

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH: BANGALORE**

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER**

ITA No.996/Bang/2022
Assessment Year: 2017-18

M/s. Nagalambika Pattina Souharda Sahakari Niyamita 01, Mahatma Gandhi Complex Old LIC Building Raichur Road Manvi 584 123 PAN NO : AACAN1949C	Vs.	ITO Ward-1 Raichur
APPELLANT		RESPONDENT

Appellant by	:	Shri Sukesh S. Patil, A.R.
Respondent by	:	Shri Gudimella V.P. Pavankumar, D.R.

Date of Hearing	17	11	2022
Date of Pronouncement	17	11	2022

O R D E R

PER CHANDRA POOJARI, ACCOUNTANT MEMBER:

This appeal by assessee is directed against order of CIT(A), NFAC, Delhi dated 11.8.2022 for the assessment year 2017-18. The assessee has raised following grounds of appeal:-

- 1. The order of AO is bad in law and against the decision of higher appellate authority*
- 2. The order of the Hon'ble CIT(A)- NFAC, Delhi is against the Act and jurisdictional High Court decision in the case of M/s Swabhimani Souharda Credit Cooperative Ltd WP No 48414/2018 wherein is*

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promulgated that cooperative registered under Souhard Act is also eligible for exemption u/s 80P of the Income Tax Act, 1961.

3. *The order of Hon'ble CIT(A)- NFAC, Delhi is bad in law and without considering the facts of the case relating to the addition sustained on account of provisions of section 194A of the Act.*
4. *Appellant craves leaves to add, to alter, to amend and to delete any other grounds at the time of hearing."*

2. The first issue for our consideration is with regard to ground No.2, which reads as follows:-

2. *"The order of the Hon'ble CIT(A)- NFAC, Delhi is against the Act and jurisdictional High Court decision in the case of M/s Swabhimani Souharda Credit Cooperative Ltd WP No 48414/2018 wherein is promulgated that cooperative registered under Souhard Act is also eligible for exemption u/s 80P of the Income Tax Act, 1961."*

3. Facts of the case are that the assessee filed its ITR for AY. 2017-18 on 29.03.2018 showing total income of Rs.NIL after claiming deduction u/s 80P of the Income-tax Act,1961 ['the Act' for short] of Rs.35,41,970/-. Assessee is a Cooperative Society registered under Karnataka Souharda Sahakari Act, 1997. It is involved in business of providing credit facilities to its members in form of loans for business, housing etc. It also collects funds from its members. The ld. AO noted that as per Certificate filed by assessee, it is registered under Karnataka Souharda Sahakari Act, 1997 on 01.10.2014 as a "Cooperative" and is not registered under Karnataka Cooperative Societies Act, 1959 as a "Cooperative Society". The ld. AO held that assessee is a 'Cooperative' and not a "Cooperative Society". The AO has discussed provisions of Section 80P in para 3.1 of his order and held deductions u/s 80P of the Act are in respect of Income of Cooperative Society. The definition contained in Section 2(19) is of 'Cooperative Society' and not a 'Cooperative'. The AO held that deductions u/s 80P of the Act are allowed only to Cooperative Societies registered under Karnataka Cooperative Societies Act

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and not to a Cooperative registered under Karnataka Souharda Sahakari Act. The AO noted that both Act are in force simultaneously. Under Karnataka Cooperatives Act, 1959 the "Cooperative Societies" are registered and under the Karnataka Souharda Sahakari Act, 1997 a 'Cooperative is registered. Vide amendments in Karnataka Souharda Sahakari Act the scope of Act was expanded but nowhere were Cooperative Societies converted to Cooperatives. In both the Acts the definition of Cooperative and Cooperative Society is independently given. Conversion from Cooperative to Cooperative Society is possible as per Amending Act, 13/2004. Both are independent entities though their conversion from one to another is possible. No person can claim to be a Cooperative Society without registration under Karnataka Cooperative Societies Act and same are controlled through a Registrar Cooperatives. Thus, these two are Independent entities. The AO held that as per the certificate of Registration produced by the Appellant it is Cooperative and not a Cooperative Society. In view of these facts, the Id. AO held that assessee does not fall in the definition of a 'Cooperative Society' u/s 2(19) of the Act and is not eligible for deduction u/s 80P of the Act.

3.1 The AO further held that two judgments pronounced by SMC Bench of this Tribunal in the case of **Halarpur Pattina Souhakari Nayamitha vs ITO dated 26.07.2019** and **Siddhartha Pattina Souharda Sahakari Niyamita vs ITO dated 26.07.2019** cannot be taken into consideration due to following reasons:

- **Division Bench of Bengaluru Tribunal in Udaya Souharda Credit Cooperative Societies vs ITO dated 17.08.2018** held that no assessee can claim to be a cooperative Society in absence of registration with Cooperative Societies Act. It held

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that if creation of Cooperative Society under Cooperative Societies act is doubtful then claim of deduction u/s 80P cannot be allowed.

- Decision of SMC Bench cannot be relied as it is contrary to decision and has not yet reached finality.

3.2 The AO has discussed judgment of Bangalore Tribunal in **M/s Udaya Souharda Credit Cooperative Society Ltd vs ITO dated 17.08.2018** wherein it has been held that-

- Without a proper registration under Cooperative Societies Act nobody can claim it to be a Cooperative Society as activities of a Cooperative Society are to be controlled under Cooperative Societies Act through Registrar of Cooperative Societies.
- Both Souharda Cooperative and Cooperative Societies are different entities and benefit of Sec 80P can only be applied to a Cooperative Society registered under Karnataka Cooperative Societies Act.

3.3 The AO held that all the above judgments of Division Benches of the Tribunal are binding on him so he held that assessee is not a Cooperative Society and is not eligible for deduction u/s 80P of Act. Thus, deduction claimed u/s 80P of the Act was disallowed and Net profit of Rs.35,37,272/- was taxed as Income in status of AOP. On appeal, the Ld. CIT(A) confirmed the order of AO. Against this assessee is in appeal before us.

4. We have heard the rival submissions and perused the materials available on record. After hearing both the parties, we are of the opinion that this issue is squarely covered by the order of the coordinate bench of the Tribunal in the case of M/s. Pavagada

Souharda Multi-Purpose Co-operative Ltd. in ITA No.648/Bang/2020 for the assessment year 2016-17 dated 16.9.2021, wherein held as under:

“9. We have considered the rival submissions. Sec.2(19) defines co-operative societies for the purpose of the Act and the same is as follows:

“Definitions.

2. In this Act, unless the context otherwise requires,—

(19) "co-operative society" means a co-operative society registered under the Co-operative Societies Act, 1912 (2 of 1912), or under any other law for the time being in force in any State for the registration of co-operative societies ;”

10. The Hon’ble Karnataka High Court in the case of Swabhimani Souharda Credit Co-operative Ltd.(supra) after considering the aforesaid definition of Co-operative society made the following observations:

(i) the object of enacting sec80P of the 1961 Act may be defeated if a restrictive meaning is assigned to the definition of “co-operative society” as given u/s 2(19) in as much as the invocability of the provisions of sec. 80P is dependent upon the entity seeking the benefit thereunder being a co-operative society; going by the txt and context of these provisions, one can safely conclude that all entities that are registered under the enactments relating to co-operative societies, regardless of their varying nomenclatures need to be treated as co-operative societies;

(ii) in the State of Karnataka, there have been two statutes enacted by the State Legislature that relate to registration & regulation of co-operative societies viz., the Karnataka Co-operative Societies Act, 1959 i.e., Karnataka Act No.11 of 1959 and the Karnataka Souharda Sahakari Act, 1997 i.e. Karnataka Act No.17 of 2000; both these Acts are enacted pursuant to Article 246(3) r/w Entry 32, List-II of Schedule VII of the Constitution of India; there is no other Entry to which this Act is relatable; the Legislative Entries being only the fields of legislation need to be very broadly interpreted, is the settled position of constitutional jurisprudence vide UJAGAR PRINTS, ETC., vs. UNION OF INDIA, AIR 1989 SC 516; Chapter X of 1997 Act containing sec.67 enacts important co-operative principles that animate and brood through almost all the provisions of this Act;

(ii) After noticing the statement and objects and reasons for introducing The Karnataka Suiharda Sahakara Bill, 1997 has the following as the Statement of Objects & Reasons and preamble to the Karnataka Co-operative Societies Act, 1959 and the Karnataka Souharda Sahakari Act, 1997, concluded as follows:

"A perusal of these two preambles and various provisions of these two Acts leads one to an irresistible conclusion that both these Acts are cognate statutes that deal with co- operative societies, regardless of some difference in their nomenclature and functionality, the subject matter being the same;

(e) the word 'co-operative' is defined by sec.2(d-2) of 1959 Act as under:

"2(d-2): 'Co-operative' means a Co-operative registered under the Karnataka Souharda Sahakari Act, 1997 (Karnataka Act 17 of 2000), and includes the Union Co-operative and the Federal Co-operative"

Similarly, the word 'co-operative' is defined by Sec. 2(e) of 1997 Act as follows:

"2(e): "Co-operative" means a co-operative including a co-operative bank doing the business of banking registered or deemed to be registered under Section 5 and which has the words 'Souharda Sahakari' in its name (and for the purposes of the Banking Regulation Act, 1949 (Central Act 10 of 1949), the Reserve Bank of India Act, 1934 (Central Act 2 of 1934), the Deposit Insurance and Credit Guarantee Corporation Act, 1961 (Central Act 47 of 1961) and the National Bank for Agriculture and Rural Development Act, 1981 (Central Act 67 of 1981), it shall be deemed to be a Co-operative Society".

A close examination of these two definitions shows that they have abundant proximity with each other in terms of content and contours; it hardly needs to be stated that in both these definitions the word 'cooperative' is employed not as an adjective but as a noun; the definition of other relative concepts in the dictionary clauses of these Acts strengthens this view; this apart, sec.7 of the 1997 Act provides that the entity registered as a 'co-operative' shall be a body corporate, notwithstanding the conspicuous absence of the word 'society' as a postfix; sec.9 of the 1959 Act makes the entity once registered u/s.8 thereof a body corporate; both the entities have perpetual succession by operation of law; thus on registration be it under the 1959 Act or the 1997 Act, a legal personality is donned by them, so that inter alia they can own and possess the property;

(f) the employment of the word "Sahakari" in the very title of the 1997 Act is also not sans any significance; 'Sahakaar' in Sanskrit is the equivalent of 'sahakaara' in Kannada which means 'co-operation'; as already mentioned above both the 1959 Act and the 1997 Act employ this terminology; the 1997 Act is woven with the principles of cooperation; sec.4 of this Act bars registration of an entity unless its main objects are to serve the interest of the members in the area of cooperation and its bye-laws provide for economic and social betterment of its members through self-help & mutual aid in accordance

with the co-operative principles; this apart, even sub-section (2) of sec.4 is heavily loaded with co-operative substance.

*In the above circumstances, these writ petitions succeed; **a declaration is made to the effect that the entities registered under the Karnataka Souharda Sahakari Act, 1997 fit into the definition of "co-operative society" as enacted in sec.2(19) of the Income Tax Act, 1961 and therefore subject to all just exceptions, petitioners are entitled to stake their claim for the benefit of sec.80P of the said Act;** a Writ of Certiorari issues quashing the impugned notice dated 30.03.2018 at Annexure-D in W.P.No.48414/2018; other legal consequences accordingly do follow.*

It is needless to mention that the other provisions of sec. 80P of 1961 Act and their effect on the claim of the petitioner-like-societies have been left to be addressed by the concerned authorities.

11. *In the light of the decision of the Hon'ble Karnataka High Court, we are of the view that the assessee should be allowed deduction under section 80P(2)(a)(i) of the Act and the CIT(A) was justified in doing so. Except the ground that the Assessee was not a co-operative society entitled to deduction u/s.80P(2)(a)(i) of the Act, no other reasons were given for denying the benefit of the said deduction to the Assessee. Hence, the order of CIT(A) is upheld."*

5. Further, same view was taken by the jurisdictional High Court in the case of CIT & Anr. Vs. Shree Mahila Credit Souhardha Sahakari Ltd. (395 ITR 287), wherein held as under:

"If a co-operative bank is exclusively carrying on banking business, then the income derived from the business cannot be deducted in computing the total income of the assessee. The income is liable for tax. A co-operative bank as defined under the Banking Regulation Act, includes a primary agricultural credit society or a primary co-operative agricultural rural development bank. The Legislature did not want to deny the said benefit to a primary agricultural credit society or a primary co-operative agricultural and rural development bank. If the assessee is not a co-operative bank carrying on exclusively banking business and if it does not possess a license from the Reserve Bank of India to carry on business, then it is not a co-operative bank. It is a co-operative society which also carries on the business of lending money to its members which is covered under section 80P(2)(a)(i) of the Income-tax Act, 1961, i.e. carrying on the business of banking for providing credit facilities to its members. It is entitled to the special deduction under section 80P of the Act."

6. Further, the jurisdictional High Court in the case of Sri Vitthalray Souharda Pattin Sahakari Niyamit Vs. UOI and Others (426 ITR 457) (Karn.), wherein held as under:

“Held, allowing the petition, that the assessee registered under the 1997 Act was a co-operative society within the definition of co-operative society under section 2(19) of the 1961 Act and should be extended the benefit under section 80P of the 1961 Act. Consequently, the order of assessment and order to freeze the assessee’s bank account were to be quashed.”

7. In view of the above binding decision of the Tribunal and Hon’ble jurisdictional High Court, we inclined to decide the issue in favour of the assessee in allowing the claim u/s 80P of the Act.

8. The next ground is with regard to sustaining disallowance on account of non-deduction of TDS u/s 194A of the Act for invoking provisions of section 40(a)(ia) of the Act. This issue came for consideration before the coordinate bench of Tribunal in the case of Kodangulur Town Co-operative Bank Ltd. in ITA Nos.527 to 529 & 526/Coch/2015 for the assessment years 2007-08, 2008-09 & 2010-11, the Tribunal vide order dated 31.5.2018 has held as under:-

“6. *We have heard the rival submissions and perused the material on record. Originally this issue came up for consideration before this Tribunal in the case of Pinarayi Service Co-operative Bank Ltd. & others vs. ITO (152 ITD 90) wherein it was held as under:*

42.1 We have heard both the parties. We find a similar issue came up for consideration of the Cochin Bench of Tribunal in the case of Karivelloor Service Co-operative Bank Ltd. vs. ITO in I.T.A. No. 311/Coch/2012 vide order dated 22-03-2013 wherein it was held as under:

“11. We have considered the rival submissions on either side and also perused the material available on record. In the case of Kadachira Service Co-operative Bank Ltd. (supra), this Tribunal found that the taxpayers were not carrying on any banking activity and, therefore, they are agricultural cooperative societies. In view of the specific provisions exempting the agricultural co-operative societies from deduction of tax in respect of agricultural co-operative societies this Tribunal found that section 194A(3)(viiia) is not applicable to agricultural co-operative societies. In this case, it appears that the taxpayer was accepting deposits and maintaining savings bank account and current bank account. The taxpayer is providing cheque facilities to its customers. Apart from this, the taxpayer is engaged in the business of purchase and

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sale of cement, hardware, medicine and home appliances. The loan appears to have been given on pledging of gold jewellery and mortgage of land. In view of the admitted fact that the taxpayer is maintaining

savings account, current account and providing cheque facility to its customers, it is obvious that the taxpayer is engaged itself in the business of banking apart from other trading activities. Exemption u/s. 194A(3)(viii) is applicable only in respect of agricultural cooperative societies. The agricultural cooperative banks are bound to deduct tax. In this case, admittedly, the tax payer is engaged in the banking activity and maintaining savings bank account, current account and providing cheque facility to its customers. Therefore, the taxpayer is bound to deduct tax in respect of interest on the deposits. Therefore, this Tribunal is of the considered opinion that the decision in the case of Kadachira Service Cooperative Bank Ltd.(supra) may not be applicable to the facts of the present case. Accordingly, the orders of the lower authorities are confirmed.

42.2. Being so, this issue is identical and the facts are also similar to the one considered by this Bench of the Tribunal in the earlier occasion, we are inclined to decided the issue against the assessee. This ground in all the assesseees ' appeals is dismissed. "

6.1 It is pertinent to mention that while adjudicating the appeals in the case of Pinarayi Service Co-operative Bank Ltd. & others vs. ITO (supra), this Tribunal followed the finding in the case of Kunnamangalam Co-operative Bank Ltd. vs. ITO in ITA No. 156/Coch/2014 dated 25/07/2014 wherein it had discussed the meaning of the word 'co-operative society' as under:

"8.2 Now, the question before us is whether the Assessee is a cooperative bank or not. Co-operative Bank as defined in Part V of the Banking Regulations Act, 1949 is as under :

"Co-operative bank" means a state co-operative bank, a central co-operative bank and a primary co-operative bank: "

8.3 From the definition of Co-operative bank it is apparent that Co-operative bank means state co-operative bank, a Central Co-operative Bank and a Primary Co-operative bank. It is not the case of the revenue that the assessee is a state Co-operative bank or Central Co-operative bank. We have therefore to find whether the assessee is a primary Co-operative bank.

8.4 The Primary Co-operative bank is defined under section 5 clause (CCV) of Banking Regulation Act 1949 as under:-

"(CCV)" primary co-operative bank" means a co-operative society, other than a primary agricultural credit society-

(1) The primary object or principal business of which is transaction of banking business:

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(2) *the paid-up share capital and reserves of which are not less than one lakh of rupees: and*

(3) *the bye-laws of which do not permit admission of any other co-operative society as a member: Provided that this sub-clause shall not apply to the admission of a co-operative bank as a member by reason of such co-operative bank subscribing to the share capital of such Co-operative society out of funds provided by the State Government „for the purpose ”*

8.5 *From the aforesaid definition, it is apparent that if the co-operative society complied with all the three conditions; firstly that the primary object or principle business transacted by it is a banking business, secondly, the paid up share capital and reserve of which are 1 lakh or more and thirdly, by laws of the co-operative society do not permit admission of any other co-operative society as a member, it will be regarded to be primary co-operative bank. If co-operative society does not fulfill any of the conditions, it cannot be regarded to be a primary co-operative bank. Therefore, in the case of the Assessee we have to examine on the basis of the facts and materials on record whether the Assessee co-operative society complies with all the three conditions. In case, it does not comply with all the three conditions, it cannot be regarded to be a co-operative bank and the provisions of Sec. 80P(4), in our opinion, will not be applicable in the case of the Assessee. Once, the Assessee will not fall within the provisions of Sec. 80P(4), the Assessee, in our opinion, will be eligible to get deduction u/s 80P(2)(a)(i) in respect of whole of the income which the Assessee derives from carrying on the business of banking or providing credit facilities to its members.*

8.6 *Whether condition no. 1 is applicable in the case of the Assessee, for this we have to look into the bye-laws of the Assessee. The objects of the Assessee in this case are enumerated as under :*

- 1) *To provide short terms, medium term and long term loans to its members.*
- 2) *To provide over draft facilities to members who are traders and kisan credit card loan to members who are farmers;*
- 3) *To invent and execute different schemes for the non agricultural purpose of the members;*
- 4) *To procure and distribute fertilizers, pesticides and equipments for agricultural purposes and different articles for house-hold needs of the members;*
- 5) *To devise different schemes for collection, processing and the marketing of agricultural produce of the members;*
- 6) *In order to lend money to members, take loans from government and other co-operative institutions;*

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7) *To provide banking facilities to members including encashment of cheque, drafts, bills etc.;*

8) *To acquire movable and immovable assets for the functioning of the bank;*

9) *To collect deposits from members and customers under different deposit Schemes;*

10) *Marketing of the agricultural produce of the members, cooperating with government and Quasi government agencies;*

11) *To start branches and extension counters within its area of operation if necessary for the development of the bank;*

12) *To acquire and market industrial products for the benefit of the members;*

13) *To issue loans to members under hire purchase scheme for purchasing household articles, machinery, jeep, autorikshaw, car etc.*

14) *To accept deposits from primary non-agricultural co-operative societies.*

Out of these, only four objects (i.e. clause no. 2,4,5 and 10) are related to agriculture or agricultural operations. So from the bye-laws of the bank it cannot be said that the primary object or principal business of the bank is to provide financial accommodation to its members for agricultural purposes or for the purposes connected with agricultural activities.

8.7 *On the basis of these objects whether it can be said that the primary object or principal business of the Assessee is transaction of banking business? Banking business has been defined u/s 5(b) of the Banking Regulation Act in the following manner :*

"banking" means the accepting, for the purpose of lending or investment, of deposits of money from the public, repayable on demand or otherwise, and withdrawable by cheque, draft, order or otherwise. "

From the said definition it is clear that banking means accepting deposit of money from the public which is repayable on demand or otherwise and withdrawal of these deposits by cheque, draft, order or otherwise and these deposits are accepted for the purpose of lending or investment. These deposits must be accepted from the public, not only from the members. These deposits must be repayable on demand or otherwise and could be withdrawn by the depositor by cheque, draft or otherwise. We notice that the CIT(A) has given a categorical finding that the Assessee has carried on banking activities on the basis of findings in the assessment order. The relevant portion of the assessment order is as under :

"16. This shows that more than 95% percentage of the loans advance for non-agricultural purposes (normal banking business activities like any other commercial bank). The percentage of loans issued for agricultural purposes is only 3.56%. In short, it cannot be said that the primary object or principal business of the bank is to provide financial

accommodation to its members for agricultural purposes or for the purposes connected with agricultural activities.

17. The assessee bank is having four types of share holdings. (A) Class equity shares of Rs. 5/- each with voting rights. It is explained that these shares are issued to individuals. (B) Class equity shares of Rs.250/- each. It is submitted that presently Kerala Government is holding three shares. (C) Class equity shares of Rs. 5/- each without voting rights. These shares are issued to individuals. (D) Class equity shares of Rs. 25/- each without voting rights. These shares are also issued to individuals. As per the bye-laws of the banks, (B) class shares can be issued to State Government, State Co-operative bank, District Co-operative bank, Kerala Coconut Farmer's Co-operative Federation, Local bodies and trust falling under the area of operation of the bank. There is no specific clause in the Bye-laws of the bank which do not permit admission of any other co-operative society as a member.

18. The assessee Co-operative bank is registered as a Primary Agricultural Credit Society, but as narrated above, it does not satisfy the criteria or conditions stipulated in the Banking Regulation Act, 1949. So it squarely falls under the operation of Sub-section (4) of Section 80P of Income Tax Act, 1961. As such the assessee is not eligible for deduction u/s. 80P of the Income Tax Act, 1961. ”

8.8 The deposits accepted are used by the Assessee co-operative society for lending or investment. This fact has not been denied. Even out of the deposits so received, the loans have been given to the members of the society in accordance with the objects as enumerated above. Thus, in our opinion, condition no. 1 stands satisfied and it cannot be said that the Assessee society was not carrying on banking business as it was accepting deposits from the persons who have no voting right. So far as the second condition is concerned, there is no dispute that the paid up share capital and reserves in the case of the Assessee is more than Rs. 1 lac. Therefore, the Assessee satisfies the second condition.

8.9 Thus, we notice that all the three conditions in the case of the assessee for becoming primary cooperative bank stand complied with.

8.10 We have gone through the decision of the Hyderabad bench of this Tribunal in the case of The Citizen Cooperative Society vs. Addl. CIT, 41 305 (Hyd). We notice that this decision is applicable to the facts of the case before us. In that decision, under para 23 the Tribunal has given a finding that the Assessee is carrying on banking business and for all practical purposes it acts like a co-operative bank. The Society is governed by the Banking Regulations Act. Therefore, the society being a co-operative bank providing banking facilities to members is not eligible to claim deduction u/s 80P(2)(a)(i) after the introduction of sub-section (4) to section 80P. In view of this finding, the Assessee was denied deduction u/s 80P(2)(a)(i). We have also gone through the decision of the Bangalore Bench of the Tribunal in the case of ITO vs. Divyajyothi Credit Co-operative Society Ltd. (supra) in ITA No. 72/Bang/2013. In this case, we notice that the Hon'ble Tribunal confirmed the order of CIT(A) following the decision of the Tribunal in the case of ACIT, Circle 3(1), Bangalore vs. M/s. Bangalore Commercial Transport Credit Co-operative Society Ltd. in ITA No. 1069/Bang/2010 holding that Sec.

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80P(2)(a)(i) is applicable only to a co-operative bank and not to credit co-operative society. With due regards to the Bench, we are unable to find any term credit cooperative society u/s 80P(2)(a)(i) or u/s 80P(4), therefore, this decision cannot assist us. We noted that the Hon'ble Gujarat High Court in the case of CIT vs. Jafari Momin Vikas Co-op. Credit Society Ltd. in Tax Appeals no 442 of 2013, 443 of 2013 and 863 of 2013 (supra) vide order dt. 15.1.2014 took the view that Sec. 80P(4) will not apply to a society which is not a co-operative bank. In the case of Vyavasaya Seva Sahakara Sangha vs. State of Karnataka & Ors. (supra) we notice that the issue before the Hon'ble High Court in the Writ Petition filed by the Petitioner related to the legislative competence of the State Legislature for issuing a circular. The issue does not relate to the claim of deduction u/s 80P(2)(a)(i). While dealing with this issue, the Hon'ble High Court under para 12 observed as under :

“12. It is not possible to accept this contention. The petitioners are not the banking institutions coming under the purview of the Banking Regulation Act. They are the co-operative societies registered under the Act, and as such they are governed by the provisions of the Act passed by the State Legislature. Consequently, the State Government has control over them to the extent the Act permits. Major activities of the petitioners are to finance its members. For the purpose of financing its members, they borrow money from the financing agencies and repay the same. Merely because the petitioners-the co-operative societies in question-are required to advance loans to their members, they do not cease to be co-operative societies governed by the Act nor can they be treated as banking companies. It is also not possible to hold that these activities of the petitioners amount to “banking” as contemplated under the Banking Regulation Act, 1949, inasmuch as these co-operative societies are not established for the purpose of doing “banking” as defined in section 5(b) of the Banking Regulation Act, 1949. ”

This decision, in our opinion, is not applicable to the case before us because the provisions of Sec. 80P(2)(a)(i), as we have already held in the preceding paragraphs, are applicable to a co-operative society which is engaged in carrying on banking business facilities to its members if it is not a co-operative bank. We have also gone through the decision of this Bench in the case of DCIT vs. Jayalakshmi Mahila Vividodeshagala Souharda Sahakari Ltd. in ITA No. 1 to 3/PNJ/2012 dt. 30.3.2012 (supra). While discussing this issue, after analysing the aims and objects of the co-operative society under para 12 of its order, this Tribunal has held as under :

“12. From the aforesaid objects, it is apparent that none of the aims and objects allows the assessee cooperative society to accept deposits of money „from public for the purpose of lending or investment. In our opinion until and unless that condition is satisfied, it cannot be said that the prime object or principal business of the assessee is banking business. Therefore, the assessee will not comply with the first condition as laid down in the definition as given u/s. 5(ccv) of the Banking Regulation act, 1959 for becoming “primary cooperative bank”. The assessee, therefore, cannot be regarded to be primary cooperative bank and in consequence thereof, it cannot be a co-operative bank as defined under part V of the Banking Regulation Act 1949. Accordingly, in our opinion the provisions of section 80P (4) read with explanation there under will not be applicable in the case of the assessee. The assessee, therefore, in our opinion will be

entitled for the deduction u/s 80P(2)(a)(i). We accordingly confirm the order of CIT(A) allowing deduction to the assessee. ”

The other decisions also relied on are not applicable to the facts of the case of the assessee.

8.11. In view of our aforesaid discussion, we hold that the assessee is a primary cooperative bank and therefore hit by the provisions of section 80P(4). ”

6.2 Before us, the Ld. AR made the contention that the CBDT had issued Circular No. 9 of 2002 and the relevant portion reads as under:

“1.....

2. Representations have been received in the board seeking clarification as to whether a member of a co-operative bank may receive without TDS interest on time deposit made with the co-operative bank on or after 1-7-1995. The Board has considered the matter and it is clarified that a member of a co-operative bank shall receive interest on both time deposits and deposits other than time deposits with such co-operative bank without TDS under section 194A by virtue of the exemption granted vide clause (v) of sub-section (3) of the said section. The provisions of clause (viiia) of the said sub-section are applicable only in case of a non-member depositor of the co-operative bank, who shall receive interest only on deposits other than time deposits made on or after 1/7/1995 without TDS under section 194A.”

6.3 The Ld. AR further contended that in view of the above circular, the issue in dispute is to be decided in favour of the assessee which is binding on the Revenue as held by the Supreme Court in the case of K.P. Varghese vs. ITO (131 ITR 597).

6.4 Further, it was noticed that in the case of ACIT vs. Visakhapatnam Cooperative Ltd. (47 SOT 295), it was held that the assessee being a cooperative bank is exempt from TDS provisions as far as the payment of interest was to its own members. Recently, the Madras High Court in the case of Coimbatore District Central Co-operative Bank Ltd. vs. ITO (382 ITR 266) had an occasion to go into the provisions of sec. 194A of the I.T. Act which is similar to the issue before us. In that case, after elaborate discussion, the High Court opined as under:

“45 The second substantial question of law that we have framed for consideration is as to whether there exists a substantial or marked difference between a co-operative society engaged in carrying on banking business and a co-operative bank and if so, under which category the appellant would fall. The answer is too obvious in view of the foregoing discussion. Except the provisions of sub-clause (b) of clause (i), sub-clause (a) of clause (iii) and sub-clauses (a) and (b) of clause (viiia) of subsection (3) of section 194A, we do not find anywhere a dichotomy created between a co-operative

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bank and a co-operative society engaged in carrying on banking businesses. Therefore our answer to the second substantial question of law would be that none of the State or Central enactments such as the Tamil Nadu Co-operative Societies Act, 1983 the Multi-State Co-operative Societies Act, 2002 the Reserve Bank of India Act, 1934, the Banking Regulation Act, 1949 and the National Bank for Agriculture and Rural Development Act, 1981, make any distinction between a co-operative society engaged in carrying on banking business and a co-operative bank.

46. Since there is a reference to the Co-operative Societies Act, 1912, in section 2(19) of the Act, we have also gone to the Co-operative Societies Act, 1912 which in any case has no application to the societies registered in terms of the State enactments.

47.The changes that were made to section 194A right from April 1, 1967 upto June 1, 2015, could be summarized, without enlarging the scope of the discussion, as follows:

(i) Under the Finance (No. 2) Act of 1967, section 194A was amended with retrospective effect from April 1, 1967, to exclude any income credited or paid to a banking company to which the Banking Regulation Act, 1949, apply, including a co-operative society engaged in carrying on the business of banking as well as co-operative land mortgage bank. In other words, income-tax was not deductible at source if the recipient of such income was a bank or co-operative society engaged in banking. L

(ii) Under the Finance Act, 1968, which came into effect from 1st April, 1968, clause (v) was inserted, so as to exclude the income credited or paid by a co-operative society to any other co-operative society. In other words, by the 1968 amendment, the liability to deduct tax at source was not there in respect of co-operative societies. The payment of interest to members was not covered even at that time.

(iii) By the next amendment, which came into effect from April 1, 1970, the income credited or paid in respect of deposits made with a co-operative society engaged in carrying on the business of banking including a co-operative land mortgage bank or co-operative land development bank was excluded from the liability to deduct tax at source. Therefore, we can take it that it was only from April 1, 1970, that the income credited or paid in respect of deposits made with co-operative societies engaged in banking business, became exempt from liability to deduct tax at source.

(iv) The reason perhaps as to why the benefit was sought to be extended to the deposits made in co-operative societies carrying on the business of banking was that the colonial acts namely, the Cooperative Societies Act, 1912 and the Multi-Unit Co-operative Societies Act, 1942 were debated after India attained independence and a co-operative movement was already at the dawn in the State of Maharashtra where sugarcane was grown to a large extent.

(v) Finding that the benefit granted by the 1970 amendment was applicable only to the incomes credited or paid in respect of deposits made with co-operative societies carrying on the business of banking, the Government came up with the next amendment

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with effect from April 1, 1971, to enlarge the scope of the benefit to members of co-operative societies irrespective of whether the society carried on banking business or not. In other words, by the amendment that came with effect from April, 1, 1971, two sets of exemptions were granted, one was in respect of income credited or paid in respect of deposits made with a co-operative society carrying on the business of banking and the other was the income credited or paid by a co-operative society to a member or to any other society. To put it differently, one more category which was excluded from the application of section 194A was inserted with effect from April 1, 1971.

(vi) After nearly 20 years, the Government came up with an amendment with effect from October, 1 1991. By this amendment inserted with effect from October, 1, 1991, sub-clauses 9a) and (b) were inserted under the existing clause (vii) after splitting (vii) into two parts, namely (vii) and (viiia).

(viiia) The rationale for the amendment with effect from October 1, 1991, was explained in the Circular No. 621, dated December 19, 1991, as follows:

“Provisions for deduction of tax at source on interest income from bank deposits, etc.

55. Section 194A of the Income Tax Act provides that the provisions regarding deduction of income-tax at source shall not apply to the income credited or paid in respect of deposits with a banking company to which the Banking Regulation Act, 1949, applies (including any bank or banking institution referred to in section 51 of that Act) or with co-operative society engaged in carrying on the business of banking (including a co-operative land mortgage bank or a co-operative land development bank).

55.1 Instances have come to notice of the unaccounted incomes being deposited in banks in one's own name or benami. Interest on such deposits is not likely to be declared in income-tax returns.

55.2 With a view to improving tax compliance, section 194A of the Income-tax Act has been amended to secure deduction of tax at source from interest on time deposits with the aforesaid banking companies and co-operative societies engaged in carrying on the business of banking. However, the requirement of deduction of tax at source will not apply in the case of interest on time deposits with a primary agricultural credit society or a primary credit society or a co-operative land mortgage bank or a co-operative bank. Further, there will be no requirement of deduction of tax at source if the amount of interest does not exceed two thousand five hundred rupees in a financial year. The ‘term of time deposits’ has been defined to mean deposits, excluding recurring deposits, repayable on the expiry of fixed periods. Thus, interest on savings bank accounts and recurring deposit accounts is not subject to deduction of tax at source. ”

48. The amendment inserted with effect from October, 1, 1991, appears to have drawn flak within a few months. It appears that representations poured in from several quarters, forcing the Government to come up with yet another amendment with effect from June 1, 1992. By this amendment, the position that prevailed prior to October 1,

1991, was restored. In fact, the next Circular bearing No. 636 dated August 31, 1992 explained the rationale for the restoration of the position on the following lines:

“Modification of the provisions regarding deduction of tax at source:

49.1 A large number of representations have been received from members of public, representative bodies and banks pointing out various difficulties which had arisen on account of the operation of these provisions. Keeping in view these difficulties, the Act amends, -

(a) section 194A of the income-tax Act, to restore the position as obtaining before October 1, 1991, in relation to deduction of income tax at source in the case of income credited or paid in respect of deposits with a banking company to which the Banking Regulation Act, 1949 applies (including any bank or banking institution referred to in section 51 of that Act) or with a cooperative society engaged in carrying on the business of banking (including a co-operative land mortgage bank or a co-operative land development bank), and

(b) section 194H of the Income-tax Act, to provide that the deduction of income-tax at source from income by way of commission or brokerage will not be required to be made on or after 1st June, 1992. ”

49. After about three years, the next amendment came under the Finance Act, 1995. The object of this Act was indicated to be to bring about an effective method of widening the tax base by enlarging the scope of deduction of income-tax at source. By this amendment, sub-clauses (a) and (d) of clause (vii) were reintroduced with effect from July 1, 1995. The rationale for such amendment was indicated in Circular No. 717, dated August 14, 1995 as follows:

“Deduction of tax at source from interest on time deposits with banks.

46.1 On account of the provisions contained in clause (vii) of sub-section (3) of section 194A, income credited or paid in respect of deposits with a banking company to which the Banking Regulation Act, 1949, applies or with a co-operative society engaged in carrying on the business of banking is exempt from the requirement of deduction of income-tax at source.

46.2 The Act amends section 194A of the Income-tax Act, relating to deduction of income-tax at source from interest other than interest on securities in the case of residents. The amendment provides for deduction of income-tax at source at the rates in force (at present, 10 per cent. in the case of resident non-corporate persons and 20 per cent. Plus surcharge thereon in the case of domestic companies) from payment of interest exceeding ten thousand rupees in a financial year on time deposits made on or after July 1, 1995, with a banking company or with a co-operative society engaged in carrying on the business of banking. The aforesaid limit of ten thousand rupees shall be

computed with reference to the income credited or paid by a branch of the banking company or the co-operative society, as the case may be. The interest on time deposits made with a primary agricultural credit society or a primary credit society or a co-operative land mortgage bank or a co-operative land development bank, will not be subject to the requirement of deduction of income-tax at source. The expression "time deposits" is defined to mean deposits, excluding recurring deposits, repayable on the expiry of fixed period.

46.3The amendment will take effect from July 1, 1995."

50 As we have indicated earlier, sub-section (1) of section 194A imposes an obligation upon every person. Even individuals and Hindu undivided families are covered by the proviso subject to certain conditions. Therefore the exclusions found in sub-section (3) are naturally to be construed stricto sensu.

51. But unfortunately, if a taxing statute and an exclusion clause contained in the taxing statute are to be construed strictly, the provisions themselves should make it clear as to who are the persons who are to be charged or exempted and what are the circumstances under which they are charged or excluded. Though the legislative intent appears to be to deal with four different types of co-operative societies, the categorization appears to have been made by the various sub-sections and clauses of section 194A without defining each one of those categories. The four categories of co-operative societies sought to be dealt with under section 194A are (a) co-operative societies; (b) co-operative societies carrying on the business of banking; (c) co-operative societies banks; (d) primary agricultural credit society, primary credit society, co-operative land mortgage bank and co-operative land development bank.

52. While there is no difficulty in clearly identifying three out of those four categories, by at least taking external aid to construction, by referring to the enactments such as the Tamil Nadu Co-operative Societies Act, 1983, the Banking Regulation Act, 1949, the Reserve Bank of India Act, 1934, and National Bank for Agriculture and Rural Development Act, 1981, there is some difficulty in identifying the cooperative societies that fall under the category of "co-operative societies that fall under the category of "co-operative societies engaged in carrying on the business of banking". Such a category is not identified in any of these enactments which we have referred to above. The confusion has actually given rise to different Tribunals and different courts coming to different conclusions.

53. That leaves us with one last issue, namely, as to whether the conflict of opinion between the Tribunals and the High Courts was confined only to quasi-judicial and judicial bodies or as to whether there was a confusion even in the minds of the Legislature. The answer to this question can be found in the manner in which an amendment has been brought forth with effect from June 1, 2015 and the memorandum explaining the clauses.

54. With effect from June 1, 2015, sub-section(3) of section 194A stands amended. Clause 42 of the Finance Bill, 2015, reads as follows:

“42. In section 194A of the Income-tax Act, in sub-section (3), with effect from the 1st day of June, 2015, -

(a) in clause (i), after the proviso, the following proviso shall be inserted namely:-

‘Provided further that the amount referred to in the first proviso shall be computed with reference to the income credited or paid by the banking company or the co-operative society or the public company, as the case may be, where such banking company or the co-operative society or the public company has adopted core banking solutions’.

(b) in clause (v), for the words ‘paid by a co-operative society to a member thereof,’ the words and brackets ‘paid by a co-operative society (other than a co-operative bank) to a member thereof or to such income credited or paid by a co-operative society’ shall be substituted;

(c) after clause (v), the following Explanation shall be inserted, namely :-

‘Explanation.- For the purposes of this clause, ”co-operative bank ” shall have the same meaning assigned to it in Part V of the Banking Regulation Act, 1949 (10 of 1949);

(d) for clause (ix), the following clauses shall be substituted, namely:-

(ix) to such income credited by way of interest on the compensation amount awarded by the Motor Accidents Claims Tribunal;

(ixa) to such income paid by way of interest on the compensation amount awarded by the Motor Accidents Claims Tribunal where the amount of such income or, as the case may be, the aggregate of the amounts of such income paid during the financial year does not exceed fifty thousand rupees, ’

(e) in Explanation 1 below clause (xi), for the word ‘excluding,’ the word ‘including’ shall be substituted. ”

The relevant portion of the memorandum explaining the clauses in the Finance Bill reads as follows

“Section 194A(1) read with section 194A(3)(i) of the Act provide for deduction of tax on interest (other than interest on securities) over a specified threshold, i.e., Rs.10,000 for interest payment by banks, co-operative society engaged in banking business (co-operative bank) and post office and Rs.5,000 for payment of interest by other persons.

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Further, sub-section (3) of section 194a, inter alia, also provides for exemption from deduction of tax in respect of following interest payments by co-operative society:

(i) Interest payment by a co-operative society to a member thereof for any other co-operative society. (section 194A(3)(v) of the Act).

(vi) Interest payments on deposits by a primary agricultural credit society or primary credit society or co-operative land mortgage bank or co-operative land development bank. (section 194A(3)(viii)(a) of the Act).

(vii) Interest payment on deposits other than time deposit by a cooperative society engaged in the business of banking other than those mentioned in section 194A(3)(viii)(a) of the Act. (section 194A(3)(viii)(b) of the Act).

Therefore, as per the provisions of section 194A(1) read with provisions of sections 194A(3)(i)9b and 194A(3)(viii)(b), co-operative bank is required to deduct tax from interest payment on time deposits if the amount of such payment exceeds specified threshold of Rs.10,000. However, as the provisions of section 194A(3)(v) of the Act provide a general exemption from making tax deduction from payment of interest by all co-operative societies to its members, the co-operative banks tried to avail this exemption by making their depositors as members of different categories. This has led to dispute as to whether the cooperative banks, for which the specific provisions of tax deduction exist in the form of section 194A(1), section 194A(3)(viii)(b) and section 194A(3)(viii)(b) of the Act, can take the benefit of general exemption provided to all co-operative societies from deduction of tax on payment of interest to members. The matter has been carried to judicial forums and in some cases a view has been taken that the provisions of section 194A(3)(viii)(b) of the Act makes no distinction between members and non-members of co-operative banks for the purposes of deduction of tax, hence, the co-operative banks are required to deduct tax on payment of interest on time deposit and cannot avoid the same by taking the plea of the general exemption provided under section 194A(3)(v) of the Act. This is because the specific provision of tax deduction provided under section 194A(3)(i)(b) and 194A(3)(viii)(b) of the Act for co-operative banks override the general exemption provided to all co-operative societies for non-deduction of tax from interest payment to members under section 194A(3)(v) of the Act.

As there is no difference in functioning of the co-operative banks and other commercial banks, the Finance Act, 2006, and Finance Act, 2007, amended the provisions of the Act to provide for co-operative banks a taxation regime which is similar to that for the other commercial banks. Therefore, there is no rationale for treating the co-operative banks differently from other commercial banks in the matter of deduction of tax and allowing them to avail the exemption meant for smaller credit co-operative societies formed for the benefit of small number of members. However, as mentioned earlier, a doubt has been created regarding the applicability of the specific provisions mandating deduction of tax from the payment of interest on time deposits by the co-operative banks to its members by claiming that general exemption provided is also applicable for payment of interest to member depositors. In view of this, it is proposed to amend the provisions of the section

194A of the Act to expressly provide from the prospective date of June 1, 2015 that the exemption provided from deduction of tax from payment of interest to members by a co-operative society under section 194A(3)(v) of the Act shall not apply to the payment of interest on time deposits by the co-operative banks to its members.”

63. It can be seen from the last part of the portion extracted above that the very note explaining the clause was specific to the effect that the proposal was to bring forth an amendment with prospective effect from June 1, 2015. There is no dispute now that on and from June 1, 2015 the appellant cannot escape the liability from deduction of tax at source.

64. Once an amendment is introduced, for the purpose of removing the anomalous situation or for the purpose of removing the confusions both in the manner in which the provisions stood and the manner in which they were understood, the same could be taken only to have prospective effect. It must be pointed out that Parliament did not choose to answer a question. Rather it chose to amend the provisions. It is now well-settled that an amendment can only be prospective unless it is made retrospective by express language or necessary implication. Apart from the fact that the express language of section 194A after amendment does not indicate any retrospectivity, the note explaining the clauses goes one step further in making it clear that it was intended to have prospective effect from June 1, 2015.

65. Therefore our answer to the first substantial question of law would be in favour of the assessee.”

6.5 Later on, this judgment was considered by the Chennai Bench of the Tribunal in the case of Coimbatore District Central Co-operative Bank Ltd. & Another vs. ITO (46 CCH 372) after taking note of the amendment made by the Parliament in Section 194A(3) of the Act by Finance Bill, 2015 with effect from 1.6.2015, it was held that the “express language of Section 194A does not indicate any retrospectivity, therefore, the assessee cannot escape the liability from deduction of tax at source from 1.6.2015. The Madras High Court clarified that before 1.6.2015, the assessee was not expected to deduct tax on the interest paid to its members. Accordingly, the question was answered in favour of assessee. In view of this judgment of Madras High Court, according to the Ld. counsel, the assessee need not deduct tax in respect of interest paid till 1.31.05.2015. This judgment of Madras High Court was subsequently followed in the assessee's own case by judgment dated 29.10.2015. The Madras High Court considered an identical issue in assessee's own case in TC(A) No.588/2015 & others Madras High Court, after considering the amendment made in Section 194A of the Act by Finance Bill, 2015 with effect from 01.06.2015, found that the express language of Section 194A (3) clearly indicates that the exemption provided for deduction of tax from the payment of interest to the members by a co-operative society under Section 194A(3)(v) of the Act shall not apply to payment of interest on any deposit by the cooperative banks to its members with effect from 01.06.2015. The Madras High Court found that after 01.06.2015, the assessee cannot escape from the liability of deduction of tax at source. The Madras High Court further found that the amendment made in Section 194A(3) of the Act was not retrospective in operation. It is intended to have prospective effect with effect from 01.06.2015. Accordingly, the question was answered in favour of assessee. It can be seen from the last portion of the portion extracted above that the very note explaining the clause was specific to the effect that the proposal was to bring forth an amendment with prospective effect from 1.6.2015. There is no dispute now that on and from 1.6.2015 the assessee cannot escape the liability from deduction of tax at source. Once an amendment is introduced for the purpose of removing the anomalous situation or for the purpose of removing the confusions both in the manner in which the provisions stood and the manner in which they were understood, the same could be taken only to have

prospective effect. It must be pointed out that the Parliament did not choose to answer a question. Rather it chose to amend the provisions. It is now well settled that an amendment can only be prospective unless it is made retrospective by express language or necessary implication. Apart from the fact that the express language of Section 194A after amendment does not indicate any retrospectivity, the note explaining the clauses goes one step further in making it clear that it was intended to have prospective effect from 1.6.2015. In view of the above, we are of the considered opinion that the assessee is not liable to deduct tax under Section 194A of the Act on the interest paid to its own members till 31.05.2015. By respectfully following the judgment of the Madras High Court in the assessee's own case, the orders of the lower authorities are set aside."

6.6 *The Ld. AR placed heavy reliance on the judgments of the Jurisdictional High Court in the cases of Moolamattom Electricity Board Employees' Cooperative Bank Ltd. & others (supra) and Thodupuzha Urban Co-operative Bank Ltd. and another (supra). In these cases, it was an admitted fact that the assesses are co-operative societies. Hence, the Jurisdictional High Court came to the conclusion that sub-clause(a) of clause (viia) of sub-section (3) of section 194A was applicable. But in the present case, the assesseees are not cooperative society but co-operative bank carrying on banking business with the approval of the Reserve Bank of India and as such, the assesseees are not liable to deduct TDS under section 194A of the I.T. Act on the interest paid to its own members. On the other hand, the present assesseees are liable to deduct TDS on the interest payments to its non-members only. This ground of the appeals of the Revenue is partly allowed.*

8. *In the result, the appeals filed by the Revenue are partly allowed."*

9. In the present case, there is no allegation that the assessee paid interest on deposits other than its members. Hence, the issue is to be decided in favour of the assessee in respect of payment of interest to its members regarding which section 194A of the Act is not applicable in respect of payment of interest to its members. To that extent, the assessee's claim is to be allowed.

10. In the result, the assessee's appeal is allowed.

Order pronounced in the open court on 17th Nov, 2022

Sd/-
(Beena Pillai)
Judicial Member

Sd/-
(Chandra Poojari)
Accountant Member

Bangalore,
Dated 17th Nov, 2022.
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

**Asst. Registrar,
ITAT, Bangalore.**