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.211/Nag./2024
(Assessment Year : 2018–19)

Durgapur Rayatwari Colliery Kamgar
Sahakari Pat Sanstha
By–pass Road, Chandrapur 442 402
PAN – AAAAD1714F ……. Appellant

v/s

Income Tax Officer
Ward–2, Chandrapur ……. Respondent

ITA no.212/Nag./2024
(Assessment Year : 2020–21)

Durgapur Rayatwari Colliery Kamgar
Sahakari Pat Sanstha
By–pass Road, Chandrapur 442 402
PAN – AAAAD1714F ……. Appellant

v/s

Income Tax Officer
Ward–2, Chandrapur ……. Respondent

Assessee by : Ms. Alfiya Rozie
Revenue by : Shri Abhay Y. Marathe

Date of Hearing – 18/11/2024	Date of Order – 28/11/2024

O R D E R

PER K.M. ROY, A.M.

These appeals are filed by the assessee challenging the impugned orders of even date 09/02/2024, passed by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, Delhi, [*"learned CIT(A)"*], for the assessment year 2018–19 and 2020–21.

2. Since both the appeals relate to the same assessee, therefore, these appeals were taken up for hearing together and are being disposed off by way of this consolidated order.

ITA No. 211/Nag./2024
Assessee's Appeal – A.Y. 2018–19

3. In this appeal, the assessee has raised following grounds:–

> *"1) Whether on the facts and circumstances of case, the Ld CIT(A) was justified in assuming that the Co-operative Bank is not a Co-operative Society as envisaged by provisions of Sec.80P(2)(d) of IT Act 1961.*
>
> *2) The Ld. CIT(A) committed a patent mistake in assuming that the Co-operative Bank Was not a Co-operative Society and for that reason the legitimate claim about the Deduction us.80P(2)(d) in respect of Interest earned on Investment with Cooperative Bank deductibility of which has been upheld by several appellate Authorities including ITAT and High Courts but was denied to the Appellant.*
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> *3) The appellant craves leave to add, alter, clarify, explain, modify, delete any of the grounds of appeal, and to seek any just and fair relief."*

4. Facts in Brief:– The assessee Society is an AOP (Association of Persons) registered under Maharashtra Co-operative Societies Act, 1960, filed return of income on 05/10/2015, declaring total income at ₹ Nil income which was processed under section 143(1) of the Income Tax Act, 1961 (*"the Act"*) at ₹ 77,91,410, disallowing deduction under Chapter–VIA at ₹ 77,91,410, on the ground of inconsistency in filing of Schedule–VIA. Accordingly, in response to the notice under section 143(2) of the Act, the assessee furnished requisite details and documents electronically. The assessee-society, for the year under consideration, claimed deduction in its return of income dated 05/10/2018, which are shown as under:–

Sr. no.	*Deduction claimed u/s*	*Amount*
i)	*Under section 80P(2)(a)(i)*	*₹47,20,046*
ii)	*Under section 80P(2)(c)(i)*	*₹50,000*
iii)	*Under section 80P(2)(d)*	*₹90,30,908*

5. The assessee–society revised its claim of deduction under section 80P, during scrutiny proceeding, in following manner:–

Sr. no.	*Deduction claimed u/s*	*Amount*
i)	*Under section 80P(2)(a)(i)*	*₹34,14,217*
ii)	*Under section 80P(2)(c)(i)*	*NIL*
iii)	*Under section 80P(2)(d)*	*₹91,47,236*

6. The Assessing Officer, on a perusal of the details filed, observed that the assessee–society has earned interest income of ₹ 91,47,236, from its investment with Cooperative Banks. In the computation of total income submitted during course of scrutiny, the assessee has also claimed the said interest income as deduction under section 80P(2)(d) of the Act to the tune of ₹ 91,47,236, under Chapter-VIA of the Act. In support of its claim under section 80P of the Act, the assessee society submitted that the assessee is a Co-operative Society and it is eligible for deduction under section 80P of the Act. However, the Assessing Officer, in view of the fact that such interest income was earned from deposits and investments of surplus funds of the assessee, not immediately required for business purposes, and that they were made with Co–operative Banks rather than Cooperative Societies, as explicitly mentioned under section 80P(2)(d) of the Act, the Assessing Officer held that the question of claiming deductions under section 80P of the Act do not arise.

The Assessing Officer, therefore, in view of the detailed analysis made in the assessment order vide Page–2 to 10, the deduction of ₹ 91,47,236, claimed by the assessee under section 80P(2)(d) of the Act is hereby disallowed which was added back to the total Income of the assessee–society. The assessee being aggrieved, carried the matter in appeal before the first appellate authority.

7. The learned CIT(A) partly allowed the assessee's appeal by observing as follows:–

> *"5.1 I have perused the order passed by the AC the AO and the written submissions filed by the appellant. The issues raised in the grounds, which require adjudication are as under.*
>
> *(a) Disallowance of deduction claimed u/s 80P(2)(d) of the Act*
>
> *(b) Levy of Interest u/s 234B and 234C of the Act*
>
> *6. Disallowance of deduction claimed u/s 80P(2)(d) of the Act*
>
> *6.1 During the course of appeal proceedings, the appellant furnished copy of the order of the earlier CIT(A) on identical issue, dated 05.06.2023 for the AY 2017-18 in appellant's own case, allowing the claim made u/s 80P(2)(d) of the IT Act by holding that "Co-operative Banks are also Co-operative Societies unless they hold a licence issued by the RBI and interest income earned by the Co-operative Society from the investment made with the Cooperative Banks is eligible for claim of deduction u/s 80P(2)(d) of the IT Act."*
>
> *6.2 The above said observation of the earlier CIT(A) is very crucial to decide the deduction of 80P(2)(d) of the IT Act. He held that if a co-operative bank holds a licence of banking from RBI, then the appellant will not be eligible to claim deduction on the Interest earned from the deposits made. In order to get the facts, the appellant was asked to furnish the audited P&L account as well as details of deposits made with co-operative banks and co-operative societies. It was provided by the appellant, which is as under:*

(F.Y. 2017-18)

DURGAPUR RAYATWARI COLLIERY KAMGAR SAHAKARI PAT SANSTHA MARYADIT CHANDRAPUR
BY PASS ROAD, BALLARPUR, CHANDRAPUR

Profit and Loss A/c for the year Ending 31st March 2018

Particulars	Amount	Particulars	Amount
To Salaries and Wages	3,61,920	**By Gross Receipts of Business**	
To Telephone Expenses	17,296	By Interest from Members	1,74,65,275
To Audit Fee	1,50,000	By Saving Bank Interest	1,525
To Audit Fee (Tax Audit)	35,000	By Misc. Income from Members	6,604
To Interest Paid to others	1,50,36,505	By Interest on Bank Fixed Deposit	41,42,114
To Profession fees	5,700	By Interest on bank recurring deposit	1,14,803
To Computer maintenance	15,270		
To Other Expenses	4,23,546		
To Contribution to Recognized Provident Fund	1,15,012		
To Hospitality	17,103		
To Depreciation	97,336		
To Provision for Gratuity	30,300		
To Travelling expenses	500		
To Court exp./ Advocate fee	61,400		
To Net Profit	53,63,433		
Total	**2,17,30,321**	**Total**	**2,17,30,321**

Prepared from books of Accounts

For DURGAPUR RAYATWARI COLLIERY EMPLOYEES CREDIT COOP SOCIETY LTD

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DINESHKUMAR RAUT
PRESIDENT

Place : Chandrapur
Date: 05.10.2018

For RATHI & RATHI
Chartered Accountants

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CA. K.G.RATHI
PARTNER
Membership No.: 015740
(Registration No. 108705W)

DEPOSITS AND INTEREST THEREON FOR A.Y. 2018-19

Details of investments	Deposits as on 31.03.2018 (Rs.)	Amount of interest received on maturity (Rs.)	Interest accrued but not due (Rs.)	Total interest (Rs.)
2	3	4	5	6
The Akola Urban Co.op. Bank Ltd., Akola Branch- Chandrapur.	65095778	3596283	3378556	6974839
Chandrapur District Central Co-Op. Bank, Chandrapur. Branch- Shastrinagar.	3200000	131622	27079	158701
The Dharampeth Mahila Multistate Co-Op. Sociery Ltd. Branch- Chandrapur.	18920019	414209	1599487	2013696
Govind Urban Credit Co-Op. Society Ltd. Nagpur Branch- Chandrapur. (Invested on dt. 31.03.2018)	500000		0	0
Turumala Tirupati Multistate Co-Op. Credit Society Ltd. Branch- Chandrapur. (invested on dt. 31.03.2018)	500000		0	0
Total	88215797	4142114	5036930	9147236

7. As per the details, the appellant was in receipt of Interest of Rs.91,47,236/- from Co-operative banks (Rs.71,33,540/-) and from Co-operative societies (Rs.20,13,696/-). It is for the appellant to explain the difference between the two RBI has published the List of the following categories of co-operative banks, which is available in the website: INCOME ETAX DEPARTMENT

1. *Scheduled Urban Co-operative Banks*
2. *Non-Scheduled Co-operative Banks*
3. *District Co-operative Banks*
4. *Scheduled State Co-operative Banks*

8. Upon perusal of the lists, it is noticed that The Akola Urban Co-operative Bank and Chandrapur District Co-operative Bank are classified as Scheduled Urban Co-operative Bank and District Co-operative Bank respectively and functioning as banking companies. They are not Co-operative Society. The AO made a detailed analysis and concluded that the surplus amount invested with Urban Co-operative Bank is not eligible to claim deduction. The AO concluded this interest income earned out of the investment made in the form of time deposits with those BANK HAS TO BE ASSESSED AS Income from Other Sources.

9. Section 80P of the IT Act, 1961 placed in the Chapter VIA, deals with "Deduction in respect of income of Co-operative Societies. Section 80P (2) of the IT Act, 1961 listed the sums referred in sub section (1). It is briefly discussed below:

> *1. As per Sec. 80P(2)(a), a co-operative society engaged in various business activities given in clause (1) to (vii) is eligible to claim deduction in computing total income.*
>
> *2. As per Sec. 80P (2)(b), a co-operative society, being a primary society engaged in supplying milk, oil seeds, fruits or vegetables raised or grown by its members to a federal co-operative society or the government or local authority or a govt company defined in Sec. 617 of the Companies Act or a Corporation established by or under a Central, State or Provincial Act is eligible to claim deduction of the whole amount of profit and gains of such business.*
>
> *3. As per Sec. 80P(2)(c), a co-operative society engaged in activities other than those specified in clause (a) or (b), can claim deduction of its the profits and gains attributable to such activities does not exceed Rs.1,50,000/- (if that was a consumer co-operative society) and Rs.50,000/- in any other case. 4. As per Sec. 80P(2)(d), in respect of any income by way of interest or dividend derived by the co-operative society, from its investments, with any other co-operative society, the whole such income.*
>
> *5. As per Sec. 80P(2)(e), in respect of any income derived by the co-operative society from the letting of go downs or warehouses for storage, processing or facilitating the marketing of commodities, the whole such income.*

10. In the present case, the assessee claimed that they are a co-operative society engaged in carrying on the business of maintenance of Business Park.

11. Co-operative Bank Vs Co-operative Society:

Sec. 80P(4) was introduced in Finance Act, 2006 where it held that the provision of Sec. 80P shall not apply in relation to any co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank. This Section explained that co-operative bank shall have the meaning of Part V of Banking Regulation Act, 1949. When this Section was introduced in the Statute, the rationale behind the same was specifically stated as under:

> *"166. Cooperative Banks, like any other bank, are lending institutions and should pay tax on their profits. Primary Agricultural Credit Societies (PACS) and Primary Cooperative Agricultural and Rural Development Banks (PCARDB) stand on a special footing and will continue to be exempt from tax under Section 80P of the Income Tax Act. However, I propose to exclude all other cooperative banks from the scope of that Section."*

12. Hence, a Circular dated 28.12.2006 containing the explanatory notes on the provisions contained in Finance Act, 2006 was also issued and it reads as under:

Withdrawal of tax benefits available to certain cooperative banks

Xxxxxxxxxx

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

13. In view of the above, it is very clear that the co-operative banks engaged in banking activities like any other bank with the approval of the RBI, their profit is not eligible to claim deduction u/s 80P(4) of the IT Act.

14. It is for these reasons, Sec. 194 A (3) (v) of the Act was also brought into the Statute that excluded the co-operative banks from the definition of co-operative society in Finance Act, 2015 and required them to deduct income-tax at source u/s 194 A of the IT Act. This makes the legislative intent clear that the co-operative banks are not the species of the genus of the co-operative society.

15. Co-operative society is defined in Sec. 2(19) of the IT Act. It means a co-operative society registered under the Co-operative Societies Act,

1912 or under any other law for time being in force in any State for the registration of co-operative societies. 16. The AO treated the interest income of Rs.79,65,841/- received from the investments made by the appellant with those two Co-operative Banks as Income from other sources and it cannot be claimed as business income earned out of maintenance of business park. This is fundamentally against the concept of mutuality as the Interest Income earned out of Term Deposit had to be assessed separately.

17. In the statement of facts, the appellant society claimed interest earned from the time deposits invested with The Akola Urban Co-operative Bank and Chandrapur District Co-operative Bank are eligible for deductions u/s. 80P (2)(d) of the IT Act, 1961. They have referred several decisions as above.

18. This written submission and statement of fact is against the provisions of the Income Tax Act discussed above. The statute categorically excluded the tax benefit given to any Co-operative Bank other than a Primary Agricultural Credit Society or a Primary Co-operative Agricultural and Rural Development Bank [Section 80P (4)]. Further as per section 80P (2) (d) of the IT Act, 1961 in respect of any income by way of interest or dividend by the Co-operative Society from its investment with any other Co-operative Society, the whole such amount is eligible for deduction. Hon'ble Supreme Court in the case of Totagar Co-operative Sale Society in 322 ITR 283 held that the intertest income earned from fixed deposits of schedule bank cannot be claimed as deduction u/s 80(P)(2)(a)(i) of the IT Act and it has to be assessed as Income from Other Sources.

19. Both these sections didn't give the tax benefit to a Co-operative Bank. When the statute did not give tax benefit to Co-operative Bank and investment of the Co- operative Society with Co-operative Bank, interest income earned by the appellant society on the investment in Co-operative Bank needs critical analysis.

20. With this background, the issue here is whether interest income derived by the assessee co-operative society from its investment with any other co-operative bank or scheduled bank was eligible to claim deduction u/s 80P(2)(d) of the IT Act has to be examined. The following factual and legal aspects are crucial to determine the claim of deduction:

> *1. The assessee being a co-operative society engaged in maintenance of business park. They also eamed interest income from time deposits with The Akola Urban Co-operative Bank and Chandrapur District Co-operative Bank.*
>
> *2. It is an admitted fact that The Akola Urban Co-operative Bank and Chandrapur District Co- operative Bank are co-operative bank and approved by RBI and it is not a co-operative society. When those Banks obtained licence from RBI and functioning as scheduled bank, it cannot be classified as co-operative society.*

> *3. Hence, as rightly observed by the AO, to this extent, the interest income earned by the appellant from The Akola Urban Co-operative Bank and Chandrapur District Co-operative Bank is not eligible to claim deduction as per Sec. 80P(2)(d) of the IT Act.*

21. In this connection, the decision of Hon'ble ITAT Bangalore in the case of Krishnarajapet Taluk Agri Pro Co-op Marketing Society Ltd. Vs. Pr.CIT (2022) (137 taxmann.com 121 (Bangalore-Trib.) that explained the above said legal and factual issue involved in determining the deduction to be allowed u/s 80P(2)(d) of IT Act is relied upon. Hon'ble ITAT discussed this issue elaborately by analyzing various judicial pronouncements on this aspect. Paragraph 14 of the said decision is reproduced below:

> *"It can thus be seen that the ratio laid down by the Hon'ble Kamataka High Court in the case of Totgars Co-operative Sales Society (supra) is that in the light of the principles enunciated by the Supreme Court in Totgars Co-operative Sale Society (supra), in case of a society engaged in providing credit facilities to its members, income from investments made in bank does not fall within any of the categories mentioned in section 80P (2) (a) of the Act. However, Section 80 (P) (2) (d) of the Act specifically exempts interest earned from investments made by it with any co-operative society, a co-operative society is entitled to deduction of the whole of such income under section 80P (2) (d) of the Act. However, interest earned from investment made in any bank, not being co- operative society, is not deductible under section 80P (2) (d) of the Act, 1961."*

22. Hon'ble Gujarat High Court in the case of Katlary Kariyana Merchant Sahkari Sarafi Mandali Ltd. v. Assistant Commissioner of Income-tax in [2022] 140 taxmann.com 602 examined this issue in detail recently and passed a speaking order by explaining the provision. It held that interest derived from surplus funds invested by assessee in nature of FDRs in Co-operative Banks and Nationalized Bank, other than Co-operative Societies will certainly not fall in category to be entitled to claim deductions under section 80P(2)(i) and section 80P(2)(d) of the IT Act. Similar issue arose for consideration before the High Court of Karnataka (Dharwad Bench) in the case of Pr. CIT v. Totagars Co-operative Society [2017] 395 ITR 611 was followed by Gujarat High Court where it was held that interest earned from investments made in any bank, not being co-operative society, is not deductible under section 80P(2) (d). It is further found by Hon'ble High court that by virtue of amendment in section 194A(3)(v), co-operative banks have been excluded from the definition of 'co-operative society by the Finance Act, 2015. The High Court of Karnataka has held that the effect of the aforesaid amendment explicitly makes clear intention of legislation that co-operative banks are not specie of genus co-operative society, which would be entitled to exemption or deduction under the special provisions of Chapter VI-A in the form of section 80P.

23. Hence, respectfully following the above-mentioned judicial pronouncements and in light of the facts and circumstances of the cases, it is held that the interest income earned on the deposits held with Co-operative Societies only eligible for deduction u/s. 80P (2) (d)

of the Income Tax Act, 1961 and not on the interest income earned on the investment made with Co-operative Bank. My predecessor has also held the same in his appeal order for the AY 2017-18.

24. Accordingly, the AO is directed to re-compute the eligible deduction u/s 80P(2)(d) of the IT Act. Hence, the grounds taken on this issue are partly allowed.

25. Levy of Interest u/s 234B and 234C of the Act:

25.1 Levy of Interest u/s 234B and 234C are consequential and mandatory in nature. The grounds taken on levy of Interest u/s 234B and 234C of the Act is also partly allowed.

26. As a result, this appeal is partly allowed."

The assessee being aggrieved by the order of the learned CIT(A), filed further appeal before the Tribunal.

8. We have given a thoughtful consideration to the arguments made by the rival parties and perused the material available on record. During the course of hearing, both the parties agree before us that the issue in hand is covered by the decision of the Co–ordinate Bench of the Tribunal (the very same Bench was a party to that order), rendered in The Ismailia Urban Co–operative Society v/s ITO, ITA no.122/Nag./2023, order dated 18/06/2024, wherein the Tribunal has considered this issue in detail and held that interest income earned by the assessee trust is eligible for deduction under section 80P(2)(a)(i) / 80P2(d) of the Act. The relevant portion of the order reproduced below:–

"9. Upon hearing both the counsel and perusing the record, we find that the issue involved is covered in favour of the assessee by a catena of decisions from ITAT as well as a decision of 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 Audyogik 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 utilized for investment in KVP/IVP by the co-operative 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).

10. 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 issue is covered in favour of the assessee by the decision of this ITA, 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:-*
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> > *"11. Upon careful consideration, we not 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 interest income arising on the surplus invested in short term deposits and securities, which surplus was not required for business purposes? The assesse(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 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 assesse(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 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 had 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 short-term 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 (supra) 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.*
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> *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 doctrine 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 order of authorities below and decide the issue in favour of assessee. "*
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> > *4. 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 find infirmity in the order of Ld. CIT(A)."*
>
> *11. In the background of aforesaid discussion and decisions, we find that CIT (A) has erred in upholding the assessment order. The Appellant Co-operative society is entitled for deduction u/s 80P as claimed in the return."*

9. In the above decision, the Co–ordinate Bench has already considered the judgment of the Hon'ble Supreme Court in The Totgars' Co–operative Sale Society Ltd. (supra) and held that the facts of this case is distinguishable and not applicable to the facts of the present case. The interest income of ₹ 19,69,016, earned by the assessee Co–operative Society from their investments made with Co–operative Bank is an income derived by it from its business activities which is assessable under the head *"Income From Business"* and not under the head *"Income From Other Sources"*. I, therefore, respectfully following the decision of the Co–ordinate Bench in The Ismailia Urban Co–operative Society v/s ITO, ITA no.122/Nag./2023, order dated

18/06/2024, set aside the impugned order passed by the learned CIT(A) and allow the grounds raised by the assessee.

10. In the result, appeal filed by the assessee is allowed.

ITA no.212/Nag./2024
Assessee's Appeal – A.Y. 2020–21

11. In this appeal, the assessee has raised following grounds:–

"1) The Ld CIT(A) was duty bound to adjudicate the following ground as specifically raised before him.

The order passed Us 143(3) since is based on surmises, conjectures and in contempt of ratios laid down by judicial authorities is devoid of law and hence untenable.

Whether on the facts and circumstances of case, the Ld AO was justified in adding to total income as per intimation u/s 143(1)(a) dated 24.12.2021 Rs. 6823460/- which consist of

a) Contingent liability Rs. 5495265/- which was neither debited to P&L A/c nor claimed deduction out of the income of any previous assessment years;

b) The additional impact of ICDS Rs.343462/- and

c) The less deduction u/s 80P Rs.984733/-Total (a+b+c) Rs.6823460/- The Ld AO was not justified by not disposing off the petition dt. 21.01.2022 u/s 154 against the order u/s 143(1) on dt.24/12/2021.

2) Whether on the facts and circumstances of case, the Ld CIT(A) was justified in assuming that the Co-operative Bank is not a Co-operative Society as envisaged by provisions of Sec.80P(2)(d) of IT Act 1961.

3) The Ld. CIT(A) committed a patent mistake in assuming that the Co-operative Bank Was not a Co-operative Society and for that reason the legitimate claim about the Deduction us.80P(2)(d) in respect of Interest earned on Investment with Cooperative Bank deductibility of which has been upheld by several appellate Authorities including ITAT and High Courts but was denied to the Appellant.

4) The Ld CIT(A) was not justified on the facts of the case and in law by not providing a copy of remand report dt. 30.01.2024 sent by the Assessing officer to the appellant.

5) The appellant craves leave to add, alter, clarify, explain, modify, delete any of the grounds of appeal, and to seek any just and fair relief."

12. The learned Authorised Representative appearing for the assessee submitted that the case of the assesse for the year assessment year 2020–21, is also on similar lines as that of the assessment year 2018-19, which has been discussed in detail in the preceding paras of this order. The Assessing Officer observed that the assessee–society has earned interest income of ₹ 79,65,842, from its investment with Cooperative Banks and in the computation of income submitted during the scrutiny proceedings, the assessee has also claimed the said interest income as deduction under section 80P(2)(d) of the Act to the tune of ₹ 79,65,842/- under Chapter-VIA of the Act. The Assessing Officer disallowed the deduction claimed under section 80P(2)(d) of the Act pertaining to this interest income i.e., ₹ 79,65,841, which was added back to the total income of the assessee–society. The assessee being aggrieved, carried the matter in appeal before the first appellate authority.

13. The learned CIT(A) dismissed the assessee's appeal and the observations of the learned CIT(A) are reproduced above vide Para–7 of this order. The assessee being aggrieved by the order of the learned CIT(A), filed further appeal before the Tribunal.

14. We have given a thoughtful consideration to the arguments made by the rival parties and perused the material available on record. We find that the issue pertaining to interest received form Co-Operative Banks is being

adjudicated is similar to that of the assessment year 2018-19 which is to the tune of ₹ 79,65,841, and following the decision of the Co–ordinate Bench in The Ismailia Urban Co–operative Society v/s ITO, ITA no.122/Nag./2023, order dated 18/06/2024, we set aside the impugned order passed by the learned CIT(A) and allow the grounds no.2 and 3, raised by the assesse pertaining to interest income earned form the Co-operative Banks.

15. Apart from this, ground no.1, was taken by the assesse which consisted additions to total income of the assessee as per intimation dated 24/12/2021, under section 143(1)(a) of the Act of ₹ 68,23,460, which comprised of contingent liability to the tune of ₹ 54,95,265, additional impact of ICDS to the tune of ₹ 3,43,462 and lesser deduction under section 80P of the Act to the tune of ₹ 9,84,733. The learned A.R. for the assessee pleaded that this ground was taken by the assesse before the Assessing Officer as well as before the CIT(A), however, both the authorities have not considered the submissions made by the assessee.

16. Considering the fact that this ground pertains to contingent liability of ₹ 54,95,265/- (which was neither debited to Profit & Loss Account, nor claimed deduction out of the income of any previous assessment years), the impact of ICDS of ₹ 4,43,462, and lesser deduction claimed under section 80P of the Act to the tune of ₹ 9,84,733, even if the disallowances are made, the said disallowance shall form part of business income of the assesse society, which stands eligible to be claimed as deduction under section 80P of the Act.

17. Fact which needs attention is that while assessing income of an assessee, income under all heads of *"income"* is compiled and the aggregate income is known as *"Gross Total Income"*. Further, from this Gross Total Income, deductions under Chapter VI-A are allowed and resultant amount is *"Total Income"* on which tax is calculated. Thus, when expenditure is disallowed, it would get added back in the income under the head business and profession (if the expenditure relates to that business) and shall stand as a part of gross total income. On this income then the deductions under Chapter VI-A will be allowed. In nut shell, the deduction under section 80P of the Act in assessee's case ought to have been allowable on the extended income (generated by disallowing such expenses).

18. It is pertinent to refer to the CBDT Circular No.37/2016 dated 02/11/2016, wherein it has been clarified that Chapter VI–A deductions shall be allowed on the enhanced income. The relevant para of this circular is extracted below:–

> *"In view of the above , the Board has accepted the settled position that the disallowances made under section 32, 40(a)(ia), 40A(3), 43B, etc of the Act and other specific disallowances , related to the business activity against which the Chapter VI A Deductions has been claimed, result in enhancement of the profits of eligible business, and that deduction under Chapter VI A is admissible on the profits of the eligible business, and that deduction under chapter VI A is admissible on the profits so enhanced by the disallowance."*

19. Thus, even if the disallowances are made pertaining to items relating to business of the assesse society, it shall ultimately form part as an enhanced income of the assesse society and shall be available to be claimed as

deducted under section 80P of the Act as business income. On this count, this ground raised by the assesse is hereby allowed.

20. Ground no.4, relates to the issue pleaded by the learned Authorised Representative for the assessee that the learned CIT(A) was not justified on the facts of the case and in law by not providing a copy of remand report sent by the Assessing Officer to the assessee. However, no submissions have been made by the learned Authorised Representative for the assessee pertaining to this ground and thus ground no.4, is dismissed.

21. In the result, appeal filed by the assessee is partly allowed.

Order pronounced in the open Court on 28/11/2024

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

NAGPUR, DATED: 28/11/2024

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