आयकर अपीलीय अधीकरण, न्यायपीठ – "D" कोलकाता,

IN THE INCOME TAX APPELLATE TRIBUNAL
*KOLKATA BENCH "**D**" KOLKATA*

Before **Shri Waseem Ahmed, Accountant Member** and
Shri S.S.Viswanethra Ravi, Judicial Member

ITA No.1244/Kol/2015 Assessment Year:2012-13

Income Tax Officer, Ward-32(2),Pr. Commissioner of Income Tax, 10-B,Middleton Row, 3rd, Floor, Kolkata-71	बनाम **/** **V/s.**	M/s National Coal Development Corporation Staff Co-operative Credit Society Ltd., Thapar House, 5th Floor, 25, Boaboune Road, Kolkata-001 [**PAN No.AAALN 0409 N**]
अपीलार्थी /Appellant	··	प्रत्यर्थी /Respondent

अपीलार्थी की ओर से/By Appellant	Shri Araindam Bhattacharjee, Addl. CIT-DR
प्रत्यर्थी की ओर से/By Respondent	Shri Subash Agarwl, Advocate
सुनवाई की तारीख/Date of Hearing	03-11-2017
घोषणा की तारीख/Date of Pronouncement	15-12-2017

आदेश /O R D E R

PER Waseem Ahmed, Accountant Member:-

This appeal by the Revenue is against the order of Commissioner of Income Tax (Appeals)-9, Kolkata dated 23.07.2015. Assessment was framed by ITO Ward-32(2), Kolkata u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') vide his order dated 30.09.2014 for assessment year 2012-13. The grounds raised by the Revenue per its appeal are as under:-

> *"1. For that on the facts and in the circumstances of the case, the Ld. CIT(A) was not justified in confirming the sanction of the AO in holding that the interest income earned by the assessee-credit society amounting to Rs.40,76,664/- on account of fixed deposits does not qualify for deduction u/s 80P.*

2. For that the Ld. CIT(A) ought to have considered that the judgment in the case of Totgars Co-operative Sale Society Ltd. v. ITO 322itr 283 (SC) is not applicable to the facts of the assessee's case.
3. For that on the facts and in the circumstances of the case, the Ld. CIT(A) ought to have allowed the proportionate deduction in respect of interest paid / payable to the members out of the interest income.
4. For that the Ld. CIT(A) has erred in not adjudicating ground no. (vi) raised in the memorandum of appeal.
5. For that the Ld. CIT(A) has erred in not giving any finding/direction to the AO in respect of ground nos. (i) (vi) and (vii).
6. That the appellant craves leave to add, alter or delete all or any of the grounds of appeal."

Shri Arindam Bhattacharjee, Ld. Departmental Representative appeared on behalf of Revenue and Shri Subash SAgarwal , Ld. Advocate appeared on behalf of assessee.

2. The ground no. 1, 4 & 5 are inter-related and therefore being taken up together. The issued raised by Revenue in this appeal is that Ld CIT(A) erred in deleting the addition made by the Assessing Officer u/s 80P(2)(a)(i) of the Act on account of interest income earned on the surplus fund i.e. Interest on Reserve, Bad Debt, MSSS & 5% on the FD general.

3. Briefly stated facts are that the assessee in the present case is a co-operative society and engaged in the activity of providing loan to its members. The assessee is also claiming deduction in respect of its profit under section 80P(2)(a)(i) of the Act. The assessee in its profit & loss account has shown interest incomes as detailed under:-

1.	Interest on Long Term Loan	Rs.	1,45,08,490.00
2.	Interest on Mid Term Loan	Rs.	41,52,295.00
3.	Interest on Education Loan	Rs.	90,971.00
4.	Interest on Emergency Loan	Rs.	1,77,275.00

Besides the above, the assessee in its profit & loss account has also shown other interest incomes as detailed under :

i.	Interest on MSSS (Net)	Rs.	20,33,844.00
ii.	Interest on FDs	Rs.	40,76,664.00

iii.	Interest on Reserve Fund	Rs.	3,66,436.00
iv.	Interest on Bad debts	Rs.	2,62,408.00

In addition to above the assessee has also shown the other income as detailed under:-

a)	Subsidy	24,000.00	
b)	Misc Receipt	3,650.00	
c)	Guest House Income	(2,44,240.00)	(2,16,590.00)

The assessee has claimed the deduction under section 80P(2)(a)(i) of the Act in respect of the above incomes. However the AO was of the view that the income earned by the assessee in the course of providing credit facilities to the assessee was eligible for deduction under section 80P(2)(a)(i) of the Act.

Accordingly, the AO called upon the assessee for seeking explanation in connection with the claim made under section 80P(2)(a)(i) of the Act in respect of its income from the sources as discussed hereunder :

1)	Interest on MSSS (Net)	Rs.	20,33,844.00
2)	Interest on FDs	Rs.	40,76,664.00
3)	Interest on Reserve Fund	Rs.	3,66,436.00
4)	Interest on Bad debts	Rs.	2,62,408.00
5)	Subsidy	Rs.	24,000.00
6)	Misc Receipt	Rs.	3,650.00
7)	Guest House Income	Rs.	(2,44,240.00)

The assessee in compliance thereto submitted that it is engaged in providing loan facilities to its members, encouraging thrift among them through various savings schemes and running a guest house in Vellore for use by members as and when they visit the city for medical treatment.

The assessee under the MSSS scheme collects the monthly contribution which is refunded to him with interest @ 7.5% per annum on his retirement. In case of death, a fixed sum of Rs. 30,000.00 is paid to the deceased employee’s nominee out of this fund. It therefore becomes necessary to ensure that this fund earns interest so that interest may in turn be paid to the members when they retire or payments may be made when they die.

Similarly the Reserve Fund is maintained as per the statutory provision. The fund is intended to provide a cushion against losses sustained by the business of providing loans. The balance of the fund that remains invested in fixed deposits does not constitute a surplus. It cannot be dealt with freely and it is certainly is not out of a surplus fund. The fund is earmarked for a certain purpose and therefore it cannot be under any circumstances be deemed to be a surplus. The fund is set aside to provide for contingencies which cannot be predicted. Thus the Reserve Fund is intended to provide against losses arising from the business of providing credit and therefore the interest earned from investing such fund is attributable to that same business.

The bad debts fund is another fund created by the society for its specific purpose to provide safeguard against losses arising from default in payment of loans by members. The subsidy was received from the company that employs the members of the appellant society namely National Coal Development Corporation Ltd. This has been given because the appellant carried on the business of providing credit facilities to its employees. Therefore it is unquestionably attributable to that business and was not received in the course of providing credit facilities.

Further vide in the Income Tax Appellate Tribunal Bench- C Kolkata vide No.**ITA No.1564/Kol/2011** dated 13.043.2012 has given in the order that interest on reserve fund, SBF Loan MSSS loan all are main activity of the business.

The assessee also furnished the objects of it as specified in the bye laws which reads as under:

(a) primary to create funds to be lent to
(b) to provide facilities for the exercise of thrift and savings and
(c) generally to encourage self-help and mutual aid among members

The assessee in furtherance of the above objects the society shall be at liberty:-

(a) To receive money by way of loans
(b) To establish a provident fund for members and to make suitable contribution to such fund out of profit
(c) … … any movable or immovable property necessary for the business of the society; and

(d) Generally to do all such other things as are incidental or conducive to the attainment of its objects.

In view of above, the AO observed that as per the aims & objects specified in the bye laws of the society the assessee is engaged in providing credit facilities to its members only. Therefore the deduction as per the provisions of section 80P(2)(a)(i) of the Act is limited to the interest income earned by it from the business of providing the credit facilities to its members. Accordingly the interest income earned on the surplus fund is not eligible for deduction u/s 80P(2)(a)(i) of the Act. The details of the interest income not qualified for the deduction under section 80P(2)(a)(i) of the Act stand as under :

(1) Interest on fixed deposit	Rs.40,76,664/-
(2) Interest on reserve fund	Rs. 3,66,436/-
(3) Interest on bad debts fund	Rs. 2,62,408/-
(4) Interest on MSSS (Net)	Rs.20,33,844/-

Accordingly the AO made the disallowance of deduction claimed by the assessee u/s 80P(2)(a)(i) of the Act in respect of above stated interest income for Rs. 67,39,352.00 only and added to the total income of the assessee.

5. Aggrieved assessee preferred an appeal to Ld CIT(A). The assessee before the Ld. CIT(A) submitted that the AO failed to appreciate that the aforesaid income earned by the assessee were in the course of its business of "*carrying on the business of providing credit facilities to its members*" and were inextricably linked to and part and parcel of its activities. The AO wrongly applied the judgment of the Hon'ble Supreme Court in the case of *"Totgars' Co-operative Sale Society Ltd., Vs. ITO* (2010) 188 taxmann 282 (SC), which was rendered on entirely on different facts inasmuch as the said society was not solely engaged in the business of providing credit facilities to its members but had earned surplus from the sale of the produce of its members. The Ld. CIT(A) after considering the submission of the assessee deleted the addition made by the AO by observing as under:-

> *"4- Ground No.(i) relates to contention of the appellant against not allowing deduction The fact of the case is that the interest income shown by the appellant aggregating to Rs.64,88,318/- was claimed as deduction u/s.80P which was disallowed by the AO. The interest income includes interest from Fixed deposits, Reserve fund, Bad debt fund and MSSS account. This issue was adjudicated by my*

predecessor in the appellant's on case for the assessment year 2011-12 by which he directed the AO to allow deduction u/s. 80P on the amount pertaining to Reserve fund, Bad debt fund and MSSS account but the interest income earned on fixed deposits does not qualify for deduction u/s 80P of the IT Act."

The Revenue, being aggrieved, is in appeal before us.

6. The Ld DR before us submitted that the impugned interest income earned by the assessee is arising out of the surplus fund deposited in the form of fixed deposit with the bank. Therefore such interest income on the surplus fund is not eligible for deduction under section 80P(2)(a)(i) of the Act. The ld. DR in support of his claim has relied on the order of Co-ordinate Bench of this tri in the case of ITO vs. Baksar Co-operative credit Society Ltd in **ITA No. 1890/Kol/2012** dated 18.11.2015 for A.Y. 2009-10, wherein it was held as under :-

"Keeping in view these facts and figures, we are of the view that the issue as to whether the relevant investment is made by the assessee out of its own surplus funds or out of the amount payable to its members, which represent its liability, requires, verification in order to determine the exact head of income under which the interest on such investment is chargeable to tax in the hands of the assessee by applying the relevant case law. We, therefore, set aside the impugned order of the ld. CIT(A) on this issue and restore the matter to the file of the Assessing Officer for deciding the same afresh after verifying the relevant factual position form record and after giving the assessee proper and sufficient opportunity of being heard. Ground No. 2 of the Revenue's appeal is accordingly treated as allowed for statistical purpose."

6.1 Similarly the ld. DR also relied on the judgment of Hon'ble jurisdictional High Court in the case of CIT vs. South Eastern Railway employees Co-Op Credit Society Ltd. in ITA 484 of 2007, where the following question of law was framed.

"Whether in the facts and circumstances of the case, the Income Tax Appellate Tribunal by allowing deduction on income earned by the assessee from investment in banks and other financial institutions has rendered the provisions of Section 80P(2)(a)(i) nugatory as the said section of the Act allows deduction to a cooperative society engaged in carrying on business of banking or providing credit facilities to its members?

The relevant finding of the Hon'ble Court reads as under :

"… … we are not able to agree with Mr. Khaitan that the rest of the interest earned by the assessee from the investments is also attributable to the business of providing credit facilities to its members. We have not been impressed by the judgments cited by MR. Khaitan."

On the other hand, the Ld. AR before us submitted that the assessee has earned inter alia interest income on the money deposited with the bank which was claimed as deduction under section 80P(2)(a)(i) of the Act. The necessary details of such interest income stand as under:-

(1) Interest on fixed deposit*(general)* Rs.40,76,664/-

(2) Interest on reserve fund Rs. 3,66,436/-

(3) Interest on bad debts fund Rs. 2,62,408/-

(4) Interest on MSSS (Net) Rs.20,33,844/-

The interest income earned by the assessee on the fixed deposits (general) made with the bank for Rs. 67,39,352.00 was disallowed by the AO on the ground that it does not arise from the business of providing credit to the members.

However the Ld CIT(A) was pleased to delete the addition to the tune of 5% of the interest income earned on the FD (general). Against the order of Ld CIT(A) assessee preferred an appeal before the Co-ordinate Bench of this Tribunal in **ITA No. 1249/Kol/2015** for the assessment year 2012-13 on the following grounds of appeal:-

" 1.For that on the facts and in the circumstances of the case, the Ld. CIT(A) was not justified in confirming the action of the A.O. in holding that the interest income earned by the assessee-credit society amounting to Rs. 40,76,664/- on account of fixed deposits does not qualify for deduction· u/s.80P.

2. For that the Ld. CIT(A) ought to have considered that the judgment in the case of Totgars Co - operative Sale Society Ltd. vs. ITO 322 ITR 283 (SC) is not applicable to the facts of the assessee's case.

3. For that on the facts and in the circumstances of the case, the Ld. CIT(A) ought to have allowed the proportionate deduction in respect of interest paid / payable to the members out of the interest income.

4. For that the Ld. CIT(A) has erred in not adjudicating ground no. (vi) raised in the memorandum of appeal.
5. For that the Ld. CIT(A) has erred in not giving any finding/direction to the A.O. in respect of ground nos. (i) (vi) and (vii).

6. That the appellant craves leave to add, alter or delete all or any of the grounds of appeal."

6.2 The Hon'ble ITAT was pleased to restore the impugned issued to the file of AO for fresh adjudication in accordance with the law by observing as under:-

"8. At the time of hearing both the parties agreed that similar treatment of interest income as income from other sources in assessee's own case for A.Y.2006-07, 2007-08 and 2009-10 came up for consideration before the Co-ordinate Bench of this Tribunal and in ITA Nos. 1792 to 1794/Kol/2012 by its order dated 02.03.2016 set aside the issue to the AO for fresh consideration. The following were the relevant observations of the tribunal :-

" 6. As regards the common issue involved in the Cross objections of the assessee relating to assessee's claim for deduction under section 80P(2)(a)(i) in respect of interest on bank fixed deposits (general), the Id. Counsel for the assessee has submitted that even though the same has been decided by the Tribunal in assessee's own case for assessment year 2008-09 by relying on the decision of the Hon'ble Supreme Court in the case of Totgars' Co-operative Sale Society Limited (supra), the Hon'ble Karnataka High Court in the decision rendered subsequently in the case of Tumkur Merchants Souharda Credit Cooperative Ltd. -vs- ITO [2015] 55 taxmann.com 447 has distinguished the decision of the Hon'ble Supreme Court in the case of Totgars' Co-operative Sale Society Limited (supra) on certain specific aspects and after taking into consideration this distinction pointed out by the Hon'ble Karnataka High Court in the case of Tumkur Merchants Souharda Credit Cooperative Ltd. (supra), the Tribunal in the case of ITO-vs- The Baskara Cooperative Credit Society Ltd. decided vide its order dated 18th November, 2015 passed in **ITA No.1890/Ko1/2012** *has restored the similar issue to the file of the AO after recording its observations in paragraph nos. 11 and 12 as under :*

> *11. We have considered the. rival submissions and carefully perused the relevant material available on record. In the case of Totgar's Cooperative Sale Society Limited (supra) cited by the ld. D.R. in support of the revenue's case .on the issue under consideration, the assessee Society besides carrying on the business of providing credit facilities to its members was also marketing its agricultural produce. The sale proceed of such agricultural produce, which was payable to its members, in many cases-was retained by the assessee-Society and the same was invested-in short-term deposits/securities. In these facts and circumstances of the case, interest income received on short-term deposits/securities was held to be chargeable to tax under the head 'income from other sources' by the Hon'ble Supreme Court observing that the amount invested by the assessee was a liability payable to its members, and, therefore, the interest income could not be said to be attributable to the activity mentioned in section 80P(2) (a) (i). In the case of Tumkur Merchants Souharda Credit Cooperative Limited (supra) cited by the ld. Counsel for the assessee, the amount, which was invested in Bank to earn interest, was not an amount due to any member and which was not the liability shown in their accounts. In fact, the said amount, which was in the nature of profit and gains, was not immediately required by the assessee for lending money to the members as there were no takers and the same, therefore, had been deposited in a Bank so as to earn interest. In these facts and circumstances of the case, as involved in the case of Tumkur Merchants Souharda Credit Cooperative Limited (supra), the decision of the Hon 'ble Supreme Court in the case of Totgar's Cooperative Sale Society Limited was found to be distinguishable on facts by the Hon'ble Karnataka High Court and the interest income received by the assessee-Society on Bank deposits was*

held to be its business income being attributable to carrying on the business of banking eligible for deduction under section 80P(2)(a)(i) of the Act.

12. Keeping in view the decision of the Hon 'ble Supreme Court in the case of Totgar's Cooperative Sale Society Limited (supra) cited by the Id. D.R. and the decision of the Hon'ble Karnataka High Court in the case of Tumkur Merchants Souharda Credit Cooperative Limited (supra) cited by the ld. Counsel for the assessee, the question that arises in the case on hand, is whether the investment, which is made by the assessee-Society and which has fetched interest income in question, is made out of its own surplus fund, as was the case in Tumkur Merchants Souharda Credit Cooperative Limited (supra) or the same is made out of the amount payable by the assessee-Society to its members, which represent its liability as was the case in Totgar's Cooperative Sale Society Limited. In this regard, it is observed that this aspect has not been specifically considered either by' the Assessing Officer or by or by the ld. CIT(Appeals) in their respective orders and, therefore, there is no finding specifically given by them on this relevant aspect. In this regard, a perusal of the relevant balance-sheet of the assessee as on 31.03.2009 (copy of which at pages 67 & 68 of the paper book), shows that. the total investment made by the assessee- Society was Rs.22.08 crores as on 31.03.2009, whereas the Reserves & Surplus and Profit & Loss Alc. balance as on the said date were Rs.1.76 crores and 1.73 crores respectively. The major amount appearing on the liability side of the balance-sheet as on 31.03.2009 was deposit and other account aggregating to Rs.28.89 crores, which comprised of various funds and deposits. Keeping in view these facts and figures, we are of the view that the issue as to whether the relevant investment is made by the assessee out of its own surplus funds or out of the amount payable to its members, which represent its liability, requires verification in order to determine the exact head of income under which the interest on such investment is chargeable to tax in the hands of the assessee by applying the relevant case laws. We, therefore, set aside the' impugned order of the Id. CIT(Appeals) on this issue and restore the matter to the file of the Assessing Officer for deciding the same afresh after verifying the relevant factual position from record and after giving the assessee proper and sufficient opportunity of being heard. Ground No. 2 of the Revenue's appeal is accordingly treated as allowed for statistical purposes."

7. Relying on the decision of the Tribunal in the case of Baksara Cooperative Credit Society Ltd. (supra), the Id. Counsel for the assessee has contended that the similar issue involved in the case of the assessee for all the three years under consideration may also be restored to the file of the AO and since the Id. DR has not raised any objection in this regard, we set aside the impugned orders of the Id. CII(A) on this issue and restore this matter to the file of the AO for deciding the same afresh as per the same direction as given in the case of Baksara Cooperative Credit Society Ltd. (supra). The Cross objections filed by the assessee thus are treated as allowed for statistical purposes."

9. Respectfully following the decision in assessee's own case we remand the issue for a decision afresh for AO as was done in A.Y. 2006-07, 2007-08 and 2009-10. Thus grounds No.1 to 3 are treated as allowed for statistical purposes."

Accordingly, the Ld AR before us prayed to restore the impugned issued to the file of AO for fresh adjudication in accordance with the law.

7. For the other issue of interest income as discussed above, the Ld AR before us submitted that the Society was registered under the West Government Co-operative Societies Act 1983 as evident from Section 3 of the West Government Co-operative Societies Act 1983 which reads as under :

> *"3.(1) The West Bengal Co-operative Societies Act, 1973, is hereby repealed.*
>
> *(2) Notwithstanding such repeal, anything done or suffered or any action taken (including Assessment Year rule made any transaction entered into, any notification or notice issued with prospective or retrospective effect, any order passed, any appointment or registration made, any suit or proceeding commenced, any dispute decided or referred to arbitration, any right or title accrued, or any liability or obligation or penalty incurred) under the Co-operative Societies Act, 1912 or the Bengal Co-operative Societies Act 1940 or the West Bengal Co-operative Societies At, 1973 shall be deemed to have been done or suffered or taken under this Act, if the provisions of this Act were in force at all material times when such thing was done or suffered or such action was taken.*
>
> *(3) Every co-operative society existing at the commencement of this Act which has been registered or deemed to have registered under the Co-operative Societies Act,1912 or the Bengal Co-operative Societies Act,1940 or the West Bengal Co-operative Societies Act,1973 shall be deemed to have been registered under this Act, and its by-laws shall, in so far as they are not in consistent with the provisions of this Act, continue in force until altered or rescinded and shall to such extent be deemed to be registered under this Act."*

As per the provisions of Section 63 to 66 of the West Government Co-operative Societies Act 1983, the assessee was required to create certain funds as detailed under:-

> *"63. (1) There shall be a Fund to be called the Co-operative Education Fund to be administered by such authority and in such manner as may be prescribed. Every co-operative society shall contribute to the Co-operative Education Fund such portion of its net profit in any co-operative year as may be prescribed.*
>
> *(2) All references to the Co-operative Development Fund established under the West Bengal Co-operative Societies Act, 1973 shall be construed as references to the Co-operative Education Fund established under this Act.*
>
> *64. Every co-operative society shall create a Bad Debt Fund by transfer of not less than fifteen percent of its net profit in a co-operative year and shall utilize it in any*

business if it has no outside liability in the form bad debt certified by the audit or in such other manner as may be prescribed.

65. Every co-operative society shall transfer in every co-operative year not less than ten percent, of its net profit to a Reserve Fund:

'Provided that the Reserve Fund shall be invested in a Government Saving Bank including Nationalised Banks and Regional Rural Banks or in any security specified in section 20 of the Indian Trusts At, 1882 or in the business of the co-operative society in such manner as may be prescribed.

66. A co-operative society may, notwithstanding anything contained in the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, establish a provident fund for the benefit of it whole-time employees with the contributions of such employees and may make contribution to the fund at the prescribed rate and the fund shall be administered in such manner as may be prescribed."

Thus all the funds as discussed above were created to meet the provisions of West Government Co-operative Societies Act 1983. Therefore the interest income earned by the assessee on such funds should be eligible for deduction under section 80P(2)(a)(i) of the Act.

The Ld AR in support of his claim has also relied on the own case of the assessee for the assessment year 2008-09 in **ITA No. 1564/Kol/2011** where the Hon'ble ITAT was pleased to delete the addition made by the AO. The relevant extract of the order is reproduced below:

"… … in respect of disallowance of the interest on reserve fund, Bad debt funds, SBF Loan, MSS loan, we are of the view that all these incomes are relating to the main activity of the assessee. Therefore they will not fall within the mischief of the Hon'ble Apex Court's direction."

In view of above the Ld. AR pleaded before us to delete the addition as made by the AO on account interest income earned on MSSS, Reserve Fund & on Bad debts Funds.

8. We have heard the rival contentions and perused the materials available on record. In the instant case the assessee has shown income from the fixed deposits maintained with the bank as discussed in the preceding paragraph.

The above interest income was disallowed by the AO on the ground that it is not arising from the credit facilities provided to the members therefore it is not eligible for deduction under section 80P(2)(a)(i) of the Act.

However at the outset it was noticed that the AO has made the disallowance of interest income on the fixed deposits (general) for Rs. 40,76,664.00 but the Ld CIT(A) has deleted the addition made by the AO to the tune of 5% of the interest income. Both the assessee and the Revenue against the order of Ld CIT(A) preferred an appeal before the Hon'ble ITAT vide ITA No. 1249/Kol/2015 and 1244/Kol/2015 respectively. In this regard, we noticed that Hon'ble ITAT has restored the issue raised by the assessee in **ITA 1249/Kol/2015** to the file of AO for fresh adjudication for the same assessment year. The relevant extract of the order has already been produced in the preceding paragraph. As the present issue of interest is common with that of the assessee, therefore we are inclined to restore the same issue to the file of AO for fresh adjudication in accordance with the law.

9. Now coming to the issue of other interest income as discussed above, we notice that these funds were created to meet the requirement of the provisions of West Government Co-operative Societies Act 1983 as discussed above. Therefore in our considered view the impugned interest income is eligible for deduction under section 80P(2)(a)(i) of the Act. Moreover, we find that the impugned issue has already been decided by the Hon'ble ITAT in the own case of the assessee for the AY 2008-09 in **ITA No.1564/Kol/2011** where the Co-ordinate Bench of this Tribunal was pleased to delete the addition made by the AO. The relevant extract of the order has already been produced in the preceding paragraph.

The case law i.e. CIT versus South Eastern Railway employees Co-Op Credit Society Ltd. (supra) as relied upon by the Ld DR is distinguishable in terms of its facts. In that case there was no statutory requirement to create the funds whereas in the instant case it was the requirement to create the funds under the provisions of Section 63 to 66 of the West Government Co-operative Societies Act 1983 as discussed above. Thus, we hold that the impugned interest income earned on MSSS, Reserve Fund & on Bad

debts Funds is eligible for deduction under section 80P(2)(a)(i) of the Act. Thus, the ground raised by the Revenue is partly allowed for statistical purposes.

10. The 2nd issue raised by the Revenue in this appeal is that Ld CIT(A) erred in deleting the addition made by the AO on account of subsidy received by the assessee.

11. The assessee during the year has received the subsidy of Rs.24,000 from National Coal Development Corporation Ltd which was claimed as deduction u/s 80P(2)(a)(i) of the Act. However, the AO disallowed the deduction claimed by the assessee under section 80P(2)(a)(i) of the Act by observing that the same is not arising from the activities of providing credit facilities to the members. Thus, the deduction of Rs.24,000 was added to the total income of the assessee.

12. Aggrieved assessee preferred an appeal to Ld CIT(A), who has deleted the addition made by the AO.
The Revenue, being aggrieved, is in appeal before us.

13. Before us both the parties relied on the order of authorities below as favourable to them.

14. We have heard the rival contentions and perused the materials available on record. At the outset we note that impugned issued has already been decided by the Co-ordinate Bench of this Tribunal in the own case of the assessee for the AY 2008-09 in ITA No. 1564/Kol/2011 where the Co-ordinate Bench of this Tribunal was pleased to delete the addition made by the AO. The relevant extract of the order is reproduced below :

> *"In respect of the subsidy amounting to Rs.33,000/- since it is of non-capital in nature the same cannot be disallowed by applying the ratio laid down by Hon'ble Supreme Court in the case of the Totgars Co-operative Sales Society Ltd. vs. ITO (supra)"*

We respectfully following the consistent view decline to interfere with the order passed by the Ld CIT(A) on this account and accordingly the ground taken by the Revenue is regretted. Consequently, the ground of appeal raised by the Revenue is dismissed.

15. The next issue raised by Revenue in this appeal is that learned CIT-A erred in allowing the deduction under section 80P(2)(a)(i) of the Act on account of the provision for Ex-gratia.

16. The assessee in the year under consideration has debited a sum of Rs. 1.50 Lacs under the head provision for ex-gratia. However the AO was of the view that the provisions cannot be allowed as deduction. Therefore the same was disallowed by the AO and added to the total income of the assessee.

17. Aggrieved, assessee preferred an appeal before Ld CIT(A) who deleted the addition made by the AO by observing as under :-

> *"7- Ground No.(vi) and (vii) relate to disallowance made by the AO of Rs.1,50,000/- on account of provision for ex-gratia. Though, the appellant submitted that the AO had disallowed the amount but they are entitled to deduction u/s. 80P(2)(a)(i) on the enhanced amount of income arose due to disallowance of the said amount. This issue was adjudicated by my predecessor in the appellant's on case for the assessment year 2011-12 by which he directed the AO to allow deduction u/s. 80P as per law."*

The Revenue, being aggrieved, is in appeal before us.

18. Before us both the parties relied on the order of authorities below as favourable to them.

19. We have heard the rival contentions and perused the material available on record. The AO in the instant case has made the disallowance of Rs.1.50 Lacs claimed by the assessee under the head provision for ex-gratia. It is undisputed fact that the provisions under the Income Tax Act are not allowable as deduction. However, it is also undisputed that in the instant case the assessee is claiming deduction u/s 80P(2)(a)(i) of the Act. Therefore, the disallowance of ex-gratia will result into higher

deduction to the assessee u/s 80P(2)(a)(i) of the Act. Thus, there will no effect on the tax liability of the assessee even after making the addition of the provision for ex-gratia expense. In the light of above reasoning, we hold that the order of the of Ld CIT(A) is correct and in accordance with law and no interference is called for. Thus the ground of appeal raised by the Revenue is dismissed.

20. **In the result, Revenue's appeal stands allowed partly for statistical purpose.**

Order pronounced in open court on 15/12/2017

Sd/-	Sd/-
(न्यायिक सदस्य)	(लेखा सदस्य)
(S.S.Viswanethra Ravi)	(Waseem Ahmed)
Judicial Member	Accountant Member

*Dkp, Sr.P.S

दिनांकः- 15/12/2017 कोलकाता / Kolkata

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. अपीलार्थी/Appellant-ITO Ward-32(2), 10-B,Middleton Row, 3rd Floor,Kolkata-71
2. प्रत्यर्थी/Respondent-M/s National Coal Development Corpn. Staff Co-Op Credit Society, Thapar House, 5th Floor, 25, Brabourne Road,Kol-001
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

By order/आदेश से,

/True Copy/

Sr. Private Secretary
Head of Office/DDO
आयकर अपीलीय अधिकरण,
कोलकाता