

**IN THE INCOME TAX APPELLATE TRIBUNAL
LUCKNOW 'B' BENCH, LUCKNOW**

**BEFORE SH. SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER
AND
SH. NIKHIL CHOUDHARY, ACCOUNTANT MEMBER**

ITA Nos.165, 166 &168/Lkw/2023
A.Ys. 2017-18, 2018-19 & 2020-21

Co-operative Cane Development Union Limited, Maholi, Ayyubi Chamber, Raniganj, Lakhimpur Kheri-262001, U.P.	vs.	The Assistant Commissioner of Income Tax, Sitapur (New)
PAN:AAATC4152F		
(Appellant)		(Respondent)

Assessee by:	Sh. Shubham Rastogi, C.A.
Revenue by:	Sh. Sanjeev Krishna Sharma, Addl CIT (D.R.)
Date of hearing:	13.08.2024
Date of pronouncement:	30.09.2024

ORDER

PER SH. NIKHIL CHOUDHARY, ACCOUNTANT MEMBER:

These three appeals are directed against the orders of the ld. CIT(A) passed under section 250 of the Income Tax Act, 1961. As the issues involved in all these three appeals are common, the appeals are being taken up together for the sake of convenience. The grounds of appeal in these appeals are as under:-

ITA No.165/Lkw/2023
A.Y. 2017-18

(1) That the Authorities below erred on facts and in law in not allowing deduction u/s 80P(2)(a)(iii) of 1. T. Act on Interest received on Investments held with Banks in form of FDR's Rs. 28,13,215/-.

(2) That the Authorities below erred in relying on the decision of Hon'ble Supreme Court in the case of Totgars Co-Operative Sale Society Ltd. Vs. ITO without appreciating that the decision of Hon'ble Supreme Court is distinguishable on facts from the case of the Appellant Assessee.

(3) That the Ld. C.I.T. (A) erred on facts and in law in considering that the A. O. has failed to demonstrate in the Assessment Order that the Interest Income on FDR's and Saving Bank Accounts was on account of surplus funds of the Society and in absence of such finding the decision of Hon'ble Supreme Court cannot be relied upon in Appellant's Case.

(4) That the Ld. C.I.T. (A) erred on facts and in law in not considering that the Law has used the word "attributable" and not the word "derived" in section 80P so as to include income from sources other than the actual conduct of the Business of the Society and thus Interest Income on FDR's & S. B. A/c is attributable to the business of providing credit facilities and providing assistance to cane growers for better development cane crops.

WITHOUT PREJUDICE TO ABOVE

(5) The Ld. C.I.T.(A) erred on facts and in law in not considering that the funds of the Society in form of Share Capital from members and the Society being co-operative Society is statutorily required to maintain a Reserve Fund of a minimum 25% of its profit and thus the investments in form of deposits with Banks to the extent of the Share Capital and Reserve Funds cannot be said to be made out of surplus funds.

(6) That Ld. C.I.T. (A) erred on facts and in law in not considering that the P. F. Balance of seasonal employees of Society which is held in the form of deposits are not the investments of the Society and accordingly interest accruing on the said amount cannot be said to be the Income of the Society.

WITHOUT PREJUDICE TO ABOVE

(7) That the Authorities below erred on facts and in law in not allowing proportionate deduction for 'Management Expenses and 'Interest paid' debited in the Profit and Loss Account from the gross interest of Rs. 28,13,215/-.

(8) That the Authorities erred on facts and in law in not considering that only the real income/profit can be Taxed and accordingly, the expenses incurred in earning the said income has to be determined and deducted from the Gross Income.

(9) That the addition made is highly excessive, contrary to the facts, law and principle of natural justice and without providing sufficient time and opportunity to have its say on the reasons relied upon by CIT (A)."

ITA No.166/Lkw/2023

A.Y. 2018-19

(1) That the Authorities below erred on facts and in law in not allowing deduction u/s 80P(2)(a)(iii) of 1. T. Act on Interest received on Investments held with Banks in form of FDR's Rs. 31,27,214/-.

(2) That the Authorities below erred in relying on the decision of Hon'ble Supreme Court in the case of Totgars Co-Operative Sale Society Ltd. Vs. ITO without appreciating that the decision of Hon'ble Supreme Court is distinguishable on facts from the case of the Appellant Assessee.

(3) That the Ld. C.I.T. (A) erred on facts and in law in considering that the A. O. has failed to demonstrate in the Assessment Order that the Interest Income on FDR's and Saving Bank Accounts was on account of surplus funds of the Society and in absence of such finding the decision of Hon'ble Supreme Court cannot be relied upon in Appellant's Case.

(4) That the Ld. C.I.T. (A) erred on facts and in law in not considering that the Law has used the word "attributable" and not the word "derived" in section 80P so as to include income from sources other than the actual conduct of the Business of the Society and thus Interest Income on FDR's & S. B. A/c is attributable to the business of providing credit facilities and providing assistance to cane growers for better development cane crops.

WITHOUT PREJUDICE TO ABOVE

(5) The Ld. C.I.T.(A) erred on facts and in law in not considering that the funds of the Society in form of Share Capital from members and the Society being co-operative Society is statutorily required to maintain a Reserve Fund of a minimum 25% of its profit and thus the investments in form of deposits with Banks to the extent of the Share Capital and Reserve Funds cannot be said to be made out of surplus funds.

(6) That Ld. C.I.T. (A) erred on facts and in law in not considering that the P. F. Balance of seasonal employees of Society which is held in the form of deposits are not the investments of the Society and accordingly interest accruing on the said amount cannot be said to be the Income of the Society.

WITHOUT PREJUDICE TO ABOVE

(7) That the Authorities below erred on facts and in law in not allowing proportionate deduction for 'Management Expenses and 'Interest paid' debited in the Profit and Loss Account from the gross interest of Rs. 31,27,214/-.

(8) That the Authorities erred on facts and in law in not considering that only the real income/ profit can be Taxed and accordingly, the expenses incurred in earning the said income has to be determined and deducted from the Gross Income.

(9) That the addition made is highly excessive, contrary to the facts, law and principle of natural justice and without providing sufficient time and opportunity to have its say on the reasons relied upon by CIT (A)."

ITA No.168/Lkw/2023
A.Y. 2020-21

“(1) That the Authorities below erred on facts and in law in not allowing deduction u/s 80P(2)(a)(iii) of 1. T. Act on Interest received on Investments held with Banks in form of FDR's Rs. 41,05,832/-

(2) That the Authorities below erred in relying on the decision of Hon'ble Supreme Court in the case of Totgars Co-Operative Sale Society Ltd. Vs. ITO without appreciating that the decision of Hon'ble Supreme Court is distinguishable on facts from the case of the Appellant Assessee.

(3) That the Ld. C.I.T. (A) erred on facts and in law in considering that the A. O. has failed to demonstrate in the Assessment Order that the Interest Income on FDR's and Saving Bank Accounts was on account of surplus funds of the Society and in absence of such finding the decision of Hon'ble Supreme Court cannot be relied upon in Appellant's Case.

(4) That the Ld. C.I.T. (A) erred on facts and in law in not considering that the Law has used the word "attributable" and not the word "derived in section 80P so as to include income from sources other than the actual conduct of the Business of the Society and thus Interest Income on FDR's & S. B. A/c is attributable to the business of providing credit facilities and providing assistance to cane growers for better development cane crops.

WITHOUT PREJUDICE TO ABOVE

(5) The Ld. C.I.T.(A) erred on facts and in law in not considering that the funds of the Society in form of Share Capital from members and the Society being co-operative Society is statutorily required to maintain a Reserve Fund of a minimum 25% of its profit and thus the investments in form of deposits with Banks to the extent of the Share Capital and Reserve Funds cannot be said to be made out of surplus funds.

(6) That Ld. C.I.T. (A) erred on facts and in law in not considering that the P. F. Balance of seasonal employees of Society which is held in the form of deposits are not the investments of the Society and accordingly interest accruing on the said amount cannot be said to be the Income of the Society.

WITHOUT PREJUDICE TO ABOVE

(7) That the Authorities below erred on facts and in law in not allowing proportionate deduction for 'Management Expenses and 'Interest paid' debited in the Profit and Loss Account from the gross interest of Rs. 41,05,832/-

(8) That the Authorities erred on facts and in law in not considering that only the real income/ profit can be Taxed and accordingly, the expenses incurred in earning the said income has to be determined and deducted from the Gross Income.

(9) That the addition made is highly excessive, contrary to the facts, law and principle of natural justice and without providing sufficient time and opportunity to have its say on the reasons relied upon by CIT (A)."

2. The facts of the case are that the assessee claimed deduction under section 80P of Rs.4,41,73,841/- in the assessment year 2017-18, Rs. 4,28,64,206/- in the assessment year 2018-19 and Rs. 2,95,03,846/- in the assessment year 2020-21. On going through the claim of deduction in each of these years, the ld. Assessing Officer observed that the assessee had also claimed deduction under section 80P on interest amounting to Rs.28,13,215/- in the assessment year 2017-18, amounting to Rs.31,27,214/- in the assessment year 2018-19 and amounting to Rs.34,99,316/- in the assessment year 2020-21. Observing that the said was not deductible under section 80P(2)(a)(iii), in view of the judgment of Hon'ble Supreme Court in the case of ***M/s. The Totgars' Cooperative Sale Society Limited vs. Income Tax Officer (2010) 322 ITR 283 (SC)***, which held that interest on FDRs and banks would come in the category of income from other sources and hence such interest income would be taxed under section 56 of the Act and not be eligible for deduction under section 80P(2)(a)(iii), as the same was not attributable to the activities of the cooperatives, the ld. Assessing Officer added back these amounts. In the assessment year 2020-21, the ld. Assessing Officer further pointed out that since the deposits of the assessee were not in a Cooperative Society, as envisaged in section 80P(2)(d) but in commercial banks, i.e. Aryavart Bank and Punjab National Bank therefore, the interest income earned by the assessee Society was also not eligible under section 80P(2)(d). Furthermore, the ld. Assessing Officer added back an unreported interest income of Rs.4,06,560/- in the assessment year 2020-21 to make the total disallowance under this head as Rs.41,05,832/-.

3. Aggrieved by these additions, the assessee filed appeals in all three years with the ld. CIT(A). However, the ld. CIT(A) dismissed the appeals of the assessee in all these years holding that, as per the decision of the Hon'ble Supreme Court in ***M/s.***

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Taxman 282 (SC), if a Society regularly earns interests from funds not required immediately for business purposes, such interest income was not eligible for deduction under section 80P. Accordingly, the Id. CIT(A) dismissed the appeals of the assessee in all three assessment years.

4. Aggrieved with the said dismissal of its appeals, the assessee society is before us in appeal. Shri. Shubham Rastogi, C.A. (hereinafter referred to as 'the Id. AR) filed a written submission and argued the case before us.

5. It was argued that the appellant was a Welfare Society for cane growers and the main object of the Society was to provide assistance to the cane growers for better development of cane crops, to make available and provide assistance in obtaining better quality of seeds, fertilizers, agricultural equipments etc., expeditious supply of sugarcane to mills and ensuring prompt payment to the cane growers and also to provide credit facilities to the members for purchase of equipments, seeds, fertilizers etc.. Thus the basic object of the assessee cooperative was the welfare of cane growers. The assessee was registered under the U.P. Sahkari Samiti Adhiniyam, 1965 and was providing facilities to cane growers as under:-

a. In the form of building roads in their geographical jurisdiction for transport of cane produce by cane growers.

b. Providing agricultural implements at subsidized rates to the members and also providing fertilizers and seeds for better cultivation of cane crop.

c. Ensuring prompt payment to farmers from sugar mills.

d. Providing credit facilities in the form of providing loans to cane growers for the purpose of purchase of fertilizers, seeds, agricultural implements etc.,

6. It was submitted that the surplus amount generated from these activities of the Society, was deposited with cooperative banks and nationalized banks as per section 59 sub clause (c) of the U.P. Cooperative Societies Act. He drew our attention to section 59(c), which read that the cooperative Society may invest or deposit its

funds with any bank approved for this purpose by the Registrar. He also drew our attention to Rule 173 of the U.P. Cooperative Societies Rules, 1968 which authorized the Cane Cooperative Society, to invest its funds in any of the modes specified under section 59(a) to (c) of the U.P. Cooperative Societies Act. It was further submitted that the only source of finance to run the cooperative society was the contribution received from the members and sugar mills and the surplus generated in the course of carrying out the activities of the Society was invested by the Society in accordance with section 58 of the Cooperative Societies Act. Section 58 dealt with the disposal of net profit and according to Clause (1-A) of section 58, it was mandated that the cooperative society would distribute the net profits of a year, as computed under sub section 1 and including the net profits brought forward from previous years, in the following manner, as under:-

a. An amount not less than 25% shall be transferred to a fund called the reserved fund.

b. No less than such amount as may be prescribed, shall be credited to a cooperative education fund to be established in the manner prescribed, and this shall be applicable to such Cooperative Society also which incur loss in the year though such provisions would not apply to a primary agricultural credit cooperative society, a Central Cooperative Bank or the apex bank.

c. An amount that may be prescribed was to be credited to the research and development fund created in the apex Society of the concerned class of Cooperative Society which would be maintained for the purpose of research and development in the prescribed manner.

d. An amount not exceeding 20% as may be prescribed would be transferred to a fund called the equity redemption fund to be established and utilized in the manner prescribed by such cooperative Society which has the subscription of the State Government in its share capital."

7. It was submitted that only the balance that remained, would be used for payment of dividend to members, payment of bonus to members, contribution to any fund as may be specified by the rules or byelaws and donation of amounts not exceeding 5% for any charitable purpose. It was, therefore, submitted that as per the said provisions, the Society was statutorily required to invest not less than 25%

of its profit in a statutory reserve fund and deposit the same with a nationalized bank as per section 59 of the U.P. Cooperative Societies Act. It was also statutorily required to keep such amount for purposes of investment in other funds, as detailed above. Distributions from these surplus funds were later to be made, as per the directions of the State Government / Cane Commissioner. It was submitted that these funds, which are tagged as statutory reserve fund as per law, were required to be kept in the form of FDRs in National Banks and Cooperative Banks, in accordance with section 59 of the UP Cooperative Act r.w.r 173 of the U.P. Cooperative Societies Rules, 1968.

8. It was submitted that the decision of Hon'ble Supreme Court in the case of ***Totgars' Cooperative Sale Society Limited*** (supra) was on a different issue inasmuch as, in that case, the Hon'ble Supreme Court was dealing with a case where the ***Totgars' Cooperative Sale Society***, apart from providing credit facilities to its members, was also in the business of marketing of agricultural produce grown by its members. The consideration received from marketing agricultural produce of its members was retained and invested in short term deposits/securities. The amount which was retained was shown as a liability in the balance-sheet. The Hon'ble Supreme Court held, that to that extent, the interest income on such investments cannot be said to be attributable to either the activity mentioned in section 80P(2)(a)(i) or 80P(2)(a)(iii) of the Act therefore, the Court held that such amounts were income from other sources and taxable under section 56 of the Act. However, in the present case, the assessee was not a, "sale society" and further it was statutorily required to invest funds in statutory reserve funds as per section 58 of the U.P. Cooperative Societies Act, for which purpose the Society passed resolution in its general body meeting. Furthermore, these funds were kept separately in the form of FDRs in nationalized banks and cooperative banks, in accordance with section 59 of U.P. Cooperative Act r.w.r. 173 of U.P. Cooperative Societies Rules and thus these deposits / investments could not be said to have been made out of the

surplus fund of the Society and the interest accruing on the same could not be brought to tax under section 56 of the Income Tax Act on the basis of the decision in the Totgar's case. The Id. AR also placed reliance on the decision of the Hon'ble Karnataka High Court in the case of **Tumkur Merchants Souharda Credit Co-op. Ltd.** (230)Taxmann 309 (Kar), wherein the Hon'ble High Court held that the judgment of the Hon'ble Supreme Court in the Totgar's case was confined to the facts and the Hon'ble Supreme Court was not laying down any law. It was submitted that no doubt the Hon'ble Allahabad High Court, in the case of **PCIT vs. M/S Co-Operative Cane Development Council, Lakhimpur** in ITA No. 183 of 2016 had ruled against the assessee, but the decision of the Hon'ble Allahabad High Court in that case had been challenged by that Society before the Hon'ble Supreme Court in Civil Appeal No. 7405 to 7409 of 2021. The Hon'ble Supreme Court, vide its order dated 6.12.2021, had restored the matter back to the Tribunal on the basis of additional documents, including the statutory rules, placed before the Hon'ble Supreme Court which had a bearing on the income of society and its entitlement to exemption under section 80P. The Id. AR took us through the judgment of the Hon'ble Supreme Court to show that the said order passed by the Hon'ble High Court had been set aside with directions to the Tribunal to decide the issue of exemption under section 80P on merits and in accordance with law, without being influenced or being bound by the earlier orders passed by them or by the Hon'ble High Court and subsequently, the Hon'ble ITAT, Lucknow Bench, on the basis of this direction, passed a consolidated order in ITA Nos.285/Lkw/2015, 474/Lkw/2015, 525/Lkw/2015, 536/Lkw/2015 and 540/Lkw/2015 on 1.09.2020. It was submitted that the Hon'ble Tribunal, after considering the byelaws and the statutory rules as also the earlier decision of the Hon'ble Allahabad High Court in the case of **Commissioner of Income Tax vs. Krishak Sahkari Ganna Samiti** 258 ITR 594 (All), the earlier decision of the Hon'ble ITAT, Lucknow Bench in the case of **Commissioner of Income Tax vs. Cooperative Cane Development Union Limited** 118 ITR 770 (All) and the earlier decision of the Hon'ble ITAT Lucknow Bench in the

case of ***Income Tax Officer vs. Sahkari Ganna Vikas Samiti, Rupapur Chauraha, (Munder), Hardoi*** in ITA No. 467/Lkw/2013, held that the investment of the statutory percentage of its profits in Government securities was a condition for carrying on the business and the profits or gains from such investments were connected with or incidental to the carrying on the actual business. Therefore, they were “attributable” to the activity carried on by the assessee, within the meaning of Clause (c) of section 80P (2)(a). Further, relying on the judgment of Hon’ble ITAT, Raipur in the case of ***Gramin Sewa Sahkari Samiti, Maryadit vs. Income Tax Officer*** (2022) 138 taxman.com 476 (Raipur-Trib), the Hon’ble Tribunal had held that the interest earned by the assessee from deposits with cooperative banks and nationalized banks, was eligible for deduction under section 80P (2)(a) of the Act. However, since the figures regarding the interest which the assessee may have earned on fixed deposits attributable to the making of statutory reserves were not before the Tribunal, the Tribunal remanded the matter back to the file of the Id. Assessing Officer, to pass a fresh order keeping in view the additional documents filed before the Hon’ble Supreme Court and the order of Hon’ble Supreme Court, after giving the assessee sufficient opportunity to be heard. It was submitted that, after considering the submissions of the assessee and the byelaws as well as the provisions of the U.P. Cooperative Societies Act with regard to the disposal of net profit and the statutory condition of keeping the funds in bank accounts for various statutory reserves, the Id. Assessing Officer concluded that the interest income earned on investments kept in the shape of FDRs with banks which were statutorily required to be kept, was attributable to the business of the assessee and consequentially he had allowed the deduction under section 80P in all the five cases remanded back to him vide his orders dated 12.01.2024 and 2.02.2024. Thus, it was submitted that the interest earned from investment made by the assessee society as per section 59 r.w.r. 173 for the purpose of section 58, had been accepted by the Revenue to be attributable to the activities in which the assessee cooperative society was engaged and therefore eligible for deduction under section 80P (2)(a) of the

Act. It was further prayed that the Hon'ble ITAT, Lucknow Bench in the case of **Income Tax Officer vs. Sahkari Ganna Vikas Samiti, Rupapur Chauraha (Munder), Hardoi** in ITA No. 467/Lkw/2013, vide their order dated 15.07.2015 had dismissed the appeal of the Revenue by relying on the judgment of Hon'ble Allahabad High Court in the present assessee's case, reported in 118 ITR 770 (All) and in the case of **Commissioner of Income Tax vs. Krishak Sahkari Ganna Samiti Limited** reported in 258 ITR 594 (All). It had also distinguished the decision of the Hon'ble Apex Court in the case of Totgar's, by pointing out that the facts of that case were different from the case of **Sahkari Ganna Vikas Samiti** (supra) and no appeal had been preferred by the Revenue against such orders.

9. The ld. AR further drew our attention to the judgment of Hon'ble ITAT, Raipur Bench in the case of **Gramin Sewa Sahkari Samiti, Maryadit** reported in 138 taxman.com 476, wherein the Hon'ble Tribunal had allowed deduction under section 80P(2)(a) to the cooperative Society by holding that the surplus funds parked by the assessee society, by way of short term deposits with cooperative banks, were inextricably inter-linked or interwoven with its business of providing credit facilities to its members. The ld. AR further submitted that during the assessment years 2017-18 and 2020-21, in disallowing the interest, the ld. Assessing Officer had also disallowed interest of Rs.3,62,946/- in the assessment year 2017-18 and Rs.2,69,252.58/- in the assessment year 2020-21 which were the amounts of interest received from cane growers (farmers) against loans granted to farmers, which was eligible for deduction under section 80P(2)(a)(i) of the Income Tax Act. It was also submitted that the society kept the provident fund deduction amount of its seasonal employees i.e. Bhavishya Nidhi in the form of FDRs with nationalized banks. The closing balance of the amount of seasonal employees Bhavishya Nidhi, as held with the Society and appearing on the liabilities side of the balance-sheet under the head, "Udhar Grahan" was Rs.49,09,436/- in the assessment year 2017-18, Rs.26,26,514/- in the assessment year 2018-19 and Rs.

26,23,971/- in the assessment year 2020-21. It was submitted that the Society had no control over these funds and they had to be returned to the employees at the time of their retirement / death. It was submitted that these FDRs, which were made against the PF deduction of seasonal / temporary employees were not the investment of the Society and the Society only acts as a custodian. Thus, the interest accruing on the said investments, were not the income of the Society and could not be taxed under section 56 of the Income Tax Act. It was submitted that all these details had not been examined by the authorities below and therefore, the application of the case of M/s Totgars Cooperative Sale Society to the assessee's case was misplaced. The ld. AR also placed reliance on the decision of the Hon'ble Madras High Court in the case of **K. 2058, Saravanampatti Primary Agricultural Cooperative Credit Society Ltd. v. Income Tax Officer** 426 ITR 251 (Mad) in which the Hon'ble High Court, after considering that the Society was required to maintain statutory reserves of 25% under the Tamilnadu Cooperative Societies Act, held that the same cannot be the surplus fund of the Society as decided in **M/s Totgars Cooperative Sale Society Limited** and after placing reliance on the decision of Hon'ble Supreme Court in the case of **Nawanshahar Central Cooperative Bank Ltd. 289 ITR 6 (SC)**, set aside the assessment for *de novo* and fresh assessment. In view of these arguments, the ld. AR prayed that the decision of the Hon'ble Supreme Court in the case of Totgars and the decision of the Hon'ble Allahabad High Court in the case of **PCIT vs. Cooperative Cane Development Council Limited, Lakhimpur** in ITA No. 183 of 2016, would not have any bearing on the case of the assessee as the aforesaid issues were neither brought or argued before the Hon'ble High Court / Hon'ble Supreme Court in those cases and after considering such arguments, the Hon'ble Supreme Court in the case of **PCIT vs. Cooperative Cane Development Council Limited, Lakhimpur(supra)**, had remanded the matter back to the ITAT to take a fresh decision without being influenced by previous orders passed by them or the Hon'ble High Court. It was further submitted that the subsequent orders of the Tribunal in that case supported the assessee and the Revenue had itself accepted the

fact that interest income earned out investment in statutory reserves was income attributable to the business of the assessee. Therefore, he prayed that the facts and law being similar in the case of the assessee, the Tribunal may follow the precedents cited and delete the additions made by the lower authorities. He also filed a written submission in support of his arguments.

10. On the other hand, Sh. Sanjeev Krishna Sharma, Id. Sr. DR appeared on behalf of the Revenue and also took us through the written submission filed earlier in support of the Revenue's case. It was submitted that in the instant case, the relevant issue had already been decided in favour of the Revenue by the Hon'ble Supreme Court in the case of ***M/s. The Totgars' Cooperative Sale Society Limited vs. Income Tax Officer (2010) 322 ITR 283 (SC)***, wherein the Hon'ble Supreme Court had observed as under:-

".....To say that the source of income is not relevant for deciding the applicability of Section 80P of the Act would not be correct because we need to give weightage to the words "the whole of the amount of profits and gains of business" attributable to one of the activities specified in Section 80P(2)(a) of the Act. An important point needs to be mentioned. The words "the whole of the amount of profits and gains of business" emphasise that the income in respect of which deduction is sought must constitute the operational income and not the other income which accrues to the Society. In this particular case, the evidence shows that the assessee- Society earns interest on funds which are not required for business purposes at the given point of time. Therefore, on the facts and circumstances of this case, in our view, such interest income falls in the category of "Other Income" which has been rightly taxed by the Department under Section 56 of the Act."

11. It was submitted that the deduction under section 80P(2) was available to only the operational income from business and other interest income, which accrues to the assessee society, could not be said to be attributable to the activities of the society. The Id. DR further pointed out that the aforesaid verdict of the Hon'ble Supreme Court had been further followed by the Hon'ble Allahabad High Court in similar cases. In the case of ***CIT vs. Cooperative Cane Development Union Limited***,

Bheera, District Lakhimpur Kheri in ITA No. 520 of 2008, the Hon'ble High Court had held as under:-

"6. In Totgar's Cooperative Sale Society Ltd (supra) the Supreme Court has explained the eligibility of deduction under Section 80-P. It was held that where the investment in securities is not a primary object of the cooperative credit society. In the present case, we are faced with a similar situation. Instead of cooperative sale society, the Society a cooperative cane development union. The purposes of both the societies are common. The objects of the Society do not provide for investment of money in post office or bank, and earn interest and thus the interest earned out of the investments made in the bank would be an interest, which will income from other sources and will be chargeable to tax under Section 56 of the Act.

7. The Income Tax Appeal is allowed. The substantial questions of law as framed by the revenue are decided in favour of revenue and against the respondent-assessee....." (copy of order enclosed as Annexure-B)."

12. He also invited our attention to the subsequent decision of Hon'ble Allahabad High Court in the case of PCIT, Bareilly vs. Cooperative Cane Development Council, Lakhimpur in ITA No.183 of 2016 dated 6.12.2016 wherein the Hon'ble High Court followed the said order in ITA No. 520/2008 cited above and allowed the Revenue's appeal, while dismissing the contentions of the assessee. It was, therefore submitted, that the issue was covered by the judicious verdict of Hon'ble Apex Court and the Hon'ble jurisdictional High Court, wherein substantial questions of law had been decided in favour of the Revenue. Accordingly, the assessee's appeal on the above issue may kindly be dismissed.

13. We have duly considered the facts and circumstances of the case. And also the arguments made by both parties. Since the case of the Revenue is based on the decision of the Hon'ble Supreme Court in the case of Totgars Cooperative Sale Society Limited vs. Income Tax Officer (supra), it would be pertinent to first consider the decision of Hon'ble Supreme Court in that matter. As pointed out by the ld. Sr. DR, as per the said judgment, the income in respect of which deduction is sought must constitute the operational income and not the other income which accrues to the society. In that particular case, the Hon'ble Supreme Court observed

that, in the facts and circumstances of that case, the assessee society had earned interest on funds which were not required for business purposes at the given point of time. Therefore, as it clarified, on the facts and circumstances of that case, they rendered their judgment that such interest income fell in the category of, "other income" which had rightly been taxed by the Department under section 56 of the Act and therefore, was ineligible for deduction under section 80P of the Act. The two judgments of Hon'ble Allahabad High Court that have been cited by the Id. Sr. DR have followed the principle laid down by the Hon'ble Supreme Court and held, that the objects of the society did not provide for investment of money in a post office or bank and earn interest and therefore, the interest earned out of the investments made in the bank would be an interest, which in turn would be income from other sources that would be chargeable to tax under section 56 of the Act. However, as the Id. Authorized Representative has pointed out, the arguments of the nature that the fixed deposits were made on account of the Statutory provisions (of sections 58 and 59 of the U.P. Cooperative Societies Act in this case) and was therefore, the condition precedent to doing of business and accordingly "attributable" to the activities of the assessee cooperative, was not brought before the Hon'ble Allahabad High Court in either of the judgments cited by the Id. Sr. DR. Furthermore, M/s Cane Cooperative Development Council had appealed the judgment of Hon'ble Allahabad High Court in ITA No. 183/2016 to the Hon'ble Supreme Court in Civil Appeal No. 7405 to 7409 of 2021 and placed the statutory rules before the Hon'ble Supreme Court. After considering that such rules may have a bearing on the nature of income and entitlement to exemption under section 80P of the Act, the Hon'ble Supreme Court had remitted the matter back to the Income Tax Appellate Tribunal to decide the appeals afresh, without being bound or influenced by the earlier orders passed by them or by the Hon'ble High Court. In view of such orders of the Hon'ble Supreme Court, the case laws of the jurisdictional Hon'ble Allahabad High Court cited by the Id. Sr. DR did not constitute a binding precedent for the ITAT, Lucknow Bench in the case of Cooperative Cane Development Council in ITA Nos. No.285/Lkw/2015,

474/Lkw/2015, 525/Lkw/2015, 536/Lkw/2015 and 540/Lkw/2015. The Hon'ble ITAT, Lucknow Bench after considering the byelaws and the statutory rules, the decisions of Hon'ble Allahabad High Court in CIT vs. Krishak Sahkari Ganna Samiti Limited 258 ITR 594 (Alld) and CIT vs. Cooperative Cane Development Union Limited 118 ITR 770 (Alld) and the decisions of the Tribunal in Income Tax Officer vs. Sahkari Ganna Vikas Samiti, Rupapur Chouraha (Munder), Hardoi in ITA No. 467/Lkw/2013 held as under:-

"7.1 Now the parties are again before us. We find that assessee had earned interest from fixed deposits from bank and co-operative society. Hon'ble Supreme Court, after acceptance of additional documents had set aside the issue before this Tribunal for readjudication. We find that the arguments of the assessee are that the assessee had placed the funds in the form of fixed deposits with nationalized banks and Co-operative banks in view of the specific requirements of U.P. Co-operative Societies Act. We find that section 58 of the U.P. Co-operative Societies Act requires the net profit to be distributed as under:

"(a) An amount not less than twenty five percent shall be transferred to a fund called the reserved fund:

(b) Not less than such amount as may be prescribed, shall be credited to a Co-operative Education fund to be established in the manner prescribed, and this shall be applicable to such cooperative society also which incur loss in the year,

[Provided that the provisions of this clause shall not apply to a Primary Agriculture Credit Co-operative Society, a Central Cooperative Bank or the Apex Bank.']

(c) An amount that may be prescribed shall be credited to the research and development fund created in the Apex Societies of the concerned class of Co-operative society and which shall be maintained for the purpose of Research and development in the prescribed manner.

(d) an amount not exceeding twenty percent as may be prescribed shall be transferred to a fund called the Equity Redemption Fund to be established and utilized in the manner prescribed by such co-operative Society which has the subscription of the State Government in its share capitals."

7.2 Hon'ble Allahabad High Court in the case of CIT vs. Krishak Sahkari Ganna Samiti Ltd. [2002] 258 ITR 594 (Alld) has held that the investment by co-operative Society in the form of Government securities, equivalent to 25% of its profit, was the requirement of keeping the same as statutory reserve therefore, has held that such earning of interest was attributable to

the activity carried on by the assessee. The relevant findings of Hon'ble Allahabad High Court are reproduced below:

"Clause (c) of Section 80-P(2) exempts income of cooperative society to the extent mentioned in that section if the profits or gains are 'attributable' to the activity in which the Cooperative Society is engaged. The findings are that under statutory provisions the Cooperative Society is bound to invest 25% of its profits in Government securities. The assessee complied with this provision. In the process, it earned interest on these investments. The question is whether such profits or gains are attributable to the activity of supplying sugarcane carried on by the assessee. In Cambay Electric Supply Industrial Co. Ltd. v. CIT [1978] 113 1TR 84 the Supreme Court held that the expression 'attributable to suggests that the Legislature intended to cover receipts from sources other than the actual conduct of the business of the assessee. The investment of the statutory percentage of its profits in Government securities was a condition of the carrying on the business. The profits or gains from such investments were connected with or incidental to the carrying on of the actual business. They were, in our opinion, rightly held by the Tribunal to be attributable to the activity carried on by the assessee within the "meaning of clause (c) aforesaid. We therefore, answer the question referred to us in the affirmative in favour of the assessee and against the Department.

8. Following the aforementioned ratio laid down by the Division Bench which we consider binding on us, we too answer the question referred to us in the affirmative in favour of the assessee cooperative Society and against the Revenue."

7.3 Further we find that the assessee has relied on a judgment of Raipur Tribunal in the case of Gramin Sewa Sahakari Samiti Maryadit vs. Income Tax Officer [2022] 138 taxmann.com 476 (Raipur-Trib.) wherein the Tribunal has held that the interest earned by the assessee from deposit with co-operative bank and nationalized bank was eligible for deduction u/s 80P(2)(a) of the Act.

7.4 The above two judgments respectively by Hon'ble High Court and Tribunal hold that the interest earned by a Co-operative Society on deposits, which are statutorily required to be kept in the form of bank deposits or Government securities, are attributable to the business of an assessee.

7.4 Here in the present cases, we do not find the figures regarding the interest which the assessee may have earned on fixed deposits attributable to the making of statutory reserves. We further find that bye laws of the assessee has to be gone through which, though are available in the paper book, but require examination by the Assessing Officer as these were filed before Hon'ble Supreme Court as additional evidences. Therefore, we deem it appropriate to remit the issue of deduction u/s 80P for readjudication by

the Assessing Officer, who, in the light of judgment of Hon'ble Supreme Court and keeping in view the judgments relied on by the assessee and keeping in view the additional documents, as filed before Hon'ble Supreme Court, will adjudicate the issue afresh. Needless to say that the assessee will be provided sufficient opportunity of being heard."

14. Subsequent on the said remand, the matter was examined by the Revenue and after consideration of the decision of the Hon'ble Supreme Court and the other judgments relied upon by the Hon'ble ITAT while remanding the matter back to him, the Id. Assessing Officer held as under:-

"3.3 Reason for inference drawn that no variation is required on this issue:

The submissions made by the Assessee have been examined thoroughly particularly the bylaws of the Assessee Society and the U. P. Co-operative Societies Act. On going through the by-laws of the Assessee Society, it has been noticed that its Part 14 i.e. "Disposal of Net Profit and Societies" Assets and funds and appropriation thereof deals with the appropriation of Net Profits and Funds of the Assessee Society. Further, it has also been noticed that the aforementioned Part-14 of the bylaws of the Societies are in accordance with section 58 and 59 of the U. P. Co-operative Societies Act. Further, it has also been noticed that the secured reserve as well as other reserves are created in Annual General Meeting of the Society as per its bylaws and get accumulated over the year. These reserves are kept in co-operative and nationalized banks from where the Assessee earns the interest income under question. In view of the aforementioned facts, it is inferred that the reserve funds kept by the Assessee with Co-operative and nationalized banks are as per the by-laws of the Society and accordingly interest income arising from these funds can be held to be attributable to its main activities and therefore, the assessee is eligible for deduction in respect of this interest income under section 80P(2)(a) of the Act as per the case laws referred to and relied upon by the Hon'ble L.T.A.T. i.e. Judgments of Hon'ble Allahabad High Court in the case of CIT Vs. Krishak Sahkari Ganna Samiti Limited [2002] 258ITR594 (Allahabad) and ITAT, Raipur in the case of Gramin Sewa Sahakari Samiti Maryadit Vs. Income Tax Officer 92022), 138 Taxmann.com 476 (Raipur Tribunal)."

15. Thus, the principle that interest income arising from investments in statutory reserve funds and other funds as per the provisions of sections 58 and 59 of the U.P. Cooperative Societies Act is "attributable" to the main activities of that Society, has been accepted by the Revenue. The assessee is governed by the same

U.P. Cooperative Societies Act and Rules as the Cooperative Cane Development Council, Lakhimpur and therefore, in its case also, it must be held that interest earned from investment made by it as per sections 58 and 59 of the U.P. Cooperative Societies Act r.w.r.173 of the U.P. State Cooperative Rules, is attributable to the activity in which the assessee is engaged and therefore, is eligible to be deducted under section 80P(2)(a) of the Act.

16. We have further observed that the Hon'ble Madras High Court in the case of **K. 2058, Saravanampatti Primary Agricultural Co-Operative Credit Societies Ltd. v. Income Tax Officer** 426 ITR 251 (Mad), after considering that the Societies was required to maintain a statutory reserve of 25% under the Tamilnadu Cooperative Societies Act held that the same could not be regarded as the surplus funds of the Society as decided in **M/s Totgars Cooperative Sale Society Limited** (supra) and therefore, it set aside the assessment of the Id. Assessing Officer in the light of the decision of the Hon'ble Supreme Court in **CIT vs. Nawanshahar Central Cooperative Bank Ltd. 289 ITR 6 (SC)** 'Therefore, in view of the arguments made by the learned Authorized Representative, that the investment in fixed deposits and other securities or on account of the provisions of sections 58 and 59 of the U.P. Cooperative Societies Act, 1965 and section 173 of the U.P. Cooperative Societies Rules, 1968, it is quite clear that since it has been held that interest on such investment is attributable to the main activity of the assessee cooperative society, the interest earned from such investments ought not to be regarded as a surplus within the meaning of Totgar's Case, but an interest attributable to the main activity of the assessee cooperative and therefore, deductible under section 80P. The assessee has submitted copies of its byelaws and the detailed breakup of investments and interest arising on the same. However, we observe that the Id. Assessing Officer has not examined the breakup of such investments and the interest earned on the same, with reference to the byelaws or sections 58 and 59 of the U.P. Cooperative Societies Act, 1965 and 173 of the U.P. Cooperative Societies

Rules, 1968 as he was of the view that no such interest was deductible in view of the decision of Hon'ble Supreme Court in the case of Totgars (supra). Now that the position with regard to such investments has been clarified by the Hon'ble ITAT in the case of Cooperative Cane Development Council, Lakhimpur and accepted by the Revenue in the consequent assessment, we deem it appropriate to restore the matter in all three cases back to the file of the Id. Assessing Officer for the limited purpose of re-computing the admissible deduction under section 80P with reference to the interest earned on investments made in accordance with sections 58 and 59 of the U.P. Cooperative Societies Act, 1965 and 173 of the U.P. Cooperative Societies Rules, 1968 . Ground numbers 1 to 5 are accordingly allowed. With regard to Ground no 6 on the issue of adding back the interest on PF balance of the seasonal employees of the society, we observe that the same cannot be considered to be the investments of the society and accordingly the interest accruing on the said amount cannot be said to be income of the society. Therefore, any adding back of such interest income to the income of the society is not maintainable and accordingly, additions made on this account in A.Ys. 2017-18 and 2020-21 are deleted. In view of the fact that we have allowed Ground numbers 1 to 5 , Ground numbers 7 to 9 are rendered infructuous and are dismissed as such

17. In the result, the appeal of assessee is partly allowed.

Order pronounced on 30.09.2024 at Lucknow, U.P.

Sd/-

**[SUDHANSHU SRIVASTAVA]
JUDICIAL MEMBER**

Sd/-

**[NIKHIL CHOUDHARY]
ACCOUNTANT MEMBER**

DATED: 30/09/2024

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Copy forwarded to:

1. Appellant -
2. Respondent -
3. CIT DR, ITAT,
4. CIT,
5. The CIT(A)

By order
Sr. P.S.