



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE MR. JUSTICE SYAM KUMAR V.M.

WEDNESDAY, THE 4<sup>TH</sup> DAY OF SEPTEMBER 2024/13<sup>TH</sup> BHADRA, 1946

I.T.A.NO.68 OF 2017

AGAINST THE ORDER DATED 26.05.2017 IN I.T.A.NO.340/COCH/2016  
OF INCOME TAX APPELLATE TRIBUNAL, COCHIN BENCH

APPELLANT/RESPONDENT/RESPONDENT/REVENUE:

THE PRINCIPAL COMMISSIONER OF INCOME TAX  
KOTTAYAM.

BY SRI.JOSE JOSEPH, STANDING COUNSEL FOR INCOME TAX

RESPONDENT/APPELLANT/APPELLANT/ASSESSEE:

M/S.SAHYADRI CO-OPERATIVE CREDIT SOCIETY LTD.  
1<sup>ST</sup> FLOOR, AMAL JYOTHI BUILDING, CATHEDRAL ROAD,  
KANJIRAPPALLY, KOTTAYAM - 686 507.

BY ADV.SRI.A.KUMAR (SR.)

BY ADV.SMT G.MINI

THIS INCOME TAX APPEAL HAVING BEEN FINALLY HEARD ON  
30.08.2024 ALONG WITH I.T.A.NO.01/2018 AND CONNECTED  
CASES, THE COURT ON 04.09.2024 DELIVERED THE FOLLOWING:



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE MR. JUSTICE SYAM KUMAR V.M.

WEDNESDAY, THE 4<sup>TH</sup> DAY OF SEPTEMBER 2024/13<sup>TH</sup> BHADRA, 1946

I.T.A.NO.1 OF 2018

AGAINST THE ORDER DATED 26.05.2017 IN I.T.A.NO.340/COCH/2016  
OF INCOME TAX APPELLATE TRIBUNAL, COCHIN BENCH

APPELLANT/RESPONDENT/RESPONDENT/REVENUE:

THE PRINCIPAL COMMISSIONER OF INCOME TAX,  
KOTTAYAM.

BY SRI.JOSE JOSEPH, STANDING COUNSEL FOR INCOME TAX

RESPONDENT/APPELLANT/APPELLANT/ASSESSEE:

M/S.SAHYADRI CO-OPERATIVE CREDIT SOCEITY LIMITED  
I<sup>ST</sup> FLOOR, AMAL JYOTJI BUILDING, CATHEDRAL ROAD,  
KANJIRAPPALLY, KOTTAYAM.

BY ADV.SRI.A.KUMAR (SR.)  
BY ADV.SMT.G.MINI

THIS INCOME TAX APPEAL HAVING BEEN FINALLY HEARD ON  
30.08.2024 ALONG WITH I.T.A.NO.68/2017 AND CONNECTED  
CASES, THE COURT ON 04.09.2024 DELIVERED THE FOLLOWING:



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE A.K.JAYASANKARAN NAMBIAR

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THE HONOURABLE MR. JUSTICE SYAM KUMAR V.M.

WEDNESDAY, THE 4<sup>TH</sup> DAY OF SEPTEMBER 2024/13<sup>TH</sup> BHADRA, 1946

I.T.A.NO.63 OF 2019

AGAINST THE ORDER DATED 29.08.2018 IN I.T.A.NO.152/COCH/2018 OF  
INCOME TAX APPELLATE TRIBUNAL, COCHIN BENCH

APPELLANT/RESPONDENT/RESPONDENT/REVENUE:

THE PRINCIPAL COMMISSIONER OF INCOME TAX,  
KOTTAYAM.

BY SRI.JOSE JOSEPH, STANDING COUNSEL FOR INCOME TAX

RESPONDENT/APPELLANT/APPELLANT/ASSESSEE:

M/S.SAHYADRI CO-OPERATIVE CREDIT SOCIETY LTD.  
KANJIRAPPALLY, KOTTAYAM-686 507.

BY ADV.SRI.A.KUMAR (SR.)  
BY ADV.SMT.G.MINI

THIS INCOME TAX APPEAL HAVING BEEN FINALLY HEARD ON  
30.08.2024 ALONG WITH I.T.A.NO.68/2017 AND CONNECTED  
CASES, THE COURT ON 04.09.2024 DELIVERED THE FOLLOWING:



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE MR. JUSTICE SYAM KUMAR V.M.

WEDNESDAY, THE 4<sup>TH</sup> DAY OF SEPTEMBER 2024/13TH BHADRA, 1946

I.T.A.NO.196 OF 2019

AGAINST THE ORDER DATED 29.08.2018 IN I.T.A.NO.153/COCH/2018  
OF INCOME TAX APPELLATE TRIBUNAL, COCHIN BENCH

APPELLANT/RESPONDENT/RESPONDENT/REVENUE:

THE PRINCIPAL COMMISSIONER OF INCOME TAX  
KOTTAYAM.

BY SRI.JOSE JOSEPH, STANDING COUNSEL FOR INCOME TAX

RESPONDENT/APPELLANT/APPELLANT/ASSESSEE:

M/S.SAHYADRI CO-OPERATIVE CREDIT SOCIETY LTD.  
KANJIRAPPALLY, KOTTAYAM-686 507.

BY ADV.SRI.A.KUMAR (SR.)  
BY ADV.SMT.G.MINI  
BY ADV.SRI.P.J.ANILKUMAR  
BY ADV.SRI.P.S.SREE PRASAD  
BY ADV.SRI.AJAY V.ANAND

THIS INCOME TAX APPEAL HAVING BEEN FINALLY HEARD ON  
30.08.2024 ALONG WITH I.T.A.NO.68/2017 AND CONNECTED  
CASES, THE COURT ON 04.09.2024 DELIVERED THE FOLLOWING:



IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE DR. JUSTICE A.K.JAYASANKARAN NAMBIAR

&

THE HONOURABLE MR. JUSTICE SYAM KUMAR V.M.

WEDNESDAY, THE 4<sup>TH</sup> DAY OF SEPTEMBER 2024/13TH BHADRA, 1946

I.T.A.NO.219 OF 2019

AGAINST THE ORDER DATED 17.01.2019 IN I.T.A.NO.433/COCH/2018  
OF INCOME TAX APPELLATE TRIBUNAL, COCHIN BENCH

APPELLANT/RESPONDENT/RESPONDENT/REVENUE:

THE PRINCIPAL COMMISSIONER OF INCOME TAX,  
KOTTAYAM.

BY SRI.JOSE JOSEPH, STANDING COUNSEL FOR INCOME TAX

RESPONDENT/APPELLANT/APPELLANT/ASSESSEE:

M/S.SAHYADRI CO-OPERATIVE CREDIT SOCIETY LTD.  
KANJIRAPPALLY, KOTTAYAM

BY ADV.SRI.A.KUMAR (SR.)

BY ADV.SMT.G.MINI

THIS INCOME TAX APPEAL HAVING BEEN FINALLY HEARD ON  
30.08.2024 ALONG WITH I.T.A.NO.68/2017 AND CONNECTED  
CASES, THE COURT ON 04.09.2024 DELIVERED THE FOLLOWING:



"C.R."

## J U D G M E N T

**Dr. A.K. Jayasankaran Nambiar, J.**

These I.T. Appeals preferred by the Revenue were disposed by a Division Bench of this Court by judgment dated 10.11.2022. Thereafter the respondent/assessee preferred Review Petitions seeking to review the aforesaid judgment of this Court to the extent it had answered Question No.2 in favour of the Revenue and against the assessee. By our order dated 28.02.2024, in the Review Petitions filed in all the above I.T. Appeals, we had found as follows while allowing the Review Petitions:

"We find that the Review is sought on a limited point in relation to Question No.2, which was answered in favour of the revenue and against the assessee by this Court while disposing I.T.No.68 of 2017 and connected cases. On hearing Advocate A. Kumar, the learned counsel for the assessee and Sri. Jose Joseph, the learned Standing counsel for the Income Tax Department, we are of the view that the legal issue involved in Question No.2 that was raised in the Income Tax Appeals requires to be considered on merits and for enabling a consideration of the same, the judgment dated 10.11.2022 in I.T.No.68 of 2017 and connected cases is recalled to the limited extent that it decides Question No.2 referred therein. The Income Tax Appeals are directed to be posted before this Court for consideration of Question No.2 on merits. Question No.2 reads as follows:

"Whether on the facts and circumstances of the case and in law, Tribunal is justified in holding that the interest from surplus fund is "Income from business" and not "Income from other sources"?"

By way of abundant caution, it is made clear that all the other issues decided by the judgment aforesaid in the Income Tax Appeals are not interfered with."



2. As noticed above, the sole issue that now arises for consideration in these I.T. Appeals is whether or not the income received by the respondent Society by way of interest, on deposits of surplus profits earned by it, would qualify for the deduction contemplated under Section 80P(2)(a) of the Income Tax Act [hereinafter referred to as the "I.T. Act"] for profits and gains of business attributable to its activity of providing credit facilities to its members. The brief facts necessary for the disposal of these I.T. Appeals on this Question are as follows:

3. The respondent/assessee is a Co-operative Society engaged in the provision of credit facilities to its members. It is a Multi-State Co-operative Society registered under the Multi-State Co-operative Societies Act, 2002, the provisions of which Statute regulate its functioning. The issue that arises for consideration in the instant case is with regard to its entitlement to deduction in respect of the interest that it earned from deposits that it had made in compliance with the statutory requirements under the Multi-State Co-operative Societies Act. It is not in dispute that the amount of profits and gains of business attributable to its business of providing credit facilities to its members is eligible for the benefit of deduction under Section 80P(2) of the I.T. Act. The question that arises for consideration, however, is whether, on deposit by the respondent/assessee of the amounts that are found to be eligible for deduction under Section 80P(2), with a bank or other permitted institutions, the interest earned by the assessee on



such deposits would also be entitled to the benefit of deduction under Section 80P(2) of the I.T. Act?. According to the Revenue, while the assessee was entitled to the deduction in relation to the principal income by way of interest earned through the provision of credit facility to its members, the interest income earned through deposit of the principal income with banks and other permitted financial institutions would attract tax under the head of "Income from other sources" since they would cease to have the character of profits and gains of business or profession.

4. Arguing on behalf of the respondent/assessee, it is the submission of the learned Senior counsel Sri. A.Kumar, assisted by Adv.Smt. G.Mini that the provisions of Sections 63 and 64 of the Multi-State Co-operative Societies Act, 2002 mandate that the assessee Society shall, *inter alia*, out of its net profits in any year, transfer an amount not less than 25% to the reserve fund and subject to such conditions as may be prescribed, the balance of the net profits may be utilised for all or any of the purposes stipulated in sub clause (2) of Section 63. Similarly, the assessee Society is also permitted to invest or deposit its funds in any of the modes specified in Section 64 of the Multi-State Co-operative Societies Act. The provisions of Sections 63 and 64 of the Multi-State Co-operative Societies Act read as follows:

**"63. Disposal of net profits** - (1) A multi-state cooperative society shall, out of its net profits in any year-

(a) transfer an amount not less than twenty-five per cent, to the reserve fund;





(b) credit annually one per cent of net profit to co-operative education fund to be maintained by the Central Government in such manner as may be prescribed and the proceeds from such fund shall be used for co-operative education and training through the National Co-operative Union of India and any other agency in such manner as may be determined by the Central Government;

(c) transfer an amount not less than ten per cent to a reserve fund for meeting unforeseen losses.

(2) Subject to such conditions as may be prescribed, the balance of the net profits may be utilised for all or any of the following purposes, namely:-

(a) payment of dividend to the members on their paid-up share capital at a rate not exceeding the prescribed limit;

(b) constitution of, or contribution to, such special funds including education funds, as may be specified in the bye-laws;

(c) donation of amounts not exceeding five per cent, of the net profits for any purpose connected with the development of cooperative movement or charitable purpose as defined in section 2 of the Charitable Endowments Act, 1890 (6 of 1890);

(d) payment of *ex gratia* amount to employees of the multi-state cooperative society to the extent and in the manner specified in the bye-laws.

**64. Investment of funds:-** A multi-state cooperative society may invest or deposit its funds-

(a) in a cooperative bank, state cooperative bank, cooperative land development bank or central cooperative bank; or

(b) in any of the securities issued by the Central Government, State Government, Government Corporations, Government Companies, Authorities, Public Sector Undertakings or any other securities ensured by Government guarantees;

(c) in the shares or securities of any other multi-state cooperative society or any cooperative society; or

(d) in the shares, securities or assets of a subsidiary institution or any other institution in the same line of business as the multi-State co-operative society; or

(e) with any other scheduled or nationalised bank.

*Explanation,-*For the purposes of this clause, the expression,-

(i) "scheduled bank" shall have the same meaning as assigned to it in clause (e) of section 2 of the Reserve Bank of India Act, 1934; and



(ii) "nationalised bank" means a corresponding new bank constituted under sub-section (1) of section 3 of the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 and the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980; or

(f) in such other manner as may be determined by the Central Government."

5. Relying on the decision of the Andhra Pradesh High Court in **The Vavveru Co-operative Rural Bank Ltd. v. The Chief Commissioner of Income Tax, Vijayawada - [(2017) 396 ITR 371]**, the decision of the Karnataka High Court in **Tumkur Merchants Souharda Credit Co-operative Limited v. The Income Tax Officer - [I.T.No.307 of 2014]**, the decision of the Calcutta High Court in **Principal Commissioner of Income Tax Asansol v. Gunja Samabay Krishi Unnayan Samity Ltd. - [2023 (1) TMI 783]** and the decision of the Karnataka High Court in **Lalitamba Pattina Souharda Sahakari Niyamita v. The Income Tax Officer, Ward-1 Gadag - [2018 (3) TMI 224]**, it is the contention of the learned Senior counsel that in as much as the investment of surplus profits was in accordance with the statutory prescriptions under the Multi-State Co-operative Societies Act, the interest earned on the deposits continued to retain the character of profits of business attributable to the activity of providing credit facilities to its members, and hence, there was no justification to deny the assessee the benefit of deduction under Section 80P(2) of the I.T. Act. In this connection, he seeks to distinguish the judgment of the Supreme Court in **M/s. The Totgars' Cooperative Sale Society Limited v. Income Tax**



**Officer, Karnataka - [(2010) 322 ITR 283 (SC)]** by pointing out that in the said case, the Supreme Court had to consider the case of a Society that had appropriated amounts forming surplus receipts which were due to its members, and invested the same to earn interest during the period when the surplus receipts were in its hands. It is his submission that the factual situation in the instant cases is entirely different and the investment was of amounts that had already attained the character of surplus profits in the hands of the assessee.

6. Per contra, it is the submission of Sri. Jose Joseph, the learned Standing Counsel for the Revenue, that the interest earned on deposits and investments made, of the principal income which was entitled for the deduction under Section 80P(2) of the I.T. Act, would attract the levy of tax under the head of "Income from other sources". This was because wherever the Legislature intended such interest income to also enjoy the benefit of deduction, it was expressly provided in Section 80P(2)(d) and the assessee in the instant case has not satisfied the requirements for getting the benefit of deduction under the said provision. The argument in other words, is that the express provision for deduction of interest on deposits conferred by Section 80P(2)(d) excludes, by implication, the deduction in relation to similar interest income under Section 80P(2)(a) of the I.T. Act.



7. On a consideration of the rival submissions, we are of the view that for the reasons stated hereinafter, the question of law that arises for consideration before us must be answered against the Revenue and in favour of the assessee. The permissible deduction that is envisaged under Section 80P(2) of the I.T. Act for a Co-operative Society that is assessed to tax under the head of 'Profits and Gains of Business or Profession' is of the whole of the amount of profits and gains of business attributable to any one or more of its activities. Thus, all amounts as can be attributable to the conduct of the specified businesses by a Co-operative Society will be eligible for the deduction envisaged under the statutory provision. The question that arises therefore is whether, merely because the assessee chooses to deposit its surplus profit in a permitted bank or financial institution, and earns interest on such deposits, such interest would cease to form part of its profits and gains attributable to its business of providing credit facilities to its members? In our view that question must be answered in the negative, since we cannot accept the contention of the Revenue that the interest earned on those deposits loses its character as profits/gains attributable to the main business of the assessee. It is not as though the assessee in the instant case had used the surplus amount [the profit earned by it] for an investment or activity that was unrelated to its main business, and earned additional income by way of interest or gain through such activity. The assessee had only deposited the profit earned by it in the manner mandated under Section 63 of the Multi-State



Co-operative Societies Act, or permitted by Section 64 of the said Act. In other words, it dealt with the surplus profit in a manner envisaged under the regulatory Statute that regulated, and thereby legitimized, its business of providing credit facilities to its members. Under those circumstances, if the assessee managed to earn some additional income by way of interest on the deposits made, it could only be seen as an enhancement of the profits and gains that it made from its principal activity of providing credit facilities to its members. The nature and character of the principal income [profits earned by the assessee from its lending activity] does not change merely because the assessee acted in a prudent manner by depositing that income in a bank, instead of keeping it in hand. The provisions of the I.T. Act cannot be seen as intended to discourage prudent financial conduct on the part of an assessee.

8. We also find force in the submission of the learned Senior counsel, distinguishing the decision of the Supreme Court in **M/s. The Totgars' Cooperative Sale Society Limited (supra)**, on the ground that the Court in that case had found that the Society concerned had appropriated amounts forming part of surplus receipts which were due to its members, and invested the same to earn interest during the period when the surplus receipts were in its hands. It was therefore that the court found that the interest earned by the Society through deposit of such receipts with banks in fact ought to have accrued to the benefit of the individual members and



not to the Society itself; that in relation to the Society, it was to be treated as income from other sources since the interest income had lost its nexus with the principal income earned by the Society. The facts in the instant cases are entirely different and the investment concerned was of amounts that had already attained the character of surplus profits in the hands of the assessee. On this issue, therefore, we find ourselves in agreement with the view taken by the Andhra Pradesh and Karnataka High Courts respectively in **The Vavveru Co-operative Rural Bank Ltd. (supra)** and **Tumkur Merchants Souharda Credit Co-operative Limited (supra)**.

9. As for the argument of the learned Standing Counsel for the Revenue, with reference to the provisions of Section 80P(2)(d) of the I.T. Act, we might only observe that, while it may be a fact that interest income of the nature specified therein is specifically allowed as a deduction in the case of Co-operative Societies in general, in the light of our discussion above as regards the nature of the interest income earned by the assessee Society in the instant cases, it would follow that the interest income dealt with by us in the instant cases is not akin to the one contemplated under Section 80P(2)(d). We are of the view that the latter provision deals with interest income other than what can be attributable to the main business of the Society.



In the result, we dismiss these I.T. Appeals preferred by the Revenue, in so far as they relate to the question as to “whether or not the income received by the respondent Society by way of interest, on deposits of surplus profits earned by it, would qualify for the deduction contemplated under Section 80P(2)(a) of the I.T. Act, for profits and gains of business attributable to its activity of providing credit facilities to its members?” by answering the said question against the Revenue and in favour of the assessee.

Sd/-  
**DR. A.K.JAYASANKARAN NAMBIAR**  
JUDGE

Sd/-  
**SYAM KUMAR V.M.**  
JUDGE

prp/



APPENDIX OF I.T.A.NO.68/2017

PETITIONER ANNEXURES:

ANNEXURE-A	ASSESSMENT ORDER U/S.143(3) DT.11.03.2015
ANNEXURE B	CIT (APPEALS) ORDER NO.ITA.K-08/KTM/CIT(A)/KTM/15-16/172 DT.31.05.2016.
ANNEXURE C	ITAT'S ORDER ITA NO.340 OF 2016 DATED 26.05.2017.





APPENDIX OF I.T.A.NO.1/2018

PETITIONER ANNEXURES:

Annexure A	ASSESSMENT ORDER U/S 143 (3) DT. 11.03.2015.
Annexure B	CIT (APPEALS) ORDER NO. ITA.K- 08/KTM/CIT(A)/KTM/15-16/172 DT. 31/05/2016.
Annexure C	ITAT'S ORDER ITA NO.340 OF 2016 DATED 26.05.2017 CO. 26/COCH/16.



APPENDIX OF I.T.A.NO.63/2019

PETITIONER ANNEXURES:

- |            |   |
|------------|---|
| ANNEXURE A | ASSESSMENT ORDER U/S.143(3) DT.23/12/2016.                              |
| ANNEXURE B | CIT (A)'S ORDER NO.ITA NO.K-21/CIT<br>(A)/KTM/2016-17 DATED 31/01/2018. |
| ANNEXURE C | ITAT'S ORDER IN ITA 152/COCH/2018 DATED<br>29/08/2018.                  |



APPENDIX OF I.T.A.NO.196/2019

PETITIONER ANNEXURES:

- |            |   |
|------------|---|
| ANNEXURE A | ASSESSMENT ORDER UNDER SECTION 143(3) DATED 23.12.2016.             |
| ANNEXURE B | CIT (A)'S ORDER NO.ITA NO.K-21/CIT(A)/KTM/2016-17 DATED 31.01.2018. |
| ANNEXURE C | ITAT'S ORDER IN ITA NO.153/COCH/2018 DATED 29.08.2018.              |



APPENDIX OF I.T.A.NO.219/2019

PETITIONER ANNEXURES:

ANNEXURE A                    ASSESSMENT ORDER U/S 143(3) DT. 08/12/2017

ANNEXURE B                    CIT (A)'S ORDER NO. ITA NO.K24/CIT(A)  
/KTM/2017-18 DT 09/07/2018

ANNEXURE C                    ITAT'S ORDER IN ITA NO. 433/COCH/2018 DT.  
17/01/2019

RESPONDENT'S ANNEXURES: NIL.

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P.S. TO JUDGE