IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH : BANGALORE

BEFORE SHRI GEORGE GEORGE K, VICE-PRESIDENT
AND
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER

ITA Nos. 547 to 551/Bang/2023
Assessment Years : 2013-14 to 2015-16, 2017-18 & 2018-19

M/s. Sri Jihveshwara Credit Co-op. Society Ltd., 125, Swakulasali Sangha Building, BVK Iyengar Road Cross, Huriopet, Bengaluru – 560 053. **PAN: AABAS7092Q**	**Vs.**	The Income Tax Officer, Ward – 2(2)(5), Bangalore.
APPELLANT		**RESPONDENT**

Assessee by	:	Shri Prasanna, Advocate
Revenue by	:	Shri V. Parithivel, JCIT (DR)

Date of Hearing	:	20-09-2023
Date of Pronouncement	:	29-09-2023

ORDER

PER BENCH

These five appeals filed by the assessee are against the separate orders passed by the NFAC, Delhi vide the following DIN Nos. for the Assessment Years under consideration.

S.No.	Assessment Year	DIN No.	NFAC order dated
1.	2013-14	ITBA/NFAC/S/250/2023-24/1054200017(1)	07/07/2023
2.	2014-15	ITBA/NFAC/S/250/2023-24/1054200054(1)	07/07/2023
3.	2015-16	ITBA/NFAC/S/250/2023-24/1054200237(1)	07/07/2023
4.	2017-18	ITBA/NFAC/S/250/2023-24/1054199371(1)	07/07/2023
5.	2018-19	ITBA/NFAC/S/250/2023-24/1054200372(1)	07/07/2023

2. The sole issue raised by the assessee in these five appeals are not granting deduction u/s. 80P(2)(a)(i)/80P(2)(d) of the IT Act on the interest income received from the co-operative banks/bank deposits and alternatively he also argued that if the assessee is not eligible for claim of deduction u/s. 80P(2) then the cost of funds should be allowed to the assessee. Since the issue involved are similar for all the five years, therefore, for the sake of brevity and convenience, we are first taking the Assessment Year 2013-14 for deciding the issue and the decision of this case shall apply mutatis - mutandis in other appeals also to the extent of the issue involved.

3. This is the second round of proceeding before us. Briefly stated the facts of the case are that the assessee filed return declaring Nil income after claiming deduction of Rs.18,17,300/- u/s. 80P. The case was selected for scrutiny and statutory notices were issued to the assessee. In the second round of proceedings before us, the assessee challenged the deduction u/s. 80P which was not granted by the Ld.CIT(A) on the interest

received of Rs.43,47,431/- on the investment made by the assessee in co-operative banks by relying on the judgment of Hon'ble jurisdictional High Court in case of Totgars Cooperative Sale Society reported in (2017) 83 taxmann.com 140 & (2017) 78 taxmann.com 179. The Ld.AR of the assessee submitted that the case of the assessee is covered by the jurisdictional High Court in case of Guttigedarara Credit Co-operative Society Ltd. reported in (2015) 60 taxmann.com 215 (Karnataka) and Tumkur Merchants Souharda Credit Cooperative Ltd. reported in (2015) 55 taxmann.com 447 (Karnataka). The assessee should be allowed deduction u/s. 80P(2)(a)(i)/80P(2)(d) of the IT Act. Alternatively he submitted that if the deduction is not allowed under Chapter VIA to the assessee, then the cost of funds for earning the interest income from co-operative banks should be allowed to the assessee as held by the coordinate bench of the Tribunal in ITA No. 376 to 379/Bang/2023 order dated 18.07.2023.

4. The Ld.DR relied on the order of the lower authorities and he submitted that the Ld.CIT(A) has rightly decided the issue in favour of the revenue relying on the latest judgment of the jurisdictional High Court of Karnataka in case of Totgars Cooperative Sale Society reported in (2017) 83 taxmann.com 140 & (2017) 78 taxmann.com 179. According to the above decision, the assessee is not eligible to get the deduction u/s. 80P(2)(a)(i)/80P(2)(d) on the fixed deposits made with cooperative banks.

5. Considering rival submissions, the issue raised before us is that the assessee has received interest from co-operative banks to which the revenue authorities have not been allowed deduction u/s 80P(2)(a)(i)/80P(2)(d) observing the latest judgment of the jurisdictional High Court noted (supra) in the case of Totgars Co-operative Sales Society (2017) 83 taxmann.com 140 in which it has been held that the income by way of interest earned by the assessee co-operative society during the Assessment Years 2007-2008 to 2011-12 on the investments made in the co-operative bank are not eligible for deductions under Section 80P(2)(d) of the Act & character of the income does not change irrespective of the investments made in Co-operative Banks or otherwise and would always remain income from other sources and that only operational income would qualify for deduction u/s 80P. We are concur with the arguments advanced by the Ld.DR. The Hon'ble jurisdictional High Court has observed as under:

> **9.** We have heard the learned counsels at length and perused the record and the judgments cited at the Bar.
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> **10.** Admittedly and undoubtedly, the respondent assessee is a Co-operative Society engaged mainly in the activity of marketing of agricultural produces grown by its members. The assessee co-operative society also accepts deposits from its members and provides credit facility to its members, runs Kirana Stores, rice mills, live stocks, van section, medical shops, Areca-nut trading section, lodging, plying and hiring of goods carriage, etc.
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> **11.** The Assessment Years involved in the present batch of appeals are Assessment Years 2007-2008 to 2011- 2012. The bone of contention is that the deduction under Section 80P(2) of the Act is now claimed by the respondent assessee under Section 80P(2)(d) of the Act and not under Section 80P(2)(a) of the Act. The reason is that now the investments and deposits after the Supreme Court's decision against the assessee *Totgar's Co-operative Sale Society Ltd.* (*supra*), the assessee has shifted the deposits and investments from Schedule Banks to Co-operative Bank and such Co-operative Bank is essentially a Co-operative Society also and Clause (d) allows deduction of income by way of interest or dividends derived by the assessee Co-operative Society from its investments with any other Co-operative Society.

12. The sheet anchor of the contention of the learned counsel for the assessee misses two essential points required for claiming the exemption or 100% deduction from gross total income for a co-operative society: (i) that the character or nature of income, namely interest on investments or deposits, does not change irrespective of the fact whether it is earned or received from a Schedule Bank or Co-operative Bank. (ii) that What the Hon'ble Supreme Court held in the case of the respondent assessee itself, against the assessee, was that such interest income on its surplus and idle funds not immediately required for its business, is not income from business taxable under Section 28 of the Act, but was taxable as "income from other sources" under Section 56 of the Act, whereas for availing the exemption or 100% deduction under Section 80P of the Act the income is specified in clauses (a) to (f) of Subsection (2) of Section 80P of the Act should be its business or operational income.

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

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

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

16. If the legislative intent is so clear, then it cannot contended that the omission to amend Clause (d) of Section 80P(2) of the Act at the same time is fatal to the contention raised by

the Revenue before this Court and *sub silentio*, the deduction should continue in respect of interest income earned from the co-operative bank, even though the Hon'ble Supreme Court's decision in the case of Respondent assessee itself is otherwise.

17. As stated above, it is the character and nature of income which determines its taxability or exemption from taxability. It is needless to say that the provisions relating to exemption and deduction need to be strictly construed and no liberal interpretation or intendment can be inferred in such provisions. What was clearly held to be not exempt and not deductible under Section 80P(2)(a) of the Act by the Hon'ble Supreme Court in the case of respondent assessee, cannot be contrarily held as exempted and deductible now for these years, merely because the depository bank, with whom the investments were made by the respondent assessee happens to be a co-operative bank. We cannot appreciate this distinction so as not to apply the binding precedent of the Hon'ble Supreme Court for subsequent years merely on account of the change of the Bank where such deposits were made by the respondent assessee, all other facts remaining the same, particularly the nature and character of the income earned by it. The interest income of assessee continues to be not attributable to its business operations even in these subsequent years.

18. The contention of the learned counsel for the assessee that a co-ordinate bench of this Court dismissed the Revenue's appeals by referring, but not applying the decision of the Hon'ble Supreme Court, we observe with greatest respects that we do not find any detailed discussion of the facts and law pronounced by the Hon'ble Supreme Court in the case of the respondent assessee in the said order passed by the co-ordinate Bench and therefore, we are unable to follow the same in the face of the binding precedent laid by the Hon'ble Supreme Court. We find in paragraph 8 of the said order passed by a co- ordinate bench that the learned Judges have observed that "the issue whether a co-operative bank is considered to be a co- operative society is no longer *res integra,* for the said issue has been decided by the Income Tax Appellate Tribunal itself in different cases……". No other binding precedent was discussed in the said judgment. Of course, the Bench has observed that a Co-operative Bank is a specie of the genus co- operative Society, with which we agree, but as far as applicability of Section 80P(2) of the Act is concerned, the applicability of the Supreme Court's decision cannot be restricted only if the income was to fall under Section 80P(2)(a) of the Act and not under Section 80P(2)(d) of the Act.

19. In our opinion, it would not make a difference, whether the interest income is earned from investments/deposits made in a Scheduled Bank or in a Co-operative Bank. Therefore, the said decision of the Co-ordinate Bench is distinguishable and cannot be applied in the present appeals, in view of the binding precedent from the Hon'ble Supreme Court.

20. In *Udaipur Sahakari Upbhokta Thok Bhandar Ltd.* v. *CIT* [2009] 315 ITR 21/182 Taxman 287 (SC), the Hon'ble Supreme Court while dealing with a case falling under Section 80P(2)(e) of the Act also negatived the claim of this special deduction to a co-operative society, while holding that the income derived by the Co-operative Society from the letting of the godowns or the warehouses was eligible for this deduction under Section 80P(2) of the Act only if such income was derived by such letting of godowns and warehouses for storage, processing or facilitating the marketing of commodities. Where the rental income was derived by the assessee, where the income claimed as deduction under Section

80P(2)(e) of the Act was by way of netting/difference between the sale of own trade stock stored in such warehouses or godowns was claimed as deductible, the Hon'ble Supreme Court denied the said claim, holding that the burden was on the assessee to establish that the income comes within the four corners of Section 80P(2)(e) of the Act. The relevant portion of the said judgment from the Head Note is quoted below for ready reference:

"HELD, affirming the decision of the High Court, that the burden was on the assessee under section 80P(2)(e) to establish that the income comes within the four corners of section 80P(2)(e) of the Act. The exemption was available in respect of income derived from the letting of godowns or warehouses, only where the purpose of letting was storage, processing or facilitating the marketing of commodities. If the godown was let out (including user) for any purpose besides storing, processing or facilitating the marketing of commodities, then the assessee was not entitled to such exemption. Any income derived by the society unconnected with such letting or use of the godown would not fall under clause (e). The High Court was right in coming to the conclusion that the assessee was storing the commodities in question in its godowns as part of its own trading stock and hence, it was not entitled to claim the deduction under Section 80P(2)(e). In this case, the issue price was set off against the sale price which clearly indicated that the netting/difference between the two prices constituted receipt on a commercial basis or net profit.

A. Venkata Subbarao v. *State of Andhra Pradesh* AIR 1965 SC 1773 *applied.*

CIT v. *South Arcot District Co-operative Marketing Society Ltd.* [1989] 176 ITR 117 (SC) *distinguished.*

Surath Venkar Sahakari Sangh Ltd v. *CIT* [1971] 79 ITR 722 (Guj) *approved.*

Decision of the Rajsthan High Court in *CIT* v. *Udaipur Shahakari Upbhokta Thok Bhandara Ltd.* [2007] 295 ITR 164 *Affirmed."*

21. The aforesaid decision of the Hon'ble Supreme Court in the case of *Totgar's Co-operative Sale Society Ltd.* (*supra*) was followed by a Division Bench of the Gujarat High Court in the case of *State Bank of India* v. *CIT* [2016] 389 ITR 578/241 Taxman 163/72 taxmann.com 64 and the Division Bench of the Gujarat High Court has held as under:

"(*ii*) That the assessee did not carry on any banking business and its objects did not contemplate investment of surplus funds received from its members. The business of a credit society like that of the assessee was limited to providing credit to its members and the income that was earned by providing such credit facilities to its members was deductible under section 80P(2)(a)(i). The character of interest was different from the income attributable to the business of the assessee-society providing credit facilities to its members. The interest income derived from investing surplus funds with the bank must be closely linked with the business of providing credit facilities for it to be held attributable to the business of the assessee. Therefore, the profits and gains could be said to be directly attributable to the business of providing credit facilities to its members if there was a direct and proximate connection between the profits and gains and the business of the assessee. There was no obligation on the assessee to invest its surplus funds with the bank. Investing surplus funds in a bank was no part of the business of the assessee providing credit facilities

to its members and hence it could not be said that the interest derived from depositing its surplus funds with the bank was profits and gains of business attributable to the activities of the assessee. It was only the interest income derived from the credit provided to its members which was deductible under section 80P(2)(a)(i) and the interest income derived by depositing the surplus funds with the bank not being attributable to the business carried on by the assessee could not be deducted under section 80P(2)(a)(i) . There was no infirmity in the orders of the Appellate Tribunal warranting interference.

Totgar's Co-Operative Sale Society Ltd. v. *ITO* [2010] 322 ITR 283 (SC)*followed."*

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"Thus, in the light of the principles enunciated by the Supreme Court in *Totgar's Co-operative Sale Society* (*supra*), in case of a society engaged in providing credit facilities to its members, income from investments made in banks does not fall within any of the categories mentioned in section 80P(2)(a) of the Act. However, section 80P(2)(d) of the Act specifically exempts interest earned from funds invested in co- operative societies. Therefore, to the extent of the interest earned from investments made by it with any co-operative society, a co-operative society is entitled to deduction of the whole of such income under section 80P(2)(d) of the Act. However, interest earned from investments made in any bank, not being a co-operative society, is not deductible under section 80P(2)(d) of the Act."

22. Again, the Division Bench of Punjab and Haryan High Court in still a later decision reported in the same volume of ITR in the case of *CIT* v. *Punjab State Co-operative Agricultural Development Bank Ltd.* [2016] 389 ITR 607/76 taxmann.com 307 (Punj. & Har.) concurred with the aforesaid view of the Gujarat High Court, distinguishing the view taken by the Andhra Pradesh High Court and Karnataka High Court, held in the following terms:

'30. We are entirely in agreement with the judgment of the Gujarat High Court especially the observation that the judgment of the Supreme Court is not restricted only to the investments made by the assessee from the amounts retained by it which were payable to its members and that the judgment also applies in respect of other funds not immediately required for business purposes.

We reproduced paragraph 15 of the judgment only to indicate that we uphold the appellant's case only on the ground that the assessee is not entitled to the said deduction on the basis that it is engaged in carrying on the business of providing credit facilities to its members. We do not express any opinion as to whether the appellant would be entitled to the said benefit in the event of it being held that the assessee is also engaged in carrying on the business of banking. That is an issue that the Tribunal would decide upon remand pursuant to this order.

31. Mr. Bansal relied upon the judgment of the Andhra Pradesh High Court in *CIT* v. *A. P. State Co-operative Bank Ltd.* [2011] 336 ITR 516 (AP). The judgment is distinguishable. In that case, the respondent-assessee was a co-operative society engaged in the business of banking and it was held that the assessees were subject to the regulations of the Reserve Bank of India Act, 1934 and the Banking Regulation Act, 1949. The Division Bench distinguished the judgment of the Supreme Court in *Totgar's* case (*supra*) on the ground that

the Supreme Court was not dealing with the case relating to co-operative banks. The present appeal is not being considered on the basis that banking is the assessee's business either.

32. Mr. Bansal relied upon the judgment of the Karnataka High Court in *Tumkur Merchants Souharda Credit Co-operative Ltd.* v. *ITO* [2015] 55 taxmann.com 447 (Karn). In that case, the assessee-co-operative society provided credit facilities to its members and earned interest from short- term deposits with banks and from savings bank accounts. The interest income earned by the assessee by providing credit facilities to its members was deposited in banks for a short duration which earned interest. The question was whether this interest was attributable to the business of providing credit facilities to the members. The Division Bench held as follows :

"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 co-operative 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.

9. In this context when we look at the judgment of the apex court in the case of *Totgar's 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 brought, 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 can not 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 *CIT* v. *A. P. State Co-operative Bank Ltd.* reported in [2011] 336 ITR 516 (AP) ; [2011] 200 Taxman 220/12 taxmann.com 66. 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 reproduction is from the original website of the Karnataka High Court).

There is an important distinction. The Division Bench expressly held in paragraph 10 that interest income was attributable to the business of banking and, therefore, liable to be deducted under section 80P(2)(a)(i) of the Act. At the cost of repetition, we have not considered whether the assessee carries on the business of banking. If it is established upon remand that the assessee carries on the business of banking the result may be different. In any event assuming that the judgment is not distinguishable on this ground, we would with respect disagree with the same in view of the judgments that we have already referred to and on the basis of our interpretation of *Totgar's* case. In any event, we are with respect unable to agree with the observations that the Supreme Court in *Totgar's* case (*supra*) did not lay down any law.

33. For the same reason, the judgment of the Karnataka High Court in *Guttigedarara Credit Co-operative Society Ltd.* v. *ITO* [2015] 377 ITR 464 (Karn); [2015] 60 taxmann.com 215 (Karn) is of no assistance to the respondent-assessee.'

23. Thus, the aforesaid judgments supports the view taken by this Court that character of income depends upon the nature of activity for earning that income and though on the face of it, the same may appear to be falling in any of the specified Clauses of Section 80P(2) of the Act, but on a deeper analysis of the facts, it may become ineligible for deduction under Section 80P(2) of the Act. The case in *Udaipur Sahakari Upbhokta Thok Bhandar Ltd.* (*supra*) was that of Section 80P(2)(e) of the Act, whereas in the present case, it is under Section 80P(2)(d) of the Act. Hence, the income by way of interest earned by deposit or investment of idle or surplus funds does not change its character irrespective of the fact whether such income of interest is earned from a schedule bank or a co-operative bank and thus, clause (d) of Section 80P(2) of the Act would not apply in the facts and circumstances of the present case. The person or body corporate from which such interest income is received will not change its character, viz. interest income not arising from its business operations, which made it ineligible for deduction under Section 80P of the Act, as held by the Hon'ble Supreme Court.

24. In view of the aforesaid, we are of the opinion that the appeals filed by the Revenue deserve to be allowed and the appeals filed by the assessee deserve to be dismissed.

6. Respectfully following the above judgment of the jurisdictional High Court we hold that the assessee is not eligible for deduction u/s 80P on the interest income earned on its investments with the Co-operative Banks. Further in respect of arguments of the ld. AR that the surplus funds or those funds invested by the assessee and interest income received on such deposits are eligible for deduction u/s 80P is also not sustainable because the income by way of interest earned by deposit or investment of idle or surplus funds does not change its character irrespective of the fact whether such income of interest is earned from a schedule bank or a co-operative bank and thus, clause (d) of Section 80P(2) of the Act would not apply in the facts and circumstances of the present case. Our this view is also supported by the above cited decision. Since during the course of arguments, the Ld.AR of the assessee took alternative ground that the cost of funds for earning the interest income has to be allowed, we concur with the Ld.AR of the assessee, that benefit of the cost of funds towards earning of the interest income has to be allowed. We noted that entire interest received has been taxed as income from other source. We are of the view that the fundamental principle under Income-tax Act being that only net income has to be taxed and not the gross income. Accordingly, the case is restored to the file of the A.O. with a direction to examine whether assessee has incurred any expenditure for earning interest income, which is assessed under the head `income from other sources'. If so, the same (cost of funds) shall be allowed as deduction u/s 57 of the I.T.Act. The AO is directed

to decide the issue as per law. The assessee is directed to co-operate with the department and furnish the necessary evidence for expeditious disposal of the matter. It is ordered accordingly. This alternative ground is partly allowed for statistical purpose.

7. In the result, this issue in ITA No. 547/Bang/2023 for A.Y. 2013-14 is partly allowed for statistical purposes.

8. Since the issue involved are similar in other appeals i.e. ITA Nos. 548 to 551/Bang/2023, therefore all these appeals are remitted to the Ld.AO in above terms.

9. The Ld.AR of the assessee submitted that for A.Y. 2013-14, the Ld.AO has made disallowance of the provisions made of Rs.10,54,850/- and Rs.18,93,494/- in the name of Income Tax reserve and General reserve respectively. Since, this disallowances of provisions are also enhancement of the business profit of the assessee, considering the submissions of the assessee, this issue is remitted back to the file of Ld.AO for determination as to whether the provisions made by the assessee as above towards Income tax reserve and General reserve is out of business profit. If the Assessing Officer finds that these provisions have been transferred out of the business profits, then the Assessing Officer has to give benefit of Circular No. 37/2016 dated 2nd Nov. 2016. Accordingly, this issue is also remitted to the file of the Ld.AO and decide the issue as per law. The assessee is directed to substantiate with the necessary

documents and not to seek unnecessary adjournment for early disposal of the case. The Assessing Officer shall provide reasonable opportunity of being heard to the assessee and decide the issue as per law.

10. To sum up, all the above appeals are partly allowed for statistical purposes. The common order passed shall be kept in respective case files.

Order pronounced in the open court on 29th September, 2023.

Sd/-	Sd/-
(GEORGE GEORGE K)	(LAXMI PRASAD SAHU)
Vice-President	Accountant Member

Bangalore,
Dated, the 29th September, 2023.
/MS /

Copy to:

1. Appellant
2. Respondent
3. CIT
4. DR, ITAT, Bangalore
5. Guard file

By order

Assistant Registrar,
ITAT, Bangalore