IN THE INCOME TAX APPELLATE TRIBUNAL
PANAJI BENCH : PANAJI

[THROUGH VIRTUAL HEARING AT ITAT : PUNE]

BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND
SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER

I.T.A.Nos.108 & 109/PAN./2024
&
Cross Objection Nos.2 & 3/PAN./2023
Assessment Years 2018-2019 & 2020-2021

The Income Tax Officer, 747, Nemchand Nivas, Ashok Nagar, NIPPANI – 591 237. Karnataka.	vs.	Shri Arihant Credit Souhard Sahakari Ltd., 346, Patil Gali, Chikodi, BELGAUM–591 216. Karnataka. PAN AABAS0813K
(Appellant/Respondent in C.O.)		(Respondent/Cross Objector in C.O.)

For Revenue :	Shri Sunil Kumar Agarwala, CIT
For Assessee :	Shri Ashok Mudnur

Date of Hearing :	28.08.2024
Date of Pronouncement :	29.08.2024

ORDER

PER BENCH :

These Revenue's twin appeals I.T.A.Nos.108 & 109/ PAN./2024 with assessee's corresponding cross objections C.O.Nos.2 & 3/PAN./2023, for assessment years 2018-2019 & 2020-2021, arise against the CIT(A)-National Faceless Appeal Centre [in short the "NFAC"] Delhi's as many Din and Order Nos.ITBA/NFAC/S/250/2023-24/1062551397(1) and 1062483129(1), dated 13.03.2024 and 12.04.2023, involving proceedings u/s.

143(3) of the Income Tax Act, 1961 (in short "the Act"), assessment year-wise, respectively.

Heard both the parties. Case files perused.

2. We advert to the Revenue's identical sole substantive grievance raised in both these appeals that the CIT(A)-NFAC herein erred in law and on facts in allowing the assessee's sec.80P(2)(d) deduction of Rs.4,17,47,645/- and Rs.6,70,18,749/-, assessment year-wise, respectively, representing interest income from investments made in cooperative bank(s) reading as under :

> *"6.3. I have perused facts of the case and the case laws cited by the appellant and the AO. The first issue is of allowability of deduction U/s.80P(2)(a)(i) After the decision of Hon'ble Apex Court in the case of the Mavilayi Service Cooperative Bank Ltd. & Ors Vs. Commissioner of Income Tax, Calicut & Anr. (supra), the AO's case does not stand. For the sake of clarity, the relevant observations made by the Hon'ble Apex Court in the case of the Mavilayt Service Cooperative Bank Ltd. & Ors (supra) are reproduced as under :*
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> > *"Section 80P being a benevolent provision enacted by Parliament to encourage and promote the credit of the co-operative sector in general must be read liberally*

and reasonably, and if there is ambiguity, in favour of the assessee. A deduction that is given without any reference to any restriction or imitation cannot be restricted or limited by implication, as is sought to be done by the revenue in the present case by adding the word 'agriculture into section 80P(2)(a)(i) when it is not there. Further, section 80P(4) is to be read as a proviso, which proviso now specifically excludes co-operative banks which are co-operative societies engaged in banking business te. engaged in lending money to members of the public, which have a licence in this behalf from the RBI, Clearly, therefore, once section 80P(4) is out of harm's way, the assessee is entitled to the benefit of the deduction contained in section 80P(2)(a)(i), notwithstanding that they may also be giving loans to their members which are not related to agriculture. Also, in case it is found that there are instances of loans being given to non-members, profits attributable to such loans obviously cannot be deducted. (Para 45).

It must also be mentioned here that 'nominal members' are 'members' as defined under the Kerala Act. Considering the definition of 'member' under the Kerala Act, loans given to such nominal members

would qualify for the purpose of deduction under section 80P(2)(a)(i). [Para 46]

Further, the Kerala Act expressly permits loans to non-members under section 59(2) and (3). Thus, the giving of loans by a primary agricultural credit society to non-members is not illegal. [Para 47]."

Considering the facts of the case and arguments advanced by the appellant, I am inclined to agree with its claim that being primary agricultural credit cooperative society registered and operating under the provisions of the Kerala Co-operative Societies Act, 1969, it is eligible for deduction u/s 80P of the Act.

6.4. After the decision of the Hon'ble Apex Court in the case of the Mavilayi Service Cooperative Bank Ltd., similar issue under identical facts came up for adjudication before the Hon'ble Bombay High Court in the case of PCIT vs. Quepem Urban Co- operative Credit Society Ltd. [2021] 128 taxmann.com 41 (Bombay). The Hon'ble Bombay High Court, totally relying on the judgment of the Honb'le Supreme Court in the case of the Mavilayi Service Co-operative Bank Ltd. (supra), held that where assessee, a registered co-operative credit society, was providing credit facility to its members, since banking had never been core activity of the assessee-society. accepting deposits from

non-members did not disqualify it from claiming benefits under section 80P, Before placing reliance upon the judgment of the Hon'ble Apex Court in the case of the Mavilayi Service Cooperative Bank Ltd., the Hon'ble Bombay High Court has discussed the facts and legal position which were discussed by the Hon'ble Apex Court in the case of the Mavilayi Service Co-operative Bank Ltd to reach final conclusion. Here, it is imperative to reproduce the relevant paras from the said order of the Hon'ble Bombay High Court as under :-

> *"Mavilayi Service Co-operative Bank Ltd:*
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> *24. In Mavilayi Service Co-operative Bank Ltd. v. CIT [2021] 123 taxmann.com 161/279 Taxman 75 (SC), the question concerns the deductions a primary agricultural credit society can claim under section 80P(2)(a) (i) of the Income-tax Act, 1961 ("IT Act") after the introduction of section 80P(4) of that Act.*
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> *25. To provide the background for Mavilayi (SC), we may examine how the dispute reached the Supreme Court. To begin with, a Division Bench of the Kerala High Court has answered the above issue in Chirakkal Service Co-operative Bank Ltd. v. CIT [2016] 68 taxmann.com 298/239 Taxman 417/384 ITR 490 (Ker.). It has held that once a Co-operative*

Society is classified by the Registrar of Co-operative Societies under the Kerala Act as being a primary agricultural credit society, the authorities under the IT Act cannot go behind the certificate so granted. That is, the certified credit society can claim the benefit under section 80P(2)(a) (i) of the IT Act.

26. But Chirakkal Service Co-operative Bank Ltd.'s case (supra) was said to be in ignorance of Perinthalmanna Service Co-operative Bank Ltd. v. ITO [2014] 49taxmann.com 438/363 ITR 268 (Ker.), a co-equal Bench decision. This judgment, on the contrary, permits an inquiry by the IT authorities into the factual situation: whether a society is in fact conducting business as a co-operative bank but not as a primary agricultural credit society.

27. In fact, these divergent views compelled the Kerala High Court to refer the matter to aFull Bench. Then, in Mavilayi Service Co-operative Bank Ltd. v. CIT 2019 (2) KHC 287, ("Mavilayi HC") the Full Bench has endorsed Perinthalmanna Service Co-operative Bank's Ltd.'s case (supra) view: that the IT Authority can go behind the certificate granted by the Registrar of Co-operative Societies. To hold thus, the Full Bench has relied on the Supreme Court's Citizen

Cooperative Society Ltd. v. Asstt. CIT [2017] 84 taxmann.com114/250 Taxman 78. The Full Bench decision taken in further appeal, the Supreme Court, finally, in Mavilayi Service Co operative Bank Ltd.'s case (supra) SC considered the controversy threadbare and reversed the Kerala High Court's Full Bench decision. It has, thus, endorsed Chirakkal Service Co-operative Bank's case (supra) view.

28. Here, before us, an identical question of law has arisen. It will suffice if we examine thecase holding of Mavilayi Service Co-operative Bank Ltd. 's case (supra) (SC) and seewhether it applies on all four. For here, too, the Revenue relies on Citizen Cooperative Society Ltd.'s case (supra), as did Mavilayi Service Co-operative Bank Ltd.'s case (supra) (HC).

29. To begin with, a three-Judge Bench of the Apex Court in Mavilayi Service Co-operative Bank Ltd.'s case (supra) (SC) has noted that though the main object of the primary agricultural society is to provide financial assistance in the form of loans to its members for agricultural and related purposes, yet some of the objects go well beyond, and include banking operations as per rules prevailing from time to time'. Then, Mavilayi Service Co-operative Bank

Ltd.'s case (supra) SC has examined the case holding of Citizen Co-operative Society case (supra). In fact, Mavilayi SC underlines the fact that even Citizen Co-operative Society case (supra) acknowledges that section 80-P of the IT Act is a benevolent provision; it was enacted by Parliament to encourage and promote growth of cooperative sector in the country. Citizen Co-operative Society case (supra), as noticed by Mavilayi SC, has further accepted that once the assessee is entitled to avail itself 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. Further, Citizen Co-operative Society case (supra) also accepts that section 80P(4) is in the nature of a proviso to the main provision contained in section 80P(1) and (2). This proviso specifically excludes only co-operative banks which are co-operative societies that must possess a licence from the RBI to do banking business. In this backdrop, on facts, Citizen Co-operative Society case (supra) concludes that the appellant assessee did not have RBI licence; so it would "not fall within the mischief of section 80P(4)".

30. Mavilayi SC points out that in Citizen Co-operative Society case (supra) the counsel for the assessee advanced no argument that "the assessing officer and other authorities under the IT Act could not go behind the registration of the co-operative society" to discover whether it was conducting business in accordance with its bye-laws. Without that question in the Court's contemplation, Citizen Co-operative Society case (supra), according to Mavilayi Service Co-operative Bank Ltd.'s case (supra) SC, stands robbed of its precedential on a point that has never been raised and, thus, never discussed. For a decision binds not beceruse of its conclusion but because of the ratio and the principle it lays down. In other words, a decision is only an authority for what it actually decides. What matters in a decision is its ratio and not every observation found in it or what logically follows from the various observations made in it.

31. Then, Mavilayi Service Co-operative Bank Ltd.'s case (supra) SC turns to the proper interpretation of Section 80P of the IT Act. In interpreting that provision, it refers, among other things, to (a) the marginal note to Section 80P to ascertain the general "drift" of the provision; to the Finance Minister's

speech, dated 28-2-2006, on the floor of Parliament; to a Circular dated 28-12-2006, explaining the provision as found in the Finance Act, 2006. Eventually, Mavilayi SC holds that to earn eligibility for deduction, the assessee must be a "co-operative society"; it is unnecessary to probe any further whether the co-operative society is classified as X or Y. Besides, the gross total income must include income that is referred to in sub-section (2) of section 80P of IT Act.

32. Mavilayi Service Co-operative Bank Ltd.'s case (supra) (SC) has referred to sub-section (4) of section 80P, which, according to it, is in the nature of a proviso to that section. This sub-section clarifies that no deduction shall be admissible for a cooperative bank. But, if it is a primary agricultural credit society or a primary cooperative agricultural and rural development bank, the deduction will still be provided. Thus, only cooperative banks now specifically stand excluded from the ambit of Section 80P of the Act.

33. On the facts, Mavilayi Service Co-operative Bank Ltd.'s case (supra) (SC) has noted that the appellant cannot be termed a cooperative bank. It is also a

matter of common knowledge that in order to do the business of a cooperative bank, it is imperative for that bank to have a licence from Reserve Bank of India. And, admittedly, the appellant does not have it. In Mavilayi Service Co-operative Bank Ltd.'s case (supra) (SC), as is the case here, the main reason for the Revenue to disentitle the appellant from getting the deduction under section 80P of the Act is not sub-section (4). It is the appellant's alleged activities in violation of the Cooperative Societies Act, under which it is formed. The AO has pointed out that the appellant has been catering to two distinct categories of people: the first category is the resident members or ordinary members; the second category is the "nominal members. These are those members who are making deposits with the assessee for the purpose of obtaining loans, etc. And, in fact, they are not members in real sense.

34. As Mavilayi Service Co-operative Bank Ltd.'s case (supra) (SC) has noted, most of the appellant's business was with this second category of persons, who have been giving deposits, which are kept in fixed deposits with a motive to earn maximum returns. A portion of these deposits is utilised to advance gold loans, etc, to the members of the first

category. It is found, as a matter of fact, that the depositors and borrowers are quite distinct.

35. In reality, the appellant's activity, Mavilayi Service Co-operative Bank Ltd.'s case (supra) (SC) agrees, is that of finance business and cannot be termed as cooperative society. It is also found that the appellant is engaged in the activity of granting loans to general public as well. All this is done without any approval from the Registrar of the Societies. With indulgence in such kind of activity by the appellant, the AO has concluded that the appellant's activity violates the Cooperative Societies Act. Moreover, it is a cooperative credit society which is not entitled to deduction under section 80P(2)(a) (i) of the Act.

36. The appellant in Mavilayi Service Co-operative Bank Ltd.'s case (supra) (SC) has argued that the assessing officer and other authorities under the IT Act could not go behind the registration of the co-operative society in order to discover as to whether it was conducting business in accordance with its bye-laws. Accepting this contention, Mavilayi Service Co-operative Bank Ltd.'s case (supra) (SC) observes:

Nor can it be said that it would logically follow from the finding on facts that the assessing officer can go behind the registration of a society and arrive at a conclusion that the society in question is carrying on illegal activities.

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Secondly, for purposes of eligibility for deduction, the assessee must be a "co-operative society". A co-operative society is defined in Section 2(19) of the IT Act, as being a co-operative society registered either under the Co- operative Societies Act, 1912 or under any other law for the time being in force in any State for the registration of co-operative societies. This. therefore, refers only to the factum of a co-operative society being registered under the 1912 Act or under the State law. For purposes of eligibility, it is unnecessary to probe any further as to whether the co- operative society is classified as X or Y. (Emphasis supplied)

37. Section 80P being a beneficial provision, according to Mavilayi Service Co-operative Bank Ltd.'s case (supra) (SC), must be construed with the object of furthering the co-operative movement generally. And section 80P(2)(a) (i) must be

contrasted with section 80P(2)(a)(iii) to (v), which expressly speaks of agriculture. It must also further be contrasted with sub-clause (b), which speaks only of a "primary" society engaged in supplying milk etc. thereby defining which kind of society is entitled to deduction, unlike the provisions contained in section 80P(2)(a) (i). Also, the proviso to section 80P(2), when it speaks of sub-clauses (vi) and (vii). further restricts the type of society which can get the deductions contained in those two sub-clauses, unlike any such restrictive language in Section 80P(2)(a)(i).

38. Mavilayi Service Co-operative Bank Ltd.'s case (supra) (SC) emphasises that once a co-operative society is providing credit facilities to its members, the fact that it is providing credit facilities to non-members does not disentitle the society from availing itself of the deduction. The distinction between eligibility for deduction and attributability of amount of profits and gains to an activity is a real one. Since profits and gains from credit facilities given to non-members cannot be said to be attributable to the activity of providing credit facilities to its members, such amount cannot be deducted.

39. To sum up, Mavilayi Service Co-operative Bank Ltd.'s case (supra) (SC) has held that the ratio decidendi of Citizen Cooperative Society Ltd. case (supra), must be given effect to. Section 80P of the IT Act, being a benevolent provision enacted by Parliament to encourage and promote the credit of the co-operative sector in general must be read liberally and reasonably. And if there is ambiguity, it must be resolved the Assessee's favour. A deduction given without any reference to any restriction or limitation cannot be restricted or limited by implication.

Conclusion.

40. First, the Assessee has all these years continued with the same set of activities. And this has been accepted by AO. On earlier occasions, unti the Assessment Year we are considering (2012-13), this Court has consistently declared that the Assessee continues to be a cooperative credit society entitled to the benefits under section 80P of the IT Act. We see no reason for the AO to take a different stand this Assessment Year.

41. That apart, the Apex Court has put a quietus to the controversy whether the Revenue could go behind the registration certificate of co- operative society and

examine its activities to determine its true nature, if any. In Mavilayi Service Co-operative Bank Ltd.'s case (supra) (SC), the enunciation of law is emphatic: the authorities under the IT Act cannot go behind the certificate. Here, indisputably, all the assessees have been registered as cooperative credit societies. Banking, as understood by the Revenue, has never been its core activity. Their accepting deposits from non members does not disqualify them from claiming benefits undeir section 80P of the IT Act."

6.5. Considering the position of law as explained by various courts above and respectfully following the decision of the Hon'ble Apex Court in the case of Mavilayi Service Co-operative Bank Ltd.'s case (supra), it is held that the AO is not justified in disallowing the deduction under section 80P(2)(a)(i) to the assessee society on the ground that it is not a primary agricultural credit society, doing banking business and it is not covered by amended provisions of sec. 80P(4) of the Act. Since the appellant society is a primary credit co-operative society registered and operating under the provisions of Co-operative Societies Act and is eligible for deduction u/s 80P(2)(a)(i) of the Act.

6.6. Accordingly, the appellant is hereby held to be eligible for deduction u/s 80P(2)(a)(i) of the I.T. Act, 1961 and the AO is directed to allow the claim for the same made by the appellant during assessment proceedings in respect of the amounts of profits and gains attributable to the activities of the appellant of carrying on the business of banking or providing credit facilities to its members.

7. Now another issue also needs to be addressed is that whether Interest on Investments derived by the Appellant is chargeable under Business Income or under the head income from other sources andwhether it is eligible for deduction u/s 80P(2)(d) of the Act is discussed in paras below.

7.1. Coming to issue of allowability of deduction u/s 80P(2)(d), The Identical issue has been decided by the Hon'ble High Court of Kerala at Ernakulam vide a combined order dated 01.11.2021 in the case of PCIT v. Peroorkada Service Co-Operative Bank Ltd. N ITA No. 323 of 2019 and PCIT v. Vilappil Service Co-Operative Bank Ltd. In ITA No.142 of 2019 reported as (2022) 442 ITR 141/ 217 DTR 246/328 CTR 443 (Ker.)(HC) wherein the hon'ble high court has held interest earned from investment of surplus funds to be assessable as 'income from other sources and not as 'profit and gains of

business. Further, the honourable court has held the interest earned from Co-operative banks to be eligible for deduction u/s 80P(2)(d) hold ing the co-operative banks to be co-operative societies for the purposes of section 80P(2)(d). However, Hon'ble court has held interest earned from treasury/commercial banks to be not eligible for deduction under section 80P as it is neither covered under section 80P(2)(a)(i) nor under section 8P(2)(d). Relevant part of the said judgment is quoted below for ready reference:

> *8.3. ".. It is not in dispute that the District/State Co-operative Banks have licence from the Reserve Bank of India under the Banking Regulation Act and are registered Cooperative Societies under the Act. Suffice to observe that by being a Society doing banking business such society will stand on par with a Co-operative Society registered under the Kerala Co-operative Societies Act would come within the purview of clause (d) of Section 80P(2)."*
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> *9. The above discussion takes us to the next point for consideration namely, whether the interest income comes under Section 28 or 56 of the Act. In other words, the fulcrum of assessee's case is that investment in Bank is business of assessee. Mr Christopher Abraham relied on both the*

circumstances and the ratio finally laid by the Supreme Court in M/s. The Totgar's Co-operative Sale Society Limited.

M/s. The Totgar's Co-operative Sale Society Limited

9.1 M/s.Totgar's Co-operative Sale Society had surplus funds with it and invested in short term deposits with banks and in government securities. The assessee earned interest on such investments. The assessee provides credit facilities to its members and sells the agricultural produce of its members. The substantial question of law which was considered by the Supreme Court in M/s. The Totgars Co-operative Sale Society Limited is whether interest income earned from investments would qualify for deduction as business income under Section 80P(2)(a)(i) of the Act. The Supreme Court, in paragraph 10, has further noted that "at the outset an important circumstance needs to be highlighted. In the present case, the interest held not eligible for deduction under Section 80P(2)(a)(i) of the Act is not the interest received from the members for providing credit facilities to them. What is sought to be taxed unider Section 56 of the Act is the interest income arising on the surplus invested in short term deposits

and securities, which surplus was not required for business purposes. The assessee markets the produce of its members whose sales proceeds, at times, are retained by it. In this case, we are concerned with the tax treatment of such amount since the fund created by such retention was not required immediately for business purposes. It was invested in specified securities. The question before us (Supreme Court) is whether interest on such deposits/securities which, strictly speaking, accrues to the members account could be taxed as business income under Section 28 of the Act? It was further held that an income which is attributable to any of the specified activities in Section 80P(2) of the Act could be eligible for deduction".

9.2. While dealing with the definition of the word 'income', it is held: "the word 'Income' has been defined under Section 2(24)(i) of the Act to include profits and gains. This sub-section is an inclusive provision, Parliament has included. specifically business profits into the definition of the word 'income. Therefore, we are required to give a precise meaning to the words 'profits and gains of business' mentioned in Section 80P(2) of the Act. In the present case, as stated above, the assessee/Society

regularly invests funds not immediately required for business purposes. Interest on such investments therefore cannot fall within the meaning of the expression 'profits and gains of business. Such interest income cannot be said also to be attributable to the activities of the Society. namely carrying on the business of providing credit facilities to its members or marketing of agricultural produce of its members. When the assessee/society provides credit facilities to its members, it turns interest income. As stated above, in this case, interest held ineligible for deduction under Section 80P(2)(a)(i) is not in respect of the interest received from members. In this case, we are only concerned with interest which accrues on funds not required immediately by the assessee for its business purposes and which have been invested in specified securities as investment. Further, as stated above, the assessee markets the agricultural produce of its members. It retains the sales proceeds in many cases. It is this retained amount which was payable to its members from whom produce was brought which was invested in short term deposits/securities. Such an amount, which was retained by the assessee/Society was a liability and it was shown in the balance sheet on the liability

side. Therefore, to that extent such interest income cannot be said to be attributable either to the activity mentioned in Section 80P(2)(a) (i) of the Act or Section 80p(2)(a)(iii) of the Act. Therefore, looking to the facts and circumstances of this case, we are of the view that the Assessing Officer was right in taxing the interest income indicated above, under Section 56 of the Act".

10. The thrust of consideration in M/s. The Tolgar's Cooperative Sale Society Limited is that the investment made by the assessee of surplus funds whether to be treated as forming part of regular business activity of assessee/Society or not. The Supreme Court, no doubt, has considered that the assessee in the reported case was also retaining the sales proceeds of its members and was investing in the bank accounts and was showing the amount payable to the members on the liability side of the balance sheet. In our consideration, M/s. The Totgar's Co-operative Sale Society Limited deals with what constitutes business income of the Society and what does not constitute business income of the Society. Interest earned from investments is not straight profits or gains from business, but a return by way of interest from investments in Bank etc. The

emphasis in Section 80P(2)(a) (i) is that in a case of a Cooperative Society engaged in carrying on the business of banking or providing credit facilities to its members for deduction of such income from computation. Mavilayi Service Co- operative Bank Ltd. has differentiated between interest earned from members of the Society and non-members and held that the interest income from later portion i.e., non-members is not eligible for deduction. It is difficult to treat the interest earned from a Treasury as better positioned than interest received from non-members. After appreciating the circumstances of the case on hand and the view taken by the Supreme Court in M/s. The Totgar's Co- operative Sale Society Limited, together with Mavilayi Service Co- operative Bank Ltd., we are of the view that the interest income earned by the assessee, in the case on hand, does not straight away fall under Section 80P(2)(a)(i) of the Act commending for deduction. [Emphasis supplied.]

11. That being so, the next question is such interest income falls under Section 56 and even if it falls under Section 56 of the Act, whether the assessee is entitled to any deduction or not.

11.1 Mr Christopher Abraham argues that the Parliament in its wisdom is aware of the activities being undertaken by all the Societies to whom relief is provided by way of deduction in Section 80P of the Act. It is with this background the Parliament has provided for the deductions in respect of a few other incomes earned by the assessee/Society. Such deductions are specifically attributable to the source from which such interest is received. Expanding the institutions or categories of benefits is contrary to the intent of the Legislature. According to him clause (d) of Section 80P(2) is clear in its application, viz. that interest/dividend received from Co-operative Societies alone is entitled for deduction. Once interest is received from a Bank or Treasury, such interest income is out of the purview of the eligible deduction in the computation of assessee's income.

11.2. Mr.Jojo appearing for the respondent, in reply to the said argument, relies on the judgment of the Supreme Court in Nawanshahar Central Co-operative Bank Ltd case and argues that irrespective of the source from which the income is earned, according to the principle laid down in Nawanshahar Central Cooperative Bank Ltd case, the assessee is entitled for deduction under Section 80P(2)(a)(i).

12. We have gone through the order of the Supreme Court in Nawanshahar Central Co-operative Bank Ltd case, for immediate reference it is excerpted:

"This Court has consistently held that investments made by a banking concern are part of the business of banking. The income arising from such investments would, therefore, be attributable to the business of bank falling under the head 'profits and gains of business and thus deductible under Section 80P(2)(a)(i) of the Income Tax Act, 1961. This has been so held in Bihar State Co-operative Bank Ltd v. CIT [1960] 39 ITR 114 (SC); CIT v. Karnataka State Co-operative Apex Bank [2001].... ITR 194 (SC) and CIT v. Ramanandapuram District Co-operative Central Bank Ltd [2002] 255 ITR 423 (SC). The principle in these cases would also cover a situation where a Co- operative bank carrying on the business of banking is statutorily required to place a part of its funds in approved securities. The appeals are accordingly dismissed without costs."

12.1. The decisions relied on by the Supreme Court refer to Co-operative Banks but not Co-operative Societies. The issue on hand is about the

interest income earned by way of investments made with institutions other than Co-operative Societies. We are of the view that by referring to the order in Nawanshahar Central Co-operative Bank Ltd case it cannot be held that the income has to be brought under Section 80P(2)(a)(i) of the Act.

12.2. Section 80P deals with Co-operative Societies' computation of income. As already noted, it has four sections and several sub-sections and clauses. The Parliament has considered the various situations in which the exigible income and the deductable income of the assessee is considered while computing the income of the assessee. For getting deduction, in our considered view, the assessee must also establish that the interest income earned by the assessee is from a Co-operative Society. As a matter of fact, in the case on hand, there is no dispute that it is not from a Co-operative Society registered under Kerala Co- operative Societies Act. The interest income earned from District Co-operative Bank/State Co-operative Bank, in the facts and circumstances of the case, do come within Section 80P(2)(d). Therefore, the income constitutes income from other sources and the only eligible deduction is covered by Section 80P(2)(d) viz. Interest

or dividend derived by the assessee from its investments with any other Co-operative Society. The source of interest income is from Bank and Treasury, interest income received from Treasury be included in the computation of total income of the assessee. In other words, interest earned from Treasury is inadmissible for deduction and interest income from Co- operative Societies registered under the Kerala Co-operative Societies Act are eligible for deduction. The contra consideration of Commissioner of Income Tax (Appeals) and the Tribunal is ITA Nos. 142 & 323/2019; 5/2020-39- incorrect and liable to be modified as stated above. Hence, it is held that the interest Income earned by the assessee does not come within the ambit of Section 80P(2)(a)(i) and permissible deduction of interest income is limited to Co- operative Societies/Banks registered under Kerala Co-operative Societies Act under clause (d) of the Act and effect order on the above lines is made by the Assessing Officer. The questions are accordingly answered."

7.2 Thus as per the aforesaid judgements it has held interest earned from investment of surplus funds to be assessable as 'income from other sources and not as 'profit and gains of business. Further, the Hon'ble court

has held the interest earned from Co-operative banks to be eligible for deduction u/s 80P(2)(d) holding the co-operative banks to be co-operative societies for the purposes of section 80P(2)(d). However, Hon'ble courts has held interest earned from treasury/commercial banks to be not eligible for deduction under section 80P as it is neither covered under section 80P(2)(a)(i) nor under section 8P(2)(d).

7.3 To sum up, even though such interest and dividends as received from entities registered with Cooperative Societies Act is income from other sources, it is eligible for deduction u/s 80P(2)(d) of the Act.

Therefore, Interest and dividends which is received from entities registered with Cooperative Societies Act will be allowed by the AO as eligible for deduction u/s 80P(2)(d) of the Act. However, interest & dividend income from other entities (viz. Government treasury /commercial banks etc.) which are not registered under the state Co-operative Societies Act is not eligible for deduction u/s 80P(2)(d).

In view of above the appellant is eligible for deduction u/s 80P(2)(d) on interest/dividend receipts from entities provided appellant produces the copy of registration documents of entities under Co-operative Societies Act, before the AO and the said registration was valid at the

time of making such deposits and receipt of interest/dividend.

7.4. However, as the concerned details/bifurcation of interest income received from investment during the year are not available in the records available with the undersigned, The AO is directed to verify and relief is allowed to appellant subject to the condition that it will produce before the AO the copy of certificate of registration under state co-operative Societies Act of all the entities from which it has derived any interest or dividend income.

8. Thus in view of above, the Assessing officer is directed to allow deduction u/s 80P to appellant in terms of para 6.5 and 7.3 above. Accordingly, all the grounds raised by the appellant regarding this issue are, accordingly, partly allowed."

3. Learned DR vehemently quotes Totagars Co-operative Sales Society Ltd. vs. ITO, 188 taxmann.com 282 (SC); CIT vs. Totagars Cooperative Sale Society, 392 ITR 74 (Karn) (HC) that the assessee's impugned interest income is not eligible for sec.80P(2)(d) deduction. He could hardly dispute that learned CIT(A)-NFAC has already considered the catena of case law (supra) whilst deciding the instant issue in assessee's favour. That being the case, we did not find any substance in the Revenue's instant sole substantive grievance

identically pleaded in both these Revenue's appeals. Rejected accordingly.

4. Next coming the assessee's twin cross objections C.O. Nos.2 & 3/PAN./2023 raising the following identical substantive grounds :

1. *"The Hon'ble CIT (A) has failed to direct the Assessing officer in case interest earned from other than societies and Cooperative banks to be brought to tax u/s.56 after allowing proportionate expenses u/s 57 as decided in Totgars Co-operative Sale Society Ltd. Vs Income Tax Officer Karnataka High Court (2015) 231 Taxman 0794 (Kar).*
2. *The Appellants crave leave to add/alter any of the grounds of appeal on or before the date of hearing."*

5. Learned counsel's only contention during the course of hearing is that the impugned disallowance(s) pertaining to the assessee's sec.80P deduction claim(s), which has been partly affirmed in the CIT(A)-NFAC's detailed discussion; may be directed to be computed only on "netting" basis in light of their lordships' directions in Totagars Co-operative Sales Society Ltd. vs. ITO, 188 taxmann.com 282 (SC). The Revenue is equally fair in not disputing the assessee's instant contentions before us in principle. We thus accept the assessee's instant identical cross objections C.O.Nos.2 &

3/PAN./2024 for statistical purposes and leave it open for the learned Assessing Officer to finalise his consequential computation by adopting netting method. Ordered accordingly.

6. To sum-up, these Revenue's twin appeals ITA.Nos.108 and 109/PAN./2024 are dismissed and cross objections of assessee C.O.Nos.2 & 3/PAN./2024 are allowed for statistical purposes in above terms. A copy of this common order be placed in the respective case files.

Order pronounced in the open Court on 29.08.2024.

Sd/-	Sd/-
[INTURI RAMA RAO]	[SATBEER SINGH GODARA]
ACCOUNTANT MEMBER	JUDICIAL MEMBER

Pune, Dated 29th August, 2024

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	The Pr. CIT, Panaji concerned
4.	D.R. ITAT, Panaji Bench, Panaji.
5.	Guard File.

//By Order//

//True Copy //

Sr. Private Secretary, ITAT, Pune Benches,
Pune.