

**IN THE INCOME TAX APPELLATE TRIBUNAL  
COCHIN BENCH, COCHIN**

**Before Shri Chandra Poojari, AM & Shri George George K, JM**

ITA No.547/Coch/2017 : Asst.Year 2007-2008  
ITA No.548/Coch/2017 : Asst.Year 2008-2009  
ITA No.549/Coch/2017 : Asst.Year 2009-2010  
ITA No.550/Coch/2017 : Asst.Year 2012-2013  
ITA No.551/Coch/2017 : Asst.Year 2013-2014

|  |     |   |
|--|-----|---|
| The Income Tax Officer<br>Ward 1<br>Kasaragod. | Vs. | M/s.Hosdurg Service Co-<br>operative Bank Limited<br>Hosdurg,<br>Kanhangad-671 315.<br><b>PAN : AAAAH0337C.</b> |
| (Appellant)                                    |     | (Respondent)  |

CO No.09/Coch/2018 : Asst.Year 2007-2008  
CO No.10/Coch/2018 : Asst.Year 2008-2009  
CO No.11/Coch/2018 : Asst.Year 2009-2010  
CO No.12/Coch/2018 : Asst.Year 2012-2013  
CO No.13/Coch/2018 : Asst.Year 2013-2014

|   |     |  |
|---|-----|--|
| M/s.Hosdurg Service Co-<br>operative Bank Limited<br>Hosdurg,<br>Kanhangad-671 315. | Vs. | The Income Tax Officer<br>Ward 2<br>Kasaragod. |
| (Cross Objector)  |     | (Respondent)                                   |

ITA No.627/Coch/2017 : Asst.Year 2007-2008  
ITA No.628/Coch/2017 : Asst.Year 2008-2009  
ITA No.629/Coch/2017 : Asst.Year 2009-2010  
ITA No.630/Coch/2017 : Asst.Year 2012-2013  
ITA No.631/Coch/2017 : Asst.Year 2013-2014

|   |     |  |
|---|-----|--|
| M/s.Hosdurg Service Co-<br>operative Bank Limited<br>Hosdurg,<br>Kanhangad-671 315. | Vs. | The Income Tax Officer<br>Ward 2<br>Kasaragod. |
| (Appellant)   |     | (Respondent)                                   |

Revenue by : Smt.A.S.Bindhu  
Assessee by : Sri. H.S.Bhatt

|                              |                                    |
|------------------------------|------------------------------------|
| Date of Hearing : 17.09.2018 | Date of Pronouncement : 18.09.2018 |
|------------------------------|------------------------------------|

## ORDER

### Per Bench

These cross appeals and Cross Objections at the instance of the assessee are directed against the consolidated order of the CIT(A) dated 13.06.2017. The relevant assessment years are 2007-2008, 2008-2009, 2009-2010, 2012-2013 and 2013-2014. Since common issues are raised in these cross appeals and cross objections, they were heard together and are being disposed off by this consolidated order. First we shall adjudicate the Revenue's appeals and the Cross Objections of the assessee.

### ITA Nos.547 to 551/C/2017 & COs 09 to 13/C/2018 :

2. The brief facts in relation to the above issue are as follows:

The assessee is a primary agricultural credit society registered under the Kerala Co-operative Societies Act, 1969. For the assessment years 2007-2008, 2008-2009, 2009-2010, 2012-2013 and 2013-2014, the returns were filed claiming deduction u/s 80P(2) of the I.T.Act. The assessments were completed for the concerned assessment years by denying the

deduction claimed u/s 80P(2) of the I.T.Act. The reason of the Assessing Officer to deny the benefit of deduction u/s 80P(2) of the I.T.Act was that the assessee was primarily engaged in the business of banking and by virtue insertion of section 80P(4) of the I.T.Act with effect from 01.04.2007, the assessee was not entitled to deduction claimed u/s 80P(2) of the I.T.Act.

3. Aggrieved by the assessments completed for the concerned assessment years, the assessee had preferred appeals to the first appellate authority. The CIT(A) following the judgment of the Hon'ble jurisdictional High Court in the case of *The Chirakkal Service Co-operative Bank Ltd. and Others [(2016) 384 ITR 490 (Ker.)]* held that the assessee was entitled to the benefit of deduction u/s 80P(2) of the I.T.Act.

4. Revenue being aggrieved by the orders of the CIT(A), has preferred the above appeals before the Tribunal,, raising following grounds:-

1. *In view of the recent decision of the Hon'ble Supreme Court in the case of The Citizens Co-Operative Society limited vs Assistant Commissioner of Income Tax, Circle- 9(1), Hyderabad dated 8th August 2017, is not the order of the learned Commissioner of Income Tax (Appeals) against law and the facts and circumstances of the case?*

2. *The Commissioner of Income Tax (Appeals) had in the instant case placing reliance on the decision of the Honourable High Court of Kerala in the case of M/s Chirakkal Service Co-op Bank Ltd. And others in*

*ITA 212 of 2013, held that the assessee is eligible for deduction u/s 80P of the Income Tax Act solely on the basis that it has been registered and classified as a Primary Agricultural Credit Society by the Competent Authority under the Kerala Co-operative Societies (KCS) Act. As against this, the Honourable Supreme Court has while deciding in the case of The Citizen Co-Operative Society limited vs Assistant Commissioner of Income Tax, Circle- 9(1), Hyderabad taken into consideration the activities of the assessee society and not relied only on the certificate of registration issued by the Central Registrar of Co-operative societies. In view of this, is not the decision of the CIT(A) against the prevailing positions of law that differentiates between de jure and de facto positions and which permits the principle of penetration of the corporate veil to determine the true nature of the activities of the cooperative society?*

*3. Whether on the facts and in the circumstances of the case, the Commissioner of Income Tax (Appeals) is right in law in holding that the assessee is eligible for claiming deduction u/s 80P on the above lines, when in the recent decision in the case of The Citizen Co-Operative Society, the Honourable Supreme Court has, after taking into account the activities of the appellant Co-operative Society, held that the appellant could not be treated as a co-operative society meant only for its members and providing credit facilities only to its members.*

*4. The Honourable Supreme Court: had in the case of The Citizen Co-Operative Society limited Vs Assistant Commissioner of Income Tax, Circle- 9(1), Hyderabad observed that the depositors and borrowers in the appellant cooperative society are distinct and therefore, in reality, the activities of the appellant are that of a finance business and cannot be termed as those of a co-operative society. The facts in the present case also fall within the same contextual fabric. The categories of resident*

*members, ordinary members and nominal members exist. This invokes the question of whether the assessee is merely providing agricultural credit to its members thereby validating the claim of tax exemption u/s 80P(4) or performing activities beyond its approved framework that enables disallowance of such claim. In view of this, is not the decision of the CIT(A) without merits?*

*5. The learned CIT(Appeals) ought to have seen that the Honourable Supreme Court in the case of Sabarkantha Zilla Kharid Vechan Sangh Ltd Vs CIT reported in 203 ITR 1027 (SC) had held that the eligible deduction under Section SOP of the Income Tax Act, 1961 in respect of Co-operative societies/banks doing both agricultural and non agricultural activities should not be 100% of the gross profits of such societies etc. but should be limited to the profits generated from agricultural activities alone performed by such assessees.*

*6. The learned CIT(Appeals) ought to have seen that the above Apex Court's decision is in sharp contrast to the decision of the Kerala High Court in the case of M/s Chirakkal Service Co-operative Bank & others in ITA 212 of 2013 that held that the authorities under the Income Tax Act cannot probe into the question of whether the assessee Cooperative society is a primary agricultural credit society once it is registered and classified as primary agricultural credit society by the competent authorities under the provisions of the Kerala Co operative Societies Act, 1969.*

*7. The judicial ratios in the cases of Rodier Mill Employees Co-op Stores Ltd. vs CIT 135 ITR 355 (Mad), CIT vs Kerala State Co-operative Marketing Federation Ltd.[1998] 234 ITR 301(Ker) and Kerala State Co-operative Agricultural Rural Development Bank Ltd. vs ACIT [ITA No.506/Coch/2010 & S.P. No.67/Coch/2010 hold that carte blanche*

*deductions u/s 80P are not available to cooperative societies merely on the basis of professed agricultural credits on the basis of mere registration and classification. In view of this, is not the decision of the CIT(A) without merits?*

*8. For these and other grounds that may be urged at the time of hearing, it is requested that the order of the CIT(A) may be set aside and that of the Assessing Officer restored."*

5. The learned Departmental Representative relied on the grounds raised. The learned AR, on the other hand, submitted that the issue in question is covered in favour of the assessee by the judgment of the Hon'ble jurisdictional High Court in the case of *The Chirakkal Service Co-operative Bank Ltd. and Others (supra)*.

6. We have heard the learned DR and perused the material on record. We find that an identical issue was considered in the case of *ITO v. The Chengala Service Co-operative Bank Limited [ITA No.434/Coch/2017 & Ors. – order dated 05<sup>th</sup> April, 2018]*. In that case, identical grounds have been raised to that of the grounds raised in the present appeals. The Tribunal after considering the judicial pronouncements, held that the assessee is entitled to deduction u/s 80P(2) of the I.T.Act. The relevant finding of the Tribunal reads as follows:-

*"7. We have heard the rival submission and perused the material on record. The undisputed facts are that the assessees in these cases are primary agricultural credit societies, registered as such under the Kerala Co-operative Societies Act. The Hon'ble jurisdictional High Court in the case of Chirakkal*

*Service Co-operative Bank Limited & Ors. (supra) had categorically held in para 17 page 14 of the judgment that when a primary agricultural credit Society is registered as such under the Kerala Co-operative Societies Act, 1969, such society is entitled to the benefit of deduction u/s 80P(2) of the Income-tax Act. The Hon'ble High Court was considering the following substantial question of law:*

*"a) Whether on the facts and in the circumstances of the case under consideration/ the Tribunal is correct in law in deciding against the assessee/ the issue regarding entitlement for exemption under section 80P, ignoring the fact that the assessee is a primary agricultural credit society?"*

*7.1 In considering the above question of law, the Hon'ble High Court rendered the following findings:*

*"15. Appellants in these different appeals are indisputably societies registered under the Kerala cooperative societies Act 1969, for sort, KCS Act and the bye-laws of each of them, as made available to this court as part of the paper books, clearly show that they have been classified as primary agricultural credit societies by the competent authority under the provisions of that Act. The parliament, having defined the term 'co-operative society' for the purposes of the BR Act with reference to, among other thing the registration of a society under any State law relating to co-operative societies for the time being; it cannot but be taken that the purpose of the societies so registered under the State Law and its objects have to be understood as those which have been approved by the competent authority under such State law. This, we visualize as due reciprocative legislative exercise by the Parliament recognizing the predominance of decisions rendered under the relevant State Law. In this view of the matter, all the appellants having been classified as primary agricultural credit societies by*

*the competent authority under the KCS Act it has necessarily to be held that the principal object of such societies is to undertake agricultural credit activities and to provide loans and advances for agricultural purposes; the rate of interest on such loans and advances to be at the rate fixed by the Registrar of co-operative societies under the KCS Act and having its area of operation confined to a village, panchayat or a municipality. This is the consequence of the definition clause in section 2(oaa) of the KCS Act. The authorities under the IT Act cannot probe into any issue or such matter relating to such applicants.*

*16. The position of law being as above with reference to the statutory provisions, the appellants had shown to the authorities and the Tribunal that they are primary agricultural credit societies in terms of clause (cciv) of section 5 of the BR Act having regard to the primary object or principal business of each of the appellants. It is also clear from the materials on record that the bye-laws of each of the appellants do not permit admission of any other co-operative society as member, except may be, in accordance with the proviso to sub-clause 2 of section 5(cciv) of the BR Act. The different orders of the Tribunal which are impeached in these appeals do not contain any finding of fact to the effect that the bye- laws of any of the appellant or its classification by the competent authority under the KCS Act is anything different from what we have stated herein above. For this reason, it cannot but be held that the appellants are entitled to exemption from the provisions of section 8OP of the IT Act by virtue of sub-section 4 of that sect; on. In this view of the matter, the appeals succeed.*

*17. In the light of the aforesaid, we answer substantial question: `A' in favour of the appellants and hold that the Tribunal erred in law in deciding the issue regarding the entitlement of exemption*

*under section 80P against the appellants. We hold that the primary agricultural credit societies, registered as such under the KCS Act; and classified so, under that Act including the appellants are entitled to such exemption."*

*7.2 In the instant cases, the assesseees are primary agricultural credit societies registered under the Kerala Cooperative Societies Act, 1969. The certificate has been issued by the Registrar of Cooperative Societies to the above said effect and the same is on record. The Hon'ble High Court, in the case cited supra, had held that primary agricultural credit society, registered under the Kerala Cooperative Societies Act, 1969, is entitled to the benefit of deduction u/s 80P(2). Since there is a certificate issued by the Registrar of Cooperative Societies, stating that the assesseees are primary agricultural credit societies, going by the judgment of the Hon'ble jurisdictional High Court, assesseees are entitled to deduction u/s 80P(2). However, the Revenue's contention is that the Hon'ble Apex Court in the case of Citizens Co-operative Society Ltd. (supra) categorically decided when deposits are received from general public / nominal members or loans are disbursed to general public / nominal members, the assessee would be doing the business of banking and therefore, would not be entitled to deduction u/s 80P(2) of the Income-tax Act. In the context of the submission made by the Revenue, let us examine whether the judgment of the Hon'ble Apex Court in the case of Citizens Co-operative Society Ltd. (supra) has application to the facts of the present cases.*

*8. The Hon'ble Apex Court judgment in the case of Citizen Co-operative Society (supra) Ltd. was rendered in the context of eligibility of a Credit Co-operative Society for deduction under section 80 P of the Act. The Apex Court, referring to the specific facts of the case held that the assessee therein is not*

*entitled for deduction under section 80P of the Income-tax Act. In the aforesaid case, the Hon'ble Apex Court was not dealing with a case of eligibility of a Primary Agricultural Credit Society for deduction under section 80P of the Income-tax Act. The Hon'ble Supreme Court at Para 23 of the aforesaid judgment had emphasized that even after the amendment made to the provisions of section 80P of the Act by insertion of section 80P(4) of the Income-tax Act, the Primary Agricultural Credit Society is eligible for deduction under section 80P of the Act.*

*8.1 The assessee society in the case considered by the Hon'ble Supreme Court was established on 31-5-1997 and was registered under section 5 of the Andhra Pradesh Mutually Aided Co-operative Societies Act, 1995. Thereafter as the operations of the assessee had increased manifold and were spread over states of Erstwhile, Andhra Pradesh, Maharashtra and Karnataka, the assessee-society got itself registered on 26.07.2005 under the Multi State Co-operative Societies Act, 2002 (MACSA)*

*8.2 The Hon'ble Apex Court in the aforementioned case specifically took note of the factual findings of the Assessing Officer (which was stated in para 15 of the judgment) referring to the bye laws and the provisions of Mutually Aided Co-operative Societies Act, 1995. The Assessing Officer was of the view that the assessee therein cannot admit 'nominal members' and most of the deposits were taken from such category of person (as they were not members as per the provisions referred). The Apex Court in para 25 of the Judgment has pointed out that the main reason for disentitling the assessee from getting the deduction provided under section 80P of the Act is not sub-section (4) of the Act. On the contrary, the Hon'ble Apex Court held that the Credit Co-operative Society was not entitled for deduction u/s 80P of the Act for the reason of categorical finding of the A.O. that the activities of the assessee are in violation of*

*the Provisions of the MACSA under which it is formed as the substantial deposits were from `nominal members' who are actually non-members as per the provisions of law referred. The Hon'ble Apex Court specifically took note of the fact that the assessee therein has carved out a category of `nominal members' who are infact not the members in the real-sense. Therefore the deposits received from the carved out category viz nominal members who are not the members as per the provisions of the law referred to therein and without the permission of the Registrar of Societies was held to be violative of the provisions and were treated/ proceeded with as deposits from the Public. In other words, in the case before the Hon'ble Supreme Court, the finding on the principle of mutuality was arrived at interalia; on the factual finding that the assessee was receiving deposits mostly from a carved out category of member viz `nominal member' who are not members as per the provisions of law referred, and that most of the business of the assessee therein was with this carved out category of person and also granting loans to public and without the approval from the Registrar of the Societies.*

*8.3 As far as the Kerala Co-operative Societies Act which is applicable to the present case is concerned, the definition of a 'member' as provided in Section 2(1) of the Kerala Co-operative Societies Act includes a nominal member. Section 2 (1) of the said Act is as follows:*

*"Member" means a person joining in the application for the registration of a co-operative society or a person admitted to membership after such registration in accordance with this Act, the Rules and the Bye law and includes a nominal or associate member"*

*8.4 The `normal member' is defined under 2(M) of the Kerala Co-operative Societies Act, 1969, which reads as follow:-*

*“(m) ‘nominal or associate member’ means a member who possesses only such privileges and rights of a member and who is subject only to such liabilities of a member as may be specified in the bye-laws;”*

8.5 Therefore, in the present cases, the nominal members are members as provided in law and deposits from such nominal members cannot be considered or treated as from the non-members or from public as was noted by the Apex Court judgment cited supra.

8.6 In this context, it is relevant to mention that the Hon’ble Supreme Court in the case of *U.P.Co-operative Cane Union v. Commissioner of Income-tax* (1999) 237 ITR 574 (SC)-para 8 of the judgment has observed as under:-

*“8. The expression “members” is not defined in the Act. Since a co-operative society has to be established under the provisions of the law made by the State Legislature in that regard, the expression “members” in section 80P(2)(a)(i) must, therefore, be construed in the context of the provisions of the law enacted by the State Legislature under which the co-operative society claiming exemption, has been formed. It is, therefore, necessary to construe the expression “members” in Section 80P(2)(a)(i) of the Act in the light of the definition of that expression as contained in Section 2(n) of the Co-operative Societies Act.”*

8.7 The Bombay High Court in *Jalgaon District Central v. UOI* (2004) 265 ITR 423 (Bom) in the light of the above Supreme Court judgment had held that nominal member is also member under the Maharashtra Co-operative Societies Act and entitled for benefits under section 80P. [Para 17 to 20 of the judgment], as under:-

*“17. In case of M/s U.P.Co-op. Cane Union Federation Ltd., Lucknow (cited supra), the Supreme Court has held that the expression “Member” is not*

*defined in the Income Tax Act. Since the Co-operative Society has to be established under the provisions of law made by the State Legislature in that regard, the expression "Member" in Section 80P(2)(a)(i) must, therefore, be construed in the context of the provisions of law enacted by the State Legislature under which the co-operative society claiming exemption has been formed. The Supreme Court has further observed that it is necessary to construe the expression "Member" in Section 80P(2)(a)(i) of the Act in the light of the definition of "Member" given under Section 2(n) of the U.P.Co-operative Societies Act, 1965.*

*18. The definition of "Member" given in Section 2(19) of the Maharashtra Co-operative Societies Act, 1960 takes within its sweep even a nominal member, associate member and sympathizer member. There is no distinction made between duly registered member and nominal, associate and sympathizer member.*

*19. In the case of K.K.Adhikari (cited supra), Division Bench of this Court has held that the definition of a Member under Section 2(19) of the Maharashtra Co-operative Societies Act, 1960 includes a nominal member or a sympathizer member. It is further held that notwithstanding the fact that a nominal member does not enjoy all the rights and privileges which are available to an ordinary member, his status is that of a member as defined in Section 2(19) of the Act.*

*20. Division Bench of this Court in the case of The Commissioner of Income Tax, Nasik (cited supra) has also taken a similar view that the definition of "Member" under section 2(19)(a) of the Maharashtra Co-operative Societies Act, 1960 includes a nominal member. It is further held by the Division Bench that there is nothing in Section 80P(2)(iii) of the Income Tax Act to the contrary."*

8.8 As per section 3 of the Banking Regulation Act, 1949, the provisions of Banking Regulation Act shall not apply to Primary Agricultural Credit Societies. The explanation to section 80P(4) states that 'Primary Agricultural Credit Society' and 'Co-operative Bank' will have the same meaning as provided in Part V of the Banking Regulation Act, 1949. The explanation provided after clause (ccvi) of section 5 r.w.s 56 of the Banking Regulation Act specifically provides that 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. The Reserve Bank of India, which is the competent authority as per the Banking Regulation Act, treats assessee society and similar societies as only "Primary Agricultural Credit Society" not falling within the ambit of Banking Regulation Act. The Reserve Bank of India has given letters to the societies similar to assessee stating that they are Primary Agricultural Credit Societies and therefore in terms of section 3 of the Banking Regulation Act are not entitled for banking license; (Copies of such letter from RBI are placed on record).

8.9 That being the case, the Assessing Officer was not competent and did not possess the jurisdiction to resolve / decide the issue as to whether the assessee was a 'Primary Agricultural Credit Society' or a 'Co-operative bank', within the meaning assigned to it under the provisions of the Banking Regulation Act and to take a contrary view especially in view of the Explanation provided after the clause (ccvi) of section 5 r.w.s Section 56 of the Banking Regulation Act.

8.10 In view of the aforesaid reasoning, we hold that the judgment of the Hon'ble Apex Court in Citizen Co-operative Society Ltd. is not applicable to the facts of the present cases. According to us, the judgment of the Hon'ble jurisdictional High Court is identical to the facts of the present case and is squarely

*applicable. Therefore, we hold that the CIT(A) has correctly allowed the claim of deduction in the above cases and we uphold the orders of the CIT(A). It is ordered accordingly.*

*9. In the result, these appeals filed by the Revenue are dismissed.*

7. In view of the above order of the Tribunal, we hold that the CIT(A) is justified in directing the A.O. to grant deduction u/s 80P(2)(a)(i) of the I.T.Act. It is ordered accordingly.

8. The Cross Objections filed by the assessee are only supportive of the CIT(A)'s order for grant of deduction u/s 80P(2). Since we have already dismissed the Revenue's appeals, the COs filed by the assessee become infructuous and the same are dismissed as infructuous.

### **ITA Nos.627 to 631/Coch/2017**

9. In these appeals filed by the assessee, three issues are raised, viz., (i) whether the assessee is entitled to the benefit of deduction u/s 80P in respect of interest received on sub-treasury; (ii) whether the assessee is entitled to deduction u/s 80P in respect of trade income; and (iii) whether rental income received by the assessee, the CIT(A) is justified in holding that the assessee is not entitled to deduction u/s 80P(2) of the I.T.Act.

### **10. Interest received on sub-treasury**

10.1 The CIT(A) has decided the issue against the assessee by observing as under:-

*"7. The appellant earned interest amounting to Rs.356/- in A.Y.2007-08, Rs.483/- in A.Y.2008-09, Rs.580/- in A.Y. 2009-10, Rs.1,004/- in A.Y.2012-13 and Rs.1,091/- in A.Y. 2013-14 on treasury deposits and claimed these amounts as deduction under section 80P of the Income Tax Act. However, the Hon'ble Supreme Court has held in the case of M/s.Tatgars' Co-operative Sale Society Ltd. Vs Income Tax Officer (322 ITR 283) that – **"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."***

10.2 The assessee being aggrieved has filed the present appeals before the Tribunal. It was contended by the learned Counsel for the assessee that the issue in question is squarely covered in favour of the assessee by the order of the Tribunal in the case of *The Padne Service Co-operative Bank Ltd. v. ITO [ITA No.584 & 585/Coch/2017 – order dated 11.01.2018]*. It was submitted that the Tribunal after considering the judicial pronouncements on the issue had decided the matter in favour of the assessee. The learned Departmental Representative present was duly heard.

10.3 We have heard the rival submissions and perused the material on record. We find an identical issue was decided by the Tribunal in the case *The Padne Service Co-operative Bank Ltd. (supra)*. The relevant finding of the Tribunal reads as follows:-

*"7. We have heard the rival submissions and perused the material on record. The solitary issue for our consideration is whether interest received on investments with sub-treasury is*

*liable to be assessed under the head 'income from other sources' or 'income from business'. If the same is to be assessed under the head 'income from business', the assessee would be entitled to deduction u/s 80P(2) of the I T Act, in respect of interest received on such investments. The assessee admittedly is providing credit facilities to its members. Section 5(b) of the banking regulation Act 1948 defines banking as '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, otherwise. Now the question is whether a cooperative society or a primary agricultural society can do banking business and whether by doing such an activity, it loses the eligibility for deduction u/s 80P(2) of the Income-tax Act. The Hon'ble High Court of Karnataka in the case of Sri Biluru Gurubasava Pattina Sahakari Sangha Niyamamitha vs ITO has clearly answered the issue. The Hon'ble High Court, after considering the amendment introduced by Finance Act 2006 w.e.f 1.4.2007 (insertion of section 80P(4) of the income-tax Act, had rendered the following findings:*

"Therefore, the intention of the legislature is clear. If a cooperative 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 Cooperative bank as defined under the Banking Regulation Act includes the primary agricultural credit society or a primary cooperative agricultural and rural development bank. The Legislature did not want to deny the said benefits 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 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."

7.1 From the above judgment of the Hon'ble Karnataka High Court, it is quite clear that a primary agricultural credit society or a primary cooperative agricultural and rural development bank who do not have license from Reserve Bank of India to carry on the business of banking, is not a cooperative bank, hit by the provisions of section 80P(4) of the Act. The judgment of the Hon'ble jurisdictional High Court in the case of Chirakkal Service Co-op Bank Ltd (supra), is also in support of the assessee as regards the grant of deduction u/s 80P of the income-tax Act.

7.2 In the instant case, the assessee do not possess any banking license from the Reserve Bank of India and is not exclusively carrying on any banking facility; but it is carrying on business of lending money to its members and therefore is covered u/s 80P(2) of the Act. The judgment of the Hon'ble Apex Court in the case of M/s Totgars Cooperative Sales Society Ltd. (supra) relied by the CIT(A) is distinguishable on facts. The Hon'ble Apex Court in the case of M/s Totgars Cooperative Sales Society Ltd (supra) was dealing with the case where the assessee apart from providing credit facilities to its members was also marketing agricultural produce grown by its members. Sale consideration received from the marketing of agricultural produce of its members was retained by the assessee in that case and was invested in short term deposits/securities. Such amount retained by assessee's society was shown as a liability in the balance sheet and therefore, to that extent interest income cannot be attributable neither to the activity mentioned in section 80P(2)(a)(i) or u/s 80P(2)(a)(iii) of the Act. This distinguishable feature has been taken note by the Hon'ble Karnataka High Court in the case of Tumkur Merchants Souharda Credit Cooperative Ltd in ITA No.307 of 2014 (judgment dated 28th Oct 2014). The Hon'ble Karnataka High Court was considering 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 or 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?"

7.3 In answering the above question of law, the Hon'ble Karnataka High Court distinguished the judgment of the Apex Court in the case of Totgars Cooperative Sales Society Ltd (supra) and rendered the following findings:

"9. In this context when we look at the judgment of the Apex Court in the case of M/s Totgars Cooperative Sales 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, deposit/ security. was invested In a short-term 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 net 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(l) of the Act. In tact 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."

*7.4 The Cochin Bench of the Tribunal in the case of the Kizhathadiyoor Service Coop Bank Ltd., on identical facts has rendered a decision in favour of the assessee. The relevant finding of the Cochin Bench of the Tribunal in the case of Kizhathadiyoor Service Cooperative Bank (supra) in ITA No. 525/Coch/2014, read as follows:*

7.2 As regards the interest from treasury and banks, we find on identical facts, the Cochin Bench of the Tribunal in the case of the Muttom Service Cooperative Bank Ltd in ITA

No. 372/Coch/2010 had decided the matter in favour of the assessee. The Cochin Bench of the Tribunal in the case of Muttom Service Cooperative Bank Ltd (supra) has distinguished the judgment of the Hon'ble Apex Court in the case of Totgar's Cooperative Sale Society Ltd (supra). The relevant finding of the coordinate Bench of the Tribunal in the case of the Muttom Service Cooperative Bank Ltd (supra) read as follows:

"5. We have considered the rival submission on either side and also perused the material available on record. We have also carefully gone through the order of the lower authority. No doubt, the latest judgment in Totgar's Co-operative Sale Society Ltd vs ITO (supra), the Apex court found that the deposit of surplus funds by the co-operative society is not eligible for deduction u/s 80P(2). In the case before the Apex Court in Totgar's Co-operative Sale Society Ltd vs ITO (supra), the assessee co-operative society was to provide credit facility to its members and market the agricultural produce. The assessee is not in the business of banking. Therefore, this Tribunal is of the opinion that the judgment of the Apex court in Totgar's Co-operative Sale Society Ltd (supra) is not applicable in respect of the co-operative society whose business is banking. Admittedly, the assessee has invested funds in state promoted treasury small savings fixed deposit scheme. Since Government of India has withdrawn India Vikas Patra, as a small savings instrument, funds invested at the discretion of the bank is one of the activities of the banking as per the Banking Regulation Act. Since the assessee co-operative society is in the 4 ITA No.372/Coch/2010 business of banking the investment in the state promoted treasury small savings fixed deposit certificate scheme is a banking activity, therefore, the interest accrued on such investment has to be treated as business income in the course of its banking activity. Once it is a business income, the assessee is entitled for deduction u/s 80P(2)((a)(i). therefore, this Tribunal is of the opinion that the judgment of the Larger Bench of the apex Court in Karnataka State Cooperative Apex Bank (supra) is applicable to the facts of this case. By respectfully following the judgment of the Apex court in Karnataka State Co-operative Bank (supra), the order of the Commissioner of Income-tax(A) is upheld."

7.3 In the instant case, the assessee is a cooperative Bank. The investment in treasury/banks and earning interest on the same is part of the banking activity of the assessee's cooperative bank. Therefore, the said income is eligible for deduction u/s 80P(2)(a)(i) of the Act. Therefore, the Income Tax Authorities were not justified in treating interest income received by the assessee as 'income from other source' and

denying the benefit of section 80P(2) of the Act. It is ordered accordingly."

*7.5 In view of the judgment of the Hon'ble Karnataka High Court in the case of Tumkur Merchants Souharda Credit Coop Ltd (supra) and Cochin Bench of the Tribunal in the case of Service Coop Bank Ltd.,(supra), we are of the view that the assessee is entitled to the benefit of deduction u/s 80P(2) of the income-tax Act, with regard to interest received on deposits made by the assessee with sub treasury amounting to Rs.3,30,866 for assessment year 2007-2008. It is ordered accordingly."*

10.4 In view of the above order of the Tribunal, we hold that the interest received on investments with sub-treasury is part of banking activities of the assessee and the same is entitled to deduction u/s 80P(2)(a)(i) of the I.T.Act. It is ordered accordingly.

10.5 In the result, ground No.2 filed in ITA No.627 to 631/Coch/2017 is allowed.

## **11. Trade Income**

11.1 The CIT(A) had decided the above issue by observing as under:-

*"The appellant derived trade income amounting to Rs.89,529/- in A.Y.2007-08, Rs.99,459/- in A.Y. 2008-09, Rs.84,768 in A.Y. 2009-10, Rs.1,88,844/- in A.Y. 2012-13 and Rs.86,956/- in A.Y. 2013-14. These amounts are not eligible for deduction under section 80P(2)(a) and hence, may be dealt with in accordance with the provisions of Income Tax Act, 1961."*

11.2 The assessee being aggrieved has filed the present appeals before the Tribunal. The learned AR submitted that an identical issue was considered by the Tribunal in the case of *The Secretary, The Panathady Service Co-operative Bank Ltd. v. ITO [ITA Nos.574 to 578/Coch/2017 – order dated 23.07.2018]* wherein the Tribunal has restored the issue to the A.O. for *de novo* consideration. The learned Departmental Representative present was duly heard.

11.3 We have heard the rival submissions and perused the material on record. We find that an identical issue was considered by the Tribunal in the case of *The Panathady Service Co-operative Bank Ltd. (supra)*. The Tribunal has restored the issue to the A.O. for *de novo* consideration. The Tribunal's finding in the case of *The Panathady Service Co-operative Bank Ltd. (supra)* is reproduced below:-

“5. Aggrieved by the order of the CIT(A), the assessee has filed the present appeals before the Tribunal. The learned AR submitted that the trade income was earned by the assessee-society on purchase and sale of agricultural implements, seeds, livestock or other articles for supplying them to its members. Further it was submitted that income received by the assessee-society from CAMPCO was for marketing of agricultural produce of its members. Therefore, it was submitted that such income was entitled to deduction u/s 80P(2)(a)(iii) and (iv) of the I.T.Act. The learned DR present was heard.

6. We have heard the rival submissions and perused the material on record. The Assessing Officer has disallowed the entire claim of deduction. There was no specific reasoning given by the assessee nor the CIT(A) for denying the benefit of deduction u/s 80P(2) of the I.T.Act. The trade income according to the assessee was earned by it on account of purchase and sale of agricultural implements, seeds, livestock or other articles intended for agriculture for the purpose of

*supplying them to its members. Income accrued from CAMPCO according to the assessee was on account of marketing of agriculture produce of its members. Therefore, it was submitted that such income was entitled to deduction u/s 80P(2)(a)(iii) and (iv) of the I.T.Act. Since the A.O. nor the CIT(A) has not given any specific reasons for denying the benefit of deduction claimed u/s 80P(2) of the I.T.Act, we deem it appropriate to remand the case to the A.O. for fresh consideration. The assessee shall prove with necessary evidence that the trade income it had earned and the income it had received from CAMPCO was entitled to deduction u/s 80P(2) of the I.T.Act.”*

11.4 It was submitted by the learned AR that the trade income was derived by the assessee on account of purchase and sale of agricultural implements, seeds etc. for its members. Therefore, it was stated that the trade income was entitled to deduction u/s 80P(2)(a)(iii) / 80P(2)(a)(iv) of the I.T.Act. There is no specific reasons given by the A.O. nor CIT(A) for denying the deduction claimed u/s 80P(2) for trade income derived by the assessee. Therefore, we restore the issue of trade income whether it is entitled to deduction u/s 80P(2) of the I.T.Act, to the file of the A.O.. It is ordered accordingly.

## **12. Rental Income**

12.1 The CIT(A) had held rental income received by the assessee was not entitled to deduction u/s 80P(2) of the I.T.Act. The relevant finding of the CIT(A) reads as follows:-

*“The appellant derived rental income amounting to Rs.24,400/- in A.Y. 2007-08, Rs.21,950/- in A.Y. 2008-09, Rs.16,700/- in A.Y. 2009-10, Rs.28,550/- in A.Y. 2012-13 and Rs.15,200/- in A.Y. 2013-14.*

*These amounts are not eligible for deduction under section 80P and hence, may be dealt with in accordance with the provisions of Income Tax Act, 1961."*

12.2 The assessee being aggrieved has filed the present appeals before the Tribunal. The learned AR stated that the rental income has been taken as income of the assessee in the returns of income filed. It was submitted by the learned AR that again taxing the rental income is not correct. The learned Departmental Representative present was duly heard.

12.3 We have heard the rival submissions and perused the material on record. The submission of the assessee is not correct. The assessee is not entitled to deduction u/s 80P for the income from house property. We have perused the orders giving effect to the CIT(A)'s order. There is no double addition of rental income after giving effect to the CIT(A)'s order. Income from house property is not entitled to deduction under any of the clauses of Sec.80P(2)(a) of the I.T.Act. Therefore, we confirm the CIT(A)'s order on this issue. It is ordered accordingly.

12.4 Therefore, ground No.4 filed in assessee's appeals are dismissed.

13. In the result – (i) the Revenue's appeals are dismissed; (ii) the Cross Objections filed by the assessee are dismissed; and (iii) the assessee's appeals are partly allowed, as indicated above.

Order pronounced on this 18<sup>th</sup> day of September, 2018.

Sd/-  
**(Chandra Poojari)**  
**ACCOUNTANT MEMBER**

Sd/-  
**(George George K.)**  
**JUDICIAL MEMBER**

Cochin ; Dated : 18<sup>th</sup> September, 2018.  
Devdas\*

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. The CIT (Appeals)-Kozhikode.
4. The Pr.CIT Kozhikode.
5. DR, ITAT, Cochin
6. Guard file.

BY ORDER,

(Asstt. Registrar)  
**ITAT, Cochin**