IN THE INCOME TAX APPELLATE TRIBUNAL

NAGPUR BENCH, NAGPUR

BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND

SHRI K.M. ROY, ACCOUNTANT, MEMBER

ITA no.390/Nag./2019
(Assessment Year : 2012–13)

Asstt. Commissioner of Income Tax
Circle–5, Nagpur ……. Appellant

v/s

The Nirmal Ujwal Credit
Co–operative Society Ltd.
Main Road, Nandanvan, Nagpur 440 009 ……. Respondent
PAN – AAAAT6554H

Assessee by : Shri Manoj G. Moryani
Revenue by : Shri Vikash Agrawal

Date of Hearing – 07/11/2024	Date of Order – 27/11/2024

O R D E R

PER K.M. ROY, A.M.

The present appeal has been filed by the Revenue challenging the impugned order dated 27/09/2019, passed by the learned Commissioner of Income Tax (Appeals)–1, Nagpur [*"learned CIT(A)"*] for the assessment year 2012–13.

2. The following grounds have been raised by the Revenue.

> *"1. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was correct in allowing the relief in respect of the addition made by the AO u/s 80P(2) of the I.T. Act 1961 on account of Interest received from other than Co-op. Society, in view of the Honorable Apex Court judgment in the case of The Citizen Co-operative Society Ltd, Hyderabad -Vs ACIT-Cir(9)(1), Hyderabad in CA No. 10245 of 2017 and also in spite of the fact that Interest income earned from commercial banking Institutions would not be entitled for deduction u/s 80P(2) of the I.T. Act, 1961.*

2. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A)-1, Nagpur, was correct in deleting the additions made by the Assessing Officer estimating the income in respect of construction activity under taken by the assessee and no income there from has been declared by assessee.

3. Whether on facts and in the circumstances of the case and in law, the Id. CIT(A) was correct in interpreting the amendment in the clause no. 4 of section 80P w.e.f. 1/4/2007.

4. Any other ground that may be raised during the proceedings."

4. Fact in Brief:- The assessee is a Multi-State Co-operative Society engaged in business of providing credit facilities and developing housing project for its members. The assessee had filed its return of income for the year under consideration showing NIL income after setting–off brought forward loss of the preceding assessment year i.e., A.Y. 2010-11. The Assessing Officer while completing the assessment vide order dated 27/03/2015, made two additions which were added to the total income of the assessee. The first addition of ₹ 1,24,04,174, pertains to interest income earned by the assessee Society from deposits (FDR) with Nationalized Banks. The Assessing Officer added this interest under the head *"Income From Other Sources"*, treating this as a non–business income. The assessee submitted before the Assessing Officer that in the assessee's line of business, the assessee has to pay interest on deposit by the Members and it is not practically possible for the assessee that all deposits collected may be advanced to borrowers at the same time. Also the assessee had to keep some amount as bank FDR so that the same can be utilized when depositors prematurely withdraw its deposits or for advancing loan. Hence, the assessee had to keep deposits with Nationalized or Co-operative Banks. Also no Society or Bank will keeps its funds idle and will not pay interest to the assessee or

customers for short term deposit when the funds are not required immediately. Hence, keeping short term deposits and interest earned on deposits with Nationalized Banks are part and parcel of routine business of the assessee. Hence, the Assessing Officer was not justified in bifurcating the interest income into the interest income from Nationalized Banks and Co-operative Banks and only treating the interest income from Nationalized Banks and Co-operative Banks and only treating the interest from Nationalized Banks as taxable under head *"Income from Other Sources"*. It was submitted by the assessee that the interest from Nationalized Bank is not taxable under section 80P of the Act. Aggrieved by this action of the Assessing Officer, the assessee filed appeal before the first appellate authority.

5. The submissions of the assessee, as contained in the impugned order vide Para–4.0 of the learned CIT(A) are reproduced below:–

> **"***1. The appellant is a credit co-operative society engaged in the business of providing credit facilities to its members. Additionally the appellant also constructing the housing project to provide housing facilities to its members in the name of Nirmal Nagri Housing Project. For the year under consideration the appellant filed return of income U/s. 139(1) on 26/09/2012 declaring total income of Rs. Nil. The return of the appellant was processed u/s. 143(1) of the Income Tax Act, 1961.*
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> 2. *The case of the appellant was selected for scrutiny under CASS and notice U/s. 143(2) was issued and served upon the appellant. During the assessment proceedings, the counsel for the appellant, Shri Madhav Vichare, Chartered Accountant and Authorised Representative (AR) of the appellant attended the proceedings from time-to-time and provided explanations and documents, whenever called.*
>
> *3. The AO asked the appellant to furnish computation of income, copy of Audit Report, details of additions to fixed assets, details of deductions claimed, details of TDS, details of Bank Accounts and details of various other expenses, etc. The appellant through his AR explained the case from time to time. From the documents submitted and*

explanations provided by the appellant, the AO notices that the appellant had earned interest income from Fixed Deposits with various banks to the tune of Rs.1,24,04,174/-. The AO from above concluded on his own that the appellant was consistently keeping deposits with various banks and earning interest income.

4. The AO enquired about the nature of deposits from the appellant, to which the appellant stated that, "the appellant had kept the deposits with either nationalized banks or co-operative bank. The management has informed that there is no statutory requirement as per The Maharashtra Co-operative Society Act for investments". From this the AO concluded that the deposits made by the appellant were 'non-statutory investments' and hence any interest income which arises from such investments shall be treated as income from Other Sources.

With respect to this, appellant wished to submit as under:-
The appellant is a credit co-operative society engaged in the business of accepting deposit from its members and providing credit facilities to its members. The society is governed by Maharashtra State Cooperative Act and it is operated and run as per approved Bye-Laws, notified under the said Act. The appellant is in the business of accepting deposits from members and advancing loans to members. It means the society is dealing in money.

The business of appellant is to collect deposit from its member in money and providing credit facilities to its members in money terms only. Therefore amount received by appellant are not surplus fund earned out of earning. It is spare/available liquid fund which is required to be kept in bank till the time it is lent to any member requiring it. Therefore, in order to manage the cost of fund, the appellant is required to deposit it in bank to earn interest in order to meet the cost of interest payable to depositor members on such deposit, until it is lent to members. Therefore, it is not surplus fund available with the appellant at any moment of time. As the funds are invested in bank to manage to cost of the funds and to earn more interest on money, as deposits collected by it from various members are interest bearing, it is requirement of the business of the appellant to deposit the fund till the time it is lent to other members and hence interest thereon is to taxable under the head Profit and Gains of Business and Profession. The deposits collected by the society are not surplus funds but construed as Working Capital for it. Being working capital funds, the interest earned on it is also business income of the appellant. Hence, keeping deposit of Working Capital in bank or investment product is an activity "ATTRIBUTABLE" to the business of the appellant, as specified in provision of section 80P(2)(a)(i). Therefore, the whole income of appellant is eligible for deduction U/s. 80P(2)(a)(i).

5. The learned AO relied on the judgment of Supreme Court in the case of Totagar's Cooperative Society Vs. ITO Karnataka [188 TAXMAN 282 (SC)] for treating the interest on deposits as additional income earned on surplus fund to taxable under the head income from other sources. In the case of Totagar's Co-operative Society the Supreme Court held as under:–

"the interest held not eligible for deduction under section 80P2(a)(i) was not the interest received from members for providing credit facility to them. What was sought to be taxed under section 56 was the interest income arising on the surplus invested in deposits which was not required for the business purpose. Such interest income would come into the category of "income from other sources" and hence, such interest income would be taxable under section 56 as rightly held by assessing officer. The headnote to section 80P indicates that the said section deal with deduction in respect of income of corporative societies Section 80P(1), inter alia, states that where gross total income of cooperative society includes any income from more than one or more sources, then such income shall be deducted from gross total income in computating the total taxable income of assessee-society. An income, which is attributable to any specified activity in section 80P(2) would be eligible for deduction. In the instant case, the assesse society regularly invested funds not immediately required for business purpose. Interest on such investments, therefore could not fall within meaning of the expression 'profit ad gains of business'. Such interest income could not be said to be attributable to the activity of society, namely carrying on the business of agricultural produce of its members. Therefore, looking to the facts and circumstances of the case, the AO was right in taxing the interest income under section 56. To say that source of income is not relevant for deciding the applicability of section 80P would not be correct because one needs to give weightage to the word 'the whole of the amount of profit and gains of business' attributable to one of the activities specified in section 80P(2)(a). The words ' the whole of the amount of profit and gain of business' emphasis that the income, in respect of which deduction is sought, must constitute the operational income and not the other income which accrues to society. In the instant case, the evidence shows that the assessee-society earned interest on funds which were not required for business purpose at the given point of time, therefore, on the fact and circumstances of the given case, such interest income fell in the category of other income which had rightly been taxed by the department under section 56".

The decision reads as interest earned on surplus funds not required for business purpose is taxable under the head income from Other Sources. The said case law is clearly distinguished in the case of appellant as there are no surplus funds invested by the appellant. Therefore ratio of decadency of the said case law is not applicable in the case of appellant.

6. The provision of Section 80P(2)(a) read as under

(a) In the case of co-operative society engaged in

- *i) Carrying on the business of banking or providing credit facilities to its members,*
- *ii) --*
- *iii) --*
- *iv) --*
- *v) --*
- *vi) --*

vii) --

From the above, it is clear that provisions of Section 80P(2)(a)(i) are specifically applicable to assessees being co-operative society engaged in providing credit facilities to its members.

The society's main business is money lending and earning interest from it, and hence interest income earned from investments made with banks shall be Income from Other income and not the Income from Business? Therefore depositing such funds is need of business and hence, interest earned thereon is taxable under the head Profit and Gains of Business and Profession.

The funds received in form of interest bearing deposit from members by appellant are not surplus fund. These funds are working capital for the society. Being working capital, the appellant is required to manage its cost. The cost bearing funds cannot be left idle till the time they are lent to other members charging interest thereon. Therefore, appellant deposits such surplus funds with nationalized bank or other co-operative so that, the cost of such funds should be met partially and no loss on account of interest to be incurred by the appellant. Therefore, keeping deposit with banks or co-operative societies is an activity attributable to the business of appellant. The interest earned from such activity is also covered under section 80P(2)(a)(i). Hence, the eligible for deduction under section 80P(2)(a)(i).

Accordingly, the addition of Rs. 1,24,04,174/- made by the AO is not correct and bad in law and needs to be deleted.

7. <u>Judicial Pronouncements relied upon by the appellant</u> :

1. CIT-III v. The Baroda Peoples Cooperative Bank (280 ITR 272 (Gujrat High Court) wherein it has been held as under

"There is no distinction between investments relatable to statutory reserves and investment from voluntary reserves as they from integral part of banking business, that being the only activity of the Appellant. Hence all income is attributable to business of banking."

2. M/s. Guttigedarara Co-operative Society Ltd. v. ITO (377 ITR 464) (Karnataka High Court) where in it has been held as under

From the aforesaid facts and rival contention, the undisputed facts which emerge are, certain sums of interest were earned from short term deposits and from savings bank account. The Appellant is a co-operative society providing credit facilities to its members. It is not carrying on any other business. The interest income earned by the Appellant by providing credit facilities to its members is deposited in the banks for a short duration which has earned interest. Therefore, whether this interest is attributable to the business of providing credit facilities to its members, is the question."

Therefore, the word 'attributable to' is certainly wider in (import than the express "derived from". Whenever the legislature wanted to give a restricted meaning, they have used the expression "derived from". The expression "attributable to" being of wider import, the said expression is used by the legislature whenever they intended to gather receipts from sources other than the actual conduct of the business. A Co-operative Society which s carrying on the business of providing credit facilities to its members, earns profits and gains of business by providing credit facilities to its members. The interest income so derived or the capital, if not immediately required to be lent to the members, the society cannot keep the said amount idle. If they deposit this amount in bank so as to earn interest, the said interest income is attributable to the profits and gains of the business of providing credit facilities to its members only. The society is not carrying on any separate business for earning such interest income. The income so derived is the amount of profits and gains of business attributable to the activity of carrying on the business of banking or providing credit facilities to its member by a co-operative society and is liable to be deducted from the gross total income under Section 80P of the Act."

3. *Shivneri Nagri Sah. Pat Sanstha Maryadit v. ITO [2015 TaxPub(DT) 1125 (Pune-Grib)]*

4. *Yasho mandir Sahakari Patpedhi Ltd. v. ITO [2016 TaxPub(Dt) 0923 (Mum-Trib)] wherein it was held as under*

The surplus funds of the Appellant's business of providing credit facilities to its members, which were not due to the members were invested in Central Govt. Bonds and in 11% Secured Redeemable Non-convertible Bonds. These surplus funds were attributable to the assesse's business of providing credit facilities to its members and, therefore the resultant interest income would also, constitute business income and, therefore, deduction under section 80P would be allowed on same.

5. *Shri Venkatesh Nagri Sah. Pat Sanstha Maryadit v. ITO, Sangli (Pune Trib)*

6. *M/s. Tumkur Merchants Souhards Vs. The Income Tax Officer (Banglore Trib)*

7. *M/s. Jaali Taluka Sahakari, Patpedhi Maryadit v. ITO (Mumbai-Trib)*

8. *Sindhudurg Zilla Madhyamik Adhyapak Sahakari Patpedhi Maryadit v. ITO (Pune-Trib)*

9. *Veejmandals Workers Federation Sahakari Patsantha Maryadit V. ITO (Pune-Trib)*

10. *Punjab State Cooperative Federation of Housing Society Ltd. v. ACIT (Chandigarh-Trib)*

11. Tibetan Rabgayling Primary Agricultural Credit Co-operative Society Ltd. V. ITO (Banglore-Trib)

12. M/s. Vaibhao Laxmi Mahila Nagri Sanstha Ltd. v. CIT(A) Nagpur-Dicided by your Honor.

8. In view of the foregoing submissions and explanation, it is respectfully submitted that appellant has deposited the business funds in the nationalized banks. The appellant has deposit of the said funds as per the business requirement to meet the cost of funds and not with the intention to earn additional income. Hence your Honour is requested to consider the matter in above perspective and kindly delet the additions made by the learned AO and allow the deduction U/s 80P(2)(a)(i) of the Act.

9. The AO in his assessment order further contended that although the main business of the appellant is to provide credit facilities to its members, the appellant had diverted the funds of the society and accordingly the income may have been earned is also diverted from the main activity of credit facility to construction and building development by the name of 'Nirmal Nagri'

10. Further, the AO contended that since the appellant was undertaking Construction activity, the profit of the same should be derived using 'Percentage of Completion Method' as mentioned in the Audit Report. Moreover, the AO contended that the appellant had filed statement of affairs regarding the construction activity for AY 2012-13, the cost of Closing WIP of the project of 'Nirmal Nagar' as on 31/03/2012 amounted to Rs. 1,05,56,38,260/-. The AO on presumption basis @8% of total Closing WIP added Rs. 8,42,11,060/- to the total income of the appellant.

11. With respect to the above addition made the appellant wished to submit that, the appellant is not in the business of providing Construction services to third parties and not involved into the business of construction Activity. The appellant is doing the construction activity only for the members of the society and not for selling the same in open market and therefore the same cannot be treated as business of the appellant.

12. Further, the AO followed Accounting Standard-7 for income to be recognized from the Construction Contracts. The gist of AS-7 Construction Contracts is provided hereunder which reads as:

This Standard should be applied in accounting for construction contracts in the financial statements of contractors.

For the purpose of this Standard, construction contracts include:

a) Contracts for the rendering of services which are directly related to the construction of the assets, for example, those for the services of project managers and architects; and

b) Contracts for destruction or restoration of assets, and the restoration of the environment following the demolition of assets

Contract revenue should comprise:

a) The initial amount of revenue agreed in the contract; and
b) Variations in contract work, claims and incentive payments;
   i) To the extent that is probable that they will result in revenue: and
   ii) They are capable of being reliably measured.

13. It is important to mention here that AS-7 in respect of Construction Contract is applicable only to contractors who are regularly involved in construction activity. Here, the appellant is neither involved in the business of construction nor he is a contractor. The appellant is not providing any type of construction services to anyone including members of the society, the appellant is constructing the housing project on its own and then selling it to the members of the society. The revenue will be generated from the sale of flats/duplexes/ bungalows etc. which clearly shows that the receipt is not from construction contract as presumed by the AO for making addition. Form this it can be seen that AO clearly misinterpreted the guidelines of AS-7 and made the addition. Accordingly, AS-7 Construction Contract cannot be applicable to the appellant.

14. Moreover, the rates provided for calculating presumption basis of taxation as applied by the AO are specifically prescribed in section 4AD of the Income Tax Act, 1961. In it is specifically mentioned that the applicable percentage are to be calculated only on the Gross Receipts or Turnover of the business of the assessee and there is no provision to apply the same on the Closing Stock/WIP as done by the AO in the case under consideration.

15. The appellant's activity of housing project is present in the earlier assessment years as well as in the later assessment years in the books of accounts and the same is duly accepted by the department as it is. The appellant has accounted for the income/losses from this housing project as and when it was sold by the appellant and therefore there is no loss to revenue. Therefore, the AO has erred in taking the housing project as construction activity and further calculating the income from this construction activity of the appellant at the rate of 8% based on presumption basis of taxation provided in Section 44AD.

Hence your Honor is requested to consider the matter in above perspective and kindly delete the additions made by the learned AO of Rs. 8,42,11,060/- being 8% of the Closing WIP as shown in Profit & Loss Account amounting to Rs. 1,05,26,38,260/-.

16. The another important aspect which deserves to be appreciated is that the Assessing Officer has erred in drawing reference from section 44AD. Section 44AD is a section for presumptive taxation, where in the statute has provided a threshold limit of Rs. 2 Cr. If it exceeds Rs. 2.00 Cr. Then the person require maintain the regular books of accounts and required to get it audited. Accordingly the appellant has maintained the

regular books of accounts and duly disclosed amount as work in progress and got same audited by the Chartered Accountant. The AO has accepted the same Audited books of account in which the Work in Progress is disclosed without any rejection. Moreover, the section 44AD provides computation of income at the rate of 8% of gross receipts/gross turnover. For the year under consideration, few advance bookings were received but not sale deeds were executed. Therefore, the appellant has reported nil turnover/gross receipts in the Audited Financial Statements. The section 44AD can be applied only on the gross turnover or gross receipts. As in the present case what was received from the members were booking advances and being in a nature of liability same was duly reported by the appellant as a liability in the balance sheet. Therefore, in the absence of any gross turnover or gross liability section 44AD is not applicable or if applied the income estimated by the Assessing Officer will be Zero as turnover is zero.

17. The Assessing Officer erred in estimating income without rejecting books of accounts. The assessing Officer accepted complete books of accounts but ironically discarded income and estimated profit. The income can be estimated only in two circumstances, either in case of an ex-parte assessment or when books of accounts are rejected. In this case neither an ex-parte order is passed nor books are rejected. The section 145(3) provides that if Assessing Officer is not satisfied about the completeness or correctness or accounting method used by the assessee, he can resort to best judgment assessment. In this case the Assessing Officer in current year as well as preceding years have accepted accounting method followed by the appellant. In most of the cases, the returns were scrutinized and orders are passed under section 143(3). The Assessing Officer has not made out a case of completeness or correctness of books of accounts. Therefore, the Assessing Officer has erred in rejecting books of accounts. Moreover, it is not the case were the appellant society has not paid due taxes. The appellant has paid due taxes in the succeeding years when sale deeds were executed. Therefore, the Assessing Officer erred in estimating income of the appellant without rejecting books of accounts and giving a cogent reason for estimating income of the appellant.

18. As regarding the contention of AO in disallowing c/f losses of Rs. 8,10,36,076/-, the appellant wishes to submit that it has annexed the chart prepared on the basis of returned loss and assessed loss by the department itself. Accordingly, the AO had accepted the carry forward of losses for those years. So there is nothing wrong done on part of the appellant in claiming those c/f losses to be set-off against income of the current year.

Hence your Honour is requested to consider the matter and kind delete the disallowance done by AO of set-off of carried forward losses of Rs. 8,10,36,076/-

19. It is very well proved that the AO, with prejudice mind, has made additions to the total income of the appellant without in depth verification of the facts of the case. Therefore, the addition made by the Ld. AO with prejudice mind is bad in law, untenable and required to be deleted."

6. The learned CIT(A), considering the submissions of the assessee held that the ratio laid down by the Hon'ble Supreme Court in Totgars Co–operative Sale Society Ltd. v/s ITO, [2010] 188 Taxman 282 (SC), are not applicable to the facts of the present case and, hence the Assessing Officer was not justified in coming to the conclusion that the sum of ₹ 1,24,04,174, is not attributable to the credit business of the assessee. The conclusion drawn by the learned CIT(A) by accepting the claim of the assessee and by deleting the addition made under section 80P of the Act, are reproduced below:–

> *"5.0 Ground No. 1: For the year under consideration the society has received an amount of Rs. 1,24,04,174/- as interest income from the funds parked with nationalized banks and co-operative banks. The assessing Officer disallowed same by treating it as an income from other sources, not directly attributable to the credit business of the appellant. The Assessing Officer also relied on the judgment of the Apex Court in the case of Totagars Co-operative Society.*
>
> *5.1 The appellant has made a detailed submission trying to distinguish aforementioned judgment of the Supreme Court from that of the facts of the appellant's case. The AR also relied on the host of judgments of various High Courts and Tribunals. The AR also sighted and relied on few judgments of jurisdictional Nagpur Tribunal and the orders passed by the CIT(A)-1, Nagpur in similar cases.*
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> *5.2. I have perused all the judgments sighted by the Assessing Officer and the AR appearing for the appellant. I am of the considered opinion that the issue involved in this appeal is no more res integra. There are plethora of judgments of various judicial forums which have endorsed the proposition that the interest earned on investment of operational funds is an income attributable to the business of the society. I find that the A.O. has based his disallowance on certain premises that in the light of the principles enunciated by the Supreme Court in Totgars Co-operatives Sale Society (Supra). The AO has opined that assessee is having surplus funds which the assessee has invested in term deposits with the banks and on such investment interest accrued to the assessee. In view of the Assessing Officer, such interest would fall under the head "income from other sources" under section 56 and not under section of the Act and consequently the assessee would not be entitled to deduction u/s. 80P(2)(a)(i). The AO also stated that the assessee society has invested its surplus funds and earned interest on them. The assessee has invested funds in commercial banks and thus it should have been offered u/s. 56 of the Act. The assessee society earns interest on funds which are not required for business purpose at the*

given point of time. Therefore, he opined that interest income earned from investments kept at commercial banks should have been treated as "Income from Other Sources" u/s. 56 of the Act.

5.3 A prudent business requires some operational funds to be kept in liquid assets so that it could be redeemed on demand when the members of the society ask for redemption of deposits kept with the society. In this context, whether this interest is attributable to the business of providing credit facilities to its members, is the question that required consideration. Section 80P(2)(a)(i), which is a specific clause applicable only to Cooperative society engaged in the business of providing credit facilities to members, categorically states that all the incomes earned by it, which is 'attributable' to its business, is eligible for deduction. It is pertinent to mention here that the word 'attributable' used in the said Section 80P(2)(a)(i) is of great importance. The Apex Court had an occasion to het: the meaning of the word 'attributable' as supposed to derive from its use in various other provisions of the statute in the case of Cambay Electric Supply Industrial Co. Ltd V- CIT [1978] 113 ITR 84 (at page 93) as under :-

> *'As regards the aspect emerging from the expression "attributable to" occurring in the phrase "profits and gains attributable to the business of the specified industry (here generation and distribution of electricity) on which the learned Solicitor-General relied, it will be pertinent to observe that the legislature has deliberately used the expression "attributable to" and not the expression "derived from". It cannot be disputed that the expression "attributable to" is – certainly wider in import than the expression "derived from". Had the expression "derived from" been used, it could have with some force been contended that a balancing charge arising from the sale of old machinery and buildings cannot be regarded as profit and gains derived from the conduct of the business of generation and distribution of electricity. In this connection, it may be pointed out that whenever the legislature wanted to give a restricted, meaning in the manner suggested by the learned Solicitor-General, if has used the expression "derived from", as, for instance, in section 80J. In our view, since the expression of wider import, namely "attributable to", has been used, the legislature intended to cover receipts from sources other than the actual conduct of the business of generation any distribution of electricity."*

5.4 Therefore, the word "attributable to" is certainly wider in import than the expression "derived from". Whenever the legislature wanted to give a restricted meaning, they have used the expression "derived from". The expression "attributable to" being of wider import, the said expression is used by the legislature whenever they intended to gather receipts from sources other than the actual conduct of the business. A Co-operative Society which is carrying on the business of providing credit facilities to its members earns profits and gains of business by providing credit facilities to its members. The interest income so derived or the capita, if not immediately required to be lent to the members, the society cannot keep the said amount idle. If they deposit this amount in bank so as to earn interest, the said interest income is attributable to the profits and gains of the business of providing credit facilities to its members only. The society is not carrying on any separate business for

earning such interest income. The income so derived is the amount of profits and gains of business attributable to the activity of carrying on the business of banking or providing credit facilities to its members by a co-operative society and is liable to be deducted from the gross total income under Section 80P of the Act.

5.5 In this context when the judgment of the Apex Court in Totgars Co-operative Sale Society's case (Supra), on which reliance is placed, in considered, the Supreme Court was dealing with a case where the assessee/Co-operative Society, apart from providing credit facilities to the members, was also in the business of marketing of agricultural produce grown by its members. The sale consideration received from marketing agricultural produce of its members was retained in many cases. The said retained amount which was payable to its members from whom produce was bought, was invested in a short-term deposit/security. Such an amount which was retained by the assessee-Society was 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 under Section 80P(2)(a)(iii) of the Act. Therefore, considering the peculiar facts of the said case, the Apex Court held the assessing officer was right in taxing the interest income indicated above under Section 56 of the Act. Further the Apex Court made it clear that they are confining the said judgment to the facts of that case. Therefore, it is clear Supreme Court was not laying down any law.

5.6 Whereas, the appellant society's primary objective is to give credit facilities to its members from the funds received from the members by way of collection of deposits from its members in the common fund and such common fund is deployed in the form of granting loan to the members of the society. As the co-op. credit society is engaged in the money lending business/pure credit financing business, it would be required to maintain certain liquid funds as per various rules and regulations and also to meet the minimum requirement of the funds. As a measure of safety, and to maintain minimum liquid and convenience of funds. As a measure of safety, and to maintain minimum liquid and convenience of fund movement, the appellant society had to keep its surplus liquid funds with different banks including nationalized banks. The issue dealt with the Hon'ble Supreme Court in case of Totgars (Supra) is extracted, for appreciation of facts as under

> *"What is sought to be taxed under 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 purpose? The assessee(s) markets the produce of its members whose sale proceeds at times were retained by it. In this case, we are concerned with the tax treatment of such amount. Since the fund created by such by such retention was not required immediately for business purposes, it was invested in specified securities. The question, before us, it whether interest on such deposits/securities, which strictly speaking accrues to the member's account, could be taxed as business income under section 28 of the Act? In our view, such interest income would*

come in the category of 'income from other sources', hence, such interest income would be taxable under section 56 of the Act, as rightly held by the assessing officer…"

5.7 From the above, it emerges that—

(a) that assessee (issue before the Supreme Court) has admitted before the AO that it had invested surplus funds, which were not immediately required for the purpose of its agricultural marketing business, in short term deposits;

(b) that the surplus funds arose out of the amount retained from marketing the agricultural produce of the members.

(c) that the surplus had arisen emphatically from marketing of agricultural produces.

5.8 To distinguish the present case under consideration, the entire funds of the Appellant was utilized for the purposes of business and there were no surplus funds. While comparing the state affairs of the present appellant with that of the Totgars' Co-operative Society (before the Supreme Court), the following apparent dissimilarities emerge, name:

(1) in case of the appellant, the entire funds were utilized for the purpose of business and that there were no surplus funds;

- in the case of Totgars, it had surplus funds, as admitted before the AO, out of retained amounts on marketing of agricultural produce of its members;

(2) in the case of present appellant, there is no fact finding recorded by the Assessing Officer that the appellant has invested surplus fund generated from non-core activities. In case before Supreme Court, Surplus funds parked in the banks were relating to the business of 'marketing of agricultural produce'

5.9 Considering the factual matrix of the case before Supreme Court and the present case, I am of the considered view that the ratio laid down by the Hon'ble Supreme Court in the case of Totgars Co-op. Sale Society Ltd. (supra) is not applicable to the appellant's case. The appellant has placed its reliance upon decision of the Hon'ble Karnataka High Court in the case of Tumkur Merchants Souharda Credit Co-operative Ltd. V/s ITO (Supra) which has considered the decision of the Hon'ble Supreme Court in the case of The Totgar's Cooperative Sales Society Ltd. Vs. ITO. Considering the same, and in view of the above facts, I am of the firm view that the AO was not justified in coming a conclusion that the sum of Rs. 1,24,04,174/- is not attributable to the credit business of the appellant. In result the appellant's claim of deduction under section 80P on interest income of Rs. 1,24,04,174 is allowed."

7. The Revenue being aggrieved by the order so passed by the learned CIT(A), filed appeal before the Tribunal.

8. Before us, the learned Departmental Representative assailing the impugned order, vehemently objected to the conclusion drawn by the learned CIT(A) in its impugned order. He relied on the order passed by the Assessing Officer.

9. Per–contra, the learned Counsel for the assessee, apart from relying upon the findings of the learned CIT(A) vide Para–5.0 to 5.9, reproduced above, following are the arguments made by the learned Counsel for the assessee during the course of hearing:–

> *"While referring to the conclusion of the learned CIT(A) vide para–5.0 to 5.7, it emerges that—*
>
> *(a) that assessee (issue before the Supreme Court) has admitted before the AO that it had invested surplus funds, which were not immediately required for the purpose of its agricultural marketing business, in short term deposits;*
>
> *(b) that the surplus funds arose out of the amount retained from marketing the agricultural produce of the members.*
>
> *(c) that the surplus had arisen emphatically from marketing of agricultural produces.*
>
> *5.8 To distinguish the present case under consideration, the entire funds of the Appellant was utilized for the purposes of business and there were no surplus funds. While comparing the state affairs of the present appellant with that of the Totgars' Co-operative Society (before the Supreme Court), the following apparent dissimilarities emerge, name:*
>
> *(1) in case of the appellant, the entire funds were utilized for the purpose of business and that there were no surplus funds;*
>
> *- in the case of Totgars, it had surplus funds, as admitted before the AO, out of retained amounts on marketing of agricultural produce of its members;*

(2) in the case of present appellant, there is no fact finding recorded by the Assessing Officer that the appellant has invested surplus fund generated from non core activities. In case before Supreme Court, Surplus funds parked in the banks were relating to the business of 'marketing of agricultural produce'

5.9 Considering the factual matrix of the case before Supreme Court and the present case, I am of the considered view that the ratio laid down by the Hon'ble Supreme Court in the case of Totgars Co-op. Sale Society Ltd. (supra) is not applicable to the appellant's case. The appellant has placed its reliance upon decision of the Hon'ble Karnataka High Court in the case of Tumkur Merchants Souharda Credit Co-operative Ltd. V/s ITO (Supra) which has considered the decision of the Hon'ble Supreme Court in the case of The Totgar's Cooperative Sales Society Ltd. Vs. ITO. Considering the same, and in view of the above facts, I am of the firm view that the AO was not justified in coming a conclusion that the sum of Rs. 1,24,04,174/- is not attributable to the credit business of the appellant. In result the appellant's claim of deduction under section 80P on interest income of Rs. 1,24,04,174 is allowed. The issue of the assessee was also covered by the order of Hon'ble Income Tax Appellate Tribunal, Nagpur Bench, Nagpur dated 18/09/224 vide ITA No. 81/Nag/2024 in case of Amravati Julha Vima Karmachari Sahakari Pat Sanstha Maryadit, Amravati –V.s- Income Tax Officer, Ward-3, Amravati.

The deduction U/s. 80P(2)(a)(i) was also allowed in the A.Y. 2010-2011 & AY 2011-2012 in the order of ITAT vide ITA No. 08 & 09/Nag/2015 the copy of order on Page-37 To 41A of the Paper Book, therefore on the basis of consistency principle the same were allowable. The issue of the assessee were also covered in favour of the assessee by judgment of Hon'ble Bombay High Court in case of CIT –Vs.- Quest Investment Advisors (P) Ltd. reported on (2018) 409 ITR 545 (Bom).

"Business expenditure-Allowability-Apportionment against professional income and capital gains vis-à-vis rule of consistency-Principle accepted by the Revenue for ten earlier years and for subsequent years to the asstt. Yrs. 2007-08 and 2008-09 was that the entire expenditure is to be allowed against business income and no expenditure is to be allocated to capital gains-Once this principle was accepted and consistently applied and followed, the Revenue was bound by it-Thee is no change in the principle which has been consistently applied for the earlier assessment years and also for the subsequent assessment years-Therefore, the view of the Tribunal in allowing the assessee's appeal on the principle of consistency cannot in the present facts be faulted with-Bharat Sanchar Nigam Ltd. & Anr. vs. Union of India & Ors. (2006) 201 CTR (SC) 346: (2006) 282 ITR 273 (SC) applied.

<u>Conclusion</u> – Principle accepted by the Revenue for ten earlier years and four subsequent years was that the entire expenditure is to be allowed against business income and no expenditure is to be allocated to capital gains; view of the Tribunal in allowing the assessee's appeal on the principle of consistency cannot in the present facts be faulted with."

10. The learned Counsel further submitted that the issue is also covered by the following case laws of the Hon'ble High Court and various Benches of the Tribunal:–

i) ACIT v/s Buldana Urgan Co–operative Credit Society, [2013] 85 DTR 410 (Nag. Trib.);

ii) CIT v/s Buldhana Urban Co–operative Credit Society & Ors., ITA no.38 of 2013, etc., judgment dated 23/01/2020 (Nag. HC);

iii) DCIT v/s Jayalakshmi Mahila Vividodeshagala Souharda Sahakari Ltd., [2012] 76 DTR 234 (Panaji Trib.);

iv) ITO v/s Jankalyan Nagri Sahakari Pat Sanstha Ltd., [2012] 54 SOT 60 (Pune Trib.);

v) Tha Bhagyalaxmi Co–operative Credit Society Ltd. v/s DCIT, ITA no.442/Ahd./2022, dated 17/03/2023;

vi) Ujjwal Credit Co–operative Society Ltd., ITA no.8 & 9/Nag./2015, for A.Y. 2010–11 & 2011–12, order dated 31/05/2016 (Nag. Trib.);

vii) Citizen Co–operative Society Ltd. v/s ACIT, Civil Appeal no.10245 of 2017 (arising out of SLP(C) no.20044 of 2015), judgment dated 08/08/2017;

viii) CIT v/s Aditya Builders, [2015] 378 ITR 75 (Bom. HC); and

ix) M/s. Corporation Leisure & Property Development Pvt. Ltd. v/s DCIT, ITA no.1006/Bang./2022, order dated 27/01/2023 (Bang. Trib.).

11. We have given a thoughtful consideration to the arguments made by the learned Departmental Representative and perused the material available on record. During the course of hearing the learned Departmental Representative could not effectively counter the case laws cited by the learned Counsel for the assessee which are said to be covered. While going through the case laws cited by the learned Counsel, we find that the related facts and circumstances of the issue raised by the Revenue in this appeal is materially identical to the issue decided by various Hon'ble High Courts and various Bench of the Tribunal, wherein the identical issue has been decided by

the Courts and the Tribunal in favour of the assessee and against the Revenue. More specifically to add here, we also find that the similar issue has also been decided by the Co–ordinate Bench of the Tribunal, Nagpur Bench, in assessee's own case in appeals filed by the Revenue viz. ACIT v/s Nirmal Ujjwal Credit Co-operative Society Ltd., ITAs no.8 & 9/Nag./2015, for the assessment year 2010–11 and 2011–12, order dated 31/05/2016, wherein the Tribunal has decided the issue against the Revenue and in favour of the assessee by observing as under:–

> *"6. We have heard both the counsel and perused the records. We find that the issue involved is covered in favour of the assessee by catena of decisions from ITAT as well as jurisdictional High Court. In this regard we may gainfully refer the Hon'ble jurisdictional High Court decision in the case of CIT vs. Solapur Nagri Audyogic Sahakari Bank Ltd. 182 Taxman 231 wherein the following question was raised.*
>
> > *"Whether the interest income received by a Co-operative Bank from investments made in Kisan Vikas Patra ('KVP' for short) and Indira Vikas Patra ('IVP' for short) out of voluntary reserves is income from banking business exempt under section 80P(2)(a)(i) of the Income-tax Act, 1961 ?"*
> >
> > *After considering the issue the Hon'ble jurisdictional High Court has concluded as under :*
> >
> > *"12. Therefore, in all these cases, where the surplus funds not immediately required for day-to-day banking were kept in voluntary reserves and invested in KVP/IVP, the interest income received from KVP/IVP would be income from banking business eligible for deduction under section 80P(2)(i) of the Act.*
> >
> > *13. In the result, there being no dispute that the funds in the voluntary reserves which were utilised for investment in KVP/OVP by the cooperative banks were the funds generated from the banking business, we hold that in all these cases the Tribunal was justified in holding that the interest income received by the co-operative banks from the investments in KVP/IVP made out of the funds in the voluntary reserves were eligible for deduction under section 80P(2)(a)(i) of the Act."*
> >
> > *The above case law fully supports the assessee's case. Here also surplus funds not immediately required for day to day banking were kept in Bank deposits.*
> >
> > *The income earned there from thus would be income from banking business eligible for deduction u/s 80P(2)(a)(i).*
> >
> > *7. Similarly we find that similar issue was considered by this Tribunal on similar grounds raised by the Revenue in the case of MSEB Engineers Co-*

Op. Credit Society Ltd. wherein the ITAT, Nagpur Bench vide order dated 05/05/2016 held as under :

"Upon hearing both the counsel and perusing the records, we find that the above issues is covered in favour of the assessee by the decision of this ITAT, referred by the Ld. CIT(A) in his appellate order. The distinction mentioned in the Grounds of appeal is not at all sustainable. We further find that this Tribunal again in the case of Chattisgarh Urban Sahakari Sanstha Maryadit Vs. ITO in ITA No.371/Nag/2012 vide order dated 27.05.2015 has adjudicated similar issue as under:-

"11 Upon careful consideration, we note that identical issue was the subject matter of consideration by ITAT, Ahmedabad Bench decision in the case of Dhanlaxmi Credit Cooperative Society Ltd. (supra), in which one of us, learned Judicial Member, was a party. The concluding portion of the Tribunal's decision is as under:

"4. With this brief background, we have heard both the sides. It was explained that the Co-operative Society is maintaining "operations funds" and to meet any eventuality towards repayment of deposit, the Co-operative Society is maintaining some liquidated funds as a short term deposit with the banks. This issue was thoroughly discussed by the ITAT "B" Bench Ahmedabad in the case of The Income Tax Officer vs. M/s.Jafari Momin Vikas Co-op.Credit Society Ltd. bearing ITA No.1491/Ahd/2012 (for A.Y.2009-10) and CO No.138/Ahd/2012 (by Assessee) order dated 31/10/2012. The relevant portion is reproduced below:-

"19. The issue dealt with by the Hon'ble Supreme Court in the case of Totgars(supra) is extracted, for appreciation of facts, as under:

"What is sought to be taxed under 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(s) markets the produce of its members whose sale proceeds at times were retained by it. In this case, we are concerned with the tax treatment of such amount. Since the fund created by such

by such retention was not required immediately for business purposes, it was invested in specified securities. The question, before us, 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? In our view, such interest income would come in the category of 'income from other sources', hence, such interest income would be taxable under section 56 of the Act, as rightly held by the assessing officer..."

19.1. However, in the present case, on verification of the balance sheet of the assessee as on 31.3.2009, it was observed that the fixed deposits made were to maintain liquidity and that there was no surplus funds with the assessee as attributed by the Revenue. However, in regard to the case before the Hon'ble Supreme Court –

"(On page 286) 7..... Before the assessing officer, it was argued by the assessee(s) that it had invested the funds on short term basis as the funds were not required immediately for business purposes and, consequently, such act of investment constituted a business activity by a prudent businessman; therefore, such interest income was liable to be taxed under section 28 and not under section 56 of the Act and, consequently, the assessee(s) was entitled to deduction under section 80P(2)(a)(i) of the Act. The argument was rejected by the assessing officer as also by the Tribunal

and the High Court, hence, these civil appeals have been filed by the assessee(s).

19.2. From the above, it emerges that (a) that assessee (issue before the Supreme Court) had admitted before the AO that it had invested surplus funds, which were not immediately required for the purpose of its business, in short term deposits;

(b) that the surplus funds arose out of the amount retained from marketing the agricultural produce of the members;

(c) that assessee carried on two activities, namely , (i) acceptance of deposit and lending by way of deposits to the members; and (ii) marketing the agricultural produce; and

(d)that the surplus had arisen emphatically from marketing of agricultural produces.

19.3. In the present case under consideration, the entire funds were utilized for the purposes of business and there were no surplus funds.

19.4. While comparing the state of affairs of the present assessee with that assessee (before the Supreme Court), the following clinching dissimilarities emerge, namely:

(1) in the case of the assessee, the entire funds were utilized for the purposes of business and that there were no surplus funds; -

-in the case of Totgars, it had surplus funds, as admitted before the AO, out of retained amounts on marketing of agricultural produce of its members;

(2) in the case of present assessee, it did not carry out any activity except in providing credit facilities to its members and that the funds were of operational funds. The only fund available with the assessee was deposits from its members and, thus, there was no surplus funds as such;

- in the case of Totgars, the Hon'ble Supreme Court had not spelt out anything with regard to operational funds;

19.5. Considering the above facts, we find that there is force in the argument of the assessee that the assessee not a co-operative Bank, but its nature of business was coupled with banking with its members, as it accepts deposits from and lends the same to its members. To meet any eventuality, the assessee was required to maintain some liquid funds. That was why, it was submitted by the assessee that it had invested in shortterm deposits. Furthermore, the assessee had maintained overdraft facility with Dena Bank and the balance as at 31.3.2009 was Rs.13,69,955/- [source: Balance Sheet of the assessee available on record].

19.6. In overall consideration of all the aspects, we are of the considered view that the ratio laid down by the Hon'ble Supreme Court in the case of Totgars Co-op. Sale Society Ltd. 9supra) cannot in any way come to the rescue of either the Ld.CIT(A) or the Revenue. In view of the above facts, we are of the firm view that the learned CIT(A) was not justified in coming to a conclusion that the sum of Rs.9,40,639/- was to be taxed u/s.56 of the Act. It is ordered accordingly."

> *5. Respectfully following the above decision of the Co-ordinate Bench, we hereby hold that the benefit of deduction u/s.80P(2)(a)(i) was rightly granted by ld.CIT(A), however, he has wrongly held that the interest income is taxable u/s.56 of the Act so do*
>
> *not fall under the category of exempted income u/s.80P of the Act. The adverse portion of the view, which is against the assessee, of ld.CIT(A) is hereby reversed following the decision of the Tribunal cited supra, resultantly ground is allowed."*
>
> *8. We find that the ratio of above case also applies to the present case. As observed in the above case law, in this case also the submissions of the assessee's counsel is that the assessee society is maintaining operational funds and to meet any eventuality towards repayment of deposit the cooperative society is maintaining some liquidated funds as short term deposits with banks. Hence adhering to the doctrin stair desises, we hold that the assessee should be granted benefit of deduction under section 80P(2)(a)(i). Accordingly, the interest on deposits would qualify for deduction under the said section. Accordingly, we set aside the orders of authorities below and decide the issue in favour of the assessee."*
>
> *3. We further find that batch of similar appeals decided by the ITAT in favour of the assessee has also been considered by the Jurisdictional High Court. The Hon'ble Jurisdictional High Court has duly affirmed of this Tribunal. Accordingly, in the background aforesaid discussion, we do not infirmity in the order of Ld. CIT(A)."*
>
> *8. In the background of aforesaid discussion and decision we do not find any infirmity in the order of learned CIT(Appeals). Accordingly we uphold the same.*
>
> *9. In the result, both the appeals filed by the Revenue stand dismissed."*

12. Respectfully following the aforesaid various judicial pronouncements and consistent with the view taken therein, we decline to interfere with the order passed by the first appellate authority and dismiss the ground no.1, raised by the Revenue in this appeal.

13. Ground no.2, raised by the Revenue relates to the addition made by the Assessing Officer on presumptive basis on the Work–in–Progress (stock) of Housing Project constructed by the assessee society for its members. The assessee society, during the year under consideration, incurred certain expenditure on construction of this housing project, scheme exclusively for the members of the society. The entire amount expended for the year under

consideration and the opening balance of the same is shown as closing work–in–progress in the Balance Sheet of the assessee and as on sales was booked by the assessee the income on the same which was not recognized by the assessee during the year.

14. The learned Departmental Representative relied on the order of the Assessing Officer.

15. The learned A.R. appearing for the assessee submitted before us that the assessee society is not following construction completion method in accounting and by mistake it was mentioned by the auditor of assessee society in the audit report issued. The percentage completion method as mentioned in AS-7 is applicable to contractors and assessee society is not a contractor. Therefore, as no sale deed is executed during the year, no profit was reported. The Assessing Officer is of the view that the assessee ought to have offered for taxation the profit on the housing project on the percentage of percentage completion method. The Assessing Officer, accordingly drew reference from the provisions of section 44AD of the Act and estimated income @8% on work in progress reported by the assessee. Aggrieved with this estimation of income, the learned A.R. made a detailed submission during the appellate proceedings. The learned A.R. assailing the order of the Assessing Officer contended that the Assessing Officer gravely erred in drawing reference from section 44AD of the Act. It was submitted that provisions of section 44AD are applicable only in those circumstances where gross receipts / turnover is less than ₹ 2 crore. The learned A.R. also submitted that presumptive income under section 44AD of the Act is

computed on the basis of gross receipts of turnover. In the present case, as there were no sales during the current year, the gross receipts or turnover is practically zero.

16. Having heard the rival parties and perused the material available on roecrd, we find substantial force in the submission of the learned A.R. for the assessee. The Assessing Officer wrongly drew reference from the presumptive taxation scheme of section 44AD of the Act. As righty contended by the learned A.R. for the assessee, the provisions in the scheme of section 44AD of the Act, stipulates computation of income on gross receipts of gross turnover. In the present case, as no sale deed is executed during the year the gross receipts or turnover is zero. The advance taken by the assessee cannot be equated with gross receipts as they are in the nature of liability. Therefore, the reference to the provisions of section 44AD of the Act in our opinion is illegal, arbitrary and bad in law.

17. Now the crucial issue which is left to be adjudicated in whether the income can be assessed on construction completion method or percentage completion method.

18. We find that the Assessing Officer referred to the audit report, where the auditor has mentioned that the assessee is following mercantile system of accounting and, therefore, the assessee was duty bound to report profit as per percentage completion method. The assessee, during the first appellate proceedings, submitted that neither the statute nor the prescribed Accounting Standards mandate the assessee to follow any prescribed method. The learned A.R. also brought on record the factum that said accounting has been

accepted by the Assessing Officer in preceding years as well as in succeeding years where the assessments were completed under section 143(3) of the Act. The learned A.R. pleaded that the principle of *'res judicta'* is applicable and the Assessing Officer ought to have not have ideally tinkered with the accepted accounting practice. The learned A.R. also referred to the provisions of section 145(3) of the Act wherein it is provided that if the Assessing Officer is not satisfied about the correctness or completeness of the accounts of the assessee or the method of the accounting followed by the assessee, then the Assessing Officer may reject books of accounts and make an assessment in the manner provided in section 144. As in the present case neither books of account are rejected nor assessment is made under section 144 of the Act and hence the Assessing Officer erred in estimating income of the assessee. We thus concur with the submission of the learned A.R. for the assessee that income cannot be estimated in the absence of the rejection books of account under section 145 of the Act. Moreover, when the assessee is regularly following certain system of accounting, which has been accepted in the preceding and succeeding years, the Assessing Officer should not have changed the method of accounting with assessing a proper rational or logic for doing so.

19. We also find that the Assessing Officer did not point out the following issues in its assessment order:–

> *"i) The books of accounts of the assessee neither rejected nor assessment made under section 144 of the Income Tax Act, the Ld. AO erred in estimating income of the appellant;*
>
> *ii) Income cannot be estimated in the absence of the rejection of books of accounts under section 145 of the Income Tax Act;*

iii) The assessee is regularly following certain system of accounting, which has been accepted in the preceding and succeeding years;

iv) The AO should not have changed the method of accounting with assessing a proper rational or logic for doing so.

v) In the absence of rejection of books of accounts, the AO erred in estimating income of the assessee; and

vi) WIP cannot be taxed on estimated based of 8%.

This issue is also covered by the following Judgment of Hon'ble High Court and various Benches of the Tribunal, which are tabulated below:–

i) National Industries Corporation v/s CIT, [2002] 258 ITR 575 (Del. HC);
ii) CIT v/s Aditya Builders, [2015] 378 ITr 75 (Bom. HC); and
iii) M/s. Corporation Leisure & Property Development Pvt. Ltd. v/s DCIT, ITA no.1006/Bang./2022, order dated 27/01/2023 (Bang.Trib.)

20. In view of the foregoing discussions in the light of the aforesaid judicial pronouncements and keeping in view the overall facts and circumstances of the case as well as in the absence of rejections of books of accounts, we hold that the Assessing Officer erred in estimating income of the assessee. Accordingly, the addition made on estimated basis is directed to be deleted by upholding the order passed by the learned CIT(A).

21. In the result, appeal filed by the Revenue for the assessment year 2012-13 stands dismissed.

Order pronounced in the open Court on 27/11/2024

Sd/-	**Sd/-**
V. DURGA RAO	**K.M. ROY**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

NAGPUR, DATED: 27/11/2024

Copy of the order forwarded to:

(1) The Assessee;

(2) The Revenue;

(3) The PCIT / CIT (Judicial);

(4) The DR, ITAT, Nagpur; and

(5) Guard file.

True Copy
By Order

Pradeep J. Chowdhury
Sr. Private Secretary

Sr. Private Secretary
ITAT, Nagpur