

**आयकर अपीलीय अधिकरण पुणे न्यायपीठ "ए" पुणे में
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "A", PUNE**

**सुश्री सुषमा चावला, न्यायिक सदस्य एवं श्री अनिल चतुर्वेदी, लेखा सदस्य के समक्ष
BEFORE MS. SUSHMA CHOWLA, JM AND SHRI ANIL CHATURVEDI, AM**

**आयकर अपील सं. / ITA Nos.1183 to 1190/PUN/2012
निर्धारण वर्ष / Assessment Years : 1999-2000 to 2006-07**

Aman Chote Vyapari
Sahakari Pat Sanstha Ltd.,
Gala No.61, Weekly Market,
Ichalkaranji

PAN: AABTA0044M

.... अपीलार्थी/Appellant

Vs.

The Dy. Commissioner of Income Tax,
Central Circle, Kolhapur

.... प्रत्यर्थी / Respondent

**आयकर अपील सं. / ITA Nos.1304 to 1311/PUN/2012
निर्धारण वर्ष / Assessment Years : 1999-2000 to 2006-07**

Income Tax Officer,
(Central), Kolhapur

.... अपीलार्थी/Appellant

Vs.

Aman Chote Vyapari
Sahakari Pat Sanstha Ltd.,
Gala No.61, Weekly Market,
Ichalkaranji

PAN: AABTA0044M

.... प्रत्यर्थी / Respondent

**आयकर अपील सं. / ITA Nos.1241 to 1243/PUN/2012
निर्धारण वर्ष / Assessment Years : 2001-02 to 2003-04**

Aman Chote Vyapari
N.S.P. Ltd.,
Laxmi Market, At & P. Miraj,
Dist. Sangli

PAN: AAAAAA2849Q

.... अपीलार्थी/Appellant

Vs.

The Dy. Commissioner of Income Tax,
Central Circle, Kolhapur

.... प्रत्यर्थी / Respondent

आयकर अपील सं. / ITA Nos.1325 to 1327/PUN/2012**निर्धारण वर्ष / Assessment Years : 2001-02 to 2003-04**Income Tax Officer,
(Central), Kolhapur

.... अपीलार्थी/Appellant

Vs.

Aman Chote Vyapari
N.S.P. Ltd.,
Laxmi Market, At & P. Miraj,
Dist. Sangli
PAN: AAAAAA2849Q

.... प्रत्यर्थी / Respondent

आयकर अपील सं. / ITA Nos.1344 to 1349/PUN/2012**निर्धारण वर्ष / Assessment Years : 2000-01 to 2005-06**Income Tax Officer,
(Central), Kolhapur

.... अपीलार्थी/Appellant

Vs.

Aman Bachat Mandal,
Gala No.61, 62, 63,
Weekly Market, Ichalkaranji

.... प्रत्यर्थी / Respondent

आयकर अपील सं. / ITA Nos.1211 to 1216/PUN/2012**निर्धारण वर्ष / Assessment Years : 2000-01, 2002-03 to 2006-07**Aman Sahakari Bank Ltd.,
10/1167, Hulgeshwari Road,
Ichalkaranji

PAN : AAAAAA0518N

.... अपीलार्थी/Appellant

Vs.

The Dy. Commissioner of Income Tax,
Central Circle, Kolhapur

.... प्रत्यर्थी / Respondent

आयकर अपील सं. / ITA Nos.1328 to 1333/PUN/2012
निर्धारण वर्ष / Assessment Years : 2000-01, 2002-03 to 2006-07

Income Tax Officer,
 (Central), Kolhapur

.... अपीलार्थी/Appellant

Vs.

Aman Sahakari Bank Ltd.,
 10/1167, Hulgeshwari Road,
 Ichalkaranji

PAN : AAAAA0518N

.... प्रत्यर्थी / Respondent

आयकर अपील सं. / ITA Nos.1244 & 1245/PUN/2012
निर्धारण वर्ष / Assessment Years : 2005-06 & 2006-07

Kohinoor Sahakari Bank Ltd.,
 Noorani Complex, Bagla Road,
 Ichalkaranji

PAN : AAACK 7440H/AABAK1459M

.... अपीलार्थी/Appellant

Vs.

The Dy. Commissioner of Income Tax,
 Central Circle, Kolhapur

.... प्रत्यर्थी / Respondent

आयकर अपील सं. / ITA Nos.1342 & 1343/PUN/2012
निर्धारण वर्ष / Assessment Years : 2005-06 & 2006-07

Income Tax Officer,
 (Central), Kolhapur

.... अपीलार्थी/Appellant

Vs.

Kohinoor Sahakari Bank Ltd.,
 Noorani Complex, Bagla Road,
 Ichalkaranji

PAN : AAACK 7440H/ AABAK1459M

.... प्रत्यर्थी / Respondent

आयकर अपील सं. / ITA Nos.1205 & 1206/PUN/2012
निर्धारण वर्ष / Assessment Years : 2004-05 & 2005-06

Vishwavijay Nagari Sah.
 Pat Sanstha Maryadit,
 10/80, Laykar Galli,
 Ichalkaranji

PAN : AAAAV3404E

.... अपीलार्थी/Appellant

Vs.

The Dy. Commissioner of Income Tax,
Central Circle, Kolhapur

.... प्रत्यर्थी / Respondent

आयकर अपील सं. / ITA Nos.1350 & 1351/PUN/2012

निर्धारण वर्ष / Assessment Years : 2004-05 & 2005-06

Income Tax Officer,
(Central), Kolhapur

.... अपीलार्थी/Appellant

Vs.

Vishwavijay Nagari Sah.
Pat Sanstha Maryadit,
10/80, Laykar Galli,
Ichalkaranji
PAN : AAAAV3404E

.... प्रत्यर्थी / Respondent

आयकर अपील सं. / ITA Nos.1202 to 1204/PUN/2012

निर्धारण वर्ष / Assessment Years : 2000-01 to 2002-03

Jamir Chhote Vyapari
Sah. Pat Sanstha,
1/624, Nadi Ves,
Ichalkaranji

PAN : AAAAJ3116H

.... अपीलार्थी/Appellant

Vs.

The Dy. Commissioner of Income Tax,
Central Circle, Kolhapur

.... प्रत्यर्थी / Respondent

आयकर अपील सं. / ITA Nos.1301 to 1303/PUN/2012

निर्धारण वर्ष / Assessment Years : 2000-01 to 2002-03

Income Tax Officer,
(Central), Kolhapur

.... अपीलार्थी/Appellant

Vs.

Jamir Chhote Vyapari
Sah. Pat Sanstha,
1/624, Nadi Ves,
Ichalkaranji
PAN : AAAAJ3116H

.... प्रत्यर्थी / Respondent

आयकर अपील सं. / ITA No.1209/PUN/2012**निर्धारण वर्ष / Assessment Year : 2006-07**

Chhaya Corner Nagri
Sahakari Pat Sanstha Maryadit,
7/71, Laxmi Market,
Ichalkaranji

PAN : AAAAC1548A

.... अपीलार्थी/Appellant

Vs.

The Dy. Commissioner of Income Tax,
Central Circle, Kolhapur

.... प्रत्यर्थी / Respondent

आयकर अपील सं. / ITA Nos.1353/PUN/2012**निर्धारण वर्ष / Assessment Years : 2006-07**

Income Tax Officer,
(Central), Kolhapur

.... अपीलार्थी/Appellant

Vs.

Chhaya Corner Nagri
Sahakari Pat Sanstha Maryadit,
7/71, Laxmi Market,
Ichalkaranji

PAN : AAAAC1548A

.... प्रत्यर्थी / Respondent

आयकर अपील सं. / ITA No.1294/PUN/2012**निर्धारण वर्ष / Assessment Year : 2004-05**

Janata Chote Vyapari (Vyavasaik)
Nagari Sahakari Pat Sanstha Ltd.,
6/307, Opp. Nagarpalika,
Ichalkaranji

PAN : AAAAJ3342D

.... अपीलार्थी/Appellant

Vs.

The Dy. Commissioner of Income Tax,
Central Circle, Kolhapur

.... प्रत्यर्थी / Respondent

आयकर अपील सं. / ITA Nos.1356/PUN/2012**निर्धारण वर्ष / Assessment Years : 2004-05**Income Tax Officer,
(Central), Kolhapur

.... अपीलार्थी/Appellant

Vs.

Janata Chote Vyapari (Vyavasaik)
Nagari Sahakari Pat Sanstha Ltd.,
6/307, Opp. Nagarpalika,
Ichalkaranji

PAN : AAAAJ3342D

.... प्रत्यर्थी / Respondent

आयकर अपील सं. / ITA No.1207 & 1208/PUN/2012**निर्धारण वर्ष / Assessment Year : 2005-06 & 2006-07**Snehadeep Nagari Sahakari
Pat Sanstha Ltd.,
Hulgeshwari Road,
Ichalkaranji

PAN : AABAS9880J

.... अपीलार्थी/Appellant

Vs.

The Dy. Commissioner of Income Tax,
Central Circle, Kolhapur

.... प्रत्यर्थी / Respondent

आयकर अपील सं. / ITA Nos.1354 & 1355/PUN/2012**निर्धारण वर्ष / Assessment Years : 2005-06 & 2006-07**Income Tax Officer,
(Central), Kolhapur

.... अपीलार्थी/Appellant

Vs.

Snehadeep Nagari Sahakari
Pat Sanstha Ltd.,
Hulgeshwari Road,
Ichalkaranji

PAN : AABAS9880J

.... प्रत्यर्थी / Respondent

Assessee by : Shri M.K. Kulkarni &
Shri Sanjay M. Vhanbatte
Revenue by : Shri Rajeev Kumar, CIT

सुनवाई की तारीख / Date of Hearing : 01.06.2017	घोषणा की तारीख / Date of Pronouncement: 11.08.2017
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आदेश / ORDER

PER SUSHMA CHOWLA, JM:

This bunch of appeals filed by the different assessees are against the separate orders of CIT(A), Kolhapur of different dates relating to different assessment years against respective orders passed under section 143(3) r.w.s. 153A(b) of the Income Tax Act, 1961 (in short 'the Act').

2. All these appeals relating to the different assessees on similar issues were heard together and are being disposed of by this consolidated order for the sake of convenience.

3. The facts and issue are identical in the bunch of appeals. However, reference is being made to the facts and issue in cross appeals in ITA No.1189/PUN/2012 and 1310/PUN/2012 to adjudicate the issues.

4. The assessee in ITA No. 1189/PUN/2012 relating to assessment year 2005-06 has raised the following grounds of appeal:

1. *On the facts and circumstances of the case and in law the legal grounds of appeal were raised before Ld. CIT(A) that the assessment was illegal and without jurisdiction framed by A.O. under S. 153A r.w.s. 143(3) after search and seizure action under S. 132(1) of the Act in the absence of service of mandatory notice under S. 143(2) of the Act. The Ld. CIT(A) was not justified in rejecting this legal ground supported by judicial precedents in the matter.*
2. *On the facts and circumstances of the case and in law the challenge to validity of the assessment completed in the absence of service of mandatory notice u/s 143(2) of the Act was raised before A.O. also*

before participating in the assessment proceedings and therefore, proviso to S. 292BB applies and in view of this the provisions of S.292BB become inapplicable. The judgment of the Hon'ble Delhi High Court in the case of Ashok chadha v. ITO is distinguishable in law. The careful perusal of the provisions of S. 153A would reveal that it is served for calling of the return of income where search has been conducted. And that is why non-obstanti clause in respect of S. 139 has been enacted. The section does not talk of the any assessment or assessment procedure in isolation under that section. The reliance of Ld. CIT(A) on the Delhi High Court judgment (supra) is misplaced.

3. *On the facts and circumstances of the case and in law the Ld. CIT(A) was not justified in holding that the provisions of S. 143(2) do not apply to a return filed under S. 153A and it cannot be construed to mean that procedure for completion of assessment enacted under S. 143(3) would also follow.*
4. *On the facts and circumstances of the case and in law the Ld. CIT(A) was not justified in holding that provisions of S. 143 are general in nature and are meant for regular assessment only. This is contrary to the precedent pronounced by Hon'ble Supreme Court in Hotel Blue Moon's case (supra).*
5. *On the facts and circumstances of the case and in law and in view of Grounds of Appeal at 1 to 4 above and considering the decision of the Ld. CIT(A) that no notice under S. 143(2) is required to be served therefore in the absence of proper service of mandatory notice u/s 143(2) of the Act the assessment be declared ab-initio void and without jurisdiction and it be quashed.*
6. *On the facts and circumstances of the case and in law and the appellant being credit co. op. society registered under Maharashtra State Co. Op. Societies Act, 1960 its operations are governed by principles of Mutuality which principle has been approved by Ld. CIT(A) while granting deduction under S. 80P(2)(a)(i) of the Act, then the principle of mutuality makes S. 68 inapplicable. The proper course in such cases is for Revenue to identify and follow the depositors. The addition made and confirmed by Ld. CIT(A) be deleted.*
7. *On the facts and circumstances of the case and in law and in view of principles of mutuality the unexplained cash credits against FD of Rs.2,04,47,000/- added in the hands of the appellant society invoking provisions of S. 68 confirmed by Ld. CIT(A) is bad in law and without jurisdiction. The addition be deleted.*
8. *On the facts and circumstances of the case and in law the addition made of Rs. 24,53,640/- being interest @ 12% computed on unexplained cash credit of Rs. 2,04,47,000/- added under S. 68 of the Act confirmed by Ld. CIT(A) and following principles of mutuality is bad in law and without jurisdiction. The addition be quashed.*
9. *On the facts and circumstances of the case and in law and in view of the principles of mutuality the unexplained cash credit of Rs. 1,67,00,000/- against FD's Aman Bachat/Bhishi Mandal's added u/s 68 of the Act and confirmed by Ld. CIT(A) is bad in law and without jurisdiction. The addition be deleted.*
10. *Without Prejudice to above, on the facts and circumstances of the case and in law the Ld.CIT(A) erred in not considering the contention of the*

appellant that while determining the quantum of addition in respect of cash credits in the name of Aman Bachat/Bhishi Mandal, set off of additions made in earlier years needs to be given. It be held accordingly.

11. On the facts and circumstances of the case and in law the deposits added as unexplained cash credit under S. 68 of the Act are the deposits owned by the members of the society. The fact has been proved beyond doubt by representative writ petitions filed by some of the members which is also accepted by the Department. The ownership of deposits of the members gets proved. The addition of deposit and estimated interest thereon so added in the hands of the appellant-society and confirmed by Ld. CIT(A) be quashed.
12. On the facts and circumstances of the case and in law the Ld. CIT(A) was not justified in holding that the appellant-society was carrying on illegal business of money lending and such illegal business was outside the principles of mutuality. The appellant-society has categorically disowned carrying on any such illegal business and at the same time confirming that the said business was conducted by independent Bhishi Mandal. In spite of independent status of the Bhishi Mandal the Ld. CIT(A) was not justified in thrusting such business on the appellant-society. It be held accordingly.
13. On the facts and circumstances of the case and in law the Ld. CIT(A) was not justified in confirming the addition of Rs. 10,78,21,270/- as substantive addition in the hands of the appellant pat sanstha without pin pointing any positive evidence that the amount belonged to the appellant. In fact and law the amount belonged to 1411 members of the Bachat Bhishi Mandal which has been perversely held to be benami of the appellant. The addition made and confirmed by Ld. CIT(A) simply on preponderance of probability and on imagination is not sustainable in law. The addition be quashed.
14. On the facts and circumstances of the case and in law and on the same analogy as per ground No. 12 above the Ld. CIT(A) was not justified in confirming the addition of Rs. 3,31,16,045/- made by A. o. on account of net profit earned from Bhishi. The addition has been made and confirmed by Ld. CIT(A) on perverse grounds is not sustainable in law. It be quashed.
15. On the facts and circumstances of the case and in law the Ld. CIT(A) was not justified in not granting deduction u/s 80P(2)(a)(i) in respect of the following additions made and confirmed by him:
 - a. FDs standing in the name of Aman Bachat/Bhishi Mandal.
 - b. Interest on such FDs.
 - c. Cash Credit in the name of Aman Bachat/Bhishi Mandal.
 - d. Peak Credit of B+ and Bachat/ Bhishi Business
 - e. Net profit of Bachat/Bhishi Business

The income representing the above being in the nature of income from regular business activities of the appellant Patsanstha, the Ld CIT(A) was not justified in making distinction in the above income and the Income represented by FDs standing in the name of other individuals while granting deduction under section 80P(2)(a)(i). The addition be deleted by granting deduction under section 80P(2)(a)(i) in this respect.

16. On the facts and circumstances of the case and in law and in view of the finding recorded by Ld. CIT(A) that the business of Bhishi was

maintained and managed by employees of the appellant-Pat sanstha. It is, therefore, evident that it was not be managed by the appellant-pat sanstha. The business premises of both that is that of appellant pat sanstha and Bhishi Mandal were adjacent and therefore, as held by Ld. CIT(A) the provisions of S. 292C(1) were not applicable as the books of account were neither in possession or control of the appellant pat sanstha. It be held accordingly.

17. *On the facts and circumstances of the case and in law and has been accepted by Ld. CIT(A) that the appellant society was governed by the Principles of Mutuality no interest under s. 234B and 234C was leviable. The same be quashed.*
18. *The appellant craves/leave to add, amend or alter any of the above grounds of appeal*

5. The Revenue in ITA No.1310/PUN/2012 relating to assessment year 2005-06 has raised the following grounds of appeal:-

1. *Whether on the facts and in the circumstances of the case and in law the Ld. CIT(A) was justified in holding on one hand that the addition of unexplained FDR's u/s 68 of the Act was correctly made by A.O and deciding on the other hand that the said unexplained income is eligible for deduction u/s 80P(2)(a)(i)?*
2. *The Ld. CIT(A) erred in not appreciating the fact that addition made u/s 68 of the Act is not income under the head 'Profits and gains of business' and hence is ineligible for deduction u/s 80P(2)(a)(i).*
3. *(i) Whether on the facts and in the circumstances of the case and in law the Ld CIT(A) was justified in allowing deduction u/s 80P(2)(a)(i) to the assessee ignoring the decision of Hon 'ble Supreme Court in the case of The Totgars Co-operative Sale Society Ltd Vs. ITO, 322 ITR 283 wherein it was held that deduction u/s 86P(2)(a)(i) is allowable only on business Income.*

(ii) It has been held by Hon'ble Gujarat High Court in the case of Fakir Mohamed Haji Hasan Vs. CIT (2001) 247 ITR 290 that income u/s 68 of the Act is a deemed income and is not to be computed under any of the five heads of income classified in section 14 of the Act. This view has been reiterated by Hon 'ble Chattisgarh High Court in the case of Dhanush General Stores Vs. CIT (2011) 339 ITR 651.
4. *(i). The Ld. CIT(A) erred in relying on the decision of ITAT, Pune in the case of Sri Mahaveer Nagari Sahakari Pat Sanstha ignoring the fact that the said decision is distinguishable on facts in as much as in the said case the unexplained deposits were owned up by the depositors as undisclosed income whereas in the present case no one has owned up the unexplained FDR's,*

(ii) "Without prejudice, the ITAT, Pune, while rendering the decision in the case of Sri Mahaveer Nagari Sahakari Pat Sanstha did not consider the judicial precedents mentioned at Ground No. 3 supra. Therefore, the said decision of ITAT is not binding on CIT(A) as rule of sub-silentio is applicable (Shanmugavel Nadar Vs. State of Tamilnadu & another, 263 ITR 658 (SC)).

5. *Without prejudice to the above grounds Ld CIT(A) should have relied on the judicial precedents mentioned at Ground No. 3 supra and by not doing so he has erred in not exercising his plenary powers which are conterminous with that of Assessing Officer as per the ratio laid down by CIT vs. Kanpur Coal Syndicate (1964) 53 ITR 225,229 (SC).*
6. *The Appellant prays that the order of the Ld CIT(A) be vacated and that of the AO's order may be restored.*
7. *The appellant craves leave to add, alter, amend, modify any of the above grounds raised, any other grounds at the time of proceedings before the Hon'ble Tribunal which may please be granted.*

6. In the above bunch of appeals, the respective assesses have raised additional grounds of appeal which are identical and read as under:-

Additional Grounds of appeal in ITA No.1189/PUN/2012 :

1. *Whether on the facts and circumstances of the case the search and seizure action conducted against the appellant herein is not valid since search action was not based on reasons germane to S. 132(1) of the Act? Whether consequently the assessment made u/s 153A r.w.s. 143(3) based on search could not stand?*
2. *Whether on the facts and circumstances of the case and in law the additional ground No. 1 above is supported by Hon'ble Rajasthan High Court Judgment in the case of CIT v. Chitra Devi Soni reported as (2009) 313 ITR 174 (Raj) as subsequent SLP filed by the Deptt. has been dismissed by Hon'ble Supreme Court reported as (2010) 313 ITR 174 (Raj) dt. 20th April 2009 by an 'speaking order' and upon dismissal of the SLP the provisions of Art 141 of the Constitution of India are attracted the same becomes a binding precedent on all courts & Tribunals functioning in India?*
3. *On the facts and circumstances of the case and in law if the SLP is dismissed by Hon'ble Supreme Court by a 'speaking order' then the High Court Judgment merges with the Supreme Court order and therefore, the Judgment pronounced in the Chitra Devi Soni's case having merged with Supreme Court order is binding precedent under Art 141 of the Constitution of India.*
4. *On the facts and circumstances of the case and in law Smt. Chitra Devi Soni Judgment being binding precedent had held that the Tribunal was very much justified and had jurisdiction to go into the question, as to whether the search was conducted consequent upon authorization having been issued, in the background of the existence of eventualities and material mentioned in S. 132(1). The search and seizure action purported to be under S. 132(1) in this case did not result into any seizure of any money bullion, jewellery or other valuable article or thing which represented either wholly or partly income or property which remained undisclosed, therefore, the authorization of the competent Authority lacked any information*

in his possession which is a 'since qua non' for reason to belief as envisaged by Cl. (c) of S. 132(1) and in view of this search action is invalid and consequent assessment under S. 153A, under appeal, is also invalid and therefore, unsustainable.

5. *On the facts and circumstances of the case and in law and in view of the judgment of Hon'ble Rajasthan High Court in Chitra Devi's case (supra) being binding precedent attracting Art 141 of the Constitution of India, which was subsequent to 5 Member Spl. Bench judgment in Promain Ltd. case dt. 7th June, 2005, (2005) 95 TTJ (Del) (SB) the Spl. Bench Judgment (supra) gets impliedly overruled. It be held accordingly.*
6. *On the facts and circumstances of the case and in law and considering the common panchanama drawn dt. 20-5-2005, it transpires that no search authorization was available in the name of the Bhishi Mandal, a separate and independent entity and therefore, the search conducted against 'Bhishi Mandal' is without any search warrant and is to be treated as 'illegal search' within the meaning of S. 132(1)(c) of the Act. In this respect this Hon'ble Tribunal can call for the records from the Deptt. to verify this contention. In case the search is illegal the same would amount to serious lapses and would be in clear violation of the provisions of S.132(1) as it does not stand to the test of S.132.*
7. *On the facts and circumstances of the case and in law the additional ground No. 6 taken being substantial question of law going to the root of the matter the Deptt. be requested to produce the records of search warrant.*
8. *On the facts and circumstances of the case and in law it is now settled law that having recourse to assessments under S. 153A under Chapter XIV, a valid search under S. 132(1) is a condition precedent and mere fact of search is not enough to give jurisdiction to the A. O. to have recourse to provisions of S. 153A/153C of the Act. In the absence of this the assessment framed under S. 153A r.w.s. 143(3) is bad in law and without jurisdiction and it be quashed.*
9. *On the facts and circumstances of the case and in law and on careful perusal of the Panchanama drawn on 20-5-2005 as a result of search action it transpires that it was in the joint names of the appellant-assessee and M/s Aman Bachat Mandal, and as a result the presumption would be that search warrant was in Joint names. But the assessment under S. 153A has been framed in the name of the appellant only holding that it was unauthorized money lending business of the appellant-society. The effect of S. 292CC inserted in the Act retrospectively w.e.f. 01-04-1976 mandating the assessment or reassessment shall be made separately in the name of each of the persons mentioned in such authorization has not been properly appreciated by the lower authorities. In view of such mandatory provision of law the assessment framed under S. 153A ignoring S. 292CC is bad in law and without jurisdiction. It be annulled.*
10. *On the facts and circumstances of the case and in law the additional ground No. 8 above gets support from the facts discussed by Ld. CIT(A) in his appeal order that (para No. 45 & 52) the Bhishi was maintaining regular books of account and was managed with great professionalism contradicting the finding of the A. O. that bhishi was not maintaining proper books of account. In the circumstances and*

following the mandate of S. 292CC the Ld. CIT(A) was not justified in confirming the order of the A. O. holding that 'Bhishi' was unauthorized money lending business of the Appellant-Pat Sanstha. It be held accordingly.

11. *On the facts and circumstances of the case and in law the plea contained in the additional grounds being pure questions of law and going to the root of the matter are in pursuance of Rule 11 of the ITAT Rules 1963, it is requested to entertain the said pleas and decide the same after providing the necessary opportunity to the parties and oblige.*
12. *On the facts and circumstances of the case and in law there was no necessity of search and seizure action under S. 132(1) of the Act as perusal of the assessment framed under S. 153A reveals that such assessment was made on the seized books of account and record which could have been summoned and thereafter impounded in survey action u/s 133A and invoking the provisions of S. 148 of the Act. It be held accordingly.*

7. The assessees vide separate letters dated 30.05.2016 have withdrawn the additional grounds raised by them and hence the same are dismissed in respect of the appeals relating to Aman Chote Vyapari Sahakari Pat Sanstha Ltd. at Ichalkaranji and at Miraj and also in Aman Sahakari Bank at Ichalkaranji.

8. The assessee in the bunch of appeals for assessment years 2000-01 to 2005-06 vide grounds of appeal No.1 to 6 has raised the issue against jurisdiction exercised by the Assessing Officer in framing the assessment under section 153A r.w.s. 143(3) of the Act and non-service of notice under section 143(2) of the Act. The assessee at the outset has not pressed the grounds of appeal No.1 to 6, hence, the same are dismissed as not pressed.

9. The learned Authorized Representative for the assessee further pointed out that the issue raised vide grounds of appeal No.7 to 9 and 11 in the appeals relating to assessment years 2000-01 to 2005-06 are against additions made in the hands of assessee by invoking the provisions of section 68 of the Act. The Assessing Officer had made the following additions on

account of unexplained cash credit and interest chargeable @ 12% on such FDRs under section 68 of the Act, as detailed below:-

<i>A.Y.</i>	<i>Unexplained cash credit</i>	<i>Interest @ 12%</i>
<i>2000-01</i>	<i>1,53,75,000/-</i>	<i>18,45,000/-</i>
<i>2001-02</i>	<i>1,32,11,000/-</i>	<i>15,85,320/-</i>
<i>2002-03</i>	<i>3,26,00,000/-</i>	<i>39,12,000/-</i>
<i>2003-04</i>	<i>2,22,48,000/-</i>	<i>26,69,760/-</i>
<i>2004-05</i>	<i>3,17,81,000/-</i>	<i>38,13,720/-</i>
<i>2005-06</i>	<i>2,04,47,000/-</i>	<i>24,53,640/-</i>

10. The learned Authorized Representative for the assessee pointed out that the additions made under section 68 of the Act were confirmed by the CIT(A). However, the CIT(A) vide paras 29 to 33 deliberated on the issue and held that the investment by way of FDRs which were claimed by the assessee to belong to the persons in whose names they were appearing, but where the assessee had failed to prove the genuineness of the credits, then the amounts were held to represent unexplained cash credits in the books of assessee and were added as total income of assessee under section 68 of the Act. However, the CIT(A) allowed the claim of deduction under section 80P(2)(a)(i) of the Act holding that the deposits were received in the regular course of business and most of them were also returned in the regular course of business, so no addition was made on this account. However, the addition was made on account of alleged illegal business of money lending i.e. on account of Bachat Bhashi scheme and B+ account. The learned Authorized Representative for the assessee pointed out that the Revenue is in appeal against the order of CIT(A) in allowing the deduction under section 80P(2)(a)(i) of the Act and in case the said deduction is held to be allowable to the assessee, then the assessee would not press the grounds of appeal No.7 to 9 and 11 raised in assessment years 2000-01 to 2005-06 and grounds of appeal No.2 and 3 in assessment years 1999-2000 and grounds of appeal No.2 and 3 in assessment year 2006-07.

11. Further, the assessee has not pressed the grounds of appeal No.1 to 4 in assessment year 1999-2000 and grounds of appeal No.2, 14 and 15 in assessment years 2000-01 to 2002-03 and in 2004-05 and has not pressed grounds of appeal No.11, 13 and 14 in assessment year 2003-04 and ground of appeal No.17 in assessment year 2005-06 and grounds of appeal No.1 and 9 in assessment year 2006-07. Hence, all these grounds of appeal in respective years are dismissed as not pressed.

12. The issue which is pressed by the assessee in its grounds of appeal is ground of appeal No.10, wherein it has claimed that in case addition is made in respect of cash credits in the name of Aman Bachat Bhishi Mandal, then set off of additions made in earlier years needs to be allowed. The said ground of appeal arises in assessment years 2005-06 and 2006-07. The assessee has further raised grounds of appeal No.12 and 13 against applicability of principles of mutuality on the business carried on by Bhishi Mandal and confirming the addition of Rs.10.78 crores in assessment year 2005-06 and Rs.8,08,425/- in assessment year 2006-07. Vide ground of appeal No.14 in assessment year 2005-06, the assessee is aggrieved by the addition of Rs.3,31,16,045/- made on account of net profit earned from Bhishi business and Rs.23.67 lakhs in assessment year 2006-07. The assessee is also aggrieved by the order of CIT(A) vide ground of appeal No.15 in not allowing the deduction under section 80P(2)(a)(i) of the Act in respect of peak credit of B+ and Bachat Bhishi business and net profit of Bachat / Bhishi business. The assessee vide ground of appeal No.16 which is linked to grounds of appeal No.12 and 13 has also pointed out that the business of Bhishi was maintained and managed by the employees of Pat Sanstha and not being managed by the assessee and hence, no addition is warranted in the hands of assessee. The

ground of appeal No.17 has not been pressed and the same is dismissed in the paras hereinabove.

13. The Revenue is in appeal against the order of CIT(A) in one hand on holding that the addition on account of unexplained FDRs under section 68 of the Act was correctly made by the Assessing Officer and on the other hand, allowing the deduction under section 80P(2)(a)(i) of the Act. All the grounds of appeal raised by the Revenue are with regard to this issue and we proceed to decide the issue first raised by the Revenue, since the learned Authorized Representative for the assessee has fairly admitted that in case the deduction under section 80P(2)(a)(i) of the Act is allowed to the assessee, then it would not press the issue of additions made under section 68 of the Act.

14. The learned Departmental Representative for the Revenue referring to the order of Assessing Officer at paras 34 to 36, pointed out that the Assessing Officer had observed that the income arising in the hands of assessee was from other sources i.e. other than the banking business, against which the additions were made under section 68 of the Act and no deduction was allowed under section 80P(2)(a)(i) of the Act. He further referred to the order of CIT(A) and pointed out that in para 29 of the appellate order, the CIT(A) confirms the addition made under section 68 of the Act but relying on the decision of the Pune Bench of Tribunal in the case of Shri Mahavir Nagari Sahakari Pat Sanshta Ltd. Vs. DCIT (2002) 74 TTJ 793 and in DCIT Vs. Shri Agrasen Sah. Patsanstha Maryadit in ITA Nos.1459 & 1460/PN/2005, relating to assessment years 1999-2000 and 2000-01, order dated 30.04.2011, vide para 32, he holds that there is distinction between legal business and illegal business carried on by the assessee. He further holds that FDRs against

which the addition has been made under section 68 of the Act are from legal business carried on by the assessee and allows the deduction under section 80P(2)(a)(i) of the Act. The learned Departmental Representative for the Revenue in this regard further referred to the written submissions filed and relied on the ratio laid down by the Hon'ble Supreme Court in *Totgar's Co-operative Sale Society Ltd. Vs. ITO* (2010) 322 ITR 283 (SC), wherein it has been held that the interest earned by the assessee would not come in the category of business income and therefore, would not be entitled for deduction under section 80P(2)(a)(i) of the Act. He further pointed out that consequent to search in the case of assessee it was established that the assessee had not been able to prove that the FDRs were out of legitimate business of banking, hence, the same did not germinate from its main business of banking and therefore, it was not eligible for deduction under section 80P(2)(a)(i) of the Act. He further pointed out that where the deposits / FDRs were not on account of genuine persons and therefore, they did not constitute part and parcel of income of banking business, then there is no question of non-applicability of *Todgar's Co-operative Sale Society Ltd.'s* case and accordingly, the decisions of Tribunal in *Shri Mahavir Nagari Sahakari Pat Sanshta Ltd. Vs. DCIT* (supra), *DCIT Vs. Shri Agrasen Sah. Patsanstha Maryadit* (supra) and in *ITO Vs. Niphad Nagari Sahakari Patsanstha Ltd.* in ITA No.1336/PN/2011, relating to assessment year 2008-09, order dated 31.07.2013 could not be applied. He admitted that where the Co-operative Credit Society was engaged in the business of banking, then income therefrom would qualify for deduction under section 80P(2)(a)(i) of the Act. There was also no dispute as to the said deduction being allowable on the interest / dividend income earned from investment in Co-operative societies. The assessee in the present case was found to have earned interest income to the extent of Rs.1,62,79,440/- from

various investments made in the names of anonymous persons. The statement on oath of the Manager was recorded, who deposed that the deposits in various fictitious names were made as per instructions of the members of the Managing Committee or Executive Body. The investigation wing on the basis of said statement had made detailed investigation and the statements of various persons were recorded to establish whether the investments were made in fictitious names and were out of unaccounted income of the assessee. He further pointed out that in the statement so recorded, the veracity of income vis-à-vis investments could not be explained by the said authorities. Accordingly, on that basis, the Assessing Officer had taxed the entire interest income holding the same as not qualifies for deduction under section 80P(2)(a)(i) of the Act.

15. The learned Departmental Representative for the Revenue pointed out that the CIT(A) was not justified in holding the assessee was eligible to claim the deduction under section 80P(2)(a)(i) of the Act.

16. The learned Authorized Representative for the assessee on the other hand, placing reliance on the order of CIT(A) and the decision of Pune Bench of Tribunal in Mahavir Nagari Sahakari Pat Sanshta Ltd. Vs. DCIT (supra) and in DCIT Vs. Shri Agrasen Sah. Patsanstha Maryadit (supra), pointed out that the decision of the Hon'ble Supreme Court in Totgar's Co-operative Sale Society Ltd. Vs. ITO (supra) is not applicable in the case of assessee society since the issue before the Hon'ble Supreme Court was whether the deduction under section 80P(2)(a)(i) of the Act was available on interest earned on short term investments. However, in the present case, the issue was whether the assessee was entitled to claim deduction under section 80P(2)(a)(i) of the Act

in respect of additions made under section 68 of the Act on account of various deposits credited in its books of account. He further pointed out differences between the facts before the Hon'ble Supreme Court in Totgar's Co-operative Sale Society Ltd. (supra) and the facts of the assessee and also referred to subsequent decision of the Hon'ble High Court for the subsequent year in the case of Totgar's Co-operative Sale Society Ltd. itself, wherein the claim of assessee was allowed under section 80P(2)(a)(iii) of the Act. The learned Authorized Representative for the assessee pointed out that in Totgar's Co-operative Sale Society Ltd., since the Co-operative society was agricultural society, then it was eligible to claim the deduction under section 80P(2)(a)(iii) of the Act and not under section 80P(2)(a)(i) of the Act. He further referred to the decision of the Pune Bench of Tribunal in Shri Mahavir Nagari Sahakari Pat Sanshta Ltd. Vs. DCIT (supra) and in DCIT Vs. Shri Agrasen Sah. Patsanstha Maryadit (supra) which had distinguished the decision of Hon'ble Supreme Court in Totgar's Co-operative Sale Society Ltd. and allowed deduction under section 80P(2)(a)(i) of the Act. Similar was the proposition laid down in ITO Vs. Niphad Nagari Sahakari Patsanstha Ltd. (supra), wherein the said deduction was allowed on interest earned by the Co-operative Credit Society from its investments with nationalized banks. He further referred to the ratio laid down by the Pune Bench of Tribunal in bunch of appeals with lead order in the case of Anjum Shoukat Bagwan Vs. DCIT in ITA Nos.215 to 225/PUN/2013, relating to assessment years 1999-2000 to 2009-10, order dated 15.02.2017, wherein the claim of deduction under section 80P(2)(a)(i) of the Act was allowed. He further pointed out that the addition was made in the hands of assessee under section 68 of the Act on account of FDRs standing in various names but some of FDRs had expired and some of FDRs were available in the premises of assessee for interest calculation or renewal and all

these fixed deposits found during the course of search have been returned to the respective parties. He further pointed out that the FDRs which are added in the hands of assessee have subsequently matured. He also pointed out that FDRs in the names of Bachat was like any other deposits.

17. We have heard the rival contentions and perused the record. The first issue which has been raised in the bunch of appeals and which is the main issue is the assessability of income in the hands of assessee and its further deduction under section 80P(2)(a)(i) of the Act. The assessee was a credit cooperative society and was engaged in the business of providing credit facilities to its members. The main Director of the Co-operative Society was Shri Badsha Bagwan. Certain information was received and pursuant thereto, search action under section 132(1) of the Act was carried out on 18.05.2005 and certain incriminating books of account were found and seized. The first dispute which appeared before the Assessing Officer was service of notice under section 143(2) of the Act and the assessee though had raised the said issue before us vide grounds of appeal No.1 to 5 in all the years but the same has been withdrawn. Further, amounts were credited in the cash book of bank/Pat Sanstha towards cash receipt against FDRs made by various persons. The Assessing Officer show caused the assessee to explain as to why the said FDRs credited in the cash book should not be considered as assessee's undisclosed business income. The assessee pointed out that it was carrying on the activities of providing credit facilities to its members since last many years and was accepting deposits from the persons from the area operations and in turn, was providing credit facilities to those who needed it. The assessee elaborately explained that the said credits in its books of account do not relate to it and relate to the persons in whose names they are

standing. In this regard, he also referred to the FDRs which were found from his possession, which as per the assessee were available in the premises for either interest calculation or for renewal. However, the Assessing Officer rejected the plea of assessee since the assessee had failed to establish that the amount received by way of investment in FDRs by depositors was genuinely invested by the concerned persons. Hence, the amount credited in the cash books of Pat Sanstha was treated as unexplained cash credits under section 68 of the Act. The Assessing Officer treated the same as income from other sources in the hands of assessee i.e. other than the banking business or providing credit facilities to its members and denied the benefit of deduction under section 80P(2)(a)(i) of the Act.

18. The CIT(A) on the other hand, held vide paras 29 to 33 of the appellate order that the assessee was carrying on two kinds of businesses; one is the legal business of banking and second was the illegal business of Bhishi (chits). In respect of credits appearing in the books of account on account of various FDRs in various names, the CIT(A) held that the same relate to regular business of the assessee. However, in the absence of assessee having furnishing complete details of the source of said investments, the same was treated as deemed income of assessee under section 68 of the Act but as the assessee was engaged in the business of banking and had received said cash credits in the course of its business of banking, the CIT(A) held that the assessee was entitled to claim the deduction under section 80P(2)(a)(i) of the Act.

19. The Revenue is aggrieved by the said decision of CIT(A) and is in appeal before us. The assessee has also filed grounds of appeal against the

addition made under section 68 of the Act pointing out that where the assessee has established the names of creditors, there is no merit in making the aforesaid additions under section 68 of the Act. However, during the course of hearing before us, the learned Authorized Representative for the assessee pointed out that in case the deduction under section 80P(2)(a)(i) of the Act is allowed to the assessee, then it would not press the grounds of appeal raised for making the addition under section 68 of the Act. The learned Authorized Representative for the assessee however, stressed that no addition is warranted under section 68 of the Act in the hands of assessee since the FDRs belonged to the persons in whose names they stand credited and in later years, the said FDRs have matured and the amount has been repaid to the members of Co-operative society. Consequently, there is no merit in making any addition under section 68 of the Act.

20. Without going into the arguments whether the said entries are to be taxed in the hands of assessee under section 68 of the Act or not, we first take up the issue as to whether the assessee is entitled to claim deduction under section 80P(2)(a)(i) of the Act. The Assessing Officer was of the view that business undertaken by the assessee is its unexplained income and to be assessed as income from other sources. On the other hand, the CIT(A) has held it to be its income from banking and hence, entitled to claim the aforesaid deduction.

21. Section 80P(2)(a)(i) of the Act provides deduction on account of income earned by the Co-operative Society from carrying on its business of banking or providing facilities to its members. The assessee has time and again stated that it had received credits from its members and had given advances to its members only in order to carry out its business of the Co-operative Society.

The Assessing Officer has not found any evidence to controvert the same in the books of account of assessee. There are entries in respect of various credits against FDRs which are tabulated at pages 24 to 27 of the assessment order year-wise. The explanation of assessee was that the said deposits belonged to the persons in whose names they are appearing. In view of certain irregularities in the opening forms and also in some cases, where original FDRs were found at the premises of assessee, the said plea of assessee was not accepted. Further, reliance was placed on the statement recorded of the Manager of Pat Sanstha. The assessee admits that there were certain irregularities in the opening forms but the irregularities were not so grave as to disprove the explanation filed by the assessee. Only because of procedural irregularities would not lead to treating the said deposits as unexplained income of the assessee Pat Sanstha, was the further plea raised by the assessee. Certain FDRs were found from the possession of assessee during the course of search and it was pointed out that the same were available with the assessee for renewal or crediting the interest and in some cases, the FDRs were left with the assessee company for safe custody by the individual members. Where the assessee is carrying on the aforesaid business of providing credit facilities to its members and has advanced the money in the ordinary course of business, then the credits against FDRs though could not be explained completely and the addition was made under section 68 of the Act, but it cannot be held that the assessee has not generated the same from its business of banking or providing credit facilities to its members. During the course of search, the statements of various branch Managers were recorded and questions were asked about the irregularities in the account opening forms and also to produce the depositors. Various Managers tried to explain the discrepancies in the opening forms and when

pressurized, they only stated that they had no other evidence to prove the genuineness of FDRs. The said facts are noted in para 73 of the assessment order. In view thereof, we find no merit in the conclusion of Assessing Officer in holding that the alleged unexplained cash credits were assessee's own undisclosed income from other sources other than banking business or providing credit facilities to its members. Merely because, the assessee could not discharge its duty and furnish the evidence completely, may attract the provisions of section 68 of the Act but it does not establish that the said cash credits appearing in the books against various FDRs is not from the business of banking or providing credit facilities to its members, carried on by the assessee Pat Sanstha. Accordingly, we uphold the order of CIT(A) in this regard.

22. Now, coming to the second limb of the order of CIT(A) in allowing the deduction under section 80P(2)(a)(i) of the Act. In this regard, we find that the issue has been deliberated upon by the Pune Bench of Tribunal in *Shri Mahavir Nagari Sahakari Pat Sanshta Ltd. Vs. DCIT (supra)*, which has also considered the facts in *Totgar's Co-operative Sale Society Ltd. (supra)* and found the same to be at variance. The issue before the Tribunal in the said case was also in respect of deposits appearing in bogus names vis-à-vis burden of proof as per section 68 of the Act. In the facts of the said case, the assessee credit co-operative society was accepting deposits from its customers and during the course of search, the Revenue had found number of deposit forms which did not contain proper particulars of depositors and the Assessing Officer observed that the assessee has failed to discharge minimum onus of proving the identity of depositors. The Assessing Officer on the other hand, also accepted the plea of assessee that it was accepting deposits from

various persons in Benami / bogus names. The addition made under section 68 of the Act was deleted by the Tribunal. Further, the assessee was also held to have satisfied the conditions laid down in section 80P(2)(a)(i) of the Act and the cash credits, if any, taxed in the hands of assessee, was held to be considered as income from the same business of providing credit facilities to its members and accordingly, entitled to the aforesaid deduction. The relevant findings of the Tribunal are vide paras 36 and 37, which read as under:-

“36. As regards the applicability of s. 80P(2)(a)(i), we find that the assessee has given loans only to its members. Shri Patankar, manager, in his statement under s. 132(4) at the time of search itself had stated that for drawing a loan, the person concerned must be a member of the society (p. 66 of the paper book). Further, the confirmation from the chairman placed at p. 132 of the paper book reveals that the loans were provided only to members. The Hon'ble Supreme Court in the case of U.P. Co-operative Cane Union Federation Ltd. vs. CIT (supra) has held that the definition of a member of a co-operative society should be taken from the relevant laws of the concerned state. As the society is incorporated under the Maharashtra Co-operative Societies Act, the definition of a member and nominal member has to be adopted from the said Act. As per these definitions (p. 90 of the paper book), members include nominal members also who are admitted as per the bye-laws and the bye-laws 74 to 88 of the society clearly state that the society can admit nominal members. In view of the above facts, the assessee satisfies the conditions laid down under s. 80P(2)(a)(i) of the Act and hence, it is entitled to deduction under s. 80P of the Act. The interest earned by the assessee accordingly will be exempt under this section. The cash credits, even if taxed, will be considered as income from the same business, i.e., providing credit facilities to the members and, accordingly, they will also be entitled to deduction under s. 80P and thus, the entire income of the assessee is entitled to deduction under s. 80P and, accordingly, no addition is sustainable in the hands of the assessee-society.

37. Coming to the charge of the AO and the learned Departmental Representative that the assessee had violated the bye-laws and hence, it ceased to be a co-operative society and accordingly, deduction under s. 80P is not allowable, we hold that the bye-laws do not take the character of the statute as held by the Hon'ble Supreme Court in the case of Co-operative Central Bank case (supra). Violation of bye-laws by the assessee cannot lead to the automatic conclusion that the assessee is not a co-operative society. The society was granted registration by the registrar of co-operative societies which shows that despite the fact that in the course of action by the IT Department where it was held that the society had accepted deposits from non-members in bogus names, the Government auditor or the registrar after the search has not held that the assessee ceases to be a co-operative society, nor have they cancelled the registration of the assessee as a co-operative society under the Maharashtra Co-operative Societies Act. Hence, we do not agree with the arguments of the AO and the learned Departmental Representative that the society is not a co-operative society. In this, we are supported by the order of the Ahmedabad Bench of the Tribunal in the case of Navdeep Co-operative Bank Ltd. (supra), wherein on similar facts, the Tribunal has held that merely because the assessee-society contravened the rules, regulations, directions of the Reserve Bank of India, so long as the registration

was enjoyed by it, the AO was not justified in holding that the assessee is not a co-operative society. Accordingly, we hold that the assessee-society will continue to enjoy the status of a co-operative society and, therefore, deduction under s. 80P will be available to the assessee.”

23. The said principle was later applied by the Pune Bench of Tribunal in the case of DCIT Vs. Shri Agrasen Sah. Patsanstha Maryadit (supra) and also in ITO Vs. Niphad Nagari Sahakari Patsanstha Ltd. (supra). Further, in another group of cases with lead order in Anjum Shoukat Bagwan Vs. DCIT (supra), vide order dated 15.02.2017, the Tribunal decided the similar issue of addition being made on account of unexplained cash credit on account of FDRs made under section 68 of the Act and the eligibility of deduction under section 80P(2)(a)(i) of the Act. The Tribunal observed as under:-

“44. In the appeals filed by the revenue relating to assessments years 2004-05 and 2005-06 the Ld. Authorised Representative for the assessee pointed out that the only issue was the claim of deduction under section 80P(2)(a)(i) of the Act on such addition made on account of unexplained FDRs under section 68 of the Act. The Ld. Authorised Representative for the assessee pointed out that the Assessing Officer had denied the said claim, however the CIT(A) had allowed the claim of the assessee by allowing deduction u/s.80P of the Act in respect of such additions. The CIT(A) held the assessee to be eligible to the said claim of deduction u/s.80P(2)(a)(i) of the Act since the cash credits were taxed in the hands of the assessee as income from other sources, i.e. providing credit facility to its members. For this proposition, reliance was placed on the ratio laid down by the Pune Bench of the Tribunal in the case of DCIT, Circle-3(1) Dhule Vs. Shri Agrasen Sahakari Pat Sanstha Maryadit vide ITA No.1459/PN/2005 order dated 30-06-2011.”

24. The Tribunal held the assessee to be eligible to claim the said deduction as per para 48, which reads as under:-

“48. We have heard the rival contentions and perused the record. We find the Pune Bench of the Tribunal in Shri Mahavir Nagari Sahakari Pat Sanstha Ltd. Vs. DCIT has held that cash credits on account of various deposits in benami/bogus names, even if, taxed, would be considered as income of the same business, i.e. providing credit facilities to its members and accordingly would be entitled to deduction u/s.80P of the Act. Following the same proposition as laid down by the Pune Bench of the Tribunal in various cases we hold that the assessee is entitled to claim deduction u/s.80P of the Act on the aforesaid addition made under section 68 of the Act even if certain errors were found in the explanation of the assessee. Accordingly we uphold the order of the CIT(A) and dismiss the grounds of appeal raised by the revenue in both the appeals.”

25. Now, coming to the stand of learned Departmental Representative for the Revenue that the issue is covered by the decision in Totgar's Co-operative Sale Society Ltd. Vs. ITO (supra). It may be pointed out that Totgar's Co-operative Sale Society Ltd. was a Co-operative Sales Society, which was engaged in the business of marketing agricultural produce of its members. We find that similar issue of claim of deduction under section 80P(2)(a)(i) of the Act and the applicability of the ratio laid down by the Hon'ble Supreme Court in Totgar's Co-operative Sale Society Ltd. Vs. ITO (supra) arose before the Tribunal in the case of ITO Vs. M/s. Kundalika Nagari Sahakari Patsanstha Maryadit with lead order in ITA No.900/PN/2014, relating to assessment year 2010-11, wherein vide order dated 29.01.2016 it was held as under:-

"16. We have heard the rival contentions and perused the record. The assessee before us is a credit co-operative society, which is accepting deposits from its members and using the same for giving loans to its members. In addition, the assessee is also making investments with other co-operative societies, which it claims to have made as per the mandate of Maharashtra Co-operative Societies Act, 1960. The issue arising before us is whether the interest income earned by the assessee on such investments is liable for deduction under section 80P(2) of the Act in the hands of the assessee. The Assessing Officer relying on the ratio laid down by the Hon'ble Supreme Court in Totgar Co-operative Sale Society Ltd. Vs. ITO (supra) was of the view that the said interest earned by the assessee was not eligible for deduction under section 80P(2)(a)(i) of the Act. The alternate plea of the assessee for claiming the deduction under section 80P(2) of the Act was raised before the CIT(A), who did not adjudicate the same as he was of the view that the assessee was eligible to claim the deduction under section 80P(2)(a)(i) of the Act. Before us, the third contention has been raised that in case, no deduction is available to the assessee, then at best only the net income on such receipts is to be added in the hands of the assessee, for which the assessee has placed the calculation sheet on record. The case of the Revenue on the other hand, is that the decision of the Hon'ble Apex Court in Totgar Co-operative Sale Society Ltd. Vs. ITO (supra) is clearly applicable. In the alternate, reliance was placed on newly inserted section 80P(4) of the Act, which was inserted by the Finance Act, 2006 w.e.f. 01.04.2007 and it was pointed out that the said section had overriding provisions and hence, the same was applicable.

17. In order to adjudicate the issue, first reference is made to the decision of Hon'ble Supreme Court in Totgar Co-operative Sale Society Ltd. Vs. ITO (supra). In the facts of the said case, the assessee before the Hon'ble Apex Court was a co-operative society providing credit facilities to the members or marketing agricultural produce of its members. The assessee had parked its funds in short term bank deposits and securities and the interest earned on the same was claimed as deductible under section 80P(2)(a)(i) of the Act. The Revenue authorities held that the same was taxable under the head 'income from other sources'. The claim of the assessee was that it had invested the funds on short term basis as these were not required immediately for business

purposes and consequently, interest received by the assessee was eligible for deduction under section 80P(2)(a)(i) of the Act. Further, the contention of the assessee before the Court was that under regulations 23 and 28 r.w.s. 57 and 58 of the Karnataka Co-operative Societies Act, 1959, a statutory obligation was imposed on co-operative credit societies to invest its surplus funds in specified securities and in view of the aforesaid statutory obligations, the above mentioned investment was made by the assessee and the same was in the nature of its business activity. The said interest income was claimed to be eligible for deduction under section 80P(2)(a)(i) of the Act, irrespective of the source or head under which such income would fall. The Hon'ble Apex Court noted that the interest income arising on surplus investment in short term deposits and securities, which surplus was not required for business purpose, was to be taxed under section 56 of the Act. The Hon'ble Apex Court further noted that the assessee markets the produce of its members whose sale proceeds at times were retained by it and the tax treatment of such amount was the issue before them. The Hon'ble Apex Court held that where the interest on deposits / securities, where the funds were not immediately required for business purposes, was invested in specified securities, would be taxable as income under section 56 of the Act. It further held that where the assessee society regularly invests its funds not immediately required for business purposes, interest on such investment could not fall within the expression of profits and gains of business and the same could not be held to be attributable to the activities of the society i.e. carrying on of business of providing credit facilities to its members or marketing the agricultural produce of its members. The Hon'ble Apex Court further reiterated that where the assessee markets the agricultural produce of its members and it retains the sale proceeds in many cases and where the retained amount which was payable to its members, from whom the produce was bought, was invested in short term deposits / securities, the said amount was liability of the assessee and it was shown in the balance sheet on the liabilities side, therefore, to that extent, the Hon'ble Supreme Court held that such interest income could not be said to be attributable either to the activity mentioned in 80P(2)(a)(i) or 80P(3) of the Act. In view thereof, the Hon'ble Supreme Court upheld the order of Assessing Officer in taxing the said amount under section 56 of the Act. The alternate plea of the assessee that even if the said interest income was held to be covered under section 56 of the Act, was eligible for deduction under section 80P(2)(a)(i) of the Act, was rejected.

18. In the facts of the case before Hon'ble High Court of Karnataka in Tumkur Merchants Souharda Credit Co-operative Ltd. Vs. ITO (supra), the assessee co-operative society was engaged in the activity of carrying on of business of providing credit facilities to its members and it had earned interest income on its deposits. Another fact noted by the Hon'ble High Court of Karnataka was that the amount which was invested in banks to earn interest was not the amount due to any members and it was not the liability of the assessee. In fact, the said amount was in the nature of profits and gains, which was not immediately required by the assessee for lending money to the members as there were no takers and the assessee in such circumstances, deposited the money in bank so as to earn interest. The Hon'ble High Court of Karnataka in such circumstances held that the interest income was attributable to carrying on of business of banking and therefore, it was liable to be deducted in terms of section 80P(1) of the Act, they took note of insertion of section 80P(4) of the Act, which was applied by the Assessing Officer to deny the deduction under section 80P(2)(a)(i) of the Act. The Hon'ble High Court of Karnataka referred to the judgment of Hon'ble Apex Court in Totgar Co-operative Sale Society Ltd. Vs. ITO (supra) and pointed out that in the facts of the said case, the amount which was retained by the assessee was a liability and it was shown in the balance sheet on liabilities side. Where the interest income was earned on such funds, then the same was held by the Hon'ble

Apex Court to be treated under section 56 of the Act. However, the distinction was drawn by the Hon'ble High Court of Karnataka in para 10 and it was pointed out that in the case before them, the amount which was invested in banks to earn the interest was not an amount due to any member, it was not the liability and it was not shown as liability in their accounts. In fact, the amount was in the nature of profits and gains which was not immediately required by the assessee for lending money to the members as there were no takers and hence, was deposited in the banks so as to earn interest, such interest income earned by the assessee was held to be attributable to carrying on the business and therefore, same was liable to be deducted in terms of section 80P(1) of the Act.

19. *Another decision referred to by the learned Authorized Representative for the assessee is Guttigedarara Credit Co-operative Society Ltd. Vs. ITO (supra), wherein the assessee was a co-operative society engaged in the activity of carrying on the business of providing credit facilities to its members. The Assessing Officer in view of insertion of section 80P(4) of the Act, had declined to extend the benefit of deduction under section 80P(2)(a)(i) of the Act. The interest income earned on short term deposits and from saving banks account was held liable to income tax. The Hon'ble High Court held that where the assessee society was providing credit facilities to its members and was not carrying on any other business, then the surplus funds which it had earned as profits of its business when temporarily not required were invested in banks to earn interest was attributable to carrying on the business of banking and therefore, liable to be deducted under section 80P(1) of the Act.*

20. *Further, the Pune Bench of Tribunal in ITO Vs. Niphad Nagari Sahakari Patsanstha Ltd. (supra) had laid down the similar proposition as by the Hon'ble High Court of Karnataka."*

26. Accordingly, we hold that the assessee is entitled to claim the deduction under section 80P(2)(a)(i) of the Act. Consequently, the grounds of appeal raised by the Revenue are dismissed. Accordingly, the grounds of appeal raised by the assessee in this regard being grounds of appeal No.7 to 9 and 11 in assessment years 2000-01 to 2005-06 and grounds of appeal No.2 and 3 in assessment year 1999-2000 and grounds of appeal No.6 and 7 are dismissed as not pressed.

27. Now, coming to the balance issues raised in the appeal filed by the assessee for the respective years. The first issue is by way of ground of appeal No.10 in the case of Aman Chote Vyapari Pat Sanstha, wherein the assessee has pointed out that the set off of additions made in the respective years be allowed against the income remained to be assessed in the hands of

assessee. In this regard, the learned Authorized Representative for the assessee pointed out that the CIT(A) has in the first instance, allowed relief in respect of certain unexplained cash credits against FDRs and also interest on the said benami FDRs. However, in assessment year 2000-01, the CIT(A) has confirmed the addition on account of unexplained cash credits and benami FDRs in the name of Aman Bachat / Bhishi Mandal to the extent of Rs.1,23,28,000/- and in assessment year 2001-02 to the extent of Rs.1,65,00,000/- and in assessment year 2002-03 of Rs.88 lakhs and Rs.1,16,20,000/- in assessment year 2004-05. The reasons for not allowing the deduction under section 80P(2)(a)(i) of the Act on such FDRs in the name of Aman Bachat / Bhishi Mandal because of the stand taken by the CIT(A) that the assessee in addition to its regular business of providing credit facilities was also running the business of Bhishis/chits in the respective years, on which the assessee was not entitled to the benefit of deduction under section 80P(2)(a)(i) of the Act. The investments in the name of Aman Bachat Mandal in the respective years were held to be not eligible under section 80P(2)(a)(i) of the Act. The learned Authorized Representative for the assessee also pointed out that the addition which has been confirmed in the hands of assessee in assessment years 2005-06 and 2006-07 on account of unexplained credits in the names of B1 and Bachat Bhishi were to the extent of Rs.10.78 crores in assessment year 2005-06 and Rs.8,08,425/- in assessment year 2006-07. Another addition which was confirmed in the hands of assessee, against which no deduction under section 80P(2)(a)(i) of the Act was given was the profit earned from Bhishi business. So the net profit from Bhishi and B1 business in the hands of assessee worked out by the Assessing Officer and confirmed by the CIT(A) to the extent of Rs.3,31,16,045/- in assessment year 2005-06 and Rs.23,67,760/- in assessment year 2006-07. The assessee in this regard

asked for set off of all the additions made in the hands of assessee on account of fact that the FDRs which were held to be belonged to the assessee in view of non-fulfillment of conditions under section 68 of the Act, had matured in different years and the said amounts were available to the assessee for making investments in its B1 and Bachat Bhishi business. The learned Authorized Representative for the assessee however, fairly admitted that in the initial years i.e. assessment years 2000-01 and 2001-02, the addition has to be made on account of peak credit in the hands of assessee but in other years, no further addition is warranted. In respect of addition made in assessment year 2005-06 of Rs.10.75 crores on account of unexplained credits in the names of B1 and Bhishi business, the learned Authorized Representative for the assessee pointed out that the benefit of set off of additions made under section 68 of the Act to be allowed, after giving credit for the profit earned from Bhishi business being available in the hands of assessee.

28. Brief facts relating to the issue are that, from the seized documents, the Assessing Officer noted that the assessee had received money from two sources i.e. Bachat Bhishi Account and B+1 Account. On the perusal of the seized documents, the Assessing Officer found that the money was lent to various people out of above two accounts. The assessee was not able to give complete information and the Assessing Officer show caused as to why the peak credit in the name of Bachat Bhishi and B+1 should not be considered as assessee's undisclosed income under section 68 of the Act. The assessee claimed that the said income from Bhishi Mandal did not belong to it but belonged to two independent persons. This plea of assessee was rejected and the Assessing Officer made the addition in the hands of assessee. The Assessing Officer held that account in the name of B+1 with opening balance

of Rs.5.51 crores as on 02.07.2004 belonged to Badshah Bagwan. As regards Bachat Bhishi Account, wherein there was contribution to Bhishi noted in the seized documents, the Assessing Officer computed peak which worked out to Rs.10.78 crores and Rs.8,08,425/- in assessment years 2005-06 and 2006-07 respectively. These were held to be unexplained sources of income of assessee and addition was made under section 68 of the Act.

29. The CIT(A) did not accept the explanation of assessee in this regard and held that the contents of seized documents belonged to the assessee. Further, the plea of assessee that the premises from which operations of said Bhishi were carried out was separate, was held to be not relevant in deciding the issue. The CIT(A) held that where the records pertaining to B1 and alleged Bhishi had surfaced in the books of assessee Pat Sanstha for the first time, then peak credit is to be added as unexplained in the hands of assessee. Similarly, the addition made on account of peak of Bhishi business in assessment years 2005-06 and 2006-07 was also upheld. The next addition which was made in the hands of assessee was the net profit from Bhishi business in assessment years 2005-06 and 2006-07. The addition of Rs.3.31 crores was made in assessment year 2005-06 and Rs.23,67,760/- in assessment year 2006-07. The CIT(A) has held the assessee to be assessable for the same.

30. The assessee is in appeal against the aforesaid findings of CIT(A). However, the limited issue which has been raised before us on strictly without prejudice basis is that the set off of additions may be allowed to the assessee. The plea of learned Authorized Representative for the assessee in this regard is that the alleged FDRs, value of which has been added in the hands of

assessee along with interest accrued thereon, were encashed in the subsequent years and the funds were available with the assessee to make the investments in Bhishi business and hence, the credit for same may be allowed against the additions made in assessment years 2005-06 and 2006-07. Another plea in this regard which has been raised is that the set off of profit of Rs.3.31 crores be allowed against addition of Rs.10.78 crores made in assessment year 2005-06.

31. The learned Departmental Representative for the Revenue has strongly objected to the said plea of assessee.

32. We have heard the rival contentions and perused the record. The assessee has been found to be engaged in another business of running Bhishi i.e. chit from one of its premises. Though the assessee claims that the said business is not run by him but by some independent persons, but that plea of the assessee has not been accepted and rejecting the same, addition has been made in the hands of assessee. In respect of Bhishi business, the documents were found for assessment years 2005-06 and 2006-07 and consequently, the addition was made on account of peak of B1 and Bachat Bhishi of Rs.10.78 crores in assessment year in 2005-06 and Rs.8,08,425/- in assessment year 2006-07. We find merit in the plea of assessee that once additions are made under section 68 of the Act in the hands of assessee on account of FDRs which were found entered in the books of account, by rejecting the claim of assessee that the said FDRs did not belong to it, but to independent persons; once the FDRs are held to be belong to the assessee and when those FDRs matured, then those funds were available with the assessee for carrying on any other business. Accordingly, we hold that the

assessee is entitled to claim the set off of additions made under section 68 of the Act in respective years against peak addition made on account of peak of B1 and Bhishi of Rs.10.78 crores in assessment year 2005-06 and Rs.8,08,425/- in assessment year 2006-07. The Assessing Officer is thus, directed to re-compute the additions in the hands of assessee in assessment years 2005-06 and 2006-07 after affording reasonable opportunity of hearing to the assessee. However, the additions made on account of net profits of Bhishi business of Rs.3,31,16,045/- is confirmed in the hands of assessee in assessment year 2005-06 and Rs.23,67,760/- in assessment year 2006-07. The benefit of said profits arising from running of Bhishi business cannot be availed in assessment year 2005-06, however, credit of the same may be allowed in assessment year 2006-07. The profit for each of the years is to be separately assessed in the hands of assessee in the respective years.

33. Now, coming to another addition, which has been confirmed by the CIT(A) in the hands of assessee on account of unexplained cash credits against FDRs of Aman Bachat Bhishi / Mandal and the interest on benami FDRs disallowed on account of Aman Bachat Bhishi / Mandal on which the CIT(A) held the assessee not entitled to claim deduction under section 80P(2)(a)(i) of the Act. The addition under section 68 of the Act has been made as under:-

<i>Assessment year</i>	<i>Addition (Rs.)</i>
2000-01	1,23,28,000/-
2001-02	1,65,00,000/-
2002-03	88,00,000/-
2004-05	1,16,20,000/-

34. The learned Authorized Representative for the assessee fairly admitted before us that the addition of Rs.1.23 crores is to be upheld in assessment year 2000-01. However, the benefit of said addition of Rs.1.23 crores is to be

allowed in assessment year 2001-02 as those funds were available with the assessee for making alleged unexplained cash credits. The total addition confirmed in the hands of assessee under section 68 of the Act in assessment year 2001-02 is Rs.1.65 crores. We uphold addition of Rs.1.23 crores in assessment year 2000-01. Further, we direct the Assessing Officer to allow the benefit of set off of Rs.1.23 crores against the addition of Rs.1.65 crores in assessment year 2001-02. Consequently, the addition of Rs.1.23 crores is confirmed in assessment year 2000-01 and addition of Rs.1.65 crores (-) Rs.1.23 crores = Rs.0.42 crores in assessment year 2001-02. However, in assessment years 2002-03 and 2003-04, no further addition is to be made as peak of Rs.1.65 crores has already been added in assessment years 2000-01 and 2001-02. Accordingly, we hold so. The grounds of appeal raised by the assessee i.e. grounds of appeal No.10, 12 and 13 are partly allowed and ground of appeal No.14 is dismissed. Further, the assessee is not entitled to claim the deduction under section 80P(2)(a)(i) of the Act in respect of peak credit of B1 and Bachat Bhishi business and also against net profit of Bachat Bhishi business. The ground of appeal No.15 raised by the assessee is thus, dismissed. The ground of appeal No.16 is linked to the grounds of appeal No.12 and 13, is also dismissed.

35. The assessee in Aman Chote Vyapari, Miraj for assessment years 2001-02 and 2002-03 and in the cross appeals filed by the Revenue, the first aspect is the additional grounds of appeal raised by the assessee against assessment framed under section 143(3) r.w.s. 153A of the Act. The assessee has not pressed the additional grounds of appeal and hence, the same are dismissed as not pressed. Further, the assessee has pointed out that the only issue raised in its appeal is against addition made under section

68 of the Act on account of unexplained cash credits against FDRs, against which the CIT(A) has allowed the claim of deduction under section 80P(2)(a)(i) of the Act holding the assessee to be engaged in the business of providing credit facilities to its members, against which the Revenue is in appeal. We have already decided the issue of allowability of claim of deduction under section 80P(2)(a)(i) of the Act in cross appeals of Pat Sanstha at Ichalkaranji in ITA Nos.1183/PUN/2012 and 1304/PUN/2012. The addition in the hands of assessee under section 68 of the Act on account of cash credits is to be upheld. However, the assessee is entitled to claim the deduction under section 80P(2)(a)(i) of the Act. Accordingly, the appeals of assessee and the Revenue are dismissed.

36. Similarly, in the case of Aman Sahakari Bank, the assessee has not pressed the additional grounds of appeal which are thus, dismissed. Similarly, the grounds of appeal No.1 to 5 and 8 raised by the assessee are not pressed and the same are dismissed as not pressed. The only issue which remained vide grounds of appeal No.6 and 7 against the addition made under section 68 of the Act in the appeal filed by the assessee and the issue raised by the Revenue against eligibility of deduction is under section 80P(2)(a)(i) of the Act. The issue is covered by our decision in the paras hereinabove and following the same parity of reasoning, the grounds of appeal No.6 and 7 raised by the assessee are dismissed and the assessee is held to be entitled to claim deduction under section 80P(2)(a)(i) of the Act on the income assessed in his hands on account of unexplained cash credits against FDRs and interest on benami FDRs. The assessee is entitled to claim the deduction under section 80P(2)(a)(i) of the Act on such cash credits and interest on FDRs. The assessee has not pressed ground of appeal No.8 in all the years, since the

CIT(A) vide rectification order had allowed the deduction under section 80P(2)(a)(i) of the Act on all the FDRs / cash credits of individuals and Mandals. In view thereof, the ground of appeal No.8 is dismissed as not pressed.

37. In the case of Aman Bachat Mandal, the Revenue is in appeal for assessment years 2000-01 to 2005-06 against deletion of protective addition made in the hands of said assessee. The income on protective basis was added in the hands of assessee on account of fixed deposits with Pat Sanstha/bank in the name of Aman Bachat Mandal. We have in the case of assessee at Ichalkaranji have upheld the addition on substantive basis to be made in its hands and accordingly, no protective addition needs to be made in the hands of Aman Bachat Mandal. Upholding the order of CIT(A), we dismiss the grounds of appeal raised by the Revenue.

38. In respect of all the balance assessee for respective assessment years before us, the first ground of appeal No.1 raised is against reopening of assessment under section 147 of the Act, which was not pressed and hence, the same is dismissed as not pressed.

39. The issue raised in grounds of appeal No.2 and 3 raised by the assessee is against the addition made under section 68 of the Act and the Revenue is in appeal against the eligibility of claim of deduction under section 80P(2)(a)(i) of the Act. Applying the parity of reasoning as in the paras hereinabove, we hold that the assessee is eligible to the claim of deduction under section 80P(2)(a)(i) of the Act and consequently, the addition made under section 68 of the Act is confirmed in the hands of assessee. However,

the grounds of appeal raised by the Revenue in each of the appeals for the respective years are dismissed.

40. In the result, all the appeals of assessee are partly allowed and all the appeals of Revenue are dismissed.

Order pronounced on this 11th day of August, 2017

Sd/-
(ANIL CHATURVEDI)
लेखा सदस्य / ACCOUNTANT MEMBER

Sd/-
(SUSHMA CHOWLA)
न्यायिक सदस्य / JUDICIAL MEMBER

पुणे / Pune; दिनांक Dated : 11th August, 2017.

Satish / GCVSR

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order is forwarded to :

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. आयकर आयुक्त (अपील) / The CIT(A)-, Kolhapur;
4. आयकर आयुक्त / The CIT-I/II, Kolhapur / CIT (Central), Pune;
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "ए" / DR 'A', ITAT, Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune