

**IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” BENCH : BANGALORE**

BEFORE SHRI PRASHANT MAHARISHI, VICE PRESIDENT

ITA No. 6/Bang/2025
Assessment year : 2016-17

Shri Mahaveer Co-operative Credit Society Ltd., Main Road, Alagur, Jamakhandi – 587 301. PAN: AABAM 6275F	Vs.	The Income Tax Officer, Ward 1, Bagalkot.
APPELLANT		RESPONDENT

Appellant by	:	Shri Sanjay D. Shriguppe, CA
Respondent by	:	Shri Ganesh R. Ghale, Standing Counsel for Revenue.

Date of hearing	:	02.06.2025
Date of Pronouncement	:	25.07.2025

ORDER

1. This appeal is filed by Shri Mahaveer Co-operative Credit Society Ltd. (the assessee/appellant) for the assessment year 2016-17 against the appellate order passed by the Addl./JCIT(Appeal), Bhubaneswar [Id. CIT(A)] dated 08.11.2024 wherein the appeal filed by the assessee against the assessment order passed u/s. 143(3) of the Income-tax Act, 1961 [the Act] dated 29.11.2018 was partly allowed for statistical purposes.
2. The assessee is aggrieved with the same and preferred this appeal mainly contesting that the (i) deduction u/s. 80P(2)(a)(i) and/or 80P(2)(d) of the Act

should be allowed to the assessee, (ii) Further the disallowance of Rs.75,000 was confirmed for non-deduction of tax at source for the audit fees.

3. Briefly stated the facts of the case show that assessee is registered under the Karnataka Co-operative Societies Act [KCS Act] , filed its return of income on 16.5.2017 declaring gross total income of Rs.19,10,651 and claimed deduction u/s. 80P(2)(a)(i) of the same amount resulting into taxable income at Nil. The return of income was picked up for scrutiny by issue of notice u/s. 143(2) on 17.8.2018. During the course of assessment proceedings, the Id. AO disallowed the entire deduction u/s. 80P(2)(a)(i) relying on the decision of Hon'ble Supreme Court in the case of *Citizen Co-operative Society Ltd.* In the assessment order, the Id. AO held that in view of the decision of Hon'ble Supreme Court in the case of *Citizen Co-operative Society*, the assessee is not entitled to deduction u/s. 80P(2)(a)(i). With respect to interest income from investment in other co-operative banks also, interest income earned from Belgaum District central Cooperative bank Limited of Rs 20,88,556/- was not allowed as deduction u/s 80P (2) (d) of the Act. Further it was also found that assessee has debited a sum of Rs.75,000 towards audit fees, but did not furnish any details for TDS, therefore 30% of 75,000 i.e., Rs.22,500 was further disallowed. Accordingly assessment order was passed u/s. 143(3) of the Act on 29.11.2018. Accordingly, total income of was computed at Rs.19,33,151/-.
4. The assessee aggrieved with the same, preferred appeal before the Id. CIT(A). It was submitted that the amount of investment made by the assessee is in terms of provisions of KCS Act and therefore assessee is entitled to deduction u/s. 80P(2)(a)(i) of the Act on the whole of the income. It was further stated that BDCC Bank is prima facie a co-operative society and as per Banking Regulation Act, it is a co-operative bank being a co-operative society carrying on the business of banking. Therefore, interest income earned by the assessee from that bank is eligible for deduction u/s. 80P(2)(d) of the Act. With respect to the disallowance u/s. 40(a)(ia) on account of non-deduction of tax at source, the audit

fees paid of Rs.75,000, the assessee contested that recipient of the income has already offered the same as income of the recipient and therefore no disallowance can be made.

5. The Id. CIT(A) confirmed the disallowance u/s. 80P(2)(a)(i) and held that deduction u/s. 80P is allowable to the society that provides credit facilities to its regular or nominal members only and not to anybody else. With respect to deduction u/s. 80P(2)(d) on interest income of Rs.22,02,796 from BDCC Bank, he held that interest income is received from a co-operative bank and the meaning of the word “co-operative society” cannot be extended to include the co-operative banks also. Accordingly deduction u/s. 80P(2)(d) was also denied. Regarding disallowance of audit fees, he held that no Form 26A issued by the auditor of recipient to prove his claim that auditor has offered the income for taxation, disallowance was confirmed.
6. Accordingly assessee is in appeal before us. The Id. AR submitted a paperbook containing 91 pages and also a case law compilation of 8 different authorities. The Id. AR submitted that the Id. CIT(A) has confirmed the disallowance without verifying the facts of the case, but merely relied upon the decision of the Hon’ble Supreme Court and has not considered the mutuality concept of the society. He submitted that as per section 18 of the KCS Act, even nominal and associate members are also valid members of the society and any business done with associate members does not violate the mutuality concept. Further the business done with nominal members is hardly 1.82% of the total business. He further relied upon the decision of the coordinate Bench dated 10.11.2022 wherein the coordinate Bench has remanded the case back to the AO to consider and then allow the claim u/s. 80P(2)(a)(i) of the Act. It was further contested that even otherwise on the interest income from BDCC Bank amounting to Rs.20,88,556, the Id. AO has not given any deduction wherein according to KCS Act, 25% of the profit is required to be invested into statutory reserve fund with BDCC Bank. It is an investment with Apex Bank. Even otherwise, it is a co-operative society

carrying on the business of banking and interest therefrom is eligible for deduction u/s. 80P(2)(d) of the Act. With respect to disallowance of 30% of audit fees, it was submitted that no opportunity was provided to the assessee to produce the relevant forms that recipient of the income has offered the income for taxation.

7. The Id. DR vehemently supported the orders of the Id. lower authorities and submitted that assessee is correctly denied deduction u/s. 80P(2)(a)(i) and 80P(2)(d) of the Act. He relied on the decision of Honourable Supreme court in case of Citizen Cooperative bank Ltd and decision of Honourable Karnataka High court in case of Totgars Cooperative Society Ltd. Further with respect to disallowance of audit fees, as the assessee failed to submit declaration from the recipient of income that they have offered the above sum as income in their return of income, no infirmity can be pointed out in the order of the Id. lower authorities.
8. We have carefully considered the rival contention and the orders of the Id. lower authorities. The assessee is a co-operative society registered under the Karnataka state co-operative societies Act. Fact stated before us shows that out of the total loan granted by the assessee only 1.81% of the total loan is granted to associate members and 98.18 percentage of the loan is granted to the regular members. It is also a fact that the Registrar of cooperative society has not questioned the registration granted to the assessee under that act. Id. Lower Authorities have merely denied the deduction to the assessee based on the decision of the Hon'ble Supreme Court in case of Citizen Cooperative Society.
9. Honourable Supreme Court had an occasion later on to consider this decision of the Honourable Supreme Court in case of Citizen Cooperative Society Limited (2017) 9 SCC 364 in the another decision of the larger bench of the Honourable Supreme Court in Mavilayi Service Co-operative Bank Ltd. vs. Commissioner of Income Tax, Calicut [2021] 123 taxmann.com 161 (SC)/[2021] 279 Taxman 75 (SC)/[2021] 431 ITR 1 (SC)[12-01-2021] wherein it was held as under:-

"20. We now come to the judgment of this Court in Citizen Cooperative Society Ltd. (supra). This judgment was concerned with an assessee who was established initially as a mutually aided cooperative credit society, having been registered under section 5 of the Andhra Pradesh Mutually Aided Cooperative Societies Act, 1995. As operations of the assessee began to spread over States outside the State of Andhra Pradesh, the assessee got registered under the Multi-State Cooperative Societies Act, 2002 as well. The question that the Court posed to itself was as to whether the appellant was barred from claiming deduction in view of Section 80P(4) of the Income-tax Act - see paragraph 5. After setting out the findings of fact in that case, and the income tax authorities concurrent holding that the society is carrying on banking business and for all practical purposes acts like a co-operative bank, this Court then held as follows:

"18. We may mention at the outset that there cannot be any dispute to the proposition that section 80-P of the Act is a benevolent provision which is enacted by Parliament in order to encourage and promote growth of cooperative sector in the economic life of the country. It was done pursuant to the declared policy of the Government. Therefore, such a provision has to be read liberally, reasonably and in favour of the assessee (see *Bajaj Tempo Ltd. v. CIT* [1992] 3 SCC 78]). It is also trite that such a provision has to be construed as to effectuate the object of the legislature and not to defeat it (see *CIT v. Mahindra and Mahindra Ltd.* [1983] 4 SCC 392. Therefore, it hardly needs to be emphasised that all those cooperative societies which fall within the purview of section 80-P of the Act are entitled to deduction in respect of any income referred to in sub-section (2) thereof. Clause (a) of sub-section (2) gives exemption of whole of the amount of profits and gains of business attributable to any one or more of such activities which are mentioned in sub-section (2).

19. Since we are concerned here with sub-clause (i) of clause (a) of sub-section (2), it recognises two kinds of cooperative societies, namely: (i) those carrying on the business of banking and; (ii) those providing credit facilities to its members.

20. In Kerala State Coop. Mktg. Federation Ltd. v. CIT [1998] 5 SCC 48, this Court, while dealing with classes of societies covered by section 80-P of the Act, held as follows:

"6. The classes of societies covered by section 80-P of the Act are as follows:

(a) engaged in business of banking and providing credit facilities to its members;

** ** **

7. We may notice that the provision is introduced with a view to encouraging and promoting growth of cooperative sector in the economic life of the country and in pursuance of the declared policy of the Government. The correct way of reading the different heads of exemption enumerated in the section would be to treat each as a separate and distinct head of exemption. Whenever a question arises as to whether any particular category of an income of a cooperative society is exempt from tax what has to be seen is whether income fell within any of the several heads of exemption. If it fell within any one head of exemption, it would be free from tax notwithstanding that the conditions of another head of exemption are not satisfied and such income is not free from tax under that head of exemption."

21. In CIT v. Punjab State Coop. Bank Ltd. [2008 SCC OnLine P&H 2042], while dealing with an identical issue, the High Court of Punjab and Haryana held as follows:

"8. The provisions of section 80-P were introduced with a view to encouraging and promoting the growth of the cooperative sector in the economic life of the country and in pursuance of the declared policy of the Government. The different heads of exemption enumerated in the section are separate and distinct heads of exemption and are to be treated as such. Whenever a question arises as to whether any particular category of an income of a cooperative society is exempt from tax, then it has to be seen whether such income fell within any of the several heads of

exemption. If it fell within any one head of exemption...It means that a cooperative society engaged in carrying on the business of banking and a cooperative society providing credit facilities to its members will be entitled for exemption under this sub-clause. The carrying on the business of banking by a cooperative society or providing credit facilities to its members are two different types of activities which are covered under this sub-clause.

** ** **

13. So, in our view, if the income of a society is falling within any one head of exemption, it has to be exempted from tax notwithstanding that the condition of other heads of exemption are not satisfied. A reading of the provisions of section 80-P of the Act would indicate the manner in which the exemption under the said provisions is sought to be extended. Whenever the legislature wanted to restrict the exemption to a primary cooperative society, it was so made clear as is evident from clause (f) with reference to a milk cooperative society that a primary society engaged in supplying milk is entitled to such exemption while denying the same to a federal milk cooperative society."

The aforesaid judgment of the High Court correctly analyses the provisions of section 80-P of the Act and it is in tune with the judgment of this Court in Kerala State Coop. Mktg. Federation Ltd. [(1998) 5 SCC 48]

22. With the insertion of sub-section (4) by the Finance Act, 2006, which is in the nature of a proviso to the aforesaid provision, it is made clear that such a deduction shall not be admissible to a cooperative bank. However, if it is a primary agricultural credit society or a primary cooperative agricultural and rural development bank, the deduction would still be provided. Thus, cooperative banks are now specifically excluded from the ambit of section 80-P of the Act.

23. Undoubtedly, if one has to go by the aforesaid definition of "cooperative bank", the appellant does not get covered thereby. It is also a matter of common

knowledge that in order to do the business of a cooperative bank, it is imperative to have a licence from Reserve Bank of India, which the appellant does not possess. Not only this, as noticed above, Reserve Bank of India has itself clarified that the business of the appellant does not amount to that of a cooperative bank. The appellant, therefore, would not come within the mischief of sub-section (4) of section 80-P.

24. So far so good. However, it is significant to point out that the main reason for disentitling the appellant from getting the deduction provided under section 80-P of the Act is not sub-section (4) thereof. What has been noticed by the assessing officer, after discussing in detail the activities of the appellant, is that the activities of the appellant are in violation of the provisions of MACSA under which it is formed. It is pointed out by the assessing officer that the assessee is catering to two distinct categories of people. The first category is that of resident members or ordinary members. There may not be any difficulty as far as this category is concerned. However, the assessee had carved out another category of "nominal members". These are those members who are making deposits with the assessee for the purpose of obtaining loans, etc. and, in fact, they are not members in real sense. Most of the business of the appellant was with this second category of persons who have been giving deposits which are kept in fixed deposits with a motive to earn maximum returns. A portion of these deposits is utilised to advance gold loans, etc. to the members of the first category. It is found, as a matter of fact, that the depositors and borrowers are quite distinct. In reality, such activity of the appellant is that of finance business and cannot be termed as cooperative society. It is also found that the appellant is engaged in the activity of granting loans to general public as well. All this is done without any approval from the Registrar of the Societies. With indulgence in such kind of activity by the appellant, it is remarked by the assessing officer that the activity of the appellant is in violation of the Cooperative Societies Act. Moreover, it is a

cooperative credit society which is not entitled to deduction under section 80-P(2)(a)(i) of the Act.

25. It is in this background, a specific finding is also rendered that the principle of mutuality is missing in the instant case. Though there is a detailed discussion in this behalf in the order of the assessing officer, our purpose would be served by taking note of the following portion of the discussion:

"As various courts have observed that the following three conditions must exist before an activity could be brought under the concept of mutuality:

- (i) that no person can earn from him;
- (ii) that there a profit motivation;
- (iii) and that there is no sharing of profit.

It is noticed that the fund invested with bank which are not member of association welfare fund, and the interest has been earned on such investment for example, ING Mutual Fund [as said by the MD vide his statement dated 20-12-2010]. [Though the bank formed the third party vis-à-vis the assessee entitled between contributor and recipient is lost in such case. The other ingredients of mutuality are also found to be missing as discussed in further paragraphs.]

In the present case both the parties to the transaction are the contributors towards surplus, however, there are no participators in the surpluses. There is no common consent of whatsoever for participators as their identity is not established. Hence, the assessee fails to satisfy the test of mutuality at the time of making the payments the number in referred as members may not be the member of the Society as such the AOP body by the Society is not covered by concept of mutuality at all."

26. These are the findings of fact which have remained unshaken till the stage of the High Court. Once we keep the aforesaid aspects in mind, the conclusion is obvious, namely, the appellant cannot be treated as a cooperative society meant only for its members and providing credit facilities to its members. We are afraid such a society cannot claim the benefit of Section 80-P of the Act."

21. An analysis of this judgment would show that the question of law that was reflected in paragraph 5 of the judgment was answered in favour of the assessee. The following propositions may be culled out from the judgment:

(I) That section 80P of the IT Act is a benevolent provision, which was enacted by Parliament in order to encourage and promote the growth of the co-operative sector generally in the economic life of the country and must, therefore, be read liberally and in favour of the assessee;

(II) That once the assessee is entitled to avail of deduction, the entire amount of profits and gains of business that are attributable to any one or more activities mentioned in sub-section (2) of section 80P must be given by way of deduction;

(III) That this Court in Kerala State Cooperative Marketing Federation Ltd. (supra) has construed section 80P widely and liberally, holding that if a society were to avail of several heads of deduction, and if it fell within any one head of deduction, it would be free from tax notwithstanding that the conditions of another head of deduction are not satisfied;

(IV) This is for the reason that when the legislature wanted to restrict the deduction to a particular type of co-operative society, such as is evident from section 80P(2)(b) qua milk co-operative societies, the legislature expressly says so - which is not the case with section 80P(2)(a)(i);

(V) That section 80P(4) is in the nature of a proviso to the main provision contained in section 80P(1) and (2). This proviso specifically excludes only co-operative banks, which are cooperative societies who must possess a licence from the RBI to do banking business. Given the fact that the assessee in that case was not so licenced, the assessee would not fall within the mischief of section 80P(4).

22. However, considering that the learned Senior Advocate appearing for the Revenue argued that the concurrent findings of fact in that case were that most of the business of the assessee was conducted illegally with nominal members, who could not be members of such society under the Andhra Pradesh Act, and considering also that, as the assessee engaged in granting loans to the general public, it could not be treated as a co-operative society meant only for its members and providing credit facilities to its members, the appeal by the assessee would fail. It is important to note that no argument was made by the counsel for the assessee in Citizen Cooperative Society Ltd. (supra) that the assessing officer and other authorities under the IT Act could not go behind the registration of the co-operative society in order to discover as to whether it was conducting business in accordance with its bye-laws."

10. Further honourable supreme court explained the provision of section 80 P of the Act referring to several judicial precedents as under:-

"27. However, this does not conclude the issue in the present case. We now turn to the proper interpretation of section 80P of the Income-tax Act. **Firstly**, the marginal note to section 80P which reads "Deduction in respect of income of co-operative societies" is important, in that it indicates the general "drift" of the provision. This was so held by this Court in *K.P. Varghese v. ITO* [[1981](#)] [7 Taxman 13/131 ITR 597](#) as follows:

"9. This interpretation of sub-section (2) is strongly supported by the marginal note to Section 52 which reads "Consideration for transfer in cases of understatement". It is undoubtedly true that the marginal note to a section cannot be referred to for the purpose of construing the section but it can certainly be relied upon as indicating the drift of the section or, to use the words of Collins, *M.R. in Bushel v. Hammond* [1904] 2 KB 563 to show what the section is dealing with. It cannot control the interpretation of the words of a section particularly when the language of the section is clear and unambiguous but, being part of the statute, it *prima facie* furnishes some clue as to the meaning and purpose of the section (vide *Bengal Immunity Company Limited v. State of Bihar* [1955] 2 SCR 603)."

28. Secondly, for purposes of eligibility for deduction, the assessee must be a "co-operative society". A co-operative society is defined in Section 2(19) of the IT Act, as being a co-operative society registered either under the Co-operative Societies Act, 1912 or under any other law for the time being in force in any State for the registration of co-operative societies. This, therefore, refers only to the factum of a co-operative society being registered under the 1912 Act or under the State law. For purposes of eligibility, it is unnecessary to probe any further as to whether the co-operative society is classified as X or Y.

29. Thirdly, the gross total income must include income that is referred to in sub-section (2).

30. Fourthly, sub-clause (2)(a)(i) with which we are directly concerned, then speaks of a co-operative society being "engaged in" carrying on the business of banking or providing credit facilities to its members. What is important *qua* sub-clause (2)(a)(i) is the fact that the co-operative society must be "engaged in" the providing credit facilities to its members. As has been rightly pointed out by the learned Additional Solicitor General, the expression "engaged in", as has been held in *CIT v. Ponni Sugars & Chemicals Ltd.* [\[2008\] 174 Taxman 87/306 ITR](#)

[392 \(SC\)](#), would necessarily entail an examination of all the facts of the case. This Court in *Ponni Sugars & Chemicals Ltd. (supra)* held:

"20. In order to earn exemption under section 80-P(2) a cooperative society must prove that it had engaged itself in carrying on any of the several businesses referred to in sub-section (2). In that connection, it is important to note that under sub-section (2), in the context of cooperative society, Parliament has stipulated that the society must be engaged in carrying on the business of banking or providing credit facilities to its members. Therefore, in each case, the Tribunal was required to examine the memorandum of association, the articles of association, the returns of income filed with the Department, the status of business indicated in such returns, etc. This exercise had not been undertaken at all."

31. The learned Additional Solicitor General relied upon the second proviso to section 2(oaa) of the Kerala Act, and argued that given the fact that the principal object in most, if not all, of the Appellants before us has not been fulfilled, these Appellants have lost all characteristics of being primary agricultural credit societies. In answer to this submission, learned counsel for the Appellants cited the following judgments, namely, *Asstt. CIT v. A.K. Menon* [\[1995\] 5 SCL 319 \(SC\)](#) (paragraph 4); *Titan Medical Systems (P.) Ltd. v. Collector of Customs* [2003 taxmann.com 2027 \(SC\)](#) (paragraph 12); and *Vadilal Chemicals Ltd. v. State of Andhra Pradesh* [2006 taxmann.com 2217 \(SC\)](#) (paragraphs 20 to 23), for the proposition that it is the RBI alone under the Banking Regulation Act, 1949, and the Registrar alone under the Kerala Act who can look into questions as to whether a primary agricultural credit society is, or is not, a co-operative bank, and whether a society's classification as primary agricultural credit society ought to continue or be re-classified as a co-operative bank. Neither argument applies to the facts of these cases, given that the statutory provision involved does not require the Appellants to be primary agricultural credit societies to claim a deduction under section 80P(2)(a)(i) in the first place.

32. Fifthly, as has been held in *Udaipur Sahkari Upbhokta Thok Bhandar Ltd. v. CIT* [2009] 8 SCC 393 at paragraph 23, the burden is on the assessee to show, by adducing facts, that it is entitled to claim the deduction under section 80P. Therefore, the assessing officer under the Income-tax Act cannot be said to be going behind any registration certificate when he engages in a fact-finding enquiry as to whether the co-operative society concerned is in fact providing credit facilities to its members. Such fact finding enquiry (see section 133(6) of the Income-tax Act) would entail examining all relevant facts of the co-operative society in question to find out whether it is, as a matter of fact, providing credit facilities to its members, whatever be its nomenclature. Once this task is fulfilled by the assessee, by placing reliance on such facts as would show that it is engaged in providing credit facilities to its members, the assessing officer must then scrutinize the same, and arrive at a conclusion as to whether this is, in fact, so.

33. Sixthly, what is important to note is that, as has been held in *Kerala State Cooperative Marketing Federation Ltd. (supra)* the expression "providing credit facilities to its members" does not necessarily mean agricultural credit alone. Section 80P being a beneficial provision must be construed with the object of furthering the co-operative movement generally, and section 80P(2)(a)(i) must be contrasted with section 80P(2)(a)(iii) to (v), which expressly speaks of agriculture. It must also further be contrasted with sub-clause (b), which speaks only of a "primary" society engaged in supplying milk etc. thereby defining which kind of society is entitled to deduction, unlike the provisions contained in section 80P(2)(a)(i). Also, the proviso to section 80P(2), when it speaks of sub-clauses (vi) and (vii), further restricts the type of society which can avail of the deductions contained in those two sub-clauses, unlike any such restrictive language in section 80P(2)(a)(i). Once it is clear that the co-operative society in question is providing credit facilities to its members, the fact that it is providing credit facilities to non-members does not disentitle the society in question from availing of the deduction. The distinction between eligibility for deduction and attributability of

amount of profits and gains to an activity is a real one. Since profits and gains from credit facilities given to non-members cannot be said to be attributable to the activity of providing credit facilities to its members, such amount cannot be deducted.

34. Seventhly, section 80P(1)(c) also makes it clear that section 80P is concerned with the co-operative movement generally and, therefore, the moment a co-operative society is registered under the 1912 Act, or a State Act, and is engaged in activities which may be termed as residuary activities *i.e.* activities not covered by sub-clauses (a) and (b), either independently of or in addition to those activities, then profits and gains attributable to such activity are also liable to be deducted, but subject to the cap specified in sub-clause (c). The reach of sub-clause (c) is extremely wide, and would include co-operative societies engaged in any activity, completely independent of the activities mentioned in sub-clauses (a) and (b), subject to the cap of INR 50,000/- to be found in sub-clause (c)(ii). This puts paid to any argument that in order to avail of a benefit under section 80P, a cooperative society once classified as a particular type of society, must continue to fulfil those objects alone. If such objects are only partially carried out, and the society conducts any other legitimate type of activity, such co-operative society would only be entitled to a maximum deduction of Rs. 50,000/- under sub-clause (c).

35. Eighthly, sub-clause (d) also points in the same direction, in that interest or dividend income derived by a co-operative society from investments with other co-operative societies, are also entitled to deduct the whole of such income, the object of the provision being furtherance of the co-operative movement as a whole."

11. As the assessee is carrying on the business of the assessee as per the certificate granted by the respective registrar of the cooperative societies and according to its bylaws, the reliance by the learned lower authorities on decision of the

honourable Supreme Court in case of Citizen cooperative society (supra), is unjustified. In fact, the principles laid down by that decision favours the claim of the assessee and does not support the case of revenue. Thus the assessee is entitled to deduction under section 80 P (2) (a) (i) of the Act.

12. Now the issue was also raised that assessee has earned interest from a cooperative societies which is carrying on the business of banking and therefore the deduction u/s 80 P (2) (d) is denied to the assessee. Revenue relied heavily on the decision of honourable Karnataka High court in case of PCIT V Totagar Cooperative Sales Society (2017) 395 ITR 611 (Karnataka) dated 16 June, 2017.
13. We find that honourable Supreme court has rendered two decisions after that in case of (i) Mavilayi Service Co-operative Bank Ltd. vs. Commissioner of Income Tax, Calicut [2021] 123 taxmann.com 161 (SC)/[2021] 279 Taxman 75 (SC)/[2021] 431 ITR 1 (SC)[12-01-2021] and (ii) Kerala State Co-Operative Agricultural & Rural Development Bank Ltd. vs. Assessing Officer [2023] 154 taxmann.com 305 (SC)/[2023] 295 Taxman 675 (SC)/[2023] 458 ITR 384 (SC)[14-09-2023] which now binds us .
14. Honourable supreme court in Mavilayi decision [supra] has extracted certain definitions as under :-

What is the Definition of cooperative Societies under the Income -tax Act, 1961

"2. In this Act, unless the context otherwise requires,—

(19) "co-operative society" means a co-operative society registered under the Co-operative Societies Act, 1912 (2 of 1912), or under any law for the time being in force in any State for the registration of co-operative societies."

What quantum and characteristics of Income is eligible for deduction u/s 80 P (2) (d) of the Act

(d) in respect of any income by way of interest or dividends derived by the co-operative society from its investments with any other co-operative society, the whole of such income;

The definition of cooperative bank in Explanation to section 80 P (4) applies only to that sub-section and not to the whole section 80 P of the Act.

Definition of cooperative bank as per section 56 of the banking Regulation Act 1949 in (cci) "co-operative bank" means a state cooperative bank, a central co-operative bank, and a primary co-operative bank.

15. Further the Karnataka state cooperative societies Act 1959 defines a cooperative bank in section 2 (b1) as under :-

[(b1) —Co-operative Bank means a Co-operative Society which is doing the business of banking. Explanation.—For the purpose of this clause —banking shall have the meaning assigned to it in section 5 of the Banking Regulation Act, 1949 (Central Act 10 of 1949).]

16. Thus a cooperative bank is necessarily a cooperative society first under The Karnataka State Cooperative Societies Act.

17. Thus, the Interest income earned from the **Investment** in another Cooperative Societies, even if it is carrying on the business of banking, being a cooperative bank as per the Karnataka Cooperative Societies Act 1959, qualifies for the deduction u/s 80 P (2) (d) of the Act. If the interest earned is not from investments but from business operations, it necessarily qualifies for deduction u/s 80 P (2) (a) itself.

18. Thus, according to me, the assessee is entitled to the deduction u/s 80 P (2) (a) if it is business income chargeable to tax under the head ' profit and gains of business and Profession" and or under section 80 P (2)(d) if it is investments

income chargeable to tax under the head ' income from Other sources" . In both the cases it forms part of the 'Gross Total income' of the Assessee.

19. Thus, Grounds no 1 and 2 of the appeal are allowed and Id AO is directed to grant deduction of the interest income to the assessee either u/s 80P (2) (a) if the interest income is attributable to the business of the assessee otherwise u/s 80 P (2)(d) of the Act, if it is chargeable to tax under the head ' Income from Other Sources'.
20. The second issue is Ground no 4 of the Appeal is against disallowance u/s 40 a (ia) of the act where the assessee has provided for audit fees of Rs 75,000/- and has not deducted tax at sources thereon. The Id CIT (A) confirmed the disallowance because assessee could not furnish form no 26 A from the auditor of the company. The Id AR submits that such form would be produced before the Id AO. We direct assessee to produce the same before the Id AO, Id AO may verify the same and if found in order delete the disallowance.
21. Grounds no 1,5 and 6 are general in nature, no arguments were advanced, hence, dismissed.
22. In the result, the appeal by the assessee is allowed for statistical purposes

Pronounced in the open court on this 25th day of July, 2025.

Sd/-

(PRASHANT MAHARISHI)
VICE PRESIDENT

Bangalore,
Dated, the 25th July 2025.

/Desai S Murthy /

Copy to:

1. Appellant
2. Respondent
3. Pr. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar
ITAT, Bangalore.