

**IN THE INCOME TAX APPELLATE TRIBUNAL "F" BENCH MUMBAI
BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER
AND
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No.44/MUM/2024
Assessment Year: 2014-15**

**ITA No. 46/MUM/2024
Assessment Year: 2018-19**

&

**ITA No. 298/MUM/2024
Assessment Year: 2021-22**

Income Tax Officer – 28.3.1, Mumbai	Vs.	Vaibhav Co-op Credit Society, At Post Ghansoli, Thane Belapur Road, Thane – 400701 (PAN : AAAAV3417F)
(Appellant) (Respondent)		

Present for:

Assessee : Shri Malay J. Gosrani
Revenue : Ms. Rajeshwari Menon, Sr. DR

Date of Hearing : 16.05.2024

Date of Pronouncement : 28.05.2024

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

The appeal filed by the Revenue in ITA No.44/Mum/2024 is against the order of Ld. CIT(A), National Faceless Appeal Centre (NFAC), Delhi, vide order no.ITBA/NFAC/S/250/2023-24/1057763170(1), dated 07.11.2023, passed against the assessment order by National E-Assessment Centre, Delhi u/s. 143(3) read with

sections 143(3A) & 143(3B) of the Income-tax Act (hereinafter referred to as the "Act"), dated 24.03.2021 for Assessment Year 2018-19.

1.1. The appeal filed by the Revenue in ITA No.46/Mum/2024 is against the order of Id. CIT(A), NFAC, Delhi, vide order no.ITBA/NFAC/S/250/2023-24/1057758561(1), dated 07/11/2023, passed against the assessment order by, Income Tax Officer 28(3)(4), Mumbai, u/s. 143 of the Act, dated 30.12.2016 for Assessment Year 2014-15.

1.2. The appeal filed by the Revenue in ITA No.298/Mum/2024 is against the order of Ld. CIT(A), NFAC, Delhi, vide order no.ITBA/NFAC/S/250/2023-24/1058212036(1), dated 24/11/2023, passed against the assessment order by Central Processing Centre, u/s. 154 of the Act, dated 30.01.2023 for Assessment Year 2021-21.

2. Grounds taken by the Revenue are reproduced as under:

ITA No. 44/MUM/2024

"1. Whether on the facts and in circumstances of the case and in law, the Ld. CIT(A) has erred in allowing the deduction w / s 80P(2)(d) of the Act on interest income earned of Rs. 1,89,79,925/-, from Co-operative bank treating the Co-operative bank as Co-operative society also, ignoring the fact that Co-operative Society and Co-operative bank are distinct entity and it is essential for a co-operative society to loose its status as a Co-operative society so as to turn into a co-operative bank and to acquire license from the RBI so as to conduct banking business."

ITA No. 46/MUM/2024

"1. Whether On the facts and in the circumstances of the case and in Law, the Ld. CIT(A) has erred in allowing deduction of Rs.2,31,44,574/- under section 80P of the Income-tax Act, 1961 to the assessee by holding that the assessee is a Co-operative Society and not a Co-operative Bank and it is entitled for deduction under section 80P of the I.T. Act, 1961.

2. Whether On the facts and in the circumstances of the case in Law, the Ld. CIT(A) has erred in deleting an addition of Rs.62,32,303/- by holding that the assessee is a Co-operative Society and not a Co-operative Bank and accordingly application of section 36(1)(via) of the Act is factually unsustainable in this case.

3. *Whether on the facts and in circumstances of the case and in law, the Ld. CIT(A) has erred in allowing the deduction u/s 80P(2)(d) of the Act on interest income earned from Co-operative bank treating the Co-operative bank as Co-operative society also, ignoring the fact that Co-operative Society and Co-operative bank are distinct entity and it is essential for a co-operative society to loose its status as a Co-operative society so as to turn into a co-operative bank and to acquire license from the RBI so as to conduct banking business.”*

ITA No. 298/MUM/2024

“(i) Whether On the facts and in the circumstances of the case in Law, the Ld. CIT(A) has erred in holding that the disallowance made by the CPC (Central Processing Centre) with respect to the deduction of Rs.2,57,88,069/- under section 80P(2)(a)(i) of the Income-tax Act was an apparent mistake and can be rectified u/s 154 of the Income-tax Act, ignoring the fact that while passing the order u/s. 143(1) and 154, the CPC has disallowed the aforesaid deduction u/s 80P of the Act by clearly excluding the same from deduction Chapter VIA.”

2.1. The issue involved in all the three appeals relate to disallowance of claim of deduction u/s. 80P(2)(a)(i) and 80P(2)(d) of the Act in respect of interest income earned by the assessee from deposits made by it with Co-operative bank. Since, common issue is involved in all the three appeals, we draw the facts from the appeal in ITA No.46/Mum/2024 to arrive at our finding which will apply *mutatis mutandis* on the other appeals also.

3. Brief facts of the case as culled out from records are that assessee is a credit cooperative society engaged in providing various credit facilities to its members. Assessee collects deposits from its members by way of fixed deposits, saving deposits and recurring daily deposits, etc. Ld. Assessing Officer observed that assessee gives various types of loans/ advances viz. team loans, against hypothecation or mortgage, vehicle loans, personal loans, housing loans, education loans, loan/ overdrafts against fixed deposits or NSC or LIC receipts etc. only to its members, but no cash credit facility, letter of credit, no export credit, packing credit etc. and no guarantee. Assessee earns interest from its members under various credit schemes and pays interest to its members under various deposit schemes.

3.1. Return of income was filed on 29.11.2014 reporting a total income of Rs.4,24,724/- after claiming deduction u/s. 80P of the Act for Rs.2,31,44,574/-. In the course of assessment, assessee was asked to explain about its claim of deduction u/s.80P(2)(a)(i) vis-à-vis amendment made by the Finance Act, 2006 which inserted by inserting section 80P(4) with explanation thereto r.w.s. 2(24)(viia) of the Act. Assessee made its detailed submission by placing reliance on several judicial precedents including that of Hon'ble Jurisdictional High Court of Bombay in the case of the Quepem Urban Cooperative Credit Society Ltd. vs. ACIT in ITA No. 22, 23 & 24 of 2015. However, Id. Assessing Officer observed that with the insertion of section 80P(4) w.e.f. 01.04.2007, the benefit of deduction shall not apply in relation to any cooperative bank other than a primary agricultural credit society or a primary cooperative agricultural and rural development bank. He thus, held that assessee is a cooperative bank other than a primary agricultural credit society or a primary cooperative agricultural and rural development bank and disallowed the claim of deduction of Rs.2,31,44,574/-. Aggrieved, assessee went in appeal before the Id. CIT(A).

3.2. Before the Id. CIT(A), assessee submitted that Id. Assessing Officer ignored the correct factual position while referring to Part V of the Banking Regulation Act,1949 and applied the provisions of Banking Regulation Act, 1949 on the Co-operative Society. According to the assessee, in the Banking Regulation Act,1949, in Section 56, definition of Co-operative Credit Society is as under: - (ccii) co-operative credit society means a co-operative society, the primary object of which is to provide financial accommodation to its members and includes a co-operative land mortgage bank. The expression financial accommodation, used in the definition of Co-operative Credit Society is not defined in Part V of Banking Regulation Act, 1949.

However, in common parlance, it is understood to be accepting deposits and granting loan or advance. But it is different from business of banking since business of banking can be done in India only under license from Reserve Bank of India (RBI). Ld. Assessing Officer thus, considered Credit Cooperative Society synonymous to Cooperative Bank, contested by the assessee.

3.3. According to the assessee, co-operative banks are functioning at par with other commercial banks, which do not enjoy any tax benefit. It was, therefore, proposed to amend section 80P by inserting a new subsection (4) It also submitted that requirement of transacting banking business is not a prerequisite for a Central or a State co-operative bank. The assessee has not claimed itself to be a Primary Co-operative Agricultural and Rural Development Bank. Rather, it is a co-operative society consisting of members being the residents of the territory of Navi Mumbai. The objects of the assessee include acceptance of deposits and granting of loans to members together with other activities but do not include banking. Moreover, the assessee has not granted any loan to or accepted a deposit from a person who is not a member.

3.4. Assessee submitted that Co-ordinate Bench of ITAT, Mumbai in its own case for the Assessment Year 2010-11 vide ITA No. 5819/Mum/2014 and 5217/Mum/2014 dated 17.03.2017 had dismissed the revenue appeal by categorically accepting the fact that assessee is a Credit Co-Operative Society and entitled for benefit u/s 80P(2)(a)(i) of the Act. Relevant extracts are as under:-

“9. H/e have heard the counsels for both the parties and we have also perused the material placed on record as well as the orders passed by the revenue authorities. After considering the facts of the case, we find that Ld. CIT(A) while dealing with the said ground has categorically mentioned the facts of the case and had given the findings in para no. 3.2.14 in its order after detailed discussion in para no. 3.1.6 to 3.2.13 and the same is reproduced below:-

“3.2.14. The A.O., in support of his decision, has relied on various decisions as already mentioned. In case of KekriSahakari Bhoomi Vikas Bank Ltd. Decision of the ITAT, Jaipur relied on by the AO, the assessee claimed itself to be a Primary Cooperative Agricultural and Rural Development Bank which stands excepted under sec.80P(4) of the Act and the assessee has failed to demonstrate that its principal business consisted: of providing financial accommodation to its members for agricultural purposes or for purposes connected with agricultural activities for claiming deduction.”

3.5. Further, the Coordinate Bench in assessee's own case vide ITA No. 1868/Mum/2023 dated 28.09.2023 had once again confirmed that the assessee is a co-operative credit society and that it is eligible for the benefit of deduction u/s 80P(2)(a)(i) of Act. Accordingly, Section 80P(4) of the Act restricting the benefit of deduction does not apply to the assessee as it is neither a cooperative bank nor co-operative society holding any license from RBI to do the banking business. Relevant extracts are as under:-

1. *“In view of above provisions, it is crystal clear without discussing any judicial pronouncements for the time being that as per section 80P (2) (a) (i) of the Act, transactions of the assessee with its members are exempted. Certainly, relying on various judicial pronouncements and principle of mutuality transactions carried out with known members and general public are not entitled for the benefit of section 80P(2)(a)(i) of the Act.*
2. *As far as deposits with other cooperative banks whatever may be the form, income arising to the assessee is squarely covered by the provisions of section 80P (2) (d) of the Act. The main foundation of the case as laid down by the Ld. PCIT is based on section 80P (4), which is in the nature of a proviso restricting the claim of a cooperative society u/s. 80P if the cooperative society is a cooperative bank or cooperative societies possess a license from the RBI to do the banking business. In this case, assessee is neither a cooperative bank nor a cooperative society possessing a license from the RBI to do banking business.*
3. *In view above discussion, in our considered opinion, assessee is fully entitled for deduction u/s. 80P (2) (a)(i) on the transaction entered into with the members of the society. As far as transactions and consequent earnings with non-members are concerned that has already been taxed by the AO in his assessment order amounting to Rs. 12,45,924/- so to this extent as far as applicability /charging of section 80P(2)(a)(i) is concerned, we do not find any perversity in the order of AO.*
4. *As far as assessee's claim u/s. 80P(2)(d) is concerned as discussed (supra), assessee is entitled for the same as assessee is not falling in section 80P(4) which is applicable only in the case of cooperative banks /cooperative societies having licences from RBI to do banking business. The whole foundation as laid down by the Ld. PCIT is on wrong appreciation of the facts and misinterpretation of relevant sections. To further substantiate our findings, we are reproducing and discussing the judicial pronouncements of*

Hon'ble Apex Court on both the issues i.e., section 80P (2) (a)(i), 80P(2)(d) and 80P(4) of the Act as under: -

➤ *[2023] 150 taxmann.com 173 (SC) PCIT v. Annasaheb Patil MathadiKamgarSahakariPathpedi Ltd.*

1. *In view of the above factual and legal discussion, we are not in agreement with the order of Ld. PCIT. Accordingly, the grounds raised by the assessee are allowed and order of Ld. PCIT find to be unsustainable, hence set-aside*
2. *In the result, the appeal filed by the assessee is allowed.”*

3.6. Assessee also placed reliance on the decisions of the Hon'ble Supreme Court in the case of *The Mavilayi Service Cooperative Bank Ltd. and others Vs. CIT [Civil Appeal Nos. 7343 to 7350 of 2019 dated 12.01.2021]* which dealt with the issue relating to deduction u/s.80P(2)(a)(i) r.w.s. 80P(4). The relevant extract from para 45 to 48 is as under:

“45. To sum up, therefore, the ratio decidendi of Citizen Cooperative 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 assessees in the present case are entitled to the benefit of the deduction contained in section 80P(2)(a)(i), notwithstanding that they may also be giving loans to their members which are not related to agriculture. Also, in case it is found that there are instances of loans being given to non-members, profits attributable to such loans obviously cannot be deducted.

46. It must also be mentioned here that unlike the Andhra Act that Citizen Cooperative Society Ltd. (supra) considered, ‘nominal members’ are ‘members’ as defined under the Kerala Act. This Court in U.P. Cooperative Cane Unions’ Federation Ltd., Lucknow v. Commissioner of Income Tax, Lucknow-I (1997) 11 SCC 287 referred to section 80P of the IT Act and then held:

“8. The expression “members” is not defined in the Act. Since a cooperative society has to be established under the provisions of the law made by the State Legislature in that regard, the expression “members” in Section 80-P(2)(a)(/) must, therefore, be construed in the context of the provisions of

the law enacted by the State Legislature under which the cooperative society claiming exemption has been formed. It is, therefore, necessary to construe the expression "members" in Section 80-P(2)(a)(/) of the Act in the light of the definition of that expression as contained in Section 2(n) of the Cooperative Societies Act. The said provision reads as under:

"2. (n) 'Member' means a person who joined in the application for registration of a society or a person admitted to membership after such registration in accordance with the provisions of this Act, the rules and the bye-laws for the time being in force but a reference to 'members' anywhere in this Act in connection with the possession or exercise of any right or power or the existence or discharge of any liability or duty shall not include reference to any class of members who by reason of the provisions of this Act do not possess such right or power or have no such liability or duty;"

Considering the definition of 'member' under the Kerala Act, loans given to such nominal members would qualify for the purpose of deduction under section 80P(2)(a)(i).

47. Further, unlike the facts in Citizen Cooperative Society Ltd.(supra), the Kerala Act expressly permits loans to non-members under section 59(2) and (3), which reads as follows:

"59. Restrictions on loans:-

(1) A society shall not make a loan to any person or a society other than a member:

Provided that the above restriction shall not be applicable to the Kerala State Co-operative Bank.

Provided further that, with the general or special sanction of the Registrar, a society may make loans to another society.

(2) Notwithstanding anything contained in sub-section (1), a society may make a loan to a depositor on the security of his deposit.

(3) Granting of loans to members or to non-members under sub-section (2) and recovery thereof shall be in the manner as may be specified by the Registrar."Thus, the giving of loans by a primary agricultural credit society to nonmembers is not illegal, unlike the facts in Citizen Cooperative Society Ltd. (supra)."

48. Resultantly, the impugned Full Bench judgment is set aside. The appeals and all pending applications are disposed of accordingly. These appeals are directed to be placed before appropriate benches of the Kerala High Court for disposal on merits in the light of this judgment."

3.7. Reliance was also placed on the decision of Hon'ble Supreme Court in the case of Kerala State Agricultural and Rural Development Bank Ltd. Vs. Assessing Officer in civil appeal No.10069 of 2016 dated 14.09.2023, wherein the Hon'ble Court dealt with its earlier decision in The Mavilayi Service Cooperative Bank (supra) and analysed in

depth provisions of section 80P, highlighting the distinction between eligibility for deduction and attributability of amount of profits and gains from the activity of providing credit facilities to the members as well as deriving income from investments made with other cooperative societies. The relevant observations and findings are as under:

1. *“In Mavilayi Service Co-operative Bank, it has been observed that Section 80P of the Act is a beneficial provision which was enacted in order to encourage and promote the growth of the co-operative sector generally in the economic life of the country and therefore, has to be read liberally in favour of the assessee. That once the assessee is entitled to avail of deduction, the entire amount of profits and gains of business that are attributable to any one or more activities mentioned in subsection (2) of Section 80P must be given by way of deduction vide Citizen Co-operative Society. This is because subsection (4) of Section 80P is in the nature of a proviso to the main provision contained in subsections (1) and (2) of Section 80P. The proviso excludes cooperative banks, which are co-operative societies which must possess a licence from the Reserve Bank of India to do banking business. In other words, if an entity does not require a licence to do banking business within the definition of banking under Section 5(b) of the BR Act, 1949, then it would not fall within the scope of sub-section (4) of Section 80P.*
2. *While analysing Section 80P of the Act in depth, the following points were noted by this Court:*
 1. *Firstly, the marginal note to Section 80P which reads “Deduction in respect of income of co-operative societies” is significant as it indicates the general “drift” of the provision.*
 2. *Secondly, for purposes of eligibility for deduction, the assessee must be a “cooperative society”.*
 3. *Thirdly, the gross total income must include income that is referred to in sub-section (2).*
 4. *Fourthly, sub-clause (2)(a)(i) speaks of a co-operative society being “engaged in”, inter alia, carrying on the business of banking or providing credit facilities to its members.*
 5. *Fifthly, the burden is on the assessee to show, by adducing facts, that it is entitled to claim the deduction under Section 80P.*
 6. *Sixthly, the expression “providing credit facilities to its members” does not necessarily mean agricultural credit alone. It was highlighted that the distinction between eligibility for deduction and attributability of amount of profits and gains to an activity is a real one. Since profits and gains from credit facilities given to non-members cannot be said to be attributable to the activity of providing credit facilities to its members, such amount cannot be deducted.*
 7. *Seventhly, under Section 80P(1)(c), the co-operative societies must be registered either under Co-operative Societies Act, 1912, or a State Act and may be engaged in activities which may be termed as residuary activities i.e. activities not covered by subclauses (a) and (b), either independently of or in addition to those activities,*

then profits and gains attributable to such activity are also liable to be deducted, but subject to the cap specified in sub-clause (c).

8. *Eighthly, sub-clause (d) states that where interest or dividend income is derived by a co-operative society from investments with other co-operative societies, the whole of such income is eligible for deduction, the object of the provision being furtherance of the co-operative movement as a whole.*

Conclusion:

In the instant case, although the appellant society is an apex cooperative society within the meaning of the State Act, 1984, it is not a co-operative bank within the meaning of Section 5(b) read with Section 56 of the BR Act, 1949.

In the result, the appeals filed by the appellant are allowed and the order(s) of the Kerala High Court and other authorities to the contrary are set aside. Consequently, we hold that the appellant is entitled to the benefit of deduction under Section 80P of the Act. The questions for consideration are answered accordingly.”

3.8. Based on the above submissions of the assessee, ld. CIT(A) observed on section 80P(2)(a)(i) r.w.s. 80P(4) that,

“6.4 Appellant is registered as a co-operative society under the Maharashtra Co-operative Societies Act, 1960. Further, it is also found to be a co-operative society on the basis of relevant definitions contained in the Income-tax Act & not being a Cooperative bank as per the applicable provision of the Banking Regulations Act. Thus, it is held that being a co-operative society, appellant, is not hit by the exclusion provided in section 80P(4) of the Act and is therefore, eligible to claim deduction under section 80P(2)(a)(i) of the Act, subject to fulfillment of conditions specified therein. While giving appeal-effect, income arising from loans given to members (whether for agriculture or otherwise), in accordance with directions of the Hon’ble Apex Court (supra), are to be allowed. The appellant had claimed the entire 80P(2) deduction under sub-section (a)(i). However, as clearly laid down in Mavilayi judgment by the Hon’ble Apex Court in case of cooperative societies, profits from giving credit facilities to members are only eligible under this sub-section.”

3.9. For the purpose of above observation, provisions of section 80P(4) were analysed by the ld. CIT(A) to arrive at a conclusion that assessee cannot be placed under any of the categories of cooperative banks even though some of its activities have the attributes of doing banking. In this respect, it was stated that,

“Section 80P(4) of the Act while excluding Cooperative banks for purposes of 80P(2) deduction allows Primary Agricultural Co-operative credit societies and RRBs which might otherwise be classified as Co-operative Banks. The term 'Co-operative society' is defined in section 2(19) of the Income-tax Act, as: '(19) "Co-operative society" means a co-operative society registered under the Co-operative Societies Act, 1912 (2 of 1912), or under any other law for the time

being in force in any state for the registration of co-operative societies;’ In assessment, appellant was held to be a Co-operative bank as its business activity was more or less similar to them. The Explanation to section 80P(4) of the Act refers to the Part V of Banking Regulation Act, 1949 to define a Co-operative Bank for purposes of section 80P of the Act. As per provisions of the Banking Regulation Act, 1949, a “Cooperative Bank” ‘means a state co-operative bank, a central cooperative bank and a primary co-operative bank’. These entities are statutorily required to obtain a license from the RBI to conduct banking business. As the appellant entity does not have a banking license from RBI, hence, it cannot be placed under any of the three categories of Cooperative banks even though some of its activities have the attributes of doing banking.”

3.10. In respect of interest earned from loans given to non members, it was observed that the same is chargeable to tax as income from other sources on net basis for which the ld. Assessing Officer is directed by the ld. CIT(A) required to verify and compute ‘net’ interest income on account of loans given to non-members and tax it appropriately under the head ‘income from other sources’.

3.11. Ld. CIT(A) also dealt with the issue relating to interest income earned by a co-operative society from its investments with other co-operative societies which falls in the category of ‘income from other sources’ and section 80P(2)(d) provides for deduction in this behalf. For holding such income as eligible for deduction under section 80P(2)(d) of the Act, ld. CIT(A) referred to decision of Pr. CIT v. Peroorkada Service Cooperative Bank Ltd. [2022] 442 ITR 141 (Ker) dated 01.11.2021 according to which investment by the assessee (co-operative society) with co-operative banks (being a genus of the larger specie i.e. co-operative society) would be eligible for 80P(2)(d) deduction. However, the scheduled banks have to be excluded.

3.12. Ld. CIT(A) thus, partly allowed the appeal of the assessee on the issues relating to section 80P(2)(a)(i) r.w.s. 80P(4) and section 80P(2)(d).

3.13. On the issue relating to addition made towards bad and doubtful debts u/s. 36(1)(viia) of Rs.6,24,32,302/- it was held by ld. CIT(A) that

assessee is not a cooperative bank and therefore, provisions of Section 36(1)(viia) do not apply to cooperative society. Aggrieved, Revenue is in appeal before the Tribunal.

4. Before us, ld. Sr. DR placed reliance on the order of ld. Assessing Officer. Per contra, ld. Counsel for the assessee reiterated the submissions made before the ld. CIT(A).

5. We have heard the rival contentions and perused the material on record. We have given our thoughtful considerations to the submissions made before us and various judicial precedents relied upon as discussed above including those in the case of assessee itself dealing with the issue before us. Admittedly, it is a fact on record that assessee does not hold banking license issued by Reserve Bank of India which is a necessary requirement for doing banking business. Assessee is a credit cooperative society providing credit facilities to its members from the deposits collected by it from its members. The credit activities undertaken by the assessee carry attributes of banking but for this sole reason assessee cannot be held to be doing banking business within the meaning of Banking Regulation Act, 1949 as applicable to cooperative banks. In this respect, it is worthwhile to take note of the difference in cooperative societies and cooperative banks explained elaborately by the Co-ordinate bench of ITAT, Mumbai in the case of ITO vs. Kulswami Cooperative Society in ITA No.6790/Mum/2012. The same is reproduced as under:

Sl. No.	Co-operative societies	Co-operative Banks
1.	<i>The Co-operative Credit Societies are registered under Maharashtra State Cooperative Societies Act, 1960 and governed, regulated, administered and supervised by the Registrar of the Cooperative Societies, Government of Maharashtra.</i>	<i>Co-operative Banks are registered under Maharashtra Co-operative Societies Act, 1960 and administered by Registrar of Cooperative Societies, Govt. Of Maharashtra. Cooperative Banks are regulated and supervised by the Reserve Bank of India. Provisions of Banking Regulation Act, 1949 with modifications</i>

		<i>specified in section 56 of the Banking Regulation Act, 1949 are applicable to Co-operative Banks. Schedule 1 to Schedule V are applicable to Cooperative Bank.</i>
2.	<i>Co-operative Societies are classified as resource/thrifts Societies in the certificate of registration issued by Registrar of Cooperative Society.</i>	<i>Co-operative Banks are classified as Cooperative Bank.</i>
3.	<i>Co-operative Credit Societies can accept deposits and advance loans only to the members. Hence the business activities are restricted to members and hence it can be termed as a mutual association/self help group.</i>	<i>Co-operative Banks can accept deposits from public. However, unlike Co-operative credit societies they can advance loans to the members only.</i>
4.	<i>Co-operative Credit Societies cannot accept deposits from public.</i>	<i>Co-operative can accept deposits from public.</i>
5.	<i>The provisions of Banking Regulation Act 1949 are not applicable to the Cooperative Credit Societies.</i>	<i>The provisions of Banking Regulation Act 1949 are applicable to the Cooperative Bank.</i>
6.	<i>The Co-operative credit societies do not required license from Reserve Bank of India to carry on its business.</i>	<i>The Co-operative banks are required to obtain license from Reserve Bank of India to carry on its business.</i>
7.	<i>The Co-operative credit societies do not have cheque facilities, clearing facilities and they cannot issue demand drafts, pay orders etc.</i>	<i>The Co-operative have cheque facilities, clearing facilities and they issue demand drafts, Assessment Year order, bank guarantees etc.</i>
8.	<i>Co-operative Credit Societies cannot use word Bank/Bankers in their name.</i>	<i>Co-operative Banks are mandatorily required to use word Bank/Bankers in their name.</i>
9.	<i>Reserve Bank of India has no statutory power of control and supervision of Cooperative Societies.</i>	<i>Reserve Bank of India has vested with statutory powers of control and supervision of Cooperative Banks.</i>

6. Furthermore, in assessee's own case (supra), the coordinate bench has held that assessee is a cooperative credit society eligible for benefit of deduction u/s. 80P(2)(a)(i) and that Section 80P(4) restricting the benefit of deduction does not apply to the assessee since it is neither a cooperative bank nor a cooperative society holding license from RBI for banking business. Also, with detailed exposition

on the issue in hand by the Hon'ble Supreme Court in the case of The Mavilayi Service Cooperative Bank (Supra) and Kerala State Cooperative Agricultural and Rural Development Bank (Supra) we do not find any reason to interfere with the well analysed and elaborate finding arrived at by the ld. CIT(A) in allowing the grounds raised by the assessee on this issue. Accordingly, ground no.1 and 3 of the Revenue are dismissed.

7. Having held that assessee is a credit cooperative society and not a cooperative bank within the meaning of Banking Regulation Act, 1949, provisions of Section 36(1)(viiia) of the Act do not apply in the case of assessee, which has been rightly held by the ld. CIT(A). Accordingly, ground no.2 of the Revenue is dismissed.

8. In the result, appeal of the Revenue is dismissed.

9. In ITA No. 298/Mum/2024, the issue involved is in respect of disallowance of Rs.2,57,88,069/- u/s. 80P(2)(a)(i) which is identical to the issue dealt above in ITA No.46/Mum/2024 except for variation in the amount. Accordingly, our observations and findings stated above apply *mutatis mutandis* on this appeal also. In the result, appeal of the Revenue is dismissed.

10. In ITA No.44/Mum/2024, the ground raised by the Revenue refers to deduction u/s. 80P(2)(d) of Rs.1,89,79,925/- on interest income earned from cooperative bank. This issue has also been dealt with by us while dealing with ground no.3 in ITA No.46/Mum/2024 above by referring to findings of ld. CIT(A) in allowing the said claim.

10.1. To further elaborate on this issue, we refer to a recent decision of the Co-ordinate Bench of ITAT, Mumbai in the case of Rajat Apartments Co-op Housing Society in ITA No. 4328 & 4329/Mum/2023, dated 27.05.2024 (undersigned author is also the author of this order). While arriving at this decision, reliance was

placed on the decision of Hon'ble High Court of Karnataka in case of the PCIT vs. Totagar Cooperative Sales Society Limited [2017] 392 ITR 74 / 78 taxmann.com 169 (SC).The findings so arrived at by the co-ordinate bench is as under:

“6.1. From the above, we understand that the provisions of section 80P(2)(d) of the Act are very clear and assessee is entitled for deduction u/s.80P(2)(d) of the Act in respect of interest or dividends received from investments made with any other cooperative societies. The decision on which the Ld.CIT(A) placed reliance i.e. The Totagar Cooperative Sales Society Limited v. ITO 322 ITR 283 (SC), is not on the issue of whether the assessee is entitled for exemption u/s. 80P(2)(d) of the Act vis-a-vis the interest income earned by the cooperative society from investments in other cooperative societies. Hence the decision of Hon'ble Supreme Court in the case of The Totagar Cooperative Sales Society Limited v. ITO has no application to the facts of the present case.

6.2. From the above extraction, we also note that the Hon'ble High Court held that the word 'cooperative society' are the words of the large extent and denotes a genus, whereas the word 'cooperative bank' is a word of limited extent, which merely de-markets and identifies a particular species of the genus 'cooperative societies'. Thus, a cooperative bank is merely a variety of the cooperative societies which can be of a different nature and can be involved in different activities.

7. We are of the considered view, that though the co-operative bank pursuant to the insertion of Sub-section (4) of Sec. 80P would no more be entitled for claim of deduction under Sec. 80P of the Act, but however, since a co-operative bank continues to be a co-operative society registered under the Co-operative Societies Act, 1912 (2 of 1912), or under any other law for the time being enforced in any state for the registration of cooperative societies, therefore, the interest income derived by a cooperative society from its investments held with a co-operative bank, would be entitled for claim of deduction under Sec.80P(2)(d) of the Act.

8. We also find that the issue before us of whether a co-operative society would be entitled for claim of deduction under Sec. 80P(2)(d) for the interest income derived from its investments held with a cooperative bank or not is covered in favour of the assessee not only by the decision of Hon'ble High Court of Karnataka referred above but also in plethora of cases including few of the following cases:

- (i) Land and Cooperative Housing Society Ltd. v. ITO (2017) 46 CCH 52 (Mum)*
- (ii) C. Green Cooperative Housing and Society Ltd. v. ITO 21(3)(2), Mumbai (ITA No. 1343/Mum/2017, dated 31.03.2017)*
- (iii) Marwanjee Cama Park Cooperative Housing Society Ltd. v. ITO Range- 20(2)(2), Mumbai (ITA No. 6139/Mum/2014, dated 27.09.2017.”*

10.2. In the present case, ld. Assessing Officer has identified interest earned by the assessee from various cooperative banks against the investments made by it which has been disallowed towards deduction

claimed under section 80P. Considering the facts on record and the judicial precedents referred above, as well as our observations and discussions made supra, we are of the considered view that though the co-operative bank pursuant to the insertion of Sub-section (4) of Sec. 80P would no more be entitled for claim of deduction under Sec. 80P of the Act, however, since a co-operative bank continues to be a co-operative society registered under the Co-operative Societies Act, 1912 (2 of 1912), or under any other law for the time being enforced in any state for the registration of cooperative societies, therefore, the interest income derived by a cooperative society from its investments held with a co-operative bank, would be entitled for claim of deduction under Sec.80P(2)(d) of the Act. We thus, hold that assessee is eligible for claiming deduction u/s. 80P(2)(d) disallowed by the ld. Assessing Officer. Accordingly, ground taken by the Revenue in this respect is dismissed. In the result, appeal of the Revenue is dismissed.

11. In the result, all the three appeals of the Revenue are dismissed.

Order is pronounced in the open court on 28 May, 2024

Sd/-
(Pavan Kumar Gadale)
Judicial Member

Sd/-
(Girish Agrawal)
Accountant Member

Dated: 28 May, 2024

MP, Sr.P.S.

Copy to :

1. The Appellant
2. The Respondent
3. DR, ITAT, Mumbai
4. Guard File
5. CIT

BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai