

IN THE INCOME TAX APPELLATE TRIBUNAL
NAGPUR BENCH, NAGPUR

BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER

SMC MATTER

ITA no.483/Nag./2024
(Assessment Year : 2016-17)

Rajura Nagari Sahakari Pat Sanstha
Maryadit, Near Old Bus Stand
Rajura, Chandrapur 442 905
PAN – AAAAR5884N

..... Appellant

v/s

Income Tax Officer
Ward-5, Chandrapur

..... Respondent

Assessee by : Shri Abhay Agrawal
Revenue by : Shri Abhay Y. Marathe

Date of Hearing – 04/02/2025

Date of Order – 25/02/2025

ORDER

This appeal by the assessee is emanating from the impugned order dated 02/05/2023, passed by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, [*learned CIT(A)*], for the assessment year 2016-17.

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

"1. The order passed by Commissioner of Income Tax (Appeals), National Faceless Appeal Centre u/s 250 of I.T Act 1961 is illegal, invalid, and bad in law.

2. The learned CIT(A) erred in confirming the action of the learned AO in making disallowance of deduction claimed u/s 80P at Rs. 17,32,958/- as claimed in the Return of Income.

3. The AO and learned CIT(A) ought to have allowed the deduction u/s 80P of the I.T. Act, 1961 as claimed in the Return of Income.

4. The learned CIT(A) erred in not providing sufficient opportunity of being heard, thereby breaching principles of natural justice.

5. The Appellant prays leave of the Hon'ble Tribunal to add, amend, alter any of the Grounds of Appeal."

3. During the course of hearing, the Registry has pointed out a delay of 418 days in filing the present appeal before the Tribunal. While going through the record available before us, we find that the assessee has filed affidavit with a request to condone the delay. The contents of the affidavit is extracted below:-

"A. That the order passed by the learned CIT(A) is dated 02/05/2023 which was uploaded on the IT portal. That the due date for filing Appeal was within 60 days from receipt of the aforesaid order i.e 01/07/2023.

B. That the Assessee has filed appeal on 06 September 2024. Thus, there has been a delay of 432 days in filing the Appeal by the Assessee.

Sufficient Cause explaining the delay in filing the Appeal

C. That, the Assessee could not represent his case before learned CIT(A). The notices were sent to email-id amohril@gmail.com which belonged to erstwhile consultant. The erstwhile consultant forwarded the mails to assessee's appeal consultant at his email-id cavarathod@gmail.com. It appears that, the appeal consultant did not comply with the notices and also failed inform the assessee about the notices issued. Thus, notices of hearing were not received by the assessee hence, the assessee could not comply with the notices. The assessee was not aware of CIT(A) order passed dated 02/05/2023. The assessee being located in rural area and trustees being layman were not well versed with checking online portal and relied completely on their tax consultants for all their compliances. The assessee operates from Rural Area. Thus, the order passed was inadvertently remained to be brought to the notice of the assessee or its trustees/ executive body.

D. Subsequently demand recovery proceedings were initiated by the local jurisdictional AO office. The assessee changed his old consultant and visited his new consultant to enquire about tax proceedings. It was only then, the new consultant informed the assessee about the passing of an adverse order by learned CIT(A) dated 20/05/2023.

On the advice of his new consultant, the Assessee appointed a new counsel Shri Abhhay N Agrawal, Advocate for filing of appeal. That there was a delay

in appointing the Counsel and providing him the necessary documents for drafting of appeal. That, it took considerable time in coordination, follow-up, and filing the appeal. The trustees being layman, does not understand the intricacies of taxation matters. Considering all the factors, there was an inadvertent delay of 432 days in filing the appeal. There was no malafide intention and the Assessee always wanted to contest the addition made in the assessment order. Therefore, the Assessee prays that the delay of 432 day be kindly condoned.

F. That there was no malafide intention on Assessee's part for delay in filing the appeal.

G. In view of the above it is submitted that there was a bonafide lapse in delay in filing the appeal before your Honour.

Hence, there is an unintentional delay in filing the appeal before your Honour. By delaying the filing of appeal, no undue benefit or advantage is taken by the Assessee. Accordingly, in the interest of justice, the Assessee wishes to challenge the appellate order passed by the learned CIT(A) by way of appeal filed before your Honour with a request for condonation of delay.

In view of this, it is prayed that the delay of 432 days may kindly be condoned in order to render the justice."

4. After considering the submissions of the learned Authorised Representative and averments made in the affidavit, we are of the opinion that the assessee is prevented in filing the appeal belatedly and we are satisfied that the delay in filing the appeal is due to reasonable cause. Consequently, we condone the delay of 418 days in filing the present appeal and admit the same for adjudication on merit.

5. Facts in Brief:- The assessee is a resident AOP (Association of Persons), engaged in the business of providing credit facilities to its members and assessed to tax. For the assessment year 2016-17, the return of income was filed by the 28/03/2018, declaring total income of ₹ nil, after claiming deduction of ₹ 17,32,958, under section 80P under Chapter-VI-A. the assessee's case was selected for limited scrutiny under CASS and accordingly notices under section 143(2) and 142(1) were served. The reply provided by

the assessee regarding admissibility of nominal members in its rolls was not satisfactory in view of the Assessing Officer and thus deduction claimed under section 80P was disallowed and added back to the returned income.

6. On appeal, the learned CIT(A) confirmed the assessment order passed by the Assessing Officer.

7. Before us, the learned Counsel for the assessee submitted that identical issue has been decided in favour of the assessee and against the Revenue by the Tribunal in following cases:-

"1. Doctor Punjabrao Deshmukh Krushi Vidyapeeth Karmachari Pat Sanstha Mryat Akola v/s ITO, ITA no.331/Nag./2022, for A.Y. 2018-19, vide order dated 19/06/2024 (ITAT Nagpur Bench); and

2. ITA no.939, 940 & 976/Bang./2024, for A.Y. 2017-18, 2018-19 & 2015-16, vide order dated 22/08/2024 (ITAT Bangalore Bench).

8. In view of the above, the learned Counsel for the assessee submitted that since the issue raised in this appeal i.e., claiming deduction of ₹ 17,32,958, under section 80P under Chapter-VI-A, is squarely covered by the aforesaid case laws, therefore, he prayed that this issue may be decided in favour of the assessee.

9. On the other hand, the learned Departmental Representative supported the order of the authorities below.

10. We have heard the rival arguments, perused the material available on record and gone through the orders of the authorities below. As submitted by the learned Counsel for the assessee, while going through the record, we find that th issue in hand is covered by the order of the Tribunal, ITAT, Nagpur

Bench, wherein the very same Bench is a party to that order, the findings of the Tribunal recorded in Doctor Punjabrao Deshmukh Krushi Vidyapeeth Karmachari Pat Sanstha Mryat Akola v/s ITO, ITA no.331/Nag./2022, for A.Y. 2018-19, vide order dated 19/06/2024, vide Para-17 to 20, a copy of which is placed on record, is reproduced below ready reference:-

"17. Another ground raised by the assessee is that the Assessing Officer had denied the claim of the assessee on the gound that the assessee being a Co-operative Society, not eligible to claim deduction under section 80P(2) of the Act. In this regard, we refer to Clause (19)(a) of The Maharashtra Co-operative Societies Act, 1960, wherein it is clearly mentioned that the Co-operative Society is eligible to claim deduction. Clause (19)(a) is reproduced below:-

"(19) (a) "member" means a person joining in an application for the registration of a co-operative society which is subsequently registered, or a person duly admitted to membership of a society after registration, and includes a nominal [or associate] member and any depositor or financial service user of primary cultural co-operative credit society:]"

18. In view of the above, the Assessing Officer was not correct to hold that the assessee being Co-operative Society is not eligible to claim deduction. We further find that the assessee's claim of deduction under section 80P(2) of the Act is squarely covered by the decision of the Co-ordinate Bench of the Tribunal in M/s. Bhagyashri Nagri Sahakari Pt. Sanstha Maryadit v/s PCIT, ITA no.122/Nag./2018, etc., A.Y. 2013-14 and 2014-15, order dated 06/04/2022, wherein the Tribunal has decided the identical issue in favour of the assessee by observing as under:-

"10. We have heard the Ld. Authorized Representatives of both the parties, perused the orders of the lower authorities and the material available on record, as well as considered the judicial pronouncements that have been pressed into service by them to drive home their respective contentions. Adverting to the view taken by the Pr. CIT that as the assessee society was as per its bye-laws permitted to admit nominal members in addition to its regular members, the failure on the part of the Assessing Officer in not bringing on record the transactions entered into by the assessee society with its nominal members i.e. total deposits received, loans given to the nominal members etc. had rendered his order erroneous in so far as it was prejudicial to the interest of the revenue, for the reason, that pursuant to the judgment of the Hon'ble Supreme Court in the case of Citizen Co-operative Society Ltd. Vs. ACIT (supra), as nominal members are not akin to members in real sense, therefore, deduction u/s.80P of the Act would not be available to the assessee qua its transactions with the nominal members. In our considered view the Pr. CIT had arrived at the aforesaid conclusion on the basis of misconceived and part baked facts. As stated by the Ld. AR, and rightly so, as the assessee society is registered under the Maharashtra Co-operative Credit Societies Act, 1960 which takes within the sweep of the definition of "Member" even "Nominal Members" and does not provide for any distinction between the duly registered member and nominal members, therefore, the view taken by the Pr. CIT that the transactions

of the assessee society with its nominal members would not qualify for deduction u/s.80P cannot be accepted. At this stage, we may herein observe, that the reliance placed by the Pr. CIT on the judgment of the Hon'ble Supreme Court in the case of Citizen Co- operative Society Ltd. (supra) being distinguishable on facts would not assist his case. In the case of Citizen Co-operative Society Ltd. (supra), the society therein involved was registered under Andhra Act, wherein the term "Member" did not take within its sweep nominal members. Our aforesaid view that the definition of "Member" u/s. 2(19) of the Maharashtra Co-operative Societies Act, 1960 takes within its sweep even a nominal member and does not provide for any distinction between the duly registered members and the nominal members is supported by the judgment of the Hon'ble High Court of Bombay in the case of Jalgaon District Central Co-operative Bank Ltd. Vs. Union of India (2004) 134 Taxman 1 (Bom). Apart from that, we find the Hon'ble Supreme Court in its recent judgment in the case of Mavilayi Service Co-operative Bank Ltd... Vs. CIT (2021) 123 taxmann.com 161(SC) after referring to and considering its earlier judgment in the case of Citizen Co-operative Society Ltd. (supra) had observed, that unlike as in the case of Citizen Co-operative Societ Ltd. (supra) which dealt with the Andhra Act wherein the term 'Member' did not take within its sweep "Nominal Member", in the case before them the assessee society was registered under Kerala Act where the term Member included Nominal member, therefore, the assessee society was eligible for claim of deduction of the interest income earned on the loans e given to its nominal members u/s.80P(2)(a)(i) of the Act. Backed by our aforesaid view, we are of a strong conviction that where the State Act under which the assessee society is registered includes within the definition of "Member" a "Nominal Member", there can be no question of denial of benefit u/s. 80P(2)(a)(i) of the Act qua the interest income pertaining to the transactions entered into by the assessee society with its Nominal Members. Our aforesaid view is supported by the orders of the co-ordinate bench of the Tribunal in the case of Vainganga Nagari Sahakari Pat Sanstha Ltd. Vs. ITO, Ward-2, Bhandara, ITA No.49/NAG/ 2020, dated 21.06.2021 and that in the case of M.S.E.B Employees Co-operative Credit Society Ltd. Va., ITO, Ward-3, Nagpur, ITA No.369/NAG/ 2019, dated 19.02.2020....."

19. We further find that the similar issue of deduction claimed by the assessee under section 80P(2) of the Act also came up before the Co-ordinate Bench of the Tribunal, Chennai Bench, in Varathappam Palayam Primary Agricultural Co-operative Credit Society v/s ITO, ITA no.282/Chny./ 2021, A.Y. 2016-17, (wherein one of us Judicial Member is a party to this order), wherein the Tribunal dealt with the issue and decided the same in favour of the assessee by observing as follows:-

"5. We have heard both the sides, perused the materials available on record and gone through the orders of authorities below. Similar issue on identical facts was subject matter in appeal before the Tribunal in the case of AA-435 Velankattuvalasu Primary Agricultural Cooperative Credit Society Ltd. v. ACIT (supra), wherein, the Coordinate Benches of the Tribunal has observed and held as under:

"8. We have heard the rival contentions and gone through the facts and circumstances of the case. We noted that this issue is squarely covered exactly on identical facts by the Co-ordinate Bench decision in the case of Tamilnadu Co-operative State Agriculture and Rural Development Bank Limited in ITA Nos.31 to 33/CHNY/2021, the decision pronounced on 29.04.2022, wherein considering the decision of Hon'ble Supreme Court in the case of The Mavilayi Service Co-operative Bank Ltd., supra

and the decision of Hon'ble Madras High Court in the case of S-1308 Ammapet Primary Agricultural Co-operative Bank Ltd., supra, the deduction is allowed u/s.80P(2) of the Act in respect of income earned from associated members. The Tribunal in the case of Tamilnadu Co-operative State Agriculture and Rural Development Bank Limited, supra held as under:-

21. We have heard the rival contentions and had gone through the facts and circumstances of the case. We have perused the case records, including the assessment order and the order of the CIT(A). We have also perused the paper-book filed by the learned Counsel of the Assessee consisting of pages 1 to 120 and pages 1 to 25. The Revenue has also filed a paper-book consisting of 1 to 84 pages and also filed written submissions along with annexures which were considered. We noted that the first objection of the learned CIT-DR is that the Assessee is a Co-operative Bank and not a Co-operative Society. We will deal with this argument of the learned CIT-DR. First of all, we have gone through the bye-laws of the Assessee Society which are placed at page 92. The relevant objects of the Assessee are mentioned at pages 93 and 94 of the Assessee's paper-book and the relevant reads as under:

"Objects : 3.

The object of the Bank shall be primarily to finance Primary Land Development Banks.

4. In order to fulfil such object, it shall have power:

To float debentures on the security / of its assets and of land mortgages, other assets transferred or deemed under the provisions of section 23A of the Act to have been transferred to it by Primary Land Development Banks or against the guarantee of Government of Tamil Nadu for repayment in full of principal and payment of interest in respect of loans granted by Tamil Nadu Co-operative State Land Development Bank to any institution approved by the Government by general or special order in writing, for such period and on such conditions as may be laid down by the provisions of the Act and the regulations made there under by the Board.[R.D. is 938/90C, dated 14.05.1990]

(aa) TO OBTAIN LOANS WITH GOVERNMENT GUARANTEE FROM ANY FINANCING AGENCIES OR FROM GOVERNMENT WITHOUT FLOATATION OF DEBENTURE ON SUCH CONDITIOONS AS MAY BE LAID DOWN BY THE GOVERNMENT.

Enbloc amendments from 1 to 35 and 43 to 54 registered by the DR of CS(c) vide his letter No.Rc.4673/71-k, dated 21.05.1971

(2) Enbloc amendments from 36 to 42 registered by theDR of CS(c) vide his letter No.Rc.4673/71-k, dated 19.04.1971.

(b) to receive deposits;

(c) to grant loans to Primary Land Development Banks and other institutions referred to in by law 2(c) for the purpose specified in Rule 13 of the Tamil Nadu Co-operative Land Development Banks (Miscellaneous provisions) Rules 1970 and

on such terms consistent with their bylaws as the Board shall decide; [No.Rc.1636/77K, dated 26.02.1977)

(d) to function as the agent of any Co-operative Bank, subject to such conditions as the Registrar may, by general or special order, specify;

(e) to acquire such immovable properties and construct such buildings as it may consider necessary for the proper conduct of its business;

(f) to appoint what staff it considers necessary to conduct the affairs of the bank;

(g) to inspect the primary land development banks and the lands mortgaged to them and to appoint the necessary staff or the authority;

(h) to develop, assist and co-ordinate the work of the affiliated primary land development banks and afford them financial and other help wherever necessary;

to do such other things as are incidental to or conducive to the above subject;

The Assessee's primary objective as mentioned in the objects is to provide finance to primary land development banks to extend loans for agricultural activities. We noted that the Assessee is a Cooperative Society registered under the Tamil Nadu Co-operative Society Act, 1983 and obtained registration as a Co-operative Society on 12.12.1929 and since then, it has been operating as a Cooperative Society providing finance to the members of the Society. We noted that the Assessee, like other co-operative institutions is a Cooperative Society and was entitled for deduction u/s.80P of the Act, the legislature, through the Finance Act 2006, introduced Section 80P(4) of the Act with a specific intention to exclude co-operative banks from this scope of deduction u/s.80P of the Act. The reasons sighted in the Finance Act, 2006 reads as under:

"166. Co-operative 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 for tax under section 80P of the Income Tax Act. However, I propose to exclude all other co-operative banks from the scope of that section."

From the above, it is clear that the provisions of Section 80P(4) of the Act was brought under the statute book, is to exclude the co-operative banks out from the ambit of Section 80P of the Act because, they have functions of any normal bank. In the present case, before us, although the Assessee by nomenclature, the name is "Tamil Nadu Co-operative

Society, Agriculture and Rural Development Bank Limited", but it is a co-operative Society registered under the Tamil Nadu Co-operative Societies Act, 1983.

22. We noted that the learned CIT-DR heavily relied on the decision of the Hon'ble Supreme Court in the case of Citizen Cooperative Society Limited (*supra*); wherein the Hon'ble Supreme Court has upheld the disallowance of the claim of deduction u/s.80P of the Act. We noted the facts that the Hon'ble Supreme Court has discussed the following crucial aspects:

I. The Society was originally formed under the mutually aided co-operative Societies Act, 1995 [MACSA] and subsequently had got registered under the Multi-State Cooperative Societies Act 2002 and their activities were in violations of the provisions of the Multi-State Co-operative Societies Act 2002 under which it had been functioning;

II. The persons from whom deposits were received were not traceable;

III. Additions were proposed u/s.68 of the Income Tax Act, 1961;

IV. They had approached the Reserve Bank of India [RBI] vide letter dated 19.10.1997 requesting for conversion of the Co-operative Society into an Urban Bank;

V. They had lent money to general public without obtaining permission from the concerned Registrar of the Cooperative Societies; VI. They had claimed to be a Co-operative Society for the claim of deduction u/s.80P of the Act and Banking Company / Co-operative Bank for the purpose of Section 269SS and 269T.

23. Now, we have gone through the facts of the Assessee and that, what is the difference as in the case-law of the Hon'ble Supreme Court, in the case of Citizen Co-operative Society Limited (*supra*) and that of the present case is noted as follows:

I. That the Assessee is registered as a Co-operative Society under Tamil Nadu Co-operative Societies Act, 1983.

II. That the Assessee provides services only to its members and not to the public and hence the principle of mutuality applies,

III. That the Society has a record of the name and address of all the members are identifiable and available;

IV. That the Society has not obtained any authorization or License from RBI to operate as a Banking Institution. Added to that, there is no inspection by the Reserve Bank of India [RBI], no reports are sent to RBI, there is no cheque withdrawal facility, the Society is not allowed to issue Demand Drafts and finally, the deposits are only from members and no non-members are involved;

V. That the Society has taken due approval for admission of members from the Registrar of Co-operative Societies and with members' capital only, it has been lending and conducting its business transactions;

24. Now, coming to an another objection of the learned CIT-DR that the Assessee never gave the list of "B" category members or Associate members, as they were general public and whole of their accounts were

in the banks. It was the argument of the learned CITDR that "B" category members were general public derived the facilities of the Assessee Bank without having any voting right in the Bank and moreover, they only gave the maximum business support to the Assessee Bank. We have considered this argument and noted that the Assessee has two categories of members, as under:

- a) Members – State Government and Primary Co-operative Agriculture and Rural Development Banks.
- b) Associate Members – Individuals and other Institutions.

25. We noted that the Assessee had filed before us, the extracts of the provisions of the Tamil Nadu Co-operative Societies Act, 1983 and the Tamil Nadu Co-operative Societies Rules. The Rule relating to the Associate Member as provided in Section 2(6) and in Section 2(16) reads as under:

"Definitions as in the Act:

I. Section 2(6) of the Act defines "Associate Member" as member who possesses only such privileges and rights of a member and who is subject only to such liabilities of a member as may be specified in this Act and the bye-laws.

II. Section 2(16) of the Act defines a "Member" as a person joining in the application for the registration of a Society and a person admitted to membership after registration in accordance with the provisions of this Act, the Rules and Bye-laws and includes an Associate Member."

We also noted that the Section 22 of the Tamil Nadu Co-operative Societies Act, 1983 and Rule – 32 of the Tamil Nadu Co-operative Societies Rules describe the procedure for admission of Associate Member and the relevant Rule reads as under:

I. Section 22 – Admission of Associate Members: - (1) Notwithstanding anything contained in Section 21, every registered society of such class as may be prescribed may admit any person possessing such qualifications as may be prescribed, as an associate member.

(2) Except as otherwise provided in the Rules, an Associate Member shall not be entitled to participate in the general meeting of the registered Society, or in the elections to the Board of such Society or to become an Officer of the registered Society or to any share in any form whatsoever in the assets or profits of the registered Society.

II. Rule 32 : - Admission of Associate members : - (1) Persons possessing the qualifications specified in sub-rule (2) may, if the bye-laws so provide, be admitted as Associate Members in the following class of Societies namely:

(9) An Associate Member shall not be required to contribute to the share capital of the Society but shall pay such admission fee as may be specified in the bye-laws, which shall not in any case exceed one hundred rupees. The admission fee shall not be refundable.

26. Before us, the learned Counsel for the Assessee explained the procedure and argued that an individual member, to become an Associate member of the Assessee Society, they will have to get the approval from the Registrar of the Co-operative Society. He agreed that

the bye-laws of the Assessee Society clearly states that all the members are required to hold shares but Associate members are exempted from holding such shares, in view of the Section 22(2) of the Tamil Nadu Co-operative Societies Act, 1983 and the Rules as amended from time to time. We noted that the Assessee's transactions are restricted only to the members or Associate members and not to the general public as alleged by the learned CIT-DR.

According to us, the Assessee cannot be construed to carry the business of Banking as defined u/s.5(b) of the Banking Regulation Act, 1949.

Thus, if the Banking Regulation Act, 1949 is now to be seen, what is clear from Section 3, read with Section 56 of the Banking Regulation Act, 1949 is that, a Primary Co-operative Bank cannot be a Primary Agriculture Credit Society as such a Co-operative Bank must be engaged in the business of banking, as defined by Section 5(b) of the Banking Regulation Act, 1949, which means the accepting, for the purpose of lending or investment of deposits of money from the public. Even the provisions of Section 22(1)(b) of the Banking Regulation Act, which is also applicable to the Co-operative Societies, but no Co-operative Society shall carry on Banking business in India, unless it is a Co-operative Bank and holds a license issued on it's behalf by the Reserve Bank of India [RBI]. The Assessee in the present case does not hold any license from the Reserve Bank of India or it is neither registered as a Banker under the Banking Regulation Act and as such, the Assessee is not allowed cheque or withdrawal facility and not allowed to issue Demand Draft and finally the deposits are only from the members or Associate members but not from non-members.

27. Before us, the learned Counsel for the Assessee has categorically made statement at the bar and produced evidences that the Assessee has records of the names and addresses of the members and all the members are identifiable and available. Further, it was contended that the Assessee has always submitted all relevant documents as and when sought for and it is not the case of the Assessing Officer that the Assessee has not submitted the relevant documents or any particular depositor is not an Associate member. Further, we also noted that the applicability of the provisions of Section 80P(4) of the Act was first raised by the Revenue for the Assessment Year 2009 – 2010, as the Assessee had adopted the same deduction and had filed his return of income accordingly. The Tribunal has categorically held that, in Assessment Year 2009 – 2010 in Assessee's own case, in I.T.A. No.1318/Mad/2013, dated 01.05.2014 that the Assessee is a Co-operative Society and is not engaged in the business of Banking and hence the provisions of Section 80P(4) of the Act does not apply to the Assessee's case. However, this matter was carried before the Hon'ble Madras High Court by the Revenue in T.C.A. No.540 of 2015, which was dismissed by the Hon'ble High Court in view of the monetary limit fixed by the CBDT for maintainability of appeal before the Hon'ble High Court but the substantial question of law framed with respect of the Section 80P(4) of the Act was left open and the Tribunal became final on the same.

28. Now, we have noted that the Hon'ble Supreme Court in the case of Mavilayi Service Co-operative Bank Limited (supra) considering the earlier decision in the case of Citizen Co-operative Society Limited (supra) has considered exactly an identical issue on exactly identical facts and held in paragraph nos.39 and 40, as under:

"39. The above material would clearly indicate that the limited object of Section 80P(4) is to exclude co-operative banks that function at par with other commercial banks, i.e. which lend money to members of the public. Thus, if the Banking Regulation Act, 1949 is not to be seen, what is clear from Section 3 read with section 56 is that a primary co-operative bank cannot be a primary agricultural credit society, as such co-operative bank must be engaged in the business of banking as defined by section 5(b) of the Banking Regulation Act, 1949, which means the accepting, for the purpose of lending or investment of deposits of money from the public. Likewise, under section 22(1)(b) of the Banking Regulation Act, 1949 as applicable to co-operative societies, no co-operative society shall carry on banking business in India, unless it is a cooperative bank and holds a license issued in that behalf by the RBI. As opposed to this, a primary agricultural credit society is a co-operative society, the primary object of which is to provide financial accommodation to its members for agricultural purposes or for purposes connected with agricultural activities.

40. As a matter of fact, some primary agricultural credit societies applied for a banking license to the RBI, as their byelaws also contain as one of the objects of the Society the carrying on of the business of banking,. This was turned down by the RBI in a letter dated 25.10.2013 as follows:

"Application for license

Please refer to your application dated April 10, 2013 requesting for a banking license. On a scrutiny of the application, we observe that you are registered as a Primary Agricultural Credit Society [PACS].

In this connection, we have advised RCS vide letter dated UBD (T) No.401/10.00/16A/2013-14 dated October 18, 2013 that in terms of Section 3 of the Banking Regulation Act, 1949 [AACS], PACS are not entitled for obtaining a banking license. Hence, your society does not come under the purview of the Reserve Bank of India, RCS will issue the necessary guidelines in this regard."

After considering these, the Hon'ble Supreme Court has summed up the issue in paragraph nos.45 and 46 as under:

"45. To sum up, therefore, the ratio decidendi of Citizen Cooperative Society Limited (supra), must be given effect to Section 80P of the Income Tax Act, being a benevolent provision enacted by the Parliament to encourage and promote the credit of the cooperative sector in general must be read liberally and reasonably, and if there is ambiguity, in favour of the Assessee. A deduction that is given without any reference to any restriction or limitation cannot be restricted or limited by implication, as is sought to be done by the Revenue in the present case by adding the word "agriculture" into Section 80P(2)(a)(i) when it is not there. Further, Section 80P(4) is to be read as a proviso, which proviso now specifically excludes cooperative banks which are co-operative societies engaged in banking business, i.e. engaged in lending money to members of the public, which have a license in this behalf from the RBI. Judged by this touchstone, it is clear that the impugned Full Bench Judgement is wholly incorrect in its reading of Citizen Co-operative Society Limited (supra). Clearly, therefore, once Section 80P(4) is out of harm's way, all the Assesseees in the present case are entitled to the benefit of the deduction contained in section 80P(2)(a)(i), notwithstanding that they may also be giving loans to their members which are not related to agriculture. Also, in case it is found that there

are instances of loans being given to non-members, profits attributable to such loans obviously cannot be deducted.

46. It must also be mentioned here that unlike the Andhra Act that Citizen Co-operative Society Limited (*supra*) considered, 'nominal members' are 'members' as defined under the Kerala Act. This Court in U.P. Co-operative Cane Unions' Federation Limited vs. Commissioner of Income Tax [1997] 11 SCC 287 referred to section 80P of the Income Tax Act and then held:

"8. The expression "members" is not defined in the Act. Since a co-operative society has to be established under the provisions of the law made by the State Legislature in that regard, the expression "members" in section 80P(2)(a)(i) must, therefore, be construed in the context of the provisions of the law enacted by the State Legislature under which the Co-operative Society claiming exemption has been formed. It is therefore, necessary to construe the expression "members" in Section 80-P(2)(a)(i) of the Act in the light of the definition of that expression as contained in Section 2(n) of the Cooperative Societies Act. The said provision reads as under:

"2.(n). 'Member' means a person who joined in the application for registration of a Society or a person admitted to membership after such registration in accordance with the provisions of this Act, the rules and the byelaws for the time being force but a reference to 'members' anywhere in this Act in connection with the possession or exercise of any right or power or the existence or discharge of any liability or duty shall not include reference to any class of members who by reason of the provisions of this Act do not possess such right or power have no such liability or duty;""

Considering the definition of 'member' under the Kerala Act, loans given to such nominal members would qualify for the purpose of deduction under section 80P(2)(a)(i)."

29. Another aspect highlighted by the learned Counsel for the Assessee is that the Revenue while framing the assessment u/s.143(3) of the Act for the Assessment Year 2017 – 2018, vide order dated 25.12.2019 has accepted the above stated position that the Assessee is a Co-operative Society and is not engaged in any banking business and therefore eligible for claim of deduction u/s.80P(2) of the Act and further the Revenue has followed the decision of the Hon'ble Supreme Court in the case of Mavilayi Cooperative Society Limited (*supra*). It means that the Revenue has accepted the position in the Assessment Year 2017 – 2018 while framing the scrutiny assessment and now the Revenue cannot go back from its stand because there is no change in the facts.

30. In view of the above facts discussed and the case-laws of the Hon'ble Supreme Court in the case of Mavilayi Service Co-operative Bank Limited vs. Commissioner of Income Tax, Calicut (*supra*), we are of the view that the Assessee is a Co-operative Society under the name and style as "Tamil Nadu Co-operative State Agricultural and Rural Development Bank Limited" and it is not engaged in the banking activities. It is also clear that in view of Section 3 read with Section 56 of the Banking Regulation Act, 1949, the Assessee cannot be considered as a Primary Co-operative Bank but it is a Primary Agricultural Credit Society because Co-operative Bank must be engaged in the business of Banking as defined in the Section 5(b) of the Banking Regulation Act, which means accepting, for the purpose of lending or investment of deposits of money from the public. Similarly, u/s.22(1)(b) of the

Banking Regulation Act, as applicable to Co-operative Societies, no Cooperative Society shall carry on in banking business in India, unless it is a Co-operative Bank and holds license issued on this behalf by the Reserve Bank of India.

In the present case also, there is no banking activity and it is not registered as a Bank and it does not hold any license issued by the Reserve Bank of India. The Assessee being a Primary Agriculture Credit Society is a Co-operative Society. The primary object of which is to provide financial accommodation to its members, i.e. members as well as Associate members for agriculture purposes or for purpose connected with the agricultural activities. Further, we are of the view that the provision of Section 80P(4) of the Act is to be read as a proviso, which proviso now specifically excludes cooperative banks which are co-operative societies engaged in the banking business, i.e. engaged in lending money to members of the public, which have a license in this behalf from the Reserve Bank of India. Clearly, therefore, the Assessee's case is out of the provisions of Section 80P(4) of the Act. In relation to the Associate members, we are of the view that the provisions of Section 22 read with Rule 32 of the Tamil Nadu Co-operative Societies Act, 1983 and Tamil Nadu Co-operative Societies Rules clearly determine the procedure to admit Associate members and accordingly in the present case, the Assessee's Cooperative Society has admitted the same. In view of the above finding, we hold that the Assessee is entitled for the claim of deduction u/s.80P(2)(a)(i) of the Act. Thus, we reverse the orders of the lower authorities and allow these three appeals of the Assessee.

Accordingly, we find the issue is squarely covered and hence, in this case also we allow the claim of deduction u/s.80P(2) of the Act."

5.1 Respectfully following the above decision of the Coordinate Benches of the Tribunal, we hold that irrespective of the fact that whether the assessee is having "A" class Members or "B" class Members, the assessee is entitled for claiming exemption under section 80P(2)(a)(i) of the Act. Thus, the ground raised by the assessee is allowed."

20. Respectfully following the aforesaid decisions of the Co-ordinate Bench of the Tribunal cited supra and consistent with the view taken therein, we set aside the impugned order passed by the learned CIT(A) and hold that the assessee is eligible to claim deduction under section 80P(2)(d) of the Act. Consequently, grounds no.2 to 4, are allowed."

11. We further find that the identical issue has also been decided by the Tribunal, Bangalore, "A" Bench, in M/s. Shri Shivaji Maharaj Credit Co-operative Society v/s ITO, ITA no.939, 940 & 976/Bang./2024, for A.Y. 2017-18, 2018-19 & 2015-16, vide order dated 22/08/2024, wherein the Tribunal decided the issue in respect of claim of deduction under section 80P of the Act in favour of the assessee, the relevant findings of the Tribunal are as under: -

"5.4

We have perused the submissions advanced by both sides in the light of records placed before us.

6. We note that the issue is in respect of deduction u/s. 80P(2)(a)(i) is covered by the ratio of Hon'ble Supreme Court in case of Mavilayi Service Co-operative Bank Ltd. v. CIT (supra).

6.1 Based on the observations by Hon'ble Supreme Court in case of Mavilayi Service Co-operative Bank Ltd. v. CIT (supra), we note that, Karnataka Co-operative Societies Act, 1959 defines Members to include nominal / associate members u/s. 2(f). Considering the definition of "Member" under the Karnataka Cooperative Societies Act, the present assessee qualifies for deduction u/s. 80P(2)(a)(i). At the cost of repetition, we draw reference from following observations of Hon'ble Supreme Court in case of Mavilayi Service Co-operative Bank Ltd. v. CIT (supra):-

"46. It must also be mentioned here that unlike the Andhra Act that Citizen Cooperative Society Ltd. (supra) considered, 'nominal members' are 'members' as defined under the Kerala Act. This Court in U.P. Cooperative Cane Unions' Federation Ltd. v. CIT [1997] 11 SCC 287 referred to section 80P of the IT Act and then held:

"8. The expression "members" is not defined in the Act. Since a cooperative society has to be established under the provisions of the law made by the State Legislature in that regard, the expression "members" in Section 80- P(2)(a)(i) must, therefore, be construed in the context of the provisions of the law enacted by the State Legislature under which the cooperative society claiming exemption has been formed. It is, therefore, necessary to construe the expression "members" in Section 80- P(2)(a)(i) of the Act in the light of the definition of that expression as contained in Section 2(n) of the Cooperative Societies Act. The said provision reads as under:

"2. (n) 'Member' means a person who joined in the application for registration of a society or a person admitted to membership after such registration in accordance with the provisions of this Act, the rules and the bye-laws for the time being in force but a reference to 'members' anywhere in this Act in connection with the possession or exercise of any right or power or the existence or discharge of any liability or duty shall not include reference to any class of members who by reason of the provisions of this Act do not possess such right or power or have no such liability or duty;"

Considering the definition of 'member' under the Kerala Act, loans given to such nominal members would qualify for the purpose of deduction under section 80P(2)(a)(i)."

6.2 Accordingly, respectfully following the above ratio, we hold that the claim of the assessee is eligible to claim deduction u/s. 80P(2)(a)(i) of the act in respect of the interest earned by the assessee from credit facilities extended to members that includes nominal / associate members, based on the byelaws in force for the relevant assessment years.

6.3 In respect of deduction available to the assessee on interest/dividend earned from fixed deposit / investments, Hon'ble Supreme Court in case of Kerala State Co-operative Agricultural and Rural Development Bank Ltd. KSCARDB vs. The Assessing Officer, Trivandrum & Ors. (supra), Hon'ble Supreme Court analysed applicability of section 80P(2)(d) deduction to an assessee in great detail.

6.4 At the outset, it is submitted that the assessee invested in Scheduled Banks and Co-operative Banks to meet the statutory requirement as provided u/s. 58 of the Karnataka Co-operative Societies Act, 1959. It is submitted that, the investments are made out of Reserve funds of the society. It was thus submitted that the case law relied on by the learned CIT(A) is M/s. Totgars Co-operative Sales Society reported in 322 ITR 283 (SC) which are distinguishable on facts being:

- It is primarily engaged in the business of providing credit facilities to its members and marketing their agricultural produce.
- At the time of marketing the produce, the sale proceeds are retained, and as the funds are not immediately required, the same was deposited and interest is earned. The funds used for investment are out of amount payables to the members retained by them.
- As interest was earned on money due to the members, that was deposited with the Bank, the same was held to be taxed as 'IFOS' u/s 56 of the Act (emphasis drawn from paras 10-11 of the judgment).

Now coming to the disallowance made u/s. 80P(2)(a)(i) by the Ld.CIT(A)/NFAC, the word 'attributable' used in the said Section is of great importance. Hon'ble Supreme Court considered the meaning of the word 'attributable' as supposed to derive from its use in various other provisions of the statute, in the case of Cambay Electric Supply Industrial Co. Ltd. v. CIT [1978] 113 ITR 84 (at page 93) as under:—

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

6.5 Therefore, in the above decision, the word "attributable to" is certainly wider in import than the expression "derived from". Whenever the legislature wanted to give a restricted meaning, they have used the expression "derived from". The expression "attributable to" being of wider import, the said

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

6.6 In the above context when we look at the decision of Hon'ble Supreme Court in case of Totgars Co-operative Sale Society's case reported in (2010) 188 Taxman 282, relied by the Ld.DR. Hon'ble Supreme Court was dealing with a case where the assessee therein, apart from providing credit facilities to the members, was also in the business of marketing of agricultural produce grown by its members. The sale consideration received from marketing agricultural produce of its members was retained in many cases. The said retained amount payable to its members from whom produce was bought, was invested in a short-term deposit/security. Such amount retained by the assessee therein 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 80P(2)(a)(i) of the Act or under Section 80P(2)(a)(iii) of the Act. On these facts Hon'ble Supreme Court held the assessing officer was right in taxing the interest income indicated above under Section 56 of the Act. Hon'ble Supreme Court, also clarified that, they are confining the said judgment to the facts of that case.

6.7 In the instant case, there is nothing on record to come to the conclusion that the amount which was invested in banks to earn interest was amount due to its members, and that, it was a liability. In fact this amount which is in the nature of profits and gains, was not immediately required by the assessee for objects of the society, but was required to be invested as required by the Karnataka Co-operative Societies Act, 1959. Therefore they had deposited the money out of which interest was earned. The said interest is thus attributable to carrying on the business of the assessee and therefore it is liable to be deducted in terms of Section 80P(2)(d) of the Act. In fact similar view is taken by the Hon'ble Andhra Pradesh High Court in the case of CIT v. Andhra Pradesh State Co-operative Bank Ltd. reported in [2011] 12 taxmann.com 66.

6.8 We note that recently Hon'ble Supreme Court in the case of Kerala State Co-operative Agricultural and Rural Development Bank Ltd. vs. AO reported in (2023) 154 taxmann.com 305 has in detail analysed the allowability of deduction u/s. 80P(2)(d) of the Act. Hon'ble Court observed and held as under:

"15.8 Since the words 'bank' and 'banking company' are not defined in the NABARD Act, 1981, the definition in subclause (i) of clause (a) of section 56 of the BR Act, 1949 has to be relied upon. It states that a co-operative society in the context of a co-operative bank is in relation to or as a banking company. Thus, co-operative bank shall be construed as references to a banking

company and when the definition of banking company in clause (c) of section 5 of the BR Act, 1949 is seen, it means any company which transacts the business of banking in India and as already noted banking business is defined in clause (b) of section 5 to mean the accepting, for the purpose of lending or investment, of deposits of money from the public, repayable on demand or otherwise, and withdrawal by cheque, draft, order or otherwise. Thus, it is only when a co-operative society is conducting banking business in terms of the definition referred to above that it becomes a co-operative bank and in such a case, section 22 of the BR Act, 1949 would apply wherein it would require a licence to run a co-operative bank. In other words, if a cooperative society is not conducting the business of banking as defined in clause (b) of section 5 of the BR Act, 1949, it would not be a co-operative bank and not so within the meanings of a state co-operative bank, a central cooperative bank or a primary co-operative bank in terms of section 56(c)(i)(cci). Whereas a co-operative bank is in the nature of a banking company which transacts the business of banking as defined in clause (b) of section 5 of the BR Act, 1949. But if a co-operative society does not transact the business of banking as defined in clause (b) of section 5 of the BR Act, 1949, it would not be a cooperative bank. Then the definitions under the NABARD Act, 1981 would not apply. If a co-operative society is not a co-operative bank, then such an entity would be entitled to deduction but on the other hand, if it is a co-operative bank within the meaning of section 56 of BR Act, 1949 read with the provisions of NABARD Act, 1981 then it would not be entitled to the benefit of deduction under sub-section (4) of section 80P of the Act.

15.9 section 56 of the BR Act, 1949 begins with a nonobstante clause which states that notwithstanding anything contained in any other law for the time being in force, the provisions of the said Act, shall apply to, or in relation to, co-operative societies as they apply to, or in relation to, banking companies subject to certain modifications. The object of section 56 is to provide a deeming fiction by equating a co-operative society to a banking company if it is a co-operative bank within the meaning of the said provision. This is because Chapter V of the BR Act, 1949, deals with application of the Chapter to co-operative societies which are co-operative banks within the meaning of the said chapter. For the purpose of these cases, what is relevant is that throughout the BR Act, 1949, unless the context otherwise requires, - references to a "banking company" or "the company" or "such company" shall be construed as references to a cooperative bank. Therefore, while considering the meaning of a co-operative bank inherently, such a co-operative society must be a banking company then only it would be construed as a co-operative bank requiring a licence under section 22 of BR Act, 1949 in order to function as such a bank.

15.10 Further, while considering the definition of a cooperative bank under section 56(cci) of the BR Act, 1949, to mean a state co-operative bank, a central co-operative bank and a primary co-operative bank which is defined in (ccviii) thereof, to have meanings respectively assigned to them in the NABARD Act, 1981 would imply that if a state co-operative bank is within the meaning of NABARD Act, 1981 then it would be excluded from the benefit under section 80P of the Act. Conversely, if a co-operative society is not a cooperative bank within the meaning of section 56 of the BR Act, 1949, it would be entitled to the benefit of deduction under section 80P of the Act."

6.9 We therefore direct the A.O. to verify whether interest / dividend is received by the assessee out of investments made with Cooperative Societies. If the assessee earns interest / dividend income out of investments with co-operative society, as observed by Hon'ble Supreme Court in the case of Kerala State Co-operative Agricultural and Rural Development Bank Ltd. Cited (supra), the same is entitled to deduction u/s 80P(2)(d) of the I.T. Act.

6.10 Without prejudice to the above, we make it clear that if the interest earned by assessee from the banks, the same be considered under the head "Income from other sources" and necessary relief to be granted to the assessee u/s 57 of the Act in respect of cost of funds and proportionate administrative and other expenses in accordance with law. Accordingly, the issue is restored to the file of Ld.AO for denovo consideration with the above observations."

12. Since the issue for our adjudication is squarely covered by the aforesaid decisions of the Tribunal cited supra, wherein the Tribunal has decided this issue in favour of the assessee and against the Revenue for the reasons stated above, consistent with the view taken therein, we set aside the impugned order passed by the learned CIT(A) by allowing the grounds of appeal raised by the assessee.

13. In the result, assessee's appeal stands allowed.

Order pronounced in the open Court on 25/02/2025

NAGPUR, DATED: 25/02/2025

**Sd/-
V. DURGA RAO
JUDICIAL MEMBER**

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.

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Sr. Private Secretary
ITAT, Nagpur