

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

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND MS. MADHUMITA ROY, JUDICIAL MEMBER**

ITA No.981/Bang/2023
Assessment year : 2017-18

M/s Bhavasara Kshatriya Co-operative Society Ltd., 279, Benkinawab Street, Mandi Mohalla, Mysuru-570 001.	Vs.	The Income-tax Officer, Ward-2(1), Mysuru.
PAN – AADAT 2458 F		
APPELLANT		RESPONDENT

Assessee by	:	Shri V Srinivasan, Advocate
Revenue by	:	Shri Ganesh R Gale, Standing Counsel for Dept.

Date of hearing	:	03.01.2024
Date of Pronouncement	:	03.01.2024

ORDER

Per Chandra Poojari, Accountant Member

This appeal by the assessee is directed against the order of NFAC, New Delhi dated 30/06/2022 passed u/s 250 of the Act for the assessment year 2017-18.

2. The assessee raised the following grounds:-

“1. The orders of the authorities below in so far as they are against the appellant are opposed to law, equity, weight of evidence, probabilities, facts and circumstances of the case.

2. The learned CIT[A] is not justified in disposing off the appeal ex-parte without allowing sufficient and real opportunity to the appellant to represent the case under the facts and in the circumstances of the appellant's case.

3. The learned CIT[A] is not justified in dismissing the appeal filed by the appellant after giving certain directions to examine the eligibility of the appellant to claim deduction u/s. 80P[2][a][i] of the Act that has been denied in the assessment order on the ground that the appellant was a co-operative bank under the facts and in the circumstances of the appellant's case.

4. " The learned CIT[A] is not justified in holding that the appellant was not entitled to deduction u/s. 80P of the Act in respect of the interest income of Rs.13,98,572/- earned by the appellant from investments in co-operative banks and other banks and holding the same to be liable for assessment under the head "Other Sources" without giving any opportunity to the appellant to make submissions on this aspect in course of the appellate proceedings under the facts and in the circumstances of the appellant's case.

4. The learned CIT[A] ought to have appreciated that the interest income earned by the appellant on deposits in banks was part of the business of providing credit facilities to the members of the appellant and hence, the said interest was liable for assessment under the head "Business" and not under the head "Other Sources" and therefore, the deduction claimed by the appellant u/s 80P[2][a][i] of the Act ought to have been allowed under the facts and in the circumstances of the appellant's case.

5. Without prejudice to the contention that the interest earned on investment was entitled to deduction u/s. 80P[2][a][i] of the Act, the interest was alternatively entitled to deduction u/s. 80P[2][d] of the Act, on the facts and circumstances of the case.

6.. Without prejudice to the right to seek waiver before the Hon'ble DG/CCIT, the appellant denies itself liable

to be charged to interest u/s. 234-A and 234-B of the Act, which requires to be cancelled under the facts and in the circumstances of the appellant's case.

7. For the above and other grounds that may be urged at the time of hearing of the appeal, your appellant humbly prays that the appeal may be allowed and Justice rendered and the appellant may be awarded costs in prosecuting the appeal and also order for the refund of the institution fees as part of the costs.

3. At the outset, it is observed that there was delay of 458 days in filing the appeal before this Tribunal. In the present case, the impugned order was passed on 30/06/2022. The time limit to file the appeal before this Tribunal was on 29/08/2022. However, the appeal was filed by the assessee before this Tribunal on 30/11/2023. The assessee filed condonation petition along with an Affidavit stating as follows:-

"I, S.V. SATHYANARAYANA, Son of Sri Sulake Venkoba Rao Venkatesha Rao, aged about 55 years, residing at Mysuru and President of M/s. THE BHAVASARA KSHATRIYA CO-OPERATIVE SOCIETY LIMITED, being conversant with the facts of the case do hereby solemnly affirm and say on oath as under:-

1. That I am the President of the above appellant Society and I am conversant with the facts of the case and competent to swear to the contents of this affidavit in connection with the prayer for condonation of delay in filing the appeal.

2. That, being aggrieved by the order of the assessment passed u/s. 143[3] of the Act, dated 16/10/2019, the appellant society had e-filed an appeal before the learned Commissioner of Income tax [Appeals] raising several grounds relating to the denial of deduction u/s. 80P of the Act.

3. That, the aforesaid appeal filed by the appellant society was taken up for hearing by the National Faceless Appeal Centre, DELHI, and notices dated 29/12/2020 to 25/08/2021 were issued,

which were placed in the hands of our Authorized Representatives M/s. Rampathange it Co. Tax Consultant and Auditors and responses were filed by them online.

4. That, it appears that a notice u/s. 250 of the Act, dated 04/06/2022 was also issued by the National Faceless Appeal Centre, Delhi posting our case for hearing on 13/06/2022 but however, the said notice was not received / not noticed in our email and later, the learned Commissioner of Income tax [Appeals], National Faceless Appeal Centre, Delhi, has passed the appellate order dated 30/06/2022 dismissing the appeal.

5. That, the aforesaid order passed by the learned Commissioner of Income tax [Appeals], National Faceless Appeal Centre, Delhi, dated 30/06/2022 was also not received on email and we were not aware of the said appellate order passed until the penalty proceedings were concluded by the order u/s. 270A of the Act, dated 14/11/2023 in which it has been mentioned that the appellate order was passed.

6. That, even in course of the penalty proceedings we had filed a response stating that the appeal filed by us was pending and it appears that the Assessment Unit had sent another notice dated 29/09/2023 stating that the appeal filed by us has been disposed off. However, this notice dated 29/09/2023 sent by the Assessment Unit was also not received on email and we could not file any response thereto.

That, it is only after the receipt of the penalty order that we logged into e-filing portal and found the appellate order dated 30/06/2022 that was passed, which we were not aware of at all.

8. That, the second appeal against the appellate order dated 30/06/2022 ought to have been filed before the Hon'ble Tribunal on or before 29/08/2022 based on the date of the order passed.

9. That, the appeal against the said appellate order passed by the learned Commissioner of Income-tax[Appeals] came to be instituted before the Hon'ble Income-tax Appellate Tribunal, Bangalore Bench, Bangalore and thus, there is a delay of 459 days in filing the appeal when the due date for filing the appeal is considered from the date of the appellate order.

10. That, the appellant society was not aware of the appellate order passed by the learned Commissioner of Income tax [Appeals], National Faceless Appeal Centre, Delhi, dated 30/06/2022 as the same was not received by email.

11. That, as soon as the appellate order came to be discovered, immediate steps were taken to prepare the appeal papers and file the same before the Hon'ble Income-tax Appellate Tribunal, Bangalore Bench, Bangalore.

12. That the delay of L -c9 days in filing the appeal before the Hon'ble Tribunal is due to reasonable cause and on account of circumstances beyond our control and the delay was neither intentional, willful nor deliberate and was occasioned for the reasons stated above.

13. That, it is, therefore, prayed that the delay of 459 days in filing the appeal may kindly be condoned and the appeal may kindly be admitted and disposed off on merits for the advancement of substantial cause of Justice.”

4. We have carefully gone through the condonation petition accompanied by the above Affidavit.

5. The ld.DR's contention is that the assessee is very negligent in its approach for filing the appeal before this Tribunal and also there was no reasonable cause in filing appeal before this Tribunal belatedly. He submitted that the appeal is to be dismissed in limine and for that purpose, he placed reliance on the order of the Tribunal in the case of Mudhol Pattina Sahakari Sangh Niyamita in ITA No.767/Bang/2023 dated 26/12/2023, wherein it is held as under:-

“3. I have gone through the condonation petition filed by the assessee. The ld. A. R. while supporting the filing of appeal belatedly seeking condonation of the delay, he relied on various decisions and submitted that in the interest of justice, the delay be condoned and appeal to be admitted. On going through the reasons advanced by the ld. A.R., the main plea of the

assessee is that the assessee was busy in year end closing of the books of accounts and the Management Committee took time to file the appeal before this Tribunal, which was beyond their control and it was not intentional.

3.1 I have gone through the above reasons advanced by assessee. In the present case, assessee has received the impugned order of the NFAC on 3.1.2023. The assessee has to file appeal before this Tribunal on or before 5.3.2023. However, the same has been filed on 10.10.2023. Thus, there was a delay of 220 days in filing the appeal before this Tribunal. The reason advanced is that the assessee was busy in carrying out the year end closing of books of accounts. In my opinion herein, the financial year 2022-23 has been ended on 31.3.2023. Even after that the assessee has not filed the appeal before this Tribunal. It took another 1.90 days' time to file the appeal. Being so, the reason advanced by assessee that assessee was busy in finalizing the year end accounts is not proper. In my opinion, there is no good and sufficient reason to file this appeal belatedly before this Tribunal. The assessee has failed to bring any material on record to prove that its bonafide attempt in filing the appeal belatedly. In my opinion, assessee has not acted with due diligence in filing the appeal before this Tribunal. On the other hand, assessee was in its approach in taking the steps in filing the appeal against the impugned order of NFAC. In the absence of any evidence to prove the bonafide of the assessee except the affidavit filed by the assessee, the delay of 220 days before this Tribunal cannot be condoned. The assessee is a Co-operative Society associated by Advocates & Chartered Accountants and ignorance of law is no excuse.

3.2 In this regard, I may refer the judgement of Hon'ble Supreme Court in the case of Swadeshi Cotton Mills Co. Ltd. Vs. The Government of UP & Ors. (1975) 4 SCC 378, wherein held as follows:

"..... But we are in agreement with the High Court on the other two grounds. As mentioned earlier, the impugned assessments were made in 1949. The writ petition was filed in 1956. The explanation given by the petitioner for this long delay is that he did not know the correct legal position and he came to know about the same after the decision of the Allahabad High Court in the Commissioner of Sales Tax, U.P. V. Modi Food Products Ltd. Every individual is deemed to know the law of the land. He courts merely interpret the law and do not make law.

Ignorance of law is not an excuse, for not taking appropriate steps within limitation. Therefore, the argument that the appellant did not know the true legal position is not one that can be accepted in law..."

3.3 Further, coordinate bench of Chennai (Third Member) in the case of JCIT Vs. Tractors 8v Farm Equipments Ltd. reported in 104 ITD 149, wherein held as follows:

"A distinction must be made between a case where the delay is inordinate and a case where the delay is of a few days. Whereas in the former case, the consideration of prejudice to the other side will be a relevant factor, so the case calls for a more cautious approach, in the latter case, no such consideration may arise and such a case deserves a liberal approach. No hard and fast rule can be laid down in this regard. The Court has to exercise the discretion on the facts of each case, keeping in mind that in considering the expression sufficient cause', the principle of advancing substantial justice is of prime importance (para 5)

The law assists those who are vigilant, not those who sleep over their rights. This principle is embodied in the dictum ; vigilantibus non dormientibus jura subveniunt. (para 6)

The delay cannot be condoned simply because the appellant 's case is hard and calls for sympathy or merely out of benevolence to the party seeking relief. In granting the indulgence and condoning the delay, it must be proved beyond the shadow of negligence, whatsoever. The sufficient cause within the contemplation of the limitation provision must be a cause which is beyond the control of the party invoking the aid of the provisions. The cause. for the delay in filing the appeal, which by due care and attention, could have been avoided, cannot be a sufficient cause within the meaning of the limitation provision. Where no negligence, or inaction, or want of bona fides can be imputed to the appellant, a liberal construction of the provisions has to be made in order to advance substantial justice. Seekers of justice must come with clean hands.

In the instant case, the assessee justified the delay only with reference to the affidavit of its director. In the said affidavit it was stated that the Commissioner (Appeal)'s order was misplaced and forgotten. It was found while sorting out the unwanted papers and thereafter steps were taken for the preparation of the appeal and consequently the delay was caused That clearly showed that the delay was due to the

negligence and inaction on the part of the assessee. The assessee could have very well avoided the delay by the exercise of due care and attention. There existed no sufficient and good reason for the delay of 310 days. Therefore, reasonings adduced by the Accountant Member were to be concurred with. (para 8) "

3.4 In view of this, I decline to condone the delay in filing the appeal before this Tribunal belatedly. Accordingly, the appeal of the assessee is dismissed as unadmitted.

4. In the result, appeal of the assessee is dismissed."

6. In our opinion, in the present case, we find that there is reasonable cause in filing the appeal belatedly before this Tribunal as rightly submitted by the ld.AR by placing reliance on the order of the Tribunal in the case of M/s Meenakshi Pre Fab Concrete Vs. DCIT in ITA No.569/Bang/2023 dated 211/2023, wherein the Tribunal held as under:-

"4. We have heard both the parties and have considered the submission of the ld. AR as well as the arguments of the ld. DR on the issue. Based on the materials available on record the bench noted that the assessee prayed for condonation of delay of 561 days. The reasons placed on record has merit and we concur with the submission of the assessee.

4.1 Before us, the assessee has also made it clear that the assessee was not aware of any proceedings before ld. CIT(A). Thus, the ld. CIT(A) also passed the order ex-parte without condoning the delay of 236 days. To this effect, assessee has also filed an affidavit on oath confirming the facts stated by the assessee. Thus, the assessee has not received justice from the ld. CIT(A) as he dismissed the appeal ex-parte without condoning the delay. The further contention of the ld. A.R. is that notice issued by ld. CIT(A) for hearing before him and also ld. CIT(A)'s orders went in spam folder of the assessee's e-mail account and therefore, the assessee did not get a fair chance to represent the case before the ld. CIT(A). The staff of the assessee not vigilant and they failed to take correct remedial measures in going through the email account of the assessee. The delay was caused due to inabilities of the assessee's staff in verifying the e-mail account of the

assessee. The assessee was not going to gain any benefit because of delayed filing of the appeal before this Tribunal or ld. CIT(A) and assessee's conduct was not contumacious. The assessee is seriously interested in prosecuting the appeal in as much as assessee had already engaged new counsel and also made requisite filing fee for filing the appeal before this Tribunal. We also find from the order of the ld. CIT(A) that assessee had filed condonation petition before the ld. CIT(A). The ld. CIT(A) has not condoned the delay and dismissed the appeal. The ld. A.R. of the assessee in his condonation petition relied obtained various judicial precedents wherein, the courts has considered the circumstances under which assessees were prevented in filing the appeal in time and condone the delay. As seen from the facts and circumstances of the present case, it is not unusual to receive the email in the spam folder and also it is not unusual the assessee's failure to see the e-mail account regularly as most of the assessees are not technical persons or well versed in electronic media or social media. Being so, the assessee has failed to take correct steps in the course of faceless assessment/appeal proceedings.

4.2 Thus, the delay of 561 days in filing the appeal by the assessee is to be condoned in view of the decision of the apex court decision in case of Collector, Land Acquisition vs MST Katiji, wherein the Hon'ble Supreme Court has held that the expression 'Sufficient Cause' employed by the legislature is adequately elastic to enable the Courts to apply the law in a meaningful manner to sub-serves the ends of justice that being the life-purpose of the existence of the institution of Courts. It was further held by the Hon'ble Supreme Court that such liberal approach is adopted on one of the principles that refusing to condone delay can result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated. As against this, when delay is condoned, the highest that can happen is that a cause would be decided on merits after hearing the parties. Another principle laid down by the Hon'ble Supreme Court is that when substantial justice and technical considerations are pitted against each other, the cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay. It was also held by the Hon'ble Supreme Court that there is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of male fides. A litigant does not stand to benefit by resorting to delay. In fact, he runs a serious risk. In the instant case, applying the same principles, we find that the assessee has all along acted diligently in safeguarding his legal rights and availing the remedies available to him and has acted and taken action but has sufficient reasons so as to bring this appeal. Considering the facts of the case and considering the interest of justice the delay of 561 days in bringing this appeal is condoned. Therefore, in the facts and circumstances of the present

case, in our opinion, after condoning delay, it is appropriate remit the entire issue in dispute to the file of ld. CIT(A) to give an opportunity of hearing to the assessee and decide the appeal afresh even condonation of delay in filing the appeal before him. Thus, we condone the delay of 561 days in filing the appeal before us and remit the entire issue in dispute to the file of ld. CIT(A) for fresh consideration. At this stage, we refrain from commenting anything about the delay before ld. CIT(A) as well as merit of the issue raised before us.

5. In the result, appeal of the assessee is partly allowed for statistical purposes”.

7. In our opinion, the reason advanced by the assessee in the present case is as similar to the one considered by the Tribunal in the case of Meenakshi Pre Fab Concrete cited supra. Accordingly, in our opinion, there is good and sufficient reason for filing the appeal belatedly before this Tribunal. Hence, we condone the delay and admit the appeal for adjudication.

8. On merit, the ld.AR submitted that the assessee has claimed deduction, which is as follows:-

1) Under Section 80P(2)(a) - Rs.14,76,803

2) Under Section 80P(2)(a)(i) - Rs.13,98,572/-

Total

Rs.28,75,375/-

9. The ld.AO denied the above exemption claimed by the assessee on the reason that the assessee in the present case filed the return of income in the status of

AOP/BOI and on sub status of co-operative bank, the benefit of section 80P is not available to the assessee.

10. Against this, the assessee went in appeal before NFAC, New Delhi, wherein the NFAC, New Delhi confirmed the order of the AO. Against this, the assessee is in appeal before us.

11. The ld.DR strongly placed reliance on the order of the coordinate bench in the case of M/s Jyothi Pattin Souhard Sahakari Niyamit in ITA No.650/Bang/2020 dated 13/08/2021 , wherein it is held as under:-

“7. We have carefully considered the rival submissions. An order passed contrary to a decision of the Hon’ble Jurisdiction High Court would be in the nature of an order prejudicial to the interest of the revenue being an order passed on an incorrect application of law. In the case of Malabar Industrial Co. Ltd. vs. CIT[2000] 243 ITR 83(SC), the Supreme Court held that there must be two conditions namely that the order of assessment is erroneous and that the order is prejudicial to the interests of the Revenue which must be satisfied before the Commissioner may invoke his powers under Section 263 of the Act. The Court held that every loss of tax cannot be said to be prejudicial to the interests of the Revenue. If two views are possible, and the AO has adopted one of those views, the order of assessment cannot be prejudicial to the interests of the Revenue. However, when the Assessing Officer does not apply his mind to the issue at hand or violates any of the principles of natural justice, the order shall be prejudicial to the interests of the Revenue. Also, an incorrect assumption of facts or incorrect application of law by the AO would make the order of assessment erroneous and prejudicial to the interests of the Revenue. 8. The Hon’ble Supreme Court in the case of The Totgars Co-operative Sale Society Ltd. Vs. ITO 322 ITR 283 (SC) held that Income from utilisation of surplus funds was taxable under the head income from other sources, and therefore not eligible for deduction u/s 80P. The

Hon'ble Karnataka High Court in case of Tumkur Merchants Souharda Credit Cooperative Ltd. vs. ITO (230 Taxman 309), was dealing with a case where deduction u/s.80P(2)(a)(i) of the Act was claimed on interest from the deposits made in a nationalized bank out of the amounts which was used by the assessee for providing credit facilities to its members. The assessee claimed that the said interest amount is attributable to the credit facilities provided by the assessee and forms part of profits and gains of business. The Hon'ble Karnataka High Court after considering SC judgment in case of Totgars (supra) held that since the word income is qualified by the expression "attributable" to the business of Banking is used in Sec.80P(2)(a)(i) of the Act, it has to receive a wider meaning and should be interpreted as covering receipts from sources other than the actual conduct of business. The Court held 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. The Hon'ble Court also distinguished the decision of the Hon'ble Supreme Court in the case of Totgars (supra) by observing that the Supreme Court was dealing with a case where the assessee-Cooperative 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. The Court also observed that even the Hon'ble Supreme made it clear that they are confining the said judgment to the facts of that case. The Court therefore concluded that Hon'ble Supreme Court was not laying down any law.

Similar view taken in Guttigedarara Credit Co-operative Society Ltd. vs. ITO [2015] 377 ITR 464 (Karnataka). In the case of PRINCIPAL COMMISSIONER OF INCOME TAX AND ANOTHER vs. TOTAGARS CO-OPERATIVE SALE SOCIETY 392 ITR 0074 (Karn) in the context of deduction u/s.80P(2)(d) of the Act, it was held that Sec.80P(2)(d) of the Act allows deduction in respect of any income by way of interest or dividends derived by the co-operative society from its investments with any other cooperative society, the whole of such income. The Hon'ble Court held that that the aforesaid Supreme Court's decision in the case of Totgars (supra), was not applicable to deduction u/s.80P(2)(d) of the Act, because the said decision was rendered with regard to deduction under Section 80P(2)(a)(i) of the Act and not under Section 80P(2)(d) of the Act.

9. However, the Hon'ble Karnataka High Court in the case of PRINCIPAL COMMISSIONER OF INCOME TAX AND ANOTHER vs. TOTAGARS CO-OPERATIVE SALE SOCIETY 395 ITR 0611 (Karn) took a different view and held that interest income earned on deposits whether with any other bank will be in the nature of income from other sources and not income from business and therefore the deduction u/s.80P(2)(d) of the Act cannot be allowed to the Assessee. The Hon'ble Court followed decision of Hon'ble Gujarat High Court in the case of SBI Vs. CIT 389 ITR 578(Guj.) in which the Hon'ble Gujarat High Court dissented from the view taken by the Hon'ble Karnataka High Court in the case of Tumkur Merchants case (supra) The Hon'ble Court had to deal with the following substantial question of law: "(I)Whether the assessee, Totagar Co-operative Sale Society, Sirsi, is entitled to 100% deduction under Section 80P(2)(d) of the Income Tax Act, 1961 (for short 'the Act') in respect of whole of its income by way of interest earned by it during the relevant ITA No.650/Bang/2020 Page 8 of 14 Assessment Years from 2007-2008 to 2011-2012 on the deposits or investments made by it during these years with a Cooperative Bank, M/s. Kanara District Central Co-operative Bank Limited? (II) Whether the Supreme Court decision in the case of the present respondent assessee, Totgar Co-operative Sale Society Limited itself rendered on 08th February 2010, in Totgar's Cooperative Sale Society Limited v. Income Tax Officer, reported in (2010) 322 ITR 283 SC : (2010) 3 SCC 223 for the preceding years, namely Assessment Years 1991-1992 to 1999-2000 (except Assessment Year 1995-1996) holding that such interest income earned by the assessee was taxable under the head 'Income from Other Sources' under Section 56 of the Act and was not 100% deductible from the Gross Total Income under Section 80P(2)(a)(i) of the Act, is not applicable to the present Assessment Years 2007-2008 to 2011-2012 involved in the present appeals and therefore, whether the Income Tax Appellate Tribunal as well as CIT (Appeals) were

justified in holding that such interest income was 100% deductible under Section 80P(2)(d) of the Act?"

10. The Hon'ble Court held that such interest income is not income from business but was income chargeable to tax under the head income from other sources and therefore there was no question of allowing deduction u/s.80P(2)(d) of the Act. The following points can be culled out from the aforesaid decision: 1. 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 cooperative 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. (Paragraph 13 of the Judgment).

2. 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 cooperative 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. (Paragraph-14 of the judgment)

3. The amendment of Section 194A(3)(v) of the Act excluding the Cooperative 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. (Paragarph 15 of the Judgment)

4. 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.(Paragraph 16 of the Judgment)

5. On the decision of the earlier decision of the Hon'ble Karnataka High Court referred to in the earlier part of this order, the Court held that it did not find any detailed discussion of the facts and law pronounced by the Hon'ble Supreme Court in the case of the respondent assessee (Totagars Sales Co-operative society) and hence unable to follow the same in the face of the binding precedent laid by the Hon'ble Supreme Court. The Hon'ble Court observed that 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.(Paragraph-18 of the Judgment)

6. The Court finally concluded that 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." (Paragraph 19 of the Judgment)

11. The Hon'ble Karantaka High Court in the aforesaid decision also placed reliance on a decision of the Hon'ble Gujarat High Court in the case of STATE BANK OF INDIA (SBI) vs. COMMISSIONER OF INCOME TAX 389 ITR 0578 (Guj) did not agree with the view taken by the Karnataka High Court in Tumkur Merchants Souharda Credit Cooperative Ltd. (supra) that the decision of the Supreme Court in Totgars Co-operative Sale Society (supra) is restricted to the sale consideration received from marketing agricultural produce of its members which was retained in many cases and invested in short term deposit/security and that the said decision was confined to the facts of the said case and did not lay

down any law. The Hon'ble Gujarat High Court held that in the case of Totgars Cooperative Sale Society (supra) decided by Hon'ble Supreme Court, the court was dealing with two kinds of activities: interest income earned from the amount retained from the amount payable to the members from whom produce was bought and which was invested in short-term deposits/securities; and the interest derived from the surplus funds that the assessee therein invested in short-term deposits with the Government securities. The Hon'ble Gujarat High Court in this regard referred to the decision of the Karnataka High Court from which the matter travelled to the Supreme Court wherein it was the case of the assessee that it was carrying on the business of providing credit facilities to its members and therefore, the appellant-society being an assessee engaged in providing credit facilities to its members, the interest received on deposits in business and securities is attributable to the business of the assessee as its job is to provide credit facilities to its members and marketing the agricultural products of its members. The Hon'ble Gujarat High Court therefore held that decision in the case of Totagar Co-operative Sales Society rendered by the Hon'ble Supreme Court is not restricted only to the investments made by the assessee therein from the retained amount which was payable to its members but also in respect of funds not immediately required for business purposes. The Supreme Court has held that interest on such investments, cannot fall within the meaning of the expression "profits and gains of business" and that such interest income cannot be said to be attributable to the activities of the society, namely, carrying on the business of providing credit facilities to its members or marketing of agricultural produce of its members. The court has held that when the assessee society provides credit facilities to its members, it earns interest income. The interest which accrues on funds not immediately required by the assessee for its business purposes and which has been invested in specified securities as "investment" are ineligible for deduction under section 80P(2)(a)(i) of the Act. (Paragraph-13 of the Judgment)

12. It can thus be seen that the ratio laid down by the Hon'ble Karnataka High Court in the case of Totalgars Cooperative Sales Society in 395 ITR 611 (Karn) is that in the light of the principles enunciated by the Supreme Court in Totgars 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 cooperative 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.

13. The CIT was therefore justified in exercising his powers of revision u/s.263 of the Act and directing the AO to tax interest income in question as it is neither of the nature specified in Sec.80P(2)(a)(i) or 80P(2)(d) of the Act.

14. The argument of the learned counsel for the Assessee has been that the AO has applied his mind and allowed the deduction and therefore the jurisdiction u/s.263 of the Act cannot be exercised. On this argument, the learned DR pointed out that the jurisdiction u/s.263 of the Act was exercised by the CIT not for the reason that the AO failed to make proper enquiries before concluding the Assessment but on the ground that his decision was contrary to decision of Hon'ble Jurisdictional High Court and therefore this argument of the learned counsel for the Assessee cannot be accepted. The argument that the view taken by the AO was a possible view and hence revision u/s.263 of the Act is bad is again not acceptable because, the view that ought to have been adopted was the later binding decision of the High Court in the case of Totagar co-opertive sales society 395 ITR 611 (Karn.).

15. The argument that co-operative Banks are also co-operative societies is again without any basis in the light of the law explained in the case of Totagar co-opertive sales society 395 ITR 611 (Karn.). The reliance placed by the learned counsel for the assessee on the earlier decisions of the Hon'ble Karnataka High Court in the case of Tumkur Merchants Souharda Credit Cooperative Ltd. (supra) that the decision in Totgars Co-operative Sale Society (supra) stands explained by the later decision in the case of Totagar co-opertive sales society 395 ITR 611 (Karn.).

16. For the reasons given above, we uphold the order of the CIT and dismiss the appeal of the assessee.

17. In the result, appeal of the Assessee is dismissed.

12. He also relied on the order of the Tribunal in the case of Krishnarajapet Taluk Agri Pro Co-op Marketing Society Ltd., in ITA No. 514/Bang/2021 dated 08/02/2022.

13. In our opinion, the above orders of the Tribunal has been passed by confirming the order of the PCIT passed u/s 263 of the Act and ratio laid down cannot be applied to the facts of the present case.

14. On the other hand, the issue involved here in this appeal has been considered by the co-ordinate bench in the case of Kedambady Keyur Primary Agricultural Co-operative Society Ltd., in ITA No.667 & 668/Bang/2023 for the assessment year 2017-18 and 2018-19 and the Tribunal vide order dated 08/11/2023 held as under:-

“3. We have heard the rival submissions and perused the materials available on record. As rightly pointed out by the ld. A.R. in his petition, the issue involved in these additional grounds is only question of law and there is no necessity of investigation of any facts otherwise on record and these additional grounds are admitted for adjudication.

4. Facts of the case are that the assessee is a Primary Agricultural Credit Co-operative Society engaged mainly in the business of providing credit facilities to its member-agriculturists and distribution of ration articles. For the assessment year 2017-18, the entire income of the assessee is eligible for deduction u/s 80P of the Act and hence had filed its return of income declaring 'NIL' taxable income. a. The assessee's case was selected for scrutiny assessment u/s 143(2) of the Act. b. While passing the order u/s 143(3), the learned assessing officer disallowed the assessee's claim for deduction u/s 80P of the Act relying on the decision of the Honorable Supreme Court in the case of Citizen Cooperative Society Ltd. v. Assistant Commissioner of Income-tax, Circle-9(1), Hyderabad reported in [2017] 84 taxmann.com 114 (SC), c. Further the learned assessing officer also disallowed the assessee's claim for deduction u/s 80P(2)(d) in respect of income from investment in other co-operative societies relying on the decision of the Dharwad Bench of the Hon'ble High Court of Karnataka in the case of The Totagars Co-op. Sale Society in ITA No. 100066 of 2016.

4.1 The assessee's contention that being a primary agricultural co-op. society, they are eligible for the said deduction and that the judicial

pronouncements relied upon by him are not applicable to them was not considered by the learned A.O. Aggrieved by the disallowance of deduction u/s 80P of the Act, the assessee has preferred this appeal.

5. The ld. D.R. relied on the order of lower authorities. 6. We have heard the rival submissions and perused the materials available on record. The ld. A.R. for the assessee has submitted detailed written submissions, which are kept on record. First of all, the claim of assessee has been denied on the reason that the assessee is having nominal members and associated members. As per the Bye-laws of the assessee society, nominal members and associated members are not allowed to participate in the administration and they are not entitled to vote as particular category of member is not entitled to participate and thereby the ld. AO followed the decision of Hon'ble Supreme Court in the case of Citizen Co-operative Society Ltd. (397 ITR 1) (SC). However, we find that the decision of Hon'ble Supreme Court in the case of Mavilayi Service Cooperative Bank Ltd. & Ors. Vs. CIT (431 ITR 1) (SC), wherein held as under: "It is important to note that though the main object of the primary agricultural society in question is to provide financial assistance in the form of loans to its members for agricultural and related purposes, yet, some of the objects go well beyond, and include performing of banking operations "as per rules prevailing from time to time", opening of medical stores, running of showrooms and providing loans to members for purposes other than agriculture. (para 15) Court in Citizen Cooperative Society Ltd. [397 ITR 1] held as follows: "13. If the income of a society is falling within any one head of exemption, it has to be exempted from tax notwithstanding that the condition of other heads of exemption are not satisfied. A reading of the provisions of Section 80-P of the Act would indicate the manner in which the exemption under the said provisions is sought to be extended. Whenever the legislature wanted to restrict the exemption to a primary cooperative society, it was so made clear as is evident from clause (f) with reference to a milk cooperative society that a primary society engaged in supplying milk is entitled to such exemption while denying the same to a federal milk cooperative society."

22. With the insertion of sub-section (4) by the Finance Act, 2006, which is in the nature of a proviso to the aforesaid provision, it is made clear that such a deduction shall not be admissible to a cooperative bank. However, if it is a primary agricultural credit society or a primary cooperative agricultural and rural development bank, the deduction would still be provided. Thus, cooperative banks are now specifically excluded from the ambit of Section 80-P.

23. If one has to go by the aforesaid definition of "cooperative bank", the appellant does not get covered thereby. It is also a matter of common knowledge that in order to do the business of a cooperative bank, it is imperative to have a license from Reserve Bank of India, which the

appellant does not possess. Not only this, as noticed above, Reserve Bank of India has itself clarified that the business of the appellant does not amount to that of a cooperative bank. The appellant, therefore, would not come within the mischief of sub-section (4) of Section 80-P. (para 20) Following propositions may be culled out from the judgment:

(I) That section 80P is a benevolent provision, which was enacted by Parliament in order to encourage and promote the growth of the cooperative sector generally in the economic life of the country and must, therefore, be read liberally and in favour of the assessee;

(II) That once the assessee is entitled to avail of deduction, the entire amount of profits and gains of business that are attributable to any one or more activities mentioned in sub-section (2) of section 80P must be given by way of deduction;

(III) That this Court in Kerala State Cooperative Marketing Federation Ltd. and Ors. (supra) has construed section 80P widely and liberally, holding that if a society were to avail of several heads of deduction, and if it fell within any one head of deduction, it would be free from tax notwithstanding that the conditions of another head of deduction are not satisfied;

(IV) This is for the reason that when the legislature wanted to restrict the deduction to a particular type of co-operative society, such as is evident from section 80P(2)(b) qua milk co-operative societies, the legislature expressly says so - which is not the case with section 80P(2)(a)(i);

(V) That section 80P(4) is in the nature of a proviso to the main provision contained in section 80P(1) and (2). This proviso specifically excludes only co-operative banks, which are co-operative societies who must possess a license from the RBI to do banking business. Given the fact that the assessee in that case was not so licensed, the assessee would not fall within the mischief of section 80P(4). (para 21) Ratio decidendi of Citizen Cooperative Society Ltd. (supra), must be given effect to. Section 80P, being a benevolent provision enacted by Parliament to encourage and promote the credit of the co-operative sector in general must be read liberally and reasonably, and if there is ambiguity, in favour of the assessee. A deduction that is given without any reference to any restriction or limitation cannot be restricted or limited by implication, as is sought to be done by the Revenue in the present case by adding the word "agriculture" into Section 80P(2)(a)(i) when it is not there. Further, section 80P(4) is to be read as a proviso, which proviso now specifically excludes co-operative banks which are co-operative societies engaged in banking business i.e. engaged in lending money to members of the public, which have a license in this behalf from the RBI. Judged by this touchstone, it is clear that the impugned Full Bench judgment is wholly incorrect in its reading of Citizen Cooperative Society Ltd. (supra). Clearly, therefore, once section 80P(4) is out of harm's way, all the assessees in the present case are entitled to the benefit of the

deduction contained in section 80P(2)(a)(i), notwithstanding that they may also be giving loans to their members which are not related to agriculture. Also, in case it is found that there are instances of loans being given to non-members, profits attributable to such loans obviously cannot be deducted. (para 45) It must also be mentioned here that unlike the Andhra Act that Citizen Cooperative Society Ltd. (supra) considered, 'nominal members' are 'members' as defined under the Kerala Act. (para 46) Considering the definition of 'member' under the Kerala Act, loans given to such nominal members would qualify for the purpose of deduction under section 80P(2)(a)(i). Unlike the facts in Citizen Cooperative Society Ltd. (supra), the Kerala Act expressly permits loans to non-members under section 59(2) and (3). Giving of loans by a primary-agricultural credit society to non-members is not illegal, unlike the facts in Citizen Cooperative Society Ltd. (supra). Impugned Full Bench judgment is set aside. (para 47)”

6.1 In view of this, the claim of assessee cannot be denied on the basis of assessee having nominal members and associated members.

6.2 Further, ld. D.R. referred to the judgement of Hon'ble Supreme Court in case of Totagars Co-operative Sale Society Ltd. vs. ITO reported in (2010) 322 ITR 283. He also referred to recent decision of Hon'ble Supreme Court in case of Kerala State Co-operative Agricultural and Rural Development Bank Ltd. KSCARDB vs. The Assessing Officer, Trivandrum & Ors. in Civil Appeal Nos. 10069 of 2016 dated 14.09.2023 submitted that the assessee cannot be allowed deduction on the interest earned from deposits made in cooperative banks under section 80 P (2) (d) of the Act.

6.3. We have perused the submissions advanced by both the sides in the light of the records placed. When we look at the decision of Hon'ble Supreme Court in case of Totgars Co-operative Sale Society's case reported in (2010) 322 ITR 283, relied by the Ld.DR, Hon'ble Supreme Court was dealing with a case where the assessee therein, 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 payable to its members from whom produce was bought, was invested in a short-term deposit/security. Such amount retained by the assessee therein 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. On these facts Hon'ble Supreme Court held the assessing officer was right in taxing the interest income indicated above under Section 56 as income from other sources of the Act. Hon'ble Supreme Court, also clarified that, they are confining the said judgment to the facts of that case alone.

6.4 Further the adjudication by the Hon'ble Supreme Court in case of *Totgars Co-operative Sale Society Ltd. vs. ITO* (322 ITR 283) (SC) was in context of Sec. 80P(2)(a)(i), and not on the entitlement of a cooperative society towards deduction under Sec.80P(2)(d) on the interest income on the investments/deposits parked with a cooperative bank. Therefore, reliance was placed by the Ld. DR on the decision of Hon'ble Supreme Court in the case of *Totgars Cooperative Sale Society Ltd. vs. ITO* (supra) is distinguishable on facts. 6.5 At this juncture, we refer to subsequent decision of Hon'ble Karnataka High Court in the case of *PCIT Vs. Totgars cooperative Sale Society* reported in (2017) 395 ITR 611, wherein Hon'ble Court held that, a co-operative society would not be entitled to claim of deduction under Sec. 80P(2)(d). At the same time, we find, that the Hon'ble Karnataka High Court in the case of *PCIT & Anr. vs. Totgars Cooperative Sale Society* reported in (2017) 392 ITR 74 and Hon'ble Gujarat High Court in the case of *State Bank Of India Vs. CIT* reported in (2016) 389 ITR 578, held, that the interest income earned by a cooperative society on its investments held with a cooperative bank would be eligible for claim of deduction under Sec.80P(2)(d) of the Act.

6.6 The Ld.D R relied on a recent decision of Hon'ble Supreme Court in case of *Kerala State Co-operative Agricultural and Rural Development Bank Ltd., KSCARDB Vs. AO & Ors* (Supra), in support of the disallowance of interest claimed by the assessee before us from the investments made in other Co-operative Banks/Sahakari Sangha etc. We have gone through this decision of Hon'ble Supreme Court. In para 3 of the decision, the issue that was under consideration before the Hon'ble Court reads as under:- "The issue involved in these cases is, whether, the appellant/assessee, a co-operative society, is entitled to claim deduction of the whole of its profits and gains of business attributable to the business of banking or providing credit facilities to its members who are all co-operative societies under Section 80P of the Income Tax Act, 1961 (hereinafter referred to as "the Act", for the sake of brevity)."

6.7 In other words Hon'ble Supreme Court in the said decision analyzed, whether the assessee therein could be treated as a "cooperative Bank" within the meaning of sec. 80P(4) of the Act. The Hon'ble Supreme Court considered the above issue in case of an assessee who is a state level Agricultural and Rural Development Bank, governed as a cooperative society, under the relevant state cooperative societies Act, and was engaged in providing credit facilities to its members who were cooperative societies only. On facts, the assessee therein claimed deduction under Section 80P(2)(a)(i) of the Act. The Ld.AO disallowed the deduction under Section 80P(2)(a)(i) holding that the appellant/assessee is neither a primary agricultural credit society nor a primary co-operative agricultural and rural development bank. The Ld.AO therein held that the appellant/assessee

is a "co-operative bank" and thus, was hit by the provisions of Section 80(P)(4) and was not entitled to the benefit of Section 80(P)(2) of the Act. This was upheld by the Ld.CIT(A) and the Tribunal. The decision of the Tribunal was confirmed by Hon'ble Kerala High Court. 6.8 The Hon'ble Supreme Court analyzed the legal framework, relevant provisions under relevant co-operative societies Act, NABARD Act, provisions of sec. 80P under the Income Tax Act, 1961, RBI Act, the Banking Regulation Act and the various judicial precedents on similar issues. The observations of Hon'ble Supreme Court in para 14.3 and 15.8 are of relevant that reads as under:-

"14.3. While analysing Section 80P of the Act in depth, the following points are noted by this Court:

i) Firstly, the marginal note to Section 80P which reads "Deduction in respect of income of co-operative societies" is significant as it indicates the general "drift" of the provision.

ii) Secondly, for purposes of eligibility for deduction, the assessee must be a "co-operative society"

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

iv) Fourthly, sub-clause (2)(a)(i) speaks of a co-operative society being "engaged in", inter alia, carrying on the business of banking or providing credit facilities to its members.

v) Fifthly, the burden is on the assessee to show, by adducing facts, that it is entitled to claim the deduction under Section 80P.

vi) Sixthly, the expression "providing credit facilities to its members" does not necessarily mean agricultural credit alone. It was highlighted that the distinction between eligibility for deduction and attributability of amount of profits and gains to an activity is a real one. Since profits and gains from credit facilities given to non-members cannot be said to be attributable to the activity of providing credit facilities to its members, such amount cannot be deducted. vii) Seventhly, under Section 80P(1) (c), the co-operative societies must be registered either under Co-operative Societies Act, 1912, or a State Act and may be engaged in activities which may be termed as residuary activities i.e. activities not covered by sub-clauses (a) and (b), either independently of or in addition to those activities, then profits and gains attributable to such activity are also liable to be deducted, but subject to the cap specified in sub-clause (c). viii) Eighthly, sub-clause (d) states that where interest or dividend income is derived by a co-operative society from investments with other co-operative societies, the whole of such income is eligible for deduction, the object of the provision being furtherance of the cooperative movement as a whole.

..... 15.8. Since the words 'bank' and 'banking company' are not defined in the NABARD Act, 1981, the definition in sub-clause (i) of clause

(a) of Section 56 of the BR Act, 1949 has to be relied upon. It states that a co-operative society in the context of a co-operative bank is in relation to or as a banking company. Thus, co-operative bank shall be construed as references to a banking company and when the definition of banking company in clause (c) of Section 5 of the BR Act, 1949 is seen, it means any company which transacts the business of banking in India and as already noted banking business is defined in clause (b) of Section 5 to mean the accepting, for the purpose of lending or investment, of deposits of money from the public, repayable on demand or otherwise, and withdrawal by cheque, draft, order or otherwise. Thus, it is only when a co-operative society is conducting banking business in terms of the definition referred to above that it becomes a co-operative bank and in such a case, Section 22 of the BR Act, 1949 would apply wherein it would require a licence to run a co-operative bank. In other words, if a co-operative society is not conducting the business of banking as defined in clause (b) of Section 5 of the BR Act, 1949, it would not be a co-operative bank and not so within the meanings of a state co-operative bank, a central co-operative bank or a primary co-operative bank in terms of Section 56(c)(i)(cci). Whereas a co-operative bank is in the nature of a banking company which transacts the business of banking as defined in clause (b) of Section 5 of the BR Act, 1949. But if a co-operative society does not transact the business of banking as defined in clause (b) of Section 5 of the BR Act, 1949, it would not be a co-operative bank. Then the definitions under the NABARD Act, 1981 would not apply. If a co-operative society is not a co-operative bank, then such an entity would be entitled to deduction but on the other hand, if it is a co-operative bank within the meaning of Section 56 of BR Act, 1949 read with the provisions of NABARD Act, 1981 then it would Not be entitled to the benefit of deduction under sub-section (4) or Section 80P of the Act.”

6.9. In any event Hon'ble Supreme Court in the decision relied by the Ld. DR has elaborately analyzed the requirement of a cooperative bank that could fall within the exception of section 80 P(4) of the Act. Based on such principle analyzed by Hon'ble Supreme Court and respectfully following the view taken by the Hon'ble Karnataka High Court in the case of PCIT & Anr. Vs. Totagars Cooperative Sale Society reported in (2017) 392 ITR 74 and Hon'ble Gujarat High Court in the case of State Bank Of India Vs. CIT reported in (2016) 389 ITR 578, we hold that, the interest income earned by a cooperative society on its investments held with a cooperative bank that do not have license under section 22 of the Banking Regulation Act 1949, falls outside the definition the term, 'Banking Company' as per section 2(c) of the Banking Regulations Act, 1949, would be eligible for claim of deduction under Sec.80P(2)(d) of the Act. The Ld.AO is thus directed to carry out necessary verification in respect of the that same to consider the claim of deduction u/s.80 P(2)(d) of the Act. Further, we make it clear that

the assessee is not entitled for deduction u/s 80P(2)(a)(i) of the Act in view of judgement of Hon'ble Supreme Court in the case of Totgars Co-operative Sale Society Ltd. (322 ITR 283) (SC), wherein held as follows:

“The words “the whole of the amount of profits and gains of business” in section 80P(2) of the Income-tax Act, 1961, emphasise that the income in respect of which deduction is sought by a co-operative society must constitute the operational income and not the other income which accrues to the society. The interest income arising to a co-operative society carrying on the business of providing credit facilities to its members or marketing of agricultural produce of its members, on the surplus, which is not required immediately for business purposes, from investment in shortterm deposits and securities, has to be taxed as income from other sources under section 56 of the Income-tax Act, 1961. Such interest cannot be said to be attributable to the activities of the society, viz., carrying on the business of providing credit facilities to its members or marketing of agricultural produce of its members. Interest income of such society from amounts retained by it cannot be said to be attributable either to the activity mentioned in section 80P(2)(a)(i) or section 80P(2)(a)(iii) of the Act.” 6.10 It is directed that in the event it is found that the interest is earned by the assessee from such commercial/cooperative banks that fall within the definition of “banking company’ as per section 2(c), Section 5(b) and holds license under section 22 of the Banking Regulation Act 1949, such interest are to be considered under the head ‘income from other sources’ however, relief may be granted as available to the assessee u/s 57 of the Act in accordance with law. With the above directions, we remit this issue to the Ld.AO.

Additional grounds: 7. With regard to additional ground No.1, in our opinion, this ground is very general in nature and not made any specific material to suggest that the ld. AO have no jurisdiction to frame the assessment in this case. Hence, the first additional ground is dismissed.

7.1 Next additional ground is with regard to levy of interest u/s 234A, 234B & 234C of the Act. Since we have remitted the issue with regard to grant of deduction u/s 80P(2)(d) of the Act, this ground is infructuous at this stage. Accordingly, this ground is dismissed.

7.2 In the result, the additional grounds raised by the assessee are dismissed.

8. In the result, the appeals filed by the assessee are partly allowed for statistical purposes.

16. In view of the above order of the Tribunal and taking the consistent view, we remit the issue in dispute to the file of AO on similar directions.

17. In the result, the appeal of the assessee is partly allowed for statistical purposes.

Order pronounced in the open court on 3rd January, 2024.

Sd/-

(MADHUMITA ROY)

Judicial Member

Bangalore,

Dated, 3rd January, 2024

/ vms /

Sd/-

(CHANDRA POOJARI)

Accountant Member

Copy to:

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

By order

Asst. Registrar, ITAT, Bangalore