IN THE INCOME TAX APPELLATE TRIBUNAL
VISAKHAPATNAM "SMC" BENCH, VISAKHAPATNAM

BEFORE SHRI V. DURGA RAO, HON'BLE JUDICIAL MEMBER

ITA No. 199/VIZ/2017
(Asst. Year : 2008-09)

Sri Uma Kamandaleswara Co-op Rural Bank Ltd., Ryali, Athreyapuram Mandalm, East Godavari District.	vs.	Addl.CIT, Kakinada Range, Kakinada.
PAN No. AADAS 4663 B (Appellant)		(Respondent)

Assessee by : Shri G.V.N. Hari – Advocate.
Department By : Shri P.S. Murthy – Sr.DR

Date of hearing : 27/12/2019.
Date of pronouncement : 13/02/2019.

O R D E R

PER V. DURGA RAO, JUDICIAL MEMBER

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals)-2, Guntur, dated 27/01/2017 for the Assessment Year 2008-09.

2. Facts of the case, in brief, are that assessee initially named as 'Sri Uma Kamandaleswara Co-operative Rural Bank Ltd.'. Subsequently name has been changed as 'Sri Uma Kamandaleswara Primary Agricultural Credit Co-operative' Society Ltd. The assessee is extending credit facilities to its members and

also claiming deduction under section 80P(2)(a)(i) of the Income Tax Act, 1961 (hereinafter referred to as 'Act'), the same is allowed by the Assessing Officer. In the assessment order, the Assessing Officer has noted that the assessee has received interest income of Rs.13,49,073/- from the fixed deposits with the DCCB and called the explain as to how interest income is eligible for deduction under section 80P(2)(a)(i) of the Act. It was submitted by the assessee before the Assessing Officer that as per rules issued by the Government, from the fixed deposits collected from the members of the society, an amount equivalent to 25% of the total deposits collected should invariable be deposited in the form of fixed deposits with DCCB since DCCB is also a guarantor for repayment. The assessee further explained that the society had surplus funds during the year in the form of deposits collected from people and such surplus funds were deposited with the DCCB over and above the statutory requirement. The Assessing Officer after considering the explanation of the assessee, he has noted that it was seen from the books produced, society has collected Rs. 1.79 crores of deposits in total from the members and though the 25% requirement translates to 44.88 lakhs, the society had actually invested an amount of Rs. 1.44 crores with the DDCB. Therefore, a part of the total interest received of Rs. 9.74 lakhs

from DCCB comprised of interest received on the surplus funds deposited with the DDCB. So, the interest received was bifurcated on pro-rata basis according to which the interest received on surplus funds deposited with the DCCB was arrived at Rs. 11,29,453/-. The Assessing Officer by following the decision of the Hon'ble Supreme Court in the case of *Totgars Co-operative Credit Society Ltd. Vs. ITO* (188 Taxmann 282 (SC)] has held that interest received on surplus funds from DCCB & KCTB has considered as 'income from other sources and accordingly same is brought to tax.

3. On appeal, ld. CIT(A) confirmed the order of the Assessing Officer.

4. On being aggrieved, assessee carried the matter in appeal before this Tribunal.

5. Ld. counsel for the assessee has submitted that the assessee is a co-operative credit society extending credit facility to its members. Collect the deposits, which is immediately not required to the extent of credit facility to its members, the same is kept in the bank and therefore, the interest received by the assessee is attributable to the business of the assessee and eligible for section 80P(2)(a)(i) of the Act. For the above proposition, he relied on the decision of the Hon'ble Andhra Pradesh High Court in the case

of *Vavveru Co-op Rural Bank Ltd. Vs. LD.CCIT & Another* [(2017) 396 ITR 371 (AP)]. Insofar as case law relied on by the Assessing Officer is concerned, it is submitted that the facts are entirely different, no application to the present case and submitted that interest received from the bank deposits on account of surplus funds is eligible for 80P(2)(a)(i) of the Act.

6. On the other hand, ld. Departmental Representative strongly supported the orders passed by the authorities below and also placed reliance on the decision of the Hon'ble Supreme Court in the case of *Totgars Co-operative Credit Society Ltd.,* (supra).

7. We have heard both the sides, perused the material available on record and orders of the authorities below.

8. The only issue involved in this appeal is whether assessee is entitled for deduction under section 80P(2)(a)(i) in respect of surplus funds deposits with the bank. The assessee is a primary agricultural Co-op Credit Society extending credit facility to its members. The assessee is also entitled to claim for deduction under section 80P(2)(a)(i) of the Act. So far as this fact is concerned, there is no dispute. The assessee has received an amount of Rs.11,29,453/- on account of surplus funds deposited with the DCCB bank and claimed deduction under section 80P(2)(a)(i) of the Act. The Assessing Officer by following the

judgment of the Hon'ble Supreme Court in the case of *Totgars Co-operative Credit Society Ltd.,* (supra) disallowed the interest received on account of surplus funds deposited with the bank is not eligible for deduction under section 80P(2)(a)(i) for the reason that such interest income could not be said to be attributable to the activities of the society i.e. carrying the business of providing credit facilities to its members. The very same issue has been considered by the coordinate bench of the tribunal in the case of *M/s. Kakinada Co-op Building Society Ltd., Vs. Addl. CIT* in ITA Nos. 348 & 349/VIZ/2013, dated 22/01/2016 wherein by following the decision of the Hon'ble Karnataka High Court in the case of *Guttigedarara Credit Co-op Society Ltd. Vs. ITO* [(2015) 66 (I) ITCL 343 (Kar. HC)] and also by following the decision of the Hon'ble Andhra Pradesh High Court in the case of *CIT Vs. Andhra Pradesh State Co-op Bank Ltd.,* (2011) 336 ITR 516 (AP) has held that interest earned on deposits by the assessee–cooperative society providing credit facilities to its members would qualify for deduction under section 80P(2)(a)(i) of the Act. For the sake of convenience, the relevant portion of the order is extracted as under:-

> *"9. We have heard both the parties, perused the records and gone through the orders of the authorities below. The assessee is Kakinada Co-operative Building Society engaged in the business*

of collecting the deposits, lending loans to its members for purchase of sites, buildings and construction of houses. When the assessee society receives the deposits from the members in the course of its business, if the deposits received is not necessary for immediate use of its business i.e. lend it to the members the same is deposited with the bank and interest income is earned. According to the A.O., the interest income earned by the assessee is an income from other sources and the same view has been confirmed by the CIT(A). After careful consideration of the orders of the authorities below and also considering the section 80P(2)(a)(i) of the Act, we find that the assessee has deposited some funds in the KCTB and DCCB and other banks when those funds are not necessary for the immediate business purpose. Therefore, they had deposited the money in a bank to earn the interest. The said interest income was attributable to the carrying of business of banking and therefore it was liable to be deducted in terms of section 80P(2)(a)(i) of the Act. The Hon'ble Karnataka High Court in case of Guttigedarara Credit Co-operative Society Ltd. Vs. ITO (supra) by following the decision of A.P. High Court in the case of CIT Vs. Andhra Pradesh State Co-operative Bank Ltd. (supra) has held that "interest earned on the deposits in the bank by the assessee cooperative society providing credit facility to its members would be quantified for deduction u/s 80P of the Act". We therefore respectfully following the jurisdictional High Court as well as the judgement of the Karnataka High Court, allow this ground of appeal raised by the assessee."

9. A similar issue has been considered by the Hon'ble Andhra Pradesh High Court in the case of *Vavveru Co-op Rural Bank Ltd. (supra)* wherein by considering the judgment of the Hon'ble Supreme Court in the case of Totgars Co-operative Credit Society Ltd., (supra) has held as under:-

"*7. It appears that the petitioners are engaged in the sale of fertilisers to its members. A portion of the income derived therefrom is deposited by the petitioners in Nationalised Banks. The income derived by way of interest on the fixed deposits made by the petitioners with the banks, was treated by the petitioners as an income attributable to the profits and gains of business, eligible for deduction under section 80P(2)(a). But the Assessing Officer treated the interest income as income from other sources not eligible for deduction.*

8. Therefore, the real controversy arising in these writ petitions is as to whether the income derived by the petitioners by way of interest on the fixed deposits made by them with the banks, is to be treated as profits and gains of business attributable to any one of the activities indicated in sub-clauses (i) to (vii) of clause (a) of sub-section (2) of section 80P or not.

9. While the petitioners place strong reliance upon a decision of the Division Bench of this court in CIT v. Andhra Pradesh State Co-operative Bank Ltd. [2011] 12 taxmann.com 66/200 Taxman 200/336 ITR 516, the Revenue places strong reliance upon the decision of the Supreme Court in Totgar's Co-operative Sale Society Ltd. v. ITO [2010] 188 Taxman 282/322 ITR 283.

10. In order to understand the scope of the controversy, it would be better to present in simple terms, the ambit of clause (a) of sub-section (2) of section 80P. This clause is intended for the benefit of (1) certain types of co-operative societies but (2) confined only to the activities listed in sub-clauses (i) to (vii). In other words, clause (a) of sub-section (2) confers a benefit only upon co-operative societies, but the benefit is restricted only to some and not to all of the activities of such co-operative societies. To put it differently, an institution claiming the benefit of clause (a) of sub-section (2) of section 80P should cross 2 check-posts. In the 1st check-post, the institution will have to establish that it is a co-operative society. In the 2nd check-post, the institution has to establish that the deduction sought represents profits and gains of business attributable to one or more of the activities in sub-clauses (i) to (vii).

11. But the manner in which clause (a) is worded appears to be little clumsy. This is due to the reason that though sub-clauses (iii) to (vii) actually describe activities such as marketing, purchase, processing, collective disposal or fishing or allied activities, sub-clauses (i) and (ii) deal with the nature of the industry/business carried on by the institution. While sub-clause (i) uses the expression "business", sub-clause (ii) uses the expression "industry". Moreover, all the 7 sub-clauses are connected to the expression "co-operative society" by the words "engaged in" appearing in sub-clause (a).

12. The sheet anchor of the case of the petitioners is the expression "attributable to" appearing in the last part of clause (a) of sub-section (2) of section 80P. Since the statute does not use the expression "derived from", but uses the expression "attributable to", the contention of the petitioners is that clause (a) should receive a wider interpretation.

13. The above contention cannot be rejected outright, for the simple reason that in many statutes and for that matter even in the Income-tax Act, the expression "attributable to" is sometimes used with the prefix "directly". The words "directly attributable" to would certainly narrow down the scope of the expression "attributable to". Therefore, the fact that the expression "attributable to" is wider in scope than the expression "derived from" cannot be denied.

14. Several decisions have been relied upon by both sides, not necessarily in the chronological order. But we think that analysing them in the chronological order would give a better understanding.

15. In CIT v. Madras Autorickshaw Drivers Co-operative Society Ltd. [1983] 143 ITR 981 (Mad.), a Division Bench of the Madras High Court was concerned with the question as to whether a society, which was purchasing autorickshaws and reselling them to its members on hire-purchase basis, could be treated as a society engaged in the business of providing credit facilities to its members or not. The Madras High Court pointed out that a credit society is distinct from a distributive society and a marketing society and that the tax relief under section 80P(2)(a) is a grant by Parliament not to a category of income but to a category of assessee, namely, a co-operative society answering the description of a society engaged in the business of providing credit facilities to its members. In other words, the court came to the conclusion that the income derived by the society by purchasing autorickshaws and selling them to its members under hire-purchase agreements will not be exempt under section 80P(2)(a)(i). This decision of the Division Bench of the Madras High Court was confirmed by the Supreme Court in a very brief order Madras Autorickshaw Drivers' Co-operative Society vs. CIT [2001] 117 Taxman 370/249 ITR 330.

16. In CIT v. Nawanshahar Central Co-operative Bank Ltd. [2007] 289 ITR 6/160 Taxman 48 (SC), the Supreme Court was concerned with a case where a co-operative society carrying on the business of banking and which is statutorily required to park a part of its funds in approved securities would be entitled to deduction under section 80P(2)(a) of the interest income arising from such investments.

17. In CIT v. Ponni Sugars & Chemicals Ltd. [2008] 174 Taxman 87/306 ITR 392 (SC) one of the two questions that arose for the consideration of the Supreme Court was whether the interest received from the members of the society could be allowed as deduction under section 80P(2)(a)(i) or not. But the Supreme

Court did not answer the question in view of the fact that the memorandum of association, the articles of association and the returns of income filed by the assessee had not been examined by the Tribunal on facts.

18. In Udaipur Sahkari Upbhokta Thok Bhandar Ltd. v. CIT [2009] 182/Taxman 287/315 ITR 21 (SC), the issue that arose for consideration actually revolved around section 80P(2)(a)(i)(2)(e) and not around section 80P(2)(a)(i). The assessee in that case was running a consumer co-operative store and was also involved in the distribution of controlled commodities such as wheat, sugar, rice and cloth on behalf of the Government under the Public Distribution Scheme for which it received commission. Whether the commission so received could be treated as an income under section 80P(2)(e) eligible for deduction was the question before the court. The Supreme Court ruled that since the assessee was storing the commodities in question in its godowns as part of its own trading stock, it was not entitled to claim deduction from such margin under section 80P(2)(e). While holding so, the Supreme Court distinguished its earlier decision in CIT v. South Arcot District Co-operative Marketing Society Ltd. [1989] 43 Taxman 328/176 ITR 117 wherein the commission taken by the society in question for storing the stock on behalf of the State Government and returning the same every month was held to be an allowable deduction. The distinction pointed out by the Supreme Court was that in South Arcot District Co-operative Marketing Society Ltd.'s case (supra), there were two sales, first between the Government and the society and the second between the society and the fair price shop.

19. In Totgars Co-operative Sale Society Ltd. v. ITO [2010] 322 ITR 272 (Kar.), a Division Bench of the Karnataka High Court held that when a society not carrying on any banking business had invested its surplus funds in security term deposits, the interest accrued from such securities and deposits should be taken as relatable to profits and gains of the society.

20. The above decision of the Karnataka High Court was taken on appeal to the Supreme Court. In a decision reported in Totgar's Co-operative Sale Society Ltd.'s case (supra), the Supreme Court held that the interest income arising out of the investment of surplus funds cannot be attributed to the activities of the society. The relevant portion of the judgment of the Supreme Court reads as follows (page 289) :

> *"The head note to section 80P indicates that the said section deals with deductions in respect of income of co-operative societies. Section 80P(2), 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 word '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 members or marketing of the agricultural produce of its members. 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 members. 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 invested in short-term deposits/securities. 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 in section 80P(2)(a)(iii)) of the Act."

21. In CIT v. Punjab State Co-operative Federation of Housing Building Societies Ltd. [2011] 11 taxmann.com 448 (Punj. & Har.) a Division Bench of the Punjab and Haryana High Court followed the decision of the Supreme Court in Totgar's and held that the interest income received by the cooperative society from commercial banks cannot be attributed to the activities of the society.

22. In State Bank of India v. CIT [2016] 72 taxmann.com 64/241 Taxman 163/389 ITR 578 (Guj.), a question arose before the Division Bench of the Gujarat High Court as to whether the interest earned on deposits made by a co-operative society that was registered with the object of accepting deposits from salaried employees of the State Bank with a view to promote thrift and provide credit facilities, was entitled to the benefit of section 80P(2)(a)(i)(2)(a). Following the decision of the Supreme Court in Totgar's Co-operative Sale Society Ltd.'s case (supra) the Gujarat High Court held that while the interest income earned by the co-operative society by extending credit facilities to its members may be business income, the interest income earned on the deposits of surplus funds with the State Bank of India may not qualify for deduction under section 80P(2)(a)(i).

23. Similarly, it was held in Mantola Co-operative Thrift & Credit Society Ltd. v. CIT [2014] 50 taxmann.com 278/[2015] 229 Taxman 68 (Delhi), that the word "Banking" appearing in section 80P(2)(a)(i) cannot be given an extended and broad meaning and that to do so would be contrary to the ratio laid down in Totgars Co-operative Society.

24. In CIT v. Punjab State Co-operative Agricultural Development Bank Ltd. [2016] 389 ITR 607/76 taxmann.com 307 (Punj. & Har.), a Division Bench of the Punjab and Haryana High Court held that the interest earned on reserve funds and call deposits could not be regarded as income attributable to one of the activities indicated in the section. The Punjab and Haryana High Court not only followed Totgars but also followed the decision of the Gujarat High Court in State Bank of India v. CIT.

25. In CIT v. South Eastern Railway Employees Co-operative Credit Society Ltd. [2016] 73 taxmann.com 123/[2017] 390 ITR 524 (Cal.), a Division Bench of the Calcutta High Court indicated that the judgment of the Supreme Court in Totgar's is a binding authority for the proposition that interest income arising on the surplus invested in short-term deposits and securities would come under the category of income from other sources.

26. Thus a line of decisions rendered by various High Courts such as the High Court of Punjab and Haryana, the High Court of Calcutta and the High Court of Gujarat, rendered after the decision of the Supreme Court in Totgar's simply followed the ratio decidendi of Totgars. But, one judgment of this court attempted a distinction and that was in Andhra Pradesh State Co-operative Bank Ltd.'s case (supra). In the said case, the assessee was a co-operative society engaged in the business of banking. The assessee had invested statutory reserves in short-term and

long-term deposits and the interest earned thereon was disallowed by the Assessing Officer for deduction under section 80P(2)(a)(i). The Commissioner partly allowed the appeal holding that the interest income relatable to non-SLR investments would not qualify for exemption. The Tribunal allowed the appeal of the assessee holding that in respect of interest income arising both from SLR securities and from non-SLR securities, deduction was allowable. In an appeal under section 260A to this court, heavy reliance was placed by the Revenue upon the decision of the Supreme Court in Totgar's. But the Division Bench distinguished Totgars on the ground that the said decision was confined to the facts of the said case and that the Supreme Court was not dealing with the cases relating to co-operative banks. Referring to the decision of the Supreme Court in Cambay Electric Supply Industrial Co. Ltd. v. CIT [1978] 113 ITR 84, this court pointed out that the expression "attributable to" is wider in scope than the expression "derived from" and that a co-operative society may earn profits by way of interest by parking their funds in high-yielding deposits or may earn income by circulating its capital among its members in the course of their banking business. Adverting to the fact that the phrase "business of banking" is not defined in the Income-tax Act, this court referred to the definition of the expression "banking" appearing in section 5(b) of the Banking Regulation Act to come to the conclusion that the income received by a co-operative bank from deposits, whether or not they are made in the discharge of statutory obligation would be eligible for exemption, since it would tantamount to income from banking business.

27. Taking clue from the aforesaid decision of this court in Andhra Pradesh State Co-operative Bank Ltd.'s case (supra), yet another distinction was sought to be made by Mr. A. B. Krishna Koundinya, learned senior counsel appearing for the writ petitioners, to the decision of the Supreme Court in Totgar's Co-operative Sale Society Ltd.'s case (supra). In paragraph-10 of its decision in Totgar's Co-operative Sale Society Ltd.'s case (supra), the Supreme Court pointed out that what was invested by Totgar's was the sale proceeds payable to the members, but which was retained and invested by the society, on account of which the amount was shown as liability in the balance-sheet. Therefore, the learned senior counsel contended that the decision of the Supreme Court in Totgar's Co-operative Sale Society Ltd.'s case (supra) may perhaps be relied upon in cases where the amount payable to the members was retained for a short duration and invested by the society, as a consequence of which the amount so retained would be a liability for the society. But in the case on hand, what was invested by the writ petitioners in fixed

deposits was not something that formed part of its liability. Therefore, the learned senior counsel maintained that the decision of this court in Andhra Pradesh State Co-operative Bank Ltd.'s case (supra) would hold the field.

28. We have carefully considered the above submissions. Before considering the effect of the various decisions cited on both sides, we think it would be ideal to look at the statutory prescription in pure and simple form. As we have indicated earlier, section 80P(2) is actually divided into six parts, categorised under clauses (a), (b), (c), (d), (e) and (f). Each one of these clauses deal with different types of co-operative societies engaged in different types of activities. The benefit made available to each one of them is also different from the other. Therefore, it may be useful to present a tabular form, the six categories of co-operative societies covered by clauses (a) to (f) and the nature and extent of the benefit available to each one of them, as follows :

Category of co-op. societies covered by	*Nature and extent of*
(*a*) (1) Co-operative society carrying on the business of banking or providing credit facilities to its members ; (2) Co-op. society engaged in cottage industry ; (3) Co-operative society engaged in marketing of agricultural produce grown by its members. (4) Co-operative society engaged in purchase of agricultural implements, seeds etc., for the purpose of supplying to its members ; (5) Co-operative society engaged in processing of agricultural produce of its members without the aid of power. (6) Co-operative society engaged in collective disposal of the labour of its members. (7) Co-operative society engaged in fishing or allied activities.	The whole of the amount of profits and gains of business attributable to any one or more of such activities.
(*b*) Primary co-operative society engaged in supplying milk, oil seeds, fruits or vegetables grown by its members to— (1) a federal co-operative society, engaged in the same business ;	The whole of the amount of profits and gains on such business.

(2) the Government or a local authority ; (3) the Government company or Corporation engaged in the same business ;	
(*c*) (1) A consumer co-operative society engaged in activities other than those specified in clause (a) or clause (b) either independently of, or in addition to, all or any of the activities so specified.	So much of the profits and gains attributable to such activities not exceeding Rs. 100,000 (one hundred thousand rupees).
(2) Co-operative society other than a consumer co-operative society engaged in activities other than those specified in clauses (a) and (b).	So much to these profits and gains attributable to such activities not exceeding Rs. 50,000 (fifty thousand rupees).
(*d*) Interest or dividends derived by the co-operative society from its investments with any other co-operative society ;	The whole of such income.
(*e*) Any income derived by the co-operative society from the letting of godowns or warehouses for storage, processing or facilitating the marketing of commodities ;	The whole of such income.
(*f*) A co-operative society other than (1) A housing society ; (2) An urban consumer society ; (3) A society carrying on transport business ; (4) A society engaged in the performance of any manufacturing operations with the aid of power, where the gross total income does not exceed Rs. 20,000 (twenty thousand rupees).	The income by way of interest on securities and the income from house property chargeable under section 22.

29. From the tabular form presented above, it may be clear that the deductions available under clauses (a) to (c) are activity-based. The deduction available under clauses (d) and (e) are investment-based and the deduction under clause (f) is institution-based. To put it differently,

(A) to be eligible for deduction under clause (a), the claim should relate to the profits and gains of business attributable to anyone or more of the activities listed in clause (a),

(B) to be eligible for deduction under clause (b), the society should be a primary society engaged in supplying milk, oilseeds, fruits, etc. to named institutions, such as, Government, Local Authority, Federal Co-operative Society, or Government Company,

(C) to be eligible for deduction under clause (c), the institution must be engaged in activities other than those covered by clauses

(a) and (b) subject to the further condition that such profits and gains should not exceed a particular limit,

(D) to be eligible for deduction under clause (d), the income should be derived from investments with another co-operative society,

(E) to be eligible for deduction under clause (e), the income should be derived from letting of godowns or warehouses, etc.

30. Therefore, what follows is that when a co-operative society engaged in any one of the activities stipulated in sub-clauses (i) to (vii) of clause (a) makes profits and gains out of business attributable to anyone of those activities, the case would fall under clause (a). The moment the income derived from one of those activities is invested in another co-operative society and an interest or dividend is derived therefrom, the case would be covered by clause (e). In case the profits and gains of business arising out of the activities listed in sub-clauses (i) to (vii) of clause (a) is invested in immovable properties, such as, godowns or warehouses and an income is derived therefrom, the case would be covered by clause (e) of section 80P(2).

31. The only area of distinction between clause (a) on the one hand and clauses (d) and (e) on the other hand is that the benefit under clause (a) is restricted only to those activities of a co-operative society enlisted in sub-clauses (i) to (vii) of clause (a). On the other hand, the benefit under clauses (d) and (e) are available to all co-operative societies, without any restriction as to the nature of the activities carried on by them.

32. In simple terms, the position can be summarised like this. If there is a co-operative society, which is carrying on several activities including those activities listed in sub-clauses (i) to (vii) of clause (a), the benefit under clause (a) will be limited only to the profits and gains of business attributable to any one or more of such activities. But, in case the same co operative society has an income not attributable to any one or more of the activities listed in sub-clauses (i) to (vii) of clause (a), the same may go out of the purview of clause (a), but still, the co-operative society may claim the benefit of clause (d) or (e) either by investing the income in another co operative society or investing the income in the construction of a godown or warehouse and letting out the same.

33. In other words, the benefit conferred by clause (d) upon all types of co-operative societies is restricted only to the investments made in other co-operative societies. Such a restriction cannot be read into clause (a), as the temporary

parking of the profits and gains of business in nationalised banks and the earning of interest income therefrom is only one of the methods of multiplying the same income. To accept the stand of the Department would mean that co-operative societies carrying on the activities listed in clauses (i) to (vii), which invest their profits and gains of business either in other co-operative societies or in the construction of godowns and warehouses, may benefit in terms of clause (d) or (e), but the very same societies will not be entitled to any benefit, if they invest the very same funds in banks. Such an understanding of section 80P(2) is impermissible for one simple reason. The benefits under clauses (d) and (e) are available in general to all co-operative societies, including societies engaged in the activities listed in clause (a). Section 80P (2) is not intended to place all types of co-operative societies on the same pedestal. The section confers different types of benefits to different types of societies. Special types of societies are conferred a special benefit.

34. The case before the Supreme Court in Totgar's Co-operative Sale Society Ltd.'s case (supra) was in respect of a co operative credit society, which was also marketing the agricultural produce of its members. As seen from the facts disclosed in the decision of the Karnataka High Court in Totgars, from out of which the decision of the Supreme Court arose, the assessee was carrying on the business of marketing agricultural produce of the members of the society. It is also found from paragraph-3 of the decision of the Karnataka High Court in Totgar's Co-operative Sale Society Ltd.'s case (supra) that the business activity other than marketing of the agricultural produce actually resulted in net loss to the society. Therefore, it appears that the assessee in Totgars was carrying on some of the activities listed in clause (a) along with other activities. This is perhaps the reason that the assessee did not pay to its members the proceeds of the sale of their produce, but invested the same in banks. As a consequence, the investments were shown as liabilities, as they represented the money belonging to the members. The income derived from the investments made by retaining the monies belonging to the members cannot certainly be termed as profits and gains of business. This is why Totgar's struck a different note.

35. But, as rightly contended by the learned senior counsel for the petitioners, the investment made by the petitioners in fixed deposits in nationalised banks, were of their own monies. If the petitioners had invested those amounts in fixed deposits in other co-operative societies or in the construction of godowns and warehouses, the respondents would have granted the benefit of deduction under clause (d) or (e), as the case may be.

> *36. The original source of the investments made by the petitioners in nationalised banks is admittedly the income that the petitioners derived from the activities listed in sub-clauses (i) to (vii) of clause (a). The character of such income may not be lost, especially when the statute uses the expression "attributable to" and not any one of the two expressions, namely, "derived from" or "directly attributable to".*
> *37. Therefore, we are of the considered view that the petitioners are entitled to succeed. Hence, the writ petitions are allowed, and the order of the Assessing Officer, in so far as it relates to treating the interest income as something not allowable as a deduction under section 80P(2)(a), is set aside.*
> *38. The miscellaneous petitions, if any, pending in these writ petitions shall stand closed. No costs.*

10. In the above decision, the Hon'ble Andhra Pradesh High Court has considered the term used in section 80P(2) "attributable to" and observed that the original source of investments made by the petitions in nationalised banks is admittedly the income that the petitioners derived from the activities listed in sub-clauses (i) to (vii) of clause (a). The character of such income may not be lost, especially when the statute uses the expression 'attributable to' and not any one of the two expression, namely, 'derived from' or 'directly attributable to'.

11. In the present case, the assessee while carrying its activities i.e. extending credit facilities to its members, collected the deposits which are not immediately necessary to extend the credit facilities to its members, deposit in the bank and interest received. We find that there is proximity between the business carried by the assessee and the interest received. The above decision of the

Hon'ble Andhra Pradesh High Court is squarely applies to the facts of the present case. Therefore respectfully following the decision of the Hon'ble Andhra Pradesh High Court in the case of *Andhra Pradesh State Co-op Bank Ltd.* (supra) and also by following the decision of the coordinate bench of the tribunal in the case of *M/s. Kakinada Co-op Building Society Ltd. (*supra), we hold that the interest income received by the assessee by depositing the surplus funds collected from the members is eligible for deduction under section 80P(2)(a)(i) of the Act.

12. Insofar as the judgment of the Hon'ble Supreme Court in the case of *Totgars Co-operative Credit Society Ltd.* (supra) is concerned, the Hon'ble Andhra Pradesh High Court has considered and discussed elaborately. In view of the above, the order passed by the ld. CIT(A) is to be reversed, accordingly we reverse the order passed by the ld. CIT(A). Thus, this appeal filed by the assessee is allowed.

13. In the result, appeal filed by the assessee is allowed.

Order Pronounced in open Court on this 13th day of Feb., 2019.

(V. DURGA RAO)
Judicial Member

Dated: 13th Feb., 2019.

vr/-

Copy to:

1. *The Assessee - Sri Uma Kamandaleswara Co-op Rural Bank Ltd., Ryali, Athreyapuram Mandalm, E.G. District.*
2. *The Revenue – Addl. CIT, Kakinada Range, Kakinada.*
3. *The Pr.CIT, Rajahmundry.*
4. *The CIT(A)-2, Guntur.*
5. *The D.R., Visakhapatnam.*
6. *Guard file.*

By order

(VUKKEM RAMBABU)
Sr. Private Secretary,
ITAT, Visakhapatnam.