IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "C" BENCH

(BEFORE SHRI MAHAVIR PRASAD, JUDICIAL MEMBER & SHRI WASEEM AHMED, ACCOUNTANT MEMBER)

ITA. No: 1708/AHD/2018 **(Assessment Year: 2012-13)**

The Peoples Co.Op. Credit Society Ltd. Manager, The Peoples Co.Op. Credit Society Ltd. Santokpura, Tal. Borsad Dist. Anand-388540	**V/S**	**Income Tax Officer, Ward-1(3)(2), Petlad**
(Appellant)		**(Respondent)**

PAN: AAAAT2360B

Appellant by	**:**	**None**
Respondent by	**:**	**Shri Lalit P. Jain, Sr. D.R.**

(आदेश)/ORDER

Date of hearing : 30 -11-2018
Date of Pronouncement : 30 -11-2018

PER MAHAVIR PRASAD, JUDICIAL MEMBER

1. This appeal by the Assessee is directed against the order of the Ld. CIT(A)-5, Vadodara dated 16.05.2018 pertaining to A.Y. 2012-13 and following grounds have been taken:

1. Ld. A.O. erred in law and on facts in disallowing deduction claimed u/s 80P(2)(a)(i).

2. Your appellant craves leave to add, amend, alter or delete any of the grounds of appeal on or before the finalization of appellate proceedings.

3. Ld.A.O. erred in law and on facts in holding interest income earned by your appellant on its bank deposits and other income amounting to Rs. 4,74,599/- as income from other sources and disallowance of deduction claimed u/s 80P thereon.

2. Briefly, stating the facts of the case are that the assessee filed its return of income on 20.07.2012 declaring total income at Nil after claiming deduction u/s. 80P at Rs.11,14,241/-. The case of assessee was selected under scrutiny and accordingly various notices u/s. 143(2) and 142(1) have been issued from time to time. During the course of assessment proceedings, the AO examined details of the interest income, and he noticed that the assessee has earned interest of Rs.22,36,225/- on the fixed deposits" held with SSNNL, Unit Trust, etc. Since the interest income from other co-operative societies is only exempt, the AO after considering the proportionate expenses treated net interest income from fixed deposits at Rs.5,16,699/- as income from other sources and consequently disallowed deduction u/s.80P(2)(a)(i) of the Act. The aggrieved assessee has filed present appeal.

3. During the course of the appellate proceedings, the appellant furnished a written submission in the Dak on 04/05/2018 through Shri. Ashwin S Shah, CA/AR of the appellant. The relevant portion of the written submission is reproduced as under:- .

4. The above issue is deliberated by various judicial authorities from time to time and has given contradictory judgements. There are numerous judicial pronouncements

in favour of the cooperative credit society also, A few illustrative cases are referred hereunder.

5. In the Samarpan Co.op. Credn 5oc, Ltd vs the ACIT (ITA No. 2400 & 2401/And/2015) A.Y. 2010-11 & 2012-13, Hon'ble 1TAT Ahmedabad has analyzed the allowability of deduction u/s 80P(2)(a)(i) for interest earned from deposits in nationalized banks. Hon'ble ITAI has analyzed the distinction between the terms used in the act for "a cooperative bank" and "Cooperative Credit Society", and "income attributable to" and "income derived from". It has a/so analyzed the decision of Karnataka High Court in the case of Guttingedarara Credit Co.operative Society Ltd vs ITO reported in (2015) 60 Taxmann.com 215 (Karnataka). It has also analyzed the order of hon'ble Gujarat High Court in ITO-vs Jafari Momin Vikas Co.op. Credit Soc. Ltd. reported in (2014) 49 taxmann.com 571 (guj) vis a vis Circular No. 133 of 2007 of the CBDT. After all -such deliberations, Hon'ble IT AT Ahmedabad has clearly held that order passed by the C1T (A) denying the benefit of deduction of the interest derived from its investment other than cooperative society u/s 80P(2)(a)(i) is unsustainable in law and allowed the appeal.

6. Your appellant most respectfully submits that after the impugned assessment order is passed, the .High Court has viewed the interest on deposits with nationalized bank as income not qualifying for deduction u/s 80P(2)(a)(i) in the case of State Bank Employees Cooperative Credit Society.

7. However, the key issue which was not examined is that the deposits made by the cooperative credit society is out of its working funds. The working funds are current assets as reduced by the current liabilities. The deposit accepted from a member by your appellant is a current liability. And advances and bank deposits made are current assets. Various current assets are of interchangeable nature. When advance takes place, deposit with the bank is utilized and when the advance is realized, the deposit with the bank increases. This interchangeability of current asset is a peculiar

phenomenon of a business. Even with such interchangeability, income from for your appellant. This cannot be viewed in isolation that when interest .is forthcoming from a member, it is a business income and when it is forthcoming from a bank, it is from other source. Deposits from members are accepted on interest with an intention to use them for the purpose of providing credit facilities to its members as per objects of the society, Till the available working funds are not advanced, the nature of the funds do not change. They continue to remain working funds in the business. To optimize the return and in order to meet the interest and incidental overheads of the business, your appellant and for that sake any prudent business would park such funds as deposit where there is business comfort on the aspects of liquidity, security and return on funds. Thus funds parked in the banks are integral and inseparable part of the working capital deployed in the business of your appellant and it cannot be viewed in isolation as investments not pertaining to the business and Interest as income from other source.

8. In the light of the aforesaid submissions, your honour is prayed to order deletion of the addition of Rs.4,74,599/- made to the income of your appellant by Ld. AO in the assessment order by disallowing the claim of deduction u/s 80P(2)(a)(i) and render justice to your appellant.

3. But replied filed by the assessee could not convince the ld. A.O. and additions were made and thereafter in appeal confirmed by the ld. CIT(A).

4. Now appellant is before us.

5. We have gone through the relevant and impugned order. As we can see, assessee parked its fund in SSNNL, Unit Trust, and earned interest of Rs.

22,36,225/- as has been held in the case of State Bank of India Employees Co-op Credit & Supply Society Ltd. vs. CIT wherein it is held:

5.6 Further, it is important to mention here that Hon'ble High Court of Gularat in its recent decision in the case of State Bank of India Employees Co-op Credit & Supply Society Ltd Vs Commissioner Of Income Tax in Tax Appeal No.486 & 487 Dated,25.04.2016 [20161 72 taxmann.com 64 (Gutarat) by distinguishing its earlier decision In the case of CJT v. Jafari Momin Vikas Co-op, Credit Society Ltd. [20141 362 ITR 331/227 Taxman 59/49 taxmann.com 571 (Guj.) has held that interest income earned from deposits from banks is not exempt U/s80P(2)(a)(i) of the Income tax Act and thereby followed the order of Hon,ble Apex Court in the case of Totgar Co-op Sale Soc Ltd Vs ITO (SO 322 ITR 283: 35DTR25.

6 From the above it can be seen that subsequent to the decision of Hon'ble Supreme court in the case of Totgar Co-op Sale Soc Ltd Vs ITO (SC) 322 ITR 283: 35DTR25, there were number of decisions on this issue by various High Courts and Tribunals in different cases by distinguishing the above judgment in favour of the assessee and Revenue. However, by the recent decision of Hon'ble High Court of Gujarat in the case of State Bank of India Employees Co-op Credit & Supply Society Vs Commissioner Of Income Tax as discussed above, the issue of dispute has been settled at least in the state of Gujarat and therefore, it is just and fair to treat the interest income earned from Co-operative societies, whose business activities are covered under the provisions of section 80P(2)(a)(i) of the IT. Act, as income from other sources U/s 56 of the Act. In the said case laws, both the Hon'ble Apex Court and Hon'ble High Court of Gujarat have categorically held that interest income earned on surplus funds in Bank deposits is income from other sources of the assessee liable to be assessed U/s56 of the I.T.Act. Since, the facts in the present case is quite similar to the facts in the case of State Bank of India Employees Co-op Credit &. Supply Society Ltd/the ratio of State Bank of India Employees Co-op Credit & Supply Society Ltd Vs Commissioner Of Income Tax (Guj High Court) is squarely

applicable in the instant case . Hence, in the instant case, by respectfully following the ratio of case laws in the case of Totgar Co-op Sale Soc Ltd Vs ITO (SC) and State Bank of India Employees CO-OP Credit & Supply Society Ltd Vs Commissioner Of Income Tax in Tax Appeal No.486 & 487 Dated 25.04.2016 of Hon'ble High Court of Gujarat , interest income of Rs. 29,02,430/- earned by the assessee from investments with bank is held to be not eligible for deduction u/s. 80P(2)(a)(i) of the I.T. Act and accordingly it is to be taxed under the normal provisions of the Act.

6. Respectfully following the aforesaid judgment and interest income earned by the appellant is not from its activities. Thus, in these circumstances contention of the appellant cannot be accepted.

7. In the result, appeal filed by the Assessee is dismissed.

Order pronounced in Open Court on 30 - 11- 2018

Sd/- Sd/-

(WASEEM AHMED) **(MAHAVIR PRASAD)**
ACCOUNTANT MEMBER **True Copy** **JUDICIAL MEMBER**

Ahmedabad: Dated 30/11/2018

Rajesh

Copy of the Order forwarded to:-

1. The Appellant.
2. The Respondent.
3. The CIT (Appeals) –
4. The CIT concerned.
5. The DR., ITAT, Ahmedabad.
6. Guard File.

By ORDER

Deputy/Asstt.Registrar
ITAT,Ahmedabad