

**IN THE INCOME TAX APPELLATE TRIBUNAL
JAIPUR BENCHES, "A" JAIPUR**

**BEFORE SH. SANDEP GOSAIN, JUDICIAL MEMBER
AND DR. M. L. MEENA, ACCOUNTANT MEMBER**

I.T.A. No. 10/JPR/2024
Assessment Year: 2020-21

Reserve Bank Cooperative
Society Ltd., C/o RBI Building,
Rambagh Circle, Tonk Road,
Jaipur 302015, Raj.

[PAN:AAATR5829A]

(Appellant

Vs. Income Tax Officer,
Ward -6(2), Jaipur

(Respondent)

Appellant by : Sh. P. C. Parwal, C.A.

Respondent by : Sh. A. S. Nehra, Addl. CIT

Date of Hearing : 14.02.2024

Date of Pronouncement : 05.03.2024

ORDER

Per Dr. M. L. Meena, AM:

The captioned appeal has been filed by the assessee against the order of the Id. CIT(A) National Faceless Appeal Centre (NFAC), Delhi dated 26.12.2023 in respect of Assessment Year: 2020-21.

2. The assessee has raised the following grounds of appeal:

- “1. *The Ld. CIT(A), NFAC has erred on facts and in law in confirming the order of AO in assessing the interest receipt of Rs.5,17,43,725/-received from investment made with other cooperative bank under the head income from other sources by (a) not accepting the contention of assessee that the said interest receipt is attributable to the activity of providing credit facility to its members eligible for deduction u/s 80P(2)(a)(i) of the Act (b) not accepting the contention of assessee that said interest receipt is otherwise eligible for deduction u/s 80P(2)(d) of the Act and (c) not allowing proportionate claim of deduction of Rs.24,88,833/- u/s 80P(2)(a)(i) on the income assessed by AO at Rs.1,00,66,166/-.*
2. *The appellant craves to alter, amend and modify any ground of appeal.*
3. *Necessary cost be awarded to the assessee.”*

3. Briefly, the facts of the case are that the appellant is engaged in the business of providing credit facilities to its members. The AO stated that the assessee's society has made an investment in Cooperative Bank not in Cooperative Society and earned interest income of Rs.5,17,43,725/- during scrutiny assessment. The Id. Assessing Officer placed reliance on the judgment of Hon'ble Apex Court in the case of Mavilayi Service Coop. Bank Ltd. &Ors. v. CIT Civil Appeal Nos. 7343-7350 of 2019 dated 12.01.2021 where the Coop. Bank are excluded from the ambit of section 80P of the Act. He reproduced relevant observation of the Apex Court vide para 5.4 of pg. 11 of the assessment order as under:

“The 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 cooperative societies who must possess a licence from the RBI to do banking business.”

4. The Id. AO further placed reliance on the judgment of Hon'ble Karnataka High Court in the case of PCIT v. Totagars Cooperative Sale Society [2017] 83 taxmann.com 140 and Hon'ble Apex Court judgment delivered in the case of Citizen Cooperative Society Ltd. v. ACIT [2017] 84 taxmann.com 114 (SC) and many other judgments. The AO has stated that the assessee has failed to produce any evidence to show that it is incurrany expenditure wholly and exclusively to earn interest income from Cooperative Ban, Commercial Bank and other financial institutions. Accordingly, the entire interest income from FDR's, amounting to Rs.5,17,43,725/- has been added to the return income under the head income from other sources u/s 56 of the Act.

5. Aggrieved, the assessee went in appeal before the Id. CIT(A) who has confirmed the addition by observing as under:

“6. Decision

6.1 I have carefully considered the grounds of appeal, the statement of facts filed by the appellant, the submissions filed and the contents of the assessment order. Ground No. 1 is against determination of total income at Rs. 1,00,66,166/-

by holding that interest income of Rs. 5,17,43,725/- is neither eligible for deduction u / s 80P(2)(a)(i) nor u/s 80P(2)(d) The reasons given by the A.O. for disallowing claim of deduction u / s 80P(2)(a)(i) as well as under section 80P(2)(d) have been discussed at Para 4 to 4.1 above. It is an undisputed fact that during the year under consideration, the appellant had earned interest income of Rs. from FDRs with the 5,17,43,725/- DEPARTMENTEN Rajasthan State Co-operative Bank.

6.2 The first issue is whether interest income on investments in FDRs with co-operative banks can be considered as business income of the appellant. The issue has been considered by the Hon'ble Supreme Court in the case of Totgars Co- Operative Sale Society Ltd. v. ITO [2010] 322 ITR 283/188 Taxman 282 (SC). The Hon'ble court held as follows:

'The words "the whole of the amount of profits and gains of business" emphasise that the income in respect of which deduction is sought must constitute the operational income and not the other income which accrues to the Society. In this particular case, the evidence shows that the assessee-Society earns interest on funds which are not required for business purposes at the given point of time. Therefore, on the facts and circumstances of this case, in our view, such interest income falls in the category of "Other Income" which has been rightly taxed by the Department under Section 56 of the Act.'

The appellant has sought to distinguish its case from that of Totgars' on the ground that Totgars Cooperative Sale Society Ltd. was engaged in the business of marketing of agricultural produce grown by its members. The sale consideration received from marketing of agricultural produce of its members was retained in many cases and invested in short term deposit. The amount so retained was a liability on it and therefore, to that extent, the interest income was held not to be income attributable to the activity carried out by the society. This view was also taken by the Karnataka High Court in the case of Tumkur Merchants Souharda Credit Cooperative Ltd. [2015] 55 taxmann.com 447 (Karnataka). However, the interpretation that the SC decision in Totgars case was rendered and would be applicable only to a co- operative society which was retaining sale proceeds of its members has been negated by the Hon'ble Gujarat High Court in its decision in the case of SBI v. CIT (2016) 389 ITR 578 (Guj). Relevant portions of the decision are reproduced below:

28. Thus, in the case of a co-operative society engaged in carrying on the business of banking or providing credit facilities to its members, what is deductible under section 80P of the Act is the whole of the amount of profits and

gains of business attributable to any one or more such activities. The Supreme Court in Totgar's Co-operative Sale Society (supra) has, while giving a precise meaning to the words "profits and gains of business" mentioned in section 80P(2) of the Act, observed that the assessee in that case regularly invested funds not immediately required for business purposes and was of the view that interest on such investments, therefore, cannot fall within the meaning of the expression "profits and gains of business". It was held 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 the agricultural produce to its members. The court further held that the words "the whole of the amount of profits and gains of business" emphasise that the income in respect of which deduction is sought must constitute the operational income and not the other income which accrues to the society. The court observed that in that particular case the evidence showed that the assessee-society earned interest on funds which were not required for business purpose at the given point of time. Therefore, in the facts and circumstances of the case, the court was of the view that, such interest income falls in the category of "Other income" which had rightly been taxed by the Department under section 56 of the Act.

29. In the opinion of this court, in case of a society engaged in providing credit facilities to its members, income from investments made in banks does not fall in any of the categories mentioned under section 80P(2)(a) of the Act. In the case of Totgar's Co-operative Sale Society (supra), as rightly submitted 'by the learned counsel for the respondent, 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. This is further clear when one peruses 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. This court is, therefore, of the view that the above decision 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. For the above reasons, this court respectfully does not agree with the view taken by the Karnataka High Court in Tum-kur Merchants Souharda Credit Co-operative Ltd. v. ITO (supra) that the decision of the Supreme Court in Totgar's 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.

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

(emphasis supplied)

6.3 The stand taken by the Gujarat High Court was reiterated by the Karnataka High Court in the later decision in the case of the same assessee in the case of PCIT V. Totagars Co-operative Sale Society, [2017] 395 ITR 611 and the Court held as under:

12. The sheet anchor of the contention of the learned counsel for the assessee misses two essential points required for claiming the exemption or 100% deduction from gross total income for a co-operative society: (i) that the character or nature of income, namely interest on investments or deposits, does not change irrespective of the fact whether it is earned or received from a Schedule Bank or Co-operative Bank. (ii) that what the Honble Supreme Court held in the

case of the respondent assessee itself, against the assessee, was that such interest income on its surplus and idle funds not immediately required for its business, is not income from business taxable under Section 28 of the Act, but was taxable as income from other sources under Section 56 of the Act, whereas for availing the exemption or 100% deduction under Section 80P of the Act the income is specified in clauses (a) to (f) of Subsection (2) of Section 80P of the Act should be its business or operational income.

17. As stated above, it is the character and nature of income which determines its taxability or exemption from taxability. It is needless to say that the provisions relating to exemption and deduction need to be strictly construed and no liberal interpretation or intendment can be inferred in such provisions."

A similar stand has been taken in the following cases:

(a) It was held in Mantola Co-operative Thrift and Credit Society Ltd., v. CIT (2014) 50 Taxman.com 278 (Delhi) that the word Banking appearing in Section 80P(2)(a)(i) cannot be given an extended and broad meaning and that to do so would be contrary to the ratio laid down in Totgars Co-operative Society.

b) In CIT v. Punjab State Co-operative Agricultural Development Bank Ltd. (2016) 76 Taxman.com 307 (P&H), a Division Bench of the Punjab and Haryana High Court held that the interest earned on reserve funds and call deposits could not be regarded as income attributable to one of the activities indicated in the Section. The Punjab and Haryana High Court not only followed Totgars but also followed the decision of the Gujarat High Court in SBI v. CIT (2016) 389 ITR 578 (Guj).

(c) In CIT v. South Eastern Railway Employers Co-operative Credit Society Ltd. (2016) 73 Taxman.com 123, a Division Bench of the Calcutta High Court indicated that the judgment of the Supreme Court in Totgars is a binding authority for the proposition that interest income arising on the surplus invested in short-term deposits and securities would come under the category of income from other sources.

6.4 The appellant states that when there are conflicting decisions of the non-jurisdictional High Courts, the decision beneficial to the assessee must be applied. This argument is not applicable to this case as there exists a Supreme Court decision on this issue, which has been shown to apply even in the case of credit societies like the appellant, by various courts. Thus, respectfully differing from the decision of my predecessor rendered in AY 2018-19 and in tune with the

various decisions cited above, which make the SC decision in the case of Totgars Co-Operative Sale Society Ltd. v. ITO [2010] 322 ITR 283/188 Taxman 282 (SC) applicable to the present case, it is hereby held that interest income of Rs. 5,17,43,725/- from FDRs maintained with co-operative banks is not income from business but is to be treated as 'income from other sources and is, therefore, not eligible for deduction u/s 80P(2)(a)(i).

6.5 The next issue is whether the appellant is eligible for deduction u/s 80P(2)(d) on the income of Rs. 5,17,43,725/- which represents interest income earned from FDRs with co-operative banks. In this regard, the Hon'ble Karnataka High Court, in the case of PCIT v/s Totagars Co-operative Sale Society Ltd. [2017] 395 ITR 611 (Kar) has deliberated on the meaning of the term 'cooperative society' as appearing in section 80P(2)(d) and has held as follows:

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

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

16. If the legislative intent is so clear, then it cannot contended that the omission to amend Clause (d) of Section 80P(2) of the Act at the same time is fatal to the contention raised by the Revenue before this Court and sub silentio, the deduction should continue respect of interest income earned from the co-operative bank, even though the Honble Supreme Courts decision in the case of Respondent assessee itself is otherwise."

6.6 The Hon'ble Supreme Court in the case of *Mavilayi Service Co-operative Bank Ltd.*[2021] 123 taxmann.com 161 (SC) has deliberated upon the distinction between a co-operative society engaged in banking business and a co-operative bank and held as under:

"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 of the Act

23. Undoubtedly, 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 licence 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.

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."

The ratio decidendi of the aforesaid decision is that a co-operative bank which is working under a license from the Reserve Bank of India falls within the mischief of section 80P(4). Thus, any income in the form of interest received from a co-operative bank would not be eligible for deduction u / s 80P(2)(d) as co-operative

banks, functioning under a license from the RBI and lending and taking deposits from the public are specifically excluded from the provisions of section 80P by virtue of section 80P(4). Since the Rajasthan State Co-operative Bank is a scheduled bank working under the Banking Regulation Act, it falls within the mischief of section 80P(4) and it cannot be considered as a co-operative society for the purpose of section 80P. Thus, interest income from this bank cannot be considered as income from investments with any other 'co-operative society' and is, thus, not eligible for deduction u/s 80P(2)(d). Therefore, the appellant is not eligible to claim deduction either u / s 80P(2)(a)(i) or 80P(2)(d) of the IT Act on the interest income from co-operative banks of Rs. 5,17,43,725/- Thus, ground of appeal no. 1 is hereby dismissed.”

6. The Id. Counsel for the assessee has reiterated the submissions made before the Ld. CIT(A). He submitted that assessing the interest receipt of Rs.5,17,43,725/-received from investment made with other cooperative bank under the head income from other sources by (a) not accepting the contention of assessee that the said interest receipt is attributable to the activity of providing credit facility to its members eligible for deduction u/s 80P(2)(a)(i) of the Act (b) not accepting the contention of assessee that said interest receipt is otherwise eligible for deduction u/s 80P(2)(d) of the Act and (c) not allowing proportionate claim of deduction of Rs.24,88,833/- u/s 80P(2)(a)(i) on the income assessed by AO at Rs.1,00,66,166/-. In support, he filed a brief note which reads as under:

“4. The Ld. CIT(A) at Para 6.2 after referring to the decision of Hon'ble Supreme Court in case of Totgars Co-Operative Sale Society Ltd. v. ITO [2010] 322 ITR 283/188 Taxman 282 and Hon'ble Gujarat High Court in case of SBI v. CIT (2016)

389 [TR 578, at Para 6.3 after referring to the decision of Hon'ble Karnataka High Court in case of PCIT V. Totagars Co-operative Sale Society [2017] 395 ITR 611 and other decisions, at Para 6.4 held that interest income of Rs.5,17,43,725/- from FDRs maintained with co-operative banks is not income from business but is to be treated as 'income from other sources and is therefore, not eligible for deduction u/s 80P(2)(a)(i). At Para 6.5 he further held that assessee is not eligible for deduction u/s 80P(2)(d) on the interest income earned from FDRs with co-operative banks for which he relied on the decision of Hon'ble Karnataka High Court in case of PCTT v/s Totagars Co-operative Sale Society Ltd. [2017] 395 ITR 611 and the decision of Hon'ble Supreme Court in the case of Mavilayi Service Co- operative Bank Ltd. [2021] 123 taxmann.com 161. Further at Para 6.7 he rejected the claim of allowing proportionate claim of deduction of Rs.24,88,833/- u/s 80P(2)(a)(i) by holding that only expenses directly attributable to the earning of income from other sources can be allowed.

Submission:-

1. It is submitted that assessee is a credit cooperative society engaged in the business of providing credit facility to its members. As per the Income & Expenditure A/e it has declared net profit of Rs.1,00,66,116/- on which deduction u/s 80P(2)(a)(i) was claimed (PB 18). This section provides that where assessee is a cooperative society engaged in providing credit facilities to its members, whole of the amount of profit & gains of business attributable to such activity shall be deducted in computing the total income.

2. It may be noted that assessee has no activity other than providing credit facilities to its members. The modus operandi of the activity of assessee is that some of its members provide funds to it which is used in providing advance to other members or invested in fixed deposit with other cooperative society engaged in the business of banking. On the amount so received it pays interest to its members and on the amount given to members/ invested in fixed deposits it earns interest. Thus, the entire activity of earning interest from members/ FDRs and payment of interest to members is a business activity in as much as the funds received from the members only is utilized in providing advance to its members/ investment in FDR. Therefore, interest earned on FDR is income attributable to carrying on its activity of providing credit facility to its members. It may be noted that the section uses the word 'attributable to carrying on the business of providing credit facility to its members and not the word 'derived from the business of providing credit facility to its members. Hon'ble Allahabad High

Court in case of CIT Vs. Cooperative Cane Development Union Ltd. (1979) 118 ITR 770 has held that the expression 'attributable to is much wider than the expression 'derived from and it suggest that the legislature intended to cover receipt from sources other than the actual conduct of business of assessee. The scope of the word 'attributable to has been considered by Hon'ble Supreme Court in case of Cambay Electric Supply Industrial Company Ltd. Vs. CIT (1978) 113 ITR 84 where at Para 11 it is held as under:-

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

Therefore, interest earned on investment in FDR with cooperative banks is an operational income attributable to carrying on business of providing credit facility to its members eligible for deduction u/s 80P(2)(a)(i)

3. The lower authorities have observed that interest received from investment in FDR with other cooperative banks is taxable u/s 56 and for this proposition they had relied upon the decision of Hon'ble Supreme Court in case of Totgars Cooperative Sales Society Ltd. Vs. ITO 188 Taxman 282. Further the Ld. CIT(A) has referred to the decision of Hon'ble Gujarat High Court in case of SBI Vs. CIT (2016) 389 ITR 578, Hon'ble Karnataka High Court in case of PCIT Vs. Totagars Co-operative Sale Society [2017] 395 TTR 611 and some other decisions. It may be noted that in the decision of Hon'ble Supreme Court, Hon'ble Gujarat High Court and Hon'ble Karnataka High Court it is stated that the word 'whole of the

amount of profit & gains from business' used in section 80P(2)(a) emphasize that the income in respect of which deduction is sought must constitute the operational income and not the other income which accrues to the society. In this connection it may be noted that it is not a case that the surplus funds has been invested in FDR. In fact in course of carrying out its activity of providing credit facility to its members, it receives the funds from its members who have the capacity to lend and out of that fund the amount is advanced to other members who need the fund. Where the funds received is more than the amount advanced, the balance funds is invested in FDR so that the interest received from the advance given/ FDRs made can be utilized to service the interest cost of the funds provided by the members. Thus, the interest on FDR constitutes operational income and therefore such income is business income and not income from other sources eligible for deduction u/s 80P(2)(a)(i)."

7. Per contra, the Id. DR relied on the impugned order and assessment order. He contended that the appellant assessee is a registered cooperative society under the Rajasthan Cooperative Societies Act and engaged in the business of financial activity of providing credit facility to its members. The assessee has claimed deduction u/s 80P(2)(a)(i) of the Act, on interest income. He submitted that the sole issue is whether the appellant is eligible for deduction u/s 80P(2)(a)(i) on the income of Rs. 5,17,43,725/- which represents interest income earned from FDRs with co-operative banks. In this regard, he referred the Hon'ble Karnataka High Court, in the case of PCIT v/s Totagars Co-operative Sale Society Ltd. [2017] 395 ITR 611 (Kar) has deliberated on the meaning of the term 'cooperative society' and other various judgement. He contended that interest received by the appellant

from Cooperative Bank or Gramin Bank Ltd. is not allowable deduction u/s 80P(2)(a)(i) of the Act as this entity is not a cooperative society as provided u/s 80P(2)(a)(i) of the Act. The Ld. DR explained that as per clause 22.02 of Circular No. 141/2006 dated 28.12.2006 of the Finance Act, 2006 explanatory notes on provisions relating to Direct Taxes, it has been explained that the co-operative banks are functioning at par with other commercial banks, which do not enjoy the tax benefit. Therefore, section 80P has been amended and a new sub-clause (4) has been inserted to provide that the provisions of the said section shall not apply in relation to any co-operative bank other than a primary agricultural credit society or a primary co-operative society agricultural land and rural development bank. Accordingly, the AO has disallowed exemption claimed u/s 80P(2)(d) and 80P(2)(a)(i) of the Act. Also, he relies on the latest judgement of Apex Court in the case of “Kerala State Co-Operative Agricultural & Rural Development Bank Ltd. v. Assessing Officer”, [2023] 154 taxmann.com 305 (SC).

7.1 Further the Ld. DR argued that interest earned on FDR is income from investment which not attributable to carrying on its activity of providing credit facility to its members. It vehemently contended that the section uses the word 'attributable to carrying on the business of providing credit facility

to its members but it never be used to the investment in FDRs with other financial institutions as the word attributable is 'derived and used for the business of providing credit facility to its members in absolute construction.

8. We have heard both the sides, perused record, written submission, impugned order, and case law cited before us.10/Jpr/2024. It is an undisputed fact that the appellant assessee earned an interest income of Rs. 5,17,43,725/- from FDRs with the Rajasthan State Co-operative Bank, during the year under consideration which has been assessed under the head income from other sources u/s 56 of the Act. The Ld. CIT(A) while confirming the addition has discussed the issue of whether interest income on investments in FDRs with co- operative banks can be considered as business income of the appellant at length in the light of the judgements of the higher judicial forums. Before wedwells into the issue on hand, it would be apt to reproduce section 80P of the Income-tax Act, 1961, which reads as under

"Section 80P : 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
 - (iii) the marketing of the agricultural produce of its members, or
 - (iv) the purchase of agricultural implements, seeds, livestock or other articles intended for agriculture for the purpose of supplying them to its members, or
 - (v) the processing, without the aid of power, of the agricultural produce of its members, the whole of the amount of profits and gains of business attributable to any one or more of such activities ;
- (b) in the case of co-operative society, being a primary society engaged in supplying milk raised by its members to a federal milk co-operative society, the whole of the amount of profits and gains of such business;
- (c) in the case of a co-operative society engaged in activities other than those specified in clause (a) or clause(b) [either independently of, or in addition to, all or any of the activities so specified], so much of its profits and gains attributable to such activities as does not exceed [fifteen thousand rupees];
- (d) in respect of any income by way of interest or dividends derived by the co-operative society from its investments with any other co-operative society, the whole of such income;
- (e) in respect of any income derived by the co-operative society from the letting of godowns or warehouses for storage, processing or facilitating the marketing of commodities, the whole of such income;
- (f) in the case of a co-operative society, not being a housing society or an urban consumers' society, or a society carrying on transport business or a society engaged in the performance of any manufacturing operations with the aid of power, where the gross total income does not exceed twenty thousand rupees, the amount of any income by way of interest on securities chargeable under section 18 or any income from house property chargeable under section 22.

Explanation.—For the purposes of this section, an urban consumers' co-operative society means a society for the benefit of the consumers within the limits of a municipal corporation, municipality, municipal committee, notified area committee, town area, or cantonment.

(3) In a case where the assessee is entitled also to the deduction under section 80H or section 80J, the deduction under sub-section (1) of this section, in relation to the sums specified in clause (a) or clause (b) or clause (c) of sub-section (2), shall be allowed with reference to the income, if any, as referred to in those clauses included in the gross total income, as reduced by the deductions under section 80H and-section 80J.

[(4) Nothing contained in this section shall apply to a co-operative society carrying on insurance business in respect of the profits and gains of that business computed in accordance with section 44.]

For the words 'fifteen thousand rupees' this words, 'twenty thousand rupees' shall be substituted w.e.f. 1-4-1970 as per Finance Act, 1969.

As per Finance Act, 1969 sub-section (4) shall stand omitted w.e.f. 1-4-1970."

9. The Hon'ble Supreme Court in the case of Totgars Co- Operative Sale Society Ltd. v. ITO [2010] 322 ITR 283/188 Taxman 282 (SC) observed that 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 the agricultural produce to its members. The words "the whole of the amount of profits and gains of business" emphasized that the income in respect of which deduction is sought must constitute the operational income and not the other income which accrues to the Society. The Hon'ble court observed that the evidence

showed that the assessee-society earned interest on funds which were not required for business purpose at the given point of time. In this particular case, the evidence shows that the assessee-Society earns interest on funds which are not required for business purposes at the given point of time. Therefore, on the facts and circumstances of this case, in our view, such interest income falls in the category of "Other Income" which has been rightly taxed by the Department under Section 56 of the Act.

10. The Hon'ble Supreme Court has observed that interest on such FDR's 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. Thus, in the light of the principles enunciated by the Supreme Court in Totgar's Co-operative Sale Society (supra), in

case of a society engaged in providing credit facilities to its members, income from investments in FDRs made in banks does not fall within any of the categories mentioned in section 80P(2)(a) of the Act. However, section 80P(2)(d) of the Act specifically exempts interest earned from funds invested in co-operative societies. Therefore, to the extent of the interest earned from investments made by it with any co-operative society, a co-operative society is entitled to deduction of the whole of such income under section 80P(2)(d) of the Act. However, interest earned from investments made in any bank, not being a cooperative society, is not deductible under section 80P(2)(d) of the Act. From the Impugned order, it can be seen that similar view has been taken by various High Courts that interest income of from FDRs maintained with co-operative banks is not income from business but is to be treated as 'income from other sources and is, therefore, not eligible for deduction u/s 80P(2)(a)(i) and 80P(2)(d) of the Act.

11. The Judgement of the Gujarat High Court was considered by the Karnataka High Court in the later decision in the case of the same assessee in the case of PCIT V. Totagars Co-operative Sale Society, [2017] 395 ITR 611 and the Court held observed that here are two

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

12. The Hon'ble Supreme Court in the case of Mavilayi Service Co-operative Bank Ltd. [2021] 123 taxmann.com 161 (SC) has deliberated upon the distinction between a co-operative society engaged in banking business and a co-operative bank and held that -

“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."

The ratio decidendi of the aforesaid decision is that a co-operative bank which is working under a license from the Reserve Bank of India falls within the mischief of section 80P(4). Thus, any income in the form of interest received from a co-operative bank would not be eligible for deduction u / s 80P(2)(d) as co-operative banks, functioning under a license from the RBI

and lending and taking deposits from the public are specifically excluded from the provisions of section 80P by virtue of section 80P(4). Since the Rajasthan State Co-operative Bank is a scheduled bank working under the Banking Regulation Act, it falls within the mischief of section 80P(4) and it cannot be considered as a co-operative society for the purpose of section 80P. Thus, interest income from this bank cannot be considered as income from investments with any other 'co-operative society' and is, thus, not eligible for deduction u/s 80P(2)(d). Therefore, the appellant is not eligible to claim deduction either u / s 80P(2)(a)(i) or 80P(2)(d) of the IT Act on the interest income from co-operative banks of Rs. 5,17,43,725/- Thus, ground of appeal no. 1 is hereby dismissed.”

13. Recently, the Coordinate Jodhpur Bench in ITA No. 134/Jodh/2023; in case of ITO v. Bhilwara Zila DugdhUtpadakSahkari Sang Ltd. vide order dated 14/10/2023 by following the latest judgement the Hon'ble Apex Court in the case of “Kerala State Co-Operative Agricultural & Rural Development Bank Ltd. v. Assessing Officer”, [2023] 154 taxmann.com 305 (SC) has observed that the appellant was a co-operative society under Section 80P(2)(a)(i) of the Act whose primary object is to provide financial accommodation to its members who are all other cooperative societies and

not member of the public. Thus, the interest received by the appellant amounting to Rs. 2,31,59,253/- from Baroda Rajasthan Gramin Bank Ltd, a Regional Rural Bank and not a co-operative bank would not be allowable deduction u/s 80P(2)(d) of the Act as this entity is not a cooperative society as provided u/s 80P(2)(d) of the Act, in the light of the latest judgement of the Apex Court in the case of “Kerala State Co-Operative Agricultural & Rural Development Bank Ltd. v. Assessing Officer”, (Supra).

14. The Ld. AR argued that the scope of the word 'attributable has been considered by Hon'ble Supreme Court in case of Cambay Electric Supply Industrial Company Ltd. Vs. CIT (1978) 113 ITR 84 and submitted that as regards the aspect emerging from the expression "attributable" occurring in the phrase "profits and gains attributable to the business of the specified industry (here generation and distribution of electricity),it cannot be disputed that the expression "attributable to" is certainly wider in import than the expression "derived from". Had the expression "derived from" been used, it could have with some force been contended that a balancing charge arising from the sale of old machinery and buildings cannot be regarded as profits and gains derived from the conduct of the business of generation and distribution of electricity. He contended that 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 and so the appellant society receipts shall cover the interest receipt from FDRs as business receipt and consequential deductions u/s 80P (2)(d) and 80(P) (2)(a)(i). However, the judgement is distinguishable on peculiar facts of the present case. In the present case the appellant society has earned an interest income of Rs. 5,17,43,725/- from FDRs with the Rajasthan State Co-operative Bank without operational activity whereas in that case the assessee was an Electric supply industry and receipt arising from the sale of old machinery and buildings could be regarded as profits and gains derived from the conduct of the business of generation and distribution of electricity being part of operational activities. Further the term attributable has been more particularly used by the Hon'ble Apex Court in its judgement delivered in the case of Totagars Co-operative Sale Society Ltd. (Supra) interest received by the appellant from Cooperative Bank or Gramin Bank Ltd. was held not allowable deduction u/s 80P(2)(a)(i) of the Act as that entity was not a cooperative society as provided u/s 80P(2)(a)(i) of the Act. In view of that matter, we find no infirmity or perversity in the

impugned order to the facts on record. Accordingly, no interference is called for in the finding of the Id. CIT(A). Thus the ground no. 1 of appeal is rejected.

15. Respectfully, following the Hon'ble Apex Court (Supra), the decision of the Id. CIT(A) sustaining the addition on account of interest received by the appellant assessee is upheld.

16. In the result, the appeal filed by the assessee is dismissed.

Order pronounced in the open court on 05.03.2024

Sd/-
(Sandeep Gosain)
Judicial Member

Sd/-
(Dr. M. L. Meena)
Accountant Member

GP/Sr.PS

Copy of the order forwarded to:

- (1) The Appellant:
- (2) The Respondent:
- (3) The Id. CIT
- (4) The Id. CIT(A)
- (5) The DR, I.T.A.T., Jaipur
- (6) Guard File

By Order,

Asstt. Registrar