

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'C' BENCH  
MUMBAI**

**BEFORE: SHRI GAGAN GOYAL, ACCOUNTANT MEMBER  
&  
SHRI SUNIL KUMAR SINGH, JUDICIAL MEMBER**

**ITA No. 697/MUM/2024  
(Assessment Year : 2014-15)**

**ITA No. 698/MUM/2024  
(Assessment Year : 2017-18)**

**ITA No. 699/MUM/2024  
(Assessment Year : 2018-19)**

CIDCO Employees Co-op. Credit Society, Ground Floor, CIDCO Bhavan, CBD-Belapur, Navi Mumbai, 400614.	Vs.	ITO Ward 28(1)(3) 3 <sup>rd</sup> Floor, Tower no. 6, Vashi Railway Station, Vashi, Navi Mumbai, 400703.
<b>PAN/GIR No. AAAAC2203N</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

Assessee by	Shri. Bhupendra Shah
Revenue by	Shri. H.M. Bhatt (SR. DR.)
<b>Date of Hearing</b>	<b>03/06/2024</b> (in ITA no. 698/Mum/2024 & ITA no. 699/MUM/2024) <b>04/06/2024</b> (in ITA no.697/MUM/2024)
<b>Date of Pronouncement</b>	<b>07/08/2024</b>

**आदेश / ORDER****PER SUNIL KUMAR SINGH (J.M):**

The facts in all the three appeals are similar and issues arising are identical. The decision on facts and law for one appeal for any assessment year would answer the issue involved in the other two years. Therefore, all the three appeals are being decided by the common order for the sake of brevity. The facts only in ITA no. 697/MUM/2024 are being narrated as under:

**ITA No. 697/MUM/2024**  
**(Assessment Year : 2014-15)**

1. This appeal has been preferred against the impugned order dated 18.12.2023 passed in Appeal no. CIT(A), Mumbai-26/10530/2016-17 by the Ld. Commissioner of Income-tax(Appeals)/ National Faceless Appeal Centre (NFAC) [hereinafter referred to as the "CIT(A)"] u/s. 250 of the Income-tax Act, 1961 [hereinafter referred to as "Act"] for the Assessment year [A.Y.] 2014-15, wherein learned CIT(A) has confirmed the addition of Rs. 56,64,970/- made vide assessment order dated 21.12.2016 and dismissed assessee's appeal.
2. (i) The brief facts state that the assessee is a co-operative credit society, registered under Maharashtra co-operative society Act, 1960 and is engaged in providing credit facilities to those CIDCO employees who are members of credit society. The assessee e-filed its return of income on 29.11.2014, declaring total income of Rs. Nil. The return was processed

u/s. 143(1) of the Act. The case was selected for scrutiny under CASS and statutory notices u/s. 143(2) and u/s. 142(1) of the Act were issued and served upon the assessee. Assessee responded and filed required details. During the year, the assessee has shown income of Rs. 56,64,971/- from business and claimed deduction u/s. 80P of the Act amounting to Rs. 56,64,971/-. Learned assessing officer held that assessee's credit society fell under the category of primary co-operative bank and therefore, the provisions of section 80P(4) is applicable in assessee's case and disallowed assessee's claim for deduction of Rs. 56,64,971/- u/s. 80P. Penalty proceedings u/s. 271(1)(C) of the Act were separately initiated for furnishing inaccurate particulars of income.

2. (ii) Aggrieved by the assessment order, assessee preferred an appeal before learned CIT(A), who confirmed assessment order, holding that the assessee is neither a primary agricultural credit society nor primary agricultural development bank but is a co-operative bank and taking support from the Judgment of Hon'ble Supreme Court passed in Totgar's Co-operative Sale Society Ltd. V ITO, [2010]322 ITR 283(SC), dismissed assessee's appeal.
3. The assessee has preferred this appeal before the Tribunal on the ground that in the facts and circumstances of the case, learned CIT(A) has erred in upholding the assessment order, disallowing the assessee co-operative society's whole amount of profits and gains of Rs. 56,64,971/- claimed u/s. 80P of the Act.

4. In response to the notice issued by the tribunal, learned DR appeared and participated in the hearing.
5. We have perused the material on record and heard learned representatives for both the parties.
6. The main point for determination under appeal is as to whether the appellant CIDCO Employees Credit Society is a co-operative bank within the meaning of section 80P(4) of the Act. If not, the effect thereof ?
7. Learned AR has submitted that the assessee is a co-operative credit society engaged in providing credit facilities to its members exclusively. It is not carrying on the business of banking. He has submitted that the issue involved in the present appeal is squarely covered by the order dated 20.05.2020 passed by the co-ordinate bench of ITAT Mumbai in ITA no. 450/MUM/2019, for A.Y. 2014-15, The University of Mumbai Employees co-op. credit society Ltd. V. ITO, Ward 17(3)(5), Mumbai. He further submits that the assessee is entitled to the benefit of section 80P and prayed to set aside the impugned order and allow the appeal.
8. Per contra, learned DR has vehemently supported impugned order passed by learned CIT(A) supported by Hon'ble Supreme Court Judgment in Totgar's Co-operative Sale Society Ltd. V Income Tax Officer, [2010] 322 ITR 283(SC).
9. According to the revenue, the appellant assessee employees co-operative credit society falls under the category of primary co-operative bank, thus hit by the exclusion clause provided in section 80P(4) of the Act and is not entitled either to the benefit of section 80P(2)(a)(i) or of section 80P(2)(d) of the Act.

10. The law relevant to the facts of the case is extracted as under:

i. Income tax Act 1961

**“80P. Deduction in respect of income of co-operative societies.**

(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 grown by 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, or*
- (vi) the collective disposal of the labour of its members, or*
- (vii) fishing or allied activities, that is to say, the catching, curing, processing, preserving, storing or marketing of fish or the purchase of materials and equipment in connection therewith for the purpose of supplying them to its members,*

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

*Provided that in the case of a co-operative society falling under sub-clause (vi), or sub-clause (vii), the rules and bye-laws of the society restrict the voting rights to the following classes of its members, namely:-*

- (1) the individuals who contribute their labour or, as the case may be, carry on the fishing or allied activities;*
- (2) the co-operative credit societies which provide financial assistance to the society;*
- (3) the State Government'*
- (b) in the case of a co-operative society, being a primary society engaged in supplying milk, oilseeds, fruits or vegetables raised or grown by its members to-*
  - (i) a federal co-operative society, being a society engaged in the business of supplying milk, oilseeds, fruits or vegetables, as the case may be; or*
  - (ii) the Government or a local authority; or*
  - (iii) a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956), or a corporation established by or under a Central, State or Provincial Act (being a*

- company or corporation engaged in supplying milk, oilseeds, fruits or vegetables, as the case may be, to the public), 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—*
- (i) *where such co-operative society is a consumers' co-operative society, one hundred thousand rupees.*
- (ii) *in any other case, fifty thousand rupees.*

*Explanation. - In this clause, "consumers co-operative society" means a society for the benefit of the consumers:*

- (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 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 80HH or section 80HHA or section 80HHB or section 80HHC, or section 80HHD or section 80-I or section 80-IA or section 80J, or section 80JJ, the deduction under sub-section (1) or 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 80HH, section 80HHA, section 80HHB, section 80HHC, section 80HHD, section 80-I, section 80-IA, section 80J and 80JJ.*
- (4) *The provisions of this section shall not apply in relation to any co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank.*
- Explanation. - For the purposes of this sub-section,-*
- (a) *"co-operative bank" and "primary agricultural credit society" shall have the meanings respectively assigned to them in Part V of the Banking Regulation Act, 1949 (10 of 1949);*
- (b) *"primary co-operative agricultural and rural development bank" means a society having its area of operation confined to a taluk and the principal object of which is to provide for long-term credit for agricultural and rural development activities.*

**The term co-operative society has been defined under section 2(19) of the income tax Act 1961, which reads as under:**

2(19) "co-operative society" means a co-operative society registered under the Cooperative 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 ;

**Section 2(24)(viiia) of the Act provides that income includes-**

"2(24)(viiia)- The profits and gains of any business of banking(including providing credit facilities) carried on by a co-operative society with its members."

**"ii) The Banking Regulation Act, 1949 (BR ACT, 1949):**

The relevant provisions of the BR Act, 1949 are extracted as under.

Section 3 of the said Act as it stood at the relevant point of time i.e before substitution by Act no. 39 of 2020 i.e prior to its enforcement i.e prior to 26.06.2020, read as follows:

**3. Act to apply to certain co-operative societies in certain cases.-Nothing in this Act shall apply to-**

- (a) a primary agricultural credit society; or
- (b) a co-operative land mortgage bank; and
- (c) any other co-operative society, except in the manner and to the extent specified in Part V.

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**5. Interpretation-**In this Act, unless there is anything repugnant in the subject or context,

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(b) "banking" means the accepting, for the purpose of lending or investment, of deposits of money from the public, repayable on demand or otherwise, and withdrawal by cheque, draft, order or otherwise;

(c) "banking company" means any company which transacts the business of banking in India.

*Explanation.* Any company which is engaged in the manufacture of goods or carries on any trade and which accepts deposits of money from the public merely for the purpose of financing its business as such manufacturer or trader shall not be deemed to transact the business of banking within the meaning of this clause;

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**22. Licensing of banking companies.** (1) Save as hereinafter provided, no company shall carry on banking business in India unless it holds a licence issued in that behalf by the Reserve Bank and any such licence may be issued subject to such conditions as the Reserve Bank may think fit to impose.

(2) Every banking company in existence on the commencement of this Act, before the expiry of six months from such commencement, and every other company before commencing banking business in India, shall apply in writing to the Reserve Bank for a licence under this section:

*Provided that in the case of a banking company in existence on the commencement of this Act, nothing in sub-section (1) shall be deemed to prohibit the company from carrying on banking business until it is granted a licence in pursuance of this section or is by notice in writing informed by the Reserve Bank that a licence cannot be granted to it:*

*Provided further that the Reserve Bank shall not give a notice as aforesaid to a banking company in existence on the commencement of this Act before the expiry of the three years referred to in sub-section (1) of section 11 or of such further period as the Reserve Bank may under that sub-section think fit to allow.*

(3) Before granting any licence under this section, the Reserve Bank may require to be satisfied by an inspection of the books of the company or otherwise that the following conditions are fulfilled, namely:-

(a) that the company is or will be in a position to pay its present or future depositors in full as their claims accrue;

(b) that the affairs of the company are not being, or are not likely to be, conducted in a manner detrimental to the interests of its present or future depositors;

(c) that the general character of the proposed management of the company will not be prejudicial to the public interest or the interest of its depositors;

(d) that the company has adequate capital structure and earning prospects;

(e) that the public interest will be served by the grant of a licence to the company to carry on banking business in India;

(f) that having regard to the banking facilities available in the proposed principal area of operations of the company, the potential scope for expansion of banks already in existence in the area and other relevant factors the grant of the licence would not be prejudicial to the operation and consolidation of the banking system consistent with monetary stability and economic growth;

(g) any other condition, the fulfilment of which would, in the opinion of the Reserve Bank, be necessary to ensure that the carrying on of banking business in India by the company will not be prejudicial to the public interest or the interests of the depositors.

(3A) Before granting any licence under this section to a company incorporated outside India, the Reserve Bank may require to be satisfied by an inspection of the books of the company or otherwise that the conditions specified in sub-section (3) are fulfilled and that the carrying on of banking business by such company in India will be in the public interest and that the Government or law of the country in which it is incorporated does not discriminate in any way against banking companies registered in India and that the company complies with all the provisions of this Act applicable to banking companies incorporated outside India.

(4) *The Reserve Bank may cancel a licence granted to a banking company under this section*

(i) *if the company ceases to carry on banking business in India; or*

(ii) *if the company at any time fails to comply with any of the conditions imposed upon it under sub-section (1); or*

(iii) *if at any time, any of the conditions referred to in sub-section (3) and sub-section (3A) is not fulfilled:*

*Provided that before cancelling a licence under clause (ii) or clause (iii) of this sub-section on the ground that the banking company has failed to comply with or has failed to fulfil any of the conditions referred to therein, the Reserve Bank, unless it is of opinion that the delay will be prejudicial to the interests of the company's depositors or the public, shall grant to the company on such terms as it may specify, an opportunity of taking the necessary steps for complying with or fulfilling such condition.*

(5) *Any banking company aggrieved by the decision of the Reserve Bank cancelling a licence under this section may, within thirty days from the date on which such decision is communicated to it, appeal to the Central Government.*

(6) *The decision of the Central Government where an appeal has been preferred to it under sub-section (5) or of the Reserve Bank where no such appeal has been preferred shall be final.*

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**56. Act to apply to co-operative societies subject to modifications-** *The provisions of this Act, as in force for the time being, shall apply to, or in relation to, co-operative societies as they apply to, or in relation to, banking companies subject to the following modifications, namely:-*

(a) *throughout this Act, unless the context otherwise requires,-*

(i) *references to a "banking company" or "the company" or "such company" shall be construed as references to a co-operative bank,*

(ii) *references to "commencement of this Act" shall be construed as references to commencement of the Banking Laws (Application to Co-operative Societies) Act, 1965 (23 of 1965);*

(b) *in section 2, the words and figures "the Companies Act, 1956 (1 of 1956), and shall be omitted;*

(c) *in section 5-*

(i) *after clause (cc), the following clauses shall be inserted namely:-*

(cci) *"co-operative bank" means a state co-operative bank, a central co-operative bank and a primary co-operative bank;*

(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;*

(cciiia) "co-operative society" means a society registered or deemed to have been registered under any Central Act for the time being in force relating to the multi-State co-operative societies, or any other Central or State law relating to co-operative societies for the time being in force;

(cciii) "director", in relation to a co-operative society, includes a member of any committee or body for the time being vested with the management of the affairs of that society;

(cciiia) "multi-State co-operative bank" means a multi-State co-operative society which is a primary co-operative bank;

(cciiib) "multi-State co-operative society" means a multi-State co-operative society registered as such under any Central Act for the time being in force relating to the multi-State co-operative societies but does not include a national co-operative society and a federal co-operative;

(cciv) "primary agricultural credit society" means a co-operative society, -

(1) the primary object or principal business of which is to provide financial accommodation to its members for agricultural purposes or for purposes connected with agricultural activities (including the marketing of crops); and

(2) the bye-laws of which do not permit admission of any other co-operative society as a member:

Provided that this sub-clause shall not apply to the admission of a co-operative bank as a member by reason of such co-operative bank subscribing to the share capital of such co-operative society out of funds provided by the State Government for the purpose;

(ccv) "primary co-operative bank" means a co-operative society, other than a primary agricultural credit society, -

(1) the primary object or principal business of which is the transaction of banking business;

(2) the paid-up share capital and reserves of which are not less than one lakh of rupees; and

(3) the bye-laws of which do not permit admission of any other co-operative society as a member.

Provided that this sub-clause shall not apply to the admission of a co-operative bank as a member by reason of such co-operative bank subscribing to the share capital of such co-operative society out of funds provided by the State Government for the purpose;

(ccvi) "primary credit society" means a co-operative society, other than a primary agricultural credit society, -

(1) the primary object or principal business of which is the transaction of banking business;

(2) the paid-up share capital and reserves of which are less than one lakh of rupees; and

*(3) the bye-laws of which do not permit admission of any other co-operative society as a member:*

*Provided that this sub-clause shall not apply to the admission of a co-operative bank as a member by reason of such co-operative bank subscribing to the share capital of such co-operative society out of funds provided by the State Government for the purpose.*

*Explanation. If any dispute arises as to the primary object or principal business of any co-operative society referred to in clauses (cciv), (ccv) and (ccvi), a determination thereof by the Reserve Bank shall be final;*

*(ccvii) "central co-operative bank", "primary rural credit society" and "state co-operative bank" shall have the meanings respectively assigned to them in the National Bank for Agriculture and Rural Development Act, 1981 (61 of 1981);"*

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*(o) in section 22,-*

*(i) for sub-sections (1) and (2) the following sub-sections shall be substituted, namely:-*

*"(1) Save as hereinafter provided, no co-operative society shall carry on banking business in India unless-*

*(a) (\*)*

*(b) it is a co-operative bank and holds a licence issued in that behalf by the Reserve Bank, subject to such conditions, if any, as the Reserve Bank may deem fit to impose:*

*Provided that nothing in this sub-section shall apply to a co-operative society, not being a primary credit society or a co-operative bank carrying on banking business commencement at the of the Banking Laws (Application to Co-operative Societies) Act, 1965 (23 of 1965), for a period of one year from such commencement.*

*Provided further that nothing in this sub-section shall apply to a primary credit society carrying on banking business commencement of on or before the the Banking Laws (Amendment) Act, 2012, for a period of one year or for such further period not exceeding three years, as the Reserve Bank may, after recording the reasons in writing for so doing, extend.*

*(2) Every co-operative society carrying on business as a co-operative bank at the commencement of the Banking Laws (Application to Co-operative Societies) Act, 1965 (23 of 1965) shall before the expiry of three months from the commencement, every co-operative bank which comes into existence as a result of the division of any other co-operative society carrying on business as a co-operative bank, or the amalgamation of two or more co-operative societies carrying on banking business shall, before the expiry of three months from its so coming into existence, every primary credit society which had become a primary co-operative bank on or before the commencement of the Banking Laws (Amendment) Act, 2012, shall before the expiry of three months*

*from the date on which it had become a primary co-operative bank and every co-operative shall before commencing banking business in India, apply in writing to the Reserve Bank for a licence under this section.*

*Provided that nothing in clause (b) of sub-section (1) shall be deemed to prohibit-*

*(i) a co-operative society carrying on business as a bank co-operative at the commencement of the Banking Law (Application to Co-operative Societies) Act, 1965 (23 of 1965); or*

*(ii) a co-operative bank which has come into existence as a result of the division of any other co-operative society carrying on business as a co-operative bank, or the amalgamation of two or more co-operative societies carrying on banking business at the commencement of the Banking Laws (Application to Co-operative Societies) Act, 1965 (23 of 1965) or at any time thereafter; or*

*(iii) [\*]*

*from carrying on banking business until it is granted a licence in pursuance of this section or is, by a notice in writing notified by the Reserve Bank that the licence cannot be granted to it.];*

*(ii) sub-section (3A) shall be omitted;*

*(iii) in sub-section (4) in clause (iii) the words, brackets, figures and letter "and sub-section (3A)" shall be omitted;*

**iii) National Bank for Agriculture and Rural Development Act, 1981 ('NABARD Act, 1981', for short):**

*The relevant provisions of NABARD Act, 1981 are extracted as under for immediate reference:*

**2. Definitions.** *In this Act, unless the context otherwise requires,-*

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*(d) "central co-operative bank" means the principal co-operative society in a district in a State, the primary object of which is the financing of other co-operative societies in that district:*

*Provided that in addition to such principal society in a district, or where there is no such principal society in a district, the State Government may declare any one or more cooperative societies carrying on the business of financing other co-operative societies in that district to be also or to be a central co-operative bank or central co-operative banks within the meaning of this definition*

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*(u) "State co-operative bank" means the principal co-operative society in a State, the primary object of which is the financing of other co-operative societies in the State:*

*Provided that in addition to such principal society in a State, or where there is no such principal society in a State, the State Government may declare any one or more cooperative societies carrying on business in that State to be also or to be a State cooperative bank or State co-operative banks within the meaning of this definition;*

*(v) "State land development bank" means the co-operative society which is the principal land development bank (by whatever name called) in a State and which has as its primary object the providing of long-term finance for agricultural development:*

*Provided that, in addition to such principal land development bank in a State, or where there is no such bank in a State, the State Government may declare any cooperative society carrying on business in that State and authorised by the bye-laws of such cooperative society to provide long-term finance for agricultural development to be also or to be a State land development bank within the meaning of this definition;*

*(w) words and expressions used herein and not defined but defined in the Reserve Bank of India Act, 1934, (2 of 1934), shall have the meanings respectively assigned to them in that Act;*

*(x) words and expressions used herein and not defined either in this Act or in the Reserve Bank of India Act, 1934 (2 of 1934), but defined in the Banking Regulation Act, 1949 (10 of 1949), shall have the meanings respectively assigned to them in the Banking Regulation Act, 1949."*

**iv) The Reserve Bank of India Act, 1934 (RBI Act):**

*The relevant provisions of the RBI Act are extracted as under for immediate reference:*

**"2. Definitions.-** *In this Act, unless there is anything repugnant in the subject or context,-*

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*(e) "scheduled bank" means a bank included in the Second Schedule;"*

**v) Maharashtra Co-operative Society Act 1960**

*(10)"Co-operative Bank means a society which is doing the business of banking as defined in clause (b) of sub section (1) of section 5 of the Banking Companies Act 1949, and includes any society which in functioning are is to function as (a co-operative agricultural and rural multipurpose developers bank) under chapter XI."*

10. In Apex Co-operative Bank of Urban Bank of Maharashtra and Goa Ltd., V Maharashtra State Co-Operative Bank Ltd. (2003)11SC 66, Hon'ble Supreme Court on considering Section 56 of the BR Act, 1949 along with Section 22 thereof, observed that the Reserve Bank of India has the right to issue licences to companies to carry out banking business and no company can carry on a banking business unless it holds a licence issued by the Reserve Bank of India. After the amendment to Section 22 of the said Act, certain types of co-operative societies, as were brought within the purview of the BR Act, 1949, could be issued a licence by the Reserve Bank of India. Under Section 22, the term "co-operative society" would include all types of co-operative societies. Hon'ble Supreme Court observed that in other words, no co-operative society can carry on banking business unless it falls within the permitted categories set out in Section 22. The term "co-operative bank" has been defined under Section 5(cci) as a state co-operative bank, a central co-operative bank and a primary co-operative bank. Thus, the term "co-operative bank" does not include all co-operative societies.

It was further observed by Hon'ble Supreme Court that when a term is specifically defined in a statute, then, for purposes of that statute, that term cannot bear a meaning assigned to it in another statute. One cannot ignore the specific definition

given in the BR Act, 1949 and apply some other definition set out in some other statute. Therefore, a co-operative bank must have the meaning assigned to it in Section 5(cci) of BR Act, 1949. Reserve Bank of India cannot go by any other meaning given to the term “co-operative bank” for purposes of licensing under BR Act, 1949. Reserve Bank of India has to go by the meaning given to this term in the said Act only. Therefore, it was concluded that the Reserve Bank of India, by virtue of its power under Section 22 cannot grant a licence to any co-operative society unless it is a state co-operative bank or a central co-operative bank or a primary co-operative bank. For that it would be necessary that a declaration under the NABARD Act, 1981 be first obtained.....”

11. In *Mavilayi Service Co-operative Bank Limited V Commissioner of Income Tax, Calicut*, (2021) 7SCC 90, it has been held by the Apex Court 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 sub-section (2) of Section 80P must be given by

way of deduction vide Citizen Co-operative Society Limited V Commissioner of Income Tax, (2017) 9SCC 364. This is because sub-section (4) of Section 80P is in the nature of a proviso to the main provision contained in sub-sections (1) and (2) of Section 80P. The proviso excludes co-operative 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.

12. Hon'ble Supreme Court in Kerala State Co-operative Agricultural and Rural Development Bank Ltd. (KSCARDB) V The Assessing Officer Trivendrum and Ors, in Civil Appeal no. 10069 of 2016, vide judgment dated 14.09.2023, after referring relevant statutory provisions and judicial precedents, including what we have referred hereinabove, has held as under:

*“14.4 In paragraph 42 of Mavilayi Service Co-operative Bank, this Court observed that the object and purpose of sub-section (4) of Section 80P is to exclude only co-operative banks that function on par with other commercial banks i.e. which lend money to members of the public. That on a reading of Section 3 read with Section 56 of the BR Act, 1949, the 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 BR Act, 1949, which means accepting, for the purpose of lending or investment, of deposits of money from the public. Also under Section 22(1)(b) of the BR Act, 1949, no co-operative society can carry on banking business in India, unless it is a co-operative bank and holds a*

*licence issued in that behalf by Reserve Bank of India. It was pointed out that as opposed to the above, 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.*

*14.5. It was further observed in the said case that some primary agricultural credit societies had sought for banking licence from Reserve Bank of India but the same was turned down by observing that such a society was not carrying on the business of banking and that it did not come under the purview of Reserve Bank of India requiring a licence for its business.*

*14.6 Thereafter in paragraph 48 of the judgment, it was observed that a deduction that is given without any reference to any restriction or limitation cannot be restricted or limited by implication. That sub-section (4) of Section 80P which is in the nature of a proviso 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 Reserve Bank of India.”*

*15. It is on the aforesaid touchstone that these appeals must now be further considered from the point of view of the applicable provisions of law.*

*15.1 Section 80P speaks about deduction in respect of income of co-operative societies from the gross total income referred to in sub-section(2) of the said Section. From the said income, there shall be deducted, in accordance with the provisions of Section 80P, sums specified in sub-section (2), in computing the total income of the assessee for the purpose of payment of income tax. Sub-section (2) of Section 80P enumerates various kinds of co-operative societies. Sub-section (2)(a)(i) states that if a co-operative society is engaged in carrying on the business of banking or providing credit facilities to its members, the whole of the amount of profits and gains of business attributable to any one or more of such activities shall be deducted. The sub-section makes a clear distinction between business of banking on the one hand and providing credit facilities to its members by co-operative society on the other. Thus, the definition of banking under Section 5(b) of the BR Act must be borne in mind as opposed to providing credit facilities to its members.*

*15.2 Section 80P was inserted to the Act with effect from 01.04.1968, however, sub-section (4) was reinserted with effect from 01.04.2007, in the present form. Earlier sub-section (4) was omitted with effect from 01.04.1970. Sub-section (4) of Section 80P in the present form is in the nature of an exception which states that the provisions of Section 80P shall apply in relation to any co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank. The expressions co-operative bank and primary agricultural credit society as well as primary co-operative agricultural and rural development bank are defined in the Explanation as co-operative bank and primary agricultural*

*credit society having the meanings respectively assigned to them in Part V of the BR Act, 1949.....”*

13. As regards the judgement of Hon’ble Supreme Court in Totgar’s Co-operative Sale Society Ltd., [2010]322 ITR 283SC, Hon’ble Andhra Pradesh and Telangana High Court in case of The Vavveru co-operative rural bank V The Chief Commissioner of Income Tax (2017) 396 ITR 71(AP), has discussed the decision of the Hon’ble Apex Court in Totgars (Supra) and distinguished the facts vide para 34 of its judgement as under:

*“34.The case before the Supreme Court in Totgars was in respect of a Co-operative Credit Society, which was also marketing the agricultural produce of its members. As seen from the facts disclosed in the decision of the Karnataka High Court in Totgars, from out of which the decision of the Supreme Court arose, the assessee was carrying on the business of marketing agricultural produce of the members of the Society. It is also found from Paragraph-3 of the decision of the Karnataka High Court in Totgars that the business activity other than marketing of the agricultural produce actually resulted in net loss to the Society. Therefore, it appears that the assessee in Totgars was carrying on some of the activities listed in Clause (a) along with other activities. This is perhaps the reason that the assessee did not pay to its members the proceeds of the sale of their produce, but invested the same in banks. As a consequence, the investments were shown as liabilities, as they represented the money belonging to the members. The income derived from the investments made by retaining the monies belonging to the members cannot certainly be termed as profits and gains of business. This is why Totgars struck a different note.”*

14. This apart, Hon’ble Karnataka High Court in Principal Commissioner of Income Tax and another V Totgars Co-operative Sale Society, [2017] 392 ITR 74 (Karn.), has, after referring Hon’ble Apex Court Judgement in Totgar (Supra) held in para 7,8,9,10 as under:

*“7. However, the contention being taken by the learned counsel is unten- able. For the issue that was before the Income-tax Appellate Tribunal, was a limited one, namely whether for the purpose of section 80P(2)(d) of the Act, a co-operative bank should be considered as a co-operative society or not? For, if a co-operative bank is considered to be a co-operative society, then any interest earned by the co-operative*

society from a co-operative bank would necessarily be deductible under section 80P(1) of the Act.

8. 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. Moreover the word "co-operative society" are the words of a large extent, and denotes a genus, whereas the word "co-operative bank" is a word of limited extent, which merely demarcates and identifies a particular species of the genus co-operative societies. Co-operative society can be of different nature, and can be involved in different activities; the co-operative bank is merely a variety of the co-operative societies. Thus the co-operative bank which is a species of the genus would necessarily be covered by the word "co-operative society".

9. Furthermore, even according to section 56(i) (ccv) of the Banking Regulation Act, 1949, defines a primary co-operative bank as the meaning of co-operative society. Therefore, a co-operative bank would be included in the words "co-operative society".

10. Admittedly, the interest which the assessee-respondent had earned was from a co-operative bank. Therefore, according to section 80P(2)(d) of the Income-tax Act, the said amount of interest earned from a co-operative bank would be deductible from the gross income of the co-operative society in order to assess its total income. Therefore, the Assessing Officer was not justified in denying the said deduction to the assessee-respondent.

The learned counsel has relied on the case of *Totgar's Co-operative Sale Society Ltd. v. ITO* [2010] 322 ITR 283 (SC). However, the said case dealt with the interpretation, and the deduction, which would be applicable under section 80P(2)(a) (i) of the Income-tax Act. For, in the present case the interpretation that is required is of section 80P(2)(d) of the Income-tax Act and not section 80P(2)(a)(i) of the Income-tax Act. Therefore, the said judgment is inapplicable to the present case. Thus, neither of the two substantial questions of law canvassed by the learned counsel for the Revenue even arise in the present case."

15. The coordinate Mumbai bench of the Tribunal in the *University of Mumbai employees co-op. credit society Ltd.* (Supra) has held in Para 7 as under:

"..... We find that issue involved in present appeal filed by the assessee is squarely covered in favour of the assessee by the decision of Hon'ble Bombay High Court, in the case of *M/s. Quepem Urban Credit Society Ltd. V. ACIT* (Supra) [2015 377 ITR, 272], where under identical set of facts, the Hon'ble High Court held that interest and dividend earned

from investments with other co-operative banks/societies is entitled for deduction u/s. 80P(2)(a)(i) of the IT Act. We further note that the ITAT Mumbai 'D' Bench, in the case of Mahapalika Kshetra Madhyamik Shikshak Sahakari Patsanstha Maryadit V. ITO(Supra) (2019) [112taxman.com 165], had considered an identical issue and held that where assessee, a co-operative credit society had not undertaken any of banking business and was providing credit facilities to its members only and not to general public, it would not hit by provisions of section 80P(4) of the IT Act 1961 and thus, entitled for deduction u/s. 80P(2)(a)(i) of the IT Act 1961 and thus entitled for deduction u/s. 80P(2)(a)(i) of the IT Act 1961.....”

16. As per section 56(cci) of the BR Act, the term 'co-operative bank' means 'state co-operative bank', a 'Central co-operative bank' and a 'primary co-operative bank'. Revenue has neither treated the appellant as 'State Co-Operative Bank' nor a 'Central Co-operative Bank' but a 'Primary Co-operative Bank' so as to bring the appellant within the ambit of Section 80P(4) of the Act. Section 56(ccv) of BR Act, defines 'primary co-operative bank' to mean a 'co-operative society' which cumulatively satisfies the following three conditions.

- 1) Its principal business of primary object should be banking business of banking;

- 2) Its paid up share capital and reserves should not be less than Rupees One Lakh.
  - 3) Its bye-laws do not permit admission of any other co-operative society as its member.
17. In the instant case, though the aforesaid second condition exists in assessee's case as its paid up share capital is in excess of Rupees One Lakh. However, we note that the appellant CIDCO Employee co-operative credit society was registered under Maharashtra state co-operative societies Act, 1960 on 11.10.1999, vide copy of registration certificate placed at page no. 86 of assessee's paper book. According to appellant's bye laws placed at pages 87-90 of assessee's paper book, the main objective of the appellant society is to provide credit facility among its members and the membership is restricted to its employees only. The appellant assessee society's members contribute their funds to society and same funds are given as loans on interest amongst its members only. Assessee's principal business is not banking business as it does not transact banking business with general public in India. The first and third conditions, thus do not exist in the functioning of assessee society. It is accordingly held that in absence of aforesaid two conditions, the appellant assessee does not fall under the category either of a co-operative bank or a 'primary co-operative bank', hence not hit by sub section 4 of section 80P of the Act.
18. We further notice that apart from the business income, certain small portion of income of the society was earned from

the interest and dividend. It appears from the profit & loss A/C of paper book at page 37 that the appellant's co-operative credit society received interest income on investments at Rs. 19,31,375/- and dividend income on bank shares at Rs. 1,32,500/-. The investee institutions have not been questioned by the authorities below in respect of their status as co-operative societies. The total income from profit & gains of Rs. 56,64,971/- during the term under consideration is not disputed by the revenue. The income from interest on investment & dividend is eligible for deduction u/s. 80P(2)(d) and the remaining amount received from the interest from members on deposit is attributable to assessee society's business income and is deductible u/s. 80P(2)(a)(i) of the Act. The Assessing Officer was thus not justified in denying the benefit of Section 80P of the Act to the assessee society. The aforesaid point is accordingly determined in favour of the assessee and against the revenue. The impugned order passed by learned CIT(A), thus, cannot be sustained.

**ITA No. 698/MUM/2024**  
**(Assessment Year : 2017-18)**

19. This appeal has been preferred against the impugned order dated 18.12.2023 passed in Appeal no. NFAC/2017-18/10081209 by the Ld. Commissioner of Income-tax(Appeals)/ National Faceless Appeal Centre (NFAC) [hereinafter referred to as the "CIT(A)"] u/s. 250 of the Income-tax Act, 1961 [hereinafter referred to as "Act"] for the Assessment year [A.Y.] 2017-18, wherein learned CIT(A) has

confirmed the addition of Rs. 72,75,520/- vide assessment order dated 19.11.2019 and dismissed assessee's appeal. The ground involved herein is similar except the figures, which has already been considered by us in our conclusive findings arrived at ITA no. 697/MUM/2024, the same shall apply mutatis mutandis in this appeal.

**ITA No. 699/MUM/2024**  
**(Assessment Year : 2018-19)**

20. This appeal has been preferred against the impugned order dated 18.12.2023 passed in Appeal no. NFAC/2017-18/10081209 by the Ld. Commissioner of Income-tax(Appeals)/ National Faceless Appeal Centre (NFAC) [hereinafter referred to as the "CIT(A)"] u/s. 250 of the Income-tax Act, 1961 [hereinafter referred to as "Act"] for the Assessment year [A.Y.] 2018-19, wherein learned CIT(A) has confirmed the addition of Rs. 78,14,228/- vide assessment order dated 01.03.2021 and dismissed assessee's appeal. The ground involved in this appeal is similar except the figures, which has also been considered by us in our conclusive findings arrived at ITA no. 697/MUM/2024, the same shall apply mutatis mutandis in this appeal.

21. In the result, the assessee's appeal ITA NO. 697,698 & 699 /MUM/2024 are allowed. The impugned orders, each dated 18.12.2023 are set aside. We direct the learned assessing officer to allow the benefit of deduction to assessee u/s. 80P(2)(a)(i) and 80P(2)(d) of the Act respectively as discussed

hereinabove in all the three appeals. The copy of this order be placed on the records of ITA no. 698/MUM/2024 & 699/MUM/2024.

Order pronounced on 07.08.2024.

**Sd/-**  
**(GAGAN GOYAL)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(SUNIL KUMAR SINGH)**  
**JUDICIAL MEMBER**

Mumbai; Dated 07/08/2024  
Anandi Nambi, *Steno*

**Copy of the Order forwarded to:**

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

//True Copy//

BY ORDER,

(Asstt. Registrar)  
**ITAT, Mumbai**