IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES "A", BANGALORE

Before Shri George George K, JM & Shri B.R.Baskaran, AM

ITA No.1207/Bang/2019 : Asst.Year 2016-2017

M/s.Uppinangady Co-operative Agricultural Society Ltd. Puttur Taluk Puttur – 574 241. **PAN : AAAAU7375D.**	v.	The Income Tax Officer Ward 1 Puttur.
(Appellant)		(Respondent)

Appellant by : Sri.V.Srinivasan, Advocate
Respondent by : Sri.Sankar Ganesh K, JCIT-DR

Date of Hearing : 09.12.2021		**Date of Pronouncement : 10.12.2021**

O R D E R

Per George George K, JM

This appeal at the instance of the assessee is directed against CIT(A)'s order dated 26.03.2019. The relevant assessment year is 2016-2017.

2. The assessee has raised eleven grounds. All the issues raised in the grounds relate to the claim of deduction u/s 80P(2)(a)(i) and 80P(2)(d) of the I.T.Act.

3. The brief facts of the case are as follows:

The assessee is an agricultural credit co-operative society, registered under the Karnataka Co-operative Societies Act, 1959. It is providing credit facilities to its members.For the assessment year 2016-2017, the return of income was filed on 09.10.2016 declaring total income of Rs.8,23,810 after claiming deduction of Rs.1,06,78,048 u/s 80P(2)(a)(i) of

the Act. The return was selected for scrutiny and the assessment order was completed u/s 143(3) of the Act vide order dated 22.12.2018. The Assessing Officer denied the claim of deduction u/s 80P(2)(a)(i) of the Act by placing reliance on the judgment of the Hon'ble jurisdictional High Court in the case of *Pr.CIT & Anr. v. Totagars Co-operative Sale Society reported in 395 ITR 611 (Kar.).* Further, the A.O. also denied the benefit of section 80P(2)(d) of the Act since the interest income was received from co-operative banks and not from co-operative societies. The A.O. also held that the assessee has violated the principle of mutuality since it was dealing with non-members. In this context, the A.O. relied on the judgment of the Hon'ble Apex Court in the case of *The Citizen Co-operative Society Ltd. v. ACIT reported in 397 ITR 1 (SC).*

4. Aggrieved, the assessee filed an appeal to the first appellate authority. The CIT(A) upheld the view taken by the A.O. that the assessee has violated the principle of mutuality, and hence, it was concluded by him that the assessee was not entitled to deduction u/s 80P(2)a)(i) and 80P(2)(d) of the Act.

5. Aggrieved by the order of the CIT(A), the assessee filed this appeal before the Tribunal. As regards the claim of deduction u/s 80P(2)(a)(i) of the Act is concerned, the learned AR submitted that the issue is covered in favour of the assessee by the latest judgment of the Hon'ble Apex Court in the case of *Mavilayi Service Co-operative Bank Ltd. & Ors. v. CIT & Anr. Reported in (2021) 431 ITR 1 (SC).* As regards the claim of deduction u/s 80P(2)(d) of the Act is concerned, it is

submitted that the interest income earned from deposit with co-operative banks is attributable to the carrying on the business activity of the assessee, and therefore, is eligible for deduction u/s 80P(2)(a)(i) of the Act. Alternatively, it was submitted that if the interest income earned from deposit with co-operative banks is assessed as income from other sources, necessarily, the cost incurred for earning such interest income should be allowed as deduction u/s 57 of the I.T.Act. In this context, the learned AR relied on the judgment of the Hon'ble jurisdictional High Court in the case of *Totagars Co-operative Sales Society reported in (2015) 58 taxmann.com 35 (Kar.)*. Further, it was submitted that majority of the interest income is earned out of investments with central co-operative banks and it is in compliance with the requirements under the Karnataka Co-operative Societies Acts and Rules. Therefore, it should be assessed u/s 80P(2)(a)(i) of the Act.

6. The learned Departmental Representative, on the other hand, strongly supported the orders of the Income Tax Authorities.

7. We have heard rival submission and perused the material on record. The Hon'ble Apex Court in the case of The Mavilayi Service Co-operative Bank Ltd. & Ors. v. CIT (supra) had held that the expression "members" is not defined under the Income-tax Act. Hence, it is necessary to construe the term "members" in section 80P(2)(a)(i) of the I.T.Act as it is contained in the respective State Co-operative Act. The Hon'ble Apex Court had held that providing credit facilities to associate or nominal members would be entitled to deduction

u/s 80P(2)(a)(i) of the I.T.Act unless they are not considered as "members" of the co-operative societies under the respective State Act. The Hon'ble Apex Court has also considered the judgment in case of Citizen Co-operative Society Ltd. (supra). The A.O. has merely denied the benefit of deduction u/s 80P(2)(a)(i) of the I.T.Act for the reason that the assessee was also dealing with associate / nominal members, which is against the dictum laid down by the Hon'ble Apex Court in case of Mavilayi Service Co-operative Bank Ltd. & Ors. (supra). The Hon'ble Apex Court has settled many issues. The gist of the judgment of the Hon'ble Apex Court, are as follows:

(i) Section 80P is a benevolent provision enacted by the Parliament to encourage and promote the credit of the co-operative sector in general must be read liberally and reasonably, if there is ambiguity, in favour of the assessee (para 45 of the judgment).

(ii) The co-operative societies extending credit facilities are entitled to deduction u/s 80P(2)(a)(i) and if there are loans to non-members, only profits attributable to the transactions with the non-members alone is liable to be excluded from the deduction. That is to say that the transactions with non-members per se would not disentitle a co-operative society from claiming the deduction under the section. If the state Act (the Co-operative Law) provides for enrollment of 'nominal members', the loans given to such nominal members would qualify for the purpose of deduction u/s

80P(2)(a)(i). (Para 30 to 46 of the Judgment)

(iii) Under clause (d) of section 80P(2), the interest or dividend income derived by a co-operative society from investments with other co-operative society is also eligible for the deduction whole of such income. (Para 35 of the Judgment)

(iv) The restrictive clause in sub-section (4) of section 80P applies only a co-operative bank and not to co-operative societies or to co-operative societies extending credit facilities to its members. Further, only a bank having obtained the license under the Banking Regulation Act, 1949, shall be covered under the said restrictive clause u/s 80P(4). The Hon'ble Court has also elaborately explained the correct meaning & scope of the Proviso under the said sub-section (4) of section 80P declaring that the proviso carves out an exception to the exclusion in sub-section (4).

7.1 We are of the view that the issue of deduction u/s 80P(2)(a)(i) of the Act, needs to be examined by the A.O., in the light of the principles enunciated by the Hon'ble Apex Court in case of Mavilayi Service Co-operative Bank Ltd. & Ors. (supra). Accordingly, the CIT(A) order on this issue is set aside and the same is restored to the files of the A.O. for examination of the case in the light of the principles laid down by the Hon'ble Apex Court in the case of The Mavilayi Service Co-operative Bank Ltd. & Ors. v. CIT (supra).

7.2 The next issue relates to rejection of claim of deduction u/s 80P(2)(a)(i) of the Act with regard to interest income earned from fixed deposits kept with co-operative banks. The recent order of the Tribunal in the case of M/s.Vasavamba Co-operative Society Ltd. v. The Pr.CIT in ITA No.453/Bang/ 2020 (order dated 13.08.2021), after considering the judicial pronouncements on the issue held that interest income earned out of investments made from surplus funds would be taxable under the head `income from other sources' and would not be eligible for deduction u/s 80P(2)(a)(i) of the I.T.Act. It was further held by the Tribunal insofar as deduction u/s 80P(2)(d) of the I.T.Act is concerned, only those interest received from investments with co-operative societies alone would be entitled to deduction. The relevant finding of the Tribunal reads as follows:-

> *"9. The Hon'ble Supreme Court in the case of the The Totgars Co-operative Sale Society Ltd. Vs. ITO 322 ITR 283 (SC) held that Income from utilisation of surplus funds was taxable under the head income from other sources, and therefore not eligible for deduction u/s 80P. The Hon'ble Karnataka High Court in case of Tumkur Merchants Souharda Credit Cooperative Ltd. vs. ITO (230 Taxman 309), was dealing with a case where deduction u/s.80P(2)(a)(i) of the Act was claimed on interest from the deposits made in a nationalized bank out of the amounts which was used by the assessee for providing credit facilities to its members. The Assessee claimed that the said interest amount is attributable to the business of providing credit facilities by the assessee and forms part of profits and gains of business. The Hon'ble Karnataka High Court after considering SC judgment in case of Totgars(supra) held that since the word income is qualified by the expression "attributable" to the business of Banking is used in Sec.80P(2)(a)(i) of the Act, it has to receive a wider meaning and should be interpreted as covering receipts from sources other than the actual conduct of business. The Court held a Cooperative Society which is carrying on the business of providing credit facilities to its members, earns profits and gains of business by providing credit facilities to its members. The interest income so derived or the capital, if not immediately required to be lent to the members, they cannot keep the said amount idle. If they deposit this amount in bank so as to*

earn interest, the said interest income is attributable to the profits and gains of the business of providing credit facilities to its members only. The society is not carrying on any separate business for earning such interest income. The income so derived is the amount of profits and gains of business attributable to the activity of carrying on the business of banking or providing credit facilities to its members by a co-operative society and is liable to be deducted from the gross total income under Section 80P of the Act. The Hon'ble Court also distinguished the decision of the Hon'ble Supreme Court in the case of Totgars (supra) by observing that the Supreme Court was dealing with a case where the assessee-Cooperative 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. 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 Apex Court held the assessing officer was right in taxing the interest income indicated above under Section 56 of the Act. The Court also observed that even the Hon'ble Supreme made it clear that they are confining the said judgment to the facts of that case. The Court therefore concluded that Hon'ble Supreme Court was not laying down any law. Similar view taken in Guttigedarara Credit Co-operative Society Ltd. vs. ITO [2015] 377 ITR 464 (Karnataka). In the case of ***PRINCIPAL COMMISSIONER OF INCOME TAX AND ANOTHER vs. TOTAGARS CO-OPERATIVE SALE SOCIETY*** *392 ITR 0074 (Karn) in the context of deduction u/s.80P(2)(d) of the Act, it was held that Sec.80P(2)(d) of the Act allows deduction in respect of any income by way of interest or dividends derived by the co-operative society from its investments with any other co-operative society, the whole of such income. The Hon'ble Court held that that the aforesaid Supreme Court's decision in the case of Totgars (supra), was not applicable to deduction u/s.80P(2)(d) of the Act, because the said decision was rendered with regard to deduction under Section 80P(2)(a)(i) of the Act and not under Section 80P(2)(d) of the Act.*

10. However, the Hon'ble Karnataka High Court in the case of ***PRINCIPAL COMMISSIONER OF INCOME TAX AND ANOTHER vs. TOTAGARS CO-OPERATIVE SALE SOCIETY*** *395 ITR 0611 (Karn) took a different view and held that interest income earned on deposits whether with any other bank will be in the nature of income from other sources and not income from business and therefore the deduction u/s.80P(2)(d) of the Act cannot be allowed to the Assessee. The Hon'ble Court followed decision of Hon'ble*

Gujarat High Court in the case of SBI Vs. CIT 389 ITR 578(Guj.) in which the Hon'ble Gujarat High Court dissented from the view taken by the Hon'ble Karnataka High Court in the case of Tumkur Merchants case (supra) The Hon'ble Court had to deal with the following substantial question of law:

> *"(I)Whether the assessee, Totagar Co-operative Sale Society, Sirsi, is entitled to 100% deduction under Section 80P(2)(d) of the Income Tax Act, 1961 (for short 'the Act') in respect of whole of its income by way of interest earned by it during the relevant Assessment Years from 2007-2008 to 2011-2012 on the deposits or investments made by it during these years with a Co-operative Bank, M/s. Kanara District Central Co-operative Bank Limited?*
>
> *(II) Whether the Supreme Court decision in the case of the present respondent assessee, Totgar Co-operative Sale Society Limited itself rendered on 08th February 2010, in Totgar's Co-operative Sale Society Limited v. Income Tax Officer, reported in (2010) 322 ITR 283 SC : (2010) 3 SCC 223 for the preceding years, namely Assessment Years 1991-1992 to 1999-2000 (except Assessment Year 1995-1996) holding that such interest income earned by the assessee was taxable under the head 'Income from Other Sources' under Section 56 of the Act and was not 100% deductible from the Gross Total Income under Section 80P(2)(a)(i) of the Act, is not applicable to the present Assessment Years 2007-2008 to 2011-2012 involved in the present appeals and therefore, whether the Income Tax Appellate Tribunal as well as CIT (Appeals) were justified in holding that such interest income was 100% deductible under Section 80P(2)(d) of the Act?"*

11. The Hon'ble Court held that such interest income is not income from business but was income chargeable to tax under the head income from other sources and therefore there was no question of allowing deduction u/s.80P(2)(d) of the Act. The following points can be culled out from the aforesaid decision:

> *1. What Section 80P(2)(d) of the Act, which was though not specifically argued and canvassed before the Hon'ble Supreme Court, envisages is that such interest or dividend earned by an assessee co-operative society should be out of the investments with any other co-operative society. The words 'Co-operative Banks' are missing in clause (d) of subsection (2) of Section 80P of the Act. Even though a co-operative bank may have the corporate body or skeleton of a co-operative society but its business is entirely different and that is the banking business, which is governed and regulated by the provisions of the Banking Regulation Act, 1949. Only the Primary Agricultural Credit Societies with*

their limited work of providing credit facility to its members continued to be governed by the ambit and scope of deduction under Section 80P of the Act. (Paragraph 13 of the Judgment).

*2. The banking business, even though run by a Co-operative bank is sought to be excluded from the beneficial provisions of exemption or deduction under Section 80P of the Act. The purpose of bringing on the statute book sub-section (4) in Section 80P of the Act was to exclude the applicability of Section 80P of the Act altogether to any co-operative bank and to exclude the normal banking business income from such exemption/deduction category. The words used in Section 80P(4) are significant. They are: "The provisions of this section shall not apply in relation to any co-operative bank other than a primary agricultural credit society …..". **The words "in relation to" can include within its ambit and scope even the interest income earned by the respondent-assessee, a co-operative Society from a Co-operative Bank. This exclusion by Section 80P(4) of the Act even though without any amendment in Section 80P(2)(d) of the Act is sufficient to deny the claim of the respondent assessee for deduction under Section 80P(2)(d) of the Act.** The only exception is that of a primary agricultural credit society. (Paragraph-14 of the judgment)*

3. The amendment of Section 194A(3)(v) of the Act excluding the Co-operative Banks from the definition of "Co-operative Society" by Finance Act, 2015 and requiring them to deduct income tax at source under Section 194A of the Act also makes the legislative intent clear that the Co-operative Banks are not that specie of genus co-operative society, which would be entitled to exemption or deduction under the special provisions of Chapter VIA in the form of Section 80P of the Act. (Paragarph 15 of the Judgment)

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

5. On the decision of the earlier decision of the Hon'ble Karnataka High Court referred to in the earlier part of this order, the Court held that it did not find any detailed discussion of the facts and law pronounced by the Hon'ble Supreme Court in the case of the respondent assessee (Totagars Sales Co-operative society) and hence unable to follow the same in the face of the binding precedent laid by the Hon'ble Supreme Court. The Hon'ble Court observed

that in paragraph 8 of the said order passed by a co-ordinate bench that the learned Judges have observed that

"the issue whether a co-operative bank is considered to be a co- operative society is no longer res integra, for the said issue has been decided by the Income Tax Appellate Tribunal itself in different cases……...".

No other binding precedent was discussed in the said judgment. Of course, the Bench has observed that a Co-operative Bank is a specie of the genus co- operative Society, with which we agree, but as far as applicability of Section 80P(2) of the Act is concerned, the applicability of the Supreme Court's decision cannot be restricted only if the income was to fall under Section 80P(2)(a) of the Act and not under Section 80P(2)(d) of the Act.(Paragraph-18 of the Judgment)

6. The Court finally concluded that it would not make a difference, whether the interest income is earned from investments/deposits made in a Scheduled Bank or in a Co-operative Bank. Therefore, the said decision of the Co-ordinate Bench is distinguishable and cannot be applied in the present appeals, in view of the binding precedent from the Hon'ble Supreme Court." (Paragraph 19 of the Judgment)

12. The Hon'ble Karantaka High Court in the aforesaid decision also placed reliance on a decision of the Hon'ble Gujarat High Court in the case of ***STATE BANK OF INDIA (SBI) vs. COMMISSIONER OF INCOME TAX*** *389 ITR 0578 (Guj) did not agree with the view taken by the Karnataka High Court in Tumkur Merchants Souharda Credit Cooperative Ltd. (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. The Hon'ble Gujarat High Court held that in the case of Totgars Co-operative Sale Society (supra) decided by Hon'ble Supreme Court, 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. The Hon'ble Gujarat High Court in this regard referred to 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. The Hon'ble Gujarat High Court therefore held that decision in the case of Totagar Co-operative Sales Society rendered by the Hon'ble Supreme Court 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. (Paragraph-13 of the Judgment)

13. It can thus be seen that the ratio laid down by the Hon'ble Karnataka High Court in the case of Totalgars Cooperative Sales Society in 395 ITR 611 (Karn) is that 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.

14. The CIT was therefore justified in exercising his powers of revision u/s.263 of the Act and directing the AO to tax interest income in question as it is neither of the nature specified in Sec.80P(2)(a)(i) or 80P(2)(d) of the Act.

15. The argument of the learned counsel for the Assessee has been that the AO has applied his mind and allowed the deduction and therefore the jurisdiction u/s.263 of the Act cannot be exercised. On this argument, the learned DR pointed out that the jurisdiction u/s.263 of the Act was exercised by the CIT not for the reason that the AO failed to make proper enquiries before

concluding the Assessment but on the ground that his decision was contrary to decision of Hon'ble Jurisdictional High Court and therefore this argument of the learned counsel for the Assessee cannot be accepted. The argument that the view taken by the AO was a possible view and hence revision u/s.263 of the Act is bad is again not acceptable because, the view that ought to have been adopted was the later binding decision of the High Court in the case of Totagar co-opeartive sales society 395 ITR 611 (Karn.).

16. The argument that co-operative Banks are also co-operative societies is again without any basis in the light of the law explained in the case of Totagar co-opeartive sales society 395 ITR 611 (Karn.). The reliance placed by the learned counsel for the Assessee on the earlier decisions of the Hon'ble Karnataka High Court in the case of Tumkur Merchants Souharda Credit Cooperative Ltd. (supra) that the decision in Totgars Co-operative Sale Society (supra) stands explained by the later decision in the case of Totagar co-opeartive sales society 395 ITR 611 (Karn.).

17. We however find that the Assessee has raised the following grounds of appeal in its appeal, viz.,

> "5. Without prejudice to the above, the learned Principal Commissioner ought to have considered the submissions of the appellant to the effect that interest received by it amounting to Rs. 1,32,726 from deposits with Mysore & Chamarajanagar District Central Co-operative Bank made out of Reserve Fund in compliance with rule 23(2) of the Karnataka Co-operative Societies Rules, 1960 constituted its income from the business of providing credit facilities to the members and accordingly, ought to have held that the Income Tax Officer rightly allowed deduction thereof under section 80-P(2)(a)(i) of the Income Tax Act, 1961.
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> 6. Without prejudice to the above, the learned Principal Commissioner ought to have taken note of the submissions made by the appellant that interest received by it amounting to Rs. 1,32,726 from deposits with Mysore &Chamarajanagar District Central Co-operative Bank made in compliance with section 58 of the Karnataka Co-operative Societies Act, 1959 constituted its income from the business of providing credit facilities to the members and accordingly, ought to have held that the deduction under section 80-P(2)(a)(i) of the Income Tax Act, 1961 in respect thereof was rightly allowed by the Income Tax Officer.
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> 7. Without prejudice to the above, the learned Principal Commissioner ought to have considered the submissions of the appellant to the effect that the interest received by it amounting to Rs. 1,32,726 from deposits with Mysore & Chamarajanagar District Central Co-operative Bank made in compliance with rule 28 of the Karnataka Co-operative Societies Rules, 1960 constituted its income from the business of providing credit facilities to the members and

> accordingly, ought to have held that the appellant was eligible for deduction thereof under section 80-P(2)(a)(i) of the Income Tax Act, 1961."
>
> *18. The issue raised by the Assessee in the aforesaid grounds require examination because if there are statutory compulsions that the money should be invested in a particular manner to run business of the Assessee then the interest income arising from such investments have business nexus and should be considered as income derived from the business of providing credit facility to the members. This aspect requires examination by the AO as it has not been raised before the CIT. We therefore modify the order of the CIT by remanding the issue raised in ground No.5 to 7 alone to the AO for examination afresh. In other respects we confirm the order of the CIT."*

7.3 In the instant case, it was contended that majority of the interest income is earned out of investments made with Central Co-operative Banks and is in compliance with the requirement under the Karnataka Co-operative Societies Act and Rules. If the amounts are invested in compliance with the Karnataka Co-operative Societies Act, necessarily, the same is to be assessed as income from business, which entails the benefit of deduction u/s 80P(2)(a)(i) of the I.T.Act. Insofar as deduction u/s 80P(2)(d) of the I.T.Act is concerned, we make it clear that interest income received out of investments with co-operative societies is to be allowed as deduction.

7.4 Insofar as assessee's claim that if interest income is to be assessed income from other sources, necessarily, the cost incurred for earning such interest income should be allowed as deduction u/s 57 of the I.T.Act, we find an identical issue was considered by the Hon'ble jurisdictional High Court in the case of Totgars Co-operative Sales Society Ltd. v. ITO reported in [2015] 58 Taxmann.com 35 (Karnataka) (judgment dated

25.03.2015). The relevant findings of the Hon'ble High Court, read as follows:-

> *"11. Having heard the learned counsel for the parties and perusing the records and in the light of the finding recorded by the Hon'ble Supreme Court that the interest income earned by the appellant falls within the category of "other income" what falls for consideration is to answer the question as to whether the Tribunal was right in law in holding that the income by way of interest was chargeable to tax under Section 56 of the Income Tax Act without allowing deduction in respect of proportionate costs incurred as permissible under Section 57.*
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> *12. It is no doubt true that the appellant did initially claim deduction under Section 80P(2). Upon the pronouncement of the order by the Apex Court, in these appeals referred to supra, the income earned on the interest is declared as "other income" falling under Section 56 of the Income Tax Act. Then the next immediate question that follows is as to whether the entire fund i.e., in deposit with the Bank is taxable or the proportionate expenditure incurred by the appellant requires deduction. It is logical that when the Revenue is permitted to assess and recover taxes from assessee under Section 56 by treating the income earned by interest as income from "other sources", the appellant shall be entitled for proportionate expenditure cost incurred in mobilizing the deposit placed in the Bank/s. What can be taxed is only the next income which the appellant earns after deducting cost and expenditure incurred and administrative expenses incurred by the assessee.*
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> *13. Accordingly, we answer the question of law and hold that the Tribunal was not right in coming to the conclusion that the interest earned by the appellant is an income from other sources without allowing deduction in respect of the proportionate costs, administrative expenses incurred in respect of such deposits."*

7.5 The assessee has not raised the plea before the Income Tax Authorities that it has to be given deduction u/s 57 of the I.T.Act, in respect of expenditure for earning the interest income. However, inspite of such plea not being raised before the lower authorities, we are of the view that since the fundamental principle under Income-tax Act being that only

net income has to be taxed (i.e., gross receipt minus allowable expenditure), this plea of the assessee has to be necessarily entertained, especially in the light of the judgment of the Hon'ble jurisdictional High Court in the case of Totagars Sale Co-operative Society Limited v. ITO [2015] 58 taxmann.com 35 (Karnataka). Accordingly, the issue of deduction u/s 57 of the I.T.Act is restored to the files of the A.O. The A.O. is directed to examine whether assessee has incurred any expenditure for earning interest income, which is assessed under the head `income from other sources'. If so, the same shall be allowed as deduction u/s 57 of the I.T.Act. The assessee is directed to co-operate with the department and furnish the necessary evidence for expeditious disposal of the matter. It is ordered accordingly.

8. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced on this 10th day of December, 2021.

Sd/-	**Sd/-**
(B.R.Baskaran)	**(George George K)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Bangalore; Dated : 10th December, 2021.
Devadas G*

Copy to :
1. The Appellant.
2. The Respondent.
3. The CIT(A) Mangalore.
4. The Pr.CIT, Mangalore.
5. The DR, ITAT, Bengaluru.
6. Guard File.

Asst.Registrar/ITAT, Bangalore