

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.454 to 456/PUN/2015
निर्धारण वर्ष / Assessment Years : 2007-08, 2008-09 & 2010-11

The Income Tax Officer,
Ward 6(3), Pune

.... अपीलार्थी/Appellant

Vs.

M/s. Maharashtra Bank Employees
Co-op. Credit Society Ltd.,
"Janmangal", 1177, Budhwar Peth,
Bajirao Road, Pune – 411002

.... प्रत्यर्थी / Respondent

PAN: AAAAM0401C

प्रत्याक्षेप सं./CO Nos.16 & 17/PUN/2017
निर्धारण वर्ष / Assessment Years : 2007-08 & 2008-09
(out of ITA Nos.454 & 455/PUN/2015)

M/s. Maharashtra Bank Employees
Co-op. Credit Society Ltd.,
"Janmangal", 1177, Budhwar Peth,
Bajirao Road, Pune – 411002

... प्रत्याक्षेपक/ Cross objector

PAN: AAAAM0401C

Vs.

The Income Tax Officer,
Ward 6(3), Pune

.... प्रत्यर्थी / Respondent

Assessee by : Shri M.R. Bhagwat
Revenue by : S/Shri Shivanand Kakkeri, JCIT and
Achal Sharma

सुनवाई की तारीख / Date of Hearing : 27.09.2017	घोषणा की तारीख / Date of Pronouncement: 22.12.2017
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आदेश / ORDER**PER SUSHMA CHOWLA, JM:**

The bunch of three appeals filed by the Revenue are against consolidated order of CIT(A)-I, Pune, dated 30.09.2014 relating to assessment years 2007-08, 2008-09 & 2010-11 against respective orders passed under section 143(3) r.w.s. 147 of the Income-tax Act, 1961 (in short 'the Act'). The assessee also filed Cross Objections against the appeals of Revenue relating to assessment years 2007-08 & 2008-09.

2. The issue arising in the present bunch of appeals is similar. Accordingly, we proceed to decide the appeals by this consolidated order for the sake of convenience. However, in order to adjudicate the issues, we make reference to the facts and issues in ITA No.454/PUN/2015.

3. The Revenue in ITA No.454/PUN/2015 has raised the following grounds of appeal:-

1. *The order of the Commissioner of Income-tax (Appeals) is contrary to law and to the facts and circumstances of the case.*
2. *On the facts and in the circumstances of the case and in law, the Learned Commissioner of Income-tax (Appeals) has erred in holding that the assessee society was eligible for deduction u/s 80P of the I.T. Act in respect of interest income on deposits with non co-operative banks.*
3. *On the facts and in the circumstances of the case and in law, the Learned Commissioner of Income-tax (Appeals) has erred in ignoring the Hon'ble Apex Court's decision in the case of Totgar's Co-operative Sale Society Ltd. Vs. ITO reported in 322 ITR 283 (2010)*
4. *For this and such other reasons as may be urged at the time of hearing, the order of the Ld. CIT(A) may be vacated and that of the Assessing Officer be restored.*

4. The assessee in CO No.16/PUN/2017 has raised the following grounds of objections:-

- 1) *The learned Commissioner of Income Tax (Appeals)-I erred in sustaining the validity of reopening of assessee society's assessments*
- 2) *The learned Commissioner of Income Tax (Appeals)-I while sustaining the validity of reopening erred in overlooking the facts of the case and the various judicial pronouncements relied upon by the assessee.*
- 3) *The reopening be held as without jurisdiction and cancelled.*
- 4) *Such other orders be passed as deemed fit and proper.*

5. The issue arising in the appeals filed by the Revenue is against the order of CIT(A) in holding the assessee society to be eligible for claim of deduction under section 80P of the Act in respect of interest income on deposits with non co-operative banks.

6. Briefly, in the facts of the case, the assessee society for the year under consideration had furnished return of income declaring income of Rs.13,18,140/-. The return of income was processed under section 143(1) of the Act. Thereafter, assessment proceedings were reopened under section 147/148 of the Act. The Assessing Officer recorded reasons for reopening as to the assessee having claimed the deduction under section 80P(2)(a)(i) of the Act on interest income earned on fixed deposits kept with Bank of Maharashtra at Rs.65,27,229/-. The Assessing Officer also recorded reasons that interest income was required to be taxed under the head 'Income from other sources' and not as 'Business income'. In response to the notice issued under section 148 of the Act, the assessee filed return of income and the case of assessee was taken up for scrutiny. The Assessing Officer noted that the assessee society had shown total receipt of Rs.7,60,96,361/- and after claiming expenditure had shown net profit at Rs.4,07,81,382/-. The assessee had claimed the deduction under section

80P(2)(a)(i) of the Act at Rs.4,17,77,146/-. The Assessing Officer further noted that total receipts shown by the assessee includes interest income on fixed deposits kept with Bank of Maharashtra at Rs.65,27,229/-. The assessee had claimed the deduction under section 80P(2)(a)(i) of the Act on the interest income also. The Assessing Officer was of the view that the assessee is not eligible to claim the aforesaid deduction on the interest income, in view of the ratio laid down by the Hon'ble Supreme Court in Totgar's Co-operative Sale Society Ltd. Vs. ITO reported in 188 Taxman 282 (SC) and also in the case of CIT Vs. Karnataka State Co-operative Apex Bank reported in 251 ITR 194 (SC). The assessee thus, was asked to explain as to why interest income received by it from fixed deposits with Bank of Maharashtra should not be taxed under the head 'Income from other sources' and why the deduction claimed under section 80P(2)(a)(i) of the Act be not disallowed. In reply, the assessee pointed out that similar issue was decided by the Tribunal in assessee's own case in assessment year 1996-97 and the deduction under section 80P(2)(a)(i) of the Act was allowed against interest income. It was further pointed out by him that the Revenue had not filed any appeal against the said order, hence the said decision has become final. Without prejudice to the same, it was further pointed out that the assessee was Co-operative society engaged in the business of providing credit facilities to its members. The said business activities were subject to the provisions of Maharashtra Co-operative Societies Act, 1960 and section 66 of the said Act requires every society that was making profit, to maintain reserve fund and transfer minimum of 25% of its profits every year to the reserve fund. It further provided that reserve fund may be invested in accordance with provisions of section 70, wherein clause (d) permitted investment of reserve fund money in any Co-operative Bank or Banking company approved by the Registrar of Co-operative Societies. The assessee further explained that the society was an

organization exclusively belonging to the employees of Bank of Maharashtra and hence, it had invested its reserve fund with Bank of Maharashtra, which was a nationalized bank. The assessee claims to have received permission of the Registrar of Co-operative Societies in 1994 under section 70 to do so and has since invested reserve fund in the fixed deposits with Bank of Maharashtra. He further pointed out from the Balance Sheet that for all the years, the balance standing in the reserve fund on the liability side almost matched with total of investment of fixed deposits with Bank of Maharashtra and P.D.C.C. Bank on the asset side. It was further stressed by the assessee that it was not case of investment of surplus funds lying idle with the society but the fulfillment of statutory obligation which directly arises from the business of providing credit facilities to its members, hence the assessee claimed to be eligible for deduction under section 80P(2)(a)(i) of the Act. Similar plea was raised in respect of interest on Saving Bank Account since the said bank account was directly used for the society's business of providing credit facilities to the members. The assessee further explained that the decision in CIT Vs. Karnataka State Co-operative Apex Bank (supra) was squarely applicable since the section 80P(2)(a)(i) of the Act referred to both, a society carrying on the business of banking or business of providing credit facilities to its members. Further, the legal obligation of reserve fund applies to all the Co-operative societies irrespective of the fact whether they are banks, credit societies or any other type of societies. In respect of decision relied upon by the Assessing Officer in the case of Totgar's Co-operative Sale Society Ltd. Vs. ITO (supra), it was pointed out that the factual matrix of the said case were completely different and hence, not applicable. The Assessing Officer did not accept the submissions put forth by the assessee. Reliance was placed on the judgment in the case of Totgar's Co-operative Sale Society Ltd. Vs. ITO (supra), wherein it was held that

deduction claimed under section 80P(2)(a)(i) of the Act on FD interest received from nationalized bank was not an operational income and it was income from other sources and the same was required to be taxed under the head 'Income from other sources'. The Assessing Officer thus, disallowed deduction claimed by the assessee under section 80P(2)(a)(i) of the Act on interest income received on fixed deposits kept with Bank of Maharashtra.

7. The CIT(A) first decided the issue of reassessment and held the same to be correctly invoked since after the return of income was filed by the assessee, the same was processed under section 143(1) of the Act and no assessment was made under section 143(3) of the Act. Relying on the ratio laid down by the Hon'ble Supreme Court in ACIT Vs. Rajesh Jhaveri Stock Brokers P. Ltd . (2007) 291 ITR 500 (SC), the CIT(A) held that what had to be seen was whether the Assessing Officer had prima facie reason to believe that income had escaped assessment, for issue of notice under section 148 of the Act. In the present case, the CIT(A) held that there were prima facie reasons to believe that income had escaped assessment, hence invoking of jurisdiction under section 147 / 148 of the Act by the Assessing Officer was upheld. The CIT(A) then, decided the issue raised on merits. Before the CIT(A), the assessee submitted that section 66 of the Maharashtra Co-operative Societies Act requires every society, which was making profit, to maintain reserve fund and transfer minimum of 25% of its profits every year to the reserve fund. Further, reserve fund could be invested in accordance with provisions of section 70, which permits investment of reserve fund money in FDs with banking society. Since the assessee society was an organization exclusively belonging to the employees of Bank of Maharashtra, the investment of its reserve fund was made in fixed deposits with the Bank of Maharashtra, which was a nationalized bank. The said investment was also as

per the assessee was authorized under section 70 of the said Act and it was claimed that it was in the course of fulfillment of statutory obligations, which directly arises from the business activity of providing credit facilities to its members, the aforesaid investments were made, which in turn, were eligible for deduction under section 80P(2)(a)(i) of the Act. In respect of reliance placed upon by the Assessing Officer on the decision of Apex Court in Totgar's Co-operative Sale Society Ltd. Vs. ITO (supra), it was pointed out that the said society was mainly engaged in the activities of marketing agricultural produce of its members. The said society had retained with itself sale proceeds of its members and such funds which were surplus or lying idle with it, were invested in fixed deposits with banks. The assessee thus, pointed out that on the basis of such facts, the Hon'ble Supreme Court held that interest arising from such investments was not having any nexus whatsoever with the business of providing credit facilities and hence, was not eligible for the deduction under section 80P(2)(a)(i) of the Act. The assessee also pointed out that the Pune Bench of Tribunal in the case of ITO Ward 1(4), Nashik Vs. Niphad Nagari Sahakari Patsanstha Ltd. in ITA No.1336/PN/2011, relating to assessment year 2008-09 had deliberated upon the issue of applicability of the ratio laid down by the Apex Court in the case of Totgar's Co-operative Sale Society Ltd. Vs. ITO (supra) as applicable to the Co-operative credit societies and decided the issue in favour of assessee. Referring to the said decision of the Tribunal, the CIT(A) held that where the assessee before him was also engaged in the business of providing credit facilities to its members and deposits in question were made in the course of said business of the assessee society; therefore, the assessee was entitled to deduction claimed under section 80P(2)(a)(i) of the Act in respect of interest earned on deposits made with the banks.

8. The Revenue is in appeal against the order of CIT(A) in deciding the issue in favour of assessee on merits, Whereas the assessee has filed Cross Objections against invoking of jurisdiction of reassessment by the Assessing Officer under section 147/148 of the Act.

9. The learned Departmental Representative for the Revenue relying on the order of Assessing Officer in turn, relied on the following decisions:-

- i) *State Bank of India Vs. CIT (2016) 72 taxmann.com 64 (Guj)*
- ii) *Mantola Co-operative Thrift & Credit Society Ltd. Vs. CIT in Income Tax Appeal No.569/2013, judgment dated 27.08.2014*
- iii) *Totgar's Co-operative Sale Society Ltd. Vs. ITO reported in 188 Taxman 282 (SC)*

10. The learned Authorized Representative for the assessee pointed out that first of all, this issue is squarely covered in favour of assessee by earlier order of Tribunal in ITA No.490/PN/1999, relating to assessment year 1996-97, order dated 25.08.2005. Our attention was drawn to the relevant para of the said decision and it was pointed out that it was under the mandatory requirement of section 66 of the Maharashtra Co-operative Societies Act, which laid down that every society had to maintain reserve fund and had to carry forward one-fourth of its net profit each year to the reserve fund. The said reserve fund could be used for carrying on the business of society or may be invested as per provisions of section 70 of the said Act. In view thereof, the Tribunal held that the assessee was entitled to claim the deduction under section 80P(2)(a)(i) of the Act on such FDR interest. The learned Authorized Representative for the assessee then referred to extract of the Maharashtra Co-operative Societies Act filed in the Paper Book at pages 1 and 2 with special reference to provisions of sections 66 and 70. He further pointed out that perusal of Balance Sheet as on 31.03.2010 would reflect that the assessee had made investment of Rs.11.79 crores in

FDRs with Bank of Maharashtra and Rs.1.35 crores with Pune District Central Co-operative General Reserve. It was further pointed out by the learned Authorized Representative for the assessee that the said entity was the Apex Bank. He further referred to reserve fund which totaled to Rs.12.92 crores and stated that majorly the investments were made out of aforesaid reserve fund. Referring to the Profit and Loss Account, the learned Authorized Representative for the assessee pointed out that interest on fixed deposits with Co-operative Banks and the other income has been held to be deductible under section 80P(2)(d) of the Act and there was no dispute in this regard. However, the dispute was only with regard to interest of Rs.1.18 crores on FDR with Bank of Maharashtra and also interest of Rs.23,164/- on Savings account. It was stressed by the learned Authorized Representative for the assessee that earlier on 18.10.1995 it had received sanction from the Registrar of Co-operative Societies for investment of reserve fund in Bank of Maharashtra. The copy of said document in Marathi is placed at page 6 of the Paper Book along with English translation placed at page 7 of the Paper Book. He further relied on the following decisions:-

- i) *CIT Vs. M/s. Punjab State Cooperative Agricultural Development Bank Ltd., Chandigarh in Income Tax Appeal No.638/2009, judgment dated 11.11.2016*
- ii) *SE Railway Employees Co-op. Credit Society Ltd., 390 ITR 524 (Cal)*
- iii) *CIT Vs. Karnataka State Co-operative Apex Bank reported in 251 ITR 194 (SC)*
- iv) *ITO Vs. M/s. Kundalika Nagari Sah. Patsanstha Maryadit in ITA No.900/PN/2014, relating to assessment year 2010-11, CO No.34/PN/2015 & Anr, order dated 29.01.2016*
- v) *M/s. Pearl Plastic Products Vs. ITO in ITA Nos.740 to 744/PN/2010, relating to assessment years 2002-03 to 2006-07, order dated 29.05.2015*

11. We have heard the rival contentions and perused the record. The limited issue which arises in the present appeal filed by the Revenue is against relief

given by the CIT(A) on the claim of assessee society that interest income received on FDRs with scheduled Bank of Maharashtra is entitled to claim of deduction under section 80P(2)(a)(i) of the Act. The assessee was a Co-operative society of the employees of Bank of Maharashtra, and was engaged in the business of providing credit facilities to its members. The activities carried on by the assessee society were subject to the provisions of Maharashtra Co-operative Societies Act, 1960. Under section 66 of the said Act, every society which is making profits from its transactions shall maintain reserve fund as per clause (1) to section 66 of the said Act. Clause (2) further lays down that every society shall carry atleast one-fourth of net profits each year to the reserve fund; and such reserve fund may subject to the rules made thereunder, if any, be used in the business of society or may, subject to provisions of section 70, be invested, as the State Government may by general or special order direct or may, with the previous sanction of the State Government be used in part for some public purpose to promote the objects of the Act or some such purposes of the State Government or of the local interest. Section 70 of the said Act lays down that society shall invest or deposit its funds in one or more of the investments provided in clauses (a) to (e) thereunder. We are concerned here with clause (d) to section 70 of the said Act, which reads as under:-

“70...
(a)....
(b)....
(c)...
(d) *in any co-operative bank (other than those referred to in clause (a) of this section) or banking company approved for this purpose by the Registrar, and on such conditions as the Registrar may from time to time impose:*
(e).....”

12. Reading the provisions of Maharashtra Co-operative Societies Act, it is incumbent upon the society which is making profits to park one-fourth of its profits in the reserve fund. Further, the said reserve funds as per directions of

the State Government by general or special order are to be invested in one of the securities, which are provided under section 70 of the said Act. Clause (d) clearly lays down that the investment or deposit of funds could be in any Co-operative Bank or Banking company approved for this purpose by the Registrar. The assessee society belonging exclusively to the employees of Bank of Maharashtra, had invested its reserve funds in FDs with Bank of Maharashtra. Accordingly, the assessee society applied for requisite permission from the Registrar of Co-operative Societies under section 70 to do so. The Registrar vide its letter dated 18.10.1995 in respect of investment of reserve funds consequent to Society's Resolution dated 25.08.1994 and Management Committee's Resolution dated 29.07.1991 and further the assessee's letter dated 11.07.1995, granted permission under section 70 of the Maharashtra Co-operative Societies Act, 1960 and Rule 54 of the Rules 1961 to transfer reserve funds amount with Pune District Central Co-operative Bank to the Bank of Maharashtra with condition of investment and also that the amount invested in the Bank of Maharashtra could not be given as security for borrowing or used for any other purpose without written permission from the Registrar. The copy of said permission is placed at page 6 with English translation at page 7 of the Paper Book. The claim of assessee was that in line with the said permission received from the Registrar as under the provisions of section 66 and 70 of the Maharashtra Co-operative Societies Act, it was required to transfer the funds i.e. one-fourth of profits of assessee's society to the reserve fund and thereafter, the funds in the reserve fund were invested as FDRs with the Bank of Maharashtra. The assessee points out that the said parking of funds in FDRs with the Bank of Maharashtra was one of the conditions for carrying on the business activities of the assessee society, hence interest earned therefrom was business income in the hands of assessee. It was time and again reiterated by the learned

Authorized Representative for the assessee that the amounts which were parked in FDRs with Bank of Maharashtra were not out of surplus and idle funds but were out of funds transferred to reserve fund. The assessee thus, claimed that once the interest income has been earned during the course of carrying on of its business activities, then the same is eligible for grant of deduction under section 80P(2)(a)(i) of the Act .

13. The Apex Court in CIT Vs. Karnataka State Co-operative Apex Bank (supra) while deciding the case of Co-operative Societies and scope of special deduction had held as under:-

“Interest arising from investment made, in compliance with statutory provisions to enable it to carry on banking business, out of reserve fund by a co-operative society engaged in banking business, is exempt under section 80P(2)(a)(i) of the Income-tax Act, 1961. The placement of such funds being imperative for the purpose of carrying on banking business the income therefrom would be income from the assessee’s business.

There is nothing in the phraseology of section 80P(2)(a)(i) which makes it applicable only to income derived from working or circulating capital.”

14. We further find that similar issue was considered by the Pune Bench of Tribunal in ITO Vs. M/s. Kundalika Nagari Sah. Patsanstha Maryadit (supra), wherein the issue was with regard to investments with other Co-operative Society as per the mandate of Maharashtra Co-operative Societies Act and whether the interest income earned by the assessee on such investments was liable for deduction under section 80P(2)(a)(i) of the Act. The Assessing Officer had denied the claim relying on the ratio laid down by the Hon'ble Supreme Court in Totgar’s Co-operative Sale Society Ltd. Vs. ITO (supra), the Tribunal after considering the factual and legal aspects held as under:-

“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.*

21. *..... The claim of the assessee before us is that it was engaged in the business of providing credit facilities to its members, out of loan received from its members itself. The surplus amount which was on account of amount received from its members only, which had not been advanced to any of the members was invested in the banks, against which the said investment was made out of surplus funds available with the assessee, which in turn, were amounts advanced by the members itself. The said parking of funds with the co-operative banks was claimed by the assessee to be in the nature of its business activity as it was the requirement of Maharashtra Co-operative Societies Act, 1960, that 20 to 30% of total deposits are to be parked in the investments with co-operative banks. It is not the case of the Department that the amount invested by the assessee was out of any liabilities due by the assessee. In the absence of the same and following the same parity of reasoning laid down by the Hon'ble High Court of Karnataka in Tumkur Merchants Souharda Credit Co-operative Ltd. Vs. ITO (supra) and the facts of the present case being at variance to the facts before the Hon'ble Supreme Court in Totgar's Co-operative Sale Society Ltd. Vs. ITO (supra), we hold that the assessee is entitled to the claim of deduction under section 80P(2)(a)(i) of the Act. In the alternate, we find merit in the plea of the assessee that at best the income which can be assessed in the hands of assessee is the net income and not the gross income as proportionate expenditure incurred is to be allowed in the hands of the assessee. However, we are not adjudicating this issue since we have already held the assessee to be eligible for claim of deduction under section 80P(2)(a)(i) of the Act. In view thereof, we also do not adjudicate the second alternate plea raised by the assessee that it is entitled to the claim of deduction under section 80P(2)(d) of the Act. However, the assessee is not entitled to the deduction under section 80P(2)(a)(i) of the Act relating to dividend received from UTI Mutual Funds and*

Sundaram Finance of Rs.87,087/- and Rs.88,519/-, which are to be included as income from other sources, on which the assessee is entitled to proportionate expenditure. Similarly, the profit of Rs.25,786/- from other activities and services is not entitled to the claim of deduction under section 80P(2)(a)(i) of the Act. Accordingly, we partly uphold the order of CIT(A). In view thereof, the grounds of appeal raised by the Revenue are partly allowed.”

15. The Hon'ble Punjab & Haryana High Court in CIT Vs. Nawanshahar Central Co-operative Bank Ltd., (2003) 263 ITR 320 (P&H) held that where investment in PSEB bonds was made in accordance with mandatory provisions of section 44 of Punjab Co-operative Societies Act, it was clearly a statutory investment and the interest on this investment was eligible for deduction under section 80P(2)(a)(i) of the Act. The Hon'ble Punjab & Haryana High Court held that whether investment was made in statutory reserves had come out of working or circulating capital or out of surplus funds was of no consequence. The said decision of the Hon'ble Punjab & Haryana High Court has been confirmed by the Hon'ble Supreme Court in CIT Vs. Nawanshahar Central Co-operative Bank Ltd. (2007) 289 ITR 6 (SC), wherein it has been held that where a Co-operative bank carrying on the business of banking, statutorily required to place part of its funds in approved security, then the income attributable thereto is deductible under section 80P(2)(a)(i) of the Act. The Hon'ble Supreme Court relied on earlier decisions of the Apex Court in this regard.

16. The Hon'ble Punjab & Haryana High Court in CIT Vs. Punjab State Co-operative Agricultural Development Bank Ltd. (2016) 389 ITR 607 (P&H) has remanded the issue back to the Tribunal to decide whether the assessee was carrying on business of banking and thereafter, decide the issue of eligibility of deduction under section 80P(2)(a)(i) of the Act on the interest income attributable to the business of banking.

17. However, we find that the Hon'ble High Court of Gujarat in State Bank of Income Vs. CIT (supra) while deciding similar issue of eligibility of deduction under section 80P(2)(a)(i) of the Act on interest income from deposits of surplus funds in banks held that neither it was business income nor income from investment in any other Co-operative societies. It may be pointed out that the Hon'ble High Court in para 16 has clearly noted that in the said case, there was no obligation upon the assessee to invest its surplus funds with the State Bank of India. It was further observed that *investing surplus funds in a bank is no part of the business of the appellant of providing credit to its members and hence, it cannot be said that the interest income derived from depositing surplus funds with the State Bank of India being attributable to the business carried on by the appellant, cannot be deducted under section 80P(2)(a)(i) of the Act.* The Hon'ble High Court further referred to section 71 of the Gujarat Co-operative Societies Act, 1961 permitting society to invest or deposit its funds in the State Bank of India. The Hon'ble High Court held that while investment in State Bank of India was permissible under section 71 of that Act, there was no statutory obligation upon the assessee to deposit the funds as part of its business. The said provision also permitted investment of funds in any Co-operative Bank or any banking company approved for this purpose by the Registrar. The Hon'ble High Court further held that the assessee could not avail the deduction under section 80P(2)(d) of the Act in this regard. Even in the case of Mantola Co-operative Thrift & Credit Society Ltd. Vs. CIT (supra) the issue before the Hon'ble High Court was in respect of interest income earned from FDRs out of surplus funds and applying the principle laid down in Totgar's Co-operative Sale Society Ltd. Vs. ITO (supra), the Hon'ble High Court held the assessee not to be entitled to claim the deduction.

18. We find that the facts of the present case are at variance to the facts before the Hon'ble High Court of Gujarat (supra). Even in the facts before the Hon'ble Supreme Court in Totgar's Co-operative Sale Society Ltd. Vs. ITO (supra), the issue was deposit of surplus funds as in the case before the Hon'ble High Court of Gujarat. Though reference is being made to the reserve funds but the ratio laid down is against investing of surplus funds. Where any society deposits its surplus funds in fixed deposits with Scheduled Bank, then the Courts have held that such interest income is not eligible for claim of deduction under section 80P(2)(a)(i) of the Act. However, the facts of the present case before us are at variance, it is not surplus funds which has been deposited by the assessee. On the other hand, the assessee is statutorily required to deposit 25% of its profits in reserve funds, which in turn, have to be parked in FDRs with Co-operative Bank or Scheduled Banking company. The assessee before us, in line with statutory obligation of maintaining its status of Co-operative society and as per the regulations of Maharashtra State Co-operative Societies Act, was duty bound to transfer 25% of its profits to reserve funds, which it has done. There is no dispute to the same. The second aspect is the utilization of funds in reserve funds by way of making FDRs with Scheduled bank under section 70 of the said Act. The assessee has received permission of the Registrar of Maharashtra Co-operative Societies Act to make such investment with Bank of Maharashtra and also in order to carry on the business activities of providing credit facilities to its employees, it is mandatory upon the assessee to invest 25% of its profits in the reserve funds, which in turn, are parked in FDRs with Bank of Maharashtra, then interest income earned by the assessee is from carrying on its business activities. Once it is so, then the said income is assessable as 'Income from business' and the assessee is entitled to claim deduction under section

80P(2)(a)(i) of the Act. Accordingly, we hold so. However, the assessee is not entitled to claim the said deduction on Saving Account interest.

19. Before parting, we may also refer to the order of Tribunal in assessee's own case in ITA No.490/PN/1999, relating to assessment year 1996-97, order dated 25.08.2005, wherein similar issue was decided by the Tribunal in turn, referring to the mandatory requirements as per sections 66 and 70 of the Maharashtra Co-operative Societies Act, 1960. The said decision of the Tribunal has been accepted by the Revenue and it has not been brought to our notice that the said decision has been reversed. Accordingly, we find no merit in the stand of Revenue in this regard and dismissing the grounds of appeal raised by the Revenue, we uphold the order of CIT(A) in directing the Assessing Officer to allow eligible deduction under section 80P(2)(a)(i) of the Act on the interest income earned on FDRs of Bank of Maharashtra.

20. The facts and issues in ITA Nos.455/PUN/2015 & 456/PUN/2015 are similar to the facts and issues in ITA No.454/PUN/2015 and our decision in ITA No.454/PUN/2015 shall apply *mutatis mutandis* to ITA Nos.455/PUN/2015 & 456/PUN/2015.

21. The Cross Objections filed by the assessee are against reopening of assessment under section 148 of the Act.

22. The learned Authorized Representative for the assessee fairly pointed out that assessment was made under section 143(1) of the Act but the Assessing Officer has to have some tangible material for recording reasons for reopening of escapement of income. The learned Authorized Representative for the

assessee stressed that the Assessing Officer had no fresh information which led him to believe that there was escapement of income, on the other hand, he was relying only on the return of income. He further pointed out that reasons were identical for both the years under consideration. The learned Authorized Representative for the assessee further relied on different decisions on this issue. We have already decided the issue on merits in favour of assessee and hence, the issue raised by way of Cross Objections become academic in nature and the same is thus, not adjudicated.

23. In the result, all the appeals of Revenue and Cross Objections of assessee are dismissed.

Order pronounced on this 22nd day of December, 2017.

Sd/- (ANIL CHATURVEDI)	Sd/- (SUSHMA CHOWLA)
लेखा सदस्य / ACCOUNTANT MEMBER	न्यायिक सदस्य / JUDICIAL MEMBER

पुणे / Pune; दिनांक Dated : 22nd December, 2017.

GCVSR

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

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. आयकर आयुक्त(अपील) / The CIT(A)-I, Pune;
4. आयकर आयुक्त / The CIT-I, 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