

**IN THE INCOME TAX APPELLATE TRIBUNAL
SMC "C" BENCH : BANGALORE**

SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER

ITA Nos. 68 & 69/Bang/2023
Assessment years : 2018-19 & 2020-21

Sangam Coop. Credit Society Ltd., 100, Post. Rampur. 587 314. Taluk Rabkavi- Banhatti, Dist. Bagalkot. PAN: AAAAS 7031E	Vs.	The Assessing Officer, National e-assessment Centre, Delhi / The ITO, Ward 1 & TPS, Bagalkot.
APPELLANT		RESPONDENT

Appellant by	:	Shri Ashok Mudnur, CA
Respondent by	:	Shri Ganesh R. Ghale, Standing Counsel.

Date of hearing	:	24.04.2023
Date of Pronouncement	:	12.05.2023

ORDER

These two appeals are by the assessee against the two separate orders, both dated 23.12.2022 of the CIT(Appeals), National Faceless Appeal Centre, Delhi [NFAC] for the assessment years 2018-19 & 2020-21 respectively. Both these appeals were heard together and disposed of by this common order.

2. The common issue involved in these appeals is that the revenue authorities erred in treating the amount of common interest earned from investments in co-operative banks as income from 'Other Sources' and denying deduction u/s. 80P(2)(d) of the Income-tax Act,

1961 [the Act]. Without prejudice, the alternate ground is that the revenue authorities erred in bringing gross interest (instead of net interest) to tax u/s. 56 of the Act and ignoring the proportionate interest expenses debited to P&L account u/s. 57 to earn the interest income.

3. The assessee is a co-operative society registered with Karnataka Co-operative Societies Act, 1959. It is engaged in providing credit facilities to the its members only.

4. The assessee filed its return for AY 2018-19 declaring gross total income of Rs.25,57,047 and claimed deduction u /s. 80P(2)(a)(i) on the entire gross total income being business income from providing credit facilities to its members, which includes interest on investments also. The case was selected for scrutiny and statutory notices were issued to the assessee. On perusal of financial statements, the AO noticed that assessee has shown investments of Rs.4,22,40,864 in fixed deposits with banks. The assessee has earned total interest income of Rs.36,85,296 on investments and the same is included in the profit claimed deduction u/s. 80P of the Act. The AO observed that interest on investments as deposits would fall in the category of income from other sources because the interest was not received from the co-operative society and it is also not business income. Therefore interest earned from surplus invested in FDRs is not attributable to the business of providing credit facilities to members and not business profits, but other income. For claiming deduction u/s. 80P(2)(a)(i) the source of income is relevant and it must be operational income. The AO relying

on Supreme Court judgment in the case of *Totagars' Co-operative Sale Society Ltd.* [2010] 188 Taxman 282 (SC) funds not required immediately for business of providing credit facilities and interest earned on such fund is income from other sources taxable u/s. 56 of the Act and the same would not qualify for deduction u/s. 80P(2)(a)(i) of the Act. Accordingly the AO denied the deduction and made addition of Rs.36,85,296 to total income.

5. On appeal, the CIT(Appeals) confirmed the order of the Assessing Officer. Aggrieved, the assessee is in appeal before the Tribunal.

6. The Id. AR reiterated the submissions made before the lower authorities and submitted that the assessee is a credit co-op. society registered under Karnataka Co-op. Societies Act, 1959 engaged in providing credit facilities to its members only. As per Rule 28 of the Karnataka State Co-op. Rules, 1960, the assessee is mandatorily required to maintain 25% to 30% of working funds as investment in banks in the form of fixed deposits with co-operative banks to meet any adverse situation. It is a part and parcel of the regular business activity of the assessee and interest earned on such deposits is part of operational income of the assessee. He submitted that the RBI has directed to maintain SLR to the banks and any income received from such activity is treated as business income of the banks and the same principle will also apply here because the Karnataka Co-op. Societies

Act mandates for maintenance of 25% to 30% liquid funds against deposits. He relied on the following decisions:-

- (i) Hon'ble Karnataka High Court in the case of Tumkur Merchants Souharda Credit Co-op. Ltd., 230 Taxman 309 (Kar)
- (ii) Bhavasar Kshtriya Co-op. Credit Society Ltd. in ITA Nos.581 to 583/Bang/2022 dated 19.10.2022. (Bang. Trib)
- (iii) CIT v. Karnataka State Co-op. Apex Bank, (2001) 251 ITR 0194 (SC)
- (iv) CIT v. Nawanshahar Central Co-op. Bank Ltd. 289 ITR 6 (SC)
- (v) Bori Urban Co-operative Credit Society Ltd. vs ITO , ITA NO. 200 & 221/PAN/2019 dated 27.12.2022
- (vi) Hon'ble Karnataka High Court in the case of Pr.CIT & another vs Totagars Co-operative Sales Society, (2017) 392 ITR 0074 (Karn)

7. On the other hand, the ld. DR relied on the orders of the lower authorities. He further submitted that co-operative bank where its entire income is earned from banking activities cannot be termed as co-operative society. He further submitted that it is settled by the Supreme Court judgment in the case of Totagars Co-operative Sale Society reported in 322 ITR 283 that interest received from surplus funds is to be taxed as income from other sources and therefore it is not eligible to claim deduction u/s. 80P & the assessee received interest is on Fixed Deposits which are surplus fund of the assessee. He further submitted that in the case of PCIT & Ors. v. Totagars Co-operative

Sale Society reported in 395 ITR 611 (Karnataka), the Hon'ble Court had decided that deduction u/s. 80P(2)(d) is allowable on the interest income received from co-operative society but not from the Co-operative Bank. He submitted that the issue has been settled by the coordinate Bench of the Tribunal on similar facts and circumstances of the case in the following decisions:-

- (a) M/s. Vasavamba Co-operative Society Ltd. v. PCIT, ITA No.453/Bang/2020 dated 13.8.2021.
- (b) M/s. Manjunatheshwara Credit Co-op. Society Ltd. v. ITO, ITA No.2238/Bang/2019 dated 4.10.2021.
- (c) Krishnarajapet Taluk Agri Pro Co-op Marketing Society Ltd. v Pr.CIT, ITA No. 514/Bang/2021 dated 08.02.2022.
- (d) M/s Jyothi Pattin Souhard Sakhari Niyamit, APMC, Gadag vs Pr.CIT, ITA No. 650/Bang/2020 dated 13.08.2021

8. The ld. DR submitted that the case laws of the jurisdictional High Court relied by the ld. AR of the assessee are not applicable since these decisions are covered in the decisions cited by him.

9. In the rejoinder, the ld. AR submitted that in the case of PCIT v. Totagars Co-operative Sale Society {2017} 78 taxmann.com 169 (Karnataka) order dated 05.01.2017, the Hon'ble Court has held that even section 56(i)(ccv) of the Banking Regulation Acts Act, 1949, defines a primary co-operative bank as the meaning of co-operative society, therefore a co-operative society bank would be included in the words 'Co-operative Society'. Accordingly he submitted that The Mysore and Chamarajanagar District Co-op. Central Bank Ltd. is primarily registered as a co-operative society and obtained licence

from RBI for carrying on banking activities, therefore as per para 9 of the said judgment, it is to be termed as a co-operative society and section 80P(2)(d) clearly states that interest received from co-operative society is eligible for deduction u/s. 80P(2)(d) of the Act. In view of this the assessee is eligible for deduction u/s 80P(2)(d) on the interest received from the co-operative banks.

9.1 The Id. AR alternatively submitted that the if the deduction u/s 80(P)(2)(a)(i) and 80(P)(2)(d) is not granted to the assessee, the proportionate expenditure for earning interest income u/s 57 should be granted which comes to approximately 82% of the interest income received by the assessee and the same may be allowed.

10. Heard both the parties, perused the entire material on record and the orders of the lower authorities. The assessee is a credit co-op. society registered with Karnataka Co-op. Societies Act, 1959 and providing credit facilities to its members and accepting deposits from its members. On the total investments of Rs.4,22,40,864 in fixed deposits, the assessee received interest of Rs.36,35,296 to which the AO has not allowed deduction u/s. 80P(2)(a)(i) or 80P(2)(d) of the Act, whereas the assessee has claimed deduction of such amount u/s. 80P(2)(a)(i) of the Act. The assessee submits that it is operational income because it has to maintain the funds as per Rule 28 of the Karnataka State Co-op. Rules, 1960 which are mandatory for the co-operative society and try to correlate with the RBI norms for maintaining certain percentage of deposits in the form of investments

which are applicable for the Banks, therefore, it qualifies for deduction u/s. 80P(2)(a)(i) of the Act., but in this regard the Id. AR of the assessee could not produce any single document for substantiating the claim. The interest received by the assessee cannot be treated as operational income of the assessee because the interest received was not from the credit facilities provided to its members as envisaged in section 80P(2)(a)(i) of the Income Tax Act. This issue has been settled by the Hon'ble jurisdictional High Court in the case of *PCIT v. Totagars Co-operative Sale Society [2017] 83 taxmann.com 140 (Karnataka)* wherein it is held that the source of funds are irrelevant.

The relevant observations are as follows:-

“23. Thus, the aforesaid judgments supports the view taken by this Court that character of income depends upon the nature of activity for earning that 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. The case in *Udaipur Sahakari Upbhokta Thok Bhandar Ltd.* (supra) was that of Section 80P(2)(e) of the Act, whereas in the present case, it is under Section 80P(2)(d) 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 schedule 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 ineligible for deduction under Section 80P of the Act, as held by the Hon'ble Supreme Court.”

11. Similar issue has been decided against the assessee by this Tribunal in the case of Krishanarajapet Taluk Agri Pro Co-op Marketing Society Ltd. v Pr.CIT in ITA No. 514/Bang/2021 dated 08.02..2022. Though this case relates to section 263 of the Act, but the facts of the case are similar regarding denying the deduction of section 80P(2)(a)(i)/80P(2)(d) of the Act on the interest received from the co-operative bank on deposits. The relevant parts of the judgment are as under:-

8. We have considered the rival submissions. By the impugned order the CIT held that the AO's order allowing deduction u/s.80P(2)(d) of the Act on a sum of Rs. 3,91,931/- which was interest received on investments with MDCC Bank, was erroneous and prejudicial to the interest of the revenue. According to the CIT, in view of the provisions of section 80P(4) of the Act excluding cooperative banks from the purview of section 80P of the Act and in view of the fact that provisions of 80P(2)(d) of the Act is applicable only in respect of interest on deposits received from co-operative societies, the deduction ought not to have been allowed by the AO. In reply to the above show cause notice, the assessee submitted that the claim made by it was allowable in terms of the decision of the Hon'ble Karnataka High Court in the case of Pr. CIT v. Totagar's Co-operative Sale Society Ltd. [2017] 78 taxmann.com 169/392 ITR 74. The assessee submitted that the insertion of section 80P(4) of the Act w.e.f. Assessment Year 2007-08 was only with a view deny the benefit of deduction under section 80P(2)(i) of the Act to Co-operative Banks and that it had nothing to do with deduction under section 80P(2)(d) of the Act.

9. The CIT, after considering submissions made by the assessee, came to the conclusion that the later decision of the Hon'ble Karnataka High Court in the case of Totagar's Co-operative Sale Society (supra), the Hon'ble Court has explained its earlier decision and held that interest received on deposits with Co-operative Bank is not eligible for deduction under section 80P(2)(d) of the Act. The CIT accordingly directed that the deduction allowed should be withdrawn.

10. An order passed contrary to a decision of the Hon'ble Jurisdiction High Court would be in the nature of an order prejudicial to the interest of the revenue being an order passed on an incorrect application of law. In the case of Malabar Industrial Co. Ltd. v. CIT [2000] 109 Taxman 66/243 ITR

83, the Supreme Court held that there must be two conditions namely that the order of assessment is erroneous and that the order is prejudicial to the interests of the Revenue which must be satisfied before the Commissioner may invoke his powers under section 263 of the Act. The Court held that every loss of tax cannot be said to be prejudicial to the interests of the Revenue. If two views are possible, and the AO has adopted one of those views, the order of assessment cannot be prejudicial to the interests of the Revenue. However, when the Assessing Officer does not apply his mind to the issue at hand or violates any of the principles of natural justice, the order shall be prejudicial to the interests of the Revenue. Also, an incorrect assumption of facts or incorrect application of law by the AO would make the order of assessment erroneous and prejudicial to the interests of the Revenue. The Hon'ble Supreme Court in the case of *The Totgars Co-operative Sale Society Ltd.* (supra) held that Income from utilization of surplus funds was taxable under the head income from other sources, and therefore not eligible for deduction u/s 80P. The Hon'ble Karnataka High Court in case of *Tumkur Merchants Souharda Credit Co-operative Ltd. v. ITO [2015] 55 taxmann.com 447/230 Taxman 309*, was dealing with a case where deduction u/s.80P(2)(a)(i) of the Act was claimed on interest from the deposits made in a nationalized bank out of the amounts which was used by the assessee for providing credit facilities to its members. The Assessee claimed that the said interest amount is attributable to the credit facilities provided by the assessee and forms part of profits and gains of business. The Hon'ble Karnataka High Court after considering SC judgment in case of *Totagar's Co-operative Sale Society Ltd.* (supra) held that since the word income is qualified by the expression "attributable" to the business of Banking is used in sec.80P(2)(a)(i) of the Act, it has to receive a wider meaning and should be interpreted as covering receipts from sources other than the actual conduct of business. The Court held a Co-operative Society which is carrying on the business of providing credit facilities to its members, earns profits and gains of business by providing credit facilities to its members. The interest income so derived or the capital, if not immediately required to be lent to the members, they cannot keep the said amount idle. If they deposit this amount in bank so as to earn interest, the said interest income is attributable to the profits and gains of the business of providing credit facilities to its members only. The society is not carrying on any separate business for earning such interest income. The income so derived is the amount of profits and gains of business attributable to the activity of carrying on the business of banking or providing credit facilities to its members by a co-operative society and is liable to be deducted from the gross total income under section 80P of the Act. The Hon'ble Court also distinguished the decision of the Hon'ble Supreme Court in the case of *Totagar's Co-operative Sale Society Ltd.* (supra) by observing that the Supreme Court was dealing with a case

where the assessee-Cooperative Society, apart from providing credit facilities to the members, was also in the business of marketing of agricultural produce grown by its members. The sale consideration received from marketing agricultural produce of its members was retained in many cases. The said retained amount which was payable to its members from whom produce was bought, was invested in a short-term deposit/security. Such an amount which was retained by the assessee - Society was a liability and it was shown in the balance sheet on the liability side. Therefore, to that extent, such interest income cannot be said to be attributable either to the activity mentioned in section 80P(2)(a)(i) of the Act or under section 80P(2)(a)(iii) of the Act. Therefore in the facts of the said case, the Apex Court held the assessing officer was right in taxing the interest income indicated above under section 56 of the Act. The Court also observed that even the Hon'ble Supreme made it clear that they are confining the said judgment to the facts of that case. The Court therefore concluded that Hon'ble Supreme Court was not laying down any law. Similar view taken in Guttigedarara Credit Co-operative Society Ltd. v. ITO [2015] 60 taxmann.com 215/234 Taxman 476/377 ITR 464. In the case of Totagar's Co-operative Sale Society Ltd. (supra) in the context of deduction u/s.80P(2)(d) of the Act, it was held that sec.80P(2)(d) of the Act allows deduction in respect of any income by way of interest or dividends derived by the co-operative society from its investments with any other co-operative society, the whole of such income. The Hon'ble Court held that the aforesaid Supreme Court's decision in the case of Totgars (supra), was not applicable to deduction u/s.80P(2)(d) of the Act, because the said decision was rendered with regard to deduction under section 80P(2)(a)(i) of the Act and not under section 80P(2)(d) of the Act.

II. However, the Hon'ble Karnataka High Court in the case of Totagar's Co-operative Sale Society Ltd. (supra) took a different view and held that interest income earned on deposits whether with any other bank will be in the nature of income from other sources and not income from business and therefore the deduction u/s.80P(2)(d) of the Act cannot be allowed to the Assessee. The Hon'ble Court followed decision of Hon'ble Gujarat High Court in the case of SBI v. CIT [2016] 72 taxmann.com 64/241 Taxman 163/389 ITR 578 in which the Hon'ble Gujarat High Court dissented from the view taken by the Hon'ble Karnataka High Court in the case of Tumkur Merchants case (supra) The Hon'ble Court had to deal with the following substantial question of law :

"(I) Whether the assessee, Totagar Co-operative Sale Society, Sirsi, is entitled to 100% deduction under section 80P(2)(d) of the Income-tax Act, 1961 (for short 'the Act') in respect of whole of its income by way of interest earned by it during the relevant

Assessment Years from 2007-2008 to 2011-2012 on the deposits or investments made by it during these years with a Co-operative Bank, M/s. Kanara District Central Co-operative Bank Limited?

(II) Whether the Supreme Court decision in the case of the present respondent assessee, Totgar Co-operative Sale Society Limited itself rendered on 08th February 2010, in Totgar's Co-operative Sale Society Limited v. Income-tax Officer, reported in (2010) 322 ITR 283 SC : (2010) 3 SCC 223 for the preceding years, namely Assessment Years 1991-1992 to 1999-2000 (except Assessment Year 1995-1996) holding that such interest income earned by the assessee was taxable under the head 'Income from Other Sources' under section 56 of the Act and was not 100% deductible from the Gross Total Income under section 80P(2)(a)(i) of the Act, is not applicable to the present Assessment Years 2007-2008 to 2011-2012 involved in the present appeals and therefore, whether the Income-tax Appellate Tribunal as well as CIT (Appeals) were justified in holding that such interest income was 100% deductible under section 80P(2)(d) of the Act?"

12. The Hon'ble Court held that such interest income is not income from business but was income chargeable to tax under the head income from other sources and therefore there was no question of allowing deduction u/s.80P(2)(d) of the Act. The following points can be culled out from the aforesaid decision :

- 1. The words 'Co-operative Banks' are missing in clause (d) of sub-section (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. (Paragraph 13 of the Judgment).*
- 2. The banking business, even though run by a Co-operative bank is sought to be excluded from the beneficial provisions of exemption or deduction under section 80P of the Act. 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. The words used in section 80P(4) are significant. They are: "The provisions of this section shall not apply in relation to any co-operative bank other than a primary agricultural credit society". The words "in*

relation to" can include within its ambit and scope even the interest income earned by the respondent-assessee, a co-operative Society from a Co-operative Bank. 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. The only exception is that of a primary agricultural credit society. (Paragraph-14 of the judgment)

3. *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. (Paragarph 15 of the Judgment)*
4. *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 Court's decision in the case of Respondent assessee itself is otherwise.(Paragraph 16 of the Judgment)*
5. *On the decision of the earlier decision of the Hon'ble Karnataka High Court referred to in the earlier part of this order, the Court held that it did not find any detailed discussion of the facts and law pronounced by the Hon'ble Supreme Court in the case of the respondent assessee (Totagars Sales Co-operative society) and hence unable to follow the same in the face of the binding precedent laid by the Hon'ble Supreme Court. The Hon'ble Court observed that in paragraph 8 of the said order passed by a co-ordinate bench that the learned Judges have observed that*

"the issue whether a co-operative bank is considered to be a cooperative society is no longer res integra, for the said issue has been decided by the Income-tax Appellate Tribunal itself in different cases.....".

No other binding precedent was discussed in the said judgment. Of course, the Bench has observed that a Co-operative Bank is a specie of the genus co- operative Society, with which we agree, but as far as applicability of section 80P(2) of the Act is concerned, the applicability of the Supreme Court's decision cannot be restricted only if the income was to fall under section 80P(2)(a) of the Act and not under section 80P(2)(d) of the Act.(Paragraph-18 of the Judgment)

6. *The Court finally concluded that it would not make a difference, whether*

the interest income is earned from investments/deposits made in a Scheduled Bank or in a Co-operative Bank. Therefore, the said decision of the Co-ordinate Bench is distinguishable and cannot be applied in the present appeals, in view of the binding precedent from the Hon'ble Supreme Court." (Paragraph 19 of the Judgment)

13. The Hon'ble Karnataka High Court in the aforesaid decision also placed reliance on a decision of the Hon'ble Gujarat High Court in the case of State Bank of India (SBI) (supra) did not agree with the view taken by the Karnataka High Court in Tumkur Merchants Souharda Credit Co-operative Ltd. (supra) that the decision of the Supreme Court in Totgars Co-operative 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. The Hon'ble Gujarat High Court held that in the case of Totgars Co-operative Sale Society (supra) decided by Hon'ble Supreme Court, 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. The Hon'ble Gujarat High Court in this regard referred to 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. The Hon'ble Gujarat High Court therefore held that decision in the case of Totagar Co-operative Sales Society rendered by the Hon'ble Supreme Court 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. (Paragraph-13 of the Judgment)

14. It can thus be seen that the ratio laid down by the Hon'ble Karnataka High Court in the case of Totagars Co-operative Sales Society (supra) is that in the light of the principles enunciated by the Supreme Court in Totgars 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 co-operative society, is not deductible under section 80P(2)(d) of the Act.

15. The CIT was therefore justified in exercising his powers of revision u/s.263 of the Act and directing the AO to tax interest income in question as it is neither of the nature specified in sec.80P(2)(a)(i) or 80P(2)(d) of the Act.

16. Another aspect with regard to the deduction u/s.80P(2)(d) of the Act, is with regard to what is the quantum of interest income that should be brought to tax by the AO, in case the deduction is denied to the assessee u/s.80P(2)(d) of the Act. On this aspect, the Hon'ble ITAT, Bengaluru Bench in the case of Puttur Primary Co-operative Agriculture and Rural Development Bank Ltd. v. ITO [IT Appeal No. 1449 (Bang.) of 2019, dated 14-6-2021], order dated 14-6-2021 for Assessment Year 2016-17, the tribunal held that the assessee should be allowed expenses and the entire gross interest cannot be taxed. The following were the relevant observations of the Tribunal :

6. The next issue relates to the deduction claimed by the assessee u/s 80P(2)(d) of the Act in respect of interest income. Identical issue has been considered by the co-ordinate bench in the case of Karkala Co-op S Bank Ltd. (supra). For the sake of convenience, we extract below the relevant observations made by the co-ordinate bench :-

"7. The next common issue relates to rejection of deduction claimed u/s 80P(2)(d) of the Act in respect of interest income earned from fixed deposits kept with bank. We noticed earlier that the A.O. has observed in Assessment Year 2015-16 that the interest

income received by the assessee from deposits kept with banks is not eligible for deduction u/s 80P(2)(c) & 80P(2)(d) of the Act since the assessee is not eligible for deduction u/s 80P(2)(a)(i) of the Act. In AY 2016-17, the AO assessed the interest income received on bank deposits under the head "Income from other sources" and denied deduction claimed u/s 80P(2)(d) of the Act. The Ld CIT(A) confirmed the action of the AO on this issue.

8. The Ld. A.R. submitted that the assessee is entitled to claim deduction allowable u/s 57 of the Act in respect of cost of funds and proportionate administrative and other expenses. In support of this submission, the Ld. A.R. placed reliance on the decision rendered by Hon'ble High Court of Karnataka in the case of Totgars Co-operative Sale Society Ltd. Vs. ITO (2015) 58 taxmann.com 35 (Karn). The Ld. A.R. submitted that the assessee in the above said case had put forth identical claim before Hon'ble Supreme Court in the case reported as Totgars Co-operative Sale Society Ltd. Vs. ITO (2010) 188 taxmann.com 282 and the Hon'ble Supreme Court, vide 14 of its order, had restored the question raised by the assessee to the file of Hon'ble High Court of Karnataka. Consequent thereto, the Hon'ble High Court of Karnataka has passed the order in the case reported in 58 taxmann.com 35 and held that the Tribunal was not right in coming to the conclusion that the interest earned by the appellant is an income from other sources without allowing deduction in respect of proportionate cost, administrative expenses incurred in respect of such deposits. Accordingly, the Ld. A.R. prayed that the A.O. may be directed to allow deduction of proportionate cost, administrative and other expenses, if the A.O. proposes to assess the interest income earned from bank deposits as income under the head "other sources".

9. We heard Ld. D.R. on this issue. We find merit in the prayer of the assessee, since it is supported by the decision rendered by Hon'ble High Court of Karnataka in the case of Totgars Cooperative Sale Society Ltd. Vs. ITO (2015) 58 taxmann.com 35 (Karn). Accordingly, we direct the A.O. to allow deduction of proportionate cost, administrative and other expenses, if the A.O. proposes to assess the interest income earned from bank deposits as income under the head 'other sources'."

7. In the instant case, the assessee has earned both interest income and dividend income. In view of the decision rendered by the jurisdictional Hon'ble High Court of Karnataka, the assessee is entitled for deduction of proportionate cost, administrative and other expenses. Accordingly,

we set aside the order passed by Ld CIT(A) on this issue and restore the same to the file of the AO with similar directions.

17. The order of the CIT is modified to the extent that the deduction while taxing interest income in dispute the AO will allow deduction on account of expenses on the lines indicated above. The AO will afford opportunity of being heard to the assessee and filing appropriate evidence, if desired, by the assessee to substantiate its case, before deciding the issue in the set aside proceedings.

12. After considering the submissions of both the parties, I note that in the case laws relied by the Id. DR the decisions cited by the Id. AR of the Hon'ble jurisdictional High Court have been already been considered and in view of the same, the assessee is not eligible for deduction u/s 80P(2)(a)(i) or 80P(2)(d) on the interest received. Accordingly grounds No. 2 & 3 raised by the assessee are dismissed.

13. The assessee has raised an alternate ground No. 04 stating that the net interest income should be taxed instead of entire gross interest income earned by the assessee on investments and further that assessee will suffer loss under the head 'business income' for which necessary set off has to be provided to the assessee. I am of the view that since the fundamental principle under Income-tax Act being that only net income has to be taxed and not the gross income, this plea of the assessee has to be necessarily accepted, especially in the light of the judgment of the Hon'ble jurisdictional High Court in the case of Totagars Sale Cooperative Society v. ITO [2015] 58 taxmann.com 35 (Karnataka) & the judgments cited above. Accordingly, the case is restored to the file of the A.O. with a direction to examine whether

assessee has incurred any expenditure for earning interest income, which is assessed under the head 'income from other sources'. If so, the same shall be allowed as deduction u/s 57 of the I.T.Act. Further if the assessee is eligible for setting off of loss suffered from the business carried on by it, the AO is directed to decide the issue as per law. The assessee is directed to co-operate with the department and furnish the necessary evidence for expeditious disposal of the matter. It is ordered accordingly. This ground is partly allowed for statistical purpose.

14. The appeal i.e., ITA No.68/Bang/2019 is partly allowed for statistical purposes. On identical facts, the assessee's appeal in ITA No. 69/Bang/2023 for AY 2020-21 is also partly allowed for statistical purposes with similar directions.

15. In the result, both the appeals by the assessee are partly allowed for statistical purposes.

Pronounced in the open court on this 12th day of May, 2023.

Sd/-

(LAXMI PRASAD SAHU)
ACCOUNTANT MEMBER

Bangalore,
Dated, the 12th May, 2023.

/Desai S Murthy/

Copy to:

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

By order

Assistant Registrar
ITAT, Bangalore.