आयकर अपीलीय अधिकरण
कोलकाता 'एसएमसी' पीठ, कोलकाता में
IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'SMC' BENCH, KOLKATA

श्री संजय शर्मा, न्यायिक सदस्य
एवं
श्री राकेश मिश्रा, लेखा सदस्य
के समक्ष
Before

SHRI SONJOY SARMA, JUDICIAL MEMBER
&
SHRI RAKESH MISHRA, ACCOUNTANT MEMBER

I.T.A. No.: 1021/KOL/2024
Assessment Year: 2020-21

Bibhisanpur Samabay Krishi Unnayan Samity Ltd.	Vs.	ITO, Ward-27(4), Haldia/ WBG-W-(176)(3)
(Appellant)		***(Respondent)***
PAN: AACAB4420G		

Appearances:

Assessee represented by : S. Rai Choudhury, Adv. and Saikat Ghosal, Adv.

Department represented by : Abhijit Adhikary, Addl. CIT.

Date of concluding the hearing : 06-May-2025
Date of pronouncing the order : 04-August-2025

ORDER

PER RAKESH MISHRA, ACCOUNTANT MEMBER:

The present appeal filed by the assessee pertaining to the AY 2020-21 is against the order of the Commissioner of Income Tax (Appeals)-NFAC, Delhi [hereinafter referred to as ld. 'CIT(A)'] passed u/s 250 of the Income Tax Act, 1961 (in short, the 'Act') dated 05.03.2024 arising out of the assessment order framed u/s 143(3)/144B of the Act dated 12.09.2022.

2. The assessee is in appeal before the Tribunal raising the following grounds of appeal:

> *"1. For that the assessment is made without application of mind and is arbitrary and bad in law and infringing the principals of natural justice.*
>
> *2. For that the entire amount of Rs.32,79,394/-, as added to the income and charged as tax as per order should be deleted considering the facts that the expenditure illegal and bad in the eye of law.*
>
> *3. For that the appellant beg to adduce further ground/ grounds before or at the time of hearing."*

3. Brief facts of the case are that the assessee had filed the return of income for AY 2020-21 dated 04.02.2021 showing total income of ₹ 'NIL' after claiming deduction u/s 80P of the Act of ₹32,79,394/-. The Assessing Officer (hereinafter referred to as Ld. 'AO') disallowed the deduction u/s 80P of the Act and assessed the total income at ₹32,79,394/-. Aggrieved with the assessment order, the assessee filed an appeal before the Ld. CIT(A) who, vide order dated 05.03.2024 dismissed the appeal of the assessee. Aggrieved with the order of the Ld. CIT(A), the assessee has filed the appeal before this Tribunal.

4. Rival submissions were considered and the details and the paper book filed have been examined. It was pointed out to the Ld. AR that the Ground no. 2 relating to the amount of ₹32,79,394/- as added to the income and charged as tax as per order, which is requested to be deleted considering the facts that the expenditure is illegal and bad in the eyes of law was incorrect as what was disallowed was the claim of deduction u/s 80P of the Act and no such expenditure of equivalent amount was added. However, the issue relating to disallowance of the claim of deduction under section 80P is adjudicated in the succeeding paras.

5. The Ld. AO considered the submission of the assessee and added the amount by holding as under:

> *"4.1 During the course of assessment proceedings, it is noticed that the assessee has made deposits/investments in co-operative banks/ commercial banks and earned interest income of Rs.83,58,850/- and dividend income of Rs.61,312/-. Any interest income arising from deposit /investment of funds in banks is in the nature of income from other sources' taxable u/s 56 of the Income tax Act and cannot be categorized as the income from the 'profits and gains of business' of the assessee. Since the deduction u/s 80P is available only for the profits and gains of the business of assessee (providing credit facilities to the members), the said deduction is not available to the interest income which is in the nature of 'other income' or 'income from other sources'. Therefore assessee is not eligible for claiming deduction u/s 80P of the Act, 1961 on the interest income of Rs.32,79,394/- .*
>
> *4.2 Interest income earned by the assessee society is not eligible for deduction u/s 80P(2)(a)(i) because of the following reasons:*
>
> *4.2.1 Section 80P(2)(a)(i) allows deduction to a co-operative society engaged in carrying on the business of banking or providing credit facilities to its members in respect of whole of the amount of profits and gains attributable to such activity.*
>
> *In the instant case, the 'interest income' under question was not the interest received from the members of the assessee society for providing credit facilities to them. What was sought to be taxed u/s. 56 is the interest income arising on the surplus invested in co-operative banks and financial institutions other than the 'co-operative societies'.*
>
> *The assessee has invested surplus fund in a bank is not part of the business of the assessee of providing credit facilities to its members. The interest derived from the credit provided to its members, is deductible under section 80P(2)(a)(i) and the interest derived by depositing surplus funds with bank not being attributable to the business carried on by assessee, could not be deducted under section 80P(2)(a)(i). In the instant case, the assessee-society regularly invested funds not immediately required for business purposes. Interest on such investments, therefore, could not fall within the meaning of the expression' profits and gains of business' as held by Hon'ble Supreme Court in the case of Totgars, Co-operative Sale Society Ltd. vs. Income-tax Officer, Karnataka. The Hon'ble Supreme Court in the case of* ***Totgars, Co-***

operative Sale Society Ltd. vs. Income-tax Officer, Karnataka [2010] 188 Taxman 282 (SC) *held in para 11 as under:*

> *"To say that the source of income is not relevant for deciding the applicability of section 80P would not be correct because one needs to give weightage to the words 'the whole of the amount of profits and gains of business' attributable to tope of the activities specified in section 80P(2)(a). The words the whole of the amount of profits and gains of business emphasize that the income in respect of which deduction is sought, must constitute the* ***operational income and not the other income*** *which accrues to the society. In the instant case, the evidence showed that the assessee-society earned interest on funds which were not required for business purposes at the given point of time. Therefore, on the facts and circumstances of the instant case, such interest income fell in the category of 'other income' which had rightly been taxed by the department under section 56."*

*As can be seen from the above decision of Hon'ble Supreme Court, it is clear that the deduction u/s 80P(2)(a) is available to only the '****operational income****' from business, but not the '****other income****' which accrues to the assessee-society. Such interest income could not be said to be attributable to the activities of the society, viz., carrying on the business of providing credit facilities to its members.*

4.2.2 Relying on the decision of the Hon'ble Apex Court, the claim of deduction u/s 80P(2)(a)(i) was rejected in the following cases as well:

*• In case of a society engaged in providing credit facilities to its members income from investments made in banks is not deductible u/s 80P[****State Bank of India (SBI)*** *(2016) 72 taxmann.com 64 (Gujarat)].*

*• Deduction u/s 80P will be allowed only when there is direct or proximate connection with or nexus to the income and the business carried on by the society. Interest income on deposits made with banks is not, attributable to the income of the co-operative society and outside realm of section 80P- [****Sri Basaveshwara Credit Cooperative Society Ltd. v. CIT*** *(2014) 47 taxmann.com 189 (Bangalore - Trib.)]*

*• In view of the decision of the Hon'ble Supreme Court (supra) Interest income on Fixed Deposit, Interest on Reserve Fund, Interest on Bad Debt Fund and interest on SBF Loan is treated as 'Income from Other Sources' without allowing deduction u/s 80P(2)(a)(i) of the Income-tax Act, 1961. [****National coal development corporation staff co-operative credit Soc. Ltd. vs. DCIT****, ITA No. 1564/Kol/2011]*

4.2.3 The Hon'ble High Court, Gujrat, has held in the case of '389 ITR 578 (GUJ), SBI Employees Co-credit & Supply Society vs. CIT' that

> *"In this case, the assessee derived interest by depositing surplus funds with the State Bank of India, but also claimed deduction u/s 80P.*
>
> *It was held that there was no obligation upon assessee to invest its surplus funds with State Bank of India. Investing surplus funds in a bank were no part of the business of the assessee of providing credit facilities to its members. Therefore, it is only the interest derived from the credit provided to its members, which is deductible under section '80P(2)(a)(i) and the interest derived by depositing surplus funds with State Bank of India not being attributable to the business carried on by assessee, could not be deducted under section 80P(2)(a)(i). If assessee wanted to avail of the benefit of deduction of such interest income, it was always open for it to deposit the surplus funds with a co-operative bank and avail of deduction under section 80P(2)(d)."*

4.2.4 The deduction u/s 80P(2)(a) is available only to the income which is ***attributable to*** *the business operation of the assessee co-operative society, i.e., providing credit facilities to its members. Depositing/investing funds in a co-operative bank/commercial bank is not a part of the business of providing credit facilities to its members. Such an interest income is not the 'operational income' of assessee-society from providing credit facilities to its members. Assessee-Society had invested the surplus funds as, and by way of investment in FDR and deposited into the bank, hence, interest on such investment has got to be taxed under the head "Income from other sources", not eligible for deduction u/s 80P of the Act****. Respectfully following all of the aforesaid legal precedents, I hold that such interest income earned by the assessee is not eligible for deduction u/s 80P(2)(a)(i) of the Act.***

4.3 Interest income earned by the assessee-society is also not eligible for deduction u/s 80P(2)(d) because of the following reasons:

4.3.1 If assessee wanted to avail of the benefit of deduction of such interest income, it was always open for it to deposit the surplus funds with a co-operative society and avail of deduction under section 80P(2)(d). The provisions with regard to allowing deduction in respect of interest income and dividend earned by a co-operative society are contained in section 80P(2)(d) of the Income tax Act, 1961, which read as under:

"in respect of any income by way of interest or dividends derived by the cooperative society from its investments with any other cooperative society, the whole of such income"

From the plain reading of section 80P(2)(d) of the I.T. Act it is apparent that to claim deduction under this section, the income must have been earned by way of interest or dividends and the income must be derived from investment with any other co-operative society only. Thus, this deduction cannot be extended to the interest income earned from the investment in any nationalized bank and/or co-operative bank. However, the assessee has received interest income from other than cooperative societies. This is in violation of section 80P(2)(d) of the Income Tax Act, 1961 which clearly states that deduction on interest & dividend can be claimed only if the interest & dividend was derived by a cooperative society from its investments with any other co-operative society.

4.3.2 The ***Hon'ble High Court of Karnataka*** *has held in the case of* ***Principal Commissioner of Income, Hubballi vs. Totagars Cooperative Sale Society*** *[2017] 83 taxmann.com 140 (Karnataka) as under:*

"What Section 80P(2)(d) of the Act, which was though not specifically argued and canvassed before the Hon'ble Supreme Court, envisages is that such interest of dividend earned by an assessee co-operative Society should be out of the investments with any other cooperative society. The words' Co-operative Banks' are missing in clause (d) of subsection (2) of Section 80P of the Act. ***Even though a co-operative bank may have the corporate body or skeleton of a co-operative society but its business is entirely different and that is the banking business, which is governed and regulated by the provisions of the Banking Regulation Act, 1949****. Only the Primary Agricultural Credit Societies with their limited work of providing credit facility to its members continued to be governed by the ambit and scope of deduction under Section 80P of the Act."*

Thus, the Hon'ble High Court has. held that though a co-operative bank may have the corporate body or skeleton of a co-operative society, its business is entirely different and that is the banking business. In effect, Hon'ble Karnataka High Court ruled that a co-operative bank was an entirely different species than that of a co-operative society. Hon'ble High Court strengthened this argument by pointing out that "the words 'Co-operative Banks' are missing in clause (d) of subsection (2) of Section 80P of the Act".

4.3.3 Once it is held that the co-operative banks are entirely different species than those of co-operative societies, the next question is whether,

*the interest earned from such Co-operative banks is eligible for deduction u/s **80P(2)(d)** of the Act. The provisions with regard to allowing deduction in respect of interest income and dividend earned by a cooperative society are contained in section 80P(2)(d) of the Income tax Act, 1961, which read as under:*

> *"in respect of any income by way of interest or dividends derived by the cooperative society from its investments with any other co-operated society, the whole of such income."*

*From the plain reading of section 80P(2)(d) of the LT. Act it is apparent that to claim deduction under this section, the income must have been earned by way of interest or dividends and the income must be derived from investment with any other co-operative society only. Thus, this deduction cannot be extended to the interest income earned from the investment in any nationalized bank and/or co-operative bank. The Hon'ble Karnataka High Court in the case of **Principal Commissioner of income-tax, Hubballi vs. Totagars Co-operative Sale Society**(supra) held at para 23 of its decision as under:*

> *"The character of income depends upon the nature of activity for earning the income and though on the face of it, the same may appear to be falling in any of the specified clauses of section 80P(2) of the Act, but on a deeper analysis of the facts, it may become ineligible for deduction under section 80P(2) of the Act. Hence, **the income by way of interest earned by deposit or investment of idle or surplus funds does not change its character irrespective of the fact whether such income of interest is earned from a scheduled bank or a co-operative bank and, thus, clause (d) of section 80P(2) of the Act would not apply in the facts and circumstances of the present case.** The person or body corporate from which such interest income is received will not change its character, viz. interest income not arising from its business operations, which made it intelligible for deduction under section 80P of the Act."*

Thus, as can be from the above decision, Hon'ble High Court held that the person or body corporate (in this case, co-operative bank) from which such interest income is derived will not change the character of income, viz. the income from other sources, which is ineligible for deduction under section 80P(2)(d) of the Act.

4.3.4 Further, section 80P was amended by the Finance Act, 2006 with effect from 01.04.2007 introducing sub-section (4) which laid down specifically that:

"The provision of section shall not apply in relation to any cooperative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank.

Explanation.- For the purposes of this sub-section,-

1. "co-operative bank" and "primary agricultural credit society" shall have the meanings respectively assigned to them in Part V of the Banking Regulation Act, 1949(10 of 1949);

2. "primary co-operative agricultural and rural development bank" means a society having its area of operation confined to a taluk and the principal object of which is to provide for long-term credit for agricultural and rural development activities."

With the insertion of sub-section' 80P(4) which is in the nature of a proviso, as held by ***Hon'ble Supreme Court*** *in its latest decision in the case of* ***The Mavilayi Service Coop. Bank Ltd. &Ors. vs. CIT,*** *Civil Appeal Nos. 7343-7350 of 2019 dtd. 12.01.2021, the co-operative banks are excluded from the ambit of section 80P of the Act. The relevant extract at para 21 is as under:*

*"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 co-operative societies who must possess a licence from the RBI to do banking business.*

That, as per section 80P(4) the provision of section 80P not applicable even for co-operative bank. During the course of assessment proceedings assessee has failed to furnish any evidences which prove that the said bank comes under the provision of section 80P(4) of the IT Act, 1961, from which interest income was received. The Co-operative banks and other non-co-operative Banks are commercial bank and does not fall under the purview of a "Co-operative Society" referred in section 80P(2)(d) of the Income tax Act, 1961.

4.3.5 The Hon'ble Karnataka High Court in the case ***of Principal Commissioner of Income-tax, Hubballi vs. Totagars Co-operative Sale Society*** *(supra) further held at para 14 as under:*

"The purpose of bringing on the statute book sub-section (4) in Section 80P of the Act was to exclude the applicability of Section 80P of the Act altogether to any co-operative bank and to exclude the normal banking business income from such exemption/deduction category……. ***This exclusion by Section 80P(4) of the Act even though without any amendment in Section 80P(2) (d) of the Act***

> ***is sufficient to deny the claim of the respondent assessee for deduction under Section 80P(2)(d) of the Act****."*

4.3.6 Thus, the intention of Legislature is to keep the co-operative banks out of the scope of section 80P of the Income Tax Act, 1961. Once the provisions of section 80P are not applicable to Co-operative Banks, for all purposes they have to be kept out of the scope of the section. Wherever the word 'co-operative society' is used in section 80P, it will not be applicable for co-operative banks. This means that the interest income derived from deposits/investments in co-operative banks are not eligible for deduction u/s. 80(P) (2) (d) of Income Tax Act, 1961.

4.3.7 As held by Hon'ble (Karnataka High Court in ***Principal Commissioner of Income-tax, Hubballi vs. Totagars Co-operative Sale Society*** *(supra), the amendment of Section 194A(3)(v) of the Act excluding the Co-operative Banks from the definition of "Co-operative Society" by Finance Act, 2015 and requiring them to deduct income tax at source under Section 194A of the Act* ***also makes the legislative intent clear that the Co-operative Banks are not that species of genus co-operative society, which would be entitled to exemption or deduction under the special provisions of Chapter VIA in the form of Section 80P of the Act.*** ***{emphasis supplied}***

4.3.8 The Hon'ble ITAT Indore has decided in the case of Jila Sahakari Kendriya Bank Maryadit, Ujjain vs ACIT-1(1), Indore ITA NO. 375/Ind/2012 dated: 12.02.2013 for A.Y. 2007-08 that:

> *"Now coming to the nature of income for which deduction has been claimed u/s 80P(2) (d), we found that it was FDR interest from Apex Coop. Bank at Rs. 1,47,53,051/-. Interest income on FDR from Apex Bank is not at Par with the interest income received from agriculturists in respect of loan given to the farmers for agriculture purposes. Such FDR interest income is not eligible for deduction u/s 80P(2)(d).*
>
> *In view of the above discussion, we do not find any infirmity in the order of CIT(A) for disallowing claim of deduction u/s 80P(2)(d) in respect of interest income earned by assessee from FDR with Apex Coop. Bank.*
>
> *In the result, the appeal of the assessee is dismissed."*

4.3.9 It is a settled issue by the Apex Court's decision in the case of Totgar's Cooperative Sale Society 322 ITR 283 (SC) 2010 followed by the High Court in case like CIT, Bareilly vs Sahkari Ganna Vikas Samity Lakhimpur Kheri

order dated 06.12.2016, and CIT Bareilly vs Cooperative Cane Development Union Ltd. Bheera, ITA no. 520/2008 dated 11.09.2009 that the interest earned by the Cooperative Society other than from cooperative Societies are taxable.

5. In view of the above discussion, the deduction claimed by the assessee with respect to interest Income earned from co-operative banks, commercial banks and other financial institutions is not found to be allowable deduction under any provision of section 80P of the I.T. Act. Thus, the deduction claimed u/s 80P(2)(a)(i) of Rs.32,79,394/- is disallowed and added to the Total Income treating the same as "other income" u/s. 56 of the 1.T Act, 1961. Penalty proceedings u/s 270A(9) of the I.T. Act, 1961 is initiated separately for under reporting of income in consequence of misreporting thereof."

6. As regards Ground no. 1, the Ld. CIT(A) has confirmed the disallowance of claim of deduction u/s 80P of the Act made by the Ld. AO, by his finding as under:

"6.1 I have carefully considered the statement of facts, the grounds of appeal, the submissions filed by the appellant and the details mentioned in the impugned order. ***Grounds no. 1 and 2*** *both relate to the disallowance of claim of deduction u/s 80P on the interest income of Rs. 83,58,850/- from deposits/investments in co-operative/commercial banks and dividend income of Rs. 61,312/- If the interest and dividend income of Rs.84,20,162/- is reduced from the income eligible for deduction u/s 80P, then there remains no income on which deduction u/s 80P can be allowed.*

6.2 The first issue is whether interest and dividend income on investments with the Mugberia Central Co-operative Bank Ltd. (MCCBL) and other commercial banks can be considered as business income of the appellant. The issue has been considered by the Hon'ble Supreme Court in the case of ***Totgars Co-Operative Sale Society Ltd. v. ITO [2010] 322 ITR 283/188 Taxman 282 (SC)****. The Hon'ble court held as follows:*

> *'The words "the whole of the amount of profits and gains of business" emphasise that the income in respect of which deduction is sought must constitute the operational income and not the other income which accrues to the Society. In this particular case, the evidence shows that the assessee-Society earns interest on funds which are not required for business purposes at the given point of time. Therefore, on the facts and circumstances of this case, in our view, such interest income falls in the category of "****Other Income****" which*

has been rightly taxed by the Department under Section 56 of the Act.'

The appellant has sought to distinguish its case from that of Totgars' on the ground that Totgars Cooperative Sale Society Ltd. was engaged in the business of marketing of agricultural produce grown by its members. The sale consideration received from marketing of agricultural produce of its members was retained in many cases and invested in short term deposit. The amount so retained was a liability on it and therefore, to that extent, the interest income was held not to be income attributable to the activity carried out by the society. This view was also taken by the Karnataka High Court in the case of ***Tumkur Merchants Souharda Credit Cooperative Ltd. [2015] 55 taxmann.com 447 (Karnataka)****. However, the interpretation that the SC decision in Totgars case was rendered and would be applicable only to a cooperative society which was retaining sale proceeds of its members has been negated by the Hon'ble Gujarat High Court in its decision in the case of* ***SBI v. CIT (2016) 389 ITR 578 (Guj)****. Relevant portions of the decision are reproduced below:*

28. Thus, in the case of a co-operative society engaged in carrying on the business of banking or providing credit facilities to its members, what is deductible under section 80P of the Act is the whole of the amount of profits and gains of business attributable to any one or more such activities. The Supreme Court in Totgar's Co-operative Sale Society (supra) has, while giving a precise meaning to the words "profits and gains of business" mentioned in section 80P(2) of the Act, observed that the assessee in that case regularly invested funds not immediately required for business purposes and was of the view that interest on such investments, therefore, cannot fall within the meaning of the expression "profits and gains of business". It was held that such interest income cannot be said to be attributable to the activities of the society, namely, carrying on the business of providing credit facilities to its members or marketing of the agricultural produce to its members. The court further held that the words "the whole of the amount of profits and gains of business" emphasise that the income in respect of which deduction is sought must constitute the operational income and not the other income which accrues to the society. The court observed that in that particular case the evidence showed that the assessee-society earned interest on funds which were not required for business purpose at the given point of time. Therefore, in the facts and circumstances of the case, the court was of the view that, such interest income falls in the category of "Other

income" which had rightly been taxed by the Department under section 56 of the Act.

29. In the opinion of this court, in case of a society engaged in providing credit facilities to its members, income from investments made in banks does not fall in any of the categories mentioned under section 80P(2)(a) of the Act. In the case of Totgar's Co-operative Sale Society (supra), as rightly submitted 'by the learned counsel for the respondent, the court was dealing with two kinds of activities: interest income earned from the amount retained from the amount payable to the members from whom produce was bought and which was invested in short-term deposits/securities; and the interest derived from the surplus funds that the assessee therein invested in short-term deposits with the Government securities. This is further clear when one peruses the decision of the Karnataka High Court from which the matter travelled to the Supreme Court wherein it was the case of the assessee that it was carrying on the business of providing credit facilities to its members and therefore, the appellant-society being an assessee engaged in providing credit facilities to its members, the interest received on deposits in business and securities is attributable to the business of the assessee as its job is to provide credit facilities to its members and marketing the agricultural products of its members. This court is, therefore, of the view that the above decision is not restricted only to the investments made by the assessee therein from the retained amount which was payable to its members but also in respect of funds not immediately required for business purposes. *The Supreme Court has held that interest on such investments, cannot fall within the meaning of the expression "profits and gains of business" and that such interest income cannot be said to be attributable to the activities of the society, namely, carrying on the business of providing credit facilities to its members or marketing of agricultural produce of its members. The court has held that when the assessee society provides credit facilities to its members, it earns interest income. The interest which accrues on funds not immediately required by the assessee for its business purposes and which has been invested in specified securities as "investment" are ineligible for deduction under section 80P(2)(a)(i) of the Act. For the above reasons, this court respectfully does not agree with the view taken by the Karnataka High Court in* ***Tumkur Merchants Souharda Credit Co-operative Ltd. v. ITO*** *(supra) that the decision of the Supreme Court*

in Totgar's Cooperative Sale Society (supra) is restricted to the sale consideration received from marketing agricultural produce of its members which was retained in many cases and invested in short-term deposit/ security and that the said decision was confined to the facts of the said case and did not lay down any law.

30. Thus, in the light of the principles enunciated by the Supreme Court in Totgar's Co-operative Sale Society (supra), in case of a society engaged in providing credit facilities to its members, income from investments made in banks does not fall within any of the categories mentioned in section 80P(2)(a) of the Act. However, section 80P(2)(d) of the Act specifically exempts interest earned from funds invested in co-operative societies. Therefore, to the extent of the interest earned from investments made by it with any co-operative society, a co-operative society is entitled to deduction of the whole of such income under section 80P(2)(d) of the Act. However, interest earned from investments made in any bank, not being a cooperative society, is not deductible under section 80P(2)(d) of the Act."

(emphasis supplied)

6.3 The stand taken by the Gujarat High Court was reiterated by the Karnataka High Court in the later decision in the case of the same assessee in the case of ***PCIT V. Totagars Co-operative Sale Society, [2017] 395 ITR 611*** *and the Court held as under:*

"12. The sheet anchor of the contention of the learned counsel for the assessee misses two essential points required for claiming the exemption or 100% deduction from gross total income for a co-operative society: (i) that the character or nature of income, namely interest on investments or deposits, does not change irrespective of the fact whether it is earned or received from a Schedule Bank or Co-operative Bank, (ii) that what the Hon'ble Supreme Court held in the case of the respondent assessee itself, against the assessee, was that such interest income on its surplus and idle funds not immediately required for its business, is not income from business taxable under Section 28 of the Act, but was taxable as income from other sources under Section 56 of the Act, whereas for availing the exemption or 100% deduction under Section 80P of the Act the income is specified in clauses (a) to (f) of Subsection (2) of Section 80P of the Act should be its business or operational income.

17. As stated above, it is the character and nature of income which determines its taxability or exemption from taxability. It is needless to say that the provisions relating to exemption and deduction need

to be strictly construed and no liberal interpretation or intendment can be inferred in such provisions."

A similar stand has been taken in the following cases:

(a) It was held in ***Mantola Co-operative Thrift and Credit Society Ltd., v. CIT (2014) 50 Taxman.com 278 (Delhi)*** *that the word Banking appearing in Section 80P(2)(a)(i) cannot be given an extended and broad meaning and that to do so would be contrary to the ratio laid down in Totgars Co-operative Society.*

(b) In ***CIT v. Punjab State Co-operative Agricultural Development Bank Ltd. (2016) 76 Taxman.com 307 (P&H)****, a Division Bench of the Punjab and Haryana High Court held that the interest earned on reserve funds and call deposits could not be regarded as income attributable to one of the activities indicated in the Section. The Punjab and Haryana High Court not only followed Totgars but also followed the decision of the Gujarat High Court in SBI v. CIT (2016) 389 ITR 578 (Guj).*

(c) ***In CIT v. South Eastern Railway Employers Co-operative Credit Society Ltd. (2016) 73 Taxman.com 123****, a Division Bench of the Calcutta High Court indicated that the judgment of the Supreme Court in Totagars is a binding authority for the proposition that interest income arising on the surplus invested in short-term deposits and securities would come under the category of income from other sources.*

6.4 Thus there exists a Supreme Court decision on this issue, which has been shown to apply even in the case of credit societies like the appellant, by various courts. Thus, respectfully following the various decisions cited above, which make the SC decision in the case of ***Totgars Co-Operative Sale Society Ltd. v. ITO [2010] 322 ITR 283/188 Taxman 282 (SC)*** *applicable to the present case, it is hereby held that interest and dividend income of Rs. 8420162/- received from the Mugberia Central Co-operative Bank Ltd. (KDCBL) and other commercial banks is not income from business but is to be treated as 'income from other sources' and is, therefore, not eligible for deduction u/s 80P(2)(a)(i).*

6.5 The next issue is whether the appellant is eligible for deduction u/s 80P(2)(d) on the income received from the Mugberia Central Co-operative Bank Ltd. (MCCBL). In this regard, the Hon'ble Karnataka High Court, in the case of ***PCIT v/s Totagars Cooperative Sale Society Ltd. [2017] 395 ITR 611 (Kar)*** *has deliberated on the meaning of the term 'cooperative society' as appearing in section 80P(2)(d) and has held as follows:*

"13. What Section 80P(2)(d) of the Act, which was though not specifically argued and canvassed before the Hon'ble Supreme Court, envisages is that such interest or dividend earned by an assessee co-operative society should be out of the investments with any other co-operative society. The words Cooperative Banks are missing in clause (d) of subsection (2) of Section 80P of the Act. Even though a co- operative bank may have the corporate body or skeleton of a co-operative society but its business is entirely different and that is the banking business, which is governed and regulated by the provisions of the Banking Regulation Act, 1949. Only the Primary Agricultural Credit Societies with their limited work of providing credit facility to its members continued to be governed by the ambit and scope of deduction under Section 80P of the Act.

15. The amendment of Section 194A(3)(v) of the Act excluding the Cooperative Banks from the definition of Co-operative Society by Finance Act, 2015 and requiring them to deduct income tax at source under Section 194A of the Act also makes the legislative intent clear that the Co-operative Banks are not that specie of genus co-operative society, which would be entitled to exemption or deduction, under the special provisions of Chapter VIA in the form of Section 80P of the Act.

16. If the legislative intent is so clear, then it cannot contended that the omission to amend Clause (d) of Section 80P(2) of the Act at the same time is fatal to the contention raised by the Revenue before this Court and sub silentio, the deduction should continue in respect of interest income earned from the co-operative bank, even though the Hon'ble Supreme Courts decision in the case of Respondent assessee itself is otherwise."

6.6 The Hon'ble Supreme Court in the case of ***Mavilayi Service Co-operative Bank Ltd.[2021] 123 taxmann.com 161 (SC)*** *has deliberated upon the distinction between a co-operative society engaged in banking business and a co-operative bank and held as under:*

"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.

*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 now 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 co-operative bank and holds a licence 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"*

The ratio decidendi of the aforesaid decision is that a co-operative bank which is working under a license from the Reserve Bank of India falls within the mischief of section 80P(4). Thus, any income in the form of interest received from a co-operative bank would not be eligible for deduction u/s 80P(2)(d) as co-operative banks, functioning under a license from the RBI and lending and taking deposits from the public are specifically excluded from the provisions of section 80P by virtue of section 80P(4). ***Since the Mugberia Central Co-operative Bank Ltd. is a scheduled bank working under the Banking Regulation Act, it falls within the mischief of section 80P(4) and it cannot be considered as a co-operative society for the purpose of section 80P. Thus, interest income from this bank cannot be considered as income from investments with any other 'co-operative society' and is, thus, not eligible for deduction u/s 80P(2)(d).*** ***{emphasis supplied}***

6.7 In view of the aforesaid discussion, it is clear that the appellant is not eligible to claim deduction either u/s 80P(2)(a)(i) or 80P(2)(d) of the IT Act on the interest and dividend income of Rs. 84,20,162/- received from Mugberia Central Co-operative Bank Ltd. (KDCBL) and other commercial banks. If this interest income is reduced from the P&L a/c, then there does not remain any income on which deduction u/s 80P can be allowed. Thus, the AO has correctly disallowed the claim of deduction u/s 80P of Rs. 32,79,394/- and the grounds no. 1 and 2 are dismissed."

7. Before us, the Ld. AR relied upon the following judicial pronouncements:

i) Totgars, Co-operative Sale Society Ltd. vs. Income-tax Officer, Karnataka [2010] 188 Taxman 282 (SC)/[2010] 322 ITR 283 (SC)/[2010] 229 CTR 209 (SC)[08-02-2010].
ii) Principal Commissioner of Income-tax vs. Ashwinkumar Arban Co Operative Society Ltd. [2024] 168 taxmann.com 314 (Gujarat)[24-09-2024].
iii) Lankapalli PACS Ltd, vs. ITO, ITA No. 364/Viz/2024 order dated 24.10.2024.
iv) Bhairabnala Samabay Krishi Unnayan vs. ITO ITA No. 111/KOL/2022 order dated 15.12.2022.
v) ITO vs. The Kakateeya Mutually Aided Thrift and Credit Co-op. Society Limited ITA No. 107/Viz/2022 order dated 30.08.2023.

8. It was submitted that 70% of the surplus was required to be deposited with State Cooperative Bank and the copy of Memorandum No. 1165(3) dated 16.10.2023 was filed. However, no computation in this regard was filed. Our attention was drawn to Certificate Of Registration at page 46 of the paper book which also contains the amendment of bye laws of the Society in which the documents have been registered on 19.12.1927. Our attention was also drawn to the decision of the Hon'ble Gujarat High Court in the case of **Principal Commissioner of Income-tax vs. Ashwinkumar Arban Co Operative Society Ltd. [2024] 168 taxmann.com 314 (Gujarat)[24-09-2024]** specifically para 33 thereof. However, in that case the Hon'ble High

Court has held that in the facts of the case, the provisions of section 80P(2)(d) of the Act would be applicable and reference was made to para 42 of Mavilayi Service Co-operative Bank that the primary agricultural credit Society concerned is a cooperative society. Therefore, the facts being different, the decision is not applicable to the facts of the case of the assessee. The facts of the other cases relied upon are also different. The assessee contended that the interest income of ₹32,79,394/- was arising out of the investment with the Apex bank and details of the bank was stated to be mentioned in page 60 of the paper book on which the details of Axis bank, ICICI bank, State Bank of India bank and UBI bank are also mentioned as the banks where the amount could be deposited. However, as the principal of mutuality is missing with respect to these banks, the income from them is liable to be subjected to tax even otherwise.

9. The assessee contends that it was statutorily required to deposit the amount in the bank. However, the same was only for ensuring the security of the funds and the scheduled banks were included but that does not entitle the assessee for the benefit of section 80P. Further, there was no prohibition for the assessee to deposit the amount in other cooperative societies, the income from which would have been exempt and allowable u/s 80P(2)(d) of the Act. Since the income from cooperative banks, in view of the discussion made above, is not exempt as the same cannot be attributed to the income from the business of collecting deposit from members and lending to them, therefore, the same is not allowable as a deductions u/s 80P. The assessee relied upon the decision of **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] for the argument that a liberal interpretation needs to be given. However, the facts of the case were different there as held in para 45 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 now 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 co-operative bank and holds a licence 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 licence to the RBI, as their bye-laws 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 Reserve Bank of India. RCS will issue the necessary guidelines in this regard."*
>
> *.....*
>
> *.....*

45. To sum up, therefore, the ratio decidendi of Citizen Co-operative Society Ltd. (supra), must be given effect to. Section 80P of the IT Act, being a benevolent provision enacted by Parliament to encourage and promote the credit of the co-operative 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 co-operative banks which are co-operative societies engaged in banking business i.e. engaged in lending money to members of the public, which have a licence in this behalf from the RBI.*** *Judged by this touchstone, it is clear that the impugned Full Bench judgment is wholly incorrect in its reading of Citizen Cooperative Society Ltd. (supra). Clearly, therefore, once section 80P(4) is out of harm's way, all the assessees 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 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).

47. Further, unlike the facts in Citizen Cooperative Society Ltd. (supra), the Kerala Act expressly permits loans to non-members under section 59(2) and (3), which reads as follows:

"59. Restrictions on loans.— (1) A society shall not make a loan to any person or a society other than a member:

Provided that the above restriction shall not be applicable to the Kerala State Co-operative Bank.

Provided further that, with the general or special sanction of the Registrar, a society may make loans to another society.

(2) Notwithstanding anything contained in sub-section (1), a society may make a loan to a depositor on the security of his deposit.

(3) Granting of loans to members or to non-members under sub-section (2) and recovery thereof shall be in the manner as may be specified by the Registrar."

Thus, the giving of loans by a primary agricultural credit society to non-members is not illegal, unlike the facts in Citizen Cooperative Society Ltd. (supra).

48. Resultantly, the impugned Full Bench judgment is set aside. The appeals and all pending applications are disposed of accordingly. These appeals are directed to be placed before appropriate benches of the Kerala High Court for disposal on merits in the light of this judgment."

10. Since the facts are different, therefore, the decision being rendered on different facts is not applicable to the facts of the case of the assessee. In fact, it emphasises the fact and the legal position that income from non-members as well as from co-operative banks is not allowable as a deduction under section 80P but income from members

for loans given for non-agricultural purposes can be claimed as a deduction.

11. The Ld. DR supported the order of the Ld. AO and the Ld. CIT(A) and stated that in view of the decision of the Hon'ble Supreme Court in the case of **Totgars, Co-operative Sale Society Ltd. vs. Income-tax Officer, Karnataka [2010] 188 Taxman 282 (SC)/[2010] 322 ITR 283 (SC)/[2010] 229 CTR 209 (SC)[08-02-2010]** the disallowance needs to be confirmed.

12. Similar issue arose in the case of **DCIT vs. Sikkim State Cooperative Supply and Marketing Federation Limited ITA Nos. 1582 & 1583/KOL/2024** order dated 18.06.2025 wherein it has been held as under:

> *"7. Similar issue arose in the case of **Gomati Co-Operative Milk Producers Union Limited Vs. ACIT-National-E-Assement Centre, New Delhi** in **ITA 136/GTY/2023** in which the decision in the case of **Totagars Co-operative Sale Society** (supra) has been relied upon. The relevant extracts from the order are as under:*
>
> *"11. We now refer to the provisions of Section 80P(2)(d) of the Act which are as under:*
>
> *"80P(2)(d) in respect of any income by way of interest or dividends derived by the cooperative society from its investments with any other co-operative society, the whole of such income".*
>
> *Thus, section 80P(2)(d) states that the income by way of interest or dividends derived from investments with **any other co-operative society** is eligible for deduction.*
>
> *12. Further, we have to examine as to whether the Tripura State Co-operative Bank Ltd. is a **co-operative bank** or merely a **co-operative society**. The Tripura State Co-operative Bank Ltd. is a Co-operative Bank and there is no dispute. In this connection, we may refer to the definition of Co-operative bank as defined under the Tripura Co-operative Societies Act, 1974 which defines the Co-operative Bank as under:*

*"**Co-operative Bank**"" means **a society** registered under this Act and doing the business of banking as defined in clause (b) of sub-section (1) of section 5 of the Banking Regulation Act, 1949.*

Thus, a Co-operative Bank is a Co-operative society which is doing the business of banking and is distinguishable from a society not doing the business of banking.

13. Again, by the 2nd amendment of the Tripura Co-operative Societies Act, 2009, the Tripura State Co-operative Banks have been declared as a Co-operative Society doing the business of banking with their jurisdiction defined as under:

"State Co-operative Bank means an apex co-operative society doing the business of banking as defined in clause (b) of section 5 of the Banking Regulation Act, 1949 and having jurisdiction over whole of Tripura State and declared as such by the State Government under clause (u) of section 2 of the National Bank for Agriculture and Rural Development Act, 1981 (Central Act No. 61 of 1981)".

*14. In this respect, as per section 2(19) of IT Act "co-operative society" means a co-operative society registered under the Co-operative Societies Act, 1912 (2 of 1912), or under any other law for the time being in force in any State for the registration of co-operative societies. Further, as per the provisions of section 80P(4) of IT Act, the provisions of this section **shall not apply** in relation to **any co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank**.*

15. Since for the purpose of section 80P of the Act Co-operative Bank has the meaning assigned to it in PART V of the Banking Regulation Act, 1949 inserted by Act 23 of 1965, s. 14 (w.e.f. 1-3-1966) and is regarding application of the Banking Regulation Act, 1949 to co-operative banks, it is imperative to refer to section 56 of the same, which is as under:

[PART V

APPLICATION OF THE ACT TO CO-OPERATIVE BANKS

***56. Act to apply to co-operative societies subject to modifications.—** 8[Notwithstanding anything contained in any other law for the time being in force, the provisions of this Act], shall apply to, or in relation to, co-operative societies as they apply to, or in relation to, banking companies subject to the following modifications, namely:—*

(a) throughout this Act, unless the context otherwise requires,-

(i) references to a "banking company" or "the company" or "such company" shall be construed as references to a co-operative bank,
(ii) references to "commencement of this Act" shall be construed as references to commencement of the Banking Laws (Application to Co-operative Societies) Act, 1965 (23 of 1965);
1[(iii) references to "memorandum of association" or "articles of association" shall be construed as references to ***bye-laws****;*
(iv) ***references to the provisions of the Companies Act, 1956 (1 of 1956)****, except in Part III and Part IIIA,* ***shall be construed as references to the corresponding provisions, if any, of the law under which a co-operative bank is registered;***
*(v) references to "****Registrar****" or "Registrar of Companies" shall be construed as references to "Central Registrar" or "****Registrar of Co-operative Societies****", as the case may be, under the law under which a co-operative bank is registered;]*
(b) in section 2, the words and figures "the Companies Act, 1956 (1 of 1956), and" shall be omitted;
(c) in section 5,—
2[(i) after clause (cc), the following clauses shall be inserted namely:—
(cci) ***"co-operative bank" means a state co-operative bank, a central co-operative bank and a primary co-operative bank;***
(ccii) "co-operative credit society" means a co-operative society, the primary object of which is to provide financial accommodation to its members and includes a co-operative land mortgage bank;
*3[(cciia****) "co-operative society" means a society registered or deemed to have been registered under any Central Act for the time being in force relating to the multi-State co-operative societies, or any other Central or State law relating to co-operative societies for the time being in force;]***
(cciii) "director", in relation to a co-operative society, includes a member of any committee or body for the time being vested with the management of the affairs of that society;
2[(cciiia) "multi-State co-operative bank" means a multi-State co-operative society which is a primary co-operative bank;
(cciiib) "multi-State co-operative society" means a multi-State co-operative society registered as such under any Central Act for the time being in force relating to the multi-State co-operative societies but does not include a national co-operative society and a federal co-operative;]
*(cciv) "****primary agricultural credit society****" means a co-operative society,—*

(1) the primary object or principal business of which is to provide financial accommodation to its members for agricultural purposes or for purposes connected with agricultural activities (including the marketing of crops); and
(2) the bye-laws of which do not permit admission of any other co-operative society as a member: Provided that this sub-clause shall not apply to the admission of a co-operative bank as a member by reason of such co-operative bank subscribing to the share capital of such co-operative society out of funds provided by the State Government for the purpose;
*(ccv) "**primary co-operative bank" means a co-operative society, other than a primary agricultural credit society,—***
*(1**) the primary object or principal business of which is the transaction of banking business;***
(2) the paid-up share capital and reserves of which are not less than one lakh of rupees; and
(3) the bye-laws of which do not permit admission of any other co-operative society as a member:
Provided that this sub-clause shall not apply to the admission of a co-operative bank as a member by reason of such co-operative bank subscribing to the share capital of such co-operative society out of funds provided by the State Government for the purpose;
*(ccvi) "**primary credit society**" means a co-operative society, other than a primary agricultural credit society,—*
(1) the primary object or principal business of which is the transaction of banking business;
(2) the paid-up share capital and reserves of which are less than one lakh of rupees; and
(3) the bye-laws of which do not permit admission of any other co-operative society as a member:
Provided that this sub-clause shall not apply to the admission of a co-operative bank as a member by reason of such co-operative bank subscribing to the share capital of such co-operative society out of funds provided by the State Government for the purpose.
Explanation.—If any dispute arises as to the primary object or principal business of any co-operative society referred to in clauses (cciv), (ccv) and (ccvi), a determination thereof by the Reserve Bank shall be final;
*(ccvii) "central co-operative bank", 1*** "primary rural credit society" and "state co-operative bank" shall have the meanings respectively assigned to them in the National Bank for Agriculture and Rural Development Act, 1981 (61 of 1981);]*
2[(ii) clauses (ff), (h) and (nb) shall be omitted;]

*16. Thus, both "**co-operative bank**" as well as "**co-operative credit**" society are defined under sub-clauses (cci) and (ccii) in section 56 read with*

section 5 of the Banking Regulation Act, 1949 [PART V] ***and while a primary co-operative bank is a co-operative society, all co-operative societies are not co-operative banks****. Thus, the terms co-operative society and co-operative bank have to be understood in the context in which they are used and are not interchangeable in all situations. In view of the aforesaid discussion made in the preceding paras, it is evident that, the Tripura State Co-operative Bank Ltd. is co-operative Society doing the business of banking and therefore****, it is a co-operative bank and not merely a cooperative society which is doing the business of banking****. Thus, the Tripura State Co-operative Bank Ltd. is a co-operative bank even though it may be a co-operative society.*

17. As is elaborated above, a co-operative society per se is not permitted to carry on the business of banking as per Part V of the Banking Regulation Act unless it is a Co-operative Bank which has been issued the requisite license by the RBI. The assessee relies upon the provisions of Section 80P(2)(d) of the Act in support of its claim that the Tripura State Co-operative Bank Ltd. is a Society and therefore, the interest from the same should be allowed as a deduction u/s 80P(2)(d) of the Act. In this respect, the provisions of the statute have to be read as a whole and not in isolation. Since the terms 'Society' and 'Co-operative Bank' appear specifically at different places in section 80P and as per Section 80P(2)(d) of the Act, the interest or dividend income of the cooperative Society received from any other cooperative Society is exempt, but by virtue of the amendment with effect from 01.04.2007, the provisions of Section 80P of the Act shall not apply in relation to any co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank, all of which have been defined as per Part V of Banking Regulation Act, 1949 and therefore, a Co-operative Bank, though being a Society and carrying on the business of banking, however is not entitled to the benefit of Section 80P of the Act by virtue of sub-Section (4) thereof, as it is treated at par with a bank and is granted the deduction available to the bank as per section 36(1) of the Act. It would be apposite to also refer to the memorandum to the Finance Act, 2007 which explains the rationale behind amendment in Sections 80P and 36(1) of the Act. In the Memorandum to the FINANCE BILL, 2007 for PROVISIONS RELATING TO DIRECT TAXES, the substance of the main provisions in the Bill relating to direct taxes is explained in the paragraphs following therein. Under the RATIONALISATION AND SIMPLIFICATION MEASURES - Deduction in respect of any provision for bad and doubtful debts to be allowed in the case of co-operative banks under section 36(1)(viia), it is explained as under:

Under the existing provisions of clause (viia) of sub-section (1) of section 36, deduction of an amount not exceeding seven and one-half per cent. of the total income (computed before making any deduction under the said clause and Chapter VIA) and an amount not exceeding ten per cent. of the aggregate average advances made by the rural branches of a scheduled bank or a non-scheduled bank computed in the prescribed manner is allowed as deduction in the computation of income of such banks. "Scheduled bank", as defined in the Explanation to clause (viia) of sub-section (1) of the section 36, does not include a co-operative bank.

The deduction earlier allowable under section 80P in the case of a co-operative society engaged in carrying on the business of banking (co-operative banks) has been withdrawn from assessment year 2007-2008 barring in the case of a primary agricultural credit society or a primary co-operative agricultural and rural development bank.

Since profits of co-operative banks are now taxable after withdrawal of deduction available to a co-operative society engaged in carrying on the business of banking under section 80P, such co-operative society banks should be allowed deduction in respect of any provision for bad and doubtful debts as its profits have become taxable. The amendment proposes to allow this deduction to co-operative banks not being a primary agricultural credit society or a primary co-operative agricultural and rural development bank.

The definition of scheduled bank in clause (ii) of Explanation to said clause (viia) is also proposed to be amended to include scheduled co-operative banks within the definition.

Under the existing provisions contained in the Explanation to item (fa) of sub-clause (iv) of clause (15) of section 10, the expression "scheduled bank" has been defined to have the meaning assigned to it in clause (ii) of the Explanation to clause (viia) of sub-section (1) of section 36 which does not include co-operative banks. However, the definition of "scheduled bank" after the proposed amendment will include scheduled co-operative banks. The referral definition of "scheduled bank" presently occurring in the Explanation to the aforesaid item (fa) does not allow exemption of interest payable to a non-resident or a not ordinarily resident by a co-operative bank. In order to continue with this position, the definition of "scheduled bank" in its pre-amended form in clause (ii) of Explanation to clause (viia) of sub-section (1) of section 36 is being substituted for the existing Explanation in the aforesaid item (fa) to ensure that the scope of the exemption allowed under the aforesaid item (fa) is not changed. The

proposed substitution of the definition of "scheduled bank" in the said item (fa) meets with this objective.

The proposed amendment to the definition of "scheduled banks" as it appears in section 36 will also have the effect of making the provisions of section 43D applicable to scheduled co-operative banks. These amendments will take effect, retrospectively, from 1st April, 2007 and will, accordingly apply in relation to the assessment year 2007-2008 and subsequent years. [Clauses 6 and 12]

18. Thus, the legislative intention behind the amendments was to bring Co-operative Banks at par with commercial Banks and the provisions of Clause (d) of sub-Section (2) of Section 80P of the Act apply in respect of any income by way of interest or dividend derived by the co-operative Society from its investments with any other Society. Since Co-operative Bank and co-operative Society have been specified at different places in Section 80P of the Act, the reference to co-operative Society in Section 80P(2)(d) of the Act is a reference to the co-operative Society which is not a Co-operative Bank and is not carrying on any banking activity while the reference to Co-operative Bank in sub-Section (4) of Section 80P of the Act is to an entity which is a cooperative Society but is carrying on the business of banking and is governed by the rules and regulations of the RBI. Simultaneous to the insertion of sub-Section (4) to Section 80P of the Act, the Co-operative Banks were treated at par with the other commercial banks and the deduction u/s 36(1)(viia) of the Act in respect of provisions made for bad and doubtful debts was also extended to a Co-operative Bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank with effect from 01.04.2007. Therefore, with effect from 01.04.2007 all Co-operative Banks for the purpose of Income Tax Act have been brought at par with other commercial banks and any interest or dividend received from a Co-operative Bank is no longer allowable as a deduction u/s 80P(2)(d) of the Act. Thus, even in respect of interest from Tripura State Co-operative Bank Ltd., (which has been declared as a co-operative Society by virtue of the second amendment of the Tripura Cooperative Societies Act, 2009), by virtue of the prohibitory amendment introduced by way of introduction of sub-Section (4) to Section 80P of the Act, the interest from Tripura State Co-operative Bank Ltd., is not deductible u/s 80P of the Act. Part V of the Banking Regulation Act, 1949 specifically bars a Co-operative Bank to be a member of any other co-operative Society. Therefore, both on the principle of mutuality and the provision of Section 80P(4) of the Act read with Part V of the Banking Regulation Act, 1949, the interest from Tripura State Co-operative Bank Ltd. is also not exempt. Treating a Co-operative Bank at par with co-operative Society and allowing them the benefit of Clause (d) of sub-Section (2) of Section 80P of the Act would render the

provisions of sub-Section (4) of section 80P otiose. Therefore, all the grounds of appeal are dismissed relating to interest from Tripura State Co-operative Bank Ltd. and United Bank of India and the order of the Ld. CIT(A) in this regard is hereby confirmed.

19. In the result, the appeal of the assessee is dismissed."

8. Therefore, considering the totality of facts and circumstances of the case and in view of the legal provisions enumerated in the preceding paras that the exemption provisions have to be strictly interpreted, the submissions of the Ld. DR and as has been elaborately discussed and brought out in the orders of the Hon'ble Karnataka High Court in the case of Bangalore Club as well as Totagars (supra) in which reliance has been placed upon the judgment of Hon'ble Supreme Court, the interest received from Cooperative Banks, even though they are Cooperative Societies, is not allowable in view of the express provision of sub-section (4) of section 80P of the Act as the Cooperative Banks have been treated at par with the Scheduled Banks and the deduction u/s 80P of the Act is allowable only for the interest received from the Cooperative Society per se and not from the Cooperative Bank. The Ld. DR has amply demonstrated how the reliance on the decisions by the Ld. AR is not applicable to the facts of the case being distinguishable. Hence, the appeal of the Revenue is allowed, the order of the Ld. CIT(A) is set aside and the order of the Ld. AO is confirmed on this issue."

Hence, in view of the discussion made above, Ground no. 1 raised by the assessee is dismissed.

13. Ground no. 3 is general in nature and does not require any separate adjudication.

14. In the result, the appeal filed by the assessee is dismissed.

Order pronounced in the open Court on 4th August, 2025.

Sd/-	*Sd/-*
[**Sonjoy Sarma**]	[**Rakesh Mishra**]
Judicial Member	Accountant Member

Dated: 04.08.2025

Bidhan (Sr. P.S.)

Copy of the order forwarded to:

1. ***Bibhisanpur Samabay Krishi Unnayan Samity Ltd., Bhagwanpur-I, Bibhisanpur B.O. Purba Medinipur, West Bengal, 721458.***
2. ***ITO, Ward-27(4), Haldia/ WBG-W-(176)(3).***
3. CIT(A)-NFAC, Delhi.
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.
6. Guard File.

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By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata