IN THE INCOME TAX APPELLATE TRIBUNAL

MUMBAI BENCH "C", MUMBAI

BEFORE SHRI. NARENDRA KUMAR BILLAIYA, ACCOUNTANT MEMBER

AND

SHRI. RAJ KUMAR CHAUHAN, JUDICIAL MEMBER

ITA NO. 2692/MUM/2024 (A.Y: 2017-18)

&

ITA NO. 2693/MUM/2024 (A.Y: 2018-19)

&

ITA NO. 2783/MUM/2024 (A.Y: 2020-21)

ITO, Mumbai Lower Parel, 306, Piramal Chamber, Mumbai – 400012.	*Vs.*	**The Central Railway Employees Co-operative Credit Society Ltd.** 665-A, The CRECCS Society, N.M. Joshi Marg, Byculla (West), Mumbai – 400027. **PAN: AAATT3547K**
(Appellant)		**(Respondent)**

Assessee Represented by	**:**	**Shri. J. D. Mistry & Shri. Madhur Agarwal**
Department Represented by	**:**	**Ms. Madhu Malati Gosh (CIT-DR)**
Date of conclusion of Hearing	**:**	**24.07.2024**
Date of Pronouncement	**:**	**11.11.2024**

O R D E R

PER RAJ KUMAR CHAUHAN (J.M.):

1. By this order we propose to decide three appeals between the same parties for A.Y. 2017-18, 2018-19 and 2020-21. These appeals of revenue are taken up together for disposal as the grounds of appeal are same and similar for all the relevant years and for the sake of convenience and to avoid multiplicity of decisions being disposed off together.

2. The case pertaining to ITA No. 2692/Mum/2024 for A.Y. 2017-18 is taken as lead case.

3. The facts in brief are that the appellant/assessee the Central Railway Employees Co-operative Credit Society Ltd. is a cooperative society registered under the Multi-state Cooperative Societies Act, 2002. As per certificate of registration issued by the Municipal Corporation of Government of India dated 19th December, 2016, the assessee/appellant is a Multi-State Co-operative Society registered under the Multi State Cooperative Societies Act, 2002. The assessee has filed its ITR on 24.10.2017 declaring total income of Rs. Nil, but the Ld. AO vide assessment order dated 16.12.2019 assessed the total income of Rs. 37,69,23,985/- for A.Y. 2017-18. Similarly, the assessee has filed its ITR

on 28.09.2018 declaring total income of Rs. Nil, but the Ld. AO vide assessment order dated 18.04.2021 assessed the total income of Rs. 46,31,37,072/- for A.Y. 2018-19. Similarly, the assessee has filed its ITR on 22.12.2020 declaring total income of Rs. Nil, but the Ld. AO vide assessment order dated 20.09.2022 assessed the total income of Rs.70,53,56,155/- for A.Y. 2020-21 and the assessee has claimed deduction u/s. 80P of the Act at the same amount. The Ld. AO vide assessment order dated 16.12.2019 has not allowed the exemption u/s. 80P of the Act, therefore, assessed income at Rs. 37,69,23,985/-.

4. As per Assessing Officer, the assessee is AOP running a Co-operative Credit society and doing banking business for their members. The society is collecting deposits from members by way of fixed deposits, saving deposits and recurring daily deposits etc. In support of its claim of deduction under chapter VI-A, the assessee submitted that the assessee is an co-operative credit society and the only business of the society is to grant medium term, short term and long term loans to its members. The society provides credit facilities to its members only. It was further claimed that Section 80P(2)(a)(i) grants deduction to the extent of the whole of the amount of profits and gains of business attributable to the

activity in respect of income of cooperative society engaged in carrying on the business of banking or providing credit facilities to its members. The claim of the assessee u/s. 80-P of the Act was examined and a show cause dated 04.11.2019, was issued to the assessee. The assessee filed reply dated 08.11.2019. Para 3 of the reply to the show cause notice is reproduced as under:

> *3. "In our case similar feeble attempt made for AY 2014-15 to treat our society as a cooperative bank was completely rejected by Hon. CIT(A) and by Hon. ITAT, Mumbai. Till date, we have not been served copy of appeal, if any, filed by the dept. before Hon. Bombay High Court against the order of Hon. ITAT. We may not be incorrect to conclude that the decision of Hon. ITAT, Mumbai in our case for AY 2014-15, referred above, is accepted by the dept. Therefore, decision of Hon. ITAT Mumbai in our case for AY 2014-15 will squarely apply for above assessment year as facts and law pertaining to AY 2014-15 have remained unchanged for A.Y. 2017-18 as well"*

5. The Ld. AO however was not convinced to the contentions of the assessee even in respect of the assessee's reliance upon the order of the Ld. CIT(A) and Hon'ble ITAT for the A.Y. 2014-15, wherein claim of the assessee to the exemption was allowed. The Ld. AO was of the view that the judgment of the Hon'ble ITAT has been challenged before the Hon'ble Bombay High Court and the judgment of the Hon'ble Bombay High Court in Quepem Urban Co-operative Credit Society Ltd Vs. ACIT has not been accepted by

the revenue and the appeal has been filed before the Hon'ble Apex Court which was pending. Since the issue has not reached its finality, hence, the Ld. AO has not allowed the exemption of Rs. 37,69,23,985 and added the same as total income at the hand of the assessee.

6. Aggrieved by the assessment order, the assessee filed appeal before the Ld. CIT(A) The Ld. CIT(A) vide order dated 15.03.2024 accepted the contentions of the assessee and while putting reliance on judgment of the ITAT and the Hon'ble Bombay High Court for the A.Y. 2014-15, ITA No. 5217/Mum/2017, dated 27.03.2019, found the appellant eligible for deduction u/s. 80P and accordingly deleted the addition made by the Ld. AO.

7. The department is aggrieved by the order the Ld. CIT(A) and is an appeal before us and has raised following grounds of appeal:

1. *"On the facts and in circumstances of the case and in law, the Ld. CIT(A) has erred in allowing deduction u/s. 80P to the assessee even though the assessee carries on the banking business and other business in the name of co- operative credit society.*

2. *On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in law in allowing deduction u/s. 80P(2)(a)(i) without considering the inserted section 80P(4) and sub clause (viia) to section 2(24) vide Finance Act 2006 w.e.f. 01.4.2007.*

3. On the facts and circumstances of the case and in law, the Ld. CITIA) has erred in law in allowing deduction u/s 80P(2)(a)(i) without considering the decision of the Supreme Court in the case of Ms. Totagar Co-op Sales Society Ltd. (322 ITR 285) wherein interest received by a co-operative society from investment of surplus funds is assessable as Income from Other Sources" and thus not eligible for deduction u/s. 80 P of the It Act, 1961."

4. The appellant prays that the order of the National Faceless Appeal Centre (NFAC). Delhi on the above grounds be reversed and that of the AO be restored."

8. We have heard the Ld. AR on behalf of the assessee and Ld. DR on behalf of the revenue. The Ld. AR apart from relying upon the decision of ITAT in assessee's own case for A.Y. 2014-15, Bombay High Court judgment in *Quepem Urban Co-operative Credit Society Ltd, 58 taxmann.com 113*, has referred and relied upon the recent judgment of the Hon'ble Supreme Court of India reported as *Principal Commissioner of Income Tax Vs. Annasaheb Patil Mathadi Kamgar Sahakari Pathpedi Ltd. [2023] 150 taxmann.com 173(SC), order dated 20.04.2023*. The Ld. DR on the other hand supported the judgment of the Ld. AO but submitted nothing regarding the judgments relied by the Ld. AR on behalf of the assessee.

9. We have considered the rival submission and examined the record. The observation of Ld. AO in para no. 9 of the order which also find reproduced in the subsequent order for the subsequent relevant year i.e.

2018-19 and 2020-21 is relevant to appreciate the facts and to proceed further and is reproduced as under:

> 9. *"Further with respect to the assessee contention that the Ld CIT(A) and Hon'ble ITAT allowed the appeal of the assessee for earlier assessment years on identical issue is also not acceptable as the higher judicial authorities have allowed the appeal of the assessees relying upon the various judicial pronouncements including the judgment of Hon'ble Bombay High court in the case of "Quepem Urban Co-operative Credit Society Ltd vs. ACIT 58". However the decision of Hon'ble High court in the case of Quepem Urban Co-operative Credit Society Ltd (supra) was not accepted by the Revenue and further appeal has been filed in the Hon'ble Apex court of which adjudication is pending. Therefore the issue has not reached to its finality. Moreover, the Revenue has preferred further appeal to the Hon'ble Bombay High Court against the decision of the Hon'ble ITAT in the assessee's own case."*

10. The Ld. CIT(A) has dealt with para no. 9 of the Ld. AO extracted above in the last para of the impugned order which is reproduced as under:

> *"Further, the byelaws of the appellant society shows that appellant society operates branches in areas as defined to specific Railway Establishments (Sl.No.3 & 4); membership is restricted to employees of the railway establishments/offices (Sl.No.10,11 &12); object and functions of the society is towards providing credit facility to its members (Sl.No.6) and the raising of funds do not involve accepting deposits from general public (Sl.No.7). Considering the merit in the argument of the appellant that it is not a cooperative bank as per the Banking Regulation Act and by respectfully following the decision of the Hon'ble Bombay High Court in the case of Quepem Urban Co-operative Credit Society Ltd and ITAT in the appellants own case for the assessment year 2014-15, I am of the view that appellant is eligible for deduction under section 80P and accordingly addition made by the assessing officer is deleted."*

11. Now the questions before us for our consideration are as under:

1. Whether the order of the Ld. CIT(A) suffers from illegality or perversity which may warrant interference by this Tribunal?

2. Whether the Ld. AO is bound by the judgment of the coordinate bench for the A.Y. 2014-15 and/or the judgment of the Hon'ble Bombay High Court?

3. Whether the revenue is justified in its reliance upon the judgment of the Hon'ble Supreme Court in M/s. Totagar Cooperative Sales Society Ltd. (322 ITR 285) as find mentioned in ground no. 3 in the appeal?

12. We now proceed to decide these questions by appreciating the fact and law available and presented before us. We first take up the question no. 2. In that regard the judgment of the Hon'ble Allahabad High Court in *K. N. Agarwal Vs. Commissioner of Income Tax, order dated 11.01.1991, [1991] 189 ITR 769B (ALL)* is relevant which says, "*Indeed, the orders of the Tribunal and the High Court are binding upon the Assessing Officer and since he acts in a quasi-judicial capacity, the discipline of such functioning demands that he should follow the decision of the Tribunal or the High Court, as the case may be. He cannot ignore it merely on the ground that*

the Tribunal's order is the subject-matter of revision in the High Court or that the High Court's decision is under appeal before the Supreme Court. Permitting him to take such a view would introduce judicial indiscipline, which is not called for even in such cases." In view of above, the Ld. AO and Ld. CIT(A) are bound by the ITAT order in assessee's own case for A.Y. 2014-15.

13. Now we take up the question no. 1. In view of our decision of question no. 2, the order of the Ld. CIT(A) and the observation in last para extracted above supra are legally sustainable and justified and there is no illegality and perversity in the same. In the given facts and circumstances, it is the Ld. AO who is at fault for not following the order of the ITAT and the Hon'ble Bombay High Court in Quepem Urban Co-operative Credit Society Ltd Vs. ACIT (supra). Our view is further fortified by the judgment of the Hon'ble Apex Court in [2023] 150 taxmann.com 173(SC) referred (supra) and is reproduced are as under:

1. *"Feeling aggrieved and dissatisfied with the impugned order dated 14-10-2019 passed by the High Court of Judicature at Bombay in ITA No.933/2017, by which the High Court has dismissed the said appeal preferred by the Revenue, relying upon its earlier decision in the case of M/s. Quepem Urban Co-operative Credit Society Ltd. Vs. Assistant Commissioner of Income Tax, 377 ITR 272, the Revenue has preferred the present appeal.*

2. The High Court considered the following question of law –

> *"Whether on the facts and in the circumstances of the case and in law, the Tribunal is justified as claimed by the assessee on the ground that the assessee, a co-operative credit society and is not a bank for the purpose of Section 80P(4) of the Act?"*

3. Apart from the fact that against the relied upon decision in the case of M/s. Quepem Urban Co-operative Credit Society Ltd. (supra),the Special Leave Petition has been dismissed, learned counsel appearing on behalf of the respective parties, the issue involved in the present appeal is squarely covered against the Revenue in view of the decision of this Court in Mavilayi Service Cooperative Bank Limited and Others Vs. Commissioner of Income Tax, Calicut and Another (2021) 7 SCC 90. This Court, in the aforesaid decision has specifically observed and held that primary Agricultural Credit Societies cannot be termed as Co-operative Banks under the Banking Regulation Act and, therefore, such credit societies shall be entitled to exemption under Section 80(P)(2) of the Income Tax Act, 1961.

4. Ms. Aakansha Kaul, learned counsel appearing on behalf of the appellant/Revenue has tried to submit that the respondent/Assessee will fall under the definition of Co-operative Bank as their activity is to give credit/loan. However, it is required to be noted that merely giving credit to its members only cannot be said to be the Co-operative Banks/Banks under the Banking Regulation Act. The banking activities under the Banking Regulation Act are altogether different activities. There is a vast difference between the credit societies giving credit to their own members only and the Banks providing banking services including the credit to the public at large also.

5. There are concurrent findings recorded by CITA, ITAT and the High Court that the respondent/Assessee cannot be termed as Banks/Cooperative Banks and that being a credit society, they are entitled to exemption under Section 80(P)(2) of the Income Tax Act. Such finding of fact is not required to be interfered with by this Court in exercise of powers under Article 136 of the Constitution of India. Even otherwise, on merits also and taking into consideration the CBDT Circulars and even the definition of Bank under the Banking Regulation Act, the respondent/Assessee cannot be said to be Co-

operative Bank/Bank and, therefore, Section 80(P)(4) shall not be applicable and that the respondent/Assessee shall be entitled to exemption/benefit under Section 80(P)(2) of the Income Tax Act.

6. In view of the above and for the reasons stated hereinabove, the present appeal deserves to be dismissed and is accordingly dismissed, answering the question against the Revenue and in favour of the Assessee.

7. The Appeal is accordingly dismissed. No costs."

14. Thus, in view of the above judgment of the Hon'ble Supreme relied by the assessee/appellant, there is no illegality and perversity in the impugned order challenged by the revenue.

15. Question No. 3: To decide this question, knowing the provisions of Section 80P(2)(a)(i) is necessary and reproduced as under:

"80-P. Deduction in respect of income of cooperative societies.-(1) Where, in the case of an assessee being a cooperative society, the gross total income includes any income referred to in sub-section (2), there shall be deducted, in accordance with and subject to the provisions of this section, the sums specified in sub-section (2), in computing the total income of the assessee.

(2) The sums referred to in sub-section (1) shall be the following, namely:

(a) in the case of a cooperative society engaged in-

(i) carrying on the business of banking or providing credit facilities to its members, or"

16. The same ground was taken by the revenue in its appeal for the A.Y. 2014-15 decided in ITA No. 5217/Mum/2017, order dated 27.03.2019 by the Ld. Coordinate Bench, Mumbai, wherein the order of the Ld. Coordinate Bench has decided the grounds against the revenue. Until the said judgment of the Coordinate Bench is set aside by the higher courts, in view of our observation earlier in the judgment, the Ld. AO as well as the other revenue authorities higher to it are bound by the judgment of the Coordinate Bench. Therefore, for the sake of dealing with arguments of revenue, we have examined the ground regarding reliance by the revenue on the judgment of the Hon'ble Supreme Court *Totgars Cooperative Sales Society Limited (supra)*. The facts and circumstances and the business activity of the assessee in that case were different from the facts and circumstances and the business activity of the assessee in the case before us. Para 17 and 18 of the said judgment would make these facts clear and are reproduced as under:

> *17. "In the present case, as stated above, the assessee Society regularly invests funds not immediately required for business purposes. Interest on such investments, therefore, cannot fall within the meaning of the expression "profits and gains of business". Such interest income cannot be said also to be attributable to the activities of the Society, namely, carrying on the business of providing credit facilities to its members or marketing of the agricultural produce of*

its members. When the assessee Society provides credit facilities to its members, it earns interest income. As stated above, in this case, interest held as ineligible for deduction under Section 80-P(2)(a)(i) is not in respect of interest received from members. In this case, we are only concerned with interest which accrues on funds not required immediately by the assessee(s) for its business purposes and which have been only invested f in specified securities as "investment".

18. Further, as stated above, the assessee(s) markets the agricultural produce of its members. It retains the sale proceeds in many cases. It is this "retained amount" which was payable to its members, from whom produce was bought, which was invested in short-term deposits/securities. Such an amount, which was retained by the assessee Society, was a liability and it was shown in the balance sheet on the liability side. Therefore, to that extent, such interest income cannot be said to be attributable either to the activity mentioned in Section 80-P(2)(a)(i) of the Act or in Section 80-P(2)(a)(iii) of the Act. Therefore, looking to the facts and circumstances of this case, we are of the view that the assessing officer was right in taxing the interest income, indicated above, under Section 56 of the Act."

17. It is thus evident from the above observation of the Hon'ble Apex Court in para no. 17 and 18 of the judgment reproduced (supra) that the assessee in that case was doing the business of not only giving credit facilities to its members but was also marketing the agriculture produce by its members and for that reasons, the assessee in the case before the Hon'ble Supreme Court was not doing only the business of providing credit facilities to its members but other activity also, hence, was not found eligible for exemption u/s. 80P(2)(a)(i) of the Act. In the case before us, it is admitted fact that the assessee was engaged only in the business for banking or

providing credit facility to its members only and was not engaged in any other business activity, therefore distinguishing it from the assessee of M/s. Totgars Cooperative Sale Society Ltd. case. For the above reasons, the assertions of the revenue that the M/s. Totgars Cooperative Sale Society Ltd. case is applicable to the present case is highly misplaced and the ground is liable to be rejected.

18. In view of our determination of all the 3 questions as mentioned above. We are of the considered opinion that there is no merit in the appeal of the revenue and the grounds taken in appeal are liable to be rejected.

19. For these reasons, we therefore uphold and confirm the order of the Ld. CIT(A). The appeal of the revenue is accordingly dismissed.

20. The finding recorded by us in ITA No. 2692/Mum/2024 for A.Y. 2017-18 shall mutatis mutandis apply to the subsequent A.Y. 2018-19 (ITA No. 2963/Mum/2024) and A.Y. 2020-21 (ITA No. 2783/Mum/2024). Accordingly, the appeals of the revenue pertaining to A.Y. 2018-19 (ITA No. 2963/Mum/2024) and A.Y. 2020-21 (ITA No. 2783/Mum/2024) are also dismissed.

21. In the result, appeals filed by the revenue are dismissed in the above terms.

Order pronounced on 11.11.2024

Sd/-	**Sd/-**
(NARENDRA KUMAR BILLAIYA)	**(RAJ KUMAR CHAUHAN)**
(ACCOUNTANT MEMBER)	**(JUDICIAL MEMBER)**

Mumbai / Dated 11.11.2024
Karishma J. Pawar, (Stenographer)

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mumbai