[2013] 32 taxmann.com 69 (Nagpur - Trib.)/[2013] 23 ITR(T) 411 (Nagpur - Trib.)/[2013] 57 SOT 76 (Nagpur - Trib.)/[2013] 153 TTJ 728 (Nagpur - Trib.)

IT-I : Where assessee-society was neither a State co-operative bank nor a Central co-operative bank and, its bye-laws permitted admission of any other co-operative society as member and, thus, it could not be regarded even as primary co-operative bank under section 5 (ccv) of Banking Regulation Act, 1949, its claim for deduction under section 80P(2)(a)(i) was not hit by section 80P(4)

IT-II : Where assessee-society received certain unexplained deposits during course of business of providing credit facilities to its members, Assessing Officer was to be directed to allow deduction under section 80P(2)(a)(i) in respect of those deposits as well

yyy

[2013] 32 taxmann.com 69 (Nagpur - Trib.)

IN THE ITAT NAGPUR BENCH

Assistant Commissioner of Income-tax, Circle-IV

v.

Buldana Urban Co-operative Credit Society Ltd.*

P.K. BANSAL, ACCOUNTANT MEMBER
AND D.T. GARASIA, JUDICIAL MEMBER
IT APPEAL NOS. 151 TO 153 & 179 TO 181 (NAG.) OF 2012
[ASSESSMENT YEARS 2007-08 TO 2009-10]
NOVEMBER 23, 2012

I. Section 80P of the Income-tax Act, 1961 - Deductions - Income of co-operative societies [Cooperative banks] - Assessment year 2007-08 to 2009-10 - Assessee had income from banking and non-banking activities - Assessing Officer took a view that assessee was not a credit co-operative society and therefore not eligible for deduction under section 80P(2)(a)(i) - It was undisputed that assessee was neither a State Co-operative bank nor a Central co-operative bank - Further bye-laws of assessee permitted admission of any co-operative society to be member of assessee indicating that assessee could not be regarded as a primary co-operative bank under section 5 (ccv) of Banking Regulation Act, 1949, and, thus, it would not be hit by section 80P(4) - Whether in view of above, assessee's claim for deduction under section 80P(2)(a)(i) was to be allowed - Held, yes [Para 11] [In favour of assessee]

II. Section 68, read with section 80P, of the Income-tax Act, 1961 - Cash credit [Deposits] - Assessment year 2007-08 to 2009-10 - A search was conducted at premises of assessee-society in course of which one document was seized - It contained handwritten noting being details of deposits received by assessee - Branch manager admitted that receipt

represented membership fee and there was violation of KYC norms - These deposits were shown by assessee as its income but Assessing Officer brought to tax these deposits as income from other sources - Whether since assessee could not prove nature and source of deposits to satisfaction of Assessing Officer, addition made under section 68 was to be confirmed - Held, yes - Whether, however, in view of fact that aforesaid deposits were received by assessee during course of carrying on business of providing credit facilities to its members, Assessing Officer was to be directed to allow deduction to assessee under section 80P(2)(a)(i) in respect of impugned addition - Held, yes [Paras 32 and 33] [Partly in favour of assessee]

FACTS-I

- The Assessing Officer during the course of assessment proceedings noted that the assessee had income from banking and non-banking activities.
- The non-banking activities were mainly that of BOT which was an activity of road construction in the form of a joint venture, running of sugar factory, running residential hostel, marketing agricultural produce, running of boys hostel and General insurance commission agency.
- The Assessing Officer took the view that the assessee was not a credit co-operative society and therefore not eligible for deduction under section 80P(2)(a)(i).
- The Commissioner (Appeals) however, held that the assessee was not a co-operative bank and was therefore entitled to the deduction under section 80P(2)(a)(i).
- On revenue's appeal:

HELD-I

- Section 80P(2)(a)(i) is explicitly clear that if the co-operative society is engaged in the business of banking or providing credit facilities to its members the co-operative society is eligible for the deduction. There is an embargo put by section 80P(4) which was introduced in to the statute by the Finance Act, 2006 with effect from 1-4-2007. This section denies the deduction to a co-operative society even if the co-operative society is carrying on the business of banking or the co-operative society is providing credit facilities to its members provided co-operative society caught within the ambit of section 80P(4). This is a fact that prior to the insertion of section 80P(4), the assessee was getting the deduction under section 80P(2)(a)(i). [Para 5]
- The sub-section (4) of section 80P provides that deduction under the said section shall not be available to any co-operative bank other than a primary agricultural credit society or rural development bank. For the purpose of the said sub-section, co-operative bank shall have the meaning as assigned to it in Part V of the Banking Regulation Act, 1949. [Para 6]
- In view of this definition the question is whether the assessee is a co-operative bank or not. Clause (b) of the Explanation to section 80P(4) in any case is not applicable in the case of assessee. In case assessee is a co-operative bank, the assessee will be hit by section 80P(4) but in case assessee is not a co-operative bank, it will not be hit by section 80(P)(4) and the assessee will be eligible to avail of the deduction under section 80P(2)(a)(i). The co-operative bank is defined in Part V of the Banking Regulation Act, 1949. [Para 7]

- From the definition of co-operative bank it is apparent that co-operative bank means State co-operative bank, a Central co-operative Bank and a Primary co-operative bank. It is not the case of the revenue that the assessee is a State co-operative bank or Central co-operative bank. One has therefore to find whether the assessee is a primary co-operative bank. The primary co-operative bank is defined under section 5 clause (CCV) of Banking Regulation Act, 1949. [Para 8]

- From the said definition, it is apparent that if the co-operative society complied with all the three conditions namely that Firstly the primary object or principle business transacted by it is a banking business, Secondly, the paid up share capital and reserve of which are 1 lakh or more and thirdly by laws of the co-operative society does not permit admission of any other co-operative society as a member. The condition number 2, no doubt is complied with in the case of the assessee to whom assessee did not dispute in the Court when the bye-laws of the assessee were brought to notice which are available in the paper book. It was noted from the paper book relating to the bye-laws of the society under the head 'membership' that bye-laws 4(ii) permits the admission of any co-operative society to be the member of the assessee-society. This means that the assessee did not comply with their condition. On this basis itself since the assessee did not comply with condition No. 3 the assessee cannot be regarded to be a primary co-operative bank and in consequence thereof it cannot be regarded to be a co-operative bank as defined in part V of the Banking Regulation Act, 1949 and therefore, the assessee will not be hit by section 80P(4). Now one needs not to look into the case of the assessee whether the primary object or principle business of the assessee is the transaction of banking business. This is merely an academic exercise. The banking business has been defined under section 5(b) of the Banking Regulation Act. [Para 9]

- From the said definition, it is clear that the banking means accepting the deposits of money from the public which is repayable on demand or otherwise and withdrawal of these deposits by cheque, draft or otherwise and these deposits are accepted for the purpose of lending or investment. This clearly states that the deposits must be accepted from the public for the purpose of lending or investment. These deposits must be repayable on demand or otherwise and could be withdrawn by the depositor by cheque, draft or otherwise. For deciding whether the assessee is carrying on the banking business as defined above, one has to refer to the aims and objects of the assessee as well as the profit and loss account. [Para 10]

- From the perusal of objects, it is apparent that none of the aims and objects allows the assessee co-operative society to accept deposits of money from public for the purpose of lending or investment. Until and unless that condition is satisfied, it cannot be said that the prime object or principal business of the assessee is banking business. Therefore, the assessee did not comply with even the first condition as laid down in the definition as given under section 5(CCV) of the Banking Regulation Act, 1959 for becoming 'primary co-operative bank'. The assessee, therefore, on this basis also cannot be regarded to be a primary co-operative bank and in consequence thereof, it cannot be a co-operative bank as defined under part V of the Banking Regulation Act, 1949. Accordingly, the provisions of section 80P(4) read with Explanation thereunder will not be applicable in the case of the assessee. The assessee, therefore, will be eligible for the deduction under section 80P(2)(a)(i). [Para 11]

FACTS-II

- A search was conducted at premises of assessee-society in course of which one document was seized. It contained handwritten noting being the details of the deposits received by the assessee.

- The Branch Manager admitted that the receipt represented membership fee and there was violation of KYC norms.
- The Assessing Officer took a view that these were the unaccounted deposits in fictitious names.
- In the return of income, these deposits were shown by the assessee as its income but the Assessing Officer brought to tax these deposits as 'income from other sources'.
- Subsequently, the assessee claimed deduction under section 80P(2)(a)(i) as the income being arisen from carrying on the business of providing credit facilities.
- The Assessing Officer did not allow the deduction in view of the provision of section 80P(4) being inserted with effect from 1-4-2007.
- The Commissioner (Appeals) confirmed the order of Assessing Officer.
- On second appeal:

HELD-II

- In this case there are three issues involved (1) Whether the addition can be made under section 68 or not, (2) whether the deposits added by the Assessing Officer are to be added under section 68 or whether they are to be regarded as the income from business or profession (3) whether the assessee is entitled for deduction under section 80P(2)(a)(i) on the addition so made.
- The assessee cannot be escaped from the deeming provision of section 68 from discharging its onus merely on the basis that the assessee was in the initial stage of development of business. The assessee failed to comply with the KYC norms which could have taken in the case of the assessee to be the charging of the onus by the assessee. The assessee cannot be saved from the clutches of the provisions of section 68 by taking the shelter that manpower of the society engaged for this business was not fully equipped and properly trained and due to which there had been lapses in complying with KYC norms. This is a case where deposits have been received by the assessee which are to be repaid on demand or after the expiry of fixed period. Therefore, the addition under section 68 has to be confirmed. Now the question arises whether the income so added will be the profit and gains from business or not. While disposing of the appeal of the revenue, the order of the Commissioner (Appeals) holding that the assessee is not a co-operative bank has been confirmed and, therefore, the restriction put in respect of the deduction available under section 80P(2)(a)(i) will not apply to the assessee.
- It is not denied that the deposits have been received during the course of business of the assessee and the assessee is engaged in the business of providing credit facilities to its members. The credit facilities cannot be provided until and unless the assessee receive the deposits. The deposits even if the assessee could not prove the nature and source of deposits to the satisfaction of the Assessing Officer, it could not be said that they were received not during the course of carrying on the business of providing the credit facilities to its members.
- Therefore, the income added under section 68 has to be treated as the profits and gains arising from business of the assessee. Now the question arises whether the assessee is entitled for deduction under section 80P(2)(a)(i) on the income so added. The deduction under section 80P(2)(a)(i) is available to a co-operative society engaged in carrying on the business of providing credit facilities to its members in respect of whole of the amounts of profits and gains of business attributable to this business.

- This is not denied that the assessee is engaged in the business of providing credit facilities to its members. The credit facilities cannot be provided until and unless the assessee receives the deposits. It cannot always be provided out of its own capital. Receiving of the deposit is necessary and essential for advancing the money on credit and earning the interest income. The deposits may not have been derived from the income for providing the credit facilities to the members. Receiving of the deposit thus in our view in case it is treated to be the income of the assessee has a casual connection with the business of providing credit facilities to its members as this receipt has been received by the assessee during the course of carrying on the business.

- There is no evidence being brought on record during the course of the hearing which may prove that these deposits belong to the assessee and he made the same. The Chairman never agreed that the deposits belong to the assessee there may be number of reasons for surrendering the amount as the income of the society but tax has to be imposed on the real income. If there is no income has arisen to the assessee, there is no question that it can be treated to be the income of the assessee as the assessee is agreeing to it.

- There cannot be any contract against the statute. The addition is confirmed due to the specific deeming provision of section 68 which lays down the burden on the assessee to prove the nature and source of cash credit of the satisfaction of the Assessing Officer. If the deduction is available to the assessee under any provision of the Act, it cannot be denied to the assessee merely on the basis that the assessee has agreed to treat it to be its additional income. [Para 32]

- In view of above, the Assessing Officer is directed to allow the deduction to the assessee under section 80P(2)(a)(i) in respect of the addition sustained under section 68. [Para 33]

CASE REVIEW

Shri Mahavir Nagari Sahakari Pat Sanstha Ltd. v. *Dy. CIT* [2002] 74 TTJ (Pune) 793*followed*.

CASES REFERRED TO

Dy. CIT v. *Jayalakshmi Mahila Vividodeshagala Souharda Sahakari Ltd.* [2012] 137 ITD 163/23 taxmann.com 313 (Panaji) (para 4), *National Thermal Power Co. Ltd.* v. *CIT* [1998] 229 ITR 383 (SC) (para 12), *Totgars Co-operative Sale Society Ltd.* v. *ITO* [2010] 322 ITR 283/188 Taxman 282 (SC) (para 13), *CIT* v. *Jila Sahakari Kendriya Bank Maryadit* [1997] 225 ITR 421/90 Taxman 426 (MP) (para 17), *Mehsana District Central Co-operative Bank Ltd.* v. *ITO* [2001] 251 ITR 522/119 Taxman 785 (SC) (para 17), *Guru Hassahai Primary Co-op. Agrl. Dev. Bank Ltd.* v. *Asstt. CIT* [2010] 133 TTJ 4 (ASR) (UO) (para 17), *Bardoli Vibhag Gram Vikas* v. *Department of Income-tax* [IT Appeal Nos. 2985 & 3129 (Ahd.) of 2008] (para 17), *Smt. Urmits Gambhir* v. *CIT* [2010] 325 ITR 171 (Delhi) (para 25), *India, Leather Corpn. (P.) Ltd.* v. *CIT* [1997] 227 ITR 552/95 Taxman 78 (SC) (para 31), *Bihar Rajya Sahkari Bhoomi Vikas Co-operative Bank Ltd.* v. *CIT* [2009] 313 ITR 247/[2010] 186 Taxman 54 (Pat.) (para 31), *Shri Mahavir Nagari Sahakari Pat Sanstha Ltd.* v. *Dy. CIT* [2002] 74 TTJ 793 (Pune) (para 31) and *CIT* v. *Lovely Exports (P.) Ltd.* [Application No. 11993 of 2007, dated 11-1-2008] (para 31).

Dr. Milind Bhusari *for the Appellant.* **Manoj Moryani** *for the Respondent.*

ORDER

P.K. Bansal, Accountant Member - All these cross-appeals have been filed against respective orders of

the CIT(A). For the sake of convenience all these appeals are disposed of by this common order.

First we are taking up all the appeals filed by the revenue in all these assessment years against the order of the CIT(A) bearing nos.151, 152 & 153/NAG/2012.

ITA No. 151/NAG/2012

In all these appeals, the revenue has taken following common grounds of appeal :-

"1. On the facts and circumstances of the case and in law, the learned CIT(A) has erred in holding that the activities of the assessee are not those of a co-operative bank.

2. On the facts and circumstances of the case and in law, the learned CIT(A) has erred in directing to allow deduction under section 80P to the assessee even though assessee carries on banking and other business in the name of a credit co-operative society."

2. The only issue involved in each of the assessment years on the grounds taken by the revenue is whether the assessee is a credit co-operative society or a co-operative bank. The brief facts of the case are that the Assessing Officer during the course of assessment proceedings noted that the assessee has income from banking and non-banking activities. The non-banking activities are mainly that of BOT which is an activity of road construction in the form of a joint venture, running of sugar factory, running residential hostel at Tirupati, marketing and agricultural produce, running of boys hostel at Pune and General insurance commission agency. The Assessing Officer took the view that the assessee is not a credit co-operative society and therefore not eligible for deduction u/s 80P(2)(a)(i) for the reasons recorded in the assessment order for the assessment year 2009-10. The assessee went in appeal before the CIT(A). CIT(A) held that the assessee is not a co-operative bank and is therefore entitled to the deduction u/s 80P(2)(a)(i) by observing as under :-

"7. I have considered the issues before me with reference to the assessment order, remand report and the submissions of the appellant. I find that the A.O. has based his disallowance on certain premises that the assessee co-operative society is actually a co-operative bank, and that with the introduction of section 80P(4) exemption is available only to a primary agricultural credit society or to a primary co-operative agricultural and rural development bank and assessee being a co-operative society carrying on the business of banking does not fall in this exempted category is not eligible for deduction u/s 80P.

7.1 In this context, it is necessary to examine the provisions of section 80P(2)(a)(i) which envisage two categories of co-operative societies one that is carrying on the business of banking and another that is providing credit facilities to its members.

(I) Section 80P reads asunder:

"(1) Where, in the case of an assessee being a co-operative society, the gross total income includes any income referred to in sub-section (2), there shall be deducted, in accordance with and subject to the provisions of this section, the sums specified in sub-section (2), in computing the total income of the assessee.

(2) The sums referred to in sub-section (1) shall be the following, namely (a) in the case of a co-operative society engaged in - (i) carrying on the business of banking or providing credit facilities to its membersé é ..

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

7.2 Thus it is clear that as per section 80P(2)(a)(i) two categories of co-operative societies are contemplated one that carries on the business of banking and the other that provides credit facilities to its members. These are distinct and separate as is evident from the disjunctive clause "or" used to identify the two categories. It is, therefore, worthwhile to examine the definitions of co-operative society and co-operative bank as per Part-V of the Banking Regulation Act, which is as follows :-

Section 56 of the Banking Regulation Act: Act to apply to co-operative societies subject to modifications :-

The provisions of this Act as in force for the time being, shall apply to, or in relation to, co-operative societies as they apply to, or in relation to banking companies subject to the following modifications, namely;

(*a*) Throughout this Act, unless the context otherwise requires :

(*i*) references to a "banking company" or "the company" or "such company" shall be construed as references to a co-operative bank ;

(*ii*) reference to "commencement of this Act" shall be construed as reference to commencement of the Banking Laws (Application to Co-operative Societies) Act, 1965 (23 of 1965);

(*b*) in section 2, the words and figures "the Companies Act, 1956 (1 of 1956) and" shall be omitted;

(*c*) in section 5;

1[(*i*) after clause (cc), the following clauses shall be inserted, namely ; (cci) "Co-operative bank" means a state co-operative bank, a central co-operative bank and a primary co-operative bank;

(*ccii*) "Co-operative credit society" means a co-operative society, the primary object of which is to provide financial accommodation to its members and includes a co-operative land mortgaged bank ; 36(cciia) "co-operative society" means a society registered or deemed to have been registered under any Central Act for the time being in force relating to the multi-State Co-operative Societies, or any other Central or State law relating to Co-operative Societies for the time being in force."

Thus it is seen that a co-operative credit society and co-operative bank are categorized separately.

7.3 It is also relevant to note that a co-operative Bank requires a specific license from the Reserve bank of India. The relevant provision of the Banking regulation Act is as follows :

"22. Licensing of banking companies - Save as hereinafter provided, no co-operative society shall carry on banking in India unless;

(*a*) it is a primary credit society or;

(*b*) it is a co-operative Bank and holds a licence issued in that behalf by the Reserve Bank, subject to such conditions if any, as the Reserve Bank may deem fit to impose."

7.4 Thus it is mandatory to obtain a licence from RBI to work as bank or banker. The society has not obtained such licence from RBI hence it is not bank or banker within the meaning of Banking Regulation Act, 1949. Further it is clear that co-operative banks have to fulfill the conditions of Registrar of Societies and also RBI to transact the business of banking. However, credit co-operative

societies are not required to submit such returns with the Reserve Bank of India.

7.5 As per the Reserve Bank circular, reproduced below, there are also specific terms conditions that a co-operative society has to adhere to convert itself into a co-operative bank.

Circular No. 312 of Reserve Bank of India : Conversion of co-operative credit societies into primary co-operative banks:

> "(*i*) The co-operative credit society intending to convert itself into a primary co-operative bank should, in the first instance, approach the Registrar of Co-operative Societies, along with the latest audited balance sheet, if on a prima-facie scrutiny of the audited balance sheet, it is observed that the applicant co-operative credit society has reached the entry point norms, the proposal may be transmitted to our concerned Regional Office.
>
> (*ii*) Before forwarding the proposals to our Regional Office, the Registrar Co-operative Societies may also satisfy himself that the overall methods of operation as revealed by the audit of the applicant co-operative credit society are satisfactory. While sending the proposals to the Regional Office a brief mention about the overall performance of the applicant society and its methods of operation may be made.
>
> (*iii*) On receipt of an "in principle" approval for the proposed conversion of the co-operative credit society into primary co-operative society will have to be advised to amend its bye-laws on the lines of model bye-laws prescribed for primary co-operative banks. It should be made very clear to the applicant society that the bank should not commence its banking business until it adopts model bye-laws and it is issued licence by the Reserve Bank of India under section 22 of the Banking Regulation Act, 1949.
>
> (*iv*) The applicant society should submit to the Regional Office of the Reserve Bank of India an application in Form III A, along with the amended bye-laws, through the Registrar of Co-operative Societies by a person duly authorized by the Board of Directors in this behalf."

Thus it is evident that every co-operative society cannot be equated with a co-operative bank and more importantly no co-operative society can unsurp the status of a bank without the regulator's approval.

8. Now a co-operative society which is carrying on the business of banking is required adhere to certain statutory compliances by the Banking Regulation Act and maintain statutory liquidity reserves applicable to banks. Besides these banks there are non banking finance companies, small saving groups, private financiers and co-operative societies which accept deposits from the public and lend it to members. Such regulations do not apply to these entities. Therefore, the mere fact of advancing credit facilities and accepting deposits does not confer the status of the bank on a credit co-operative society.

8.1 From Part-V of the Banking Regulation Act, it is clear that both co-operative credit societies and co-operative banks have been brought under two separate categories and have been distinctly and variously defined. It is also seen that provisions of section 6 of the Banking Regulation Act lays down the forms of business in which a banking co-operative society can engage. The scope of this activity is enumerated in clauses (a) to (o) of section 6. The major activities besides the business of borrowing and lending money include discounting, buying and selling of bills of exchange, hundies promissory

notes, coupons, drafts bill of lending, railway receipts, the granting and issuing of letters of credit, traveller's cheques and circular notes, the buying and selling and dealing in bullion and foreign exchange holding, issuing commission underwriting and dealing in stock, funds, shares, debentures and providing safe deposit vaults.

9. Considering the facts in totality I am of the considered view that it cannot be held that the assessee is a co-operative bank and is not entitled to deduction u/s 80P(2)(a)(i) in view of section 80P(4). The provisions of section 80P(4) have only sought to exclude the co-operative banks from availing the benefits of this deduction. Therefore in principle I agree with the contention of the appellant that it is eligible for deduction u/s 80P(2)(a)(i). However since the appellant society carries on various activities other than that of providing credit facilities to members AO is required to ascertain and quantify the income from providing credit facilities to members and consider only such amounts as is eligible for deduction u/s 80P(2)(a)(i). This ground is therefore disposed of accordingly."

3. The learned D.R before us vehemently argued that assessee is involved in a number of activities such as banking, BOT (road construction in the form of joint venture) running of sugar factory on lease basis, running of residential hostel at Tirupati, marketing of agricultural produce, running of boys hostel at Pune and general insurance commission agency. The assessee had income from interest on advance, income from investments, commission income, locker rent, godown rent etc. This all tantamount to be income from banking operations. It has income from other different sources which are regarded to be the non-banking business. The majority of the income is derived from banking operation since the assessee has banking business therefore the assessee is not entitled for the deduction u/s 80B(2)(a)(i) in view of the provision of section 80P(4).

4. The learned A.R on the other hand vehemently contended that the assessee is a credit co-operative society and therefore eligible for deduction u/s 80P(2)(a)(i) of the Income Tax Act. It was pointed out that the assessee is not a co-operative bank nor a primary agricultural society nor a primary co-operative agriculture and rural development bank. Co-operative bank and primary agricultural society has been defined in Part -V of banking regulation Act. Section 5(cci) of the said Act defines "Co-operative Bank" to mean state co-operative, a centre co-operative bank and a primary co-operative bank. The assessee is neither a state co-operative bank nor a centre co-operative bank. Primary co-operative bank is defined u/s 5 clause(CCV) of the Banking Regulation Act which fulfils all the following three conditions :- (a) the primary object or principle business of which is transaction of banking business (b) the paid-up share capital and reserves of which are not less than one lakh rupees and the bye-laws of which do not permit any admission of co-operative society as a member. It was contended that the principle business of the assessee is not a banking business and for which our attention was drawn to the aims and objects of the society as given in the bye-laws. It was pointed out that banking business has been defined u/s 5(b) of the Banking Regulation Act referring to rule 4 of the bye-laws which deals with the membership. It was contended that rule 4 (ii) permits admission of any other co-operative society to become the member of assessee co-operative society. Thus it was contended that the assessee cannot be called to be a primary co-operative bank and consequently it cannot be regarded to be a primary co-operative bank as the assessee co-operative society in any case did not comply with two conditions as given in section 5 clause (CCV) of the Banking Regulation Act, 1949. Our attention was also drawn towards the decision of Panaji Bench in ITA No. 1 to 3(PNJ)/ 2012 in the case of *Dy. CIT* v. *Jayalakshmi Manila Vividodeshagala Souhardajahakari Ltd.* [2012] 137 ITD 163/23 taxman.com 313 to which both of us are the member and undersigned is the author.

5. We have carefully considered the rival submissions along with the order of the tax authorities below. The question before us is whether the assessee is a co-operative society engaged in carrying on the

business of banking or providing credit facilities to its members and its gross total income includes an income therefrom. Whether the assessee is eligible to avail of the deduction u/s 80P(2)(a)(i). According to this section, if a co-operative society is engaged in carrying on the business of banking or providing credit facilities to its members and its gross total income includes any income therefrom, the co-operative society is entitled for the deduction. Section 80P(2)(a)(i) is explicitly clear that if the co operative society is engaged in the business of banking or providing credit facilities to its members the co-operative society is eligible for the deduction. There is an embargo put by section 80P(4)' which was introduced into the statute by the Finance Act 2006 w.e.f. 01/04/2007. This section denies the deduction to a co-operative society even if the co-operative society is carrying on the business of banking or the co-operative society is providing credit facilities to its members provided co-operative society caught within the ambit of section 80P(4). This is a fact that prior to the insertion of section 80P(4), the assessee was getting the deduction u/s 80P(2)(a)(i).

Section 80P (4) reads as under: -

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

Explanation - for the purpose of this sub-section

(*a*) "Co-operative bank" and "primary agricultural society" shall have the meanings respectively assigned to them in Part V of the Banking Regulation Act, 1994 (10 of 1949)

(*b*) "Primary Co -operative Agricultural and Rural Development Bank" means a society having its area of operation confined to a taluk and the principal object of which is to provide for long term credit for agricultural and rural development activities."

6. The above sub-section 4 of section 80P provides that deduction under the said section shall not be available to any co-operative bank other than a primary agricultural Credit society or rural development bank. For the purpose of the said sub-section, co-operative bank shall have the meaning as assigned to it in Part V of the Banking Regulation Act, 1949.

7. In view of this definition the question before us is whether the assessee is a Co-operative Bank or not. Clause (b) of the Explanation to section 80P(4) in any case is not applicable in the case of assessee. In case assessee is a Co-operative Bank, the assessee will be hit by section 80 P(4) but in case assessee is not a Co-operative Bank, it will not hit by section 80 P(4) and the assessee will be eligible to avail of the deduction u/s P(2)(a)(i). The Co-operative bank is defined in Part V of the Banking Regulation Act, 1949 as under: -

"Section 5(cci) "Co-operative bank" means a state co-operative bank, a central co-operative bank and a primary co-operative bank:"

8. From the definition of Co-operative bank it is apparent that Co-operative bank means state co-operative bank, a Central Co-operative Bank and a Primary Co operative bank. It is not the case of the revenue that the assessee is a state Co-operative bank or Central Co-operative bank. We have therefore to find whether the assessee is a primary Co-operative bank. The Primary Co-operative bank is defined under section 5 clause (CCV) of Banking Regulation Act 1949 as under:-

"(CCV) "primary co-operative bank" means a co-operative society, other than a primary agricultural credit society, -

(1) the primary object or principal business of which is transaction of banking business:

(2) the paid-up share capital and reserves of which are not less than one lakh of rupees: and

(3) the bye-laws of which do not permit admission of any other co-operative society as a member:

Provided that this sub-clause shall not apply to the admission of a co-operative bank as a member by reason of such co-operative bank subscribing to the share capital of such co-operative society out of funds provided by the State Government for the purpose:"

9. From the aforesaid definition, it is apparent that if the co-operative society complied with all the three conditions namely that Firstly the primary object or principle business transacted by it is a banking business, Secondly, the paid-up share capital and reserve of which are 1 lakh or more and thirdly bye-laws of the co-operative society do not permit admission of any other co-operative society as a member. The condition number 2, no doubt is complied with in the case of the assessee to whom Ld. AR did not dispute in the Court when the bye-laws of the assessee were brought to our knowledge which are available in the paper book at pages 4 to 26. We noted from page 7 and 8 of the paper book relating to the bye-laws of the society under the head 'membership' that bye-laws 4(ii) permits the admission of any co-operative society to be the member of the assessee society. This means that the assessee did not complied with third condition. On this basis itself since the assessee did not comply with condition no. 3 the assessee cannot be regarded to be a primary co-operative bank and in consequence thereof it cannot be regarded to be a co-operative bank as defined in part V of the Banking Regulation Act, 1949 and therefore in our opinion the assessee will not be hit by section 80P(4). In our opinion we need not to look into the case of the assessee whether the primary object or principle business of the assessee is the transaction of banking business. This is merely an academic exercise. The banking business has been defined u/s 5(b) of the Banking Regulation Act as under: -

"Sec. 5(b) "banking" means the accepting, for the purpose of lending or investment, of deposits of money from the public, repayable on demand or otherwise, and withdrawal by cheque, draft, order or otherwise:"

10. From the said definition, it is clear that the banking means accepting the deposits of money from the public which is repayable on demand or otherwise and withdrawal of these deposits by cheque, draft or otherwise and these deposits are accepted for the purpose of lending or investment. This clearly states that the deposits must be accepted from the public for the purpose of lending or investment. These deposits must be repayable on demand or otherwise and could be withdrawn by the depositor by cheque, draft or otherwise. For deciding whether the assessee is carrying on the banking business as defined above, we have to refer to the aims and objects of the assessee as well as the profit and loss account. The aims and objects as given in the bye-laws (as per English translation filed before us) are reproduced for our ready reference as under:-

"3. Objects, and functions:

(*a*) Objects:

The principal object of the society will be to promote the interest of all its members to attain their social and economic betterment through self-help and mutual aid in accordance with the co-operative principles.

1. To promote social and economic betterment of members through self-help and mutual aid in accordance with co-operation principles as specified in the first schedule of the

Act.

2. To encourage thrift, self-help and co-operation among members.
3. Accept deposit from members.
4. Issue the shares to the members.
5. Give loans to members.
6. To borrow or to raise money for the business of the society.
7. Provide safe deposit vaults and ancillary services.
8. To purchase lease, take on rent land and building and construct building and premises and maintain them for the use of the society or use of its employees or use of its members.
9. Accept grants, subsidies, assistance and concessions from internal and external sources subject to any law for the time being in force.
10. Promote subsidy institutions for the furtherance of the objectives of the society an incidental thereto.
11. The society shall undertake insurance business as corporate agent subjected to approval from IRDA & Central Registrar.
12. To construct the godowns/shops or to acquire it on rental basis for the purpose of storage of agricultural goods for the purpose of welfare of members like farmers and businessman.
13. To arrange centre or facility for purchase and sell of daily needed things for the welfare of the members as per the requirement of members.
14. Work jointly with non-Governmental organizations or public institutions for the welfare of the society.
15. Apart from the above to look after the distribution of the goods as per the instruction of the government from time to time.
16. Provide the loans to individual farmer as a crop loan for short and medium term.
17. To work with Government & non-government organization & public institution on BOT basis and implement various social activities as per the directions or by the permission of Government.
18. To manage, maintain, look after and administer the property of society and to acquire the same.
19. To give loans to the members for the development of self-employment, cottage industry and small scale industry.

20. To manage, to sell and to release any property of the borrowers which may come into the possession of the society for the recovery of loans which are given to them.

21. To acquire, to manage and to undertake the whole or part of business of any other co-operative society with the prior permission of the registering authorities.

22. To do all such other things as are incidental and conductive to the promotion or advancement of these objects and of the business of the society."

11. From the aforesaid objects, it is apparent that none of the aims and objects allows the assessee co-operative society to accept deposits of money from public for the purpose of lending or investment. In our opinion until and unless that condition is satisfied, it cannot be said that the prime object or principal business of the assessee is banking business. Therefore, the assessee will not comply with even the first condition as laid down in the definition as given u/s 5(ccv) of the Banking Regulation Act, 1959 for becoming "primary co-operative bank". The assessee, therefore, on this basis also cannot be regarded to be a primary co-operative bank and in consequence thereof, it cannot be a co-operative bank as defined under part V of the Banking Regulation Act 1949. Accordingly, in our opinion the provisions of section 80P(4) read with explanation thereunder will not be applicable in the case of the assessee. The assessee, therefore, in our opinion will be eligible for the deduction u/s 80P(2)(a)(i). Almost similar view has been taken by us being the member of the bench in the case of *DCIT* v: *Jayalakshmi Mahila Vividodeshagala Souharda Sahakari Ltd.* (*supra*) as relied by the Id. A.R. We accordingly confirm the order of CIT(A) allowing deduction to the assessee. In the result, we dismiss all the three appeals filed by the revenue.

Now, we will deal with the appeals filed by the assessee. The various grounds of appeal taken by the assessee in all the three appeals filed by it are given as under :-

ITA No. 179/NAG/2012

1. The learned CIT (Appeals) erred in holding that the income of Rs. 47,26,334/- from investment made in Joint Venture entitled for deduction under section 80P(2)(a)(i).

2. The learned CIT(Appeals) erred in holding that the locker rent of Rs. 4,39,196/- is not eligible for deduction u/s 80P(2)(a)(i).

3. The learned CIT(Appeals) erred in holding that the following provision which have been added back to the income and which exclusively pertaining to providing credit facility to members is not eligible for exemption as it is not related to providing credit facility.

   (*a*) N.P.A. Provision for Rs. 1,29,26,927/-

   (*b*) Purchase of Vehicle Fund Rs. 10,00,000/-

   (*c*) Provision of Investment Fluctuation Reserve 23,50,000/-

4. The learned CIT(Appeals) erred in not allowing godown rent under section 80P(2)(e)

ITA No. 180/NAG/2012

1. The learned CIT (Appeals) erred in holding that the income of Rs. 34506180/- from investment made in Joint Venture entitled for deduction under section 80P(2)(a)(i).

2. The learned CIT (Appeals) erred in holding that locker rent of Rs. 9,76,608/- is not eligible for deduction u/s 80P(2)(a)(i).

3. The learned CIT(Appeals) erred in holding that the following provision which have been added back to the income and which exclusively pertaining to providing credit facility to members is not eligible for exemption as it is not related to providing credit facility.

   (*a*) Other Income Rs. 6234963/-

4. The learned CIT (Appeals) erred in not allowing godown rent under section 80P(2)(e) amounting to Rs. 2358577/-

5. The learned CIT (Appeals) erred in not allowing donation an amount of Rs. 5800000/-

6. The learned CIT (Appeals) erred in confirming the addition of Rs. 1435931/- u/s 2(24)(10) rws 36(i)(via)

7. The learned CIT (Appeals) erred in confirming the addition of Rs. 898420/- as cash receipts.

ITA No. 181/NAG/2012

1. The learned CIT (Appeals) erred in holding that the income of Rs. 80194237/- from investment made in Joint Venture entitled for deduction under section 80P(2)(a)(i).

2. The learned CIT (Appeals) erred in holding that locker rent of Rs. 2348228/- is not eligible for deduction u/s 80P(2)(a)(i).

3. The learned CIT (Appeals) erred in holding that the following provision which have been added back to the income and which exclusively pertaining to providing credit facility to members is not eligible for exemption as it is not related to providing credit facility.

   (*d*) Addition u/s 244A 180124/-

   (*e*) Unidentified Deposit Rs. 10,81,00,000/-

   (*f*) Provision for Investment Fluctuation Reserve 8483667/-

4. The learned CIT (Appeals) erred in not allowing godown rent for Rs. 6423821/- under section 80P(2)(e)

5. The learned CIT (Appeals) erred in confirming the addition of Rs. 10,81,00,000/- as unidentified deposits. The amount of deposits being to the various persons.

6. The learned CIT (Appeals) erred in adding amount of Rs. 2496650/-

7. The learned CIT (Appeals) erred in confirming the addition of Rs. 1164232/- in respect of amount received for issuing cheques it was not issued.

8. Alternatively the addition can only be make to the extent of money received during the year and not the opening balance.

9. The learned CIT (Appeals) erred in confirming the addition of Rs. 3694180/-

10. The learned CIT (Appeals) erred in confirming the addition of Rs. 82000/-."

12. At the time of hearing the assessee also moved application for taking the additional ground in the assessment year 2008-09 and 2009-10 and claimed the exemption by amending ground no. 3 in respect of provision made for doubtful funds amounting to Rs. 1869427/- and Rs. 29743092/- for the assessment year 2008-09 and 2009-10 respectively added back to the income of the assessee as it exclusively provides credit facility to its members. We admit this ground in each of the assessment year as it is a legal ground and in view of the decision of *National Thermal Power Co. Ltd.* v. *CIT* [1998] 229 ITR 383 (SC) the legal ground can be taken at any time.

13. Ground no. 1 taken by the assessee in all the three appeals filed by it is the same except the change in the figures. The assessee has earned the interest on the investment made in the joint venture (AOP) and claimed deduction u/s 80P(2)(a)(i) on the contention that it is the income derived from the business of credit facilities to its members. The Assessing Officer did not allow the deduction as it took the view that the assessee is hit by the embargo given u/s 80P(4) but has not given any independent finding. When the matter went before CIT(A). The CIT(A) even though held that the assessee is a credit co-operative society but did not allow the deduction u/s 80P(2)(a)(i) in respect of the interest income earned by the assessee from the investment earned by the joint venture. According to him this income cannot be brought within the ambit of what can be considered to be the activity of providing credit facilities to members. In this regard, he relied on the decision of Hon'ble Supreme court in the case of *Totgars Co-operative Sale Society Ltd* v. *ITO* [2010] 322 ITR 283 (SC)/188 Taxman 282. The relevant finding of the CIT(A) are reproduced as under:-

> "10.5 As far as income from investment is concerned it is seen that income from JV(AOP) included under this head is an amount of Rs. 47,26,334/-. This is clearly income which cannot be brought within the ambit of what can be considered to be the activity of providing credit facilities to members. The net income arrived at after considering expenditure if any is not eligible for deduction u/s 80P(2)(a)(i) as is liable to be brought to tax. In respect of income from investments the ratio of the decision reported in 322 ITR 283 (SC) is relevant. It has been held as follows:-
>
> "Section 80P(1), inter alia, states that where the gross total income of a co-operative society includes any income from one or more specified activities, then such income shall be deducted from the gross total income in computing the total taxable income of the assessee-society. An income, which is attributable to any of the specified activities in section 80P(2) of the Act, would be eligible for deduction. The word "income" has been defined u/s. 2(24)(i) of the Act to include profits and gains. This sub-section is an inclusive provision. The Parliament has included specifically "business profits" into the definition of the word "income". Therefore, we are required to give precise meaning to the word "profits and gains of business" mentioned in section 80P(2) of the Act. In the present case, as stated above, assessee society regularly invests funds not immediately required for business purposes. Interest on such investments, therefore, cannot fall within the meaning of the expression "profits and gains of business". Such interest income cannot /be said also to be attributable to the activities of the society, namely carrying on the business of providing credit facilities to its members. 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 u/s 80P(2)(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."

11. In the decision reported in 250 ITR 299 the Gujarat High Court has held that when the profits and gains of a business include income from taxable and non-taxable activities separation of these two components which have entered into the total income can only be done by finding out the proportionate net income that is after deduction from the amount of gross profits both for taxable activities as well as for non-taxable activities, all expenditure attributable to these two different categories of activities. Hence the income in respect of non taxable activities which is to get the benefit of deduction u/s 80P(2)(i) is to be ascertained by setting off against the gross profits of non taxable activities the proportionate amount of expenditure in respect of non taxable activities.

11.1 AO is therefore directed to compute the net income from investment to be brought to tax in view of the judicial pronouncement above."

14. The learned A.R before us vehemently contended that the AOP in which the assessee had made the investment and derived interest income therefrom is the member of the co-operative society and therefore it is the income on providing the credit facilities to its members. The CIT(A) or the Assessing Officer never asked for whether the AOP is a member of the society or not. It is not an income which the assessee derived from the non-members. This fact can be fully verified by the revenue. The learned D.R on the other hand relied on the order of the CIT(A).

15. We have carefully considered the rival submissions along with the document and the material submitted before us. The provisions of section 80P(2)(a)(i) restricts the deduction only to the income which has been earned on providing credit facilities by the society to its member. Whether AOP is a member of the co-operative society or not this fact requires verification. In this regard article 4 of the bye-laws of the co-operative society is relevant. Article 4(ii)(h) permits the membership of the co-operative society to the AOP if has been approved by the Central Registrar. Even a corporation owned or controlled by the Government, Central Govt., State Govt., or any Govt., company can become the member of the society. We therefore, in the interest of justice and fair play both the parties set aside the order of the CIT(A) and restore this issue to the file of the Assessing Officer with the direction the Assessing Officer shall verify whether the joint venture from where the assessee derived interest income is the member of the assessee co-operative society or not. In case the Assessing Officer finds that the joint venture AOP/Company is the member of the assessee co-operative society the deduction should be allowed to the assessee u/s 80P(2)(a)(i) to the assessee on the interest income on investment made in joint venture. The Assessing Officer is also directed to give proper opportunity to the assessee to prove and adduce the necessary evidence in this regard. In case the Assessing Officer finds that the joint venture is not the member of the society, the order of the CIT(A) shall stand confirmed and Assessing Officer is directed to compute the net income from investment to be brought to tax in accordance with the directions of the CIT(A) given under para 11 and 11.1 of its order dated 28.2.2012.

16. The second common ground in all the three appeals filed by the assessee relate to the claim of the deduction u/s 80P(2)(a)(i) in respect of locker rent. The Assessing Officer disallowed the deduction when the matter went before the CIT(A), CIT(A) confirmed the disallowance by holding as under :-

"11.2 As far as income from locker rent is concerned this income of the co-operative society is not entitled to deduction u/s 80P(2)(a)(i) as this is not locker received by a banking company. However the provisions of section u/s 80P(2)(c) will apply. Reliance is placed on the decision of the MP High Court in *CIT* v. *Jila Sahakari Kendriya Bank Maryadit* 225 ITR 421 (MP)."

17. We heard the rival submissions and carefully considered the same alongwith the order of the tax authorities below. We noted that the decision of MP High Court in the case of *CIT* v. *Jila Sahakari Kendriya Bank Maryadit* [1997] 225 ITR 421/90 Taxman 426 has been overruled by Hon'ble Supreme

Court in the case of *Mehsana District Central Co-operative Bank Ltd.* v. *ITO* [2001] 251 ITR 522/119 Taxman 785. In this case it was held that income derived by assessee cooperative bank from hiring out of safe deposit vaults is income from banking and is deductible u/s 80P(2)(a)(i). We have already held that the assessee is not carrying on the business of banking. It is carrying on the business of providing credit facilities to its members. This income in our opinion cannot be regarded to be the profits and gains of business attributable to providing credit facilities to its member. Hon'ble Supreme Court has allowed the deduction in respect of the locker rent to a co-operative society carrying on the banking business because as per section 6(1)(a) of the Banking Regulation Act, 1949 provision of safe deposit vaults is part of ordinary banking business. This thing cannot be hold good in the case of credit co-operative society. The decision given in 172 ITR 474/(sic) [(MP) and *Guru Harsahai Primary Co.-op. Agrl. Dev. Bank Ltd.* v. *Asstt. CIT* [2010] 133 TTJ 4 (ASR) (UO) relate the co-operative society engaged in the banking business. We have also gone through the decision of *Bardoli Vibhag Gramin Vikas* v. *Department of Income Tax and Bench* (O) ITAT Ahmedabad in ITA No. 3129 & 2985/Ahd/2008. This relate to the assessment year 2005-06 prior to the insertion of section 80P(4) which prohibits the deduction u/s 80P(2) and (3) to a co-operative society engaged in banking business by the Finance Act, 2006 w.e.f. 1.4.2007. During the assessment year a co-operative society even engaged in the banking business is entitled for the deduction u/s 80P(2)(a)(i) in respect of profit and gain derived from banking business./In the case of *Bardoli Vibhag Gramin Vikas* (*supra*) we rioted from para 6.1 that this co-operative society has income from banking business also. In view of this fact under para 8.3 the, Ahmedabad Bench of the Tribunal allowed the deduction to the assessee in respect of the locker rent. We accordingly confirm the order of the CIT(A) and dismiss the second ground filed by the assessee. In ITA No. 179 the ground no. 3 relate to not providing deduction u/s 80P(2)(a)(i) in respect of the NPA provision Rs. 1,29,26,937/-, purchase of vehicle fund Rs. 10,00,000/- and provision for Investment Fluctuation Reserve Rs. 23,50,000/-. The Assessing Officer did not allow NPA provision debited to the profit and loss account in fact the assessee himself added it in the revised computation filed on 28.12.2010 when the matter went before the CIT(A) the CIT also disallowed the same as being provision of unascertained liability. Provision for vehicle fund was also disallowed by the Assessing Officer as according to him it was for providing the capital expenditure. The assessee also added back the same in the revised computation when the matter went before the CIT(A) the CIT(A) confirmed the disallowance similarly the assessee made provision for investment fluctuation. The Assessing Officer disallowed the same as it being a provision for notional loss. He also observed that assessee also added the same in the revised computation. When the matter went before the CIT(A) the CIT(A) confirmed the disallowance the relevant finding of the CIT(A) of all the three items are given under para 11.5 of his order which is reproduced as under :-

> "11.5 As regards the addition of Rs. 1 crore made for Provision for SAMSSK, the assessee has a business of running of sugar factory on lease basis. It is clear that disallowance on this account is not included to the income from business of providing credit facilities. As regards provision for investment fluctuation reserve of Rs. 23,50,000/-, provision for purchase of vehicle fund of Rs. 10,00,000/- and fringe benefit tax of Rs. 2,86,180/- it is seen that the amounts cannot go to increase income for providing credit facilities. Additions on these amounts are therefore to be excluded for the working out of section 80P(2)(a)(i). Similarly as regards the doubtful loan funds of Rs. 12,23,263/- and NPA provision of Rs. 1,29,26,927/- these are provisions of unascertained and contingent liabilities. Similarly donation of Rs. 91,047/- has been added back. As appellant has during the year earned income from mixed activities which both include income eligible for exemption and income not eligible for exemption appellant is not entitled to deduction u/s 80P(2)(a)(i) in respect of additions made to returned income."

18. The learned A.R before us vehemently contended that disallowance of all these four provisions which

include the additional ground admitted by us in turn will increase the income from the business of credit facilities provided to the member and according the deduction available u/s 80P(2)(a)(i) shall get increased. The learned A.R on the other hand contended that the assessee society is engaged in multiple business and has derived the income from various sources. Income from business of providing credit facilities are not going to be increased by this disallowance.

19. We have heard the rival submissions and carefully considered the same. We noted that the assessee was duly allowed deduction u/s 80-IB(2)(a)(i) in respect of income from investment except the interest income from joint venture which has been restored to the Assessing Officer for verification. The investment fluctuation reserve is directly linked with the income from investment business and therefore the disallowance made for provision for investment fluctuation reserve is amounting to Rs. 23,50,000/- in case it has been deducted already out of income from investment, the assessee in our opinion shall be eligible for deduction u/s 80P(2)(a)(i). In case the assessee has not made this provision out of income from investment on which the deduction u/s 80(2)(a)(i) is allowed to the assessee and confirmed by us the assessee will not be eligible for deduction u/s 80-IB. Similar is the position in our opinion in respect of NPA provision and provision for doubtful loan fund. If the assessee has reduced these provisions while computing the income from interest on advances, the disallowance of this provision will increase the interest on advances and accordingly in our opinion the assessee will be eligible for deduction on these provisions u/s 80P(2)(a)(i). Similarly if the provision for purchase of vehicle fund is made out of the income earned by the assessee from the business of providing credit facilities to members on which the assessee is entitle for deduction u/s 80(2)(a)(i), the assessee will be entitled for deduction otherwise not. The facts relating to these provisions require verification. We accordingly set aside the order of the CIT(A) on this accounts and restore this issue to the file of the Assessing Officer with the direction that the Assessing Officer shall verify all these four provisions i.e. provision for doubtful loan fund, investment fluctuation reserve, provision for purchase of vehicle fund and NPA provision whether they were reduced by the assessee while computing the income from profits and gains from credit facilities to members and the assessee got the deduction u/s 80P(2)(a)(i) on the income after reducing these amounts. If this is the fact, the Assessing Officer is directed to increase the deduction available to the assessee to the extent the provisions so disallowed. Thus this ground is allowed for statistical purposes.

20. The ground no. 4 which relate to the godown rent was not pressed by the assessee as the CIT(A) has duly allowed deduction to the assessee u/s 80P(2)(a)(i). We accordingly dismiss this ground.

ITA No. 180/NAG/2012

21. The ground nos. 1 and 2 in the appeal filed by the assessee has already been disposed of by us while disposing of assessee's appeal for the assessment year 2007-08.

22. Ground nos. 3, 4 and 5 since not pressed by the assessee therefore they are dismissed as not pressed.

23. So far the deduction u/s 80P(2)(a)(i) in respect of provision for doubtful loan fund taken by the assessee as additional ground, we have already held while disposing of ground no. 3 for the assessment year 2007-08 that the facts are to be verified whether the provision for doubtful loan fund has been made out of the income earned for providing credit facilities to the member and also directed in case it is found that the provision for doubtful loan fund has been made out of income earned for providing credit facility to its members the assessee should be allowed deduction. Accordingly, we direct the same to the Assessing Officer in respect of additional ground taken during the assessment year thus the additional ground is allowed for statistical purposes.

24. Ground no. 6 relates to the addition of Rs. 14,35,931/- u/s 2(24)(x) in respect of sum received by the

assessee from his employer as contribution towards P.F or S.F. The Assessing Officer treated the said amount as the income of the assessee as the assessee delayed the deposit of the amount with the appropriate authority. When the matter went before CIT(A), CIT(A) also confirmed the same. We heard the rival submissions and the learned A.R pointed out that all the payments of provident fund contribution were made within the accounting year. We, therefore, in view of the settled position of law delete the disallowance. Thus this ground is allowed.

25. Ground no.7 relates to the addition of Rs. 8,98,420/- as cash receipt . The facts relating to this ground are that the Assessing Officer noted that seized document no. A21 pages 47 has noting of cash transaction/payment amounting to Rs. 8,98,420/-. These payments according to him relate to cash payment. On page 47, a figure of 121 was shown under the heading cash payment. The Assessing Officer accordingly sought the explanation of the assessee. The assessee submitted that the said pages contained rough calculation. The contents in the said pages do not belong to the assessee and are not in the handwriting of any employee of the assessee. In respect of page no. 51 it was stated that said pages contained rough calculation made by technical consultants/contractor of Malkapur regarding construction of Chicalim Road, Buldhana on BOT basis. These basis are left at the assessee's place does not belong to the assessee and also not in the handwriting of any of the employee of the assessee. Page 51 contains the statement of expenditure up to 14.3.2009 which shows details of payment made to various contractors against work performed. The amounts were duly recorded in the books of account and TDS was duly deducted. The Assessing Officer relying on the provisions of section 292C added the sum of Rs. 8,98,420/-. When the matter went before CIT(A), the CIT(A) confirmed the addition holding that the assessee failed to discharge its onus satisfactorily relying on the decision of Hon'ble Delhi High Court in the case of *Smt Urmila Gambhir* v. *CIT* [2010] 325 ITR 171. Before us the learned A.R reiterated the submissions made before the Assessing Officer and vehemently contended by referring to the facts of the case in the case of *Smt Urmilg Gambhir* (*supra*) that the said decision is not applicable. In that case, the assessee has duly purchased the agricultural land for which expenditure were mentioned in the loose sheet. The assessee never denied that the paper was not in the handwriting of its employees. Even one paper showing the land rate prevailing at that time was also found and seized which corroborated the figures given in the loose sheet seized. The learned D.R on the other hand relied on the authorities below. We have carefully considered the rival submissions alongwith the order of the authorities below as well as the case laws cited before us. We have gone through the decision of *Smt Urmila Gambhir* (*supra*). This decision in our opinion will not help the revenue. In this case the Hon'ble High Court did not treat the findings given by the Tribunal to be perversed. We also noted that in that case assessee never denied that the paper found does not belong to it. It also does not deny that the papers found were not in the handwriting of the assessee. The fact the assessee bought the land during the year was duly confirmed from the books of the assessee. The prevailing rate of land per acre was also found. Under these facts the Tribunal confirmed the order and High Court took the view that the finding given by the Tribunal was not perverse. Section 292(c) no doubt makes a presumption in respect of the document found in the possession of control of any person in the course of search or survey that such document belong to the assessee, the content of such document are true and the signature and it is reasonably be assumed in the handwriting of any other particular person. The presumption given u/s 292(c) in our opinion is not conclusive and is rebuttable. The assessee in this case, we noted since beginning has denied that the loose paper found belong to him. It is not in the handwriting of any employee of the society. There is no corroborated evidence available on record or found during the course of the search which may prove contention of the assessee that it contains rough calculation and the paper does not belong to the assessee to be wrong on one place we noted from the assessment order that the handwritten noting of payment made to Kaware & Jawade Associates @ 2.5 % of Rs. 1,15,00,000/- however 1.5% is returned back by cash but the addition we noted has only been made mentioning cash receipt not cash payment. In our opinion once assessee has filed a plausible explanation,

the onus get shifted on the Assessing Officer how he did not agree with the explanation of the assessee. We noted that the Assessing Officer mentioned that the explanation of the assessee is not acceptable in view of the provisions of section 292C and he treated all these pages belonging to the assessee and added the sum of Rs. 8,98,420/- in the hands of the assessee. We do not agree with this approach of the Assessing Officer as in our opinion explanation given by the assessee is bona fide and plausible. We therefore, delete the addition by setting aside the order of the CIT(A) on this ground. Thus this ground is allowed.

ITA No. 181/NAG/2012

26. Ground nos. 1 and 2 we have already disposed of while disposing of ITA No. 179/M AG/2012 in the preceding paragraph of this order.

27. Ground no. 3 relates to the sustenance of addition in respect of (a) interest on refund of income tax (b) unidentified deposit and (c) provision for investment fluctuation reserve. So far ground no. 3(a) is concerned, the learned A.R did not press it during the course of hearing therefore the ground no. 3(a) stands dismissed as not pressed. Ground no. 3(b) is the same as ground no. 5 therefore it will be disposed of subsequently as ground no. 5. Ground no. 3(c) is similar to the ground no. 3(c) in ITA No. 179/NAG /2012. Both the learned A.R and D.R agreed to the same and stated whatever view this Tribunal may take in respect of ground no. 3(c) for the assessment year 2007-08, the same view may be taken. We have already disposed of ground no. 3(c) in assessment year 2007-08 i.e. ITA NO. 179/NAG/2012 in the preceding paragraph of this order, we accordingly direct the Assessing Officer to follow our order in the preceding paragraph for the year 2007-08 which we have given in respect of ground no. 3(c) in that year. Thus this ground is disposed of accordingly.

28. Ground no. 4 since not pressed therefore, the same stands dismissed as not pressed.

29. Ground no. 5 relate to the sustenance of addition of Rs. 10,81,00,000/- by the CIT(A). The facts relating to this addition are that during the course of search a document (a) A29 was seized page no. 1 of the said document consists of handwritten notings regarding deposits and receipts of various dates. The sheet also contains details of receipt of membership fee from certain members on specific dates. In his statement one Shri Umesh Agarwal, Branch Manager dated 20.3.2009 during the course of search in reply to question no. 15 admitted that these receipts are membership fees but the details of members were not available on record and KYC norms were violated. On the same day a number of identical amounts were accepted each below Rs. 20,000/- from large number of customers by way of cash in a single branch. Assessing Officer in para (E) of the assessment order has also relied upon the enquiries and investigation during search which revealed that the daily cash scrolls when verified along with relevant pay-in-slip, F.D applications, showed that the deposit were of single individual and split into small deposits below Rs. 20,000/- each either in the names of existing or fictitious customers. All these deposits wore repaid in cash in some instances the FD's were not discharged but still the cash was repaid. Thus, the Assessing Officer treated the deposits to be unaccounted in fictitious name. Thus, the AO listed out amount of fictitious deposits in various branches in para 5 page 30 of assessment order. Assessing Officer mentioned that when the chairman of the assessee Shri Radheshyam Chandak was confronted with the various deposits, he in the statement recorded on 16.5.2009, offered an additional income of Rs. 10.10 crore. Subsequently, vide letter dated 25.6.2009 such unidentified deposit were revised at Rs. 10.81crores. The assessee made the claim of deduction u/s 80P(2)(a)(i) which was also rejected. The assessee went in appeal before the ClT(A), CIT(A) confirmed the addition and also rejected the claim of deduction u/s 80P(2)(a)(i) By holding as under :-

> "13. I have carefully considered the issue before me. It is necessary to appreciate that the assessee has received these amounts by way of cash and systematically entered the deposits in the name of existing

fictitious persons for amounts below Rs. 20,000/. This exercise has been done to facilitate acceptance of deposits and repayment of deposits by cash. It is further admitted that these amounts are received from parties to whom the KYC norms have not been applied.

14. The answer to Question no. 4 of Shri Radheshyam Chandak in the course of statement recorded u/s 132(4) clearly indicates modus operandi followed by the assessee and the reason for the disclosure of the amount of Rs. 10.10 crore. The said extract of the said answer is reproduced below :-

>"I have gone through your question carefully and have also gone through the various statements recorded u/s 131 of the I.T. Act, 1961 the various documents/loose papers, bundles etc. impounded u/s 131(3) of the I. T. Act, 1961 by the I.T. Authorities as referred in your questions. With regards to the various irregularities and deficiencies pointed out in your question. I have to state that our society i.e. Buldana Urban Co-operative credit society Ltd, Buldana is in swift mode of development phase and has expanded its branches at various places. As a result there are certain basic requirement which have not been complied with like identification of the depositor i.e. name, addresses, photographs etc. Our manpower is also not fully equipped properly trained. I request you to take into consideration these reasons due to which we could not strictly follows the KYC norms. However, since these deposits are now withdrawn and since we have no control over these funds, we are not in a position to identify these depositors at this stage as we did not follow the KYC norms. In view of these facts our society has made an attempt to estimate the quantum of such deposits kept with the different branches of BUCCSL The total figure of such deposits comes to Rs. 10,00,00,000/- (Rs. Ten crore ten lakh) approximately. In the light of the above, to protect the interests and reputation of our society i.e. BUCCSL. I on behalf of the society i.e. BUCCSL, I am offering this amount of Rs. 10,00,00,000/- as additional income of the society for F.Y. 2008-09 i.e. A.Y. 2009-10, for the purpose of Income Tax. This additional income offered is over and above the regular income of BUCCSL for A.Y. 2009-10 and the society is agree to pay the due taxes on this amount of additional income of Rs. 10,00,00,000/- approximately. I undertake to submit before you the detailed computation of such deposits with the respective branches included in this figure of Rs. 10,10,00,000/- by 25.05.2009. I have to state that I have been duly authorized by the Board of the Directors (BODs) of BUCCSL in this regard and I undertake that the society will pay the due taxes on this additional income. I am also submitting to you a duly signed letter in this regard, on behalf on BUCCSL."

Subsequently assessee has filed a letter dt. 25-06-2009 reworking the amount as Rs. 10.80 crore as follows :-

"Search and seizure action u/s 132 of the I.T. Act, 1961 was carried out at the business and other office premises of the society on 20.03.2009. During the course of search statement u/s 132(4) of Chairman of the society was recorded on 17.05.2009 and as per the statement it was stated that during the course of search various documents in respect of deposits made by different persons were found. The persons incharge at the head office and in different branches have attended and explained and clarified the queries put forth from time to time. The society which is in the swift mode of development phase has expanded its branches not only in Maharashtra but in nearby other states. The manpower viz. manager, assistant manager and other staff are not fully equipped with KYC norms as well as other banking and financial regulations.

As per the statement u/s 132(4) on 17.05.2009 it was admitted by the chairman of the society that due to swift expansion certain KYC norms would not be fulfilled like photographs, etc.

To safeguard the interest of the society and depositors, the society has offered additional income on this account of Rs.10.10 crore on 17.05.2009. The additional income offered was for the AY 2009-10.

The assessee society is now enclosing herewith the details of additional income offered of Rs. 10,81,27,332/- which as per the statement u/s 132(4) was only Rs. 10.10 crore. The above difference has been arrived after further verifying the details of deposits branchwise. The assessee is now enclosing herewith the details of Rs. 10,81,27,332/-."

16. The facts of the case and the admission of additional income in the course of statement u/s 132(4) place the case on a different footing when compared to the facts of decision relied upon by the appellant in 74 TTJ 793. Further the judgment does not support the view that there is no onus on appellant to prove the genuineness of the deposits. In the said case the Hon'ble ITAT Pune bench has held as follows :-

"In the case of banking concerns, it can be said that the onus on the assessee would be discharged if it is established that such assessee has acted with due diligence and caution while accepting the deposits."

16.1 What clearly emerges from the facts of the case is that the onus to prove that the deposits are genuine is not discharged. In the appellant's case from daily cash scrolls the acceptance of deposit in cash showing amounts below Rs. 20,000/- in the names of depositors to whom KYC norms have not been applied, is evident. The subsequent issue of FDs in the name of a single individual by the appellant shows that the action of the assessee in accepting these deposits were in wilful violation of the established norms. Appellant has flouted standards of due diligence for unacceptable reasons. It is also material that the amounts have been accepted as undisclosed income of the appellant in the statement recorded u/s 132(4) of the chairman of BUCCSL Sri Radheshyam Chandak. As regard the contention of the appellant that all these amounts have been received in the business of providing credit facilities to members, the fact to be taken note of is that assessee carried on multifarious activities and does not exclusively carry on the business of providing credit facilities to members. Therefore the entire amount cannot be attributed to the business of providing credit facilities to members income of which is eligible for exemption u/s 80P(2)(a)(i). Further it is to be appreciated that the income received from the business of providing credit facilities to members would be only in the nature of interest income. Here the issue in dispute is the amount of alleged deposits which have been accepted as unexplained and offered to tax. I am of the view that when there is violation of established norms of the KYC and a systematic attempt to circumvent provisions of section 269SS of the I.T. Act by accepting amounts below Rs. 20,000/- by way of cash it cannot be held that these amounts have been received during the course of carrying on business of providing credit facilities to members. It is also necessary to note that in the statement recorded u/s 132(4) on 16.05.2009 and subsequent letter dt. 25.06.2009 appellant has unequivocally admitted that the amount is undisclosed income and offered to pay the taxes thereon. The subsequent claim that this amount is eligible for deduction u/s 80P(2)(a)(i) is not tenable as appellant has failed to establish that this amount is income from business of providing credit facilities. Further it is clear that addition on account of cash credits is to be made under the head income from other sources and not under the head income from business. Reliance is placed on the decision reported in 120 ITR 294(AP) in this regard. The contention of the appellant is therefore rejected.

16.2 The scope of the expression "providing credit facilities" to its members is restricted and confined to providing credit facilities to members. The deposits received from parties whose identity itself is not established who are not established to be members is therefore not of the nature of eligible income as contemplated by the provisions of section 80P(2)(a)(i). In the decision of India Leather Corporation (P) Ltd. 227 ITR 552 (SC) the Hon'ble Apex Court has held that there must be a direct connection between the income and the source so as to be characterized as "attributable". The facts of the

assessee's case transgress the said basic requirement. The deposit of Rs. 10.81 crore is therefore not attributable to the business of providing credit facilities. In a recent decision of the Patna High Court reported in 313 ITR 247 in the case of *Bihar Rajya Sakhar Bhoomi Vikas Coop Bank Ltd* v. *CIT* it has been held that interest not earned from money in stock-in-trade or circulating capital is not eligible for deduction u/s 80P(2)(a)(i) of the Act."

30. The learned A.R before us made the following submissions:-

"(*i*) The society is managed by directors of the company, the human element in the affairs of the society. It has to act through the board of directors and their actions and decisions are that of the company for all purposes.

(*ii*) The society has a large deposit from the depositors. An amount of Rs. 10,81,00,000/- was added by the Assessing Officer as fictitious deposits. Now these are not fictitious deposits. Each of the deposits contains the name of the person and his address and other details and entire deposit.

(*iii*) These deposits have been received in the normal course of carrying on business of the society and on the basis of which it earns its income.

(*iv*) Society as a unit of assessment and it being an artificial jurisdictional person carrying on business through the human agency of its board of directors, the question for decision is whether the juristic person should be answerable or its human face through it acts should be answerable. Unobjectionably it is the board of directors.

(*v*) The enquiry should have been directed against the depositors only who are to be considered as the persons owning the deposits.

(*vi*) These deposits have been returned to them also. The details of return of the deposit are filed in the separate paper book.

(*vii*) If depositors place the money in the bank whose numbers are very large, the board of directors cannot remember, them all Nor can they be expected to substantiate the credit worthiness of the persons concerned as in the case of an individual or HUF or firm etc.

(*viii*) These are deposits which the public place with the bank on their own violation. These are not deposits solicited individually by the board of directors or any person employed by the society. Deposits are different from loans and they should be treated in the manner.

(*ix*) The onus is lighter than in other cases, State Bank of India will not be able to establish the crore of depositors amount their genuineness.

(*x*) These are not individual oriented but public oriented. The management cannot prove their capacity to deposit. That is an impossible task and law does not require doing an impossible act.

(*xi*) In respect of the deposit of the entire amount, a list of depositors, name and address has been given branch-wise."

31. Alternately it was contended that the assessee has moved application for admission of the additional ground that the assessee is entitled for deduction u/s 80P(2)(a)(i) on this income. This being the legal ground after hearing the Ld.DR, we permitted the additional ground. It was submitted the assessee be allowed deduction u/s 80P(2)(a)(i) as it will be an income derived from the business of providing the credit facilities. It was pointed out that this plea was taken before the CIT(A) and also before this Tribunal by

way of additional ground in case this Tribunal take a view that this plea is not covered by the ground taken by the assessee. In this regard attention was drawn towards the para 16.2 of the order of CIT(A). It was further contended that while disallowing the claim of the assessee the CIT(A) relied on the decision of the Supreme Court in the case of *Indian Leather Corporation Pvt. Ltd.* v. *CIT* [1997] 227 ITR 552/95 Taxman 78 as well as on the decision of Patna High Court in the case of *Bihar Rajya Sahakari Bhoomi Vikas Co-operative Bank Ltd.* v. *CIT* [2009] 313 ITR 247/[2010] 186 Taxman 54. The decision of Supreme Court in the case of *Indian Leather Corporation (P.) Ltd.* (*supra*) is not applicable on the facts of the case. The decision of the Patna High Court is also not applicable and it relate to a co-operative society carrying on banking business. The learned A.R vehemently relied on the decision of *Shri Mahavir Nagari Sahakari Pat Sanstha Ltd.* v. *Dy. CIT* [2002] 74 TTJ 793 (Pune). The reliance was also placed on the decision of Hon'ble Supreme court in the case of *CIT* v. *Lovely Exports (P) Ltd.* [Application No. 11993 of 2007 dated 11-1-2008] for the proposition of law that in any case the addition cannot be made in the hands of the assessee. The learned D.R on the other hand relied on the order of the authorities below.

32. We have carefully considered the rival submissions along with the order of the tax authorities as well as submissions made before us and the case laws cited before us during the course of hearing. We noted that during the course of search one document was seized. The ownership of which has not been denied by the assessee, it contains handwritten noting being the details of the deposits received by the assessee. These sheets also contain details of the receipt of membership fees on specific dates. The Branch Manager admitted that the receipt represent membership fee. It was noted that there was violation of KYC norms. The Assessing Officer took the view that these were the unaccounted deposits in fictitious names. The Chairman of the assessee's credit society in his statement recorded on 16.5.2002 offered additional income of Rs. 10.10 crore to protect the interest and reputation of the society. In the said statement he stated that the said sum is offered as income as the society could not strictly follow the KYC norms and since these deposits earned are now withdrawn. Assessee does not have any control over these deposits. He also stated in the said statement since the assessee did not follow the KYC norms, it is not in a position to identify the depositors at this stage. Subsequently, he reworked the deposits by a letter dated 25.6.2009 and agreed to the addition of these deposits as additional income to the tune of Rs. 10.81 crore after verifying the details of deposits branch-wise. These deposits were shown by the assessee as its income but the Assessing Officer brought to tax these deposits as income from other sources, subsequently the assessee claimed deduction u/s 80P(2)(a)(i) as the income being arisen from carrying on the business of providing credit facilities. The assessing officer did not allow the deduction u/s 80P(2)(a)(i) in view of the provision of section 80P(4) being inserted w.e.f. 1.4.2007. The CIT(A) even though confirmed the addition but has also not allowed the deduction to the assessee u/s 80P(2)(a)(i) observing that the scope of the expression providing credit facilities to its member is restricted and confined to providing credit facilities to members.

The deposit received from parties whose identity itself are not established, who are not established to be members who are not of the nature of eligible income as given u/s 80P(2)(a)(i). In this regard the CIT(A) relied on the decision of *Indian Leather Corp. (P.) Ltd.* (*supra*). Now in this case there are three issues involved (1) Whether the addition can be made u/s 68 of the Income Tax Act or not, (2) In case whether the deposits has added by the Assessing Officer are to be added u/s 68 whether they are regarded as the income from business or as income from other sources and (3) Whether the assessee is entitled for deduction u/s 80P(2)(a)(i) on the addition so made. We will first take up whether the addition can be made u/s 68 of the Income Tax Act. Section 68 of the Income Tax Act lays down rule of evidence. The onus is on the assessee to prove to the satisfaction of the Assessing Officer the nature and source of the cash credit otherwise any sum found credited in the books of the assessee maintained for any previous year be charged to income tax as the income of the assessee of that previous year. In our opinion the assessee cannot be escaped from the deeming provision of section 68 from discharging its onus merely on the basis

that the assessee was in the initial stage of development of business. The assessee failed to comply with the KYC norms which could have taken in the case of the assessee to be the charging of the onus by the assessee. The assessee cannot be saved from the clutches of the provisions of section 68 by taking the shelter that manpower of the society engaged for this business was not fully equipped and properly trained and due to(which there had been lapses in complying with KYC norms. The decision of *Lovely Exports (P.) Ltd.* (*supra*) in our opinion will not apply in the present case as in that case the money was given by the shareholders for a consideration i.e. against the allotment of the shares. This is a case where deposits have been received by the assessee to whom it is to be repaid on demand or after the expiry of fixed period. We therefore, confirm the addition u/s 68. To that extent we confirm the order of the CIT(A). Now the question arise whether the income so added will be the profit and gains from business or not. While disposing of the appeal of the revenue, we confirm the order of the CIT(A) holding that the assessee is not a co-operative bank therefore, in our opinion the restriction put in respect of the deduction available u/s 80P(2)(a)(i) will not apply to the assessee. In his statement recorded even though chairman of the society surrendered the amount but he never agreed that these deposits belong to the assessee or were made by the assessee by surrendering the amount he clearly stated that since our society is in swift mode of development phase and is in the mode of development phase at various places. There are certain basic requirement which have not been complied with like identification of the deposits i.e. name, address, photograph etc., even he accepted manpower of the society engaged for this business is also not fully equipped and properly trained and due to these reasons, the society could not strictly follow the KYC norms. He also stated since these deposits stand withdrawn and society does not have any control over this fund at this stage therefore he surrendered the amount. It is not denied that the deposits have been received during the course of business of the assessee and the assessee is engaged in the business of providing credit facilities to its members. The credit facilities cannot be provided until and unless the assessee receive the deposits. The deposits even if the assessee could not prove the nature and source thereof to the satisfaction of the Assessing Officer, it could not be said that they were received not during the course of carrying on the business of providing the credit facilities to its members. Therefore, we are of the view that the income added u/s 68 has to be treated as the profits and gains arising from business of the assessee. Now the question arise whether the assessee is entitled for deduction u/s 80P(2)(a)(i) on the income so added. The deduction u/s 80P(2)(a)(i) is available to a co-operative society engaged in carrying on the business of providing credit facilities to its members in respect of whole of the amounts of profits and gains of business attributable to this business. We noted that the Assessing Officer did not agree with the assessee but under para 8 took the view that this amount has not been earned by the assessee in its normal course of business activities and therefore he took the view that there is no case even prima facie to consider the claim of deduction u/s 80P(2)(a)(i) of the Income Tax Act. We have gone through the decision of the Supreme Court in the case of *Indian Leather Corporation (P.) Ltd.* (*supra*) as relied by CIT(A). In this case Supreme Court took the view that " it is no doubt true that the words "attributable to" have a wider meaning than the words "derived from". But at the same time it cannot be ignored that normally the word "attributable" implies that "for a result to be attributable to anything it must be wholly, or in material part, caused by that thing." [see : Stroud's Judicial Dictionary, 5th edn,, volume I, page 223]. A casual connection is necessary. In order that income can be said to be attributable to manufacture or processing of goods for the purpose of the Explanation to section 104(4) of the Act the earning of the income must be directly connected with manufacture or processing of goods. It is also necessary that a material part of the said income should have been earned by that activity." Now the question arise whether the income so added u/s 68 being the deposits in respect of which KYC norms were not complied with can be regarded to be the amount of profit and gains of business providing the credit facilities to its members, This is not denied that the assessee is engaged in the business of providing credit facilities to its members. The credit facilities cannot be provided until and unless the assessee receives the deposits. It cannot always be

provided out of its own capital. Receiving of the deposit is necessary and essential for advancing the money on credit and earning the interest income. The deposits may not have been derived from the income for providing the credit facilities to the members. Receiving of the deposit thus in our view in case it is treated to be the income of the assessee has a casual connection with the business of providing credit facilities to its members as this receipt in our opinion has been received by the assessee during the course of carrying on the business. Thus the judgment of the Supreme Court has referred to by CIT(A), in our opinion, support the case of the assessee rather than that of revenue. There is no evidence being brought on record or placed before us during the course of the hearing which may prove that these deposits belong to the assessee and he made the same. The Chairman never agreed that the deposits belong to the assessee there may be number of reasons for surrendering the amount as the income of the society but in our opinion tax has to be imposed on the real income. If there is no income has arisen to the assessee, there is no question that it can be treated to be the income of the assessee as the assessee is agreeing to it. There cannot be any contract against the statute. The addition is confirmed due to the specific deeming provision of section 68 which lays down the burden on the assessee to prove the nature and source of cash credit to the satisfaction of the Assessing Officer. We noted that the CIT(A) rejected the claim of the assessee for the deduction u/s 80P(2)(a)(i). If the deduction is available to the assessee under any provision of the Income Tax Act, in our opinion, it cannot be denied to the assessee merely on the basis that the assessee has agreed to treat it to be its additional income. We have gone through the decision of the Pune Bench in the case of *Shri Mahavir Nagari Sahakari Pat Sanstha Ltd.* (*supra*) as relied by the assessee, the headnote of this judgment read as under :-

> "Deduction u/s 80P(2)(a)(i) Providing credit facility to members -Loans to members only- As per definition of a 'member' given in Maharashtra Co-operative Societies Act members include nominal members also who are admitted as per the bye-laws of the society-assessee giving loans only to its members-Therefore, it satisfied the conditions laid down u/s 80P(2)(a)(i) and was entitled to deduction-cash credit, even if taxed, would be considered as income from the same business, i.e. providing credit facilities to the members, and accordingly, it would also be entitled to deduction u/s 80P- Bye-laws do not take the character of the Statute-Violation of bye-laws by the assessee could not lead to the automatic conclusion that the assessee was not a co-operative society-Government auditor or the Registrar has not held that the assessee has ceased to be a co-operative society none have they cancelled the registration of the assessee as a co-operative society-assessee-society would continue to enjoy the status of a co-operative society and, therefore, deduction u/s 80P would be available to it."

33. The aforesaid decision is clearly applicable on the facts and circumstances of the case. The decision of the Coordinate Bench is binding on us. Respectfully following the aforesaid decision and the discussion held in the preceding paragraph, we set aside the order of CIT(A) on this issue and direct the Assessing Officer to allow the deduction to the assessee u/s 80P(2)(a)(i) in respect of the addition sustained by us u/s 68 of the Income Tax Act; Thus, this ground is partly allowed.

34. In the result, appeals filed by the revenue stands dismissed, while the appeals filed by the assessee are partly allowed.

Sunil

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*Partly in favour of assessee.