

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH**

Reserved on : 09-02-2017 & Delivered on : -03-2017

Coram :

**Honourable Mr. Justice V.RAMASUBRAMANIAN
and
Honourable Ms. Justice J.UMA DEVI**

**W.P.Nos.12727 and 12767 of 2016
and
W.P.Nos.2518, 2571, 2576 and 2581 of 2017**

1. The Vavveru Co-operative Rural Bank Ltd.,
(Regd. No.K-70), Buchireddy Palem Village & Mandal,
Kavali Division, Nellore District,
Rep. by its Manager Sri D.Ramanaiah.
2. The Buchireddy Palem Co-operative Rural Bank Ltd.,
(Regd. No.K-69), Buchireddy Palem Village & Mandal,
Kavali Division, Nellore District,
Rep. by its Secretary Sri K.Suresh Kumar Reddy,
S/o. K.Krishna Reddy.

... Petitioners

Vs.

1. The Chief Commissioner of Income Tax,
3rd Floor, SVR Plaza, D.No.40-6-15,
Siddhartha Public School Road,
Moghalrajpuram, Vijayawada-520 010.
2. The Income Tax Officer, Income Tax Department,
Ward No.4, Nellore, PSR Nellore District.

... Respondents

For Petitioners : Mr. A.V. Krishna Kaundinya,
Senior Counsel for
Mr. Veerabhadra Rao Koppiseti

For Respondents : Mr. T.Vinod Kumar,
Senior Standing Counsel
for Income Tax

**HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND**

HON'BLE Ms JUSTICE J.UMA DEVI

**W.P.Nos.12727 and 12767 of 2016
and**

W.P.Nos.2518, 2571, 2576 and 2581 of 2017

COMMON ORDER: (per V.Ramasubramanian, J.)

The Vavveru Co-operative Rural Bank Limited and the Buchireddi Palem Co-operative Rural Bank Limited have come up with these writ petitions challenging the orders of assessment passed under Section 143(3) of the Income Tax Act, 1961 in relation to the Assessment Years 2010-11, 2013-14 and 2014-15.

2. We have heard Mr. A.V. Krishna Kaundinya, learned Senior Counsel appearing for the writ petitioners and Mr. T.Vinod Kumar, learned Senior Standing Counsel appearing for the Revenue.

3. At the outset, it should be pointed out that the petitioners have an effective statutory alternative remedy of an appeal, as against the impugned orders of assessment, to the Commissioner of Income Tax (Appeals). But the petitioners have come up with these writ petitions on the ground that the denial of the benefit of deductions under Section 80P(2)(a) of the Act to the petitioners, by the Assessing Officer is completely contrary to statutory provisions and that since the issue goes to the root of the question of jurisdiction on the part of the Assessing Officer,

they have chosen to come up with the present writ petitions bypassing the alternative remedy of appeal.

4. Therefore, the only issue that arises for our consideration in this batch of writ petitions is as to whether the denials, by the Assessing Officers, of the benefit of deduction under Section 80P(2)(a) to the petitioners is correct or not.

5. Though the petitioners in these writ petitions are named as Co-operative Rural Banks, the petitioners claim that they are Primary Agricultural Co-operative Credit Societies, registered under the Co-operative Societies Act, 1932. The Assessing Officer has also treated both these institutions as Primary Agricultural Credit Societies and did not treat them as Banks. The settlement of this question at the outset, is of utmost importance, in view of the fact that the provisions of Section 80P are not applicable to Co-operative Banks other than the Primary Agricultural Credit Societies and Primary Co-operative Agricultural and Rural Development Banks. This is made clear by sub-section (4) of Section 80P. Therefore, we shall proceed on the basis that both these petitioners herein are not Co-operative Banks which stand excluded by sub-section (4) of Section 80P.

6. Sub-section (1) of Section 80P entitles a Co-operative Society to deduct the sums specified in sub-section (2) from

its gross total income, while computing the total income.

Sub-section (2) of Section 80P reads as follows:

“(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, or
 - (ii) a cottage industry, or
 - (iii) the marketing of agricultural produce grown by its members, or
 - (iv) the purchase of agricultural implements, seeds, livestock or other articles intended for agriculture for the purpose of supplying them to its members, or
 - (v) the processing, without the aid of power, of the agricultural produce of its members, or
 - (vi) the collective disposal of the labour of its members, or
 - (vii) fishing or allied activities, that is to say, the catching, curing, processing, preserving, storing or marketing of fish or the purchase of materials and equipment in connection therewith for the purpose of supplying them to its members.

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

Provided that in the case of a co-operative society falling under sub-clause (vi), or sub-clause (vii), the rules and bye-laws of the society restrict the voting rights to the following classes of its members, namely:--

- (1)** the individuals who contribute their labour or, as the case may be, carry on the fishing or allied activities;
- (2)** the co-operative credit societies which provide financial assistance to the society;
- (3)** the State Government;

(b) in the case of a co-operative society, being a primary society engaged in supplying milk, oilseeds, fruits or vegetables raised or grown by its members to—

- (i) a federal co-operative society, being a society engaged in the business of supplying milk,

oilseeds, fruits, or vegetables, as the case may be; or

- (ii) the Government or a local authority; or
- (iii) a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956), or a corporation established by or under a Central, State or Provincial Act (being a company or corporation engaged in supplying milk, oilseeds, fruits or vegetables, as the case may be, to the public),

the whole of the amount of profits and gains of such business;

(c) in the case of a co-operative society engaged in activities other than those specified in clause (a) or clause (b) (either independently of, or in addition to, all or any of the activities so specified), so much of its profits and gains attributable to such activities as does not exceed,--

- (i) where such co-operative society is a consumers' co-operative society, one hundred thousand rupees; and
- (ii) in any other case, fifty thousand rupees.

Explanation.—In this clause, “consumers’ co-operative society” means a society for the benefit of the consumers;

(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;

(e) in respect of any income derived by the co-operative society from the letting of godowns or warehouses for storage, processing or facilitating the marketing of commodities, the whole of such income;

(f) in the case of a co-operative society, not being a housing society or an urban consumers’ society or a society carrying on transport business or a society engaged in the performance of any manufacturing operations with the aid of power, where the gross total income does not exceed twenty thousand rupees, the amount of any income by way of interest on securities or any income from house property chargeable under section 22.

Explanation.—For the purpose of this section, an “urban consumers’ co-operative society” means a society for the benefit of

the consumers within the limits of a municipal corporation, municipality, municipal committee, notified area committee, town area or cantonment.”

7. It appears that the petitioners are engaged in the sale of fertilisers to its members. A portion of the income derived therefrom is deposited by the petitioners in Nationalised Banks. The income derived by way of interest on the Fixed Deposits made by the petitioners with the Banks, was treated by the petitioners as an income attributable to the profits and gains of business, eligible for deduction under Section 80P(2)(a). But the Assessing Officer treated the interest income as income from other sources not eligible for deduction.

8. Therefore, the real controversy arising in these writ petitions is as to whether the income derived by the petitioners by way of interest on the Fixed Deposits made by them with the Banks, is to be treated as profits and gains of business attributable to any one of the activities indicated in sub-clauses (i) to (vii) of clause (a) of sub-section (2) of Section 80P or not.

9. While the petitioners place strong reliance upon a decision of the Division Bench of this Court in *Commissioner of Income-Tax v. Andhra Pradesh State Co-operative Bank Ltd.* (2011) 336 ITR 516, the Revenue places strong reliance upon the decision of the Supreme

Court in *Totgars Co-operative Sale Society Ltd. v. Income-tax Officer, Karnataka* (2010) 322 ITR 283.

10. In order to understand the scope of the controversy, it would be better to present in simple terms, the ambit of clause (a) of sub-section (2) of Section 80P. This clause is intended for the benefit of (1) certain types of co-operative societies but (2) confined only to the activities listed in sub-clauses (i) to (vii). ***In other words, clause (a) of sub-section (2) confers a benefit only upon co-operative societies, but the benefit is restricted only to some and not to all of the activities of such co-operative societies.*** To put it differently, an institution claiming the benefit of clause (a) of sub-section (2) of Section 80P should cross 2 check-posts. In the 1st check-post, the institution will have to establish that it is a co-operative society. In the 2nd check-post, the institution has to establish that the deduction sought represents profits and gains of business attributable to one or more of the activities in sub-clauses (i) to (vii).

11. But the manner in which clause (a) is worded appears to be little clumsy. This is due to the reason that though sub-clauses (iii) to (vii) actually describe activities such as marketing, purchase, processing, collective disposal or fishing or allied activities, sub-clauses (i) and (ii) deal with the nature of the industry/business carried on by the institution. While sub-clause (i) uses the expression

“business”, sub-clause (ii) uses the expression “industry”. Moreover, all the 7 sub-clauses are connected to the expression “co-operative society” by the words “engaged in” appearing in sub-clause (a).

12. ***The sheet anchor of the case of petitioners is the expression “attributable to” appearing in the last part of clause (a) of sub-section (2) of Section 80P. Since the Statute does not use the expression “derived from”, but uses the expression “attributable to”, the contention of the petitioners is that clause (a) should receive a wider interpretation.***

13. The above contention cannot be rejected outright, for the simple reason that in many Statutes and for that matter even in the Income Tax Act, the expression “attributable to” is sometimes used with the prefix “directly”. The words “directly attributable to” would certainly narrow down the scope of the expression “attributable to”. Therefore, the fact that the expression “attributable to” is wider in scope than the expression “derived from” cannot be denied.

14. Several decisions have been relied upon by both sides, not necessarily in the chronological order. But we think that analysing them in the chronological order would give a better understanding.

15. In **CIT V. Madras Auto Rickshaw Drivers Cooperative Society Ltd.**¹, a Division Bench of the Madras High Court was concerned with the question as to whether a society, which was purchasing Auto-rickshaws and reselling them to its members on hire-purchase basis, could be treated as a society engaged in the business of providing credit facilities to its members or not. The Madras High court pointed out that ***a credit society is distinct from a distributive society and a marketing society and that the tax relief under Section 80P (2) (a) is a grant by Parliament not to a category of income but to a category of assessee***, namely, a co-operative society answering the description of a society engaged in the business of providing credit facilities to its members. In other words, the Court came to the conclusion that the income derived by the society by purchasing Auto rickshaws and selling them to its members under hire-purchase agreements will not be exempt under Section 80P (2) (a). This decision of the Division Bench of the Madras High Court was confirmed by the Supreme court in a very brief order reported in (2001) 249 ITC 330 (SC).

16. In **CIT v. Nawanshahar Central Cooperative Bank Ltd.**,², the Supreme Court was concerned with a case where a

¹ (1983) 43 ITR 981 (Mad)

² (2007) 281 ITR 6 (SC)

cooperative society carrying on the business of banking and which is statutorily required to park a part of its funds in approved securities would be entitled to deduction under Section 80P (2) (a) of the interest income arising from such investments.

17. In **CIT v. Ponni Sugar and Chemicals Ltd.**,³ one of the two questions that arose for the consideration of the Supreme Court was whether the interest received from the members of the society could be allowed as deduction under Section 80P (2) (a) or not. But the Supreme Court did not answer the question in view of the fact that the Memorandum of Association, the Articles of Association and the Returns of income filed by the assessee had not been examined by the Tribunal on facts.

18. In **Udaypur Sahkari Upbhokta Thok Bhandar Ltd., v. CIT**,⁴, the issue that arose for consideration actually revolved around Section 80P (2) (e) and not around Section 80P (2) (a). The assessee in that case was running a consumer co-operative store and was also involved in the distribution of controlled commodities such as wheat, sugar, rice and cloth on behalf of the Government under the Public Distribution Scheme for which it received commission. Whether the commission so received could be treated as an income under

³ (2008) 306 ITR 392 (SC)

⁴ (2009) 315 ITR 21 (SC)

Section 80P (2) (e) eligible for deduction was the question before the Court. The Supreme Court ruled that since the assessee was storing the commodities in question in its godowns as part of its own trading stock, it was not entitled to claim deduction from such margin under Section 80P (2) (e). While holding so, the Supreme Court distinguished its earlier decision in **CIT v. South Arcot District Cooperative Marketing Society Ltd.**,⁵ wherein the commission taken by the society in question for storing the stock on behalf of the State Government and returning the same every month was held to be an allowable deduction. The distinction pointed out by the Supreme Court was that in *South Arcot District Co-operative Marketing Society Ltd.*, there were two sales, first between the Government and the society and the second between the society and the fair price shop.

19. In **Totgars Co-operative Sale Society Ltd., v. ITO**⁶, a Division Bench of Karnataka High Court held that when a society not carrying on any banking business had invested its surplus funds in security term deposits, the interest accrued from such securities and deposits should be taken as relatable to profits and gains of the society.

20. The above decision of the Karnataka High court was taken on appeal to the Supreme Court. In a decision reported

⁵ (1998) 176 ITR 117 (SC)

⁶ (2010) 322 ITR 272 (Kar)

in (2010) 322 ITR 283, the Supreme Court held that the interest income arising out of the investment of surplus funds cannot be attributed to the activities of the society. The relevant portion of the judgment of the Supreme Court reads as follows:

“The head note to section 80P indicates that the said section deals with deductions in respect of a co-operative Society includes any income from one or more specified activities, then such income shall be deducted from the gross total income in computing the total taxable income of the assessee-Society. An income, which is attributable to any of the specified activities in Section 80P(2) of the Act, would be eligible for deduction. The word “income” has been defined under Section 2(24)(i) of the Act to include profits and gains.

This sub-section is an inclusive provision. The Parliament has included specifically “business profits” into the definition of the word “income”. Therefore, we are required to give a precise meaning to the words “profits and gains of business” mentioned in Section 80P(2) of the Act. In the present case, as stated above, assessee-Society regularly invests funds not immediately required for business purposes. Interest on such investments, therefore, cannot fall within the meaning of the expression “profits and gains of business”. Such interest income cannot be said also to be attributable to the activities of the society, namely, carrying on the business of providing credit facilities to its members or marketing of the agricultural produce of its members. When the assessee-Society provides credit facilities to its members, it earns interest income. As stated above, in this case, interest held as ineligible for deduction under Section 80P(2)(a) is not in respect of interest received from members. In this case, we are only concerned with interest which accrues on funds not required immediately by the assessee(s) for its business purposes and which have been only invested in specified securities as “investment”. Further, as stated above, assessee(s) markets the agricultural produce of its members. It retains the sale proceeds in many cases. It is this “retained amount” which was payable to its members, which was retained

by the assessee-Society, was a liability and it was shown in the balance-sheet on the liability-side.

Therefore, to that extent, such interest income cannot be said to be attributable either to the activity mentioned in Section 80p(2)(a)(i) of the Act or in Section 80P(2)(a)(iii) of the Act.

21. In **CIT v. Punjab State Co-operative Federation of House Building Societies Ltd.**,⁷, a Division Bench of the Punjab & Haryana High Court followed the decision of the Supreme Court in *Totgars* and held that the interest income received by the co-operative society from commercial banks cannot be attributed to the activities of the society.

22. In **SBI v. CIT**⁸, a question arose before the Division Bench of the Gujarat High Court as to whether the interest earned on deposits made by a co-operative society that was registered with the object of accepting deposits from salaried employees of the State Bank with a view to promote thrift and provide credit facilities, was entitled to the benefit of Section 80P (2) (a). Following the decision of the Supreme Court in *Totgars* the Gujarat High court held that while the interest income earned by the co-operative society by extending credit facilities to its members may be business income, the interest income earned on the deposits of surplus funds with the State Bank of India may not qualify for deduction under Section 80P (2) (a).

⁷ (2011) 11 Taxman.com 448 (P&H)

⁸ (2016) 389 ITR 578 (Guj)

23. Similarly, it was held in **Mantola Co-operative Thrift and Credit Society Ltd., v. CIT**⁹, that the word “Banking” appearing in Section 80P (2) (a) (i) cannot be given an extended and broad meaning and that to do so would be contrary to the ratio laid down in *Totgars Co-operative Society*.

24. In **CIT v. Punjab State Co-operative Agricultural Development Bank Ltd.**,¹⁰ a Division Bench of the Punjab and Haryana High Court held that the interest earned on reserve funds and call deposits could not be regarded as income attributable to one of the activities indicated in the Section. The Punjab and Haryana High Court not only followed *Totgars* but also followed the decision of the Gujarat High Court in *SBI v. CIT*.

25. In **CIT v. South Eastern Railway Employers Co-operative Credit Society Ltd.**,¹¹ a Division Bench of the Calcutta High Court indicated that the judgment of the Supreme Court in *Totgars* is a binding authority for the proposition that interest income arising on the surplus invested in short-term deposits and securities would come under the category of income from other sources.

26. Thus a line of decisions rendered by various High Courts such as the High Court of Punjab and Haryana, the High Court of Calcutta and the High Court of Gujarat,

⁹ (2014) 50 Taxman.com 278 (Delhi)

¹⁰ (2016) 76 Taxman.com 307 (P & H)

¹¹ (2016) 73 Taxman.com 123

rendered after the decision of the Supreme Court in *Totgars* simply followed the *ratio decidendi* of *Totgars*. But, one judgment of this Court attempted a distinction and that was in **CIT v. Andhra Pradesh State Co-operative Bank Ltd.**,¹². In the said case, the assessee was a Co-operative society engaged in the business of banking. The assessee had invested statutory reserves in short-term and long-term deposits and the interest earned thereon was disallowed by the assessing officer for deduction under Section 80P(2)(a)(i). The Commissioner partly allowed the appeal holding that the interest income relatable to non-SLR investments would not qualify for exemption. The Tribunal allowed the appeal of the assessee holding that in respect of interest income arising both from SLR securities and from non-SLR securities, deduction was allowable. In an appeal under Section 260A to this Court, heavy reliance was placed by the Revenue upon the decision of the Supreme Court in *Totgars*. But the Division Bench distinguished *Totgars* on the ground that the said decision was confined to the facts of the said case and that the Supreme Court was not dealing with the cases relating to co-operative banks. Referring to the decision of the Supreme Court in **Cambay Electric Supply Industrial Co. Ltd v. CIT**¹³, this Court pointed out that the expression

¹² (2011) 336 ITR 516 (AP)

¹³ (1978) 113 ITR 84

“attributable to” is wider in scope than the expression “derived from” and that a co-operative society may earn profits by way of interest by parking their funds in high-yielding deposits or may earn income by circulating its capital among its members in the course of their banking business. Adverting to the fact that the phrase “business of banking” is not defined in the Income Tax Act, this Court referred to the definition of the expression “banking” appearing in Section 5(b) of the Banking Regulations Act to come to the conclusion that the income received by a co-operative bank from deposits, whether or not they are made in the discharge of statutory obligation would be eligible for exemption, since it would tantamount to income from banking business.

27. Taking clue from the aforesaid decision of this Court in *Andhra Pradesh State Co-operative Bank Ltd.*, yet another distinction was sought to be made by Mr. A.B. Krishna Koundinya, learned Senior Counsel appearing for the writ petitioners, to the decision of the Supreme Court in *Totgars*. In paragraph-10 of its decision in *Totgars*, the Supreme Court pointed out that what was invested by *Totgars* was the sale proceeds payable to the members, but which was retained and invested by the Society, on account of which the amount was shown as liability in the Balance-sheet. Therefore, the learned Senior Counsel contended that the decision of the Supreme Court in *Totgars* may perhaps be relied upon 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. But in the case on hand, what was invested by the writ petitioners in fixed deposits was not something that formed part of its liability. Therefore, the learned Senior Counsel maintained that the decision of this Court in *Andhra Pradesh State Co-operative Bank Ltd.*, would hold the field.

28. We have carefully considered the above submissions. Before considering the effect of the various decisions cited on both sides, we think it would be ideal to look at the statutory prescription in pure and simple form. As we have indicated earlier, Section 80P(2) is actually divided into six parts, categorised under clauses (a), (b), (c), (d), (e), and (f). Each one of these clauses deal with different types of co-operative societies engaged in different types of activities. The benefit made available to each one of them is also different from the other. Therefore, it may be useful to present a tabular form, the six categories of co-operative societies covered by clause (a) to (f) and the nature and extent of the benefit available to each one of them, as follows:

Category of Co-Op., Societies covered by sub-clauses (a) to (f)	Nature and Extent of benefit available
<u>(a)</u> (1) Co-operative society carrying on the business of banking or providing	The whole of the amount of profits

credit facilities to its members; (2) Co-op society engaged in Cottage Industry; (3) Co-operative engaged in marketing of agricultural produce grown by its members. (4) Co-operative society engaged in purchase of agricultural implements, seeds etc., for the purpose of supplying to its members; (5) Co-operative society engaged in processing of agricultural produce of its members without the aid of power (6) Co-operative society engaged in collective disposal of the labour of its members (7) Co-operative society engaged in fishing or allied activities	and gains of business attributable to any one or more of such activities.
(b) Primary co-operative society engaged in supplying milk, oil seeds, fruits or vegetables grown by its members to – 1) a federal co-operative society, engaged in the same business; 2) the Government or a local authority; 3) the Government company or Corporation engaged in the same business;	The whole of the amount of profits and gains on such business
(c) 1) A consumer co-operative society engaged in activities other than those specified in clause (a) or clause (b) either independently of, or in addition to, all or any of the activities so specified. 2) Co-operative society other than a consumer co-operative society engaged in activities other than those specified in clauses (a) and (b).	So much of the profits and gains attributable to such activities not exceeding Rs.100,000/- (one hundred thousand rupees). So much to these profits and gains attributable to such activities not exceeding Rs.50,000/- (fifty thousand rupees).
(d) Interest or dividends derived by the co-operative society from its investments	The whole of such income.

with any other co-operative society;	
(e) Any income derived by the co-operative society from the letting of godowns or warehouses for storage, processing or facilitating the marketing of commodities;	The whole of such income.
(f) A co-operative society other than 1) A housing society; 2) An urban consumer society; 3) A society carrying on transport business; 4) A society engaged in the performance of any manufacturing operations with the aid of power, where the gross total income does not exceed Rs.20,000/- (twenty thousand rupees)	The income by way of interest on securities and the income from house property chargeable under Section 22.

29. From the Tabular form presented above, it may be clear that **the deductions available under Clauses (a) to (c) are activity-based. The deduction available under Clauses (d) and (e) are investment-based and the deduction under Clause (f) is institution-based.** To put it differently,

(A) to be eligible for deduction under Clause (a), the claim should relate to the profits and gains of business attributable to anyone or more of the activities listed in Clause (a),

(B) to be eligible for deduction under Clause (b), the society should be a primary society engaged in supplying milk, oilseeds, fruits, etc. to named institutions, such as, Government, Local Authority, Federal Co-operative Society, or Government Company,

(C) to be eligible for deduction under Clause (c), the institution must be engaged in activities other than those covered by Clauses (a) and (b) subject to the further condition that such profits and gains should not exceed a particular limit,

(D) to be eligible for deduction under Clause (d), the income should be derived from investments with another Co-operative Society,

(E) to be eligible for deduction under Clause (e), the income should be derived from letting of godowns or warehouses, etc.

30. Therefore, what follows is that when a Co-operative Society engaged in anyone of the activities stipulated in sub-Clauses (i) to (vii) of clause (a) makes profits and gains out of business attributable to anyone of those activities, the case would fall under Clause (a). The moment the income derived from one of those activities is invested in another Co-operative Society and an interest or dividend is derived therefrom, the case would be covered by Clause (e). In case the profits and gains of business arising out of the activities listed in sub-Clauses (i) to (vii) of Clause (a) is invested in immovable properties, such as, godowns or warehouses and an income is derived therefrom, the case would be covered by Clause (e) of Section 80P (2).

31. The only area of distinction between clause (a) on the one hand and Clauses (d) and (e) on the other hand is that the benefit under Clause (a) is restricted only to those activities of a Co-operative Society enlisted in sub-clauses (i) to (vii) of Clause (a). On the other hand, the benefit under Clauses (d) and (e) are available to all Co-operative Societies, without any restriction as to the nature of the activities carried on by them.

32. In simple terms, the position can be summarized like this. If there is a Co-operative Society, which is carrying on several activities including those activities listed in sub-Clauses (i) to (vii) of Clause (a), the benefit under Clause (a) will be limited only to the profits and gains of business attributable to anyone or more of such activities. But, in case the same Co-operative Society has an income not attributable to anyone or more of the activities listed in sub-Clauses (i) to (vii) of Clause (a), the same may go out of the purview of Clause (a), but still, the Co-operative Society may claim the benefit of Clause (d) or (e) either by investing the income in another Co-operative Society or investing the income in the construction of a godown or warehouse and letting out the same.

33. In other words, the benefit conferred by Clause (d) upon all types of Co-operative Societies is restricted only to the investments made in other Co-operative Societies. Such a

restriction cannot be read into Clause (a), as the temporary parking of the profits and gains of business in nationalised Banks and the earning of interest income therefrom is only one of the methods of multiplying the same income. To accept the stand of the Department would mean that Co-operative Societies carrying on the activities listed in Clauses (i) to (vii), which invest their profits and gains of business either in other Co-operative Societies or in the construction of godowns and warehouses, may benefit in terms of Clause (d) or (e), but the very same Societies will not be entitled to any benefit, if they invest the very same funds in Banks. Such an understanding of section 80P(2) is impermissible for one simple reason. The benefits under Clauses (d) and (e) are available in general to all Co-operative Societies, including Societies engaged in the activities listed in Clause (a). Section 80P(2) is not intended to place all types of co-operative societies on the same pedestal. The section confers different types of benefits to different types of societies. Special types of societies are conferred a special benefit.

34. The case before the Supreme Court in **Totgars** was in respect of a Co-operative Credit Society, which was also marketing the agricultural produce of its members. As seen from the facts disclosed in the decision of the Karnataka High Court in **Totgars**, from out of which the decision of the Supreme Court arose, the assessee was carrying on the

business of marketing agricultural produce of the members of the Society. It is also found from Paragraph-3 of the decision of the Karnataka High Court in **Totgars** that the business activity other than marketing of the agricultural produce actually resulted in net loss to the Society. Therefore, it appears that the assessee in **Totgars** was carrying on some of the activities listed in Clause (a) along with other activities. This is perhaps the reason that the assessee did not pay to its members the proceeds of the sale of their produce, but invested the same in banks. As a consequence, the investments were shown as liabilities, as they represented the money belonging to the members. The income derived from the investments made by retaining the monies belonging to the members cannot certainly be termed as profits and gains of business. This is why **Totgars** struck a different note.

35. But, as rightly contended by the learned senior counsel for the petitioners, the investment made by the petitioners in fixed deposits in nationalised banks, were of their own monies. If the petitioners had invested those amounts in fixed deposits in other Co-operative Societies or in the construction of godowns and warehouses, the respondents would have granted the benefit of deduction under Clause (d) or (e), as the case may be.

36. The original source of the investments made by the petitioners in nationalised Banks is admittedly the income

that the petitioners derived from the activities listed in sub-Clauses (i) to (vii) of Clause (a). ***The character of such income may not be lost, especially when the statute uses the expression “attributable to” and not anyone of the two expressions, namely, “derived from” or “directly attributable to”.***

37. Therefore, we are of the considered view that the petitioners are entitled to succeed. Hence, the Writ Petitions are allowed, and the order of the Assessing Officer, insofar as it relates to treating the interest income as something not allowable as a deduction under Section 80P (2) (a), is set aside.

38. The miscellaneous petitions, if any, pending in these writ petitions shall stand closed. No costs.

V.RAMASUBRAMANIAN, J.

J.UMA DEVI, J.

March, 2017.
Ak/Js/Cbs

**HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
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and
W.P.Nos.2518, 2571, 2576 and 2581 of 2017
(per VRS, J.)**



**March, 2017.
(Ak/Js/Cbs)**