IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT

BEFORE SHRI PAWAN SINGH, JM & DR. A. L. SAINI, AM

आयकरअपीलसं./ITA Nos.173/SRT/2017 and 199/SRT/2018

(निर्धारणवर्ष / Assessment Years: (2013-14 and 2014-15)

(Virtual Court Hearing)

M/s.Maroli Bazar Vibhag Vividh KS.M.L. At & Post – Maroli Bazar, Tal-Jalalpore, Dist-Navsari.	**Vs.**	The Income Tax Officer, Ward-2, Navsari.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: **AAAAM 1095 J**		
(Assessee)		**(Respondent)**

आयकरअपीलसं./ITA Nos.200/SRT/2018 and 201/SRT/2018

(निर्धारणवर्ष / Assessment Years: (2013-14 & 2014-15)

(Virtual Court Hearing)

Kharel Vibhag V.V.K.S.M. Ltd., At & Post – Kharel, Navsari.	**Vs.**	The Deputy Commissioner of Income Tax, Navsari. & The Income Tax Officer, Ward-2, Navsari.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: **AAAAK 0870 D**		
(Assessee)		**(Respondent)**

Assessee by : Shri Parmil Sinh Parmar - AR
Respondent by : Ms. Anupama Singla – Sr. DR

सुनवाईकीतारीख/ **Date of Hearing : 09/07/2021**

घोषणाकीतारीख/**Date of Pronouncement: 07/09/2021**

आदेश / O R D E R

PER DR. A. L. SAINI, ACCOUNTANT MEMBER:

Captioned four appeals filed by the different assessees, pertaining to Assessment Years (A.Y.) 2013-14 and 2014-15, are directed against the separate orders passed by the Learned Commissioner of Income Tax (Appeals) [ld.CIT(A)], which in turn arise out of separate assessment orders passed by the Assessing Officer under section 143(3) of the Income Tax Act, 1961 (herein after referred to as "the Act").

2. Since, the issues involved in all the appeals are common and identical; therefore, these appeals have been heard together and are being disposed of by this consolidated order. For the sake of convenience, the grounds as well as the facts narrated in ITA No.173/SRT/2017, for assessment Year 2013-14, have been taken into consideration for deciding the above appeals *en masse*.

3. Grounds of appeal raised by the assessee in lead case in ITA no.173/SRT/2017, for the A.Y. 2013-14, are as follows:

> *"1. The learned CIT(A) has erred both in law and on the facts of the case in confirming the action of AO in re-writing the books of accounts without rejecting the same for the purposes of recalculating the claim of deduction u/s 80P of the Act.*
>
> *2. The learned CIT(A) has erred both in law and on the facts of the case in confirming the action of AO in artificially determining the profits eligible for each department and thus restricting the claim of deduction u/s 80P of the Act.*
>
> *3. The learned CIT(A) has erred both in law and on the facts of the case in confirming the action of AO in disallowing deduction to the extent of Rs.9,08,475/- under Section 80P of the Act.*
>
> *4. Both the lower authorities have passed the orders without properly appreciating the facts and they further erred in grossly ignoring various submissions, explanations and information submitted by the assessee from time to time which ought to have been considered before passing the impugned order. This action of the lower authorities is in clear breach of law and Principles of Natural Justice and therefore deserves to be quashed.*
>
> *5. The learned CIT(A) has erred in law and on facts of the case in confirming action of the ld AO in levying interest u/s 234A/B/C of the Act.*

4. Briefly stated, the relevant material facts are as follows. Assessee is a Multipurpose Co-operative society and dealing mainly in marketing of agricultural products grown by its members and other allied activities, such as consumer store and rice mill. The assessee is also derived interest and dividend income. The assessee, being a co. op. society has filed its return of income for A.Y. 2013-14 on 07.09.2013 declaring total income of Rs. Nil/- after claiming deduction u/s 80P of Rs.65,37,224/-. The return of income was processed u/s

143(1) of the Act by accepting the income so returned. Later on, assessee`s case was selected for scrutiny assessment through CASS. On verification of computation of income, it was observed by the assessing officer that assessee has claimed various deductions u/s 80P(2)(a), 80P(2)(c) and 80P(2)(d) of the Income Tax Act. The assessing officer noticed that assessee had income from various sources such as interest on providing credit facilities to farmer members, commission on marketing agricultural produce grown by members, income from sale of fertilizers and insecticides, income from consumer store and income from rice mill. Further, whatever income earns from these activities, has been claimed as deduction u/s 80P of the Act to the extent of available profit. The assessing officer also noticed that assessee is a multipurpose co. op. society and engaged in various activities which derived profit from non- member also, no separate books of accounts were maintained by the assessee to differentiate profit from member's activities and profit from non-member's activities. Further, the assessee has differentiate gross margin on different activities but not shown net margin after deducting overhead expenses on each activities.

5. The assessing officer, then explained the position of law stating that a co-operative society is entitled to a deduction u/s 80P of the Income-tax Act in respect of income of the nature specified in Sub-sections (2) (a) to (f) of the said section. The quantum of deduction for income specified in clauses (a), (b) and (d) to (f) is 100%, while the quantum under clause (c) is restricted to one lakh rupees in case of consumers' cooperative society and fifty thousand rupees in any other case. The said clause (c) grants the deduction in respect of profits and gains attributable to activities other than those specified in clauses (a) and (b). Income of the nature specified in clauses (d) to (f) is deductible under the respective clauses. Clause (c) accordingly contains a residual provision, which grants deduction in respect of an income, which is not otherwise specified in any of the other clauses and at times is referred to as a standard deduction. The said clause reads as under:

> *"(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 specified) , so much of its profits and gains attributable to such activities as does not exceed :

(i) where such co-operative society is a consumers' co-operative society, one hundred thousand rupees; and

(ii) in any other case, fifty thousand rupees.

Explanation — In this clause, consumers' co-operative society means a society for the benefit of the consumers."

Thus assessing officer noted that eligibility of a co-operative society for deduction under clause (c) has been put under the scanner by various judicial authorities. It is very much required to determine whether the income for which deduction is claimed by the society is received from any activity carried out by it and whether such income is attributable to such activity.

The assessing officer thus observed that if a co-operative society is carrying on a business and earning income, part of which is exempted and part of which is not exempted, the profits and gains attributable to the exempted activity has to be arrived at on the basis of the books of account maintained by the assessee. If separate sets of books or separate accounts of expenditure have been maintained for the exempted and non-exempted activities, there is no problem. If separate books of account have not been maintained and the expenses have been incurred jointly for earning both the incomes, then such expenses have to be estimated by the Assessing Officer which are relatable to earn the income from non-exempted activities in order to arrive at the true and correct income. It cannot be presumed that no expenditure was incurred in earning the exempted income.

6. Therefore, considering the above and as the assessee co. op. society is engaged in multi-purpose activities, it is very much essential to work out net margin of the activities and allowability of deduction u/s 80P(2) on the same. Accordingly, the net margins of the different activities were worked out by assessing officer as per Annexure-A (enclosed as a part of order) on the basis of allocation of overhead expenses in the ratio of turnover and deduct the same from the gross margin of the activities. As per this working, the allowability of

deduction u/s 80P(2) was worked out at Rs. 56,28,749/- as against assessee's claim of Rs.65,37,224/-.

On being asked to assessee as to why the excess claim should not be disallowed, the assessee reiterated the decision of Hon'ble High Court of Gujarat in the case of CIT v. Jamnagar Jilla Sahakari Kharid Vechan Sangh Ltd. [201 CTR 243(Guj)] in which the Hon'ble High Court has held that:

> *"Business of the assessee-society being an indivisible business, common expenditure which has no direct nexus with the activities specified in S. 80P(2)(a)(iv) cannot be apportioned for deducting the same from the income from such specified activities, and, therefore, deduction u/s.80P(2)(a)(iv) is to be allowed on the gross income."*

However, the assessing officer has rejected the contention of the assessee stating that in the case of CIT v. Jamnagar Jilla Sahakari Kharid Vechan Sangh Limited, the Hon'ble High Court concentrated on the indivisible business of the assessee but in the instant case, the assessee has shown separate turnover and gross margin of each activities i.e. members fertilizers and polling activities, consumer activities, rice mill etc, therefore, it cannot be said that assessee co. op. society is engaged in the indivisible business. Based on these facts, assessing officer restricted deduction u/s 80P(2) of the I.T. Act to Rs.56,28,749/-, as against assessee's claim of Rs.65,37,224/-, thus, the balance amount of Rs.9,08,475/- (Rs.65,37,224 -Rs.56,28,749) was disallowed by the assessing officer.

7. Aggrieved by the order of the Assessing Officer, the assessee carried the matter in appeal before the ld.CIT(A) who has confirmed the addition made by the Assessing Officer. Aggrieved, the assessee is in appeal before us.

8. Learned Counsel for the assessee submits that in the computation of total income filed with the return of income the assessee claimed deduction u/s 80P(2)(a) of the Act at Rs.1,02,18,564/- under the head interest on providing credit facilities to farmer members. The audit report of the co-operative society indicates interest income of Rs.1,06,70,456/- and interest expenses of Rs.69,98,746/- during the current assessment year. In the assessment order, the

AO has worked out deduction u/s 80P(2)(a)(i) at Rs.31,82,961/- after taking into account expenses on the activity of credit facility undertaken by the assessee. Similarly, the AO has calculated deductions under other clauses of section 80P(2) and determined total taxable income at Rs. 9,08,475/-. The ld Counsel contended that assessing officer has erred in making addition, and for that he relied on the decision of Hon'ble Gujarat High Court in the case of CIT vs. Jamnagar Jilla Sahakari Kharid Vechan Sangh Ltd. 283 ITR 116 and prayed the Bench that addition so made may be deleted.

9. On the other hand, the Ld. DR for the Revenue has primarily reiterated the stand taken by the Assessing Officer, which we have already noted in our earlier para and is not being repeated for the sake of brevity.

10. We have given our thoughtful consideration to rival contention. We have perused case file as well as paper books furnished by assessee with the able assistance of Shri Parmil Sinh Parmar, (advocate), representing the assessee and Ms. Anupama Singla, Learned Sr. DR, representing the Revenue. We find that one key issue arises for our apt adjudication in the instant lis, which is, whether the income from the specified activities is required to be deducted *in toto* or whether the common overhead expenses are required to be allocated on a proportionate basis, to arrive at the net income from the specified activities on a notional basis.

We note that issue under consideration is no longer *res-integra.* That is, the issue relating to deductibility of expenditure incurred for the business of a co-operative society in relation to the amount of profits and gains attributable to the activities specified under section 80P(2) of the Act, when the business of the assessee *qua* specified activities and activities other than specified activities is one and indivisible and there are common overhead expenses, has been adjudicated by the Hon`ble High Court of Gujarat in the case of Jamnagar Jilla Shakari Kharid Vechan Sangh Ltd, [2006] 153 TAXMAN 363 (GUJ.). In this case the Hon`ble Court held that when business of assessee qua specified

activities and activities other than specified activities is one and indivisible and there are common overhead expenses, income from specified activities is required to be deducted *in toto* and common overhead expenses are not required to be allocated on a proportionate basis, to arrive at net income from specified activities on a notional basis. The findings of the Hon`ble Court is reproduced below:

> ***"35.*** *To properly appreciate the controversy in question it would be necessary to advert to the scheme of the Act. This Court in its decision rendered in the case of CIT v. Baroda Peoples Co-op. Bank Ltd. [2005] 149 Taxman 509 (Guj.) and allied matters has exhaustively delineated the scheme of the Act, which is reproduced hereunder:*
>
> *"Section 80P of the Act appears in Chapter VI-A of the Act. The said Chapter pertains to deductions to be made in computing total income. It is divided into four heads or four parts:*
>
> *A : General sections (sections 80A to 80BB)*
>
> *B : Deduction in respect of certain payments (sections 80C to 80GGC)*
>
> *C : Deductions in respect of certain incomes (sections 80H to 80TT)*
>
> *D : Other deductions (sections 80U to 80VV)*
>
> *Section 80A(1) of the Act provides that in computing total income of an assessee, there shall be allowed from the gross total income, the deductions specified in sections 80C to 80U (in the present case 80C to 80VV), in accordance with and subject to the provisions of this Chapter, viz., Chapter VI-A. Under sub-section (2) of section 80A a ceiling has been placed, viz., the aggregate amount of deductions under the Chapter shall not exceed the gross total income of an assessee. Under section 80B(5) gross total income has been defined to mean the total income computed in accordance with the provisions of the Act before making any deduction under Chapter VI-A. As to what is the nature of the income to be included in the gross total income is laid down vide section 80AB of the Act. The said section provides that where any deduction is required to be made or allowed under any section included in Chapter VI-A under the heading 'C—Deductions in respect of certain incomes' in respect of any income of the nature specified in any of the sections falling under the heading 'C,' then for the purposes of inclusion in the gross total income, notwithstanding anything contained in any of the said sections, the amount of income of that nature as computed in accordance with the provisions of the Act (before making any deduction under this Chapter) shall alone be deemed to be the amount of income of the nature which is amenable to deduction and which is included in the gross total income. On a conjoint reading of sections 80B(5) and 80AB of the Act, it is apparent that for seeking deduction in respect of incomes falling in any of the sections specified under heading 'C' of Chapter VI-A such income has to be computed in accordance with the provisions of the Act and then included in gross total income; gross total income means the total income, computed in accordance with the provisions of the Act, and at both the stages while*

computing total income, deductions under Chapter VI-A are not to be taken into consideration. Therefore, income under a particular head comprising of a specific item has to be in the first instance computed in accordance with the provisions of the Act, that is, all the permissible deductions/allowances have to be first taken into consideration (excluding deductions under Chapter VI-A) and the figure of net income arrived at after such computation has to form part of the total income. In other words, the net income relatable to a particular head or item has to go in as a component of the gross total income before any deduction under Chapter VI-A is to be allowed.

Once this is the scheme laid down by the statute, all such allowable expenditure, in the form of various allowances and deductions, are already taken care of from the income earned by an assessee under a particular head. In case of income falling under the head 'Profits and gains of business or profession' section 29 of the Act stipulates that the income referred to in section 28 shall be computed in accordance with the provisions contained in sections 30 to 43D of the Act. Therefore, in case of an assessee carrying on business of banking in the first instance, income under section 28 is computed in accordance with the provisions of section 29 of the Act and such net figure is taken as a component of the total income or gross total income for the purpose of deduction under Chapter VI-A. . . .

Examining the issue from a slightly different angle. One may take into consideration the provisions of section 4, read with section 5 and section 2(45) of the Act. The charge of income-tax is fastened under section 4 of the Act in respect of the total income of the previous year. Such total income includes all income from whatever source derived which is either received or accrues to an assessee during any previous year. Section 2(45) of the Act defines 'total income' to mean the total amount of income referred to in section 5 computed in the manner laid down in the Act. Thus, all income received by or accruing to an assessee during any previous year is to be charged to tax after computation in the manner prescribed by the Act. Therefore, in case of an assessee, like the present assessee, all interest income, actually received or accrued has to be computed in the manner provided in the Act so as to form the total income which is subjected to charge under section 4 of the Act. That once again gives an indication that all such income has to be computed as provided on a conjoint reading of sections 28 and 29 of the Act and only thereafter the net figure is required to be taken up for consideration for the purpose of ascertaining deductibility or otherwise under section 80P of the Act which falls under the heading 'C' of Chapter VI-A of the Act.

******

Sub-section (1) of section 80P stipulates that in case of an assessee who is a co-operative society, the sums specified in sub-section (2) shall be deducted while computing total income of the assessee, provided the gross total income includes any income referred to in sub-section (2). Sub-section (2) specifies the sums which are deductible by way of specifying activities in clauses (a) to (f). In clause (a) again, the activities which are of the prescribed nature, are specified vide sub-clauses (i) to (vii). In the event of a co-operative society carrying on any one of such businesses as specified by sub-clauses (i) to (vii) or engaged in any one or more such activities the

whole of the amount of profits and gains of business attributable to any one or more activities shall be deducted. Thus, the provision itself gives an inherent indication that for the purpose of constituting the sum deductible while computing the total income of the assessee, the sum has to be the amount of profits and gains of business. It is necessary to take note of the fact that in sub-section (2) of section 80P of the Act word 'income' is not used but the word used is 'sum' which is the 'whole of the amount of profits and gains of business'. Therefore, under sub-section (1) the gross total income has to include income from any of the specified activities and for the purpose of deduction the sums specified in sub-section (2) shall be deducted in computing the total income of an assessee, namely, a co-operative society. Before analyzing sub-clause (i) of clause (a) of sub-section (2) of section 80P of the Act, it is necessary to take note that under sub-section (3) of section 80P the deduction available under sub-section (1) of section 80P shall be allowed after reducing from the qualifying income, the income, if any, as referred to in sections specified therein viz., section 80HH, etc. This is one more indication available in the scheme of the Act to denote that what is deductible under the provisions of Chapter VI-A is in terms of the provisions of the Act with special reference to section 80B(5) read with section 80AB of the Act is the net figure." (p. 528)

Therefore, it is evident that as per the scheme of the Act all permissible statutory deductions are required to be made prior to making deduction under the provisons of Chapter VI-A and that what is deductible under Chapter VI-A of the Act is the net figure.

***36.** Section 80P(1) provides that 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 provisons of this section, the sums specified in sub-section (2) in computing the total income of the assessee.*

Sub-section (2) of section 80P insofar as the same is relevant for the present purpose reads as under :

"(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—

*(i)to (iii) *******

(iv)the purchase of agricultural implements, seeds, livestock or other articles intended for agriculture for the purpose of supplying them to its members, or

*(v)to (vii) *******

the whole of the amount of profits and gains of business attributable to any one or more of such activities."

***37.** What section 80P(1) contemplates is that where any income referred to under sub-section (2) forms a component of the gross total income of a co-operative society, the society would be entitled to deduction of the sums*

specified in sub-section (2) in respect of the amount of profits and gains attributable to the activities specified in sub-section (2).

38. *In the present case the specified activity, namely, sale of articles intended for agriculture to the members of the assessee-society, falls under sub-clause (iv) of section 80P(2)(a) of the Act, and accordingly, the whole of the profits and gains attributable to the said activity is deductible while computing the total income of the assessee.*

39. *Section 80A provides that the deductions specified in sections 80C to 80VV shall be allowed from the gross total income in computing the total income of an assessee. "Gross total income" for the purpose of Chapter VI-A is defined under section 80B(5) to mean the total income computed in accordance with the provisions of the Act, before making any deduction under the said Chapter or under section 280-O. Section 80AB provides that for the purpose of computing deduction under any of the sections included under heading "C—Deductions in respect of certain incomes" of Chapter VI-A the amount of income of the nature specified in that section as computed in accordance with the provisions of the Act (before making deduction under Chapter VI-A) shall alone be deemed to be the amount of income of that nature which is derived or received by the assessee and which is included in his gross total income.*

40. *Applying the principles laid down by this Court in the case of Baroda Peoples Co-operative Bank Ltd. (supra) to the facts of the present case, in the first instance, income under the particular head, namely, 'Profits and gains of business or profession' comprising of the specific item, namely, profits and gains from activities specified under sub-clause (iv) of clause (a) of sub-section (2) of section 80P is required to be computed in accordance with the provisions of the Act, i.e., all permissible deductions/allowances have to be first taken into consideration [excluding deductions under section (Chapter) VI-A] and the figure of net income arrived at after such computation has to form part of total income.*

41. *Therefore, in the first instance the income of the assessee under section 28 is required to be computed in accordance with the provisions of section 29 of the Act. Section 29 provides that the income referred to in section 28 shall be computed in accordance with the provisions contained in sections 30 to 43A. Sections 30 to 36 provide for specific deductions and section 37 which is relevant for the present purpose provides for general deductions. Under section 37, any expenditure (not being expenditure of the nature described in sections 30 to 36 and section 80VV and not being in the nature of capital expenditure or personal expenses of the assessee), laid out and expended wholly and exclusively for the purposes of the business or profession shall be allowed in computing the income changeable under the head "Profits and gains of business or profession".*

42. *The Apex Court in the cases of Indian Bank Ltd. and Maharashtra Sugar Mills Ltd. (supra) lays down in the context of section 10(2) and 10(2)(xv) of the Act of 1922 which is pari materia to section 37 of the Act of 1961, that what is*

required to be ascertained is as to whether the expenditure is laid out wholly and exclusively for the purpose of business. The said section does not envisage any further inquiry as to whether the expenditure has produced or will produce taxable income. The fact that the income arising from a part of that business is not exigible to tax under the Act is not a relevant circumstance. Applying the aforesaid principles, to the facts of the present case, while computing the gross total income in terms of section 80B(5), at the first stage, all that is required to be seen is whether the expenditure is laid out wholly and exclusively for the purpose of business as envisaged under section 37 of the Act. Hence, in the first instance, the expenditure incurred wholly and exclusively for the purposes of the business including the expenditure incurred in relation to the specified activities would be required to be deducted under section 37 of the Act. Therefore, common overhead expenses would be deducted in entirety at the first stage under section 37 of the Act.

43. *Apart from deductions under section 37, all permissible deductions/allowances have to be taken into consideration to arrive at the "gross total income" as defined under section 80B(5). It is from this gross total income that amount of profits and gains of business attributable to the specified activity, namely, sale of articles intended for agriculture to members of the assessee-society is to be deducted to compute the total income of the assessee.*

44. *In view of the provisions of section 80AB of the Act, the amount of income from the specified activity computed in accordance with the provisions of the Act (before making deduction under Chapter VI-A) shall be the income derived by the assessee from the specified activity and which forms part of the gross total income. In relation to the applicability of section 80AB of the Act, the Tribunal has held that the same does not salvage the case of the revenue because the said section deals with determination of income on the basis of the provisions of the Act. That the expenditure sought to be apportioned being common expenditure, there is no question of deducting the same from the profits of the tax-free activities because such expenditure has no direct nexus with such activities nor can it be said that such expenditure cannot be related to non-taxable activities.*

45. *The moot question, therefore, would be as to what is the amount of profits and gains attributable to the activities specified under section 80P(2)(a)(iv) of the Act, insofar as the assessee is concerned, in view of the fact that the business of the assessee is one and indivisible and there being common overhead expenses, it is not possible to bifurcate the expenses qua exempted and non-exempted activities.*

46. *As can be seen from the order of the Tribunal, it has recorded a finding of fact after appreciating the evidence on record that the business of the assessee is one and indivisible; that the expenditure sought to be apportioned is common expenditure; the said expenditure has no direct nexus with the specified activities and it cannot be said that such expenditure is not relatable to the taxable activities. In the circumstances, it is not possible to carve out (compute) the expenditure attributable to the specified activities out of the common overhead expenses, to arrive at the net income from such activities. If the method adopted by the Assessing Officer is followed and the expenditure is*

apportioned on pro rata basis, the same would be on a notional basis and it cannot be said that the said expenditure is relatable solely to the specified activity. Hence, the net income of the specified activity so arrived at would be a notional figure and not an actual figure.

47. *Considering the decisions cited above, the main decision relied upon on behalf of the revenue is the decision of the Apex Court in the case of Sabarkantha Zilla Kharid Vechan Sangh Ltd. (supra) whereas the main decision relied upon on behalf of the assessee is the decision of the Apex Court in the case of Rajasthan State Warehousing Corpn. (supra). In the case of Sabarkantha Zilla Kharid Vechan Sangh Ltd. (supra), there was no dispute about the method adopted by the ITO for arriving at the figure of proportionate net income of taxable activities and proportionate net figure of non-taxable activities, namely, of the advisability of the rule of three in finding out the proportionate net income out of the total net income of the assessee. Hence, as there was no such dispute, all that the Court was concerned with was whether the provisions of section 81(i)(d) and the proviso to section 81(1) read in the light of the provisions of sections 66 and 110 of the Act, permitted any such apportionment. Which is not so in the present case; in that the advisability of the rule of three in finding the proportionate net income is not only disputed but forms part of the main controversy. There is no quarrel with the proposition as regards apportionment of expenditure to arrive at the net income in respect to taxable activities and exempt activities. The crux of the matter lies in the fact that the activities being one and indivisible it is not possible to apportion the expenditure on an actual basis. The question therefore, is whether apportionment is permissible on a national basis.*

48. *In the case of Sabarkantha Zilla Kharid Vechan Sangh Ltd. (supra), the Apex Court has held that when the assessee-co-operative society's income is included in its total income, it becomes entitled to a deduction from the amount of income-tax chargeable on its total income. That means, the co-operative society concerned becomes entitled to deduction or exemption from income-tax payable but it is only on its net amount of profits and gains, i.e., on income of its business otherwise computable in accordance with the provisions of the IT Act for the purpose of charging income-tax thereon and which is included in its total income, and not on the amount of its GPs and gains of business. Under the scheme of the Act as it stood at the relevant time what was exempted was the income-tax payable by the assessee in relation to the exempted activities, which was computable in the light of the sections 66 and 110 of the Act. Section 81 fell under Chapter VII of the Act under the heading "Incomes forming part of total income on which no income-tax is payable". Under section 110 read with section 66 the Act (as it stood at the relevant time), there was a special machinery for determination of tax where total income of an assessee included income on which no tax is payable. However, the provisions of section 81(1) have been deleted from Chapter VII of the IT Act, 1961 w.e.f. 1-4-1968 and incorporated as section 80P in Chapter VI-A of the Act. Therefore, there is a change in the very scheme of the Act, in relation to income of co-operative societies. However, the Apex Court has taken support from interpretation as to*

the scope of section 80P of the Act to express its view on interpretation of section 81 of the Act (as it then stood) as stated at p. 1035 of the reports.

49. *In the case of Rajasthan State Warehousing Corpn. (supra), the question before the Apex Court was as to whether in the facts and circumstances of the case and the business of the assessee being one and indivisible, the Tribunal was right in law in holding that the expenses have to be allocated in the same percentage as the different sources of income and not to be allowed in entirety. In the facts of the said case the ITO had allowed only so much of the expenditure as could be allocated to the taxable income and disallowed the rest of it which was referable to the non-taxable income, being exempt under section 10(29) of the Act. The Apex Court after considering its decisions in the cases of Indian Bank Ltd. (supra), Maharashtra Sugar Mills Ltd. (supra), Waterfall Estates Ltd. v. CIT [1996] 219 ITR 563 (SC) as well as the decision of the Punjab and Haryana High Court in the case of Punjab State Co-operative Supply & Marketing Federation Ltd. (supra) laid down the following principles:*

(i)if income of an assessee is derived from various heads of income he is entitled to claim deduction permissible under the respective head whether or not computation under each head results in taxable income;

(ii)if income of an assessee arises under any of the heads of income but from different items, e.g., different house properties or different securities, etc., and income from one or more items alone is taxable whereas income from the other item is exempt under the Act, the entire permissible expenditure in earning the income from the head is deductible; and

(iii)in computing "profits and gains of business or profession" when an assessee is carrying on business in various ventures and some among them yield taxable income and others do not, the question of allowability of the expenditure under section 37 will depend on:

(a)fulfillment of requirements of that provision noted above; and

(b)on the fact whether all the ventures carried on by him constituted one indivisible business or not; if they do, the entire expenditure will be a permissible deduction but if they do not, the principle of apportionment of the expenditure will apply because there will be no nexus between the expenditure attri-butable to the venture not forming an integral part of the business and the expenditure sought to be deducted as the business expenditure of the assessee.

In the said case, on behalf of the revenue it had been conceded that if the exempted income and the taxable income are earned from one indivisible business, then the apportionment of the expenditure cannot be sustained. In the facts of the said case it was held that the income from various ventures having been earned in the course of one indivisible business, the impugned order upholding the apportionment of the expenditure and allowing deduction of only that proportion of it which is referable to taxable income is unsustainable.

50. *In the light of the aforesaid decisions, it is clear that there are two lines of judgments taking two different views. In the case of Sabarkantha Zilla Kharid Vechan Sangh Ltd. (supra) it has been laid down that the expenditure qua taxable and non-taxable activities has to be apportioned on a proportionate basis, though under a different scheme of the Act, whereas in the case of Rajasthan State Warehousing Corporation (supra) it has been laid down that where the expenditure (sic-business) is one and indivisible, the entire expenditure will be a permissible deduction.*

51. *Section 80P has been introduced in Chapter VI-A of the Act with a view to encourage and promote the growth of the co-operative sector in the economic life of the country and in pursuance of the declared policy of the Government. While interpreting section 80P of the Act, the object of the provision must be borne in mind and a liberal construction should be made so as to achieve the object of the provision. It is settled legal position that when two views are possible, the one which favours the assessee must be adopted.*

52. *In the circumstances, the view taken by the Apex Court in the case of Rajasthan State Warehousing Corpn. (supra) that in case where the ventures carried on by the assessee constitute one indivisible business the entire expenditure will be permissible deduction requires to be applied as the same is in consonance with the scheme of the Act as stated hereinbefore. Even otherwise, the said expression of law, being the view that favours the assessee is required to be adopted. Even the decision in Sabarkantha Zilla Kharid Vechan Sangh Ltd. (supra) cannot strictly speaking, be said to be taking a contrary view, considering the fact that in the said case there was no dispute as regards the applicability of the rule of three in finding out the proportionate net income out of the total net income of the assessee, whereas that is the central dispute in the present case.*

53. *The view taken by the Tribunal that common expenditure cannot be apportioned for deducting the same from the tax-free activities because such expenditure has no direct nexus with the tax-free activities nor could it be said that the said expenditure was not relatable to the taxable activities is in consonance with the principles laid down by the Apex Court in the case of Rajasthan State Warehousing Corpn. (supra).*

In the circumstances the Tribunal was justified in directing the ITO to allow deduction under section 80P(2)(a)(iv) as claimed by the assessee on the gross income and not on the net income worked out by the ITO.

54. *The question referred is accordingly answered in the affirmative, that is, in favour of the assessee and against the revenue. The reference is disposed of accordingly, with no order as to costs."*

11. We note that Assessing Officer did not agree with assessee`s claim in principle as he was of the view that deduction can be allowed only to the extent of the net profits arising out of the activities specified in the said sub-section and

not with reference to the gross profit. The Assessing Officer found that the assessee has dealt in a number of commodities and that the common expenses relating to all the activities have been amalgamated in such a manner that the expenses relating to all the activities specified under section 80P(2) of the Act cannot easily be ascertained. He, therefore, restricted deduction u/s 80P(2) of the I. T. Act to Rs.56,28,749/-, as against assessee's claim of Rs 65,37,224/-.

We note that business of the assessee-society under consideration is one and indivisible and in pursuing various activities, the expenditure incurred wholly and exclusively for the purpose of the business, irrespective of the fact that the income from one or more parts of the activities was not liable to tax, was allowable in entirety and could not be apportioned and attributed towards the claim under section 80P(2) of the Act. As we have noted that the issue is squarely covered in favour of the assessee by the decision of the Hon`ble High Court of Gujarat in the case of Jamnagar Jilla Shakari Kharid Vechan Sangh Ltd (supra), and there is no change in facts and law and the Revenue is unable to produce any material to controvert the aforesaid findings of the Hon`ble Court (supra). Therefore, respectfully following the binding judgment of the Hon`ble High Court of Gujarat (supra), we allow the appeal of the assessee.

12. We have adjudicated the issue, taking the lead case in ITA No.173/SRT/2017 for assessment year 2013-14 in case of M/s Maroli Bazar V.V.S Mandli Ltd, however, the same issues have been raised by other assessees in other captioned appeals namely, ITA No.199/SRT/2018 (AY 2014-15), and ITA No.200/SRT/2018 (AY 2013-14) and ITA No. 201/SRT/2018 (AY 2014-15). The facts and issues involved in all these appeals are analogous to ITA No.173/SRT/2017 for assessment year 2013-14. Accordingly, our observations made in ITA No.173/SRT/2017 for assessment year 2013-14, shall apply *mutatis mutandis* to the aforesaid other appeals of assessees. For the parity of reasons, we allow the abovementioned appeals of the other assessees in terms of directions noted in ITA No.173/SRT/2017 for assessment year 2013-14.

13. In the result, appeals filed by the assessees (In ITA No.173/SRT/2017, ITA No.199/SRT/2018, ITA No.200/SRT/2018, ITA No. 201/SRT/2018) are allowed.

Order is pronounced in the open court on 07/09/2021 by placing the result on the Notice Board as per Rule 34(5) of the Income Tax (Appellate Tribunal) Rule 1963.

Sd/-	**Sd/-**
(PAWAN SINGH)	**(Dr. A.L. SAINI)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Surat /दिनांक/ Date: 07/09/2021 /*sgr*

Copy of the Order forwarded to

1. The Assessee
2. The Respondent
3. The CIT(A)
4. Pr.CIT
5. DR/AR, ITAT, Surat
6. Guard File

By Order

// TRUE COPY //

Assistant Registrar/Sr. PS/PS
ITAT, Surat