IN THE INCOME TAX APPELLATE TRIBUNAL
SMC BENCH, LUCKNOW

BEFORE SHRI. SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER

ITA Nos.294 & 295/LKW/2023
Assessment Year: 2014-15 & 2015-16

Tinich Sahkari Ganna Samiti Limited Village & Post Tinich Distt Basti (U.P)	v.	The Income Tax Officer Basti
TAN/PAN:AACAT5474G		
(Appellant)		(Respondent)

Appellant by:	None (Written submission)
Respondent by:	Shri Sanjeev Krishna Sharma and Shri Amit Kumar, D.Rs

O R D E R

These appeals have been preferred by the Assessee against the orders dated 26.07.2023 and dated 09.08.2023, passed by the National Faceless appeal Centre, Delhi (NFAC) for Assessment Years 2014-15 and 2015-16.

2.0 Both these appeals filed by the assessee are having almost identical issues. Therefore, they were taken up for hearing together and are being disposed of by this common order for the sake of convenience.

2.1 The brief facts of the case in assessment year 2015-16 are that the assessee was a Co-operative Society mainly engaged in marketing of sugarcane grown by its members. The assessee filed its return of income for the year under consideration on

17.12.2015, declaring income at Nil. The case of the assessee was selected for complete scrutiny under CASS. During the course of assessment proceedings, the Assessing Officer (AO) noticed that the assessee had received commission of Rs.33,80,618/- from M/s Govind Nagar Sugar, a Unit of Phenil Sugar Pvt. Ltd. and received interest on deposits of Rs.54,367/-. The AO noted that in the return filed by the assessee, it had shown sales/gross receipt at Rs.2,98,333/- and claimed expenses at Rs.35,08,236/- under the head 'Other Expenses'. In response to the query raised by the AO, in this regard, the assessee had filed its reply dated 27.11.2017 before the AO taking a stand for deduction under section 80P(2)(a)(iii) of the Act being a Co-operative Society. However, the AO held that since the assessee failed to produce books/registers /papers/ vouchers for verification of the claim of expenses of Rs.35,08,236/-, the same was to be disallowed and was to be added to the income of the assessee. Further, the assessee had also shown interest income of Rs.54,367/- on deposits and had claimed the same as being exempt under section 80P of the Act. The AO held that since the income from other sources of the assessee was not an allowable deduction under section 80P of the Act, the same was also to be disallowed and was liable to be added to the income of the assessee. The AO also noticed from the ITS details that for

assessment year 2011-12, a refund of Rs.1,65,560/- was issued on 08.07.2014, on which interest under section 244A of the Act for Rs.16,412/- was included and that since the assessee had failed to disclose the same in its return of income filed for the captioned year, the same was also added to the income of the assessee. The AO completed the assessment under section 143(3) of the Act, assessing the total income of the assessee at Rs.34,51,400/- as against Nil income returned by the assessee.

2.2 The AO also initiated penalty proceedings under section 271(1)(c) of the Act, separately.

2.3 Aggrieved, the Assessee preferred an appeal before the NFAC, which dismissed the appeal of the assessee on merits.

2.4 Now, the assessee has approached this Tribunal challenging the order of the NFAC by raising the following grounds of appeal:

1. *Because the Id. CIT (A) has failed to consider and in adjudicating upon the specific grounds no. 1 to 4 of the grounds of appeal (Form 35) challenging disallowance of expenses to a tune of Rs.3508236/-.*
2. *Because on whole facts, circumstances of the case and materials on record, the Id. CIT(A) has erred in confirming the disallowance of expenses of Rs.3508236/- by dismissing the appeal.*

3. *Because on the whole facts, circumstances of the case and materials on record, the Id. CIT(A) has erred in denying allowability of deduction under section 80P(2)(a)/ 80P(2)(a) (iii) of the Income tax act 1961, in respect of the assessed alleged income of Rs.3508236/- (3507452/- + 784/-) particularly when this alleged income has been treated by him as business income u/s 28. While denying claim of this deduction, he has erred in relying upon his order passed in appellant's appeal for immediate preceding AY 2014-15.*

4. *That the commission receipt from the sugar factory/s in the case is against the marketing activity of marketing of the sugar cane grown by the appellant's members who are the farmers, hence it is fully eligible for deduction u/s 80P(2)(a)(iii) the income tax Act 1961 particularly when the Hon'ble jurisdictional ITAT, Lucknow and the ITAT Varanasi have held. similar commission receipts in identical cases of cane cooperative society/s established with the similar objects/functions and which are functioning under the same State law as eligible for deduction u/s 80P)2)(a) (iii).*

5. *That the grounds taken by both the Id. authorities below in rejecting claim of deduction u/s 80P(2)(a)(iii) are not correct and justified on facts of the case and in law both and they have not considered the whole facts, circumstances of the case and related law fully and in their right perspective.*

6. *That while rejecting/denying the claim of deduction u/s 80P(2)(a)(iii) against the gross commission receipts from*

the sugar factory/s as well as net profit out of it in the case, both the Id. authorities below have erred in not applying the various decisions of the Hon'ble jurisdictional ITAT and also other ITAT's on the issue which are in favor of the assessee.

7. *That on the whole facts and circumstances of the case and materials on record, the Id. CIT(A) is not justified and correct in confirming an addition of Rs.54367/- made on account of interest earned on FDR with bank without allowing deduction u/s 80P(2)(a)(iii) regarding it when this interest is directly linked with and attributable to the appellant's activity of marketing of sugar cane grown by its members which activity falls u/s 80P(2)(a) (iii) of the Income Tax Act of 1961.*

8. *Because the Id. CIT (A) has failed to consider and in adjudicating upon specific grounds no. 7 to 9 of the of grounds appeal (Form 35) challenging non allowance of deduction u/s 80P(2)(a) (iii) in respect of an interest of Rs. 16412/- received u/s 244A.*

9. *That on the whole facts and circumstances of the case and materials on record, the Id. CIT(A) is not justified and correct in confirming an addition of Rs.16412/ made on account of interest received u/s 244A of the Income Tax Act 1961 without allowing deduction u/s 80P(2)(a)(iii) when this interest is directly linked with and attributable to the appellant's activity of marketing of sugar cane grown by its members which activity falls u/s 80P(2)(a)(iii) of the Income Tax Act of 1961.*

10. *The Id. CIT(A) has, while dismissing the appeal, failed to consider the fact that the interest of Rs.16412/- received u/s 244 is on operational money and not on surplus fund invested in the bank a/c.*

11. *That on the whole facts and circumstances of the case, the deductions u/s 80P(2)(a) as claimed by appellant deserves to be allowed.*

12. *That the appellant craves leave to argue any other ground/s at time of hearing of appeal.*

3.0 In assessment year 2014-15 (ITA No.294/LKW/2023), the assessee e-filed its return of income on 14.01.2016 and whole of its business income, amounting to Rs.35,57,576/-, was claimed as exempt under section 80P of the Act. In this regard, after considering the submissions made on behalf of the assessee, the AO placed reliance on the decision of the Hon'ble Supreme Court in the case of Totgar's Co-operative Sale Society Ltd. vs. Income Tax Officer, Karnataka [2010] 322 ITR 283 and rejected the assessee's claim for deduction under section 80P of the Act. The AO computed the income of the assessee as under:

Commission received from Sugar Mills on which TDS was made u/s.194H of the Act.	Rs.33,57,576/-
Less: 1/3 for expenses by estimate	Rs.11,85,859/-
	Rs.23,71,717/-
Interest income as per ITR	Rs.2,86,061/-
Total Taxable income (rounded off)	Rs.26,57,780/-

3.1 The AO completed the assessment under section 143(3) of the Act, assessing the total income at Rs.26,57,780/-.

3.2 The AO also initiated penalty proceedings under sections 271(1)(1)(c) and 271B of the Act, separately.

3.3 Aggrieved, the Assessee preferred an appeal before the NFAC, which partly allowed the appeal of the assessee.

3.4 Now, the assessee has approached this Tribunal challenging the order of the NFAC, by raising the following grounds of appeal:

1. *Because the impugned order of the Id. CIT (A) is illegal, unjustified and bad in the eye of law in as much as, in it, the enhancement in the assessed total income by Rs.1185859/- by Id. CIT(A) because of reversing the expenses allowed by Id. A.O. is without issuing any show cause notice u/s 251(2) in respect of this proposed enhancement and also without giving opportunity of being heard against it before making enhancement in its final order.*
2. *Because the grounds taken by the Id. CIT (A) for reversal of the allowance of expenses of Rs.1185859/-, which was allowed by the Id. A.O. while computing the net profit against so called commission receipts, are misconceived, incorrect on facts and in law and these are based on presumption, surmises and conjectures.*

3. *Because on whole facts and circumstances of the case, the reversal of the allowance of the total expenses of Rs. 1185859/- (which was allowed by the Id. A.O. against the gross commission receipts from the sugar factory/s while computing the net profit) made by the Id. CIT(A) is not justified and correct particularly when he has specifically held these commission receipts as business receipts chargeable u/s 28 of the income Tax Act 1961. The Id. CIT(A) has erred in ignoring the mandatory provision u/s 29 of the Income Tax Act 1961.*

4. *Because on the whole facts and circumstances of the case, the Id. CIT(A) has erred in holding that the commission receipts from the sugar factory in the case did not out of any marketing activity to be qualified for deduction u/s 80P(2)(a)(iii) and that these receipts towards capital fund and not eligible for deduction u/s 80P(2)(a)(iii) the income tax Act 1961 particularly when the Hon'ble jurisdictional ITAT, Lucknow and the ITAT Varanasi have held similar commission receipts in identical cases of cane cooperative society/s established with the similar objects/functions and functioning under the same State law as eligible for deduction u/s 80P)2)(a)(iii).*

5. *That the while facts and circumstances of the law and in law the Id. CIT(A) is not justified and correct in rejecting/denying the claim of deduction u/s 80P(2)(a)(iii) regarding the gross as well as net receipts of commission from the sugar factory/s against activity of marketing of the sugar cane (grown by the appellant's members) and thereby confirming an addition of Rs.2371717/- (as*

enhanced by the CIT(A) by Rs.1185859/- because of reversal of allowance of expenses which was allowed by the Id. A.O.).

6. *That the grounds taken by both the Id. authorities below in rejecting claim of deduction u/s 80P(2)(a) (iii) are not correct and justified on facts of the case and in law both and they have not considered the whole facts, circumstance of the case and related law fully and in their right perspective.*

7. *That while rejecting/denying the claim of deduction u/s 80P(2)(a)(iii) against the gross commission receipts from the sugar factory/s as well as net profit out of it in the case, both the Id. authorities below have erred in not applying the various decisions of the Hon'ble jurisdictional ITAT and also other ITAT's on the issue which are in favor of the assessee.*

8. *That while rejecting/denying the claim of deduction u/s 80P(2)(a) (iii) against the commission receipts from the sugar factory/s in the case, the Id. CIT(A) has, on whole facts, circumstance of the case and materials on record, erred in holding that the activity against which the appellant has received this commission is not an activity of marketing of sugar cane grown by the appellant's members.*

9. *That the Id. CIT(A) has erred in not allowing deduction u/s 80P(2)(a) (i) second limb regarding the interest of Rs.257739/- received from the members on the credits provided to them by the appellant particularly when the fact of receipt of this interest on the credits provided by*

the appellant to its members was not disputed by the Id. A.O. in the assessment order and the issue is squarely covered by the decision of Hon'ble jurisdictional Allahabad High court in case reported in 2003 UPTC 104 (All.): 258 ITR 594 All. in favor of assessee.

10. *That on the whole facts and circumstances of the case and materials on record, the Id. CIT(A) is not justified and correct in confirming an addition of Rs.8551/- made on account of interest earned on saving bank account/s without allowing deduction u/s 80P(2)(a)(iii) when this interest is directly linked with and attributable to the appellant's activity of marketing of sugar cane grown by its members which activity falls u/s 80P(2)(a) (iii) of the Income Tax Act of 1961. The Id. CIT(A) has, while confirming this addition, failed to consider the fact that this interest is on operational money and not on surplus fund invested in the bank a/c.*

11. *That on the whole facts and circumstances of the case and materials on record, the Id. CIT(A) is not justified and correct in confirming an addition of Rs.19771/- made on account of interest earned on FDR with bank without allowing deduction u/s 80P(2)(a)(iii) when this interest is directly to the linked with and attributable appellant's activity of marketing of sugar cane grown by its members which activity falls u/s 80P(2)(a)(iii) of the Income Tax Act of 1961. The Id. CIT(A) has, while confirming this addition, failed to consider the fact that this interest is on operational money and not on surplus fund invested in the bank a/c.*

12. That on the whole facts and circumstances of the case, the deductions u/s 80P(2)(a) as claimed by appellant deserves to be allowed in respect of disclosed as well as the assessed total income.

13. That on the whole facts and circumstances of the case, the enhancement made by the Id. CIT(A) in the assessed total income is unjustified, arbitrary, excessive and high.

14. That the appellant craves leave to argue any other ground/s at time of hearing of appeal.

4.0 Although none has appeared on behalf of the assessee, the assessee has filed written submissions and has prayed that the appeals of the assessee may be decided on the basis of the written submissions filed by the assessee for assessment year 2014-15. The relevant portion of the written submissions are being reproduced hereunder:

"3.1 Regarding ground no. iv, v, vi, vii & viii of 'grounds of appeal' in form 36 (claim of deduction u/s 80P(2)(a)(iii)):-

As already stated in above para no. 2.1, the appellant has, in the return filed for the year, claimed a deduction at Rs.3557576/- u/s 80P(2)(a)(iii), out of the gross total income of Rs.3557576/-, which is the total net profit from business.

As explained in a written reply dt. 09.09.2016 submitted u/s 143(2) before the Id. A.O. (a copy of which alongwith enclosures has been submitted as annex. 1 to 22 to the written submission dt. 19.04.2022 filed before the Id. CIT(A) and a copy of which along with relevant attachment is

enclosed as annex. 1 to 72 herewith and the relevant part of which has also been reproduced by the Id. CIT(A) in para no. 3 of the appellate order under appeal) and as also explained in another written reply dt. Nov. 2016, particularly in its para no. 1 and r/w para no. 14 of it, (a copy of which along with enclosures has been submitted as annex. 23 to 25 to the written submission dt. 19.04.2022 filed before the Id. CIT(A) on 19.04.2022), the appellant is a registered cooperative society u/s 2(19) of the Income Tax Act, 1961 (in support of which a copy of registration certificate of cooperative society, which has also been submitted as annex. 6 to 7 of the written submission dt. 19.04.2022 filed before the Id. CIT(A) on 19.04.2022) as per 'object' set forth in this registered byelaws, the main object of the appellant is:-

a. To enhance the cultivation of sugar cane crop.

b. Providing of better price to its member cane growers by mills.

c. Marketing of the sugar cane, an agricultural produce, grown by the appellant's members.

d. To provide seeds, fertilizers pesticides, agricultural equipments to members.

e. To provide credits to the members.

f. To arrange funds and finance for activities of the society.

(Note: a copy of relevant part of the said byelaws has been submitted as annex. 8 to 16 to the written submission dt. 19.04.2022 e-filed before the CIT(A). A copy of it has also been submitted u/s 143(2)/ 142(1) before the Id. A.O. A copy

of this written submission dt. 19.04.2022 before the Id. CIT(A) is enclosed as annex. 1 to 72 herewith).

3.2 From the above object, which have not been denied or disputed by any of the lower authority, it is evident that one of the main object of the appellant is the marketing of the sugar cane, an agricultural produce, grown by the appellant's members, to provide credit facilities to the members and the purchase of agricultural implements, seeds, livestock or other articles intended for agriculture for the purpose of the supplying them to the members. These activities fall u/s 80P(2)(a)(iii), 80P(2)(a)(i)second limb and 80P(2)(a)(iv) of the IT Act 1961 respectively.

Here it is important to mention that being a registered body working under strict administrative control and supervision of the Cane Commissioner of the State Govt., the appellant has no power or authority to travel beyond the 'object' laid down in the byelaws nor there is any material on record or finding by any of the lower authority that the appellant is engaged in any activity other than those laid down in its byelaws or has any other source of its income than the object in the byelaws.

3.3 The details as to modus operendi of the said marketing activity, in which the supply of the sugar cane grown by the members to the sugar factory/s is managed by the appellant and against which the consideration in the name of commission as per mandatory provision u/s 18 of the related U.P. Sugar Cane (Regulation of Supply and Purchase) Act 1953 is received by the appellant from the concerned sugar factory/s, have admittedly been given in a written reply dt. 09.09.2016 alongwith supporting documentary evidences

before the Id. A.O. This reply filed has been reproduced in para no. 3 of the order of the CIT(A). The copy of this written reply dt. 09.09.2016 along with supporting documentary evidences submitted before the Ld. A.O. has been enclosed as annex. 1 to 16, 19 to 20, 22, 23 to 25, 26 to 30, 31 to 40 and 41 to 44 to the written submission dt. 19.04.2022 e-filed before the CIT(A). From this detail of the modus operendie of the activity of marketing of the sugar cane, it is clear that this activity falls u/s 80P(2)(a)(iii). In an identical case of Dy. CIT, Range- ii, Gorakhpur Vs. M/s. Sahkari Ganna Vikash Samiti Ltd., Khadda, Kushinagar, which is also a registered cooperative society falling u/s 2(19) of the IT Act 1961 and having the similar object in its similar registered byelaws and which is doing similar activities as in the present case of the appellant, the ITAT, Allahabad, 'SMC' Bench Allahabad (Circuit Bench- Varanasi) has, in its order dt. 23.11.2016 in ITA no. 599/Alld/2014 (a copy of which has been submitted as annex, 41 to 44 to the written submission dt. 19.04.2022 before the CIT(A)), held the similar activity as part of the marketing activities falling u/s 80P(2)(a)(iii). The relevant part of para no. 5 of this order of the Hon'ble ITAT Allahabad reads as under:-

> *5. I have heard learned D.R., carefully considered the same along with the orders of the tax authorities below. Learned D. R. even though vehemently contended and relied on the order of the Assessing Officer but I am not convinced with the contentions of learned D. R. The provisions of section 80P(2)(a)(iii) of the Act are very clear. It allows the deduction to the co-operative society on the income which it earned from the marketing of the*

agricultural produce grown by its members. It is not denied that the co-operative society is engaged in marketing of the sugarcane grown by its members. The consideration which the co-operative society gets from the cane mills by way of commission instead of showing the purchases from its members and then showing the sales to the sugar mills. Marketing is an expression of vide import. It means the purpose of business activities involved in the flow of the goods and services from the points of initial agricultural production until they are in the hands of the ultimate consumer. The society takes the sugarcane from its members and supplies it to the sugar mills. All these functions from acquiring of the sugarcane from its members till it is delivered to the sugar mills are performed by the assessee. Therefore, deduction cannot be denied only on the basis that the assessee gets the commission in performing all these activities. These activities, in my opinion, are part of the marketing activities. I, therefore, confirm the order of CIT(A).”

Here it is mentioned that in support of the fact that the facts and circumstances of the said case before the Hon'ble ITAT Allahabad are similar to the present case, a copy of the order dt. 25.08.2014 of the CIT(A)- III, Lucknow which has been in consideration by the Hon'ble ITAT Allahabad in said ITA no. 599/Alld/2014, has also been submitted as annex. 31 to 40 to the written submission dt. 19.04.2022 filed before the Id. CIT(A) AND there is no finding/observation in the appellate order under present appeal that the facts and circumstances of the present case are not similar to the said case in ITA no. 599/Alld/2014 before the Hon'ble ITAT Allahabd. It is also

important to mention here that the order of the Hon'ble ITAT Allahabad in this ITA no. 599/Alld./2014 holding the similar activity of marketing falling u/s 80P(2)(a)(iii) has not been challenged by the revenue in any higher forum, therefore, the decision rendered by the Hon'ble ITAT in this ITA no. 599/Alld/2014 in favor of the assessee has reached to finality. Further, there is no order of any ITAT or other higher authority contrary to decision given in this ITA no. 599/Alld/2014.

Besides the said ITAT Allahabad, the coordinate bench of this Hon'ble ITAT Lucknow has also, in many identical cases the reference of which have been given in para no. 2 and 6 of a recent order dt. 11.10.2018 of Id. CIT(A)- I, Lucknow in case of Sahakari Ganna Vikas Samiti Ltd. Basti AY 2015-16, (a copy of which has also been submitted as annex, 54 to 57 to the written submission dt. 19.04.2022 filed before the Ld. CIT(A)) has allowed the deduction u/s 80P(2)(a)(iii) in respect to the similar commission receipts from the sugar factory/s against similar activity of marketing in case of similar cane cooperative societies in the state of U.P..

3.4 So far as the ground taken by the Ld. A.O. for said rejection of claim of deduction u/s 80P(2)(a) (iii) is concerned, it is submitted that this rejection was made by him only on the ground that in view of decision of Hon'ble S.C. in case of Totgar's Co-operative Sale Society Ltd., reported in (2010) 322 ITR 283 and the decision of Hon'ble Delhi H.C. dt. 27.08.2014 (Income Tax appeal 569/2013) in the case of Mantola co-operative Thrift and Credits Society Lt. Vs. CIT, the said commission received from the sugar factory/s by the appellant is assessable as income from other source u/s 56.

This ground taken by him is not justified and correct as (i) the facts and circumstances of the these cases before the Hon'ble S.C. and Hon'ble Delhi H.C. are altogether different than the present case of the appellant which is clear from the details of modus oprendi of activity of the appellant which has not been found false or incorrect, (ii) the commission in the present case has been received as a consideration against the appellants activity of sugar cane supply management service which is clear from mandatory statutory provision contained u/s 18 of the U.P. Sugar Cane (Regulation of Supply and Purchase) Act 1953 under which the concerned sugar factory is under legal obligation to pay to the appellant certain amount in the name of commission to and this commission amount is calculated with reference to the quantity of purchase of sugar cane by them from the appellant's members through the appellant, applying rate of commission fixed by the State govt. and these facts were not there in the above cited rulings of the Hon'ble S.C. and Delhi H.C.. In this way, the commission by the appellant is directly linked with and attributable to the activity of marketing of agricultural produce grown by the appellant's members, consequently, falls u/s 80P(2)(a)(iii), and (iii) in the ruling of Hon'ble S.C. in the cited case of Totgar's Co-operative Sale Society Ltd (Supra) by the Id. A.O., the question was whether the interest earned on deposit/investment of surplus fund i.e the money not immediately required for day to day business, in fixed deposit in bank is eligible for deduction u/s 80P and in this context, the Hon'ble S.C. held that such interest earned by a cooperative society is liable to be assessed u/s 56 but, in the present case of the appellant, the commission

received from the sugar factory/s is not on investment of any surplus fund in fixed deposit in bank to earn higher income/profit but it has been received as a consideration against the cane supply management service to the sugar factory/s. In para no. 6 and 7 an order dt. 20.05.2020 of Ld. CIT(A) I, Lucknow in identical case of M/s Cooperative Cane Development Union Ltd. Balrampur: AY 2017-18 (a copy of which is enclosed as annex. 100 to 108 herewith), it has been held by the Ld. CIT(A) that the nature of commission under similar facts and circumstances as in the present case is different from the interest income and this income has been clearly derived by the assessee Society from the above activity i.e marketing of agricultural produces of members and holding so, the deduction u/s 80P(2)(a)(iii) in respect to similar commission receipt has been allowed by him, and (iv) under similar facts and circumstances in case of a similar cane cooperative society in the State of U.P., namely M/s Sahakari Ganna Vikas Samiti Ltd. Khadda AY 2011-12, the Hon'ble ITAT Allahabad has, in its referred order dt. 23.11.2016 in ITA no. 599/Alld/2014 (a copy of which has been submitted as annex. 41 to 44 to the written submission dt. 19.04.2022 filed before the Ld. CIT(A)), held the similar activity as of marketing of agricultural produce falling u/s 80P(2)(a)(iii) and consequently, the deduction of the similar commission receipts against it from the sugar factory/s has been held as eligible for full deduction u/s 80P(2)(a)(iii).”

5.0 Per contra, the Ld. Sr. DR submitted that in the instant case, the relevant issue had already been decided in favour of the

Revenue by the Hon'ble Supreme Court in the case of The Totgars' Cooperative Sale Society Limited vs. Income Tax Officer *(2010) 322 ITR 283 (SC)*. It was further submitted that the deduction under section 80P(2) of the Act was available only to the operational income from business and other interest income, which accrues to the assessee society, could not be said to be attributable to the activities of the society. The ld. DR further pointed out that the aforesaid verdict of the Hon'ble Supreme Court had been further followed by the Hon'ble Allahabad High Court in similar cases. The Ld. Sr. D.R. placed reliance in the case of CIT vs. Cooperative Cane Development Union Limited, Bheera, District Lakhimpur Kheri in ITA No. 520 of 2008. The Ld. Sr. D.R. also invited our attention to the subsequent decision of the Hon'ble Allahabad High Court in the case of PCIT, Bareilly vs. Cooperative Cane Development Council, Lakhimpur in ITA No.183 of 2016, order dated 6.12.2016, wherein, the Hon'ble High Court followed the said order in ITA No. 520/2008 cited above and allowed the Revenue's appeal, while dismissing the contentions of the assessee. It was, therefore, submitted that the issue was covered by the judgment of the Hon'ble Apex Court and the Hon'ble jurisdictional High Court, wherein substantial questions of law had been decided in favour of the Revenue.

Accordingly, the assessee's appeal on the above issue may kindly be dismissed.

6.0 I have heard the rival submissions and have also perused the material on record. The Lucknow Bench of the ITAT had an occasion to consider an identical issue in the case of Co-operative Cane Development Union Limited, Maholi in ITA Nos.165, 166 & 168/LKW/2023, wherein the Lucknow Bench, vide order dated 30.09.2024, considered the implication of the judgment of the Hon'ble Apex Court in the case of The Totgars' Cooperative Sale Society Limited vs. Income Tax Officer (supra) and had, thereafter, reached the conclusion that interest income arising from investment in statutory reserve funds and 'other funds' as per the provisions of sections 58 and 59 of the U.P. Co-operative Societies Act is attributable to the main activities of the Society and would, thus, qualify for deduction under section 80P of the Act.

6.1 It would be relevant to reproduce the relevant paragraphs from the above said order of the Lucknow Bench of the *ITAT:*

> *"13. We have duly considered the facts and circumstances of the case. And also the arguments made by both parties. Since the case of the Revenue is based on the decision of the Hon'ble Supreme Court in the case of Totgars Cooperative Sale Society Limited vs. Income Tax*

Officer (supra), it would be pertinent to first consider the decision of Hon'ble Supreme Court in that matter. As pointed out by the ld. Sr. DR, as per the said judgment, 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 that particular case, the Hon'ble Supreme Court observed that, in the facts and circumstances of that case, the assessee society had earned interest on funds which were not required for business purposes at the given point of time. Therefore, as it clarified, on the facts and circumstances of that case, they rendered their judgment that such interest income fell in the category of, "other income" which had rightly been taxed by the Department under section 56 of the Act and therefore, was ineligible for deduction under section 80P of the Act. The two judgments of Hon'ble Allahabad High Court that have been cited by the ld. Sr. DR have followed the principle laid down by the Hon'ble Supreme Court and held, that the objects of the society did not provide for investment of money in a post office or bank and earn interest and therefore, the interest earned out of the investments made in the bank would be an interest, which in turn would be income from other sources that would be chargeable to tax under section 56 of the Act. However, as the ld. Authorized Representative has pointed out, the arguments of the nature that the fixed deposits were made on account of the Statutory provisions (of sections 58 and 59of the U.P. Cooperative Societies Act in this case) and was therefore, the condition precedent to doing of business and accordingly "attributable" to the activities of the assesse cooperative, was not brought before the Hon'ble Allahabad High Court in either of the judgments cited by the ld. Sr. DR. Furthermore, M/s Cane Cooperative Development Council had appealed the judgment of Hon'ble Allahabad High Court in ITA No. 183/2016 to the Hon'ble Supreme Court in Civil Appeal No. 7405 to 7409 of 2021 and placed the

statutory rules before the Hon'ble Supreme Court. After considering that such rules may have a bearing on the nature of income and entitlement to exemption under section 80P of the Act, the Hon'ble Supreme Court had remitted the matter back to the Income Tax Appellate Tribunal to decide the appeals afresh, without being bound or influenced by the earlier orders passed by them or by the Hon'ble High Court. In view of such orders of the Hon'ble Supreme Court, the case laws of the jurisdictional Hon'ble Allahabad High Court cited by the ld. Sr. DR did not constitute a binding precedent for the ITAT, Lucknow Bench in the case of Cooperative Cane Development Council in ITA Nos. No.285/Lkw/2015, 474/Lkw/2015, 525/Lkw/2015, 536/Lkw/2015 and 540/Lkw/2015. The Hon'ble ITAT, Lucknow Bench after considering the byelaws and the statutory rules, the decisions of Hon'ble Allahabad High Court in CIT vs. Krishak Sahkari Ganna Samiti Limited 258 ITR 594 (Alld)and CIT vs. Cooperative Cane Development Union Limited 118 ITR 770 (Alld) and the decisions of the Tribunal in Income Tax Officer vs. Sahkari Ganna Vikas Samiti, Rupapur Chouraha (Munder), Hardoi in ITA No. 467/Lkw/2013 held as under:-

> *"7.1 Now the parties are again before us. We find that assessees had earned interest from fixed deposits from bank and co-operative society. Hon'ble Supreme Court, after acceptance of additional documents had set aside the issue before this Tribunal for readjudication. We find that the arguments of the assessees are that the assessees had placed the funds in the form of fixed deposits with nationalized banks and Co- operative banks in view of the specific requirements of U.P. Co- operative Societies Act. We find that section 58 of the U.P. Co- operative Societies Act requires the net profit to be distributed as under:*
>
> *"(a) An amount not less than twenty five percent shall be transferred to a fund called the reserved fund:*

(b) Not less than such amount as may be prescribed, shall be credited to a Co-operative Education fund to be established in the manner prescribed, and this shall be applicable to such cooperative society also which incur loss in the year,

[Provided that the provisions of this clause shall not apply to a Primary Agriculture Credit Co-operative Society, a Central Cooperative Bank or the Apex Bank.',]

(c) An amount that may be prescribed shall be credited to the research and development fund created in the Apex Societies of the concerned class of Co-operative society and which shall be maintained for the purpose of Research and development in the prescribed manner.

(d) an amount not exceeding twenty percent as may be prescribed shall be transferred to a fund called the Equity Redemption Fund to be established and utilized in the manner prescribed by such co-operative Society which has the subscription of the State Government in its share capitals."

7.2 Hon'ble Allahabad High Court in the case of CIT vs. Krishak Sahkari Ganna Samiti Ltd. [2002] 258 ITR 594 (Alld) has held that the investment by co-operative Society in the form of Government securities, equivalent to 25% of its profit, was the requirement of keeping the same as statutory reserve therefore, has held that such earning of interest was attributable to the activity carried on by the assessee. The relevant findings of Hon'ble Allahabad High Court are reproduced below:

"Clause (c) of Section 80-P(2) exempts income of cooperative society to the extent mentioned in that section if the profits or gains are 'attributable' to the activity in which the Cooperative Society is engaged. The findings are that under statutory

provisions the Cooperative Society is bound to invest 25% of its profits in Government securities. The assessee complied with this provision. In the process, it earned interest on these investments. The question is whether such profits or gains are attributable to the activity of supplying sugarcane carried on by the assessee. In Cambay Electric Supply Industrial Co. Ltd. v. CIT [1978] 113 1TR 84 the Supreme Court held that the expression 'attributable to suggests that the Legislature intended to cover receipts from sources other than the actual conduct of the business of the assessee. The investment of the statutory percentage of its profits in Government securities was a condition of the carrying on the business. The profits or gains from such investments were connected with or incidental to the carrying on of the actual business. They were, in our opinion, rightly held by the Tribunal to be attributable to the activity carried on by the assessee within the "meaning of clause (c) aforesaid. We therefore, answer the question referred to us in the affirmative in favour of the assessee and against the Department.

8. Following the aforementioned ratio laid down by the Division Bench which we consider binding on us, we too answer the question referred to us in the affirmative in favour of the assessee cooperative Society and against the Revenue."

7.3 Further we find that the assessee has relied on a judgment of Raipur Tribunal in the case of Gramin Sewa Sahakari Samiti Maryadit vs. Income Tax Officer [2022] 138 taxmann.com 476 (Raipur-Trib.) wherein the Tribunal has held that the interest earned by the assessee from deposit with co-operative bank and nationalized bank was eligible for deduction u/s 80P(2)(a) of the Act.

7.4 The above two judgments respectively by Hon'ble High Court and Tribunal hold that the interest earned by a Co-operative Society on deposits, which are statutorily required to be kept in the form of bank deposits or Government securities, are attributable to the business of an assessee.

7.4 Here in the present cases, we do not find the figures regarding the interest which the assessees may have earned on fixed deposits attributable to the making of statutory reserves. We further find that bye laws of the assessee has to be gone through which, though are available in the paper book, but require examination by the Assessing Officer as these were filed before Hon'ble Supreme Court as additional evidences. Therefore, we deem it appropriate to remit the issue of deduction u/s 80P for readjudication by the Assessing Officer, who, in the light of judgment of Hon'ble Supreme Court and keeping in view the judgments relied on by the assessee and keeping in view the additional documents, as filed before Hon'ble Supreme Court, will adjudicate the issue afresh. Needless to say that the assessees will be provided sufficient opportunity of being heard."

14. Subsequent on the said remand, the matter was examined by the Revenue and after consideration of the decision of the Hon'ble Supreme Court and the other judgments relied upon by the Hon'ble ITAT while remanding the matter back to him, the ld. Assessing Officer held as under:-

"3.3 Reason for inference drawn that no variation is required on this issue:

The submissions made by the Assessee have been examined thoroughly particularly the bylaws of the Assessee Society and the U. P. Co-operative Societies Act. On going through the by-laws of

the Assessee Society, it has been noticed that its Part 14 i.e. "Disposal of Net Profit and Societies" Assets and funds and appropriation thereof deals with the appropriation of Net Profits and Funds of the Assessee Society. Further, it has also been noticed that the aforementioned Part-14 of the bylaws of the Societies are in accordance with section 58 and 59 of the U. P. Co-operative Societies Act. Further, it has also been noticed that the secured reserve as well as other reserves are created in Annual General Meeting of the Society as per its bylaws and get accumulated over the year. These reserves are kept in co-operative and nationalized banks from where the Assessee earns the interest income under question. In view of the aforementioned facts, it is inferred that the reserve funds kept by the Assessee with Co-operative and nationalized banks are as per the by-laws of the Society and accordingly interest income arising from these funds can be held to be attributable to its main activities and therefore, the assessee is eligible for deduction in respect of this interest income under section 80P(2)(a) of the Act as per the case laws referred to and relied upon by the Hon'ble L.T.A.T. i.e. Judgments of Hon'ble Allahabad High Court in the case of CIT Vs. Krishak Sahkari Ganna Samiti Limited [2002] 258ITR594 (Allahabad) and ITAT, Raipur in the case of Gramin Sewa Sahakari Samiti Maryadit Vs. Income Tax Officer 92022), 138 Taxmann.com 476 (Raipur Tribunal).”

15. Thus, the principle that interest income arising from investments in statutory reserve funds and other funds as per the provisions of sections 58 and 59 of the U.P. Cooperative Societies Act is “attributable” to the main activities of that Society, has been accepted by the Revenue. The assessee is governed by the same U.P. Cooperative Societies Act and Rules as the Cooperative Cane Development Council, Lakhimpur and therefore, in its case also, it must be held that interest

earned from investment made by it as per sections 58 and 59 of the U.P. Cooperative Societies Act r.w.r.173 of the U.P. State Cooperative Rules, is attributable to the activity in which the assessee is engaged and therefore, is eligible to be deducted under section 80P(2)(a) of the Act.

Xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx

Now that the position with regard to such investments has been clarified by the Hon'ble ITAT in the case of Cooperative Cane Development Council, Lakhimpur and accepted by the Revenue in the consequent assessment, we deem it appropriate to restore the matter in all three cases back to the file of the ld. Assessing Officer for the limited purpose of re-computing the admissible deduction under section 80P with reference to the interest earned on investments made in accordance with sections 58 and 59 of the U.P. Cooperative Societies Act, 1965 and 173 of the U.P. Cooperative Societies Rules, 1968 . Ground numbers 1 to 5 are accordingly allowed."

6.2 Therefore, on identical set of facts in the present appeals, respectfully following the order of the Lucknow Bench of the ITAT in Co-o-operative Cane Development Union Limited, Maholi vs. ACIT, Sitapur (supra), I deem it appropriate to restore the matter in both the appeals to the file of the AO for the limited purpose of re-computing the admissible deduction under section 80P of the Act with reference to the interest earned in investments made in accordance with sections 58 and 59 of the

U.P. Co-operative Societies Act, 1965 and Rule 173 of the U.P. Co-operative Societies Rules, 1968.

6.3 The assessee shall also cause to be furnished such books of account and documents before the AO as might be required by him.

6.4 The issue of verification of expenses in both the years under appeal is also accordingly restored to the file of the AO for the purpose of re-examination and re-adjudication.

6.5 The AO is directed to give proper opportunity to the assessee prior to passing of the said assessment order.

7.0 In the final result, both the appeals of the assessee stand allowed for statistical purposes.

Order pronounced in the open Court on 18/09/2025.

Sd/-
[SUDHANSHU SRIVASTAVA]
JUDICIAL MEMBER

DATED:18/09/2025

JJ:

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR

By order

Assistant Registrar/DDO

IN THE INCOME TAX APPELLATE TRIBUNAL
SMC BENCH, LUCKNOW

BEFORE SHRI. SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER

ITA Nos.294 & 295/LKW/2023
Assessment Year: 2014-15 & 2015-16

Tinich Sahkari Ganna Samiti Limited Village & Post Tinich Distt Basti (U.P)	v.	The Income Tax Officer Basti
TAN/PAN:AACAT5474G		
(Appellant)		(Respondent)

Appellant by:	None (Written submission)
Respondent by:	Shri Sanjeev Krishna Sharma and Shri Amit Kumar, D.Rs

O R D E R

These appeals have been preferred by the Assessee against the orders dated 26.07.2023 and dated 09.08.2023, passed by the National Faceless appeal Centre, Delhi (NFAC) for Assessment Years 2014-15 and 2015-16.

2.0 Both these appeals filed by the assessee are having almost identical issues. Therefore, they were taken up for hearing together and are being disposed of by this common order for the sake of convenience.

2.1 The brief facts of the case in assessment year 2015-16 are that the assessee was a Co-operative Society mainly engaged in marketing of sugarcane grown by its members. The assessee filed its return of income for the year under consideration on

17.12.2015, declaring income at Nil. The case of the assessee was selected for complete scrutiny under CASS. During the course of assessment proceedings, the Assessing Officer (AO) noticed that the assessee had received commission of Rs.33,80,618/- from M/s Govind Nagar Sugar, a Unit of Phenil Sugar Pvt. Ltd. and received interest on deposits of Rs.54,367/-. The AO noted that in the return filed by the assessee, it had shown sales/gross receipt at Rs.2,98,333/- and claimed expenses at Rs.35,08,236/- under the head 'Other Expenses'. In response to the query raised by the AO, in this regard, the assessee had filed its reply dated 27.11.2017 before the AO taking a stand for deduction under section 80P(2)(a)(iii) of the Act being a Co-operative Society. However, the AO held that since the assessee failed to produce books/registers /papers/ vouchers for verification of the claim of expenses of Rs.35,08,236/-, the same was to be disallowed and was to be added to the income of the assessee. Further, the assessee had also shown interest income of Rs.54,367/- on deposits and had claimed the same as being exempt under section 80P of the Act. The AO held that since the income from other sources of the assessee was not an allowable deduction under section 80P of the Act, the same was also to be disallowed and was liable to be added to the income of the assessee. The AO also noticed from the ITS details that for

assessment year 2011-12, a refund of Rs.1,65,560/- was issued on 08.07.2014, on which interest under section 244A of the Act for Rs.16,412/- was included and that since the assessee had failed to disclose the same in its return of income filed for the captioned year, the same was also added to the income of the assessee. The AO completed the assessment under section 143(3) of the Act, assessing the total income of the assessee at Rs.34,51,400/- as against Nil income returned by the assessee.

2.2 The AO also initiated penalty proceedings under section 271(1)(c) of the Act, separately.

2.3 Aggrieved, the Assessee preferred an appeal before the NFAC, which dismissed the appeal of the assessee on merits.

2.4 Now, the assessee has approached this Tribunal challenging the order of the NFAC by raising the following grounds of appeal:

1. *Because the Id. CIT (A) has failed to consider and in adjudicating upon the specific grounds no. 1 to 4 of the grounds of appeal (Form 35) challenging disallowance of expenses to a tune of Rs.3508236/-.*
2. *Because on whole facts, circumstances of the case and materials on record, the Id. CIT(A) has erred in confirming the disallowance of expenses of Rs.3508236/- by dismissing the appeal.*

3. *Because on the whole facts, circumstances of the case and materials on record, the Id. CIT(A) has erred in denying allowability of deduction under section 80P(2)(a)/ 80P(2)(a) (iii) of the Income tax act 1961, in respect of the assessed alleged income of Rs.3508236/- (3507452/- + 784/-) particularly when this alleged income has been treated by him as business income u/s 28. While denying claim of this deduction, he has erred in relying upon his order passed in appellant's appeal for immediate preceding AY 2014-15.*

4. *That the commission receipt from the sugar factory/s in the case is against the marketing activity of marketing of the sugar cane grown by the appellant's members who are the farmers, hence it is fully eligible for deduction u/s 80P(2)(a)(iii) the income tax Act 1961 particularly when the Hon'ble jurisdictional ITAT, Lucknow and the ITAT Varanasi have held. similar commission receipts in identical cases of cane cooperative society/s established with the similar objects/functions and which are functioning under the same State law as eligible for deduction u/s 80P)2)(a) (iii).*

5. *That the grounds taken by both the Id. authorities below in rejecting claim of deduction u/s 80P(2)(a)(iii) are not correct and justified on facts of the case and in law both and they have not considered the whole facts, circumstances of the case and related law fully and in their right perspective.*

6. *That while rejecting/denying the claim of deduction u/s 80P(2)(a)(iii) against the gross commission receipts from*

the sugar factory/s as well as net profit out of it in the case, both the Id. authorities below have erred in not applying the various decisions of the Hon'ble jurisdictional ITAT and also other ITAT's on the issue which are in favor of the assessee.

7. *That on the whole facts and circumstances of the case and materials on record, the Id. CIT(A) is not justified and correct in confirming an addition of Rs.54367/- made on account of interest earned on FDR with bank without allowing deduction u/s 80P(2)(a)(iii) regarding it when this interest is directly linked with and attributable to the appellant's activity of marketing of sugar cane grown by its members which activity falls u/s 80P(2)(a) (iii) of the Income Tax Act of 1961.*

8. *Because the Id. CIT (A) has failed to consider and in adjudicating upon specific grounds no. 7 to 9 of the of grounds appeal (Form 35) challenging non allowance of deduction u/s 80P(2)(a) (iii) in respect of an interest of Rs. 16412/- received u/s 244A.*

9. *That on the whole facts and circumstances of the case and materials on record, the Id. CIT(A) is not justified and correct in confirming an addition of Rs.16412/ made on account of interest received u/s 244A of the Income Tax Act 1961 without allowing deduction u/s 80P(2)(a)(iii) when this interest is directly linked with and attributable to the appellant's activity of marketing of sugar cane grown by its members which activity falls u/s 80P(2)(a)(iii) of the Income Tax Act of 1961.*

10. *The Id. CIT(A) has, while dismissing the appeal, failed to consider the fact that the interest of Rs.16412/- received u/s 244 is on operational money and not on surplus fund invested in the bank a/c.*

11. *That on the whole facts and circumstances of the case, the deductions u/s 80P(2)(a) as claimed by appellant deserves to be allowed.*

12. *That the appellant craves leave to argue any other ground/s at time of hearing of appeal.*

3.0 In assessment year 2014-15 (ITA No.294/LKW/2023), the assessee e-filed its return of income on 14.01.2016 and whole of its business income, amounting to Rs.35,57,576/-, was claimed as exempt under section 80P of the Act. In this regard, after considering the submissions made on behalf of the assessee, the AO placed reliance on the decision of the Hon'ble Supreme Court in the case of Totgar's Co-operative Sale Society Ltd. vs. Income Tax Officer, Karnataka [2010] 322 ITR 283 and rejected the assessee's claim for deduction under section 80P of the Act. The AO computed the income of the assessee as under:

Commission received from Sugar Mills on which TDS was made u/s.194H of the Act.	Rs.33,57,576/-
Less: 1/3 for expenses by estimate	Rs.11,85,859/-
	Rs.23,71,717/-
Interest income as per ITR	Rs.2,86,061/-
Total Taxable income (rounded off)	Rs.26,57,780/-

3.1 The AO completed the assessment under section 143(3) of the Act, assessing the total income at Rs.26,57,780/-.

3.2 The AO also initiated penalty proceedings under sections 271(1)(1)(c) and 271B of the Act, separately.

3.3 Aggrieved, the Assessee preferred an appeal before the NFAC, which partly allowed the appeal of the assessee.

3.4 Now, the assessee has approached this Tribunal challenging the order of the NFAC, by raising the following grounds of appeal:

1. *Because the impugned order of the Id. CIT (A) is illegal, unjustified and bad in the eye of law in as much as, in it, the enhancement in the assessed total income by Rs.1185859/- by Id. CIT(A) because of reversing the expenses allowed by Id. A.O. is without issuing any show cause notice u/s 251(2) in respect of this proposed enhancement and also without giving opportunity of being heard against it before making enhancement in its final order.*
2. *Because the grounds taken by the Id. CIT (A) for reversal of the allowance of expenses of Rs.1185859/-, which was allowed by the Id. A.O. while computing the net profit against so called commission receipts, are misconceived, incorrect on facts and in law and these are based on presumption, surmises and conjectures.*

3. *Because on whole facts and circumstances of the case, the reversal of the allowance of the total expenses of Rs. 1185859/- (which was allowed by the Id. A.O. against the gross commission receipts from the sugar factory/s while computing the net profit) made by the Id. CIT(A) is not justified and correct particularly when he has specifically held these commission receipts as business receipts chargeable u/s 28 of the income Tax Act 1961. The Id. CIT(A) has erred in ignoring the mandatory provision u/s 29 of the Income Tax Act 1961.*

4. *Because on the whole facts and circumstances of the case, the Id. CIT(A) has erred in holding that the commission receipts from the sugar factory in the case did not out of any marketing activity to be qualified for deduction u/s 80P(2)(a)(iii) and that these receipts towards capital fund and not eligible for deduction u/s 80P(2)(a)(iii) the income tax Act 1961 particularly when the Hon'ble jurisdictional ITAT, Lucknow and the ITAT Varanasi have held similar commission receipts in identical cases of cane cooperative society/s established with the similar objects/functions and functioning under the same State law as eligible for deduction u/s 80P)2)(a)(iii).*

5. *That the while facts and circumstances of the law and in law the Id. CIT(A) is not justified and correct in rejecting/denying the claim of deduction u/s 80P(2)(a)(iii) regarding the gross as well as net receipts of commission from the sugar factory/s against activity of marketing of the sugar cane (grown by the appellant's members) and thereby confirming an addition of Rs.2371717/- (as*

enhanced by the CIT(A) by Rs.1185859/- because of reversal of allowance of expenses which was allowed by the Id. A.O.).

6. *That the grounds taken by both the Id. authorities below in rejecting claim of deduction u/s 80P(2)(a) (iii) are not correct and justified on facts of the case and in law both and they have not considered the whole facts, circumstance of the case and related law fully and in their right perspective.*

7. *That while rejecting/denying the claim of deduction u/s 80P(2)(a)(iii) against the gross commission receipts from the sugar factory/s as well as net profit out of it in the case, both the Id. authorities below have erred in not applying the various decisions of the Hon'ble jurisdictional ITAT and also other ITAT's on the issue which are in favor of the assessee.*

8. *That while rejecting/denying the claim of deduction u/s 80P(2)(a) (iii) against the commission receipts from the sugar factory/s in the case, the Id. CIT(A) has, on whole facts, circumstance of the case and materials on record, erred in holding that the activity against which the appellant has received this commission is not an activity of marketing of sugar cane grown by the appellant's members.*

9. *That the Id. CIT(A) has erred in not allowing deduction u/s 80P(2)(a) (i) second limb regarding the interest of Rs.257739/- received from the members on the credits provided to them by the appellant particularly when the fact of receipt of this interest on the credits provided by*

the appellant to its members was not disputed by the Id. A.O. in the assessment order and the issue is squarely covered by the decision of Hon'ble jurisdictional Allahabad High court in case reported in 2003 UPTC 104 (All.): 258 ITR 594 All. in favor of assessee.

10. *That on the whole facts and circumstances of the case and materials on record, the Id. CIT(A) is not justified and correct in confirming an addition of Rs.8551/- made on account of interest earned on saving bank account/s without allowing deduction u/s 80P(2)(a)(iii) when this interest is directly linked with and attributable to the appellant's activity of marketing of sugar cane grown by its members which activity falls u/s 80P(2)(a) (iii) of the Income Tax Act of 1961. The Id. CIT(A) has, while confirming this addition, failed to consider the fact that this interest is on operational money and not on surplus fund invested in the bank a/c.*

11. *That on the whole facts and circumstances of the case and materials on record, the Id. CIT(A) is not justified and correct in confirming an addition of Rs.19771/- made on account of interest earned on FDR with bank without allowing deduction u/s 80P(2)(a)(iii) when this interest is directly to the linked with and attributable appellant's activity of marketing of sugar cane grown by its members which activity falls u/s 80P(2)(a)(iii) of the Income Tax Act of 1961. The Id. CIT(A) has, while confirming this addition, failed to consider the fact that this interest is on operational money and not on surplus fund invested in the bank a/c.*

12. That on the whole facts and circumstances of the case, the deductions u/s 80P(2)(a) as claimed by appellant deserves to be allowed in respect of disclosed as well as the assessed total income.

13. That on the whole facts and circumstances of the case, the enhancement made by the Id. CIT(A) in the assessed total income is unjustified, arbitrary, excessive and high.

14. That the appellant craves leave to argue any other ground/s at time of hearing of appeal.

4.0 Although none has appeared on behalf of the assessee, the assessee has filed written submissions and has prayed that the appeals of the assessee may be decided on the basis of the written submissions filed by the assessee for assessment year 2014-15. The relevant portion of the written submissions are being reproduced hereunder:

"3.1 Regarding ground no. iv, v, vi, vii & viii of 'grounds of appeal' in form 36 (claim of deduction u/s 80P(2)(a)(iii)):-

As already stated in above para no. 2.1, the appellant has, in the return filed for the year, claimed a deduction at Rs.3557576/- u/s 80P(2)(a)(iii), out of the gross total income of Rs.3557576/-, which is the total net profit from business.

As explained in a written reply dt. 09.09.2016 submitted u/s 143(2) before the Id. A.O. (a copy of which alongwith enclosures has been submitted as annex. 1 to 22 to the written submission dt. 19.04.2022 filed before the Id. CIT(A) and a copy of which along with relevant attachment is

enclosed as annex. 1 to 72 herewith and the relevant part of which has also been reproduced by the Id. CIT(A) in para no. 3 of the appellate order under appeal) and as also explained in another written reply dt. Nov. 2016, particularly in its para no. 1 and r/w para no. 14 of it, (a copy of which along with enclosures has been submitted as annex. 23 to 25 to the written submission dt. 19.04.2022 filed before the Id. CIT(A) on 19.04.2022), the appellant is a registered cooperative society u/s 2(19) of the Income Tax Act, 1961 (in support of which a copy of registration certificate of cooperative society, which has also been submitted as annex. 6 to 7 of the written submission dt. 19.04.2022 filed before the Id. CIT(A) on 19.04.2022) as per 'object' set forth in this registered byelaws, the main object of the appellant is:-

a. To enhance the cultivation of sugar cane crop.

b. Providing of better price to its member cane growers by mills.

c. Marketing of the sugar cane, an agricultural produce, grown by the appellant's members.

d. To provide seeds, fertilizers pesticides, agricultural equipments to members.

e. To provide credits to the members.

f. To arrange funds and finance for activities of the society.

(Note: a copy of relevant part of the said byelaws has been submitted as annex. 8 to 16 to the written submission dt. 19.04.2022 e-filed before the CIT(A). A copy of it has also been submitted u/s 143(2)/ 142(1) before the Id. A.O. A copy

of this written submission dt. 19.04.2022 before the Id. CIT(A) is enclosed as annex. 1 to 72 herewith).

3.2 From the above object, which have not been denied or disputed by any of the lower authority, it is evident that one of the main object of the appellant is the marketing of the sugar cane, an agricultural produce, grown by the appellant's members, to provide credit facilities to the members and the purchase of agricultural implements, seeds, livestock or other articles intended for agriculture for the purpose of the supplying them to the members. These activities fall u/s 80P(2)(a)(iii), 80P(2)(a)(i)second limb and 80P(2)(a)(iv) of the IT Act 1961 respectively.

Here it is important to mention that being a registered body working under strict administrative control and supervision of the Cane Commissioner of the State Govt., the appellant has no power or authority to travel beyond the 'object' laid down in the byelaws nor there is any material on record or finding by any of the lower authority that the appellant is engaged in any activity other than those laid down in its byelaws or has any other source of its income than the object in the byelaws.

3.3 The details as to modus operendi of the said marketing activity, in which the supply of the sugar cane grown by the members to the sugar factory/s is managed by the appellant and against which the consideration in the name of commission as per mandatory provision u/s 18 of the related U.P. Sugar Cane (Regulation of Supply and Purchase) Act 1953 is received by the appellant from the concerned sugar factory/s, have admittedly been given in a written reply dt. 09.09.2016 alongwith supporting documentary evidences

before the Id. A.O. This reply filed has been reproduced in para no. 3 of the order of the CIT(A). The copy of this written reply dt. 09.09.2016 along with supporting documentary evidences submitted before the Ld. A.O. has been enclosed as annex. 1 to 16, 19 to 20, 22, 23 to 25, 26 to 30, 31 to 40 and 41 to 44 to the written submission dt. 19.04.2022 e-filed before the CIT(A). From this detail of the modus operendie of the activity of marketing of the sugar cane, it is clear that this activity falls u/s 80P(2)(a)(iii). In an identical case of Dy. CIT, Range- ii, Gorakhpur Vs. M/s. Sahkari Ganna Vikash Samiti Ltd., Khadda, Kushinagar, which is also a registered cooperative society falling u/s 2(19) of the IT Act 1961 and having the similar object in its similar registered byelaws and which is doing similar activities as in the present case of the appellant, the ITAT, Allahabad, 'SMC' Bench Allahabad (Circuit Bench- Varanasi) has, in its order dt. 23.11.2016 in ITA no. 599/Alld/2014 (a copy of which has been submitted as annex, 41 to 44 to the written submission dt. 19.04.2022 before the CIT(A)), held the similar activity as part of the marketing activities falling u/s 80P(2)(a)(iii). The relevant part of para no. 5 of this order of the Hon'ble ITAT Allahabad reads as under:-

> *5. I have heard learned D.R., carefully considered the same along with the orders of the tax authorities below. Learned D. R. even though vehemently contended and relied on the order of the Assessing Officer but I am not convinced with the contentions of learned D. R. The provisions of section 80P(2)(a)(iii) of the Act are very clear. It allows the deduction to the co-operative society on the income which it earned from the marketing of the*

agricultural produce grown by its members. It is not denied that the co-operative society is engaged in marketing of the sugarcane grown by its members. The consideration which the co-operative society gets from the cane mills by way of commission instead of showing the purchases from its members and then showing the sales to the sugar mills. Marketing is an expression of vide import. It means the purpose of business activities involved in the flow of the goods and services from the points of initial agricultural production until they are in the hands of the ultimate consumer. The society takes the sugarcane from its members and supplies it to the sugar mills. All these functions from acquiring of the sugarcane from its members till it is delivered to the sugar mills are performed by the assessee. Therefore, deduction cannot be denied only on the basis that the assessee gets the commission in performing all these activities. These activities, in my opinion, are part of the marketing activities. I, therefore, confirm the order of CIT(A).”

Here it is mentioned that in support of the fact that the facts and circumstances of the said case before the Hon'ble ITAT Allahabad are similar to the present case, a copy of the order dt. 25.08.2014 of the CIT(A)- III, Lucknow which has been in consideration by the Hon'ble ITAT Allahabad in said ITA no. 599/Alld/2014, has also been submitted as annex. 31 to 40 to the written submission dt. 19.04.2022 filed before the Id. CIT(A) AND there is no finding/observation in the appellate order under present appeal that the facts and circumstances of the present case are not similar to the said case in ITA no. 599/Alld/2014 before the Hon'ble ITAT Allahabd. It is also

important to mention here that the order of the Hon'ble ITAT Allahabad in this ITA no. 599/Alld./2014 holding the similar activity of marketing falling u/s 80P(2)(a)(iii) has not been challenged by the revenue in any higher forum, therefore, the decision rendered by the Hon'ble ITAT in this ITA no. 599/Alld/2014 in favor of the assessee has reached to finality. Further, there is no order of any ITAT or other higher authority contrary to decision given in this ITA no. 599/Alld/2014.

Besides the said ITAT Allahabad, the coordinate bench of this Hon'ble ITAT Lucknow has also, in many identical cases the reference of which have been given in para no. 2 and 6 of a recent order dt. 11.10.2018 of Id. CIT(A)- I, Lucknow in case of Sahakari Ganna Vikas Samiti Ltd. Basti AY 2015-16, (a copy of which has also been submitted as annex, 54 to 57 to the written submission dt. 19.04.2022 filed before the Ld. CIT(A)) has allowed the deduction u/s 80P(2)(a)(iii) in respect to the similar commission receipts from the sugar factory/s against similar activity of marketing in case of similar cane cooperative societies in the state of U.P..

3.4 So far as the ground taken by the Ld. A.O. for said rejection of claim of deduction u/s 80P(2)(a) (iii) is concerned, it is submitted that this rejection was made by him only on the ground that in view of decision of Hon'ble S.C. in case of Totgar's Co-operative Sale Society Ltd., reported in (2010) 322 ITR 283 and the decision of Hon'ble Delhi H.C. dt. 27.08.2014 (Income Tax appeal 569/2013) in the case of Mantola co-operative Thrift and Credits Society Lt. Vs. CIT, the said commission received from the sugar factory/s by the appellant is assessable as income from other source u/s 56.

This ground taken by him is not justified and correct as (i) the facts and circumstances of the these cases before the Hon'ble S.C. and Hon'ble Delhi H.C. are altogether different than the present case of the appellant which is clear from the details of modus oprendi of activity of the appellant which has not been found false or incorrect, (ii) the commission in the present case has been received as a consideration against the appellants activity of sugar cane supply management service which is clear from mandatory statutory provision contained u/s 18 of the U.P. Sugar Cane (Regulation of Supply and Purchase) Act 1953 under which the concerned sugar factory is under legal obligation to pay to the appellant certain amount in the name of commission to and this commission amount is calculated with reference to the quantity of purchase of sugar cane by them from the appellant's members through the appellant, applying rate of commission fixed by the State govt. and these facts were not there in the above cited rulings of the Hon'ble S.C. and Delhi H.C.. In this way, the commission by the appellant is directly linked with and attributable to the activity of marketing of agricultural produce grown by the appellant's members, consequently, falls u/s 80P(2)(a)(iii), and (iii) in the ruling of Hon'ble S.C. in the cited case of Totgar's Co-operative Sale Society Ltd (Supra) by the Id. A.O., the question was whether the interest earned on deposit/investment of surplus fund i.e the money not immediately required for day to day business, in fixed deposit in bank is eligible for deduction u/s 80P and in this context, the Hon'ble S.C. held that such interest earned by a cooperative society is liable to be assessed u/s 56 but, in the present case of the appellant, the commission

received from the sugar factory/s is not on investment of any surplus fund in fixed deposit in bank to earn higher income/profit but it has been received as a consideration against the cane supply management service to the sugar factory/s. In para no. 6 and 7 an order dt. 20.05.2020 of Ld. CIT(A) I, Lucknow in identical case of M/s Cooperative Cane Development Union Ltd. Balrampur: AY 2017-18 (a copy of which is enclosed as annex. 100 to 108 herewith), it has been held by the Ld. CIT(A) that the nature of commission under similar facts and circumstances as in the present case is different from the interest income and this income has been clearly derived by the assessee Society from the above activity i.e marketing of agricultural produces of members and holding so, the deduction u/s 80P(2)(a)(iii) in respect to similar commission receipt has been allowed by him, and (iv) under similar facts and circumstances in case of a similar cane cooperative society in the State of U.P., namely M/s Sahakari Ganna Vikas Samiti Ltd. Khadda AY 2011-12, the Hon'ble ITAT Allahabad has, in its referred order dt. 23.11.2016 in ITA no. 599/Alld/2014 (a copy of which has been submitted as annex. 41 to 44 to the written submission dt. 19.04.2022 filed before the Ld. CIT(A)), held the similar activity as of marketing of agricultural produce falling u/s 80P(2)(a)(iii) and consequently, the deduction of the similar commission receipts against it from the sugar factory/s has been held as eligible for full deduction u/s 80P(2)(a)(iii).”

5.0 Per contra, the Ld. Sr. DR submitted that in the instant case, the relevant issue had already been decided in favour of the

Revenue by the Hon'ble Supreme Court in the case of The Totgars' Cooperative Sale Society Limited vs. Income Tax Officer *(2010) 322 ITR 283 (SC)*. It was further submitted that the deduction under section 80P(2) of the Act was available only to the operational income from business and other interest income, which accrues to the assessee society, could not be said to be attributable to the activities of the society. The ld. DR further pointed out that the aforesaid verdict of the Hon'ble Supreme Court had been further followed by the Hon'ble Allahabad High Court in similar cases. The Ld. Sr. D.R. placed reliance in the case of CIT vs. Cooperative Cane Development Union Limited, Bheera, District Lakhimpur Kheri in ITA No. 520 of 2008. The Ld. Sr. D.R. also invited our attention to the subsequent decision of the Hon'ble Allahabad High Court in the case of PCIT, Bareilly vs. Cooperative Cane Development Council, Lakhimpur in ITA No.183 of 2016, order dated 6.12.2016, wherein, the Hon'ble High Court followed the said order in ITA No. 520/2008 cited above and allowed the Revenue's appeal, while dismissing the contentions of the assessee. It was, therefore, submitted that the issue was covered by the judgment of the Hon'ble Apex Court and the Hon'ble jurisdictional High Court, wherein substantial questions of law had been decided in favour of the Revenue.

Accordingly, the assessee's appeal on the above issue may kindly be dismissed.

6.0 I have heard the rival submissions and have also perused the material on record. The Lucknow Bench of the ITAT had an occasion to consider an identical issue in the case of Co-operative Cane Development Union Limited, Maholi in ITA Nos.165, 166 & 168/LKW/2023, wherein the Lucknow Bench, vide order dated 30.09.2024, considered the implication of the judgment of the Hon'ble Apex Court in the case of The Totgars' Cooperative Sale Society Limited vs. Income Tax Officer (supra) and had, thereafter, reached the conclusion that interest income arising from investment in statutory reserve funds and 'other funds' as per the provisions of sections 58 and 59 of the U.P. Co-operative Societies Act is attributable to the main activities of the Society and would, thus, qualify for deduction under section 80P of the Act.

6.1 It would be relevant to reproduce the relevant paragraphs from the above said order of the Lucknow Bench of the *ITAT:*

> *"13. We have duly considered the facts and circumstances of the case. And also the arguments made by both parties. Since the case of the Revenue is based on the decision of the Hon'ble Supreme Court in the case of Totgars Cooperative Sale Society Limited vs. Income Tax*

Officer (supra), it would be pertinent to first consider the decision of Hon'ble Supreme Court in that matter. As pointed out by the ld. Sr. DR, as per the said judgment, 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 that particular case, the Hon'ble Supreme Court observed that, in the facts and circumstances of that case, the assessee society had earned interest on funds which were not required for business purposes at the given point of time. Therefore, as it clarified, on the facts and circumstances of that case, they rendered their judgment that such interest income fell in the category of, "other income" which had rightly been taxed by the Department under section 56 of the Act and therefore, was ineligible for deduction under section 80P of the Act. The two judgments of Hon'ble Allahabad High Court that have been cited by the ld. Sr. DR have followed the principle laid down by the Hon'ble Supreme Court and held, that the objects of the society did not provide for investment of money in a post office or bank and earn interest and therefore, the interest earned out of the investments made in the bank would be an interest, which in turn would be income from other sources that would be chargeable to tax under section 56 of the Act. However, as the ld. Authorized Representative has pointed out, the arguments of the nature that the fixed deposits were made on account of the Statutory provisions (of sections 58 and 59of the U.P. Cooperative Societies Act in this case) and was therefore, the condition precedent to doing of business and accordingly "attributable" to the activities of the assesse cooperative, was not brought before the Hon'ble Allahabad High Court in either of the judgments cited by the ld. Sr. DR. Furthermore, M/s Cane Cooperative Development Council had appealed the judgment of Hon'ble Allahabad High Court in ITA No. 183/2016 to the Hon'ble Supreme Court in Civil Appeal No. 7405 to 7409 of 2021 and placed the

statutory rules before the Hon'ble Supreme Court. After considering that such rules may have a bearing on the nature of income and entitlement to exemption under section 80P of the Act, the Hon'ble Supreme Court had remitted the matter back to the Income Tax Appellate Tribunal to decide the appeals afresh, without being bound or influenced by the earlier orders passed by them or by the Hon'ble High Court. In view of such orders of the Hon'ble Supreme Court, the case laws of the jurisdictional Hon'ble Allahabad High Court cited by the ld. Sr. DR did not constitute a binding precedent for the ITAT, Lucknow Bench in the case of Cooperative Cane Development Council in ITA Nos. No.285/Lkw/2015, 474/Lkw/2015, 525/Lkw/2015, 536/Lkw/2015 and 540/Lkw/2015. The Hon'ble ITAT, Lucknow Bench after considering the byelaws and the statutory rules, the decisions of Hon'ble Allahabad High Court in CIT vs. Krishak Sahkari Ganna Samiti Limited 258 ITR 594 (Alld)and CIT vs. Cooperative Cane Development Union Limited 118 ITR 770 (Alld) and the decisions of the Tribunal in Income Tax Officer vs. Sahkari Ganna Vikas Samiti, Rupapur Chouraha (Munder), Hardoi in ITA No. 467/Lkw/2013 held as under:-

> *"7.1 Now the parties are again before us. We find that assessees had earned interest from fixed deposits from bank and co-operative society. Hon'ble Supreme Court, after acceptance of additional documents had set aside the issue before this Tribunal for readjudication. We find that the arguments of the assessees are that the assessees had placed the funds in the form of fixed deposits with nationalized banks and Co- operative banks in view of the specific requirements of U.P. Co- operative Societies Act. We find that section 58 of the U.P. Co- operative Societies Act requires the net profit to be distributed as under:*
>
> *"(a) An amount not less than twenty five percent shall be transferred to a fund called the reserved fund:*

(b) Not less than such amount as may be prescribed, shall be credited to a Co-operative Education fund to be established in the manner prescribed, and this shall be applicable to such cooperative society also which incur loss in the year,

[Provided that the provisions of this clause shall not apply to a Primary Agriculture Credit Co-operative Society, a Central Cooperative Bank or the Apex Bank.',]

(c) An amount that may be prescribed shall be credited to the research and development fund created in the Apex Societies of the concerned class of Co-operative society and which shall be maintained for the purpose of Research and development in the prescribed manner.

(d) an amount not exceeding twenty percent as may be prescribed shall be transferred to a fund called the Equity Redemption Fund to be established and utilized in the manner prescribed by such co-operative Society which has the subscription of the State Government in its share capitals."

7.2 Hon'ble Allahabad High Court in the case of CIT vs. Krishak Sahkari Ganna Samiti Ltd. [2002] 258 ITR 594 (Alld) has held that the investment by co-operative Society in the form of Government securities, equivalent to 25% of its profit, was the requirement of keeping the same as statutory reserve therefore, has held that such earning of interest was attributable to the activity carried on by the assessee. The relevant findings of Hon'ble Allahabad High Court are reproduced below:

"Clause (c) of Section 80-P(2) exempts income of cooperative society to the extent mentioned in that section if the profits or gains are 'attributable' to the activity in which the Cooperative Society is engaged. The findings are that under statutory

provisions the Cooperative Society is bound to invest 25% of its profits in Government securities. The assessee complied with this provision. In the process, it earned interest on these investments. The question is whether such profits or gains are attributable to the activity of supplying sugarcane carried on by the assessee. In Cambay Electric Supply Industrial Co. Ltd. v. CIT [1978] 113 1TR 84 the Supreme Court held that the expression 'attributable to suggests that the Legislature intended to cover receipts from sources other than the actual conduct of the business of the assessee. The investment of the statutory percentage of its profits in Government securities was a condition of the carrying on the business. The profits or gains from such investments were connected with or incidental to the carrying on of the actual business. They were, in our opinion, rightly held by the Tribunal to be attributable to the activity carried on by the assessee within the "meaning of clause (c) aforesaid. We therefore, answer the question referred to us in the affirmative in favour of the assessee and against the Department.

8. Following the aforementioned ratio laid down by the Division Bench which we consider binding on us, we too answer the question referred to us in the affirmative in favour of the assessee cooperative Society and against the Revenue."

7.3 Further we find that the assessee has relied on a judgment of Raipur Tribunal in the case of Gramin Sewa Sahakari Samiti Maryadit vs. Income Tax Officer [2022] 138 taxmann.com 476 (Raipur-Trib.) wherein the Tribunal has held that the interest earned by the assessee from deposit with co-operative bank and nationalized bank was eligible for deduction u/s 80P(2)(a) of the Act.

7.4 The above two judgments respectively by Hon'ble High Court and Tribunal hold that the interest earned by a Co-operative Society on deposits, which are statutorily required to be kept in the form of bank deposits or Government securities, are attributable to the business of an assessee.

7.4 Here in the present cases, we do not find the figures regarding the interest which the assessees may have earned on fixed deposits attributable to the making of statutory reserves. We further find that bye laws of the assessee has to be gone through which, though are available in the paper book, but require examination by the Assessing Officer as these were filed before Hon'ble Supreme Court as additional evidences. Therefore, we deem it appropriate to remit the issue of deduction u/s 80P for readjudication by the Assessing Officer, who, in the light of judgment of Hon'ble Supreme Court and keeping in view the judgments relied on by the assessee and keeping in view the additional documents, as filed before Hon'ble Supreme Court, will adjudicate the issue afresh. Needless to say that the assessees will be provided sufficient opportunity of being heard."

14. Subsequent on the said remand, the matter was examined by the Revenue and after consideration of the decision of the Hon'ble Supreme Court and the other judgments relied upon by the Hon'ble ITAT while remanding the matter back to him, the ld. Assessing Officer held as under:-

"3.3 Reason for inference drawn that no variation is required on this issue:

The submissions made by the Assessee have been examined thoroughly particularly the bylaws of the Assessee Society and the U. P. Co-operative Societies Act. On going through the by-laws of

the Assessee Society, it has been noticed that its Part 14 i.e. "Disposal of Net Profit and Societies" Assets and funds and appropriation thereof deals with the appropriation of Net Profits and Funds of the Assessee Society. Further, it has also been noticed that the aforementioned Part-14 of the bylaws of the Societies are in accordance with section 58 and 59 of the U. P. Co-operative Societies Act. Further, it has also been noticed that the secured reserve as well as other reserves are created in Annual General Meeting of the Society as per its bylaws and get accumulated over the year. These reserves are kept in co-operative and nationalized banks from where the Assessee earns the interest income under question. In view of the aforementioned facts, it is inferred that the reserve funds kept by the Assessee with Co-operative and nationalized banks are as per the by-laws of the Society and accordingly interest income arising from these funds can be held to be attributable to its main activities and therefore, the assessee is eligible for deduction in respect of this interest income under section 80P(2)(a) of the Act as per the case laws referred to and relied upon by the Hon'ble L.T.A.T. i.e. Judgments of Hon'ble Allahabad High Court in the case of CIT Vs. Krishak Sahkari Ganna Samiti Limited [2002] 258ITR594 (Allahabad) and ITAT, Raipur in the case of Gramin Sewa Sahakari Samiti Maryadit Vs. Income Tax Officer 92022), 138 Taxmann.com 476 (Raipur Tribunal).”

15. Thus, the principle that interest income arising from investments in statutory reserve funds and other funds as per the provisions of sections 58 and 59 of the U.P. Cooperative Societies Act is “attributable” to the main activities of that Society, has been accepted by the Revenue. The assessee is governed by the same U.P. Cooperative Societies Act and Rules as the Cooperative Cane Development Council, Lakhimpur and therefore, in its case also, it must be held that interest

earned from investment made by it as per sections 58 and 59 of the U.P. Cooperative Societies Act r.w.r.173 of the U.P. State Cooperative Rules, is attributable to the activity in which the assessee is engaged and therefore, is eligible to be deducted under section 80P(2)(a) of the Act.

Xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx

Now that the position with regard to such investments has been clarified by the Hon'ble ITAT in the case of Cooperative Cane Development Council, Lakhimpur and accepted by the Revenue in the consequent assessment, we deem it appropriate to restore the matter in all three cases back to the file of the ld. Assessing Officer for the limited purpose of re-computing the admissible deduction under section 80P with reference to the interest earned on investments made in accordance with sections 58 and 59 of the U.P. Cooperative Societies Act, 1965 and 173 of the U.P. Cooperative Societies Rules, 1968 . Ground numbers 1 to 5 are accordingly allowed."

6.2 Therefore, on identical set of facts in the present appeals, respectfully following the order of the Lucknow Bench of the ITAT in Co-o-operative Cane Development Union Limited, Maholi vs. ACIT, Sitapur (supra), I deem it appropriate to restore the matter in both the appeals to the file of the AO for the limited purpose of re-computing the admissible deduction under section 80P of the Act with reference to the interest earned in investments made in accordance with sections 58 and 59 of the

U.P. Co-operative Societies Act, 1965 and Rule 173 of the U.P. Co-operative Societies Rules, 1968.

6.3 The assessee shall also cause to be furnished such books of account and documents before the AO as might be required by him.

6.4 The issue of verification of expenses in both the years under appeal is also accordingly restored to the file of the AO for the purpose of re-examination and re-adjudication.

6.5 The AO is directed to give proper opportunity to the assessee prior to passing of the said assessment order.

7.0 In the final result, both the appeals of the assessee stand allowed for statistical purposes.

Order pronounced in the open Court on 18/09/2025.

Sd/-
[SUDHANSHU SRIVASTAVA]
JUDICIAL MEMBER

DATED:18/09/2025

JJ:

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR

By order

Assistant Registrar/DDO