IN THE INCOME TAX APPELLATE TRIBUNAL
VISAKHAPATNAM BENCH, VISAKHAPATNAM

BEFORE SHRI N.K. CHOUDHRY, HON'BLE JUDICIAL MEMBER &
SHRI D.S. SUNDER SINGH, HON'BLE ACCOUNTANT MEMBER

I.T.A. No. 42 & 43/VIZ/2020
(Asst. Year : 2013-14)

M/s. The Krishna District Milk Producers Mutually Aided Co-operative Union Ltd., Milk Products Factory, Lambadipet, Chitti Nagar, Vijayawada. PAN No. AAAAT 2578 D (Appellant)	vs.	ACIT, Circle-1(1) Vijayawada. (Respondent)

Assessee by : Shri C.Subrahmanyam, FCA
Department by : Shri D.K. Sonawal, CIT DR

Date of hearing : 17/03/2021.
Date of pronouncement : 24/03/2021.

O R D E R

PER N.K. CHOUDHRY, JUDICIAL MEMBER

These appeals have been preferred by the Assessee against the orders dated 16/03/2018 and 20/11/2019 impugned herein passed by the ld. Pr. CIT and ld.CIT(A), Vijayawada u/sec. 263 and 250(6) of the Income Tax Act, 1961 (hereinafter referred to as "Act") respectively, for the A.Y. 2013-14.

2. Both the appeals are based on same facts therefore we consider it appropriate to decide both the appeals simultaneously by this composite order.

3. ITA No.43/VIZ/2020

This appeal pertains to challenge to the order passed by Ld. Pr. CIT u/s 263 of the Act. At the outset we observe that there is 606 days delay in filing of the instant appeal, for which the Assessee has preferred an application for condonation of delay, which we will decide first. The Assessee argued in support of its application.

4. On the contrary, ld. DR refuted the claim of the Assessee and specifically submitted that filing of the instant appeal with application for condonation of delay is an afterthought and therefore this appeal is liable to be dismissed in *limine* with heavy costs.

5. Heard the parties and perused the material available on record. The law is well settled by the Higher Courts that while dealing with the application for condonation of delay, the Court is to see the conduct of the party and plausible reasoning for non filing of the statutory appeal within time. The primary function of a court is to adjudicate the dispute between the parties and to advance substantial justice. The power to condone the delay in approaching the Court has been conferred upon the Courts to enable them to do substantial justice to parties by disposing of the cases on merits.

5.1. The Apex Court in **Collector, Land Acquisition, Anantnag v. Mst. Katiji (1987) I LLJ 500 SC**, analyzed the provisions of law qua limitation Act and held *that the expression 'sufficient cause' employed by the legislature in the Limitation Act is adequately elastic to enable the Courts to apply the law in a meaningful manner which sub-serves the ends of justice-that being the life purpose for the existence of the institution of Courts.* It was further observed *that a liberal approach is liable to be adopted on principle*.

5.2. It is also well settled that 'bonafide lis' cannot be thrown out on the basis of legal technicalities and it is utmost duty of the Courts to adjudicate the same. The Apex Court in **Nand Kishore v. State of Punjab (1995) 6 SCC 614,** under the peculiar circumstances of the case condoned the delay of about 31 years, in approaching the apex Court. As it is well settled that the period of delay is not relevant for considering the application for condonation of delay. What is required to be seen is as to whether a party seeking condonation of delay has made out a "sufficient cause or not".

5.3. However the apex Court In Ramlal and others vs. Rewa Coalfields Ltd. [AIR http://www.judis.nic.in 1962 SC 361], reminded *that discretion is given to the court to condone the delay and admit the appeal. Even if the sufficient cause has been shown, a party is not entitled to the condonation of delay in question as a matter of right. The proof of a sufficient cause is a condition precedent for the exercise of the discretionary jurisdiction vested in the court. The diligence of the party or its bona fides may fall for consideration."*

5.4. Further the Apex Court in the case of Esha Bhattacharjee Vs. Managing Committee of Raghunathpur Nafar Academy & Others http://www.judis.nic.in reported in MANU/SC/0932/2013, made certain observations qua condonation of delay, which are as follows:

> *i) There should be a liberal, pragmatic, justice-oriented, non- pedantic approach while dealing with an application for condonation of delay, for the courts are not supposed to legalise injustice but are obliged to remove injustice.*
>
> *ii) The terms sufficient cause should be understood in their proper spirit, philosophy and purpose regard being had to the fact that these terms are basically elastic and are to be applied in proper perspective to the obtaining fact- situation.*
>
> *iii) Substantial justice being paramount and pivotal the technical considerations should not be given undue and uncalled for emphasis.*

iv) No presumption can be attached to deliberate causation of delay but, gross negligence on the part of the counsel or litigant is to be taken note of.

v) Lack of bona fides imputable to a party seeking condonation of delay is a significant and relevant fact.

vi) It is to be kept in mind that adherence to strict proof should not affect public justice and cause public mischief because the courts are required to be vigilant so that in the ultimate eventuate there is no real failure of justice.

vii) The concept of liberal approach has to encapsulate the conception of reasonableness and it cannot be allowed a totally unfettered free play.

viii) There is a distinction between inordinate delay and a delay of short duration or few days, for to the former doctrine of prejudice is attracted whereas to the latter it may not be attracted. That apart, the first one warrants strict approach whereas the second calls for a liberal delineation.

ix) The conduct, behaviour and attitude of a party relating to its inaction or negligence are relevant factors to be taken into consideration. It is so as the fundamental principle is that the courts are required to weigh the scale of balance of justice in respect of both parties and the said principle cannot be given a total go by in the name of liberal approach.

x) If the explanation offered is concocted or the grounds urged in the application are fanciful, the courts should be vigilant not to expose the other side unnecessarily to face such a litigation.

5.5. The proof of a sufficient cause is a condition precedent for the exercise of the discretionary jurisdiction vested in the Courts. This aspect of the matter naturally introduces the consideration of all relevant facts and it is at this stage the diligence of the party or its bona fides may fall for consideration.

5.6. Coming to the instant case, the Assessee though in his application for condonation of delay does not specify any ground for delay, however, mentioned that reasons and circumstances under which

appeal was filed belatedly are explained in the enclosed affidavit. The contents of the application are reproduced herein below:-

> *"Whereas, the appeal was to be filed before the Hon'ble ITAT on or before 1st June, 2018. However, the appeal could be filed on 28th Jan 2020 causing a delay of 606 days. The reasons and circumstances under which the appeal was filed belatedly are explained in the enclosed affidavit.*
>
> *Considering the facts and circumstances causing a delay, as explained in the enclosed affidavit, there was no malafide intention in filing the appeal belatedly, therefore, it is requested that the Hon'ble ITAT may condone the delay of 606 days and admit the appeal hearing and its disposal.*

5.7. The Assessee in support of its application also filed its affidavit, wherein submitted *that ld. Pr.CIT, Vijayawada vide revision order dated 16/03/2018 passed u/sec. 263 of the Act, set aside the assessment dated 14/03/2016 framed by the DCIT, u/sec. 143(3) of the Act and directed the AO to redo the assessment after giving an opportunity of being heard. The Assessee thought that the matter could be pursued before the AO who will complete the assessment afresh. Later on, after receiving the consequential order dated 28/12/2018 passed by the ACIT, Circle-1(1), Vijayawada u/sec. 143(3) r.w.s. 263, the Assessee filed an appeal before the ld. CIT(A), who vide order dated 20/11/2019 disposed of the said appeal.*

5.8. *Thereafter upon receipt of the said order, the Assessee's Auditor suggested to approach Shri C. Subrahmanyam, FCA for further course of action and accordingly the order passed by the ld. CIT(A) u/sec. 143(3) r.w.s. 263 was challenged before the Hon'ble ITAT on dated 28/01/2020.*

5.9. It was further stated by the Assessee *that while going through the case, Mr. Subrahmanyam enquired as to whether any appeal was filed against the order passed by the Pr.CIT on which the Assessee mentioned that the Assessee has thought that the order passed u/sec. 263 of the Act was with open direction, therefore did not file the appeal. For this Mr. Subrahmanyam informed that an appeal can be filed against the order*

passed u/sec. 263 of the Act and on being informed of the legal position, the Assessee immediately requested Shri C. Subrahmanyam to take the matter for filing appeal before the Hon'ble ITAT, Visakhapatnam and ultimately the appeal was filed on 28/01/2020, thus causing a delay in filing the appeal by 606 days. It was further stated in the affidavit that delay is on account of reasons cited hereinabove and there was no malafide intention in not filing the appeal within due date.

5.10. We may observe that the Assessee filed the instant appeal only after receiving the order dated 20/11/2019 passed by the ld. CIT(A) against the assessment framed u/sec. 143(3) r.w.s. 263 by the ACIT, Vijayawada. In the said order, the ld. CIT(A) did not adjudicate one of the issues qua grants-in-aid of Rs. 1,51,37,000/- which was claimed as Capital receipt by the Assessee. Further the ld. CIT(A) again and again emphasised *that he didn't have any jurisdiction to examine the addition made in the order u/s 143 read with section 263 in accordance with the specific directions given by the Pr.CIT u/sec. 263 of the Act and therefore the Assessee could have filed appeal against the revision order passed by the Pr.CIT u/sec. 263 of the Act, before the ITAT.*

5.11. The Assessee has claimed that on misconception and/or non-guidance of earlier counsel, the Assessee did not file appeal against the order passed by the Pr.CIT u/sec. 263 of the Act, however, on guidance of the present counsel, the Assessee immediately filed the instant appeal. The reasons stated by the Assessee do not inspire any confidence and seems to be an afterthought concocted story cultivated upon the observations of the ld. CIT(A) in the appellate order against the assessment framed u/sec. 143(3) r.w.s. 263 of the Act and therefore, in order to fill up the gap and/or to get adjudicate the issue which has been left by the ld. CIT(A), filed the instant appeal before us with a delay of 606 days.

5.12. In our considered opinion, act of the Assessee was not diligent in availing the remedy of appeal. The delay in filing the appeal is occurred due to Assessee's in-activeness hence in our considered opinion, in any sense, the averments made, the reasons stated and demonstrated by the Assessee failed to qualify the test of sufficient cause and also do not show any acceptable cause much less sufficient cause to exercise Court's discretion in its favour. Hence considering the peculiar facts and circumstances collectively, we are not inclined to admit the appeal by condoning the delay of 606 days in filing of the appeal, **consequently the application for condonation of delay stands dismissed**.

6. Resultantly, the appeal i.e. **ITA No.43/VIZ/2020** of the Assessee stands dismissed in limine.

7. ITA No.42/VIZ/2020

In this appeal, the Assessee has challenged the order passed by the ld. CIT(A) against the affirmation of additions qua grants-in-aid received by the Assessee society as capital in nature and disallowance of deduction claimed u/sec. 80P(2)(d) of the Act.

8. Brief facts of the case are that the AO while following the directions of the Principal Commissioner of Income Tax (for short, 'Pr.CIT') u/sec. 263 determined the grants-in-aid to the tune of Rs. 1,51,37,000/- as revenue receipt and added to the total income of the Assessee and further disallowed the deduction of Rs.97,88,434/- which was claimed by the Assessee u/sec. 80P(2)(d) of the Act. Against the said additions, the Assessee preferred the first appeal before the ld. CIT(A), who sustained the aforesaid additions, against which the Assessee preferred the instant appeal and raised two issues.

9. First issue relates to the treatment of grants-in-aid received from the Government as revenue receipt. The ld.CIT(A) in concluding part of its order held *that the issue of the capital/ revenue character of the grants-in-aid received by the Assessee was dealt with by the Pr.CIT in the revision order wherein while concluding the revision order it was stated by the Pr.CIT that the assessment order dated 14/03/2016 is set aside for re-doing the assessment in respect of the said issue, as it was found that the assessment order is erroneous and prejudicial to the interests of the revenue*. The ld.CIT(A) further observed *that on careful perusal of the revision order passed by the Pr.CIT on the issue of taxability of the grants-in-aid received from the Government, it is noticed that the Pr.CIT recorded a clear finding therein that the said grants-in-aid which was claimed as capital receipt by the Assessee, is revenue in character by its very nature. While setting aside the assessment order on the said issue, the Pr.CIT directed the AO to redo the assessment on the said issue.* The ld. CIT(A) further observed *that it is seen from the wording of the order that the Pr.CIT did not allow any discretion to the AO to decide the issue in accordance with law after calling for and examining the relevant facts.* The ld. CIT(A) further observed *that since the Assessee did not challenge the said revision order of the Pr.CIT by filing an appeal before the Hon'ble Tribunal, therefore it is considered that the addition made by the AO in the assessment order by treating the grants-in-aid as a revenue receipt in compliance to the binding of specific direction issued by the Pr.CIT cannot be challenged in appeal before the ld. CIT(A) against the assessment order passed u/sec. 143(3) r.w.s. 263 of the Act, which is in accordance with the specific direction given by the Pr.CIT, since that would amount to examining the merits of the specific direction of the Pr.CIT itself which is not permissible as per the provisions of section 246A of the Act*. The ld. CIT(A) further observed *that the jurisdiction to examine the merits of the specific direction given by the Pr.CIT in the order u/sec. 263 of the Act lies only with the Hon'ble Tribunal*. The ld. CIT(A) while holding that the ld. CIT(A) has no jurisdiction to examine and adjudicate the ground of appeal in hand

raised against the said addition also followed the decision of the coordinate bench of the tribunal in the case of **Sri Nadella Venkata Nageswara Rao Vs. DCIT in ITA No. 333/VIZ/2017, dated 20/12/2017**.

10. The Assessee by challenging the said issue reiterated that the Ld. PCIT vide its order passed u/s 263 of the Act set aside the assessment order and directed the AO to pass the order after giving the Assessee a reasonable opportunity of being heard and ultimately the assessing officer decided the issue in hand on merit and therefore the conclusion drawn by the Ld. CIT(A) is not based upon any plausible reason and contrary to the facts and observations made by the ld. Pr. CIT.

10. On the contrary, ld. DR supported the order passed by the ld.CIT(A).

11. We have heard both the parties and perused the material available on record. Let us to quote the relevant part of the order dated 16/03/2018 passed by the Pr.CIT u/sec. 263 of the Act :-

> *"Hence, after considering various issues as mentioned above, the submissions of the Assessee, the facts on record and the legal position as enunciated by the judiciary,* ***the assessment order dated 14/03/2016 passed by the AO under section 143(3) of the I.T. Act, 1961 is set aside for redoing the assessment covering the above issues*** *mentioned in the show cause letters mentioned above, as it is found that the above mentioned order is erroneous and prejudicial to the interests of the revenue on the above issues.* ***The AO may pass the order after giving the Assessee a reasonable opportunity of being heard."***

A perusal of the directions part of the order passed by the Pr.CIT u/sec. 263, it reflects that the Pr.CIT set aside the original assessment order dated 14/03/2016 framed by the AO u/sec. 143(3) for redoing the assessment, covering the issues which include the issue under

consideration. The Pr.CIT at the last further directed that the AO may pass the order after giving the Assessee a reasonable opportunity of being heard.

From simple reading of the directions, it can be easily construed that the Pr.CIT has not given any bench mark and/or direction to determine the issues in a particular manner, however directed for redoing the assessment while giving a reasonable opportunity of being heard to the Assessee which goes to show that AO had every authority to analyse/consider the facts and circumstances of the case and to determine the issues afresh in accordance with law, which in fact, in the instant case has been done by the AO in consequential order.

We may observe that the Ld. CIT(A) has misconstrued the directions of the Pr.CIT passed u/sec. 263 whereas in real fact there was no embargo set to the AO while determining the issues. The case cited i.e. **Sri Nadella Venkata Nageswara Rao** (supra) by the Ld. CIT(A) is also distinguishable to the facts of the instant case because in that case the AO was directed by the Pr.CIT to add the depreciation of Rs. 35,65,818/- to the total income and to re-determine the total income in accordance with law and established procedure, but in the instant case no such direction(s) was given with regard to adding of any addition and/or determination of issues in particular mode/fashion, but in fact the prerogative was given to the AO to determine the issues afresh in accordance with law, while affording a reasonable opportunity of being heard to the Assessee .

On the aforesaid analyzations and considerations, we are inclined to set aside the conclusion of the Ld. CIT(A) qua affirmation of the grants-in-aid as capital in nature and consequently the issue is remanded back to the file of the Ld. CIT(A) for decision afresh in accordance with law and without being influenced by any of the

observations made by the Pr.CIT in its order dated 16/03/2018 passed u/sec. 263 of the Act, suffice to say while affording proper and reasonable opportunity(s) of being heard to the Assessee.

In the result, issue related to grants in aid stands remitted to the file of the Ld. CIT(A) for statistical purposes.

12. **Second issue** relates to denial of deduction to the tune of Rs. 97,88,434/- claimed u/sec. 80P(2)(d) of the Act, by the assessing officer and sustained by the Ld. CIT(A). The Assessee in the instant appeal reiterated the facts and circumstances as demonstrated before authorities below qua issue under consideration, whereas the Ld. D.R. supported the decisions of the authorities below on the issue under consideration.

13. Heard the parties and perused the material available on record.

The Assessee during the financial year under consideration had received interest of Rs. 1,81,08,430/- from the investment in fixed deposits made with the Krishna District Co-operative Central Bank, of which the Assessee is a member shareholder and after netting off the interest expenditure relating to the said interest receipt, the net interest income of Rs. 97,88,434/- was claimed as deduction u/sec. 80P(2)(d). The AO disallowed the said claim , while relying upon the decision of the Hon'ble Karnataka High Court in the case of *Pr.CIT Vs. Totgars Co-operative Society* (83 Taxmann.com 140) wherein it was held that the income by way of interest earned on the deposits or investments made with a Co-operative Bank is not allowable.

The AO further held *that surplus funds available with the Assessee, have been invested for earning interest in Co-operative Bank which is carrying the banking business governed by Banking Regulations Act, therefore, it is clear from section 80P(4) that the provisions of section shall*

not apply. Since the Assessee has deposited its funds with the Krishna District Co-operative Bank which is governed by Banking Regulations Act 1949 and therefore interest earned from that bank is not an allowable deduction u/sec. 80P(2)(d) of the Act.

13.1 The Assessee also challenged the said disallowance before the ld. CIT(A), and claimed that the Assessee had only deposited working capital funds in the Co-operative Bank as a short term measure but not surplus funds. Further, it was also submitted by the Assessee that the decision of the Hon'ble Karnataka High Court in the case of *Pr.CIT Vs. Totgars Co-operative Society* (83 Taxmann.com 140) (supra) as relied upon by the AO for making disallowance of deduction u/sec. 80P(2)(d) of the Act is not applicable to the facts of the Assessee's case. Since Assessee in the said case, claimed deduction qua investment of surplus funds in the fixed deposits in Co-operative Bank whereas in the instant case, the Assessee had deposited the working capital funds in the Co-operative Bank as a short term measure.

The Assessee also relied upon the following judgments:-

1. CIT Vs. Kribhco (2012) 23 Taxmann.com 312 (Delhi)
2. Punjab State Co-operative Milk Producers Federation Ltd. Vs. CIT & Another (2011) 336 ITR 495 (Punjab & Haryana High Court)
3. CIT Vs. Doaba Co-operative Sugar Mills Ltd. (1998) 230 ITR 774 (Punjab & Haryana)
4. ITO Vs. Punjab State Co-operative Milk Producers Federation (2010) 130 TTJ (Chd) (UO)

13.2 The ld. CIT(A) though considered the submissions of the Assessee, however sustained the disallowance of deduction claimed u/sec. 80P(2)(d) of the Act by holding as under:-

> *"25. I have carefully considered the facts of the case, the assessment order and written submission of the assessee. The assessee received interest income of Rs.1,81,08,430/- from its Investment in fixed deposits with Krishna District Co-operative Central Bank (KDCCB), in which the assessee is a member shareholder. After netting off the interest*

expenditure relating to the said interest receipt, the net interest income of Rs.97,88,434/- was claimed as deduction u/s. 80P(2)(d) by the assessee in the revised return of income. The said deduction u/s. 80P(2)(d) is applicable to the income derived by a cooperative society by way of Interest or dividend from its investments with any other co-operative society. The AO disallowed the said deduction in the assessment order on the ground that the interest income earned from the investment made with a co-operative bank, which is governed by the provisions of the Banking Regulation Act, 1949, is not eligible for the deduction u/s. 80P(2)(d) in view of the provisions of sec. 80P(4) which lay down that the provisions of sec. 80P 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. In support of his view, the AO placed reliance on the decisions of the Hon'ble Karnataka High Court in the case of Pr.CIT Vs. Totagars Co-operative Sale Society (2017) 83 taxmann.com 140 (Kar).

26. On the other hand, it was contended by the assessee that the said decision of the Hon'ble Karnataka High Court is not applicable to the assessee's case since the assessee deposited its working capital funds only in the fixed deposits of KDCC Bank as a short term measure and the funds invested by the assessee do not represent the surplus funds of the assessee.

27. The issue arising for consideration in this ground of appeal is whether the interest earned by the assessee co-operative society from the investment made in fixed deposits in KDCC Bank, a co-operative bank, is eligible for deduction u/s. 80P(2)(d) after the insertion of the provisions of sec. 80P(4). As per the provisions of sec. 80P(2)(d), any income by way of interest or dividends derived by a co-operative society from its investments with any other co-operative society is eligible for deduction in computing the total income. The assessee derived interest income from its investment in fixed deposits with KDCC Bank. The said co-operative bank is a co-operative society which is engaged in the business of banking and it is governed by the provisions of Banking Regulation Act The provisions of sec 80P(4), which were inserted in the Act by the Finance Act, 2006 w.e.f. 01/04/2007, lay down that the provisions of sec 80P 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.

28 The Hon'ble Karnataka High Court examined the issue of the eligibility of interest income earned- from deposits made in a co-operative bank for deduction u/s 80P(2)(d) in the light of the provisions of sec 80P(4) in the case of Pr. CIT Vs. Totagars co-operative Society (Supra) and held that the interest income earned by a co-operative society from the investment in deposits made with a co-operative bank is not eligible for deduction u/s. 8013(2)(d) in view of the provisions of sec. 80P(4). The relevant portion of the decision of the Hon'ble High Court is extracted as under:

13. What Section 80P(2)(d) of the Act which was though not specifically argued and canvassed before the Hon'ble Supreme Court, envisages is that such interest or dividend earned by an assessee co-operative society should be out of the investments with any other co-operative society. The words 'Co-operative Banks' are missing In clause (d) of subsection (2) of Section 80P of the Act. Even though a co- operative bank may have the corporate body or skeleton of a co-operative society but its business is entirely different and that is the banking business, which is governed and regulated by the provisions of the Banking Regulation Act, 1949. Only the Primary Agricultural Credit Societies with their limited work of providing credit facility to its members continued to be governed by the ambit and scope of deduction under Section 80P of the Act.

14. The banking business, even though run by a Co-operative bank is sought to be excluded from the beneficial provisions of exemption or deduction under Section 80P of the Act. The purpose of bringing on the statute book sub-section (4) in Section 80P of the Act was to exclude the applicability of Section 80P of the Act altogether to any co-operative bank and to exclude the normal banking business income from such exemption/deduction category. The words used in Section 80P(4) are significant. They are: 'The provisions of this section shall not apply in relation to any co-operative bank other than a primary agricultural credit society .....". The words in relation to can include within its ambit and scope even the interest income earned by the respondent assessee, a co-operative Society from a Co-operative Bank. This exclusion by Section 80P(4) of the Act even though without any amendment in Section 80P(2)(d) of the Act is sufficient to deny the claim of the respondent assessee for deduction under Section 80P(2)(d) of the Act. The only exception is that of a primary agricultural credit society. The depository Kanara District Central Bank Limited in the present case is admittedly not such a primary agricultural credit society.

15. The amendment of Section 194A(3)(v) of the Act excluding the Co-operative Banks from the definition of Co- operative Society by Finance Act, 2015 and requiring them to deduct income tax at source under Section 194A of the Act also makes the legislative intent dear that the Co-operative Banks are not that specie of genus co-operative society, which would be entitled to exemption or deduction under the special provisions of Chapter VIA in the form of Section 80P of the Act.

29. The Hon'ble High Court referred to the expression 'in relation to' used in the provisions of sec. 80P(4) and held that the same includes within its ambit and scope even the interest income earned by a co-operative society from a cooperative bank. The provisions of sec. 80P(4) were interpreted by the Hon'ble High Court so as to exclude the benefit of deduction u/s. 80P to

the income of a co-operative bank as well as the interest income earned by a co-operative society from a co-operative bank. The said decision of the Hon'ble Karnataka High Court is squarely applicable to the facts of the assessee's case. The contention of the assessee that the said decision applies only in respect of the interest income earned from the utilisation of surplus funds invested in fixed deposits with a co-operative bank and that the said decision is not applicable to the assessee since it had invested the working capital funds in fixed deposits with a co-operative bank as a short term measure is considered to be untenable since the Hon'ble High Court did not make any distinction with regard to the source of the funds utilised for investing in the fixed deposits with a co-operative bank while rendering its decision. Further, the assessee did not lead any evidence in support of the claim that the working capital funds were invested in the fixed deposits with KDCC bank during the appellate proceedings, though the AO recorded a finding in the assessment order that the assessee invested its surplus funds in the said deposits."

13.3 Further, the ld. CIT(A) also distinguished the facts of the case of the Assessee to the cases/decisions cited by the Assessee by holding as under:-

"*30. As regards the reliance placed by the assessee on the decision of Hon'ble Delhi High Court in the case of CIT Vs. Kribhco (2012) 23 taxmann.com; decision of Hon'ble Punjab & Haryana High Court in the cases of Punjab State Cooperative Milk Producers Federation Ltd. Vs. CIT (2011) 336 ITR 495 and CIT Vs. Doaba Co-operative Sugar Mills Ltd (1998) 230 ITR 774 and the decision of Hon'ble ITAT Chandigarh in the case of ITO Vs. Punjab State Co-operative Milk Producers Federation Ltd. (2010) 130 TTJ 1 in support of its eligibility for deduction u/s. 80P(2)(d), it is noticed that the said decisions were rendered for assessment years prior to A.Y. 2007-08, the assessment year from which the provisions of sec. 80P(4) have come into effect and consequently, it is held that the said decisions do not render any assistance to the case of the assessee.*"

13.4 The issue in hand relates to the claim of deduction u/sec. 80P(2)(d) of the Act. For clarity, the contents of section are reproduced herein below for ready reference:-

Section 80P (2) of The Income- Tax Act, 1961.

80P. *Deduction in respect of income of co- operative societies*

(1) Where, in the case of an Assessee being a co- operative society, the gross total income includes any income referred to

in sub- section (2), there shall be deducted, in accordance with and subject to the provisions of this section, the sums specified in sub- section (2), in computing the total income of the Assessee.

(2) The sums referred to in sub- section (1) shall be the following, namely:-

(a) in the case of a co- operative society engaged in-

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Xxxxxxxxxxxxxxxxxxxx

(b) in the case of a co- operative society, being a primary society engaged in supplying milk, oil seeds, fruits or vegetables raised or grown by its members to-

Xxxxxxxxxxxxxxxxxxxx

Xxxxxxxxxxxxxxxxxxxx

(c) in the case of a 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

(d) in respect of any income by way of interest or dividends derived by the co- operative society from its investments with any other cooperative society, the whole of such income;

(e) xxxxxxxxxxxxxxxxxxx

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(f) xxxxxxxxxxxxxxxxxxx

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13.5 The Hon'ble Karnataka High Court in Totgars Cooperative Society's case (supra) as relied upon by the authorities below , held as under:-

"13. What Section 80P(2)(d) of the Act, which was though not specifically argued and canvassed before the Hon'ble Supreme Court,

envisages is that such interest or dividend earned by an assessee co-operative society should be out of the investments with any other co-operative society. The words 'Co-operative Banks' are missing in clause (d) of subsection (2) of Section 80P of the Act. Even though a co-operative bank may have the corporate body or skeleton of a co-operative society but its business is entirely different and that is the banking business, which is governed and regulated by the provisions of the Banking Regulation Act, 1949. Only the Primary Agricultural Credit Societies with their limited work of providing credit facility to its members continued to be governed by the ambit and scope of deduction under Section 80P of the Act.

14. The banking business, even though run by a Co-operative bank is sought to be excluded from the beneficial provisions of exemption or deduction under Section 80P of the Act. The purpose of bringing on the statute book sub-section (4) in Section 80P of the Act was to exclude the applicability of Section 80P of the Act altogether to any co-operative bank and to exclude the normal banking business income from such exemption / deduction category. The words used in Section 80P(4) are significant. They are: "The provisions of this section shall not apply in relation to any co-operative bank other than a primary agricultural credit society .....". The words "in relation to" can include within its ambit and scope even the interest income earned by the respondent-assessee, a co-operative Society from a Co-operative Bank. This exclusion by Section 80P(4) of the Act even though without any amendment in Section 80P(2)(d) of the Act is sufficient to deny the claim of the respondent assessee for deduction under Section 80P(2)(d) of the Act. The only exception is that of a primary agricultural credit society. The depository Kanara District Central Bank Limited in the present case is admittedly not such a primary agricultural credit society.

15. The amendment of Section 194A(3)(v) of the Act excluding the Co-operative Banks from the definition of "Co-operative Society" by Finance Act, 2015 and requiring them to deduct income tax at source under Section 194A of the Act also makes the legislative intent clear that the Co-operative Banks are not that specie of genus co-operative society, which would be entitled to exemption or deduction under the special provisions of Chapter VIA in the form of Section 80P of the Act."

13.6 The Hon'ble Karnataka High Court subsequently, in the case of *Pr.CIT Vs. Totagars Co-operative Sale Society* (2017) 392 ITR 74 while dealing with the purpose of section 80P(2)(d), has held as under:-

"7. However, the contention being taken by the learned counsel is untenable. For the issue that was before the ITAT, was a limited one, namely whether for the purpose of Section 80P(2)(d) of the Act, a Co-operative Bank should be considered as a Co-operative Society or not? For, if a Co-operative Bank is considered to be a Co-operative Society, then any interest earned by the Co-operative Society from a Co-operative Bank would necessarily be deductable under Section 80P(1) of the Act.

8. ***The issue whether a Co-operative Bank is considered to be a Co-operative Society is no longer res integra****. For the said issue has been decided by the ITAT itself in different cases.* ***Moreover the word "Co- operative Society" are the words of a large extent, and denotes a genus, whereas the word "Co-operative Bank" is a word of limited extent, which merely demarcates and identifies a particular species of the genus Co- operative Societies****. Co-Operative Society can be of different nature, and can be involved in different activities;* ***the Co-operative Society Bank is merely a variety of the Co-operative Societies****. Thus the Co-operative Bank which is a* ***species of the genus would necessarily be covered by the word "Co-operative Society****".*

9. Furthermore, even according to Section 56(i)(ccv) of the Banking Regulations Act, 1949, ***defines a primary Co-Operative Society bank as the meaning of Co-Operative Society****. Therefore, a Co-operative Society Bank would be included in the words 'Co-operative Society'.*

10. Admittedly, the interest which the assessee respondent had earned was from a Co-operative Society Bank. Therefore, according to Sec. 80P(2)(d) of the I.T. Act, the said amount of interest earned from a Co-operative Society Bank would be deductable from the gross income of the Co-operative Society in order to assess its total income. Therefore, the Assessing Officer was not justified in denying the said deduction to the assessee respondent.

11. The learned counsel has relied on the case of The Totgars Co-operative Sale Society Ltd. Vs. Income Tax Officer, (supra). ***However, the said case dealt with the interpretation, and the deduction, which would be applicable under Section 80P(2)(a)(i) of the I.T. Act. For, in the present case the interpretation that is required is of Section 80P(2)(d) of the I.T. Act and not Section 80P(2)(a)(i) of the I.T. Act****. Therefore, the said judgment is in-applicable to the present case. Thus, neither of the two substantial questions of law canvassed by the learned counsel for the Revenue even arise in the present case."*

13.7 The Hon'ble Karnataka High Court in Totgar's case (2017) 392 ITR 74 (supra) clearly held that the issue whether a Co-operative Bank is considered to be a Co-operative Society is no longer res integra. The Co-Operative Society bank is merely a variety of the Co- Operative Societies and would be included in the words 'Co-operative Society'.

The Hon'ble Court also distinguished the case i.e. *Pr.CIT Vs. Totgars Co-operative Society* (83 Taxmann.com 140) (supra) which was relied on by the authorities below for making and sustaining the addition in hand. The Hon'ble High Court clearly held that The Totgars Co-operative Sale Society Ltd. case (supra) dealt with the interpretation, and the deduction, which would be applicable under Section 80P(2)(a)(i) of the I.T. Act. For, in the present case the interpretation that is required is of Section 80P(2)(d) of the I.T. Act and not Section 80P(2)(a)(i) of the I.T. Act. Therefore, the said judgment is inapplicable to the present case.

13.9 The Hon'ble Punjab & Haryana High Court in the case *of CIT vs Doaba Co-Operative Sugar Mills Ltd*. [(1998) 230 ITR 774 (P&H)] has also allowed the claim of the Assessee u/sec. 80P(2)(d) of the Act which

was claimed to be earned as income of Rs. 4,00,919/- on account of interest received from Nawanshar Central Co-operative Bank.

13.10 Further, the Hon'ble Gujarat High Court in the case of *Surat Vankar Sahakari Sangh Ltd. v. ACIT* [(2020) 421 ITR 134 (Guj.)] also allowed the deduction claimed u/sec. 80P(2)(d) as interest earned from the co-operative bank. Various co-ordinate benches of the tribunal have also allowed the deduction claimed u/sec. 80P(2)(d) in respect of interest earned from co-operative banks.

13.11. No doubt there are judgments on both sides to the issue, however, the Hon'ble Apex Court in the case of CIT Vs. Vegetable Products 88 ITR 192, laid down the following proposition to the effects *"whenever there are two reasonable constructions of a taxing provision are possible that construction which favours the Assessee must be adopted".*

13.12 Even recently the Apex Court in the case of The Mavilayi Service Co-operative Bank Ltd. & Ors Versus Commissioner of Income Tax Calicut & Anr {Civil Appeal Nos. 7343-7350 of 2019 decided on 12th Jaunary 2021} held *that Section 80P of the IT Act, being a benevolent provision enacted by Parliament to encourage and promote the credit of the co-operative sector in general must be read liberally and reasonably, and if there is ambiguity, in favour of the Assessee.*

13.13 Respectfully following the above-mentioned judgments of Hon'ble apex court, we do not have any hesitation to follow the decision of Hon'ble Karnataka High Court rendered in the case of *Pr.CIT Vs. Totagars Co-operative Sale Society* (2017) 392 ITR 74 wherein clearly held that t*he issue whether a Co-operative Bank is considered to be a Co-operative Society is no longer res integra. The Co- operative Bank which is a species of the genus would necessarily be covered by the word "Co-operative Society". Even according to Section 56(i)(ccv) of the Banking Regulations Act,*

1949, defines a primary Co-Operative Society bank as the meaning of Co-Operative Society. Therefore, a Co-operative Society Bank would be included in the words 'Co-operative Societies'. Admittedly, the interest which the Assessee respondent had earned was from a Co-operative Society Bank. Therefore, according to Sec. 80P(2)(d) of the I.T. Act, the said amount of interest earned from a Co-operative Society Bank would be deductable from the gross income of the Co-operative Society in order to assess its total income.

13.14 Section 80P(2)(d) exempt the income by way of interest or dividend derived by the co-operative society from its investment with any other co-operative society which includes Co-operative bank which would be included in the words 'Co-operative Societies' as held by the Hon'ble Karnataka high Court in Totgars's case(supra). In the instant case, the Assessee has earned interest income from Krishna District Co-operative Central Bank (KDCCB) and it is not the case of the Revenue Department that KDCCB is not a co-operative society. Therefore on the aforesaid consideration and analyzations, the decision of the ld. CIT(A) qua issue in hand is set aside and the AO is directed to allow the deduction of Rs. 97,88,434/- claimed u/sec. 80P(2)(d) of the Act by the Assessee .

14. Consequently the ground related to the issue in hand stands allowed.

15. In the ultimate result, the appeal i.e. **ITA No.43/VIZ/2020** of the Assessee stands dismissed in limine and **ITA No.42/VIZ/2020** stands partly allowed for statistical purposes.

Order Pronounced in open Court on this 24th day of March, 2021.

Sd/-	sd/-
(D.S. SUNDER SINGH)	**(N.K. CHOUDHRY)**
Accountant Member	**Judicial Member**

Dated: 24th March, 2021.

vr/-

Copy to:

1. *The Assessee - M/s. The Krishna District Milk Producers Mutually Aided Co-operative Union Ltd., Milk Products Factory, Lambadipet, Chitti Nagar, Vijayawada.*
2. *The Revenue – ACIT, Circle-1(1), Vijayawada.*
3. *The Pr.CIT, Vijayawada.*
4. *The CIT(A), Vijayawada.*
5. *The D.R., Visakhapatnam.*
6. *Guard file.*

By order

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