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

Before **Shri P.M.Jagtap, Vice-President** and
Shri S.S.Godara, Judicial Member

ITA No.1868/Kol/2017 Assessment Year:1014-15

ACIT, Circle-33, 10B, Middleton Row, 3rd Floor, Kolkata-71	बनाम / **V/s.**	Central Bank of India Employees Co-operative Society Ltd., 10 Nellie Sengupta Sarani, Kolkata-700087 [**PAN No.AAAAC 3869 N**]
अपीलार्थी /Appellant	..	प्रत्यर्थी /Respondent

अपीलार्थी की ओर से/By Appellant	Shri Rabin Chaudhury, Addl. CIT-SR-DR
प्रत्यर्थी की ओर से/By Respondent	Shri Sanjay Bhattacharya, FCA Shri G. Banerjee, FCA
सुनवाई की तारीख/Date of Hearing	01-11-2018
घोषणा की तारीख/Date of Pronouncement	30-11-2018

आदेश /O R D E R

PER S.S.Godara, Judicial Member:-

This Revenue's appeal for assessment year 2014-15 arises against the Commissioner of Income Tax (Appeals)-9, Kolkata's order dated 24.05.2017, passed in case No.300/CIT(A)-9/Cir-33/2016-17/Kol. u/s 143(3) of the Income Tax Act, 1961; in short 'the Act'

Heard both the parties. Case file perused.

2. The Revenue's sole substantive grievance pleaded in the instant appeal challenges the CIT(A)'s order accepting assessee's section 80P(2)(a)(i) deduction claim of ₹2,20,70,040/- in the nature of interest income earned from investment in fixed deposits with various banks.

3. This assessee is a co-operative society of employees working with the Central Bank of India. It provides loan to its members in lieu of charging interest. The assessee invested its surplus funds in both Central Bank of India, 10, Nellie Sengupta Sarani, Kolkat-87 as well as the West Bengal State Co-operative Bank thereby deriving interest income of ₹2,20,70,040/-. It claimed the same to be eligible for sec. 80P(2)(a)(i) deduction. The Assessing Officer's assessment order dated 26.12.2016 quoted hon'ble apex court's decision in Tatgar's Cooperative Sale Society Ltd. vs. Income Tax Officer (2010) 188 Taxman 282 (SC) to hold that impugned interest income had been earned from investment in fixed deposits than from carrying on business of banking or providing credit facilities to its members. He accordingly disallowed assessee's impugned deduction claimed.

4. The assessee preferred its appeal. The CIT(A) has reversed the Assessing Officer's action disallowing assessee's deduction claimed mainly on the ground that this issue is already covered in its favour in earlier years as per tribunal's order. His findings in para 4.1 of the lower appellate order are very very much unspeaking. He accepts assessee's written submissions filed during the course of lower appellate proceedings reading as below:-

> "*3 Submission: The AR of the appellant made the submissions as under:*
> *3.1 Grounds No. 1 and 2:*
> *The appellant is a Co-op. Society engaged in providing credit facilities to its members and the said fact has been mentioned by the Assessing Officer in his Assessment Order. The management of the appellant Co-op. Society decided for quite a long time to keep a part of its working capital invested in Fixed Deposits with the parent bank (Viz., Central Bank of India) to ensure two Objectives: (a) Absolute security of repayment of members' deposits and (b) Any time conversion of the deposits into liquid funds for utilization in its business. A part of these investments were again pledged with the bank to avail of a credit limit which provided the working capital to the appellant. The loan funds were obtained through overdraft account so that the cost of borrowing remains co-related to the period of utilization of funds only. This arrangement of investment of funds in bank time deposits, obtaining loan against the same and utilization of borrowed funds as working capital, has been continued by the appellant for several number of years in the past and in scrutiny assessments, excepting for the preceding five Assessment Years 2009-10, 2010-11,2011-12, 2012-13 and 2013-14 this arrangement had never been disputed by the Assessing Officer in the matter of determining the business activities of the appellant and consequently in relation to the appellant's claim of Deduction u/s 80P. However, in respect of all the above-mentioned 5(five) Assessment Years, the actions of the Assessing Officer were held to be unjustified and the appellant's contention for its eligibility to Deduction u/s 80P in respect of its entire income from interest, was accepted. Further, the appellant*

had also kept invested certain statutory funds with Banks in accordance with the relevant provisions of the Multi-State Co-operative Societies Act, 2002.

The appellant was formed, and has been operating from long ago for the main purpose of providing credit facilities to its members. This is the main activity pursued by the appellant co-op Society and this is sufficiently evident from the Profit and Loss Account of the appellant as well as the Asset & liabilities disclosed in the appellant's Balance Sheet. Apart from the main activity of providing credit facilities to its members, the appellant also obtains deposits from members to inculcate thrift and savings habits amongst them. The credit to members is provided out of the deposits obtained from the members. The funds obtained as deposits are invested in bank time deposits against which overdraft facilities are obtained and credit facilities are provided to the members. All these activities are closely integrated, interrelated and synergized to carry on the business of providing credit facilities to the members. To take a view that the business of providing credit is only the last step in these chain of activities, will not be reasonable, logical or justified.

In the Assessment Year 2014-15 (under Appeal), the Assessing Officer held that the interest income from investments made in time deposits with banks amounting to RS.22070040 was allegedly not eligible for deduction u/s 80P(2)(a)(i) on the ground that these funds had allegedly not been used for the purposes of the appellant's business of providing credit facilities to its members. The Assessing Officer just followed his predecessor's Assessment Orders passed for the immediate five preceding Assessment Years 2009-10 to A.Y. 2013-14. As done earlier for the above-referred five Assessment Years, the Assessing Officer relied on the Supreme Court decision in the case of Totgars' Co-operative Sale Society Ltd. V. ITO, Karnataka [2010] 188 Taxman 282 (SC). The facts of the above-referred case had been that. a part of the funds not immediately required for business, was invested as short-term deposits and interest income on such short term investments were held as non-business income and consequently not eligible for deduction u/s. 80P(2)(a). The facts of the appellant's present appeal are completely different. Here the funds invested are used for the purposes of business by (a) earning income to be utilised for providing Credit facilities to the members, (b) availing of credit limits which are essential for providing the working capital to the appellant for grant of credit to its members, (c) maintaining the liquidity option and (d) keeping the income option alive. The Assessing Officer considered the Interest income of Rs.22070040 earned from fixed deposits and Savings Bank Account as alleged Income from Other sources and on that basis he denied the deduction u/s 80P(2)(a) in respect thereof. The appellant submits that the above- referred Supreme Court decision relied upon by the Assessing Officer, was distinguishable from the appellant's case as under:

(i) The activities of the concerned co-operative societies were to provide credit facilities to its members and to market their agricultural produce, while in the case of the appellant the main objects were to create funds to be lent to the appellant's members and also to provide the members the facilities for the exercise of Thrifts and Savings.

(ii) The concerned co-operative society had been in the business of marketing the agricultural produce of its members and the said society used to retain the sale proceeds from such business, in many cases. The "retained amounts" which were payable to the society's members from whom the produce had

been bought, not being required immediately for the society's business, were invested in the short-term deposits/securities. In the appellant's case the primary objects were to create fund to be lent to the members as well as to provide facilities for the exercise of Thrifts and Savings. The appellant had to arrange for creation of the necessary funds through - (a) members' contributions to Thrift Fund, (b) members' payments to guarantee fund at the time availing of loan facilities, (c) interest receivable from the members in relation to loans taken by them, (d) interest receivable from the deposits made with the bank out of the contributions/payments received from the members, etc.

(iii) While in the case of the concerned co-operative society the interest had been received in relation to the investments made out of the sale proceeds arising out of the business, in the appellant's case interest was earned from deposits and payments received from the members, for creation of funds to be lent out to the members as well as to reward the members by paying interest on their respective balances in thrift fund and guarantee fund.

From the above-mentioned specific differences it may kindly be appreciated that while in the above-referred Supreme Court case, the interest had been earned from deposits made by utilizing the idle fund, in the case of the appellant the interest was earned from the deposits that had been made for facilitating the business of the appellant. Hence, it is submitted that the interest earned on deposits by the appellant had direct nexus to its business of providing loan facilities to its members as well as for encouraging the members towards thrifts and savings. Accordingly, it is submitted that the interest earned on deposits by the appellant should be considered as having arisen from business activities and therefore, deduction u/s 80(2)(a)(i) may kindly be directed to be allowed. It may be noted that in respect of all the preceding five Assessment Years in which the Assessing Officer had denied deduction u/s 80P in relation to the Interest earned on Deposits with Banks, appellant got relief through the respective Appellate Orders passed by the CIT(Appeals)-XIX, Kolkata and the CIT (Appeals)-9, Kolkata for A.Y-2013-14 dated 30.09.2016 (copy of last order enclosed). The departmental appeal for A. Yrs. 2009-10 to 2012-13 before ITAT, Kolkata was decided in favour of assessee in ***ITA No. 158 & 1808 to 1809/Kol/14 & ITA 1126/Kol/15*** *dated 09.11.2016 (copy enclosed).*

*It is further submitted that the Assessing Officer did not appreciate that as per the provisions of the Multi-State Co-operative Societies Act, 2002 the appellant had been required to make investments in respect of specified percentage of its business profit of the year and a substantial portion of the investments represented the statutory funds aggregating to Rs.58957203 [*statutory reserve fund of Rs.48481947 and reserve fund (unforeseen loss) of Rs.10475256*]. It may kindly be appreciated that these investments having been made for complying with the statutory requirements, had direct nexus with the business carried on by the appellant and thus the interest earned therefrom should necessarily be treated as arising from business carried on by the appellant. Reference may kindly be made to the Supreme Court decision in the case of CIT v. Karnataka State Co-operative Apex Bank [2001] 251 ITR 194(SC) wherein it was held that any income derived from funds placed in accordance with the statutory requirements, would be considered as income arising from business and thus deduction u/s 80P(2)(a)(i) would be available in respect thereof. In fact, during*

the assessment proceeding, this particular Supreme Court decision was brought to the attention of the Assessing Officer .

Without prejudice to the above claim of considering the interest income earned on deposits as part of business income, the Interest income from WB Co-operative Bank Ltd. of Rs. 30,25,211 had qualified for deduction u/s. 80P(2)(d) as the relevant interest was earned from another cooperative society. The Assessing Officer disallowed this claim without showing any specific reason. The appellant submits that the finding of the Assessing Officer are all wrong on facts and law. WB Co-op. Bank Ltd. is a co-operative society having license to carry on banking business from RBI. It is a scheduled bank and that schedule is mentioned in Banking Regulation Act, 1949 only, which have no relationship with the Income-tax Act or any Co-operative Societies Act. The appellant co-op. society is again a member/shareholder of WB Co-op. Bank Ltd. and owns shares worth Rs. 1100 of that Bank as duly reflected in its Balance Sheet. The appellant submits that deduction u/s. 80P(2)(d) is available for interest income from W.B. Cooperative Bank Ltd. The deduction has been allowed in the assessee's cases in the past five A.Yrs. by CIT(A) and ITAT.

The Assessing Officer did not allow benefit of deduction u/s. 80P(2)(a)(i) on the Miscellaneous Receipts of Rs.2472 stating that the receipts under this head had allegedly nothing to do with business of providing credit facilities to the appellant's members. The appellant submits that the items comprised in the receipt, were directly related to, inextricably connected with and were attributable to the business activities of the appellant co-op. society. In the past appeals the CIT(A) and ITAT allowed the deduction on this type of receipts.

The appellant submits that even if it would be assumed that the Interest income from Investments allegedly did not qualify for deduction u/s 80P(2)(a) and/or 80P(2)(d) as it was allegedly not a business income or for any other reason, then the interest cost which the assessee had incurred for earning such Interest income, was required to be deducted from the said interest income from Deposits. The time deposits with bank were made by utilizing the funds received by the appellant by way of its members' deposits carrying interest and therefore the interest earning had to be set-off with interest expense. In this regard reference may kindly be made to the above-mentioned Supreme Court" decision referred to by the Assessing Officer wherein the Supreme Court remitted to the Karnataka High Court, the issue of deducibility of cost of funds and appropriate administrative expenses u/s 57.

The appellant submits, without prejudice to the submissions made in regard to Grounds Nos.1and 2 above, that in the event of considering the Interest income of Rs.22070040 as allegedly not a part of Business Income, simultaneously with the exclusion of the said sum of Rs.22070040 from the appellant's F.: Business Income, the Assessing Officer should also have excluded the expenses towards Interest paid on Deposits aggregating to Rs.21073824, out of the head 'Business Income' since the said expenses of interest had direct nexus with the earning of the Interest on deposits. Hence, it is submitted that if it is held that the Interest income of Rs.22070040 would not be eligible for deduction u/s 80P(2)(a)(i), necessary direction may kindly be given to the Assessing Officer to reduce the Interest expenses of RS.21073824 from the Interest income of Rs.22070040 for determining the income/loss arising from such earning of Interest allegedly assessable under the head "Income from Other sources".

5. Mr. Choudhury's sole argument during the course of hearing is that assessee's interest income on investment made in fixed deposits in the Central Bank as well as West Bengal State Cooperative Bank (supra) is not eligible for section 80P(2)(a)(i) deduction since not derived or attributable to any banking business activities or from members. Case law *CIT vs. South Eastern Railways Employees Co-Op. Credit Society Ltd.* (2017) 390 ITR 524 (Cal) is quoted in support deciding the very issue in Revenue's favour. The assessee's case on the other hand is that this issue of allowability of sec.80P(2)(a)(i) deduction is no more *res integria* since covered in its favour as per tribunal's earlier order(s). It places on record a co-ordinate bench's order in **ITA No.2203/Kol/2016** for AY 2013-14 decided on 01.03.2018 as follows:-

> *"3. The issue involved in this appeal by the revenue is as to whether the CIT(A) was justified in allowing deduction u/s.80P(2)(a)(i) of the Income Tax Act, 1961 (Act) on interest income earned on Fixed Deposits. The Assessee is a Co-operative Society of the employees of Central Bank of India. It provides loan to its members and earns interest on them. In addition to the loan provided to the employees of the Central Bank of India who are its members the Assessee had also made investments in Fixed Deposits with Banks and other co-operative societies and earned interest income thereon. The Assessee claimed deduction u/s.80P(2)(a)(i) of the Act in respect of the interest so received. The relevant provisions of Sec.80P(2)(a)(i) of the Act reads thus:*
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> "**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."
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> (2) The sums referred to in sub-section (1) shall be the following, namely :—
> (a) in the case of a co-operative society engaged in—
> (i) carrying on the business of banking or providing credit facilities to its members, or
> (ii) a cottage industry, or
> (iii) the marketing of agricultural produce grown by its members, or
> (iv) the purchase of agricultural implements, seeds, livestock or other articles intended for agriculture for the purpose of supplying them to its members, or
> (v) the processing, without the aid of power, of the agricultural produce of its members, or
> (vi) the collective disposal of the labour of its members, or
> (vii) fishing or allied activities, that is to say, the catching, curing, processing, preserving, storing or marketing of fish or the purchase of materials and equipment in connection therewith for the purpose of supplying them to its members,

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

4. The AO was of the view that as per the decision rendered by the Hon'ble Supreme Court in the case of Totgar's Co-operative Sale Society Ltd vs ITO 322 ITR 283 (SC) interest earned on deposits had to be regarded as income under the head 'Income from other sources' and therefore deduction u/s 80P(2)(a)(i) of the Act cannot be allowed to the assessee as only the whole of the amount of profits and gains of business attributable to carrying on the business of banking or providing credit facilities to its members is allowed as deduction under the said provision. According to the AO the aforesaid income is not derived from the business of providing credit facility to its members. Applying the decision in the case of Totgar's Co-operative Sale Society Ltd vs ITO (supra), the AO treated the interest income as income from other sources and accordingly denied the benefit of deduction u/s 80P(2)(a)(i) of the Act.

5. Aggrieved by the orders of AO, the Assessee preferred appeal before CIT(A). The CIT(A) held that interest income had to be assessed under the head income from business and that the Assessee was entitled to deduction u/s.80P(2)(a)(i) of the Act on the interest income in question. In doing so, he followed his own order in Assessee's own case in AY 2012-13 wherein he had allowed similar claim of the Assessee.

6. Aggrieved by the order of the CIT(A), the revenue is in appeal before the Tribunal. At the time of hearing it was brought to our notice that this tribunal in Assessee's own case adjudicated identical issue in I.T.ANos.158 & 1808 to 1809/Kol/14 & ITA 1126/Kol/15 for Assessment Years : 2009-10 to 2012-13 by order dated 9.11.2016. The tribunal held on identical issue on identical facts as follows:

"11. We have given a very careful consideration to the rival submissions. Since the revenue has laid much emphasis on the decision of the Hon'ble Supreme Court in the case of Totagars Co-operative Society 322 ITR 283 (SC), we deem it necessary to deal with this contention.

12. This tribunal had an occasion to deal with similar objections in the case of another co-operative society similar to the Assessee in the present appeals. In ITA No.07/Kol/2014 for Assessment Year: 2009-10 in the case of Rupnarayanpur Samabay Krishiunnayan Samity Ltd. Vs. A.C.I.T., Circle-1, Hooghly, the Assessee was an is an agricultural credit society duly registered under the West Bengal Cooperative Societies Act, 1983. In the course of proceedings before CIT(A), the CIT(A) noticed that the assessee had claimed deduction u/s 80P(2(a) (i) of the Act on interest income arising from Savings Bank A/C. and Recurring Deposit(RD) Account which was made by the Assessee from and out of the RD Account made by its members with the Assessee. The Revenue took the view that as per the decision rendered by the Hon'ble Supreme Court in the case of Totgar's Co-operative Sale Society Ltd vs ITO 322 ITR 283 (SC) interest earned on deposits had to be regarded as income under the head 'Income from other sources' and therefore deduction u/s 80P(2)(a)(i) of the Act ought not to have allowed to the assessee as only the whole of the amount of profits and gains of business attributable to carrying on the business of banking or providing credit facilities to its

members is allowed as deduction under the said provision. On further appeal by the Assessee before the Tribunal, the Tribunal held as follows:

> "6. At the time of hearing of this appeal the ld. Counsel for the assessee filed before me a copy of the decision rendered by ITAT, Kolkata Bench in the case of S.E., S.E.C. & E.Co. Railways Employees'Co-operative Credit Society ltd. Vs ACIT in **ITA No.1693/Kol/2012** order dated 30.10.2014. In the aforesaid case the identical question as to whether interest income had to be regarded as income from business or income from other sources had come up for consideration. The Assessee in the aforesaid decision accepted loans and deposits from its members and utilized the same towards providing loans and credit facilities to its members. However excess funds were utilized in making deposits in banks and investments. The Tribunal relying upon the decision rendered by the Hon'ble Calcutta High Court in the case of CIT vs South Eastern railway Employees Co-operative Credit Society in G.A.No.1838 of 2010 dated 22.07.2010 came to the conclusion that interest income has to be regarded as income from business of banking and is entitled for deduction u/s 80P(2)(a)(i) of the Act. The Tribunal had also distinguished the decision rendered by the Hon'ble Supreme Court in the case of Totgar's Co-operative Sale Society Ltd vs ITO (supra). The following observations of the Hon'ble Tribunal read as under :-
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> > "7.1. We further find that the issue involved is covered in favour of the assessee by catena of decisions of the Tribunal in assessee's own case. These decisions are also affirmed by the Hon'ble Jurisdictional High Court in its order for A.Yr.2005-06. In this order the Hon'ble Jurisdictional High Court has considered all the relevant orders and has decided the issue in favour of the assessee. We may gainfully reproduce the operative order of the Jurisdictional High Court which is as under :-
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> > > "We have gone through the impugned judgment and order of the Learned Tribunal. It appears that the point involved .is whether interest earned out of the investment earned by the assessee cooperative can be treated to be the income arising out of business activity or from other sources in order to apply the provision of Section 80P(2)(a)(i) of the I.T. Act. It is an undisputed factual position that similar issue arose before the Commissioner of Income Tax (Appeal) in relation to the assessment year 1998-99 to 2002-2003 as also for the assessment year 1995-96 and 1996-97 show subsequent decision of the Tribunal in relation to the assessment years 1998-99 to 2002-03 and 2003-04 have been challenged by any of the parties before this Court. It is submitted by Mr.Bhowmick that there has been challenge of the decision in relation to assessment years 1995-96, 1996-97 and the same is pending before this Court we think that challenge of the assessee has now become redundant as the earlier view taken in both the

> assessment years have been reversed by the Tribunal by its subsequent decision. Hence, the pendency of that earlier matter is of no consequence in this matter. Had there been a challenge of the decision of the Tribunal in relation to the assessment years 1998- 99 to 2002-03 and also 2003-04 to 2004-05 the matter would have been different. The revenue did not take any step whatsoever. Therefore, we presume the revenue has accepted the subsequent view of the Tribunal and the same now hold the field right now."

7.2. Considering the above we find that this issue is squarely covered in favour of the assessee by the decision of the Hon'ble Jurisdictional High Court in assessee's own case. In this regard we would like to place reliance upon the decision of the Hon'ble Apex Court in the case of CIT vs Excel Industries 358 ITR 295 wherein the principle of consistency has been reiterated. Hence when the issue has been decided by the Jurisdictional High Court no convincing reason has been pointed to take a different view, any deviation is not permitted.

7.3. Now we come to the case laws relied upon by the ld. CIT(A). As regards the decision of the Hon'ble Apex Court in the case of Totgars Co-operative Sale Society Ltd. (supra) we find that the said decision is not applicable in the facts of the case. We find that the Hon'ble Apex Court in the said decision in para 11 has itself mentioned that "We are confining the judgment to the facts of the present case". The facts of the case were that assessee's business was to provide credit facilities to its members and to market their agricultural produce. In many cases assessee retained sale proceeds of members whose produce was marketed by it and since funds created by such retention were not required immediately for business purposes, it invested same in specified securities and earned interest income. In these circumstances the Hon'ble Apex Court had held that interest earned would come in category of 'Income from other sources' taxable u/s 56 of the Act and would not qualify for deduction as business income u/s 80P(2)(a)(i). From the above it is amply evident in the present case the assessee has not retained any amount due to its members and instead of paying the same had invested the same and earned interest. Thus this case law is not applicable on the facts of the present case.

7.4. As regards the decision of Hon'ble Patna High Court in the case of Bihar Rajya Sahkari Bhoomi Bikash Co-op. Bank Ltd. (supra) the same is also not applicable to the facts of the present case. In that case the question was the treatment of interest earned on provident fund and rental income as attributable to banking business and this qualifying for deduction u/s 80P(2)(a)(i) of the Act.

> 7.5. In the background of the aforesaid discussion and precedent we hold that the issue is squarely covered in favour of the assessee by the decision of the Tribunal and the Jurisdictional High Court in assessee's own case. The decision relied upon by the ld. CIT(A) are not applicable in the facts of the case. The principle of consistency as conveyed by the Hon'ble Apex Court mandates that the Revenue does not take a different stand. Accordingly we set aside the orders of the authorities below and decide the issue in faovur of the assessee."
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> 6.1. Respectfully following the above decision and taking down the fact that interest income in the present case is identical to the interest income received by the assessee in the decision referred to above. I hold that the assessee is entitled to deduction u/s 80P(2)(a)(i) of the Act in respect of the interest income."

13. The aforesaid view has also been followed by the Tribunal in I.T.A.Nos.737-742/Kol/2011for Assessment Year: 1996-97 to 2001-02 in the case of A.C.I.T., Circle-56, -vs.-The West Bengal State Co-operative Bank Ltd.

14. The Hon'ble Karnataka High Court had also an occasion to examine the scope of Sec.80P(2)(a)(i) of the Act, in the light of the decision of the Hon'ble Supreme Court in the case of Totagar Co-operative Society (supra) in the case of Guttigedarar Credit Co-operative Society Ltd. Vs. ITO Ward 2(2), Mysore (Karnataka). The Assessee in that case which was a co-operative Society claimed deduction in respect of interest income it earned on deposit of surplus funds as eligible for deduction u/s.80P(2)(a)(i) of the Act. The appellate authorities under the Act held that assessee is liable to income tax in view of the judgment of the Apex Court in the case of Totgars Co-operative Sale Society Ltd. v. ITO 377 ITR 283 (Karn.). On appeal by the Assessee, the Hon'ble Karnataka High Court held:

> "9. The word '**attributable**' used in the said Section is of great importance. The Apex Court had an occasion to consider the meaning of the word 'attributable' as supposed to derive from its use in various other provisions of the statute in the case of Cambay Electric Supply Industrial Co. Ltd. v.CIT 113 ITR 84 (SC) (at page 93) as under:—
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> > '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.'

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

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

12. In the instant case, the amount which was invested in banks to earn interest was not an amount due to any members. It was not the liability.

> It was not shown as liability in their account. In fact this amount which is in the nature of profits and gains, was not immediately required by the assessee for lending money to its members, as there were no takers. Therefore they had deposited the money in a bank so as to earn interest. The said interest 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 Cooperative Bank Ltd. 336 ITR 516 (AP).
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> 13. 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….."
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> 15. In view of the aforesaid judicial pronouncements, we are of the view that the objections raised by the revenue in the grounds of appeal before us, cannot be sustained."

> *7. It is not disputed before us by the parties that the facts and circumstances under which the appeal was decided by the Tribunal in the earlier AYs was identical to the facts and circumstances in the present AY. We are therefore of the view that the decision rendered by the tribunal will be applicable to the present AY also. Respectfully following the decision of the Tribunal in Assessee's own case, we uphold the order of the CIT(A) and dismiss the appeal by the revenue.*
>
> *8. In the result, appeal by the revenue is dismissed."*

Mr. Banerjee accordingly prayed for rejection of the instant appeal.

6. We have given our thoughtful consideration to rival contentions. The sole dispute between the parties is about the correctness of assessee's sec. 80P(2)(a)(i) deduction claim of ₹2,20,70,040/- pertaining to interest income from fixed deposits and other investments made in Central Bank of India as well as West Bengal State Co-operative. It appears at the time instance that this taxpayer's case is squarely covered by this tribunal's earlier year in its favour (supra). Relevant factual backdrop however speaks otherwise. It is sufficiently clear by now that the above co-ordinate bench followed yet another tribunal's order declining Revenue's stand on sec. 80P(2)(a)(i) issue as per hon'ble jurisdictional high court's decision in *CIT vs. South Eastern Railway Employees Co-operative Credit Society* in **ITAT No.135 of 2010 GA No.1838 of 2010** dated 22.07.2010. The Revenue had filed said appeal against the tribunal's order holding the concerned assessee's interest income arising from

investments in banks to be eligible for sec. 80P(2)(a)(i) deduction. Their lordships' detailed discussion in the said case qua in the instant issue as follows:-

> "*It appears in this matter the Revenue wants us to admit the appeal on the points as formulated hereinbelow; -*
>
> > i) Whether on the facts and circumstances of the case, the interest earned by the assessee to the tune of Rs.l,18,07,64S/- out of its investment in banks is not the activity that arose from the activity of providing loan and credit facilities to its members as the society is not engaged in the business of banking and is therefore not qualifying for deduction u/S.80P(2a)(a)(i) of the Act, the learned Tribunal is correct in law in holding that interest earned on such investment is within the purview of section 80P of the Act?
>
> *We have gone through the impugned judgment and order of the Learned Tribunal. It appears that the point involved is whether interest earned out of the investment earned by the assessee cooperative can be treated to be the income arising out of business activity or from other sources in order to apply the provision of Section 80P(2)(a)(i) of the LT. Act. It is an undisputed factual position that similar issue arose before the Commissioner of Income Tax (Appeal) in relation to the assessment year 1998-99 to 2002-2003 as also for the assessment year 1995-96 and 1996-97- Then again in relation to the assessment years 2003-04 and 2004-05 a similar point arose. The Learned Tribunal in relation to the assessment years 1998-99 to 2002-03 by order dated 10.11.2006 in ITA Nos.840 to 844/Kol/2006 and again by order dated 29.12.2006 in relation to assessment years 2003-04 and 2004-05 has deleted the disallowance made in those assessment years and it was held that the interest earned by the assessee cooperative society from its short term and fixed deposits with the banks and other institutions were disallowed on the ground that this income was not business profit of the assessee society but was income from other sources. The Ld. tribunal has also has held that income from investment in banks and other financial institutions is the business income of the assessee society and it is eligible to get deduction under Section 80P(2)(a)(i). The Tribunal has overruled the decisions rendered against the assessee in relation to assessment years 1995-96 and 1996-97 on the same issue in relation to subsequent years.*
>
> *It was found by the Tribunal while affirming the order of the Commissioner of Income Tax (Appeal) that there is no change in the facts and circumstances of this case and it was held that the assessee was eligible for deduction under Section 80P(2)(a)(i) on interest on investment amounting to RS.1,18,07,645/- in this assessment year also. Since the Tribunal found that this decision of the Tribunal was followed by CIT (A) there is no reason to take a different view.*
> *Under these circumstances, we feel that when the Commissioner of Income Tax (A) as well as the*
>
> *Tribunal has followed the earlier unchallenged decision no question of law is involved in this matter. Nothing has been produced before us to show subsequent decision of the Tribunal in relation to the assessment years 1998-99 to 2002-03 and 2003-04 have been challenged by any of the parties before this Court.*

It is submitted by Mr. Bhowmick that there has been challenge of the decision in relation to assessment years 1995-96, 1996-97 and the same is pending before this Court we think that challenge of the assessee has now become redundant as the earlier view taken in both the assessment years have been reversed by the Tribunal by its subsequent decision. Hence, the pendency of that earlier matter is of no consequence in this matter. Had there been a challenge of the decision of the Tribunal in relation to the assessment years 1998-99 to 2002-03 and also 2003-04 to 2004-05 the matter would have been different. The revenue did not take any step whatsoever. Therefore, we presume the revenue has accepted the subsequent view of the Tribunal and the same now hold the field right now.
The appeal is dismissed accordingly."

7. We find that this issue does not set at rest as per the above extracted judgment. Their lordship's subsequent decision in the very assessee's case for assessment years 2003-04 and 2004-05 came to be decided on 15.07.2016 reported as (2017) 390 ITR 524 (Cal). The Revenue's substantial question of law admitted therein was as to whether the said assessee's interest income arising from investment in banks and other financial institutions quantify for sec. 80P(2)(a)(i) deduction or not. The tribunal had admittedly held the same to be eligible for deduction. Hon'ble jurisdictional high court's answers Revenue's substantial question of law as follows:-

"7. We have not been impressed by the first submission advanced by Mr.Saraf. If the Multi-State Co-operative Societies At, 2002 does not provide for the consequences of an omission to act in accordance with section 63 thereof, that is no valid reason why the mandate of law should not be followed. When law requires a business to be done in a particular manner the business can be done only in that manner or not at all.
8. We are also not impressed by the submission advanced by Mr. Khaitan that the interest earned by the assessee from the investments made, to the extent of a sum of Rs.99 lakhs during the assessment year 2003-004 and a sum of Rs.1.12 crores during the assessment year 2004-05, should be attributable to the business of providing credit facilities to it members Section 80P, it is true provides that "in the case of a co-operative society engaged n carrying on the business... providing credit facilities to its members .... the whole of the amount of the profits and gain of business '**attributable**' to any such activity 'shall be deducted'. But there is a caution appearing in sub-section (1) which provides that the gross total income of a co-operative society may include income from various activities. It is only an income falling under sub-section (2), which is deductible. The Supreme Court in the case of Totgar's Co-operative Sale Society Ltd. v. ITO reported in [2012] 322 ITR 283 (SC) took the following view in para. 10 of the report (page 289):

> *'At the outset, an important circumstance needs to be highlighted. In the present case, the interest held not eligible for deduction under section 80P(2)(a)(i) of the Act is not the interest received from the members for providing credit facilities to them. What is sought to be taxed under section 56 of the Act is the interest income arising on the surplus invested in short-term deposits and securities which surplus was not required for business purposes The assessee(s) markets the produce of its members whose sale proceed at*

*times were retained by it. In this case, we are concerned with the tax treatment of such amount. Since the fund created by such retention was not required immediately for business purposes, it was invested in specified securities. The question, before us, is-whether interest on such deposits/securities, which strictly speaking accrues to the member' account, could be taxed as business income under section 28 of the Act? In our view, such interest income would come in the category of 'income from other sources', hence such interest income would be taxable under section 56 of the Act, as rightly held by the Assessing Officer. In this connection, we may analyze section 80P of the Act. This section comes in Chapter VI-A, which, in turn, deals with 'Deductions in respect of certain income'. The headnote to section 80P indicates that the said section deals with deductions in respect of income of co-operative societies. Section 80P(1), inter alia, states that where the gross total income of a co-operative society includes any income from one or more specified activities, then such income shall be deducted from the gross total income in computing the total taxable income of the assessee-society. An income, which is attributable to any of the specified activities in section 80P(2) of the Act, would be eligible for deduction. The word '**income**' has been defined under section 2(24)(i) of the Act to include profits and gains. This sub-section is an inclusive provision. Parliament has included specifically '**business profits**' into the definition of the words '**income**'. Therefore, we are required to give a precise meaning to the words '**profits and gains of business**' mentioned in section 80P(2) of the Act. In the present case, as stated above, the assessee-society regularly invests funds not immediately required for business purposes. Interest on such investments, therefore, cannot fall within the meaning of the expression '**profits and gains of business**'. Such interest income cannot be said also to be attributable to the activities of the society, namely, carrying on the business of providing credit facilities to its embers or marketing of the agricultural produce of its member. When the assessee-society provides credit facilities to its members, it earns interest income. As stated above, in this case, interest held as ineligible for deduction under section 80P(2)(a)(i) is not in respect of interest received from members. In this case, we are only concerned with interest which accrues on funds not required immediately by the assessee(s) for its business purposes and which have been only invested in specified securities as '**investment**'. Further, as stated above, the assessee(s) markets the agricultural produce of its member. It retains the sale proceeds in many cases. It is this '**retained amount**' which was payable to its members, from whom produce was brought, which was retained by the assessee-society, was a liability and it was shown in the balance-sheet on the liability side. Therefore, to that extent such interest income cannot be said to be attributable either to the activity mentioned in section 80P(2)(a)(i) of the Act or in section 80P(2)(a)(iii). Therefore, looking to the facts and circumstances of this case, we are of the view that the Assessing Officer was right in taxing the interest income, indicated above, under section 56 of the Act.*

9. We are prepared to agree with Mr. Khaitan to the extent that the interest earned from out of the investments made under section 64 read with section 63 of the Multi-State Co-operative Societies Act, 2002 is attributable to the business of providing credit facilities to its members. But 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 judgment cited by Mr. Khaitan.

*10. We are unable to agree with the views of the Patna High Court in the case of Bihar State Housing Co-op Federation Ltd. (supra). The Division Bench in that case relied upon the judgment of the apex court in the case of CIT v. Karnataka State Co-operative Apex Bank reported in [2001] 251 ITR 194 (SC). That was a case of a co-operative bank. A co-operative bank and a co-operative society do not stand on the same footing. The whole of the income of co-operative bank is deductible whereas in the case of society the income attributable to any one or more of the activities laid down in sub-section (2) is deductible. The Division Bench did not give any independent reasoning. The Division Bench proceeded on the basis that the view taken by them was supported by the judgment in the case of Karnataka State Co-operative Apex Bank (supra) which, with respect, was not a correct impression. The other judgment cited by Mr. Khaitan in the case of Guttigedarara Credit Co-operative Society Ltd. (supra) is not applicable because the caution appearing in sub-section (1) of section 80P, that only an income referred to in sub-section (2) was deductible, was not taken into account. The sub-section (2) provides for only the income attributable to the business of advancing credit facilities to its members. Income arising from any other source including investment of capital "**if not immediately required to be lent to the member**" was not contemplated. The assessee cannot claim any deduction which is not provided for by the section. Moreover the judgment in the case of Totgar's Co-operative Sale Society Ltd. (supra is a binding authority for the preposition that "interest income arising on the surplus invested in short-term deposits and securities... would come in the category of income from other sources."*

Realising his difficulty, MR. Khaitan submitted that the assessee was under the impressions that the income arising out of investments is also attributable to the business of providing credit facilities to its members and on that basis, the assessee did not separately provide for the expenditure incurred for the purpose of earning Rs.99 lakhs during the assessment year 2003-04 and Rs.1.12 crores during the assessment year 2004-05, form investments. Those investments were obviously made from out of the funds deposited by the members and for such deposits, interest has been paid to those members by the assessee. The interest paid to those members on account of such deposits should, therefore, have been separately accounted for, which exercise was not undertaken. The result thereof was that the expenditure was artifically enhanced and the income arising out of the business of providing credit facilities to its members got reduced. When the income got reduced, the amount of deduction also got reduced. He, therefore, submitted that the matter should be remanded to the Assessing Officer for the purpose of working out the amount of expenditure incurred in earning the approximate sums of Rs.99 laksh and Rs.1.12crores respectively. The expenditure incurred for earning those two amounts of income is the amount of interest paid for that money to the members which has to be ascertained and that has to be deducted from the expenditure of the eligible business so that the eligible amount of deduction can be worked out. At the same time, The Assessing Officer has to be directed, according to him, to treat the amount of interest arising out of investments of the funds created under section 63 as an income attributable to the business.

> *Mr. Saraf submitted that this is a new case made out by the assessee before the High Court. This was never the plea before any of the authorities. He is no doubt correct in his submission. But court cannot refuse to give a person what is due to him. As a matter of fact, only that is a good judgment which renders every person his due. Whether the assessee claimed the amount or did not claim the amount, is not of much importance. What is of importance is whether the benefit is allowable in law? If an answer to that question is in the affirmative, then that benefit has to be allowed.*
> *In that view of the mater, the question raised for decision is answered in the affirmative and in favour of the Revenue to the extent as indicated above. The appeal is allowed. The matter is, however, remained to the Assessing Officer (a) to work-out the interest earned under sections 63 and 64 of the Multi-Stat Co-operative Societies Act, 20002 and to allow benefit under section 80P and (b) to ascertain the interest paid to the members for the purpose of earning the sums of Rs.99 lakhs and 1.2 crores on account of interest from investments. Such interest shall be deducted from the expenses of eligible business. Consequent increased amount of profits of eligible business as discussed above shall be the amount of deduction available to the assessee under section 80P."*

8. We deem it appropriate to conclude in these peculiar facts and circumstances that assessee's impugned interest income derived from investment is not eligible for u/s 80P(2)(a)(i) deduction per se. Its reliance on learned co-ordinate bench's decision in its own case dated 01.03.2018 (supra) is not very well founded since going against the hon'ble jurisdictional subsequent judgment on the very issue. We therefore treat learned co-ordinate bench's earlier order to be *per inquriam* as per the *CIT vs. B.R. Constructions* (1993) 202 ITR 222 (AP)(F.B) since not taking into consideration the law settled by hon'ble jurisdictional high court. The Revenue therefore succeeds in its sole substantive ground in principle.

9. This leaves us with the equally significant aspect of computation of the impugned sec. 80P(2)(a)(i) deduction. There is hardly any dispute about the assessee having derived its interest income from investments made in a nationalised and State co-operative bank (supra). We quote jurisdictional high court's above stated latter judgment first of all make it clear that the Assessing Officer needs to re-do the entire computation afresh. He shall treat assessee's interest income if any, earned from investments made from deposits sec. 64 r.w.s. 63 of the Multi-State Co-operative Societies Act, 2002 to be very much attributable to the business of providing credit facility to its members. This shall follow the necessary netting exercise of the

impugned interest income vis-à-vis the corresponding interest expenditure as well for arriving at the impugned disallowance. Needles to say, the assessee shall be afforded adequate opportunity of hearing in consequential proceedings.

10. This Revenue's appeal is allowed for statistical purposes in above terms.

Order pronounced in open court on 30/11/2018

Sd/-	Sd/-
(उपाध्यक्ष)	(न्यायिक सदस्य)
(P.M.Jagtap)	(S.S.Godara)
Vice President	Judicial Member

*Dkp-Sr.PS

दिनांकः- 30/11/2018 कोलकाता / Kolkata

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

1. अपीलार्थी/Appellant-ACIT, Circle-33, 10B, Middleton Row, 3rd Fl, Kolkata-71
2. प्रत्यर्थी/Respondent-Central Bank of India Employees Co-op. Society Ltd., 10 Nellie Sengupta Sarani, Kolkata-87
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/

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
कोलकाता ।