IN THE INCOME TAX APPELLATE TRIBUNAL
"D" Bench, Mumbai

Before Shri Pramod Kumar, Vice President
and Shri Ravish Sood, Judicial Member

ITA No.4306/Mum/2018
ITA No.4582/Mum/2017
(Assessment Years: 2012-13 & 2013-14)

Mahapalika Kshetra Madhyamik Shikshak Sahakari Patsanstha Maryadit 201/202, Anish Tower, Bapat Marg, Matunga West, Mumbai – 400 016 PAN – AAAAM1865G	Vs.	ITO 21(2)(2), Room No. 111, 1st Floor, Piramal Chambers, Parel, Mumbai – 400 012
(Appellant)		**(Respondent)**

ITA Nos.4751 & 4752 /Mum/2017
(Assessment Years: 2012-13 & 2013-14)

The ITO -21(2)(2), Room No. 111, 1st Floor, Piramal Chambers, Parel, Mumbai – 400012 PAN – AAAAM1865G	Vs.	Mahapalika Kshetra Madhyamik Shikshak Sahakari Patsanstha Maryadit 201/202, Anish Tower, Bapat Marg, Matunga West, Mumbai – 400016
(Appellant)		**(Respondent)**

Appellant by : Shri Naren Sheth, A.R
Respondent by: Ms. Jothilakshmi Nayak, D.R

Date of Hearing : 15.10.2019
Date of Pronouncement : 22.10.2019

O R D E R

PER RAVISH SOOD, JM

The present cross appeals are directed against the consolidated order passed by the CIT(A)-33, Mumbai, dated 03.04.2017, which in turn arises from the respective assessment orders passed by the A.O under Sec.143(3) of the Income Tax Act, 1961 (for short 'Act') for A.Y. 2012-13 and A.Y. 2013-14. As common issues are involved in the captioned appeals, therefore, the same are being taken up and disposed off together by way of a consolidated order. We shall first advert to the cross appeals for A.Y. 2012-13.Assessee has assailed the impugned order for A.Y 2012-13 on the following grounds of appeal :

"1. The CIT (Appeal) erred in law and in the circumstances of the case in exceeding his power under section 251(l) by bifurcating total income of Rs 55,38,329 into Business Income under section 28 and Investment income under section 56 and accordingly calculated deduction under section 801?(2)(a)(i) and section 80(P)(2)(d) respectively, whereas the assessing officer has assessed whole income as business income of the Appellant and accordingly whole business income of Rs.55,138,329 claimed under section 80P(2)(a)(i), has been disallowed by AO, without giving any notice and without giving any opportunity to heard.

Without prejudice to the above:

2. The CIT (Appeal) erred in law and in the circumstances of the case in bifurcating total income and deduction of Rs. 55,38,329 claimed under section 80P(2)(a)(i) into two parts viz. section 80P(2)(a)(i) of Rs.52,24,593 and section 80P(2)(d) of Rs.3,13,796, without giving any notice or opportunity to the Appellant of being heard and to represent its case in this regard.

3. The CIT (Appeal) erred in law and in the circumstances of the case in treating interest earned on investment as investment income and not business income without taking into consideration the fact of the case and without giving any notice or opportunity to the Appellant of being heard and to represent its case in this regard.

4. The CIT (Appeal) erred in law and in the circumstances of the case in treating interest earned on investment as investment income and not business income without taking into consideration the fact that the said CIT(Appeal) , in earlier year Assessments i.e for A.Y.2011-12 and A.Y.2010-11, has consider whole income as business income and allowed deduction u/s 80(P)(2)(a)(i) on the said income

5. The CIT (Appeal) erred in law and in the circumstances of the case in applying section 80(P)(2)(d) on interest income earned on investment and consequently disallowing deduction of Rs. 3,13,796 on the ground that interest income is from co-operative bank and not from cooperative society. without taking into consideration the fact of the case and without giving any notice or opportunity to the Appellant of being heard and to represent its case in this regard.

6. The CIT (Appeal) erred in law and in the circumstances of the case by not treating the whole income of Rs. 55,38,329earned by the appellant society from engaging in the business of providing credit facilities to its members under section 28 and accordingly allowing deduction as per section 80P(2)(a)(i) but instead bifurcated the income of Rs. 55,38,329 into business and investment income as stated in ground 2 above, without taking into consideration the fact of the case and without giving any notice or opportunity to the Appellant of being heard and to represent its case in this regard.

7. The CIT (Appeal) erred in law and in the circumstances of the case by disallowing the deduction of Rs.12,400 relating to rental and other income under section 80P without considering the provision of section 80P(2)(c).

8. The Appellant craves to leave, add, alter, amend and / or delete any grounds of appeal during the course of appeal."

On the other hand, the revenue has challenged the order of the CIT(A) on the following grounds of appeal:

"1. On the facts and circumstances of the case and in law, the Ld.CIT(A) has erred in allowing the assessee a deduction of Rs.52,12,193/- u/s.80P(2)(a)(i) of the Income-tax Act, 1961.

2. On the facts and circumstances of the case and in law, the Ld.CIT(A) has erred in allowing 90.66% of deduction u/s.80P(2)(d) of the Income-tax Act,1961 by way of interest from Fixed Deposit of Rs.27,93,154/- and Dividend of Rs.5,65,900/- from Co-operative Banks.

3. On the facts and circumstances of the case and in law, the Ld.CIT(A) has erred in allowing 90.66% of Guest House Rent of Rs.62,350/- and Rs.70,405/by way of sale of pass-book.

4. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in not appreciating the fact that the assessee fulfills the conditions laid down u/s.56(c)(ccv) of Part V of Banking Regulation Act, 1949 and required to be considered as a co-operative bank and therefore, under the purview of a cooperative bank, assessee is not eligible for deduction u/s.80P(2)(a)(i) of the Act.

5. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in ignoring the fact that the facts are different in this case than the judgment of Hon'ble Bombay High Court in the case of Quepem Urban Cooperative Credit Society Ltd. Vs. ACIT, dt.17.04.2015 (2015) 58 Taxmann.com 113(Bombay) and erred in not appreciating the fact that the assessee fulfills the conditions laid down u/s.56(c)(ccv) of Part V of Banking Regulation Act, 1949 and covered under purview of co-operative bank.

6. The appellant prays that the order of Ld. CIT(A) on the above grounds be set aside and that of the Assessing Officer be restored.

7. The appellant craves leave to amend or to alter any ground or add a new ground, which may be necessary."

2. Briefly stated, the assessee which is a co-operative credit society engaged in the business of collecting deposits and providing credit facilities to its members had filed its return of income for A.Y 2012-13 on 26.09.2012, declaring its income at Rs. Nil. Subsequently, the case of the assessee was selected for scrutiny assessment under Sec.143(2) of the Act.

3. During the course of the assessment proceedings it was observed by the A.O that the assessee had claimed deduction under Sec.80P of Rs.55,38,329/-. Observing, that pursuant to insertion of sub-section (4) of Sec.80P, vide the Finance Act, 2006 w.e.f 01.04.2007, the assessee would no more be entitled for claim of deduction under Sec.80P(a)(i), A.O called upon the assessee to put forth an explanation justifying its aforesaid claim for deduction. As the explanation of the assessee did not find favour with the A.O, therefore, he declined to allow the

claim of deduction raised by the assessee under Sec. 80P and assessed its income at Rs.55,38,329/-.

4. Aggrieved, the assessee assailed the assessment order before the CIT(A). After necessary deliberations, it was observed CIT(A) that the assesse's claim for deduction was liable to be bifurcated into two parts viz. (i). deduction under Sec.80P(2)(a)(i); and (ii). deduction under Sec. 80P(2)(d). On being queried, the assessee furnished the bifurcated details of its receipts for the year under consideration, as under :

Sr. No.	Particulars	Amount (Rs.)
1.	Dividend Received on shares	5,65,900/-
2.	Interest received on Investments	27,93,154/-
3.	Interest received on loan	5,58,16,030/-
4.	Printing and stationery received	70,405/-
5.	Rent from Shirdi Guest House	62,350/-

Also, the bifurcated details of the gross total income vis-a-vis expenditure was also furnished with the appellate authority, as under:

Sr. No.	Particulars	Total Receipts	Interest on investments and dividend	Other Income viz.,Dividend, rent and printing stationary
1.	Gross receipts	5,93,07,839/-	33,59,054/-	1,32,755/-
2.	Expenditure as claimed in the P & L A/c	5,37,69,510/-	30,45,318/-	1,20,356
3.	Total Income	55,38,329/-	3,13,736/-	12,400
The expenditure for interest and other income is considered on pro-rata basis				

On the basis of the aforesaid facts, the CIT(A) observed that the claim for deduction under Sec. 80P that was raised by the assessee was to be compartmentalised into the following two parts:

(i) Deduction u/s 80P(2)(a)(i) (including other income) Rs.52,24,593/-

(ii) Deduction u/s 80P (2)(d) (on account of interest on FD) Rs.3,13,736/-

Total..... Rs.55,38,329/-

In the backdrop of his aforesaid observations the CIT(A) separately examined the entitlement of the assessee towards claim for deduction under the provisions of Sec.80P(2)(a)(i) and Sec.80P(2)(d).

5. Insofar, the entitlement of the assessee towards claim of deduction under Sec. 80P(2)(a)(i) was concerned, the CIT(A) was of the view that a co-operative society which was carrying on the business of banking or providing credit facilities to its members would be eligible for deduction under Sec.80P(2)(a)(i) of the Act. In fact, the CIT(A) while concluding as hereinabove, was of the view that the use of the word 'attributable' in conjunction with the phrase 'any one or more of such activities' in Sec.80P(2)(a)(i), would mean, that in the course of its banking activity, if the society receives any income which is the outcome of the business of banking of such society, then such an income would be its profit and gains of the business that would be eligible for deduction under Sec.80P(2)(a)(i) of the Act. It was observed by the CIT(A), that the assesses claim for deduction under Sec.80P(2)(a)(i) comprised of interest received on loans given to members, rental income and printing and stationery receipts. The CIT(A) was of the view, that the income earned by the assessee from its activities of providing credit facilities to its members was eligible for deduction under Sec.80P(2)(a)(i) of the Act. At the same time, the CIT(A) observed, that the assesse's income from rent of guest house and printing and stationery receipts would not be eligible for deduction under Sec. 80P(2)(a)(i). Accordingly, the CIT(A) declined to allow the assesses claim of deduction under Sec.80P(2)(a)(i) to the extent the same was relatable to its rental income and printing and stationary receipts aggregating to Rs. 12,400/-. On the basis of his aforesaid observations the CIT(A) reworked out the assesse's entitlement towards claim of deduction under Sec. 80P(2)(a)(i) at Rs.52,12,193/- [Rs.52,24,593/- (-) Rs.12,400/-].

6. It was further observed by the CIT(A), that the interest income earned by the assessee on its investments viz. FDs would be covered by the provisions of Sec.80P(2)(d). The CIT(A) was of the view that pursuant to insertion of sub-section (4) of Sec.80P, vide the Finance Act, 2006 w.e.f 01.04.2007, the claim for deduction under Sec.80P would no more be available to a Co-operative Bank except for a Co-operative Agricultural Society or Primary Co-operative Agricultural and Rural Development Bank. On the basis of his aforesaid observations, the CIT(A) was of the view that the deduction under Sec.80P(2)(d) would no more be available to a Co-operative Bank which was carrying on the business of banking and finance. The CIT(A) drawing support from the judgment of the Hon'ble Supreme Court in the case of Totgars Co-operative Sale Society Ltd. Vs. ITO (2010) 322 ITR 283 (SC) observed, that the income earned

by a co-operative credit society which was in the business of providing credit facilities to its members by investing its deposits during the time period the funds were not immediately required for its business purpose would be liable to be brought to tax under the head "Income from other sources" and accordingly, taxed under Sec.56 of the Act. On the basis of his aforesaid observations, the CIT(A) was of the view that the interest income earned by the assessee society from its investments with scheduled banks or co-operative banks would not be eligible for deduction under Sec 80P(2)(d) of the Act. Accordingly, the CIT(A) in the backdrop of his aforesaid deliberations concluded that the assessee would not stand entitled for deduction under Sec.80P of Rs.3,13,736/-. To sum up, the CIT(A) concluded that the assesse's entitlement towards claim for deduction under Sec. 80P was to be confined to Rs. 52,12,193, to which it was entitled under Sec.80P(2)(a)(i) of the Act.

7. Both the assessee and the revenue being aggrieved with the order of the CIT(A) have carried the matter in appeal before us. Insofar the appeal of the revenue is concerned, the ld. authorized representative (for short 'A.R') for the assessee relied on the order of the CIT(A). Also, it was submitted by the ld. A.R, that the issue as regards the entitlement of the assessee towards claim of deduction under Sec.80P(2)(a)(i) was squarely covered by the order of the Tribunal passed in the assesses own case for A.Y.2014-15 i.e ITO-21(2)(2) Vs. M/s Mahapalika Kshetra Shikshak Shahkari Patsanstha (ITA No. 928/M/2018, dated 25.06.2019) (copy placed on record). As regards the appeal of the assessee, it was submitted by the ld. A.R that the bifurcation of the assessee claim of deduction under Sec.80P of Rs. 55,38,329/- into two parts viz. (a). Sec.80P(2)(a)(i)): Rs.52,24,593/-; and(ii) Sec. 80P(2)(d): Rs.3,13,736/-, was carried out by the CIT(A) absolutely at the back of the assesse, without affording any opportunity to the assessee to rebut the said observations and the adverse inferences which were sought to drawn in its hands. In sum and substance, it was the claim of the ld. A.R, that the CIT(A) without affording any opportunity of being heard to the assessee had on a suo motto basis bifurcated the assesses claim for deduction under Sec. 80P(2)(a)(i) and 80P(2)(d) of the Act. In the backdrop of the aforesaid facts, it was averred by the ld. A.R, that as the assessee was not afforded any opportunity to meet out the adverse inferences which were sought to be drawn by the CIT(A), therefore, in all fairness the matter may be restored to his file for fresh adjudication after providing an opportunity of being heard to the assessee.

8. Per contra, the ld. Departmental Representative (for short 'D.R') relied on the order of the CIT(A) to the extent he had partly declined to allow the assesses claim for deduction under Sec.80P of the Act. As regards the appeal of the revenue, it was submitted by the ld. D.R, that the A.O after carrying out a conjoint reading of Sec. 80P(2)(a)(i) r.w.s 80P(4) of the Act, had rightly declined the assesses entitlement towards claim of deduction under Sec.80P of the Act. It was averred by the ld. D.R that the CIT(A) was in error in restoring the assesses claim for deduction under Sec.80P(2)(a)(i) to the extent of Rs.52,12,193/-.

9. We have heard the authorized representatives for both the parties, perused the orders of the lower authorities and the material available on record, as well as the judicial pronouncements relied upon by them. As observed by us hereinabove, the A.O held a conviction that as the assessee was hit by provisions of Sec. 80P(4), therefore, it was not eligible to claim deduction under Sec. 80P(2)(a)(i). The claim of the assessee that it was a co-operative credit society providing banking/credit facilities only to its members and was not a co-operative bank providing banking/credit facility to the public at large did not find favour with the A.O. As is discernible from the records, the A.O was of the view that deduction under Sec.80P (2)(a)(i) in the case of cooperative credit society engaged in carrying on the business of banking (co-operative banks) was withdrawn by the legislature, vide the Finance Act, 2006 w.e.f 01.04.2007, except for in the case of a "primary agricultural credit society" or "a primary co-operative agricultural and rural development bank". Further, It was observed by the A.O, that the Explanation to Sec. 80P(4) clearly defined the expressions "co-operative bank", "primary agricultural credit society" and "primary cooperative agricultural and rural development bank". It was also noticed by him that as per the Finance Act, 2006 sub-clause (viia) to Sec.2(24) had been inserted, which provided that the profit and gains of any business of banking (including providing credit facilities) carried out by a co-operative society with its members shall be included in the definition of 'income'. On the basis of his aforesaid deliberations, it was observed by the A.O that as the assessee fulfilled all the three conditions laid down under Sec.56(c)(ccv) of Part V of the Banking Regulation Act, 1949 viz. (i) that, the primary object of the principal business of the co-operative society is the transaction of banking business; (ii) that, the paid-up share capital and reserves of the co-operative society are not less than one lakh of rupees; and (iii) that, the bye laws of the co-operative society did not permitted

admission of any other co-operative society as a member, therefore, it clearly fell within the category of a primary co-operative bank. In the backdrop of his aforesaid deliberations the A.O had concluded that the assessee being a primary co-operative bank would not be eligible for claim of deduction under Sec. 80P(2)(a)(i). It was on the basis of his aforesaid observations that the assesses claim for deduction under Sec.80P of Rs. 55,38,329/- was declined by te A.O.

10. We have deliberated at length on the issue under consideration and are unable to persuade ourselves to accept the view taken by the A.O. As per sub-section (4) of Sec. 80P that was inserted by the Finance Act, 2006 w.e.f 01.04.2007, the provisions of the said section were not to apply in relation to any co-operative bank other than a "primary agricultural credit society" or "a primary agricultural and rural development bank". As is discernible from a perusal of Sec. 80P(2)(a)(i), the same envisages a deduction in respect of the whole of the amount of profits and gains of business "attributable to" the specified activities of the co-operative society. In our considered view, the term "attributable to" which is much wider in impact than the expression "derived from", would thus also cover receipts from other activities related to the business of banking. As to whether the assessee can be held to be a co-operative bank, the same can be answered in the backdrop of the judgment of the **Hon'ble High Court of Bombay** in the case of **Quepem Urban Credit Society Ltd. Vs. ACIT, (2015) 58 taxmann.com 113 (Bom)**. It was observed by the Hon'ble High Court in its aforesaid judgment, that an assessee cannot be considered to be a co-operative bank for the purposes of Sec.80P(4) unless the following three conditions are satisfied:

(i) the principal business or primary objective should be business of banking.

(ii) its paid up share capital and reserves should not be less than rupee one lac.

(iii) its bye laws do not permit admission of any other co-operative society as its member.

In our considered view, the word 'banking' means accepting for the purpose of lending or investment of deposits of money from the public, repayable on demand or otherwise and withdrawal by cheque, draft, order or otherwise. As in the case of a co-operative credit society the acceptance and lending of money is only from the members and not from the public,

therefore, it can safely be concluded that the principal business or primary objective of the said co-operative credit society is not the business of banking. As such, the first condition mentioned hereinabove can safely be held to have not been satisfied by the assessee before us.Apart there from, we find that there is a clear distinction between co-operative banks registered under the Banking Regulations Act, 1949 and co-operative societies registered under Co-operative Societies Act. In our considered view, the assessee which is a co-operative credit society cannot be categorised as a co-operative bank which is governed under the Banking Regulations Act, 1949. Our aforesaid view is fortified by the judgment of the **Hon'ble High Court of Karnataka** in the case of **Shri Vardhaman Urban Co-operative Credit Society Ltd. Vs. CIT [ITA No. 100038 of 2014, dated 21.09.2015].** In the said case, the Hon'ble High Court while deliberating on the scope of Sec. 80P(4), had observed, that all the co-operative credit societies are eligible for deduction under Sec.80P(2)(a)(i), unless they were declared as a bank by the Reserve Bank of India. Since the assessee society before us is not recognized as a bank by the Reserve Bank of India, therefore, in our considered view it cannot be treated as a co-operative bank. On the basis of our aforesaid observations, we are of the considered view that as the assessee is a co-operative credit society and not a co-operative bank, therefore, it would not be hit by the provisions of Sec. 80P(4) of the Act.

11. As the assessee before us is co-operative credit society and not a co-operative bank, therefore, it would not be hit by the provisions of Sec.80P(4) as had been made available on the statute by the Finance Act, 2006, w.e.f 01.04.2007. In fact, as observed by us hereinabove, it is absolutely mandatory for a co-operative society to seek a licence from the Reserve Bank of India to form and operate as a co-operative bank. Further, a perusal of Circular No. 312 of Reserve Bank of India reveals the process involved for conversion of a co-operative credit society into a primary co-operative bank. Admittedly, in the case before us, as the assessee being a co-operative credit society is neither authorized nor had undertaken any of the banking business activities as are carried out by a co-operative bank, but had only provided financial assistance/credit to its members, therefore, it can safely be concluded that it cannot be held to be a co-operative bank. On the basis of our aforesaid deliberations, we are persuaded to be in agreement with the view taken by the CIT(A) that the assessee would not be hit by the provisions of Sec.80P(4) of the Act. Apart there from, we find that the Tribunal in the assesses

own case for A.Y 2014-15 viz. ITO-21(20(2) vs. M/s Mahapalika Kshetra Madhyamik Shikshak Sahakari Patsanstha (ITA No. 928/Mum/2018, dated 25.06.2019) had concluded that the assessee society was duly entitled for claim of deduction u/s 80P(2)(a)(i) of the Act. We thus not finding any infirmity in the order of the CIT(A), who had rightly concluded that the assesses claim for deduction under Sec. 80P(2)(a)(i) was in order, uphold his order in context of the issue under consideration.

12. The appeal of the revenue is dismissed.

13. We shall now advert to the appeal of the assessee. As observed by us hereinabove, it is the claim of the ld. A.R, that as the CIT(A) had absolutely at the back of the assessee bifurcated its entitlement towards claim of deduction under Sec.80P into two parts viz.(i) deduction under Sec.80P(2)(a)(i): Rs.52,24,593/-; and (ii) deduction under Sec.80P(2)(d) Act: Rs.3,13,736/-, therefore, the assessee was divested of any opportunity of meeting out the aforesaid view of the CIT(A), and also the consequential adverse inferences emerging therefrom. We have perused the order of the CIT(A) and find substantial force in the claim of the ld. A.R, that the entire exercise of bifurcating the assesses claim for deduction under Sec.80P had been carried out by the CIT(A) without affording any opportunity to the assessee to rebut the same. In fact, we find that the assesses claim for deduction under Sec. 80P was declined by the A.O on the standalone basis of a conjoint reading of Sec.80P(2)(a)(i) r.w.s 80P(4). In our considered view, the CIT(A) before resorting to the aforesaid fresh basis for restricting the assesses claim for deduction under Sec.80P to an amount of Rs.52,12,193/-, in all fairness, should have afforded an opportunity of being heard to the assessee and called for his objections, if any, as regards the same. As is discernible from the records, no opportunity was afforded by the CIT(A) to the assessee prior to embarking on the aforesaid fresh basis for confining the assesses claim for deduction under Sec.80P of the Act. In the backdrop of the aforesaid facts, we are of the considered view, that insofar the assesses claim for deduction under Sec.80P of Rs.3,13,736/- has been declined by the CIT(A), the same in all fairness would require to be revisited by him. Accordingly, for the limited purpose of reconsidering the assesses entitlement towards claim of deduction under Sec.80P of Rs.3,13,736/- the matter is restored to the file of the CIT(A) for fresh adjudication. Needless to say, the CIT(A) shall during the course of the “set aside” proceedings afford a sufficient opportunity of being heard to the

assessee. The **Grounds of appeal No.1 to 7** raised by the assessee are allowed for statistical purposes in terms of our aforesaid observations.

14. The **Ground of appeal No. 8** being general in nature is dismissed as not pressed.

15. The appeal of the assessee is allowed for statistical purposes in terms of our aforesid observations

A.Y.2013-14
ITA No.4306/Mum/2018

16. We shall now advert to the cross appeals for A.Y. 2013-14. Assessee has assailed the impugned order on the following grounds of appeal:

"1. The CIT (Appeal) erred in law and in the circumstances of the case in bifurcating total deduction of Rs. 60,07,707 under section 80P(2)(a)(i) into two parts viz. section 801?(2)(a)(i) and section 80P(2)(d).

2. The CIT (Appeal) erred in law and in the circumstances of the case in treating interest earned on investment as investment income and not business income.

3. The CIT (Appeal) erred in law and in the circumstances of the case in applying section 80(P)(2)(d) on interest income earned on investment and consequently disallowing deduction on the ground that interest income is from cooperative bank and not from cooperative society.

4. The CIT (Appeal) erred in law and in the circumstances of the case by not treating the whole income of Rs. 60,07,707 earned by the appellant society from engaging in the business of providing credit facilities to its members as per section 80P(2)(a)(i) but instead bifurcated the income of Rs. 60,07, 707 into business and investment income as stated in ground 1 above.

5. The CIT (Appeal) erred in law and in the circumstances of the case in exceeding his power under section 25 1(1) by. bifurcating total income of Rs 60,07,707 into section 80P(2)(a)(i) and section 80(P)(2)(d) whereas the assessee has made a claim under section 80P(2)(a)(i) which the Assessing officer has disallowed as per the assessing order passed.

6. The Appellant craves to leave, add, alter, amend and / or delete any grounds of appeal during the course of appeal."

On the other hand, the revenue has challenged the order passed by the CIT(A) by raising before us the following grounds of appeal:

"1. On the facts and circumstances of the case and in law, the Ld.CIT(A) has erred in allowing the assessee a deduction of Rs.57,82,752/- u/s.80P(2)(a)(i) of the Income-tax Act, 1961.

2. On the facts and circumstances of the case and in law, the Ld.CIT(A) has erred in allowing 89.96% of deduction u/s.80P(2)(d) of the Income-tax Act, 1961 by way of interest from Fixed Deposit of Rs.38,06,251/- and Dividend of Rs.5,66,400/- from Co-operative Banks.

3. On the facts and circumstances of the case and in law, the Ld.CIT(A) has erred in allowing 89.66% of Guest House Rent of Rs1,10,000/- and Rs.33,090/- by way of sale of pass-book.

4. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in not appreciating the fact that the assessee fulfills the conditions laid down u/s.56(c)(ccv) of Part V of Banking Regulation Act, 1949 and required to be considered as a co-operative bank and therefore, under the purview of a co-operative bank, assessee is not eligible for deduction u/s.80P(2)(a)(i) of the Act.

5. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in ignoring the fact that the facts are different in this case than the judgment of Hon'ble Bombay High Court in the case of Quepem Urban Cooperative Credit Society Ltd. Vs. ACIT, dt.17.04.2015 (2015) 58 Taxmann.com113(Bombay) and erred in not appreciating the fact that the assessee fulfills the conditions laid down u/s.56(c)(ccv) of Part V of Banking Regulation Act, 1949 and covered under purview of co-operative bank.

6. The appellant prays that the order of Ld. CIT(A) on the above grounds be set aside and that of the Assessing Officer be restored.

7. The appellant craves leave to amend or to alter any ground or add a newground, which may be necessary."

17. Briefly stated, the assessee had filed its return of income for A.Y. 2013-14 on 28.09.2013, declaring its total income at Rs. Nil. Subsequently, the case of the sasessee was selected for scrutiny assessment under Sec.143(2) of the Act.

18. During the course of the assessment proceedings it was observed by the A.O that the assessee had claimed deduction under Sec. 80P of Rs.60,07,707/-. It was observed by the A.O, that pursuant to insertion of sub-section (4) of Sec.80P, vide the finance Act, 2006 w.e.f 07.04.2007, the provisions of Sec.80P were no more applicable to any co-operative Bank other than a Primary Agricultural Credit Society or Primary Co-operative Agricultural Rural Development Bank. On the basis of a conjoint reading of Sec.80P(2)(a)(i) r.w.s 80P(4) the A.O declined to allow the assessee claim for deductoin under Sec.80P of Rs.60,07,707/-. In the backdrop of the aforesaid facts, the A.O after inter alia withdrawing the assesses entitlement towards deduction under Sec.80P assessed its income at Rs.62,36,132/-.

19. Aggrieved, the assessee carried the matter in appeal before the CIT(A). The CIT(A) observed, that the A.O while framing the assessment had also made two additions/disallowances viz.(i) disallowance of personal expenditure:Rs.68,425/-; and (ii) disllowance of gratuity : Rs.1,00,000/-. As regards the assesses entitlement towards claim of deduction under Sec.80P was concerned, the CIT(A) followed the view that was taken by him while disposing off the appeal of the assessee for the immediately preceding year i.e A.Y. 2012-13. However, as the sasessee had niether furnished its profit and loss account for the year under consideration nor had filed the bifurcation of its receipts from different sources for the

year under consideration, therefore, the CIT(A) directed the A.O to obtain the necessary details from the assessee, and after carrying out the necessary befurcations as was done in A.Y.2012-13, therein re-work out the assesses claim for deduction under Sec.80P. It was specifically directed by the CIT(A), that the assessee would not be entitled for claim of deduction under Sec.80P(2)(a)(i) insofar its rental receipts or receipts from printing and stationery or income of any such nature were concerned. Also, it was observed by him, that the assessee would not be entitled to claim deduction under Sec.80P(2)(d) in respect of its interest income received during the year form FDs or other investments which were kept in the financial institutions or banks. In sum and substance, the CIT(A) had directed the A.O to principally work out the assesses claim for deductoin under Sec.80P, in the same manner in which the same was done by him while disposing off the appeal of the assessee for A.Y. 2012-13.

20. Both the assessee and the revenue being aggreived with the order of the CIT(A) have carried the matter in appeal before us. Insofar the appeal of the revenue is concerned, it was submitted by the ld. A.R, that the CIT(A) had rightly concluded that the assessee was entitled for claim of deductoin under Sec. 80P(2)(a)(i) of the Act. As regards the appeal of the assessee, it was submitted by the ld. A.R, that as the CIT(A) had without affording any opportunity of being heard to the assessee directed the A.O to rework out the assesses entitlement towards claim of deduction under Sec.80P after bifurcating the same into two parts, viz. (i) deduction under Sec.80P(2)(a)(i); and (ii) deduction uner Sec. 80P(2)(d), therefore, the assesee had remained divested of putting forth any objection as regards the same. It was averred by the ld. A.R, that insofar the declining of the assesses entitlement towards claim for deduction u/s 80P in respect of its interest income received during the year form FDs or other investments by the CIT(A), the same having been done without affording any opportunity of being heard to the assesee on the said issue, thus, in all fairness may be restored to the file of the CIT(A) with a direction to readjudicate the same after providing an opportunity of being heard to the assessee.

21. Per contra, the ld. D.R adverting to the appeal of the revenue submitted, that as the A.O on the basis of a conjoint reading of Sec.80P(2)(a)(i) r.w.s Sec.80P(4) had rightly declined the assesses claim for deduction under Sec. 80P of Rs.60,07,707/-, therefore, the CIT(A) was in error in concluding to the contrary and dislodging the well reasoned order of the A.O. Insofar,

the appeal of the assessee was concerned, the ld. D.R relied on the order of the CIT(A) to the extent he had concluded that the assessee was not to be allowed deduction under Sec.80P (2)(d) in respect of its interest income receipts during the year from FDs or other investments kept in the financial institutions or Banks. Also, the ld. D.R supported the declining of the assesses claim for deduction by the CIT(A) as regards its rental income or receipts from printing and stationery or income of such other natuare under Sec.80P(2)(a)(i) of the Act.

22. We have heard the authorised representatives for both the parties, perused the orders of the lower authorities, as well as the judicial pronouncments relied upon by them. On a perusal of the order of the CIT(A), we find, that the same is materially the same as in comparison to the order that was passed by him while disposing off the appeal of the asessee for the immediately preceing year i.e A.Y. 2012-13. In fact, the only difference during the the year under consideration is that in the absence oif the profit and loss account and also the bifurcated details of income, as the CIT(A) was not able to rework the assesses entitlement towards claim for deduction under Sec.80P(2)(a)(i) and under Sec.80P(2)(d), had thus, directed the A.O to rework out the same by following the observations which were recorded by him while disposing off the appeal of the assessee for A.Y. 2012-13. On similar line, as in A.Y. 2012-13, the CIT(A) while disposing off the appeal for A.Y. 2013-14 had directed the A.O not to allow deduction under Sec.80P(2)(d) with respect to the interest income received by the assesee during the year from FDs or other investments kept in financial institutions or banks. Also, as in the preceding year, the CIT(A) had directed the A.O not to allow deduction under Sec.80P(2)(a)(i) to the asseseee in respect of its rental income or receipts from printing and stationery or income of any such nature. We find that as the facts and the issue invovled in the present appeal remains the same as were there before us in the cross appeals of the assessee and the revenue for A.Y. 2012-13, therefore, our order therein passed while disposing off the said respective appeals shall apply *mutatis mutandis* for disposal of the present appeals. Accordingly, in the same terms, the appeal of the revenue is dismissed and the appeal the assessee is allowed for statistical purposes.

23. The appeal of the assessee for A.Y. 2012-13 and A.Y. 2013-14 in ITA No. 4582/Mum/2017 & ITA No. 4306/Mum/2018 are allowed for statistical purposes. On the other

hand, the appeals of the revenue for A.Y. 2012-13 and A.Y 2013-14 in ITA No.4751/Mum/2017 & ITA No. 4752/Mum/2017 are dismissed.

Order pronounced in the open court on 22.10.2019

Sd/-	Sd/-
(Pramod Kumar) VICE PRESIDENT	(Ravish Sood) JUDICIAL MEMBER

मुंबई Mumbai; दिनांक 22.10.2019
PS. Rohit

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent.
3. आयकरआयुक्त(अपील) / The CIT(A)-
4. आयकरआयुक्त/ CIT
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard file.

सत्यापितप्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायकपंजीकार (Dy./Asstt. Registrar)

आयकरअपीलीयअधिकरण, मुंबई / **ITAT, Mumbai**