

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "A": HYDERABAD
(THROUGH VIRTUAL CONFERENCE)**

**BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

Sl.No.	ITA No.	AY	Appellant	Respondent
1&2	667 & 668/Hyd/2019	2011-12 & 2014-15	The Advocates Mutually Aided Cooperative Society Ltd., Hyderabad. PAN - AAAAT 7853 P	Dy. Commissioner of Income-tax, Circle - 9(1), Hyderabad.
3&4	688 & 689/Hyd/2019	2011-12 & 2014-15	Dy. Commissioner of Income-tax, Circle - 9(1), Hyderabad.	The Advocates Mutually Aided Cooperative Society Ltd., Hyderabad. PAN - AAAAT 7853 P
Assessee by:			None	
Revenue by:			Shri Rohit Mujumdar, DR	
Date of hearing:			29/05/2021	
Date of pronouncement:			11/06/2021	

ORDER

PER L.P. SAHU, A.M.:

These appeal filed by the Assessee as well as Revenue are directed against CIT(A) - 7, Hyderabad's separate orders, dated 21/02/2019 for AY 2011-12 & 2014-15 involving proceedings u/s 143(3) rws 147 of the Income Tax

Act, 1961 ; in short “the Act”. As the facts and grounds are identical in these appeals, they were clubbed and heard together and therefore a common order is passed for the sake of convenience.

2 At the time of hearing these appeals, none appeared on behalf of the assessee , therefore, we proceed to dispose of these appeals after hearing the ld. DR and considering the facts available on record as well as the orders of revenue authorities.

3. The assessee has raised a ground against disallowance claim of deduction u/s 80P(2)(a)(i) in both the appeals under consideration and another ground raised in AY 2014-15 is relating to disallowance u/s 40(a)(ia) of the Act.

4. The revenue has raised a ground in both the appeals against the action of CIT(A) in allowing the assessee’s claim of deduction u/s 80P(2)(d) of the Act.

5. First, we take up assessee’s appeals and the facts as culled out from AY 2011-12 are that the assessee is a cooperative society deriving income from the activity of providing credit facilities to the members/normal members as well as income from sale of stamps. The assessee filed its return of income for the AY 2011-12 on 29/01/2011 declaring total income at Rs. 90,84,410/-. The AO

completed the assessment u/s 143(3) rws 147 of the Act on 14/12/2018 by assessing the total income at Rs. 4,04,77,722/- by making the disallowance of assessee's claim of deduction u/s 80P(2)(a)(i) of Rs. 41,44,498/- and deduction u/s 80P(2)(d) of Rs. 2,59,50,392/-.

5.1 The AO disallowed the assessee's claim of deduction u/s 80P(2)(a)(i) on the following grounds:

i. The appellant cooperative society Is not providing credit facilities to its members.

ii. The society has 3 kinds of members (1) Permanent Members (2) Associate Members (3) Nominal Members.

iii. Associate Members and Nominal members do not have any voting rights al1t1 do not participate in dividends.

iv. Only permanent members, such as advocates have voting rights.

v. The appellant accepts deposits mostly from the associate members and nominal members.

vi. Depositors and borrowers are quite distinct and activity is finance business and cannot be termed as cooperative activity. One category of members is getting benefited at the expense of the. other category of members.

vii. Assessee is also engaged in the activity of sale of stamps which is nothing to do amongst the cooperation of members.

viii. Assessee has purchased' land by entering into transaction with non-members.

ix. The principle of mutuality is missing in the society as permanent members are. enjoying the facility of availing loans.

While disallowing the claim of deduction U/s.80P(2)(a)(i), the Assessing Officer relied upon the ratio of the decision of Hon'ble Supreme Court in the case of Citizen Cooperative Society Limited, Hyderabad decided in Civil Appeal Jurisdiction in Civil Appeal No.10245 of 2017 (arising out of the SLP(c) No.20044of.2015), dated 8-8-2017."

5.2 As regards the claim of deduction u/s 80P(2)(d) of Rs. 2,59,50,392/- the AO disallowed the claim on the ground that the assessee is not engaged in the business of banking, is not providing credit facility to its members and also on the ground that interest was earned on surplus funds. Since the assessee earned incomes on the investments made from cooperative sector, the AO had calculated the proportionate incomes earned from cooperative banks.

6. Aggrieved by the order of AO, the assessee preferred appeal before the CIT(A). The Id. CIT(A) disallowed the assessee's claim of deduction u/s 80P(2)(a)(i) and allowed the deduction claimed u/s 80P(2)(d) of the Act. By following the decision of the co-ordinate bench of the Tribunal in assess's own case for the in ITA Nos. 546,547 and1331/Hyd/2012 and ITA No. 1860/Hyd/2013 for Assessment Year 2007-08,2008-09,2009-10 and 2010-

11 respectively Aggrieved from the order of the CIT(A), both the assessee and revenue are in appeals before the ITAT.

7. The Id. DR relied on the order of the CIT(A) in respect of the claim of deduction u/s 80P(2)(a)(i) and he further submitted that assessee has not obtained licence form RBI for carrying out banking business activity, even though, the assessee itself engaged in the banking business. He further submitted that in respect of deduction u/s 80P(2)(d), assessee has earned interest on surplus funds deposited with the Bank. Therefore, the judgment of the Hon'ble Supreme Court in the case of Totgars Cooperative Sales Society Ltd. Vs. ITO, 322 ITR 283 is squarely applicable to the facts of the present case. Therefore, he submitted that the order of the CIT(A) may be set aside and the order of the AO be restored on this issue.

8. We have considered the submissions of the Ld. DR and perused the material on record as well as gone through the orders of revenue authorities. We observe that the CIT(A) confirmed the AO's decision in respect of claim of deduction u/s 80P(2)(a)(i) relying on the judgment of the Hon'ble Supreme Court in the case of Citizen Cooperative Society Ltd., Hyd. In Civil Appeal No. 10245 of 2017, dated 08/08/2017, the decision of which was followed by the AO while confirming the disallowance. As regards the

assessee's claim of deduction u/s 80P(2)(d) of the Act, the CIT(A) relying on the decision of the coordinate bench of this Tribunal in assessee's own case cited supra, directed the AO to delete the disallowance made under the said section.

8.1 Further, on perusal of the orders of authorities below, we observe from the order of the Assessing Officer that various allegations have been made by the AO regarding the activity of the assessee, without obtaining licence from RBI the assessee carrying out the banking business activity, giving loan to Members and to others and kinds of Members etc which is clear from the assessment order. It is interesting to note here that both the authorities below alleged that the assessee is providing loans to others, but, it is clear from the order of the CIT(A) at para No. 4.3 of his order, the assessee has given loans to only shareholder members as under:

Details of Membership	Number of Members	Amount received from Members	Loans paid to Members
Share Holder Members	1744	1,13,66,200 (share capital and share application money)	7,29,93,046
Associate Members	1558	55,37,000 deposits	Nil
Nominal Members	127478	71,61,67,258	Nil

8.2 These allegations have been addressed and nullified by the coordinate bench of this Tribunal in assessee's own case cited supra and has allowed assessee's claim of deduction u/s 80P(2)(a)(i) by observing as under:

2. Briefly stated, assessee is a cooperative society registered under the A.P. Mutually Aided Cooperative Societies Act (APMACSA). It is engaged in the business of providing credit facilities to its Members and accepting deposits from Associated/nominal Members. It filed its return of income on 07.09.2009 declaring income of Rs.31,06,406 after claiming deduction under section 80P of the Act of Rs.26,00,800. Assessee's gross receipts for the year ending March, 2007 are to the tune of Rs.1,51,48,494. This include interest received and receivable on Loans/ FDs with Societies/ Banks/ Members to an extent of Rs.1,37,32,229. Balance of receipts pertains to interest on gold loans, share-loans, sale of postal stamps, welfare stamps, other stamps and stationery. Assessee being a Mutually Aided Cooperative Society admits Members with whom it has certain transactions. It also has transactions with nominal Members, more particularly taking deposits of the bail amount from the bailees and keeping them in deposits on the orders of the Court while granting bail to the accused persons. Assessee while filing the return of income computed the gross total income at Rs.57,07,206 and did not claim deduction under section 80P of the entire income. Since, its receipts include gross receipts from Cooperative societies/ Banks/Members and also from general public and from Associated/Nominal Members assessee claimed proportionate deduction under 80P by taking eligible receipts from the Cooperative Sector over the gross receipts, thereby, assessee claimed only deduction of Rs.26,00,800. While claiming deduction under section 80P, it has claimed deduction only under 80P(2)(a)(i) on the income from 'providing credit facilities to its

members'. Even though it has interest income from the deposits made with other Cooperative Societies/Banks, it did not claim deduction under section 80P(2)(d) in respect of income by way of interest/ dividend from other cooperative society.

3. The A.O. while completing the assessment was of the opinion that assessee is not entitled for deduction under section 80P(2)(a)(i) on the reason that assessee has admitted nominal Members in violation of A.P. Cooperative Societies Act /Rules, 1964 as amended on 28.01.2002. He has elaborately discussed the rules and also the so-called violations stated to have been committed by the society. He came to conclusion that activity of the assessee is not 'banking activity' among its Members but finance business of accepting deposits (surety bonds for accused) and investing them in FDs/advancing loans to Members. A.O. noted that assessee is engaged in the activity of sale of stamps etc., to the outside world. AO denied the deduction under section 80P(2)(a)(i). However, A.O. also noted that assessee being a Cooperative Society made deposits with other Cooperative Institutions including Cooperative Banks. After analysing the income on certain parameters which he has considered, he allowed deduction of Rs.34,57,307 under section 80P(2)(d) thereby, enhancing the 80P deduction but at the same time enhancing the total income also in view of other calculations, determining total income at Rs.43,12,740 as against declared income of Rs.31,06,406. In doing so, A.O. indirectly disallowed amount of Rs.20,68,583 towards insurance on Mediclaim policies of Members while arriving at the profit for the purpose of taxation.

4. Before the Ld. CIT(A), assessee contended that A.O. has wrongly considered A.P. Cooperative Societies Act whereas, the assessee is registered under A.P. Mutually Aided Cooperative Societies Act (APMACSA). Ld. CIT(A) analysed the provisions and case law on the issue and came to the conclusion that assessee is engaged in

providing credit facilities to its Members. He also was of the opinion that source of funds for providing such credit has not been specified in the section, therefore, since the funds are obtained as part of section 14(2) of the APMCSA, he was of the opinion that acceptance of deposits from non Members/nominal Members cannot be said to disqualify the assessee from benefit of section 80P. Therefore, he directed the A.O. to allow deduction under section 80P(2)(a)(i).

4.1. Ld. CIT(A) also noted that there was a calculation error which has crept into computation of deduction under section 80P(2)(d) and therefore, he has directed the A.O. to restrict the deduction to Rs.31,89,338. Ld. CIT(A) also gave a finding that since assessee had other receipts like commission on postal stamps, labels, sale of stationery etc., which is not related to business of providing credit facilities to the Members of the society, he directed the A.O. to exclude an amount of Rs.9,38,866 consisting of the other receipts while calculating deduction under section 80P(2)(a)(i). Ld. CIT(A), however, did not agree with the assessee's contention of allowing expenses of Rs.20,68,583 on insurance and medical claim policies on its Members, which the A.O. held to be purely personal in nature. He was of the opinion that the expenditure on insurance policies cannot be said to be incurred for the purpose of assessee's business. Therefore, he did not allow the above expenditure while deciding the issues.

5. Assessee is aggrieved on the disallowance of expenses of Rs.20,68,583 on insurance and medi-claim policies taken in the name of its Members whereas, Revenue is aggrieved on the direction of the Ld. CIT(A) to allow deduction under section 80P(a)(i). Revenue in its appeal has raised the following grounds :

1. "The CIT(A) erred in overlooking the violation of provisions of A.P. Cooperative Societies Act, 1964 and the finding of A.O. that the activity of assessee is

"banking business" and not "carrying on the business of banking or providing credit facilities to its members" as it was mobilizing funds from outsiders and doing normal banking business.

2. The observation of CIT(A) is misplaced with regard to deduction u/s.80P(2)(i)(a) is even otherwise given to the assessee even if it accepts deposits from non members.

3. The facts and issue involved in this case is similar for A.Y. 2008-09 also. The concept of mutuality and violation of banking regulation act, which are essential in determining the status and activity of assessee and whether assessee is eligible for deduction u/s.80P(2)(a)(i) was discussed elaborately in the assessment order for A.Y. 2008-09. This issue for A.Y. 2008-09 is also in appeal before ITAT. The A.O., though not discussed these issues in the assessment order for A.Y. 2007-08 is very much relevant in deciding the issue. Therefore, the same are applicable for this assessment year also."

5.1. As can be seen from the above, ground Nos. 1 and 2 pertain to allowance of deduction under section 80P(2)(a)(i) and in support ground No.3 was raised on the basis of the issues involved in A.Y. 2008-09 also. The concept of mutuality and violation of Banking Regulations Act which were the main discussion in A.Y. 2008-09 were raised. This issue does not arise from the order of the A.O. However, this ground is kept in mind while deciding the issues. For the time being, ground No.3 is not material in deciding the issues arising in impugned order for A.Y. 2007-08.

5.2. The main contention of the Revenue is that assessee is not carrying on the business of banking which the A.O. held in violation of the provisions of the Act. Basically, assessee was mobilizing funds for deposits and doing normal banking business and therefore, Revenue is of the opinion that deduction under section 80P(a)(i) should not be allowed to the assessee.

6. After considering the rival contentions and perusing the paper book placed on record and provisions of the Act, we do not find any merit in Revenue appeal on this issue. As far as the so-called violations of the provisions of A.P. Cooperative Societies Act, 1964 are concerned, this ground does not arise in the case of assessee as it is not registered under the said Act, but under APAMACS 1995. There is a finding by Ld. CIT(A) that assessee was registered under the said Act vide the Registration granted on 19.11.1997 by the Registrar of A.P. Mutually Aided Cooperative Societies. Therefore, analysing assessee's activities and determining the so-called violations by the A.O. is misdirected. The issue of transactions with nominal Members or non-Members is not an issue as the assessee has clearly claimed deduction under section 80P only to the extent of transactions with its Members. Since the transactions are inter-linked, assessee has proportionately claimed deduction under section 80P(a)(i) taking the transactions with the Members and the gross receipts. Ld. CIT(A) also examined this aspect on factual basis and excluded certain other incomes also. Therefore, on facts, the issue of violation of provisions of A.P. Cooperative Societies Act, 1964 does not arise at all.

7. With reference to the finding of A.O. that the activity of assessee is banking business and not carrying on the 'business of banking or providing credit facilities to its Members'. This ground raised is also misplaced. Assessee by its bye laws has two types of Members. Vide bye law 3(iv)(a) Member means, Member/shareholder of the society. Bye-Law 3(iv)(b) defines Associate Member and Nominal Member means other than shareholder of the society. Therefore, the bye-laws itself distinguishes between Member and a Nominal Member/Associate Member, the later being not a shareholder of the society. As far as the objective is concerned, the objective of the society is to make economic and social upliftment and welfare of its Members and their families through the activities of the

society in general and promote and protect the interest of the Advocates in particular, through mutually aid, thrift and self-help in accordance with the principle of cooperative, as enunciated in section 3 of the Act. The bye law 8 which define Membership clearly indicates that in case an applicant is admitted as a Member of the Society, the applicant has to remit the value of 50 shares at Rs.100 each and non-refundable admission fees as decided by the Board from time to time. Bye law 8(vii) empowers the Board to admit any person as Associate Member or Nominal-Member to avail loan from the society or make a deposit with the Society, who shall pay admission fee of Rs.50 or any other amount as decided by the Board. It also clearly indicates that such person shall not be eligible to vote, attend meetings, claim profits or loss or any other privileges provided to the shareholder unless specifically permitted. It also restricts that Board shall not induct more than 250 Members as Associate Members. Thus the bye-laws pertain to Membership clearly distinguishes the Members of the Cooperative Society and Associate Members who cannot be treated as Member, as they are having only a right to pay admission fees and take loans from society and make deposit with society, without other privileges. There are certain judgments given under Cooperative Societies Act in case of societies involved in banking business, by virtue of which distinction between Members and non-Members was not considered material and their equal treatment as far as business of banking is concerned was accepted. In this case, as rightly pointed out by the Ld. CIT(A), assessee is not involved in business of banking and has only involved in providing credit facilities to the Members of the Society. Even though it has other objects, basically as per the assessee's admission before the authorities, the receipts of interest is on the loans provided to the Members per se. Most of the deposits accepted are from Associate Members who are not generally given any loans as their deposits are for surety on the bonds given to the

accused and these amounts received from such non-Members are deposited in other Cooperative Societies/ Cooperative Banks or Scheduled Banks. As can be seen from the order of the A.O. itself, he has identified the amounts of interest received from the Cooperative Societies/Cooperative Banks and deduction under section 80P(2)(d) was allowed. Ld. CIT(A) also corrected certain calculation errors in restricting deduction under section 80P(2)(d). There is no dispute on the above either by assessee or by the Revenue.

7.1. Assessee's activity cannot be considered as a banking activity and as rightly analysed and held by the Ld. CIT(A), assessee is involved in providing the credit facilities to its Members. Since the assessee only claimed proportionate deduction under section 80P on the activities with its Members only, while offering income to tax on the activities with non-Members/outside world, Revenue grounds raised in this regard are misconceived. We do not find any merit in the contentions raised by the Revenue in ground No.2.

8. With reference to ground No.3, also since assessee is not involved in business of banking and it is only a Cooperative Society registered under Mutually Aided Cooperative Societies Act, ground No.3 is also has no merit. However, the issue of ground No.3 is decided separately in A.Y. 2008-09. Therefore, as far as issues raised in A.Y. 2007-08 are concerned, we confirm the order of Ld. CIT(A) to that extent and reject the Revenue ground.

9. Coming to assessee's main contention about disallowance of an amount of Rs.20,68,583, it was submitted that medi-claim and insurance claim was paid on behalf of the Members for their welfare. It is one of the objectives of the society to consider the welfare of its Members. As part of it, assessee has taken policies to protect the interests of the Members. This

cannot be considered as a personal in nature. Assessee being a Cooperative Society there cannot be any expenditure on personal nature. This expenditure is certainly for the objects of the society and therefore, has to be allowed as a deduction. Moreover, as seen from the working made out by the A.O. he has excluded incomes received from the Cooperative Banks/Societies separately. The receipts from the Members are separately considered for allowing proportionate deduction under section 80P(2)(a)(i). In case, this expenditure is not allowed, the income to that extent will go up from the income computed on the transactions with Members. The deduction under section 80P(2)(a)(i) also has to be proportionately increased. This is an academic view, but the fact is that the expenditure is an allowable expenditure, as it is spent for the benefit of the Members, in the course of society activities, as permitted by the bye-laws of the society. In view of this, we are of the opinion that the expenditure cannot be disallowed as personal in nature. Assessing Officer is directed to allow the amounts and compute the incomes accordingly on proportionate basis between the incomes on the transactions with Members and on transactions with Associated/Nominal Members and allow deduction under section 80P(a)(i) accordingly. Therefore, assessee's grounds on this issue are considered as allowed."

8.3 While allowing assessee's claim of deduction u/s 80P(2)(d), as cited supra the coordinate bench has observed as under:

13. *With reference to issue of treating the income from other Cooperative Banks as income from other sources, relying on the decision of Hon'ble Supreme Court in the case of [The Totgars Cooperative Sale Society Ltd., vs. ITO 322 ITR 283 \(SC\)](#), Ld. CIT(A) agreed with the opinion of the A.O. in treating the income as other sources, but however, directed the A.O. to*

allow deduction under section 80P(2)(d) as allowed in A.Y. 2007-08. With reference to acceptance of various insurance claims, Ld. CIT(A) agreed with the order of the A.O. on similar lines as that of A.Y. 2007-08.

"22.1 The ground No.3 regarding deduction under section 80P(ii)(d) is in respect of interest received from Cooperative Societies and the Cooperative Banks. We are unable to understand why the Cooperative Banks are not considered as Cooperative Societies in Banking business. The sub-section (4) introduced by Finance Act, 2006 w.e.f. 1.4.2007 is as under :

(4) The provisions of this section shall not apply in relation to any cooperative bank other than a primary agricultural credit society or a primary cooperative agricultural and rural development bank.

Explanation - For the purposes of this sub-section,-

(a) 'co-operative bank' and 'primary agricultural credit society' shall have the meanings respectively assigned to them in Part V of the Banking Regulation Act, 1949 (10 of 1949).

(b) "Primary Cooperative 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."

22.1. As per this section, the exemption provided under sub-section (2) or sub-section (3) does not apply to the incomes of the Cooperative Bank other than a primary agricultural Cooperative Society or a primary Cooperative Agricultural and Rural Development Bank. However, the above provision applicable in the case of Cooperative Bank is not in respect of interest received from Cooperative Banks by a Cooperative Credit Society/Cooperative Society. Section 80P(2)(d) is applicable to the assessee society in respect of incomes by way of interest or dividends received by the

cooperative society from its investments with any other cooperative society. Therefore, in the case of the assessee society, sub-section (4) is not applicable and deduction under section 80P(2)(d) is certainly eligible to assessee. In the assessment of a Cooperative Bank, the incomes may not be exempt after 01.04.2007 by virtue of sub-section (4), but assessee is not a Cooperative Bank. Therefore, the Revenue ground is not only illogical but also not supported by the facts of the case. Moreover as seen, the recommendation made by the A.O. to the Ld. CIT in their internal correspondence is extracted as a ground. This also indicates non-application of mind either by the A.O. or by higher authority like CIT. This sorry state of affairs should come to an end and Officers should act responsibly while preferring second appeal on the orders of the senior officer like Ld. CIT(A). Revenue appeal is dismissed.”

8.4 Recently, in the case of Mavilayi Service Cooperative Bank Ltd. Vs. CIT, [2021] 123 taxmann.com 161 (SC), with regard to section 80P, the Hon’ble Supreme Court has held as under:

“Lets turn to the proper interpretation of section 80P. Firstly, the marginal note to section 80P which reads 'deduction in respect of income of co-operative societies' is important, in that it indicates the general "drift" of the provision. [Para 27]

Secondly, for purposes of eligibility for deduction, the assessee must be a 'co-operative society'. A co-operative society is defined in section 2(19) as being a co-operative society registered either under the Co-operative Societies Act, 1912 or under any other law for the time being in force in any State for the registration of co-operative societies. This, therefore, refers only to the factum of a co-operative society being registered under the 1912 Act or under the State law. For

purposes of eligibility, it is unnecessary to probe any further as to whether the co-operative society is classified as X or Y. [Para 28]

Thirdly, the gross total income must include income that is referred to in sub-section (2). [Para 29]

Fourthly, sub-clause (2)(a)(i) with which this case is directly concerned case speaks of a co-operative society being 'engaged in' carrying on the business of banking or providing credit facilities to its members. What is important qua sub-clause (2)(a)(i) is the fact that the co-operative society must be 'engaged in' the providing credit facilities to its members. [Para 30]

The statutory provision involved does not require the appellants to be primary agricultural credit societies to claim a deduction under section 80P(2)(a)(i) in the first place. [Para 31]

The burden is on the assessee to show, by adducing facts, that it is entitled to claim the deduction under section 80P. Therefore, the Assessing Officer under the IT Act cannot be said to be going behind any registration certificate when he engages in a fact-finding enquiry as to whether the co-operative society concerned is in fact providing credit facilities to its members. Such fact finding enquiry (see section 133(6)) would entail examining all relevant facts of the co-operative society in question to find out whether it is, as a matter of fact, providing credit facilities to its members, whatever be its nomenclature. Once this task is fulfilled by the assessee, by placing reliance on such facts as would show that it is engaged in providing credit facilities to its members, the Assessing Officer must then scrutinize the same, and arrive at a conclusion as to whether this is, in fact, so. [Para 32]

What is important to note is that, the expression 'providing credit facilities to its members' does not necessarily mean agricultural credit alone. Section 80P being a beneficial provision must be construed with the object of furthering the co-operative movement generally, and section 80P(2)(a)(i) must be contrasted with section 80P(2)(a)(iii) to (v), which expressly speaks of agriculture. It must also further be

contrasted with sub-clause (b), which speaks only of a 'primary' society engaged in supplying milk etc. thereby defining which kind of society is entitled to deduction, unlike the provisions contained in section 80P(2)(a)(i). Also, the proviso to section 80P(2), when it speaks of sub-clauses (vi) and (vii), further restricts the type of society which can avail of the deductions contained in those two sub-clauses, unlike any such restrictive language in section 80P(2)(a)(i). Once it is clear that the co-operative society in question is providing credit facilities to its members, the fact that it is providing credit facilities to non-members does not disentitle the society in question from availing of the deduction. The distinction between eligibility for deduction and attributability of amount of profits and gains to an activity is a real one. Since profits and gains from credit facilities given to non-members cannot be said to be attributable to the activity of providing credit facilities to its members, such amount cannot be deducted. [Para 33]

Section 80P(1)(c) also makes it clear that section 80P is concerned with the co-operative movement generally and, therefore, the moment a co-operative society is registered under the 1912 Act, or a State Act, and is engaged in activities which may be termed as residuary activities i.e. activities not covered by sub-clauses (a) and (b), either independently of or in addition to those activities, then profits and gains attributable to such activity are also liable to be deducted, but subject to the cap specified in sub-clause (c). The reach of sub-clause (c) is extremely wide, and would include co-operative societies engaged in any activity, completely independent of the activities mentioned in sub-clauses (a) and (b), subject to the cap of INR 50,000/- to be found in sub-clause (c)(ii). This puts paid to any argument that in order to avail of a benefit under section 80P, a co-operative society once classified as a particular type of society, must continue to fulfil those objects alone. If such objects are only partially carried out, and the society conducts any other legitimate type of activity, such co-operative society would only be entitled to a maximum deduction of Rs. 50,000/- under sub-clause (c). [Para 34]

Sub-clause (d) also points in the same direction, in that

interest or dividend income derived by a co-operative society from investments with other co-operative societies, are also entitled to deduct the whole of such income, the object of the provision being furtherance of the co-operative movement as a whole. [Para 35]

Coming to the provisions of section 80P(4), it is important to advert to speech of the Finance Minister dated 28-2-2006, which reflects the need for introducing section 80P(4). [Para 36]

Likewise, a circular dated 28-12-2006, containing explanatory notes on provisions contained in the Finance Act, 2006, is also important. [Para 37]

The above material would clearly indicate that the limited object of section 80P(4) is to exclude co-operative banks that function at par with other commercial banks i.e. which lend money to members of the public. Thus, if the Banking Regulation Act, 1949 is now to be seen, what is clear from section 3 read with section 56 is that a primary co-operative bank cannot be a primary agricultural credit society as such co-operative bank must be engaged in the business of banking as defined by section 5(b) of the Banking Regulation Act, 1949, which means the accepting, for the purpose of lending or investment, of deposits of money from the public. Likewise, under section 22(1)(b) of the Banking Regulation Act, 1949 as applicable to co-operative societies, no co-operative society shall carry on banking business in India, unless it is a co-operative bank and holds a licence issued in that behalf by the RBI. As opposed to this, a primary agricultural credit society is a co-operative society, the primary object of which is to provide financial accommodation to its members for agricultural purposes or for purposes connected with agricultural activities. [Para 39]

As a matter of fact, some primary agricultural credit societies applied for a banking licence to the RBI, as their bye-laws also contain as one of the objects of the Society the carrying on of the business of banking. This was turned down by the RBI. [Para 40]

Section 80P 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. A deduction that is given without any reference to any restriction or limitation cannot be restricted or limited by implication, as is sought to be done by the revenue in the present case by adding the word 'agriculture' into section 80P(2)(a)(i) when it is not there. Further, section 80P(4) is to be read as a proviso, which proviso now specifically excludes co-operative banks which are co-operative societies engaged in banking business i.e. engaged in lending money to members of the public, which have a licence in this behalf from the RBI. Clearly, therefore, once section 80P(4) is out of harm's way, the assessee is entitled to the benefit of the deduction contained in section 80P(2)(a)(i), notwithstanding that they may also be giving loans to their members which are not related to agriculture. Also, in case it is found that there are instances of loans being given to non-members, profits attributable to such loans obviously cannot be deducted. [Para 45]

It must also be mentioned here that 'nominal members' are 'members' as defined under the Kerala Act. Considering the definition of 'member' under the Kerala Act, loans given to such nominal members would qualify for the purpose of deduction under section 80P(2)(a)(i). [Para 46]"

8.5 We find that in the said case, the Hon'ble Supreme Court has considered its case of Citizen Cooperative Society Ltd., on which reliance placed by both the authorities below, while disallowing the assessee's claim of deduction u/s 80P(2)(a)(i) of the Act. The issue of deduction claimed U/s 80P(2)(d) has been decided by the coordinate bench of Tribunal in assessee's own case as cited supra and in which the decision of Hon'ble Supreme Court Totgars Cooperative Sales Society Ltd. Vs. ITO, 322 ITR 283 has been discussed.

Respectfully following the above judgements cited supra, we allow the appeals of the assessee and dismiss the appeal of the revenue in above terms .

10. Coming to second issue of section 40(a)(ia) disallowance of Rs. 1,06,658/-, we find that the same is covered by section 194A(3)(v) in assessee's favour being a payment made by society to its members. This disallowance is deleted.

11. In the result, assessee's appeals are allowed and revenue's appeals are dismissed in above terms. A copy of this common order be placed in the respective case files.

Pronounced in the open court on 11th June, 2021.

**Sd/-
(S.S. GODARA)
JUDICIAL MEMBER**

**Sd/-
(L. P. SAHU)
ACCOUNTANT MEMBER**

Hyderabad, Dated: 11th June, 2021.

Kv

copy to :

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<i>7</i>	<i>ITAT, DR, Hyderabad.</i>
<i>8</i>	<i>Guard File.</i>