आयकर अपीलीय अधिकरण] पुणे न्यायपीठ "एक सदस्य" पुणे में
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "SMC", PUNE

BEFORE
SHRI ANIL CHATURVEDI, AM

आयकर अपील स / ITA Nos.2427 & 2542/PUN/2017
निर्धारण वर्ष / Assessment Year : 2013-14 & 2012-13

Chandraprabhu Gramin Bigar Sheti Sahkari Pat Santha Maryadit, A/p: Natepute, Tal Malshiras, Dist. Solapur.	..... अपीलार्थी / Appellant

PAN : AAAAC2702L.

बनाम v/s

The Income Tax Officer, Ward – 1(4), Padharpur.	..... प्रत्यर्थी / Respondent

Assessee by : Ms. Riya S. Shah.

Revenue by : Mrs. Shabana Parveen.

सुनवाई की तारीख / Date of Hearing : 23.10.2018		घोषणा की तारीख / Date of Pronouncement: 26.10.2018

आदेश / ORDER

PER ANIL CHATURVEDI, AM :

1. These two appeals filed by the assessee are emanating out of separate orders of Commissioner of Income Tax (A) – 7, Pune dt. 05.06.2017 for A.Y. 2013-14 and order dt.04.08.2017 for A.Y. 2012-13.

2. Before me, at the outset, both the parties submitted that though the appeals filed by the assessee are for different assessment years but the facts and issues involved in both the appeals are identical except the assessment years and the amounts involved and therefore the submissions made by them

while arguing one appeal would be equally applicable to the other appeal also and thus, both the appeals can be heard together.

In view of the aforesaid submissions of both the parties, I, for the sake of convenience, proceed to dispose of both the appeals by a consolidated order but however, proceed with narrating the facts in ITA No.2542/PUN/2017 for assessment year 2012-13.

3. The relevant facts as culled out from the material on record are as under :-

Assessee is a Co-operative Credit Society engaged in the business of providing credit facilities to its members. Assessee electronically filed its return of income for A.Y. 2012-13 on 11.09.2012 declaring total taxable income of Rs.Nil. The case was selected for scrutiny and thereafter assessment was framed u/s 143(3) of the Act vide order dt.21.11.2014 and the total income was determined at Rs.14,44,050/-. Aggrieved by the order of AO, assessee carried the matter before Ld.CIT(A), who vide order dt.04.08.2017 (in appeal No.PN/CIT(A)-7/Wd-1(4)/1112/2014-15) dismissed the appeal of assessee. Aggrieved by the order of Ld.CIT(A), assessee is now in appeal and raised the following grounds for A.Y. 2012-13 :

> "1. *On the facts and in the circumstances of the case, Ld. CIT(A) has erred in sustaining the interest of Rs 14,44,050/- earned on the investment made with the nationalized bank as income from other sources and taxing the same u/s 56 of the Income Tax A ct, 1961.*

> *2. On the facts and in the circumstances of the case, Ld. CIT(A) has grossly erred in not following the decision of Hon'ble Pune Tribunal in the appellant's own case reported in 47 CCH 704 on the same set of facts and further erred in relying the decision of Totgars Co-operative Sale Society Ltd - SC - 322 ITR 283 the facts of which are totally distinguishable.*
>
> *3. On the facts and in the circumstances of the case, Ld. CIT(A) has further erred in sustaining that addition of said interest income as taxable disregarding the fact that appellant's entire income is exempt U/S 80P(2)(a)(i) of the Income Tax Act,1961 as the appellant society is a Patsanstha and not a co-operative Bank and providing credit facilities the members."*

4. Similar grounds have been raised in ITA No.2427/PUN/2017 for A.Y. 2013-14.

5. All the grounds being inter-connected are considered together.

6. Before us, Ld.A.R. submitted that as far as the appeal for A.Y. 2013-14 is concerned, there is delay of 3 days in filing the appeal. She submitted sworn affidavit of Secretary of the assessee wherein the reasons for delay is explained and submitted that the delay is not intentional and therefore prayed that the delay of 3 days be condoned. Ld.D.R. did not seriously object to the prayer of condonation.

7. On the issue of condonation of delay of appeal for A.Y. 2013-14, I have gone through the sworn affidavit filed by the Secretary of assessee and heard the Ld.D.R. After considering the reasons stated in the affidavit, I am of the view that the delay in filing the appeal has been satisfactorily explained. In view of these facts, I condone the delay and admit the appeal for hearing.

8. During the course of assessment proceedings, AO noticed that assessee has earned aggregate interest of Rs.14,44,054/- on FDRs maintained with nationalized banks private sector banks, (the details of interest are listed at para 6.4 of the assessment order). AO was of the view that the interest income of Rs.14,44,054/- was not from assessee's business activity of providing credit facilities to its members, it was in the nature of "income from other sources" which was required to be taxed u/s 56 of the Act and it was also ineligible for deduction u/s 80P(2)(a)(i) of the Act. The assessee was show caused and asked to explain as to why deduction claimed on such interest income not be disallowed. The submissions made by the assessee were not found acceptable to the AO. He thereafter considered the interest income earned aggregating to Rs.14,44,054/- as "income from other sources" u/s 56 of the Act and denied the claim of deduction u/s 80P(2)(a)(i) of the Act. Aggrieved by the order of AO, assessee carried the matter before Ld.CIT(A), who upheld the order of AO by observing as under :

> *6.2 The identical issue has been decided by the ITAT Bangalore in case of Sri Basaveshwara Credit Co-operative Society Ltd. (supra.) and the Delhi High Court in case of Mantola Co-Operative Thrift & Credit Society Ltd. (supra.) and the Hon'ble Supreme Court in the case of Totgar' Co-operative Sale Society Ltd. (supra.). These decisions are squarely applicable to the case of the appellant. The decision of Laxmi Narayan Nagar Sahakari Pat Sanstha Vide ITA No.604/PN/2014, order dated 19/08/2015 wherein the decision of the Karnataka High Court in case of Tumkur Merchants Southarda Credit Cooperative Ltd. Vs. ITO, reported in 55 taxmann.com 447 and Delhi High Court in case of Mantola Co-operative Thrift & Credit Society Ltd. Vs. CIT reported in 50 taxmann.com 278 were considered by the ITAT and decided the issue in favour of the assessee following the decision of the Hon'ble Supreme Court in case of CIT vs Vegetable Products Ltd, reported in 88 ITR 192. Later on SLP has been admitted in case of Mantola Co-operative Thrift & Credit Society Ltd reported in 70 taxmann.com 296 (SC). Later on SLP has been admitted in case of Mantola Co-operative Thrift &*

Credit Society Ltd reported in 70 taxmann.com 296 (SC). The decision of Merchants Souharda Credit Cooperative Ltd(supra) pertained to AY 2009-10 whereas Hon'ble Karnataka High Court relied on the decision of the Andhra Pradesh High Court in the case of CIT v. Andhra Pradesh State co-operative Bank Ltd., [2011] 200 Taxman 220/12 taxmann.com 66 pertained to AY 97-98. The effect of amendment from AY 2007-08 has not been considered. Hon'ble ITAT Pune decided the issue on the basis of decision of Vegetable Products Ltd(supra) and controversy remained unresolved. The judgment proceeds on concession and not on any analysis or examination of the relevant provisions does not set binding precedent has been held by the Hon'ble Supreme court in case of Lakshmi Shankar Srivastava reported in AIR 1979 SC 451. The Delhi High Court in case of Mantola Co-operative Thrift & Credit Society Ltd. (Supra) has considered the amended provision of section 80P and Hon'ble Supreme Court's decision in case of Totqers' Co-operative Sale Society Ltd(Supra). Whether a co-operative society is in nature of cooperative bank or primary agricultural credit society can be decided by RBI in terms of explanation to section 5(ccvi). The appellant has not brought anything on record certifying by the RBI that appellant is primary agricultural credit society as defined in part V of Banking Regulation Act, 1949 in section 5(cciv) or Primary Credit Society u/s. 5(ccvi). Further, the issue is under consideration before the Honorable Supreme Court in case of Mantola Co-Operative Thrift & Credit Society Ltd. and there is no stay to the order of the Delhi High Court.

6.3 In view of the above, respectfully following the Delhi High Court decision and Supreme Court decision which is directly on the issue involved on interest from the bank is to be treated as income from other sources and appellant is not eligible for 80P the appellant has received interest of Rs.14,44,054/- from the banks which cannot be characterized as income from business of providing credit facility to members of the society. Therefore, action of the Assessing Officer in treating Rs.14,44,054/- as income from other sources is upheld and ground No.1, 2 and 3 of the appeal is dismissed."

Aggrieved by the order of Ld.CIT(A), assessee is now in appeal.

9. Before me, Ld.A.R. reiterated the submissions made before AO and Ld.CIT(A). Ld.A.R. further submitted that the issue in the present case is directly covered by the decision of Pune Tribunal in assessee's own case for A.Y. 2008-09 (ITA No.1576/PN/2016 dt.26.08.2016.) She placed on record the copy of the aforesaid decision. She further submitted that there are no change in the facts of the appeal for the year under consideration and to that of

earlier year and therefore following the order of earlier year, the issue be decided in assessee's favour. Ld.D.R. on the other hand, pointing to the findings of Ld.CIT(A), submitted that Ld.CIT(A) following the order of Hon'ble Delhi High Court in the case of Mantola Co-operative Thrift & Credit Society Ltd., Vs. CIT reported in [2014] 50 taxmann.com 278 and the Hon'ble Apex Court's decision in the case of Totgars Co-operative Sale Society Ltd., Vs. ITO reported in [2010] 188 Taxman 282, has decided the issue against the assessee. She further submitted that ITAT while deciding the issue in assessee's own case in earlier year had not considered the amendment made to Sec.80P w.e.f for A.Y. 2007-08 and the case laws relied upon by the Tribunal while deciding the appeal for A.Y. 2008-09 were prior to amendment and therefore the decision in assessee's own case cannot be relied upon. She thus supported the order of Ld.CIT(A).

10. I have heard the rival submissions and perused the material on record. The issue in the present ground is with respect to denial of claim of deduction u/s 80P(2)(a)(i) of the Act on the interest earned on fixed deposits placed with banks I find that identical issue arose in assessee's own case in A.Y. 2008-09 wherein the Co-ordinate Bench of the Tribunal after considering the decisions of Hon'ble Apex Court in the case of Totgars Co-operative Sale Society Ltd., (supra) and the decision of Hon'ble Delhi High Court in the case of Mantola Co-operative Thrift & Credit Society Ltd., (supra) and other decisions has decided the issue in favour of the assessee by observing as under :

"8. I have considered the rival arguments made by both the sides, perused the orders of the AO and CIT(A) and the paper book filed on behalf of the assessee. I have also considered the various decisions cited before me. I find the only dispute in the instant appeal is regarding the allowability of the claim of deduction u/s.80P(2)(a)(i) on the interest income of Rs.10,77,0656/- received from the fixed deposits kept with nationalised banks, i.e. Bank of India and IDBI. According to the revenue such interest income has to be treated as income from other sources and thereby assessee is not entitled to deduction u/s.80P(2)(a)(i). According to the assessee such interest income has to be treated as income from business in view of the plethora decisions of the Coordinate Benches of the Tribunal.

9. I find an identical issue had come up before the Tribunal in the case of Chandraprabhu Gramin Bigar Sheti Sahkari Patsantha Maryadit Vs. ITO, Pandharpur vide ITA No.1352/PN/2016 order dated 29-07-2016 for A.Y. 2010-11. After considering the various decisions made by both the sides, I have decided the issue in favour of the assessee by holding that the assessee is entitled to deduction u/s.80P(2)(a)(i) on the interest income kept with various banks other than cooperative banks/societies. The relevant observation of the Tribunal from para 8 onwards read as under :

"8. I have considered the rival arguments made by both the sides, perused the orders of the AO and the CIT(A) and the paper book filed on behalf of the assessee. I have also considered the various decisions cited before me. I find the assessee in the instant case is a cooperative society and has earned interest income of Rs.15,36,248/- from its investment with different banks which it claimed as deduction u/s.80P(2)(a)(i) of the I.T. Act, 1961. The AO, following the decision of Hon'ble Supreme Court in the case of Totgar's Cooperative Sale Society Ltd. (Supra), disallowed the above amount by rejecting the claim of deduction u/s.80P(2)(a)(i). I find the Ld.CIT(A) distinguishing the various decisions cited before him dismissed the appeal filed by the assessee.

9. It is the submission of the Ld. Counsel for the assessee that in view of the decision of the Pune Bench of the Tribunal as well as various other decisions the issue stands covered in favour of the assessee. I find merit in the argument of the Ld. Counsel for the assessee. I find the Pune Bench of the Tribunal in the case of following the decision of the Tribunal in the case of Niphad Nagari Sahakari Patsanstha Ltd. (Supra) and the decision of the Hon'ble Karnataka High Court in the case of Tumkur Merchants Souharda Credit Cooperative Ltd. (Supra) has held that assessee is entitled to deduction u/s.80P(2)(a)(i) on the interest income on deposits with banks other than cooperative banks/cooperative societies. The relevant observation of the Tribunal from para 9 onwards read as under :

"9. I have considered the rival arguments made by both the sides, perused the orders of the AO and the CIT(A) and the paper book filed on behalf of the assessee. I have also considered the various decisions cited before me. I find the assessee in the instant case is a cooperative society and has received interest of Rs.48,16,346/- from its investments with different

banks. The assessee claimed deduction u/s.80P(2)(a)(i) of its income on account of interest from banks other than cooperative societies. The AO following the decision of Hon'ble Supreme Court in the case of Totgar's Cooperative Sale Society Ltd. disallowed an amount of Rs.44,52,781/- after allowing deduction of Rs.3,63,565/- as proportionate expenses for earning such interest income. I find the Ld.CIT(A) following the decision of the Pune Bench of the Tribunal in the case of Niphad Nagari Patsanstha Ltd. (Supra) held that the said interest is its business income eligible for deduction u/s.80P(2)(a)(i) of the I.T. Act. I find the Tribunal in assessee's own case in the immediately preceding assessment year has also decided identical issue and the appeal filed by the Revenue has been dismissed. The relevant observation of the Tribunal from para 6 onwards read as under :

"6. At the time of hearing, it was a common point between the parties that an identical controversy has been considered by the Pune Bench of the Tribunal in the case of another co-operative society, namely, ITO vs. Niphad Nagari Sahakari Patsanstha Ltd. vide ITA No.1336/PN/2011 dated 31.07.2013 wherein the issue has been held in favour of the assessee after considering similar objection, which has been raised by the Assessing Officer in the present case. The learned Representative for the assessee has furnished a copy of the said order of the Tribunal dated 31.07.2013 (supra) and has also pointed out that the Tribunal has duly considered the decision of the Hon'ble Supreme Court in the case of Totgar's Co-operative Sale Society Ltd. (supra), which has been relied upon by the Assessing Officer in the present case. The learned Departmental Representative has neither controverted the above matrix and nor referred to any contrary decision and therefore for the sake of maintaining consistency we follow the decision of our co-ordinate bench in the case of Niphad Nagari Sahakari Patsanstha Ltd. (supra) and uphold the plea of the assessee. However, before parting, we may reproduce hereinafter the following portion of the order of the Tribunal dated 31.07.2013 (supra) which brings out the reasoning prevailing with the Tribunal to uphold the plea of the assessee :-

> *"11. We have considered the rival arguments made by both the sides, perused the orders of the Assessing Officer and the CIT(A) and the Paper Book filed on behalf of the assessee. We have also considered the various decisions cited before us. In the instant case there is no dispute to the fact that the assessee is a cooperative society engaged in the business activity of credit cooperative society, i.e. providing credit facility to its members. According to the Revenue the income of the society on account of interest from banks other than cooperative banks, interest on mutual funds, long term and short term capital gain on sale of mutual funds etc. are not covered by the activity of providing credit facilities to its members and hence not eligible for deduction u/s.80P(2)(a)(i) of the Income Tax Act in view of the decision of Hon'ble Supreme Court in the case of Totagar's Cooperative Sale Society Ltd. (Supra). We find the Ld. CIT(A) allowed the claim of the assessee on the ground that the assessee is entitled to deduction u/s.80P(2)(a)(i) on account of interest from banks other than cooperative banks, interest on mutual funds long term and short term capital gain on mutual funds etc. While doing so, he held that the decision in the case of Totagar's Cooperative Sale Society Ltd. (Supra) is not applicable to the facts of the present case since in that case the amount invested in short term deposits and securities was not out of interest bearing deposits collected from members but out of sale proceeds of agricultural produce of farmer members marketed by the society. Further, the Hon'ble Apex Court has considered only the latter part of section 80P(2)(a)(i), i.e. income of a cooperative society engaged in providing credit facilities to its members is eligible for*

deduction and has not considered the earlier part of section 80P(2)(a)(i), i.e. income of a cooperative society engaged in carrying on the business of banking is eligible for deduction.

11.1 We find the Ahmedabad Bench of the Tribunal in the case of M/s. Jafari Momin Vikas Cooperative Credit Society Ltd. (Supra) after considering the decision of Hon'ble Supreme Court in the case of Totagar's Cooperative Sale Society Ltd. (Supra) has observed as under :

> *"17. We have carefully considered the submissions of the either party, perused the relevant records and also the case law on which the learned AR had reservation in it's applicably in the circumstances of the assessee's case.*
>
> *18. It was the stand of the learned CIT (A) that the entire income was not exempt and that it was to be examined as to whether there was any interest income on the short term bank deposits and securities included in the total income of this society which has been claimed as exempt. According to the CIT (A), a similar issue to that of the present one was dealt with by the Hon'ble Supreme Court in the case of Totgars Co-op. Sale Society Ltd v. ITO (supra). The issue before the Hon'ble Court for determination was whether interest income on short term bank deposits and securities would be qualified as business income u/s 80P (2)(a)(i) of the Act.*
>
> *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..."*
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> *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 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 (supra) 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.*
>
> *19.7 Before parting with, we would, with due regards, like to record that the ruling of the Hon'ble jurisdictional High Court in the case of CIT v. Manekbang Co-op Housing Society Ltd reported in (2012) 22 Taxmann.com 220(Guj) has been kept in view while deciding the issue."*

11.2 We find the Cochin Bench of the Tribunal in the case of Muttom Service Cooperative Aplappuzha Bank Ltd. Vs. ITO (Supra) after considering the decision of Hon'ble Supreme Court in the case of Totagar's Cooperative Sale Society Ltd. (Supra) and various other decisions has observed as under :

> *"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 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 Co- operative 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.*
>
> *6. In the result, the appeal of the revenue stands dismissed."*

11.3 In the instant case there is no dispute to the fact that the society is a credit cooperative society authorised by the registrar of cooperative

societies for accepting deposits and lending money to its members as per license granted by the registrar of cooperative societies and the main object of the society is to provide credit facility to members who can be any person of the society. We find the Pune Bench of the Tribunal in the case of Mahavir Nagari Sahakari Pat Sanstha Ltd. reported in 74 TTJ 793 (Pune) has held that the credit society which is carrying on the business of banking activity and providing credit facility to its members is eligible for deduction u/s.80P(2)(a)(i). In view of the above discussion and following the decisions of the Ahmedabad Bench of the Tribunal and Cochin Bench of the Tribunal which in turn have considered the decision of the Hon'ble Supreme Court in the case of Totagar's Cooperative Sale Society Ltd. (Supra) we find no infirmity in the order of the Ld.CIT(A). Accordingly, the same is upheld and the grounds raised by the Revenue are dismissed.

12. In the result, the appeal filed by the Revenue is dismissed."

7. Following the aforesaid precedent, which has been rendered in identical circumstances and for the sake of maintaining consistency, we affirm the action of the CIT(A) allowing the claim of the assessee for exemption u/s 80P(2)(a)(i) of the Act in relation to a sum of Rs.75,36,432/-. Accordingly, Revenue fails in its appeal."

10. I find the Coordinate Bench of the Tribunal in the case of following the decision of Hon'ble Karnataka High Court in the case of Tumkur Merchants Souharda Credit Cooperative Ltd. Vs. ITO reported in 55 taxmann.com 447 (to which I am a party) has observed as under :

"9. We have considered the rival arguments made by both the sides, perused the orders of the Assessing Officer and the CIT(A) and the Paper Book filed on behalf of the assessee. We have also considered the various decisions cited before us. The only dispute to be decided in the grounds raised by the assessee is that whether the interest amounting to Rs.25,01,774/- earned by the assessee on short term deposits with banks has to be treated as "income from other sources" u/s.56 or the assessee is eligible for deduction u/s.80P(2)(a)(i). We find the AO following the decision of Hon'ble Supreme Court in the case of The Totgar's Cooperative Sale Society Ltd. (Supra) treated the interest earned from such short term deposits as "income from other sources" and brought the same to tax which has been upheld by the CIT(A).

10. It is the case of the assessee that in view of the decision of Hon'ble Karnataka High Court in the case of Tumkur Merchants Souhards Credit Cooperative Ltd. (Supra) the interest earned from such short term deposits with bank is entitled to deduction u/s.80P(2)(a)(i). We find the Hon'ble High Court of Karnataka after considering the decision of Hon'ble Supreme Court in the case of Totgar's Cooperative Sale Society Ltd. (Supra) held that the interest earned by such cooperative societies on short term deposits with scheduled banks is eligible for deduction u/s.80P(2)(a)(i). The relevant observation of the Hon'ble High Court from para 6 onwards read as under :

"6. From the aforesaid facts and rival contentions, the undisputed facts which emerges is, the sum of Rs. 1,77,305/- represents the interest earned from short-term deposits and from savings bank account. The assessee is a Cooperative Society providing credit facilities to its members. It is not carrying on any other business. The interest income earned by the assessee by providing credit facilities to its members is deposited in the banks for a short duration which has earned interest. Therefore, whether this interest is attributable to the business of providing credit facilities to its members, is the

question. In this regard, it is necessary to notice the relevant provision of law i.e., Section 80P(2)(a)(i):

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

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

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

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

> *(i)*
> *carrying on the business of banking or providing credit facilities to its members, or*
>
> *(ii) to (vii) xx xx xx*
>
> *the whole of the amount of profits and gains of business attributable to any one or more of such activities."*

7. The word 'attributable' used in the said section is of great importance. The Apex Court had an occasion to consider the meaning of the word 'attributable' as supposed to derive from its use in various other provisions of the statute in the case of Cambay Electric Supply Industrial Co. Ltd. v. CIT [1978] 113 ITR 84 (SC) ***as*** *under:*

> *'As regards the aspect emerging from the expression "attributable to" occurring in the phrase "profits and gains attributable to the business of the specified industry (here generation and distribution of electricity) on which the learned Solicitor-General relied, it will be pertinent to observe that the legislature, has deliberately used the expression "attributable to" and not the expression "derived from". It cannot be disputed that the expression "attributable to" is certainly wider in import than the expression "derived from". Had the expression "derived from" been used, it could have with some force been contended that a balancing charge arising from the sale of old machinery and buildings cannot be regarded as profits and gains derived from the conduct of the business of generation and distribution of electricity. In this connection, it may be pointed out that whenever the legislature wanted to give a restricted meaning in the manner suggested by the learned Solicitor-General, it has used the expression "derived from", as, for instance, in section-80J. In our view, since the expression of wider import, namely, "attributable to", has been used, the legislature intended to cover receipts from sources other than the actual conduct of the business of generation and distribution of electricity.*

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

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

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

10. In the instant case, the amount which was invested in banks to earn interest was not an amount due to any members. It was not the liability. It was not shown as liability in their account. In fact this amount which is in the nature of profits and gains, was not immediately required by the assessee for lending money to the member's, as there were no takers. Therefore they had deposited the money in a bank so as to earn interest. The said interest income is attributable to carrying on the business of banking and therefore it is liable to be deducted in terms of Section 80P(1) of the Act. In fact similar view is taken by the Andhra Pradesh High Court in the case of CIT v. Andhra Pradesh State co-operative Bank Ltd., [2011] 200 Taxman 220/12 taxmann.com 66. In that view of the matter, the order passed by the appellate authorities denying the benefit of deduction of the aforesaid amount is unsustainable in law. Accordingly it is hereby set aside. The substantial question of law is answered in favour of the assessee and against the revenue. Hence, we pass the following order:"

11. No doubt, a contrary decision to this effect was also cited by the Ld. Departmental Representative where the Hon'ble Delhi High Court in the case of Mantola Cooperative Thrift & Credit Society Ltd. (Supra) has held that where the assessee cooperative society was engaged in providing credit facilities to its members earns interest income on surplus funds deposited as fixed deposits, such interest income would be assessable as "income from other sources" and thus not eligible for deduction u/s.80P(2)(a)(i). However, it is also the settled proposition of law that when two views are possible, the view which is in favour of the assessee has to be followed. Since in the instant case, two divergent decisions were cited before us and no decision of the Hon'ble jurisdictional High Court is available, therefore, following the decision of the Hon'ble Supreme Court in the case of CIT Vs. Vegetable

products reported in 88 ITR 192 we hold that the view in favour of the assessee, i.e. the decision of the Hon'ble Karnataka High Court has to be followed. Accordingly, we hold that the interest income earned by the assessee on short term deposits kept with banks has to be allowed as deduction u/s.80P(2)(a)(i) of the I.T. Act. The order of the CIT(A) is accordingly set aside and the grounds raised by the assessee are allowed."

11. In view of the decision of the Tribunal in assessee's own case as well as the decision of the Coordinate Bench of the Tribunal in the case of Shri Laxmi Narayan Nagari Sahakari Patsanstha Maryadit cited (Supra), I do not find any infirmity in the order of the CIT(A) holding that assessee is entitled to deduction u/s.80P(2)(a)(i) on the interest income. Accordingly, the same is upheld and the grounds raised by the Revenue are dismissed.

10. Since I am a party to the above decision, therefore, following my own decision in the case of Swa Ashokrao Bankar Nagari Sahakari Patsanstha Maryadit (Supra) I hold that the assessee is entitled to deduction u/s.80P(2)(a)(i) on the interest income kept with banks other than cooperative banks/cooperative societies. Therefore, the order of the CIT(A) is set aside and the grounds raised by the assessee are allowed."

10. In view of the above decision, I hold that the assessee cooperative society is entitled to deduction u/s.80P(2)(a)(i) on the interest income of fixed deposits kept with banks other than cooperative banks/societies. Grounds raised by the assessee are accordingly allowed.

11. In the result, the appeal filed by the assessee is allowed."

11. Before me, it is Revenue's contention that while deciding the assessee's appeal for A.Y. 2008-09, the amendment made to the Section w.e.f. A.Y. 2007-08 has not been considered by the Tribunal. Before me, no material has been placed by Revenue to demonstrate that Revenue has preferred appeal against the order of Tribunal for A.Y. 2008-09 and that the higher Judicial Forum has set aside / stayed the order for A.Y. 2008-09. Further, Revenue has neither pointed out any distinguishing feature in the facts of the present case and that of earlier year. I therefore, relying on the decision of the Tribunal in assessee's own case for A.Y. 2008-09 and for similar reasons hold that assessee is entitled to deduction u/s 80P(2)(a)(i) of the Act on the interest income on fixed deposits kept with nationalized banks and

private sector banks. **Thus, the ground of the assessee is allowed.**

12. **In the result, the appeal of assessee in ITA No.2542/PUN/2017 for A.Y. 2012-13 is allowed.**

13. As far as the grounds raised in appeal in ITA No.2427/PUN/2015 for A.Y. 2013-14 is concerned, in view of the submissions of both the parties that the facts of the case in the year being identical to the facts and issue of the case in ITA No.2542/PUN/2017 for A.Y. 2012-13, I therefore for the reasons stated herein while disposing of the appeal in ITA No.2542/PUN/2017 for A.Y. 2012-13, and for similar reasons, hold that assessee is eligible for deduction u/s 80P(2)(a)(i) of the Act on the interest earned from fixed deposits placed with Banks and thus I allow the grounds of assessee in ITA No.2427/PUN/2017 for A.Y. 2013-14. **Thus, the grounds of the assessee are allowed.**

14. **In the result, the appeal of assessee in ITA No.2427/PUN/2017 for A.Y. 2013-14 is allowed.**

15. **To sum up, both the appeals of assessee are allowed.**

Order pronounced on 26th day of October, 2018.

Sd/-
(**ANIL CHATURVEDI**)
लेखा सदस्य / ACCOUNTANT MEMBER

पुणे Pune; दिनांक Dated : 26th October, 2018.
Yamini

<u>आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to</u> :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. The CIT(A)-7, Pune.
4. The Pr.CIT-6, Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "एक सदस्य" / DR, ITAT, "SMC" Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER

// True Copy //

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune.