IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH : BANGALORE

BEFORE SHRI GEORGE GEORGE K, VICE PRESIDENT AND
SHRI WASEEM AHMED, ACCOUNTANT MEMBER

ITA Nos.656, 667, 668/Bang/2024
Assessment Years : 2017-18, 2018-19, 2020-21

ITO, Ward - 1, Udupi.	Vs.	M/s. Brahmavara Vyavasaya Seva, Head Office Unnathi, Brahmavar Udupi Taluk, Udupi – 576 213. **PAN : AAAAB 2992 F**
APPELLANT		RESPONDENT

C.O.Nos.10, 11, 12/Bang/2024 **(in ITA Nos.656, 667, 668/Bang/2024)**
Assessment Years : 2017-18, 2018-19, 2020-21

M/s. Brahmavara Vyavasaya Seva,, Udupi – 576 213. **PAN : AAAAB 2992 F**	Vs.	ITO, Ward - 1, Udupi.
CROSS OBJECTOR		RESPONDENT

Assessee by	:	Ms. Akshaya K. S, CA
Revenue by	:	Shri. Subramanian S, JCIT(DR)(ITAT), Bengaluru.

Date of hearing	:	14.05.2024
Date of Pronouncement	:	16.05.2024

O R D E R

Per George George K, Vice President :

These appeals at the instance of the Revenue and Cross-objection (CO) filed by the assessee are arising out of three Orders of CIT(A) passed under section 250 of the Income Tax Act, 1961 (hereinafter called 'the Act'). The relevant Assessment Years are 2017-18, 2018-19, 2020-21.

2. Common issues are raised in these appeals; hence, they were heard together and are disposed off by this consolidated order.

3. We shall first adjudicate Revenue's appeal. Identical grounds are raised in Revenue's appeals. The grounds relating to Assessment Year 2017-18 reads as follows:

1. *The order of the learned CIT(A) is opposed to law and facts of the case.*

2. *The Ld.CIT(A) has erred in deciding the appeal without going to the facts and circumstances of the case.*

3. *The CIT(A) has erred in directing the A.0 to allow the deduction under Section 80P(2)(d) of the Income Tax Act, 1961 in respect of whole of its income by way of interest earned by it on the deposits or investments made by it during the concerned years with a Co-operative Banks which are not co- operative societies?*

4. *The CIT(A) has erred in not considering the fact that the interest income received from the co-op. banks has to be disallowed in view of the binding decisions of the Karnataka High Court in the case of M/s. Totagars Co-operative Sale Society reported in 395 ITR 611 and the Hon'ble Apex Court in 322 ITR 283. The Hon'ble Karnataka High Court in the case of M/s Totagars Co-operative Sale Society (supra) categorically held that the income by way of interest earned by the deposit of idle or surplus funds does not change its character irrespective of the fact whether such income of interest is earned from a scheduled bank or a co-operative bank and that clause (d) of section 80P(2) of the Act would not apply?*

5. For these and other grounds that may be urged upon, the order of CIT(A) may be reversed and that assessment order to be restored.

6. The appellant craves to amend or alter any grounds of appeal or add the same, if deemed necessary.

4. Brief facts of the case are as follows:

Assessee is a primary agricultural cooperative society registered under the Karnataka Cooperative Societies Act, 1959. It is engaged in the business of providing credit facilities to its members. For the Assessment Years 2017-18, 2018-19 and 2020-21, assessments were completed by denying the claim of deduction under section 80P of the Act. For the Assessment Year 2017-18, the reasons for denying the claim under section 80P of the Act was that assessee had violated the principles of mutuality by accepting the deposits and disbursing loans to its nominal members who are more than 15% of the regular members. The AO placed reliance on the judgment of the Hon'ble Apex Court in the case of Citizen Co-operative Society Ltd., Vs. ACIT reported in (2017) 397 ITR 1 in taking the above view. Further, the AO for Assessment Year 2017-18 held that interest income earned on investments with Co-operative Banks is to be assessed as "Income from Other Sources" and same cannot be allowed as deduction under sections 80P(2)(a)(i) or 80P(2)(d) of the Act. In taking the above view, the learned AR relied on the judgment of the Hon'ble jurisdictional High Court in the case of PCIT Vs. Totgars Sales Society reported in 395 ITR 611 (Karnataka). However, since the assessee had claimed deduction under section 80P(2)(a)(i) of the Act for interest received from

Co-operative Banks, the AO did not make any separate disallowance under section 80P(2)(d) of the Act.

5. As regards the Assessment Years 2018-19 and 2020-21, the AO noticed that the assessee had claimed deduction under section 80P(2)(a)(i) of the Act for the interest income earned from investments with co-operative banks. The AO was of the view that the aforesaid interest income is to be assessed as "Income from Other Sources", hence, would not be entitled to deduction under section 80P(2)(a)(i) of the Act. Further, the AO also observed that since the interest income is received from co-operative banks and not from co-operative societies, it would not be entitled to deduction under section 80P(2)(d) of the Act . In this context, the AO relied on the judgment of the Hon'ble jurisdictional High Court in the case of PCIT Vs. Totgars Sales Society (supra).

6. Aggrieved by the orders passed for Assessment Years 2017-18, 2018-19 and 2020-21, assessee preferred appeals before the CIT(A). For Assessment Year 2017-18, the CIT(A) held by placing reliance on the judgment of the Hon'ble Apex Court in the case of Mavilayi Service Co-operative Bank Ltd., & Ors. Vs. CIT reported in 431 ITR 1 that assessee is entitled to deduction under section 80P(2)(a)(i) of the Act, as there is no prohibition under the Karnataka Co-operative Societies Act, 1959, for admission of nominal members. Further, as regards the interest income received from Co-operative Societies, the CIT(A) held that the same is to be assessed as "Income from Other Sources" and not entitled to deduction under section 80P(2)(a)(i) of the Act. However, the CIT(A) held that assessee is entitled to deduction under section 80P(2)(d) of the Act since

co-operative banks are essentially also a co-operative society. As regards the interest income for Assessment Years 2018-19 and 2020-21, the CIT(A) held that the same is assessed as "Income from Other Sources". In holding so, the CIT(A) relied on the judgment of the Hon'ble Gujarat High Court in the case of State Bank of India Vs. CIT reported in [2016] 389 ITR 578 and judgment of the Hon'ble Kerala High Court in the case of PCIT Vs. M/s. Peroorkada Service Co-operative Bank Ltd., reported in [2022] 442 ITR 141 (Kerala). The CIT(A), however, held that the interest income so received from the co-operative bank is entitled to deduction under section 80P(2)(d) of the Act. In this context, the learned CIT(A) relied on the judgment of the Hon'ble jurisdictional High Court in the case of PCIT Vs. Totgars Co-operative Sale Society [2017] 83 taxmann.com 140 (Karnataka) and also the Order of the Tribunal in the case of Totgars Co-operative Sale Society Ltd., Vs. ACIT in ITA Nos.376 to 379/Bang/2023) order dated 18.07.2023.

7. Aggrieved by the orders of the CIT(A) in granting deduction under section 80P(2)(d) of the Act, the Revenue has filed the present appeals before the Tribunal. The learned DR relied on the grounds raised.

8. The learned AR, on the other hand, supported the findings of the CIT(A).

9. We have heard the rival submissions and perused the material on record. The Hon'ble Supreme Court in the case of the the Totgars Co-operative Sale Society Ltd. Vs. ITO 322 ITR 283 (SC) held that Income from utilisation of surplus funds was taxable under the head income from

other sources, and therefore not eligible for deduction u/s 80P(2)(a)(i) of the Act. The Hon'ble Karnataka High Court in case of Tumkur Merchants Souharda Credit Cooperative Ltd. vs. ITO (230 Taxman 309), was dealing with a case where deduction u/s.80P(2)(a)(i) of the Act was claimed on interest from the deposits made in a nationalized bank out of the amounts which was used by the assessee for providing credit facilities to its members. The Assessee claimed that the said interest amount is attributable to the business of providing credit facilities by the assessee and forms part of profits and gains of business. The Hon'ble Karnataka High Court in the case of Tumkur Merchant Souharda Credit Co-operative Ltd., Vs. ITO (supra), after considering SC judgment in case of Totgars (supra), held that since the word income is qualified by the expression "attributable" to the business of Banking is used in Sec.80P(2)(a)(i) of the Act, it has to receive a wider meaning and should be interpreted as covering receipts from sources other than the actual conduct of business. The Court held a Cooperative Society which is carrying on the business of providing credit facilities to its members, earns profits and gains of business by providing credit facilities to its members. The interest income so derived or the capital, if not immediately required to be lent to the members, they cannot keep the said amount idle. If they deposit this amount in bank so as to earn interest, the said interest income is attributable to the profits and gains of the business of providing credit facilities to its members only. The society is not carrying on any separate business for earning such interest income. The income so derived is the amount of profits and gains of business attributable to the activity of carrying on the business of banking or providing credit facilities to its members by a co-operative society and is liable to be deducted from the gross total income under Section 80P of the

Act. The Hon'ble Karnataka High Court also distinguished the decision of the Hon'ble Supreme Court in the case of Totgars (supra) by observing that the Supreme Court was dealing with a case where the assessee-Cooperative Society, apart from providing credit facilities to the members, was also in the business of marketing of agricultural produce grown by its members. The sale consideration received from marketing agricultural produce of its members was retained in many cases. The said retained amount which was payable to its members from whom produce was bought, was invested in a short-term deposit/security. Such an amount which was retained by the assessee - Society was a liability and it was shown in the balance sheet on the liability side. Therefore, to that extent, such interest income cannot be said to be attributable either to the activity mentioned in Section 80P(2)(a)(i) of the Act or under Section 80P(2)(a)(iii) of the Act. Therefore in the facts of the said case, the Apex Court held the assessing officer was right in taxing the interest income indicated above under Section 56 of the Act. The Hon'ble Karnataka High Court also observed that even the Hon'ble Supreme made it clear that they are confining the said judgment to the facts of that case. The Court therefore concluded that Hon'ble Supreme Court was not laying down any law. Similar view taken in Guttigedarara Credit Co-operative Society Ltd. vs. ITO [2015] 377 ITR 464 (Karnataka).

10. In the case of Principal Commissioner of Income Tax and Another Vs. Totagars Co-operative Sale Society reported in 392 ITR 0074 (Karn) in the context of deduction under section 80P(2)(d) of the Act, it was held that Section 80P(2)(d) of the Act allows deduction in respect of any income by way of interest or dividends derived by the co-operative society from its investments with any other co-operative society, the whole of such income.

The Hon’ble Court held that that the aforesaid Supreme Court's decision in the case of Totgars (supra), was not applicable to deduction u/s.80P(2)(d) of the Act, because the said decision was rendered with regard to deduction under Section 80P(2)(a)(i) of the Act and not under Section 80P(2)(d) of the Act.

11. However, the Hon’ble Karnataka High Court in the case of Principal Commissioner of Income Tax and Another Vs. Totagars Co-operative Sale Society reported in 395 ITR 0611 (Karn) took a different view and held that interest income earned on deposits whether with any other bank will be in the nature of income from other sources and not income from business and therefore the deduction under section 80P(2)(d) of the Act cannot be allowed to the Assessee. The Hon’ble Court followed decision of Hon’ble Gujarat High Court in the case of SBI Vs. CIT 389 ITR 578(Guj.) in which the Hon’ble Gujarat High Court dissented from the view taken by the Hon’ble Karnataka High Court in the case of Tumkur Merchants case (supra). The Hon’ble Karnataka High Court in the case of Principal Commissioner of Income Tax and Another Vs. Totagars Co-operative Sale Society (supra) had to deal with the following substantial question of law:

> *"(I)Whether the assessee, Totagar Co-operative Sale Society, Sirsi, is entitled to 100% deduction under Section 80P(2)(d) of the Income Tax Act, 1961 (for short 'the Act') in respect of whole of its income by way of interest earned by it during the relevant Assessment Years from 2007-2008 to 2011-2012 on the deposits or investments made by it during these years with a Co-operative Bank, M/s. Kanara District Central Co-operative Bank Limited?*

(II) Whether the Supreme Court decision in the case of the present respondent assessee, Totgar Co-operative Sale Society Limited itself rendered on 08th February 2010, in Totgar's Co-operative Sale Society Limited v. Income Tax Officer, reported in (2010) 322 ITR 283 SC : (2010) 3 SCC 223 for the preceding years, namely Assessment Years 1991-1992 to 1999-2000 (except Assessment Year 1995-1996) holding that such interest income earned by the assessee was taxable under the head 'Income from Other Sources' under Section 56 of the Act and was not 100% deductible from the Gross Total Income under Section 80P(2)(a)(i) of the Act, is not applicable to the present Assessment Years 2007-2008 to 2011-2012 involved in the present appeals and therefore, whether the Income Tax Appellate Tribunal as well as CIT (Appeals) were justified in holding that such interest income was 100% deductible under Section 80P(2)(d) of the Act?"

12. The Hon’ble Karnataka High Court held that such interest income is not income from business but was income chargeable to tax under the head income from other sources and therefore there was no question of allowing deduction u/s.80P(2)(a)(i) of the Act. Further, the Hon’ble High Court held that assessee is not entitled to deduction under section 80P(2)(d) of the Act. The following points can be culled out from the aforesaid decision:

i. 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. (Paragraph 13 of the Judgment).

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

iii. 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. (Paragarph 15 of the Judgment)

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

v. On the decision of the earlier decision of the Hon’ble Karnataka High Court referred to in the earlier part of this order, the Court held that it did not find any detailed discussion of the facts and law pronounced by the Hon'ble Supreme Court in the case of the respondent assessee (Totagars Sales Co-operative society) and hence

unable to follow the same in the face of the binding precedent laid by the Hon'ble Supreme Court. The Hon’ble Court observed that in paragraph 8 of the said order passed by a co- ordinate bench that the learned Judges have observed that

> "the issue whether a co-operative bank is considered to be a co- operative society is no longer res integra, for the said issue has been decided by the Income Tax Appellate Tribunal itself in different cases……..".

No other binding precedent was discussed in the said judgment. Of course, the Bench has observed that a Co-operative Bank is a specie of the genus co- operative Society, with which we agree, but as far as applicability of Section 80P(2) of the Act is concerned, the applicability of the Supreme Court's decision cannot be restricted only if the income was to fall under Section 80P(2)(a) of the Act and not under Section 80P(2)(d) of the Act.(Paragraph-18 of the Judgment)

vi. The Hon’ble Karnataka High Court finally concluded that it would not make a difference, whether the interest income is earned from investments/deposits made in a Scheduled Bank or in a Co-operative Bank. Therefore, the said decision of the Co-ordinate Bench is distinguishable and cannot be applied in the present appeals, in view of the binding precedent from the Hon'ble Supreme Court.” (Paragraph 19 of the Judgment)

13. The Hon’ble Karantaka High Court in the aforesaid decision also placed reliance on a decision of the Hon’ble Gujarat High Court in the case of State Bank of India (SBI) vs. Commissioner of Income Tax 389 ITR 0578 (Guj) which did not agree with the view taken by the Karnataka High Court in Tumkur Merchants Souharda Credit Cooperative Ltd. (supra) that the decision of the Supreme Court in Totgars Co-operative Sale Society (supra) is restricted to the sale consideration received from marketing agricultural produce of its members which was retained in many cases and invested in short term deposit/security and that the said decision was

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

provides credit facilities to its members, it earns interest income. The interest which accrues on funds not immediately required by the assessee for its business purposes and which has been invested in specified securities as "investment" are ineligible for deduction under section 80P(2)(a)(i) of the Act. (Paragraph-13 of the Judgment)

14. It can thus be seen that the ratio laid down by the Hon'ble Karnataka High Court in the case of Totalgars Cooperative Sales Society in 395 ITR 611 (Karn) is that in the light of the principles enunciated by the Supreme Court in Totgars Co-operative Sale Society (supra), in case of a society engaged in providing credit facilities to its members, income from investments made in banks does not fall within any of the categories mentioned in section 80P(2)(a) of the Act. However, section 80P(2)(d) of the Act specifically exempts interest earned from funds invested in co-operative societies. Therefore, to the extent of the interest earned from investments made by it with any co-operative society, a co-operative society is entitled to deduction of the whole of such income under section 80P(2)(d) of the Act. However, interest earned from investments made in any bank, not being a co-operative society, is not deductible under section 80P(2)(d) of the Act.

15. The argument that co-operative Banks are also co-operative societies is again without any basis in the light of the law explained in the case of Totagar co-opeartive sales society 395 ITR 611 (Karn.). The reliance placed by the learned counsel for the Assessee on the earlier decisions of the Hon'ble Karnataka High Court in the case of Tumkur Merchants

Souharda Credit Cooperative Ltd. (supra) that the decision in Totgars Co-operative Sale Society (supra) stands explained by the later decision in the case of Totagar co-opeartive sales society 395 ITR 611 (Karn.).

16. In light of the aforesaid reasoning and judgment of the Hon'ble jurisdictional High Court in the case of PCIT Vs. Totagars Co-operative Sales Society reported in 395 ITR 611 (Karnataka), we hold that CIT(A) is not justified in granting deduction under section 80P(2)(d) of the Act for the Assessment Years 2017-18, 2018-19 and 2020-21.

17. We shall now take up for adjudication the grounds raised in assessee's cross objections.

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18. The grounds raised by the assessee in the CO for the Assessment Years 2017-18, 2018-19 and 2020-21 are identical. They read as follows:

1. ***Relating to the claim of Interest from cooperative banks under Section 801:12.0)***

1.1 The respondent cooperative society asserts that the order passed by the National Faceless Appeal Centre (NFAC), which grants the deduction under section 80P(2)(d) of the Income Tax Act, 1961 concerning interest income from cooperative banks, is appropriate and necessitates affirmation.

1.2 The respondent relies on the favourable judgment delivered by the Jurisdictional Karnataka High Court in the case of PCIT vs. Totagars Cooperative Sate Society

(2017) 392 ITR 74. This reliance is further supported by the principle established by the Apex Court in the case of CIT v. Vegetable Products Ltd. [1973] 88 ITR 192, which mandates that when two interpretations of a legal provision are plausible, the interpretation that favours the assessee should be adopted.

2. Relating to the claim of Interest from cooperative_banks under Section 80P(2)(a)(i)

2.1. Without prejudice to the objections raised in ground 1, the respondent submits that it is not engaged in any business activities other than providing credit facilities to its members. Accordingly, the respondent contends that interest income derived from the funds that were neither due to any members nor immediately required for lending to the members is directly attributable to the principal business operations of the appellant. Consequently, this interest income is eligible for deduction under Section 80P(2)(a)(i) of the Income Tax Act, 1961, relying on the decision of the Honourable Karnataka High Court in the case of Tumkur Merchants Souharda Credit Cooperative Ltd. vs. ITO [2015] 55 taxmann.com 447. Additionally, this ground serves to distinguish the facts and circumstances from those addressed in the judgement of the Honourable Karnataka High Court in the case of PCIT Vs. Totgars Co-operative Society Ltd (395 ITR 611), as relied upon by the appellant.

2.2. The appellant additionally submits that interest income derived from cooperative banks ought to be considered for deductions under Section 80P(2)(a)(i) to the extent that such interest income is generated from deposits that are statutorily required to be maintained under the Karnataka Cooperative Societies Act, 1959, as such interest income are directly attributable to the principal business operations of the appellant.

3. Relating to the deduction of expenses under Section 57

3.1. Without prejudice to the above grounds of cross objection, the respondent contends that if the interest received from cooperative banks is to be classified and taxed as Income from Other Sources, then such interest income must be computed after duly determining and deducting the expenses debited to the income and expenditure account, which are directly related to the generation of this income.

4. Relating to set off of Business loss with Income from other sources before considering deductions under Section 80P(2)(a)

4.1. Without prejudice to the above grounds of cross objection, the respondent prays before this honourable Tribunal that if the interest received from cooperative banks is to be classified and taxed as Income from Other Sources, then any resultant business loss should be first offset against the Income from other sources in accordance with Section 71 of the Income Tax Act, before considering the Deduction available to the respondent under Section 80P(2)(a).

5. The respondent craves leave to add, amend, alter, omit or substitute any of the grounds of appeal at any stage before the appeal is finally heard or adjudicated upon.

19. Assessee has filed a Paper Book enclosing therein the breakup of investment as on the end of Financial Years for the relevant Assessment Years, circular issued by the Deputy Registrar of the Co-operative Society, CBDT Circular 18/2015 dated 02.11.2015, the case laws relied on, etc. Ground Nos. 1 and 2.1 in the CO is essentially supporting the orders of the CIT(A). In view of our discussions / findings in paragraphs 9 to 16 (supra), the above grounds are rejected. In ground Nos.2.2 and 3.1, assessee has raised the contention that investments which are yielding interest income

are part of the operational income of the assessee society and is hence eligible for deduction under section 80P(2)(a)(i) of the Act. The learned AR further relying on the judgment of the Hon'ble Apex Court in the case of Kerala State Co-Operative Agricultural & Rural Development Bank Ltd. Vs. Assessing Officer reported in (2023) 458 ITR 384 (SC) submitted that assessee is entitled to benefit of deduction under section 80P(2)(d) of the Act since the co-operative bank will encompass also "co-operative society" referred under section 2(19) of the Act. It was further contended that if interest income is to be assessed as "Income from Other Sources" and is not granted the benefit of deduction under section 80P(2)(d) of the Act, the assessee ought to be granted deduction of cost of funds for earning such interest income. Further, relating to grounds 4 and 4.1, the learned AR submitted that if interest received from co-operative bank is to be classified and taxed as "Income from Other Sources", then any other resultant business loss should first be set off against the "Income from Other Sources" in accordance with section 71 of the Act, before considering deduction available to the assessee society under section 80P(2)(a)(i) of the Act.

20. The learned DR was duly heard.

21. We have heard the rival submissions and perused the material on record. If assessee is able to prove that investments with Co-operative Bank are in compliance with the requirement under the Karnataka Co-operative Societies Act, 1959, and the relevant Rules, the interest income earned out of such investments would be entitled to deduction under section 80P(2)(a)(i) of the Act. On identical factual situation, the

Bangalore Bench of the Tribunal in the case of Canara Bank Staff Credit Co-operative Societies Ltd., in ITA No.517/Bang/2023 (order dated 03.10.2023) had restored the matter to the AO to examine whether the amounts invested with the Co-operative Banks are out of compulsion under the Karnataka Co-operative Societies Act and the relevant Rules. It was further held by the Tribunal that if the investments are out of compulsion under the Act and the relevant Rules, the interest income received out of the investment made under such compulsion would be liable to be taxed as 'income from business' which would entail the benefit of deduction under section 80P(2)(a)(i) of the Act. The relevant finding of the Bangalore Bench of the Tribunal reads as follows:

> *"7. I have heard the rival submissions and perused the material on record. The interest income is received out of investments made with Apex Co-operative Bank. It is the case of the assessee that the investments are made out of compulsions as per the Karnataka Co-operative Societies Act, 1959, and the relevant Rules. The Hon'ble Apex Court in the case of CIT Vs. Karnataka State Co-operative Apex Bank (supra) had held that when amounts are invested by the Co-operative Societies as per the statutory requirements, the same would be entitled to deduction under section 80P(2)(a)(i) of the Act. The Hon'ble Apex Court considered the following question of law:*
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> > *"Whether, on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that the interest income arising from the investment made out of reserve fund is exempt under section 80P(2)(a)(i) of the Income-tax Act, 1961?"*
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> *8. In considering the above question, the Hon'ble Apex Court rendered the following findings:*
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> > *"4. This judgment was cited before the Bench of two learned Judges which decided the case of the Bangalore District Co-operative Central Bank Ltd. (supra). It was considered as*

having been rendered on its own facts and not applicable to the case of Bangalore District Co-operative Central Bank Ltd. (supra) in view of the finding of the Tribunal that the income in question was attributable to the business of that assessee. The Court referred to the Banking Regulation Act, the Karnataka Co-operative Societies Act and the Karnataka Co-operative Societies Rules, which showed that the investments that had been made by the assessee were in compliance with the statutory -provisions and in order to carry on the business of banking. They were necessary and consequently, they were part of the business activities of the assessee falling within the scope of section 80P(2)(a)(i).

5. We do not agree with the finding of the Bench which decided the Bangalore District Co-operative Central Bank Ltd.'s case (supra) that the decision in the case of M.P. Co-operative Bank Ltd. (supra) was rendered on its own facts. The latter decision was clearly a reasoned decision.

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 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 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."

9. A similar view that has been held by the Hon'ble Andhra Pradesh High Court in the case of CIT-II, Hyderabad Vs. Andhra Pradesh State Cooperative Bank Ltd., reported in 336 ITR 516 (AP).

10. The Bangalore Bench of the Tribunal in the case of M/s. The Bharathi Co-operative Credit Society Vs. ITO in ITA No.793/Bang/2022 (order dated 28.11.2022) for Assessment Year 2015-16, following its earlier order in the case of M/s. Vasavamba Co-operative Society Ltd., Vs. The PCIT in ITA No.453/Bang/2020 (Order dated 13.08.2021), had rendered a similar finding which reads as follows:

> *"7.1 In the instant case, it was contended that majority of the interest income is earned out of investments made with Co-operative Banks and is in compliance with the requirement under the Karnataka Co-operative Societies Act and Rules. If the amounts are invested in compliance with the Karnataka Co-operative Societies Act, necessarily, the same is to be assessed as income from business, which entails the benefit of deduction u/s 80P(2)(a)(i) of the I.T.Act. Insofar as deduction u/s 80P(2)(d) of the I.T.Act is concerned, we make it clear that interest income received out of investments with cooperative societies is to be allowed as deduction."*

11. In light of the aforesaid reasoning and the judicial pronouncements cited supra, we restore this issue to the files of the AO. The AO is directed to examine whether the amounts invested with Apex Co-operative Bank and other banks, are out of compulsions under the Karnataka Co-operative Societies Act, 1959, and the relevant Rules. If it is found that the investments are made out of compulsions under the Act and the relevant Rules, the interest income received out of the investments made under such compulsions would be liable to be taxed as "business income" which would entail the benefit of deduction under section 80P(2)(a)(i) of the Act. With the aforesaid observation, we restore the matter to the AO. It is ordered accordingly.

12. In the result, appeal filed by the assessee is allowed for statistical purposes."

22. In light of the aforesaid order of the Tribunal, the AO is directed to examine whether investment with Co-operative Bank is out of statutory compulsions to maintain the SLR, and if so, to grant deduction under section 80P(2)(a)(i) of the Act. In the event it is found that assessee is not entitled to get the benefit under section 80P(2)(a)(i) of the Act, the AO shall also examine whether it is entitled to deduction under section 80P(2)(d) of the Act in light of the recent judgment of the Hon'ble Apex Court in the case of Kerala State Co-operative Agricultural Rural Development Vs. AO (supra). If the assessee is not entitled to benefit of deduction either under section 80P(2)(a)(i) or under section 80P(2)(d) of the Act, the AO shall consider the claim of deduction under section 57 of the Act in respect of the cost of funds for earning such interest income which is assessed as income under the head "Income from Other Sources". For the direction to grant deduction for the cost of funds, we rely on the judgment of the jurisdictional High Court in the case of Totgar's Co-operative Sales Society Ltd., Vs. ITO reported in (2015) 58 taxmann.com 35 (Karnataka) (judgment dated 25.03.2015). Further, the AO shall also consider the claim of the assessee raised in its CO in ground 4.1 (supra). It is ordered accordingly.

23. In the result, the appeals filed by Revenue are allowed and the COs filed by the assessee are allowed for statistical purposes.

Pronounced in the open court on the date mentioned on the caption page.

Sd/-	**Sd/-**
(WASEEM AHMED)	**(GEORGE GEORGE K)**
Accountant Member	**Vice President**

Bangalore,
Dated : 16.05.2024.
/NS/*

Copy to:
1. Appellant 2. Respondent
3. CIT 4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar
ITAT, Bangalore.