

आयकर अपीलिय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES,"SMC" JAIPUR

डा० एस. सीतालक्ष्मी, न्यायिक सदस्य एवं श्री राठोड कमलेश जयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA. Nos. 221 & 222/JP/2023
निर्धारण वर्ष / Assessment Years : 2018-19 & 2020-21

Royal Credit Co-operative Society Ltd. 9, Lav Kush Nagar-1, Tonk Phatak, Jaipur	बनाम Vs.	A.O., NFAC, Delhi/Income Tax Officer, Ward-7(1), Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AABAR 1662 B		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Sh. S. R. Sharma (C.A.) &
Sh. R. K. Bhatra (CA)

राजस्व की ओर से / Revenue by : Smt Monisha Chaudhary (Addl. CIT)
सुनवाई की तारीख / Date of Hearing : 25/05/2023
उदघोषणा की तारीख / Date of Pronouncement : 20/06/2023

आदेश / ORDER

PER BENCH:

These two appeals are filed by assessee and are arising out of the order of the National Faceless Appeal Centre, Delhi dated 17/03/2023 [here in after (NFAC)] for assessment years 2018-19 & 2020-21 which in turn arise from the order dated 23.03.2021 & 21.09.2022 respectively passed under section 143(3) of the Income Tax Act, [here in after as Act] by the National e-Assessment Centre, Delhi.

2. Since the issues involved in the assessee's appeal for both the years are almost identical and are almost common, except the difference in figure of additions disputed, therefore, both these appeals were heard together with the agreement of both the parties and are being disposed off by this consolidated order.

3. At the outset, the Id. AR has submitted that the matter pertaining to Royal Credit Co Operative Society Limited in ITA no. 221/JPR/2023 may be taken as a lead case for discussions as the issues involved in the lead case are common and inextricably interlinked or in fact interwoven and the facts and circumstances of other cases are identical except the difference in the amount in other assessment year. The Id. DR did not raise any specific objection against taking that case as a lead case. Therefore, for the purpose of the present discussions, the case of ITA No. 221/JPR/2023 is taken as a lead. Based on the above arguments we have also seen that for both these appeals are similar facts, similar arguments and similar grounds raised, therefore, were heard together these two appeals and are disposed by taking lead case facts, grounds and arguments from the folder in ITA No. 221/JPR/2023 for the assessment year 2018-19 and the order

there in passed shall mutatis mutandis apply to the ITA No. 222/JPR/2023.

4. Before moving towards the facts of the case we would like to mention that the assessee has assailed the appeal in ITA No. 221/JPR/2023 on the following grounds;

1. That on the facts and in the circumstances of the case the Ld. CIT(A), NFAC is wrong, unjust and has erred in law in confirming the action of Ld. Assessing Officer in holding that interest income of Rs. 6075056 earned by the appellant co-operative society on FDR(s) with the Malviya Urban Co-operative bank Ltd is not an income derived by it from its business activities and is in the nature of receipts from other sources and thereby upholding working of Income from business by the Ld. AO at (-) Rs. 2904912 as against Rs. 3170144 correctly computed and declared by the appellant.

2. The Ld. CIT(A), NFAC is also wrong and has erred in law in confirming disallowance of deduction of Rs. 3170144 by the Ld. AO under section 80P(2)(a)(i) of the IT. Act, 1961.

3. That without prejudice to the ground No. (1) and (2) above on the facts and in the circumstances of the case the Ld. CIT(A), NFAC is wrong, unjust and has erred in law in upholding the action of Ld AO in rejecting alternate plea of the appellant that interest income of Rs. 6075056 derived by it from FDR(s) with the Malviya Urban Co-operative Bank is in fact income derived from a Co-operative Society within meaning of sec. 80P(2)(d) of the I.T. Act. 1961 and thereby confirming the denial of deduction on said amount of Rs. 6075056 u/s 80P(2)(d).

4. That the appellant craves the permission to add to or amend to any of the above grounds of appeal or to withdraw any of them.

5. The fact as culled out from the records is that the assessee filed its return of income for the Asst. Year 2018-19 on 18.08.2018 admitting a total income of Rs. 94,600/-. The same was processed

u/s 143(1) by CPC on 12.07.2019 with a total income of Rs. 94,600/-. In response to the notice u/s 142(1) issued, the assessee submitted information. After verifying the information submitted by the assessee it is seen that the assessee for the A.Y.2018-19 claimed deduction u/s.80P(2)(a)(i) of Chapter-IVA of Income tax Act, 1961 to the extent of Rs.31,70,144/-. In order to verify the genuineness of the claim of the assessee, notice u/s.142(1) issued asking to justify the claim of deduction made under Sec.80P(2)(a)(i) of Income Tax Act, 1961.

5.1 In response to the various notices issued, the assessee submitted the information and stated that the assessee is a Co-operative Credit Society formed and operated by members only. The assessee Co-operative Society is registered with the Registrar of Co-operative Society, Rajasthan, Jaipur under Rajasthan State Co-operative Act. The assessee accepts deposits and provide credit facilities solely to its members. The assessee provides secured loans to its members by way of overdraft facility, short term, medium/long term nature out of circulating funds available with it, which are in the form of share capital, recurring deposits, fixed deposits raised from its members.

5.2 After analyzing the particulars of income disclosed by the assessee, it can be seen that the interest amount of Rs. 3,09,71,971/- received from members of the Society for providing various credit facilities were only to be treated as business receipts. The net result after deducting the expenses claimed under various heads of Rs. 3,38,76,883/- from the business receipts of Rs. 3,09,71,971/- would be loss from business of (-) Rs. 29,04,912/-. The interest received on Fixed Deposits with Malavia Urban Co-operative bank Ltd. of Rs. 60,75,056/-, being the nature of receipts from other sources, is to be treated as income from other sources but not income from business as disclosed by the assessee. Thus there was not profit or gain from the business of the assessee in order to be eligible to claim the deduction u/s 80P(2)(a)(i) of I.T. Act. The Id. AO noted that the net result is a loss from business, the assessee is not eligible to claim deduction u/s. u/s.80 (P)(2)(a)(i) of the Act for the year under consideration and therefore, the deduction was denied to the assessee.

6. Aggrieved from the order of the assessment order, assessee preferred an appeal before the Id. CIT(A)/NFAC. Apropos to the

grounds of the appeal so raised the relevant finding of the Id.

CIT(A)/NFAC is reiterated here in below:

“18. In view of the decision of the Hon'ble Supreme Court in the above said case, it was held that the exemption/deduction section should be interpreted strictly and the burden on the assessee to prove the applicability of exemption.

a. The claim of the appellant that such interest income under the parameter of section 80P(2)(a)(i) does not qualify the basic nature of the deduction, as the section 80P(2)(a)(i) states clearly that the income is eligible for deduction which is earned in the course of business of banking and providing credit facilities to its member. The appellant has not substantiated that the interest income earned is from the investment made in Malavia Urban Co-operative Bank Ltd qualifies for the deduction u/s. 80P(2)(a)(i) of the Act.

b. Further, for the investment of surplus fund and claiming the deduction. the specific clause (d) of 80P(2) is provided and the appellant case does not fit in the said clause as the clause strictly states that the interest income is eligible for deduction if the fund is kept/invested in the other societies.

19. It is also pertinent to refer the decision of Hon'ble Supreme Court of India in the case of Totgars' Co-operative Sale Society Ltd Vs Income-tax Officer [2010] 188 Taxman 282 (SC), in which it was held that fund not required immediately for business of providing credit facilities and interest earned on such fund would come under the category of 'Income from Other Sources' taxable u/s 56 of the Income-tax Act, 1961 and the same would not qualify for deduction as business income u/s 80P(2)(a)(i) of the Income-tax Act, 1961.

20. In view of the above discussion, the undersigned is of considered opinion that the appellant is not eligible for deduction u/s 80P(2)(d)/80P(2)(a)(i) with respect to the interest income of Rs. 31,70,144/- earned from the deposit of surplus fund in the Co-operative Bank. Accordingly, the ground raised by the appellant stands dismissed.

21. In the result, the appeal is dismissed.”

7. As the assessee did not found any favour from the appeal so filed before the Id. CIT(A)/NFAC, preferred this appeal on the various grounds as reproduced here in above. To support grounds so raised by the assessee the Id. AR of the assessee relied upon the following written submissions:

“The above appeal has been filed by assessee against the appeal order dated 17-03-2023 passed by Ld. CIT(A), NFAC, Delhi in appeal No. NFAC/2017-18/10039767. The assessee has raised following grounds of appeal: -

1. *That on the facts and in the circumstances of the case the Ld. Assessing Officer is wrong, unjust and has erred in law in holding that interest income of Rs. 6075056 earned by the appellant co-operative society on FDR(s) with the Malviya Urban Co-operative bank Ltd is not an income derived by it from its business activities and is in the nature of receipts from other sources. The assessee officer thus wrongly worked Income from business at (-) Rs. 2904912 as against income of Rs. 3170144. Correctly computed and declared by the appellant in accordance.*
2. *The assessing Officer is further wrong and has erred in law in disallowing deduction of Rs. 3170144 claimed by the appellant under section 80P(2)(a)(i) of the I.T. Act, 1961.*
3. *That without prejudice to the ground No. (1) and (2) above on the facts and in the circumstances of the case the Ld. Assessing Officer is wrong, unjust and has erred in law in not accepting plea of the appellant that interest income of Rs. 6075056 derived by it from FDR(s) with the Malviya Urban Co-operative Bank is in fact income derived from a Co-operative Society within meaning of sec. 80P(2)(d) of the I.T. Act, 1961 by arbitrarily holding that income from co-operative Bank is not exempt in view of expl. To sub-section (4) of sec. 80P. The impugned action of the AO is wrong and bad in law in as much as the said explanation is far the purpose of sec. 80P(4) and not whole of section 80P of the I.T. Act, 1961. The denial of deduction on this amount of Rs. 6075056 u/s 80P(2)(d) by the assessing officer is wrong, unwarranted and bad in law.*

4. *That the appellant craves the permission to add to or amend to any of the above grounds of appeal or to withdraw any of them.*

1. Facts of the case

The assessee is a co-operative society registered under the Rajasthan Co-Operative Society Act, 2001. The society is governed by the Co-operative Societies Act and Rajasthan Co-operative Rules amended from time to time. The Cooperative society is meant for the benefit of members of the society and accepts deposits and provide credit facilities solely to its members. The assessee society primarily works for the mutual benefit of the said members by accepting deposits from members and giving on credit to needy members on interest. Further on account of statutory guidelines of the regulations of the societies, as prudence management and in the larger interest of the depositors the society keep its surplus funds by way of liquid investments.

2. Action of Ld. A.O.

The assessee society's case was selected in Scrutiny for this A.Y. by Ld. A.O. by issuing notice u/s 143 (2) which assessee complied from time to time. The Ld. A.O. in assessment proceedings is of the opinion that the interest income of Rs. 6075056 earned by the appellant co-operative society on FDR(s) with the Malviya Urban Co-operative bank Ltd is not an income derived by it from its business activities and is in the nature of receipts from other sources. The Ld. Assessing Officer is further opined that interest income of Rs. 6075056 derived by it from FDR(s) with the Malviya Urban Co-operative Bank is in fact income derived from a Co-operative Society within meaning of sec. 80P(2)(d) of the I.T. Act, 1961 by arbitrarily holding that income from co-operative Bank is not exempt in view of expl. To sub-section (4) of sec. 80P.

3. Order of CIT (A)

The assessee filed an appeal before CIT (A) NFAC, Delhi. The Ld. CIT(A) confirmed the addition made by the Ld. A.O. vide para 19 of his/her impugned order relying on the judgment of the Hon'ble Supreme Court in the case of Totgars Co-operative society Ltd. Vs Income tax officer held that fund not required immediately for business of providing credit facilities and interest earned on such fund would come under the category of 'income from other sources' taxable u/s 56 of the Income-Tax Act, 1961 and the same would not qualify for deduction as business income u/s 80P(2)(a)(i) of the income tax Act, 1961.

The Ground wise submissions of assessee are as under:-

The ground no. 1 to 3 are interlinked hence a combined submission is made hereunder:-

- 1.1 It is submitted that section 80P of the Act allows deduction in respect of various categories of income of a co-operative society. If any cooperative society carries on the business of banking, the interest income received by a cooperative society on its investment/deposits is attributable to banking business. The provision does not make any distinction insofar as the interest earned by deposit placed in a bank and interest earned on the compulsive deposit which is made as required under the relevant statute. It is no doubt that a cooperative society may be required to earmark some portion of its capital for exclusive deposit in Government prescribed securities or banks. A co-operative society may earn profits by way of interest by parking their funds in high-yielding deposits or may earn income by circulating its capital among its members in the course of their banking business. All the income from banking business which is referable to section 80P(2)(a)(i) of the Act would qualify for deduction under the Act.
- 1.2 The chapter VIA of the Act stipulates that in computing the total income of an assessee, there shall be allowed from his gross total income, in accordance with and subject to the provisions of this Chapter, the deductions specified in sections 80C to 80U. The chapter is divided into four distinct parts, namely, A to D. Part D deals with deductions in respect of certain incomes. Section 80P is a special provision providing for the deduction in respect of income of co-operative societies. As defined in section 2(19) of the Act, "co-operative society" means "a co-operative society registered under the Co-operative Societies Act, 1912, or under any other law for the time being in force in any State for the registration of co-operative societies". For ready reference and sake of convenience the relevant provisions of sub-section 1 and 2 of section 80P are reproduced herein below:-

"80P (1) Where, in the case of an assessee being a cooperative society, the gross total income includes any income referred to in sub-section (2), there shall be deducted, in accordance with and subject to the provisions of this section, the sums specified in sub-section (2), in computing the total income of the assessee

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

(a) *In the case of a cooperative society engaged in*

- (i) *carrying on the business of banking or providing credit facilities to its members, or*
- (ii) *a cottage industry¹, or*
- ²*[(iii) the marketing¹ of agricultural produce¹ grown by its members, or]*
- (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) *the processing, without the aid of power, of the agricultural produce of its members, ³[or]*
- ³*[(vi) the collective disposal of the labour^{3a} of its members, or*
- (vii) *fishing or allied activities, that is to say, the catching, curing, processing, preserving, storing or marketing of fish or the purchase of materials and equipment in connection therewith for the purpose of supplying them to its members.]*

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

- 1.3 It is submitted that section 80P(2)(a) of the Act does not make any distinction between income received by a cooperative society from statutory deposits and the income from non-statutory deposit of surplus funds. The income earned by the cooperative society either by deposit of the prescribed percentage of its reserves or by deposit of their surplus funds is exempted. The income from either category of the deposits is certainly attributable to the business of banking or providing credit facilities to its members. Indeed as a prudent business practice, no entity engaged in the business of banking or providing credit facilities to its members would keep its amount idle. By parking the funds, immediately not required for the business, in other banks, interest can be earned to the benefit of the cooperative society. Every cooperative society is expected to make profits for the benefit of its members. As long as the deposit of the surplus funds in the other banks for the purpose of earning interest is not unauthorized or not barred by any of the applicable statutes, the income is certainly

attributable to the business of banking or providing credit facilities to its members.

Further for ready reference the relevant para of the Rajasthan Co-operative Societies Act is also reproduced herein below:-

49. Investment of funds. - A co-operative society shall invest its funds in one or more of the following, namely -

- (a) Central Co-operative Bank;*
- (b) apex Co-operative Bank;*
- (c) In the shares or securities or debentures issued by any other co-operative society with limited liability;*
- (d) In any other mode permitted by the rules or by the general or special order of the Government:*

Provided that notwithstanding anything contained in this section, the guidelines, if any issued by the Reserve Bank of India in this regard for the Urban Co-operative Banks shall have effect.

Provided further that a short term co-operative credit structure society may invest or deposit its funds in any bank or financial institution regulated by the Reserve Bank of India.]

[Copy of Rajasthan Co-operative Society Act 2001 is attached]

1.4 Assessee society's submissions are also supported by the decision of *The Hon'ble High Court of Telengana and Andhra Pradesh in case of Vavveru Co-operative Rural Bank Ltd. v. Chief Commissioner of Income-tax (2017) 88 taxmann.com 728, in which case it was held that:*

Section [80P](#) of the Income-tax Act, 1961 - Deductions - Income of co-operative societies - Assessment years 2010-11, 2013-14 and 2014-15 - Assessee-society was entitled to deduction under section 80P in respect of interest income from fixed deposits with nationalised bank when source of such investment was income derived from activities listed in sub-clauses (i) to (vii) of clause (a) of section 80P(2) [In favour of assessee]

If there is a co-operative society, which is carrying on several activities including activities listed in sub-clauses (i) to (vii) of clause (a) of section 80P(2), the benefit under clause (a) will be limited only to the profits and gains of business attributable to any one or more of such activities. If same co-operative society has an income not attributable to any one or more of the activities listed in sub-clauses (i) to (vii) of clause (a), the same may go

out of the purview of clause (a), but the co-operative society may claim the benefit of clause (d) or (e) either by investing the income in another co-operative society or investing the income in the construction of a godown or warehouse and letting out the same. In other words, the benefit conferred by clause (d) upon all types of co-operative societies is restricted only to the investments made in other co-operative societies. Such a restriction cannot be read into clause (a), as the temporary parking of the profits and gains of business in nationalised banks and the earning of interest income therefrom is only one of the methods of multiplying the same income. The assessee, a primary agricultural co-operative credit society, was engaged in the sale of fertilizers to its members. A portion of the income derived therefrom was deposited by the assessee in nationalised banks and income by way of interest on fixed deposits was claimed to be eligible for deduction under section 80P(2). The Assessing Officer treated the interest income as income from other sources not eligible for deduction.

Held that the original source of the investments made by the assessee in nationalized banks was admittedly the income derived from the activities listed in sub-clauses (i) to (vii) of clause (a) of section 80P(2). The character of such income is not lost, especially when the statute uses the expression 'attributable to' and not any one of the two expressions, namely, 'derived from' or 'directly attributable to'. Therefore, the assessee was entitled to deduction under section 80P on interest income.

- *The Hon'ble Supreme Court in the case of PCIT Vs NTPC Sail Power Co. Ltd. 117 Taxmann. Com 136/217 Taxman 92 (SC) held that Interest earned by assessee on temporary deposit of surplus funds was taxable as business income and not as income from other sources.*
- *The Hon'ble Supreme Court in the case of CIT Vs Ramanathapuram District Cooperative Central Bank Ltd. (2002) 123 Taxman 222 (SC) held that where a cooperative Bank, carrying on business of banking, is statutorily required to place a part of its funds in approved securities, income from such securities would be eligible for deduction under section 80P()(a)(i).*
- *CIT Vs Andhra Pradesh State Cooperative Bank Ltd. (2011) 200 Taxmann 220/12 Taxmann.Com 66(AP) :- Section 80P (2)(a) does not make a distinction between income received by a cooperative Bank from statutory deposits and income from non- statutory deposit of surplus funds and, therefore, income received by a cooperative bank from deposits, whether or not they are made in*

discharge of a statutory obligation or otherwise, being income from banking business would be eligible for exemption under section 80P.

The Hon'ble jurisdictional ITAT, Jaipur bench, Jaipur also in the case of Shiksha Vibhag Karmacharigan Sahakari Samiti Ltd, Kota Vs. ITO Ward 2(3) Kota in IT Appeal No.281& 282/JP 2017 and 87/JP/2018 dated 17.06.2019 and ITO Vs Keshorai Patan Sahkari Sugar Mills, Bundi (ITA No. 418-419/JP/2017) upheld the same view after considering the judgements of Totagar's Co-operative Sale Society Ltd.

The Assessee society also relies on the following judgments:

- a) *DCIT Vs BardoliVibhag Gram Udyog Vikas Co-op Credit Society Ltd., (2019) 102 Taxmann.Com 110, Surat*
- b) *The Jawala Cooperative Urban Thrift & Credit Society Limited Vs ACIT (ITA No. 2900-2901/Del/2015) dated 26-04-2018*
- c) *ITO Vs M/s.Chirayinkeezhu Service Co-operative Bank Limited (ITA No. 420/Coch/2018 dated 25-10-2018)*

As such the interest income from FDRs is correctly declared and assessable under the Income from Business head in view of above facts and settled legal position of law also supports that deduction u/s 80P of the Act, is correctly and legally claimed by assessee society and accordingly allowable as such.

2. In the assessment order, it is alleged that assessee society is also not entitled to claim the deduction u/s 80P (2)(d) of the I.T. Act, for the interest earned of Rs.31,70,144/- on FDs with Malviya Urban Co-Operative Bank Ltd. & M/s Jaipur Central Co-operative Bank Ltd. The said allegation is far away from the facts of the case and on analysis of relevant and complete provisions of Section 80P, in view of the following submission of the assessee society.

2.1 It is alleged in the assessment order that Co-Operative Bank are not co-operative society for the purpose of section 80P of the Act, by quoting that, For the purpose of section 80P, the co-operative bank is defined as under;
“Co-operative Bank” and “primary agricultural credit society” shall have the meaning respectively assigned to them in Part V of the Banking Regulation Act 1949”

2.2 It is kindly submitted that the aforesaid definition of co-operative bank is as per Explanation(a) to sub-section (4) of Section 80P, inserted by the Finance Act, 2006 w.e.f. 1-4-2007, denying the deduction under Section 80P to the Co-Operative Banks. The relevant provisions of Section 80P (4) and explanation there to are re-produced hereinbelow:-

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

Explanation.—for the purposes of this sub-section,—

- (a) "co-operative bank" and "primary agricultural credit society" shall have the meanings respectively assigned to them in Part V of the Banking Regulation Act, 1949 (10 of 1949);*
- (b) "Primary co-operative agricultural and rural development bank" means a society having its area of operation confined to a taluk and the principal object of which is to provide for long-term credit for agricultural and rural development activities.]*

On plain reading of the Explanation (a) it is apparent that said explanation defining co-operative bank is only to be understood with respect to sub-section (4) of 80P and not for entire section 80P. It is pertinent to note that Explanation begins with the phrase "For the purpose of this sub-section,-. It means that interpretation of the co-operative bank is to be drawn only and only while interpreting sub-section (4) of Section 80P and not otherwise.

- 2.3. Contention of the assessee society are duly supported by as decided in the case of *Doaba Co-operative Sugar Mills Ltd (supra)*, the Punjab & Haryana High Courtas held as under:

'5. The contention of Mr. Gupta, learned counsel appearing for the Revenue, is that the Tribunal was wrong in allowing deduction under Section 80P(2) (d) of the Act because it is not established that the assessee had derived the interest by investing all the amount of surplus funds. It is further contended by Mr. Gupta that the assessee has paid interest to Jalandhar Central Co-operative Bank and has also received interest from the said co- operative bank, thereby showing that the assessee has on the aggregate paid interest to the bank and, therefore, no deduction under Section 80P(2)(d) can be allowed. To appreciate this argument, we have to look to the provisions of Section 80P(2)(d) of the Act, For facility of reference, it is reproduced as under:

"80P. (2)(d) in respect of any income by way of interest or dividends derived by the co-operative society from its investments with any other co- operative society, the whole of such income."

6. So far as the principle of interpretation applicable to a taxing statute is concerned, we can do no better than to quote the by-now classic words of Rowlatt J., in *Cape Brandy Syndicate v. IRC* [1921] 1 KB 64, 71 :

"...In a taxing Act, one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used,"

7. The principle laid down by Rowlatt J., has also been time and again approved and applied by the Supreme Court in different cases including the one, *Hansraj Gordhandasv. H. H. Dave, Assistant Collector of Central Excise and Customs, AIR 1970 SC 755, 759.*

8. Section 80P(2)(d) of the Act allows whole deduction of an income by way of interest or dividends derived by the co-operative society from its investment with any other co-operative society. This provision does not make any distinction in regard to source of the investment because this Section envisages deduction in respect of any income derived by the co-operative society from any investment with a co-operative society. It is immaterial whether any interest paid to the co-operative society exceeds the interest received from the bank on investments. The Revenue is not required to look to the nature of the investment whether it was from its surplus funds or otherwise. The Act does not speak of any adjustment as sought to be made out by learned counsel for the Revenue. The provision does not indicate any such adjustment in regard to interest derived from the co-operative society from its investment in any other co-operative society. Therefore, we do not agree with the argument advanced by learned counsel for the Revenue. In our opinion, the learned Tribunal was right in law in allowing deduction under Section 80P(2)(d) of the Income-tax Act, 1961. In respect of interest of RS. 4,00,919 on account of interest received from Nawanshaln Central Co-operative Bank without adjusting the interest paid to the bank. Therefore, the reference is answered against the Revenue in the affirmative and in favour of the assessee.' [Emphasis supplied]

- 2.4. It is correctly appraised in para 11.0. of the assessment order that Co-operative bank even though might be registered as a Co-operative Society is not a co-operative society eligible for receiving the benefit of exemption or 100 % deduction under section 80P of the Act, as its Banking business is governed by the provisions of a special law like Banking Regulation Act, 1949. But here in the case of assessee society it is not a co-operative bank but a co-operative society eligible for deduction u/s 80P (2)(a)(i) as well as under sub-section 80P (2) (d) of the Income Tax Act, 1961.
- 2.5. In para 12.0 of the assessment order amendment of section 194A(3) (v) of the Act by Finance Act, 2015 have been enumerated that w.e.f. 01.06.2015 the said section excludes the co-operative bank from the genus category of co-operative society and making it liable to make TDS on the interest paid by it to other person further indicates that the legislative intent is to exclude Co-Operative Banks from the beneficiary category of co-operative society entitled to exemption or 100% deduction of its income u/s 80P of the Act. It is kindly submitted that the said amendment can not be borrowed for interpretation of provisions of section 80P (2) (d) of the Act, as legislature was very much clear in keeping exemption or 100% deduction under Section 80P (2) (a),(b) (c) and (d) for the co-operative society. The intent of the legislature is further emphasized from the drafting of the Explanation (a) to sub-section 4 of Section 80P which in unambiguous words begins that For the purpose of this sub-section, -- (a) "Co-operative bank" and "primary agricultural credit society" shall have the meaning assigned to them in Part V of the Banking Regulation Act,

If the intent of the legislature would have been to take out Co-operative Bank from the Co-operative society from the ambit of the provisions of section 80P (2), the Explanation would have also been placed under sub-section (2) of the Section 80P or otherwise said Explanation would have referred For the purpose of this Section and not word For the purpose of this sub-section.

- 2.6 As already submitted herein before, assessee society again wish to emphasize that

"...In a taxing Act, one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used,"

The principle laid down by Rowlatt J., has also been time and again approved and applied by the Supreme Court in different cases including the one, Hansraj Gordhandasv. H. H. Dave, Assistant Collector of Central Excise and Customs, AIR 1970 SC 755, 759.

- 2.7 In para 13.0. of the order, decision in the case of M/s Totagars Co-operative Sales Society Limited has been relied, however the facts of the said case are different from the facts in the case of the assessee society. The said decision was rendered in connection with Section 80P (2) (i) and not w.r.t. Section 80 (2)(d) of the Act.

In the case of *Totagar's Co-operative Sale Society Ltd v/ s ITO (supra)* the Hon'ble Supreme Court while interpreting the section 80P(2)(a)(i) of the Act held that surplus funds not immediately required in the business and invested in the short term deposit would be assessable under the head "income from other sources" where the Co- operative society is engaged in carrying on business of banking or providing credit facilities to its members and consequently no deduction is allowable u/s 80P(2)(a)(i) of the Act. Thus, from a perusal of the provisions of u/s 80P(2)(a)(i) and 80P(2)(d) it is clear that the former deals with deduction in respect of profits and gain of business in case of the co-operative society carrying on business of banking or providing credit facilities to its members if the said income is assessable as income from business whereas latter provides for deduction in respect of income by way interest and dividend derived by assessee from its investments with other cooperative society. Thus it is amply clear that a cooperative society can only avail deduction u/s 80P(2)(a)(i) in respect of its income assessable as business income and not as income from other sources if it carries on business of the banking or providing credit facilities to its members and has income assessable under the head business whereas for claiming u/s 80P(2)(d) it must have income of interest and dividend on investments with other Co-operative society may or may not be engaged in the banking for providing credit facilities to its members and the head under which the income is assessable is not material for the claim of deduction under this section.

The Honble Supreme Court in the case of *Totagar's Co-operative Sale Society Ltd.(Supra)* held that a society has surplus funds which are invested in short term deposits where the society is engaged in the business of banking or providing credit facilities to its members in that case the said income from short term deposits shall be treated and assessed as income from other sources and deduction u/s 80(P)(2)(a)(i) would not be available meaning thereby that deduction

u/s 80(P)(2)(a)(i) is available only in respect of income which is assessable as business income and not as income from other sources. Whereas in distinction to this, the provisions of section 80(P)(2)(d) of the Act provides for deduction in respect of income of a coop society by way of interest or dividend from its investments with other coop society if such income is included in the gross total income of the such coop society.

The ITAT, Mumbai held the same view in the case of Lands End Cooperative Housing Society vs. I.T.O. ward-16(1)(3), Mumbai in ITA No. 3566/Mum/ 2014 for Assessment Year: 2009-10 vide order dated 15/01/2016 after considering the Hon'ble Supreme Court's judgment in the case of Totagar's Co-operative Sale Society Ltd.(Supra).

2.8 Likewise in para 14.0.and 15.0. of the order, decision in the case of M/s Bandra Shiv Samruddhi Co-Operative Housing Society Ltd. Vs. ACIT 19(3) in ITA No.1073/2012 dated 19.04.2013 has been quoted and relied upon, wherein it is held that the interest earned from cooperative bank is not eligible for deduction u/s 80P of the Income Tax Act. The facts of the said case are also different from the facts in the case of the assessee society. In the aforesaid the said society was Housing Society and the decision was rendered upon the concept of mutually and decision of Hon'ble SC's judgment in the case of Totagar's Co-Operative Sale Society (Supra) was relied upon while rendering decision. As such it is submitted the said decision was rendered in connection with Section 80P (2) (i) and not w.r.t. Section 80 (2)(d) of the Act, and

Accordingly, the ratio decided in the said case is not at all applicable and relevant in the case of assessee society.

2.9 Assessee society also places, its reliance in support of submissions, upon order of jurisdictional Hon'ble ITAT Jaipur Bench decision in the case of Shiksha Vibhag Karmacharigan Sahakari Samiti Ltd, Kota Vs. ITO Ward 2(3) Kota in IT Appeal No. 281& 282/JP 2017 and 87/JP/2018 dated 17.06.2019[Copy of order attached], where in the Hon'ble ITAT has reiterated in the concluding para while deciding in favour of the appellant society as under:

"The Hon'ble High Court has again considered the decision of Hon'ble Supreme Court in case of Totagars Co-operative Sale Society Ltd. vs. ITO (supra) and held that the interest earned on the deposits of the assessee's own fund made in the banks is eligible for deduction under section 80P(2)(a) being the said income is attributable to the business activity of the assessee. Though there are divergent views on this issue, however, by

following the decision of Hon'ble Jurisdictional High Court as well as the decision of this Tribunal, we decide this issue in favour of the assessee and allow the deduction under section 80P/80P(2)(d) in respect of interest earned on deposits made with the banks/cooperative banks. Hence the addition made by the AO on this account for all the three years is deleted."

- 2.10 The Hon'ble ITAT Jaipur Bench in the recent case of M/s. Jaipur Zila Dugdh Utpadak Sahakari Sangh Ltd Vs. DCIT/ACIT Circle- 6 Jaipur in IT Appeal No. 512,513 & 22/JP/2019 Dated 09-11-2022 held that *"on the issue as to whether a cooperative bank is a cooperative society or not, there are decisions of various High Courts and ITAT in favour of the assessee at the relevant point of time when notice u/s 148 was issued. Even the Coordinate Bench in case of ITO Vs. Shree Keshorai Patan Sahakari Sugar Mill (ITA No. 418 & 419/JP/2017 order dated 31.01.2018) held that co-operative bank is to be treated as co-operative society for the purpose of interest income on investment in such co-operative bank and thus, eligible for deduction u/s 80P(2)(d) in respect of the interest income from investment made with the co-operative bank. Thus, when AO has taken one of the permissible view for allowing deduction u/s 80P(2)(d) in respect of interest earned by the assessee on investment made in FDR with Jaipur Central Cooperative Bank Limited, then on the basis of various decisions relied by Ld. A/R (supra), we have no hesitation to hold that reopening is bad in law and thus, this ground of the assessee is allowed."*

The appellant also relying on the following judgement(s) of Hon'ble coordinate Jurisdictional ITAT, Jaipur:-

- a) M/s Jhunjhunu Karya Vikrya Sahakari Samiti Limited Vs. PCIT-2, Jaipur in the IT Appeal No. 150/JP/2022 Dated 15-12-2022
- b) Shri Madhopur KrayaVikraya Sahkari Samiti Limited Vs. PCIT-2 Jaipur the ITAT Jaipur Bench in the IT Appeal No. 194/JP/2022 Dated

- 2.11 The Hon'ble ITAT, Bench, Hyderabad in case of the Tirumala Trupati devasthanams employees co op. Credit society, Tirupati vs. the ITO, ward-1(1), Tirupati after considering the judgement of Hon'ble Supreme Court in Totagar's co-op society ltd. Held that:-

"I have gone through the record in the light of the submissions made on either side. Facts are not in dispute. The decision of the Hon'ble Apex Court in the case of Totgars Co-operative Sale Society Ltd.(supra), is explained by the

Hon'ble jurisdictional High Court in the case of The Vavveru Co-operative Rural Bank Ltd. vs. CCIT (2017) [396 ITR 371](AP), while dealing with the allowability of the interest derived by cooperative societies from out of the investments if any, made. The Hon'ble court observed that, "the case before the Supreme Court in Totgar's Co-operative Sale Society Ltd.'s case (supra) was in respect of a co-operative credit society, which was also marketing the agricultural produce of its members. As seen from the facts disclosed in the decision of the Karnataka High Court in Totgars, from out of which the decision of the Supreme Court arose, the assessee was carrying on the business of marketing agricultural produce of the members of the society. It is also found from paragraph-3 of the decision of the Karnataka High Court in Totgar's Co-operative Sale Society Ltd.'s case (supra) that the business activity other than marketing of the agricultural produce actually resulted in net loss to the society. Therefore, it appears that the assessee in Totgars was carrying on some of the activities listed in clause (a) alongwith other activities. This is perhaps the reason that the assessee did not pay to its members the proceeds of the sale of their produce, but invested the same in banks. As a consequence, the investments were shown as liabilities, as they represented the money belonging to the members. The income derived from the investments made by retaining the monies belonging to the members cannot certainly be termed as profits and gains of business. This is why Totgar's struck a different note."

9. In the case on hand, undisputedly, the interest arose on the credit balances with reference to the regular course of business of the assessee. On this aspect, the Hon'ble jurisdiction High Court in Vavveru Cooperative Rural Bank Ltd. (supra), held that, if the original source of the investments made by the petitioners in nationalized banks is admittedly the income that the petitioners derived from the activities listed in sub clauses(i) to (vii) of clause (a), then the character of such income may not be lost, especially when the statute uses the expression "attributable to" and not any one of the two expressions, namely, "derived from" or "directly attributable to".

10. It, therefore, goes without saying that the interest credited by the Andhra Bank and the Indian Bank to the account of the assessee on the credit balances does not lose its character as the income derived from the activities of the assessee covered by 80P(2)(a)(i) of the Act. I, therefore, am of the opinion that the disallowed interest in this matter, as a matter of fact is eligible for deduction under section 80P(2)(a)(i) of the Act. Learned Assessing Officer will accordingly delete the disallowance.

- 2.12 The Jawala Cooperative Urban Thrift & Credit Society Limited, 218-219, Cycle Market, Jhandewalan Extn. New Delhi Vs The ACIT, Circle-62(1) Civic Centre, New Delhi held that:-

"We have considered the rival submissions. It is not in dispute that assessee is a Cooperative Urban Thrift & Credit Society engaged in providing credit facilities to its Members and only its Members can get credit facilities. The assessee claimed that its income is exempt under section 80P of the I.T. Act from taxation. It was also pleaded that in earlier years the same claim of assessee have been accepted by the Revenue Department. The rule of consistency applies in favour of assessee as no different facts have been brought on record. It is also claimed that in A.Y. 2008-2009, the A.O. has denied deduction under section 80P of the I.T. Act on interest income on FDR with Bombay Mercantile Cooperative Bank Ltd., and was taxed. The Ld. CIT(A), however, deleted the addition and the Tribunal dismissed the appeal of Revenue. The assessee placed sufficient material before the authorities below to prove that it has invested surplus funds in FDR and earned interest. These funds were available to assessee for utilisation for providing credit facilities to its Members. The interest on FDR have been pledged with the same Bank and O.D. facility have been obtained. The O.D. facility obtained were used for providing credit facilities to its Members. The assessee also filed Certificate that Bombay Mercantile Cooperative Bank Ltd., is a Cooperative Society. The findings of the Tribunal in the case of assessee for A.Y. 2008-2009 have already been reproduced above in which it was held that Bombay Mercantile Cooperative Bank Ltd., have been assessed as a Cooperative Society and its income was allowed to be exempt under section 80P(2)(a)(i) of the I.T. Act by the Mumbai Bench. It was, therefore, held that fixed deposits placed with this Bank falls within the exemption granted by Section 80P(2)(d) of the I.T. Act and assessee was also eligible for deduction under section 80P(2)(a)(i) of the I.T. Act. The order of the Tribunal has become final because Departmental Appeal have been dismissed by the Hon'ble Delhi High Court, though, on tax effect. Thus, assessee has been able to prove that it has invested surplus fund in the FDR and earned interest which is utilised for providing credit facilities to its Members. The O.D. facility was also obtained from the same Bank which is used for providing credit facilities to its Members. The issue is, therefore, covered in favour of the assessee by the Order of ITAT, Delhi Bench, in the case of same assessee for A.Y. 2008-2009. Since the finding of fact has become final that Bombay Mercantile Cooperative Bank Ltd., is a Cooperative

Society, therefore, there was no justification to apply Section 80P(4) of the I.T. Act against the assessee. In the same Order of the Tribunal, the decision of the Hon'ble Supreme Court in the case of Totgars Cooperative Sale Society Ltd., (supra) was found to be distinguishable on facts. Therefore, there was no justification for Ld. CIT(A) to distinguish the Order of the Tribunal in the case of the same assessee. The Hon'ble Karnataka High Court in the case of Tumkar Merchants Souharda Credit Cooperative Ltd., Tumkur vs. ITO, Tumkur (supra) in para-8 held as under:

"8. Therefore, the word "attributable to" is certainly wider in import than the expression "derived from". Whenever the legislature wanted to give a restricted meaning, they have used the expression "derived from". The expression "attributable to" being of wider import, the said expression is used by the legislature whenever they intended to gather receipts from sources other than the actual conduct of the business. A Cooperative Society which is carrying on the business of providing credit facilities to its members, earns profits and gains of business by providing credit facilities to its members. The interest income so derived or the capital, if not immediately required to be lent to the members, they cannot keep the said amount idle. If they deposit this amount in bank so as to earn interest, the said interest income is attributable to the profits and gains of the business of providing credit facilities to its members only. The society is not carrying on any separate business for earning such interest income. The income so derived is the amount of profits and gains of business attributable to the activity of carrying on the business of banking or providing credit facilities to its members by a co-operative society and is liable to be deducted from the gross total income under Section 80P of the Act.

8.1. In the said decision, the Judgment of Hon'ble Supreme Court in the case of Totgars Cooperative Sale Society Ltd., (supra) have been considered by the High Court and it was held that the said decision is confined to facts of that case. The appeal of assessee was allowed. The Ahmedabad Bench of the Tribunal in the case of Arbuda Credit Co-op. Society Ltd., vs. ACIT (supra), followed the Order in the case of same assessee for A.Y. 2008-2009 and decision of the Hon'ble Karnataka High Court above and decided the issue in favour of the assessee and held that assessee is eligible for deduction under section 80P(2)(a)(i) of the I.T. Act for the interest income earned on unutilized idle funds kept for business purposes of the Society being deposited with Banas Bank. The Ld. CIT(A) in the case of the same assessee for A.Y. 2013-2014 vide order dated 15.02.2018 following the

order of the Tribunal for A.Y. 2008-2009 allowed the claim of assessee. Therefore, there were no justification for Ld. CIT(A) in not following the order of the Tribunal in the case of same assessee for A.Y. 2008-2009. The Hon'ble Madhya Pradesh High Court in the case of Agrawal Warehousing and Leasing Ltd., 257 ITR 235 held that the Ld. CIT(A) not only committed judicial impropriety but also erred in law in refusing to follow the order of the Appellate Tribunal. The conditions of Section 80P(2)(a)(i) and also 80P(2)(d) are satisfied by assessee.

8.2. Considering the totality of the facts and circumstances, we are of the view that authorities below were not justified in refusing to grant deduction under section 80P of the I.T. Act in favour of the assessee. We, accordingly, set aside the orders of the authorities below and delete the entire addition. The appeal of assessee is allowed.

9. In the result, appeal of the assessee is allowed.

2.13 FURTHER RECENTLY HON'BLE ITAT, MUMBAI BENCH, MUMBAI IN THE CASE OF AMORE COMMERCIAL PREMISES CO-OP SOCIETY LTD. VS CPC, BANGLORE, KARNATAKA (ITA No. 2873-74/MUM/2022) VIDE ORDER DATED 17-01-2023 AFTER CONSIDERING THE JUDGEMENT OF HON'BLE SUPREME COURT IN TOTAGAR'S CO-OP SOCIETY LTD. HELD AS UNDER:-

8. Hon'ble High Court of Karnataka in case of Pr. CIT & Anr. Vs. Totgar's Co-operative Sale Society Ltd. (2017) 292 ITR 74 (Kar.) and Hon'ble Gujarat High Court in case of State Bank of India vs. ITA No.2873 & 2874/M/2022 AMORE COMMERCIAL PREMISES 9 CIT (2016) 389 ITR 578 (Guj.) had held that interest income earned by a co-operative society on its investment held with cooperative bank would be eligible for claim of deduction under section 80P(2)(d) of the Act.

9. So following the decision rendered by Hon'ble Karnataka High Court (supra) and Hon'ble Gujarat High Court (supra), we are of the considered view that assessee society who has earned an amount of Rs. Rs. 6,96,725/- from its investment of surplus fund with cooperative banks is entitled for deduction under section 80P(2)(d) of the Act. Resultantly, the Ld. CIT(A) has erred in upholding the denial of deduction by the AO to the assessee under section 80P(2)(d) of the Act.

10. In view of but has been discussed above, I am of the consider view that Ld. CIT(A) has erred in upholding the denial of deduction

claimed by the Assessee Society u/s. 80P (2)(d) of the Act, hence Assessing Officer is directed allowed the same.

- 2.14 The Hon'ble High Court of Calcutta in case of PCIT Vs Gunja Samabay Krishi Unnayan Samity Ltd. (147 Taxmann Com 518) Dated 13-01-2023 held that "Where assessee, co-operative society, earned interest income on surplus funds invested in deposits with banks and Government securities, since neither said amount of deposit was due to its members nor it was liability to its members, same would qualify for deduction under section 80P(2)(a)(i)".
- 2.15 In view of the aforesaid various decisions by jurisdictional Hon'ble High Court and Hon'ble ITAT the assessee society is rightly entitled to claim the deduction of interest income of FDRs with Co-operative Bank under Section 80 (2) (d) of the Act.

In view of the above facts and settled legal position of law the deduction u/s 80P of the Act, is correctly and legally claimed by assessee society and accordingly allowable as such. It is prayed to your honors to set aside the order of Ld. CIT(A) and addition made in the assessment order may kindly be deleted.

Ground No. (4)

General ground.

The appellant prays accordingly."

8. In this appeal the Id. AR of the assessee submitted compilation of judgment(s), the same is reiterated here in below.

S. No.	Name of Case	Name of Court	Date of order	Page No.
1	Pr. CIT vs. Gunja Samabay Krishi Unnayan Samity Ltd.	High Court of Calcutta	13-01-2023	1-3
2	Income Tax Officer, Vs. Keshorai Patan Sahakari Sugar Mill, Bundi	ITAT Jaipur Bench	31-01-2018	4-19
3	The Jawala Cooperative Urban Thrift & Credit Society Limited vs. ACIT, Circle-62(1), Delhi	ITAT Delhi Bench	26-04-2018	20-38
4	Shiksha Vibhag Karmacharigan Sahakari	ITAT Jaipur Bench	17-06-2019	39-58

	Samiti Ltd. vs. Income Tax Officer, Ward 2(3), Kota			
5	M/s Jaipur Zila Dugdh Utpadak Sahakari Sangh Ltd. vs. DCIT/ACIT, Circle-06, Jaipur	ITAT Jaipur Bench	09-11-2022	59-70
6	Shri Madhopur Kraya Vikraya Sahkari Samiti Limited vs. Pr. CIT-2, Jaipur	ITAT Jaipur Bench	15-11-2022	71-84
7	Jhunjhunu Karya Vikrya Sahakari Samiti Limited vs. Pr. CIT-2, Jaipur	ITAT Jaipur Bench	15-12-2022	85-112
8	The Tirumala Tirupati Devasthanams Employees Co-operative Society, vs. Income Tax Officer	ITAT Hyderabad Bench	11-04-2023	113-117

9. The Id DR is heard who relied on the findings of the lower authorities and more particularly advanced the similar contentions as stated in the order of the Id. CIT(A). The Id. DR relied and also filed a copy of decision of the Gujarat High Court in case of Katlary Kariyanan Merchant Sahakari Sarafi Mandali Ltd. Vs. ACIT [140 taxmann.com 602] where in the court following the decision of PCIT Vs. Totagars Co-Operative Sale Society [83 taxmann.com 140] held the reopening was in accordance with the law.

10. We have heard the rival contentions, perused the material placed on record and orders of the lower authorities. We have also perused the judicial pronouncements that have been pressed into service by both the parties to drive home to their respective

contentions. The main issue in this case is the denial of deduction u/s.80 (P)(2)(a)(i) of I.T. Act, to the assessee to the extent of net profit of Rs.31,70,144/- earned by the assessee from carrying on business as Co-operative Society and the assessee claimed said amount as eligible for deduction u/s.80(P) of I.T. Act. It was also stated that the assessee's source of income is interest income arising while providing credit facilities to its members and as such it is entitled for deduction u/s 80P(2)(a)(i) of I.T. Act which was claimed in the return of income filed by the assessee.

10.1 We shall first advert to the assessee's grievance that the lower authorities had erred in declining its claim for deduction u/s. 80P(2)(a)(i) of the Act, i.e, as regards the interest income that was earned on the surplus funds which were deposited by it with Malviya Urban Co-operative Bank Ltd., i.e, a co-operative bank. After deliberating at length on the issue in hand, we find that the aforesaid claim of the assessee hinges around the aspect that as to whether or not the interest income earned by it on its surplus funds which were parked as deposits in the normal course of its business of providing credit facilities to its members, i.e., at the point of time when there were no takers for the said funds, was

eligible for deduction u/s. 80P(2)(a)(i) of the Act. We have given a thoughtful consideration to the contentions advanced by the Ld. Authorized representatives for both the parties.

10.2 Before proceeding any further, we deem it fit to cull out the provisions of section 80P(2)(a)(i) of the Act, the scope and gamut of which is the primary bone of contention before us, which reads as under :

"80P. (1) Where, in the case of an assessee being a co-operative society, the gross total income includes any income referred to in sub-section (2), there shall be deducted, in accordance with and subject to the provisions of this section, the sums specified in sub-section (2), in computing the total income of the assessee.

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

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

(i) carrying on the business of banking or providing credit facilities to its members, or

(ii) to (iii)....."

(Emphasis by underlining supplied by us)

10.3 On a perusal of the aforesaid statutory provision, we find that the same, contemplates, that the income of a co-operative society from its business of banking or providing credit facilities to its members is eligible for deduction u/s. 80P(2)(a)(i) of the Act. Our indulgence in the present appeal is confined to the limited aspect, i.e, as to whether or not the interest income earned by the

assessee-society by depositing its surplus funds with a bank can be brought within the meaning of "income from carrying on the business of banking or providing credit facilities to its members", and thus, would fall within the realm of the deduction contemplated in section 80P(2)(a)(i) of the Act. At this stage, we may herein observe, that it is the claim of the assessee, that as depositing of its surplus funds, i.e, the funds for which there were no takers at the relevant point of time, in the course of its business of providing credit facilities to its members, is inextricably interlinked; or in fact interwoven with its said stream of its business activity, therefore, the interest income received on such short-term deposits was duly eligible for deduction under the aforesaid statutory provision, i.e., sec. 80P(2)(a)(i) of the Act. We may herein observe, that though the assessee-society is engaged in providing credit facilities to its members. It is neither the case of the revenue nor a fact discernible from the record that the funds deposited by the assessee-society with the bank, viz. Malavia Urban Co-operative Bank Limited (supra) were the amounts that were payable by the society to its members, and the same having being retained were for the time being invested as a short-term deposit/security with the bank. If that would have been so, then, the interest income earned

on such short-term deposit/security with the bank would not have been eligible for deduction u/s.80P(2)(a)(i) of the Act. But then, as the amount deposited by the assessee-society with the bank, viz. Malavia Urban Co-operative Bank Limited (supra) was simpliciter surplus or idle funds of the assessee society, for which there were no takers for the time being in course of its business of providing credit facilities to its members. Therefore, depositing of the same by way of short-term deposits with the aforesaid bank, as stated by the Id. A.R, and rightly so, would clearly be inextricably interlinked, or in fact interwoven with its aforesaid primary business activity, i.e., providing of credit facilities to its members. At this stage, we may herein observe, that the Hon'ble Supreme Court in the case of Totgars Co-operative Sale Society Ltd. (supra), had held, that in a case where the assessee-cooperative society apart from providing credit facilities to its members was also in the business of marketing of agricultural produce grown by its members, and the sale consideration of the agricultural produce due towards its members was thereafter retained and invested as a short-term deposit/security with the bank, then, the interest income therein earned to the said extent could not be said to be attributable to its activity of providing credit facilities to its

members. As is discernible from the aforesaid judicial pronouncement of the Hon'ble Supreme Court, we find the Hon'ble Apex Court had clarified beyond doubt that they have confined the judgment to the facts of the case before them, and the same was not to be considered as laying down of any law. Be that as it may, the aforesaid judgment of the Hon'ble Supreme Court in the case of Totgars Co-operative Sale Society Ltd. (supra) had thereafter been considered by the Hon'ble High Court of Karnataka in the case of Tumkur Merchants Souharda Cooperative Ltd. (supra), wherein the Hon'ble High Court had after exhaustive deliberations held as under :

'6. From the aforesaid facts and rival contentions, the undisputed facts which emerges is, the sum of Rs. 1,77,305/- represents the interest earned from short term deposits and from savings bank account. The assessee is a cooperative society providing credit facilities to its members. It is not carrying on any other business. The interest income earned by the assessee by providing credit facilities to its members is deposited in the banks for a short duration which has earned interest. Therefore, whether this interest is attributable to the business of providing credit facilities to its members, is the question. In this regard, it is necessary to notice the relevant provision of law *i.e.* section 80P(2)(a)(i):

"80P. *Deduction in respect of income of cooperative societies.*—(1) Where, in the case of an assessee being a cooperative society, the gross total income includes any income referred to in sub-section (2), there shall be deducted, in accordance with and subject to the provisions of this section, the sums specified in sub-section (2), in computing the total income of the assessee.

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

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

(i) carrying on the business of banking or providing credit facilities to its members, or

(ii) to (vii)**

**

**

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

7. The word 'attributable used in the said section is of great importance. The Apex Court had an occasion to consider the meaning of the word 'attributable' as supposed to derive from its use in various other provisions of the statute in the case of *Cambay Electric Supply Industrial Co. Ltd. v. CIT*, Gujarat-II reported in ITR Vol.113 (1978) Page 842 at Page 93 as under:

As regards the aspect emerging from the expression "attributable to" occurring in the phrase "profits and gains attributable to the business of" the specified industry (here generation and distribution of electricity) on which the learned Solicitor General relied, it will be pertinent to observe that the Legislature has deliberately used the expression "attributable to" and not the expression "derived from". It cannot be disputed that the expression "attributable to" is certainly wider in import than the expression "derived from". Had the expression "derived from" been used it could have with some force been contended that a balancing charge arising from the sale of old machinery and buildings cannot be regarded as profits and gains derived from the conduct of the business of generation and distribution of electricity. In this connection it may be pointed out that whenever the Legislature wanted to give a restricted meaning in the manner suggested by the learned Solicitor General it has used the expression "derived from", as for instance in s. 80J. In our view since the expression of wider import, namely, "attributable to" has been used, the Legislature intended to cover receipts from sources other than the actual conduct of the business of generation and distribution of electricity.

8. Therefore, the word "attributable to" is certainly wider in import than the expression "derived from". Whenever the legislature wanted to give a restricted meaning, they have used the expression "derived from". The expression "attributable to" being of wider import, the said expression is used by the legislature whenever they intended to gather receipts from sources other than the actual conduct of the business. A cooperative society which is carrying on the business providing credit facilities to its members, earns profit and gains of business by providing credit facilities to its members. The interest income so derived or the capital, if not immediately required to be lent to the members, they cannot keep the said amount idle. If they deposit this amount in bank so as to earn interest, the said interest income is attributable to the profits and gains of the business of providing credit facilities to its members only. The society is not carrying on any separate business for earning such interest income. The income so derived is the amount of

profits and gains of business attributable to the activity of carrying on the business of banking or providing credit facilities to its members by a co-operative society and is liable to be deducted from the gross total income under section 80P of the Act.

9. In this context when we look at the judgment of the Apex Court in the case of *M/s. Totgars Co-operative Sale Society Ltd*, on which reliance is placed, the Supreme Court was dealing with a case where the assessee co-operative society, apart from providing credit facilities to the members, was also in the business of marketing of agricultural produce grown by its members. The sale consideration received from marketing agricultural produce of its members was retained in many cases. The said retained amount which was payable to its members from whom produce was bought, was invested in a short-term deposit/security. Such an amount which was retained by the assessee-society was a liability and it was shown in the balance sheet on the liability side. Therefore, to that extent, such interest income cannot be said to be attributable either to the activity mentioned in section 80P(2)(a)(i) of the Act or under section 80P(2)(a)(iii) of the Act. Therefore, in the facts of the said case, the Apex Court held the Assessing Officer was right in taxing the interest income indicated above under section 56 of the Act. Further they made it clear that they are confining the said judgment to the facts of that case. Therefore, it is clear, Supreme Court was not laying down any law.

10. In the instant case, the amount which was invested in banks to earn interest was not an amount due to any members. It was not the liability. It was not shown as liability in their account. In fact this amount which is in the nature of profits and gains, was not immediately required by the assessee for lending money to the members, as there were no takers. Therefore, they had deposited the money in a bank so as to earn interest. The said interest income is attributable to carrying on the business of banking and therefore, it is liable to be deducted in terms of section 80P(1) of the Act. In fact similar view is taken by the Andhra Pradesh High Court in the case of *COMMISSIONER OF INCOME TAX III HYDERABAD v. ANDHRA PRADESH STATE COOPERATIVE BANK LTD*. Reported in (2011) 200 TAXMAN 220/12. In that view of the matter, the order passed by the appellate authorities denying the benefit of deduction of the aforesaid amount is unsustainable in law. Accordingly, it is hereby set aside. The substantial question of law is answered in favour of the assessee and against the revenue. Hence, we pass the following order:

Appeal is allowed.

The impugned order is hereby set aside. Parties to bear their own cost.'

10.4 Recently even the honourable apex court on 20.04.2023 in the Civil Appeal NO . 8719/2022 in the case of The PR. Commissioner of Income Tax 17, Mumbai VERSUS M/S ANNASAHEB PATIL MATHADI KAMGAR SAHAKARI PATHPEDI LIMITED held that

Apart from the fact that against the relied upon decision in the case of M/s. Quepem Urban Co-operative Credit Society Ltd.(supra),the Special Leave Petition has been dismissed, having heard learned counsel appearing on behalf of the respective parties, the issue involved in the present appeal is squarely covered against the Revenue in view of the decision of this Court in *Mavilayi Service Cooperative Bank Limited and Others Vs. Commissioner of Income Tax, Calicut and Another* (2021) 7 SCC 90. This Court, in the aforesaid decision has specifically observed and held that primary Agricultural Credit Societies cannot be termed as Co-operative Banks under the Banking Regulation Act and, therefore, such credit societies shall be entitled to exemption under Section 80(P)(2) of the Income Tax Act, 1961.

Ms. Aakansha Kaul, learned counsel appearing on behalf of the appellant/Revenue has tried to submit that the respondent/Assessee will fall under the definition of Co-operative Bank as their activity is to give credit/loan. However, it is required to be noted that merely giving credit to its members only cannot be said to be the Co-operative Banks/Banks under the Banking Regulation Act. The banking activities under the Banking Regulation Act are altogether different activities. There is a vast difference between the credit societies giving credit to their own members only and the Banks providing banking services including the credit to the public at large also. There are concurrent findings recorded by CITA, ITAT and the High Court that the respondent/Assessee cannot be termed as Banks/Cooperative Banks and that being a credit society, they are entitled to exemption under Section 80(P)(2) of the Income Tax Act. Such finding of fact is not required to be interfered with by this Court in exercise of powers under Article 136 of the Constitution of India. Even otherwise, on merits also and taking into consideration the CBDT Circulars and even the definition of Bank under the Banking Regulation Act, the respondent/Assessee cannot be said to be Co-operative Bank/Bank and, therefore, Section 80(P)(4) shall not be applicable and that the respondent/Assessee shall be entitled to exemption/benefit under Section 80(P)(2) of the Income Tax Act.

In view of the above and for the reasons stated hereinabove, the present appeal deserves to be dismissed and is accordingly dismissed, answering the question against the Revenue and in favour of the Assessee.

10.5 In the backdrop of the aforesaid discussion and judicial decision discussed we are of a considered view, that as in the case of the assessee before us the surplus funds parked by way of short-term deposit with the co-operative bank, viz. *Malavia Urban Co-operative Bank Limited* are inextricably interlinked, or in fact interwoven with its business of providing credit facilities to its members, therefore, the same as claimed by the Ld. AR, and rightly so, would duly be eligible for deduction u/s. 80P(2)(a)(i) of the Act. We, thus, in terms of our aforesaid observations, direct the Assessing Officer to allow deduction of Rs.31,70,144/- u/s. 80P(2)(a)(i) of the Act on the interest income earned by the assessee society on its deposits with the co-operative bank.

In the results appeal of the assessee in ITA No. 221/JPR/2023 is allowed.

11. The fact of the case in ITA No. 222/JP/2023 is similar to the case in ITA No. 221JP/2023 and we have heard both the parties and persuaded the materials available on record. The bench has noticed that the issues raised by the assessee in this appeal No.

222/JP/2023 is equally similar on set of facts and grounds. Therefore, it is not imperative to repeat the facts and various grounds raised by both the parties. Hence, the bench feels that the decision taken by us in ITA No. 221/JP/2023 for the Assessment Year 2018-19 shall apply mutatis mutandis in ITA No. 222/JP/2023 for the Assessment Year 2020-21.

In the result, both appeals of the assessee are allowed.

Order pronounced in the open Court on 20/06/2023.

Sd/-

(डा० एस. सीतालक्ष्मी)
(Dr. S. Seethalakshmi)
न्यायिक सदस्य / Judicial Member

Sd/-

(राठोड कमलेश जयन्तभाई)
(Rathod Kamlesh Jayantbhai)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 20/06/2023

*Ganesh Kr.

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- Royal Credit Co-operative Society Limited, Jaipur
2. प्रत्यर्थी / The Respondent- A.O., NFAC, Delhi/Income Tax Officer, Ware-7(1), Jaipur
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File { ITA Nos. 221 & 222/JP/2023 }

आदेशानुसार / By order

सहायक पंजीकार / Asst. Registrar