

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, 'B' JAIPUR

डा० एस. सीतालक्ष्मी, न्यायिक सदस्य एवं श्री राठोड कमलेश जयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI,

आयकर अपील सं./ITA Nos. 645 & 646/JP/2023
निर्धारण वर्ष / Assessment Years : 2017-18 & 2020-21

Income Tax Officer, Ward 2(2), Kota	बनाम Vs.	Hitkari Vidyalaya Sahkari Shiksha Samiti Limited, Kota
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAAAH 2943 Q		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Sh. Sidharth Ranka, Adv. &
Sh. Sorabh Harsh, Adv.
राजस्व की ओर से / Revenue by : Sh. Anoop Singh (Addl. CIT)

सुनवाई की तारीख / Date of Hearing : 03/07/2024
उदघोषणा की तारीख / Date of Pronouncement: 20/08/2024

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

These two appeals are filed by the revenue and are arising out of the order of the National Faceless Appeal Centre, Delhi dated 01/09/2023 [here in after 'NFAC'] for assessment years 2017-18 & 2020-21 which in turn arise from the order dated 26.12.2019 & 20.09.2022 passed under section 143(3) of the Income Tax Act, by AO.

2. Revenue has challenged the allowability of deduction u/s. 80P(2)(d) to the by the Id. CIT(A) in both the assessment year. As the issue involved in these appeals are identical on facts and are common on ground for the dispute, except the difference in figure disputed in each year. Both these appeal were heard together with the consent of the parties and are disposed off by this consolidated order.

3. At the outset, of the hearing the Id. DR representing the revenue submitted as the issue in both the appeals are common on facts and in law the matter in ITA No. 645/JP/2023 may be taken as a lead case for discussions and disposal of these cases. The Id. AR did not raise any specific objection against taking that case as a lead case. Therefore, for the purpose of the present discussions, the case of ITA No. 645/JP/2023 is taken as a lead case.

4. Before moving towards the facts of the case we would like to mention that the revenue has assailed the appeal in ITA No. 645/JP/2023 on the following grounds;

“(1) Whether on the facts and circumstances of the case, the learned CIT(A), NFAC, Delhi was justified in deleting the addition made by the AO in terms of disallowing the Deduction under section 80P(2)(d) of the Act, 1961 on the Interest Income deposits/investments in a Co-operative Bank.

(2) Whether on the facts and circumstances of the case, the learned CIT(A), NFAC, Delhi was justified in ignoring the finding of the Hon'ble Rajasthan High Court vide order dated 21/09/2016 in assessee's own case related to A.y 2007-08, involving the claim of deduction u/s 80P(2)(d) of the Act, which was rightly pointed by the AO while making the assessment?

Vide letter dated 09.05.2024 revenue preferred to revise the ground and instead of two grounds they raised a revised one single ground which reads as under ;

Whether on the facts and circumstances of the case, the learned CIT(A), NFAC, Delhi was justified in deleting the addition made by the AO in terms of disallowing the Deduction under section 80P(2)(d) of the Act, 1961 on the Interest Income earned by the assessee amounting to Rs. 1,45,12,666/- from its deposits / investments in a Co-operative bank?

5. Succinctly, the fact as culled out from the records is that the assessee is a co-operative Society registered with the "Registrar of Cooperative Societies for Rajasthan" having its primary object to carry on the business of providing credit facilities to its members. The assessee filed the return of income for the A.Y 2017-18 on 25.10.2017 declaring Nil total income which was processed u/s 143(1) of the IT. Act 1961 on 22.02.2019 by the CPC at returned income.

5.1 The case was selected for limited scrutiny through CASS. A notice u/s 143(2) of the Act was issued to assessee under digital signature on

11.08.2018, which was transmitted/served upon the assessee by electronic mail to the e-mail address designated by him as per return of income filed. Subsequent thereto, notices were issued to assessee thereby requesting to file the required details / documents. The assessee submitted upto the mentioned date in above notice and served upon the assessee by e-mail/speed post. In response to the notice issued u/s 143(2) and 142(1) of the Act, the assessee / authorized representative of the assessee furnished the requisite details to the assessing officer.

5.2 The society as its educational activity runs a B.Ed. College affiliated with the Kota University, Kota. In respect of the said activity, separate set of books are maintained. Such books of accounts are duly supported by supporting record and stand audited. Copy of Income and expenditure account and balance sheet stands submitted on the assessment record. The co-operative society is engaged in providing credit facilities to its members. It has received deposits from its members and has given loans & advances to the members as per their requirement and the amount remaining surplus is deposited with co-operative banks. During assessment proceedings Id. AO noted that the assessee claimed deduction of Rs. 1,45,12,670/- under section 80P of the Act. The assessing officer is in the opinion that society was not eligible to claim deduction under section 80P

on the income from other sources, which was earned in the form of interest from FDRs and deposits in Banks other than co-operative societies. Therefore, a show cause notice was issued to the assessee that “As per provisions of section 80P(2)(a)(i) cooperative societies are eligible to claim deduction for carrying on the business of banking or providing credit facility to its members. Further it is provided that deduction will be available for the whole of the amount of profit and gains of business attributable to anyone or more such activities. It is observed that the assessee society has earned interest income from banks and other institutions which is not covered under the provision of section 80P of the act and liable for taxation under section 56 of the Income Tax Act. Therefore, following the rule of principle of natural justice the assessee given an opportunity to show cause as to why the disallowance of deduction claimed by the assessee should not made.

5.3 The assessee filed a detailed reply in relation to the allowability of deduction claimed u/s. 80P of the Act. The Id. AO considered the reply of the assessee but not found convincing and noted as under :

“5.1 The provisions of section 80P(4) 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 and 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). Further it is also seen that Co- operative banks, in which assessee Society has invested its funds are not claiming deduction under section 80P of the Act.

In the light of provisions of section 80P and above facts of the case, I am in the view that assessee Society is not entitled to claim deduction under section 80P on the quantum of income which is not covered under section 80P(2)(a)(i) of the Act."

The Id. AR further requested that the interest income of Rs. 6,88,98,489/- is eligible for deduction under section 80P(2)(d) of the Act and given the written submission to justify the claim. The Id. AO noted that the interest which the assessee has earned are received from the banks and thus he hold a view that the assessee has received the interest from the bank and not from the co-operatitve society therefore, he denied the claim of the assessee for deduction u/s. 80P of the Act for an amount of Rs. 1,45,12,666/-.

6. Feeling aggrieved from the order of the Assessing Officer, the appeal was filed before the Id. CIT(A)/NFAC challenging the addition so made by the Id. AO. The Id. CIT(A) has considered the arguments of the assessee and has directed to delete disallowance of deduction claimed by the assessee for an amount of Rs. 1,45,12,666/-. The relevant finding of the Id. CIT(A) on the issue is reiterated here in below:

"4.2 Decision: I have gone through and duly considered the submission made by the appellant, AO's observation in the assessment order u/s 143(3) and other

facts of the case available on the record. The appellant has furnished many irrelevant submissions which are not applicable to the present assessment order.

4.2.1 The prime contention of the appellant in these grounds of appeal is denial of deduction u/s 80P by not considering the income earned by way of investment made in various institutions/societies by the appellant society and consequent determination of Rs. 1,45,12,670/- as the taxable income of the society.

4.2.2 Appellant society is registered as a credit cooperative society registered with the Registrar of Co-operative societies for Rajasthan. The primary object of the appellant society is to carry on the business of providing credit facilities to its members and to run educational institutions. In the assessment order, assessing officer initially held that the appellant is engaged in providing credit facilities to its members, society has received deposits from its members and has given loan and advances to the members as per their requirement and the remaining surplus is deposited with co-operative banks. The Assessing officer came to conclusion that appellant society was not eligible to claim deduction u/s 80P on the "income from other sources which was earned in the form of interest from FDRs and deposits in Bank other than co-operative societies and has issued the show cause notice. After the receipt of reply from appellant, he has invoked provisions of Section 80P(4) to deny the deduction available u/s 80P Provisions of section 80P(4) is applicable to the co-operative bank. In this case, the appellant is not a co-operative bank as per the banking regulation act and does not have necessary license. The AO has also not mentioned any evidence or argument holding the appellant to be a co-operative bank. Therefore, AO was wrong in invoking section 80P(4) in denying the deduction u/s 80P.

4.2.3 The AO has held that the appellant is not eligible for deduction u/s 80P(2)(d) for the interest receipts of Rs 6,88,98,489. Details of such interest receipts were seen in the assessment order and the written submission. It is seen that the appellant has earned total interest of Rs. 6,87,59,794/- from Kota Central Co-op Bank (KCCB) and Kota Nagarik Sahakari Bank Limited, Kota (KNSB) and amount of Rs. 1,38,695/- from other banks. The deduction u/s 80P(2)(d) is given for income by way of interest or dividend derived by the cooperative society from its investment with any other cooperative society. During the appeal proceedings for AY 2018-19, the appellant had furnished the details in the form of certificate of registration of KNSB and KCCB that these are cooperative societies registered under Rajasthan co-operative societies act, IV of 1953. The appellant has also cited various decisions that have distinguished the Honourable Karnataka High

Court decision in the case of Tatagars Co-operative sales society. Reliance is also made on the honourable ITAT Jaipur decision in the case of

Jaipur Zila Dugdh Utpadak Sahakari Sangh Ltd. Vs DCIT (ITAT Jaipur) extracted above. Therefore, I agree with the appellant's submission that this interest is received from other cooperative societies to the tune of Rs, 6,87,59,794/- and is thus eligible for deduction u/s 80P(2)(d). The Hon'ble High Court in its order dated 21/09/2016 in the appellant's own case decided that interest income earned from nationalized bank (banks other than co-operative banks) should be taxed under the head "income from other sources" In respect of the amount of Rs. 1,38,695/-, this income has been received from banks other than the co-operative societies, therefore, is not eligible for deduction u/s 80P(2)(d). Therefore, appeal is partly allowed on these grounds."

7. The above finding of the Id. CIT(A) is under challenged by the revenue on the grounds as stated herein above mainly disputing the deletion of disallowance made by the assessing officer considering the interest received from the bank and not from the co-operative society. Apropos to the grounds so raised the Id. DR filed the following written submissions on 29.05.2024:

2. In this regard, the CBDT circular no. 06/2010 dated 20.09.2010 regarding clarification on eligibility of deductin u/s 80P to the regional rural banks is reproduced as under:

"SECTION 80P OF THE INCOME-TAX ACT, 1961 - DEDUCTION IN RESPECT OF INCOME OF CO-OPERATIVE SOCIETIES - CLARIFICATION REGARDING ELIGIBILITY OF DEDUCTION UNDER SECTION 80P TO REGIONAL RURAL BANKS CIRCULAR NO. 6/2010 [F.NO. 173(3)/44/2009-IT (A-I)], DATED 20-9-2010 Section 80P of the Income-tax Act, 1961 provides for a deduction from the income of cooperative societies referred to in that section.

2. As Regional Rural Banks (RRB) are basically corporate entities (and not cooperative societies), they were considered to be not eligible for deduction under section 80P when the section was originally introduced. However, as section 22 of the Regional Rural Bank Act provides that a

RRB shall be deemed to be cooperative society for the purposes of the Income-tax Act, 1961, in order to make such banks eligible for deduction under section 80P, CBDT issued a beneficial Circular No. 319 dated 11-1-1982, which stated that for the purpose of section 80P, a Regional Rural Bank shall be deemed to be a cooperative society.

3. Section 80P was amended by the Finance Act, 2006, with effect from 1-4-2007 introducing sub-section (4), which laid down specifically that the provisions of section 80P will not apply to any cooperative bank other than a Primary Agricultural Credit Society or a Primary Cooperative Agricultural and Rural Development Bank. Accordingly, deduction under section 80P was no more available to any Regional Rural Bank from assessment year 2007-08 onwards.

An OM dated 25-8-2006 addressed to RBI was issued by the Board clarifying that Regional Rural Banks would not be eligible for deduction under section 80P of the Income-tax Act, 1961 from the assessment year 2007-08 onwards.

4. It has been brought to the notice of the Board that despite the amended provisions, some Regional Rural Banks continue to claim deduction under section 80P on the ground that they are cooperative societies covered by section 80P(1) read with Boards Circular No. 319 dated 11-1-1982.

5. It is, therefore, reiterated that Regional Rural Banks are not eligible for deduction under section 80P of the Income-tax Act, 1961 from the assessment year 2007-08 onwards. Further more, the Circular No. 319 dated 11-1-1982 deeming any Regional Rural Bank to be cooperative society stands withdrawn for application with effect from assessment year 2007-08.

The field officers may take note of this position and take remedial action, if required.”

2.1 It is very much evident from the aforesaid Circular that as per the Income Tax Act, 1961, the Regional Rural Banks were considered to be not eligible for deduction u/s 80P when the section was originally introduced. Later on, few RRBs started to claim deduction u/s 80P as per section 22 of the RRB Act, 1976. At that time, the claim of deduction by the RRBs was not as per law as the I T Act, 1961 did not provide for such deduction. In order to give special status to the RRBs, a new CBDT circular no. 310 dated 11.01.1982 was issued in which the RRBs were allowed deduction u/s 80P.

2.2 Furthermore, the Ministry of Finance decided to withdraw the special status given to the RRBs vide CBDT circular dated 11.01.1982 and section 80P was amended by the Finance Act, 2006 introducing sub-section 4 to section 80P of the Act which laid down specifically that the provisions of section 80P will not apply to any cooperative bank other than a primary agricultural society or a primary cooperative agricultural and Rural Development Bank.

2.3 Furthermore, an OM dated 25.08.2006 addressed to RBI was issued by the CBDT clarifying that the RRBs would not be eligible for deduction u/s 80P of the I.T. Act from the A.Y. 2007-08 onwards. So, the condition prior to CBDT circular dated 11.01.1982 was restored.

3. Further it is submitted that the Hon'ble High court of Karnataka in the case of PCIT Hubbaali V/s Totagars Co-operative Sales Society [2017] 83 taxmann.com 140 (Karnataka) dated June 16, 2017 Karnataka mentioned categorically that the RRBs are not eligible for deduction u/s 80P. Paras 11 to para 15 of the aforesaid order are reproduced as under:

"11. The Assessment Years involved in the present batch of appeals are Assessment Years 2007-2008 to 2011- 2012. The bone of contention is that the deduction under Section 80P(2) of the Act is now claimed by the respondent assessee under Section 80P(2)(d) of the Act and not under Section 80P(2)(a) of the Act. The reason is that now the investments and deposits after the Supreme Court's decision against the assessee Totgar's Co-operative Sale Society Ltd. (supra), the assessee has shifted the deposits and investments from Schedule Banks to Co-operative Bank and such Co-operative Bank is essentially a Co-operative Society also and Clause (d) allows deduction of income by way of interest or dividends derived by the assessee Co-operative Society from its investments with any other Co-operative Society.

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

13. What Section 80P(2)(d) of the Act, which was though not specifically argued and canvassed before the Hon'ble Supreme Court, envisages is that such interest or dividend earned by an assessee co-operative society should be out of the investments with any other co-operative society. The words 'Co-operative Banks' are missing in clause (d) of subsection (2) of Section 80P of the Act. Even though a co- operative bank may have the corporate body or skeleton of a co-operative society but its business is

entirely different and that is the banking business, which is governed and regulated by the provisions of the Banking Regulation Act, 1949. Only the Primary Agricultural Credit Societies with their limited work of providing credit facility to its members continued to be governed by the ambit and scope of deduction under Section 80P of the Act.

14. 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. The depository Kanara District Central Bank Limited in the present case is admittedly not such a primary agricultural credit society.

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

The Hon'ble High Court has clearly stated that the provisions of the section 80P shall not apply in relation to cooperative bank other than a primary agricultural society or a primary Cooperative Agricultural and Rural Development Bank.

4. The Hon'ble Rajasthan High Court in the case of PCIT Ajmer V/s M/s Bhilwara Zila Dugdh Utpadak Sahakari Sangh Ltd. D.B. ITA no. 2/2019 dated 13.08.2019 quoted section 22 of the RRBs Act 1976 stating that the RRBs shall be deemed co-operative societies for the purpose of I.T. Act, 1961 and the CBDT amendment to section 80P by way of introduction of section 80P(4) was set-aside by them.

4.1 The Hon'ble High Court has failed to appreciate the issue in totality. It is very much evident that deduction u/s 80 P of the Act was not available to the Cooperative Banks. Later on, few RRBs started to claim deduction u/s 80P as per section 22 of the RRB Act, 1976. At that time, the claim of deduction by the RRBs was not as per law as the I T Act, 1961 did not provide for such deduction. In order to give special status to the RRBs, a new CBDT circular no. 310 dated 11.01.1982 was issued in which the RRBs were allowed deduction u/s 80P.

4.2 In 2006, the Finance Ministry took a conscious decision and decided to bring an end to the special status provided to the co-operative banks (through circular no. 310 dated 11.01.1982) by bringing a change in the statute of the Income-Tax Act, 1961. Section 80P(4) was introduced in the I.T. Act 1961 categorically mentioning that the provision u/s 80P of the Act shall not apply in relation to any co-operative banks. The statute clearly mentioned the exceptions which are eligible for deduction u/s 80P. It is settled principle of law that the provisions relating to income tax will be governed by the I.T. Act, 1961 and will have an over-riding effect on other statute affected by those provisions such as RRBs Act 1976. The Hon'ble Rajasthan High Court has failed to appreciate the settled principle of law in its order. The Hon'ble ITAT Bench Jaipur has adjudicated this issue earlier placing reliance on aforesaid Rajasthan High Court order.

5. Therefore, in view of history of this provision (section 80 P) and as per the provisions of existing law (I T Act, 1961) read with the order of Hon'ble High Court of Karnataka as stated in the preceding paragraphs, the assessee is not eligible for deduction u/s 80 P and the Assessing Officer has rightfully denied the claim."

7.1 In support of the contention so raised the Id. DR relied upon the following evidence / decisions;

S.No:	PARTICULARS	Page No.
1	CIRCULAR NO. 6/2010 [F.NO. 173(3)/44/2009-IT (A-I)], DATED 20-9-2010	1
2	CIRCULAR NO. 14/2006, DATED 28-12-2006	2-27
3	BILL FINANCE BILL, 2006 MEMORANDUM REGARDING DELEGATED LEGISLATION	28-60
4	[2017] 83 taxmann.com 140 (Karnataka) HIGH COURT OF KARNATAKA Principal Commissioner of Income-tax, Hubballi v. Totagars Co-operative Sale Society	61-77
5	[2016] 72 taxmann.com 64 (Gujarat) HIGH COURT OF GUJARAT State Bank of India (SBI) v. Commissioner of Income-tax	78-97

6	[2016] 76 taxmann.com 307 (Punjab & Haryana) HIGH COURT OF PUNJAB AND HARYANA Commissioner of Income-tax-I, Chandigarh v. Punjab State Cooperative Agricultural Development Bank Ltd	98-112
7	[2009] 176 Taxman 404 (Rajasthan) HIGH COURT OF RAJASTHAN Commissioner of Income-tax* v. Sirohi S.B.V. Bank Ltd.	113-122
8	HIGH COURT OF RAJASTHAN DB ITA No 636/2008 The CIT, Kota V. M/s Shri Hitkari Vidyalaya Sahakari Shiksha Samiti Ltd.	123-130
9	[2010] 188 Taxman 282 (SC) SUPREME COURT OF INDIA Totgars, Co-operative Sale Society Ltd. v. Income-tax Officer, Karnataka	131-137

7.2 The Id. DR vehemently submitted that the interest income which the assessee society has earned is derived from the co-operative bank and not from the co-operative society and considering the amendment made in section 80P(4) of the Act it is incorrect to appreciate that the co-operative bank is co-operative society for allowing the benefit to the assessee when there is not dispute that the interest income received by the assessee is from the co-operative bank may be running as co-operative bank or nagrick bank. In support of the contention the Id. DR heavily relied upon the CBDT circular no. 06/2010 dated 20.09.2010 wherein the board has clarified that the Regional Rural Banks(RRBs) are basically corporate entities and earlier the board has clarified that for the purpose of the section 80P they were treated as co-operative society and upon the amendment made in section 80P(4) of the Act they are considered as corporate entities and similar

treatment be given to the assessee. The Id. DR also relied upon the following written submission on these aspect as argued:

“2. During the course of hearing, the Id. AR pleaded that the assessee "Hitkari Vidyalaya Shakari Shiksha Samiti Limited" has made investment in co-operative banks and not in the RRBs and the income thereupon is therefore exempt u/s 80P(2)(d) of the Act as the CBDT circular no. 06/2010 dated 20.09.2010 is not applicable in the instant case.

3. It was respectfully submitted during the course of hearing (gist) that:

3.1 The judgement of the Hon'ble Rajasthan High Court in the case of PCIT Ajmer V/s M/s Bhilwara Zila Dugdh Utpadak Sahakari Sangh Ltd. D.B. ITA no. 2/2019 dated 13.08.2019 is therefore not applicable in the case of the assessee as the same is with regard to RRBs and the assessee's investment are with the co-operative banks. Therefore there is no judgment of the jurisdictional High Court on this issue in favour of the assessee. Further, the adjudications of the Hon'ble Tribunals based on the above case law on this issue are therefore not applicable.

3.2 The judgment of the Hon'ble High Court of Karnataka in the case of PCIT Hubbaali V/s Totagars Co-operative Sales Society [2017] 83 taxmann.com 140 (Karnataka) dated June 16. 2017 is squarely applicable in the instant case and the issue in contention has been specifically dealt with by the Hon'ble High Court of Karnataka (emphasis supplied upon para 14 of the aforesaid order). The phrase "in relation to" appearing in section 80P(4) of the Act and its connotations has been discussed in said order.

3.3 The judgment of the Hon'ble Apex Court in the case of Totgars, Co-operative Sale Society Ltd. v. Income-tax Officer, Karnataka [2010] 188 Taxman 282 (SC) dated FEBRUARY 8.2010 strengthens the case of the revenue as has been mentioned in para 11 to 13 of the order of the Hon'ble High court of Karnataka in the case of PCIT Hubbaali V/s Totagars Co-operative Sales Society [2017] 83 taxmann.com 140 (Karnataka) dated June 16, 2017.

In this way the judgement of the Hon'ble Apex Court support the stand of the revenue on this issue.

3.4 Section 80P (4) of the Act specifically mentions the cooperative bank (other than a Primary Agricultural Credit Society or a Primary Cooperative Agricultural and Rural Development Bank) in relation to which the provision of 80P (2)(d) of

the Act are applicable. If certain co-operative banks are not eligible for claiming deduction u/s 80P, then it is incorrect to interpret that income arising out of investment in these co-operative banks will be eligible for deduction u/s 80P of the Act.

3.5 Though the headnote of the CBDT circular no. 06/2010 dated 20.09.2010 talks about RRBs but section 80P (4) of the Act has been discussed in the said circular and hence is applicable for co-operative banks (issue in hand).
Respectfully submitted for your kind consideration.”

8. The Id. AR of the assessee supported the finding recorded in the order of the Id. CIT(A) and submitted the written submission to counter the ground raised by the revenue. The written submission reads as under:

“The Assessee Respondent – Society is a Co-operative Society registered under the Rajasthan Cooperative Societies Act, 1965.

1. The Assessing Officer vide assessment order dated 26.12.2019 for A.Y. 2017-2018 assessed the Total Income of the assessee at Rs. 1,45,12,666/-. He has disallowed the benefit of deduction u/s. 80P(2)(d) of the Act on the interest earned by the assessee applicant from Cooperative Banks, i.e., A.P. Mahesh Cooperative Urban Bank Ltd., Kota Central Co-operative Bank Ltd. & Kota Nagrik Sahkari Bank Ltd. and also from scheduled commercial banks.

1.1. The Id. CIT(A) vide its order dated 01.09.2023 for A.Y. 2017-2018 has (i) allowed relief to the assessee towards interest earned by the assessee applicant from Cooperative Banks and has (ii) allowed the benefit of claim of proportionate expenses on interest income earned from scheduled commercial banks.

2. The Assessing Officer vide assessment order dated 20.09.2022 for A.Y. 2020-2021 assessed the Total Income of the assessee at Rs. 7,94,24,130/-. He has disallowed the benefit of deduction u/s. 80P(2)(d) of the Act on the interest earned by the assessee applicant from Cooperative Banks, i.e., A.P. Mahesh Cooperative Urban Bank Ltd., Kota Central Co-operative Bank Ltd. & Kota Nagrik Sahkari Bank Ltd. and also from scheduled commercial banks.

2.1. The CIT(A) vide its order dated 01.09.2023 has (i) allowed relief to the assessee towards interest earned by the assessee applicant from Cooperative Banks and has (ii) allowed the benefit of claim of proportionate expenses on interest income earned from scheduled commercial banks.

3. For ready reference, extracts of relevant provisions of Section 80P is reproduced hereunder:

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 sum 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) *.....*
- (ii) *.....*
- (iii) *the marketing of 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*
- (v) *.....*
- (vi) *.....*
- (vii) *.....*
- the whole of the amount of profits and gains of business attributable to any one or more of such activities*
- (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;*
- (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.]*

4. Finance Ministers Budget Speech while introducing sub-section 80P(4) of the Act is as follows:

Cooperative Banks, like any other bank, are lending institutions and should pay tax on their profits. Primary Agricultural Credit Societies (PACS) and Primary Cooperative Agricultural and Rural Development Banks (PCARDB) stand on a special footing and will continue to be exempt from tax under section 80P of the

Income Tax Act. However, I propose to exclude all other cooperative banks from the scope of that section.”

5. CBDT Circular dated 28.12.2006 containing explanatory notes on provisions contained in the Finance Act, 2006, reads as follows:

22.2. The cooperative banks are functioning at par with other commercial banks, which do not enjoy any tax benefit. Therefore, section 80P has been amended and a new subsection (4) has been inserted to provide that the provisions of the said section shall not apply in relation to any cooperative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank. The expressions ‘co-operative bank’, ‘primary agricultural credit society’ and ‘primary co-operative agricultural and rural development bank’ have also been defined to lend clarity to them.

6. 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, the interest income derived by a co-operative society from its investments held with a co-operative bank, would continue to be entitled for claim of deduction under Sec.80P(2)(d) of the Act since a Co-operative bank continues to be a co-operative society registered under the Co-operative Societies Act, 1912 or under any other law for the time being enforced in any state for the registration of co-operative societies.

7. We wish to refer and rely upon following authorities including Hon’ble jurisdictional Rajasthan High Court & other Hon’ble High Courts and also Hon’ble jurisdictional ITAT & other Hon’ble ITAT which have under identical factual backdrop have consistently held that benefit of deduction u/s. 80P(2)(d) ought to be given to the assessee societies wherein interest is earned from cooperative banks:

SNo.	High Court / Tribunal	Particulars	PB
1.	Rajasthan High Court	PCIT v. Bhilwara Zila Dugdh Utpadak Sahakari Sangh Ltd. (2019) 8 TMI 1131 dated 13.08.2019	01-02
2	Madras High Court	Thorapadi Urban Co-op Credit Society Ltd. v. ITO (2023) 11 TMI 779 dated 10.10.2023	14-16
3	Gujarat High Court	The Surat Vankar Sahakari Sangh Ltd. v. PCIT (2016) 7 TMI 1217 dated 12.07.2016	17-23
4	Gujarat High Court	State Bank of India v. CIT (2016) 7 TMI 516 dated 25.04.2016	24-41
5	Jodhpur Bench	ACIT v. Bhilwara Zila Dugdh Utpadak Sahakari Sangh Ltd. in ITA 163/Jodh/2019 dated 11.09.2023	03-13
6	Jaipur Bench	Royal Credit Cooperative Society Ltd. v. AO, NFAC (2023) 6 TMI 1026 dated 20.06.2023	42-63

7	Jaipur Bench	Jhunjhunu Kraya Vikray Sahakari Samiti Ltd. v. PCIT (2022) 12 TMI 1117 dated 15.12.2022	64-82
8	Jaipur Bench	Jaipur Zila Dugdh Utpadak Sahakari Sangh Ltd. v. DCIT (2022) 11 TMI 813 dated 09.11.2022	83-88
9	Jaipur Bench	Rajasthan Cooperative Dairy Federation Ltd. v. PCIT {ITA: 23/JP/2021 dated 09.11.2021}	262-274
10	Jaipur Bench	Palsana Gram Sewa Sahkari Samiti Ltd. v. PCIT {2021 (12) TMI 635 dated 02.11.2021}	275-303
11	Jaipur Bench	Ajmer Zila Dugdh Utpadak Sahkari Sangh Ltd. v. PCIT {2021 (3) TMI 256 dated 01.03.2021}	304-319
12	Jaipur Bench	Ajmer Zila Dugdh Utpadak Sahkari Sangh Ltd. v. PCIT {2019 (11) TMI 690 dated 28.08.2019}	320-330
13	Jaipur Bench	Jaipur Zila Dugdh Utpadak Sahkari Sangh Ltd. v. DCIT {2020 (3) TMI 631 dated 04.03.2020}	331-349
14	Jaipur Bench	Shahpura Gram Seva Sahkari Samiti Ltd. v. ITO {2020 (10) TMI 715 dated 15.10.2020}	350-356
15	Jaipur Bench	Jaipur Zila Dugdh Utpadak Sahkari Sangh Ltd. v. ACIT {2019 (9) TMI 1338 dated 30.09.2019}	357-366
16	Ahmedabad Bench	Laxmi Bachat Sharafi Sahkari Mandali Ltd. v. ITO {2022 (9) TMI 153 dated 31.08.2022}	367-380
17	Rajkot Bench	Galaxy Credit Cooperative Society Ltd. v. PCIT {2022 (7) TMI 494 dated 08.07.2022}	381-384
18	Pune Bench	Dr. Jagadale Mama Hospital Employees Coop Credit Society Ltd. v. PCIT {2022 (9) TMI 30 dated 29.08.2022}	385-390
19	Surat Bench	ACIT v. Sachin Udyog Nagar Sahkari Mandli Ltd. {2022 (10) TMI 257 dated 06.10.2022}	391-393
20	Vishakhapatnam Bench	Krishna District Milk Producer Mutually Aided Co-operative Union Limited v. ACIT {2021 (3) TMI 1108 dated 24.03.2021}	394-405
21	Madras Bench	NLC Indcoserve v. ITO {2022 (6) TMI 936 dated 08.06.2022}	406-415
22	Raipur Bench	Gramin Seva Sahakari Samiti Maryadit v. ITO {2022 (8) TMI 597 dated 04.08.2022}	416-429
23	Bangalore Bench	Kanakshree House Building Co-operative Society {2022 (1) TMI 1187 dated 17.11.2021}	430-440
24	Delhi Bench	ITO v. The Jwala Cooperative Urban Thrift and Credit Society Ltd. {2022 (6) TMI 74 dated 31.05.2022}	441-443
25	Mumbai Bench	Avanti Niketan Cooperative Housing Society Ltd. v. CIT(A) {2022 (10) TMI 401 dated 06.10.2022}	444-449

26	Panaji Bench	Belgaum Coal & Coke Consumer Cooperative Association Ltd. v. ITO {2022 (4) TMI 395 dated 06.04.2022}	450-456
27	Kolkata Bench	Bhairabnala Samabay Krishi Unnayan Samiti Ltd. v. ITO {2022 (12) TMI 755 dated 15.12.2022}	457-461

8. In light of above-mentioned facts and orders and consistent view of various Hon'ble High Courts and Hon'ble Tribunals including jurisdictional Hon'ble High Courts and jurisdictional Hon'ble Tribunals, and also the past history of the assessee, which have considered the position of law and the issue involved in detail, the appeal of the department on both the grounds deserves to be dismissed and the order of the CIT(A) deserves to be confirmed.

9. To support the contention so raised in the written submission reliance was also placed on the following further decisions:

Sno.	Particulars	Page
1	Copy of order passed by Hon'ble Rajasthan High Court in case of PCIT v. Bhilwara Zila Dugdh Utpadak Sahakari Sangh Ltd. (2019) 8 TMI 1131 dated 13.08.2019	01-02
1.1	Copy of order passed by Hon'ble ITAT, Jodhpur Bench in case of ACIT v. Bhilwara Zila Dugdh Utpadak Sahakari Sangh Ltd. in ITA 163/Jodh/2019 dated 11.09.2023	03-13
2	Copy of order passed by Hon'ble Madras High Court in case of Thorapadi Urban Co-op Credit Society Ltd. v. ITO (2023) 11 TMI 779 dated 10.10.2023	14-16
3	Copy of order passed by Hon'ble Gujarat High Court in case of The Surat Vankar Sahakari Sangh Ltd. v. PCIT (2016) 7 TMI 1217 dated 12.07.2016	17-23
4	Copy of order passed by Hon'ble Gujarat High Court in case of State Bank of India v. CIT (2016) 7 TMI 516 dated 25.04.2016	24-41

5	Copy of order passed by Hon'ble ITAT, Jaipur Bench in case of Royal Credit Cooperative Society Ltd. v. AO, NFAC (2023) 6 TMI 1026 dated 20.06.2023	42-63
6	Copy of order passed by Hon'ble ITAT, Jaipur Bench in case of Jhunjhunu Kraya Vikray Sahakari Samiti Ltd. v. PCIT (2022) 12 TMI 1117 dated 15.12.2022	64-82
7	Copy of order passed by Hon'ble ITAT, Jaipur Bench in case of Jaipur Zila Dugdh Utpadak Sahakari Sangh Ltd. v. DCIT (2022) 11 TMI 813 dated 09.11.2022	83-88
8	Copies of Certificates issued by concerned authorities for: <ul style="list-style-type: none"> • A.P. Mahesh Cooperative Urban Bank Ltd. • Kota Central Co-operative Bank Ltd. • Kota Nagrik Sahkari Bank Ltd. 	89-89 90-90 91-91
9	<ul style="list-style-type: none"> • Copy of order dated 10.12.2010 passed by Hon'ble ITAT for A.Y. 2007-2008 in assessee's own case • Copy of order dated 22.03.2013 passed by Id. CIT(A) for A.Y. 2007-2008 in assessee's own case • Copy of order dated 09.04.2018 passed by Id. CIT(A) for A.Y. 2011-2012 in assessee's own case • Copy of order dated 08.02.2019 passed by Id. CIT(A) for A.Y. 2013-2014 in assessee's own case • Copy of order dated 09.02.2019 passed by Id. CIT(A) for A.Y. 2014-2015 in assessee's own case • Copy of order dated 08.02.2019 passed by Id. CIT(A) for A.Y. 2015-2016 in assessee's own case • Copy of order dated 01.09.2023 passed by Id. CIT(A) for A.Y. 1998-1999 in assessee's own case • Copy of order dated 01.09.2023 passed by Id. CIT(A) for A.Y. 1999-2000 in assessee's own case • Copy of order dated 01.09.2023 passed by Id. CIT(A) for A.Y. 2000-2001 in assessee's own case • Copy of order dated 01.09.2023 passed by Id. CIT(A) for A.Y. 2001-2002 in assessee's own case • Copy of order dated 01.09.2023 passed by Id. CIT(A) for A.Y. 2003-2004 in assessee's own case • Copy of order dated 01.09.2023 passed by Id. CIT(A) for A.Y. 2004-2005 in assessee's own case 	92-110 111-125 126-143 144-166 147-190 191-213 214-221 222-229 230-237 238-245 246-253 254-261

S.no.	Court	Particulars	Page no.
1.	Jaipur Bench	Rajasthan Cooperative Dairy Federation Ltd. v. PCIT {ITA: 23/JP/2021 dated 09.11.2021}	262-274
2.	Jaipur Bench	Palsana Gram Sewa Sahkari Samiti Ltd. v. PCIT {2021 (12) TMI 635 dated 02.11.2021}	275-303
3.	Jaipur Bench	Ajmer Zila Dugdh Utpadak Sahkari Sangh Ltd. v. PCIT {2021 (3) TMI 256 dated 01.03.2021}	304-319
4.	Jaipur Bench	Ajmer Zila Dugdh Utpadak Sahkari Sangh Ltd. v. PCIT {2019 (11) TMI 690 dated 28.08.2019}	320-330
5.	Jaipur Bench	Jaipur Zila Dugdh Utpadak Sahkari Sangh Ltd. v. DCIT {2020 (3) TMI 631 dated 04.03.2020}	331-349
6.	Jaipur Bench	Shahpura Gram Seva Sahkari Samiti Ltd. v. ITO {2020 (10) TMI 715 dated 15.10.2020}	350-356
7.	Jaipur Bench	Jaipur Zila Dugdh Utpadak Sahkari Sangh Ltd. v. ACIT {2019 (9) TMI 1338 dated 30.09.2019}	357-366
8.	Ahmedabad Bench	Laxmi Bachat Sharafi Sahkari Mandali Ltd. v. ITO {2022 (9) TMI 153 dated 31.08.2022}	367-380
9.	Rajkot Bench	Galaxy Credit Cooperative Society Ltd. v. PCIT {2022 (7) TMI 494 dated 08.07.2022}	381-384
10.	Pune Bench	Dr. Jagadale Mama Hospital Employees Coop Credit Society Ltd. v. PCIT {2022 (9) TMI 30 dated 29.08.2022}	385-390
11.	Surat Bench	ACIT v. Sachin Udyog Nagar Sahkari Mandli Ltd. {2022 (10) TMI 257 dated 06.10.2022}	391-393

12.	Vishakhapatnam Bench	Krishna District Milk Producer Mutually Aided Co-operative Union Limited v. ACIT {2021 (3) TMI 1108 dated 24.03.2021}	394-405
13.	Madras Bench	NLC Indcoserve v. ITO {2022 (6) TMI 936 dated 08.06.2022}	406-415
14.	Raipur Bench	Gramin Seva Sahakari Samiti Maryadit v. ITO {2022 (8) TMI 597 dated 04.08.2022}	416-429
15.	Bangalore Bench	Kanakshree House Building Co-operative Society {2022 (1) TMI 1187 dated 17.11.2021}	430-440
16.	Delhi Bench	ITO v. The Jwala Cooperative Urban Thrift and Credit Society Ltd. {2022 (6) TMI 74 dated 31.05.2022}	441-443
17.	Mumbai Bench	Avanti Niketan Cooperative Housing Society Ltd. v. CIT(A) {2022 (10) TMI 401 dated 06.10.2022}	444-449
18.	Panaji Bench	Belgaum Coal & Coke Consumer Cooperative Association Ltd. v. ITO {2022 (4) TMI 395 dated 06.04.2022}	450-456
19.	Kolkata Bench	Bhairabnala Samabay Krishi Unnayan Samiti Ltd. v. ITO {2022 (12) TMI 755 dated 15.12.2022}	457-461

10. The Id. AR of the assessee drawing our attention to para 4.2.2 stated that the Id. CIT(A) has given the categorical finding that the assessee is not a co-operative bank as per the banking regulation of the Act and does not

have necessary license of banking company. The Id. AO nowhere held that the assessee is not credit cooperative society and co-operative bank. That finding of the Id. CIT(A) being factual in nature and the revenue has not challenged that finding the ground for disallowance of deduction has not force and is required to be dismissed even on that ground. He further, submitted that the circular referred by the Id. DR is for considering the RRBs as corporate entity of the amendment of section 80(P)(4) and board does not referred the co-operative society running a co-operative society and the assessee is not doing banking activities as permitted by the RBI. Merely it earned interest on investing its funds it cannot be considered as co-operative bank. So the arguments of the Id. DR to consider the assessee being co-operative society to be considered as corporate entity is misconceived. The RRBs were registered as company and was considered for limited purpose of extending the benefit of section 80P were considered as co-operative society and that aspect was clarified in the board circular without specifying the co-operative society. Even the investment made by the assessee is not in the RRBs and therefore, the arguments advanced have no force. The Id. AR of the assessee submitted that the Department has preferred an appeal against the order in ITA No. 437/Jodh/2017 dated 31.10.2018 wherein the Hon'ble Rajasthan High court, Jodhpur Bench has

considered the circular as referred by the revenue and the appeal of the revenue was dismissed vide order in appeal no. No. 2/2019. Thus, the issue is correctly decided by the Id. CIT(A) in favour of the assessee.

11. We have heard the rival contention and perused the materials placed on records by both the parties. Before us both the parties supported the orders of the lower authorities as favorable to them. In this appeal the solitary ground raised by the revenue is that the Id. CIT(A) is justified in directing the Id. AO to delete the disallowance of Rs. 1,45,12,666/- made by the Id. AO considering the provision of section 80P(2)(d) of the Act. The brief facts being not disputed by both the parties the same are not repeated and we directly deal with the allowability of deduction claimed by the assessee for an amount of Rs. 1,45,12,666/- as per provision of section 80P(2)(d) of the Act. The assessee in the assessment proceeding contended that they have received a sum of Rs. 6,68,98,489/-. Most of the amount so received is sourced from the co-operative society though the same are also running as co-operative bank. The Id. AO did not consider the interest income stating that though assessee claimed to have received the interest from the entity registered under Co-operative Societies Act but it also granted license to carry on banking business u/s. 22(1) read with

section 56(o) of the Reserve Bank of India and thus considering the amendment made in section 80P(4) he did not considered these interest income as eligible for deduction u/s. 80P(2)(d) of the Act. Thus, the limited issue before us is that whether the assessee being co-operative society be denied benefit of section 80P(2)(d) of the Act on interest received from another cooperative Societies [Running as co-operative bank as per banking regulations]. The similar issue has been decided by the Hon'ble Rajasthan High court, Jodhpur while dealing with the Revenue's appeal filed for the assessment year 2014-15 in the case of PCIT, Ajmer vs M/s Bhilwara Zila Dugdh Utpadak Sahakari Sangh Ltd. in BD Income Tax Appeal No. 2/2019. The relevant observation made in the order by the Jurisdictional High Court has been reproduced as under:

"The revenue cites a CBDT Circular (No. 6/2010 dated 20.09.2010) and contends that the Board categorically stated that interest income derived from deposits, made with non-cooperative institutions and more specifically Regional Rural Banks do not qualify for the benefit under Section 80P(2) of the Act of 1961. Section 22 of the Regional Rural Banks Act, 1976 states as follows" "22. Regional Rural Bank to be deemed to be a co- operative society for purpose of the Income Tax Act, 1961- For the purpose of the Income Tax Act, 1961 (43 of 1961), or any other enactment for the time being in force relating to any tax on income, profits, or gains, a Regional Rural Bank shall be deemed to be a cooperative society." ***The CBDT reasoning appears to be that Section 80P was amended w.e.f. 1.4.2007 introducing specifically that the benefit of exemption would not apply to any cooperative bank other than Primary Agricultural Credit Society or a Primary Cooperative Agricultural and Rural Development Bank. The circular then stated that in the light of this inclusion - to Section 80P by way of introduction of Section 80P(4), the exemption could not be availed of by the banks invested in Regional Rural Banks. This Court is of the opinion that the revenue's contention is unsustainable.*** Section 22 in uncertain terms categorically deems Regional Rural Banks (of which description Baroda Rajasthan Regional Rural Banks answer to) as Cooperative

Societies for the purposes of Income Tax Act. In the absence of non-obstante clause, the mere fact that a restrictive condition was imposed in relation to a Cooperative Bank for regulating the benefit of Section 80P, does not in any manner, alter the pre-existing situation. By virtue of Section 22, Regional Rural Banks continue to be deemed Cooperative Societies and all the contingent consequences that flow from it. For the above reasons, this court is of the opinion that there is no substantial question of law involved in the present appeal. The appeal is, therefore, dismissed.”

12. The revenue has challenged that order of the Jodhpur bench wherein the bench has dealt with that issue in detailed and the finding of the bench in that case being in detailed is reproduced herein below:

“7. We have heard the both parties and perused the materials available on record. The Bench observed that the said appeal was filed on the basis of that addition of Rs. 2,23,46,187/- u/s 80P(2)(d) of the Act. We note that the department has preferred an appeal against the order of Id. CIT(A) for assessment year 2016-17 wherein the disallowance of deduction claimed u/s 80P(2)(d) of the Act amount to Rs. 2,23,46,187/- was deleted. The issue before us is that whether the assessee being co-operative society be denied benefit of section 80P(2)(d) of the Act on interest received from another co- operative society engaged in banking activities. The similar issue has been decided by the Hon'ble Rajasthan High court, Jodhpur has decided in Revenue's appeal filed for the assessment year 2014-15 in the case of PCIT. Ajmer vs M/s Bhilwara Zila Dugdh Utpadak Sahakari Sangh Ltd. in BD Income Tax Appeal No. 2/2019 vide its order dated 13.08.2019. The relevant observation made in the order by the Jurisdictional High Court has been reproduced as under:-

"The revenue cites a CBDT Circular (No. 6/2010 dated 20.09.2010) and contends that the Board categorically stated that interest income derived from deposits, made with non-cooperative institutions and more specifically Regional Rural Banks do not qualify for the benefit under Section 80P(2) of the Act of 1961. Section 22 of the Regional Rural Banks Act, 1976 states as follows"

"22. Regional Rural Bank to be deemed to be a co- operative society for purpose of the Income Tax Act, 1961- For the purpose of the Income Tax Act, 1961 (43 of 1961), or any other enactment for the time being in force relating to any tax on income, profits, or gains, a Regional Rural Bank shall be deemed to be a cooperative society.

The CBDT reasoning appears to be that Section 80P was amended w.e.f. 1.4.2007 introducing specifically that the benefit of exemption would not apply to any cooperative bank other than Primary Agricultural Credit Society or a Primary Cooperative Agricultural and Rural Development Bank. The circular then stated that in the light of this inclusion to Section 80P by way of introduction of Section 80P(4), the exemption could not be availed of by the banks invested in Regional Rural Banks.

This Court is of the opinion that the revenue's contention is unsustainable. Section 22 in uncertain terms categorically deems Regional Rural Banks (of which description Baroda Rajasthan Regional Rural Banks answer to) as Cooperative Societies for the purposes of Income Tax Act,

In the absence of non-obstante clause, the mere fact that a restrictive condition was imposed in relation to a Cooperative Bank for regulating the benefit of Section 80P, does not in any manner, alter the pre-existing situation. By virtue of Section 22, Regional Rural Banks continue to be deemed Cooperative

Societies and all the contingent consequences that flow from it. For the above reasons, this court is of the opinion that there is no substantial question of law involved in the present appeal.

The appeal is, therefore, dismissed."

Taking into consideration the present facts and circumstances of the case, we observed that the Ild. CIT(A) has rightly passed the order as the similar written submission filed by the assessee during the appellate proceeding and the identical issue which is in favour of the assessee's own case of the Coordinate Bench in case by the ITAT, Jodhpur's order dated 31.10.2018 in ITA No. 437/Jodh/2017, A.Y 2014-15) which have been confirmed by the Hon'ble Court. The relevant observations of ITAT is as under:-

"5. We have considered the rival submission of the parties and have gone through the assessment proceedings the AO noted that assessee has claimed exemption of interest income on FDR with Central Cooperative Bank Ltd., for Rs.76,43,562/- and interest on FDR with Baroda Rajasthan Kshetriya Gramin Bank of Rs.2,09,91,701 The AO allowed the exemption on interest received from Central Co-operative Bank However, the AO disallowed the exemption on account of interest earned from Baroda Rajasthan Kshetriya Gramin Bank on his observation that Baroda Rajasthan Kshetriya Gramin Bank is not a Co-operative Society. The 40 also took the view that Baroda Rajasthan Kshetriya Gramin Bank is neither registered under Co-operative Society Act or under, other law for the time enforce any such state for registration of Co-operative Societies. Therefore, the interest of Rs 2,09,91,701/- received on FDR was not held eligible for deduction w/s 80P(2)(d). The Id. CIT(A) confirmed the action of AO holding that Baroda Rajasthan (supra) is not a

Co-operative Society registered under the Co-operative Society Act or under any law for the time enforce in any state for the registration of Co-operative Society, therefore, the interest received by assessee on FDR made with Baroda Rajasthan (supra) is not eligible for deduction w/s 80P(2)(d). 6. The Id. AR of the assessee relied upon the decision of Mumbai Tribunal in Presidency Co-operative Society (supra) and in Shree Keshorai Patan Sahakari Sugar Mill. In our considered view the facts narrative is not applicable on the facts of the present case. In both the cases the assessee, (in those cases were held entitled for exemption of interest received on deposit with Co-operative Bank which were held as Co-operative Society. However, in the present case, the assessee has claimed that Rural Bank are also Co-operative We have examined the CBDT circular No. 6/2010 dated 16.09.2010, for appreciation of the contents the circular it is extracted below;

CIRCULAR NO. 6/2010 IF NO. 173(3)/44/2009-IT (A-1)] DATED 20-9-2010.

1. Section 80P of the Income-tax Act, 1961 provides for a deduction from the income of cooperative societies referred to in that section.

2. As Regional Rural Banks (RRB) are basically corporate entities (and not cooperative societies), they were considered to be not eligible for deduction under section 80P when the section was originally introduced. However, as section 22 of the Regional Rural Bank Act provides that a RRB shall be deemed to be cooperative society for the purposes of the Income-tax Act, 1961, in order to make such banks eligible for deduction under section 80P. CBDT issued a beneficial Circular No. 319 dated 11-1-1982, which stated that for the purpose of section 80P, a Regional Rural Bank shall be deemed to be a cooperative society.

3. Section 80P was amended by the Finance Act, 2006, with effect from 1-4-2007 introducing sub-section (4), which laid down specifically that the provisions of section 80P will not apply to any cooperative bank other than a Primary Agricultural Credit Society or a Primary Cooperative Agricultural and Rural Development Bank. Accordingly, deduction under section 80P was no more available to any Regional Rural Bank from assessment year 2007-08 onwards. An OM dated 25-8-2006 addressed to RBI was issued by the Board clarifying that Regional Rural Banks would not be eligible for deduction under section 80P of the Income-tax Act, 1961 from the assessment year 2007-08 onwards. 4. It has been brought to the notice of the Board that despite the amended provisions, some Regional Rural Banks continue to claim deduction under section 80P on the ground that they are cooperative societies covered by section 80P(1) read with Board's Circular No. 319 dated 11-1-1982. 5. It is, therefore, reiterated that Regional Rural Banks are not eligible for deduction under section 80P of the Income-tax Act, 1961 from the assessment year 2007-08 onwards. Furthermore, the Circular No. 319 dated 11-1-1982 deeming any Regional Rural Bank to be cooperative society stands withdrawn for application with effect from assessment year 2007-08. The field officers may take note of this position and take remedial action, if required. 7. We have also perused the various provisions of Regional Rural Bank Act 1976. Baroda Rajasthan Kshetriya Gramina Bank was set up under the provisions of under the provisions of Regional Rural Bank Act. Section 22 of the Regional Rural Bank Act provides that Regional Rural Bank to be deemed to be a co-operative society for purpose of the

Income-tax Act, 1961. In our considered view the the Circular of CBDT cannot override the provisions of the Act of Parliament. Even the careful reading of the Circular No. 6 of CBDT make it clear that exemption is withdrawn with respect to Regional Rural Banks are not eligible for deduction under section 80P of the Income-tax Act, 1961 from the assessment year 2007-08 onwards, and not the co-operative societies. The assessee before us is the cooperative society and not the Regional Rural Bank. Therefore, considering the provisions of section 22 of Regional Rural Bank Act, wherein the status of the banks established are of the co-operative societ the assessee is entitled for the exemption on the interest earned on the deposits. In the result the ground No. 1 & 2 of the appeal are allowed." As the facts of the A.Y. 2014-15 are similar to the facts of the assessment year under appeal (2016-17), therefore, following the decision of ITAT, Jodhpur referred above, the AO is directed to allow deduction of Rs. 2,23,46,187/- u/s 80P(2)(d). In the result, the appeal is allowed."

On being consistent to the finding so recorded herein above and the same is also confirmed by our High Court wherein the our High Court has dealt with the contention of the revenue relying the circular no. 06/2010 dated 20.09.2010. Thus, considering the above discussion and the detailed finding so recorded by the Id. CIT(A) we do not find any infirmity in the order of the Id. CIT(A).

In terms of these observations, appeal of the revenue stands dismissed.

13. The fact of the case in ITA No. 646/JP/2023 is similar to the case in ITA No. 645/JP/2023 and we have heard both the parties and persuaded the materials available on record. The bench noticed that the issues raised by the assessee in this appeal No. 646/JP/2023 is equally similar on set of

facts and grounds. Therefore, it is not imperative to repeat the facts and ground raised by the revenue. Hence, bench feels that the decision taken by us in ITA No. 645/JP/2023 for the Assessment Year 2017-18 shall apply mutatis mutandis in the case of Hitkari Vidyalaya Shakari Shiksha Samiti Limited in ITA No. 646/JP/2023 for the Assessment Year 2020-21.

In terms of these observations, both appeals of the revenue are stands dismissed.

Order pronounced in the open Court on 20/08/2024.

Sd/-

(डा० एस. सीतालक्ष्मी)
(Dr. S. Seethalakshmi)
न्यायिक सदस्य / Judicial Member

Sd/-

(राठोड कमलेश जयन्तभाई)
(Rathod Kamlesh Jayantbhai)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 20/08/2024

*Ganesh Kumar, Sr. PS

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. The Appellant- Income Tax Officer, Ward 2(2), Kota
2. प्रत्यर्था / The Respondent- Hitkari Vidyalaya Shakari Shiksha Samiti Limited, Kota
3. आयकर आयुक्त / The Id CIT
4. आयकर आयुक्त(अपील) / The Id CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA Nos. 645 & 646/JP/2023)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar