012) 13 SCC 788

that if the intention of legislature was not to grant deduction under Section 80P(2)(a)(i) to the cooperative societies carrying on the business of providing credit facilities to its members, said provision would have been deleted from the Statute. According to the learned senior counsel, the new proviso to Section 80P(4) which was brought onto Statute Book is applicable only to cooperative banks and not to credit cooperative societies. The intention of the legislature in bringing the cooperative banks into the taxation structure was mainly to bring them on par with commercial banks.

13) Taking aid of the principle of mutuality, it was submitted that the assessee is a mutual concern. Income derived by it from its operations is distributed among members. The members are entitled to participate in the surplus, thereby creating an identity. Facilities are provided only to members of the society, who provide funds to it and their identity with the funds and their participation in the surplus arising from the said fund is unmistakably found and thus principles of mutuality will apply. In order to apply principle of mutuality, there must be complete identity between contributors and participators and requirement of law bring that contributors of the common fund and participators in the surplus must be an identical body. What is essential is that members of the assessee as a class must be able to participate in the surplus. It is immaterial whether surplus is paid back to the members or is put to reserve with the

society for development and for providing better amenities to the members. There is complete identity between the contributors and the participators of the assessee.

14) On the basis of the aforesaid arguments, Mr. Shekhar pleaded that the appellant be held entitled to the benefit of Section 80P of the Act.

15) In reply, Mr. Radhakrishnan, learned senior counsel appearing for the Revenue, submitted that the findings arrived at by the authorities below to the effect that the activity/business of the appellant, in essence, was that of a co-operative bank was based on the material on record and needed no interference. In this behalf he not only relied upon the findings of the Tribunal as per the discussion contained therein, but also submitted that these are findings of fact. The Assessing Officer scrutinised the bye-laws of the appellants and in particular those bye-laws which deal with the liability of membership etc. as well as provisions of Mutually Aided Co-operative Societies Act, 1995 (MACSA) under which the appellant is registered. The Assessing Officer found that the Act does not accept a person to be member of more than one co-operative for the same services. Moreover, Section 19 of MACSA does not accept every co-operative to be a panacea for all problems facing an entire population in an area and leaves it to the members to decide how big they wish to grow and how much they can handle. After

analysing these provisions, following discussion ensued in the order passed by the Assessing Officer:

> "As per the above provisions governing the conduct of the assessee, the assessee cannot admit nominal members and deal with them. The main activities of the assessee are in violation of the above provisions, as seen under:
>
> (i) As per the information furnished, it was found that the assessee caters to two distinct categories of people.
>
> (ii) The first category is that of resident members or ordinary members.
>
> (iii) The second category is that of nominal members, who make deposits with the assessee for the purpose of obtaining loans etc.
>
> (iv) This category of persons is neither members nor nominal/associate members.
>
> (v) As noticed, the assessee accepts deposits mostly from the second category these deposits are mostly kept in FDs.
>
> (vi) With banks to earn maximum returns, a portion of these deposits are utilized to advance gold loans etc. to members of the first category.
>
> (vii) It is noticed that the assessee has fixed deposits of Rs.541699504.39 of Rs. As on 31.3.2007.
>
> Therefore, the fixed deposits in banks are mostly out of funds received as deposits from the second category of persons referred above.
>
> (viii) As a class, the depositors and borrowers are quite distinct and the activity is finance business and cannot be termed as cooperative activity.
>
> (ix) The assessee is also engaged in the activity of granting loans to general public etc. which has nothing to do with cooperation amongst members. It is plain business and any willing buyer can utilize the services of the assessee.

(x) As understood, the assesse has not obtained any approval from the Registrar of Societies either to accept deposits from nominal members (who are actually non-members as the provisions of law referred above) as well as for conducting the business of sale of stamps etc.

(xi) Therefore, both in form and substance, the activity is in violation of the Cooperative Societies Act and Cooperative Society Rules.

(xii) Apart from the above, a cooperative credit society is not entitled for deduction u/s 80P(2)(a)(i) on the income from investment of surplus funds as per decision of IT at Hyderabad Bench in ITA No. 1141/Hyd/2007 in the case of SBI Staff Mutually Aided Cooperative Society Ltd."

16) He submitted that there was a clear finding of the Assessing Officer, which was consistently approved by the higher authorities as well, that provisions of Section 80P(2)(i)(a) were grossly violated as the appellant Society was found not dealing with its members only but also with general public as well. On that basis, further submission of Mr. Radhakrishnan was that the principle of mutuality was missing in this case, which aspect was also discussed in detail by the Assessing Officer. He, thus, contended that in view of the aforesaid findings, no case for interference was made out by the appellant.

17) We have considered the submissions of the counsel for the parties with reference to the record of this case.

18) We may mention at the outset that there cannot be any dispute to

the proposition that Section 80P of the Act is a benevolent provision which is enacted by the Parliament in order to encourage and promote growth of co-operative sector in the economic life of the country. It was done pursuant to declared policy of the Government. Therefore, such a provision has to be read liberally, reasonably and in favour of the assessee (See – ***Bajaj Tempo Limited, Bombay*** v. ***Commissioner of Income Tax, Bombay City-III, Bombay***[3]). It is also trite that such a provision has to be construed as to effectuate the object of the Legislature and not to defeat it (See – ***Commissioner of Income Tax, Bombay & Ors.*** v. ***Mahindra and Mahindra Limited & Ors.***[4]). Therefore, it hardly needs to be emphasised that all those co-operative societies which fall within the purview of Section 80P of the Act are entitled to deduction in respect of any income referred to in sub-section (2) thereof. Clause (a) of sub-section (2) gives exemption of whole of the amount of profits and gains of business attributable to anyone or more of such activities which are mentioned in sub-section (2).

19) Since we are concerned here with sub-section (i) of clause (a) of sub-section (2), it recognises two kinds of co-operative societies, namely: (i) those carrying on the business of banking and; (ii) those providing credit facilities to its members.

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3 (1992) 3 SCC 78
4 (1983) 4 SCC 392

20) In the case of ***Kerala State Cooperative Marketing Federation Limited & Ors.*** v. ***Commissioner of Income Tax***[5], this Court, while dealing with classes of societies covered by Section 80P of the Act, held as follows:

> "6. The classes of societies covered by Section 80-P of the Act are as follows:
>
> (a) Engaged in business of banking and providing credit facilities to its members;
>
> xx xx xx
>
> 7. We may notice that the provision is introduced with a view to encouraging and promoting growth of cooperative sector in the economic life of the country and in pursuance of the declared policy of the Government. The correct way of reading the different heads of exemption enumerated in the section would be to treat each as a separate and distinct head of exemption. Whenever a question arises as to whether any particular category of an income of a cooperative society is exempt from tax what has to be seen is whether income fell within any of the several heads of exemption. If it fell within any one head of exemption, it would be free from tax notwithstanding that the conditions of another head of exemption are not satisfied and such income is not free from tax under that head of exemption..."

21) In the case of ***Commissioner of Income Tax*** v. ***Punjab State Co-operative Bank Ltd.***[6], while dealing with an identical issue, the High Court of Punjab and Haryana held as follows:

> "8. The provisions of section 80P were introduced with a view

5 (1998) 5 SCC 48
6 (2008) 300 ITR 24 (Punjab & Haryana H.C.)

> to encouraging and promoting the growth of the co-operative sector in the economic life of the country and in pursuance of the declared policy of the Government. The different heads of exemption enumerated in the section are separate and distinct heads of exemption and are to be treated as such. Whenever a question arises as to whether any particular category of an income of a co-operative society is exempt from tax, then it has to be seen whether such income fell within any of the several heads of exemption. If it fell within any one head of exemption,.... It means that a co-operative society engaged in carrying on the business of banking and a co-operative society providing credit facilities to its members will be entitled for exemption under this sub-clause. The carrying on the business of banking by a cooperative society or providing credit facilities to its members are two different types of activities which are covered under this sub-clause.
>
> xx xx xx
>
> 13. So, in our view, if the income of a society is falling within any one head of exemption, it has to be exempted from tax notwithstanding that the condition of other heads of exemption are not satisfied. A reading of the provisions of section 80P of the Act would indicate the manner in which the exemption under the said provisions is sought to be extended. Whenever the Legislature wanted to restrict the exemption to a primary co-operative society, it was so made clear as is evident from clause (f) with reference to a milk co-operative society that a primary society engaged in supplying milk is entitled to such exemption while denying the same to a federal milk co-operative society."

22) The aforesaid judgment of the High Court correctly analyses the provisions of Section 80P of the Act and it is in tune with the judgment of this Court in ***Kerala State Cooperative Marketing Federation Limited*** (supra).

23) With the insertion of sub-section (4) by the Finance Act, 2006, which is in the nature of a proviso to the aforesaid provision, it is made

clear that such a deduction shall not be admissible to a co-operative bank. However, if it is a primary agriculture credit society or a primary co-operative agriculture and rural development bank, the deduction would still be provided. Thus, co-operative banks are now specifically excluded from the ambit of Section 80P of the Act.

24) Undoubtedly, if one has to go by the aforesaid definition of 'co-operative bank', the appellant does not get covered thereby. It is also a matter of common knowledge that in order to do the business of a co-operative bank, it is imperative to have a licence from the Reserve Bank of India, which the appellant does not possess. Not only this, as noticed above, the Reserve Bank of India has itself clarified that the business of the appellant does not amount to that of a co-operative bank. The appellant, therefore, would not come within the mischief of sub-section (4) of Section 80P.

25) So far so good. However, it is significant to point out that the main reason for disentitling the appellant from getting the deduction provided under Section 80P of the Act is not sub-section (4) thereof. What has been noticed by the Assessing Officer, after discussing in detail the activities of the appellant, is that the activities of the appellant are in violations of the provisions of the MACSA under which it is formed. It is pointed out by the Assessing Officer that the assessee is catering to two

distinct categories of people. The first category is that of resident members or ordinary members. There may not be any difficulty as far as this category is concerned. However, the assessee had carved out another category of 'nominal members'. These are those members who are making deposits with the assessee for the purpose of obtaining loans, etc. and, in fact, they are not members in real sense. Most of the business of the appellant was with this second category of persons who have been giving deposits which are kept in Fixed Deposits with a motive to earn maximum returns. A portion of these deposits is utilised to advance gold loans, etc. to the members of the first category. It is found, as a matter of fact, that he depositors and borrowers are quiet distinct. In reality, such activity of the appellant is that of finance business and cannot be termed as co-operative society. It is also found that the appellant is engaged in the activity of granting loans to general public as well. All this is done without any approval from the Registrar of the Societies. With indulgence in such kind of activity by the appellant, it is remarked by the Assessing Officer that the activity of the appellant is in violation of the Co-operative Societies Act. Moreover, it is a co-operative credit society which is not entitled to deduction under Section 80P(2)(a)(i) of the Act.

26) It is in this background, a specific finding is also rendered that the principle of mutuality is missing in the instant case. Though there is a

detailed discussion in this behalf in the order of the Assessing Officer, our purpose would be served by taking note of the following portion of the discussion:

> "As various courts have observed that the following three conditions must exist before an activity could be brought under the concept of mutuality;
>
> that no person can earn from him;
> that there a profit motivation;
> and that there is no sharing of profit.
>
> It is noticed that the fund invested with bank which are not member of association welfare fund, and the interest has been earned on such investment for example, ING Mutual Fund [as said by the MD vide his statement dated 20.12.2010]. [Though the bank formed the third party vis-a-vis the assessee entitled between contributor and recipient is lost in such case. The other ingredients of mutuality are also found to be missing as discussed in further paragraphs].
>
> In the present case both the parties to the transaction are the contributors towards surplus, however, there are no participators in the surpluses. There is no common consent of whatsoever for participators as their identity is not established. Hence, the assessee fails to satisfy the test of mutuality at the time of making the payments the number in referred as members may not be the member of the society as such the AOP body by the society is not covered by concept of mutuality at all."

27) These are the findings of fact which have remained unshaken till the stage of the High Court. Once we keep the aforesaid aspects in mind, the conclusion is obvious, namely, the appellant cannot be treated as a co-operative society meant only for its members and providing credit facilities to its members. We are afraid such a society cannot claim the benefit of Section 80P of the Act.

28) This appeal, therefore, fails and is hereby dismissed with costs.

.....J.
(A.K. SIKRI)

.....J.
(ASHOK BHUSHAN)

NEW DELHI;
AUGUST 8, 2017.

ITEM NO.1502 COURT NO.7 SECTION XII-A
(FOR JUDGMENT)

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (C) No(s). 20044/2015

(Arising out of impugned final judgment and order dated 17-07-2013 in ITTA No. 292/2013 passed by the High Court Of A.P. At Hyderabad)

THE CITIZEN COOPERATIVE SOCIETY LTD.,
REP. BY MANAGING DIRECTOR
G.RANGA RAO. HYDERABAD Petitioner(s)

VERSUS

ASST. COMMISSIONER OF INCOME TAX Respondent(s)
CIRCLE-9(1),HYDERABAD

Date : 08-08-2017 This matter was called on for pronouncement of judgment today.

For Petitioner(s) Mr. K. Shivraj Choudhuri, AOR

For Respondent(s) Ms. Anil Katiyar, AOR

Hon'ble Mr. Justice A.K. Sikri pronounced the judgment of the Bench comprising His Lordship and Hon'ble Mr. Justice Ashok Bhushan.

Leave granted.

The appeal is dismissed in terms of the signed reportable judgment.

Pending application(s), if any, stands disposed of accordingly.

(Ashwani Thakur) (Mala Kumari Sharma)
COURT MASTER COURT MASTER
(Signed reportable judgment is placed on the file)

IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC - A" BENCH : BANGALORE

BEFORE SHRI SUNIL KUMAR YADAV, JUDICIAL MEMBER

ITA No.1590/Bang/2016
Assessment year : 2012-13

Lalitamba Pattina Souharda Sahakari Niyamita, Vivekanand Road, Behind Prasad Nursing Home, Gadag – 582 101. **PAN: AAATL 5716G**	Vs.	The Income Tax Officer, Ward 1, Gadag.
APPELLANT		RESPONDENT

Appellant by	:	Shri Bennur Nagaraj, CA
Respondent by	:	Smt. Padma Meenakshi, Jt. CIT(DR)(ITAT), Bengaluru.

Date of hearing	:	02.08.2017
Date of Pronouncement	:	31.08.2017

O R D E R

This appeal is preferred by the assessee against the order of the CIT(Appeals) *inter alia* on the following grounds:-

"1. The order passed by the CIT(Appeals), Hubli & the order passed by the AO on the directions from CIT(Appeals), Hubli may kindly be set aside and allow our claim of deduction u/s. 80P(2)(a)(i), it is eligible under the Act and pray for the justice.

2. On the other hand, treat the Bank Interest Income under Other Sources and allow the Cost of funds as per the calculations submitted u/s. 57.

3. Rectify the mistake apparent on records done by the AO that assessed income is higher than the Net Profits which is objected by the departmental auditors."

2. During the course of hearing, the ld. counsel for the assessee has contended that the impugned issues are squarely covered by the judgment of the Hon'ble jurisdictional High Court in the case of *Tumkur Merchants Souharda Credit Co-operative Ltd. v. ITO in ITA No.307 of 2014*, therefore the appeal of the assessee may be allowed.

3. The ld. DR, on the other hand, has submitted that the CIT(Appeals) has decided the issue following the judgment of *Totgars Co-operative Sale Society v. ITO* of the Hon'ble Supreme Court. The CIT(Appeals) has already allowed the deduction of interest earned on FDRs from the co-operative banks u/s 80P of the Act. The CIT(Appeals) has only disallowed the interest earned from the FDRs from the other banks. Therefore, no interference in the order of the CIT(Appeals) is called for.

4. Having carefully examined the order of the CIT(Appeals) in the light of rival submissions, I find that the CIT(Appeals) has adjudicated the issue in the light of the judgment of the Hon'ble jurisdictional High Court in the case of *Totgars Co-operative Sale Society (supra)* and *Tumkur Merchants Souharda Credit Co-operative Ltd. (supra)* and also the other judgment of the Hon'ble Andhra Pradesh High Court. Having taken into account all the facts, the CIT(Appeals) has already allowed deduction u/s. 80P on the

interest or dividend received in respect of income by way of deposits with the co-operative banks from its investment. The CIT(Appeals) did not allow the deduction u/s. 80P(2)(d) on interest received from the deposits in other banks. Since deduction u/s. 80P is to be allowed only on those receipts which were received from co-operative societies or co-operative banks and not from the other banks, we find no infirmity in the order of the CIT(Appeals). We accordingly confirm the same.

5. In the result, the appeal of the assessee is dismissed.

Pronounced in the open court on this 31st day of August, 2017.

Sd/-
(SUNIL KUMAR YADAV)
Judicial Member

Bangalore,
Dated, the 31st August, 2017.

/ Desai Smurthy /

Copy to:
1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.
6. Guard file

By order

Senior Private Secretary
ITAT, Bangalore.

Income Tax Appellate Tribunal - Ahmedabad
M/S. Jafari Momin Vikas Co-Op. ... vs The Income Tax Officer, Ward-2,, ... on 28 August, 2018
, -

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD - BENCH 'A'

BEFORE SHRI RAJPAL YADAV, JUDICIAL MEMBER
AND
SHRI WASEEM AHMED, ACCOUNTANT MEMBER

./ ITA No. 2320, 2321 and 2322/Ahd/2014
/Assessment Year: 2007-08, 2010-11 and 2011-12

M/s.Jafari Momin Vikas Co-op. Credit Society At-Kakoshi, Ta-Siddhpur Dist - Patan	ITO, ward-2 Vs Patan.
/ (Appellant) Assessee by : Revenue by :	/ (Respondent) Shri H.V. Doshi, AR Shri S.K. Dev, SR.DR

/Date of Hearing : 14/08/2018
/Date of Pronouncement : 28/08/2018

ORDER

PER RAJPAL YADAV, JUDICIAL MEMBER : Present three appeals directed at the instance of the assessee against orders of ld.CIT(A), Gandhinagar, Ahmedabad of even dated 19.5.2014 passed for above three assessment years.

2. Common issue raised in these three appeals are against the order of the ld.CIT(A), whereby the ld.CIT(A) confirmed order of the assessing officer AO in denying deduction under section 80P(2)(a)(i) of the Income Tax Act, 1961. Facts in all these appeals are common except variation in quantum, therefore, we proceed to dispose of all these appeals by this common order.

ITA No.2320/Ahd/2014 - 2 Others

3. At the outset, the ld.DR submitted that issue is covered in favour of the Revenue by judgment of the Hon'ble jurisdictional High Court in the case of State Bank of India Co-operative Society Vs. CIT, 72 taxmann.com 64 (Guj) wherein it has been held that cooperative society engaged in the business of providing credit facilities to its members which earns interest income on the surplus funds parked with the nationalised banks, is not eligible for deduction under section 80P(2)(a)(i) of the Act. Since impugned orders of Revenue authorities are in consonance with judgment of the Hon'ble High Court cited supra, no interference thereof is required and all the appeals of the assessee may be dismissed. However, the ld.counsel for the assessee does not contest judgment of Hon'ble Gujarat High Court, but submitted that in case claim of the assessee is not found to be admissible, then

proportionate administrative and financial expenses incurred for earning such interest/investment income be allowed to the assessee.

4. Having heard both the parties and on perusal of the record, we find that Assessee is a cooperative society registered under Gujarat Co- operative Societies Act, 1961 and engaged in providing credit facilities to its members. The assessee-society has filed return of income declaring NIL income, after claiming deduction under section 80P(2)(a)(i) for the interest income earned on FDRs. with the banks. This claim was denied by the AO on the ground that provisions of section 80P(2)(a)(i) does not cover assessee-society. The ld.CIT(A) concurred with the order of the AO by relying upon the judgment of Hon'ble jurisdictional High Court in the case of State Bank of India Co-operative Society (supra). We find ITA No.2320/Ahd/2014 - 2 Others that Hon'ble jurisdictional High Court has held that interest earned from investment made in nationalized bank by a cooperative society engaged in providing credit facilities to its members, is not eligible for deduction under section 80P. The Tribunal in earlier occasions on similar issue has taken a consistent view by following above judgment of the Hon'ble jurisdictional High Court. Since orders of the Revenue authorities are in accordance with the judgment of the Hon'ble jurisdictional High Court cited supra, no interfere is called for in the impugned orders, which we confirm. However, any expenditure incurred by the assessee for earning such income could be allowed to it, if not already allowed. In other words, the ld.AO has to determine the net interest income as well as misc. income earned by the assessee, and only thereafter that income has to be excluded from the admissibility of deduction under section 80P of the Act.

5. In the result, appeals of the assessee are partly allowed for statistical purpose.

Pronounced in the Open Court on 28th August, 2018.

Sd/-	Sd/-
(WASEEM AHMED)	(RAJPAL YADAV)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

"ಮಾನ್ಯ ಸರ್ವೋಚ್ಚ ನ್ಯಾಯಾಲಯದ ತೀರ್ಪು ಮತ್ತು ಅದರ ಪರಿಣಾಮ"

ಮಾನ್ಯ ಸರ್ವೋಚ್ಚ ನ್ಯಾಯಾಲಯವು ದಿನಾಂಕ 8/8/2017 ರಂದು ಮಹತ್ವದ ತೀರ್ಪೊಂದನ್ನು ನೀಡಿದ್ದು ಅದರ ಪ್ರಕಾರ ಬ್ಯಾಂಕಿಂಗ್ ವ್ಯವಹಾರ ನಡೆಸುವ ಸಹಕಾರಿ ಸಂಸ್ಥೆಗಳು ಆದಾಯ ತೆರಿಗೆ ಕಾಯ್ದೆ ಕಲಂ 80ಪಿ ಕಡಿತವನ್ನು ಪಡೆಯಲು ಅರ್ಹವಲ್ಲ ಎಂಬುದಾಗಿ ನಿರ್ಧರಿಸಿದೆ. ಇದು ಬಹುಶ: ಪತ್ತಿನ ಸಹಕಾರಿಗಳಿಗೆ ವ್ಯತರಿಕ್ತವಾದ ಪರಿಣಾಮ ಉಂಟು ಮಾಡುವ ಸಾದ್ಯತೆ ಇದೆ. ದಿ ಸಿಟಿಜನ್ ಕೋ ಆಪ್‌ರೇಟಿವ್ ಸೊಸೈಟಿ ಲಿ, ಹೈದರಾಬಾದ್ ಅವರು ಸಲ್ಲಿಸಿದ ಮೇಲ್ಮನವಿಯನ್ನು ತಿರಸ್ಕರಿಸಿ ಮಾನ್ಯ ಸರ್ವೋಚ್ಚ ನ್ಯಾಯಾಲಯ ಈ ತೀರ್ಪನ್ನು ನೀಡಿದ್ದು ಇದರಿಂದ ಸಹಕಾರಿ ಸಂಸ್ಥೆಗಳಿಗೆ ಪ್ರತಿಕೂಲ ಪರಿಸ್ಥಿತಿ ಉಂಟಾಗುವ ಸಾಧ್ಯತೆ ಇದೆ.

ಪ್ರಕರಣದ ವಿವರ:

ದಿ ಸಿಟಿಜನ್ ಕೋ ಆಪ್‌ರೇಟಿವ್ ಸೊಸೈಟಿ ಲಿ, ಹೈದರಾಬಾದ್ ಸಹಕಾರಿ ಸಂಸ್ಥೆಯಾಗಿದ್ದು ಆಂದ್ರ ಪ್ರದೇಶ ಮುಚ್ಚುವಲಿ ಎಡೆಡ್ ಆಪ್‌ರೇಟಿವ್ ಸೊಸೈಟಿ ಕಾಯ್ದೆ 1995ರ ಅಡಿಯಲ್ಲಿ ನೊಂದಾಯಿಸಲ್ಪಟ್ಟಿದ್ದು ತದನಂತರ ಮಲ್ಟಿ ಸ್ಟೇಟ್ ಕೋ ಆಪರೇಟಿವ್ ಕಾಯ್ದೆ 2002ರ ಅಡಿಯಲ್ಲಿ ನೊಂದಾಯಿಸಲ್ಪಟ್ಟಿರುತ್ತದೆ. ಸದರಿ ಸಂಸ್ಥೆ ಪತ್ತಿನ ವ್ಯವಹಾರವನ್ನು ನಡೆಸುತ್ತಿದ್ದು, ಸನ 2008–09ರ ಸಾಲಿಗೆ ಗಳಿಸಿದ ಲಾಭದ ಮೇಲೆ ಆದಾಯ ತೆರಿಗೆ ವರದಿಯನ್ನು ಸಲ್ಲಿಸುವಾಗ ಆದಾಯ ತೆರಿಗೆ ಕಲಂ 80ಪಿ ಯಲ್ಲಿ ಕಡಿತವನ್ನು ತೋರಿಸಿ ಶೂನ್ಯ ಆದಾಯವನ್ನು ಘೋಷಿಸಿತ್ತು. ಆದರೆ ಆದಾಯ ತೆರಿಗೆಯ ಸಹ ಆಯುಕ್ತರು ಆದನ್ನು ತಿರಸ್ಕರಿಸಿ ಸದರಿ ಸಂಸ್ಥೆಯ ಮೇಲೆ ಆದಾಯ ತೆರಿಗೆಯನ್ನು ವಿಧಿಸಿದ್ದು, ಅದರ ವಿರುದ್ದ ಸಂಸ್ಥೆ ಆಯುಕ್ತರಲ್ಲಿ ಮೇಲ್ಮನವಿಯನ್ನು ಸಲ್ಲಿಸಿದ್ದು ಆಯುಕ್ತರೂ ಸಹ ಅದನ್ನು ತಿರಸ್ಕರಿಸಿದಾಗ ಅದನ್ನು ಪ್ರಶ್ನಿಸಿ ಮಾನ್ಯ ಉಚ್ಚ ನ್ಯಾಯಾಲಯ ಹೈದರಾಬಾದ್ ಅವರಿಗೆ ಮೇಲ್ಮನವಿಯನ್ನು ಸಲ್ಲಿಸಿತ್ತು. ಅಲ್ಲೂ ಕೂಡ ಸಂಸ್ಥೆಯ ವಿರುದ್ದ ತೀರ್ಪು ಬಂದಿದ್ದು ಆ ತೀರ್ಪಿನ ವಿರುದ್ದ ಮಾನ್ಯ ಸರ್ವೋಚ್ಚ ನ್ಯಾಯಾಲಯದಲ್ಲಿ ಅಹವಾಲನ್ನು ಸಲ್ಲಿಸಿದ್ದು ಅದನ್ನು ಪರಿಶೀಲಿಸಿ ಮಾನ್ಯ ಸರ್ವೋಚ್ಚ ನ್ಯಾಯಾಲಯ ಸದರಿ ಸಂಸ್ಥೆಯ ಮನವಿಯನ್ನು ತಿರಸ್ಕರಿಸಿ ಆದಾಯ ತೆರಿಗೆ ಅಧಿಕಾರಿಗಳು ನೀಡಿದ ಆದೇಶವನ್ನು ಎತ್ತಿಹಿಡಿದಿರುತ್ತದೆ.

ತೀರ್ಪಿನ ಸಾರಾಂಶ:

- ಸದರಿ ಸಂಸ್ಥೆ ಸದಸ್ಸೇತರರೊಂದಿಗೆ ವ್ಯವಹಾರವನ್ನು ಮಾಡುತ್ತಿದ್ದು ಆದಾಯ ತೆರಿಗೆ ಕಾಯಿದೆ ಕಲಂ 80ಪಿ ನ್ನು ಸತತವಾಗಿ ಉಲ್ಲಂಘನೆ ಮಾಡುತ್ತಿದೆ.
- ಸದರಿ ಸಂಸ್ಥೆ ಸಾಮಾನ್ಯ ಸದಸ್ಯರು ಮತ್ತು ನಾಮ ಮಾತ್ರ ಸದಸ್ಯರ ಜೊತೆ ವ್ಯವಹಾರವನ್ನು ಮಾಡುತ್ತಿದೆ.

- ಸದರಿ ಸಂಸ್ಥೆ ನಾಮ ಮಾತ್ರ ಸದಸ್ಯರಿಂದ ಠೇವಣಿ ಸಂಗ್ರಹ ಮಾಡುತ್ತಿದ್ದು ಅದರಲ್ಲಿ ಸಣ್ಣ ಪ್ರಮಾಣವನ್ನು ಮಾತ್ರ ಸಾಮಾನ್ಯ ಸದಸ್ಯರಿಗೆ ಬಂಗಾರದ ಸಾಲವನ್ನು ಕೊಟ್ಟಿದ್ದು ಉಳಿದ ಠೇವಣಿಯನ್ನು ಹೊರಗಡೆ ಹೂಡಿಕೆ ಮಾಡಿ ಲಾಭವನ್ನು ಗಳಿಸಿರುತ್ತದೆ.
- ಸದರಿ ಸಂಸ್ಥೆ ಹೂಡಿಕೆ ಮಾಡಿದ ಹಣ ಭಾಗಶಃ ನಾಮಮಾತ್ರ ಸದಸ್ಯರಿಂದ ಪಡೆದ ಠೇವಣಿಯಾಗಿರುತ್ತದೆ.
- ಠೇವಣಿದಾರರು ಮತ್ತು ಸಾಲಗಾರರು ಬೇರೆ ಬೇರೆ ಆಗಿರುವುದರಿಂದ ಇದು ಹಣಕಾಸು ವ್ಯವಹಾರವಾಗಿದ್ದು ಸಹಕಾರಿ ಚಟುವಟಿಕೆ ಆಗಿರುವುದಿಲ್ಲ.
- ಸದರಿ ಸಂಸ್ಥೆ ಸಾರ್ವಜನಿಕರಿಗೆ ಸಾಲವನ್ನು ನೀಡುತ್ತಿದ್ದು ಇದು ಸದಸ್ಯರ ನಡುವೆ ನಡೆಯುವಂತಹ ಸಹಕಾರಿ ಚಟುವಟಿಕೆ ಆಗಿರುವುದಿಲ್ಲ.
- ಸದರಿ ಸಂಸ್ಥೆ ಸಹಕಾರಿ ಸಂಘಗಳ ಕಾಯಿದೆಯನ್ನು ಉಲ್ಲಂಘನೆ ಮಾಡಿರುತ್ತದೆ.
- ಈ ಎಲ್ಲಾ ಕಾರಣಗಳಿಂದ ಸದರಿ ಸಂಸ್ಥೆಯನ್ನು ಸದಸ್ಯರಿಗಾಗಿ ಮಾಡಿಕೊಂಡ ಸಹಕಾರಿ ಸಂಸ್ಥೆ ಎಂದು ಕರೆಯಲು ಸಾಧ್ಯವಿಲ್ಲ ಮತ್ತು ಆದಾಯ ತೆರಿಗೆ ಕಾಯಿದೆ ಕಲಂ 80ಪಿ ಅಡಿಯಲ್ಲಿ ತೆರಿಗೆ ಕಡಿತಕ್ಕೆ ಅರ್ಹವಲ್ಲ ಎಂಬುದಾಗಿ ನಿರ್ಧರಿಸಿರುತ್ತದೆ.

<u>ತೀರ್ಪಿನಿಂದ ಆಗಬಹುದಾದ ಪರಿಣಾಮಗಳು:</u>

ಬಹಳಷ್ಟು ಸಂಸ್ಥೆಗಳು ಅದರಲ್ಲೂ ಸೌಹಾರ್ದ ಸಹಕಾರಿಗಳು ಪತ್ತಿನ ವ್ಯವಹಾರದ ಜೊತೆ, ಛಾಪಾಕಾಗದ, ವಿಮೆ, ಸ್ಟಾರ್ಟ್ ಶಾಪ್ ಮುಂತಾದ ವ್ಯವಹಾರಗಳನ್ನು ಸದಸ್ಯರಲ್ಲದವರ ಜೊತೆ ಮಾಡುತ್ತಿದ್ದು, ಆದಾಯ ತೆರಿಗೆ ಅಧಿಕಾರಿಗಳು ಸದರಿ ತೀರ್ಪನ್ನು ಆಧಾರವಾಗಿಟ್ಟುಕೊಂಡು ಸಹಕಾರಿ ಸಂಸ್ಥೆಗಳು ನಾಮಮಾತ್ರ ಸದಸ್ಯರು ಮತ್ತು ಸದಸ್ಯೇತರರೊಂದಿಗೆ ವ್ಯವಹಾರವನ್ನು ನಡೆಸುತ್ತಿರುವುದರಿಂದ ಗಳಿಸಿದ ಆದಾಯಕ್ಕೆ ತೆರಿಗೆ ಪಾವತಿಸಲು ಸೂಚಿಸಬಹುದು. ಸದರಿ ತೀರ್ಪಿನಲ್ಲಿ ಗಮನಿಸಬೇಕಾದ ಇನ್ನೊಂದು ಅಂಶ ಯಾವುದೆಂದರೆ, ಇಲ್ಲಿ ಸಂಸ್ಥೆ ಗಳಿಸಿದ ಒಟ್ಟು ನಿವ್ವಳ ಲಾಭಕ್ಕೆ ಆದಾಯ ತೆರಿಗೆ ವಿಧಿಸಿದ್ದು, ಸದಸ್ಯೇತರೊಂದಿಗೆ ನಡೆಸಿದ ವ್ಯವಹಾರದಿಂದ ಬಂದ ಲಾಭಕ್ಕೆ ಮಾತ್ರ ಅಲ್ಲ ಎನ್ನುವುದು ಗಮನಾರ್ಹ.

<u>ಕ್ರಮವಿಡಬೇಕಾದ ಅಂಶಗಳು:</u>

- ಸೌಹಾರ್ದ ಸಹಕಾರಿಗಳು ಸದಸ್ಯೇತರರೊಂದಿಗೆ ನಡೆಸುವ ವ್ಯವಹಾರದ ಬಗ್ಗೆ ಪುನರ್ ವಿಮರ್ಶೆ ಮಾಡುವುದು ಒಳಿತು.

- ಕೆಲವು ಸೌಹಾರ್ದ ಸಹಕಾರಿಗಳು ನಾಮಮಾತ್ರ ಸದಸ್ಯರಿಂದ ಪಿಗ್ಮಿ ಠೇವಣಿ ಪಡೆಯುತ್ತಿದ್ದು ಅದನ್ನು ಕೂಡಲೇ ನಿಲ್ಲಿಸಬೇಕು.
- ಛಾಪಾಕಾಗದ ಮುಂತಾದ ಸದಸ್ಯೇತರರೊಂದಿಗೆ ನಡೆಸುವ ವ್ಯವಹಾರಕ್ಕೆ ಪ್ರತ್ಯೇಕವಾಗಿ ಲೆಕ್ಕ ಪತ್ರವನ್ನು ನಿರ್ವಹಿಸಿ ಅದರಿಂದ ಬಂದ ಲಾಭಕ್ಕೆ ಆದಾಯ ತೆರಿಗೆಯನ್ನು ಪಾವತಿಸಬೇಕು.
- ತೀರ್ಪಿನ ಹಿನ್ನೆಲೆಯಲ್ಲಿ ಹೂಡಿಕೆಯಿಂದ ಬಂದ ಲಾಭಕ್ಕೂ ಆದಾಯ ತೆರಿಗೆಯನ್ನು ಪಾವತಿಸಬೇಕಾದ ಪ್ರಸಂಗ ಬರಬಹುದು.

ಹಿನ್ನುಡಿ:–

ಸದರಿ ತೀರ್ಪಿನ ಸಾರಾಂಶವನ್ನು ಗಮನಿಸಿದಾಗ, ಸದಸ್ಯರೊಂದಿಗೆ ಮಾತ್ರ ವ್ಯವಹಾರ ಮಾಡುವ ಪತ್ತಿನ ಸಹಕಾರಿಗಳು ಯಾವುದೇ ಆತಂಕ ಪಡುವ ಅಗತ್ಯವಿಲ್ಲ. ಅವರು ಗಳಿಸಿದ ಲಾಭಕ್ಕೆ ತೆರಿಗೆ ಕಡಿತ ಲಭ್ಯವಿರುತ್ತದೆ. ಆದಾಯ ತೆರಿಗೆ ಅಧಿಕಾರಿಗಳು ಈ ತೀರ್ಪನ್ನು ಆಧಾರವಾಗಿಟ್ಟುಕೊಂಡು ಕಲಂ 80ಪಿ ಕಡಿತವನ್ನು ತಿರಸ್ಕರಿಸಬಹುದು. ಅಂತಹ ಸಂದರ್ಭದಲ್ಲಿ ಮೇಲ್ಮನವಿ ಸಲ್ಲಿಸಬೇಕಾದ ಅನಿವಾರ್ಯತೆ ಉಂಟಾಗಬಹುದು. ಈ ಕಡಿತದ ಲಾಭ ಎಲ್ಲಿಯವರೆಗೆ ಸಿಗಬಹುದು ಎನ್ನುವುದು ಯಕ್ಷ ಪ್ರಶ್ನೆ. ಹಾಗಾಗಿ ಸಹಕಾರಿ ಸಂಸ್ಥೆಗಳು ಇನ್ನು ಮುಂದೆ ತೆರಿಗೆ ಪಾವತಿಸಬೇಕಾದ ಅನಿವಾರ್ಯತೆ ಉಂಟಾಗಬಹುದು. ಈ ನಿಟ್ಟಿನಲ್ಲಿ ಅದರ ಬಗ್ಗೆ ಗಂಭೀರವಾದ ಚಿಂತನೆ ಮಾಡುವುದು ಅಗತ್ಯ.

– ಮಧುಕರ ಜಿ ಹೆಗಡೆ
ಸನ್ನದು ಲೆಕ್ಕಪರಿಶೋಧಕರು
ಬೆಂಗಳೂರು

IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH : BANGALORE

BEFORE SHRI SUNIL KUMAR YADAV, JUDICIAL MEMBER
AND SHRI A. K. GARODIA, ACCOUNTANT MEMBER

ITA No.34/Bang/2017
Assessment year : 2012-13

The Income Tax Officer, Ward 6(3)(2), Bengaluru.	Vs.	M/s. Pavagada Souharda Multipurpose Co-op. Ltd., No.2729, 14th Cross, E-Block, Kodigehalli Gate, Sahakarnagar, Bengaluru – 560 092. **PAN: AAAAT 7737L**
APPELLANT		RESPONDENT

Appellant by	:	Smt. H.L. Soumya, Addl. CIT(DR)
Respondent by	:	Shri Madhukar G. Hegde, CA

Date of hearing	:	19.09.2017
Date of Pronouncement	:	22.09.2017

ORDER

Per Sunil Kumar Yadav, Judicial Member

This appeal is filed by the revenue against the order of the CIT(Appeals) *inter alia* on the following grounds:-

"1. The order of the CIT (Appeals) is opposed to law and the facts and circumstances of the case.

2. On the facts and in the circumstances of the case, the learned CIT(A) erred in deleting the disallowance of deduction u/s 80P(2)(a)(i) made by the AO, without appreciating the fact that the assessee society was carrying on banking business, by fulfilling all the conditions laid down in Section 5(cci) of

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Income Tax Appellate Tribunal

the Banking Regulation Act, 1949 referred to in Explanation to sub-section (4) of Section 80P, thereby qualifying it as a primary Co-operative Bank.

3. On the facts and in the circumstances of the case, the learned CIT(A) erred in placing reliance upon the decision of the Hon'ble High Court of Karnataka in the case of Shri Biluru Gurbasappa Pattina Sahakari Sangha Niyamitha without appreciating the fact that the SLP filed by the Department before the Hon'ble Apex Court is still pending judgment.

4. For these and such other grounds that may be urged at the time of hearing, it is humbly prayed that the order of the CIT(A), in so far as it relates to the above grounds may be reversed and that of the Assessing Officer be restored.

5. The appellant craves leave to add, to alter, to amend or delete any of the grounds that may be urged at the time of hearing of the appeal."

2. The brief facts borne out from the record are that the AO during the assessment proceedings noted that the assessee has deposited the surplus funds in the Bank and interest out of the surplus funds invested amounting to Rs.1,90,05,335 was claimed as exemption u/s. 80P(2)(a)(i). The AO in view of the amended provisions of section 80P(4) of the Act held that societies carrying on the business of banking are not entitled to claim deduction u/s. 80P(2)(a)(i) of the Act.

3. On appeal by the assessee, the CIT(Appeals) allowed the appeal of the assessee following the judgment of Hon'ble jurisdictional High Court in the case of *Shri Biluru Gurubasappa Pattina Sahakari Sangha Niyamita (369 ITR 86)*.

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4. Aggrieved, the revenue is in appeal before us. The ld. DR placed reliance on the assessment order with the submission that a SLP has been filed against the judgment of Hon'ble jurisdictional High Court in the case of *Shri Biluru Gurubasappa Pattina Sahakari Sangha Niyamita (supra)*.

5. On the other hand, the ld. counsel for the assessee submitted that the assessee is a co-operative society registered under the Karnataka Co-operative Societies Act, 1959 and carrying on business of credit co-operative society. The surplus funds are deposited in bank and interest earned is claimed as exempt u/s. 80P. The ld. counsel for the assessee submitted that this issue is now covered by the judgment of the Hon'ble jurisdictional High Court in the case of *Tumkur Merchants Souharda Credit Co-operative Ltd. v. ITO in ITA No.307 of 2014 dated* 28.10.2014 wherein the Hon'ble High Court allowed the claim after considering the judgment of the Hon'ble Supreme Court in the case of *The Totgars Co-operative Sale Society, 322 ITR 272 (SC)*.

6. We have carefully examined the orders of lower authorities in the light of rival submissions. We find that the issue is squarely covered by the judgment of Hon'ble jurisdictional High in the case of *Tumkur Merchants Souharda Credit Co-operative Ltd. (supra)* wherein after considering the judgment of the Hon'ble Supreme Court in the case of *The Totgars Co-operative Sale Society (supra)*, it was held that the said interest income is attributable to carrying on the business of banking or providing credit

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facilities and therefore assessee is entitled to the deduction. The relevant paragraphs of the judgment of the Hon'ble High Court is extracted hereunder for the sake of reference:-

> "8. Therefore, the word "attributable to" is certainly wider in import than the expression "derived from". Whenever the legislature wanted to give a restricted meaning, they have used the expression "derived from". The expression "attributable to" being of wider import, the said expression is used by the legislature whenever they intended to gather receipts from sources other than the actual conduct of the business. A Cooperative Society which is carrying on the business of providing credit facilities to its members, earns profits and gains of business by providing credit facilities to its members. The interest income so derived or the capital, if not immediately required to be lent to the members, they cannot keep the said amount idle. If they deposit this amount in bank so as to earn interest, the said interest income is attributable to the profits and gains of the business of providing credit facilities to its members only. The society is not carrying on any separate business for earning such interest income. The income so derived is the amount of profits and gains of business attributable to the activity of carrying on the business of banking or providing credit facilities to its members by a co-operative society and is liable to be deducted from the gross total income under Section 80P of the Act.
>
> 9. In this context when we look at the judgment of the Apex Court in the case of M/s. Totgars Co-operative Sale Society Ltd., on which reliance is placed, the Supreme Court was dealing with a case where the assessee-Cooperative Society, apart from providing credit facilities to the members, was also in the business of marketing of agricultural produce grown by its members. The sale consideration received from marketing agricultural produce of its members was retained in many cases. The said retained amount which was payable to its members from whom produce was bought, was invested in a short-term deposit/security. Such an amount which was retained by the assessee-Society was a liability and it was shown in the balance sheet on the liability side. Therefore, to that extent, such interest

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income cannot be said to be attributable either to the activity mentioned in Section 80P(2)(a)(i) of the Act or under Section 80P(2)(a)(iii) of the Act. Therefore in the facts of the said case, the Apex Court held the assessing officer was right in taxing the interest income indicated above under Section 56 of the Act. Further they made it clear that they are confining the said judgment to the facts of that case. Therefore it is clear, Supreme Court was not laying down any law.

10. In the instant case, the amount which was invested in banks to earn interest was not an amount due to any members. It was not the liability. It was not shown as liability in their account. In fact this amount which is in the nature of profits and gains, was not immediately required by the assessee for lending money to the members, as there were no takers. Therefore they had deposited the money in a bank so as to earn interest. The said interest income is attributable to carrying on the business of banking and therefore it is liable to be deducted in terms of Section 80P(1) of the Act. In fact similar view is taken by the Andhra Pradesh High Court in the case of COMMISSIONER OF INCOME-TAX III, HYDERABAD VS. ANDHRA PRADESH STATE COOPERATIVE BANK LTD., reported in (2011) 200 TAXMAN 220/12. In that view of the matter, the order passed by the appellate authorities denying the benefit of deduction of the aforesaid amount is unsustainable in law. Accordingly it is hereby set aside. The substantial question of law is answered in favour of the assessee and against the revenue. Hence, we pass the following order:

Appeal is allowed.

The impugned order is hereby set aside. Parties to bear their own cost."

7. Respectfully following the judgment of Hon'ble jurisdictional High Court in the case of *Tumkur Merchants Souharda Credit Co-operative Ltd. (supra)*, we decide this issue in favour of the assessee and find no infirmity

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in the order of CIT(Appeals) allowing the benefit of deduction u/s. 80P to the assessee.

8. In the result, the appeal of revenue is dismissed.

Pronounced in the open court on this 22nd day of September, 2017.

Sd/-
(A. K. GARODIA)
Accountant Member

Sd/-
(SUNIL KUMAR YADAV)
Judicial Member

Bangalore,
Dated, the 22nd September, 2017.
/ Desai Smurthy /

Copy to:
1. Appellant 2. Respondent 3. CIT 4. CIT(A)
5. DR, ITAT, Bangalore. 6. Guard file

By order

Sd/-

Senior Private Secretary
ITAT, Bangalore.

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वरिष्ठ निजी सचिव
Senior Private Secretary
आयकर अपीलीय अधिकरण
Income Tax Appellate Tribunal
बेंगलूर / Bangalore.

Karnataka High Court
Lalitamba Pattina Souharda ... vs The Income Tax Officer on 19 February, 2018
Author: S.Sujatha And Cunha

:1:

IN THE HIGH COURT OF KARNATAKA
DHARWAD BENCH

DATED THIS THE 19TH DAY OF FEBRUARY, 2018

PRESENT

THE HON'BLE MRS. JUSTICE S. SUJATHA

AND

THE HON'BLE MR. JUSTICE JOHN MICHAEL CUNHA

ITA No.100004 OF 2018

BETWEEN:
LALITAMBA PATTINA SOUHARDA
SAHAKARI NIYAMITA,
REP. BY ITS CHIEF EXECUTIVE OFFICER
SRI VIVEK HANUMANTHRAO KULKARNI
VIVEKANAND ROAD, GANESH TEMPLE,
BEHIND PRASAD NURSING HOME,
GADAG - 582101,
PAN:AAATL5716G

... APPELLANT

(BY SRI. A. SHANKAR, ADV.)

AND:

THE INCOME TAX OFFICER,
WARD-1, AAYAKAR BHAVAN,
NEAR HATALGERI NAKA,
GADAG - 582101

...RESPONDENT

(BY SRI. Y.V.RAVIRAJ, ADV.)

THIS ITA IS FILED UNDER SECTION 260A OF THE INCOME-TAX ACT, 1961, PRAYING TO (A) TO FORMULATE THE SUBSTANTIAL QUESTION OF LAW AS STATED ABOVE AND ANSWER THE SAME IN FAVOUR OF THE APPELLANT AND (B) TO ALLOW THE APPEAL AND SET ASIDE THE ORDERS PASSED BY THE INCOME-TAX APPELLATE TRIBUNAL, "SMC-A BENCH, BANGALORE IN ITA NO.1590/BANG/2016 DATED 31.08.2017 FOR THE ASSESSMENT YEAR 2012-13 (VIDE ANNEXURE-A)

:2:

THIS APPEAL COMING ON FOR ADMISSION THIS DAY,
S.SUJATHA J., DELIVERED THE FOLLOWING:

JUDGMENT

This appeal is directed against the order of the Income Tax Appellate Tribunal "SMC-A" Bench : Bengaluru in ITA No.1590/Bang/2016 relating to the assessment year 2012-13, whereby, the appeal filed by the Assessee is dismissed confirming the order of the CIT (Appeals) as well as the assessment order.

2. The appellant is a Co-operative Society, registered under the Karnataka Souharda Sahakari Act, 1997 and is engaged in the business of accepting deposits from the members and providing credit facilities to its members only, as contended. In addition, it also carries on e-stamping business.

3. The appellant filed a return of income on 06.09.2012 declaring a total income of Rs.65,590/- after claiming deduction under Section 80P(2)(a)(i) of the Income Tax Act, 1961 (for short, 'the Act') at Rs.11,01,302/-. The appellant's case was selected for scrutiny. Notice under Section 143(2) of the Act was issued and served on the appellant. After hearing the appellant, the learned Assessing Officer passed an order under Section 143(3) of the Act determining the total income at Rs.25,08,170/-, denying the deductions under Section 80P(2)(a)(i) of the Act, for interest income earned on bank fixed deposits. Aggrieved by the same, the appellant preferred an appeal before the Commissioner of Income Tax (Appeals)-Hubballi, who partly allowed the appeal of the appellant upholding the order passed by the Assessing Officer inasmuch as denial of deductions under Section 80P(2)(a)(i). However accepted the claim of appellant of cost of fund and administrative expenses in respect of fund invested which had yielded interest income. Aggrieved by the same, to the extent it was against Assessee, the appeal was preferred before the Income Tax Appellate Tribunal, Bengaluru by the Assessee. The Tribunal after hearing the parties, dismissed the Appeal. Hence, this appeal by the Assessee. Relevant substantial questions of law raised are as under :

> 1. Whether the Tribunal was justified in law in holding that the interest income from bank deposits is not business income but is income from other sources and consequently denied the appellant deduction under Section 80P(2)(a)(i) of the Act, on the facts and circumstances of the case?
>
> 2. Whether the Tribunal was justified in law in holding that the appellant is not eligible for deduction under Section 80P(2)(a)(i) of the Act in respect of the interest income of Rs.24,83,504/- on the facts and in the circumstances of the case?
>
> 4. Learned counsel appearing for the assessee/appellant firstly argued that the Co-ordinate Bench judgment of this Court in I.T.A. No.307/2014 in the case of Tumkur Merchants Souharda Credit Co-operative Limited v. The Income Tax Officer, Tumkur, is squarely applicable to the facts of the present case. Section 80P(1) and 80P(2)(a)(i) of the Act reads thus :

"Deduction in respect of income of co-operative societies.

80P. (1) Where, in the case of an assessee being a co-operative society, the gross total income includes any income referred to in sub- section (2), there shall be deducted, in accordance with and subject to the provisions of this section, the sums specified in sub- section(2), in computing the total income of the assessee.

(2) The sums referred to in sub- section(1) shall be the following, namely :-

(a) in the case of a co-operative society engaged in -

(i) carrying on the business of banking or providing credit facilities to its members, or

(ii) xxx

(iii) xxx

(iv) xxx

(v) xxx

(vi) xxx

(vii) xxx the whole of the amount of profits and gains of business attributable to any one or more of such activities."

5. The phrase "attributable to" was considered by this Court in Tumkur Merchants Souharda Credit Co-

operative Limited supra, placing reliance on the Hon'ble Apex Court judgment in the case of Cambay Electric Supply Industrial Co. Ltd. v. Commissioner of Income- Tax, Gujarat-II reported in (1978) 113 ITR Page 842, it is held that "expression "attributable to" being is of wider import, the said expression is used by the Legislature whenever they intended to gather receipts from sources other than the actual conduct of the business. The society is not carrying on any separate business for earning such interest income. The income so derived is the amount of profits and gains of business attributable to the activity of carrying on the business of banking or providing credit facilities to its members of a Co-operative Society and is liable to be deducted from its gross total income under Section 80P of the Act". Thus, the learned counsel submits that the income derived from the interest is attributable to the activity of carrying on the business of Banking or providing credit facilities to its members by Co-operative Society and has to be deducted from the gross total income under Section 80P(2)(a)(i) of the Act.

6. Secondly, learned counsel submitted that the Assessing Officer computed the income at Rs.25,08,166/- rounded off to Rs.25,08,170/-. Considering the total income (as per return of income

filed) at Rs.65,590/-, it is the contention of the learned counsel that interest income on the F.D.R.s. namely F.D.R.s. Karnataka Bank Rs.11,08,505/-; F.D.R.s. Corporation Bank Rs.10,05,661/- and F.D.R.s. Ratnakar Bank Rs.3,38,647/- totaling to Rs.24,52,813/- was taken into account by the assessee, while computing the consolidated income and expenditure account wherein interest received is shown as Rs.1,21,52,715.58 ps. and the surplus for the current year being Rs.11,66,893.94 ps. In the details for interest received from the Bank on fixed deposits this amount of Rs.24,59,020.74 ps. was taken into account. The Assessing Officer, again adding this amount of Rs.24,52,813/- to determine the income at Rs.25,08,166/- is unsustainable.

7. Thirdly, it was submitted that the Tribunal proceeded to hold that the interest income is not business income and is income from other sources under Section 56 of the Act. The Tribunal failed to take note of the fact that the amounts are funded out of members deposits and consequently the same is business income in the facts and circumstances of the case.

8. Nextly, it was contended that Tribunal is not justified in not correctly determining the income from business and not giving set-off of such loss from regular business against the interest income determined under other sources. Thus, it is submitted that even not admitting, but assuming the judgment of the Hon'ble Apex Court in Totgar's Co-operative Sale Society Limited v. The Income Tax Officer, Sirsi, reported in (2010) 322 ITR 283 SC : (2010)3 SCC 223 is applicable to the facts of the case, in terms of paragraph 14 of the said judgment, the Tribunal ought to have examined whether it was right in law for the Tribunal that the income by way of interest on deposits held with Scheduled banks, bonds and other securities was chargeable to tax under Section 56 under the head 'Income from other sources' without allowing any deduction in respect of cost of funds and proportionate administrative and other expenses under Section 57 without considering the deduction to which the assessee is entitled to under Section 57 of the Act. The Authorities as well as the Tribunal proceeded to apply the judgment of M/s. Totgar's Co- operative Sale Society Limited supra, which according to the learned counsel is unjustifiable. Further it is submitted that this Court on remand made by the Hon'ble Apex Court in Totgar's Co-operative Sale Society Limited supra, remanded the matter to the Assessing Officer to do the factual exercise in respect of ascertaining the proportionate costs, administrative expenses incurred in respect of such deposits even concluding that the interest earned by the appellant therein is an income from other sources. Such being the position, the matter requires reconsideration by the Assessing Officer on these aspects. Hence the appeal deserves to be allowed answering the substantial questions of law in favour of the assessee.

9. Learned counsel Sri Y.V. Raviraj appearing for the Revenue would contend that the issue involved herein is no more res integra in view of the judgment of the Hon'ble Apex Court in Totgar's Co-operative Sale Society Limited supra, whereby the Hon'ble Apex Court has held that interest received only on investment by the Co-operative Societies in the Banks cannot be said to be attributable either to the activity mentioned in Section 80P(2)(a)(i) of the Act or in Section 80P(2)(a)(iii) of the Act. Such income has to be taxed under Section 56 of the Act. In view of the judgment of the Hon'ble Apex Court in Totgar's Co- operative Sale Society Limited supra, the Division Bench judgment of this Court in Tumkur Merchants Souharda Credit Co-operative Limited supra, cannot be made applicable to the case on hand. Hence, Commissioner of Income Tax (Appeals) as well as Tribunal rightly placing reliance on M/s. Totgar's Co-operative Sale Society

Limited supra, held that the assessee is not entitled to any deduction under Section 80P(2)(a)(i) of the Act.

10. Nextly, it is submitted that the Division Bench judgment of this Court in The Pr. Commissioner of Income Tax, Hubballi v. The Totgar's Co-operative Sale Society Ltd., in I.T.A. No. 100066/2016 and connected matters (D.D. 16.06.2017), has held that income by way of interest earned by the assessee - Co-operative Society on the investments made in the Co-operative Bank are not eligible for deduction under Section 80P(2)(d) of the Act. The same analogy applies for Section 80P(2)(a)(i) of the Act also.

11. However, the learned counsel fairly submits that the computation made by the Assessing Officer in arriving at the income of Rs.25,08,166/- adding the interest on the fixed deposit at Rs.24,52,813/- which was already taken into account by the assessee in the consolidated income and expenditure account in reflecting the interest received at Rs.1,21,52,715.58 ps. requires to be reconsidered. Similarly it is also submitted that in terms of the judgment of the Hon'ble Apex Court in the case of Totgar's Co-operative Sale Society Limited supra even the matter if remanded to the Assessing Officer for reconsideration to determine the proportionate cost of funds and administrative and other expenses to be deducted under Section 57 of the Act, the same would not be of any assistance to the assessee since the said expenditure has already been reflected in profit and loss account and has been claimed and given deduction by the Assessing Officer.

12. We have given our thoughtful consideration to the arguments advanced at the bar and perused the material on record.

13. The Co-ordinate Bench of this Court in Tumkur Merchants Souharda Credit Co-operative Limited supra has categorically observed that the interest earned by the society in investing in the Banks is attributable to the activity of carrying on business in the banking or providing credit facilities to its members by a Co-operative Society and is liable to be deducted from the gross total income under Section 80P of the Act. The judgment of the Hon'ble Apex Court in the case of Totgars Co-operative Sale Society Limited supra is also considered and distinguished. The view taken by the Andhra Pradesh High Court in the Commissioner of Income Tax -III, Hyderabad, v. Andhra Pradesh State Co-operative Bank Limited, reported in (2011) 200 Taxmann 220/12 is also considered whereby Andhra Pradesh High Court has held that the interest earned by the Co-operative Society by investing the fixed deposits in the Banks is entitled for deduction under Section 80P(2)(i)(a) of the Act. It is also pertinent to note that this judgment of the jurisdictional High Court in Tumkur Merchants Souharda Credit Co-operative Limited supra, has reached finality. As submitted by the learned counsel for the assessee, the applicability of this Tumkur Merchants Souharda Credit Co-operative Limited supra to the facts of the present case is not considered by the authorities in a right perspective. The Tribunal proceeded to hold that the Commissioner of Income Tax (Appeals) has considered the judgment of Tumkur Merchants Souharda Credit Co- operative Limited supra as well as M/s. Totgar's Co- operative Sale Society Limited supra and given the benefit of deduction under Section 80P on the interest or dividend received in respect of income by way of deposits with the Co- operative Banks from its investment. The Tribunal proceeded to consider the deduction given under Section 80P(2)(d) of the Act as the deduction under Section 80P(2)(a)(i) of the Act or in

other words deduction given under Section 80P(2)(d) of the Act would not further entitle the appellant/assessee to claim deduction under Section 80P(2)(a)(i) of the Act. These two provisions being entirely different and distinct, the Tribunal ought to have examined the applicability of Section 80P(2)(a)(i) of the Act in the facts and circumstances of the case. Deduction given under Section 80P(2)(d) of the Act would not disentitle the assessee to claim deduction under Section 80P(2)(a)(i) of the Act. Even assuming as submitted by the learned counsel for the assessee, M/s. Totgar's Co-perative Sale Society Limited supra is applicable to the facts and circumstances of the present case, it was obligatory on the part of the Tribunal being a last fact finding authority to examine the factual aspect in respect of the proportionate costs and administration expenses to be incurred by the appellant regarding the interest earned under Section 56 of the Act and the availability of deduction under Section 57 of the Act to the assessee. This exercise also not being done by the Tribunal merely upholding the order of the Commissioner of Income Tax as well as the Assessing Officer is wholly unsustainable.

14. The judgment relied upon by the learned counsel for the revenue in the case of Totgar's Co-perative Sale Society Limited supra, deals with Section 80P(2)(d). As aforesaid, Section 80P(2)(d) and Section 80P(2)(a)(i) of the Act being different, the said judgment is not squarely applicable to the facts of the present case. The applicability of Section 80P(2)(a)(i) of the Act has to be considered in terms of the said section. The authorities mixing up the issue of Section 80P(2)(a)(i) and Section 80P(2)(d) cannot reject the claim of the assessee under Section 80P(2)(a)(i) of the Act without giving a proper finding on the issue.

15. It is prima facie apparent on record that the Assessing Officer proceeded to compute the income of Rs.25,08,170/- despite the same being accounted by the assessee in the consolidated income and expenditure account for the income returned by the assessee at Rs.11,66,894/-. Income cannot be enhanced to Rs.25,00,000/- for the purpose of levying income tax without considering the actual figures arrived at by the assessee returned while declaring the taxable income. Hence, on this ground also the computation made by the Assessing Officer requires to be reconsidered.

16. For the aforesaid reasons, the order of the Tribunal as well as the authorities are set aside and the matter is remanded to the Assessing Officer for fresh consideration. All rights and contentions of the parties are left open. The Assessing Officer shall provide an opportunity of hearing to the assessee and pass appropriate orders in the light of the judgment of the Hon'ble Apex Court as well as this Court as referred to above, in an expedite manner.

17. In the circumstances, substantial question of law is not answered.

18. Appeal stands disposed of accordingly.

Sd/-

JUDGE Sd/-

JUDGE Svh/hnm

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 27TH DAY OF JUNE, 2014

PRESENT

THE HON'BLE MR. JUSTICE N KUMAR

AND

THE HON'BLE MR. JUSTICE B MANOHAR

ITA NO. 505/2013

BETWEEN:

1. The Commissioner of Income Tax
No.55/1, 'Shilashree',
Vidyarany Complex,
Vishveshwaranagar,
Mysore 570 008.

2. The Income Tax Officer
No.55/1, 'Shilpashree',
Vidhyaranya,
Vishveshwaranagar,
Mysore 570 008. **...Appellants**

(By Sri E.I. Sanmathi, Adv.)

AND:

Vasavi Multipurpose
Souharda Sahakari Niyamita,
VVS Bhavan,
Nekar Street,
Chikkamagalur. **...Respondent**

(By Sri K.R. Prasad, Adv.)

This ITA filed under Section 260-A of I.T. Act, 1961 arising out of order dated 10.05.2013 passed in ITA No.97/Bang/2013, for the Assessment year 2007-2008, praying to (i) formulate the substantial questions of law stated therein; (ii) set aside the appellate order dated 10.05.2013 passed by the ITAT, 'C' Bench, Bangalore in ITA No.97/Bang/2013.

This ITA coming on for hearing this day, ***N. KUMAR J*** delivered the following:

J U D G M E N T

This appeal is preferred by the revenue against the order passed by the Tribunal granting deduction under Section 80P of the Income Tax Act, 1961 (for short 'the Act') and also holding that the Commissioner of Income Tax committed an error in exercising its jurisdiction under Section 263 of the Act.

2. The two substantial questions of law which arise for consideration are as under:

(i) "Whether in the circumstances of the case, the Tribunal is right in holding that assessee is entitled for deduction under Section 80P ignoring provisions of Section 80P(4) read with Section 2(24)(viia) introduced in statute with effect from 01.04.2007?

(ii) Whether the Tribunal is right in cancelling order passed under Section 263 on the ground that the assessment order passed is not prejudicial to the interests of revenue, though detailed reasons were recorded in order under Section 263 as to how the assessment order passed is prejudicial to interest of revenue?"

3. Insofar as the first question of law is concerned, this Court had an occasion to consider the said question in ***ITA No.5006/2013*** dated ***05.02.2014*** in the case of ***THE COMMISSIONER OF INCOME TAX vs. SRI BILURU GURUBASAVA PATTINA SAHAKARI SANGHA NIYAMITHA,***

BAGALKOT, where, after referring to the relevant provisions of the Income Tax Act, and the banking Regulation Act, held as under:

> "If a Co-operative Bank is exclusively carrying banking business, then the income derived from the said business cannot be deducted in computing the total income of the assessee. The said income is liable for tax. A Co-operative bank as defined under the Banking Regulation Act includes the primary agricultural credit society or a primary co-operative agricultural rural development bank. The Legislature did not want to deny the said benefit to a primary agricultural credit society or a primary co-operative agricultural and rural development bank. They did not want to extend the said benefit to a co-operative bank which is exclusively carrying on banking business i.e., the purport of the amendment. If the assessee is not a Co-operative bank carrying on exclusively banking business and if it does not possess a license from the Reserve Bank of India to carry on business, then it is not a Co-operative bank. It is a Co-operative society which also carries on the business of

> lending money to its members which is covered under Section 80P(2)(a)(i) i.e., carrying on the business of banking for providing credit facilitates to its members. The object of the aforesaid amendment is not to exclude the benefit extended under Section 80P(i) to the society."

Therefore, the said issue was held in favour of the assessee and against the revenue.

4. Insofar as the second question of law is concerned, in the aforesaid judgment this Court has held, when status of the assessee is a co-operative society and not a co-operative bank, the order passed by the Assessing Authority extending the benefit of the exemption from payment of tax under Section 80P(2)(a)(i) of the Act is correct. There is no error. When there is no error, question of order being prejudicial would not arise and therefore, the order passed by the revisional authority is not at all with jurisdiction and rightly the tribunal entertained the appeal

against this order and set aside the said order. The same holds good even in this case.

5. Thus, the substantial question of law is answered in favour of the assessee and against the revenue.

(SD/-)
JUDGE

(SD/-)
JUDGE

VP/-

Not Official Copy

Income Tax Appellate Tribunal - Bangalore
Shree Siddeshwar Souhardha ... vs Department Of Income Tax on 24 July, 2015

IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCH 'C', BANGALORE

BEFORE ABRAHAM P. GEORGE, ACCOUNTANT MEMBER

AND

SHRI. VIJAYPAL RAO, JUDICIAL MEMBER

I.T.A No.503/Bang/2015
(Assessment Year : 2011-12)

Income tax Officer,
Ward - 1, Bagalkot .. Appellant

v.

Shree Siddeshwar Souhardha Sahakari Niyamit,
Near Bus stand, Belagi, District Bagalkot .. Respondent
PAN : AACAS9345R

Assessee by :None
Revenue by : Shri. Sunil Kumar Agarwal, JCIT

Heard on : 22.07.2015
Pronounced on : 24 .07.2015

ORDER

PER ABRAHAM P. GEORGE, ACCOUNTANT MEMBER :

In this appeal filed by Revenue, it is aggrieved that CIT (A) allowed the claim of assessee for deduction u/s.80P(2)(a)(i) of the Income-tax Act, 1961 ('the Act' in short), relying on the decision of Hon'ble High Court of Karnataka in CIT v. Sri Biluru Gurubasava Pattin Sahakari Sangh Niyamit, Bagalkot [ITA No.5006/2013, dt.05.02.2014].

02. Facts apropos are that assessee, a cooperative society had filed its return of income for relevant assessment year in which it had claimed deduction of ITA.503/Bang/2015 Page - 2 Rs.54,55,427/-, u/s.80P(2)(a)(i) of the Act. The Assessing Officer was of the opinion that the assessee fell within the definition of a cooperative bank given in clause (ccv) of Section 5 of the Banking Regulations Act, 1949. Therefore, according to him, sub-section (4) of section 80P stood attracted. The said sub-

section specifically stated that the provisions of section 80P would not apply to a cooperative bank. Though the assessee argued that it had transactions only with its members and not public, this contention was not accepted. According to the Assessing Officer even a section of the public was

good enough to be considered as 'service to the public'. Further, as per the Assessing Officer, the primary object of the assessee was transacting in banking business and its paid-

up share capital exceeded Rs.1 lakh. Its bye laws did not have a clause permitting admission of any other cooperative society as a member. He therefore held it to be a cooperative bank. According to the Assessing Officer, assessee was not eligible for a deduction u/s.80P(2)(i) of the Act.

03. Aggrieved, assessee moved in appeal before the CIT (A). Argument of assessee was that the amounts which were placed in deposits were having direct nexus with the amounts received as deposits from members. When there were no immediate need of the funds for loan disbursements, instead of keeping the funds idle, assessee had placed it with the banks as deposits. As per assessee, it was bound to pay interest to the members. Submission of assessee was that acceptance of deposits from its members, closure of such deposits and repayments were regular and routine feature of its business. As per assessee, ITA.503/Bang/2015 Page - 3 unless the funds which were remaining with it were placed in banks, it would not have been possible for it to pay the interest due to its members.

04. CIT (A) was impressed by the contentions raised by assessee and relying on the judgment of Hon'ble High Court of Karnataka in CIT v. Sri Biluru Gurubasava Pattin Sahakari Sangh Niyamit, Bagalkot (supra), held that assessee was entitled to exemption u/s.80P(2)(a)(i) of the Act.

05. Ld. DR strongly assailing the order of the CIT (A) submitted that source of the interest was deposits in the bank. According to him, only the immediate source was required to be seen and not the remote source. Hon'ble Apex Court was clear in this aspect in the decision of Totgar's Cooperative Sale Society Ltd., (supra). Here in the case of assessee, only a very small amount was lent by it to its members. It was not similar to a society which was carrying on credit business. Therefore according to him, claim for deduction u/s.80P(2)(a)(i) of the Act, on such interest was unjustified.

06. Nobody appeared on behalf of the assessee.

07. We have perused the orders and heard the Ld. DR There is no dispute that one of the main object of assessee society was providing credit facility to its members. AO himself has mentioned that this was the primary object for which assessee was incorporated. Nodoubt, out of substantial sum received as deposits from the members, only small portion were given by assessee as loans to its members. Major part of the funds were parked in FDs. However, it is an ITA.503/Bang/2015 Page - 4 admitted position that assessee was bound to give interest to its members on the deposits received by it from them. Therefore, when there were no takers for the money, which assessee as a part of its objects wanted to lend, the only available choice for assessee, in order not to keep the funds idle, was to place it in banks for earning interest. Hon'ble jurisdictional High Court in the case of CIT v.

Tumkur Merchants Souharda Credit Cooperative Ltd (ITA.307 of 2014, dt.28.10.2014), which was also in relation to a cooperative society having as its object, business of providing business credits to its members, held as under at paras 3 to 10 of the judgement dt.28.10.2014 :

"4. The learned counsel for the assessee assailing the impugned order contended, the interest accrued in a sum of Rs.1,77,305/- is from the deposits made by the assessee in a nationalized bank out of the amounts which was used by the assessee for providing credit facilities to its members and therefore the said interest amount is attributable to the credit facilities provided by the assesseeand forms part of profits and gains of business and therefore he submits the appellate authorities were not justified in denying the said benefit in terms of Sub-sec.(2) of Section 80P of the Act. In support of his contentions, he relied on several judgments and pointed out that the Apex Court in the aforesaid judgment has not laid down any law.

5. Per contra, learned counsel for the Revenue strongly relied on the said judgment of the Supreme Court and submitted, the case is covered by that judgment of the Apex Court and no case for interference is made out.

6. From the aforesaid facts and rival contentions, the undisputed facts which emerges is, the sum of Rs. 1,77,305/- represents the interest earned from short-term deposits and from savings bank account. The assessee is a Cooperative Society providing credit facilities to its members. It is not carrying on any other business. The interest income earned by the assessee by providing credit facilities to its members is deposited in the banks for a short duration which has earned interest.

Therefore, whether this interest is attributable to the business of providing credit facilities to its members, is the question. In this regard, ITA.503/Bang/2015 Page - 5 it is necessary to notice the relevant provision of law ie., Section 80P(2)(a)(i):

"Deduction in respect of income of co-operative societies:

80P (1) Where, in the case of an assessee being a co-operative society, the gross total income includes any income referred to in sub-section (2), there shall be deducted, in accordance with and subject to the provisions of this section, the sums specified in sub- section (2), in computing the total income of the assessee.

(2) The sums referred to in sub-section (1) shall be the following, namely:

(a) in the case of co-operative society engaged in --

(i))carrying on the business of banking or providing credit facilities to its members, or

(ii) xxx

(iii) xxx

(iv) xxx

(v) xxx

(vi) xxx

(vii) xxx the whole of the amount of profits and gains of business attributable to any one or more of such activities."

7. The word 'attributable' used in the said section is of great importance. The Apex Court had an occasion to consider the meaning of the word 'attributable' as supposed to derive from its use in various other provisions of the statute in the case of CAMBAY ELECTRIC SUPPLY INDUSTRIAL CO. LTD. VS.

COMMISSIONER OF INCOME-TAX, GUJARAT-ll reported in ITR VOL. 113 (1978) PAGE 842 at page 93 as under:

"As regards the aspect emerging from the expression "attributable to" occurring in the phrase "profits and gains attributable to the business of the specified industry here generation and distribution of electricity on which the learned Solicitor-General relied, it will be pertinent to observe that the legislature has deliberately used the expression "attributable to" and not the expression "derived from". It cannot be disputed that the expression "attributable to" is certainly wider in import than the expression "derived from". Had the expression "derived from" been used, it could have with some force been ITA.503/Bang/2015 Page - 6 contended that a balancing charge arising from the sale of old machinery and buildings cannot be regarded as profits and gains derived from the conduct of the business of generation and distribution of electricity. In this connection, it may be pointed out that whenever the legislature wanted to give a restricted meaning in the manner suggested by the learned Solicitor General, it has used the expression "derived from", as, for instance, in section 80J. In our view, since the expression of wider import, namely, "attributable to", has been used, the legislature intended to cover receipts from sources other than the actual conduct of the business of generation and distribution of electricity."

8. Therefore, the word "attributable to" is certainly wider in import than the expression "derived from". Whenever the legislature wanted to give a restricted meaning, they have used the expression "derived from". The expression "attributable to" being of wider import, the said expression is used by the legislature whenever they intended to gather receipts from sources other than the actual conduct of the business. A Cooperative Society which is carrying on the business of providing credit facilities to its members, earns profits and gains of business by providing credit facilities to its members. The interest income so derived or the capital, if not immediately required to be lent to the members, they cannot keep the said amount idle. If they deposit this amount in bank so as to earn interest, the said interest income is attributable to the profits and gains of the business of providing credit facilities to its members only. The society is not carrying on any separate business for earning such interest income. The income so derived is the amount of profits and gains of business attributable to the activity of carrying on the business of banking or providing credit facilities to its members by a co-operative society and is liable to be deducted from the gross total income under Section 80P of the Act.

9. In this context when we look at the judgment of the Apex Court in the case of M/s. Totgars Co-operative Sale Society Ltd., on which reliance is placed, the Supreme Court was dealing with a case where the Society, apart from providing credit facilities to the members, was also in the business of marketing of agricultural produce grown by its members. The sale consideration received from marketing agricultural produce of its members was retained in many cases. The said retained amount which was payable to its members from whom produce was bought, was invested in a short-term deposit/security. Such an amount which was retained by the assessee Society was a liability and it was

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shown in the balance sheet on the liability side. Therefore, to that extent, such interest income cannot ITA.503/Bang/2015 Page - 7 be said to be attributable either to the activity mentioned in section 80P(2)(a)(i) of the Act or under Section 80P(2)(a)(iii) of the Act. Therefore in the facts of the said case, the Apex Court held the assessing officer was right in taxing the interest income indicated above under Section 56 of the Act. Further they made it clear that they are confining the said judgment to the facts of that case. Therefore it is clear, Supreme Court was not laying down any law.

10. In the instant case, the amount which was invested in banks to earn interest was not an amount due to any members. It was not the liability. It was not shown as liability in their account. In fact this amount which is in the nature of profits and gains, was not immediately required by the assessee for lending money to the members, as there were no takers. Therefore they had deposited the money in a bank so as to earn interest. The said interest income is attributable to carrying on the business of banking and therefore it is liable to be deducted in terms of Section 80P(1) of the Act. In fact similar view is taken by the Andhra Pradesh High Court in the case of COMMISSIONER OF INCOME- TAX III, HYDERABAD vs. ANDHRA PRADESH STATE COOPERATIVE BANK LTD., reported in (2011) 200 TAXMAN 220/12 In that view of the matter, the order passed by the appellate authorities denying the benefit of deduction of the aforesaid amount is unsustainable in law. Accordingly it is hereby set aside. The substantial question of law is answered in favour of the assessee and against the revenue. Hence, we pass the following order.

Appeal is allowed."

08. We are of the opinion that in view of the judgement of Hon'ble jurisdictional High Court reproduced above, where in at para 10, it has been clearly mentioned that the money meant for lending, remaining surplus, there being no takers, if deposited in banks for earning interest, such interest income would be attributable to the business of banking carried out by the assessee. We are of the opinion that the facts of the case here fit perfectly well with the facts in the judgment mentioned above. We, therefore, hold that assessee was eligible for claiming deduction u/s.80P(2)(a)(i) of the Act, on the interest earned ITA.503/Bang/2015 Page - 8 on the FDs placed by it with banks, this being a part of its business income. We do not find it necessary to interfere with the order of the CIT (A).

10. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open court on 24th day of July, 2015.

Sd/-	Sd/-
(VIJAYPAL RAO)	(ABRAHAM P GEORGE)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH : BANGALORE

BEFORE SHRI SUNIL KUMAR YADAV, JUDICIAL MEMBER
AND SHRI A. K. GARODIA, ACCOUNTANT MEMBER

ITA No.28/Bang/2017
Assessment year : 2012-13

The Income Tax Officer, Ward 7(2)(2), Bangalore.	Vs.	M/s. Shree Vemana Souharda Credit Co-operative Ltd., No.127/34, 7th Cross, 4th Main, Wilson Garden, Bangalore – 560 027. **PAN: AAGAS 8075C**
APPELLANT		RESPONDENT

Appellant by	:	Smt. H.L. Soumya, Addl. CIT(DR)
Respondent by	:	Shri Madhukar G. Hegde, CA

Date of hearing	:	19.09.2017
Date of Pronouncement	:	22.09.2017

ORDER

Per Sunil Kumar Yadav, Judicial Member

This appeal is filed by the revenue against the order of the CIT(Appeals) *inter alia* on the following grounds:-

"1. The order of the learned CIT(A) is opposed to law and facts of the case.

2. Whether on the facts and circumstances of the case, the CIT(A) was justified in law in allowing deduction u/s.80P(2)(a)(i) of the Act to the co-operative society carrying on the business of baking, inspite of the fact that clause no.(4) of section 80P inserted with effect from

Ministry of Law & Justice
Income Tax Appellate Tribunal

01.04.2007 clearly bars the co-operative society from the above deduction, other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank.

3. Whether on the facts and circumstances of the case, the CIT(A) was justified in law in holding that the assessee is entitled to deduction under section 80P(2) in respect of interest earned from investments by not taking into consideration the judgement of the Hon'ble High Court of Karnataka in the case of M/s. The Totagar Co-operative Sale Society Ltd (2010) 188 taxmann 282?

4. Whether the CIT(A) is correct in law in following the judgments of jurisdictional High Court, Dharwad Bench in the case of Sri Biluru Gurubasava Pattina Sahakari Sangha Niyamitha, Bagalkot in ITA No. 5006/2013, which has not become final since the same has not been accepted by the Department and SLPs are pending before the Hon'ble Supreme Court.

5. For these and other grounds that may be urged at the time of hearing, it is prayed that the order of the CIT(A) in so far as it relates to the above grounds may be reversed and that of the Assessing Officer may be restored.

6. The appellant craves leave to add, alter, amend and/or delete any of the grounds mentioned above.

2. The brief facts borne out from the record are that the AO during the assessment proceedings noted that the assessee has deposited the surplus funds in the Bank and interest out of the surplus funds invested amounting to Rs.6,37,104 was claimed as exemption u/s. 80P. The AO relying on the decision of the Hon'ble Supreme Court in the case of *Totagars Co-operative Sales Society Ltd. v. ITO, 188 Taxmann 282 (SC)* held that interest earned on surplus fund invested in short term deposits

with banks other than co-operative banks/societies are not eligible for deduction u/s. 80P.

3. On appeal by the assessee, the CIT(Appeals) allowed the appeal of the assessee following the judgment of Hon'ble jurisdictional High Court in the case of *Shri Biluru Gurubasappa Pattina Sahakari Sangha Niyamita (369 ITR 86)*.

4. Aggrieved, the revenue is in appeal before us. The ld. DR placed reliance on the assessment order who has followed the judgment of the Hon'ble Supreme Court in the case of *The Totgars Co-operative Sale Society (322 ITR 283(SC)*.

5. On the other hand, the ld. counsel for the assessee submitted that the assessee is a co-operative registered under the Karnataka Souharda Sahakari Act, 1997 and carrying on business of providing credit facilities to its members. The surplus funds are deposited in bank and interest earned is claimed as exempt u/s. 80P. The ld. counsel for the assessee submitted that this issue is now covered by the judgment of the Hon'ble jurisdictional High Court in the case of *Tumkur Merchants Souharda Credit Co-operative Ltd. v. ITO in ITA No.307 of 2014 dated* 28.10.2014 wherein the Hon'ble High Court allowed the claim after considering the judgment of the Hon'ble Supreme Court in the case of *The Totgars Co-operative Sale Society, 322 ITR 272 (SC)*.

6. We have carefully examined the orders of lower authorities in the light of rival submissions. We find that the issue is squarely covered by the judgment of Hon'ble jurisdictional High in the case of *Tumkur Merchants Souharda Credit Co-operative Ltd. (supra)* wherein after considering the judgment of the Hon'ble Supreme Court in the case of *The Totgars Co-operative Sale Society (supra)*, it was held that the said interest income is attributable to carrying on the business of banking or providing credit facilities and therefore assessee is entitled to the deduction. The relevant paragraphs of the judgment of the Hon'ble High Court is extracted hereunder for the sake of reference:-

> "8. Therefore, the word "attributable to" is certainly wider in import than the expression "derived from". Whenever the legislature wanted to give a restricted meaning, they have used the expression "derived from". The expression "attributable to" being of wider import, the said expression is used by the legislature whenever they intended to gather receipts from sources other than the actual conduct of the business. A Cooperative Society which is carrying on the business of providing credit facilities to its members, earns profits and gains of business by providing credit facilities to its members. The interest income so derived or the capital, if not immediately required to be lent to the members, they cannot keep the said amount idle. If they deposit this amount in bank so as to earn interest, the said interest income is attributable to the profits and gains of the business of providing credit facilities to its members only. The society is not carrying on any separate business for earning such interest income. The income so derived is the amount of profits and gains of business attributable to the activity of carrying on the business of banking or providing credit facilities to its members by a co-operative society and is liable to be deducted from the gross total income under Section 80P of the Act.

9. In this context when we look at the judgment of the Apex Court in the case of M/s. Totgars Co-operative Sale Society Ltd., on which reliance is placed, the Supreme Court was dealing with a case where the assessee-Cooperative Society, apart from providing credit facilities to the members, was also in the business of marketing of agricultural produce grown by its members. The sale consideration received from marketing agricultural produce of its members was retained in many cases. The said retained amount which was payable to its members from whom produce was bought, was invested in a short-term deposit/security. Such an amount which was retained by the assessee-Society was a liability and it was shown in the balance sheet on the liability side. Therefore, to that extent, such interest income cannot be said to be attributable either to the activity mentioned in Section 80P(2)(a)(i) of the Act or under Section 80P(2)(a)(iii) of the Act. Therefore in the facts of the said case, the Apex Court held the assessing officer was right in taxing the interest income indicated above under Section 56 of the Act. Further they made it clear that they are confining the said judgment to the facts of that case. Therefore it is clear, Supreme Court was not laying down any law.

10. In the instant case, the amount which was invested in banks to earn interest was not an amount due to any members. It was not the liability. It was not shown as liability in their account. In fact this amount which is in the nature of profits and gains, was not immediately required by the assessee for lending money to the members, as there were no takers. Therefore they had deposited the money in a bank so as to earn interest. The said interest income is attributable to carrying on the business of banking and therefore it is liable to be deducted in terms of Section 80P(1) of the Act. In fact similar view is taken by the Andhra Pradesh High Court in the case of COMMISSIONER OF INCOME-TAX III, HYDERABAD VS. ANDHRA PRADESH STATE COOPERATIVE BANK LTD., reported in (2011) 200 TAXMAN 220/12. In that view of the matter, the order passed by the appellate authorities denying the benefit of deduction of the aforesaid amount is unsustainable in law. Accordingly it is hereby set aside. The substantial question of law is answered in favour of the assessee and against the revenue. Hence, we pass the following order:

Appeal is allowed.

The impugned order is hereby set aside. Parties to bear their own cost."

7. Respectfully following the judgment of Hon'ble jurisdictional High Court in the case of *Tumkur Merchants Souharda Credit Co-operative Ltd. (supra)*, we decide this issue in favour of the assessee and find no infirmity in the order of CIT(Appeals) allowing the benefit of deduction u/s. 80P to the assessee.

8. In the result, the appeal of revenue is dismissed.

Pronounced in the open court on this 22nd day of September, 2017.

Sd/-
(A. K. GARODIA)
Accountant Member

Sd/-
(SUNIL KUMAR YADAV)
Judicial Member

Bangalore,
Dated, the 22nd September, 2017.
/ Desai Smurthy /

Copy to:
1. Appellant 2. Respondent 3. CIT 4. CIT(A)
5. DR, ITAT, Bangalore. 6. Guard file

By order

Senior Private Secretary
ITAT, Bangalore.

प्रमाणित प्रति
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IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 27TH DAY OF JUNE, 2014

PRESENT

THE HON'BLE MR. JUSTICE N KUMAR

AND

THE HON'BLE MR. JUSTICE B MANOHAR

ITA No. 598/2013

BETWEEN:

1. The Commissioner of Income Tax
C. R. Building,
Queens Road,
Bangalore.

2. The Income Tax Officer
Ward – 4(1),
C.R. Building,
Queens Road,
Bangalore. **...Appellants**

(By Sri Kamaladhar. G, Adv.)

AND:

M/s. Bangalore Credit
Co-operative Society Ltd.,
No.723, New No. 37/1,

36th Cross,
7th Main, 4th Block,
Jayanagar,
Bangalore 560 011. **...Respondent**

(By Sri A. Shankar & Sri M. Lava, Advs.)

This ITA filed under Section 260-A of I.T. Act, 1961 arising out of order dated 13.06.2013 passed in ITA No.1659/Bang/2012, for the Assessment year 2009-10, praying to (i) formulate the substantial questions of law stated therein; (ii) set aside the order passed by the ITAT, Bangalore in ITA No.1659/Bang/2012 dated 13.06.2013 confirming the order of the Appellate Commissioner and confirm the order passed by the Income Tax Officer, Ward-4(1), Bangalore.

This ITA coming on for admission this day, ***N. KUMAR J*** delivered the following:

J U D G M E N T

This appeal is preferred by the revenue challenging the order passed by the Tribunal, wherein it is held that sub-section (4) of Section 80P of the Income Tax Act, 1961 is applicable only to co-operative banks and not to credit co-operative societies.

2. The substantial questions of law which are raised in the appeal are as under:

(i) Whether the Tribunal was correct in upholding the CIT(A)'s order directing the assessing officer to grant deduction under Section 80P(2)(a)(i) of the Act of Rs.70,58,624/- for assessment year 2009-10 by relying on the earlier order of ITAT on identical issue without appreciating that the revenue had not accepted the said order and an appeals under Section 260A is pending before this Hon'ble Court for adjudication?

(ii) Whether the Tribunal is correct in holding that the assessee is not a Co-operative Bank but only a Co-operative society engaged in providing credit facilities to its members?

(iii) Whether the Tribunal was correct in not appreciating the facts that the main motto of the co-operative society is lending for its members which is in the nature of banking transaction, treated on par as per the new clause introduced in the definition of income to section 2(24)(viia) and comes

under the purview of 80P sub-section (4) of the Act as inserted in Finance Act 2006 with effect from 01.04.2007?

(iv) Whether the Tribunal was correct in holding that the provision of sub-section (4) of Section 80P of the Income-tax Act are applicable only to co-operative banks and not to credit co-operative societies, which are engaged in business of banking, including providing credit facilities to their members?

(v) Whether the Tribunal was correct in holding that the assessee is a c-operative society and not a co-operative bank in terms of sub-section (4) of Section 80P of the Income Tax Act without considering the meaning of Co-operative Bank as envisaged under Part V of Banking Regulation Act, 1949 wherein it is defined that Co-operative Bank includes primary co-operative Bank, which is further defined as co-operative society with the primary object of transactions of Banking business?"

3. The Tribunal in its order has set out the difference between the co-operative bank and society as under:

Nature	Co-operative society registered under Banking Regulation Act, 1949	Co-operative Society registered under Karnataka Co-operative Society Act, 1959
Registration	Under the Banking Regulation Act, 1949 and Co-operative Societies Act, 1959	Co-operative Societies Act, 1959
Nature of business	1. As defined in Section 6 of Banking Regulation Act. 2. Can open savings bank account, current account, overdraft account, cash credit account, issue letter of credit, discounting bills of exchange, issue cheques, demand drafts (DD), Pay orders, Gift cheques, lockers, bank guarantees etc. 3. Co-operative Banks can act as clearing agent for cheques, DDs, pay orders and other forms. 4. Banks are bound to	1. As per the bye laws of the co-operative society. 2. Society cannot open savings bank account, current account, issue letter of credit, discounting bills of exchange, issue cheque, demand drafts, pay orders, gift cheques, lockers, bank guarantees etc. 3. Society cannot act clearing agent, for cheques, DDs, pay orders and

	follow the rules, regulations and directions issued by Reserve Bank of India (RBI)	other forms. 4. Society are bound by rules and regulations as specified by in the co-operative societies act.
Filing of returns	Co-operative banks have to submit annual return to RBI every year	Society has to submit the annual return to Registrar of Societies.
Inspection	RBI has the power to inspect accounts and over all functioning of the Bank	Registrar has the power to inspect accounts and over all functioning of the bank.
Part V	Part V of the Banking Regulation Act is applicable to co-operative banks	Part V of the Banking Regulation Act is not applicable to co-operative banks.
Use of words	The word 'bank' 'banker', 'banking' can be used by a co-operative bank.	The word 'bank' 'banker', 'banking' cannot be used ay a co-operative society

4. This Court had an occasion to consider the said questions in ***ITA No.5006/2013*** dated ***05.02.2014*** in the case of ***THE COMMISSIONER OF INCOME TAX vs. SRI BILURU GURUBASAVA PATTINA SAHAKARI SANGHA NIYAMITHA, BAGALKOT,*** where, after referring to the

relevant provisions of the Income Tax Act, and the banking Regulation Act, held as under:

> "If a Co-operative Bank is exclusively carrying banking business, then the income derived from the said business cannot be deducted in computing the total income of the assessee. The said income is liable for tax. A Co-operative bank as defined under the Banking Regulation Act includes the primary agricultural credit society or a primary co-operative agricultural rural development bank. The Legislature did not want to deny the said benefit to a primary agricultural credit society or a primary co-operative agricultural and rural development bank. They did not want to extend the said benefit to a co-operative bank which is exclusively carrying on banking business i.e., the purport of the amendment. If the assessee is not a Co-operative bank carrying on exclusively banking business and if it does not possess a license from the Reserve Bank of India to carry on business, then it is not a Co-operative bank. It is a Co-operative society which also carries on the business of lending money to its members which is covered

> under Section 80P(2)(a)(i) i.e., carrying on the business of banking for providing credit facilitates to its members. The object of the aforesaid amendment is not to exclude the benefit extended under Section 80P(i) to the society."

Therefore, the said issue was held in favour of the assessee and against the revenue.

5. The said judgment answers the issues in this case also. Accordingly, we pass the following order.

The appeal is dismissed. The substantial questions of law are answered in favour of the assessee and against the revenue.

(sd/-)
JUDGE

(sd/-)
JUDGE

VP/-

CR 50975/14

Patil Shashikala

IN THE HIGH COURT OF KARNATAKA
DHARWAD BENCH

DATED THIS THE 5TH DAY OF FEBRUARY 2014

PRESENT

THE HON'BLE MR.JUSTICE N.KUMAR

AND

THE HON'BLE MR.JUSTICE C.R.KUMARASWAMY

INCOME TAX APPEAL NO.5006/2013

BETWEEN:

1. THE COMMISSIONER OF INCOME TAX
   DR. B. R. AMBEDKAR ROAD
   BELGAUM

2. THE INCOME TAX OFFICER
   WARD I, BAGALKOT ...APPELLANTS

(BY SRI. Y. V. RAVIRAJ, ADVOCATE)

A N D :

SRI BILURU GURUBASAVA PATTINA
SAHAKARI SANGHA NIYAMITHA
BAGALKOT ...RESPONDENT

(BY SRI. A. SHANKAR, ADVOCATE)

- - - - - - - -

THIS APPEAL IS FILED UNDER SECTION 260A OF THE INCOME-TAX ACT, 1961 AGAINST THE ORDER PASSED IN ITA.NO.514/BANG./2012 DATED

HIGH COURT OF KARNATAKA
DHARWAD BENCH

This Certified Copy Contains 11 Pages
and Copying Charges of Rs. 33 is received
in Cash.

28.02.2013 ON THE FILE OF THE INCOME TAX APPELLATE TRIBUNAL, BANGALORE BENCH 'B', BANGALORE, ALLOWING THE APPEAL FILED BY THE ASSESSEE'S FOR ASSESSMENT YEAR 2007-08.

THIS APPEAL COMING ON FOR ADMISSION THIS DAY, **N.KUMAR J.,** DELIVERED THE FOLLOWING:

JUDGMENT

The Revenue has preferred this appeal against the order passed by the Tribunal setting-aside the order passed by the Commissioner of Income Tax under Section 263 of the Income Tax Act, 1961 (hereinafter referred to as the 'Act').

2. The assessee is a Credit Co-operative Society engaged in providing credit facilities to its members. It has filed returns of the income for the assessment year 2007-08 claiming deduction under Section 80P(2)(a)(i) amounting to Rs.2,04,03,878/- (Rupees Two Crore Four Lakh Three Thousand Eight Hundred and Seventy Eight only). The Assessing Officer has passed assessment under Section 143(3) of the Act on 29.12.2009

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DHARWAD BENCH

disallowing to the tune of Rs.1,66,47,180/- (Rupees One Crore Sixty Six Lakh Forty Seven Thousand One Hundred and Eighty only) in respect of interest received from Gem Sugars Limited, Bilagi Sugars Limited and Nirani Cements Limited. However, the Assessing Officer allowed deduction under Section 80P(2)(a)(i) to the extent of Rs.1,93,73,000/- (Rupees One Crore Ninety Three Lakh Seventy Three Thousand only).

3. The Commissioner of Income Tax invoking his power under Section 263 of the Act, issued notice to the assessee calling upon him to show-cause as to why the order of assessment should not be set-aside in view of Section 80P(4) of the Act. After service of notice, the assessee entered appearance and brought to the notice of the authority that the assessee is not a Co-operative bank and therefore, Section 80P(4) has no application to the case of the assessee. However, the Revisional Authority was of the view that the assessing authority

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DHARWAD

has not considered the application of Section 80P(4) which was inserted with effect from 01.04.2007 and therefore, he set-aside the order of assessment and remanded the matter back to the Assessing Authority to consider the applicability of the aforesaid provision.

4. Aggrieved by the said order, the assessee preferred an appeal before the Tribunal.

5. The Tribunal held that as the assessee is not a Co-operative Bank, Section 80P(4) has no application. Moreover, the power under Section 263 of the Act could be invoked by the Revisional Authority only, if the order is erroneous and thereby is prejudicial to the interest of revenue. In the instant case, as the assessee is not a Co-operative Bank i.e. there is no error committed by the Assessing authority much less, the said order was prejudicial to the interest of revenue and therefore, the order passed by the Revisional Authority was set-aside.

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DHARWAD BENCH

6. Aggrieved by the said order, the Revenue has preferred this appeal.

7. The only substantial question of law which arises for our consideration in this appeal is:-

In the facts and circumstances of this case, whether the Revisional Authority was justified in invoking his power under Section 263 of the Act without the foundational fact of assessee being Co-operative bank was not there?

8. In the assessment order, the Assessing authority has clearly stated that the assessee is a Co-operative society and has not obtained any banking license. The business of the assessee is to provide credit facilities to its members. Since the assessee cannot carry on any banking business, the interest on investment is taxable as income from other source. Therefore, the aforesaid facts, which is not in dispute clearly establishes that it is not a Co-operative Bank.

HIGH COURT OF KARNATAKA

Infact, the Revisional Authority also in its order has categorically stated that the assessee is a Co-operative society, which provides credit facilities. Section 80P of the Act deals with the deduction of income of a society. In the case of any assessee being a Co-operative society, the whole of the amounts of profits and gains of business attributable to any of other activities referred to sub-section (2) of Section 80P shall be deducted in computing the total income of the assessee. In other words, the said income is not taxable. It is a benefit given to the Co-operative society. Section 80P(4) was introduced by Finance Act, 2006 with effect from 01.04.2007 excluding the said benefit to a Co-operative Bank. The said provision reads as under:-

> *"(4) The provisions of this section shall not apply in relation to any co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank.*

HIGH COURT OF KARNATAKA DHARWAD BENCH

(a) *"co-operative bank" and "primary agricultural credit society" shall have the meanings respectively assigned to them in Part V of the Banking Regulation Act, 1949 (10 of 1949);*

(b) *"primary co-operative agricultural and rural development bank" means a society having its area of operation confined to a taluk and the principal object of which is to provide for long-term credit for agricultural and rural development activities."*

Therefore, the intention of the legislature is clear. If a Co-operative Bank is exclusively carrying on banking business, then the income derived from the said business cannot be deducted in computing the total income of the assessee. The said income is liable for tax. A Co-operative bank as defined under the Banking Regulation Act includes the primary agricultural credit society or a primary co-operative agricultural and rural development bank. The Legislature did not want to deny the said benefits to a primary agricultural credit society or a primary co-operative agricultural and rural

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DHARWAD BENCH

development bank. They did not want to extend the said benefit to a Co-operative bank which is exclusively carrying on banking business i.e. the purport of this amendment. Therefore, as the assessee is not a Co-operative bank carrying on exclusively banking business and as it does not possess a licence from Reserve Bank of India to carry on business, it is not a Co-operative bank. It is a Co-operative society which also carries on the business of lending money to its members which is covered under Section 80P(2)(a)(i) i.e. carrying on the business of banking for providing credit facilities to its members. The object of the aforesaid amendment is not to exclude the benefit extended under Section 80P(1) to such society. Therefore, there was no error committed by the Assessing Authority. The said order was not prejudicial to the interest of the Revenue. The condition precedent for the commissioner to invoke the power under Section 263 is that the twin condition should be

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satisfied. The order should be erroneous and it should be prejudicial to the interest of the revenue.

9. This Court had an occasion to consider Section 263 of the Act in the case of - **COMMISSIONER OF INCOME-TAX AND ANOTHER V. DIGITAL GLOBAL SOFT LTD. [2013] 354 ITR 489 (Karn)** where paragraph-18, it has held as under:

> *"As is clear from the wording in section 263, the Commissioner gets the jurisdiction to revise any proceedings under this Act if he considers that any order passed therein by the Assessing Officer is erroneous in so far as it is prejudicial to the interests of the Revenue. Therefore, it is clear that he cannot exercise the power of revision solely on the ground that the order passed is erroneous. He gets jurisdiction only if such erroneous order is prejudicial to the interest of the Revenue. "Prejudicial to the Revenue" means, lawful revenue due to the State has not been realized or cannot be realized. In other words, by the order of the assessing authority*

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if the lawful revenue to the State has not been realized or cannot be realized, as the said order is prejudicial to the interests of the Revenue and also erroneous, he gets jurisdiction to interfere with the said order under section 263. Therefore, for attracting section 263, the condition precedent is (a) the order of the Assessing Officer sought to be revised is erroneous, and (b) it is prejudicial to the interests of the Revenue. If one of them is absent, i.e., if the order of the Income-tax Officer is erroneous but is not prejudicial to the Revenue, recourse cannot be had to section 263(1) of the Act. The satisfaction of both the conditions stipulated in the section is the sine qua non for the Commissioner to exercise his jurisdiction under Section 263."

In the instant case, when the status of the assessee is a Co-operative society and is not a Co-operative bank, the order passed by the Assessing Authority extending the benefit of exemption from payment of tax under Section 80P(2)(a)(i) of the Act is correct. There is no error. When there is no error, the

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question of order being prejudicial would not arise. The Tribunal has rightly entertained the appeal and set-aside the order. Therefore, the said order is in accordance with law and cannot be found fault with. The substantial question of law is answered in favour of the assessee and against the revenue.

SD/-
JUDGE

SD/-
JUDGE

HIGH COURT OF KARNATAKA DB BENCH

(a) The date on which the application was made ..... 05/02/14 .....

(b) The date on which charges and additional charges, if any, are called for..... - .....

'c) The date on which charges and additional charges, if any are deposited / Paid..... 01/03/14

(d) The date on which the copies ready..... 01/03/14

(e) The date of notifying the copy is ready for delivery..... 03.03.14.

(f) The date on which the applicant is required to appear on or before.....

(g) The date on which copy is delivered to the applicant..... 01/03/14

(h) Examined by.....

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Section Officer
Copying Branch
High Court of Karnataka
Bench, Dharwad.

IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH : BANGALORE

BEFORE SHRI N.V. VASUDEVAN, JUDICIAL MEMBER
AND SHRI JASON P. BOAZ, ACCOUNTANT MEMBER

ITA No.72/Bang/2013
Assessment year : 2009-10

The Income Tax Officer, Ward 4(1), Bangalore.	Vs.	M/s. Divyajyothi Credit Co-operative Society Ltd., No.39, 8th Main, Jayanagar III Block, Bangalore – 560 011. **PAN: AAAAD 2194B**
APPELLANT		RESPONDENT

Appellant by	:	Shri L.V. Bhaskara Reddy, Jt.CIT(DR)
Respondent by	:	None

Date of hearing	:	05.02.2014
Date of Pronouncement	:	07.02.2014

O R D E R

Per N.V. Vasudevan, Judicial Member

This appeal by the revenue is against the order dated 01.11.2012 of the CIT(Appeals)-II, Bangalore relating to assessment year 2009-10.

2. The assessee is a co-operative society. It is engaged in banking business also. The assessee had claimed deduction u/s. 80P(2)(a)(i) of the Act. Under Sec.80P(2)(i) of the Act where the gross total income of a co-operative society includes income from carrying on the business of banking or providing credit facilities to its members, the same is allowed deduction. By the Finance Act, 2006 w.e.f. 1-4-2006, Sub-section (4) was inserted in Sec.80-P which provides as follows:

> "(4) The provisions of this section shall not apply in relation to any co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank.
>
> Explanation : For the purposes of this sub-section,—
>
> (a) "co-operative bank" and "primary agricultural credit society" shall have the meanings respectively assigned to them in Part V of the Banking Regulation Act, 1949 (10 of 1949);
>
> (b) "primary co-operative agricultural and rural development bank" means a society having its area of operation confined to a taluk and the principal object of which is to provide for long-term credit for agricultural and rural development activities."

3. The AO was of the view that after amended by the Finance Act, 2006 w.e.f. 1.4.2007 by which sub-section (4) was inserted, the Assessee which was a co-operative society carrying on banking business was not entitled to deduction u/s.80P(2)(i) of the Act. According to the AO, the assessee was a co-operative bank and therefore the deduction u/s. 80P(2)(a)(i) cannot be allowed. In coming to the above conclusion, the AO noticed that the nature of the activity of the assessee, though registered as

a credit co-operative society, is that of a banking institution notwithstanding the fact that receipt of and lending money is limited to its members. The AO further noticed that clause (viia) in section 2(24) of the Act was inserted by the Finance Act 2006 effective from 1/4/2007, which provides that profits and gains of any business (including providing credit facilities) carried on by a co-operative society with its members the assessee's activity was also "Income". That the deduction from gross total income of certain receipts is available only to primary agricultural credit societies or primary co-operative agricultural and rural development banks; and that the benefit of such deduction is not available to institutions like the assessee society. The AO also referred to section 5(b) of the Banking Regulation Act to hold that, if one of the two conditions of the appellant i.e. its primary object should be banking or its principal business must be transaction in banking business, is sufficient to bring the appellant into the concept of a banking institution. The AO referred to the objects of the assessee society in its bye laws that the activities of the assessee fall within the provisions of sections 5(b), 6(1)(a), 6(1)(g), 6(1)(k) and 6(1)(n) of the Banking Regulations Act and held that, broadly, they are in the nature of banking activity. According to the AO, the following features make the assessee ineligible to exemption contemplated in section 80P of the Act:

i) Since membership is open to anyone paying a sum of Rs.10/- to Rs.100/- for membership and no other condition is imposed. In other words, membership as is available in any banking institution is available in the case of the appellant society.

ii) The purpose of accepting deposits from the public is for making investments and for lending to members. Confining the lending only to members makes no difference.

iii) Deposits collected from the depositors are repayable on demand and do not go into the corpus of the appellant.

iv) Though withdrawal of money is not done by cheques, drafts or pay-out slips, pay orders are issued in favour of a person on behalf of the depositor.

v) The assessee society came within the Explanation to sub-section (4) of section 80P of the Act as a banking institution.

4. In the light of the above-mentioned observations, the AO held that the appellant was not entitled to exemption u/s 80P(2)(a)(i) of the Act and brought the same to tax.

5. On appeal by the assessee, the CIT(Appeals) allowed the claim of the assessee for deduction u/s. 80P(2)(a)(ii) of the Act by following the decision of ITAT in the following cases:-

i) ACIT, Circle-3(1), Bangalore v. M/s Bangalore Commercial Transport Credit Co-operative Society Ltd. - ITA.No.1069/Bang/2010 dated 8/4/2011 [ITAT, Bangalore Bench 'B', Bangalore]

ii) ITO, Ward-1(4) v. Jankalyan Nagri Sahakari Pat Sanstha Ltd. [(2012) 24 taxmann.com 127 (Pune-Trib) dated 26/6/2012]

iii) DCIT, Central Circle, Panaji v. Jayalakshmi Mahila Vividodeshagala Souharda Sahakari Ltd. ITA Nos. 1 to 3 (PNJ)/1012 dated 30/3/2012.

6. Aggrieved by the order of the CIT(Appeals), the revenue has filed the present appeal before the Tribunal.

7. At the time of hearing, it was seen that the issue raised by the revenue has already been considered and decided by this Tribunal in the case of *ACIT, Circle 3(1), Bangalore v. M/s. Bangalore Commercial Transport Credit Co-operative Society Ltd. in ITA No.1069/Bang/2010*, wherein this Tribunal held that section 80P(4) is applicable only to cooperative banks and not to credit cooperative societies. The intention of the legislature of bringing in cooperative banks into the taxation structure was mainly to bring in par with commercial banks. Since the assessee is a cooperative society and not a cooperative bank, the provisions of section 80P(4) will not have application in the assessee's case and therefore, it is entitled to deduction u/s 80P(2)(a)(i) of the Act. The following were the relevant observations of the Tribunal:-

> "9. We have heard the rival submissions and perused the material on record. The assessee was denied the deduction u/s 80-P(2)(a)(i) of the Act for the reason of introduction of sub section 4 to section 80P. Section 80P(4) reads as follows:-
>
> *"(4) 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.*
>
> *Explanation: For the purposes of this sub-section,*
>
> *(a) "co-operative bank" and "primary agricultural credit society" shall have the meanings*

respectively assigned to them in Part V of the Banking Regulation Act, 1949 (10 of 1949);

(b) "primary cooperative agricultural and rural development bank" means a society having its area of operation confined to a taluk and the principal object of which is to provide for long term credit for agricultural and rural development activities".

9.1 The above sub-section 4 of section 80P provides that deduction under the said section shall not be available to any cooperative bank other than a primary agricultural credit society or rural development bank. For the purpose of the said sub section, cooperative bank shall have the meaning assigned to it in part V of the Banking Regulation Act, 1949. In Part V of the Banking Regulation Act, "cooperative bank" means a State Cooperative Bank, a Central Cooperative Bank and a Primate Cooperative Bank.

9.2 From the above section, it is clear that the provisions of section 80P(4) has got its application only to cooperative banks. Section 80P(4) does not define the word "cooperative society". The existing sub-section 80P(2)(a)(i) shall be applicable to a cooperative society carrying on credit facility to its members. This view is clarified by Central Board of Direct Tax vide its clarification No.133/06/2007-TPL dated 9th May, 2007. The difference between a cooperative bank and a cooperative society are as follows:-

Nature	Cooperative society registered under Banking Regulation Act, 1949	Cooperative society registered under Karnataka Cooperative Society Act, 1959.
Registra -tion	Under the Banking Regulation Act, 1949 and Cooperative Societies Act, 1959.	Cooperative Societies Act, 1959.
Nature of business	1. As defined in section 6 of Banking Regulation Act. 2. Can open savings bank account, current account, overdraft account, cash credit account, issue letter of credit, discounting bills of exchange, issue cheques, demand drafts (DD), Pay Orders, Gift cheques, lockers, bank guarantees etc.	1. As per the bye laws of the cooperative society. 2. Society cannot open savings bank account, current account, issue letter of credit, discounting bills of exchange, issue cheques, demand drafts, pay orders, gift cheques, lockers, bank guarantees etc.

	3. Cooperative Banks can act as clearing agent for cheques, DDs, pay orders and other forms. 4. Banks are bound to follow the rules, regulations and directions issued by Reserve Bank of India (RBI).	3. Society cannot act as clearing agent, for cheques, DDs, pay orders and other forms. 4. Society are bound by rules and regulations as specified by in the cooperative societies act.
Filing of returns	Cooperative banks have to submit annual return to RBI every year.	Society has to submit the annual return to Registrar of Societies.
Inspec-tion	RBI has the power to inspect accounts and overall functioning of the bank.	Registrar has the power to inspect accounts and overall functioning of the bank.
Part V	Part V of the Banking Regulation Act is applicable to cooperative banks.	Part V of the Banking Regulation Act is not applicable to cooperative banks.
Use of words	The word 'bank', banker', 'banking' can be used by a cooperative bank.	The word 'bank', banker', 'banking' cannot be used by a cooperative society.

9.3 If the intention of the legislature was not to grant deduction u/s 80P(2)(a)(i) to cooperative societies carrying on the business of providing credit facilities to its members, then this section would have been deleted. The new proviso to section 80P(4) which is brought into statute is applicable only to cooperative banks and not to credit cooperative societies. The intention of the legislature of bringing in cooperative banks into the taxation structure was mainly to bring in par with commercial banks. Since the assessee is a cooperative society and not a cooperative bank, the provisions of section 80P(4) will not have application in the assessee's case and therefore, it is entitled to deduction u/s 80P(2)(a)(i) of the Act. Hence, we are of the view that the order of the CIT(A) is correct and in accordance with law and no interference is called for."

8. The Hon'ble Gujarat High Court in the case of Tax appeal No.442 of 2013 with Tax appeal No.443 of 2013 with Tax appeal No.863 of 2013 in the case of CIT Vs. Jafari Momin Vikas Co-op Credit Society Ltd. by judgment dated 15.1.2014 had to deal with the following question of law:

"Whether the Hon'ble Tribunal is correct in allowing deduction under section 80P(2)(a)(i) to assessee's society even though same is covered under section 80P(4) rws 2(24) (viia) being income from providing credit facilities carried on by a co-operative society with its member?"

The Hon'ble Court held as follows:

"4. As per section 80P(4), the provisions of section 80P would not apply in relation to any co-operative bank other than primary agricultural credit society or primary co-operative agricultural and rural development bank. As per the explanation, the terms "co-operative bank" and "primary agricultural credit society" shall have the meanings respectively assigned to them in Part V of the Banking Regulation Act, 1949.

5. Assessing Officer held that by virtue of section 80P(4), the respondent assessee would not be entitled to benefits of deduction under section 80P. CIT(Appeals) as well as the Tribunal reversed the decision of the Assessing Officer on the premise that the respondent assessee not being a bank, exclusion provided in sub-section(4) of section 80P would not apply. This, irrespective of the fact that the respondent would not fall within the expression "primary agricultural credit society".

6. Had this been the plain statutory provisions under consideration in isolation, in our opinion, the question of law could be stated to have arisen. When, as contended by the assessee, by virtue of subsection(4) only co-operative banks other than those mentioned therein were meant to be excluded for the purpose of deduction under section 80P, a question would arise why then Legislature specified primary agricultural credit societies along with primary cooperative agricultural and rural development banks for exclusion from such exclusion and in other words, continued to hold such entity as eligible for deduction. However, the issue has been considerably simplified by virtue of CBDT circular No.133 of 2007 dated 9.5.2007. Circular provides as under:-

"Subject: Clarification regarding admissibly of deduction under section 80P of the Income-Tax Act, 1961.

1. Please refer to your letter no.DCUS/30688/2007, dated 28.03.2007 addressed to Chairman, Central Board of Direct Taxes, on the above given subject.

2. In this regard, I have been directed to state that sub-section(4) of section 80P provides that deduction under the said section shall not be allowable to any co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank. For the purpose of the said sub-section, co-operative bank shall have the meaning assigned to it in part V of the Banking Regulation Act, 1949.

3. In part V of the Banking Regulation Act,"Co-operative Bank" means a State Co-operative bank, a Central Co-operative Bank and a primary Co-operative bank.

4. Thus, if the Delhi Co op Urban T & C Society Ltd. does not fall within the meaning of "Co-operative Bank" as defined in part V of the Banking Regulation Act, 1949, subsection(4) of section 80P will not apply in this case.

5. The issues with the approval of Chairman,Central Board of Direct Taxes."

7. From the above clarification, it can be gathered that sub-section(4) of section 80P will not apply to an assessee which is not a co-operative bank. In the case clarified by CBDT, Delhi Coop Urban Thrift & Credit Society Ltd. was under consideration. Circular clarified that the said entity not being a cooperative bank, section 80P(4) of the Act would not apply to it. In view of such clarification, we cannot entertain the Revenue's contention that section 80P(4) would exclude not only the co-operative banks other than those fulfilling the description contained therein but also credit societies, which are not cooperative banks. In the present case, respondent assessee is admittedly not a credit co-operative bank but a credit co-operative society. Exclusion clause of sub-section(4) of section 80P, therefore, would not apply. In the result, Tax Appeals are dismissed."

9. In view of the aforesaid decisions, we are of the view that there is no merit in this appeal by the revenue. Consequently, the same is dismissed.

Pronounced in the open court on this 7th day of February, 2014.

Sd/-	Sd/-
(JASON P. BOAZ)	(N.V. VASUDEVAN)
Accountant Member	Judicial Member

Bangalore,
Dated, the 7th February, 2014.

DS/-

Copy to:

1. Appellant 2. Respondent 3. CIT 4. CIT(A)
5. DR, ITAT, Bangalore. 6. Guard file

By order

Senior Private Secretary
ITAT, Bangalore.

GOVERNMENT OF INDIA

कार्यालय आयकर आयुक्त (अपील्स)-7,बेंगलुरु
सातवां तल, बी. एम. टी. सी. बिल्डिंग, 80. फीट, रोड, कोरमंगला, बेंगलुरु – 560095
OFFICE OF
THE COMMISSIONER OF INCOME TAX (APPEALS)-7, BENGALURU
7th Floor, BMTC Building, 80 ft. Road, Koramangala, Bengaluru – 560095.

बी. के. सिंह (आयकर आयुक्त (अपील्स)-7)

B. K. Singh, (Commissioner of Income Tax (Appeals) – 7)

अ. सं./ITA No.153/CIT(A)-7/BR/2014-15 **आदेश की तारीख / Date:04.02.2016**

1.	अपीलार्थी का नाम तथा पता /Name and address of the Appellant	M/s Mahalakshmipura Sri Vasavi Credit Co-op Society Ltd., No. 88G, 13th Cross, Mahalakshmi layout, Bengaluru – 560085.
2.	अधिकारी का नाम व पदनाम जिसने निर्धारण आदेश जारी किया / Name and Designation of the Assessing Officer	M. Rajeshwari, Income-Tax Officer, Ward-8(3), Bengaluru.
3.	पैन/Permanent Account Number (PAN)	AAAJM0409K
4.	अपील दायर करने की तारीख अपील दायर करने की तारीख / Date of Institution of Appeal	03.05.2013
5.	निर्धारण वर्ष /Assessment Year	2010-11
6.	निर्धारित आय/Total Income	Rs. 11,60,340/-
7.	मांगा गया कर/शास्ति/जुर्माना/ब्याज/Demand Raised	Rs. 4,86,990/-
8.	आयकर अधिनियम की धारा जिसके अधीन आदेश पास किया गया, जिसके विरुद्ध अपील की गई / Section under which order appealed against was passed and date of such orders	143(3) of IT Act 1961, Dated – 15.03.2013

सुनवाई की तारीख/Last date of Hearing	25.01.2016
अपीलार्थी की ओर से उपस्थित/Present for Appellant	Mr. Madhukar G. Hegde, CA

आयकर आयुक्त (अपील)-7 बेंगलूरु / Commissioner of Income-Tax (Appeals)-7 Bengaluru

Received on 10/2/16 12.30 PM
Mahadev

अपील आदेश
APPELLATE ORDER

An Appeal was instituted by the Appellant M/s Mahalakshmipura Sri Vasavi Credit Co-operative Society Ltd. on 03.05.2013 for the assessment year 2010-11 against the order dated 15.03.2013, U/s. 143(3) passed by ITO, Ward-8(3), Bengaluru. As per declaration in Form No.35, the date of service of the impugned order and the demand notice is stated to be 04.04.2013. In view of this, the appeal which has been instituted on 03.05.2013, is found to be in time. The appellant company thereafter filed its return of income declaring a total income NIL. The Assessing Officer completed the assessment u/s.143(3) determining the total income at Rs. 11,60,340/-, and thereby raised the demand of Rs. 4,86,990/-.

2. In response to notice issued, the Authorized Representative of the appellant, Mr. Madhukar G. Hegde, CA & Authorised Representative, appeared before me and the case was heard.

3. The appellant has raised the following grounds of appeal:
Madalakshmipura Sri Vasavi Credit Co-operative Society ltd.

1. The learned assessing officer's order is contradictory to law and facts of the case and, therefore, it may be set aside and the disallowance made by assessing officer be allowed u/s 80P(2)(a)(i).

2. On the facts and in the circumstances of the case and in law the Assessing Officer erred in reading the section 80P(2)(a)(i) without appreciating that all banking transactions were made only with its members and a credit co-operative society formed for exclusive benefits of its members.

3. The leraned assessing officer's was not justified disallowing the deduction, merely to the amendment to sec. 2(24)(viia) of the income tax act, by including the profits and gains of any business of banking (including providing credit facilities) carried by a co-op society with its members. Without considering the provisions of the section 80P(2)(a)(i) of the income tax act, which is reproduced below:

80P. Deduction in respect of income of co-operative societies.

(1) Where, in the case of an assessee being a co-operative society, the gross total income includes any income referred to in sub-section (2), there shall be deducted, in accordance with and subject to the provisions of this section, the sums specified in sub-section (2), in computing the total income of the assessee.

(2) The sums referred to in sub-section (1) shall be the following, namely:

(a) in the case of a co-operative society engaged in

(i) carrying on the business of banking or providing credit facilities to its members.

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On the facts and in the circumstances of the case and in law the Assessing Officer erred in reading the section 80P(2)(a)(i).

4. The Appellant prays that the disallowance of Rs. 11,60,337/- in respect of the income derived from the activities of the appellant engaged in ***Carrying on the business of banking or providing credit facilities to its members.***

5. "The Appellant craves leave to add, amend, alter vary and /or withdraw any or all the above grounds of Appeal.

4. The appellant in support of above grounds of appeal vide statement of facts, has stated as follows:

M/s Mahalakshmipura Sri Vasavi Credit Co-operative Society Ltd.

Your appellant is a Co-operative Society registered under the provisions of the Karnataka co-operative societies etc. Its activity is carrying on the business of banking or providing the credit facilities to its members.

Appellant filed the income tax return for the assessment year 2010-11 by declaring the gross income of Rs. 11,60,337/- which is derived from its activities, whereby declaring a net taxable income NIL.

During the said assessment year, appellant has derived the income by way of interest from the loans to its members and also the income from the investments made by it as per the statutory provisions of the Karnataka Co-operative Societies act.

Assessing Officer has not identified the meaning of the credit co-operative society and co-operative bank, treated both at par, and Assessing officer disallowed the claim of the deduction u/s 80P(2)(a)(i) by considering the appellant is a co-operative bank, by reading section 80P(2)(a)(i) together with the section 80P(4). Wrongly considering section 80P(2)(a)(i) is applicable only for primary agricultural credit society or a primary co-operative agricultural & rural development bank. Hence the appeal.

5. I have carefully considered the grounds of appeal, statement of facts and written submissions filed by the appellant.

5.1 The appellant is a co-operative society which has claimed deduction u/s 80P of IT Act amounting to Rs. 11,60,337 . The Assessing Officer, relying on circular no. 6/2010 dated 20.09.2010 disallowed this exemption u/s 80P. The above mentioned circular is in respect of regional rural bank which continue to claim deduction u/s 80P on the ground that they are treated as co-operative society. In this circular it was clarified by the CBDT that regional rural bank are not eligible for deduction u/s 80P and their deemed status of being a co-operative society as per Circular no. 319 dated 11.01.1982 is withdrawn.

5.2 In the appellant own case for the A.Y. 2012-13, the Hon'ble ITAT 'B' Bench, Bengaluru in ITA No. 1088/Bang/2015 dated 29.12.2015, after considering the case of CIT

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vs. Shri Biluru Gurubasappa Pattina Sahakari Sangha Niyamita (369 ITR 86) of Hon'ble Karnataka High Court and also Shri Chandraprabhu Urban Co-operative Credit Society Ltd. vs. ITO in ITA No. 100043 & 100045 of 2014, has held that the assessee being a co-operative society and not a co-operative bank in terms of section 80P(4) of IT Act thus it is eligible for deduction u/s 80P. The Hon'ble High Court affirmed the view express in the decision of Shri Biluru Gurubasappa Pattina Sahakari Sangha Niyamita (supra) that if a co-operative bank is exclusively carrying on banking business then the income derived from the said business cannot be deducted in computing the total income of the Assessee. The benefit of this deduction cannot be extended to co-operative bank which is exclusively carrying on banking business. In the instant case the appellant is not a co-operative bank carrying on exclusively on banking business rather it is a co-operative society which also carries on business of landing money to its members i.e. carrying on the business of banking for providing credit facilities to its members.

6. Respectfully following the decision of ITAT Bengaluru in the Appellant's own case for A.Y. 2012-13 in ITA No. 1088/Bang/2015 on the same issue the claim of deduction u/s 80P of the IT Act is allowed

7. In the result the appeal of the appellant is Allowed.

4/12/16

(B. K. Singh)
आयकर आयुक्त (अपील)-7, बेंगलूर
Commissioner of Income-tax
(Appeals)-7, Bengaluru

आयकर आयुक्त का कार्यालय (अपील)-7 Office of the Commissioner of Income-Tax (Appeals)-7 Bangaluru. बेंगलूर

To
The Appellant.
Copy to:
1. The Chief Commissioner of Income Tax, Bengaluru - 2, Bengaluru.
2. The Commissioner of Income Tax - 7, Bengaluru.
3. The Addl. /Dy. Commissioner of Income Tax, Range – 5(3), Bengaluru.
4. The Dy. Commissioner of Income-tax Circle-11(5), Bengaluru.
5. The file.

4/12/16

(B. K. Singh)
आयकर आयुक्त (अपील)-7, बेंगलूर
Commissioner of Income-tax
(Appeals)-7, Bengaluru

Income Tax Appellate Tribunal - Bangalore

The Mysore Merchant Co-Operative ... vs Department Of Income Tax on 29 June, 2015

IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCH " B "

BEFORE SHRI N.V. VASUDEVAN, JUDICIAL MEMBER AND
SHRI JASON P. BOAZ, ACCOUNTANT MEMBER

I.T.A. Nos.86 & 87/Bang/2015
(Assessment Years : 2011-12 & 2012-13)

Income Tax Officer, TDS Ward, Mysore.	Vs.	The Mysore Merchant Co-operative Bank Ltd., Jaganmohan Palace Road, Mysore. PAN BLRTO 3050F
Appellant		Respondent.

Appellant By : Dr.P.K. Srihari, Addl. CIT (D.R.)
Respondent By : Ms. Vinutha, C.A.

Date of Hearing : 26.05.2015.
Date of Pronouncement : 29.06.2015.

O R D E R

Per Shri Jason P. Boaz, A.M. :

These appeals by Revenue are directed against the composite order of the Commissioner of Income Tax (Appeals), Mysore dt.16.10.2014 for Assessment Years 2011-

12 and 2012-13. The appeals having common / identical issues were heard together and are being disposed off by way of this combined order.

2. The facts of the case, briefly, are as under :-

2.1 The assessee is a co-operative society engaged in the business of banking. A survey under Section 133A of the Income Tax Act, 1961 (in short 'the Act') was conducted at ITA Nos.86 & 87/Bang/2015 the assessee's business premises on 26.11.2013 in order to verify its compliance to the Tax Deduction at Source ('TDS') provisions. In the course of the survey, it was noticed that in the period relevant to Assessment Years 2011-12 and 2012-13, the assessee had not deducted tax at source in respect of interest paid to members relying on the specific exception provided for under the provisions of section 194A(3)(v) of the Act. The Assessing Officer was of the view that the provisions of section 194A(3)(v) of the Act are not applicable to a co-operative society carrying on the business of banking; but rather the provisions of Section 194A(3)(viia) of the Act. The Assessing Officer held that the assessee had failed to deduct tax at source as per the provisions of section 194A(3) of the Act. On the basis of the details of interest paid in the period relevant to Assessment Years 2011-12

and 2012-13, the Assessing Officer passed orders under Section 201(1) and 201(1A) of the Act dt.31.3.2014 determining the following demands :-

Asst. Year	Demand u/s.201(1)	Demand u/s. 201(1A)
2011-12	31,32,522	11,27,708
2012-13	31,24,020	7,49,765

2.2 Aggrieved by the orders of the ITO (TDS), Mysore dt.31.3.2014 for both

Assessment Years 2011-12 and 2012-13, the assessee preferred appeals before the CIT (Appeals), Mysore. The learned CIT (Appeals), allowed the assessee's appeals following the decision of a co-ordinate bench of this Tribunal in the case of the Bagalkot District ITA Nos.86 & 87/Bang/2015 Central Co-operative Bank V JCIT in ITA No.1572/Bang/2013 dt.30.5.2014, held as under :-

"5.6 Respectfully following the decision of Hon'ble ITAT which is binding on me, it is held that the appellant being a co-operative society carrying on banking business, when it pays interest income to its members both on time deposits and on deposits other than time deposits with such co-operative societies need not deduct tax under Section 144A by virtue of exemption granted vide clause (v) of sub-section (3) of the said section. However, the interest paid to non-members are not covered under this has held by Hon'ble ITAT in the order, A.O. is directed to restrict the addition only to this if there is any interest paid to non-members. It is ordered accordingly.

6. For statistical purpose the appeals are treated as allowed."

3. Revenue is now aggrieved by the orders of the CIT (Appeals), Mysore dt.16.10.2014 for both Assessment Years 2011-12 and 2012-13 and has preferred these appeals before the Tribunal raising the following identical grounds for both assessment years :-

For A.Y. 2011-12 " 1. The learned CIT (Appeals) has erred in granting relief contrary to the findings in the earlier part of the order.

2. The learned CIT (Appeals) has erred in relying on the decision of Hon'ble ITAT, Bangalore Bench in the case of The Bagalkot District CentralCo-op. Bank Vs. JCIT in ITA No.1512/Bang/2013 which is erroneous and against the law.

3. The learned CIT (Appeals) ought to have considered the orders of the Hon'ble ITAT, Pune (857 ITD 569) and Hon'ble ITAT, Panaji Bench order in the case of Bailhongal Urban Co-operative Bank dt.28.8.2013, which have been decided in favour of the Department.

4. The learned CIT (Appeals) erred in relying on the decision of the Hon'ble ITAT, Bangalore which held that the provisions of section 194A(3)(v) are applicable to the deposits made with the assessee, the assessee being a co-operative bank.

5. The learned CIT (Appeals) erred in relying on the decision of the Hon'ble ITAT, Bangalore which had failed to appreciate the fact that the clause 194A(3)(viia) is a specific provision which has overriding effect on the general provisions of clause 194A(3)(v).

ITA Nos.86 & 87/Bang/2015

6. The learned CIT (Appeals) erred in relying on the decision of the Hon'ble ITAT, Bangalore which failed to appreciate that the clause 194A(3)(v) is a general clause applicable to co-operative societies in general, it is a normal principle of interpretation of law that in the presence of a specific provision the general provision will not apply.

For these and other grounds that may be raised during the course of appeal and actual hearing, the appellant prays that the order of learned CIT (Appeals) may be set aside and cancelled."

For A.Y. 2012-13 " 1. The learned CIT (Appeals) has erred in granting relief contrary to the findings in the earlier part of the order.

2. The learned CIT (Appeals) has erred in relying on the decision of Hon'ble ITAT, Bangalore Bench in the case of The Bagalkot District CentralCo-op. Bank Vs. JCIT in ITA No.1512/Bang/2013 which is erroneous and against the law.

3. The learned CIT (Appeals) ought to have considered the orders of the Hon'ble ITAT, Pune (857 ITD 569) and Hon'ble ITAT, Panaji Bench order in the case of Bailhongal Urban Co-operative Bank dt.28.8.2013, which have been decided in favour of the Department.

4. The learned CIT (Appeals) erred in relying on the decision of the Hon'ble ITAT, Bangalore which held that the provisions of section 194A(3)(v) are applicable to the deposits made with the assessee, the assessee being a co-operative bank.

5. The learned CIT (Appeals) erred in relying on the decision of the Hon'ble ITAT, Bangalore which had failed to appreciate the fact that the clause 194A(3)(viia) is a specific provision which has overriding effect on the general provisions of clause 194A(3)(v).

6. The learned CIT (Appeals) erred in relying on the decision of the Hon'ble ITAT, Bangalore which failed to appreciate that the clause 194A(3)(v) is a general clause applicable to co-operative societies in general, it is a normal principle of interpretation of law that in the presence of a specific provision the general provision will not apply.

For these and other grounds that may be raised during the course of appeal and actual hearing, the appellant prays that the order of learned CIT (Appeals) may be set aside and cancelled."

ITA Nos.86 & 87/Bang/2015 4.1 Though Revenue has raised several grounds (supra), the issue in question relates to the applicability of the provisions of Section 194A(3)(5) of the Act in the case on hand.

We have heard both the learned Departmental Representative in support of the above grounds of appeal raised by Revenue and the learned Authorised Representative in support of the impugned orders of the learned CIT (Appeals). We find that the issues in question before us were considered by a co-ordinate bench of this Tribunal in the case of the Bagalkot District Central Co-operative Bank in ITA No.1572/Bang/2013 dt.30.5.2014 and it was held that the assessee, which is a co-operative society carrying on banking business, when it pays interest to a member both on time deposits and on deposits other than time deposits with such co-operative society need not deduct tax at source under Section 194A by virtue of the exemption granted vide clause (v) of Sub-Section (3) of the said section.

The operative portion of this order of the co-ordinate bench from paras 12 to 23 thereof are extracted hereunder :-

" 12. We have heard the rival submissions. The learned counsel for the Assessee after referring to the relevant provisions of Sec.194A(3)(i)(b), 194A(3)(v) and 194A(3)(viia) of the Act (these provisions have already been extracted in the earlier part of this order and are not being repeated), submitted that an analysis of the provisions would disclose that:

a) U/s. 194A(3)(i)(b) a Co-operative Bank need not deduct tax at source if the amount of interest paid does not exceed Rs. 10,000 whether the payment is made to a member or non- member or whether the interest is on time deposit or non-time deposit.

ITA Nos.86 & 87/Bang/2015

b) U/s 194A (3)(v) a Co-operative Society irrespective of its nature of activity need not deduct tax at source on any interest paid to its members whether on time deposits or non-time deposits

c) U/s l94A(3)(viia)(a), a primary agricultural credit Co-operative Society or a Cooperative land mortgage bank or a co-operative land development bank need not deduct tax at source on any interest paid by it in respect of deposits received by it.

d) U/s 194A(3)(viia)(b) of the Act a co-operative society other than a co-operative society or a bank referred to in Clause (a) need not deduct tax at source on interest paid on any deposit other than time deposits.

2.3 The following chart explains the position:

Any Interest on Interest Type of Rs. 10,000 or Amount/Any deposits other on time Interest / less type of interest than time- deposit Payee paid by a Co-op deposits 194A 1 94A(3)(i)(b) Society 194A(3)(viia)(b) (3)(v) 194A(3)(v) Member Exempt Exempt Exempt Exempt TDS to Non-Member Exempt TDS to be made Exempt be made According to him the above chart would clearly show that when a co-operative society is paying interest to its members, it need not deduct tax at source. It was his submission that the Assessee is a co-operative society registered under the Mysore Co-operative Societies Act vide the certificate issued by the Registrar of Co-operative Societies.

13. With regard to the reliance placed by the learned Assessing Officer on the decision of the Hon'ble ITAT Pune Bench in Bhagani Nivedita Sahakari Bank Ltd Vs ACIT (87) ITD 569, it was submitted by him that in that case the Hon'ble Tribunal held that the provision of S. 194A(3)(v) of the Act is not applicable to a Co-operative Bank. The Hon'ble Tribunal held that u/s. l94A(3)(v) were to apply to a Co-operative Bank, there will be a conflict between 194A(3)(viia)(b) and S.

ITA Nos.86 & 87/Bang/2015 194A(3)(v). It was his submission that there is no conflict. S.194A(3)(viia)(b) would apply to all co-operative banks when they pay interest on deposits other than time deposit whether to members or non-members whereas S. 194A(3)(v) applies to payment to members including interest on time-deposits". The classification itself is different. S.194A(3)(v) classifies the payees into members or non-members whereas 194A(3)(viia)(b) classifies the nature of interest whether it is on time deposit or a non-time deposit When the classification is on a totally different criterion, there cannot be any conflict between the two sections. They operate in two different fields. It is respectfully submitted that the Hon'ble ITAT Bench erred in holding that there is a conflict between 194A(3(v) and 194A(3)(viia)(b). It was further submitted by him that the Hon'ble ITAT Pune Bench did not have the benefit of Circular No. 9/2002 dated 11.9.2002 (257 ITR St

36). In this circular the Board has clarified as under:

> "Board has considered the matter and it is clarified that a member of a co- operative bank shall receive interest on both time deposits and deposits other than time deposits where such co-operative bank without TDS under Section 194A by virtue of exemption granted vide clause (v) of sub-section (3) of the said section. The provisions of clause (viia) of the said sub- section are applicable only in case of a non-member depositor of the co- operative bank, who shall receive interest only on deposits other than time deposits made on or after July 1, 1995 without TDS under section 194A".

It was also submitted by him that the learned Assessing Officer has stated that the Circular was struck down in Jalgaon District Central Cop-operative Bank Ltd Vs Union of India (265)ITR 423. According to him the observations of the AO in this regard were not correct as the Hon'ble High Court struck down only that portion of circular which dealt with Boards clarification as to who is a member. The court never had an occasion to go into a question whether S. 194A(3)(v) of the Act would cover- a co-operative bank or not. It was finally submitted that the Assessee is entitled to deduction and no disallowance is called for u/s 40(a)(ia) of the Act.

14. The learned DR while reiterating the stand of the AO/CIT(A)further relied on the decision of the ITAT Panaji Bench in ITA No.85/PN/2013 for AY 09-10 in the case of The Bailhongal Uraban Co-op Bank Ltd. Vs. JCIT order dated 28.8.2013 wherein the Tribunal followed the order of SMC Bench in the case of Bhagani Nivedita Sah Bank Ltd. Vs. ACIT 87 ITD 569 (Pune). Without prejudice to his submission that TDS provisions were applicable even in the case of payment ITA Nos.86 & 87/Bang/2015 of interest to member depositors by a co-operative society, it was submitted by him that the order of the AO/CIT(A) is not clear as to whether the interest disallowed pertains to interest

paid to members or non-members and this aspect has to be verified, if necessary. In particular it was submitted that if clause(v) of Sec.194A(3) exempts co-operative societies from the provisions of TDS when it pays interest to its members then there was no need to have Sec.194A(3)(viia) of the Act specifically exempting certain co-operative societies from the obligation to deduct tax at source when it pays interest. To this argument, we have already noticed the argument of the learned counsel for the Assessee that these two provisions operate in different field. We may clarify here that the said argument of the learned counsel for the Assessee is a clear answer to the above argument of the learned DR. The learned DR also filed written submission before us, in which the stand of the revenue, as reflected in the orders of the lower authorities, has been reiterated.

15. We have given a very careful consideration to the rival submissions. We are of the view that the submissions made by the learned counsel for the Assessee deserves to be accepted. As rightly contended by him Sec.194A(3)(i)(b) of the Act is a provision which mandates deduction of tax at source by a co-operative Society carrying on the business of banking, where the income in the form of interest which is paid by such society is in excess of ten thousand rupees. Sec.194A(3)(v) of the Act provides that tax need not be deducted at source where the income in the form of interest is credited or paid by a co-operative society to a member thereof or to any other co-operative society. This provision therefore applies to all co- operative societies including co-operative society engaged in the business of banking. It is not possible to exclude co-operative society engaged in the business of banking from the provisions of Sec.194A(3)(v) of the Act on the ground that the same is covered by the provisions of Sec.194A(3)(i)(b) of the Act. Sec.194A(3)(v) of the Act refers to payment by a co-operative Socieity to a member and payment by a co-operative society to non-member would continue to be governed by the provisions of Sec.194A(3)(i)(b) of the Act. Similarly u/s.194A(3)(viia)(b) interest on deposits other than time deposits even if the payment is made to a non-member by a co-operative society, the co-operative society need not deduct tax at source. Thus this section carves out another exception to Sec.194A(3)(i)(b) of the Act. We do not think that any of the above provisions can be called a general provision and other provisions called specific provisions. Each provision over-lap and if read in the manner as indicated above, there is perfect harmony to the various provisions. We do not agree with the view expressed by the Pune ITAT SMC in the case of ITA Nos.86 & 87/Bang/2015 Bhagani Nivedita Sahakari Bank Ltd. (supra) when it says that Co-operative society as mentioned in cl. (v) is a general species, whereas the other five categories of co-operative societies which are specifically referred to in other provisions are specific co-operative societies. The further conclusion in the said decision that the term 'co-operative society' in cl. (v) of s. 194A(3) has to be interpreted as co-operative society other than co-operative bank, is again unsustainable. The law is well settled that by a process of interpretation one cannot add on words that are not found in the text of the statute. Such a course is permitted only when there is "causus omisus". We do not think that the provisions of Sec.194A(3)(v) suffers from any causus omisus as has been interpreted by the ITAT Pune Bench SMC.

16. We are also of the view that the decision of the Hon'ble Kerela High Court in the case of Moolamattom Electricity Board Employees Co-op Bank Ltd. (supra) supports the plea of the Assessee before us. The petitioners in that case were primary credit societies registered under the Kerala Co-operative Societies Act. In view of the specific provisions of Sec.194A(3(viia) of the Act, they claimed that they need not deduct tax at source on interest paid. It was submitted by the

petitioner that sub-s.194A(3)(v) deals with such income credited or paid by a co- operative society to a member whereas sub-s. (3)(viia)(a) provides a total exemption to deposits with the primary credit society. The Hon'ble Kerala High Court accepted their plea and in their judgment have observed that Sec.194A (3)(i) exemption limit of Rs. 10,000 to interest paid on time deposits with co-operative societies engaged in carrying on business of banking is allowed but that does not mean that all co-operative societies who have credited or paid exceeding Rs. 10,000 are liable to deduct tax at source. The Court held that co-operative society engaged in carrying on business of banking and primary credit societies stand on different footing and belong to different class. That does not mean that Sec.194A(3)(v) of the Act is applicable only to Co-operative Societies other than co-operative societies carrying on the business of banking as observed in para-37 of its judgment the Pune ITAT in the case of Bhagani Nivedita Sah Bank Ltd. (supra). In fact in para-2 of Circular No.9 dated 11.9.2002, the CBDT has very clearly laid down that Co-operative societies carrying on banking business when it pays interest on deposits by its members need not deduct tax at source in view of the provisions of Sec.194A(3)(v) of the Act.

17. We also find that the CBDT in Circular No.9 dated 11.9.2002 clarified certain aspects which are relevant to the present case. The same reads thus: "Circular No.9 of 2002 ITA Nos.86 & 87/Bang/2015 "Sub : Tax deduction at source under section 194A of the Income-tax Act, 1961

--Applicability of the provisions in respect of income paid or credited to a member of co-operative bank--Reg.

11/09/2002 TDS 194A Under section 194A of the Income-tax Act, 1961, tax is deductible at source from any payment of income by way of interest other than income by way of interest on securities. Clause (v) of sub-section (3) of section 194A exempts such income credited or paid by a co-operative society to a member thereof from the requirement of TDS. On the other hand, clause (viia) of sub-section (3) of section 194A exempts from the requirement of TDS such income credited or paid in respect of deposits (other than time-deposits made on or after 1st July, 1995) with a co-operative society engaged in carrying on the business of banking.

2. Representations have been received in the Board seeking clarification as to whether a member of a co-operative bank may receive without TDS interest on time deposit made with the co-operative bank on or after 1st July, 1995. The Board has considered the matter and it is clarified that a member of a co-operative bank shall receive interest on both time deposits and deposits other than time deposits with such co-operative bank without TDS under section 194A by virtue of the exemption granted vide clause (v) of sub-section (3) of the said section. The provisions of clause (viia) of the said sub-section are applicable only in case of a non-member depositor of the co-operative bank, who shall receive interest only on deposits other than time deposits made on or after 1st July, 1995 without TDS under section 194A.

3. A question has also been raised as to whether normal members, associate members and sympathizer members are also covered by the exemption under section 194A(3)(v). It is hereby clarified that the exemption is available only to such members who have joined in application for the registration of the co- operative society and those who are admitted to membership after

registration in accordance with the bye-laws and rules. A member eligible for exemption under section 194A(3)(v) must have subscribed to and fully paid for at least one share of the co-operative bank, must be entitled to participate and vote in the General Body Meetings and/or Special General Body Meetings of the co-operative bank and must be entitled to receive share from the profits of the co-operative bank.

[F. No. 275/106/2000-IT(B)] ITA Nos.86 & 87/Bang/2015 (2002) 177 CTR (St) 1"

18. It can be seen from para-2 of the Circular referred to above that the CBDT has very clearly laid down that Co-operative societies carrying on banking business when it pays interest on deposits by its members need not deduct tax at source. The above interpretation of the provisions by the CBDT which is in favour of the Assessee, in our view is binding on the tax authorities.

19. In the case decided by ITAT Panaji Bench in ITA No.85/PN/2013 for AY 09- 10 in the case of The Bailhongal Uraban Co-op Bank Ltd. Vs. JCIT order dated 28.8.2013, the tribunal proceeded on the footing that the aforesaid circular has been quashed by the Hon'ble Bombay High Court in the case of The Jalgaon District Central Co-operative Bank Ltd. Vs. Union of India 265 ITR 423 (Bom) and therefore chose to follow the decision rendered by Pune ITAT SMC in the case of Bhagani Nivedita Sahakari Bank Ltd. (supra). In our view the Hon'ble Bombay High Court in the case of Jalgaon District Central Co-operative Bank Ltd.'s case was dealing with a case of challenge to para-3 of CBDT Circular No.9 dated 11.9.2002 which tried to interpret the word "member" as given in Sec.194A(3)(v) of the Act. It is only that part of the Circular that had been quashed by the Hon'ble Bombay High Court and the other paragraphs of the Circular had no connection with the issue before the Hon'ble Bombay high Court. How could it be said that the entire circular has been quashed by the Hon'ble Bombay High Court? In our view para-2 of the Circular still holds good and the conclusion of the ITAT Pune Bench in the case of The Bailhongal Uraban Co-op Bank Ltd.(supra) are not factually correct. Consequently, the conclusions drawn in the aforesaid decision also contrary to facts and hence cannot be considered as precedent.

20. The learned counsel for the Assessee has brought to our notice that the ITAT Vishakapatnam Bench in the case of The Visakhapatnam Co-operative Bank ITA No.5 and 19 of 2011 order dated 29.8.2011 has held that co-operative societies carrying on banking business when it pays interest to its members on deposits it need not deduct tax at source in view of the provisions of Sec.194A(3)(v) of the Act. Similar view has also been expressed by the Pune Bench of the ITAT in the case of Ozer Merchant Co-operative Bank ITA No.1588/PN/2012 order dated 30.10.2013. We may add that in both these decisions the discussion did not turn on the interpretation of Sec.194A(3)(i)(b) of the Act vis-a-vis Sec.194A(3)(v) of the Act. It is thus clear that the preponderance of judicial opinion on this issue is that ITA Nos.86 & 87/Bang/2015 co-operative societies carrying on banking business when it pays interest to its members on deposits need not deduct tax at source in view of the provisions of Sec.194A(3)(v) of the Act

21. For the reasons given above, we hold that the Assessee which is a co- operative society carrying on banking business when it pays interest income to a member both on time deposits and on deposits other than time deposits with such co-operative society need not deduct tax at source under

section 194A by virtue of the exemption granted vide clause (v) of sub-section (3) of the said section.

22. We however find, as submitted by the learned DR, that the orders are not clear as to whether the entire interest disallowed u/s.40(a)(ia) of the Act relates to interest paid to members or part of the interest is also paid to non-members. We therefore set aside the order of the CIT(A) for the limited purpose of verifying as to any portion of the interest disallowed relates to payment to non-members and in that event restrict the disallowance in so far as it relates to payment of interest by the Assessee to non-members without deduction of tax at source.

23. In the result, the appeal of the Assessee is treated as allowed for statistical purposes."

4.2 Following the decision of the co-ordinate bench of this Tribunal in the case of The Bagalkot District Central Co-operative Bank (supra), we hold that the assessee, which is a co-operative society carrying on the business of banking, need not deduct tax at source under Section 194A of the Act when it pays interest to a member both on time deposits and deposits other than time deposits kept with such co-operative society, by virtue of the exemption granted vide clause (v) of sub-section (3) of Section 194A of the Act.

4.3 As submitted by the learned Departmental Representative and observed by the learned CIT (Appeals), it is not clear whether the entire interest in question relates to interest paid to members or whether a part of the interest is also paid to non-members.

ITA Nos.86 & 87/Bang/2015 In this view of the matter, we uphold the decision of the learned CIT (Appeals) in directing the Assessing Officer to verify whether any portion of the interest in question relates to payments to non-members and to restrict the disallowance only to the extent of payment of interest to non-members without deduction of tax at source. Consequently, Revenue's Grounds at S.Nos. 1 to 7 are dismissed.

5. In the result, Revenue's appeals for Assessment Years 2011-12 and 2012-13 are dismissed.

Order pronounced in the open court on 29th June, 2015.

Sd/-	Sd/-
(N.V.VASUDEVAN)	(JASON P BOAZ)
Judicial Member	Accountant Member

*Reddy gp

Copy to :

1. Appellant
2. Respondent
3. C.I.T.
4. CIT(A)
5. DR, ITAT, Bangalore.
6. Guard File.

(True copy) By Order

Asst. Registrar, ITAT, Bangalore

®

IN THE HIGH COURT OF KARNATAKA

DHARWAD BENCH

DATED THIS THE 17th DAY OF SEPTEMBER 2014

PRESENT

THE HON'BLE MR. JUSTICE RAM MOHAN REDDY

AND

THE HON'BLE MR. JUSTICE B.MANOHAR

I.T.A. No.100042 OF 2014

BETWEEN:

VENUGRAM MULTIPURPOSE CO-OPERATIVE
CREDIT SOCIETY LTD.,
SHANIWAR KHUT, BELGAUM,
REP. BY ITS CHAIRMAN,
SUNIL S/O. MOHAN RAO POTDAR,
AGE: 54 YEARS.

... APPELLANT

(BY SRI. S PARTHASARATHI &
SRI. H.R KAMBIYAVAR, ADVOCATES)

AND:

THE INCOME-TAX OFFICER,
WARD 1(2), FK COMPLEX,
B.R. AMBEDKAR ROAD,
BELGAUM.

... RESPONDENT

(BY SRI. Y V RAVIRAJ, ADVOCATE)

THIS ITA IS FILED U/SEC.260A OF THE INCOME-TAX ACT, 1961 AGAINST THE ORDER PASSED IN ITA.NO.402/PNJ/2013 DTD:17.04.2014 ON THE FILE OF THE INCOME TAX APPELLATE TRIBUNAL, PANAJI BENCH, PANAJI, APPEAL FILED BY THE ASSESSEE IS DISMISSED.

This appeal coming on for *Admission* this day, *Ram Mohan Reddy, J.* delivered the following:

J U D G M E N T

The assessee has come up in appeal invoking Section 260A of the Income Tax Act, 1961 (for short '***the Act'***), calling in question the assessment order dated 31.10.2012, Annexure 'B', the order dated 07.10.2013 of the First Appellate Authority, Annexure 'C' and order dated 17.04.2014 of the Income Tax Appellate Tribunal, Panji Branch, Panaji (for short '***Tribunal'***) Annexure 'A', declining to extend the benefit of deduction under Section 80P(2)(a)(i) of the Act.

2. The crux of the matter lies in the registration of the appellant Co-operative Credit Society under *the Karnataka Co-operative Societies Act, 1959*, (for short '***KCS Act'***) and the core question for decision making is:

> "Whether the appellant—a Multi-purpose Co-operative Credit Society, falling within the definition of the term "***Primary Agricultural Credit***

Co-operative Society" under Section 2(h-2) of the *'KCS Act'*, is entitled to the benefit of deduction in respect of its income under Section 80P(2)(a)(i) of the Act regard being had to Section 80P(4) of the Act?"

3. The appellant a Multi-purpose Co-operative Credit Society, registered under the '*KCS Act*' with Registration Certificate dated 23.10.2001, filed its return for the assessment year 2010-11, declaring gross total income of ₹11,24,117/- and claimed the entire amount as a deduction under Section 80P(2)(a)(i) and the taxable income as NIL.

4. The Assessing Authority (ITO, Ward-1(2), Belgaum), by assessment order dated 31.10.2012, Annexure 'B', declined the deduction and assessed the income to ₹12,11,580/-, on the premise that the appellant is a *Primary Co-operative Bank* disentitled to the benefit of deduction under Section 80P(2)(a)(i), in the light of Section 80P(4)

of the 'Act'. That order when carried in first appeal before the Commissioner of Income Tax (Appeals), Belgaum, was confirmed by dismissal of the appeal by order dated 07.10.2013, Annexure 'C'. The appellant preferred appeal before the Tribunal, whence by order dated 17.04.2014, Annexure 'A', the appeal was dismissed.

5. Sub-section (4) of Section 80P of the Act reads thus:

> [**80P. Deduction in respect of income of Co-operative Societies.—**
> (1) x x x
> (2) x x x
> (3) x x x
> [2][(4) The provisions of this section shall not apply in relation to any co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank.
>
> ***Explanation.*—For the purposes of this sub-section,—**
>
> (a) "co-operative bank" and "primary agricultural credit society" shall have the meanings respectively assigned to them in Part V of the Banking Regulation Act, 1949 (10 of 1949);

[2]Ins. By the Finance Act, 2006 (21 of 2006), sec.19 (w.e.f. 1-4-2007). Earlier sub-section (4) was omitted by the Finance Act, 1969 (14 of 1969), sec.10(b) (w.e.f. 1-4-1970).

(b) "primary co-operative agricultural and rural development bank" means a society having its area of operation confined to a taluk and the principal object of which is to provide for long-term credit for agricultural and rural development activities.]

6. This statuary provision disentitles any 'co-operative bank' other than a 'primary agricultural credit Society' or 'primary co-operative agricultural and rural development bank' to the benefits of deduction under Section 80P of the Act. Therefore, what is required to be noticed is whether the appellant Multi-purpose Co-operative Credit Society falls within the definition of either '*Primary Agricultural Credit Society'* or '*Primary Co-operative Agricultural and Rural Development Bank'*. The explanation to the said sub-section states that a *Co-operative Bank* and the *primary agricultural credit Society* shall have the meanings respectively assigned to them in Part V of the *Banking Regulations Act, 1949 (10 of 1949).* In the facts of this case, suffice it to notice explanation (a).

7. Part V of the *Banking Regulation Act, 1949,* provides for application of the Act to Co-operative Banks. Section 56, reads thus:

[1][PART V

APPLICATION OF THE ACT TO CO-OPERATIVE BANKS

56. ***Act to apply to co-operative societies subject to modifications***.—The provisions of this Act, as in force for the time being, shall apply to, or in relation to, co-operative societies as they apply to, or in relation to banking companies subject to the following modifications, namely:—

(a) Throughout this Act, unless the context otherwise requires,—

(i) references to a "banking company" or "the company" or "such company" shall be construed as reference to a co-operative bank;

(ii) references to "commencement of this Act" shall be construed as references to commencement of the Banking Laws (Application to Co-operative Societies) Act, 1965 (23 of 1965);

(b) in Sec. 2, the words and figures "the Companies Act, 1956 (1 of 1956) and" shall be omitted;

(c) in Sec. 5,––

[2][*(i)* after clause (*cc*), the following clauses shall be inserted, namely:—

(*cci*) x x x

(ccii) x x x

[3][(cciia) "co-operative society" means a society registered or deemed to have been registered under any Central Act for the time

being in force relating to the multi-State co-operative societies, or any other Central or State law relating to co-operative societies for the time being in force;]

(cciii) x x x

[4][(cciiia) x x x ;]

[5][(cciiib) x x x ;]

(cciv) "primary agricultural credit society" means a co-operative society,—

(1) the primary object or principal business of which is to provide financial accommodation to its members for agricultural purposes or for purposes connected with agricultural activities (including the marketing of crops); and

(2) the bye-laws of which do not permit admission of any other co-operative society as a member:

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

X X X X X"

[1] Part V (containing section 56) Ins. by Act 23 of 1965, sec. 14 (w.e.f. 1-3-1966). Earlier section 56 was repealed by Act 36 of 1957, section 2 and Sch. I (w.e.f. 17-9-1957)

[2] Subs. by Act 61 of 1981, Sec. 61 and the Second Schedule, Pt. II (w.e.f. 1st May, 1982).

[3] Ins. by Act 24 of 2004, sec 2(I)(A) (w.r.e.f. 1-3-1966)

[4] x x x

[5] x x x

8. Section 2(f-1) of the KCS Act defines ***'Multi-purpose Co-operative Society'*** thus:

> "2. **Definitions**.—In this Act, unless the context otherwise requires.—
>
> x x x
>
> [1][(f-1) '**Multipurpose Co-operative Society**' means a primary society the object of which is to provide various services including services related to credit, business, industry, consumer durables to its members;
>
> (f-2) x x x]"
>
> [1]Clauses (f-1) and (f-2) inserted by Act No.6 of 2010 and shall be deemed to have come into force w.e.f. 3-11-2009.

Section 2(h-2) of the KCS Act defines ***'Primary Agricultural Credit Co-operative Society'***, thus:

> "[6][(h-2) '**Primary Agricultural Credit Co-operative Society**' means a co-operative society as defined under clause (cciv) of section 5 of Banking regulation Act, 1949 (Central Act 10 of 1949) and includes a multipurpose co-operative society;]"
>
> [6]Clause (h-2) inserted by Act No.6 of 2010 and shall be deemed to have come into force w.e.f. 3-11-2009.

9. The bye-laws of the appellant society define '***Member'*** to mean, *a person who has submitted his application for membership at the time of registration as per Articles, Rules, Bye-laws of the Society and given the membership*. Bye-law 5 in Chapter-2 provides for membership and reads thus:-

> "**5. Membership**: Any person including persons employed in government and semi-government and societies and who is normally residing within the area of operation of the Society and who genuinely need the services provided by the society, and competent to enter into contract under Section 11 of the Indian Contract Act, 1872, is eligible to become the member of the society."

10. In the light of the established fact that appellant is a ***Multi-purpose Co-operative Society*** registered under the KCS Act as evident from the Registration Certificate issued under the KCS Act, it cannot but be said that it falls within

the definition of the said term under Section 2(f-1) of the KCS Act and also, under the definition of the term '***Primary Agricultural Credit Co-operative Society'***. Regard being had to Section 5(cciv) as provided under Section 56 of *the Banking Regulation Act, 1949*, Appellant being a Primary Agricultural Credit Co-operative Society, coupled with the fact that under its bye-laws, a co-operative society cannot become a member, complies with the requirements of the 'Act'.

11. In that view of the matter, the exception carved out in Sub-section (4) of Section 80P of the 'Act' squarely applies to the appellant's Multi-purpose Co-operative Credit Society, hence, entitled to the deduction under Section 80P(2)(a)(i) of the 'Act'. The authorities namely, Income Tax Officer, the First Appellate Authority and the Tribunal having missed the bus and not noticed the essential fact of constitution of the

appellant's Society, concluded that the appellant—assessee falls within the mischief of Sub-section (4) of Section 80P of the Act disentitling it to the deduction under Section 80P(2)(a)(i) of the 'Act'.

12. The question framed *supra* is answered accordingly.

13. In that view of the matter, orders of the authorities being illegal and unsustainable are set aside. The appeal is accordingly ***allowed***.

SD/-
JUDGE

SD/-
JUDGE

RK*
Ct: Dk/-

IN THE HIGH COURT OF KARNATAKA AT BANGALORE

DATED THIS THE 27TH DAY OF JUNE, 2014

PRESENT

THE HON'BLE MR. JUSTICE N KUMAR

AND

THE HON'BLE MR. JUSTICE B MANOHAR

ITA No. 273/2013

BETWEEN:

1. The Commissioner of Income Tax (Appeals) Mysore.

2. The Deputy Commissioner of Income tax Circle – 1 Udupi. **...Appellants**

(By Sri E.I. Sanmathi, Adv.)

AND:

General Insurance Employees' Co-operative Credit Society Limited

'Krishna', Ajjarkad,
Court Road, Udupi. **...Respondent**

(By Sri Mahesh R. Uppin, Adv.)

This ITA filed under Section 260-A of I.T. Act, 1961 arising out of order dated 15.02.2013 passed in ITA No.1455/Bang/2012, for the Assessment year 2009-10, praying to (i) formulate the substantial questions of law stated therein; (ii) set aside the order dated 15.02.2013 passed by the Income Tax Appellate Tribunal, 'B' Bench, Bangalore in Appeal Proceedings ITA No.1455/Bang/2012.

This ITA coming on for orders this day, ***N. KUMAR J*** delivered the following:

J U D G M E N T

This appeal is preferred by the revenue challenging the order passed by the Tribunal, wherein it is held that sub-section (4) of Section 80P of the Income Tax Act, 1961 is applicable only to co-operative banks and not to credit co-operative societies.

2. The substantial question of law which is raised in the appeal is as under:

> "Whether on the facts and in the circumstances of the case, the tribunal was justified in law in

holding that the assessee – society is entitled to deduction under Section 80P(2)(a)(i) of the Income Tax Act?"

3. The Tribunal in its order has set out the difference between the co-operative bank and society as under:

Nature	Co-operative society registered under Banking Regulation Act, 1949	Co-operative Society registered under Karnataka Co-operative Society Act, 1959
Registration	Under the Banking Regulation Act, 1949 and Co-operative Societies Act, 1959	Co-operative Societies Act, 1959
Nature of business	1. As defined in Section 6 of Banking Regulation Act. 2. Can open savings bank account, current account, overdraft account, cash credit account, issue letter of credit, discounting bills of exchange, issue cheques, demand drafts (DD), Pay orders, Gift cheques, lockers, bank guarantees etc. 3. Co-operative Banks can act as clearing agent	1. As per the bye laws of the co-operative society. 2. Society cannot open savings bank account, current account, issue letter of credit, discounting bills of exchange, issue cheque, demand drafts, pay orders, gift cheques, lockers, bank guarantees etc. 3. Society cannot

	for cheques, DDs, pay orders and other forms. 4. Banks are bound to follow the rules, regulations and directions issued by Reserve Bank of India (RBI)	act clearing agent, for cheques, DDs, pay orders and other forms. 4. Society are bound by rules and regulations as specified by in the co-operative societies act.
Filing of returns	Co-operative banks have to submit annual return to RBI every year	Society has to submit the annual return to Registrar of Societies.
Inspection	RBI has the power to inspect accounts and over all functioning of the Bank	Registrar has the power to inspect accounts and over all functioning of the bank.
Part V	Part V of the Banking Regulation Act is applicable to co-operative banks	Part V of the Banking Regulation Act is not applicable to co-operative banks.
Use of words	The word 'bank' 'banker', 'banking' can be used by a co-operative bank.	The word 'bank' 'banker', 'banking' cannot be used ay a co-operative society

4. This Court had an occasion to consider the said question in ***ITA No.5006/2013*** dated ***05.02.2014*** in the case of ***THE COMMISSIONER OF INCOME TAX vs. SRI BILURU GURUBASAVA PATTINA SAHAKARI SANGHA***

NIYAMITHA, BAGALKOT, where, after referring to the relevant provisions of the Income Tax Act, and the banking Regulation Act, held as under:

> "If a Co-operative Bank is exclusively carrying banking business, then the income derived from the said business cannot be deducted in computing the total income of the assessee. The said income is liable for tax. A Co-operative bank as defined under the Banking Regulation Act includes the primary agricultural credit society or a primary co-operative agricultural rural development bank. The Legislature did not want to deny the said benefit to a primary agricultural credit society or a primary co-operative agricultural and rural development bank. They did not want to extend the said benefit to a co-operative bank which is exclusively carrying on banking business i.e., the purport of the amendment. If the assessee is not a Co-operative bank carrying on exclusively banking business and if it does not possess a license from the Reserve Bank of India to carry on business, then it is not a Co-operative bank. It is a Co-operative society which also carries on the business of

> lending money to its members which is covered under Section 80P(2)(a)(i) i.e., carrying on the business of banking for providing credit facilitates to its members. The object of the aforesaid amendment is not to exclude the benefit extended under Section 80P(i) to the society."

Therefore, the said issue was held in favour of the assessee and against the revenue.

5. The said judgment answers the issue in this case also. Accordingly, we pass the following order.

The appeal is dismissed. The substantial question of law is answered in favour of the assessee and against the revenue.

(SD/-)
JUDGE

(SD/-)
JUDGE

VP/-