



**IN THE HIGH COURT OF KARNATAKA
DHARWAD BENCH**

DATED THIS THE 16th DAY OF JUNE 2017

PRESENT

THE HON'BLE DR. JUSTICE VINEET KOTHARI

AND

THE HON'BLE DR. JUSTICE H. B. PRABHAKARA SASTRY

INCOME TAX APPEAL No.100066 of 2016

Connected with

**INCOME TAX APPEAL Nos.100064, 100065, 100067,
100068 & 100051-100054 of 2016**

IN ITA No.100066/2016:

BETWEEN:

1. THE PR. COMMISSIONER OF
INCOME TAX,
C R BUILDING, NAVANAGAR,
HUBBALLI.
2. INCOME TAX OFFICER,
WARD-1, SIRSI,
AACAT 0251 D.

...APPELLANTS

(By Sri. Y. V. RAVIRAJ, ADV.)

AND:

Date of Judgment: 16.06.2017
ITA No.100066/2016 & Connected cases
The Pr. Commissioner of Income Tax,
C R Building, Navanagar, Hubballi. & Anr Vs.
The Totagars Co-Operative Sale Society, Sirsi.

THE TOTAGARS CO-OPERATIVE
SALE SOCIETY,
TSS ROAD, NEW MARKET YARD,
SIRSI.

... RESPONDENT

(By Sri. A. SHANKAR, M. LAVA &
S. S. HEGDE, ADVS.)

THIS APPEAL IS FILED UNDER SECTION 260A OF
THE INCOME-TAX ACT, 1961 PRAYING TO:

- i. FORMULATE THE SUBSTANTIAL
QUESTIONS OF LAW STATED ABOVE.
- ii ALLOW THE APPEAL AND SET ASIDE
THE ORDERS PASSED BY THE
INCOME TAX APPELLATE TRIBUNAL,
BANGALORE BENCH 'C' IN ITA
NO.706/BANG/2015 DTD: 22.01.2016
AND CONFIRM THE ORDER PASSED
BY THE INCOME TAX OFFICER,
WARD-1 SIRSI, IN THE INTEREST OF
JUSTICE AND EQUITY.

IN ITA No.100064/2016:

BETWEEN:

1. THE PR. COMMISSIONER OF INCOME TAX,
C R BUILDING, NAVANAGAR,
HUBBALLI.

Date of Judgment: 16.06.2017
ITA No.100066/2016 & Connected cases
The Pr. Commissioner of Income Tax,
C R Building, Navanagar, Hubballi. & Anr Vs.
The Totagars Co-Operative Sale Society, Sirsi.

2. INCOME TAX OFFICER,
WARD-1, SIRSI,
AACAT 0251 D.

... APPELLANTS

(By Sri. Y. V. RAVIRAJ, ADV.)

AND:

THE TOTAGARS CO-OPERATIVE
SALE SOCIETY,
TSS ROAD, NEW MARKET YARD,
SIRSI.

... RESPONDENT

(By Sri. A. SHANKAR, M. LAVA &
S. S. HEGDE, ADVS.)

THIS ITA IS FILED U/SEC.260A OF THE INCOME
TAX ACT, 1961, PRAYING TO:

- i. FORMULATE THE SUBSTANTIAL
QUESTION OF LAW STATED ABOVE.
- ii. ALLOW THE APPEAL AND SET ASIDE
THE ORDERS PASSED BY THE
INCOME TAX APPELLATE TRIBUNAL,
BANGALORE BENCH "C" IN ITA
NO.704/BANG/2015, DATED 22.01.2016
AND CONFIRM THE ORDER PASSED
BY THE INCOME TAX OFFICER,
WARD-I, SIRSI.

Date of Judgment: **16.06.2017**
ITA No.100066/2016 & Connected cases
The Pr. Commissioner of Income Tax,
C R Building, Navanagar, Hubballi. & Anr. **Vs.**
The Totagars Co-Operative Sale Society, Sirsi.

IN ITA No.100065/2016:

BETWEEN:

1. THE PR. COMMISSIONER OF INCOME TAX,
C R BUILDING, NAVANAGAR,
HUBBALLI.
2. INCOME TAX OFFICER,
WARD-1, SIRSI,
AACAT 0251 D.

... APPELLANTS

(By Sri. Y. V. RAVIRAJ ADV.)

AND:

THE TOTAGARS CO-OPERATIVE
SALE SOCIETY,
TSS ROAD, NEW MARKET YARD,
SIRSI.

... RESPONDENT

(By Sri. A. SHANKAR, M. LAVA &
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THIS ITA IS FILED U/SEC.260A OF THE INCOME-
TAX ACT, 1961, PRAYING TO:

- i. FORMULATE THE SUBSTANTIAL
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- ii. ALLOW THE APPEAL AND SET ASIDE
THE ORDERS PASSED BY THE
INCOME-TAX APPELLATE TRIBUNAL,
BENGALURU BENCH "C" IN ITA

Date of Judgment: 16.06.2017
ITA No.100066/2016 & Connected cases
The Pr. Commissioner of Income Tax,
C R Building, Navanagar, Hubballi. & Anr Vs.
The Totagars Co-Operative Sale Society, Sirsi.

NO.705/BANG/2015, DATED:22.01.2016
AND CONFIRM THE ORDER PASSED
BY THE INCOME TAX OFFICER,
WARD-1 SIRSI.

IN ITA No.100067/2016:

BETWEEN:

1. THE PR. COMMISSIONER OF INCOME TAX,
C R BUILDING, NAVANAGAR,
HUBBALLI.
2. INCOME TAX OFFICER,
WARD-1, SIRSI,
AACAT 0251 D.

... APPELLANTS

(By Sri. Y. V. RAVIRAJ ADV.)

AND:

THE TOTAGARS CO-OPERATIVE
SALE SOCIETY,
TSS ROAD, NEW MARKET YARD,
SIRSI.

... RESPONDENT

(By Sri. A. SHANKAR, M. LAVA &
S. S. HEGDE, ADVS.)

THIS ITA IS FILED U/SEC.260A OF THE INCOME-
TAX ACT, 1961, PRAYING TO:

- i. FORMULATE THE SUBSTANTIAL
QUESTION OF LAW AS STATED
ABOVE.

Date of Judgment: 16.06.2017
ITA No.100066/2016 & Connected cases
The Pr. Commissioner of Income Tax,
C R Building, Navanagar, Hubballi. & Anr Vs.
The Totagars Co-Operative Sale Society, Sirsi.

- ii. ALLOW THE APPEAL AND SET ASIDE THE ORDERS PASSED BY THE INCOME-TAX APPELLATE TRIBUNAL, BENGALURU BENCH 'C' IN ITA NO.707/Bang/2015, DATED 22.01.2016 AND CONFIRM THE ORDER PASSED BY THE ONCOME TAX OFFICER, WARD-1, SIRSI.

IN ITA No.100068/2016:

BETWEEN:

1. THE PR. COMMISSIONER OF INCOME TAX,
C R BUILDING, NAVANAGAR,
HUBBALLI.
2. INCOME TAX OFFICER,
WARD-1, SIRSI,
AACAT 0251 D.

... APPELLANTS

(By Sri. Y. V. RAVIRAJ, ADV.)

AND:

THE TOTAGARS CO-OPERATIVE
SALE SOCIETY,
TSS ROAD, NEW MARKET YARD,
SIRSI.

... RESPONDENT

(By Sri. A. SHANKAR, M. LAVA &
S. S. HEGDE, ADVS.)

Date of Judgment: 16.06.2017
ITA No.100066/2016 & Connected cases
The Pr. Commissioner of Income Tax,
C R Building, Navanagar, Hubballi. & Anr Vs.
The Totagars Co-Operative Sale Society, Sirsi.

THIS ITA IS FILED U/SEC.260A OF THE INCOME-TAX ACT, 1961, PRAYING TO:

- i. FORMULATE THE SUBSTANTIAL QUESTION OF LAW AS STATED ABOVE.
- ii. ALLOW THE APPEAL AND SET ASIDE THE ORDERS PASSED BY THE INCOME-TAX APPELLATE TRIBUNAL, BENGALURU BENCH 'C' IN ITA NO.708/BANG/2015, DATED 22.01.2016 AND CONFIRM THE ORDER PASSED BY THE INCOME TAX OFFICER, WARD-1, SIRSI.

IN ITA Nos.100051-100054/2016:

BETWEEN:

M/S THE TOTGARS
CO-OPERATIVE SALE SOCIETY,
REP. BY ITS GENERAL MANAGER
SRI.RAVEESH ACHUT HEGDE,
TSS BUILDING, NEW MARKET YARD,
SIRSI 581402.

... APPELLANT

(By Sri. A SHANKAR, M. LAVA
AND S. S. HEGDE ADVS.)

AND:

INCOME TAX OFFICER,
WARD-1, KAMATH BUILDING,
TSS ROAD, SIRSI - 581402.

Date of Judgment: **16.06.2017**
ITA No.100066/2016 & Connected cases
The Pr. Commissioner of Income Tax,
C R Building, Navanagar, Hubballi. & Anr. Vs.
The Totagars Co-Operative Sale Society, Sirsi.

... RESPONDENT

(BY SRI. Y.V. RAVIRAJ ADV.)

THESE ITAs ARE FILED U/SEC.260A OF THE
INCOME-TAX ACT, 1961, PRAYING TO:

- i) FORMULATE THE SUBSTANTIAL
QUESTIONS OF LAW STATED ABOVE
AND ANSWER THE SAME IN FAVOUR
OF THE APPELLANT.
- ii) ALLOW THE APPEAL AND SET ASIDE
THE FINDINGS, TO THE EXTENT
AGAINST THE APPELLANT IN THE
ORDER PASSED BY THE INCOME
TAX APPELLATE TRIBUNAL, 'C'
BENCH, BENGALURU IN CORSS
OBJECTION Nos.179 TO 182 / BANG /
2014 DATED:22.01.2016 RELATING TO
ASSESSMENT YEARS 2007-2008 TO
2010-2011 FILED IN ITA Nos.704 TO
707/BANG/2015, TO MEET THE ENDS
OF JUSTICE.

JUDGMENT RESERVED ON : 12.06.2017.

JUDGMENT PRONOUNCED ON : 16.06.2017.

THESE APPEALS COMING ON FOR **FINAL**
HEARING ON 12TH JUNE 2017 AND THE SAME HAVING
BEEN HEARD AND RESERVED FOR PRONOUNCEMENT
OF JUDGMENT, THIS DAY, **DR. VINEET KOTHARI, J.,**
PRONOUNCED THE FOLLOWING:

J U D G M E N T

Mr.Y.V.Raviraj, Adv. for Revenue.
Mr. A Shankar, Mr.M. Lava &
Mr.S. S. Hegde Advs. for assessee.

1. The aforesaid five Income Tax Appeals are filed by the Revenue while another set of five appeals have been filed by the assessee and all the ten appeals are being disposed of by this common judgment.

2. The substantial questions of law involved in the present appeals filed by the Revenue are as follows:

- (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 vs. 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? ”

3. The *ratio decidendi* of the Supreme Court decision in the case of assessee, Totagar's Co-operative Sale Society Limited itself, was that such interest income earned by the assessee was not the income from the business as a Co-operative Society, but was income from other sources taxable under Section 56 of the Act, whereas Section 80P(2)(a) of the Act included and permitted such 100% deduction if such income is earned by the co-operative society by carrying on the business of banking or providing credit facilities to its members or a cottage industry or the marketing of the agricultural produces grown by its members, etc.

4. The relevant portion of the judgment of the Hon'ble Supreme Court is quoted below for ready reference:

“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.** Assessee(s) markets the produce of its members whose sale proceeds at times were 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, 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? **In our view, such interest income would come in the category of "Income from other sources", hence, such interest income would be taxable under Section 56 of the Act, as rightly held by the Assessing Officer.***

In this connection, we may analyze Section 80P of the Act. This section comes in Chapter VI-A, which, in turn, deals with "Deductions in respect of certain Incomes". The Heading of Section 80P indicates that the said section deals with deductions in respect of income of cooperative Societies. Section 80P(1), inter alia, states that where the gross total income of a Co-operative Society includes any income from one or more specified activities, then such income shall be deducted from the gross total income in computing the total taxable income of the assessee-Society. An income, which is attributable to any of the specified activities in Section 80P(2) of the Act, would be eligible for deduction. The word "income" has been defined under Section 2(24)(i) of the Act to include profits and gains. This subsection is an inclusive provision. The 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, 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 the agricultural produce of its members. When the assessee-Society provides credit facilities to its members, it earns interest income. As stated above, in this case, interest held as ineligible for deduction under Section 80P(2)(a)(i) is not in respect of interest received from members. In this case, we are only concerned with interest which accrues on funds not required immediately by the assessee(s) for its business purposes and which have been only invested in specified securities as "investment".

Further, as stated above, assessee(s) markets the agricultural produce of its members. It retains the sale proceeds in many cases. It is this

"retained amount" which was payable to its members, from whom produce was bought, 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 in 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.

An alternative submission was advanced by the assessee(s) stating that, if interest income in question is held to be covered by Section 56 of the Act, even then, the assessee-Society is entitled to the benefit of Section 80P(2)(a)(i) of the Act in respect of such interest income. We find no merit in this submission. Section 80P(2)(a)(i) of the Act cannot be placed at par with Explanation (baa) to Section 80HHC, Section 80HHD(3) and Section

80HHE(5) of the Act. Each of the said sections has to be interpreted in the context of its subject-matter. For example, Section 80HHC of the Act, at the relevant time, dealt with deduction in respect of profits retained for export business. The scope of Section 80HHC is, therefore, different from the scope of Section 80P of the Act, which deals with deduction in respect of income of cooperative Societies. Even Explanation (baa) to Section 80HHC was added to restrict the deduction in respect of profits retained for export business. The words used in Explanation (baa) to Section 80HHC, therefore, cannot be compared with the words used in Section 80P of the Act which grants deduction in respect of "the whole of the amount of profits and gains of business". A number of judgements were cited on behalf of the assessee(s) in support of its contention that the source was irrelevant while construing the provisions of Section 80P of the Act. We find no merit because all the judgements cited were cases relating to Cooperative Banks and assessee-Society is not carrying on Banking business.

We are confining this judgement to the facts of the present case. To say that the source of income is not relevant for deciding the applicability of Section 80P of the Act would not be correct because we need to give weightage to the words "the whole of the amount of profits and gains of business" attributable to one of the activities specified in Section 80P(2)(a) of the Act. An important point needs to be mentioned. The words "the whole of the amount of profits and gains of business" emphasise that the income in respect of which deduction is sought must constitute the operational income and not the other income which accrues to the Society. In this particular case, the evidence shows that the assessee- Society earns interest on funds which are not required for business purposes at the given point of time. Therefore, on the facts and circumstances of this case, in our view, such interest income falls in the category of "Other Income" which has been rightly taxed by the Department under Section 56 of the Act."

5. Before adverting to the rival contentions raised by both the sides before us, we consider it necessary to reproduce the provisions of Section 80P of the Act with its heading from its Chapter VIA of the Act of 1961. Chapter VIA provides for deductions in respect of certain income from the gross total income for computing net taxable income of the Co-operative Societies .

6. Section 80P of the Act reads as under:

“ 80P. Deduction in respect of income of co-operative societies.

(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), there 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

(ii) a cottage industry, or

(iii) the marketing of the agricultural produce grown by its members, or

(iv) the purchase of agricultural implements, seeds, livestock or other articles intended for agriculture for the purpose of supplying them to its members, or

(v) the processing, without the aid of power, of the agricultural produce of its members, or

(vi) the collective disposal of the labour of its members, or

(vii) fishing or allied activities, that is to say, the catching, curing, processing, preserving, storing or marketing of fish or the purchase of materials and equipment in connection therewith for the purpose of supplying them to its members,

the whole of the amount of profits and gains of business attributable to any one or more of such activities:

Provided that in the case of a co-operative society falling under sub-clause (vi), or sub-clause (vii), the rules and bye-laws of the society restrict the voting rights to the following classes of its members, namely:-

- (1) the individuals who contribute their labour or, as the case may be, carry on the fishing or allied activities;*
- (2) the co-operative credit societies which provide financial assistance to the society;*
- (3) the State Government;*

(b) in the case of a co-operative society, being a primary society engaged in supplying milk, oil seeds, fruits or vegetables raised or grown by its members to-

- (i) a federal co-operative society, being a society engaged in the business of supplying milk, oilseeds, fruits or vegetables, as the case may be; or*
- (ii) the Government or a local authority; or*
- (iii) a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956), or a corporation established by or under a Central, State or Provincial Act (being a company or corporation engaged in supplying milk, oilseeds, fruits or vegetables, as the case may be, to the public), the whole of the amount of profits and gains of such business;*

(c) in the case of a 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 its profits and gains attributable to such activities as does not exceed,-

- (i) where such co-operative society is a consumers' co-operative society, one hundred thousand rupees; and*
- (ii) in any other case, twenty fifty thousand rupees.*

Explanation.- In this clause, "consumers' co-operative society" means a society for the benefit of the consumers;

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

(e) 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;

(f) in the case of a co-operative society, not being a housing society or an urban consumers' society or a society carrying on transport business or a society engaged in the performance of any manufacturing operations with the aid of power, where the gross total income does not exceed twenty thousand rupees, the amount of any income by way of interest on securities or any income from house property chargeable under section 22.

Explanation.- For the purposes of this section an "urban consumers' co- operative society" means a society for the benefit of the consumers within the limits of a municipal corporation, municipality, municipal committee, notified area committee, town area or cantonment.

(3) In a case where the assessee is entitled also to the deduction under section 80HH or section 80HHA or section 80HHB or section 80HHC or section 80HHD or section 80-I or section 80IA or section 80J, the deduction under subsection (1) of this section, in relation to the sums specified in clause (a) or clause (b) or clause (c) of subsection (2), shall be allowed with reference to the income, if any, as referred to in those clause included in the gross total income as reduced by the deductions under section 80HH, section 80HHA, section 80HHB, section 80HHC, section 80HHD, section 80-I, section 80-IA, section 80J and section 80JJ.

(4) The provisions of this section shall not apply in relation to any co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank.

Explanation.—For the purposes of this subsection,—

(a) “co-operative bank” and “primary agricultural credit society” shall have the meanings respectively assigned to them in

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*Part V of the Banking Regulation Act, 1949
(10 of 1949);*

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

CONTENTIONS OF THE APPELLANTS / REVENUE:

7. Mr.Y.V.Raviraj, learned counsel appearing for the Revenue has made the following submissions:-

- (i) That the controversy stands covered by the Supreme Court’s decision in the case of assessee Co-operative Society itself in ‘*Totgar’s Co-operative Sale Society Limited vs. Income Tax Officer, reported in (2010) 322 ITR 283 SC : (2010) 3 SCC 223*, and the Income Tax Tribunal as well as CIT (Appeals), have erred in allowing the deductions in respect of the whole of the interest income earned by the respondent- assessee for Assessment Years 2007-08 to 2011-12 under consideration merely because such interest was earned from the

deposits and investments made by the respondent-assessee with another Co-operative Bank, namely, M/s.Kanara District Central Co-operative Bank. He submitted that whether the deposits and investments of surplus funds of the respondent-assessee not immediately required for business purposes, is made with the Scheduled Banks or Nationalised Banks or whether Co-operative Banks does not make a difference, as far as the character of the income earned by the respondent-assessee is concerned and if it does not partake the character of its business operational income from its business as a co-operative Society, the same would continue to be fully taxable and will not be eligible for 100% deduction under Section 80P(2) of the Act, as held by the Hon'ble Supreme Court.

(ii) The learned counsel for the Revenue further urged that shifting of its claim for 100% deduction from Section 80P(2)(a) of the Act to 80P(2)(d) of the Act does not make a difference because sub-section (4) inserted in Section 80P(2)(d)

of the Act with effect from 01st April 2007 by Finance Act, 2006 excludes Co-operative Banks other than Primary Agricultural Credit Society or a Primary Co-Operative Agricultural and Rural Development Bank as defined under the Banking Regulation Act, 1949 from the applicability of Section 80P of the Act and therefore, even the interest income earned by the respondent-assessee from the deposits from investments made by it with the Co-operative Bank, namely M/s.Kanara District Central Co-operative Bank Limited would not be exempted or 100% deductible under clause (d) of the Section 80P(2) of the Act, which stipulates that the income by way of interest or dividends derived by a Co-operative Society from its investments with any other co-operative society, would be so deductible.

The learned counsel for the Revenue submitted that the Co-operative Bank even though might be registered as a Co-operative Society is not a Co-operative Society eligible for

receiving the benefit of exemption or 100% deduction under Section 80P of the Act, as its Banking business is governed by the provisions of a special law like Banking Regulation Act, 1949.

(iii) The learned counsel for the Revenue further urged that the amendment of Section 194A(3)(v) of the Act by Finance Act, 2015 with effect from 01st June 2015 excluding the Co-operative Banks from the genus category of Co-operative Societies and making it liable to deduct income tax at source on the interest paid by it to other persons, further indicates that the legislative intent is to exclude Co-operative Banks from the beneficiary category of co-operative societies entitled to exemption or 100% deduction of its income under Section 80P of the Act.

(iv) The learned counsel for the Revenue further submitted that the income of a Co-operative Society entitled for 100% deduction under Section 80P of the Act, as referred to

Clauses (a) to (f) of Sub-section (2) of Section 80P of the Act, are its business income earned from the co-operative activities like providing credit facilities to its members, running a cottage industry, marketing of agricultural produces, agricultural implements, seeds, livestock, collective disposal of labour, fishing or allied activities or supply of milk and oil seeds, fruits, vegetables, etc. and the income derived from renting godowns or warehouses, etc. He, therefore, submitted that in order to promote the co-operative movement, these deductions from gross total income were provided in Section 80P of the Act to promote such co-operative movement, whereas the interest income earned on investments or deposits of surplus funds was never intended to be given the benefit of exemption or 100% deduction and therefore, not only the decision rendered by the Hon'ble Supreme Court in the case of respondent assessee itself covers the field even for these assessment years from 2007-2008 to 2011-2012, but subsequently, the legislative amendments also makes the legislative intent explicit that the

income earned by the Co-operative Bank or even through or from the Co-operative Banks are not entitled for such exemption or 100% deduction.

CONTENTIONS OF THE ASSESSEE:

8. Mr.A.Shankar, learned counsel appearing for the respondent-assessee made the following submissions at Bar:

(I) That the Supreme Court's decision in the case of the assessee itself for the preceding years is not applicable to the present Assessment Years in question, because, the assessee Co-operative Society shifted its deposits and investments in scheduled banks, which was the fact available before the Hon'ble Supreme Court, to a Co-operative Bank, *Kanara District Central Co-operative Bank Limited*, which, undoubtedly, is also a co-operative society and therefore, the deduction under Section 80P(2)(d) of the Act is clearly available to the assessee Co-operative Society under Section 80P(2)(d) of the Act, which was not the claim of deduction

made before the Hon'ble Supreme Court as the deposits were not with the Co-operative Society / Co-operative Bank and interest income was not received from another Co-operative Society but Scheduled Banks.

(II) The learned counsel for the assessee also urged that the Co-operative Society is a genus term and the co-operative Bank is also a specie of Co-operative Society and since, clause 80P(2)(d) of the Act permits such 100% deduction in respect of the income by way of interest or dividends derived by the Co-operative Society (Assessee) from its investments with any other Co-operative Society (including Co-operative Bank) and the whole of such interest income is eligible for 100% deduction.

(III) It was also urged that the provisions of Section 80P(4) of the Act inserted by the Finance Act 2006 with effect from 01st April 2007, excluding the applicability of Section 80P of the Act to any Co-operative Bank other than a Primary

Agricultural Credit Society or a Rural Development Bank, is not applicable in the present case because the Assessee Co-operative Society is not a Co-operative Bank, but is only a Co-operative Society registered under the provisions of Co-operative Society Act as defined under Section 2(19) of the Act.

The learned counsel for the assessee also urged that Section 2(19) of the Act defines a “Co-operative Society” to mean a Co-operative Society registered under the Co-operative Societies Act, 1912, or any other law for the time being in force in any State for the registration of the Co-operative Societies. He submitted that there is no dispute or doubt that the respondent Society is duly registered Co-operative Society and therefore, exclusion of Co-operative Banks under subsection (4) of Section 80P of the Act does not hit the respondent Assessee.

(IV) It was also urged that one of the appeals against this Respondent assessee, namely *ITA No.100069 of 2016* for Assessment Year 2012-2013 in the case of *CIT Vs. Totagar's*

Co-operative Sale Limited, has already been dismissed by a co-ordinate Bench of this Court on 05th January 2017 holding that the aforesaid Supreme Court's decision relied upon by the Revenue is not applicable to the Assessment Year 2012-2013 in question, because the said decision dealt with the interpretation of the deduction under Section 80P(2)(a)(i) of the Act and not under Section 80P(2)(d) of the Act and the Court has held that the Co-operative Bank is a specie of the genus term Co-operative Society and therefore, the present appeals filed by the Revenue also deserves to be similarly dismissed.

(V) That for the five appeals filed by the assessee on the limited ground of rejection of its cross-objections by the Income Tax Appellate Tribunal on the issue of justifiability of the reassessment under Section 147 / 148 of the Act for some of the Assessment Years, the learned counsel for the assessee urged that if the question of exemption / deduction is decided against the assessee by this Court, the right to agitate the

justifiability of reassessment under Section 147 / 148 of the Act may be kept open. However, if such issue on exemption / deduction under Section 80P(2)(d) of the Act is decided in favour of the assessee, then the said question in cross-objection would only be academic.

(VI) It was also urged that for certain Assessment Years falling between the Assessment Years 2000-2001 to 2006-2007, the Assessing Authority itself had allowed the claim of the assessee under Section 80P(2)(d) of the Act and the Revenue has not contested the matter further.

However, in the absence of any such material placed before us, we are unable to verify the same and in the absence of any such question raised before us for those Assessment Years, the answer to the questions raised before us cannot depend upon that.

9. We have heard the learned counsels at length and perused the record and the judgments cited at the Bar.

10. Admittedly and undoubtedly, the respondent assessee is a Co-operative Society engaged mainly in the activity of marketing of agricultural produces grown by its members. The assessee co-operative society also accepts deposits from its members and provides credit facility to its members, runs Kirana Stores, rice mills, live stocks, van section, medical shops, Areca-nut trading section, lodging, plying and hiring of goods carriage, etc.

11. The Assessment Years involved in the present batch of appeals are Assessment Years 2007-2008 to 2011-2012. The bone of contention is that the deduction under Section 80P(2) of the Act is now claimed by the respondent assessee under Section 80P(2)(d) of the Act and not under Section 80P(2)(a) of the Act. The reason is that now the investments and deposits after the Supreme Court's decision

against the assessee reported in (2010) 322 ITR 283 (SC), the assessee has shifted the deposits and investments from Schedule Banks to Co-operative Bank and such Co-operative Bank is essentially a Co-operative Society also and Clause (d) allows deduction of income by way of interest or dividends derived by the assessee Co-operative Society from its investments with any other Co-operative Society.

12. The sheet anchor of the contention of the learned counsel for the assessee misses two essential points required for claiming the exemption or 100% deduction from gross total income for a co-operative society: (i) that the character or nature of income, namely interest on investments or deposits, does not change irrespective of the fact whether it is earned or received from a Schedule Bank or Co-operative Bank. (ii) that What the Hon'ble Supreme Court held in the case of the respondent assessee itself, against the assessee, was that such interest income on its surplus and idle funds not immediately

required for its business, is not income from business taxable under Section 28 of the Act, but was taxable as “income from other sources” under Section 56 of the Act, whereas for availing the exemption or 100% deduction under Section 80P of the Act the income is specified in clauses (a) to (f) of Subsection (2) of Section 80P of the Act should be its business or operational income.

13. What Section 80P(2)(d) of the Act, which was though not specifically argued and canvassed before the Hon’ble Supreme Court, envisages is that such interest or dividend earned by an assessee co-operative society should be out of the investments with any other co-operative society. The words ‘Co-operative Banks’ are missing in clause (d) of subsection (2) of Section 80P of the Act. Even though a co-operative bank may have the corporate body or skeleton of a co-operative society but its business is entirely different and that is the banking business, which is governed and regulated

by the provisions of the Banking Regulation Act, 1949. Only the Primary Agricultural Credit Societies with their limited work of providing credit facility to its members continued to be governed by the ambit and scope of deduction under Section 80P of the Act.

14. 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. The depository Kanara District Central Bank Limited in the present case is admittedly not such a primary agricultural credit society.

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

provisions of Chapter VIA in the form of Section 80P of the Act.

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

17. As stated above, it is the character and nature of income which determines its taxability or exemption from taxability. It is needless to say that the provisions relating to exemption and deduction need to be strictly construed and no liberal interpretation or intendment can be inferred in such provisions. What was clearly held to be not exempt and not deductible under Section 80P(2)(a) of the Act by the Hon'ble

Supreme Court in the case of respondent assessee, cannot be contrarily held as exempted and deductible now for these years, merely because the depository bank, with whom the investments were made by the respondent assessee happens to be a co-operative bank. We cannot appreciate this distinction so as not to apply the binding precedent of the Hon'ble Supreme Court for subsequent years merely on account of the change of the Bank where such deposits were made by the respondent assessee, all other facts remaining the same, particularly the nature and character of the income earned by it. The interest income of assessee continues to be not attributable to its business operations even in these subsequent years.

18. The contention of the learned counsel for the assessee that a co-ordinate bench of this Court dismissed the Revenue's appeals by referring, but not applying the decision of the Hon'ble Supreme Court, we observe with greatest respects that we do not find any detailed discussion of the facts and law

pronounced by the Hon'ble Supreme Court in the case of the respondent assessee in the said order passed by the co-ordinate Bench and therefore, we are unable to follow the same in the face of the binding precedent laid by the Hon'ble Supreme Court. We find 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 co-operative 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.

19. In our opinion, 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.

20. In *Udaipur Sahakari Upbhokta Thok Bhandar Limited Vs. Commissioner of Income Tax, (2009) 315 ITR 21 (SC)*, the Hon'ble Supreme Court while dealing with a case falling under Section 80P(2)(e) of the Act also negated the claim of this special deduction to a co-operative society, while holding that the income derived by the Co-operative Society from the letting of the godowns or the warehouses was eligible for this deduction under Section 80P(2) of the Act only if such income was derived by such letting of godowns and warehouses for storage, processing or facilitating the marketing of

commodities. Where the rental income was derived by the assessee, where the income claimed as deduction under Section 80P(2)(e) of the Act was by way of netting / difference between the sale of own trade stock stored in such warehouses or godowns was claimed as deductible, the Hon'ble Supreme Court denied the said claim, holding that the burden was on the assessee to establish that the income comes within the four corners of Section 80P(2)(e) of the Act. The relevant portion of the said judgment from the Head Note is quoted below for ready reference:

“ HELD, affirming the decision of the High Court, that the burden was on the assessee under section 80P(2)(e) to establish that the income comes within the four corners of section 80P(2)(e) of the Act. The exemption was available in respect of income derived from the letting of godowns or warehouses, only where the purpose of letting was storage, processing or facilitating the marketing of commodities. If the godown was let out (including user) for any purpose besides storing, processing

or facilitating the marketing of commodities, then the assessee was not entitled to such exemption. Any income derived by the society unconnected with such letting or use of the godown would not fall under clause (e). The High Court was right in coming to the conclusion that the assessee was storing the commodities in question in its godowns as part of its own trading stock and hence, it was not entitled to claim the deduction under Section 80P(2)(e). In this case, the issue price was set off against the sale price which clearly indicated that the netting/difference between the two prices constituted receipt on a commercial basis or net profit.

A.Venkata Subbarao Vs. State of Andhra Pradesh AIR 1965 SC 1773 applied.

CIT vs. South Arcot District Co-operative Marketing Society Ltd., (1989) 176 ITR 117 (SC) distinguished.

Surath Venkar Sahakari Sangh Ltd Vs. CIT (1971) 79 ITR 722 (Guj) approved.

Decision of the Rajsthan High Court in CIT Vs. Udaipur Shahakari Upbhokta Thok Bhandara Ltd. (2007) 295 ITR 164, Affirmed. ”

21. The aforesaid decision of the Hon'ble Supreme Court in the case of **Totgar** was followed by a Division Bench of the Gujarat High Court in the case of **State Bank of India Vs. Commissioner of Income-Tax**, reported in [2016] 389 ITR 578 (Guj.) and the Division Bench of the Gujarat High Court has held as under:

“(ii) That the assessee did not carry on any banking business and its objects did not contemplate investment of surplus funds received from its members. The business of a credit society like that of the assessee was limited to providing credit to its members and the income that was earned by providing such credit facilities to its members was deductible under section 80P(2)(a)(i). The character of interest was different from the income attributable to the business of the assessee-society providing credit facilities to its members. The interest income derived from investing surplus funds with the bank must be closely linked with the business of

providing credit facilities for it to be held attributable to the business of the assessee. Therefore, the profits and gains could be said to be directly attributable to the business of providing credit facilities to its members if there was a direct and proximate connection between the profits and gains and the business of the assessee. There was no obligation on the assessee to invest its surplus funds with the bank. Investing surplus funds in a bank was no part of the business of the assessee providing credit facilities to its members and hence it could not be said that the interest derived from depositing its surplus funds with the bank was profits and gains of business attributable to the activities of the assessee. It was only the interest income derived from the credit provided to its members which was deductible under section 80P(2)(a)(i) and the interest income derived by depositing the surplus funds with the bank not being attributable to the business carried on by the assessee could not be deducted under section 80P(2)(a)(i) . There was no infirmity in the orders of the Appellate Tribunal warranting interference.

Date of Judgment: 16.06.2017
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The Totagars Co-Operative Sale Society, Sirsi.

**TOTGAR'S CO-OPERATIVE SALE
SOCIETY LTD. v. ITO [2010] 322 ITR 283 (SC)**
followed."

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

22. Again, the Division Bench of Punjab and Haryana High Court in still a later decision reported in the same volume of ITR in the case of *Commissioner of Income-Tax Vs. Punjab State Co-operative Agricultural Development Bank Limited*, reported in [2016] 389 ITR 607 (P&H) concurred with the aforesaid view of the Gujarat High Court, distinguishing the view taken by the Andhra Pradesh High Court and Karnataka High Court, held in the following terms:

“ 30. We are entirely in agreement with the judgment of the Gujarat High Court especially the observation that the judgment of the Supreme Court is not restricted only to the investments made by the assessee from the amounts retained by it which were payable to its members and that the judgment also applies in respect of other funds not immediately required for business purposes.

We reproduced paragraph 15 of the judgment only to indicate that we uphold the

appellant's case only on the ground that the assessee is not entitled to the said deduction on the basis that it is engaged in carrying on the business of providing credit facilities to its members. We do not express any opinion as to whether the appellant would be entitled to the said benefit in the event of it being held that the assessee is also engaged in carrying on the business of banking. That is an issue that the Tribunal would decide upon remand pursuant to this order.

*31. Mr. Bansal relied upon the judgment of the Andhra Pradesh High Court in **CIT v. A. P. State Co-operative Bank Ltd. [2011] 336 ITR 516 (AP)**. The judgment is distinguishable. In that case, the respondent-assessee was a co-operative society engaged in the business of banking and it was held that the assessees were subject to the regulations of the Reserve Bank of India Act, 1934 and the Banking Regulation Act, 1949. The Division Bench distinguished the judgment of the Supreme Court in Totgar's case (supra) on the*

ground that the Supreme Court was not dealing with the case relating to co-operative banks. The present appeal is not being considered on the basis that banking is the assessee's business either.

*32. Mr. Bansal relied upon the judgment of the Karnataka High Court in **Tumkur Merchants Souharda Credit Co-operative Ltd. v. ITO [2015] 55 taxmann.com 447 (Karn)**. In that case, the assessee-co-operative society provided credit facilities to its members and earned interest from short- term deposits with banks and from savings bank accounts. The interest income earned by the assessee by providing credit facilities to its members was deposited in banks for a short duration which earned interest. The question was whether this interest was attributable to the business of providing credit facilities to the members. The Division Bench held as follows :*

"8. Therefore, the word 'attributable to' is certainly wider in import than the expression 'derived from'. Whenever the Legislature wanted to give a restricted meaning, they have used the expression 'derived from'. The expression 'attributable to' being of wider import, the said expression is used by the Legislature whenever they intended to gather receipts from sources other than the actual conduct of the business. 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.

9. *In this context when we look at the judgment of the apex court in the case of Totgar's Co-operative Sale Society Ltd., on which reliance is placed, the Supreme Court was dealing with a case where the assessee-co-operative 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 brought, 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 can not 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. Further they made it clear that they are confining the said judgment to the facts of that case. Therefore it is clear, Supreme Court was not laying down any law.

10. In the instant case, the amount which was invested in banks to earn interest was not an amount due to any members. It was not the liability. It was not shown as liability in their account. In fact this amount which is in the nature of profits and gains, was not immediately required by the assessee for lending money to the members, as there were no takers. Therefore they had deposited the money in a bank so as to earn interest. The said interest income is attributable to carrying on the business of banking and

therefore it is liable to be deducted in terms of section 80P(1) of the Act. In fact similar view is taken by the Andhra Pradesh High Court in the case of CIT v. A. P. State Co-operative Bank Ltd. reported in [2011] 336 ITR 516 (AP) ; [2011] 200 Taxman 220/12 taxmann.com 66. In that view of the matter, the order passed by the appellate authorities denying the benefit of deduction of the aforesaid amount is unsustainable in law. Accordingly it is hereby set aside. The substantial question of law is answered in favour of the assessee and against the Revenue. Hence, we pass the following order.

Appeal is allowed."

(The reproduction is from the original website of the Karnataka High Court).

There is an important distinction. The Division Bench expressly held in paragraph 10 that interest income was attributable to the business of banking and, therefore, liable to be deducted under section 80P(2)(a)(i) of the Act. At

the cost of repetition, we have not considered whether the assessee carries on the business of banking. If it is established upon remand that the assessee carries on the business of banking the result may be different. In any event assuming that the judgment is not distinguishable on this ground, we would with respect disagree with the same in view of the judgments that we have already referred to and on the basis of our interpretation of Totgar's case. In any event, we are with respect unable to agree with the observations that the Supreme Court in Totgar's case (supra) did not lay down any law.

*33. For the same reason, the judgment of the Karnataka High Court in **Guttigedarara Credit Co-operative Society Ltd. v. ITO [2015] 377 ITR 464 (Karn) ; [2015] 60 taxmann.com 215 (Karn)** is of no assistance to the respondent-assessee."*

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* (*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.

24. In view of the aforesaid, we are of the opinion that the appeals filed by the Revenue deserve to be allowed and the appeals filed by the assessee deserve to be dismissed.

25. The issue relating to the justifiability of the reassessment under Section 147 / 148 of the Act also becomes academic once the conclusion is arrived at that the deduction under Section 80P(2) of the Act was not available to the assessee for these Assessment Years.

26. The substantial questions of law framed above are thus answered in favour of the Revenue and against the assessee and it is held that the income by way of interest earned by the assessee co-operative society during the Assessment Years 2007-2008 to 2011-12 on the investments made in the co-

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operative bank are not eligible for deductions under Section 80P(2)(d) of the Act.

27. The appeals of the Revenue are accordingly *allowed* and those of the assessee are *dismissed*. No order as to costs.

Sd/-
JUDGE

Sd/-
JUDGE

RK/-