

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.10.2015

CORAM

THE HONOURABLE MR.JUSTICE V.RAMASUBRAMANIAN
AND
THE HONOURABLE MR.JUSTICE T.MATHIVANAN

Tax Case (Appeal) Nos.588 to 643, 647 to 688, 744 to 750, 942 to 948, 969 to 982 of 2015

M/S.THE COIMBATORE DISTRICT

CENTRAL CO OPERATIVE BANK LTD
(MADATHUKULAM BRANCH) PALANI MAIN RD
MADATHUKULAM UDUMALPET
COIMBATORE 642 113

... Appellant in TCAs.588,589,590,
591,592,593,594 of 2015

M/S THE COIMBATORE DISTRICT

CENTRAL CO OPERATIVE BANK LTD
(TIRUPUR BRANCH) 90 KUMARAN RD
TIRUPUR 641 601

... Appellant in TCAs.595,596,597,
598,599,600,601 of 2015

M/S.THE COIMBATORE DISTRICT

CENTRAL CO-OPERATIVE BANK LTD
(GANDIMANAGAR BRANCH) HUDCO COLONY
PEELAMEDU COIMBATORE 641 004

... Appellant in TCAs.602,603,604,
605,606,607,608 of 2015

THE COIMBATORE DISTRICT

CENTRAL COOPERATIVE BANK LTD
(METTUPALAYAM BRANCH) 20/152 K.K.NAGAR
KARAMADAI ROAD METTUPALAYAM
COIMBATORE - 641 301.

... Appellant in TCAs.609,610,611,
612,613,614,615 of 2015

M/S THE COIMBATORE DISTRICT

CENTRAL CO OPERATIVE BANK LTD
(PERUR BRANCH) 15 THEN KAILASAR ST
PERUR CBE 641 010

... Appellant in TCAs.616,617,618,
619,620,621,622 of 2015

M/S.THE COIMBATORE DISTRICT
CENTRAL CO OPERATIVE BANK LTD
(AVINASHI BRANCH) 42 K.P. COMPLEX
CHEYUR ROAD AVINASHI-641 654.

... Appellant in TCAs.623,624,625,
626,627,628,629 of 2015

M/S THE COIMBATORE DISTRICT
CENTRAL COOPERATIVE BANK LTD
(SULUR BRANCH) 13A RAIWAY FEEDER RD
SULUR COIMBATORE - 641402

... Appellant in TCAs.630,631,632,
633,634,635,636 of 2015

M/S. THE COIMBATORE DISTRICT
CENTRAL COOPERATIVE BANK LTD
(UDUMALAI BRANCH) NO.81
PASUPATHY MUDHARLIAR STREET
UDUMALPET - 642 216.

... Appellant in TCAs.637,638,639,
640,641,642,643 of 2015

M/S THE COIMBATORE DISTRICT
CENTRAL CO OPERATIVE BANK LTD
(ANNUR BRANCH) 149 DHARMAR KOVIL ST
ANNUR 641 653

... Appellant in TCAs.647,648,649,
650,651,652,653 of 2015

M/S THE COIMBATORE DISTRICT
CENTRAL CO OPERATIVE BANK LTD
425 DR.NANJAPPA RD CBE 641 018

... Appellant in TCAs.654,655,656,
657,658,659,660 of 2015

M/S. THE COIMBATORE DISTRICT
CENTRAL COOPERATIVE BANK LTD
(KOTUR BRANCH) NO.229-230
KAMARAJ ROAD KOTTUR - 642 114.

... Appellant in TCAs.661,662,663,
664,665,666,667 of 2015

THE COIMBATORE DISTRICT
CENTRAL CO OPERATIVE BANK LTD
(KURICHI BRANCH) S.B. TOWERS
SUNDARAPURAM COIMBATORE-641 024.

... Appellant in TCAs.668,669,670,
671,672,673,674 of 2015

M/S. THE COIMBATTORE DISTRICT
CENTRAL CO-OPERATIVE BANK LTD
(PALLADAM BRANCH) 16 N.G.R. ROAD
PALLADAM 641 664

... Appellant in TCAs.675,676,677,
678,679,680,681 of 2015

M/S.THE COIMBATTORE DISTRICT
CENTRAL CO OPERATIVE BANK LTD
(KAVUNDAMPALAYAM BRANCH) 81 PASUPATHY
MUDHALIAR ST UDUMALPET 642 216

... Appellant in TCAs.682,683,684,
685,686,687,688 of 2015

M/S. THE COIMBATTORE DISTRICT
CENTRAL CO-OPERATIVE BANK LTD
(SINGANALLUR BRANCH) 170 KAMARAJAR ROAD
VARADHARAJAPURAM
COIMBATTORE- 641 015.

... Appellant in TCAs.744,745,746,
747,748,749,750 of 2015

M/S. THE COIMBATTORE DISTRICT
CENTRAL CO OPERATIVE BANK LTD.
(PERIANAICKAM PALAYAM BRANCH)
1 RAILWAY FEEDER ROAD PERIANAICKAN PALAYAM
COIMBATTORE 641 020.

... Appellant in TCAs.942,943,944,
945,946,947,948 of 2015

M/S.THE COIMBATTORE DISTRICT
CENTRAL CO-OPERATIVE BANK LTD
(ANAIMALAI BRANCH) 63A VALAMURUGAN COMPLEX
POLLACHI ROAD ANAIMALAI 642 104

... Appellant in TCAs.969,970,971,
972,973,974,975 of 2015

M/S. THE COIMBATTORE DISTRICT
CENTRAL CO-OPERATIVE BANK LTD.
(PETHAPPAMPATTI BRANCH) NO.6/135
DHARAPURAM MAIN ROAD
PETHAPPAMPATTI - 642 205.

... Appellant in TCAs.976,977,978,
979,980,981,982 of 2015

-Vs-

The Income Tax Officer
TDS Ward-I(5)
Coimbatore

... Respondent in all TCAs

PRAYER : Memorandum of Grounds of Tax Case Appeals under section
260A of the Income Tax Act 1961 against the Orders of the Income
Tax Appellate Tribunal, Chennai 'B' 'A' 'C' Benches.

TC(A) NO	588/15 to 594/15	595/15 to 601/15	602/15 to 608/15	609/15 to 615/15
DATED	30.04.2015	30.04.2015	30.04.2015	30.04.2015
ITA NO.	3042/MDS/14 to 3048/MDS/14	2503/MDS/14 to 2509/MDS/14	2452/MDS/14 to 2458/MDS/14	185/MDS/14 to 191/MDS/14
AGAINST THE ORDER OF THE	Commissioner of Income Tax (Appeals)-II, Coimbatore	Commissioner of Income Tax (Appeals)-II, Coimbatore	Commissioner of Income Tax (Appeals)-II, Coimbatore	Commissioner of Income Tax (Appeals)-II, Coimbatore
DATED	16.09.2014	25.08.2014	31.07.2014	12.11.2014
ORDER IN APPEAL NO.	236/14-15 to 242/14-15	194/14-15 to 200/14-15	187/14-15 to 193/14-15	278/14-15 to 284/14-15
AGAINST THE ORDER OF THE	Income Tax Officer TDS Ward-I(5), Coimbatore	Income Tax Officer TDS Ward, Tiruppur	Income Tax Officer TDS Ward-I(5), Coimbatore	Income Tax Officer TDS Ward-I(5), Coimbatore
DATED	30.03.2014	30.03.2014	30.03.2014	30.03.2014
PAN/TAN NOS	CMBT 04820E	CMBT 04773G	CMBT 04776C	CMBT 04777D
ASSESSMENT YEAR	2008-09 to 2014-15	2008-09 to 2014-15	2008-09 to 2014-15	2008-09 to 2014-15

TC(A) NO	616/15 to 622/15	623/15 to 629/15	630/15 to 636/15	637/15 to 643/15
DATED	30.04.2015	30.04.2015	30.04.2015	30.04.2015
ITA NO.	3028/MDS/14 to 3034/MDS/14	2523/MDS/14 to 2529/MDS/14	2459/MDS/14 to 2465/MDS/14	178/MDS/14 to 184/MDS/14
AGAINST THE ORDER OF THE	Commissioner of Income Tax (Appeals)-II, Coimbatore	Commissioner of Income Tax (Appeals)-II, Coimbatore	Commissioner of Income Tax (Appeals)-II, Coimbatore	Commissioner of Income Tax (Appeals)-II, Coimbatore
DATED	27.10.2014	25.08.2014	31.07.2014	12.11.2014
ORDER IN APPEAL NO.	313/14-15 to 319/14-15	271/14-15 to 277/14-15	177/14-15 to 179/14-15	264/14-15 to 270/14-15
AGAINST THE ORDER OF THE	Income Tax Officer TDS Ward-I(5), Coimbatore	Income Tax Officer TDS Ward, Tiruppur	Income Tax Officer TDS Ward-I(5), Coimbatore	Income Tax Officer TDS Ward-I(5), Coimbatore
DATED	30.03.2014	30.03.2014	30.03.2014	30.03.2014
PAN/TAN NOS	CMBT 04813E	CMBT 04774A	CMBT 04815G	CMBT 04816A
ASSESSMENT YEAR	2008-09 to 2014-15	2008-09 to 2014-15	2008-09 to 2014-15	2008-09 to 2014-15

TC(A) NO	647/15 to 653/15	654/15 to 660/15	661/15 to 667/15	668/15 to 674/15
DATED	30.04.2015	30.04.2015	30.04.2015	30.04.2015
ITA NO.	192/MDS/14 to 198/MDS/14	2445/MDS/14 to 2451/MDS/14	3035/MDS/14 to 3041/MDS/14	2496/MDS/14 to 2502/MDS/14
AGAINST THE ORDER OF THE	Commissioner of Income Tax (Appeals)-II, Coimbatore	Commissioner of Income Tax (Appeals)-II, Coimbatore	Commissioner of Income Tax (Appeals)-II, Coimbatore	Commissioner of Income Tax (Appeals)-II, Coimbatore
DATED	12.11.2014	31.07.2014	27.10.2014	25.08.2014
ORDER IN APPEAL NO.	292/14-15 to 298/14-15	180/14-15 to 186/14-15	320/14-15 to 326/14-15	257/14-15 to 263/14-15
AGAINST THE ORDER OF THE	Income Tax Officer TDS Ward-I(5), Coimbatore	Income Tax Officer TDS Ward-I(5), Coimbatore	Income Tax Officer TDS Ward-I(5), Coimbatore	Income Tax Officer TDS Ward-I(5), Coimbatore
DATED	30.03.2014	30.03.2014	30.03.2014	30.03.2014
PAN/TAN NOS	CMBT 05520E	CMBT 04766G	CMBT 04811C	CMBT 04814F
ASSESSMENT YEAR	2008-09 to 2014-15	2008-09 to 2014-15	2008-09 to 2014-15	2008-09 to 2014-15

TC(A) NO	675/15 to 681/15	682/15 to 688/15	744/15 to 750/15 (A/C Bench)	942/15 to 948/15
DATED	30.04.2015	30.04.2015	20.05.2015	30.04.2015
ITA NO.	2516/MDS/14 to 2522/MDS/14	206/MDS/14 to 212/MDS/14	3006/MDS/14 to 3012/MDS/14	199/MDS/14 to 205/MDS/14
AGAINST THE ORDER OF THE	Commissioner of Income Tax (Appeals)-II, Coimbatore	Commissioner of Income Tax (Appeals)-II, Coimbatore	Commissioner of Income Tax (Appeals)-II, Coimbatore	Commissioner of Income Tax (Appeals)-II, Coimbatore
DATED	25.08.2014	12.11.2014	16.09.2014	12.11.2014
ORDER IN APPEAL NO.	250/14-15 to 256/14-15	306/14-15 to 312/14-15	201/14-15 to 207/14-15	291/14-15 to 297/14-15
AGAINST THE ORDER OF THE	Income Tax Officer TDS Ward, Tiruppur	Income Tax Officer TDS Ward-I(5), Coimbatore	Income Tax Officer TDS Ward-I(5), Coimbatore	Income Tax Officer TDS Ward-I(5), Coimbatore
DATED	30.03.2014	30.03.2014	30.03.2014	30.03.2014
PAN/TAN NOS	CMBT 04402E	CMBT 04765F	CMBT 04763D	CMBT 04778E
ASSESSMENT YEAR	2008-09 to 2014-15	2008-09 to 2014-15	2008-09 to 2014-15	2008-09 to 2014-15

TC (A) NO	969/15 to 975/15	976/15 to 982/15
DATED	20.05.2015	20.05.2015
ITA NO.	3051/MDS/14 to 3057/MDS/14	3058/MDS/14 to 3064/MDS/14
AGAINST THE ORDER OF THE	Commissioner of Income Tax (Appeals)-II, Coimbatore	Commissioner of Income Tax (Appeals)-II, Coimbatore
DATED	27.10.2014	27.10.2014
ORDER IN APPEAL NO.	327/14-15 to 333/14-15	334/14-15 to 340/14-15
AGAINST THE ORDER OF THE	Income Tax Officer TDS Ward-I(5), Coimbatore	Income Tax Officer TDS Ward-I(5), Coimbatore
DATED	30.03.2014	30.03.2014
PAN/TAN NOS	CMBT 04809A	CMBT 04817B
ASSESSMENT YEAR	2008-09 to 2014-15	2008-09 to 2014-15

For Appellants : Mr.K.Ravi

For Respondent : Mr.J.Narayanasamy
Senior Standing Counsel

JUDGMENT

(Judgment of the Court was delivered by V.RAMASUBRAMANIAN, J.)

All these appeals are by the branch offices of one assessee, namely, The Coimbatore District Central Co-operative Bank Limited , filed under Section 260A of the Income Tax Act, 1961.

2. The assessee has come up with the above appeals, raising the following substantial question of law:-

'Whether a co-operative society, carrying on banking business with the approval of the Reserve Bank of India, is liable to deduct tax under Section 194A of the Income Tax Act, 1961 on the interest paid to its members?'

3. We are of the considered view that in addition to the above substantial question of law, one more substantial question of law also arises for consideration, namely,

'Whether there is any distinction between a co-operative bank and a co-operative society carrying on banking business and if so, under which category the appellant would fall?'

4. Heard Mr.K.Ravi, learned counsel for the appellants and Mr.J.Narayanasamy, learned senior standing counsel for the respondent.

Brief Facts:-

5. The facts in brief out of which the above appeals arise are as follows:-

(a) The appellant is registered as a co-operative society, in terms of the provisions of the Tamil Nadu co-operative Societies Act, 1983. The appellant is carrying on the business of banking with 30 branches including the head office in the district of Coimbatore.

(b) A survey was conducted in the business premises of the appellant on 14.11.2013, followed by a hearing in which the Deputy Commissioner of Income Tax, TDS Circle, Coimbatore called for branch-wise details of deposits attracting TDS provisions for the financial years 2007-08 to 2013-14. The appellant/assessee was asked to submit the details by 16.12.2013.

(c) Since the appellant did not furnish the details, the assessing officer, TDS circle issued summons under Section 131 (1A) of the Act. It was followed by separate pro-rata demands. Thereafter the Income Tax Officer, TDS, Coimbatore passed orders under Section 201(1) and 201(1A). Orders in respect of each assessment year were passed on the same date, but individually. By the said orders, the Income Tax Officer directed the appellant to pay the amount quantified in each of those years.

(d) The appellant filed statutory appeals before the Commissioner of Income Tax (Appeals-II), Coimbatore. The appeals were partly allowed by separate orders. By those orders, the appellate Commissioner held that the demand made by the Income Tax Officer even in respect of the deposits which did not exceed Rs.10,000/- was not proper.

(e) Aggrieved by the disallowed portion of their appeals, the appellant filed second appeals before the Income Tax Appellate Tribunal. The Tribunal, by common orders passed in a batch of cases, partly allowed the appeals, setting aside the orders of the lower authorities, remanding the matter back to the assessing officer for the limited purpose of verifying the

nature of the deposits on which interest was paid. In other words, the Tribunal found that there was no segregation of time deposits and recurring deposits by the assessing officer. This segregation was necessary in view of the fact that the interest paid on time deposits attracts liability to deduct tax at source, if it exceeds Rs.10,000/- and the interest paid on recurring deposits and savings bank account, does not attract the liability to deduct tax at source.

(f) Not satisfied with the common orders passed by the Tribunal, in the manner aforesaid, the assessee has come up with these appeals contending that even in respect of time deposits, irrespective of the quantum of interest paid, the co-operative societies like the appellant are not obliged to deduct tax at source for the assessment years in question.

Relevant Statutory provisions:-

6. In order to examine the substantial questions of law that have arisen for our consideration, it may be necessary to take note of the relevant statutory provisions at first.

7. Sub-section (1) of Section 194A makes it obligatory for any person (except individuals and Hindu Undivided Family members) who is responsible for paying any income by way of interest (other than income by way of interest on securities) to a resident, to deduct income tax thereon at the rates in force. Such deduction should be made at the time of credit of such income to the account of the payee or at the time of payment in cash or by the issue of cheque or draft or by any other mode.

8. The proviso to sub-section (1) of Section 194A makes it obligatory for even individuals and Hindu Undivided Family members to deduct tax at source, if the contingencies stated in the proviso arise. Since we are not concerned in this batch with such contingencies, we do not deal with the proviso.

9. Having indicated in sub-section (1), persons who are responsible to deduct tax at source, the circumstances under which tax is to be deducted at source and the taxable events in sub-section (1), the provisions of Section 194A proceed to list out the exclusions or exceptions under sub-section (3). Sub-section (3) contains about eleven clauses, under which the items that are excluded from the application of sub-section (1) are listed. In simple terms, such exclusions under sub-section (3) of Section 194A could be understood as follows:-

Exclusions under clause (i) of sub-section (3):

10. (i) Where the amount of income credited or paid or likely to be credited or paid during the financial year, by a banking company to which the Banking Regulation Act, 1949

applies, does not exceed Rs.10,000/-, no liability under sub-section (1) arises.

(ii) Where the amount of such income credited or paid or likely to be credited or paid during the financial year, by a co-operative society engaged in the business of banking does not exceed Rs.10,000/-, there is no liability.

(iii) Where the amount of income credited or paid or likely to be credited or paid during the financial year, on a deposit with the post office under any scheme framed by the Central Government and notified in this behalf exceeds Rs.10,000/-, there is no liability under sub-section (1).

(iv) Where the amount credited or paid or likely to be credited or paid during a financial year does not exceed Rs.5,000/-, irrespective of who pays it, or to whom it is paid, no liability arises.

Exclusions to the exclusions under clause (i) of sub-section (3):

11. To the exclusions provided under sub-clauses (a) to (d) of clause (i) of sub-section (3), certain restrictions are imposed by two provisos. The first proviso was inserted by Finance (No.2) Act, 1996 with effect from 1.10.1996 and the second proviso was inserted with effect from 1.6.2015. By the first proviso, time deposits (i) either with a banking company to which the Banking Regulation Act, 1949 applies; (ii) or to a co-operative society engaged in the business of banking; (iii) or to deposits with a public company which is formed and registered in India with the main object of carrying on the business of providing long term finance, for construction or purchase of houses in India for residential purposes and which is eligible for deduction under Section 36 are to be computed with reference to the income credited or paid by a branch of a banking company or a co-operative society or a public company.

12. By the second proviso, the time deposits made with a banking company or with a co-operative society or deposits with a public company covered by the first proviso are directed to be computed with reference to the income credited or paid by all branches in favour of the assessee, if such banking company or co-operative society or the public company had adopted core banking solutions.

Exclusions under clause (iii) of sub-section (3):

13. The liability to deduct tax at source imposed under sub-section (1) will not apply to the incomes credited or paid (i) to a banking company to which the Banking Regulation Act, 1949 applies; (ii) to a co-operative society engaged in the business of banking including a co-operative land mortgage bank; (iii) to a financial corporation established by or under a State or Central Act; (iv) to the Life Insurance Corporation; (v) to the Unit Trust of India; (vi) to any company or co-operative society

carrying on the business of insurance; (vii) to such other institution which the Central Government may by notification indicate.

Exclusions under clauses (iv) and (vi):

14. The liability to deduct tax at source will not arise in respect of an income credited or paid by a firm to a partner. It will also not apply to such income credited or paid in respect of deposits under any scheme framed by the Central Government and notified in this behalf.

Exclusions under clauses (v), (vii) and (viia):

15. The obligation imposed under sub-section (1) will also not arise in respect of the following:-

(i) income credited or paid by a co-operative society other than a co-operative bank to a member thereof or to such income credited or paid by a co-operative society to any other co-operative society;

(ii) to the income credited or paid in respect of deposits other than time deposits with a banking company to which the Banking Regulation Act, 1949 applies;

(iii) to the income credited or paid in respect of deposits with a primary agricultural credit society or a primary credit society or a co-operative land mortgage bank or a co-operative land development bank;

(iv) to the income credited or paid in respect of deposits other than time deposits with a co-operative society other than a co-operative society or bank, namely, primary agricultural credit society, primary credit society, co-operative land mortgage bank and co-operative land development bank engaged in carrying on the business of banking.

16. There are also exclusions under clauses (viii), (ix), (x) and (xi), with which we are not fortunately concerned in this batch. But before parting with Section 194A, we should take note of two important things, namely, (a) that the expression "time deposits" is defined in Explanation-1 to mean deposits including recurring deposits repayable on the expiry of fixed periods; and (b) that the expression "co-operative bank" is defined in the explanation under clause (v) to have the same meaning as assigned to it in Part-V of the Banking Regulation Act, 1949. These two expressions assume significance, in the light of the questions that have arisen for consideration and hence we have taken note of the same.

17. For the purpose of easy reference, we extract herein below sub-section (3) of Section 194A in entirety.

"(3) The provisions of sub-section (1) shall not apply -

(i) where the amount of such income or, as the case may be, the aggregate of the amounts of such income credited or paid or likely to be credited or paid during the financial year by the person referred to in subsection (1) to the account of, or to, the payee, [does not exceed -

(a) ten thousand rupees, where the payer is a banking company to which the Banking Regulation Act, 1949 (10 of 1949) applies (including any bank or banking institution, referred to in section 51 of that Act);

(b) ten thousand rupees, where the payer is a co-operative society engaged in carrying on the business of banking;

(c) ten thousand rupees, on any deposit with post office under any scheme framed by the Central Government and notified by it in this behalf; and

(d) five thousand rupees in any other case.]

Provided that in respect of the income credited or paid in respect of -

(a) time deposits with a banking company to which the Banking Regulation Act, 1949 (10 of 1949) applies (including any bank or banking institution referred to in section 51 of that Act); or

(b) time deposits with a co-operative society engaged in carrying on the business of banking;

(c) deposits with a public company which is formed and registered in India with the main object of carrying on the business of providing long-term finance for construction or purchase of houses in India for residential purposes and which is eligible for deduction under clause (viii) of subsection (1) of section 36 [***],[***] the aforesaid amount shall be computed with reference to the income credited or paid by a branch of the banking company or the co-operative society or the public company, as the case may be;

[Provided further that the amount referred to in the first proviso shall be computed with reference to the income credited or paid by the banking company or the co-operative society or the public company, as the case may be, where such banking company or the co-operative society or the public company has adopted core banking solutions;]

(ii) [***];

(iii) to such income credited or paid to -

(a) any banking company to which the Banking Regulation Act, 1949 (10 of 1949), applies, or any co-operative society engaged in carrying on the business of banking (including a co-operative land mortgage bank), or

(b) any financial corporation established by or under a Central, State or Provincial Act, or

(c) the Life Insurance Corporation of India established under the Life Insurance Corporation Act, 1956 (31 of 1956), or

(d) the Unit Trust of India established under the Unit Trust of India Act, 1963 (52 of 1963), or

(e) any company or co-operative society carrying on the business of insurance, or

(f) such other institution, association or body or class of institutions, associations or bodies which the Central Government may, for reasons to be recorded in writing, notify in this behalf in the Official Gazette;

(iv) to such income credited or paid by a firm to a partner of the firm;

(v) to such income credited or [paid by a co-operative society (other than a co-operative bank) to a member thereof or to such income credited or paid by a co-operative society] to any other co-operative society;

[Explanation.--For the purposes of this

clause, "co-operative bank" shall have the same meaning as assigned to it in Part V of the Banking Regulation Act, 1949 (10 of 1949);]

(vi) to such income credited or paid in respect of deposits under any scheme framed by the Central Government and notified by it in this behalf in the Official Gazette;

(vii) to such income credited or paid in respect of deposits (other than time deposits made on or after the 1st day of July, 1995) with a banking company to which the Banking Regulation Act, 1949 (10 of 1949) applies (including any bank or banking institution referred to in section 51 of that Act);

(viii) to such income credited or paid in respect of, -

(a) deposits with a primary agricultural credit society or a primary credit society or a co-operative land mortgage bank or a co-operative land development bank;

(b) deposits (other than time deposits made on or after the 1st day of July, 1995) with a co-operative society, other than a co-operative society or bank referred to in sub-clause (a), engaged in carrying on the business of banking;]

(ix) to such income credited or paid by the Central Government under any provision of this Act or the Indian Income-tax Act, 1922 (11 of 1922), or the Estate Duty Act, 1953 (34 of 1953), or the Wealth-tax Act, 1957 (27 of 1957), or the Gift-tax Act, 1958 (18 of 1958), or the Super Profits Tax Act, 1963 (14 of 1963), or the Companies (Profits) Surtax Act, 1964 (7 of 1964), or the Interest-tax Act, 1974 (45 of 1974);

(x) to such income credited by way of interest on the compensation amount awarded by the Motor Accidents Claims Tribunal;

(xi) to such income paid by way of interest on the compensation amount awarded by the Motor Accidents Claims Tribunal where the

amount of such income or, as the case may be, the aggregate of the amounts of such income paid during the financial year does not exceed fifty thousand rupees;]

[(x) to such income which is paid or payable by an infrastructure capital company or infrastructure capital fund or a public sector company [or scheduled bank] in relation to a zero coupon bond issued on or after the 1st day of June, 2005 by such company or fund or public sector company [or scheduled bank].

[(xi) to any income by way of interest referred to in clause (23FC) of section 10.]

[Explanation 1: For the purposes of clauses (i), (vii) and (viia), "time deposits" means deposits ([including] recurring deposits) repayable on the expiry of fixed periods.

Explanation 2:[***]"

18. What is important for our discussion is to focus on certain expressions used in the various clauses and sub-clauses of sub-section (3) of Section 194A. The expressions that require our attention are (a) co-operative society; (b) co-operative bank; (c) co-operative society engaged in carrying on the business of banking; (d) primary agricultural credit society; (e) primary credit society; (f) co-operative land mortgage bank; and (g) co-operative land development bank.

19. As we have stated earlier, the expression "co-operative bank" is defined in the explanation under clause (v) of sub-section (3) to have the same meaning as assigned to it in Part-V of the Banking Regulation Act, 1949. But the explanation makes it clear that it is applicable only for the purpose of that clause viz., clause (v). Therefore we do not know whether the meaning assigned to the expression "co-operative bank" in Part-V of the Banking Regulation Act, 1949 could be borrowed for the purpose of understanding the meaning of the same expression found in the clauses other than clause (v) of sub-section (3).

20. Section 2(19) of the Income Tax Act defines a "co-operative society" to mean a co-operative society registered under the co-operative Societies Act, 1912 or under any other law for the time being in force in any State for the registration of co-operative societies. The expression "co-operative bank" is not defined in the Income Tax Act, 1961.

21. Insofar as the State of Tamil Nadu is concerned, there are at least two enactments that govern the functioning of co-operative societies. The co-operative societies which function only within the geographical limits of the State of Tamil Nadu are registered under the Tamil Nadu Co-operative Societies Act, 1983. But if there is a co-operative society which is federal in nature or which is national in character, it is called a multi-State co-operative society and the same is registered under the Central enactment viz., Multi-State Co-operative Societies Act, 2002.

22. Since the expression "co-operative society" is defined in Section 2(19) of the Income Tax Act, 1961, it is neither necessary nor warranting for us to go to the definition of the same expression either in the Tamil Nadu Co-operative Societies Act, 1983 or in the Multi-State Co-operative Societies Act, 2002. On the contrary, we may have to refer to these enactments to see what a co-operative bank is, in view of the limitation imposed in the explanation under clause (v) of sub-section (3) of Section 194A.

23. Our tale of woes is compounded by the fact that even the Tamil Nadu Co-operative Societies Act does not define the expression "co-operative bank". The Tamil Nadu Co-operative Societies Act, 1983 under which the appellant/assessee has been incorporated defines the following expressions:-

- (a) agricultural producers marketing society;
- (b) agricultural services co-operative society;
- (c) apex society;
- (d) central society;
- (e) consumer society;
- (f) co-operative union;
- (g) credit society;
- (h) financing bank;
- (i) milk producers society;
- (j) oil-seeds growers society;
- (k) primary society;
- (l) registered society;
- (m) self relying society;
- (n) scheduled co-operative society;
- (o) society with limited liability;
- (p) society with un-limited liability; and
- (q) weaver's society.

24. If for a moment, we get back to the provisions of the Income Tax Act, 1961, we would find that Section 194A deals with the following types of co-operative institutions:-

- (a) co-operative society;
- (b) co-operative bank;
- (c) co-operative society engaged in carrying on the

- business of banking;
- (d) primary agricultural credit society;
 - (e) primary credit society;
 - (f) co-operative land mortgage bank; and
 - (g) co-operative land development bank.

25. But the expression "co-operative bank" is defined in the Multi-State Co-operative Societies Act, 2002 under clause (f) of Section 3 to mean a multi-State co-operative society which undertakes banking business. The expression "co-operative society" is defined in Section 3(h) of the Multi-State Co-operative Societies Act, 2002 to mean a society registered or deemed to be registered under any law relating to co-operative societies for the time being in force in any State.

26. While the distinction sought to be made in clause (viia) of sub-section (3) of Section 194A between (i) a primary agricultural credit society, a primary credit society, a co-operative land mortgage bank and a co-operative land development bank and (ii) other types of co-operative societies is understandable, the distinction sought to be made in the various clauses of sub-section (3) between a co-operative bank on the one hand and a co-operative society carrying on the business of banking on the other hand, is not clearly decipherable from the scheme of Section 194A. Even if we take external aid to construction, by borrowing from the provisions of the Tamil Nadu Co-operative Societies Act, 1983 and the Multi-State Co-operative Societies Act, 2002, no such distinction between a co-operative bank and a co-operative society carrying on the business of banking could be made out.

27. Since the Tamil Nadu Co-operative Societies Act does not define a co-operative bank, though it defines the expression "credit society" and "financing bank", a co-operative society carrying on the business of banking registered in terms of the Tamil Nadu Act could fall naturally only under any of these categories, namely, credit society or financing bank. Therefore it is necessary to take note of the definition of the expressions "credit society" and "financing bank". The expression "credit society" is defined in Section 2(13) of the Tamil Nadu Co-operative Societies Act, 1983 as follows:-

"credit society" means a registered society which has as its principal object the raising of funds to be lent to its members for the purposes of agriculture, animal husbandry, pisciculture (including fish catching), apiculture, sericulture, petty trade, cottage and small scale industries including farm based industries, purchase of implements or raw materials, construction,

purchase or repair of dwelling houses, discharge of prior debts, meeting ceremonial or educational expenses, purchase of domestic and other requirements or for such other purposes as the Government may, by notification specify in this behalf."

28. The expression "financing bank" is defined in Section 2 (14) of the Tamil Nadu Co-operative Societies Act, 1983 as follows:-

"financing bank" means a registered society which has as its principal objects the lending of money to other registered societies."

29. A careful look at the above definitions would show that there is a very thin line of demarcation between the two. A credit society is one which has as its principal object the raising of funds to be lent to its members for the purposes indicated in the definition. A financing bank is one which has as its principal object the lending of money to other registered societies.

30. What distinguishes a credit society from a financing bank as could be seen from the definitions of these expressions is that the distinction lies in the purpose for which the money is lent by them. The distinction does not lie in the manner in which they invite or accept deposits. What is important for the purpose of Section 194A is the acceptance of deposits and the payment of interest to the depositors. Therefore, for the purpose of Section 194A, a credit society under the Tamil Nadu Co-operative Societies Act and the financing bank under the same Act stand on the same footing. They can be treated differently only in terms of the express provisions such as the one found in sub-clause (a) of clause (vii) of sub-section (3). Otherwise the expression "co-operative bank" which is neither defined in the Income Tax Act nor in the Tamil Nadu Societies Registration Act would naturally cover a credit society as well as a financing bank at least insofar as the Tamil Nadu Act is concerned.

31. Interestingly, the Multi-State Co-operative Societies Act, 2002 does not deal with the expression "credit society" at all. It deals only with two expressions, namely, "co-operative bank" and "co-operative society".

32. Though the explanation under clause (v) of sub-section (3) limits the meaning of the expression "co-operative bank" borrowed from Part-V of the Banking Regulation Act, 1949 to clause (v) alone, we would nevertheless take note of the said

definition to see if the same could be of any assistance. The expression "co-operative bank" is defined in Section 56(c) of the Banking Regulation Act, 1949 to mean a state co-operative bank, a central co-operative bank and a primary co-operative bank. Interestingly, Section 56 of the Banking Regulation Act, 1949 defines the four expressions found in sub-clause (a) of clause (viia) of sub-section 3. Section 56 defines the expressions "primary agricultural credit society", "primary co-operative bank" and "primary credit society". After defining these three expressions in great detail under clauses (cciv), (ccv) and (ccvi), the Banking Regulation Act, 1949 adopts the meanings given to certain other expressions such as central co-operative bank, primary rural credit society and State co-operative bank, as found in National Bank for Agriculture and Rural Development Act, 1981.

33. Therefore in our trail we will now have to go to the National Bank for Agriculture and Rural Development Act.

34. The expression "central co-operative bank" is defined in Section 2(d) of National Bank for Agriculture and Rural Development Act, 1981 to mean the principal co-operative society in a district, the primary object of which is to finance all other co-operative societies in that district. Therefore the geographical limitations are imposed upon a co-operative society which comes within the meaning of the expression "central co-operative bank" by virtue of the definition found in Section 2 (d) of the National Bank for Agriculture and Rural Development Act, 1981 to which a reference and reliance is made in Section 56(ccvii) of the Banking Regulation Act, 1949.

35. Section 2(n) of the National Bank for Agriculture and Rural Development Act, 1981 defines a primary rural credit society also. Since we are not concerned with such a society in this batch, we shall skip the same.

36. The expression "State land development bank", which is not defined either in the Tamil Nadu Act or in the Multi-State Co-operative Societies Act or even in the Banking Regulation Act, 1949 is defined in Section 2(v) of the National Bank for Agriculture and Rural Development Act, 1981. In simple terms, a State land development bank is one which has as its principal object, the providing of long term advances for agricultural development.

37. The reason as to why we have been compelled to go after these definitions is the fact that the appellant/assessee happens to be the District Central Co-operative Bank. No co-operative society is entitled to use the word "bank", unless it happens to be a co-operative bank. This is made clear by clause

(f) of Section 56 of the Banking Regulation Act, 1949. As a matter of fact, the answer to the questions of law raised in these appeals could be found in Section 56(f) of the Banking Regulation Act, 1949. Before we advert to clause (f) of Section 56, we should bring on record one fact.

38. Section 56 of the Banking Regulation Act is actually a complete code in itself. Section 56 makes the provisions of the Banking Regulation Act, 1949 applicable to co-operative societies, just as they apply to banking companies, subject to certain modifications indicated in clauses (a) to (zl). By the provisions contained in clauses (a) to (zl), Section 56 incorporates the amendments, the substantive provisions of the Act as well as the schedules thereto, insofar as their application to co-operative societies are concerned. One of the provisions of the Banking Regulation Act, 1949 relates to the entitlement or obligation of companies carrying on the business of banking, to the use of the words bank, banker, banking or banking company. This is covered by Section 7 of the Banking Regulation Act, 1949.

39. Insofar as the application of Section 7 of the Act to co-operative societies is concerned, clause (f) of Section 56 provides the method and form in which Section 7 will apply to co-operative societies. Section 56(f) which substitutes Section 7 of the Banking Regulation Act, 1949, for the purpose of its application to co-operative societies, is extracted as follows:-

"[(f) for section 7, the following section shall be substituted, namely:-

"7. Use of words "bank", "banker" or "banking".--(1) No co-operative society other than a co-operative bank shall use as part of its name or in connection with its business any of the words "bank", "banker" or "banking", and no co-operative society shall carry on the business of banking in India unless it uses as part of its name at least one of such words.

(2) Nothing in this section apply to--

(a) a primary credit society, or

(b) a co-operative society formed for the protection of the mutual interest of co-operative banks or co-operative land mortgage banks, or

(c) any co-operative society, not being a primary credit society, formed by the employees of--

(i) a banking company or the State Bank of India or a corresponding new bank or a subsidiary bank of such banking

company, State Bank of India or a corresponding new bank, or
(ii) a co-operative bank or a primary credit society or a co-operative land mortgage bank,
insofar as the word "bank", "banker" or "banking" appears as part of the name of the employer bank, or as the case may be, of the bank whose subsidiary the employer bank is.]
"

40. Therefore Section 7 of the Banking Regulation Act, 1949 in its application to the co-operative societies, as per Section 56(f), makes it obligatory for a co-operative society carrying on the business of banking in India, to use the adjunct "bank". Interestingly, sub-section (1) of Section 7 of the Banking Regulation Act, 1949 (as amended in relation to co-operative society) comprises of two parts. The first part of Section 7(1) states that no co-operative society other than a co-operative bank shall use the word "bank" as part of its name. The second part of Section 7(1) states that no co-operative society shall carry on the business of banking in India unless it uses as part of its name at least one of the words, namely, bank, banker or banking.

41. Therefore Section 7(1) of the Banking Regulation Act, 1949 settles at least one issue, namely, that insofar as that Act is concerned, there is no distinction between a co-operative bank and a co-operative society carrying on the business of banking. If a co-operative society carries on the business of banking, it should necessarily have the adjunct bank. Additionally, if a co-operative society does not carry on the business of banking, it should not use the adjunct bank.

42. Therefore there appears to be no distinction between a co-operative bank and a co-operative society engaged in the business of banking, at least for the purpose of the Banking Regulation Act, 1949. We have already seen from the provisions of the Tamil Nadu Co-operative Societies Act, 1983 that the said Act also does not distinguish between a co-operative society carrying on the banking business and a co-operative bank, though it distinguishes between a credit society and a financing bank. The fact that we have no alternative except to look into the provisions of the Banking Regulation Act, 1949 and the National Bank for Agriculture and Rural Development Act, 1981 is also fortified by two clauses in sub-section (2) of the Reserve Bank of India Act, 1934. In clauses (h) and (i) of Section 2, the Reserve Bank of India Act, 1934 states that the expressions "agricultural operations", "central co-operative bank, "co-operative society" "crops, "marketing of crops", "pisciculture",

"regional rural bank" and "State co-operative bank" shall have the meaning assigned to them by National Bank for Agriculture and Rural Development Act, 1981 and that the expressions "co-operative bank", "co-operative credit society", "primary agricultural credit society" and "primary co-operative bank" would have the same meaning as assigned to them in Part-V of the Banking Regulation Act, 1949.

43. Therefore the conclusion that is irresistible is that none of these enactments either Central or State, make a clear distinction between a co-operative society engaged in carrying on banking business and a co-operative bank other than those credit societies and land development or land mortgage banks.

Questions raised in this batch:

44. Having considered the various statutory provisions, if we get back to the case on hand, it is seen that we are called upon to answer two substantial questions of law. We shall take up the second one first.

45. The second substantial question of law that we have framed for consideration is as to whether there exists a substantial or marked difference between a co-operative society engaged in carrying on banking business and a co-operative bank and if so, under which category the appellant would fall. The answer is too obvious in view of the foregoing discussion. Except the provisions of sub-clause (b) of clause (i), sub-clause (a) of clause (iii) and sub-clauses (a) and (b) of clause (vii) of sub-section (3) of Section 194A, we do not find anywhere a dichotomy created between a co-operative bank and a co-operative society engaged in carrying on banking businesses. Therefore our answer to the second substantial question of law would be that none of the State or Central enactments such as the Tamil Nadu Co-operative Societies Act, 1983, the Multi-State Co-operative Societies Act, 2002, the Reserve Bank of India Act, 1934, the Banking Regulation Act, 1949 and the National Bank for Agriculture and Rural Development Act, 1981 make any distinction between a co-operative society engaged in carrying on banking business and a co-operative bank.

46. Since there is a reference to the Co-operative Societies Act, 1912 in Section 2(19) of the Act, we have also gone to the Co-operative Societies Act, 1912. It was a central legislation of the colonial past, which also does not define a co-operative bank. It only deals with co-operative societies registered under the Act. Therefore our answer to the second question may not undergo a change even if we make a reference to the Co-operative Societies Act, 1912, which in any case has no application to the societies registered in terms of the State enactments.

Substantial question of law No.1:

47. Coming to the first substantial question that arises for consideration, Mr.J.Narayanasamy, learned senior standing counsel for the department, submitted a note to us indicating the manner in which Section 194A underwent a change right from the Finance Act No.2 of 1967 upto date. The history of the amendments that Section 194A had undergone in the past nearly about 48 years indicate that the pendulum has swung from one extreme to the other insofar as the co-operative societies are concerned, indicating the mindset of the law makers at different points of time. The changes that were made to Section 194A right from 1.4.67 upto 1.6.2015 could be summarized, without enlarging the scope of the discussion, as follows:-

- (i) Under Finance Act No.2 of 1967, Section 194A was amended with retrospective effect from 1.4.67 to exclude any income credited or paid to a banking company to which the Banking Regulation Act, 1949 apply, including a co-operative society engaged in carrying on the business of banking as well as co-operative land mortgage bank. In other words, income tax was not deductible at source if the recipient of such income was a bank or co-operative society engaged in banking.
- (ii) Under the Finance Act of 1968, which came into effect from 1.4.68, clause (v) was inserted, so as to exclude the income credited or paid by a co-operative society to any other co-operative society. In other words, by the 1968 amendment, the liability to deduct tax at source was not there in respect of co-operative societies, if the income referred to therein had been paid or credited to other co-operative societies. The payment of interest to members was not covered even at that time.
- (iii) By the next amendment, which came into effect from 1.4.70, the income credited or paid in respect of deposits made with a co-operative society engaged in carrying on the business of banking including a co-operative land mortgage bank or co-operative land development bank was excluded from the liability to deduct tax at source. Therefore we can take it that it was only from 1.4.70 that the income credited or paid in respect of deposits made with co-operative societies engaged in banking business, became exempt from liability to deduct tax at source.
- (iv) The reason perhaps as to why the benefit was sought to be extended to the deposits made in co-operative societies carrying on the business of banking was that the colonial acts, namely, the Co-operative Societies Act, 1912 and the Multi-unit Co-operative Societies Act, 1942 were debated after India attained independence and a co-operative movement was already at the dawn in the State of Maharashtra where sugarcane was grown to a large extent.

- (v) Finding that the benefit granted by the 1970 amendment was applicable only to the incomes credited or paid in respect of deposits made with co-operative societies carrying on the business of banking, the Government came up with the next amendment with effect from 1.4.71 to enlarge the scope of the benefit to members of co-operative societies irrespective of whether the society carried on banking business or not. In other words, by the amendment that came with effect from 1.4.71, two sets of exemptions were granted, one was in respect of income credited or paid in respect of deposits made with a co-operative society carrying on the business of banking and the other was the income credited or paid by a co-operative society to a member or to any other society. To put it differently, one more category which was excluded from the application of Section 194A was inserted with effect from 1.4.71.
- (vi) After nearly 20 years, the Government came up with an amendment with effect from 1.10.91. By this amendment inserted with effect from 1.10.91, sub-clauses (a) & (b) were inserted under the existing clause (vii) after splitting (vii) into two parts, namely, (vii) and (vii-a).
- (vii) The rationale for the amendment with effect from 1.10.91 was explained in the Circular No.621 dated 15.12.1991, as follows:-

"Provision for deduction of tax at source on interest income from bank deposits, etc."

55. Section 194A of the IT Act provides that the provisions regarding deduction of income tax at source shall not apply to the income credited or paid in respect of deposits with a banking company to which the Banking Regulation Act, 1949, applies (including any bank or banking institution referred to in s.51 of that Act) or with co-operative society engaged in carrying on the business of banking (including a co-operative land mortgage bank or a co-operative land development bank).

55.1. Instances have come to notice of the unaccounted incomes being deposited in banks in one's own name or benami. Interest on such deposits is not likely to be declared in IT returns.

55.2. With a view to improving tax compliance, s.194A of the IT Act has been amended to secure deduction of tax at source from interest on time deposits with the aforesaid banking companies and co-operative

societies engaged in carrying on the business of banking. However, the requirement of deduction of tax at source will not apply in the case of interest on time deposits with a primary agricultural credit society or a primary credit society or a co-operative land mortgage bank or a co-operative land development bank. Further, there will be no requirement of deduction of tax at source if the amount of interest does not exceed two thousand five hundred rupees in a financial year. The "term of time deposits" has been defined to mean deposits, excluding recurring deposits, repayable on the expiry of fixed periods. Thus, interest on savings bank accounts and recurring deposit accounts is not subject to deduction of tax at source."

48. The amendment inserted with effect from 1.10.91 appears to have drawn a flak within a few months. It appears that representations poured in from several quarters, forcing the Government to come up with yet another amendment with effect from 1.6.92. By this amendment, the position that prevailed prior to 1.10.91 was restored. In fact, the next circular bearing No.636 dated 31.8.92 explained the rationale for the restoration of the position on the following lines:-

"Modification of the provisions regarding deduction of tax at source:

49.1. A large number of representations had been received from members of public representative bodies and banks pointing out various difficulties which had arisen on account of the operation of these provisions. Keeping in view these difficulties, the Act amends--

(a) section 194A of the income-tax Act, to restore the position as before 1st October, 1991 in relation to deduction of income-tax at source in the case of income credited or paid in respect of deposits with a banking company to which the Banking Regulation Act, 1949 applies (including any bank or banking institution referred to in section 51 of that Act) or with a co-operative society engaged in carrying on the business of banking (including a co-operative land mortgage bank or a co-operative land development bank), and

(b) section 194H of the Income-tax Act, to

provide that the deduction of income tax at source from income by way of commission or brokerage will not be required to be made on or after 1st June, 1992."

49. After about three years, the next amendment came under the Finance Act, 1995. The object of this Act was indicated to be to bring about an effective method of widening the tax base by enlarging the scope of deduction of income tax at source. By this amendment, sub-clauses (a) and (d) of clause (viiia) were reintroduced with effect from 1.7.95. The rationale for such amendment was indicated in Circular No.717 dated 14.8.95 as follows:-

"Deduction of tax at source from interest on time deposits with banks.

46.1. On account of the provisions contained in clause (vii) of sub-section (3) of section 194A, income credited or paid in respect of deposits with a banking company to which the Banking Regulation Act, 1949 applies or with a co-operative society engaged in carrying on the business of banking is exempt from the requirement of deduction of income-tax at source.

46.2. The Act amends section 194A of the Income-tax Act, relating to deduction of income-tax at source from interest other than interest on securities in the case of residents. The amendment provides for deduction of income-tax at source at the rates in force (at present, 10 per cent in the case of resident non-corporate persons and 20 per cent plus surcharge thereon in the case of domestic companies) from payment of interest exceeding ten thousand rupees in a financial year on time deposits made on or after 1st July, 1995 with a banking company or with a co-operative society engaged in carrying on the business of banking. The aforesaid limit of ten thousand rupees shall be computed with reference to the income credited or paid by a branch of the banking company or the co-operative society, as the case may be. The interest on time deposits made with a primary agricultural credit society or a primary credit society or a co-operative land mortgage bank or a co-operative land development bank, will not be subject to the requirement of deduction of income-tax at source. The expression "time

deposits" is defined to mean deposits, excluding recurring deposits, repayable on the expiry of fixed period.

46.3 The amendment will take effect from 1st July, 1995."

50. Fortunately, the next amendment came only after 20 years in the Finance Act 2015 with effect from 1.6.2015. We will take up the changes brought forth by Finance Act 2015 later, so that we could deal with the effect of these amendments and the contentions of the Revenue on the basis of these amendments.

51. Relying upon the various amendments that were introduced right from 1967 at least upto 1995, it is contended by the Revenue that the original intention of excluding the income credited or paid from the purview of the liability to deduct tax at source, was only to benefit the income credited or paid by a co-operative society to another society. The benefit was later extended to the deposits made with co-operative societies engaged in the business of banking. Subsequently, upon finding that unaccounted monies were deposited in co-operative societies, the benefit was withdrawn. Therefore it is contended by Mr.J.Narayanasamy, learned senior standing counsel that any interpretation to sub-clauses (a) and (b) of clause (viia) and clause (v) of sub-section (3) of Section 194A should be in tune with the legislative intent in including certain things at times and excluding some of those things at other points of time and what is ultimately left at the crucial point of time with reference to the law that was in force in the relevant assessment year.

52. We have no difficulty in accepting the said submission. As we have indicated earlier, sub-section (1) of Section 194A imposes an obligation upon every person. Even individuals and Hindu Undivided Families are covered by the proviso subject to certain conditions. Therefore the exclusions found in sub-section (3) are naturally to be construed stricto sensu.

53. But unfortunately, if a taxing statute and an exclusion clause contained in the taxing statute are to be construed strictly, the provisions themselves should make it clear as to who are the persons who are to be charged or exempted and what are the circumstances under which they are charged or excluded. Though the legislative intent appears to be to deal with four different types of co-operative societies, the categorisation appears to have been made by the various sub-sections and clauses of Section 194A without defining each one of those categories. The four categories of co-operative societies sought to be dealt with under Section 194A are (a) co-operative societies; (b) co-operative societies carrying on the business

of banking; (c) co-operative banks; and (d) primary agricultural credit society, primary credit society, co-operative land mortgage bank and co-operative land development bank.

54. While there is no difficulty in clearly identifying three out of those four categories, by at least taking external aid to construction, by referring to the enactments such as the Tamil Nadu Co-operative Societies Act, 1983, the Banking Regulation Act, 1949, the Reserve Bank of India Act, 1934 and National Bank for Agriculture and Rural Development Act, 1981, there is some difficulty in identifying the co-operative societies that fall under the category of "co-operative societies engaged in carrying on the business of banking". Such a category is not identified in any of these enactments which we have referred to above. This confusion has actually given rise to different Tribunals and different Courts coming to different conclusions.

55. In the Bagalkot District Central Co-operative Bank v. Joint Commissioner of Income Tax in I.T.A.No.1572/Bang/2013 decided on 30.5.2014, the Bangalore Bench of the Tribunal came to the conclusion that the district central co-operative bank in question was a co-operative society carrying on banking business and that therefore when it pays interest income to a member, both on time deposits and on deposits other than time deposits, the society need not deduct tax at source.

56. Similar views were taken by the Vishakapatnam Bench of the Tribunal in the Vishakapatnam Co-operative Bank in I.T.A.Nos.5 and 19 of 2011 decided on 29.8.2011 and the Pune Bench of the Tribunal in Ozer Merchant Co-operative Bank in I.T.A.No.1588/PN/2012 decided on 30.10.2013.

57. However, a contra view was expressed by the Panaji Bench in I.T.A.No.85/PN/2013 in the case of Bailhongal Urban Co-operative Bank Ltd., v. Joint Commissioner of Income Tax, decided on 28.8.2013. But the decision of the Panaji Bench was based upon the decision of the Bombay High Court in Jalgaon District Central Co-operative Bank Ltd. v. Union of India, 265 ITR 423, wherein the Bombay High Court was concerned with Circular No.9 of 2002, which made a distinction between the nominal members, associate members and sympathizer members. We are not concerned in this batch about the categorization of members. We are concerned about the distinction made between sub-clauses (a) and (b) of clause (viia) of sub-section (3).

58. The Revenue places reliance upon the decision of the Division Bench of the Kerala High Court in Income Tax Officer v. Thodupuzha Urban Co-operative Bank Ltd. (2003) 264 ITR 36. But in the said case, there was no issue as to whether the assessee

fell under one or two of the types of co-operative societies mentioned in sub-clause (a) of clause (viia) or not. It was admittedly a co-operative society and hence the Kerala High Court came to the conclusion that sub-clause (a) of clause (viia) was applicable.

59. In Kadirur Vanitha Co-operative Society Ltd. v. Income Tax Officer (2011) 196 Taxman 0418, the assessee claimed that it was a primary credit co-operative society. Since it was a question of fact, the Kerala High Court relegated the parties for appropriate adjudication before the departmental authorities after producing necessary certificates.

60. That leaves us with one last issue, namely, as to whether the conflict of opinion between the Tribunals and High Courts was confined only to quasi-judicial and judicial bodies or as to whether there was a confusion even in the minds of the legislature. The answer to this question can be found in the manner in which an amendment has been brought forth with effect from 1.6.2015 and the memorandum explaining the clauses.

61. With effect from 1.6.2015, sub-section (3) of Section 194A stands amended. Clause 42 of Finance Bill, 2015 reads as follows:-

"42. In section 194A of the Income-tax Act, in sub-section (3), with effect from the 1st day of June, 2015,--

(a) in clause (i), after the proviso, the following proviso shall be inserted, namely:- "Provided further that the amount referred to in the first proviso shall be computed with reference to the income credited or paid by the banking company or the co-operative society or the public company, as the case may be, where such banking company or the co-operative society or the public company has adopted core banking solutions."

(b) in clause (v), for the words "paid by a co-operative society to a member thereof or", the words and brackets "paid by a co-operative society (other than a co-operative bank) to a member thereof or to such income credited or paid by a co-operative society" shall be substituted;

(c) after clause (v), the following Explanation shall be inserted, namely:--'Explanation.--For the purposes of this clause, "co-operative bank" shall have the same as meaning assigned to it in Part V

of the Banking Regulation Act, 1949;

(d) for clause (ix), the following clauses shall be substituted, namely:- "(ix) to such income credited by way of interest on the compensation amount awarded by the Motor Accidents Claims Tribunal; (ixa) to such income paid by way of interest on the compensation amount awarded by the Motor Accidents Claims Tribunal where the amount of such income or, as the case may be, the aggregate of the amounts of such income paid during the financial year does not exceed fifty thousand rupees;"

(e) in Explanation 1 below clause (xi), for the word "excluding", the word "including" shall be substituted."

62. The relevant portion of the memorandum explaining the clauses in the Finance Bill reads as follows:-

"Section 194A(1) read with section 194A(3) (i) of the Act provide for deduction of tax on interest (other than interest on securities) over a specified threshold, i.e. Rs.10,000/- for interest payment by banks, co-operative society engaged in banking business (co-operative bank) and post office and Rs.5,000/- for payment of interest by other persons. Further, sub-section (3) of section 194A inter alia also provides for exemption from deduction of tax in respect of following interest payments by co-operative society:

(i) Interest payment by a co-operative society to a member thereof or any other co-operative society. [Section 194A(3) (v) of the Act]

(ii) Interest payments on deposits by a primary agricultural credit society or primary credit society or co-operative land mortgage bank or co-operative land development bank. [Section 194A(3) (vii) (a) of the Act]

(iii) Interest payment on deposits other than time deposit by a co-operative society engaged in the business of banking other than those mentioned in section 194A(3) (vii) (a) of the Act. [Section 194A(3) (vii) (b) of the Act]

Therefore, as per the provisions of section 194A(1) read with provisions of

sections 194A(3) (i) (b) and 194A(3) (viia) (b), co-operative bank is required to deduct tax from interest payment on time deposits if the amount of such payment exceeds specified threshold of Rs.10,000/-. However, as the provisions of section 194A(3) (v) of the Act provide a general exemption from making tax deduction from payment of interest by all co-operative societies to its members, the co-operative banks tried to avail this exemption by making their depositors as members of different categories. This has led to dispute as to whether the co-operative banks, for which the specific provisions of tax deduction exist in the form of section 194A(1), section 194A(3) (i) (b) and section 194A(3) (viia) (b) of the Act, can take the benefit of general exemption provided to all co-operative societies from deduction of tax on payment of interest to members. The matter has been carried to judicial forums and in some cases a view has been taken that the provisions of section 194A(3) (viia) (b) of the Act makes no distinction between members and non-members of co-operative banks for the purposes of deduction of tax, hence, the co-operative banks are required to deduct tax on payment of interest on time deposit and cannot avoid the same by taking the plea of the general exemption provided under section 194A(3) (v) of the Act. This is because the specific provision of tax deduction provided under section 194A(3) (i) (b) and 194A(3) (viia) (b) of the Act for co-operative banks override the general exemption provided to all co-operative societies for non-deduction of tax from interest payment to members under section 194A(3) (v) of the Act.

As there is no difference in the functioning of the co-operative banks and other commercial banks, the Finance Act, 2006 and Finance Act, 2007 amended the provisions of the Act to provide for co-operative banks a taxation regime which is similar to that for the other commercial banks. Therefore, there is no rationale for treating the co-operative banks differently from other commercial banks in the matter of deduction of tax and allowing them to avail

the exemption meant for smaller credit co-operative societies formed for the benefit of small number of members. However, as mentioned earlier, a doubt has been created regarding the applicability of the specific provisions mandating deduction of tax from the payment of interest on time deposits by the co-operative banks to its members by claiming that general exemption provided is also applicable for payment of interest to member depositors. In view of this, it is proposed to amend the provisions of the section 194A of the Act to expressly provide from the prospective date of 1st June, 2015 that the exemption provided from deduction of tax from payment of interest to members by a co-operative society under section 194A (3)(v) of the Act shall not apply to the payment of interest on time deposits by the co-operative banks to its members."

63. It can be seen from the last part of the portion extracted above that the very note explaining the clause was specific to the effect that the proposal was to bring forth an amendment with prospective effect from 1.6.2015. There is no dispute now that on and from 1.6.2015 the appellant cannot escape the liability from deduction of tax at source.

64. Once an amendment is introduced, for the purpose of removing the anomalous situation or for the purpose of removing the confusions both in the manner in which the provisions stood and the manner in which they were understood, the same could be taken only to have prospective effect. It must be pointed out that the Parliament did not choose to answer a question. Rather it chose to amend the provisions. It is now well settled that an amendment can only be prospective unless it is made retrospective by express language or necessary implication. Apart from the fact that the express language of Section 194A after amendment does not indicate any retrospectivity, the note explaining the clauses goes one step further in making it clear that it was intended to have prospective effect from 1.6.2015.

65. Therefore our answer to the first substantial question of law would be in favour of the assessee.

66. However, Mr.J.Narayanasamy, learned senior standing counsel contends that in Commissioner of Income Tax v. Alom Extrusions Ltd., (2009) 319 ITR 0306, the Supreme Court construed a similar amendment to have retrospective effect. But unfortunately the Supreme Court was concerned in that case with

the benefit conferred upon the assessee and not a levy. Therefore on the basis of Alom Extrusions, it cannot be contended that the amendment merely clarified the existing provisions so as to have retrospective effect or to become retroactive.

67. In the result, the tax case appeals are allowed. Consequently, M.P.Nos.1 & 2 of 2015 are closed. However, there is no order as to costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1. The Income Tax Appellate Tribunal
"A" Bench
Chennai
2. The Income Tax Appellate Tribunal
"B" Bench
Chennai
3. The Income Tax Appellate Tribunal
"C" Bench
Chennai
4. The Income Tax Officer
TDS Ward -I(5)
Coimbatore.
5. The Commissioner of Income Tax(Appeals) - II,
Coimbatore.
6. The Income Tax Officer,
TDS Ward, Tiruppur.

+125cc's to Mr.J.Narayanaswamy, Advocate, S.R.No.57413 to 57417
+2cc's to Mr.K.Ravi, Advocate, S.R.No.57327

Tax Case (Appeal) Nos.588 of 2015 etc.

VD & JSV(CO)
CA(21/01/2016)