OD-7

IN THE HIGH COURT AT CALCUTTA
SPECIAL JURISDICTION [INCOME TAX]
ORIGINAL SIDE

ITAT/36/2025
IA NO: GA/1/2025
THE WEST BENGAL STATE CO-OPERATIVE AGRICULTURE & RURAL DEVELOPMENT BANK LTD.
VS
DEPUTY COMMISSIONER OF INCOME TAX, CIRCLE-54, KOLKATA

: C O R A M :

THE HON'BLE THE CHIEF JUSTICE T.S SIVAGNANAM
-A N D-
HON'BLE JUSTICE CHAITALI CHATTERJEE (DAS)

For Appellant : *Mr. Subash Agarwal, Adv.*
Mr. Rajarshi Chatterjee, Adv.
Mr. Nitish Bhandary, Adv.
Mr. Amit Shaw, Adv.
Ms. Suman Sahani, Adv.

For Respondent : *Mr. Prithu Dudhoria, Adv.*

Heard on : 06.08.2025

Judgment Delivered on : 06.08.2025

T.S SIVAGNANAM, CJ:

1. This appeal filed by the assessee under Section 260A of the Income Tax Act, 1961 (the Act) is directed against order dated 3rd September, 2024 passed by the Income Tax Appellate Tribunal, "C" Bench, Kolkata (the Tribunal) in ITA/1320/Kol/2023 for the assessment year 2013-14.

2. The assessee has raised the following substantial questions of law for consideration :

"1. Whether on the facts and in the circumstances of case, Learned Tribunal was justified in confirming the disallowance of Deduction of interest income of Rs.2,83,02,934/- under section 80P(2)(a)(i) by relying on the assessee's own case for AY 2006-07?

2. Whether on the facts and in the circumstances of case, Learned Tribunal was justified in relying on the decision of Totgars' Cooperative Sale Society Ltd., v. ITO, [322 ITR 283 (SC)] as the decision in Totgars' Cooperative Sale Society Ltd. (supra) rendered by the Hon'ble Supreme Court is clearly distinguishable on facts?

3. Whether the Learned Tribunal was justified in rejecting the alternative submission of the petitioner that the attributable cost of funds that went towards making deposits with the scheduled banks was required to be deducted from the eligible business and consequently, increased amount of profit of eligible business will be allowed as deduction under section 80(P)(2)(a)(i)?

4. Whether on the facts and in the circumstances of case, Learned Tribunal was justified by holding that the interest on personal loans amounting to Rs.21,98,448/- and interest on House Building Loan to staff to the tune of Rs.1,76,490/- could not be treated as income attributable to the banking business and as such, the same were not eligible for deduction under Section 80P?

5. Whether on the facts and in the circumstances of case, Learned Tribunal was justified by holding that the income from commission, miscellaneous income and sundry incomes also do not relate to the business activities of the petitioner, the same do not qualify for deduction under Section 80P(2)(d) of the Act or 80P(2)(a)(i) of the Act?"

3. We have heard learned advocates on either side.

4. Learned Advocate appearing for the appellant/assessee, on instruction, submits that the substantial question (5), as suggested above, is not pressed. Such submission is placed on record and the substantial question of law no.5 is rejected as not pressed.

5. The assessee is a cooperative society carrying on the business of providing credit facilities to its members, earns profits and gains of business by providing long term credit facilities to its members. The assessee being the apex cooperative society of the land mortgage bank in the State of West Bengal, funds were received from NABARD during the relevant financial year and it is stated that the funds were received in two installments and the funds are in turn lent to the members in 100 of installments and as the assessee does borrow in a wholesale manner and lend on retail basis, there is always some floating fund. This floating fund has a cost that is interest payable to NABARD and the same is invested in short term deposits which yields income to the assessee and partly compensates the cost, namely interest payable to NABARD. Therefore, the assessee's case was that these activities are integral to their business of lending and the interest earning on the deposits is attributable to their lending business. Further, the assessee contended that they received repayment from borrowers in several installments and they have to in turn repay to NABARD which has to be done only twice a year i.e., 31st January and 31st July of each year as per the Schedule fixed by NABARD. Therefore, the assessee has to accumulate the fund to pay the installment on the scheduled dates and the interest income so derived if not immediately required to be lent to the members and/or installment will be falling due after some period, the

assessee cannot keep the said amount idle and they deposited the amount in bank so as to earn interest and such interest earned is attributable to the profits and gains of business of providing credit facilities to its members. Further, the assessee contended that the society is not carrying on any separate business for earning such interest income and the income so derived is the amount of profits and gains attributable to the activities of carrying in the business of banking or providing credit facilities to its members by a cooperative society and the same is liable to be deducted from the gross total income under Section 80P of the Act.

6. The Assessing Officer who completed the assessment under Section 143(3) of the Act by order dated 30.3.2016, did not accept the submissions made by the assessee by referring to the decision of the Hon'ble Supreme Court in *Totgars Cooperative Sales Society Ltd. vs. ITO, (2010) 188 Taxman 282 (SC).* Apart from that, the assessee also contended that they are eligible for deduction under Section 80P in respect of the interest on personal loans amounting to Rs.21,98,448/- as well as interest on House Building Loan to staff to the tune of Rs.1,76,490/- and these should be treated as income attributable to the banking business carried on by the assessee. The Assessing Officer held neither of these interest incomes is eligible for deduction under Section 80P(2)(d) and, therefore, needs to be segregated and the incomes are outside the loan of business of the assessee and should be charged to tax under the head "income from other source'. Aggrieved by such order, the assessee preferred appeal before the learned Commissioner of Income Tax (Appeals)-9, Kolkata, [CIT(A)].

7. With regard to interest earned by the assessee from other cooperative banks, the assessee contended that the decision in *Totgars Cooperative Sales Society Ltd. (supra)* is not applicable to the facts of the case and it is clearly distinguishable.

8. With regard to interest on personal loan to members and interest on house building loan to staff, it was contended that the personal loans given were to the members of the society and the house building loan was given to the staff against mortgage of property and some of them were also members of the society and, therefore, deduction is permissible under section 80P(1)(2)(a)(i) of the Act. The CIT(A) dismissed the appeal by an order dated 1.11.2023 and on perusal of the order we find that the CIT(A) has extracted the findings recorded by the Assessing Officer and held that the Assessing Officer was justified in coming to the conclusion as arrived at by him in the assessment year dated 30.3.2016.

9. Aggrieved by such order, the assessee preferred appeal before the learned Tribunal. The learned Tribunal was also persuaded to dismiss the appeal filed by the assessee by placing reliance on the decision of the Hon'ble Supreme Court in *Totgars Cooperative Sales Society Ltd. (supra)* and after noting the finding recorded by the Assessing Officer as well as the CIT(A) agreed with such finding resulting dismissal of the appeal. Aggrieved by such order, the assessee has preferred the present appeal.

10. The substantial questions of law no.1, 2 and 3 are inter-connected and concern as to whether the disallowance of deduction of interest income under section 80P(2)(a)(i) was justified and while deciding the said issues it has to be

considered as to whether the decision in *Totgars Cooperative Sales Society Ltd. (supra)* would be applicable to the facts and circumstances of the case of the assessee. We need not labour much on these issues as we are guided by the decision of the Karnataka High Court as well as High Court of Telengana and Andhra Pradesh as also a decision of this Court. In *Guttigedarara Credit Co-operative Society Ltd. vs. Income-tax Officer, Ward 2(2), Mysore, [2015] 60 taxmann.com 215 (Karnataka),* one of the substantial question of law framed for consideration was whether the Tribunal in the said case was correct in law in holding that interest earned on the deposits in banks by the appellant Co-operative Society therein does not qualify for deduction under section 80P(2)(a)(i) of the Act on the facts and circumstances of the said case. The Hon'ble Division Bench took note of the statutory provision namely, Section 80P(2)(a)(i) and interpreted the word 'attributable' as mentioned in the said statutory provision. To explain the meaning of the word 'attributable' reliance was placed on the decision of the Hon'ble Supreme Court in *Cambay Electric Supply Industrial Co. Ltd. vs. CIT [1978] 113 ITR 84 [SC]* and it was held as follows :

> *"Therefore, the word 'attributable to' is certainly wider in import than the expression 'derived from'. Whenever the legislature wanted to give a restricted meaning, they have used the expression 'derived from'. The expression 'attributable to' being of wider import, the said expression is used by the legislature whenever they intended to gather receipts from sources other than the actual conduct of the business. A Co-operative Society which is carrying on the business of providing credit facilities to*

its members, earns profits and gains of business by providing credit facilities to its members. The interest income so derived or the capital, if not immediately required to be lent to the members, the society cannot keep the said amount idle. If they deposit this amount in bank so as to earn interest, the said interest income is attributable to the profits and gains of the business of providing credit facilities to its members only. The society is not carrying on any separate business for earning such interest income. The income so derived is the amount of profits and gains of business attributable to the activity of carrying on the business of banking or providing credit facilities to its members by a co-operative society and is liable to be deducted from the gross total income under Section 80P of the Act."

11. In terms of the above decision, the expression 'attributable to' being a wider in import, the said expression is used by the legislature whenever they intended to gather receipts from sources other than the actual conduct of the business. The facts in the said case were more or less identical to the facts before us. As the interest income so derived or the capital, if not immediately required to be lent to the members, the society/assessee cannot keep the said amount idle and if they deposit this amount in bank so as to earn interest, the said interest income is attributable to the profits and gains of the business of providing credit facilities to its members only. Bearing in mind the meaning of the words 'attributable to' the court proceeded to consider as to the applicability of the judgment of the Hon'ble Supreme Court in *Totgars Cooperative Sales Society Ltd. (supra).* It was pointed out that the Hon'ble Supreme Court was dealing

with the case where the assessee therein, apart from providing credit facility to the members, was also in the business of marketing of agricultural produce grown by its members and the sale consideration received from marketing agricultural produce of its members was retained in many cases and retained amount which was payable to its members from whom produce was bought, was invested in a short term deposit/security.

12. The facts of the case of the assessee before us is entirely different as the amount which was deposited in the bank was not an amount due to the members and it was not the liability of the society to the members and, therefore, the interest earned from such deposits in the bank should be held to be eligible for deduction under section 80P(2)(a)(i) of the Act. Yet again in *Tumkur Merchants Souharda Credit Cooperative Ltd. vs. Income-tax Officer Word-V, Tumkur, [2015] 55 taxmann.com 447 (Karnataka)* identical issue was considered and it was held that where Cooperative Society was engaged in the business of providing credit facilities to its members, they deposited excess amount for short term in banks, interest earned was entitled to be deducted under section 80P of the Act.

13. *In Vavveru Co-operative Rural Bank Ltd. vs. Chief Commissioner of Income Tax (2017) 88 taxmann.com 728 (Telangana and Andhra Pradesh),* the Hon'ble Division Bench was considering a writ petition challenging order of assessment passed under Section 143(3) of the Act and the question arose whether the denial by the Assessing Officer of the benefit of deduction under Section 80P(2)(a)(i) to the petitioner's society therein, is correct or not. The Court considered the expression 'attributable to' and held that since the statute does

not use the expression 'derived from', but uses the expression 'attributable to', accepted the contention of the petitioner therein that clause (a) should receive a wider interpretation. It was pointed out that the decision of the Hon'ble Supreme Court in *Vavveru Co-operative (supra)* can be relied upon by the revenue in cases where the amount payable to the members was retained for a short duration and invested by the society, as a consequence of which the amount so retained would be a liability for the society. The facts of the case on hand is entirely different as was the case in *Vavveru Co-operative Rural Bank Ltd.* Furthermore, it was pointed out that in *Tumkur Merchants Souharda Credit Cooperative Ltd.[supra],* the said society was carrying on business activity other than marketing of agricultural produce actually resulted in net loss to the society and it appears that the assessee in *Tumkur Merchants Souharda Credit Cooperative Ltd.[supra]* was carrying on some of the activities listed in clause [a] along with other activities. Further, it was held that the investment made by the petitioner-Society *[Vavveru Co-operative Rural Bank Ltd.]* had invested those amount in fixed deposits in other Co-operative societies or in the construction of godown and warehouses, the department would have granted the benefit of deduction under clauses [d] or [e], as the case may be. Furthermore, the original source of investment made by the petitioner-Society in nationalised banks is admittedly the income of the petitioner derived from the activities listed in sub-clauses (i) to (vii) of clause [a] and the character of such income may not be lost, especially when the statue uses the expression 'attributable to' and not any one of the two expressions, namely 'derived from' or 'directly attributable to'. In *Principal Commissioner of Income Tax vs. Gunja Samabay*

Krishi Unnayan Samity Ltd., [2023] 147 taxmann.com 518 [Cal], it was held that where the assessee/Co-operative Society earned interest income on surplus fund invested in deposits with banks and Government securities, since neither the said amount of deposit was due to its members nor was it a liability to its members, same would quality for deduction under section 80P(2)(a)(i).

14. Thus, the above decisions which have been referred to would clearly apply to the facts and circumstances of the assessee's case and this will lead to the irresistible conclusion that the Assessing Officer, the CIT(A) as well as the Tribunal erred in not granting the deduction as claimed by the assessee under section 80P(2)(a)(i) of the Act and also erred in following the decision in *Totgars Cooperative Sales Society Ltd. (supra)* which is not applicable to the facts and circumstances of the case. Accordingly, the substantial questions of law (1), (2) and (3) are answered in favour of the appellant/assessee.

15. Substantial question of law (4) has two components; one relating to interest on personal loan and the other interest on house building loan to staff. So far as the interest on house building loan to staff is concerned, we concur with the view taken by the Assessing Officer as confirmed by the CIT(A) as well as the Tribunal. Therefore, to that extent the substantial question of law has to be answered against the appellant/assessee. The other component which arises in substantial question (4) is with regard to the interest on personal loan given to the members. It is not in dispute that the assessee is registered under the provisions of the West Bengal Co-operative Societies Act and it has got four categories of members, (i) Class A - members are State Government, (ii) Class B are 24 primary Agricultural Rural Development Banks, (iii) Class-C are 450 Co-

operative Societies and (iv) Class-D are individuals above 18 years of age who are given loan through branches. As the assessee has earned interest on the personal loans extended to one class of members namely, members in Class D, the said amount would be eligible for deduction under section 80P of the Act. Accordingly, this issue is answered in favour of the appellant/assessee.

16. In the result, the appeal is allowed and the substantial questions of law (1), (2) and (3) are answered in favour of the appellant/assessee and substantial question of law (4) is partly answered in favour of the appellant/assessee namely, with regard to the interest on personal loan and with regard to the other component namely, interest on house building loan to staff, the same is decided against the appellant/assessee.

17. Consequently, the application, IA NO: GA/1/2025 stands disposed of.

(**T.S. SIVAGNANAM, CJ**.)

I Agree.

(**CHAITALI CHATTERJEE (DAS), J**.)

SM/Pkd.
A.R.[C.R.]