

आयकर अपीलिय अधिकरण, पुणे न्यायपीठ “एक-सदस्य मामला” पुणे में
**IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH “SMC”, PUNE**

श्री डी. करुणाकरा राव, लेखा सदस्य के समक्ष
BEFORE SHRI D. KARUNAKARA RAO, AM

Sl. No.	ITA No.	Name of Appellant	Name of Respondent	Asst. Year
1	1606/PUN/2018	Sarroday Gramin Bigarsheti Sahakari Path Sanstha Maryadit, A/p Gholegaon, Tal- Junnar, Dist – Pune-412411. PAN: AAABS1881P	ITO, Ward-10(5), Pune	2015-16
2	1607/PUN/2018	Gomata Gramin Bigarsheti Sahakari Pat. Sanstha Maryadit, A/p Wadgaon Anand, Tal- Junnar, Dist – Pune-412411. PAN: AAIFG5060A	ITO, Ward-10(5), Pune	2010-11
3	1608/PUN/2018	Girija Gramin Bigarsheti Sahakari Pat. Sanstha Maryadit, A/p Gholegaon, Tal- Junnar, Dist – Pune-410502. PAN: AACAG5149B	ITO, Ward-10(5), Pune	2015-16
4	1609/PUN/2018	Adarsh Mahila Gramin Bigarsheti Sa. Patsantha Maryadit, A/p Alephata, Tal- Junnar, Dist – Pune-412411. PAN: AADAA1436A	ITO, Ward-10(5), Pune	2015-16

अपीलार्थी की ओर से / Appellant by : Shri Abhay Avchat
Shri Nikhil Pathak
प्रत्यर्थी की ओर से / Respondent by : Shri Vishwas Mundhe

सुनवाई की तारीख / Date of Hearing : 08.08.2019	घोषणा की तारीख / Date of Pronouncement: 23.09.2019
--	--

आदेश / ORDER

PER D. KARUNAKARA RAO, AM :

There are **four appeals** under consideration filed by the different assessees. The appeals in ITA Nos.1606, 1608 & 1609/PUN/2018 are directed against the order of CIT(A)-6, Pune commonly dated 28.06.2018 for the Assessment Year 2015-16. The appeal in ITA No.1607/PUN/2018 is

directed against the order of CIT(A)-6, Pune dated 28.06.2018 for the Assessment Year 2010-11.

2. Since the issues raised by the different assessees in the grounds are almost common in all the four appeals, therefore, all the four appeals were heard together and are being disposed of by this composite order.

Facts & Developments before Assessing Officer & CIT(A)

3. Briefly stated the relevant facts include that the assessee is a registered cooperative society registered under the Maharashtra Co-op. Society Act, 1960. The assessee filed the return of income declaring Nil income after claiming of deduction u/s 80P of the Act. The Assessing Officer took the case for "limited scrutiny" in view of the CASS guidelines and found that the assessee is not entitled to claim the deduction u/s 80P of the Act where the activities relate to giving loans to members/nominal members etc are earned the interest income. Further, the Assessing Officer noticed that the member/new members/family members are involved in this earning of the interest income. Following the Hon'ble Supreme Court judgements in the case of Citizen Co-operative Society Ltd. vs. ACIT in Civil Appeal No.10245/2017 dated 08.08.2017, the benefits of section 80P(2) of the Act was denied by the Assessing Officer.

4. During the first appellate proceedings, the assessee relied on the decision of Pune Bench of the Tribunal in the case of ITO vs. Jankalyan Nagari Sah. Pat Sanstha Ltd., 24 taxmann.com 127 (Pune-Trib.) and the

judgement of the Hon'ble Gujarat High Court in the case of CIT vs. Jafar Momin Vikas Co-op. Credit Society Ltd., 49 taxmann.com 571 (Guj-HC) etc in support of claim of the assessee. The CIT(A) examined the applicability of the said decisions as well as the judgement and also relied on the Hon'ble Supreme Court's judgement in the case of Citizen Co-operative Society Ltd. (supra), which recognizes the existence of two kinds of members of cooperative society and held that the assessee does not amount to cooperative bank and invoked the provisions of section 80P(4) of the Act.

5. Aggrieved with the above decision of the CIT(A), the assessee is in appeals before the Tribunal.

Before the Tribunal

6. Before me, ld. Counsel for the assessee explained the above facts of the case and submitted that the similar issue came up for adjudication before this Tribunal in the case of Sai Prerana Gramin Bigarsheti Sahakari Pat Sanshta Maryadit vs. ITO in ITA No.1431/PUN/2018 and many others dated 03.07.2019 and submitted that the issue stands now covered by the said order of the Tribunal (supra). The contents of para 3 to 10 of the said order of the Tribunal (supra) are relevant in this regard.

7. On the other hand, ld. DR for the Revenue relied heavily on the orders of the revenue authorities.

8. On hearing both the sides and perusing the Paper Book filed before us and case laws cited above. On considering order of the Tribunal in the case of Sai Prerana Gramin Bigarsheti Sahakari Pat Sanshta Maryadit dated 03.07.2019 (supra), I find identical issue came up for adjudication before this Tribunal and the Tribunal, as per discussion given in para 3 to 10 of its order, decided the said issue in favour of the assessee. For the sake of completeness, the contents of para 3 to 10 of the said order of the Tribunal (supra) are extracted hereunder :-

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

Assessee is a Co-operative Society registered under Maharashtra Co-operative Credit Societies Act, 1960 and is stated to be engaged in providing credit facilities to its Members and accepts deposits from its members. Assessee filed its return of income for A.Y. 2015-16 on 29.09.2015 declaring total income at Rs.Nil after claiming deduction of Rs.18,38,878/- u/s 80P of the Act. The case was selected for scrutiny and thereafter assessment was framed u/s 143(3) of the Act vide order dt.29.12.2017 and the claim of deduction u/s 80P of the Act was denied to the assessee and the total income was thus determined at Rs.18,38,878/-. Aggrieved by the order of AO, assessee carried the matter before Ld.CIT(A), who vide order dt.01.06.2018 (in appeal No.PN/CIT(A)-6/ITO Wd.10(5)/10297/2017-18) dismissed the appeal of the assessee. Aggrieved by the order of Ld.CIT(A), assessee is now in appeal before us and has raised the following grounds :

“1. The Ld.CIT(A) – 6, Pune erred in law and on facts, in confirming the action of the learned AO in denying the deduction u/s 80P(2)(a)(i) of the ITA, 1961 amounting to Rs.18,38,878/-.

2. The learned CIT(A)-6, Pune and the learned AD erred in law and on facts in denying deduction u/s 80P of the ITA, 1961 amounting to Rs. 18,38,878/-. The IT authorities erred in treating the appellant as a 'Business Financer' instead of a mere Credit Co-operative Society (i.e. PAT-SANSTHA) dealing with members.

3. Further, the learned CIT(A)-6, Pune erred in law and on facts in not allowing the deduction u/s 80P(2)(d) of the ITA, 1961 on account of the interest received from Pune District Central Co-operative Bank. The learned IT-Authorities ought to have appreciated that deposits were kept with co-operative banks from safety and prudence perspective.

4. Alternatively and without prejudice to Ground No. 1, 2 & 3, the learned IT Authorities erred in law and on facts by not allowing proportionate deduction u/s 80P of the ITA, 1961 to the extent of

eligible income earned; against the taxation of total income of Rs. 18,38,878/-."

4. *Similar grounds have been raised in the all the remaining appeals by different assesseees i.e., ITA Nos.1361, 1386,1430 & 1517/PUN/2018 for A.Y. 2015-16 and ITA No.1940/PUN/2018 for A.Y. 2014-15. Though the grounds are worded differently but the crux of the grounds is denial of claim of deduction u/s 80P of the Act.*

5. *Before me, at the outset, Ld.A.R. submitted that though assessee has raised various grounds but the sole controversy is with respect to denial of claim of deduction u/s 80P of the Act.*

6. *During the course of assessment proceedings, AO noticed that assessee was providing credit facilities to its members and was accepting the deposits from them. AO noticed that assessee had provided credits facilities to 10 new non-members and the aggregate loan disbursed to these new non-members was Rs.9,14,500/- and on which assessee had received interest of Rs.46,901/-. AO also noticed that assessee had also provided credits facilities to 9 nominal members to whom the aggregate loan disbursed was Rs.4,50,500/- and has received interest at Rs.37,652/-. AO also noticed that assessee had invested surplus funds with PDCC Banks and other Banks and from which assessee had received interest aggregating to Rs.12,79,098/-. AO was of the view that as per the provisions of Sec.80P(2)(d) of the Act, the assessee Society has to invest the surplus funds with Co-operative Society and not with Co-operative Banks. AO noted that no details for justification were furnished by the assessee. AO noted that though assessee had provided credit facilities to the new non-members and nominal members but had failed to submit any evidence of approval from the Managing Committee for being taken the new non-members or nominal members and had submitted only registration numbers and hence, according to AO, assessee had violated the bye-laws of the Society. AO was of the view that since the assessee had neither enrolled the new non-members or nominal members nor any activities were carried out by them thereby violated the provisions of bye-laws of the Society by accepting the deposits from nominal members and new non-members. AO thereafter concluded that assessee was acted like a regular Bank by accepting deposits from any person and also giving loans and therefore the main motto of the assessee is to earn more profits.*

7. *AO also noticed that the assessee was required to invest surplus funds with the Co-operative Society and not with the Co-operative Banks and the interest earned on investments, surplus funds with Co-operative Banks was not eligible for claim of deduction. He therefore concluded that assessee satisfied the essential condition to qualify as a Co-operative Bank namely i.e., the primary object or principal business of which is the transaction of banking business and that assessee society can be treated as a Co-operative Bank and also nature of the activity shows that it has taken the character of the Co-operative Banks which were not eligible for deduction u/s 80P of the Act by virtue of share capital, surplus reserves and surpluses which were invested in banks other than mentioned in Sec.80P(2)(d) of the Act. He noted that since the assessee had invested surplus funds with PDDC i.e., Co-operative Banks and other Banks assessee was not eligible for deduction u/s*

80P(2)(d) of the Act. He accordingly denied the claim of deduction of Rs.18,38,878/- u/s 80P of the Act. Aggrieved by the order of AO, assessee carried the matter before Ld.CIT(A), who upheld the order of AO by observing as under :

“6. The submissions have been gone through. It is seen that Sec.80P is applicable only to the assesseees which are co-operative societies and which are involved in the activities mentioned in the sub-section-2(1) and (b) of sec.80P. The appellant is a co-operative society as it is registered under the Maharashtra Co-operative Societies Act, 1960 and thus falls within the definition of co-operative society mentioned in Sec.2(19) of the I.T. Act. The activity of the appellant is that of accepting deposits and providing credit facilities to its members and therefore gets covered under the clause 80P(2)(a)(i) which refers to any co-operative society engaged in carrying on the business of banking or providing credit facilities to its members. However, with the introduction of Sec.80P(4), by Finance Act 2006 w.e.f. A.Y. 07-08, the benefit of Sec.80P has been removed for co-operative banks which were hitherto enjoying the benefit of deduction under this section. The relevant Sec.80P(4) reads as :

“The provision of this section shall not apply in relation to any co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank.

Explanation – For the purpose of this sub-section :

- a. ‘Co-operative bank’ and ‘primary agricultural credit society’ shall have the meaning respectively assigned to them in Part V of the Banking Regulation Act 1949 (10 of 1949).
- b. ‘Primary Co-operative agricultural and rural development bank means a society having its area of operation confined to a taluk and the principal object of which is to provide for long term credit for agricultural and rural development activities”.

6.1 Subsequent to the introduction of Sec.80P(4), controversy arose as to whether all the credit cooperative societies fall within the definition of cooperative bank mentioned in sec.80P(4). This issue was examined by the various Tribunals in the country and also by the constitutional courts.

6.1.1 In the case of CIT Vs. Jafar Momin Vikas Co-op. Credit Society Ltd. reported in [2014] 49 Taxmann.com 571 (Guj.), the High Court of Gujarat held in its order dtd.15/1/2014 that Sec.80P(4) will not apply to the assessee which is not a co-operative bank and in ruling so that it relied on the clarification issued by the CBDT in Circular No.133 of 2007 dtd.9/5/2007 in respect of the Delhi Co-operative Urban Thrift and Credit Society Ltd.

6.1.2 The ITAT Pune Bench B in the case of ITO Vs. Jankalyan Nagari Sah. Pat Sanstha Ltd. reported in [2012] 24 Taxmann.com 127 (Pune) for A.Y. 07-08 dtd.26/6/2012, has held that the co-operative credit society is distinct and separate from co-operative bank. It is also held that the co-operative credit society cannot be said to be a primary co-operative bank within the meaning of Banking Regulation Act 1949 relying on the principal of interpretation that there is no intendment in interpreting the statutes and has to be strict as the definitions in Sec.80P(4) are legislation by reference.

6.1.3 The Supreme Court in the case of The Citizen Co-operative

Society Ltd. Vs. ACIT Cir-3, Hyderabad in the Civil Appeal No.10245/2017 dtd.8/8/2017 held that 80P(2)(a)(i) recognizes two kinds of co-operative societies namely i) Those carrying on the business of banking and ii) those providing credit facilities to its members. It further held that in order to do the business of a co-operative bank, it is imperative to have a license from the RBI and therefore held that the business of the appellant in that case does not amount to that of a co-operative bank and held that the appellant would not come within the mischief of Sec.80P(4).

6.1.4 Considering the facts of the appellant's case, the appellant also cannot be treated as a Co-operative bank as it does not have the license from the RBI to do the business of banking. Therefore, the provisions of Sec.80P(4) would not be applicable to the appellant also.

7. In the assessment order, the AO has brought on record that the appellant has nominal members who have deposited moneys and also availed loans. The nominal members are not regular members and they are not allotted any shares of the society and thus are not entitled to any profits or assets of the society. They are not entitled to vote and also not eligible to be a member of a committee or for appointment as a representative of the society on any other society. It is also seen that the Maharashtra Co-operative Society Act 1960 provides for open membership as per Sec.23 of the Act. The society cannot refuse membership to any person duly qualified under the Act and its by-laws. The appellant's society by its very nature is not restricted to any class of persons or people from any specified area. As brought by the AO, the appellant has been admitting new members who are in need of loans. Thus, the activity of the appellant is more in the nature of business of finance. The Supreme Court in the case of Citizen Co-operative Society cited above, on similar grounds held that such societies would not be entitled to deduction u/s.80P(2)(a)(i) on the ground that it is not involved in co-operative activities. The borrowers and the depositors are quite distinct. As the facts of the appellant case are similar to that of the case decided by the Supreme Court, the decision of Supreme Court is also applicable to the appellant. Therefore, the action of the AO in disallowing the deduction u/s.80P(2)(a) is upheld.

7.1 As the society has been held to be not involved in co-operative activity, the deduction u/s.80P itself would not be applicable to the appellant. Therefore the claim of deduction u/s.80P(2)(d) would also not be available to the appellant."

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

8. Before me, Ld.A.R. reiterated the submissions made before AO and Ld.CIT(A). Before me Ld.A.R. reiterated the submissions made before AO and Ld.CIT(A) and submitted that Ld.CIT(A) while upholding the order of AO had relied on the decision of Hon'ble Apex Court in the case of Citizen Cooperative Society Limited Vs. ACIT in Civil Appeal No.10245 of 2017 order dated 08.08.2017. He submitted that the facts in the case of Citizen Co-operative Society (supra) are different and are therefore not applicable to the present facts. He submitted that the Citizen Co-operative Society (supra) was

with respect to the Andhra Pradesh Mutually Aided Co-operative Societies Act, 1995. He submitted that there is a difference in the meaning of 'member' as per Andhra Pradesh Mutually Aided Co-operative Societies Act the definition of 'member' as per the Maharashtra Co-operative Societies Act, 1960. He submitted that as per Maharashtra Co-operative Societies Act, Members include a nominal, associate or sympathizer member which is different in Andhra Pradesh Mutually Aided Co-operative Societies Act. He submitted that on the contrary, the Maharashtra Co-operative Societies Act with respect to the definition of 'Members' was some- what similar to that of Tamilnadu Co-operative Societies Act, 1983. In support of his contentions, he placed on record the comparative chart of the different relevant clauses in the Acts of Societies applicable in Maharashtra, Tamilnadu and Andhra Pradesh. He further submitted that the Madras High Court in the case of PCIT Vs. M/s. S-1308 Ammapet Primary Agricultural Co-operative Bank Ltd. reported in Tax Appeal No.882 and 891 of 2018 order dated 06.12.2018 and after considering the difference in the definition of members and after considering the decision of Hon'ble Apex Court in the case of Citizen Co-operative Society (supra), has decided the issue in favour of the assessee. He also placed on record the copy of the aforesaid decision. Ld.A.R. further relying on the decision of Hon'ble Bombay High Court in the case of Jalgaon District Central Cooperative Bank Ltd., (2004) 134 Taxmann.com 1 (Bom) submitted that the Hon'ble Bombay High Court has observed that the definition of "Member" given in Sec.2(19) of Maharashtra Cooperative Societies Act takes within its sweep even a nominal member, associate members and sympathizer members and has further observed that there is no distinction made between duly registered member, nominal and associate member and sympathizer member. He further submitted that the other reason for denying the claim of deduction u/s 80P was that since the assessee has deposited surplus funds with Co-operative Credit Society, it is not eligible for deduction. He submitted that the Co-ordinate Bench of the Tribunal on identical issue in the case of ITO Vs. Jankalyan Nagri Sahakari Pat Sanshta Ltd., (ITA No.598/PN/2011 order dt.26.06.2012) has decided the issue in favour of the assessee. He placed on record the copy of the aforesaid decision. He therefore submitted that following the decision of Co-ordinate Bench of the Tribunal in the case of Jankalyan Nagri Sahakari Pat Sanshta Ltd., (supra), the issue be decided in assessee's favour. Similar arguments were raised by other Authorized Representatives also. Ld. D.R. on the other hand, supported the order of lower authorities.

9. *I have heard the rival submissions and perused the material on record. The issue in the present case is with respect to denial of claim of deduction u/s 80P of the Act. I find that AO while denying the claim of assessee had held the assessee can be treated as a Co-operative Bank looking at the nature of activities of the assessee and since Co-operative Banks are not eligible for deduction u/s 80P on the amount invested in banks other than those mentioned u/s 80P(2)(d) of the Act, he denied the claim of deduction. I find that the Co-ordinate Bench of the Tribunal while deciding the identical issue in the case of Jankalyan Nagri Sahakari Pat Sanshta Ltd., (supra) has decided the issue in assessee's favour by noting as under :*

"8. It is pertinent to note here that the definition of the Co-operative Credit Society is given in Clause (ccii) of Sec. 5 which reads as under :

“co-operative credit society” means a Co-operative Society, the primary object of which is to provide financial accommodation to its members and includes a co-operative land mortgage bank;”

9. *The Banking Regulation Act, 1949 defines of Co-operative bank in cl.(cci) of sec. 5 (as inserted by sec. 56 of the said Act) and Co-operative Credit Society is not included but its identity is kept separate by way of independent definition in view of Clause (ccii) of Sec. 5 of the Banking Regulation Act which defines what is meaning of ‘Credit Co-operative Society’. On plain reading of the Banking Regulation Act, 1949, nowhere it is suggested that the term “Co-operative Bank” also includes ‘Co-Operative Credit Society” also. Meaning of any term or expression is to be ascertained in the context of provisions of referred Act. As per Sub-sec. (4) of Sec. 80P of the I. T. Act, Co-operative Bank means State Co-operative Bank, a Central Co-operative Bank and a Primary Co-operative Bank. It is seen that Cooperative Bank is deprived of the benefit of the deduction u/s. 80P(2)(a)(i) of the Act. As per the interpretation given by the AO, assessee Co-Operative Credit Society partakes the character of the Primary Co-operative Bank and as the Primary Co-operative Bank is included in the definition of the Cooperative Bank and hence, is not entitled to the benefits of Sec. 80P(2)(a)(i) of I. T. Act. In our opinion, this is not the correct interpretation. It is well settled principle in the interpretation of the ‘taxing provisions’ that the same are to be strictly construed and there is n room for any intendment. There is no presumption as to tax.Nothing is to be read or nothing is to be implied. One has to fairly look into language used by the Parliament. The Parliament has adopted the definition of the Co-operative Bank by referring the same as given in the Banking Regulation Act, 1949. It is called Legislation by reference and we have to give the strict interpretation while interpreting the effect of Sub-sec. (4) to Sec. 80 P. In our opinion, Co-operative Credit Society is distinct and separate from the Co-operative Bank nor it can be said as a Primary Co-operative Bank within the meaning of Banking Regulation Act, 1949. Hence, the assessee being a Co-operative Credit Society is entitled for deduction u/s. 80 P(2)(a)(i) of the Act. We accordingly uphold the order of the Ld CIT(A).”*

10. *Before me, it is assessee’s contention that the facts in the year under consideration are similar to the case of Jankalyan Nagri Sahakari Pat Sanshta Ltd., (supra). The aforesaid contention of the assessee has not been controverted by Revenue. Revenue has also not placed any contrary binding decision in its support nor has placed any material to demonstrate that the order passed by the Tribunal in the case of Jankalyan Nagri Sahakari Pat Sanshta Ltd., (supra) in A.Y. 2007-08 has been set aside by higher Judicial Forum.*

11. *I further find that Ld.CIT(A) while upholding the order of AO, had relied on the decision of Hon’ble Apex Court in the case of Citizen Co-operative Society (supra). Before me, Ld.A.R. has pointed to the difference in the definition of member in case of Andhra Pradesh Mutually Aided Co-operative Societies Act, 1995 and Maharashtra Co-operative Societies Act, 1960 and Tamilnadu Co-operative Societies Act, 1983. The difference in the definition*

pointed out by Ld.A.R. has not been controverted by Ld. D.R. I thus find force in the argument of Ld.A.R. that the ratio of decision in the case of Citizen Co-operative Society (supra) will not be applicable to the present case. I further find that Hon'ble Madras High Court in the case of M/s. S-1308 Ammapet Primary Agricultural Co-operative Bank (supra), after considering the decision of Citizen Co-operative Society (supra) has held as under :

“11. We have elaborately heard the learned Senior Standing Counsel for the Revenue.

12. Admittedly, the assessee – society is registered under the provisions of the TNCS Act. It defines the word 'members' under Section 2(16) to mean a person joining in the application for the registration of society and a person admitted to the membership after registration in accordance with the provisions of the Act, the Rules framed thereunder and the By-laws and includes an associate member. The expression 'associate member' is defined under Section 2(6) of the TNCS Act to mean a member, who possesses only such privileges and rights of a member and who is subject only to such liabilities of a member as may be specified in this Act, the Rules and the By-law.

13. Thus, the definition of the word 'members' includes an associate member and therefore, the Assessing Officer fell into an error in drawing a distinction between A Class members and B Class members. For the purpose of being entitled to a relief under Section 80P of the Act, all that is required is that the cooperative society should answer the description of a society engaged in carrying on the business of providing credit facilities to its member. Once the description is answered, then automatically, the benefit of Section 80P of the Act would stand attracted subject to the provisions contained in Sub-Section (2) of Section 80P of the Act.

14. Further, it is to be pointed out that in terms of Sub-Section (4) of Section 80P of the Act, which was inserted vide the Finance Act, 2006 with effect from 01.4.2007 i.e from the assessment year 2007-08, the 'primary cooperative agricultural and rural development bank' means 'a society having its area of operation confined to a taluk, the principal object of which is to provide for long term credit for agricultural and rural development activities'. What was excluded was the 'cooperative banks' and admittedly, the assessee society is a primary agricultural cooperative credit society and therefore, would be entitled to the benefit of Section 80P of the Act.

15. Further, for the assessment year 2014-15, the decision in the case of Citizen Cooperative Society Limited was relied upon by the Revenue before the Tribunal, which, in paragraph 6.1 of its order dated 28.2.2018 for the assessment year 2014-15, extracted the operative portion of that judgment. In that case, the Hon'ble Supreme Court found that the society carried on certain activities, which were contrary to the provisions of the Andhra Pradesh Mutually Aided Cooperative Societies Act, 1995 and that they accepted deposits from third parties, who were not members in the real sense and were using those deposits to advance gold loans. Therefore, the Hon'ble Supreme Court pointed out that such an activity of the said society was that of a

finance business and could not be termed as a cooperative society and that the loans, which were disbursed, were without the approval from the Registrar of Mutually Aided Cooperative Societies, Ranga Reddy District. The Hon'ble Supreme Court found that the said society was not entitled to deduction under Section 80P of the Act.

16. It is noteworthy to point out that the Hon'ble Supreme Court in the decision in the case of Citizen Cooperative Society Limited also observed that in the light of insertion of Sub-Section (4) to Section 80P of the Act by the Finance Act, 2006, such deduction should not be admissible to a cooperative bank and that if it is a primary agricultural credit society or a primary cooperative agriculture and rural development bank, the deduction would still be provided.

17. In the preceding paragraphs, we have pointed out the definitions of the expressions 'members' and 'associate member' under the TNCS Act and held that an 'associate member' is also a 'member' in terms of Section 2(16) of the TNCS Act. Furthermore, the Assessing Officer himself found that the associate members are also admitted as members of the society. In such circumstances, the Assessing Officer fell into an error in not granting any relief to the assessee society, which was rightly granted by the CIT (A) as confirmed by the Tribunal. In addition to that, the Assessing Officer has not pointed out that loans have been disbursed to all and sundry in terms of the provisions of the TNCS Act and in terms of Clause (b) to Sub-Section (4) of Section 80P of the Act, the society has an area of operation, operates within the taluk and will provide long term credit for agricultural and rural development activities as well. The CIT (A) rightly granted the relief to the assessee as confirmed by the Tribunal. We do not find any good ground to entertain these appeals.”

I further find that Hon'ble Bombay High Court in the case of Jalgaon District Co-operative Central Cooperative Bank Ltd. (supra) has held that the **definition of 'member' given in section 2(19) of the Maharashtra Co-operative Societies Act takes within its sweep even a nominal member, associate member and sympathizer member** and there is no distinction made between duly registered member and nominal, associate and sympathizer member. I therefore, following the decision of Co-ordinate Bench of the Tribunal in the case of Jankalyan Nagri Sahakari Pat Sanshta Ltd., (supra) and following the same hold that the **assessee is eligible for deduction of Rs.18,38,878/- u/s 80P(2)(d) of the Act in respect of the amount invested in PDCC i.e., Co-operative Banks and other Banks.** I am further of the view that in the present case, the ratio of decision of the High Court in the case of M/s. S-1308 Ammapet Primary Agricultural Co-operative Bank Ltd. (supra) would be applicable. I therefore following the ratio of the decisions cited herein above and the decision of Hon'ble Bombay High Court hold that assessee is eligible for deduction u/s 80P of the Act. **Thus, the grounds of the assessee are allowed.**

9. Thus, there is no difference in the verity of members discussed above. The earnings out of investments in PDCC, Credit Co-operative Banks and others, are exempt u/s 80P of the Act. Considering the settled nature of the issue at the level of the Tribunal (supra) and following the rule of consistency, I am of the opinion that the said issue should be decided in favour of the assessee. Thus, the relevant grounds raised by the assessees in all the four appeals are allowed.

10. In the result, all the four appeals of the assessee are allowed.

Order pronounced on this 23rd day of September, 2019.

Sd/-
(D. KARUNAKARA RAO)
लेखा सदस्य / ACCOUNTANT MEMBER

पुणे / Pune; दिनांक Dated : 23rd September, 2019.
Sujeet

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order is forwarded to :

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

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

Senior Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune