

IN THE INCOME TAX APPELLATE TRIBUNAL,
NAGPUR BENCH, NAGPUR

BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER AND
SHRI RAM LAL NEGI, JUDICIAL MEMBER..

I.T.A. No. 224/Nag/2012
Assessment Year : 2009-10.

The Income-tax Officer,
Ward-6(1), Nagpur.

Appellant.

Vs. The Vidarbha Premier Co-op.
Housing Society, Nagpur.
PAN AAAAV0210E.
Respondent.

I.T.A. No. 232/Nag/2012
Assessment Year : 2009-10.

The Vidarbha Premier Co-op.
Housing Society, Nagpur.
Appellant.

Vs. The Income-tax Officer,
Ward-6(1), Nagpur.
Respondent.

Department by : Shri A.R. Ninawe.
Assessee by : Shri Alok Bha gat.

Date of Hearing : 22-11-2016
Date of Pronouncement : 9/1/2017.

ORDER.

PER SHAMIM YAHYA, A.M. :

These are cross appeals by the assessee and Revenue emanating out of order of learned CIT(Appeals)-II, Nagpur dated 28-02-2012 and pertain to assessment year 2009-10.

Grounds of appeal in Revenue's appeal read as under:

1. On the facts and circumstances of the case, the Ld. CIT(A), Nagpur erred in holding that deduction u/s 80P(2)(a)(i) of the IT Act, 1961 is admissible to the assessee in the ratio proportionate to the receipts.

2. On the facts and in the circumstances of the case the Ld. CIT(A) erred in not appreciating the fact that assessee being Co-operative housing society is covered u/s 80P(c)(ii) of the IT Act, 1961.

Grounds of appeal in assessee's appeal read as under:

1. Having regard to the facts and circumstances of the case, the learned CIT(A) failed to appreciate the fact that the Appellant is a 'Co-operative Society' the main activity of which is duly covered u/s 80P(2)(a)(i) of the Income-tax Act, 1961, and therefore, on the 'Principal of Mutuality' other incomes of the Appellant society being from ancillary activity are also eligible for deduction u/s 80P(2)(a)(i).
2. That on facts and in circumstances of the case, the CIT(A) =II, Nagpur, grossly erred in holding that balance income of appellant society of Rs.14,62,54,397/- are not ancillary and incidental to the main activity of business of providing credit facilities to its members, and as such, profits attributable to these incomes amounting to Rs.48,39,540.00 are not eligible for deduction u/s 80P(2)(a)(i).
3. Whether on facts and in circumstances of the case, the CIT(A)-II, Nagpur, was right in law to hold that a 'Co-operative Bank' is not a 'Co-operative Society', and therefore, interest earned from such co-operative banks is not eligible for deduction u/s 80P(2)(a)(i) or u/s 80P(2)(d) of the Income Tax Act, 1961.
4. The Appellant prays that the disallowance of claim for deduction u/s 80P(2)(a)(i) of the Income Tax Act, 1961 for Rs.48,39,580.00 be deleted.

2. Brief facts of the case are as under :

In this case the AO noticed that the assessee has claimed deduction u/s 80P(2)(a)(i) for Rs.1,14,95,448/-. That as per Rules Co-operative Housing Societies are formed to provide residential houses to its members. That they purchase land, develop it and construct houses or flats and allot the same to the members. That the society also provides loans to its members to construct/purchase flats or houses. Therefore, it is not eligible for deduction u/s 80P(2)(a)(i). That Co-operative Housing Societies are eligible for deduction of Rs.50,000/- on its income u/s 80P(2)(c)(ii) under the category of other societies. That the assessee was, therefore, asked vide letter dated 08-12-2011, to show

cause why the deduction claimed u/s 80P(2)(a)(i) amounting to Rs.1,14,95,448/- should not be disallowed and added back to the total income of the assessee.

The assessee submitted as under :

"We submit that we have provided credit facility direct to the members, for whom we have not constructed nor purchased property. We have simply granted credit facility from the funds received from members and we are working simply as agent and 90% of the members are like this only availed this facility. The object clauses of the society as per byelaws do allow the society to have providing credit facilities to its members. As far as the assessee society is concerned vis-a-vis section 80P(2)(a)(i), nothing has changed over the last 50 years of the act and specifically in the A.Y. 2009-10 to suggest that the nature of activity of society has now changed to deny the benefit of section 80P(2)(a)(i) of the act which the successive assessing officer have seen. The assessee society would humbly submit that:

- i) *It is not true that the main objects of the assessee society is only to acquire land by purchase or otherwise, develop it and construct houses or flats and allot the same to the members of the society.*
 - ii) *What is true is that the main objects of the assessee society includes providing credit facility to its members for construction of houses or plots and for repairing of houses etc.*
 - iii) *The assessee society provides housing credit facility only providing houses is not the predominant object of the society as appears from your observation.*
 - iv) *We have not made a single transaction of loan as allege in your above said letter but we simply give credit facility to members only for acquiring residential house.*
 - v) *To say that the assessee society does not provide credit facility to its members would be travesty of reality when one reads the accounts of the society for the last several years. To be specific, for the year under assessment, the assessee society has earned interest of Rs.31 crore and the balance of housing loan outstanding as on 31.3.2009 is RS.221 crore. The assessee society wishes to submit that by no stretch of imagination one could come to a conclusion that the assessee society does not provide credit facility to its members contributing a share capital of Rs.6 crore and deposit of RS.285 crore and having 1,21,855 members of the society. Some of them give deposit and some of them get credit facility for house property. The proposed aeniel u/s 80P(2)(a)(i) would seriously frustrate the teqisletive intention for which the said subsection is on record for decades of the coming into force of the Income Tax Act, 1961.*
- vi) *Te cooperative housing society established with several objects and it is established when the society is engaged in any of the activities falling u/s 80P(2)(a) that would suffice to enable the society to claim the benefit of deduction. The word 'providing credit facilities to its members' in section means providing by way of giving credit facility for acquiring house and not selling goods on credit. The Co-operative Housing Society does not carry any trading activity but only providing credit facility to all its members to have their own house even by giving mortgage and therefore, there is absolute identity of contributors and participants which results in following principles of mutuality. Our*

- activity is duly covered u/s 80P(2)(a)(i) and therefore it should be allowed considering principles of mutuality.
- vii) The entire benefit of receiving interest goes to the members who deposit money with us, so all the members are getting benefit from each other. So the principle of mutuality is fully satisfied in all cases. It is only credit facility for acquiring house only and not for any other purpose.
- viii) Considering the activity of the society as one of housing only eligible for deduction of Rs.50,000/- only as suggested by you would be unjust and unreasonable besides being an unwarranted departure from the facts already on record and consistently accepted by the Department. All the ingredients of section 80P(2)(a)(i) are fully complied by us and there is no reason for withdrawing the claim of deduction as claimed by us.
- ix) We specifically state that ours is not primary activity of constructing building services. Our primary activity is providing credit facility for acquiring house property for needy members. All the receipts are from members and such it is mutuality. Purchase of plot and construction is given additional facility to members only who come to us and we do not deal with outsiders except for the members of the society. ,

The assessee made further submission as under:

'The activities of the society are same and there is no change in activity as in past. The society also takes and execute housing scheme every year .. The society provide flats to its members in scheme which shown in Gala Account. This scheme is implemented by taking over job of construction of flat by the society/s own finance and thereafter conveying the flats to the members by financing loan to them. There is no income as the motive is of recovering that loan from the members on the basis of no profit no loss. This is a service to members of society and not trading or business activity of the society. The object is only to provide housing facility to its needy members. The surplus in Gala Yojana is reserved for meeting fluctuating prices of materials and administrative expense of the Gala Yojana.'

4. The AO was not satisfied. He observed and held as under :

“ The assessee has shown ‘Surplus on Schemes’ amounting to Rs.3,51,47,632/- under Miscellaneous income in the Profit & Loss account. The assessee was asked to submit the details of the same. The assessee submitted details of schemes, which is as follows :

Surplus on sale of flat Jewad Amravati	: Rs.21,30,081
Surplus on Butibori Cidco Scheme	: Rs.3,37,155
Estimated profit on Empress Mill Scheme	: Rs.3,27,21,194

1.

Thus the assessee housing society has net income of Rs.3,51,88,430/- on housing scheme during the year and the net profit shown during the year as per Profit & Loss account is Rs.1,16,65,292/-

Some of the main objects of the society as per bye-laws are

- a) To acquire land by purchase or otherwise for erecting

- dwelling thereon for the society or its members.
- b) To layout land to suit the requirements of members and to prepare plans and estimates for construction of buildings thereon.
 - c) To build or cause to be built houses for use of the members.
 - d) To advance loans to members for construction of house, acquiring houses or plots, repairing houses or making such suitable modifications or accretions thereto as may be necessary or convenient, redemption of debt incurred on mortgage of house or in connection with house or sinking wells on land adjoining the house or to meet exigencies of members.
 - e) To hold, sell, mortgage, lease out on hire or on hire-purchase system, give on lease or otherwise dispose of land, house sites, buildings and other property moveable or immoveable and to open safe deposit lockers as may be necessary for carrying out the objects of the Society.
 - f) To lend money to the members of the Society on security of their fixed deposit receipts.

3.2 The assessee is a co-operative housing society, who provide houses/flats or housing loan to its members. The assessee society has surplus of Rs.3,51,88,430/- on the housing scheme during the year. Co-operative housing societies are not eligible for deduction u/s 80P(2)(a)(i) but are eligible for deduction of Rs.50,000/- only on its income u/s 80P(2)(c)(ii) under the category of other societies. The assessee has claimed deduction u/s 80P(2)(a)(i) for Rs.1,14,95,448/-. In view of the facts and circumstances as discussed above the deduction claimed u/s 80P(2)(a)(i) is hereby disallowed. Hence the amount of **Rs.1,14,45,448j-** after allowing deduction of Rs.50,000/- u/s 80P(2)(c)(ii), is added back to the total income of the assessee as 'income from business'.

4. In view of the above remarks, the total income of the assessee is computed as under :

Income from Business

Net profit as per Profit & Loss A/c : Rs.1,66,65,292

Less : House property income considered
separately. : Rs.1,69,844

Income from business : Rs.1,14,95,448

Less : Deduction u/s 80P(2)(c)(ii) : Rs. 50,000

Total income from business : Rs.1,14,45,448

Income from House Property as declared : Rs. 1,18,891

Gross Total Income : Rs.1,15,64,339

Total Assessed Income : **Rs.1,15,64,340**
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5. Against the above order the assessee appealed before the learned CIT(Appeals). The learned CIT(Appeals) noted and reproduced the submissions of the assessee. After reproducing the assessee's submissions the learned CIT(Appeals) held as under :

“ The appellant has submitted the statement of accounts follows:

Sr. No.	Nature	Particulars.	Amount Rs.
A)	Housing Loan interest.	Amount received on long term credit facilities given to members of the society against their house property mortgage.	Rs. 17,53,94,476.00
B)	Loan against deposits	Interest received out of the loans on FDR deposits of the members of the society.	Rs. 32,71,855.00
C)	Staff loans and advances	Recovery out of loan facility given to staff Repayment is attached to salary.	Rs. 1,44,221.00
D)	RRC and Decretal	Recovery of credit facilities given	Rs. 2,12,25,491.00

	Loan A/c	to members against, RRC-Recovery Revenue Certificates duly obtained from Co-operative Court for recovery of outstanding amount against mortgaged property of members.	
E)	Excegency Loans	Credit facility given to members on long term basis against mortgage of property for other than housing purpose.	Rs. 11,24,768.00
F)	Interest on investment.	Interest received on deposits of society with other co-operative societies.	Rs. 10,74,65,925.00
G)	Other interest	Interest on loans given to members who are owners of tenanted premises of the society for branches.	Rs. 1,25,864.00
	Total		Rs. 30,87,52,650.00

4.0 We see that out of the chart for interest received only entry at Sr.No. A,B D & E qualify for interest income from members of cooperative society and these interest receipt fall within the profits and gains attributable to activity as defined u/s 80P(2)(a)(i) i.e. providing credit facility to its members and hence other interest receipt falls under his section. Hence section 80P(2)(a)(i) claim has to be restricted to this portion of receipts only. To this extent A.O. is not correct in holding that this cooperative society is not eligible for deduction u/s 80P(2)(a)(i) as section 80P(1) does not distinguish between any cooperative society as long as income is interest income from mutual activity of providing credit facilities to its members and any interest income is earned there from.

4.1 Appellant wanted to include the other interest received by it from "Investments" made by it with certain banks claiming that since these banks are cooperative banks, income from these investments is also covered u/s 80P(2)(a). I am unable to agree to this as the moment you invest surplus funds in banking business you go out of "mutuality clause" which is the main stage of concept of giving such relief as the members of cooperative society do not earn income from themselves and whatever gain is there, it is shared by them in the form of dividend. Hence, such income is exempt. But the moment surplus fund it investd in banks, it is income from other sources as held by the Hon'ble Supreme Court in M/s. The Totgars' Cooperative Sales Society Ltd. vs. ITO 322 ITR 283 (SC). Even the exemption u/s 80P(2)(d) is not applicable to income earned by society from cooperative bank. As the moment cooperative society becomes bank, it is out of section 80P and the word used in section 80P(2)(d) is "cooperative society" and not "Cooperative Bank". Under Income Tax Act thy have very different connotation so much that now cooperative banks have been taken out of purview of section 80P altogether. Hence, express "investment" made by the appellant in these banks are going out of cooperative set up and they may in turn be invested in any activity and move out of preview of cooperative society i.e. can be used commercially by banks as they like and this money is not used for mutual benefit of members of the cooperative banks alone.

Hence, the amount of interest received by appellant from investment in banks is not be deducted in section 80P(2)(a)(d).

4.2 Now we come to determine taxability of receipt of society. How to calculate the net exemption / net taxable and as the society has not maintained the account in such a manner that one can determine the amount of net taxable / exempted income easily. Appellant has suggested two ways in its submission; one is on INVESTMENT BASIS and other is on GROSS RECEIPT BASIS. I think the gross receipt basis would serve a better purpose because what is to be calculated is that proportion of income, which is attributable to business of giving credit facility to its members or that portion of interest income which is attributable to interest earned from members of cooperative society.

4.3 Hence, according to this conclusion, I hold that since it is not possible to prepare separate account, we divide the net surplus of Rs.1,14,95,448/- [Rs.1,16,65,292 - Rs.16,98,894 (income from house property)] Hence, out of total receipt of Rs.34,74,40,831.24, the receipts which are come out of activity covered u/s 80P(2)(a)(i) is Rs.20,10,16,590.34/- [Rs.20,11,60,811.34 - Rs.1,44,221 (staff advance interest)]. A.O. is directed to allow deduction u/s 80P(2)(a)(i) out of income of the appellant in this ratio i.e.

$$\frac{\text{Rs. } 20,10,16,590.34}{\text{Rs. } 34,71,64,700.00}$$

Hence out of Rs.1,14,95,948/- only the sum in above ratio will allowed as deduction as it is admissible to income from activity of giving credit facility to its members.”

6. Against the above order the assessee and Revenue are in cross appeals before us.

7. We have heard both the counsel and perused the records. Submissions of the learned counsel of the assessee are summarized as under :

1) It is submitted that the appellant is a cooperative society having a legacy of more than 80 years which is duly registered under the Co-operative Societies Act having more than 1.20 lac members with it.

2) That the main object of the Appellant Society is to provide housing facilities to its members by providing them with housing loan for purchase / construction / repairs of house property, providing houses in the form of residential apartments to its members, etc. the activities being duly incorporated in the bye-laws of the society. The society accepts deposits

from its member as contribution in the form of various deposits for the cause of the society.

3) That the entire activity as carried out by the society is for the benefit of the members. The loans are provided only to the members of the society. The society accepts deposits from its members and loans are provided to the members out of the same. The members are the contributors and the beneficiaries themselves. Thus, the PRINCIPLE OF MUTUALITY is broadly and correctly applicable in the case of the Assessee Society as the contributors and participators are clearly identifiable in all the activities of the society.

4) It is submitted that the by-laws of the society clearly outline the object of the society which are for the benefits of the members. The motive is service to the members and the society at large by providing housing loan and premises at reasonable costs. Consequently any surplus or profit, if earned by the society, is distributed amongst the members as dividend. The learned CIT(A) failed to appreciate the fact that all the activities carried on by the Appellant Society are duly covered by the Principal of Mutuality and profits, if any, should not be exigible to tax under the principals of mutuality.

5) It is submitted that the CIT(A) grossly erred in holding that profit amounting to Rs. 48,39,4801- is not eligible for deduction *u/s* 80P(2)(a)(i) of the Income Tax Act 1961, as the source of income for the same amounting to Rs. 14,62,54,397/- is not attributable to the activity as defined in section 80P(2)(a)(i) i.e. 'business of providing credit facility to its members'.

5) That the main activity of the society is to provide long term housing loan to its members which is evident from the amount of investment for the same. The Appellant society has provided housing loan to its members amounting to Rs.220.63

cores as on 31.03.2009, which is a major application of fund by the society. The other activity of the society is to provide constructed housing premises to its members, investment in which was about Rs. 32.80 crores during the year under consideration.

6) That during A.Y. 2009-10, the total profit earned by the society amounted to Rs.1,16,65,292/- including income from house property amounting to Rs.1,69,844.00. The computation of income for the year is as follows :

<u>Particulars</u>	<u>Amount Rs.</u>	<u>Amount Rs.</u>
1) Income from House property	1,69,844.00	
Less 30% repairs	50,953.00	1,18,890.00
2) Income from business as per P&L A/c	1,16,66,292.00	
Less: house property treated separately	<u>1,69,844.00</u>	<u>1,14,95,448.00</u>
Gross Total Income		1,16,14,338.00
Less: Deduction u/ 80P.		<u>1,14,95,448.00</u>
Balance Taxable Income Rs.		1,18,890.00

The society claimed deduction u/s 80P(2)(a)(i) on the consolidated amount of profit earned from its activity carried out during the period.

7) That the various sources of income during F.Y. 2008-09 are as follows:

Particulars	Amount Rs.	Amount Rs.
1) <u>Interest income</u>		
a) Interest on housing loans	17,53,94,476.00	
b) Interest on loan against deposit	32,71,855.00	
c) Interest on Staff loans	1,44,221.00	
d) Interest RRC and Decretal loans	2,12,25,491.00	
e) Interest on Exegency loans	11,24,768.00	
f) Interest on investments	10,74,65,925.00	

g) Interest on loan given to owners	1,25,864.00	
of tenanted branch premises.		30,87,52,650.00

2) Miscellaneous receipts:

a) Income from house property	1,69,844.00	
b) Locker rent received	1,06,385.00	
c) Surplus from housing schemes	3,51,88,430.00	
d) Other receipts	7,07,839.00	3,61,72,498

3) Share transfer fees 32,722.00

4) Other receipts:

a) Loan incidental charges	10,52,853.00	
b) Loan consolidation charges	78,148.00	
c) Incoperative saving A/c charges	1,47,460.00	
d) Working charges(flat transfer fee)	2,96,100.00	
e) Loan commitment charges	9,08,448.00	24,83,010.00

Total receipts charges 34,74,40,831.00

8) It is submitted that the learned CIT(A) grossly erred in holding that profits from only income of 1) interest on housing loan, 1) interest on loan against deposit, 3) interest on RRC Decretal loans, and 4) interest on exigency loans; are eligible for deduction u/s 90P(2)(a)(i), these activities being attributable to the activity as defined in that section, and all other incomes are not ancillary to or incidental to the activity of providing credit facilities to the members, and are not eligible for deduction u/s 80P(2)(a)(i).

9) That the CIT(A) erred in not considering the nature of other incomes of the Appellant society, and disallowed deduction of profit on lumpsum basis. These incomes are entirely related to and are completely incidental and ancillary

to the activity of providing credit facilities to the members. The various incomes, profits of which are not considered for deduction u/s 80P(2)(a)(i), are as follows :

Particulars	Amount Rs.	Amount Rs.
1) <u>Interest income:</u>		
a) Interest on Staff loans	1,44,221.00	
b) Interest on investments	10,74,65,925.00	
c) Interest on loan given to owners of tenanted branch premises	1,25,864.00	
		10,77,36,010.00
2) <u>Miscellaneous receipts:</u>		
a) Locker rent received	1,06,385.00	
b) Surplus from housing schemes	3,51,88,430.00	
c) Other receipts	7,07,839.00	3,60,02,654.00
3) <u>Share transfer fees</u>		
		32,722.00
4) <u>Other receipts</u>		
a) Loan incidental charges	10,52,853.00	
b) Loan consolidation charges	78,148.00	
c) Inoperative Saving A/c charges	1,47,460.00	
d) Working charges(flat transfer fee)	2,96,100.00	
e) Loan commitment charges	9,08,448.00	24,83,010.00
Total Rs.		14,62,54,397.00

Profit attributable to these receipts amounting to Rs. 48,39,580.00 is considered by the learned CIT(A) as not eligible for deduction *u/s* 80P(2)(a)(i).

10) It is submitted that income of Rs. 1,44,2211- as interest on loans and

advances to staff are very much part of the activities of the Appellant society. An organization cannot carry on its business efficiently without the aid of its employees. The Appellant society provided housing loans, vehicle loans, grain advances, and festival advances to its employees. Interest was duly charged on the loans given. Moreover, the employees are themselves share holder of the Appellant Society and are also contributors to its funds in the form of term deposits. Hence, interest on credit facilities provided to the employees is eligible for deduction *uls* 80P(2)(a)(i).

11) It is also submitted that the income of Rs. 1,25,8641- is interest on loan given to owners of tenanted premises held by the Appellant Society for its branches. The owners of tenanted premises are very much the members of the society and the nature of loan given was for repairs of housing property. Thus, the same is in terms of the regular business of the Appellant society of providing credit facility to its members and the income from interest is duly exempt.

12) It is submitted that income of Rs. 10,74,65,925.00 as interest on investment made in various co-operative banks is ancillary and incidental to carrying on the business of providing credit facilities to its members, and as such, exempt under the provisions of section 80P(2)(a)(i). The Appellant Assessee deposited surplus funds available with it in co-operative banks and earns interest thereon.

13) It is not disputed that the Appellant society is carrying on the business of providing credit facilities to its members, and the same is established by the learned CIT(A). That the provisions of Section 80P(2)(a)(i) of the Act besides being applicable to business of banking also applies to the business of providing credit facility to its members. The investments of surplus funds available with the Appellant are deposited in the course of business of the society. The funds in bank can be said to be ready for

utilization by the Assessee in its business of providing credit facilities to its members. Therefore, the said income can be clearly said to be incidental and in proximity to the business of the Assessee.

1.

14) That the investments are made in various co-operative banks and are also in accordance with the Provisions of The Maharashtra State Co-operative Societies Act 1960.

15) It is submitted that the issue regarding interest earned from deposits with banks to be part of business income of an Assessee eligible for deduction u/s 80P(2)(a)(i) is well settled by the Hon'ble Apex Court .

In case of CIT Vs Karnataka State co-operative Apex Bank (2001) 169 CTR(SC) 486: (2001) 251 ITR 194 (SC): (2001) 118 TAXMANN 321 (SC) larger bench of the Hon'ble Supreme Court was pleased to hold that:

'the interest arising from the investment made in compliance with statutory provisions to enable it to carry on banking business out of reserve fund by a cooperative society engaged in banking business is exempt u/s BOP(2)(a)(i) of the Income-tax Act, 1961. The placement of such funds being imperative for the purpose of carrying on banking business, the income there from would be income from the assessee's business. There is nothing in phraseology of Section BOP(2)(a)(i) which makes it applicable only to income derived from working or circulating capitals. '

The Hon'ble Supreme Court in the cases of

(1) Mehsana District Central Co-operative Bank Ltd vs. ITO (2001) 170 CTR (SC) 169: (2001) 251 ITR 522(SC): (2001) 119 TAXMANN 785(SC) and

(2) CIT vs. Ramnathapuram Distt. Co-op. Central Bank Ltd. (2002) 1756 CTR (SC) 297: (2002) 255 ITR 423 (SC): (2002) 123 TAXMANN 222 (SC)

has been pleased to follow the decision taken in the case of Karnataka State Co-op. Apex Bank.

Though the decisions cited above relate to co-operative banks, the parity of reasoning given by the Apex court can be clearly applied to the case of the Assessee that interest earned out of deposits with banks are incidental and ancillary to the business of banking/providing credit facility to its members, and therefore eligible for deduction u/s 80P(2)(a)(i).

16) It is further submitted that in case of Bihar State Housing Co-operative Federation Ltd vs. CIT (2009) 315 ITR 286 (PAT), the Hon'ble High Court held that :

'The interest earned on the deposits made does not arise out of one or more of the activities specified in Sc. 80P(2)(a)(i), but the interest received by the Assessee on the bank deposits is ancillary and incidental to carrying on the business of providing credit facility to its member and, as such, exempt under the aforesaid provisions. It may be stated herein that the Assessee deposits surplus funds available with it in banks and earn interest thereon. The nature of activity in which the Assessee is involved clearly creates a situation when surplus fund is available to it which it deposits in bank and earns interest thereon. The placement of such funds being incidental and ancillary to carry on the business of providing credit facilities to its members by reason of Sec BOP(2)(a)(i), same is exempt under the aforesaid provisions. '

17) The same ratio was also duly laid down in the cases of:

a) CIT vs. Orrisa State Co-operative Housing Corporation Ltd. (1976) 104 ITR 157 (ORI);

b) CIT & ANR vs. Iqbalpur Co-operative Cane Development Union Ltd (2010) 230 CTR (Uttarakhand) 95: (2009) 315 ITR 441 : (2009) 29 DTR 259;

c) Punjab State Co-operative Federation of Housing Building Societies Ltd. vs. ACIT (2010) 134 TT J (Chd) (UO) 12: (2010) 38 DTR 284: (2010) 4 ITR 507.

18) With due consideration of the decisions of Hon'ble Apex Court and also various High Courts and Tribunal, it is well established that interest earned from bank deposits are income in proximity with and incidental to the business of providing credit facility to its members and is eligible for deduction *u/s* 80P(2)(a)(i).

19) It is submitted that other receipts in the nature of:

1)Other receipts (forms sale etc.)	Rs.707839.00;
2)Loan Incidental charges	Rs. 10,52,853.00;
3)Loan consolidation charges	Rs. 78,148.00;
4)Loan Commitment charges	Rs. 9,08,448.00;
5)Working charges(flat transfer fee)	Rs. 2,96,100.00; &
6)Inoperative saving account charges	Rs. 1,47,460;

are all receipts which are directly related with the loans provided to the members of the society. These charges are collected for the due processing of the loan accounts and maintenance of deposit accounts. As such, all these cages are incidental to the main activity of providing credit facility to its members, and are therefore also eligible for deduction *u/s* 80P(2)(a)(i).

20) It is submitted that providing credit facility to its members is the primary object of the society which is duly accepted and established by the Hon'ble CIT(A). The society also carries on the activity of providing housing apartments to its members by purchasing land and constructing the scheme thereon, which is duly contemplated in the bye-laws. This activity is carried out as a facility for the members and to provide affordable houses to needy members of the society. Surplus of Rs. 3,51,88,430/- was duly credited to the Profit & Loss Account of the

Appellant Society.

21) That construction of apartments is an ancillary activity of the society. which is evident from the fact that the total investment as on 31.03.2009 for the same was Rs. 32.80 crores, which is only 15% of the Appellants total investment. The apartments are provided to the members, and are absolutely transferred in the favor of the purchasing member immediately by executing a sale deed, along with mortgage deed for the long term finance provided. What remains is only a relation of a Borrower and a Lender between the member and the society. It is clearly established that the society is not selling or providing goods on credit to its members, but is only providing credit facility. Any income earned on such activity which is in proximity to the main business of providing credit facility to its members should be eligible for deduction of u/s 80P(2)(a)(i).

22) The society earns income from various sources. It cannot be said that the society has only one business, neither a solitary activity can be characterized as its only business. The entire activities as carried out by the society has to be considered so as to satisfy the qualification for deduction u/s 80P(2)(a)(i). Section 80P(2)(a)(i) allows deduction to *'the whole amount of profits and gains of business attributable to anyone or more of such activities.'* The entire activity of the business as carried out by the society relates directly with the provision of credit facility to its members.

23) The Provision for exemption is intended to encourage co-operative Societies. Considering the benevolent cause, a liberal construction should be given to the language employed in the provision. Construing Sec. 80P(2)(a)(i) in the manner it can be said that if the co-operative society is members that would suffice to attract the benefit of deduction under sec. 80P(2)(a)(i).

24) Nature of income from various activities of the society cannot be segregated for taxation purpose. The entire profit as earned and declared

by the society is attributable to the activity of providing credit facility to its members. House property income was duly offered for taxation.

25) That the words 'attributable to' used in the provision of section 80P(2)(a)(i) has to be given a wider term. By use of the term, the legislature intended to cover receipts from sources other than the actual business of the Assessee. All incomes which are incidental and ancillary to the business as specified in the section and which are in direct proximity of the business as included in section 80P has to be attributable to such activity.

26) That an income can be said to be '*attributable to*' a business if there is a proximate connection between the two, and it does not require that such connection should be direct, or the immediate source of such income ought to be the business activity itself. It is not necessary that the income in respect of which deduction is claimed, should be derived from the business referred in section 80P(2)(a)(i). It would be sufficiently to invoke the claim u/s 80P(2)(a)(i), if the relevant income is shown to be related to any activity which is inextricably linked with the business referred in that provision. If a proximate connection between the income in question and the business referred in section 80P(2)(a)(i) is established, it would be sufficient to claim the deduction.

27) It is submitted that the learned CIT(A) erred in law to hold that interest income earned from investment in co-operative banks is not eligible for deduction u/s 80P(2)(a)(i) or 80P(2)(d)'. The learned CIT(A) held that '*co-operative banks are not co-operative societies*' and any investment therein are out of the purview of Section 80P and the co-operative setup.

28) That during appeal proceedings before the Hon'ble CIT(A), the Assessee made an alternate claim that interest from investments in co-operative banks are also eligible for deduction u/s 80P(2)(d). The learned

CIT(A) held that co-operative banks are commercial organization and 'the word used in the section is society and not bank'.

29) It is submitted that a co-operative bank is a co-operative society, eligible to do banking business with necessary permission and license from Reserve Bank of India to carry on banking business. As per Section 56(c) (i) of the Banking Regulation Act 1949, "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' means a co-operative society, other than a primary agricultural credit society'

It is therefore very much clear that a co-operative bank is a co-operative society, and as such, interest received from it is duly covered under the purview of section 80P.

l) That it is humbly Prayed that the claim as made by the Assessee for deduction of Rs. 48,39,5801- u/s 80P(2)(a)(i) may please be allowed.

8. Per Contra learned D.R. relied upon the order of the AO and the order of learned CIT(Appeals) to the extent he has upheld the AO's action.

9. We have carefully considered the submissions and perused the records. We find that assessee in this case is a cooperative society. The assessee is engaged in the activities of carrying on the business of banking or providing credit facilities to its members as well as it is engaged in activities of a housing society. The Assessing Officer has held the society to be a housing society and hence he has denied the deduction under section 80P (2) (a)(i). The Assessing Officer has allowed only deduction under section 80 P (2) (c) (ii). The learned CIT(Appeals) has held that the assessee should be granted deduction after deduction of income attributable to housing society activities. He has directed that the income be allocated on the basis of gross receipt basis.

In this regard we may gainfully refer to the provisions of section 80 P(1) and 80 P (2) as under:

Section 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 sum 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 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:-

- (1) the individuals who contributed 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, oilseeds, 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 (1 of 1956), or 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 clause (b) (either independent 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 [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 interest or dividends derived by the co-operative society from the 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.

Explanation- For the purpose 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."

A reading of the above makes it clear that a corporative society can be engaged in different type of activities. If a cooperative society is carrying on business of banking or providing credit facilities to its members and at the same time also engaged in other activities, the deduction under section 80 P 2(a)(i) will still be available to the cooperative society to the extent of income relates to the activity of carrying on the business of banking or providing credit facilities to its members.

10. In this case it is evident that apart from providing credit facilities to its members the cooperative society is also engaged in activities of a housing cooperative society. Hence to the extent the profit of the assessee is attributable to the activity of providing credit facilities to its members the same be qualify for deduction under section 80 P(2)(a)(i).

11. The assessee's plea that in the past it has been provided deduction on total income under section 80 P (2)(a)(i) on the same set of facts cannot come to the rescue of the assessee. It is settled law from the Honourable Supreme Court that a mistake cannot be perpetuated. As per the facts of the case and the mandate of law it is clear that assessee is engaged in activities of providing credit facility as

well as providing housing facility. Hence assessee's activities which relate to the provisions of section 80 (P)(2)(a) will get hundred percent deduction. In this regard it is noted that assessee's books of accounts have not been maintained separately so as to depict profits attributable to both the segments. In this regard both the counsel agreed that the issue can be remitted to the file of the Assessing Officer and the assessee will cooperate in arriving at the profit attributable to both the segments. Accordingly in the interest of justice the issue of arriving at profits attributable to both the segments is remitted to the Assessing Officer. The Assessing Officer shall arrive at the figure of profits after giving the assessee an opportunity of being heard.

12. Another issue on which assessee has filed appeal is with regard to the learned CIT-A's direction that assessee would not be eligible for deduction on interest income as it is not co-operative bank.

13. We find that this issue is, covered in favour of the assessee by the decision of this Tribunal in ITA No. 371/Nag/2012 for Asstt. Year 2009-10 vide order dated 27-05-2015 in the case of Chhattisgarh Urban Credit Sahakari Sanstha Maryadit wherein the Tribunal held as under :

“11 Upon careful consideration, we note that identical issue was the subject matter of consideration by ITAT, Ahmedabad Bench decision in the case of Dhanlaxmi Credit Cooperative Society Ltd. (supra), in which one of us, learned Judicial Member, was a party. The concluding portion of the Tribunal's decision is as under :

“4. With this brief background, we have heard both the sides. It was explained that the Co-operative Society is maintaining “operations funds” and to meet any eventuality towards re-payment of deposit, the Co-operative Society is maintaining some liquidated funds as a short term deposit with the banks. This issue was thoroughly discussed by the ITAT “B” Bench Ahmedabad in the case of The Income Tax Officer vs. M/s.Jafari Momin Vikas Co-op.Credit Society Ltd. bearing ITA No.1491/Ahd/2012 (for A.Y. 2009-10) and CO No.138/Ahd/2012 (by Assessee) order dated 31/10/2012. The relevant portion is reproduced below:-

“19. The issue dealt with by the Hon’ble Supreme Court in the case of Totgars (supra) is extracted, for appreciation of facts, as under:

“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? The 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 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...”

19.1. However, in the present case, on verification of the balance sheet of the assessee as on 31.3.2009, it was observed that the fixed deposits made were to maintain liquidity and that there was no surplus funds with the assessee as attributed by the Revenue. However, in regard to the case before the Hon’ble Supreme Court

—

“(On page 286) 7..... 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. The 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).

19.2. From the above, it emerges that

(a) that assessee (issue before the Supreme Court) had admitted before the AO that it had invested surplus funds, which were not immediately required for the purpose of its business, in short term deposits;

(b) that the surplus funds arose out of the amount retained from marketing the agricultural produce of the members;

(c) that assessee carried on two activities, namely, (i) acceptance of deposit and lending by way of deposits to the members; and (ii) marketing the agricultural produce; and

(d) that the surplus had arisen emphatically from marketing of agricultural produces.

19.3. In the present case under consideration, the entire funds were utilized for the purposes of business and there were no surplus funds.

19.4. While comparing the state of affairs of the present assessee with that assessee (before the Supreme Court), the following clinching dissimilarities emerge, namely:

(1) in the case of the assessee, the entire funds were utilized for the purposes of business and that there were no surplus funds; -

-in the case of Totgars, it had surplus funds, as admitted before the AO, out of retained amounts on marketing of agricultural produce of its members;

(2) in the case of present assessee, it did not carry out any activity except in providing credit facilities to its members and that the funds were of operational funds. The only fund available with the assessee was deposits from its members and, thus, there was no surplus funds as such;

- in the case of Totgars, the Hon'ble Supreme Court had not spelt out anything with regard to operational funds;

19.5. Considering the above facts, we find that there is force in the argument of the assessee that the assessee is not a co-operative Bank, but its nature of business was coupled with banking with

its members, as it accepts deposits from and lends the same to its members. To meet any eventuality, the assessee was required to maintain some liquid funds. That was why, it was submitted by the assessee that it had invested in short- term deposits. Furthermore, the assessee had maintained overdraft facility with Dena Bank and the balance as at 31.3.2009 was Rs.13,69,955/- [source: Balance Sheet of the assessee available on record].

19.6. In overall consideration of all the aspects, we are of the considered view that the ratio laid down by the Hon'ble Supreme Court in the case of Totgars Co-op. Sale Society Ltd. 9supra) cannot in any way come to the rescue of either the Ld.CIT(A) or the Revenue. In view of the above facts, we are of the firm view that the learned CIT(A) was not justified in coming to a conclusion that the sum of Rs.9,40,639/- was to be taxed u/s.56 of the Act. It is ordered accordingly.”

5. Respectfully following the above decision of the Co-ordinate Bench, we hereby hold that the benefit of deduction u/s.80P(2)(a)(i) was rightly granted by ld.CIT(A), however, he has wrongly held that the interest income is taxable u/s.56 of the Act so do not fall under the category of exempted income u/s.80P of the Act. The adverse portion of the view, which is against the assessee, of ld.CIT(A) is hereby reversed following the decision of the Tribunal cited supra, resultantly ground is allowed. ”

We find that the ratio of above case also applies to the present case. As observed in the above case law, in this case also the submissions of the assessee's counsel is that the assessee society is maintaining operational funds and to meet any eventuality towards repayment of deposit the cooperative society is maintaining some liquidated funds as short term deposits with banks. Hence adhering to the doctrin stair desises, we hold that the assessee should be granted benefit of deduction under section 80P(2)(a)(i). Accordingly, the interest on deposits would qualify for deduction under the said section. Accordingly, we set aside the orders of the authorities below and decide the issue in favour of the assessee.”

14. Respectfully following the precedent as above we set aside the orders of learned CIT(Appeals) in this regard and decide the issue in favour of assessee.

15. In the result these appeals by the assessee and revenue stand allowed for statistical purposes.

Order pronounced in the Open Court on this 9th day of Jan., 2017.

Sd/-
(RAM LAL NEGI)
JUDICIAL MEMBER.

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER.

Nagpur,
Dated: 9/1/2017.

Copy forwarded to :
1. The Vidarbha Premier Co-op. Housing Society, Gandhisagar, Mahal, Nagpur-440018.
2. I.T.O., Ward-6(1), Nagpur.
3. C.I.T.-III, Nagpur.
4. CIT(Appeals) -II, Nagpur.
5. D.R., ITAT, Nagpur.
6. Guard File

True Copy

By Order

Assistant Registrar,
Income Tax Appellate Tribunal,
Nagpur Bench, Nagpur.

Wakode.

