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.566, 567, 568 & 569/Nag./2024
(Assessment Year : 2015–16, 2018–19, 2020–21 & 2022–23)

Hinganghat Nagri Sahakari Pat Sanstha
Ram Mandir Ward, Hinganghat ……. Appellant
Wardha 442 301 PAN – AAAJH0303D

v/s

Income Tax Officer
Ward–1, Wardha ……. Respondent

Assessee by : Shri Suyash Ranka
Revenue by : Shri Abhay Y. Marathe

Date of Hearing – 23/01/2025	Date of Order – 10/02/2025

O R D E R

PER K.M. ROY, A.M.

This appeal by the assessee is emanating from the impugned order dated 28/08/2024, passed by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, [*"learned CIT(A)"*], for the assessment year 2015–16, 2018–19, 2020–21 & 2022–23

ITA no.566/Nag./2024
Assessment Year – 2015–16

2. In its appeal, the assessee has raised following grounds:–

"1. That the Ld. Commissioner (Appeals) has erred in Law as well as in Facts by sustaining the addition of Rs.41,88,448/- as Income from other Source of Income and the attributes of activity carried out by the Appellant.

2. That the Ld. Commissioner (Appeals) has erred in Law as well as in Facts by sustaining the stand that Income Tax Return has not been filed and disallowing the benefit of Sec 80P of Rs.53,72,108/- based on the same, even

after the return was filed within Assessment Proceeding as on 17.01.2023 bearing Ack No. 923756621170123 which is acknowledged in the Assessment Order itself.

3. That the Ld. Commissioner (Appeals) had erred in law and facts in confirming addition made by Learned AO to the Income of Appellant to the extent of Rs.41,88,448/- in respect of interest income by treating interest income received on FD of Nationalized Banks as income from other sources u/s 56 of Income Tax Act, 1960 by wrongly applying ratio laid down by Supreme Court in the case of Totagars Co. Op. sale Society Ltd. vs. ITO as the facts of the appellant's case distinguished from Totagars case.

4. That the Ld. Commissioner (Appeals) has erred in considering the source of fund for Fixed Deposit as surplus funds available as against the appellant actual fact that the source of funds was the deposit taken by members which were bearing interest payment. The Appellant would like to state that its business activities, including the fixed deposits were in line with the Maharashtra Co-operatives Act, 1960.

5. That the Ld. Commissioner (Appeals) has erred that without considering complete Facts and circumstances of the case submitted at the time of Appeal filing, Ld. Commissioner (Appeals) has stated in its Decision Point No. 5.5 that, 'Assessee himself has accepted that the FDs were made out of surplus funds available'. Whereas, appellant has nowhere in his entire submission has accepted that the FDs are made with the surplus funds. Appellant always contented that to meet any eventuality, the assessee society is required to maintain some liquid funds. That is why, generally, credit societies used to invest in fixed deposits and the funds used are from the members thrift interest bearing Deposits.

6. That the Appellant would like to rely on the Judgement of Honorable Kerla High Court in the case of Chirakkal Service Co-operative Bank Ltd. Vs CIT as reported in 384 ITR 490 (2016) were the court stated " when an assessment is subjected to first appeal or further appeals under the IT Act or all questions germane for concluding the assessment would be relevant and claims which may result in modification of returns already filed could also be entertained. Particularly when it relates to claims for exemptions. This is so because the finality of assessment would not be achieved in all such cases, until the termination of all such appellate remedies. In all such situation, it cannot be treated that a return filed at any stage of such proceedings could be treated as non est in law and invalid for the purpose of deciding exemption under section 80P.

Similar Position has been held by Hon'ble Calcutta High Court in CIT Vs Hardeodas Agarwall Trust [1992] 198 ITR 511 (Cal) where the court held that first and second appeal is a continuation of assessment proceedings.

7. That the Appellant would like to rely on the Judgement of Honorable Karnataka High Court Judgment in case of Guttigedarara Credit Co-Operative Society Limited v. Income Tax where the amount which was invested in banks to earn interest was not an amount due to any members. It was not the liability. It was not shown as liability in their account. In fact this amount which is in the nature of profits and gains, was not immediately required by the assessee for lending money to its members, as there were no takers.

Therefore, they had deposited the money in a bank so as to earn interest. The said interest income is attributable to carrying on the business of banking and therefore it is liable to be deducted in terms of Section 80P(1) of the Act. In fact similar view is taken by the Andhra Pradesh High Court in the case of Commissioner of Income Tax-III, Hyderabad v. Andhra Pradesh State Co-operative Bank Ltd., reported in (2011) 200 Taxman 220/12.

8. The appellant craves leave to add, alter, vary omit, substitute or amend the above grounds of appeal, at any time before or at the of hearing of the appeal, so as to enable the honorable Income Tax Appellate Tribunal to decide this appeal according to law."

3. Facts of the case, as culled out from the impugned order passed by the learned CIT(A) are as under:–

"3. In cases where in the variations proposed:

3.1 Complete description of issues involved (issue wise):

The assessee M/S HINGANGHAT NAGRI SAHAKARI PAT SANSTHA has not filed retum for the A.Y. 2015-16. On receipt of insight information it is noticed that during F.Y. 2014-15 the assessee has made cash deposits of Rs. 1,16,70,000/- in Axis Bank and received interest income of Rs. 15,81,842/- from banks on which TDS is deducted. It is seen that the assessee has not filed his return of income for AY 2015-16. The above transactions, total to amount Rs.1,32,51,842/- remain unexplained and there is escapement of income in absence of return of income filed. Thus income from above transaction has not been offered for tax and due tax has not been paid. An opportunity of being heard as per provision of section 148A(b) of the Income Tax Act, 1961 was provided to the assessee with prior approval from competent authority vide dated 23/03/2022 wherein the assessee was given a show cause as to why following income/receipts shall not be treated as income chargeable to tax which has escaped the assessment within the meaning of provision of section 147 of the IT Act, 1961 for the assessment year 2015-16:

2. Assessee could not submit proper reply to the transactions stated above, therefore a notice u/s 148 of the Act was issued to the assessee on 31-03-2022 and re-open proceedings were initiated.

3.2 Synopsis of all submissions of the assessee relating to the issue and indicating the dates of submission:

The assessee submitted the information called for vide replies stated above.

A copy of P&L Account and Balance sheet was submitted by the assessee.

3.3 Summary of information/evidence collected which proposed to be used against it(Attach documents if required):

The ITR file by the assesse, Audit Report and final accounts submitted by the assessee.

3.4 Variation proposed on the basis of inference drawn:

1. Claim of 80P

Assessee filed return of income in response to notice u/s 148 of the Act on 17-01-2023 and notice 143(2) was issued vide notice dated 31-01-2023. On verification of information filed by the assessee, it is noticed that a claim for deduction u/s 80P was made by the assessee of Rs. 53,72,108/- in the return.

a) The claim made by the assessee is not allowable u/s 80AC. Section 80 AC (ii) specifies that "Deduction not to be allowed unless return is furnished as specified under sub section (1) of section 139. The assessee has not filed return of income within the due date of subsection (1) of section 139.

Interest Income:

b) On perusal of submissions made by the assessee society, as per P&L Account and as per return filed by the assessee it is revealed that the assessee society has received total interest income from other sources amounting to Rs. 41,88,448/- on investments and bank interest. (Interest received on Deposits Rs. 41,88,023 +Interest on Saving Account Rs. 425 Rs. 41,88,448) [In the show cause notice inadvertently interest amount received from saving account of Rs. 425/- was missed]. Further, the income by way of interest earned by a co-operative society through deposit or investment of funds from a scheduled bank or a co-operative bank or a person or body corporate (other than a co-operative society) will be in the nature of income from other sources (not arising from the business operations) chargeable under section 56 of the Act and ineligible for deduction u/s 80P of the Act.

3.5 Synopsis of the reply of the assessee to SCN and additional SCN (if any):

No response is received to the show cause notice issued. Assessee has not submitted any reasons substantiating the claims made by it as stated above.

3.6 Summary of information evidence collected after SCN(if any).

No response is received to the show cause notice issued. Assessee has not submitted any reasons substantiating the claims made by it as stated above. By not giving the reply to the show cause notice, it is presumed that assessee is not having any explanation to be submitted to the claims made in the return.

3.7 Point wise rebuttal of reply of the assessed including analysis of any case lawrelied upon.

1. Claim of 80P:

Assessee filed return of income in response to notice u/s 148 of the Act on 17-01-2023 and notice 143(2) was issued vide notice dated 31-01-2023. On verification of information filed by the assessee, it is noticed that a claim for deduction u/s 80P was made by the assessee of Rs. 53,72,108/- in the return.

a) The claim made by the assessee is not allowable u/s 80AC. Section 80 AC (ii) specifies that "Deduction not to be allowed unless return is furnished as specified under sub section (1) of section 139. The assessee has not filed return of income within the due date of subsection (1) of section 139. If notice u/s 148 of the Act would not have been issued to the assessee, assessee would not have filed return the income as stated above would have bee escaped from tax. Therefore assessee was not eligible for deduction u/s 80P of Rs. 53,72,108/- as claimed in the return.

Addition: Rs. 53,72,108"

4.5 The assessee, in his written submissions controverted the disallowance as under:

"The Assessee Society is an AJP Named and Styled as Hinganghat Nagrik Sahakari Patsanstha with its registered office situated at Kochar Complex, Ram Mandir Ward, Hinganghat-442301. The Assessee, states that they are carrying on the business of Lending and providing credit facilities to its members, Primarily objectivized for the mutual benefit of its members, and has claimed deduction under Section 80P of the Income Tax Act. The assessee society is registered under Maharashtra State Co-operative Societies Act, 1960 having registration No. as ARH/RSR/(CR)/831/90 dated 06.09.1990 primarily engaged in the principle business of providing financial assistance to its members and not with object of making profit.

1.2 The Department has issued a Notice u/s 148 for escapement of income in absence of return of income filed. Further Notice u/s 142(1) was issued on 12.12.2022 with compliance date 14.12.2022 which hardly had three working days. We were not given a justified time to even explain our case nor an opportunity to describe the details of our case. We have submitted Manual Income Tax Form and Computation of Income along with the reply stating "We are in receipt of your above-mentioned letter dated 12/12/2022. We, Hinganghat Nagri Sahakari Pat Sanstha is a Cooperative Credit Society registered under Cooperative Society Act, 1960. We are regular Tax Filer and disclosed total Income. We had prepared Income Tax Computation for FY 2014-15 disclosing full particulars of Income but we were unable to file it electronically due to some technical error. The computation & return of income for the FY 2014-15 were submitted during the Assessment Stage and the same has also been considered by the Assessing Officer but they have disallowed Deduction under Section 80P and have considered the Business income into Other Sources which against the Basic Principles of Classification based on the Nature of Business of the Assessee. Kindly consider the same.

We also had submitted Copy of Audited Balance Sheet and Copy of ITR along with our reply which is electronically filed on 17.01.2023 having acknowledgement No. 923756621170123 in response to notice issued to file the isturn of income under section 148.

Although we were regularly submitting our response but because of the short period we were unable to put in our detailed response thereby we are herwith stating the facts on which we would like to rely upon and the resons for Computation of Our Income the way we have Computed.

1.3 Again, a Notice u/s 142(1) Issued on 06.01.2023 with a response due date of 11.01.2023 which again are Four Working days excluding Sunday. Such short time for response is completely unjustified on the grounds of natural justice which can not be considered as reasonable opportunity of being heard.

A Notice u/s 142(1) has issued having a single day time to submit the documents called which was on 16.01.2023 and response due date was 17.01.2023. Additionally we would like to bring it to the notice of the NFAC that Such short response time made available to us is completely unjustified on the grounds of Natural Justice and the Assessing Officer has flouted the First Principals of Natural Justice which states that the assessee should be provided as reasonable opportunity to elabhorate and explain his case.

We would like to state that When the information required by the Learned Assessing officer Pertains to a Financial Year which is Prior to 8 Years from the Current Period such short time period is unreasonable.

Further a Show Cause Notice was issued on 13.02.2023 with a due date of 17.02.2023 which again had a time limit of 5 Working days and no Physical Notice was issued to us.

1.4 However, the return of income was filed electronically during the assessment proceeding which is treated as invalid by the learned assessing officer on the ground that same was not filed within the due date. Without appreciating the response of the appellant, the learned Assessing officer passed on order stating that No response is received to the show cause notice issued. Assessee has not submitted any reasons substantiating the claims made by it as stated above. By not giving the reply to the show cause notice, it is presumed that assessee is not having any explanation to be submitted to the claims made in the return. The learned assessing officer has made an addition in the income of Rs. 53,72,108/-. The addition made by the assessing officer is on the basis of the return of income submitted by the assessee and still the Assessing officer has invalidated the return which is self-contradictory in Nature.

1.5 As Per Learned Assessing Officers Contention, "the appellant has not filed the return of income u/s 139(1) of the IT Act, 1961 and hence the deduction u/s 80P is not allowed. Also the interest earned by the assessee Society through deposit or investment of funds in Scheduled or Co-operative Bank should be treated as income from Other Sources and not eligible as deduction u/s 80P "

Whereas, Section 80A(5) read with Judiciary Judgments on the same clarifys that, "the deduction under chapter VIA is allowable if the claim of the same is made in the return of income either filed under section 139(1) or filed under section 139(4) or in response to notice u/s 142(1) or filed before completion of assessment. The specific disallowance of claims in the return of income filed under section 139(4) or in response to 142(1)is not made under section 80A(5) of the IT Act 1961. The claim under section 80P is made in the return of income filed and therefore it should be allowed. Additionally, there is no specific disallowance of claim made under section 80P of the I.T Act, 1961 for belated returns or return filed during the assessment proceedings. In our case we have already filed Return of Income & Claimed deduction in the course of

assessment proceeding only. Thereby the disallowance under Section 80P on these Ground is Untenable and aginst the principals of law.

The Learned Assessing Officer has disallowed the claim u/s 80P under the light of Sec 80AC(ii) which States as follows, "For section 80AC (ii) of the Income-tax Act, the EN

following section shall I be substi substituted, COME TAY DEPAR

80AC. Deduction not to be allowed unless return furnished. Where in computing the total income of an assessee of any previous year relevant to the assessment year commencing on or after-

(ii) the 1st day of April, 2018, any deduction is admissible under any provision of this Chapter under the heading "C.-Deductions in respect of certain incomes",

no such deduction shall be allowed to him unless he furnishes a return of his income for such assessment year on or before the due date specified under sub-section (1) of section 139." Where as under the light of Sec 80AC, deductions under Chapter under the heading "C.-Deductions in respect of certain incomes are disallowed on or after 01st April, 2018.

Period under appeal is prior to April 2018 which clearly state that the Learned Assessing Officers Application of 80AC (ii) is futile in this case as the law in itself was effective from 01/04/2018.

Thus, as per sec. 80AC which contemplates filing of ITR to claim deductions under Chapter VI "A" of the Act within due date can not be applied to the previous Years starting Before 01/04/2018."

4.6 The AO has disallowed the deduction claimed u/s 80AC(ii) on the ground that no valid return has been filed by the assessee. The assessee has controverted the stand of the AD on the ground that the said provision of 80AC is applicable from 1 April 2018 whereas the assessment year under consideration for the assessee is prior to that. The assessee has claimed that despite of not filing retum within the due dates, he is eligible for deduction.

4.7 However, Hon'ble Madras High Court in the case of AA520 Veerappampalayam Primary Agricultural Cooperative Credit Society Ltd. 138 Taxmann.com 571 dated 7.04.2021 has held that no claim under any provisions of Part C of Chapter VIA would be admissible in case of a belated retum. Although the decision of Hon'ble Hon'ble Kerala High Court in the case of Chirakkal Service Cooperative Bank 384 ITR 490 pertains to the Asstt Year 2018-19, ie post amendments to section 80AC vide Finance Act 2018, Hon'ble ITAT Pune in the case of Solapur Dist MSK Samiti H Master T And NT while passing order for the AY 2017-18 distinguished the case of Chirakkal Services of Kerala High Court relied upon by the assessee, and held that the deduction is to be disallowed even prior to 2018. Relevanit extract of the order is as under:

The Hon'ble Bombay High Court in the case of EBR Enterprises Vs. Union of India 415 ITR 139 (Bombay), dated 4th June, 2019 has held as under:

Quote, 5. As per this provision, where the assessee fails to make a claim in his return of income for any deduction under Section 104 or Section 107 or Section 10B or Section 10BA or under any provision of the said Chapter-VI A under the heading "C.-Deduction in respect of certain incomes no deduction would be allowed to him under the said provision. In plain terms, this Sub Section (5) Section 80A of the Act imposes an additional condition for claim of deduction in relation to income under any of the provisions mentioned therein. Apart from the requirement of fulfillment of individual set of respective conditions for the purpose of claiming the concerned deduction, this plenary condition requires that the claim ought to have Solapur Dist MSK Samiti H Master T and NT Path Mydt Pandharpur [A] made in the retum of income by the assessee and if the asSSSSSE fails to make such claim in the return of income, such deduction shall not allowed to him under the relevant provision. Admittedly, in the present case, the Petitioners had not raised any such claim in the return of income. In plain terms, the claim of the Petitioners under Section 80-1B (10) of the Act would be hit by Sub Section (5) of Section 80A of the act. ……..
……..

What Sub Section (5) of Section 80A of the Act mandates is that, if the assessee fails to make a claim in his retum of income for any deduction under the provisions specified therein, the same would not be granted to the assessee. This condition or restriction is not relatable to the Assessing Officer or the Income Tax Authority. This condition attaches to the claim of the assessee and has to be implemented by the Assessing Officer, CIT or the Appellate Tribunal as the case may be. There is no indication in Sub Section (5) of Section 80A of the Act as to why the restriction contained therein amounts to limiting the power of Assessing Officer but not that of Commissioner." Unquote.

7.5 Thus, the Hon'ble Jurisdictional High Court categorically held that as per Section 80A(5) of the Act, to claim deduction under section 801B assessee had to make the claim of impugned deduction in the Return of Income. It means to claim Deduction under Chapter VIA under the heading "C.-Deductions in respect of certain incomes the Assessee has to claim the deduction in the Return of Income.

7.6 The Hon'ble High Court of Kerala in the case of Kuthuparamba Range Kalluchethu Vyavasaya Thozhilali Sahakarana Sangham Ltd Vs. CIT 257 Taxman 151 (Kerala) (20-

06-2018] held as under:

Solapur Dist MSK Samiti H Master T and NT Path Mydt Pandharpur [A] Quote, "The question raised in one of the appeals [I.T.A.No.273 of 2015] is whether the Society-assessee can claim a deduction when no return was filed..

5. …….. Section 80P comes under sub-chapter 'C' "Deduction in respect of certain incomes". A claim for such deduction has to be made in the return of income inter alia of the deduction permissible under Section 80P for reason of it being allowed to Co-operative Societies. We also notice a Division Bench

decision of this Court in Chirakkal Service Co-operative Bank Ltd. v. CIT [2016] 68 taxmann.com 298/239 Taxman 417/384 ITR 490 (Ker.), which relied on the aforesaid provision to decline exemption insofar as a similar situation in which no return was filed. In such circumstance, the failure to file a return under Section 139; even when a notice was issued under Section 142(1), is not a technical defect. We also do not think that the decision in Yokogawa India Ltd. applies, since deduction as spoken of in Section 80A(1) with reference to the provision under sub-chapter 'C' being 80P, is with respect to the institution being a Co-operative Society. Only when a retum is filed claiming deduction under Section 80P, the AO will be enabled to first consider the question of eligibility of the assessee and then consider the allowability of deduction from the total income. We, hence, answer the question of law framed in I.T.A.No.273 of 2015 against the assessee and in favour of the Revenue." Unquote.

7.7 The Hon'ble Kerala High Court in the case of Nileshwar Rangekallu Chethu Vyavasaya Thozhilali Sahakarana Sangham Vs. CIT 459 ITR 730 (Kerala) [14-03-2023], has held as under:

Quote, 1. On a consideration of the rival submissions and on a perusal of the statutory provisions, we find that a reading of section 80A(5) and Section 80AC of the IT Act as they stood prior to 1-4-2018, when the latter provision was amended by Finance Act 2018, would reveal that the statutory scheme under the IT Act was to admit only such claims for deduction under section 80P of the IT Act as were made by the assessee in a return of income filed by him. That return can be under sections 139(1), 139(4), 142(1) or section 148, and to be valid, had to be filed within the due date contemplated under those provisions. Under section 80A(5), the claim for deduction under section 80P could be made by an assessee in a return filed within the time prescribed for filing such returns under any of the above provisions. The amendment to Section 80AC with effect from 1-4-2018, however, mandated that for an assessee to get a deduction under section 80P of the IT Act, he had to furnish a return of his income for such assessment year on or before the due date specified in Solapur Dist MSK Samiti H Master T and NT Path Mydt Pandharpur [A] section 139(1) of the IT Act. In other words, after 1-4-2018, even if the assessee makes his claim for deduction under section 80P in a return filed within time under sections 139(4), 142(1) or section 148, he will not be allowed the deduction, unless the return in question was filed within the due date prescribed under section 139(1). Thus, it is clear that the statutory scheme permits the allowance of a deduction under section 80P of the IT Act only if it is made in a return recognised as such under the IT Act, and after 1-4-2018, only if that return is one filed within the time prescribed under section 139(1) of the Act. As the return in these cases, for the assessment years 2009-10 and 2010-11, were admittedly filed after the dates prescribed under sections 139(1) and 139(4) or in the notices issued under section 142(1) and section 148, the returns were indeed non-est and could not have been acted upon by the Assessing Officer even though they were filed before the completion of the assessment.

12. There is yet another aspect of the mater. The requirement of making the claim for deduction in a return of income filed by the assessee can be seen as a statutory pre-condition for claiming the benefit of deduction under the IT Act. It is trite that a provision for deduction or exemption under a taxing Statute has to be strictly construed against the assessee and in favour of the

Revenue. Thus viewed, a failure on the part of an assessee to comply with the pre-condition for obtaining the deduction cannot be condoned either by the statutory authorities or by the courts.

13. It is in the backdrop of the aforesaid discussion that we must consider the findings of a Division Bench of this Court in Chirakkal Service Co-operative Bank Ltd. [supra]. The findings therein, that appear to suggest that a claim for deduction under section 80P can be entertained even if it is made in a return filed beyond the time permitted under the IT Act, ignores the perspective that sees the requirement of the claim for deduction being made in a valid return as a pre-condition for obtaining the benefit of the statutory deduction. The said findings also fly in the face of the express statutory provisions that requires the claim to be made in a return filed by the assessee, by which term is meant a valid return under the Act, and therefore have necessarily to be seen as per incuriam. We also find that the subsequent amendments to section 80AC by the Finance Act 2018 fortifies the view that we have taken for, it makes the claim for deduction under section 80P conditional on filing a return within the due date prescribed under section 139(1) of the IT Act. In other words, the pre-condition for claiming the deduction under section 80P of the IT Act has now been made more stringent by reducing the time available to an assessee for making the claim

Solapur Dist MSK Samiti H Master T and NT Path Mydt Pandharpur [A] In the light of the aforesaid discussion, we find that the above questions of law have to be answered in favour of the Revenue and against the assessee, and we do so. Thus, these I.T. Appeals are disposed by answering the substantial questions of law raised therein, in favour of the Revenue and against the assessee." Unquote. 7.8 The Hon'ble Gujarat High Court in the case of Rachna Infrastructure Pvt. Ltd., Vs. Pr.CIT 138 taxmann.com 416 (Gujarat) (15-02-2022] held that assessee was not eligible for deduction u/s 801A as per Section 80A (5) of the Act as Assessee had not claimed the deduction in the Return of Income. 7.9 Thus, the Law laid down by the Hon'ble Jurisdictional High Court(supra) and Hon'ble Kerala High Court is that Assessee has to claim Deduction Under Chapter VIA of the Act under the heading "C.-Deductions in respect of certain incomes" in the Return of Income. Also Hon'ble Keral High Court (supra) further held that the Return of Income has to be filed within the time mentioned in the Section 139(1) of the Act to claim the impugned deduction.

8. In these facts and circumstances of the case, as the Assessee had not filed the Return of Income for A.Y.2017-18, respectfully following the Hon'ble High Courts(supra), we hold that the assessee is not eligible for deduction under section 80P of the Act. Solapur Dist MSK Samiti H Master T and NT Path Mydt Pandharpur [A] Accordingly we uphold the Assessment Order Accordingly, all the grounds raised by the assessee are dismissed.

Respectfully following the ratio laid down by the Hon'ble Madras High Court in the case of AA520 Veerappampalayam Primary Agricultural Cooperative Credit Society(supra), it is held that as the assessee had failed to file his return within time allocated u/s 139(1)/(4) and 148/142(1), the AO has rightly disallowed the exemption u/s 80P. Hence grounds 1,4,5 and 7 are decided against the assessee."

4. We are in complete disagreement with the conclusion drawn by the learned CIT(A). He has completely misunderstood the ratio of the cases. Provisions of section 80AC of the Act has been amended w.e.f. the assessment year 2018–19 and the same does not apply for the current assessment year. Further, it is beyond doubt that the assessee has filed a return of income under section 148 of the Act albeit late. This n on–compliance does not stand in the way of claiming deduction under section 80P of the Act, because the return of income under section 148 of the Act is considered as a return of income under section 139 of the Act. So, we reverse the impugned order passed by the learned CIT(A) affirming the assessment order passed by the Assessing Officer and on technicalities, the claim under section 80P of the Act cannot be negated. Hence, the assessee is entitled for deduction under section 80P of the Act for ₹ 11,83,660. Now, as regards the balance amount of ₹ 41,88,448, holding the same to be income from other sources by the Assessing Officer, it is a matter on record that this very Co–ordinate Bench of the Tribunal, Nagpur Bench, has allowed the claim following the ratio laid down in 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:-*
>
> > *"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.

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. "

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."

5. In view of the above, all the grounds are allowed and the entire assessed income of ₹ 53,72,108, the assessee is entitled for relief. We order accordingly. Thus, grounds raised by the assessee for A.Y. 2015–16 are allowed.

6. In the result, appeal by the assessee for A.Y. 2015–16 is allowed.

ITA no.567, 568 & 569/Nag./2024
Assessee's Appeals for
A.Y. 2018–19, 2020–21 & 2022–23

7. In all these appeal, the only issue arose is, whether or not the learned CIT(A) was justified in upholding the assessment order passed by the Assessing Officer while disallowing the claim of benefit of section 80P of the Act. This issue is common in all the years under consideration, except variation in figures and hence a consolidated order is being passed as under.

8. 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:-*
> >
> > > *"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.*
>
> *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. "*
>
> > *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 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"*. We, 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 in all the assessment year i.e., A.Y. 2018–19, 2020–21 & 2022–23.

10. In the result, appeal by the assessee for A.Y. 2018–19, 2020–21 & 2022–23 are allowed.

Order pronounced in the open Court on 10/02/2025

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

NAGPUR, DATED: 10/02/2025

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