

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**TAX APPEAL NO.486 of 2015
With
TAX APPEAL NO.487 of 2015****FOR APPROVAL AND SIGNATURE:****HONOURABLE MS. JUSTICE HARSHA DEVANI
and
HONOURABLE MR. JUSTICE G.R.UDHWANI**

1	Whether Reporters of Local Papers may be allowed to see the judgment?	
2	To be referred to the Reporter or not?	
3	Whether their Lordships wish to see the fair copy of the judgment?	
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder?	

STATE BANK OF INDIA (SBI)....Appellant(s)

Versus

COMMISSIONER OF INCOME TAX....Opponent(s)

Appearance:

MR SN DIVATIA, ADVOCATE for the Appellant(s) No.1

MR MR BHATT, SR. ADVOCATE with MRS MAUNA M BHATT, SR.

STANDING COUNSEL for the Opponent(s) No.1

**CORAM: HONOURABLE MS. JUSTICE HARSHA DEVANI
and
HONOURABLE MR. JUSTICE G.R.UDHWANI****Date : 25/04/2016****COMMON ORAL JUDGMENT
(PER : HONOURABLE MS. JUSTICE HARSHA DEVANI)**

1. Heard Mr. S.N. Divatia, learned advocate for the

appellant and Mr. M.R. Bhatt, senior advocate, learned counsel for the respondent. Having regard to the submissions advanced by the learned counsel for the respective parties, the court is of the view that the matters require consideration, hence **admit**. The following substantial questions of law arise for consideration:-

- (1) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was justified in upholding invocation of powers under section 263 of the Income Tax Act, 1961 by the Commissioner of Income Tax?
- (2) Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was justified in holding that interest income of Rs.16,14,579/- on deposits placed with State Bank of India was not exempt under section 80P(2)(a)(i) of the Income Tax Act, 1961?

In Tax Appeal No.487/2015, in the second question, the figure “16,14,579” shall stand substituted by the figure “32,83,410”.

1.1 Since, the learned counsel for the respective parties had addressed the court at length on the merits of the case, the appeals were taken up for final hearing at the admission stage itself.

2. Both these appeals at the instance of the assessee arise out of the common order dated 26th March, 2015 passed by the Income Tax Appellate Tribunal, ‘D’ Bench, Ahmedabad (hereinafter referred to as “the Tribunal”) in ITA

Nos.492/AHD/2014 and 900/AHD/2014 and hence, the same were taken up for hearing together and are decided by this common judgment.

3. The assessment years are 2009-10 and 2010-11. The appellant is a co-operative society registered under the Gujarat Co-operative Societies Act, 1961. The assessee is registered with the object of accepting deposits from salaried persons of the State Bank of India, Gujarat region with a view to encourage thrift and providing credit facility to them. Accordingly, the assessee society has launched various deposit schemes such as Term Deposit, Recurring Deposit, Aid to Your Family Scheme, Members Retiring Benefit Fund etc. and at the same time, is advancing loans to the members such as consumer goods loan, car-vehicle loan, food grain loan and general purposes loan, etc.

3.1 The appellant filed its original return of income for assessment year 2009-10 on 21st August, 2009 declaring total income at Rs. Nil after claiming deduction under section 80P of the Income Tax Act, 1961 (hereinafter referred to as the "Act") at Rs.29,69,444/-. The matter was taken up in scrutiny by the Assessing Officer who called for various details including justification regarding claim of deduction under section 80P of the Act vide notice under section 142(1). The appellant society submitted its reply dated 9th May, 2011 narrating the nature of activities carried out by it and claim of deduction under section 80P with copy of bye-laws. The Assessing Officer framed assessment under section 143(3) of the Act on 24th May, 2011 accepting the claim.

3.2 For assessment year 2010-11, the appellant filed its original return of income on 5th August, 2010 declaring nil total income after claiming deduction under section 80(P)(2)(a)(i) of the Act at Rs.43,64,828/-. The matter was taken up for scrutiny by the Assessing Officer, who, vide notice under section 142(1) of the Act, called for various details, which included justification regarding claim of deduction under section 80P. The appellant society in its reply narrated the nature of activities carried out by it and the claim of deduction under section 80P of the Act. The Assessing Officer, by an order dated 5th November, 2012, passed under section 143(3) of the Act, accepted the claim.

3.3 Subsequently, the Commissioner of Income Tax invoked powers under section 263 of the Act proposing to revise the above referred orders passed by the Assessing Officer on the ground that interest income of Rs.16,14,579/- from the State Bank of India for assessment year 2009-10 and interest income of Rs.32,83,410/- from the State Bank of India for assessment year 2010-11 was not exempt under section 80P(2)(d) of the Act. In response to the above show-cause, the appellant contended that the interest income was business income and was exempt under section 80P(2)(a)(i) of the Act. The Commissioner of Income Tax did not find the explanation satisfactory on the ground that interest income had not been received from a co-operative bank so as to be exempt under section 80P(2)(d) of the Act and that it was not business income so as to be exempt under section 80P(2)(a)(i) of the Act and hence, the assessment order was held to be erroneous and prejudicial to the revenue. Being aggrieved, the appellant carried the matters in appeal before the Income Tax Appellate

Tribunal. The Tribunal held that interest income earned on extending credit facilities by the assessee to its members will be business income as there exists nexus between the income and the business of the society, which is extending credit facility to its members but it cannot be said that there is such nexus between the interest earned on deposits made with SBI. The Tribunal was of the view that it may be true that the deposits were made in banks so that funds are not kept idle but the motive for making deposits with SBI cannot change the character of interest income earned on deposit made from SBI to one arising from business of providing credit facility to its members. In this regard, the Tribunal drew support of the decision of the Supreme Court in **Totgars Co-operative Sales Society Ltd. v. Income Tax Officer**, (2010) 322 ITR 283, and dismissed the appeals.

4. Mr. S.N. Divatia, learned advocate for the appellant assailed the impugned order by submitting that the assessee is a co-operative society formed by the employees of the State Bank of India Gujarat Circle under the Gujarat Co-operative Societies Act, 1961 in the category of Employees' Co-operative Credit Society for the purpose of encouragement of savings and providing credit facilities to the members of the Society. It was submitted that the Society is not engaged in any other activity except giving credit facilities to its members who are employees of State Bank of India and that the income generated by the assessee is mainly on account of differential rate of amount of deposits received from the members and the amount of loans given to the members. Thus, the income generated is only from the contributions received from the members and it does not deal in any way with any person

other than the members. The State Bank of India deducts the contribution from the salary of the employees and the collective contribution received is remitted to the assessee generally on the first of every month. The amount of loan is given to the employees on a fixed day of the month (around 15th of the month) and not every day. During the intervening period, the idle money collected by the assessee is deposited with the State Bank of India for the purpose of earning interest. As and when the amount is required, the deposits with the State Bank of India are liquidated and utilized for the purposes of the assessee. The deposit of amount with State Bank of India is, therefore, incurred during the course of business and part of the activities of the assessee and cannot be seen in isolation. It was submitted that the decision of the Supreme Court in the case of **Totgars Co-operative Sales Society Limited v. Income Tax Officer** (supra) would not be applicable to the facts of the present case inasmuch as to apply the said decision, the necessary facts have to be on record and that there is no strait-jacket formula that the above decision would be applicable.

4.1 Reliance was placed upon the decision of the Karnataka High Court in **Tumkur Merchants Souharda Credit Cooperative Limited v. Income Tax Officer, Ward V, Tumkur**, (2015) 55 taxmann.com 447 (Karnataka), wherein the court has held that the word “attributable to” is certainly wider in import than the expression “derived from”. Whenever the legislature wanted to give a restricted meaning, they have used the expression “derived from”. The expression “attributable to” being of wider import, the expression is used by the legislature whenever they intended to gather receipts

from sources other than the actual conduct of business. A co-operative society which is carrying on the business of providing credit facilities to its members, earns profits and gains from business by providing credit facilities to its members. The interest income so derived or the capital, if not immediately required to be lent to the members, cannot be kept idle. If they deposit this amount in a bank so as to earn interest, the said interest income is attributable to profits or gains of the business of providing credit facilities to its members only. The court observed that the society is not carrying on any separate business for earning business income. The income so derived is the amount of profits or gains of business attributable to the activity of carrying on the business of banking or providing credit facilities to its members by a co-operative society and is liable to be deducted from the gross total income under section 80P of the Act. As regards the decision of the Supreme Court in the case of **Totgars Co-operative Sales Society Limited** (supra), the court observed that the Supreme Court was dealing with a case where the assessee - co-operative society, apart from providing credit facilities to the members, was also in the business of marketing of agricultural produce grown by its members. The sale consideration received from marketing agricultural produce of its members was retained in many cases. The said retained amount which was payable to its members from whom produce was bought, was invested in a short-term deposit/security. Such an amount which was retained by the assessee - society was a liability and it was shown in the Balance Sheet on the liability side. The Supreme Court held that therefore, to that extent, such interest income cannot be said to be attributable either to the activity mentioned in section 80P(2)(a)(i) of the Act or under section

80P(2)(a)(iii) of the Act. Therefore, in the facts of the said case, the Supreme Court held that the Assessing Officer was right in taxing the interest income under section 56 of the Act. The court further observed that the Supreme Court had made it clear that it was confining the said judgment to the facts of the said case and, therefore, was of the view that the Supreme Court was not laying down any law. It was submitted that the above decision would be squarely applicable to the facts of the present case as the factual background in which the said decision was rendered is similar to the present case.

4.2 Reliance was also placed upon the decision of the Karnataka High Court in the case of **Guttigedarara Credit Co-operative Society Ltd. v. Income Tax Officer**, (2015) 377 ITR 464 (Karn), wherein the above view has been reiterated. Reliance was also placed upon the decision of the Patna High Court in the case of **Bihar State Housing Co-operative Federation Ltd. v. Commissioner of Income Tax**, (2009) 315 ITR 286, wherein the court was dealing with the question as to whether on the facts and in the circumstances of that case, the Tribunal was correct in holding that the sum of Rs.15,98,590/- received by way of interest on bank deposit is not ancillary and incidental to carrying on the business of providing credit facilities to its members and as such, exempt under section 80P(2)(a)(i) of the Income Tax Act, 1961. The court held that the interest earned on the deposits does not arise out of one or more of the activities specified in section 80P(2)(a)(i) of the Act, but the interest received by the assessee on the bank deposit is ancillary and incidental to carrying on the business of providing credit facilities to its members and as such, exempt under the provisions of section

80P(2)(a)(i) of the Act. The court observed that the assessee deposits surplus funds available with it and earns interest thereon. The nature of activity in which the assessee is involved clearly creates a situation where surplus fund is available to it which it deposits in the bank and earns interest thereon. The placement of such funds being incidental and ancillary for carrying on business of providing credit facilities to its members by reason of section 80P(2)(a)(i) of the Act, the same is exempt under the said provision. The decision of the Supreme Court in the case of **Bihar State Co-operative Bank Ltd. v. Commissioner of Income Tax**, (1960) 39 ITR 114, was cited wherein it has been held thus:

“[9] In the instant case the co-operative society (the appellant) is a Bank. One of its objects is to carry on the general business of banking. Like other banks money is its stock-in-trade or circulating capital and its normal business is to deal in money and credit. It cannot be said that the business of such a Bank consists only in receiving deposits and lending money to its members or such other societies as are mentioned in the objects and that when it lays out its moneys so that they may be readily available to meet demand of its depositors if and when they arise, it is not a legitimate mode of carrying on of its banking business. The Privy Council in 1940-8 ITR 635 : (AIR 1940 PC 230) where the profits arose from the sale of Government securities pointed out at page 645 (of ITR) : (at p. 236 of AIR), that in the ordinary cases the business of a Bank essentially consists of dealing with money and credit. Depositors put their money in the Bank at a small rate interest and in order to meet their demands if and when they arise the Bank has always to keep sufficient cash or easily realisable securities. That is a normal step in the carrying on of the banking business. In other words that is an act done in what is truly the carrying on or carrying out of a business. It may be added that another mode of conducting business of a Bank is to place its funds in deposit with other banks and that also is to meet

demands which may be made on it. It was however argued that in the instant case the moneys had been deposited with the Imperial Bank on long term deposits inasmuch as they were deposited for one year and were renewed from time to time also for a year; but as is shown by the accounts these deposits fell due at short intervals and would have been available to the appellant had any need arisen.

[10] *Stress was laid on the use of the word 'surplus' both by the tribunal as well as by the High Court and it was also contended before us that in the bye-laws under the heading 'business of the bank' it was provided, that the bank could invest surplus funds when not required for the business of the bank in one or more ways specified in S. 19 of the Bihar Act (Cl. 4 III (I) of the Bye-Laws). Whether funds invested as provided in S. 19 of the Bihar Act would be surplus or not does not arise for decision in this case, but it has not been shown that the moneys which were in deposit with other banks were 'surplus' within that bye-law so as to take it out of banking business. As we have pointed out above, it is a normal mode of carrying on banking business to invest moneys in a manner that they are readily available and that is just as much a part of the mode of conducting a Bank's business as receiving deposits or lending moneys or discounting hundies or issuing demand drafts. That is how the circulating capital is employed and that is the normal course of business of a Bank. The moneys laid out in the form of deposits as in the instant case would not cease to be a part of the circulating capital of the appellant nor would they cease to form part of its banking business. The returns flowing from them would form part of its profits from its business. In a commercial sense the directors of the company owe it to the bank to make investments which earn them interest instead of letting moneys lie idle. It cannot be said that the funds of the Bank which were not lent to borrowers but were laid out in the form of deposits in another bank to add to the profit instead of lying idle necessarily ceased to be a part of the stock-in-trade of the bank, or that the interest arising therefrom did not form part of its business profits. Under the bye-laws one of the objects of the appellant bank is to carry on the general business of banking and therefore subject to the Co-operative Societies Act, it has to carry on its business in the*

manner that ordinary banks do. It may be added that the various heads under S. 6 of the Income-Tax Act and the provisions of that Act applicable to these various heads are mutually exclusive. Section 12 is a residuary section and does not come into operation until the preceding heads are excluded: Commissioner of Income-tax v. Basant Rai Takhat Singh, 1933-1 ITR 197 at p. 201 : (AIR 1933 PC 180, 182)."

4.3 Reliance was also placed upon the decision of the Andhra Pradesh High Court in the case of **Commissioner of Income Tax v. Andhra Pradesh State Co-operative Bank Ltd.** (2011) 336 ITR 516, for the proposition that insofar as the interest earned from deposits is concerned, section 80P(2)(a)(i) does not make any difference nor is it possible to read any limitation having regard to the language of the said provision. Every income "attributable to any or more of business of banking" shall be deducted from the gross total income. The decision of this court in the case of **Commissioner of Income Tax-III v. Baroda Peoples Co-op. Bank Ltd.**, (2006) 280 ITR 282, was cited for the proposition that while examining a case wherein a co-operative society claims deduction under section 80P(2)(i) of the Act, one has to bear in mind the object with which the provision is introduced viz. to encourage and promote growth of co-operative sector in the economic life of the country and in pursuance of the declared policy of the Government. Section 80P requires that profits and gains of business must be attributable to any one or more of the specified activities.

4.4 Referring to the notice issued under section 263 of the Act, it was pointed out that the same has been issued on the ground that the appellant is not entitled to exemption under section 80P(2)(d) of the Act, whereas in fact the

appellant has not claimed deduction under section 80P(2)(d) but has claimed deduction under section 80P(2)(a)(i) of the Act. Reliance was placed upon the decision of this court in the case of **Commissioner of Income Tax v. D.N. Dosani**, (2006) 280 ITR 275, for the proposition that before the CIT can pass any order, he has to give the assessee an opportunity of being heard and thereafter record, at least prima facie, that the order of the Assessing Officer is erroneous insofar as it is prejudicial to the interests of the Revenue. The requirement of giving the assessee an opportunity of hearing is for the simple reason that the assessee may be able to refute the belief of the CIT which might be formed on an examination of the record of the proceedings under the Act, that is to say, the assessee may be in a position to point out that the assessment order is neither erroneous nor prejudicial to the interests of the Revenue, or even if it is erroneous, it is not prejudicial to the interests of the Revenue, or it may not be erroneous, even if it is prejudicial to the interests of the Revenue. Therefore, the moment the Revenue's contention is accepted that in the fresh assessment, the Assessing Officer is entitled to examine items which did not form part of section 263 proceedings, the statutory requirement of framing an order under section 263 of the Act after giving the assessee an opportunity of being heard, stands obliterated or made redundant. The court held that on a plain reading of section 263(1) of the Act, it is apparent that the CIT could not have treated any further item or part of the assessment order as being erroneous and prejudicial to the interests of the Revenue without giving the assessee an opportunity of being heard. Therefore, what the CIT himself could not have done, cannot be permitted to be done by the Assessing Officer while giving effect to the order

under section 263 of the Act. Mr. Divatia further submitted that thus, the Commissioner of Income Tax is required to give an opportunity of hearing and on that point, the assessee should be heard. Referring to paragraph 9 of the order passed under section 263 of the Act, it was pointed out that no opportunity of hearing qua section 80P(2)(a)(i) had been given and hearing had been given only in respect of section 80P(2)(d) of the Act. It was submitted that the Commissioner of Income Tax while issuing notice under section 263 of the Act had not assumed jurisdiction in respect of section 80P(2)(a)(i) but only qua section 80P(2)(d) of the Act. Thus, the only question before the Tribunal was whether there was violation of section 80P(2)(d) of the Act. It was further submitted that in **Totgars Co-operative Sales Society Ltd.** (supra), the question was whether the income was assessable under section 56 of the Act, which is not so in the present case. It was submitted that there is no finding in the impugned order that the interest income has to be treated as income from other sources under section 56 of the Act. Referring to the show-cause notice under section 263 of the Act, it was pointed out that there is not even a slightest indication that the income is sought to be taxed as income from other sources under section 56. Thus, there is no finding given by the Commissioner of Income Tax that this income is from other sources nor has the Tribunal given any such finding. It was submitted that the same business consideration as in the case of a bank would govern the case of a credit society.

4.5 Reference was made to bye-law 7 of the Bye-laws of the appellant society to point out that the interest income is a part of the corpus of the society and when the corpus is

invested, the decision of the Supreme Court in the case of **Totgars Co-operative Sales Society Ltd.** (supra) would not be applicable. It was submitted that the interest income is incidental to the main activity of the appellant of providing credit facility and that in the above decision of the Supreme Court, the word 'incidental' had not come up for consideration. Reliance was placed upon the decision of this court in the case of **Commissioner of Income-Tax v. Jafari Momin Vikas Co-op. Credit Society Ltd.** (2014) 362 ITR 331, wherein the court was called upon to answer the question as to whether the Tribunal was correct in allowing deduction under section 80P(2)(a)(i) to the assessee's society even though the same was covered under section 80P(4) read with section 2(24) (viiia) being income by a cooperative society with its member? The court, in view of the clarification issued by the CBDT by virtue of circular No.133 of 2007 dated 9.5.2007, held that sub-section (4) of section 80P will not apply to an assessee which is not a co-operative bank. The court accordingly did not accept the contention of the revenue that section 80P(4) would exclude not only the co-operative banks other than those fulfilling the description contained therein but also credit societies, which are not co-operative banks. The court held that in the case before it the respondent assessee was admittedly not a credit co-operative bank but a credit co-operative society and therefore, the exclusion clause of section 80P(4) of section 80P would not apply.

4.6 In conclusion, it was submitted that the appeals deserve to be allowed by answering the questions in favour of the assessee and against the revenue.

5. Opposing the appeals, Mr. M.R. Bhatt, Senior Advocate, learned counsel for the respondent submitted that it is only the interest received from members towards credit facilities extended to them that would fall within the ambit of the expression profits and gains of business attributable to the activities of the appellant. It was contended that it is open for the appellant to invest surplus funds with the bank and derive interest thereon, but this does not have any direct or proximate connection with the activities of the appellant, and hence the appellant would not be entitled to the benefit of section 80P(2) of the Act in respect of such income. It was submitted that for the purpose of availing the benefit of deduction under section 80P(2) of the Act, such amounts have to be invested in co-operative banks, in which case it would fall within the ambit of section 80P(2)(d) of the Act.

5.1 It was submitted that in case of a credit co-operative society, it is the income derived from such activity that is exempt. Adverting to the facts of the present case it was submitted that the assessee received interest from the State Bank of India which is not a co-operative society nor can such interest be said to be derived from providing credit facilities, therefore, the decision of the Supreme Court in the case of **Totgars Co-operative Sales Society Ltd.** (supra) would be squarely applicable to the facts of the present case so far as the merits are concerned. Reference was made to the decision of the Supreme Court in the case of **Bangalore Club v. Commissioner of Income Tax & Anr, 2013 (350) ITR 509** wherein the Supreme Court has explained the concept of mutuality and in the facts of the said case, held that the arrangement lacked complete identity between the

contributors and participators. Till the stage of generation of surplus funds, the set up resembled that of mutuality. The flow of money, to and fro, was maintained within the closed circuit formed by banks and clubs and to that extent, nobody who was not privy to this mutuality, benefited from the arrangement. However, as soon as these funds were placed in fixed deposits with banks, the closed flow of funds between the banks and the club suffered from deflections due to exposure to commercial banking operations. During the course of their banking business, the member banks used such deposits to advance loans to their clients. Hence, in that case, with the funds of mutuality, member banks engaged in commercial operations with third parties outside the mutuality, rupturing the privity of mutuality and consequently, violating the one to one identity between the contributors and participators as mandated by the first condition. The court was accordingly of the view that the first condition for a claim of mutuality was not satisfied. The court observed that the second condition demanded that to claim an exemption from tax on the principle of mutuality, treatment of the excess funds must be in furtherance of the object of the club which was not the case there. The court observed that in that case, surplus funds were not used for any specific service, infrastructure, maintenance or for any other direct benefit for the members of the club. These were taken out of mutuality when the member banks placed the same at the disposal of the third parties, thus, initiating an independent contract between the bank and the clients of the bank, a third party, not privy to the mutuality. This contract lacked the degree of proximity between the club and its members which may in a distant and indirect way benefit the club, nonetheless, it cannot be categorised as an

activity of the club in pursuit of its objectives. Mr. Bhatt submitted that section 80P of the Act is based upon the concept of mutuality and accordingly exempts any income derived by the society from its members and, therefore the above decision would be squarely applicable to the facts of the present case and that the interest earned from the funds deposited with the banks lacked the degree of proximity between the appellant and its members and hence, cannot be categorised as an activity of the appellant in the pursuit of its objectives so as to fall within the ambit of section 80P(2)(a)(i) of the Act.

5.2 As regards the contention that the Commissioner of Income-tax had assumed jurisdiction only qua section 80P(2) (d) of the Act, referring to the order under section 263 of the Act, it was submitted that the Commissioner of Income Tax is clear that the assessee is not eligible either under clause (a) or clause (d) of section 80P(2) of the Act. Reference was made to the decision of the Karnataka High Court in the case of **Totgars Co-operative Sale Society Ltd. v. Income-Tax Officer**, (2010) 322 ITR 272 (Karn), to point out the nature of the dispute involved in that case. It was submitted that in that case, the court was concerned with two activities of the assessee society: (i) to provide credit facility to its members, and (ii) to market the agricultural produce of its members. It was submitted that the findings recorded by the Supreme Court are also in connection with the two activities and, therefore, to say that the Supreme Court was only concerned with the surplus of marketing produce is not correct. It was submitted that the observation regarding the judgment being confined to the facts of that case is because the assessee was

not in the banking business and all the earlier decisions in this regard are relating to banking business. According to the learned counsel, the decision of the Karnataka High Court in the case of **Tumkur Merchants Souharda Credit Cooperative Ltd.** (supra) is based upon an incorrect reading of the above decision of the Supreme Court. It was submitted that in the case of *Bangalore Club* (supra) even in case where the principle of mutuality was applicable, such interest income has not been allowed.

5.3 As regards the contention raised on behalf of the appellant that the Commissioner of Income-tax has gone beyond the scope of the notice issued under section 263 of the Act, reference was made to the submissions made on behalf of the appellant before the Tribunal, to submit that the submissions are on merits and no contention has been raised that the Commissioner of Income Tax has gone beyond the scope of the notice issued under section 263 of the Act. Reliance was placed upon the decision of the Supreme Court in the case of **Malabar Industrial Co. Ltd. v. Commissioner of Income-tax, Kerala, 2000 (243) ITR 83**, wherein the court has held that an incorrect assumption of facts or an incorrect application of law will satisfy the requirement of the order being erroneous. In the same category fall orders passed without applying the principles of natural justice or without application of mind. It was submitted that in the facts of the present case, the Assessing Officer has not applied his mind to the claim of interest derived from the funds deposited with the State Bank of India and hence, the order suffers from the vice of non-application of mind.

5.4 As regards the decision of this court in the case of **Commissioner of Income-tax v. D.N. Dosani** (supra), it was submitted that the same would not be applicable to the facts of the present case, inasmuch as, in the facts of that case, the Assessing Officer, pursuant to the order made under section 263 of the Act had gone much beyond the scope of the said order, whereas in the present case the proceedings arise out of the order passed by the Commissioner of Income-tax under section 263 of the Act. It was, accordingly, urged that the appeals being devoid of merits deserve to be dismissed and the questions are required to be answered in favour of the revenue.

6. The short question that arises for consideration in these appeals is as to whether the appellant is entitled to claim deduction under section 80P(2)(a)(i) of the Act in respect of the interest earned on the deposits placed with the State Bank of India.

7. For the purpose of appreciating the controversy in issue, it may be necessary to refer to certain facts. The record of the case shows that during the course of assessment proceedings for assessment year 2009-10, the Assessing Officer had issued notice under section 142(1) of the Act dated 20th April, 2011 calling for various details including the following:

“10. Please justify the claim of deduction under section 80P of the IT Act, 1961 by me.”

In response to the above notice issued under section 142(1) of the Act, the appellant by its reply dated 9th May, 2011, inter alia submitted thus:-

- “ 2. The constitution of assessee is of a co-operative society formed by the employees of the State Bank of India, Ahmedabad Circle for the purpose & benefit of members of the society & has been registered under Gujarat Co-operative societies act 1961 under employees co-operative society for the purpose of boosting the savings of members of the society. The jurisdiction of the society is confined to SBI Gujarat Circle. The main object of the society is to receive the contribution from the members from their salaries to be received from SBI on monthly basis. The members are to subscribe to the share capital of the society by payment of fixed amount and they have been allotted the shares.

Out of the corpus so received, by way of share capital and contribution from the members by way of monthly deductions from their salaries, the society is giving loans to the members as per their requirements. The entire activity is conducted by Board of Directors elected by the members themselves at the Annual General Meeting. All the members of the Board are honorary members and they do not draw any remuneration & perquisites from the fund of the society. The income generated by the society is mainly on account of differential rate of amount of deposits received from the members and the amount of loans given to the members. Thus the income generated is only from contribution of members. The society does not deal in any way with any person other than members. The society has track record of 32 years and had accumulated sufficient fund by way of share capital reserves and deposits from members. Out of the said fund, society is giving various kind of loans to their members as decided by the Board of the society from time to time.”

7. As referred to point No.2, the primary activity of the society is to give loans to members and to receive deposits from the members. The main income of the society is interest income. We refer to copy of Profit & Loss Account which clearly indicates the amount of interest received by the society by various loans given to the members and as well as interest received on investment.”

“10. We refer to the point sr. no.2, wherein the activity carried out by the assessee, wherein the whole income is generated by the society from the contribution received from their own members and the assessee society has not earned any income other than dealing with any other outside party or any other activity. Hence the assessee society has claimed the whole income as exempted U/s 80 P of IT Act.”

Thus, it was the case of the appellant that the income generated is only from the contribution of members and that the society does not in any way deal with any person other than members. In paragraph 10 of the reply, the appellant is specific and categorical about the fact that the whole income is generated by the society from the contribution received from their own members and that the assessee society has not earned any income other than dealing with any outside party or other activity. Hence, the assessee has claimed the whole income as exempted under section 80P of the Income Tax Act.

8. It may be pertinent to note that in the entire reply, there is no averment to the effect that the exemption is claimed under section 80P(2)(a)(i) of the Act. Till the conclusion of the assessment proceedings, the stand of the appellant was that such exemption was claimed under section 80P of the Act, without reference to any specific clause thereunder. Before the Commissioner of Income Tax, for the first time, a stand has been taken that the exemption has been claimed under section 80P(2)(a)(i) of the Act. Moreover, the claim for exemption does not give any bifurcation regarding the amount earned by way of interest from the credit facilities provided to its members and the interest from the investment made in the bank. The Assessing Officer, therefore, has not gone into this aspect of the matter at all.

9. Insofar as assessment year 2010-11 is concerned, the Assessing Officer had issued notice dated 20th July, 2012 under section 142(1) of the Act calling upon the appellant to justify various deductions claimed under section 80P of the Act amounting to Rs.43,64,828/- along with necessary supporting evidences and to explain why the deduction should not be disallowed in view of the provisions of section 80P(4) of the Act. In response thereto, the appellant submitted that it was engaged in activities of providing credit facilities and encouragement for savings to its members, that is, employees of State Bank of India serving with the Gujarat circle. It was also stated that the assessee is not engaged in any activity other than giving credit facility to its members who have been employees of the State Bank of India and classified as Employees Co-operative Credit Society, and that the assessee society is eligible for deduction under section 80P(2)(a)(i) at the rate of 100% from its income and accordingly, has claimed deduction in its return of income for assessment year 2010-11. A perusal of the computation of total income shows that the assessee has shown the gross amount of deduction claimed under section 80P of the Act at Rs.43,64,828/- and has claimed the entire amount as deduction under the said provision. In the record of the case, there is no bifurcation available as regards the amount earned by way of interest from the funds deposited with the State Bank of India. It is the case of the appellant that the interest income earned from the funds deposited with the State Bank of India has to be treated as business income because only surplus funds have been deposited on which interest has been received and hence, the same is deductible under section 80P(2)(a)(i) of the Act. It is

also the case of the appellant that the interest income is incidental to its main activity of providing credit facilities to its members.

10. It is in the backdrop of the aforesaid facts which emerge from the record that the controversy involved in the present case is required to be examined. Since the Tribunal has held that the appellant is not entitled to claim deduction of interest earned from the funds deposited with the State Bank of India by placing reliance upon the decision of the Supreme Court in **Totgars Co-operative Sale Society Ltd. v. Income Tax Officer** (supra), it may be apposite to refer to the said decision. In the above case, the assessee was a co-operative credit society. During the relevant assessment years in question, it had surplus funds which it invested in short-term deposits with the banks and in Government securities. On such investments, interest accrued to the assessee. The assessee was providing credit facilities to its members and also used to market the agricultural produce of its members. The substantial question of law which arose for consideration was: Whether such interest income would qualify for deduction as business income under section 80P(2)(a)(i) of the Income Tax Act, 1961? Thus, the assessee invested in short term deposits and securities, the surplus funds which were not required for business purposes. The assessee also marketed the produce of its members whose sale proceeds at times were retained by it. Since the fund created by such retention was not required immediately for business purposes, it was invested in specified securities. The court considered the question as to whether interest on such deposits/securities, which strictly speaking accrues to the members' account, could be taxed as business

income under section 28 of the Act and was of the view that such interest income would come in the category of “income from other sources”, hence such interest income would be taxable under section 56 of the Act. The court further held thus:

15. *At the outset, an important circumstance needs to be highlighted. In the present case, the interest held not eligible for deduction under Section 80-P(2)(a)(i) of the Act is not the interest received from the members for providing credit facilities to them. What is sought to be taxed under Section 56 of the Act is the interest income arising on the surplus invested in short-term deposits and securities which surplus was not required for business purposes. The assessee(s) markets the produce of its members and wholesale proceeds at times were retained by it. In this case, we are concerned with the tax treatment of such amount. Since the fund created by such retention was not required immediately for business purposes, it was invested in specified securities. The question before us is—whether interest on such deposits/securities, which strictly speaking accrues to the members’ account, could be taxed as business income under Section 28 of the Act? In our view, such interest income would come in the category of “Income from other sources”, hence, such interest income would be taxable under Section 56 of the Act, as rightly held by the assessing officer.*

16. *In this connection, we may analyse Section 80-P of the Act. This section comes in Chapter VI-A, which, in turn, deals with “Deductions in respect of certain incomes”. The headnote to Section 80-P indicates that the said section deals with deductions in respect of income of cooperative societies. Section 80-P(1), inter alia, states that where the gross total income of a cooperative society includes any income from one or more specified activities, then such income shall be deducted from the gross total income in computing the total taxable income of the assessee Society. An income, which is attributable to any of the specified activities in Section 80-P(2) of the Act, would be eligible for deduction. The word “income” has been defined under Section 2(24)(i) of the Act to include profits and gains. This sub-section is an inclusive provision. Parliament has*

included specifically “business profits” into the definition of the word “income”. Therefore, we are required to give a precise meaning to the words “profits and gains of business” mentioned in Section 80-P(2) of the Act.

17. In the present case, as stated above, the assessee Society regularly invests funds not immediately required for business purposes. Interest on such investments, therefore, cannot fall within the meaning of the expression “profits and gains of business”. Such interest income cannot be said also to be attributable to the activities of the Society, namely, carrying on the business of providing credit facilities to its members or marketing of the agricultural produce of its members. When the assessee Society provides credit facilities to its members, it earns interest income. As stated above, in this case, interest held as ineligible for deduction under Section 80-P(2)(a)(i) is not in respect of interest received from members. In this case, we are only concerned with interest which accrues on funds not required immediately by the assessee(s) for its business purposes and which have been only invested in specified securities as “investment”.

18. Further, as stated above, the assessee(s) markets the agricultural produce of its members. It retains the sale proceeds in many cases. It is this “retained amount” which was payable to its members, from whom produce was bought, which was invested in short-term deposits/securities. Such an amount, which was retained by the assessee Society, was a liability and it was shown in the balance sheet on the liability side. Therefore, to that extent, such interest income cannot be said to be attributable either to the activity mentioned in Section 80-P(2)(a)(i) of the Act or in Section 80-P(2)(a)(iii) of the Act. Therefore, looking to the facts and circumstances of this case, we are of the view that the assessing officer was right in taxing the interest income, indicated above, under Section 56 of the Act. (Emphasis supplied)

11. On behalf of the appellant, it has been contended that the above decision would not be applicable to the facts of the present case, inasmuch as, the Supreme Court was concerned with the sale proceeds belonging to the members,

which the assessee therein had retained. It was this retained amount which was payable to its members, from whom produce was bought which was invested in short-term deposits/securities and such an amount which was retained by the assessee society, was a liability and it was shown in the Balance Sheet on the liability side. It was pointed out that, therefore, to that extent, the Supreme Court had held that the interest income cannot be said to be attributable either to the activities mentioned in section 80P(2)(a)(i) of the Act or under section 80P(2)(a)(iii) of the Act. It was submitted that in the facts of the present case, it is not the amount belonging to the members which has been deposited with the State Bank of India. What has been invested is the amount received for the purpose of providing credit facilities to the members and hence, the above decision would not be applicable to the facts of the present case.

12. Under section 80P of the Act, an assessee is entitled to exemption in respect of income earned out of the activities enumerated in sub-section (2) thereof, which are as follows:

- (a) in the case of a cooperative society engaged in—*
 - (i) carrying on the business of banking or providing credit facilities to its members, or*
 - (ii) a cottage industry, or*
 - (iii) the marketing of the agricultural produce of its members, or*
 - (iv) the purchase of agricultural implements, seeds, livestock or other articles intended for agriculture for the purpose of supplying them to its members, or*
 - (v) the processing, without the aid of power, of the agricultural produce of its members, or*
 - (vi) the collective disposal of the labour of its members, or*

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

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

Thus, in the case of a co-operative society engaged in carrying on the business of banking or providing credit facilities to its members, what is deductible under section 80P of the Act is the whole of the amount of profits and gains of business attributable to any one or more such activities. The Supreme Court in **Totgars Co-operative Sale Society** (supra) has, while giving a precise meaning to the words “profits and gains of business” mentioned in section 80P(2) of the Act, observed that the assessee in that case regularly invested funds not immediately required for business purposes and was of the view that interest on such investments, therefore, cannot fall within the meaning of the expression “profits and gains of business”. It was held that such interest income cannot be said to be attributable to the activities of the society, namely, carrying on the business of providing credit facilities to its members or marketing of the agricultural produce to its members. The court further held that the words “the whole of the amount of profits and gains of business” emphasise that the income in respect of which deduction is sought must constitute the operational income and not the other income which accrues to the society. The court observed that in that particular case, the evidence showed that the assessee-society earned interest on funds which were not required for business purpose at the given point of time. Therefore, in the facts and circumstances of the case, the court was of the view that, such

interest income falls in the category of “Other income” which had rightly been taxed by the Department under section 56 of the Act.

13. In the opinion of this court, in case of a society engaged in providing credit facilities to its members, income from investments made in banks does not fall in any of the categories mentioned under section 80P(2)(a) of the Act. In the case of **Totgars Co-operative Sale Society** (supra), as rightly submitted by the learned counsel for the respondent, the court was dealing with two kinds of activities: interest income earned from the amount retained from the amount payable to the members from whom produce was bought and which was invested in short-term deposits/securities; and the interest derived from the surplus funds that the assessee therein invested in short-term deposits with the Government securities. This is further clear when one peruses the decision of the Karnataka High Court from which the matter travelled to the Supreme Court wherein it was the case of the assessee that it was carrying on the business of providing credit facilities to its members and therefore, the appellant-society being an assessee engaged in providing credit facilities to its members, the interest received on deposits in business and securities is attributable to the business of the assessee as its job is to provide credit facilities to its members and marketing the agricultural products of its members. This court is, therefore, of the view that the above decision is not restricted only to the investments made by the assessee therein from the retained amount which was payable to its members but also in respect of funds not immediately required for business purposes. The Supreme Court has held that interest on such investments,

cannot fall within the meaning of the expression “profits and gains of business” and that such interest income cannot be said to be attributable to the activities of the society, namely, carrying on the business of providing credit facilities to its members or marketing of agricultural produce of its members. The court has held that when the assessee society provides credit facilities to its members, it earns interest income. The interest which accrues on funds not immediately required by the assessee for its business purposes and which has been invested in specified securities as “investment” are ineligible for deduction under section 80P(2)(a)(i) of the Act. For the above reasons, this court respectfully does not agree with the view taken by the Karnataka High Court in **Tumkur Merchants Souharda Credit Cooperative Ltd. v. Income Tax Officer Ward-V, Tumkur** (supra) that the decision of the Supreme Court in **Totgars Co-operative Sale Society** (supra) is restricted to the sale consideration received from marketing agricultural produce of its members which was retained in many cases and invested in short term deposit/security and that the said decision was confined to the facts of the said case and did not lay down any law.

14. Thus, in the light of the principles enunciated by the Supreme Court in **Totgars Co-operative Sale Society** (supra), in case of a society engaged in providing credit facilities to its members, income from investments made in banks does not fall within any of the categories mentioned in section 80P(2)(a) of the Act. However, section 80P(2)(d) of the Act specifically exempts interest earned from funds invested in co-operative societies. Therefore, to the extent of the interest earned from investments made by it with any co-operative

society, a co-operative society is entitled to deduction of the whole of such income under section 80P(2)(d) of the Act. However, interest earned from investments made in any bank, not being a co-operative society, is not deductible under section 80P(2)(d) of the Act.

15. On behalf of the appellant, reliance has been placed upon bye-law 7 of its Bye-laws, which as translated into English reads thus: *“When the funds of the society are not in use, the same shall be invested or kept in deposit in accordance with the provisions of section 71 of the Co-operative Societies Act.”*

The objects of the society as stated in the Bye-laws are:

- (1) to encourage thrift, self-sufficiency and co-operation amongst members of the society;
- (2) to inculcate the concept of savings amongst the members;
- (3) to give credit to the members at reasonable rates when the occasion arises; and
- (4) to carry out all activities for achieving the objects of the society.

Thus, the objects of the appellant society do not contemplate investment of surplus funds received from its members. Insofar as Bye-law 7 is concerned, it may be noted that the same falls under the heading “fund” and not under the objects of the society. Thus, the object of the society is to provide credit facilities to its members and it is the income earned out of the credit advanced to the members that is allowable as a deduction under section 80P(2)(a)(i) of the Act. The learned counsel for the appellant has relied upon various decisions wherein the assessee was a banking company. In the opinion of this court, since the appellant admittedly does not carry on any banking business, the said decisions would not be applicable in the facts of the present case.

16. In case where the co-operative society is a bank, one of its objects would be to carry on the general business of banking. Like other banks, money would be its stock-in-trade or circulating capital and its normal business is to deal in money and credit. The business of such a bank does not consist only of receiving deposits and lending money to its members or such other societies as are mentioned in the objects. When such a society lends out its monies so that they may be readily available to meet the demands of its depositors if and when they arise, it is a legitimate mode of carrying on its banking business. In case of a credit society like the present one, the business of the society is limited to providing credit to its members and the income that is earned from providing such credit facilities to its members is deductible under section 80P(2)(a)(i) of the Act. However, investing its surplus funds with the State Bank of India 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 is profits and gains of business attributable to the activities of the appellant society. The character of the interest is different from the income attributable to the business of the society of providing credit facilities to its members. The interest income derived from investing surplus funds with the State Bank of India must be closely linked with the business of providing credit facilities for it to be held that it is attributable to the business of the assessee. Therefore, the profits and gains can be said to be directly attributable to the business of providing credit facilities to its members if there is a direct and proximate connection between the profits gains and the

business of the appellant. In the present case there is no obligation upon the appellant to invest its surplus funds with the State Bank of India. Investing surplus funds in a bank is no part of the business of the assessee of providing credit facilities to its members. Therefore, it is only the interest derived from the credit provided to its members which is deductible under section 80P(2)(a)(i) of the Act and the interest derived by depositing surplus funds with the State Bank of India not being attributable to the business carried on by the appellant, cannot be deducted under section 80P(2)(a)(i) of the Act. If the appellant wants to avail of the benefit of deduction of such interest income, it is always open for it to deposit the surplus funds with a co-operative bank and avail of deduction under section 80P(2)(d) of the Act.

17. Section 71 of the Gujarat Co-operative Societies Act, 1961 permits a society to invest or deposit its fund in the State Bank of India. Therefore, while investment in the State Bank of India is permissible under section 71 of that Act, there is no statutory obligation cast upon the appellant to deposit funds as a part of its business. The said provision also permits investment of funds in any co-operative bank or any banking company approved for this purpose by the Registrar on such conditions as the Registrar may from time to time impose. However, insofar as the provisions of the Income Tax Act are concerned, under section 80P(2)(d) thereof, it is only the income by way of interest or dividends derived by a co-operative society from its investments with any other co-operative society which is required to be deducted while computing the total income of the assessee.

18. It has been contended on behalf of the appellant that the Commissioner of Income-tax has travelled beyond the scope of the notice under section 263 of the Act and that no opportunity of hearing was granted to the appellant qua section 80P(2)(a)(i) of the Act and that hearing was given only in respect of section 80P(2)(d) of the Act. In this regard, it may be noted that no such contention has been raised before the Tribunal and hence, the same does not arise out of the impugned order. Besides, as is evident from the facts noted hereinabove, the appellant, in the return of income, had claimed deduction under section 80P of the Act and not specifically under section 80P(2)(a)(i). The appellant had also not shown any bifurcation of the income derived from providing credit facilities to its members and the interest earned by depositing surplus funds with the State Bank of India. In fact, it was the categorical case of the appellant that the whole income generated by the society from the activities carried out by it, is from the contribution received from its own members and that the assessee society has not earned any income from dealing with other outside party or any other activity and hence, the society had claimed the whole income as exempted under section 80P of the Act. In this background, the Commissioner of Income-tax, in the notice issued under section 263 of the Act, has sought to revise the order passed by the Assessing Officer on the ground that the petitioner had claimed deduction of the interest income from State Bank of India under section 80P(2) in contravention of the provisions of section 80P(2)(d) of the Act, wherein only interest income from a co-operative society qualifies for deduction under section 80P. In response to the notice under section 263 of the Act, the appellant, inter alia, contended that the reason for treating the

interest income received from Fixed Deposit account as business income is that the fund of the business was kept in interest earning account with facility to withdraw the fund as and when necessary to earn interest for and on behalf of the members. It is one of the activities of the Society engaged in carrying on the business of banking or providing credit facilities to its members as provided in section 80P(2)(a) of the Act and gains of business attributable to such activity is exempt from taxable income and that based on the above, interest income of fixed deposits with S.B.I. has been treated as business income of the Society engaged in the business of banking or providing credit facilities to its members and accordingly income derived from this activity has been claimed exempt under section 80P(1) and 80P(2)(a) of the Act. Having regard to the stand adopted by the appellant in response to the notice under section 263 of the Act, this court is of the view that it cannot, in any manner, be said that the Commissioner of Income-tax has travelled beyond the scope of the notice under section 263 of the Act, inasmuch as, he has only dealt with the contention raised by the appellant.

19. The contention that the Commissioner of Income Tax has not held that interest income derived from parking the funds with the State Bank of India is income from other sources, in the opinion of this court, does not merit consideration for the reason that it is for the Assessing Officer, pursuant to the order under section 263 of the Act to examine the nature of the income and tax it accordingly. Insofar as the order under section 263 of the Act is concerned, in the light of the above discussion, it is not possible to state that the same suffers from any legal infirmity. The Tribunal was, therefore,

wholly justified in upholding the same.

20. Insofar as the decision of this court in the case of **Baroda Peoples Co-op. Bank Ltd.** (supra) is concerned, this court inter alia held that section 80P(2)(a)(i) of the Act permits a co-operative society engaged in carrying on business of banking or providing credit facilities to its members to claim deduction of the whole of the amount of profits and gains of business attributable to such activities namely, business of banking or providing credit facilities to its members. On a plain reading, it becomes apparent that the two activities are distinct and separate activities. The first activity viz. carrying on the business of banking connotes a larger activity than the activity of providing credit facilities to its members. The latter is restricted qua the members of the society while the former is wide enough to take within its sweep as its potential customers, both the members and non-members. The court observed that bearing in mind that section 80P(2)(a)(i) of the Act requires a co-operative society and not a co-operative bank defined under the Gujarat Co-operative Societies Act, to be engaged in carrying on the business of banking it is not possible to restrict the scope of business to the definition of 'banking' under section 5(b) of the Banking Regulation Act. The court observed that clause (n) of sub-section (1) of section 6 of the Banking Regulation Act is an inherent pointer to the interpretation one is required to place on section 6(1) of the Banking Regulation Act. The said clause permits a bank of "doing all such things as are incidental or conducive to the promotion or advancement of the business of banking company". Thus, there is a live link, a proximate nexus between clauses (a) to (o) of section 6(1) and the business of

banking under section 5(b) of Banking Regulation Act. To say that investment of funds (so called surplus) is not conducive to the promotion or advancement of the business of banking, would not only be derogatory of and contrary to the provisions but pedantic.

21. Thus, the court in the above decision has distinguished between the two activities namely, the business of banking and providing credit facilities to its members and has held that carrying on the business of banking connotes a larger activity than the activity of providing credit facilities to its members. It has further been held that the investment of funds is conducive to the promotion or advancement of the business of banking. In the present case, this court is not dealing with a co-operative society engaged in the business of banking, but with a co-operative society engaged in the business of providing credit facilities to its members, which is not as wide an activity as the business of banking. Strong reliance has been placed by the learned counsel for the appellant on the findings recorded in paragraphs 52, 67 and 69 of the said decision. In paragraph 52 the court has referred to the decision of the Supreme Court in *Vellore Electric Corporation Ltd. v. CIT*, (1997) 227 ITR 557, wherein the phrase "attributable to" came up for consideration. In paragraph 67, the court has referred to the decision of the Supreme Court in *Bihar State Co-operative Bank Ltd.*, (1960) 39 ITR 114, wherein the court has held that it cannot be said that the funds of the bank were not lent to borrowers but were laid out in the form of deposits in another bank to add to the profit instead of lying idle necessarily ceased to be a part of the stock-in-trade of the bank; or that the interest arising

therefrom did not form part of its business profits. In paragraph 69 the court held thus:

“The question therefore would arise as to whether any distinction can be drawn between so called surplus funds/idle funds and statutory investments. It is necessary to bear in mind that a reserve per se does not yield any income. It is the investment of the fund backing a reserve which would yield income. Therefore, whatever be the nomenclature of a particular reserve, the funds of an assessee in totality are conglomerate of the total amount of deposits/investments, profits and other realisations. Money has no colour and the nomenclature used to segregate different funds is only for the sake of administrative convenience. Otherwise it is not possible to state that a particular portion of the fund emanates from the deposits received or from the profits earned in the earlier years. Thus, these funds are utilized, are invested, to earn further profits by way of interest. The only caveat, as can be seen running through the entire case law commencing from the Privy Council decision is that such funds must be invested in easily realizable securities. The twin objective as laid down by this Court is not to lose interest by keeping the funds idle and invested in securities so as to encash them readily in case of need. This is in consonance with the definition of the term 'Banking'. The deposits are accepted as payable on demand or otherwise, and also permitting withdrawal by cheques and other prescribed modes.

On a plain reading of the above paragraphs of the decision of this court in **CIT v. Baroda Peoples Co-operative Bank Ltd.** (supra), it is clear that the court has held that investing funds to earn further profit is in consonance with the term banking. The court has further held that the business of banking is primarily a business of trust, a business of putting trust in a banker. How does a bank ensure that the customer places trust. It has to offer not only good returns but also safety and liquidity. In other words, the depositor must be ensured that the depositor will get good returns on its deposit, the deposits

would be safe and deposits would be available for withdrawal as and when required, subject to the terms of the contract between the parties. The court held that it is in this context that the requirement of investment being in easily realizable securities or money being readily available for meeting the demand made by the depositor is taken as the touchstone of the business of banking. Thus, the above decision having been rendered in the context of banking business does not have any applicability to the facts of the present case. Under the circumstances, the said decision does not in any manner come to the aid of the appellant.

22. In the light of the above discussion, this court does not find any infirmity in the impugned order passed by the Tribunal warranting interference. The questions are accordingly answered in the affirmative, that is, in favour of the revenue and against the assessee. It is accordingly held that the Income Tax Appellate Tribunal was justified in upholding invocation of powers under section 263 of the Income Tax Act, 1961 by the Commissioner of Income Tax. The Income Tax Appellate Tribunal was also justified in holding that interest income of Rs.16,14,579/- and Rs.32,83,410/- respectively on deposits placed with State Bank of India was not exempt under section 80P(2)(a)(i) of the Income Tax Act, 1961. The appeals, therefore, fail and are accordingly dismissed.

(Harsha Devani, J.)

(G.R. Udhwani, J.)

hki