

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE S.V.BHATTI

&

THE HONOURABLE MR.JUSTICE BASANT BALAJI

MONDAY, THE 1ST DAY OF NOVEMBER 2021 / 10TH KARTHIKA, 1943

ITA NO. 323 OF 2019

AGAINST THE ORDER IN ITA 67/2019 OF I.T.A.TRIBUNAL,COCHIN BENCH,

ERNAKULAM

APPELLANT/S:

THE PRINCIPAL COMMISSIONER OF INCOME TAX
THIRUVANANTHAPURAM

BY ADV SRI.CHRISTOPHER ABRAHAM, INCOME TAX DEPARTMENT

RESPONDENT/S:

M/S. PEROORKADA SERVICE CO-OPERATIVE BANK LTD
TC 845/1, PEROORKADA, TRIVANDRUM-695 005.

BY ADV SRI.C.A.JOJO

THIS INCOME TAX APPEAL HAVING COME UP FOR HEARING ON 01.11.2021,
ALONG WITH ITA.142/2019, 5/2020, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE S.V.BHATTI

&

THE HONOURABLE MR.JUSTICE BASANT BALAJI

MONDAY, THE 1ST DAY OF NOVEMBER 2021 / 10TH KARTHIKA, 1943

ITA NO. 142 OF 2019

AGAINST THE ORDER/JUDGMENT IN ITA 196/2018 OF I.T.A.TRIBUNAL,COCHIN

BENCH, ERNAKULAM

APPELLANT/S:

THE PRINCIPAL COMMISSIONER OF INCOME TAX,
THIRUVANANTHAPURAM.

BY ADV SRI.CHRISTOPHER ABRAHAM, INCOME TAX DEPARTMENT

RESPONDENT/S:

VILAPPIL SERVICE CO-OPERATIVE BANK LTD.,
PEYAD P.O., THIRUVANANTHAPURAM-14.(PAN AAAAV4785E)

BY ADV SRI.BABU S. NAIR

THIS INCOME TAX APPEAL HAVING COME UP FOR HEARING ON 01.11.2021,
ALONG WITH ITA.323/2019 AND CONNECTED CASES, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE S.V.BHATTI

&

THE HONOURABLE MR.JUSTICE BASANT BALAJI

MONDAY, THE 1ST DAY OF NOVEMBER 2021 / 10TH KARTHIKA, 1943

ITA NO. 5 OF 2020

AGAINST THE ORDER/JUDGMENT IN ITA 47/2019 OF I.T.A.TRIBUNAL,COCHIN BENCH,
ERNAKULAM

APPELLANT/S:

THE PRINCIPAL COMMISSIONER OF INCOME TAX
THIRUVANANTHAPURAM

BY ADV SRI.CHRISTOPHER ABRAHAM, INCOME TAX DEPARTMENT

RESPONDENT/S:

PEROORKADA SERVICE CO-OPERATIVE BANK LTD
TC 845/1, PEROORKADA, THIRUVANANTHAPURAM-
695005(PAN.AAAAP3974B)

BY ADV SRI.C.A.JOJO

THIS INCOME TAX APPEAL HAVING COME UP FOR HEARING ON 01.11.2021,
ALONG WITH ITA.323/2019 AND CONNECTED CASES, THE COURT ON THE SAME DAY
DELIVERED THE FOLLOWING:

J U D G M E N T

[ITA Nos.323/2019, 142/2019, 5/2020]

S.V.Bhatti, J.

Heard learned Standing Counsel Mr Christopher Abraham for appellant and Mr C A Jojo, learned counsel for respondent in ITA Nos.323/2019 and 5/2020. No representation for respondent in ITA No.142/2019.

ITA No.142/2019 [Assessment Year 2014-15]

2. The Principal Commissioner of Income Tax - Thiruvananthapuram/Revenue is the appellant. Vilappil Service Co-operative Bank Ltd, Peyad, Thiruvananthapuram/assessee is the respondent. The appeal is at the instance of the Revenue under Section 260A of the

Income Tax Act, 1961 (for short 'the Act') against the order dated 19.09.2018 of the Income Tax Appellate Tribunal (for short 'Tribunal'), Cochin Bench, Cochin in ITA No. 196/Coch/2018. The subject matter of the appeal relates to the issues arising from the return filed by the assessee for the Assessment Year 2014-15.

2.1 The assessee is a Primary Agricultural Credit Society registered under the Kerala Co-operative Societies Act 1969. The assessee is engaged in banking activity and providing credit facilities to its members. The assessee claimed complete deduction of income under Section 80P(2)(a)(i) of the Act and also claimed inclusion of interest income earned by the assessee from the deposit of idle funds with co-operative bank and treasury treating the said income as business income falling within the admissible ambit of deduction under Section 80P(2)

(a)(i) of the Act. The Assessing Officer rejected the claims of the assessee for deduction under Section 80P(2)(a)(i) and treated the interest income as income from other sources and also that the interest income does not come within the purview of Section 80P(2)(d) of the Act the deduction claim made by the assessee has been rejected. The assessee aggrieved by the order of Assessing Officer in Annexure-A filed appeal before the Commissioner of Income Tax (Appeals). The CIT (Appeals), through order in Annexure-B dated 28.02.2018, allowed the appeal of the assessee, thereby admitted the claim of assessee of total income eligible for deduction under Section 80P(2)(a)(i) of the Act. The appellate authority firstly accepted that the assessee is entitled to claim deduction as a registered co-operative society and that the interest income earned by the assessee from the investment with District Co-operative Bank

and Treasury forms part of business income of the assessee. The Revenue, aggrieved by the order in Annexure-B dated 28.02.2018, filed ITA No. 196/Coch/2018 before the Tribunal and through the order impugned the Tribunal dismissed the appeal filed by the Department. Hence, the instant appeal.

3. The appeal is admitted on the following substantial questions of law:

- “i) Whether, on the facts and circumstances of the case and in law, is the Tribunal justified in holding that the assessee is eligible for claiming deduction under section 80P of the Income Tax Act when the assessee failed to fulfil the principal objective of providing agricultural credits to agriculturists?
- ii) Whether, on the facts and circumstances of the case and in law, is the Tribunal justified in holding that the classification of "Primary Agricultural Credit Society" made by the competent authority under Kerala Co-operative Societies Act is binding on the authorities under the Income Tax Act for determining the eligibility for deduction under section 80P(4) of the Income Tax Act?
- iii) Is not the conclusion reached by the ITAT that the

Assessing Officer cannot probe into details as to the fulfilment of the principal objective of 'providing agricultural credits to members' by PACs, erroneous and unjustified in view of the provisions of KCS Act?

iv) Is not the above decision of the ITAT relying on the High Court decision in the case of Chirakkal Service Co-op bank & connected cases {[2016]384 ITR 490(Ker)} contradictory to the decision rendered by this Hon'ble Court in an earlier case - M/s Perinthalmanna Service Co-operative Bank {reported in [2014]363 ITR 268(Ker)}

v) Should not have the Tribunal noticed in the light of the findings of the Hon'ble Apex Court in the case *Sabarkhanta Zilla Kharid Vechan Sangh Ltd. Vs CIT* reported in 203 ITR 1027(SC), that eligible deduction under section 80(1)(d) [substituted by section 80P by the Finance (No.2) Act, 1967 w.e.f 01.04.1968] of the Income Tax Act, 1961 in respect of co-operative societies/banks doing both agricultural and non-agricultural activities should not be 100% of the gross profits and gains of business of such societies etc., but should be limited to the profits generated from agricultural activities alone performed by such assesseees?

vi) Whether on the facts and in the circumstances of the case, the order of the ITAT is correct in not duly considering

that the interest income earned from deposits with banks cannot be attributable as profit and gains from the business of providing credit facilities to its members u/s80P(2)(a)(i) & in not considering the case law in 322 ITR 283 M/s Totgar Co-operative Sales Society applicable in the case?

Substantial Question nos.1 to 4

4. Learned counsel appearing for the Revenue and the assessee state that the substantial question nos.1 to 4 excerpted supra are covered by the judgment of the Supreme Court in *Mavilayi Service Co-operative Bank Ltd. v. Commissioner of Income Tax*¹; the assessee since is a registered Co-operative Society and the deduction claimed is interest earned from loans lent to members and amount invested with Co-operative Bank and Treasury, so the threshold eligibility of deduction is admissible to assessee and accordingly the income earned by way of interest from members is eligible for deduction under Section

1 [2021] 431 ITR 1 (SC)

80P(2)(a)(i) of the Act. Accordingly the questions can be answered against the Revenue and in favour of the assessee.

Statement is placed on record. Substantial question nos.1 to 4 are answered in favour of the assessee and against the Revenue.

Substantial Question nos.5 and 6

5. Substantial Question nos. 5 and 6 relate to the claim of deduction made by the assessee of interest income earned from the deposits the assessee has made with District/State Co-operative Banks and Treasury. The details of the interest earned from the investments with above three institutions are stated thus:

Interest received from District Co-operative Bank	59,00,912
Interest received from State Co-operative Bank	2,91,428
Interest received from Treasury deposits	60,651
Total	62,52,991

5.1 The assessee, as per the certificate dated 01.11.2016

of the Joint Registrar of Co-operative Societies (General) Trivandrum, claims to be a Primary Agricultural Credit Co-operative Society registered under the Kerala Co-operative Societies Act 1969. Admittedly, the assessee is not engaged in the banking business as defined in the Banking Regulation Act 1949. In other words, the assessee does not have licence or authorisation under the Banking Regulation Act to do business in Banking. Principally, the assessee is engaged in the business of providing credit facilities to its members by accepting loans from members as well as non-members. As stated above the assessee earned interest income amounting to Rs.62,52,991/- from the deposits made with Co-operative Banks/Treasury. The Assessing Officer proposed to assess the said income under the head: Income from Other Sources, inasmuch as, according to Revenue, the interest income does not form part of any receipt

received by the assessee while carrying on the business of providing credit facilities to its members. The assessee objected to the inclusion of interest income under the head 'Income from Other Sources', on the ground that the District Co-operative Bank and Kerala State Co-operative Bank are registered as Co-operative Societies and the entire interest income is eligible for deduction under Section 80P(2)(d) of the Act. The Assessing Officer found that the District/State Co-operative Banks are treated as Co-operative Banks and not as Co-operative Societies. The Assessing Officer relied on the judgment of the Supreme Court in *M/s. The Totgar's Co-operative Sale Society Ltd v. Income Tax Officer*², and held as squarely applicable to the case on hand for rejecting the deduction of interest earned from investments made with Co-operative Banks/Treasury/Society. Further unless and until the interest income conforms to the eligibility

requirement of Section 80P(2)(d), the income otherwise derived cannot be deducted from the income of the assessee under clause (d) of Section 80P(2). Thus, the Assessing Officer added Rs.62,52,991/- to the income of the assessee. The CIT (Appeals) accepted the case of the assessee that the assessee is entitled to the claim of deduction under Section 80P(2)(a)(i); that the interest income earned by the assessee from Co-operative Banks/Treasury is entitled to deduction inasmuch as the surplus fund deposited with Co-operative Bank is entitled to deduction. The Tribunal confirmed the view taken by the CIT (Appeals). However, the Tribunal accepted the entire claim of deduction of interest income earned by the assessee as business income. These findings of the Tribunal are assailed with considerable force by the Revenue.

6. Mr Christopher Abraham appearing for the Revenue

challenges the findings of the CIT (Appeals) and the Tribunal by contending that the appellate authority and the Tribunal committed a serious error in law in appreciating the extent to which the assessee is entitled to claim deduction under Section 80P(2)(a)(i) of the Act and the eligible deduction is limited to interest or dividend derived from investments made under Section 80P(2)(d) of the Act only to Co-operative Societies. The decision of the Supreme Court in *Mavilayi Service Co-operative Bank Ltd* is kept in mind while appreciating the case of the assessee whether to include the interest income from investments in Co-operative Banks/Treasury as income earned by the assessee by providing credit facilities to its members. The learned counsel places emphasis on the summary in *Mavilayi Service Co-operative Bank Ltd*, namely “clearly, therefore, once Section 80(P)(iv) is out of harm’s way, all the assessees in the

present case are entitled to the benefit of deduction contained in Section 80P(2)(a)(i), notwithstanding that they may also be giving loan to their members which are not related to agriculture. Also in case it is found that there are instances of loans being given to non-members, profits attributable to such loans obviously cannot be deducted.”

Therefore, he argues that, even the recent judgment of the Supreme Court notices that a Co-operative society could be engaging in the business of banking for providing credit facilities to its member and also to non-members. The benefit or deduction admissible under Section 80P(2)(a)(i) is restricted to the Co-operative Society engaged in the business of banking or providing credit facilities **to its members**. The profits derived from any other transaction is out of harm's way and will have to be treated as business income of the assessee/Society and not eligible for deduction under Section

80P(2)(a)(i) of the Act.

6.1 On the same analogy, according to him, the Parliament has visualized the possibilities of the Societies investing either the surplus funds or the funds at its disposal with one or more financial institutions. In respect of such investments made by the Co-operative Society, the Parliament desired to limit the admissible deduction only to the interest income received from investments of the assessee with any other Co-operative Society. The argument of the assessee, if is accepted, then, the plain meaning of Section 80P(2)(a)(i) and (d) is expanded by adjudication or interpretation and more deduction heads are added to the existing list. Such a course is, according to him, impermissible. The learned counsel places strong reliance on *M/s. The Totgar's Co-operative Sale Society Ltd* case and argues that the interest from investment made by the

assessee firstly would fall under the category of 'income from other sources'. Once it is treated as income from other sources, the assessee is not entitled to claim deduction under Section 80P(2)(a)(i) of the Act, Then the area available to the assessee is under Section 80P(2)(d) of the Act. To attract Section 80P(2)(d) the assessee must show that the interest or dividend is received only from a Co-operative Society. Adverting to the facts of the case, it is argued that, admittedly, the interest income is received from Co-operative Banks which have licences from the Reserve Bank of India under the Banking Regulation Act. The reasoning of the appellate authority and the Tribunal is completely illegal and the reliance placed by the Tribunal on a few cases decided by them is fallacious and these findings are liable to be set aside. He prays for answering the questions in favour of the Revenue and against the assessee.

7. Mr Jojo, learned counsel appearing for the assessee, who has made submissions in connected matters, contends that the investment made by the assessee is with the State/District Co-operative Banks. The banks even if have licences under the Banking Regulation Act, still they are Co-operative Societies registered under the Kerala Co-operative Societies Act 1969. The investment made by the assessee is part of business activity of the assessee, namely by not keeping the funds idle with the assessee. Therefore, firstly the income has to be treated as income earned by the assessee while engaging in banking business and providing credit facilities to its members. The counsel relies on the judgment of the Supreme Court in *Commissioner of Income Tax v. Nawanshahar Central Co-operative Bank Ltd*³. He relies on the findings recorded by the Tribunal and contends that the questions be answered in favour of the

³[2007] 160 Taxman 48 (SC)

assessee and against the Revenue.

8. We have noted the rival submissions of the counsel appearing for the parties. In the circumstances of this case, the question that falls for consideration is whether, in the facts and circumstances of this case, the interest income earned by the assessee from the deposits made with District/State Co-operative Banks and Treasury, firstly, would fall as business income of the assessee, and, alternatively, whether the interest income is eligible for deduction under Section 80P(2)(d) of the Act. Section 80P reads as follows:

“80P (1) Where, in the case of an assessee being a co-operative society, the gross total income includes any income referred to in sub-section (2), here shall be deducted, in accordance with and subject to the provisions of this Section, the sums specified in sub-section (2), in computing the total income of the assessee.

(2) The sums referred to in sub-section (1) shall be the following, namely :-

- (a) in the case of a co-operative society engaged in-
 - (i) carrying on the business of banking or providing credit facilities to its members, or

.....

- (d) In respect of any income derived by the Co-operative Society from the letting of godowns or warehouses for storage, processing or facilitating the marketing of commodities, the whole of such income:"

8.1 Firstly, we keep in perspective the ratio of Supreme Court in *Mavilayi Service Co-operative Bank Ltd.* on the construction of Section 80P(2)(a)(i) read with sub-section 4 of Section 80P. Now provision in Section 80P(2)(a)(i) is read without reference to an activity viz. Primary Agriculture etc. It is noted that Section 80P provides for deduction in respect of income of Co-operative Societies and Section 80P(2) allows a straight deduction from the computation of total income of the assessee/Co-operative Society to the extent mentioned in

respect of incomes referred therein. Under Section 80P(2)(a)(i) the whole of profits and gains from business of banking or providing credit facilities to the members of the Society is entitled to deduction. Clauses (ii) to (vii) are unnecessary for the purpose of this judgment, hence not included in the narrative. A Division Bench of High Court of Telangana and Andhra Pradesh in *Vavveru Co-operative Rural Bank Ltd v. Chief Commissioner of Income Tax*⁴, has succinctly tabulated the Societies and the benefits to which each one of the category of Societies is entitled to, would be benefiting in our narrative to excerpt the relevant portion as under:

“28. We have carefully considered the above submissions. Before considering the effect of the various decisions cited on both sides, we think it would be ideal to look at the statutory prescription in pure and simple form. As we have indicated earlier, Section 80P(2) is actually divided into six parts, categorised under clauses (a), (b), (c), (d), (e), and (f). Each one of these clauses deal with different types of

4 [2017] 396 ITR 371 (T&AP)

co-operative societies engaged in different types of activities. The benefit made available to each one of them is also different from the other. Therefore, it may be useful to present a tabular form, the six categories of co-operative societies covered by clause (a) to (f) and the nature and extent of the benefit available to each one of them, as follows:

Category of Co-Op., Societies covered by sub-clauses (a) to (f)	Nature and Extent of benefit available
(a) (1) Co-operative society carrying on the business of banking or providing credit facilities to its members; (2) Co-op society engaged in Cottage Industry; (3) Co-operative engaged in marketing of agricultural produce grown by its members. (4) Co-operative society engaged in purchase of agricultural implements, seeds etc., for the purpose of supplying to its members; (5) Co-operative society engaged in processing of agricultural produce of its members without the aid of power (6) Co-operative society engaged in collective disposal of the labour of its members (7) Co-operative society engaged in fishing or allied activities.	The whole of the amount of profits and gains of business attributable to any one or more of such activities.
(b) Primary co-operative society engaged in supplying milk, oil seeds, fruits or vegetables grown by its members to 1) a federal co-operative society, engaged in the same business; 2) the Government or a local authority; 3) the Government company or Corporation engaged in the same	The whole of the amount of profits and gains on such business

business;	
(c) 1) A consumer co-operative society engaged in activities other than those specified in clause (a) or clause (b) either independently of, or in addition to, all or any of the activities so specified.	So much of the profits and gains attributable to such activities not exceeding Rs.100,000/- (one hundred thousand rupees).
2) Co-operative society other than a consumer co-operative society engaged in activities other than those specified in clauses (a) and (b).	So much to these profits and gains attributable to such activities not exceeding Rs.50,000/- (fifty thousand rupees).
(d) Interest or dividends derived by the co-operative society from its investments with any other co-operative society;	The whole of such income.
(e) Any income derived by the co-operative society from the letting of godowns or warehouses for storage, processing or facilitating the marketing of commodities;	The whole of such income.
(f) A co-operative society other than 1) A housing society; 2) An urban consumer society; 3) A society carrying on transport business; 4) A society engaged in the performance of any manufacturing operations with the aid of power, where the gross total income does not exceed Rs.20,000/- (twenty thousand rupees)	The income by way of interest on securities and the income from house property chargeable under Section 22.

29. From the Tabular form presented above, it may be clear that the deductions available under Clauses (a) to (c) are activity-based. The deduction available under Clauses (d) and (e) are investment-based

and the deduction under Clause (f) is institution-based. To put it differently,

(A) to be eligible for deduction under Clause (a), the claim should relate to the profits and gains of business attributable to anyone or more of the activities listed in Clause (a),

(B) to be eligible for deduction under Clause (b), the society should be a primary society engaged in supplying milk, oilseeds, fruits, etc. to named institutions, such as, Government, Local Authority, Federal Co-operative Society, or Government Company,

(C) to be eligible for deduction under Clause (c), the institution must be engaged in activities other than those covered by Clauses (a) and (b) subject to the further condition that such profits and gains should not exceed a particular limit,

(D) to be eligible for deduction under Clause (d), the income should be derived from investments with another Co- operative Society,

(E) to be eligible for deduction under Clause (e), the income should be derived from letting of godowns or warehouses, etc.”

8.2 Clause (a) of sub-section (2) of Section 80P is intended for the benefit of certain types of co-operative societies, but benefits are confined only to the activities listed in sub-clauses (i) to (vii) of clause (a). In other words, clause (a) of sub-section

(2) of Section 80P confers benefit upon Co-operative Societies, but the benefit is restricted only to stated benefits and not to all the activities earning income for Co-operative Societies. Put it differently, an institution claiming the benefit of clause (a) of sub-section (2) of Section 80P should satisfy two requirements: At the first instance, the institution has to establish that it is a Co-operative Society. In the case on hand, such requirement is satisfied by the assessee. At the second instance, the institution has to establish that the interest income earned by it is from the business of banking or by providing credit facilities to its members. In such an eventuality, the entire income earned by the assessee is entitled for deduction under Section 80P(2)(a)(i) of the Act.

8.3 Further, clause (d) deals with interest in respect of any income by way of interest or dividends derived by the Co-

operative Societies from its investments with any other Co-operative Society, the whole of such interest income is eligible for deduction. It is upon plain construction inferable that clause (d) deals with income derived by a Co-operative Society, other than the income covered by clauses (a) to (c) of Section 80P(2). Clause (d) deals with yet another type of income earned by the Co-operative Society which is deducted while computing the total income of the assessee. However, to merit acceptance of deduction under clause (d) of Section 80P(2) of the Act, the clause referring to interest or dividend derived from investments with any other Co-operative Society is satisfied. In the case on hand, the argument of assessee is that the interest earned by the assessee is from Co-operative Banks/Treasury. The Co-operative Banks are registered under the Kerala Co-operative Societies Act. Therefore, the interest earned could be

treated as meriting consideration under clause (d) of Section 80P(2) of the Act. It is not in dispute that the District/State Co-operative Banks have licence from the Reserve Bank of India under the Banking Regulation Act and are registered Co-operative Societies under the Act. Suffice to observe that by being a Society doing banking business such society will stand on par with a Co-operative Society registered under the Kerala Co-operative Societies Act would come within the purview of clause (d) of Section 80P(2).

9. The above discussion takes us to the next point for consideration namely, whether the interest income comes under Section 28 or 56 of the Act. In other words, the fulcrum of assessee's case is that investment in Bank is business of assessee. Mr Christopher Abraham relied on both the circumstances and the ratio finally laid by the Supreme Court in

M/s. The Totgar's Co-operative Sale Society Limited.

M/s. The Totgar's Co-operative Sale Society Limited

9.1 M/s.Totgar's Co-operative Sale Society had surplus funds with it and invested in short term deposits with banks and in government securities. The assessee earned interest on such investments. The assessee provides credit facilities to its members and sells the agricultural produce of its members. The substantial question of law which was considered by the Supreme Court in *M/s. The Totgars Co-operative Sale Society Limited* is whether interest income earned from investments would qualify for deduction as business income under Section 80P(2)(a)(i) of the Act. The Supreme Court, in paragraph 10, has further noted that "*at the outset an important circumstance needs to be highlighted. In the present case, the interest held not eligible for deduction under Section 80P(2)(a)(i) of the Act is not the*

interest received from the members for providing credit facilities to them. What is sought to be taxed under Section 56 of the Act is the interest income arising on the surplus invested in short term deposits and securities, which surplus was not required for business purposes. The assessee markets the produce of its members whose sales proceeds, at times, are retained by it. In this case, we are concerned with the tax treatment of such amount since the fund created by such retention was not required immediately for business purposes. It was invested in specified securities. The question before us (Supreme Court) is whether interest on such deposits/securities which, strictly speaking, accrues to the members account could be taxed as business income under Section 28 of the Act? It was further held that an income which is attributable to any of the specified activities in Section 80P(2) of the Act could be

eligible for deduction".

9.2 While dealing with the definition of the word 'income', it is held: *"the word 'income' has been defined under Section 2(24)(i) of the Act to include profits and gains. This sub-section is an inclusive provision. Parliament has included specifically business profits into the definition of the word 'income'. Therefore, we are required to give a precise meaning to the words 'profits and gains of business' mentioned in Section 80P(2) of the Act. In the present case, as stated above, the assessee/Society regularly invests funds not immediately required for business purposes. Interest on such investments therefore cannot fall within the meaning of the expression 'profits and gains of business'. Such interest income cannot be said also 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. When the assessee/society provides credit facilities to its members, it turns interest income. As stated above, in this case, interest held ineligible for deduction under Section 80P(2)(a)(i) is not in respect of the interest received from members. In this case, we are only concerned with interest which accrues on funds not required immediately by the assessee for its business purposes and which have been invested in specified securities as investment. Further, as stated above, the assessee markets the agricultural produce of its members. It retains the sales proceeds in many cases. It is this retained amount which was payable to its members from whom produce was brought which was invested in short term deposits/securities. 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 Section 80P(2)(a)(iii) of the Act. Therefore, looking to the facts and circumstances of this case, we are of the view that the Assessing Officer was right in taxing the interest income indicated above, under Section 56 of the Act".

10. The thrust of consideration in *M/s. The Totgar's Co-operative Sale Society Limited* is that the investment made by the assessee of surplus funds whether to be treated as forming part of regular business activity of assessee/Society or not. The Supreme Court, no doubt, has considered that the assessee in the reported case was also retaining the sales proceeds of its members and was investing in the bank accounts and was showing the amount payable to the members on the liability side of the balance sheet. In our consideration, *M/s. The Totgar's*

Co-operative Sale Society Limited deals with what constitutes business income of the Society and what does not constitute business income of the Society. Interest earned from investments is not straight profits or gains from business, but a return by way of interest from investments in Bank etc. The emphasis in Section 80P(2)(a)(i) is that in a case of a Co-operative Society engaged in carrying on the business of banking or providing credit facilities to its members for deduction of such income from computation. *Mavilayi Service Co-operative Bank Ltd.* has differentiated between interest earned from members of the Society and non-members and held that the interest income from latter portion i.e., non-members is not eligible for deduction. It is difficult to treat the interest earned from a Treasury as better positioned than interest received from non-members. After appreciating the circumstances of the

case on hand and the view taken by the Supreme Court in *M/s. The Totgar's Co-operative Sale Society Limited*, together with *Mavilayi Service Co-operative Bank Ltd.*, we are of the view that the interest income earned by the assessee, in the case on hand, does not straight away fall under Section 80P(2)(a)(i) of the Act commending for deduction.

11. That being so, the next question is such interest income falls under Section 56 and even if it falls under Section 56 of the Act, whether the assessee is entitled to any deduction or not.

11.1 Mr Christopher Abraham argues that the Parliament in its wisdom is aware of the activities being undertaken by all the Societies to whom relief is provided by way of deduction in Section 80P of the Act. It is with this background the Parliament has provided for the deductions in respect of a few

other incomes earned by the assessee/Society. Such deductions are specifically attributable to the source from which such interest is received. Expanding the institutions or categories of benefits is contrary to the intent of the Legislature. According to him clause (d) of Section 80P(2) is clear in its application, viz. that interest/dividend received from Co-operative Societies alone is entitled for deduction. Once interest is received from a Bank or Treasury, such interest income is out of the purview of the eligible deduction in the computation of assessee's income.

11.2 Mr Jojo appearing for the respondent, in reply to the said argument, relies on the judgment of the Supreme Court in *Nawanshahar Central Co-operative Bank Ltd* case and argues that irrespective of the source from which the income is earned, according to the principle laid down in *Nawanshahar Central Co-operative Bank Ltd* case, the assessee is entitled for deduction

under Section 80P(2)(a)(i).

12. We have gone through the order of the Supreme Court in *Nawanshahar Central Co-operative Bank Ltd* case, for immediate reference it is excerpted:

“This Court has consistently held that investments made by a banking concern are part of the business of banking. The income arising from such investments would, therefore, be attributable to the business of bank falling under the head ‘profits and gains of business’ and thus deductible under Section 80P(2)(a)(i) of the Income Tax Act, 1961. This has been so held in *Bihar State Co-operative Bank Ltd v. CIT* [1960] 39 ITR 114 (SC); *CIT v. Karnataka State Co-operative Apex Bank* [2001] ITR 194 (SC) and *CIT v. Ramanandapuram District Co-operative Central Bank Ltd* [2002] 255 ITR 423 (SC).

The principle in these cases would also cover a situation where a Co-operative bank carrying on the business of banking is statutorily required to place a part of its funds in approved securities. The appeals are accordingly dismissed without costs.”

12.1 The decisions relied on by the Supreme Court refer to Co-operative Banks but not Co-operative Societies. The issue on

hand is about the interest income earned by way of investments made with institutions other than Co-operative Societies. We are of the view that by referring to the order in *Nawanshahar Central Co-operative Bank Ltd* case it cannot be held that the income has to be brought under Section 80P(2)(a)(i) of the Act.

12.2 Section 80P deals with Co-operative Societies' computation of income. As already noted, it has four sections and several sub-sections and clauses. The Parliament has considered the various situations in which the exigible income and the deductible income of the assessee is considered while computing the income of the assessee. For getting deduction, in our considered view, the assessee must also establish that the interest income earned by the assessee is from a Co-operative Society. As a matter of fact, in the case on hand, there is no dispute that it is not from a Co-operative Society registered

under Kerala Co-operative Societies Act. The interest income earned from District Co-operative Bank/State Co-operative Bank, in the facts and circumstances of the case, do come within Section 80P(2)(d). Therefore, the income constitutes income from other sources and the only eligible deduction is covered by Section 80P(2)(d) viz. Interest or dividend derived by the assessee from its investments with any other Co-operative Society. The source of interest income is from Bank and Treasury, interest income received from Treasury be included in the computation of total income of the assessee. In other words, interest earned from Treasury is inadmissible for deduction and interest income from Co-operative Societies registered under the Kerala Co-operative Societies Act are eligible for deduction. The contra consideration of Commissioner of Income Tax (Appeals) and the Tribunal is

incorrect and liable to be modified as stated above. Hence, it is held that the interest income earned by the assessee does not come within the ambit of Section 80P(2)(a)(i) and permissible deduction of interest income is limited to Co-operative Societies/Banks registered under Kerala Co-operative Societies Act under clause (d) of the Act and effect order on the above lines is made by the Assessing Officer. The questions are accordingly answered.

ITA No.323/2019 [Assessment Year 2011-12]

13. The Principal Commissioner of Income Tax - Thiruvananthapuram/Revenue is the appellant. M/s. Peroorkada Service Co-operative Bank Limited, Thiruvananthapuram/assessee is the respondent. The appeal is at the instance of the Revenue under Section 260A of the Act against the order dated 17.05.2019 of the Income Tax Appellate

Tribunal (for short 'Tribunal'), Cochin Bench, Cochin in ITA No. 67/Coch/2019. The subject matter of the appeal relates to the issues arising from the return filed by the assessee for the Assessment Year 2011-12.

13.1 The details of the orders etc leading up to the filing of the appeal are tabulated hereunder:

Assessment Year	2011-12
Assessing Officer	Order No.AAAAP3974B/W-2(1)/TVM/2018-19 dated 12.12.2018
Commissioner of Income Tax (Appeals)	ITA No.296/EF/TVM/CIT(A)/TVM/2017-18 dated 27.11.2018
Income Tax Appellate Tribunal	ITA No.67/Coch/2019 dated 17.05.2019

Income under the head Other Sources:

On verification of financial statements, it is seen that assessee has surplus funds, which the assessee invested as deposits with

different institutions like Co-operative Banks, Treasuries, etc. and is in receipt of interest income, which is credited in Profit and Loss Account, in order to arrive at net profit. During the course of assessment proceedings, assessee has furnished break up of interest received during the period, on investments at various institutions, totaling to Rs.9,85,38,230/-, details of which are as under:

Name of Institution	Amount
Trivandrum District Co-operative Bank	9,28,68,899
Kerala State Co-operative Bank	6,21,881
District Treasury	5,43,014
Kerala State Consumer Federation Co-operative Society	15,97,654
Consumerfed	20,12,798
Kerala State Rubber Marketing Federation Co-operative Society	5,56,484
Neyyattinkara School Teachers Co-operative Society	2,32,500
Trivandrum Taluk Co-operative Employees Society	1,05,000
Total	9,85,38,230

This interest income is liable to be taxed under the head "Income from other sources" and during the course of assessment proceedings, it was proposed to treat Rs.9,85,38,230/- as income under the head 'Other Sources'. The dispute relates to the extent to which the deduction claimed by the assessee is legal. The substantial question raised reads as follows:

1. Whether on the facts and in the circumstances of the case, the order of the ITAT is correct in not duly considering that the assessee had invested surplus funds like an ordinary investor and it has to be taxed as Income from Other Sources?

ITA No.5/2020 [Assessment Year 2013-14]

14. The Principal Commissioner of Income Tax - Thiruvananthapuram/Revenue is the appellant. M/s. Peroorkada Service Co-operative Bank Limited,

Thiruvananthapuram/assessee is the respondent. The appeal is at the instance of the Revenue under Section 260A of the Act against the order dated 26.06.2019 of the Income Tax Appellate Tribunal (for short 'Tribunal'), Cochin Bench, Cochin in ITA No. 47/Coch/2019. The subject matter of the appeal relates to the issues arising from the return filed by the assessee for the Assessment Year 2013-14.

14.1 The details of the orders etc leading up to the filing of the appeal are tabulated hereunder:

Assessment Year	2013-14
Assessing Officer	Order No.AAAAP3974B/W-2(1)/TVM/2017-18 dated 19.12.2017
Commissioner of Income Tax (Appeals)	ITA No.293/EF/TVM/CIT(A)/TVM/2017-18 dated 07.11.2018
Income Tax Appellate Tribunal	ITA No.47/Coch/2019 dated 16.06.2019

Income under the head 'Other Sources':

(i) Interest income on deposits:

(a) Vide Order u/s.263, Principal Commissioner of Income Tax has directed to ensure that interest income on deposits is accounted for in accordance with provisions of Section 145. During the course of assessment proceedings, assessee has furnished break up of interest received during the period, on investments at various institutions, totaling to Rs.14,18,62,743/-, details of which are as under:

Name of Institution	Amount
District Treasury	36,00,000
Consumer Federation	53,23,353
Rubber Marketing Federation	9,67,350
Neyyattinkara School Teachers Co-operative Society	2,70,000
Trivandrum Taluk Co-operative Employees Society	1,05,000
TDCB	13,15,97,040
Total	14,18,62,743

14.2 This interest income is liable to be taxed under the head "Income from other sources" and during the course of assessment proceedings, it was proposed to treat Rs.14,18,62,743/- as income under the head 'Income from Other Sources'. The dispute relates to the extent to which the deduction claimed by the assessee is legal. The substantial question raised reads as follows:

1. Whether on the facts and in the circumstances of the case, is the order of the ITAT correct, in not duly considering that the assessee had invested surplus funds like an ordinary investor and the interest on such deposits has to be taxed as “Income from Other Sources”?

15. In ITA NO.142/2019 it has been held that the interest income earned by the Society comes with the category of income from other sources and Section 80P(2)(d) deals with the eligible deduction in this behalf. It has been held in the

connected cases that the assessee is entitled to deduction of interest income earned from Co-operative Banks/Societies/Federation registered under the Co-operative Societies Act and the income earned from Treasury is not included in Section 80P(2)(d) and is not entitled for deduction from computation of income. The Assessing Officer passes Effect Order on the lines indicated above.

Appeals are allowed as indicated above. No order as to costs.

Sd/-

S.V.BHATTI

JUDGE

Sd/-

BASANT BALAJI

JUDGE

APPENDIX OF ITA 142/2019

PETITIONER ANNEXURE

ANNEXURE A	TRUE COPY OF THE ORDER U/S 143(3) OF THE INCOME TAX ACT, 1961 OF THE ASSESSING OFFICER DATED 28.12.2016.
ANNEXURE B	TRUE COPY OF THE ORDER OF THE COMMISSIONER OF INCOME TAX(APPEALS), TRIVANDRUM DATED 28.02.2018.
ANNEXURE C	TRUE COPY OF THE ORDER OF THE ITAT IN ITA NO.196/COCH/2018, FOR THE ASST. YEAR 2014-15 DATED 17.09.2018.

APPENDIX OF ITA 5/2020

PETITIONER ANNEXURE

ANNEXURE A	TRUE COPY OF THE ORDER U/S 143(3) RWS 263 OF THE INCOME TAX ACT, 1961 FOR AY 2013-14 DATED 19/12/2017
ANNEXURE B	TRUE COPY OF THE ORDER OF THE COMMISSIONER OF INCOME TAX(APPEALS), THIRUVANANTHAPURAM DATED 07.11.2018
ANNEXURE C	TRUE COPY OF THE ORDER OF THE ITAT, COCHIN BENCH IN ITA NO.47/COCH/2019, FOR THE THE AY 2013-14 DATED 26.06.2019

APPENDIX OF ITA 323/2019

PETITIONER ANNEXURE

ANNEXURE A	TRUE COPY OF THE ORDER U/S 143(3) R.W.S 147 OF THE INCOME TAX ACT 1961 OF THE ASSESSING OFFICER DATED 11.12.2017
ANNEXURE A1	TRUE COPY OF THE ORDER U/S 154 OF THE INCOME TAX ACT, 1961 OF THE ASSESSING OFFICER DATED 12.12.2018
ANNEXURE B	TRUE COPY OF THE ORDER OF THE COMMISSIONER OF INCOME TAX (APPEALS), TRIVANDRUM DATED 27.11.2018
ANNEXURE C	TRUE COPY OF THE ORDER OF THE ITAT IN ITA NO 67/COCH/2019, FOR THE ASST YEAR 20110-12 DATED 17.5.2019