

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCH 'B' JAIPUR

श्री विजय पॉल राव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष  
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA. No. 512 & 513/JP/2019  
निर्धारण वर्ष / Assessment Years : 2011-12 & 2012-13

M/s Jaipur Zila Dugdh Utpadak Sahakari Sangh Ltd., Jaipur Diary, Near Gandhi Nagar Railway Station, Jaipur	बनाम Vs.	DCIT Circle-06 Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAAAJ0767G		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

आयकर अपील सं./ITA. No. 633 & 634/JP/2019  
निर्धारण वर्ष / Assessment Years : 2011-12 & 2012-13

Deputy Commissioner of Income-tax, Circle-6, Jaipur	बनाम Vs.	M/s Jaipur Zila Dugdh Utpadak Sahakari Sangh Ltd., Jaipur Diary, Near Gandhi Nagar Railway Station, Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAAAJ0767G		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri P. C. Parwal (CA)  
राजस्व की ओर से / Revenue by: Shri Karni Dan (JCIT)

सुनवाई की तारीख / Date of Hearing : 06/08/2019  
उदघोषणा की तारीख / Date of Pronouncement : 02/09/2019

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

These are cross appeals filed by the assessee and the Revenue against the respective orders of Id. CIT(A)-2, Jaipur dated 27.02.2019

for AY 2011-12 and AY 2012-13 wherein the respective grounds of appeal are as under:-

**ITA. No. 512/JP/2019 (For A.Y 2011-12)**

"1. The Id. CIT(A) has erred on facts and in law in upholding validity of order passed by AO u/s 147 of IT Act, 1961.

2. The Id. CIT(A) has erred on facts and in law in holding that interest expenditure to the extent of Rs. 87,91,593/- is attributable to the interest income of Rs. 1,46,40,834/- earned on FDRs maintained with Jaipur Central Cooperative Bank Ltd. (JCCB), thereby disallowing deduction u/s 80P to this extent. He has further erred in considering the amount of interest income from JCCB at Rs. 1,46,40,834/- instead of Rs. 1,49,40,834/-.

2.1 The Id. CIT(A) has erred on facts and in law in not considering that investment in FDRs is made out of own funds and borrowed funds has been utilized for business purpose and therefore, no interest expenditure can be attributed for earning the interest income."

**ITA. No. 633/JP/2019 (For A.Y 2011-12)**

"Whether in the facts and circumstances of the case and in law, the CIT(A) is correct in holding that the income received from investments made with Jaipur Central Co-operative Bank is eligible for deduction u/s 80-P(2)(d) of the I.T. Act, 1961 and thereby justified in allowing relief of Rs. 1,49,40,834/-."

**ITA. No. 513/JP/2019 (For A.Y 2012-13)**

"1. The Ld. CIT(A) has erred on facts and in law in upholding the validity of the order passed by AO u/s 147 of IT Act, 1961.

2. The Ld. CIT(A) has erred on facts and in law in holding that interest expenditure to the extent of Rs. 95,12,659/- is attributable to the interest income of Rs. 1,59,92,544/- earned on FDRs maintained with Jaipur Central Cooperative Bank Ltd., thereby disallowing deduction u/s 80P to this extent.

2.1 The Id. CIT(A) has erred on facts and in law in not considering that investment in FDRs is made out of own funds and borrowed funds has been utilized for business purpose and therefore, no interest expenditure can be attributed for earning the interest income."

**ITA. No. 634/JP/2019 (For A.Y 2012-13)**

"Whether in the facts and circumstances of the case and in law, the CIT(A) is correct in holding that the income received from investments made with Jaipur Central Co-operative Bank is eligible for deduction u/s 80-P(2)(d) of the I.T. Act, 1961 and thereby justified in allowing relief of Rs. 1,59,92,544/-."

2. Since common issues are involved, all these appeals were heard together and are being disposed off by this consolidated order.

3. With the consent of both the parties, the matter pertaining to AY 2011-12 is taken up for the purposes of present discussion. Briefly stated, the facts of case are that the assessee is a cooperative society engaged in the business of procurement of milk, processing it to prepare milk products and sale thereof. It filed its return of income on

29.09.2011 declaring total income of Rs. 3,60,25,830/-. The assessment was completed u/s 143(3) on 06.12.2014 at total income of Rs.4,55,67,387/-. Subsequently, the assessment was reopened by issuance of notice u/s 148 and reassessment was completed u/s 147 r/w 143(3) disallowing the claim u/s 80P(2)(d) of Rs 1,49,40,834 and assessed at a total income of Rs 5,09,66,660. On appeal, the Id CIT(A) allowed the claim u/s 80P(2)(d), however, restricted the quantum of claim to Rs 58,49,241. Against the said findings of the Id CIT(A), both the assessee and the Revenue are in appeal before us.

4. During the year under consideration, the assessee received interest of Rs.1,49,40,834/- on FDRs placed with the Jaipur Central Cooperative Bank on which deduction u/s 80P was claimed. The AO referring to the decision of Hon'ble Supreme Court in case of Totgar's Cooperative Sales Society Ltd. Vs. ITO held that if a society is regularly earning interest on funds (not required immediately for business purposes), such interest income is taxable u/s 56 under the head 'Income from other sources' and not eligible for deduction u/s 80P. Further the deduction u/s 80P(2)(d) is available on interest or dividend derived from its investment made in co-operative society and not available if interest is received from investment made in co-operative bank drawing support from the provisions of section 80P(4) of the Act. Accordingly, the AO disallowed the claim of deduction u/s 80P at Rs.1,49,40,834/-.

5. On appeal, the Ld. CIT(A) held that Jaipur Central Cooperative Bank is a cooperative society. The assessee is also a cooperative society. Thus, deduction u/s 80P(2)(d) is admissible to the assessee in respect of income by way of interest or dividend derived by the assessee (cooperative society) from its investment with any other

cooperative society (Jaipur Central Cooperative Bank). However, she held that the total interest income of the assessee is Rs.5,86,88,487/- against which total interest expenditure is Rs.3,52,41,527/-. Therefore, the interest expenditure attributable to the interest income of Rs.1,46,40,834/- from JCCB would be Rs.87,91,593/- ( $\text{Rs.3,52,41,527} \times \text{Rs.1,46,40,834} / \text{Rs.5,86,88,487}$ ). Thus, the net interest income from JCCB would be Rs.58,49,241/- ( $\text{Rs.1,46,40,834} - \text{Rs.87,91,593}$ ). Accordingly, the AO was directed to allow deduction of Rs.58,49,241/- u/s 80P(2)(d).

6. During the course of hearing, the Id. AR submitted that during the year, the assessee has received interest income on FDR's amounting to Rs.1,49,40,834/- from Jaipur Central Co-operative Bank Ltd. It is a bank registered under 'The Rajasthan Co-operative Society Act, 2001.' Thus, interest income claimed as deduction u/s 80P of the Act is available to the assessee as the Jaipur Central Co-operative Bank Ltd. is a co-operative society. The Ld. CIT(A) has therefore, rightly held that deduction u/s 80P(2)(d) is available to the assessee in respect of interest received from another cooperative society. Reliance in this connection is placed on the decision of ITAT, Jaipur Bench in case of **ITO Vs. Shree Keshorai Patan Sahakari Sugar Mill** (ITA No. 418 & 419/JP/2017 order dated 31.01.2018). In this case, the assessee is a co-operative sugar mill. It claimed deduction u/s 80P(2) & 80P(2)(d) in respect of interest of Rs.2,65,43,870/- on fixed deposits with co-operative banks. The AO disallowed the deductions holding that assessee is not carrying out banking business nor the income is derived from providing any credit facilities to its members. The Ld. CIT(A) allowed claim of deduction u/s 80P in respect of entire amount. The Ld.

D/R submitted that assessee has earned income on account of interest on FDR with co-operative bank and not on the amount deposited with other co-operative societies and therefore, deduction u/s 80P(2)(d) is not available. It was held that the only condition for availing deduction u/s 80P(2)(d) is that income is by way of interest or dividend derived by co-operative society from its investment with any other co-operative society. Co-operative bank is to be treated as co-operative society for the purpose of interest income on investment in such co-operative bank. Hence, assessee is eligible for deduction u/s 80P(2)(d) in respect of the interest income from investment made with the co-operative bank. In view of above, ground of the department be dismissed.

7. It was further submitted that the Ld. CIT(A) after holding that assessee is entitled to deduction u/s 80P(2)(d) in respect of interest received on FDR made with JCCB observed that assessee has incurred total interest expenditure of Rs.3,52,41,527/- and therefore, interest expenditure attributable to the interest income of Rs.1,46,40,834/- from JCCB would be Rs.87,91,593/- and thus, disallowed the claim u/s 80P(2)(d) to that extent.

8. In this regard, it was submitted that assessee has earned interest of Rs. 1,49,40,834/- on FDRs in Jaipur Central Cooperative Bank and not Rs.1,46,40,834/- as stated by Ld. CIT(A). Further, the assessee has not incurred any interest expenditure in earning the interest income on FDR with Jaipur Central Co-operative Bank. This is because assessee has invested its own funds for making investment in FDR which is evident from the fact that assessee has interest free funds of Rs.49,97,82,216/- as on 31.03.2011 against investment in FDR of

Rs.97.48 cr., out of which investment in FDR with JCCB is Rs. 20 cr. as per the following details:-

Share Capital	Rs.36,92,54,756/-
Accumulated Profits	Rs. 7,95,17,731/-
Profits for the year	Rs. 5,10,09,729/-
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	Rs.49,97,82,216/-

Thus, interest free fund is much more than the investment in FDR with JCCB. It is a settled law that if both interest free funds and interest bearing funds are available, then presumption would arise that investments would be out of the interest free funds generated or available with the company, if the interest free funds were sufficient to meet the investments. The Hon'ble Supreme Court in case of CIT Vs. Reliance Industries Ltd. (2019) 175 DTR 1 has held "*Tribunal having found that the interest free funds available to the assessee were sufficient to meet its investment, it could be presumed that funds were given to subsidiaries out of interest free funds and therefore, interest referable to funds given to subsidiaries is allowable as deduction under sec. 36(1)(iii)*". Hence, the observation of Ld. CIT(A) that assessee has incurred interest expenditure of Rs.87,91,593/- to earn the interest income of Rs.1,49,40,834/- from JCCB is incorrect.

9. It was further submitted that the position of the interest expenditure incurred and interest income earned as reflected in the profit & loss account are as under:-

Interest Income		
- Interest on FDR	5,79,17,121/ -	
- Interest on Others	7,71,366/-	
Total interest income	5,86,88,487/-	5,86,88,487/-
Interest Expenditure		
- Interest on OD	97,93,342/-	
- Interest on DCS	25,46,774/-	

- Interest on TL	46,10,444/-	
- Interest on WC	1,82,90,967/-	
Total interest expenditure	3,52,41,527/-	3,52,41,527/-
Net Interest income		2,34,46,960/-
Less: Interest received on FDR with JCCB		1,49,40,834/-
Net interest income other than interest from JCCB		85,06,126/-

From the above table, it can be noted that even if interest from JCCB is excluded, the net interest income declared by the assessee is Rs.85,06,126/-. Thus, when expenditure on interest is lower than the interest income earned on FDRs, no part of interest expenditure can be attributed to the earning of the interest income.

10. It was further submitted that even otherwise also, interest expenditure is incurred on the loan taken for working capital and fixed assets. The investment in these assets are much more than the loan taken as evident from the following table :-

Loan Taken		
-Working Capital Loan	60,00,00,000/-	
-Over Draft	19,95,06,124/-	
-NDDB Loan	7,62,72,875/-	
-DCS	16,55,40,001/-	
Total Loan	104,13,19,000/-	104,13,19,000/-
Investment in Stock and debtors		
-Sundry Debtors	59,44,28,770/-	
-Stock in trade	68,52,81,030/-	
Total investment in stock and debtors	127,97,09,800/-	127,97,09,800/-

Thus, the entire borrowed funds are utilised for the purpose for which it is taken and therefore, no part of interest expenditure can be attributed to earning of the interest income.

In view of above, it was submitted that the AO be directed to allow deduction u/s 80P(2)(d) as claimed by the assessee by dismissing the ground of the department and allowing the ground of the assessee.

11. The Id DR was heard who has vehemently argued the matter and supported the findings of the lower authorities. He took us through the findings of the AO and the Id CIT(A) which we have already taken note of and hence, not repeated for sake of brevity.

12. We have heard the rival contentions and perused the material available on record. The issue under consideration is whether the interest income on FDRs placed by the assessee cooperative society with Jaipur Central Cooperative Bank Ltd is eligible for deduction u/s 80P(2)(d) of the Act which reads as under:

*"80P. (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) .....*

*(b) .....*

*(c) .....*

*(d) in respect of any income by way of interest or dividends derived*

*by the co-operative society from its investments with any other co-operative society, the whole of such income."*

13. The aforesaid provisions have been examined at length by this Bench in case of **ITO Vs. Shree Keshorai Patan Sahakari Sugar Mill (Supra)** and the relevant findings are reproduced as under:

*"6.1 As regards the claim u/s 80P(2)(d), we find that the only condition for availing the deduction under this provision is any income by way of interest or dividend derived by the Cooperative Society from its investment with any other cooperative society, the whole of such income is allowable for deduction u/s 80P(1). Therefore, there is no condition for the assessee society to engaged in the activity of provide credits to the Members or banking business for availing the deduction u/s 80P(2)(d) read with section 80P(1) of the Act. As regards the cooperative bank shall be treated as cooperative societies for the purpose of the interest income on investment in such cooperative bank u/s 80P(2)(d) the Mumbai Bench of this Tribunal in case of Lands End Co-operative Housing Society Ltd. Vs. ITO(supra), after considering the decision of the Hon'ble Supreme Court in case of Totagar's Co-operative Sale Society Ltd. Vs. ITO (supra) has considered and decided this issue in para 8.3 as under:-*

*"8.3 We have heard the rival submissions and perused the material on record. We find that the CIT(A) enhanced the income of the assessee by rejecting the deduction u/s 80P(2)(d) of the Act of Rs.14,88,107/- being interest on investment with other Coop. banks by following the decision in the case of Sandra Samruddihi Co-operative Housing Society Ltd. (Supra) which was passed on the basis of the decision passed by the Hon'ble Supreme Court in the*

*case of Totagar's Co-operative Sale Society Ltd. In the case of Totagar's Co-operative Sale Society Ltd v/s ITAT (supra) the Hon'ble Supreme Court while interpreting the section 80P(2)(a)(0 of the Act held that surplus funds not immediately required in the business and invested in the short term deposit would be assessable under the head "income from other sources" where the Co-operative society is engaged in carrying on business of banking or providing credit facilities to its members and consequently no deduction is allowable u/s 80P(2)(a)(i) of the Act. Whereas in the case before us the issue is whether a co-operative society which has derived income on investment with cooperative banks is entitled to deduction u/s 80P(2)(d). The provisions of Section 80P(2)(d) of the Act provide deduction in respect of income by way of interest or dividend on investments made with other Cooperative society. For the purposes of better proper understanding of these two provisions the relevant extract of the section are reproduced below:*

*80P: Deduction in respect of income of co-operative Societies.*

*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 members.*

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

*(d) In respect of any income by way of interest or dividends derived by the co-operative society from its investments with any other co-operative society, the whole of such income."*

*From the close perusal of the provisions of u/s 80P(2)(a)(i) and 80P(2)(d) it is clear that the former deals with deduction in respect of profits and gain of business in case of the co-operative society carrying on business of banking or providing credit facilities to its members if the said income is assessable as income from business whereas latter provides for deduction in respect of income by way interest and dividend derived by assessee from its investments with other cooperative society. Thus it is amply clear that a cooperative society can only avail deduction u/s 80P(2)(d)(i) in respect of its income assessable as business income and not as income from other sources if it carries on business of the banking or providing credit facilities to its members and has income assessable under the head business whereas for claiming u/s 80P(2)(d) it must have income of interest and dividend on investments with other Co-operative society may or may not be engaged in the banking for providing credit facilities to its members and the head under which the income is assessable is not material for the claim of deduction under this section. Now will evaluate the assessee's case in the light of the decision of the Hon'ble Supreme court. The Honble Supreme Court in the case of Totagar's Co-operative Sale Society Ltd.(Supra) held that a society has surplus funds which are invested in short term deposits where the society is engaged in the business of banking or providing credit faculties to its members in that case the said income from short term deposits shall be treated and assessed as income from other sources and deduction u/s 80(P)(2)(a)(0 would not be available meaning thereby that deduction u/s 80(P)(2)(a)(0 is available only in respect of income which is assessable as business income and not as income from other sources. Whereas in distinction to this , the provisions of section 80(P)(2)(d) of the Act provides for*

*deduction in respect of income of a coop society by way of interest or dividend from its investments with other coop. society if such income is included in the gross total income of the such coop society. In view these facts and circumstances we are of the considered view that the assessee is entitled to the deduction of Rs. 14,88,107/-in respect of interest received/derived by it on deposits with coop. banks and therefore the appeal of the assessee is allowed by reversing the order of the CIT(A). The AO is directly accordingly."*

*6.2 We further note that the Hon'ble Jurisdictional High Court in the case of CIT vs. Rajasthan Rajya Sahakari Kray Vikray Sangh Ltd. (supra) by following the decision of Hon'ble Gujarat High Court in the case of Surat Vankar Sahakari Sangh Ltd. Vs. ACIT, 72 taxmann.com 169 has held in as under:-*

*"8. We have considered the decisions cited by learned advocate for the assessee as well as the revenue. We feel that the decisions cited by the learned advocate for the assessee shall be applicable on the facts of the present case. In the case of K. Nandakumar v. ITO [\[1993\] 204 ITR 856/\[1994\] 72 Taxman 223 \(Ker.\)](#), the Kerala High Court has held as under:*

*'4. The effect of Section 80AB is that, for the purpose of computing the deduction under Section 80L, the amount of income of that nature as computed in accordance with the provisions of the Act shall alone be deemed to be the amount of income of that nature. What the section means is that the net income by way of interest computed in the manner provided by the provisions of the Act shall alone be taken into account for computing the benefit. But it must be noted that payment of interest under a loan transaction incurred for the purpose of deriving income from business is not an item which arises in the computation of interest income "in accordance*

*with the provisions" of the Act. The said amount has to be paid irrespective of whether any interest income is otherwise received or not. Though the interest is payable to the same bank, the fact remains that the amount of income by-way of interest is not calculated under the provisions of the Act with reference to such outgoings which fall under different heads. The assessee is entitled to deduction under Section 37 of all expenditure incurred for the purpose of deriving the business income, and it is under that head that the interest paid on the loan taken from the bank is deducted. The net amount of interest contemplated by Section 80AB should take in the net amount arrived at after meeting the expenses deductible from that item under the provisions of the Act as explained above. That is not the case here. Therefore, Section 80AB has no application to the facts of these cases. The interest paid on the loan transactions has to be deducted from the business income, and not from the interest received from the bank on the fixed deposits. The assessees were therefore right in the submissions which they made before the Commissioner of Income-tax in the revision petitions which they filed. This aspect of the matter has been overlooked by the Commissioner in passing the order, exhibit P-5.'*

*8.1 Similarly, in the case of Doaba Co-operative Sugar Mills Ltd (supra), the Punjab & Haryana High Court has held as under:*

*'5. The contention of Mr. Gupta, learned counsel appearing for the Revenue, is that the Tribunal was wrong in allowing deduction under Section 80P(2) (d) of the Act because it is not established that the assessee had derived the interest by investing all the amount of surplus funds. It is further contended by Mr. Gupta that*

*the assessee has paid interest to Jalandhar Central Co-operative Bank and has also received interest from the said co-operative bank, thereby showing that the assessee has on the aggregate paid interest to the bank and, therefore, no deduction under Section 80P(2)(d) can be allowed. To appreciate this argument, we have to look to the provisions of Section 80P(2)(d) of the Act, For facility of reference, it is reproduced as under :*

*"80P. (2)(d) in respect of any income by way of interest or dividends derived by the co-operative society from its investments with any other co-operative society, the whole of such income."*

*6. So far as the principle of interpretation applicable to a taxing statute is concerned, we can do no better than to quote the by-now classic words of Rowlatt J., in Cape Brandy Syndicate v. IRC [1921] 1 KB 64, 71 :*

*"...In a taxing Act, one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used,"*

*7. The principle laid down by Rowlatt J., has also been time and again approved and applied by the Supreme Court in different cases including the one, Hansraj Gordhandas v. H. H. Dave, Assistant Collector of Central Excise and Customs, AIR 1970 SC 755, 759.*

*8. Section 80P(2)(d) of the Act allows whole deduction of an income by way of interest or dividends derived by the co-operative society from its investment with any other co-operative society. This provision does not make any distinction in regard to source of the*

*investment because this Section envisages deduction in respect of any income derived by the co-operative society from any investment with a co-operative society. It is immaterial whether any interest paid to the co-operative society exceeds the interest received from the bank on investments. The Revenue is not required to look to the nature of the investment whether it was from its surplus funds or otherwise. The Act does not speak of any adjustment as sought to be made out by learned counsel for the Revenue. The provision does not indicate any such adjustment in regard to interest derived from the co-operative society from its investment in any other co-operative society. Therefore, we do not agree with the argument advanced by learned counsel for the Revenue. In our opinion, the learned Tribunal was right in law in allowing deduction under Section 80P(2)(d) of the Income-tax Act, 1961. in respect of interest of RS. 4,00,919 on account of interest received from Nawanshaln Central Co-operative Bank without adjusting the interest paid to the hank. Therefore, the reference is answered against the Revenue in the affirmative and in favour of the assessee.'*

*8.2 Moreover, the Bombay High Court in the case of Bai Bhuriben Lallubhai (supra) has held that the purpose for which the assessee borrowed money had no connection whether direct or indirect with the income which she earned from the fixed deposit and that she was not entitled to the deduction claimed under Section 12(2). The High Court held that if an assessee had no option except to incur an expenditure in order to make the earning of an income possible, then undoubtedly the exercise of that option is compulsory and any expenditure incurred by reason of the exercise of that option would*

*come within the ambit of section 12(2) of the Indian Income-Tax Act but where the option has no connection with the carrying on of the business or the earning of the income and the option depends upon personal considerations or upon motives of the assessee, that expenditure cannot possibly come within the ambit of Section 12(2). In the present case, the loan was taken for business purpose more particularly purchase of yarn and not for fixed deposits.*

*9. In view of the above, the questions raised in the present appeals are answered in favour of the assessee and against the revenue. The order passed by the Tribunal is accordingly quashed and set aside."*

*6. Further the Hon'ble Karnataka High Court in case of PCIT and Another vs. Totagars Co-operative Sale Society 392 ITR 0074 as relied upon by the Ld. AR of the assessee as held in para 7 to 11 as under:-*

*"7. However, the contention being taken by the learned counsel is untenable. For the issue that was before the ITAT, was a limited one, namely whether for the purpose of Section 80P(2)(d) of the Act, a Co-operative Bank should be considered as a Co-operative Society or not? For, if a Co-operative Bank is considered to be a Co-operative Society, then any interest earned by the Co-operative Society from a Co-operative Bank would necessarily be deductible under Section 80P(1) of the Act.*

*8. The issue whether a Co-operative Bank is considered to be a Co-operative Society is no longer res integra. For the said issue has been decided by the ITAT itself in different cases. Moreover the word "Co-operative Society" are the words of a large extent, and denotes a genus, whereas the word "Co-operative Bank" is a word of limited*

*extent, which merely demarcates and identifies a particular species of the genus Co-operative Societies. Co-Operative Society can be of different nature, and can be involved in different activities; the Co-operative Society Bank is merely a variety of the Co-operative Societies. Thus the Co-operative Bank which is a species of the genus would necessarily be covered by the word "Co-operative Society".*

*9. Furthermore, even according to Section 56(i)(ccv) of the Banking Regulations Act, 1949, defines a primary Co-Operative Society bank as the meaning of Co-Operative Society. Therefore, a Co-operative Society Bank would be included in the words 'Co-operative Society'.*

*10. Admittedly, the interest which the assessee respondent had earned was from a Co-operative Society Bank. Therefore, according to Sec. 80P(2)(d) of the I.T. Act, the said amount of interest earned from a Co-operative Society Bank would be deductible from the gross income of the Co-operative Society in order to assess its total income. Therefore, the Assessing Officer was not justified in denying the said deduction to the assessee respondent.*

*11. The learned counsel has relied on the case of Totgars Co-operative Sale Society Ltd. v. ITO [\[2010\] 322 ITR 283/188 Taxman 282 \(SC\)](#). However, the said case dealt with the interpretation, and the deduction, which would be applicable under Section 80P(2)(a)(i) of the I.T. Act. For, in the present case the interpretation that is required is of Section 80P(2)(d) of the I.T. Act and not Section 80P(2)(a)(i) of the I.T. Act. Therefore, the said judgment is inapplicable to the present case. Thus, neither of the two substantial questions of law canvassed by the learned counsel for the Revenue even arise in the present case."*

*6.4 Thus, the Hon'ble High Court has held that the Co-operative Bank is considered to a cooperative society for the purpose of section 80P(2)(d). Accordingly, in view of the decisions as cited (supra), we do not find any error or illegality in the orders of the Id. CIT(A) to the extent of the allowing the claim of the assessee u/s 80P(2)(d) in respect of interest income from deposits/FDRs with the Co-operative Banks."*

14. Therefore, in light of the aforesaid decision, in the instant case, for the purposes of section 80P(2)(d) of the Act, Jaipur Central Cooperative Bank Ltd shall be treated as a co-operative society. Therefore, interest on FDRs placed by the assessee society with such cooperative society shall be eligible for deduction u/s 80P(2)(d) of the Act.

15. Now, coming to a related issue as to whether by virtue of provisions of Section 80P(4) of the Act, the claim of the assessee under section 80(P)(2)(d) can be denied to the assessee society. The relevant provisions of section 80P(4) reads as under:

*"(4) The provisions 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."*

16. The Coordinate Bench in case of **Kaliandas Udyog Bhavan Premises Co-op Society Ltd. vs Income-tax Officer-21(2)(1), Mumbai** [2018] 94 Taxmann.com 15 had an occasion to examine similar contention and it was held that though the co-operative bank pursuant to the insertion of Sub-section (4) of Sec. 80P would no more

be entitled for claim of deduction under Sec. 80P of the Act, however, as a co-operative bank continues to be a co-operative society registered under the Co-operative Societies Act, 1912 (2 of 1912), or under any other law for the time being enforced in any state for the registration of co-operative societies, therefore, the interest income derived by a co-operative society from its investments held with a co-operative bank, would be entitled for claim of deduction under Sec.80P(2)(d) of the Act. We see no reason to deviate from the same and agree with the aforesaid view taken by the Co-ordinate Bench and. The relevant findings of the Co-ordinate Bench read as under:

*"6. We have heard the authorised representatives for both the parties, perused the orders of the lower authorities and the material available on record. We find that our indulgence in the present appeal has been sought to adjudicate as to whether the claim of the assessee for deduction under section 80P(2)(d), in respect of interest income earned from the investments made with the co-operative banks is in order or not. We find that the issue involved in the present appeal hinges around the adjudication of the scope and gamut of sub-section (4) of Sec. 80P, as had been made available on the statute by the legislature vide the Finance Act 2006, with effect from 01.04.2007. We find that the lower authorities had taken a view that pursuant to insertion of sub-section (4) of Sec. 80P, the assessee would no more be entitled for claim of deduction under Sec. 80P(2)(d) of the interest income earned on the amounts parked as investments with co-operative banks, other than a Primary Agricultural Credit Society or a Primary Co-operative Agricultural and Rural Development Bank. We find that the lower authorities*



*Thus, from a perusal of the aforesaid Sec. 80P(2)(d) it can safely be gathered that income by way of interest income derived by an assessee co-operative society from its investments held with any other cooperative society, shall be deducted in computing the total income of the assessee. We may herein observe, that what is relevant for claim of deduction under Sec. 80P(2)(d) is that the interest income should have been derived from the investments made by the assessee co-operative society with any other cooperative society. We though are in agreement with the observations of the lower authorities that with the insertion of Sub-section (4) of Sec. 80P, vide the Finance Act, 2006, with effect from 01.04.2007, the provisions of Sec. 80P would no more be applicable in relation to any co-operative bank, other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank, but however, are unable to subscribe to their view that the same shall also jeopardise the claim of deduction of a co-operative society under Sec. 80P(2)(d) in respect of the interest income on their investments parked with a co-operative bank. We have given a thoughtful consideration to the issue before us and are of the considered view that as long as it is proved that the interest income is being derived by a co-operative society from its investments made with any other co-operative society, the claim of deduction under the aforesaid statutory provision, viz. Sec. 80P(2)(d) would be duly available. We may herein observe that the term 'co-operative society' had been defined under Sec. 2(19) of the Act, as under:—*

*'(19) "Co-operative society" means a cooperative society registered under the Co-operative Societies Act, 1912 (2 of 1912),*

*or under any other law for the time being in force in any state for the registration of co-operative societies;'*

*We are of the considered view, that though the co-operative bank pursuant to the insertion of Sub-section (4) of Sec. 80P would no more be entitled for claim of deduction under Sec. 80P of the Act, but however, as a co-operative bank continues to be a co-operative society registered under the Co-operative Societies Act, 1912 (2 of 1912), or under any other law for the time being enforced in any state for the registration of co-operative societies, therefore, the interest income derived by a co-operative society from its investments held with a co-operative bank, would be entitled for claim of deduction under Sec.80P(2)(d) of the Act.*

**8.** *We shall now advert to the judicial pronouncements that had been relied upon by the authorized representatives for both the parties and the lower authorities. We find that the issue that a co-operative society would be entitled for claim of deduction under Sec. 80P(2)(d) for the interest income derived from its investments held with a cooperative bank is covered in favour of the assessee in the following cases:*

- (i) Land and Cooperative Housing Society Ltd. (supra)*
- (ii) Sea Green Cooperative Housing and Society Ltd. (supra)*
- (iii) Marwanjee Cama Park Cooperative Housing Society Ltd. (supra).*

*We further find that the Hon'ble High Court of Karnataka in the case of Totagars Cooperative Sale Society(supra) and Hon'ble High Court of Gujarat in the case of State Bank Of India (supra),*

*had also held that the interest income earned by the assessee on its investments held with a co-operative bank would be eligible for claim of deduction under Sec. 80P(2)(d) of the Act. Still further, we find that the CBDT Circular No. 14, dated 28.12.2006, as had been relied upon by the Id. A.R., also makes it clear beyond any scope of doubt, that the purpose behind enactment of sub-section (4) of Sec. 80P was to provide that the co-operative banks which are functioning at par with other banks would no more be entitled for claim of deduction under Sec. 80P(4) of the Act. We are of the considered view that the reliance placed by the CIT (A) on the judgment of the Hon'ble Supreme Court in the case of Totgars Co-operative Sale Society Ltd. (supra) being distinguishable on facts, thus, had wrongly been relied upon by him. The adjudication by the Hon'ble Apex Court in the aforesaid case was in context of Sec. 80P(2)(a)(i), and not on the entitlement of a co-operative society towards deduction under Sec. 80P(2)(d) on the interest income on the investments parked with a co-operative bank. We further find that the reliance place by the Id. D.R on the order of the ITAT "F" bench, Mumbai in the case of Vaibhav Cooperative Credit Society (supra) is also distinguishable on facts. We find that the said order was passed by the Tribunal in context of adjudication of the entitlement of the assessee co-operative bank towards claim of deduction under Sec.80P(2)(a)(i) of the Act. We find that it was in the backdrop of the aforesaid facts that the Tribunal after carrying out a conjoint reading of Sec. 80P(2)(a)(i) r.w. Sec. 80P(4) had adjudicated the issue before them. We are afraid that the reliance placed by the Id. D.R on the aforesaid order of the*

*Tribunal being distinguishable on facts, thus, would be of no assistance for adjudication of the issue before us. Still further, the reliance placed by the Ld. D.R on the order of the ITAT 'SMC' Bench, Mumbai in the case of Shri Sai Datta Co-operative Credit Society Ltd. (supra), would also not be of any assistance, for the reason that in the said matter the Tribunal had set aside the issue to the file of the assessing officer for fresh examination. That as regards the reliance placed by the Id. D.R on the judgment of the Hon'ble High Court of Karnataka in the case of Totagars co-operative Sale Society (supra), the High Court had concluded that a co-operative society would not be entitled to claim of deduction under Sec. 80P(2)(d). We however find that as held by the Hon'ble High Court of Bombay in the case of K. Subramanian v. Siemens India Ltd. [\[1983\] 15 Taxman 594/\[1985\] 156 ITR 11 \(Bom\)](#), where there is a conflict between the decisions of non-jurisdictional High Court's, then a view which is in favour of the assessee is to be preferred as against that taken against him. Thus, taking support from the aforesaid judicial pronouncement of the Hon'ble High Court of jurisdiction, we respectfully follow the view taken by the Hon'ble High Court of Karnataka in the case of Totagars Cooperative Sale Society(supra) and Hon'ble High Court of Gujarat in the case of State Bank Of India (supra), wherein it was observed that the interest income earned by a co-operative society on its investments held with a co-operative bank would be eligible for claim of deduction under Sec.80P(2)(d) of the Act.*

*9. We thus in the backdrop of our aforesaid observations are unable to persuade ourselves to be in agreement with the view taken by the lower authorities that the assessee would not be entitled for claim of deduction under Sec. 80P(2)(d), in respect of the interest income on the investments made with the co-operative bank. We thus set aside the order of the lower authorities and conclude that the interest income of Rs. 27,48,553/-earned by the assessee on the investments held with the co-operative bank would be entitled for claim of deduction under Sec. 80P(2)(d).*

17. In light of above, by virtue of provisions of Section 80P(4) of the Act, the claim of the assessee under section 80(P)(2)(d) cannot be denied to the assessee society.

18. Another issue that arise for consideration is whether deduction u/s 80P(2)(d) shall be allowed on the gross interest income on FDRs or it should be allowed on the net interest income calculated after deducting the interest expenditure allocable to funds placed in form of FDR. Though the assessee has challenged the findings of the Id CIT(A) to the effect that it has not incurred any interest expenditure, we find that there is no necessity to examine the same as conceptually, the deduction under section 80P(2)(d) has to be allowed on gross and not on net interest income as held by the **Hon'ble Gujarat High Court** in case of **Surat Vankar Sahakari Sangh Ltd vs ACIT** [2016] 72 Taxmann.com 169 (Guj) wherein it was held as under:

*"3. In all the four appeals, the common issue is grant of net deduction u/s 80P(2)(d) of the Act, in respect of interest and*

*dividend received by the assessee from co-operative societies i.e. bank in this case. The Assessing Officer allowed deduction u/s 80P(2)(d) to the extent of net interest instead of gross interest as claimed by the assessee and disallowed the excess claim of deduction in this regard for all the years under consideration. The amount disallowed by the Assessing Officer and deduction granted by the Assessing Officer is tabularized and recorded as under:*

Particular	Assessment Years			
	1991-92	1992-93	1993-94	1994-95
Dividend - From co- op societies	9743	48000	3491	42674
Interest (As shown in the return of income)	1022699	1214259	1220756	902765
Deduction u/s 80P(2)(d) of the Act as per return	1027719	1045298	1223026	943736
Disallowed by Assessing Officer	477863	640219	641273	76116
Deduction granted u/s 80P(2)(d) of the Act by Assessing Officer	549856	405079	581753	867618

*8. We have considered the decisions cited by learned advocate for the assessee as well as the revenue. We feel that the decisions cited by the learned advocate for the assessee shall be applicable on the facts of the present case. In the case of K. Nandakumar v. ITO [1993] 204 ITR 856/[1994] 72 Taxman 223 (Ker.), the Kerala High Court has held as under:*

*'4. The effect of Section 80AB is that, for the purpose of computing the deduction under Section 80L, the amount of income of that nature as computed in accordance with the provisions of the Act shall alone be deemed to be the amount of*

*income of that nature. What the section means is that the net income by way of interest computed in the manner provided by the provisions of the Act shall alone be taken into account for computing the benefit. But it must be noted that payment of interest under a loan transaction incurred for the purpose of deriving income from business is not an item which arises in the computation of interest income "in accordance with the provisions" of the Act. The said amount has to be paid irrespective of whether any interest income is otherwise received or not. Though the interest is payable to the same bank, the fact remains that the amount of income by-way of interest is not calculated under the provisions of the Act with reference to such outgoings which fall under different heads. The assessee is entitled to deduction under Section 37 of all expenditure incurred for the purpose of deriving the business income, and it is under that head that the interest paid on the loan taken from the bank is deducted. The net amount of interest contemplated by Section 80AB should take in the net amount arrived at after meeting the expenses deductible from that item under the provisions of the Act as explained above. That is not the case here. Therefore, Section 80AB has no application to the facts of these cases. The interest paid on the loan transactions has to be deducted from the business income, and not from the interest received from the bank on the fixed deposits. The assessees were therefore right in the submissions which they made before the Commissioner of Income-tax in the revision petitions which they filed. This aspect of the matter has been overlooked by the Commissioner in passing the order, exhibit P-5.'*

*8.1 Similarly, in the case of Doaba Co-operative Sugar Mills Ltd (supra), the Punjab & Haryana High Court has held as under:*

*'5. The contention of Mr. Gupta, learned counsel appearing for the Revenue, is that the Tribunal was wrong in allowing deduction under Section 80P(2) (d) of the Act because it is not established that the assessee had derived the interest by investing all the amount of surplus funds. It is further contended by Mr. Gupta that the assessee has paid interest to Jalandhar Central Co-operative Bank and has also received interest from the said co- operative bank, thereby showing that the assessee has on the aggregate paid interest to the bank and, therefore, no deduction under Section 80P(2)(d) can be allowed. To appreciate this argument, we have to look to the provisions of Section 80P(2)(d) of the Act, For facility of reference, it is reproduced as under :*

*"80P. (2)(d) in respect of any income by way of interest or dividends derived by the co-operative society from its investments with any other co- operative society, the whole of such income."*

*6. So far as the principle of interpretation applicable to a taxing statute is concerned, we can do no better than to quote the by-now classic words of Rowlatt J., in Cape Brandy Syndicate v. IRC [1921] 1 KB 64, 71 :*

*"...In a taxing Act, one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used,"*

*7. The principle laid down by Rowlatt J., has also been time and again approved and applied by the Supreme Court in different cases including the one, Hansraj Gordhandas v. H. H. Dave, Assistant Collector of Central Excise and Customs, AIR 1970 SC 755, 759.*

*8. Section 80P(2)(d) of the Act allows whole deduction of an income by way of interest or dividends derived by the co-operative society from its investment with any other co-operative society. This provision does not make any distinction in regard to source of the investment because this Section envisages deduction in respect of any income derived by the co-operative society from any investment with a co-operative society. It is immaterial whether any interest paid to the co-operative society exceeds the interest received from the bank on investments. The Revenue is not required to look to the nature of the investment whether it was from its surplus funds or otherwise. The Act does not speak of any adjustment as sought to be made out by learned counsel for the Revenue. The provision does not indicate any such adjustment in regard to interest derived from the co-operative society from its investment in any other co-operative society. Therefore, we do not agree with the argument advanced by learned counsel for the Revenue. In our opinion, the learned Tribunal was right in law in allowing deduction under Section 80P(2)(d) of the Income-tax Act, 1961. in respect of interest of RS. 4,00,919 on account of interest received from Nawanshaln Central Co-operative Bank without adjusting the interest paid to the bank. Therefore, the reference is answered against the Revenue in the affirmative and in favour of the assessee.'*

*8.2 Moreover, the Bombay High Court in the case of Bai Bhuriben Lallubhai (supra) has held that the purpose for which the assessee borrowed money had no connection whether direct or indirect with the income which she earned from the fixed deposit and that she was not entitled to the deduction claimed under Section 12(2). The High Court held that if an assessee had no option except to incur an expenditure in order to make the earning of an income possible, then undoubtedly the exercise of that option is compulsory and any expenditure incurred by reason of the exercise of that option would come within the ambit of section 12(2) of the Indian Income-Tax Act but where the option has no connection with the carrying on of the business or the earning of the income and the option depends upon personal considerations or upon motives of the assessee, that expenditure cannot possibly come within the ambit of Section 12(2). In the present case, the loan was taken for business purpose more particularly purchase of yarn and not for fixed deposits.*

*9. In view of the above, the questions raised in the present appeals are answered in favour of the assessee and against the revenue. The order passed by the Tribunal is accordingly quashed and set aside."*

19. In light of above discussion and respectfully following the decisions referred supra, the assessee society is held eligible for deduction under section 80P(2)(d) in case of interest income of Rs 1,49,40,834 on FDRs placed with Jaipur Central Cooperative Bank Ltd.

20. In the result, the sole ground of Revenue's appeal is dismissed and ground no. 2 in assessee's cross appeal is allowed. Having decided the matter on merits, the legal ground raised by the assessee challenging the validity of the proceedings u/s 147 has become infructuous and is dismissed.

21. In ITA No. 513/JP/2019 and 634/JP/19 for AY 2012-13, admittedly and undisputedly, the facts and circumstances of the case are exactly identical to facts and circumstances of the case in 512/JP/2019 and 633/JP/19, our findings and directions contained therein shall apply *mutatis mutandis* to these appeals.

22. In the result, the matter for both years is decided in favour of the assessee and against the Revenue and the respective appeals are disposed off in light of above findings and directions.

Order pronounced in the open Court on 02/09/2019

Sd/-

(विजय पॉल राव)  
(Vijay Pal Rao)

न्यायिक सदस्य / Judicial Member

Sd/-

(विक्रम सिंह यादव)  
(Vikram Singh Yadav)

लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 02/09/2019

\*Ganesh Kr.

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- M/s Jaipur Zila Dugdh Utpadak Sahakari Sangh Ltd., Jaipur
2. प्रत्यर्थी / The Respondent- DCIT, Circle-06, Jaipur
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.

6. गार्ड फाईल / Guard File { ITA No. 512, 633,513 & 634/JP/2019 }

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar