

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

**BEFORE SHRI GEORGE GEORGE K., VICE PRESIDENT
AND
SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER**

ITA No.895/Bang/2023
Assessment Year: 2017-18

Vittal Grameena Sahakari Bank Niyamitha F.F. 94, Palace Road Vittal Bantwal Taluk Vittal 574 222 Karnataka PAN NO.AAAVA1252A	Vs.	ITO Ward-2(5) Mangaluru
ASSESSEE		RESPONDENT

Assessee by	:	Ms. Harsha J., A.R.
Revenue by	:	Shri Parithivel, D.R.

Date of Hearing	:	06.02.2024
Date of Pronouncement	:	06.02.2024

O R D E R

PER CHANDRA POOJARI, ACCOUNTANT MEMBER:

This appeal by assessee is directed against order of NFAC for the assessment year 2017-18 dated 12.9.2023 passed u/s 250 of the Income Tax Act, 1961 (in short “The Act”). The assessee has raised following grounds of appeal:

- 1. “The Order of the learned Commissioner passed under section 250 of the Act is opposed to law, equity, weight of evidence, probabilities and the facts and circumstances in the Appellant's case.*
- 2. The Appellant denies to be assessed to tax on total income as determined by the learr.ad AO of Rs. 2,52,38,729/- as against the total income reported by the Appellant of Rs. NIL on the facts and circumstances of the case.*
- 3. The learned Commissioner of Income-tax (Appeals) erred in applying the ratio of judgment of Karnataka High Court in the case of M/s/Totgars Co-operative Sales Society reported*

in 83 Taxmann.com 140 for charging interest income as "IFOS" which are distinguishable on facts of the Appellant case:

- a. the Appellant is a credit co-operative society and not engaged in marketing of agricultural produce; and*
- b. the Appellant has earned interest from investment of its operational funds used in business of investing and lending to members and not by investing surplus funds in short term deposits.*

4. *The learned Commissioner of Income-tax (Appeals) erred in applying the principles laid down by the Supreme Court in the case of Mavilayi Service Cooperative Bank (123 taxman.ccm 161) wherein:*

- a. Section 80P(4) of the Act is said to be applicable only to co-operative Bank which are co-operative societies engaged in banking business which have a licence in this behalf from the RBI not applicable to the facts and circumstances of the case.*
- b. Interest income earned from-Scheduled Banks & Cooperative banks are also from non-member category and hence cannot be considered for deduction u/s 80P(2)(a) nor u/s 80P(2)(d) which is not applicable as investment made in S.C.D.C Bank is because of statutory requirement.*

5. *The learned Commissioner of Income-tax (Appeals) erred in not considering Karnataka High Court in the case of Tumkur Merchants Scuharda Credit Cooperative Ltd. v. Income tax officer Ward-V, Tumkur reported in 120151 55 taxmann.com 447 and M/s Guttigedarsra Credit Co-op Society Ltd. Mysore Vs. ITO, Mysore (!TA 1526/Bang/2013)where interest income earned from investment in co-operative Bank by a credit co-operative society is eligible for deduction u/s 80P(2)(d) of the Act.*

6. *The learned Commissioner of Income-tax (Appeals) erred in considering interest income earned by the Appellant from investment into other co-operative societies as taxable under the head "Other sources" and not "Business income"; thus rendering deduction u/s 80P(2)(d) not applicable.*

7. *The Appellant craves leave to add, alter, delete or substitute any of the grounds urged above.*

8. *In the view of the above and other grounds that may be urged at the time of the hearing of the appeal, the Appellant prays that the appeal may be allowed in the interest of justice and equity."*

2. The crux of above grounds is as follows:

2.1 Ground Nos.2 & 4 are with regard to deduction claimed u/s 80P(2)(a)(i) of the Act on interest income earned from Co-operative Bank. Ground Nos.3, 5 & 6 are with regard to deduction claimed u/s

80P(2)(d) of the Act on interest income earned from Co-operative bank.

3. Facts of the case are that the Assessee is registered under Karnataka Co-operative Society Act, 1959 on 06.08.1995. The Assessee is a co-operative Bank involved in activities of providing credit facilities to its members and trading in essential agricultural commodities, fertilisers, pesticides, food grains, ration and day to day materials for the benefit of the members. The Assessee is required to maintain statutory reserve as per the Circular No. DRPS: 948:2006-07 issued by Deputy Registrar of Co-operative Societies wherein all co-operative societies are directed to maintain a reserve of 3% in cash and 25% of liquid funds and invest in the District Central Co-operative Bank to maintain liquidity so that deposits are repaid on time. The extract of the circular is as follows:

“With reference to the above, the xerox copy of the letter is enclosed. Majority of co-operative societies of the District are functioning with minimum Rs. 1 crore to Rs. 20 crores deposits. Few co-operative societies are failing to maintain liquid assets by giving maximum 87% of their deposits as loans. When the depositors ask for withdrawal of deposits these societies may be unable repay the deposits and face financial crisis. To avoid such situation all the cooperative societies are hereby directed to take necessary action that all co-operative societies shall reserve 3% in cash and 25% of liquid funds and invest in the District Central Co. operative Bank.”

3.1 During AY 2017-18, the Assessee has filed its Return of Income on 22.10.2017 declaring Total Income of NIL after claiming deduction of Rs.2,52,38,729/- u/s 80P of the Act. The Return of Income was processed u/s. 143(1) of the Act. Later, the return was selected under CASS and notice u/s. 143(2) was issued to the Assessee on 10.08.2018. Details have also been called for u/s 142(1) of the Act. The AO completed the assessment making disallowance of the entire claim under section 80P of the Act. The Assessment order was passed by determining total income of the assessee as Rs. 2,52,38,729/- as against NIL total income declared by the Assessee. Being aggrieved, the Assessee preferred statutory appeal before the CIT(A).

3.2 The CIT(A) adjudicated the matter by holding that insofar the denial of deduction under section 80P(2)(a)(i) is concerned the matter is settled by the Apex Court in favour of the Assessee in re *Mavilayi Service Coop Bank Ltd* subject to the condition that profits attributable to non-members (excluding regular, associate and nominal members) to be excluded for the purpose of the same deduction.

3.3 The CIT(A) adjudicated the matter by holding that interest/dividend income from Co-operative Bank is ineligible for deduction u/s 80P(2)(a)(i) and 80P(2)(d) of the Act relying on the decision of Hon'ble Supreme Court in re *Mavilayi Service Coop Bank Ltd* (123 taxman.com 161) and *Totgar's Co-Operative Sale Society Ltd. v. ITO* [2010] 322 ITR 283.

3.4 Being aggrieved by the order of ld. CIT(A), the Assessee is in appeal before us.

4. Regarding ground Nos.2 & 4, it was submitted as follows:-

4.1 During the AY 2017-18, the Assessee had earned interest income from deposits held in South Canara Central Co-operative Bank Ltd (S.C.D.C.C) of Rs.1,02,20,518/-. The Assessee had included the above interest for the purpose of deduction under section 80P(2)(d) of the Act. During the course of assessment proceedings, it was proposed to tax interest income earned from Co-operative Banks as IFOS as per Dharwad Bench of Hon'ble High Court of Karnataka in the case of The Totagars Co-op Sale Society, Sirsi in ITA No.100066 of 2016 and Clause 80P(2)(d) is not applicable. The Assessee responded by way of submission on 10.12.2019 as follows:

- i. The Assessee is required to invest compulsorily as per the Karnataka Co-operative Societies Act, 1959. The deposits are with S.C.D.C.C bank are not invested but maintained for the

purpose of ratios as per law. Hence, the same shall be business income.

- ii. The Assessee has no retained amount or liability payable from trading activity.
- iii. Rate of interest earned on investment deposits are much lower than the interest offered for the deposit holders. Hence interest earned through investments contribute loss to the total income earned.
- iv. S.C.D.C.C Bank is constituent body of all the co-operative societies that are its members and has been permitted and licensed by RBI and has attained status of "Co-operative Bank".
- v. All the Co-operative Banks are basically co-operative Societies whereas all co-operative societies are not co-operative banks. Hence, interest earned from S.C.D.C.C bank is to be allowed as deduction u/s 80P(2)(d) of the Act.

4.2 The AO completed the assessment making disallowance of the interest income from investments in Co-operative Bank under section 80P(2)(a)(i) r.w.s 80P(2)(d) of the of the Act relying on the decision of Karnataka High Court in the case of PCIT vs. Totgars Co-operative Sale Society reported in (2017) 395 ITR 611 (Kar). The Assessment order was passed by determining total income of the assessee as Rs. 2,52,38,729/- as against NIL total income declared by the Assessee. Aggrieved by the order, an appeal was filed before Commissioner of Income-tax (Appeals). In addition to the submissions made before the learned AO, the Assessee submitted that the observation of the learned AO that the Assessee has invested excess funds in S.C.D.C.C Bank which are not required for its immediate operations is incorrect. As deposits are made as required compulsorily as per the Karnataka Co-operative Societies Act, 1959 hence it is not justified to- disallow the claim of deduction u/s 80P(2)(d) of the Act. Further, the judgement of Karnataka High Court relied on is distinguishable on

facts as interest earned by the Assessee is incidental to its business of providing credit facilities to its members and qualifies for deduction as held in ITA 29/2015 in the case of Gutigedarara Credit Co-op Society Ltd, Mysore vs. ITO. The CIT(A) passed the order u/s 250 of the Act on 12/09/2023 relying on the Supreme Court decision in re *Mavilayi Service Coop Bank Ltd (123 taxman.com 161)* and *Totgar's Co-Operative Sale Society Ltd. v. ITO [2010] 322 ITR 283* wherein it was held that the interest income from deposits kept with Schedule Banks and Cooperative Banks are to be taxed under the head income from other sources and their nature of income cannot be changed to business income. Aggrieved by the order, the Assessee is on appeal us. At the outset, the ld. A.R. for the Assessee submitted that the facts before us which are relevant to determine that the interest income is eligible for deduction u/s 80P(2)(a)(i) of the Act:

- a) The Assessee is a primary agricultural credit co-operative society engaged in the business of accepting deposits and lending money to members.
- b) The Assessee is required to maintain statutory reserve as per Rule 28 of KCS Rules, 1960 and hence as deposited the money with S.C.D.C.C Bank (refer Page 31-32 of the Paper book 1)
- c) The Assessee wishes to submit that as per Rule 28 of the KCS rules maintenance of fluid resources is mandatory under law. We have reproduced the Rule below:

28. Maintenance of fluid resources :-

Every Co-operative Society accepting deposits and granting cash credits shall maintain fluid resources in such form and according to such standards as may be fixed by the Registrar, from time to time, by general or special order.

- d) In pursuance of such rule, the Circular was issued by Deputy Registrar of Co-operative Societies where to avoid such situation of financial crises, all the cooperative societies have hereby directed to take necessary action to reserve 3% in cash and 25%

of liquid funds and invest in the District Central Co-operative Bank. Hence, the Assessee has deposited funds in S.C.D.C.C Bank to meet the statutory requirement and earned interest thereon.

- e) Further, as per Rule 23 of the KCS Rules, a co-operative society is required to maintain reserves to meet unforeseen losses and such reserves can be invested in specified securities u/s 58 of KSC Act. We have reproduced the relevant provisions below:

23. Object and investment of Reserve Fund :-

(1) A reserve fund maintained by a Co-operative Society shall belong to the society and is intended to meet unforeseen losses. It shall be indivisible and no member shall have any claim to a share in it.

(2) A Co-operative Society shall not invest or deposit its reserve fund except in one or more of the modes mentioned in clauses (a) to (d) of Section 58 of the Act:

Provided that the Registrar may, by general or special order, permit any Co-operative Society or any class of Co-operative Societies to invest the reserve fund or a portion thereof on its own business, or in the

(3) No Co-operative Society whose reserve fund has been separately invested or deposited shall draw upon, pledge or otherwise employ such fund, except with the sanction of the Registrar previously obtained in writing.

- f. Hence such interest income earned is as per statutory requirement are eligible for deduction u/s 80P(1) of the Act as they are attributable to business of credit facility provided by the Assessee. We have reproduced the section below for ease of reference:

Deduction in respect of income of co-operative societies.

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

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

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

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

(ii) a cottage industry, or

.....

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

- g. Reliance is placed on the decision of Supreme Court in the case of Commissioner of Income-tax .v. Karnataka State Co-operative Apex Bank [2001] 118 Taxman 321 (SC) on parity of reasoning wherein it was held that:

“6. The question is whether we agree with the reasoning in M.P. Co-operative Bank Ltd.'s case (supra). There is no doubt, and it is not disputed, that the assessee-co-operative bank is required to place a part of its funds with the State Bank or the Reserve Bank of India to enable it to carry on its banking business. This being so, any income derived from funds so placed arises from the business carried on by it and the assessee has not, by reason of section 80P(2)(a)(i), to pay income-tax thereon. The placement of such funds being imperative for the purposes of carrying on the banking business, the income derived therefrom would be income from the assessee's business. We are unable to take the view that found favour with the Bench that decided the case of M.P. Co-operative Bank Ltd. (supra) that only income derived from circulating or working capital would fall within section 80P(2)(a)(i). There is nothing in the phraseology of that provision which makes it applicable only to income derived from working or circulating capital.

7. In the premises, we take the view that the decision of this Court in the case of M.P. Co-operative Bank Ltd. (supra) does not set down the correct law and that the law is as we have put it above. The question, accordingly, is answered in the affirmative and in favour of the assessee.

- h. Further, reliance is placed on the decision of Commissioner of Income-tax. Nawanshahar Central Co-operative Bank Ltd.[2007] 160 Taxman 48 (SC) on parity of reasoning wherein it was held that:

“This Court has consistently held that investments made by a banking concern are part of the business of banking. The income arising from such investments would, therefore, be attributable to the business of bank falling under the head "Profits and gains of business" and thus deductible under section 80P(2)(a)(i) of the Income-tax Act, 1961. This has been so held in Bihar State Co-operative Bank Ltd. v. CIT [1960] 39 ITR 114 (SC), CIT v. Karnataka State Co-operative Apex Bank [2001] 251 ITR 194 (SC) and CIT v. Ramanathapuram District Co-operative Central Bank Ltd. [2002] 255 ITR 423 (SC).”

- i. Based on the above decision, the CBDT vide Circular No. 18/2015, F.No. 279/Misc./140/2015/TTJ dated 02-11-2015 has decided that no appeals shall be filed either by the

Department/ Assessee and if filed shall be withdrawn in cases the investments made by a banking concern are part of the business of banking. Therefore, the income arising from such investments is attributable to the business of banking falling under the head "Profits and Gains of Business and Profession".

j. Applying the same principles, in order to carry out business of providing credit facilities to members it is imperative to maintain liquid funds by investing in specified banks under the Co-operative Societies laws, hence the same would be attributable to the business and any income arising thereon would be eligible for deduction u/s 80P(2)(a)(i) of the Act.

k. Further, the term used in section 80P is whole of the income attributable to. Hence, the term The expression "attributable to" is of wider import and is intended to gather receipts from sources other than the actual conduct of the business. Reliance is placed on the Karnataka High Court in the case of Tumkur Merchants Souharda Credit Co-operative Ltd. V. ITO, ward-4, Tumkr(2015) wherein it was held that:

7. The word 'attributable' used in the said section is of great importance. The Apex Court had an occasion to consider the meaning of the word 'attributable' as supposed to derive from its use in various other provisions of the statute in the case of Cambay Electric Supply Industrial Co. Ltd. v. CIT [1978] 113 ITR 84 (SC) as under:

'As regards the aspect emerging from the expression "attributable to" occurring in the phrase "profits and gains attributable to the business of the specified industry (here generation and distribution of electricity) on which the learned Solicitor-General relied, it will be pertinent to observe that the legislature, has deliberately used the expression "attributable to" and not the expression "derived from". It cannot be disputed that the expression "attributable to" is certainly wider in import than the expression "derived from". Had the expression "derived from" been used, it could have with some force been contended that a balancing charge arising from the sale of old machinery and building cannot be regarded as profits and gains derived from the conduct of the business of generation and distribution of electricity. In this connection, it may be pointed out that whenever the legislature wanted to give

a restricted meaning in the manner suggested by the learned Solicitor-General, it has used the expression "derived from", as, for instance, in section-80J. In our view, since the expression of wider import, namely, "attributable to", has been used, the legislature intended to cover receipts from sources other than the actual conduct of the business of generation and distribution of electricity.'

8. *Therefore, the word "attributable to" is certainly wider in import than the expression "derived from".*

*Whenever the legislature wanted to give a restricted meaning, they have used the expression "derived from". **The expression "attributable to" being of wider import, the said expression is used by the legislature whenever they intended to gather receipts from sources other than the actual conduct of the business.** A Cooperative Society which is carrying on the business 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.*

1. Wherefore, the Assessee is required to invest in S.C.D.C.C Bank as it is statutorily required; hence any interest arising from deposit would be attributable to the business; hence shall be allowed as deduction u/s 80P(2)(a)(i) of the Act.
- m. Wherefore, addition of Rs. 1,02,20,518/- is liable to be deleted.

4.3 The ld. A.R. submitted that the learned Commissioner of Income-tax (Appeals) erred in applying the principles laid down by the Supreme Court in the case of Mavilayi Service Cooperative Bank (123 taxman.com 161) wherein:

- a. Section 80P(4) of the Act is said to be applicable only to co-operative Bank which are co-operative societies engaged in banking business which have a licence in this behalf from the RBI not applicable to the facts and circumstances of the case.

- b. Interest income earned from Scheduled Banks & Cooperative banks are also from non-member category and hence cannot be considered for deduction u/s 80P(2)(a) nor u/s 80P(2)(d) which is not applicable as investment made in S.C.D.C.C Bank is because of statutory requirement (ground no. 4)

4.4 At the outset, the ld. A.R. submitted that the Assessee is entitled to deduction us/ 80P(2)(a)(i) of the Act as held by Learned CIT(A) in his assessment order. However, the learned Commissioner of Income-tax (Appeals) has misapplied the principles laid down by the Supreme Court in the case of Mavilayi Service Cooperative Bank (123 taxman.com 161) where profits attributable to the loans given to non-members (excluding Regular, Associate and nominal members) are to be excluded for the purpose of the deduction u/s 80P(2)(a)(i) of the Act.

45. To sum up, therefore, the ratio decidendi of Citizen Co-operative Society Ltd. (supra), must be given effect to. Section 80P of the IT Act, 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 licence 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 assesseees 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.

4.5 The ld. A.R. submitted that the Supreme Court has laid down a law that any interest earned from loans given to non-members are not eligible for deduction u/s 80P of the Act. But as a corollary, this

does not mean that interest earned from investment in Co-operative Banks are profit attributable from non-member category; hence not eligible for deduction. This is because in order to carry out business of providing credit facilities to members it is imperative to maintain liquid funds by investing in specified banks under the Co-operative Societies laws, hence the same would be attributable to the business. Further, the interest earned from Co-operative banks are not arising from loans given; but due to investments made as per statutory requirement; hence applying these principle on income earned from non-member category is inappropriate to the facts and circumstances of the case. Wherefore, reliance placed on this decision of Supreme Court for not allowing deduction of interest income earned from investment made in co-operative banks u/s 80P(2)(a)(i) is unsustainable under law.

4.6 The ld. A.R. submitted that the learned Commissioner of Income-tax (Appeals) erred in applying the ratio of judgment of Karnataka High Court in the case of M/s Totgars Co-operative Sales Society reported in 83 Taxmann.com 140 for charging interest income as “IFOS” which are distinguishable on facts of the Assessee’ case:

- a. the Assessee is a primary agricultural credit co-operative society and not engaged in marketing of agricultural produce; and
- b. The Assessee has earned interest from investment of its operational funds used in business of investing and lending to members and not by investing surplus funds in short term deposits (Ground no. 3)

4.7 The ld. A.R. submitted that the learned Commissioner of Income-tax (Appeals) erred in not considering Karnataka High Court in the case of Tumkur Merchants Souharda Credit Cooperative Ltd. v. Income tax officer Ward-V, Tumkur reported in 120151 55 taxmann.com 447 and Bangalore ITAT decisions in the case of

Totagars Co-op Sale Society, Sirsi Vs The Asst. Commissioner of Income tax, Circle-1(1) & TPS, Hubli in ITA No. 376 to 379/Bang/2023 where interest income earned from investment in co-operative Bank by a primary agricultural credit co-operative society is eligible for deduction u/s 80P(2)(d) of the Act (Ground no. 5)

5. The ld. D.R. strongly relied on the order of ld. CIT(A).

6. We have heard the rival submissions and perused the materials available on record. The Hon'ble Apex Court in the case of Mavilayi Service Co-operative Bank Ltd. & Ors. v. CIT & Anr. (supra) had held that the co-operative societies providing credit facilities to its members is entitled to deduction u/s 80P(2)(a)(i) of the Act. The Hon'ble Apex Court after considering the judicial pronouncements on the subject, had stated the term "member" has not been defined under the Income-tax Act. It was, therefore, stated by the Hon'ble Apex Court that the term "member" in the respective State Co-operative Societies Acts under which the societies are registered have to be taken into consideration. The Hon'ble Apex Court held that if nominal / associate member is not prohibited under the said Act, for being taken as a member, the income earned on account of providing credit facilities to such member also qualify for deduction u/s 80P(2)(a)(i) of the Act. It was further held by the Hon'ble Apex Court that section 80P(4) of the I.T. Act is to be read as a proviso. It was stated by the Hon'ble Apex Court that section 80P(4) of the Act now specifically excludes only co-operative banks which are co-operative societies engaged in the business of banking i.e. engaged in lending money to members of the public, which have a licence in this behalf from the RBI. The Hon'ble Apex Court had enunciated various principles in regard to deduction u/s 80P of the Act. On identical factual situation, the Bangalore Bench of the Tribunal in the case of M/s. Ravindra Multipurpose Cooperative Society Ltd. v. ITO in ITA No.1262/Bang/2019 (order dated

31.08.2021) had remanded the issue to the files of the A.O. for de novo consideration. The Tribunal directed the A.O. to follow the dictum laid down by the Hon'ble Apex Court in the case of Mavilayi Service Co-operative Bank Ltd. & Ors. v. CIT & Anr. (supra). The relevant finding of the Co-ordinate Bench of the Tribunal in the case of M/s. Ravindra Multipurpose Cooperative Society Ltd. v. ITO (supra), reads as follows:-

“6. Grounds 2-4 & additional Ground No.1:

In respect of associate / nominal members, Hon'ble Supreme Court in the case of Mavilayi Service Co-operative Bank Ltd. v. CIT (2021) 123 taxmann.com 161 (SC) has held that the expression “Members” is not defined in the Income-tax Act. Hence, it is necessary to construe the expression “Members” in section 80P(2)(a)(i) of the Act in the light of definition of that expression as contained in the concerned co-operative societies Act. In view of this, the facts are to be examined in the light of principles laid down by the Hon'ble Supreme Court in Mavilayi Service Cooperative Bank Ltd. (surpa).

Accordingly, we remit this issue of deduction u/s 80P(2)(a)(i) of the Act to the files of Ld.AO to examine the same de novo in the light of the above judgment. Needless to say that proper opportunity of being heard is to be granted to assess in accordance with law.”

6.1 In view of the order of the ITAT, which is identical to the facts of the case, we restore the issue of claim of deduction u/s 80P of the Act to the files of the A.O. for de novo consideration.

7. With regard to ground Nos.3, 5 & 6 the ld. A.R. for the assessee has submitted as follows:

7.1 At the outset, assessee has invested in District Co-operative Bank as it is imperative to carry on the business of providing banking or credit facilities to the members. Further, the Appellant has no liability appearing in the balance sheet which is payable to the members. Hence, it is clear that the investments are made out of operational funds and not surplus funds. She submitted that the case law relied on by the learned CIT(A) is M/s Totgars Co-operative

Sales Society reported in 322 ITR 283 (SC) which are distinguishable on facts being:

- It is primarily engaged in the business of providing credit facilities to its members and marketing their agricultural produce.
- At the time of marketing the produce, if the amounts are retained and as the funds are not immediately required, the same was deposited and interest is earned. The funds used for investment are out of amount payables to the members retained by them.
- As interest is earned on surplus money deposited with the Bank not immediately required for business purposes, the same was held to be taxed as 'IFOS' u/s 56 of the Act

7.2 She submitted that alike banking business, investments made are attributable to the business of banking as it is statutorily required and out of operational funds, similarly for co-operative societies engaged in providing banking and credit facilities, any investments made out of operational funds and income earned thereon are attributable to its business. She placed reliance on the following cases of the Jurisdictional High Court/ Hon'ble Bench which have distinguished the facts of the above case laws and held that interest income is eligible for deduction u/s 80P(1) of the Act which squarely applies to the facts of the Appellant's case:

- a) Tumkur Merchants Souharda Credit Cooperative Ltd. V. Income Tax Officer Ward-V, Tumkur (55 taxmann.com 447) (Karnataka)
- b) Honnali Credit Cooperative Society Ltd., Honnali Vs. ITO Ward-2, Shivamoga (ITA No.2752 & 2753 order pronounced on 31.1.2018)
- c) Guttigedarara Credit Cooperagive Society Ltd. Reported in (2015) 60 taxmann.com 215 (Karnatak)

7.3 She further submitted that Bangalore ITAT in the Appellant's own case in ITA No.1401/Bang/2019 for AY 2016-17 has held that

5. I have considered the rival submissions and set aside the order of CIT(A) and restore the matter back to his file for fresh decision in the light of above discussion.....

He is also directed to examine the facts of present case in the light of these two judgments of Hon'ble Karnataka High Court rendered in the case of Tumkur Merchants Souharda Credit Co-operative Ltd. Vs. ITO (supra) and PCIT and Another Vs. Totagars Co-operative Sale Society (supra) and pass necessary order as per law in the light of above discussion after providing adequate opportunity of being heard to both sides.

7.4 Wherefore, the ld. A.R. placed reliance on the following judgements of Jurisdictional High Court/ this Hon'ble Tribunal in case of M/s Totagars Co-operative Sale Society where interest/dividend earned from investment in other co-operative society out of operational funds are eligible for deduction u/s 80P(2)(d) of the Act.

- a) PCIT & Anr Vs. Totagars Cooperative Sale Society reported in (2017) 392 ITR 74
- b) Totagars Cooperative Sale Society Ltd. Vs. ACIT Circle-1(1) and TPS (ITA No.376 to 379/Bang/2023)

7.5 She submitted that similar view has been taken in the following judgements:

- M/s. University of Agricultural Employees House Building Co-op Society v. ACIT Circle -6(3)(1) (ITA 319/Bang/2023)
- Bhavasar Kshtriya Co-operative Credit Society Ltd. vs. ITO/ADIT in ITA Nos. 581 to 583/Bang/2022
- Patharev Prabhu Co-operative Housing Society Ltd.v.Income-tax Officer [2023] 153 taxmann.com 714 (Mumbai - Trib.)
- Shree Madhi Vibhag Khand Udyog Sahakari Mandli Ltd.v. Principal Commissioner of Income-tax [2023] 152 taxmann.com 548 (Surat-Trib.)
- Gramin Sewa Sahakari Samiti Maryadit v. Income-tax Officer [2022] 138 taxmann.com 476 (Raipur - Trib.)

7.6 Therefore, she submitted that interest income earned from co-operative banks are eligible for deduction u/s 80P(2)(d) of the Act. However, in the recent past with the amendment to 80P(4) of the Act w.e.f 1.04.2007 which has denied the benefit of 80P to co-operative banks other than primary agricultural credit society or a primary co-operative agricultural and rural development bank, the courts have taken a view that deduction of interest income from District/State/Central Co-operative Banks earned by a co-operative society are not eligible for deduction u/s 80P(2)(d) of the Act as they are not co-operative societies as required u/s 80P of the Act. She submitted that the Supreme Court in the case of *Mavilayi Service Co-operative Bank Limited vs. CIT, Calicut* reported in [2021] 123 Taxmann.com 161 has clearly stated that the intention of introduction of section 80P(4) of the Act is to exclude co-operative banks that function at par with other commercial banks i.e. which lend money to members of the public. Further, a primary agricultural credit society is a co-operative society, the primary object of which is to provide financial accommodation to its members for agricultural purposes or for purposes connected with agricultural activities; hence it is not a banking company within the meaning of RBI Act.

"36. Coming to the provisions of section 80P(4), it is important to advert to speech of the Finance Minister dated 28-2-2006, which reflects the need for introducing section 80P(4). Shri P. Chidambaram specifically stated:

"166. Cooperative Banks, like any other bank, are lending institutions and should pay tax on their profits. Primary Agricultural Credit Societies (PACS) and Primary Cooperative Agricultural and Rural Development Banks (PCARDB) stand on a special footing and will continue to be exempt from tax under section 80P of the Income-tax Act. However, I propose to exclude all other cooperative banks from the scope of that section."

37. Likewise, a Circular dated 28-12-2006, containing explanatory notes on provisions contained in the Finance Act, 2006, is also important, and reads as follows:

"Withdrawal of tax benefits available to certain cooperative banks

*** ** **

22.2 The cooperative banks are functioning at par with other commercial banks, which do not enjoy any tax benefit. Therefore section 80P has been amended and a new sub-section (4) has been inserted to provide that the provisions of the said section shall not apply in relation to any cooperative

bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank. The expressions 'co-operative bank', 'primary agricultural credit society' and 'primary co-operative agricultural and rural development bank' have also been defined to lend clarity to them."

38. A clarification by the CBDT, in a letter dated 9-5-2008, is also important, and states as follows: "Subject: Clarification regarding admissibility of deduction under section 80P of the Income-tax Act, 1961.

*** ** **

2. In this regard, I have been directed to state that sub-section(4) of section 80P provides that deduction under the said section shall not be allowable to any co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank. For the Purpose of the said sub-section, co-operative bank shall have the meaning assigned to it in part V of the Banking Regulation Act, 1949.

3. In part V of the Banking Regulation Act, "Co-operative Bank" means a State Co-operative bank, a Central Co-operative Bank and a primary Co-operative bank.

4. Thus, if the Delhi Co-op Urban T & C Society Ltd. does not fall within the meaning of "Co-operative Bank" as defined in part V of the Banking Regulation Act, 1949, sub-section(4) of section 80P will not apply in this case.

5. Issued with the approval of Chairman, Central Board of Direct Taxes."

39. The above material would clearly indicate that the limited object of section 80P(4) is to exclude co-operative banks that function at par with other commercial banks i.e. which lend money to members of the public. Thus, if the Banking Regulation Act, 1949 is now to be seen, what is clear from section 3 read with section 56 is that a primary co-operative bank cannot be a primary agricultural credit society, as such co-operative bank must be engaged in the business of banking as defined by section 5(b) of the Banking Regulation Act, 1949, which means the accepting, for the purpose of lending or investment, of deposits of money from the public. Likewise, under section 22(1)(b) of the Banking Regulation Act, 1949 as applicable to co-operative societies, no co-operative society shall carry on banking business in India, unless it is a co-operative bank and holds a licence issued in that behalf by the RBI. As opposed to this, a primary agricultural credit society is a co-operative society, the primary object of which is to provide financial accommodation to its members for agricultural purposes or for purposes connected with agricultural activities."

7.7 Further, she submitted that the Hon'ble Supreme Court in the case of *Kerala State Co-operative Agricultural and Rural Development Bank Ltd.*, in Civil Appeal No.10069 of 2016, order dated 14.09.2023 has held that Central Co-operative Bank is a Co-operative Society which is registered under the Kerala State Co-operative Societies Act, then it is not a bank per se governed by RBI.

*“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) of section 80P of the Act.*

*15.9 section 56 of the BR Act, 1949 begins with a non-obstante clause which states that notwithstanding anything contained in any other law for the time being in force, the provisions of the said Act, shall apply to, or in relation to, co-operative societies as they apply to, or in relation to, banking companies subject to certain modifications. The object of section 56 is to provide a deeming fiction by equating a co-operative society to a banking company if it is a co-operative bank within the meaning of the said provision. This is because Chapter V of the BR Act, 1949, deals with application of the Chapter to co-operative societies which are co-operative banks within the meaning of the said chapter. For the purpose of these cases, what is relevant is that throughout the BR Act, 1949, unless the context otherwise requires, - references to a "banking company" or "the company" or "such company" shall be construed as references to a co-operative bank. **Therefore, while considering the meaning of a co-operative bank inherently, such a co-operative society must be a banking company then only it would be construed as a co-operative bank requiring a licence under section 22 of BR Act, 1949 in order to function as such a bank.***

15.10 Further, while considering the definition of a co-operative bank under section 56(cci) of the BR Act, 1949, to mean a state co-operative bank, a central co-operative bank and a primary co-operative bank which is defined in (ccviii) thereof, to have meanings respectively assigned to them in the NABARD Act, 1981 would imply that if a state co-operative bank is within the meaning of NABARD Act, 1981 then it would be excluded from the benefit under section 80P of the Act. Conversely, if a co-operative society is not a co-operative bank within the meaning of section 56 of the BR Act, 1949, it would be entitled to the benefit of deduction under section 80P of the Act.”

7.8 Therefore, the Id. A.R. submitted that the Hon’ble Supreme Court has clearly stated a state co-operative bank, a central co-operative bank or a primary co-operative bank in terms of section 56(c)(i)(cci) of the Act are not co-operative banks carrying on banking business i.e., 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.

7.9 Hence, she submitted that the S.C.D.C.C Bank is a co-operative society registered under Karnataka Co-operative Societies Act, 1959 (refer Page 135 of the Paper book 1) and not co-operative Banks carrying on banking business in terms of *in clause (c) of section 5 of the BR Act, 1949*. This is because the Central Co-operative Banks is established with the primary object of financing of other co-operative societies in that district and not for carrying on banking business with the public. She reproduced the section 2(d) of The National Bank For Agriculture And Rural Development Act, 1981 below:

“(d) “central co-operative bank” means the principal co-operative society in a district in a State, the primary object of which is the financing of other co-operative societies in that district: Provided that in addition to such principal society in a district, or where there is no such principal society in a district, the State Government may declare any one or more cooperative societies carrying on the business of financing other co-operative societies in that district to be also or to be a central co-operative bank or central co-operative banks within the meaning of this definition;”

7.10 She placed reliance on the decision of Chennai Tribunal in the case of *Kangayam Primary Agricultural Co-operative Credit Society v The Income Tax Officer, Ward 1(4), Tirupur* wherein it was held as follows:

“We noted that the Hon’ble Supreme Court has considered the identical issue in the case of Kerala State Co-operative Agricultural and Rural Development Bank Ltd., in Civil Appeal No.10069 of 2016, order dated 14.09.2023, wherein the Hon’ble Supreme Court has stated that the Central Co-operative Bank is a Co-operative Society which is registered under the Kerala State Co-operative Societies Act, then it is not a bank per se governed by RBI. Similarly in the present case before us, the Erode District Central Co-operative Bank also governed by Tamil Nadu Co-operative Societies Act and once it is governed by Co-operative Societies Act, the assessee is eligible for claim of deduction u/s.80P(2)(d) of the Act. Hence, we are of the view that assessee’s case is squarely covered in favour of assessee by the decision of Hon’ble Supreme Court in the case of Kerala State Co-operative Agricultural and Rural Development Bank Ltd., supra and hence, we allow the claim of assessee.”

7.11 Hence, the ld. A.R. for the assessee submitted that it is eligible to claim deduction u/s 80P(2)(d) of the Act in respect of interest income of Rs. 1,02,20,518/- earned from S.C.D.C.C Bank as it not bank governed by RBI per-se. Without prejudice to the above, as an alternate remedy and without prejudice to the above, the ld. A.R. submitted that if at all investment income from S.C.D.C.C. Bank is taxed u/s 56, then deduction u/s 57 in respect of cost of funds shall be allowed as deduction.

8. We have heard the rival submissions and perused the materials available on record. As regards the claim of deduction u/s 80P(2)(d) of the I.T. Act, we direct the A.O. to verify whether interest / dividend is received by the assessee out of investments made with Cooperative Societies. If the assessee earns interest / dividend income out of investments with co-operative society, as observed by Hon’ble Supreme Court in the case of Kerala State Co-operative Agricultural and Rural Development Bank Ltd. Cited (supra), the same is entitled to deduction u/s 80P(2)(d) of the I.T. Act.

8.1 Without prejudice to the above, we make it clear that if the interest earned by assessee from the banks is considered under the

head "Income from other sources", relief to be granted to the assessee u/s 57 of the Act in accordance with law. Accordingly, the issue is restored to the file of Id. AO for denovo consideration with the above observations.

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

Order pronounced in the open court on 6th Feb, 2024

Sd/-
(George George K.)
Vice President

Sd/-
(Chandra Poojari)
Accountant Member

Bangalore,
Dated 6th Feb, 2024.
VG/SPS

Copy to:

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

By order

Asst. Registrar,
ITAT, Bangalore.