2026:BHC-OS:17608-DB

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL (L) NO. 2533 OF 2026
WITH
INTERIM APPLICATION NO. 3436 OF 2026

Citizen Credit Co-operative Bank Ltd. (Borivali) ...Appellant
vs
The Income Tax Officer, TDS Ward, Mumbai ...Respondent

AND
INCOME TAX APPEAL (L) NO. 2547 OF 2026
WITH
INTERIM APPLICATION NO. 3432 OF 2026

Citizen Credit Co-operative Bank Ltd. (Mulund) ...Appellant
vs
The Income Tax Officer, TDS Ward, Mumbai ...Respondent

AND
INCOME TAX APPEAL (L) NO. 2548 OF 2026
WITH
INTERIM APPLICATION NO. 3172 OF 2026

Citizen Credit Co-operative Bank Ltd. (Malad) ...Appellant
vs
The Income Tax Officer, TDS Ward, Mumbai ...Respondent

AND
INCOME TAX APPEAL (L) NO. 2549 OF 2026
WITH
INTERIM APPLICATION NO. 3435 OF 2026

Citizen Credit Co-operative Bank Ltd. (Kurla) ...Appellant
vs
The Income Tax Officer, TDS Ward, Mumbai ...Respondent

AND
INCOME TAX APPEAL (L) NO. 2554 OF 2026
WITH
INTERIM APPLICATION NO. 3433 OF 2026

Citizen Credit Co-operative Bank Ltd. (Wadala) ...Appellant
vs
The Income Tax Officer, TDS Ward, Mumbai ...Respondent

AND
INCOME TAX APPEAL (L) NO. 2555 OF 2026
WITH
INTERIM APPLICATION NO. 3431 OF 2026

Citizen Credit Co-operative Bank Ltd. (Turner Road) ...Appellant
vs
The Income Tax Officer, TDS Ward, Mumbai ...Respondent

AND
INCOME TAX APPEAL (L) NO. 2556 OF 2026
WITH
INTERIM APPLICATION NO. 3434 OF 2026

Citizen Credit Co-operative Bank Ltd. (Santacruz) ...Appellant
vs
The Income Tax Officer, TDS Ward, Mumbai ...Respondent

AND
INCOME TAX APPEAL (L) NO. 2558 OF 2026
WITH
INTERIM APPLICATION NO. 3437 OF 2026

Citizen Credit Co-operative Bank Ltd. (Vakola) ...Appellant
vs
The Income Tax Officer, TDS Ward, Mumbai ...Respondent

Mr. Jehangir Mistri, Senior Advocate, with Mr. Harsh Kothari for the Appellants.
Mr. Y. S. Bhate for Respondents.

CORAM: G. S. KULKARNI & AARTI SATHE, JJ.

RESERVED ON: 24 JULY 2026.
PRONOUNCED ON: 06 AUGUST 2026.

Judgment (Per G. S. Kulkarni, J.):-

1. These are eight appeals filed under Section 260A of the Income Tax Act, 1961 (for short, "**the Act**") by the appellant-Citizen Credit Co-operative Bank

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Ltd., against a common order dated 15 July 2025 passed by the Income Tax Appellate Tribunal, Bench at Mumbai, whereby the appellant's (for short referred to as '**the assessee'**) appeals, arising from the orders passed by the Commissioner of Income Tax (Appeals), have been rejected. As the assessee is a co-operative bank having different branches and the assessment of each of the branches being independent, these appeals pertain to a common assessment year namely Assessment Year 2016-17. As the issues which fell for consideration of the forums below were similar, they have continued to remain so, also in respect of the present proceedings. Hence, these appeals are being disposed of by this common order.

2. At the outset, the assessee has urged the following common questions of law for consideration in the present proceedings:-

> "(I) Whether in the facts and circumstances of the case and in law, the assessee would become entitled to an exemption to deduct income tax under the provisions of sub-section (3)(v) of Section 194A qua the interest amounts paid to its depositors who are co-operative societies?
>
> (II) Whether in the facts and circumstances of the case and in law, the orders of the lower authorities treating the assessee as an assessee in default under Section 201(1) and levying interest under Section 201(1A) of the Income Tax Act and as confirmed by the tribunal can be sustained ?

Facts :-

3. The relevant facts necessary to adjudicate the present proceedings are required to be noted:-

The assessee is a multi-State co-operative Society registered under the Multi-State Co-operative Societies Act, 1984 and, on the repeal of the said Act, it was deemed to be registered under the corresponding provisions of the Multi-State Co-operative Societies Act, 2002. The Assessee was granted a banking licence by the Reserve Bank of India (RBI) under Section 22(1) read with Section 56(o) under the Banking Regulation Act, 1949. Consequent thereto, the assessee although being a co-operative society, is also a co-operative bank carrying on the business of banking.

4. The assessee has obtained separate TAN registration numbers for each of its branches for the year under consideration, as also the assessee filed separate TDS returns for each of its branches.

5. A survey action was initiated against the assessee whereunder information was called from each of the branches of the assessee, pursuant to a notice issued under Section 133(6) of the Act. Such notices were responded to and all the requisite details were furnished by the assessee. Thereafter, the proceedings under Section 201 of the Act were initiated against the assessee for each of the branches separately as each branch had a separate TAN. The issue as raised by the department in such proceedings was in respect of the assessee withholding deposit of tax deducted at source (TDS), on interest paid by the assessee on the fixed deposits maintained by the co-operative societies with the assessee. It is the case of the assessee that the co-operative societies who had deposited the amounts with the assessee were not the members of the assessee/bank, as also, they cannot be members in view of the bye-laws of the assessee.

6. For the assessment year in question, a notice dated 19 January 2023 was issued under Section 201(1) / 201(1A) of the Act, in respect of one of the branches of the assessee namely the Turner Road branch *inter alia* recording that information was received that tax had not been deducted under Section 194A of the Act in respect of the interest paid to co-operative housing societies and in connection therewith, certain details were called for. Similar notices under Section 201(1)/201(1A) of the Act were issued in respect of seven other branches. All such branches submitted their replies which were similar to the one filed in the case of the assessee's Turner Road branch.

7. Further responding to the said notices, the assessee by its letter dated 20 February 2023 *inter alia* filed the relevant details including information with respect to interest on fixed deposits paid by the assessee on which tax had not been deducted at source. Another notice dated 28 February 2023 was issued to the Turner Road branch of the assessee, under Section 201(1)/201(1A) of the Act, calling upon the assessee to show cause as to why it should not be treated as an assessee-in-default under the said provisions. Such notice was responded to by the assessee by a detailed letter dated 13 March 2023 in which the assessee *inter alia* contended that it was not liable to deduct tax on interest paid to co-operative societies for assessment year 2016-17 for the reason that the assessee was a Multi-State Co-operative Society which has been granted banking licence as an urban co-operative bank. Further, the assessee had regularly filed its income tax returns as a co-operative society as defined under Section 2(19) of the Act; and that it had opted to be governed by Section 115BAD which applies only to co-operative

societies. Referring to clause (v) of Section 194A(3) incorporated by the Finance Act, 2015, the assessee contended that such provision was divided into two parts and that the TDS requirement was made applicable to the first part after the amendment that is in respect of interest paid by a co-operative bank to its members, and that the exemption from the requirement to deduct tax continued to apply to the second part of clause (v) that is in respect of interest credited or paid by a co-operative society to another co-operative society which would apply to the assessee in the facts in hand. The assessee also referred to the amendment made by the Finance Act, 2020, post which it was contended that the co-operative banks covered by the amendment were required to deduct tax at source and hence, the assessee started deducting tax on interest paid to co-operative societies thereafter.

8. Although the aforesaid contentions were raised, the order dated 24 March 2023 came to be passed by the Assessing Officer (Income Tax Officer TDS Ward) under Section 201(1)/201(1A) of the Act, in relation to the Turner Road branch, holding the assessee to be an assessee-in-default for non deduction of tax at source under Section 194A of the Act in respect of interest of Rs.2,40,89,521/- on fixed deposits paid/credited to the co-operative societies. The Assessing Officer held that the assessee is an urban commercial bank, hence, it does not fall within the purview of the co-operative society for the purpose of Section 80P of the Act. The Assessing Officer further held that the co-operative societies earning income from the assessee, were not entitled to deduction under Section 80P(2)(d) of the Act and, therefore, it was obligatory on the assessee to deduct

tax at source on the interest paid to such societies. It was further held that Section 194A(3)(v) was amended by the Finance Act, 2015 with effect from 1 June 2015, so as to mandate a co-operative bank to deduct tax at source on the interest paid or credited to its members. Also, reliance was placed by the assessee on Section 194A(3)(i) and Section 194A(3)(viia)(b) to hold that the said two provisions are specific provisions, while the exemption granted under Section 194A(3)(v) is a general provision and the special provision would override the general provision.

9. Similar orders were passed by the Assessing Officer for the other seven branches of the assessee, holding the assessee to be an assessee-in-default under Section 201(1)/201(1A) of the Act, for not deducting tax at source on the interest paid to other co-operative societies.

10. Being aggrieved by the orders passed by the Assessing Officer, the Assessee filed appeals before the Commissioner of Income Tax (Appeals) *inter alia* raising all the grounds which were raised before the Assessing Officer, and more particularly, relying on the provisions of Section 194A(3)(v) to contend that adhering to the said provisions, there was no obligation to deduct tax at source in respect of the interest amount paid/credited to the co-operative societies. The assessee also referred to the amendment made by the Finance Act, 2015, in the first limb of clause (v) of Section 194A(3), which the assessee contended, that it had no application in the present case and submitted that there is no change insofar as the second limb of clause (v) was concerned, which governed the assessee's case. More pertinently, the assessee asserted a specific case relying on paragraph 42.7 of Circular No.19/2015 issued by the Central Board of Direct

Taxes (CBDT) explaining the amendments made by the Finance Act, 2015, to contend that the circular clearly provided that the existing exemption provided under Section 194A(3)(v) of the Act from deduction of tax in respect of interest paid by a co-operative society to another co-operative society, shall continue to apply to the co-operative bank, and therefore, a co-operative bank shall not be required to deduct tax at source from the payment of interest on time deposit to a depositor - co-operative society. It was also contended that the provisions of Section 80P of the Act which were relied upon by the Assessing Officer, were not relevant for determining the requirement of TDS under Section 194A of the Act.

11. Considering the aforesaid contentions and the case of the department, the CIT (A) passed an order dated 5 February 2025 dismissing the appeals filed by the Assessee. The CIT (A) *inter alia* observed that the assessee is at par with commercial banks and being a co-operative bank, it is not eligible to claim exemption from deduction of tax at source under Section 194A(3)(v) of the Act, which was held to be applicable to the co-operative societies and not to co-operative banks. The CIT (A) further held that the assessee is not entitled to claim any benefit under Section 80P of the Act and, consequently, it also cannot avail the benefit under Section 194A(3)(i) and 194A(3)(v) of the Act. It is the assessee's case that the CIT(A) in making such observations, had overlooked the fact that eligibility of the assessee to claim benefit under Section 80P of the Act had no relevance to the issue in hand about the requirement to deduct tax at source. In regard to the assessee's reliance on paragraph 42.7 of Circular No.19/2015 issued by CBDT, the CIT(A), however, did not consider the effect of

the said paragraph, but referred to paragraph 42.5 of the said circular to observe that in view of the said paragraph, the tax was required to be deducted at source without appreciating that paragraph 42.5 dealt with the first limb of Section 194A(3)(v) i.e. interest on time deposits paid to members which, according to the assessee, was not the subject matter in issue. Thus, on such reasoning on the appeals filed by the assessee qua its different branches, the appeals filed by the assessee came to be rejected by the CIT(A).

12. In the above circumstances, the assessee approached the Tribunal challenging the orders passed by the CIT (Appeals) for the assessment year in question. The appeals were consolidated and heard together as common questions of law and facts had arisen except for the difference in quantum. The assessee also submitted written submissions on the legal position as attracted as also relied on the aforesaid circulars issued by the CBDT. The tribunal by a common order dated 15 July 2025 as impugned in the present appeals, rejected the appeals filed by the assessee. The tribunal *inter alia* held that the assessee was liable to deduct tax at source under Section 194A of the Act on the interest on fixed deposits paid by the assessee to the other co-operative societies *inter alia* referring only to paragraph no.42.5 of the CBDT Circular No.19 of 2015 and not paragraph no.42.7 which in fact was applicable. It is the assessee's case that paragraph no.42.5 of the said Circular No.19 of 2015 in fact applied to the first part of Section 194A(3)(v) of the Act which was not the subject matter of the proceedings. According to the assessee, the tribunal in reaching to this conclusion, overlooked that the recipient of interest in the assessees' case who are

co-operative societies were not the members of the assessee and therefore the second part of Section 194A(3)(v) was applicable read with paragraph 42.7 of the said circular.

13. On such backdrop, the assessee filed Miscellaneous Applications under Section 254(2) of the Act seeking rectification of the orders passed by the Tribunal, which came to be rejected by the Tribunal by an order dated 11 November 2025, subject matter of an independent challenge in Writ Petition No. 2234 of 2026 filed by the assessee. On such conspectus, the present appeals have been filed by the assessee raising the substantial questions of law as noted by us hereinabove.

Submissions :-

14. Mr. Jehangir Mistri, learned senior counsel for the assessee, has made extensive submissions, his first submission is that the approach of the tribunal is *per se* contrary to the plain provisions of Section 194A(3)(v) of the Act read with the Circular No.19 of 2015 dated 27 November 2015. This, inasmuch as Section 194A(3)(v) is required to be read in two parts; the first part being applicable *"to such income credited or paid by a co-operative society (other than a co-operative bank) to a member thereof"* is applicable to members of a co-operative bank simplicitor, and hence, the same is not applicable in the facts of the present case.

15. It is next submitted that the second part of Section 194A(3)(v) providing that *"or to such income credited or paid by a co-operative society and to any other co-operative society"* is applicable to the assessees case, inasmuch as the

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assessee is concerned only in regard to the interest which is paid/credited to the co-operative societies which are not its members, and which cannot be members of the assessee as per its bylaws. It is thus, Mr. Mistri's submission that it was the plain applicability of clause (v) of Section 194A(3) which was required to be considered by the Tribunal which it has failed to do. It is thus a mistake apparent on the face of the Tribunal's order.

16. Mr. Mistri would next submit that the aforesaid interpretation of clause (v) of Section 194A(3) was explained by the CBDT in its Circular No.19 of 2015 dated 27 November 2015, and more particularly, in paragraph no.42.7 of the said circular. It is submitted that there is no iota of doubt when an explanation was offered by the CBDT to the said provisions, which were introduced by the 2015 Finance Act, which categorically provided that there is no requirement for a co-operative bank to deduct tax at source, in regard to interest amounts paid to the non-members co-operative societies. It is therefore his submission that evidently there is a legal error apparent on the face of the order passed by the tribunal. The view taken by the tribunal in also rejecting the assessees' Rectification Applications, is erroneous. In support of his submission, Mr. Mistri has placed reliance on the decision of learned Single Judge of the Kerala High Court in the case of **Kaipuzha Service Cooperative Bank Limited and Ors. Vs. Commissioner of Income Tax (TDS) and Ors**. as also the decision of the Madras High Court in the case of **Coimbatore District Central Cooperative Bank Limited Vs. Income Tax Officer, TDS Ward-1 (5), Coimbatore**[1].

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17. On the other hand, Mr. Bhate, learned counsel for the revenue has supported the impugned order passed by the tribunal on the assessees' appeal as also the order impugned in the Writ Petition, rejecting the Rectification Application filed by the assessee. It is Mr. Bhate's submission that the tribunal has rightly applied the provisions of Section 194A(3)(v), and the interpretation as put-forth by assessee is not correct. It is also his submission that paragraph 42.7 of the circular, in the manner as interpreted by the assessee, ought not be accepted, and that the tribunal has rightly referred to paragraph no.42.5 of the circular. It is accordingly his submission that all these proceedings be rejected as they do not give rise to any substantial question of law.

ANALYSIS

18. We have heard learned counsel for the parties. With their assistance, we have perused the record and the impugned orders, as also Circular No.19 of 2015 dated 27 November 2015 issued by the CBDT, which has been the primary bone of contention on behalf of the parties.

19. At the outset, it is not in dispute that the assessee is a co-operative bank registered under the Multi-State Co-operative Societies Act, 2002. It is thus a Multi-State Co-operative Society as defined under clause (p) of Section 3 of the Multi-State Co-operative Societies Act, 2002, which defines multi-state co-operative society as a society registered or deemed to be registered under the said Act and includes a national co-operative society and a federal co-operative society. The assessee has been granted a banking license by the Reserve Bank of India under Section 22(1) read with Section 56(o) of the Banking Regulation

Act, 1949, and is accordingly engaged in the banking business not only to cater to its members but also qua non members which includes co-operative societies. It also appears to be not in dispute that insofar as the payment of interest on deposits as made by the members of the assessee is concerned, the assessee has deducted tax on such amounts credited/paid to its members. The dispute however is, considering the provisions of Section 194A(3)(v), whether the assessee would be liable to deduct tax at source and deposit the same with the department on interest paid to its non-member co-operative societies. To examine the issue, it would be necessary to note the relevant provisions of the Act which stand attracted, namely, definition of co-operative society as defined under Section 2(19) and the provisions of Section 194A(3)(v):

> "**2(19)** "co-operative society" means a co-operative society registered under the Co-operative Societies Act, 1912 (2 of 1912), or under any other law for the time being in force in any State for the registration of co-operative societies."
>
> **Section 194A Interest other than "Interest on securities".**
>
> **(1) Any person, not being an individual or a Hindu undivided family, who is responsible for paying to a resident any income by way of interest other than income [by way of interest on securities], shall, at the time of credit of such income to the account of the payee" or at the time of payment thereof in cash or by issue of a cheque or draft or by any other mode, whichever is earlier, deduct income-tax thereon at the rates in force:**
>
> [**Provided** that an individual or a Hindu undivided family, whose total sales, gross receipts or turnover from the business or profession carried on by him exceed the monetary limits specified under clause (a) or clause (b) of Section 44AB during the financial year immediately preceding the financial year in which such interest is credited or paid, shall be liable to deduct income tax under this section.]
>
> [*Explanation*. For the purposes of this section, where any income by way of interest as aforesaid is credited to any account, whether called "Interest payable account" or "Suspense account" or by any other name, in the books of account of the person liable to pay such income, such crediting shall be deemed to be credit of such income to the account of

the payee and the provisions of this section shall apply accordingly.]

(2) [*Omitted by the Finance Act, 1992, w.e.f. 1-6-1992.*]

(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 sub-section (1) to the account of, or to, the payee, [does not exceed-

………

(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);]

(viia) 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;]

(emphasis supplied)

20. From a plain reading of the aforesaid provision, it is evident that any person, other than an individual or a Hindu Undivided Family, who is responsible for paying to a resident any income by way of interest, other than income by way of interest on securities, is required to deduct income tax thereon at the rates in force. Such deduction is to be made at the time of credit of such income to the account of the payee or at the time of payment thereof, whether in cash, by cheque, draft, or by any other mode, whichever is earlier. Sub-section (3) of the said provision carves out certain exceptions by providing that the

provisions of sub-section (1) shall not apply, *inter-alia,* to the payments specified in the various sub-clauses. In the present context, the relevant provision is sub-clause (v) of sub-section (3), which stipulates that the obligation to deduct tax under sub-section (1) of Section 194A shall not apply to income credited or paid by a co-operative society (other than a co-operative bank) to its members or to income credited or paid by one co-operative society to another co-operative society. The explanation below sub-clause (v) further provides that, for the purposes of this clause, the expression "co-operative bank" shall have the same meaning as assigned to it in Part V of the Banking Regulation Act, 1949. It is also relevant to note that sub-clause (viia) grants an exemption in respect of income credited or paid on 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. The same sub-clause also exempts income credited or paid on deposits (other than time deposits made on or after 1 July 1995) with a co-operative society, other than a co-operative society or bank referred to in sub-clause (a), engaged in the business of banking.

21. Considering the nature of the provision, we are in agreement with the assessee's contention that clause (v) of Section 194A(3) is required to be divided into two parts. The first part which is to the effect "**to such income credited or paid by a co-operative society (other than a co-operative bank) to a member thereof**", would pertain to interest credited or paid by a co-operative society, which is not a co-operative bank, to a member. In other words, if it is a co-operative bank, which credits the income to any member, such exemption would

not be available. Accordingly, this part of Section 194A(3)(v) is not the subject matter of consideration in the present proceedings, since there is no dispute that the assessee is a co-operative bank and, while crediting interest income to its members, it has been deducting tax at source.

22. The question is in regard to the second part of Section 194A(3)(v), which is to the effect "***to such income credited or paid by a co-operative society to any other co-operative society***". The assessee's contention is that the expression "co-operative society" as used in the second part of the provision includes the assessee, notwithstanding that it is a co-operative bank. According to the assessee, a co-operative bank, in law, does not cease to be a co-operative society. Therefore, the interest paid by the assessee to depositors that are co-operative societies, even though such depositors are not members of the assessee, would stand covered by the exemption under Section 194A(3)(v).

23. A careful reading of the provision reveals substance in the contentions as urged on behalf of the assessee. To appreciate such contentions as urged on behalf of the assessee, it is necessary to have a holistic reading of sub-clause (v) of Section 194A(3). The first part of the provision categorically excludes a co-operative bank in relation to income credited or paid by a co-operative society to its members. However, when we consider the second part, it becomes evident that the legislature has consciously refrained from referring to a "co-operative bank", which is explicitly included in the first part and making the provision applicable to all the co-operative societies, which include a co-operative bank.

The reason being that the inherent legal character of the co-operative bank to be a co-operative society does not in any manner stand extinguished or obliterated. The legislature in not excluding the co-operative banks in the second part has made such intention clear to grant the benefit to co-operative banks to remain exempted from the applicability of sub-section (1) of Section 194A. The sequel, therefore being where a co-operative bank pays interest to its non-members, the co-operative bank inherently being co-operative society, the exemption would undoubtedly apply. Consequently, by applicability of the second part of clause (v) of sub-section (3) [supra], a co-operative bank would not be under an obligation to deduct tax at source in making interest payments to non-member co-operative societies.

24. In the present case, the assessee has paid interest to co-operative societies which are not its members and, under its bye-laws, such societies cannot become members. Had the legislature intended to exclude co-operative banks from the scope of the second part of clause (v) of Section 194A(3), it could have done so by expressly excluding them, as it did in the first part. However, such exclusion has been kept away in the second part of clause (v), in other words, the intention of the legislature was to exclude the co-operative banks making payments of interest to non-member co-operative societies, then the wording of the second part would have been completely different or it would have been akin to the first part of clause (v).

25. Thus, if the contention as urged on behalf of the Revenue is to be accepted, namely, that clause (v) would include the deduction of tax at source by

co-operative banks, in the co-operative banks paying interest to their non-member co-operative societies, in such event, the provision would have read differently.

26. In interpreting a taxing statute, the Court cannot read or include such words, which the legislature has not incorporated and thereby change the purport and meaning of the provision, so as to bring about a different intention other than the intention as plainly reflected by the provision. In other words, the second part of clause (v) of Section 194A(3) cannot be read in the manner as urged by the Revenue so as to exclude the co-operative bank within the meaning of the 'Co-operative society', such interpretation would amount to the Court reading something completely alien to the plain language of clause (v). This, in our opinion, is the plain consequence as brought about by Section 194A(3)(v).

27. The aforesaid interpretation as discerned on a strict reading of the provision, also stands fortified in the CBDT applying its mind, when it issued Circular No.19 of 2015 dated 27 November 2015, being the "explanatory notes to the provisions of the Finance Act, 2015", wherein, in paragraph 42 of the said circular dealing with rationalisation of provisions relating to deduction of tax on interest (other than interest on securities), the following has been provided in relation to exemption from deduction of tax in respect of interest payments by a co-operative society, *inter alia,* in the context of interest payment by a co-operative society to its non-members and as specifically set out in paragraph 42.7. It would be necessary to note the contents of paragraph 42 of the said circular along with the sub-paragraphs so as to appreciate paragraph 42.7 thereof, in

regard to the clear purport as attributed to the second part of clause (v) of Section 194A(3), to include a co-operative bank within the meaning of a co-operative society being not obligated to deposit tax deducted at source, in making payment of interest to its non-members co-operative societies. Paragraph 42 along with sub-paragraphs is required to be noted, which read thus:-

> "**42. Rationalisation of provisions relating to deduction of tax on interest (other than interest on securities)**
>
> **42.1 Section 194A(1) read with section 194A(3)(i) of the Income-tax Act provides 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 cooperative society. [Section 194A(3](v) of the Income-tax 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)(viia) (a) of the Income-tax 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)(viia) (a) of the Act. [Section 194A(3) (viia)(b) of the Income-tax Act]
>
> **42.2 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 Income-tax 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.**
>
> 42.3 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 Income-tax 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 Income-tax Act makes no distinction between members and non-members of cooperative 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 Income-tax Act. This is because the specific provision of tax deduction provided under section 194A(3) (i) (b) and 194A(3) (viia)(b) of the Income-tax Act for cooperative 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 Income-tax Act.

42.4 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 Income-tax 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 is also applicable for payment of interest to member depositors.

42.5 In view of this, the provisions of the section 194A(3)(v) of the Income-tax Act have been amended so as to expressly provide 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 Income-tax Act shall not apply to the payment of interest on time deposits by the co-operative banks to its members. As this amendment is effective from the prospective date of 1st June. 2015. the co-operative bank shall be required to deduct tax from the payment of interest on time deposits of its members, on or after the 1st June, 2015. Hence, a cooperative bank was not required to deduct tax from the payment of interest on time deposits of its members paid or credited before 1st June, 2015.

42.6 However, the existing exemption provided under section 194A(3)(viia)(a) of the Income-tax Act to primary agricultural credit society or a primary credit society or a cooperative land mortgage bank or a co-operative land development bank from deduction of tax in respect of interest paid on deposit shall continue to apply. Therefore, these cooperative credit societies/banks referred to in said clause (viia)(a) of section 194A(3) of the Income-tax Act shall not be required to deduct tax on interest payment to depositors even after the said amendment.

42.7 Further, the existing exemption provided under section 194A(3)(v) of the Income-tax Act from deduction of tax from interest paid by a co-operative society to another co-operative society shall continue to apply to the co-operative bank and, therefore, à co-operative bank shall not be required to deduct tax from the payment of interest on time deposit to a depositor, being a co-operative society."

(emphasis supplied)

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28. Thus, the CBDT has clarified that the existing exemption under Section 194A(3)(v) of the Act from the deduction of tax on interest paid by one co-operative society to another co-operative society continues to apply to co-operative banks. Consequently, a co-operative bank is not required to deduct tax at source on interest paid on time deposits where the depositor is a co-operative society. There can be nothing clearer than what has been set out in paragraph 42.7 by the CBDT circular, which fully supports the contention as urged on behalf of the assessee.

29. However, it appears that surprisingly, the effect required to be given to the plain applicability of clause (v) of Section 194A(3), as stipulated by the CBDT in the said circular, has been completely misconstrued and/or overlooked by the Tribunal, inasmuch as the Tribunal has failed to apply its mind to the specific effect brought about by the clarification issued by the CBDT in paragraph 42.7, it has instead chosen to emphasize the applicability of clause 42.5 while making the following observations:-

> "7. We have considered the rival submissions and perused the record of the case. It is seen that the assessee is an urban cooperative bank and was enjoying the exemption from payment of tax at source on interest paid on the deposits. However, vide Finance Act, 2015 w.e.f. 1.6.2015, same has been withdrawn and sub-clause (v) of sub-section (3) of Section 194A has been amended whereby it has been specifically inserted that the cooperative banks are not eligible for this exemption. Further, in the memorandum explaining the provisions, this issue has been dealt with and the relevant clause 42 of Finance Act 2015 relating to this has clarified the position that this amendment is applicable prospectively w.e.f. 01.06.2015. The relevant clause is reproduced as Rationalisation of provisions relating to deduction of tax on interest (other than interest on securities)

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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)(viia)(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)(viia)(a) of the Act. [Section 194A(3)(viia)(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 rational 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............"

6.2 The Ministry of Finance, Government of India vide Circular No.19/2015 in F.No.142/14/2015-TPL, has held that the Co- operative Banks are not required to deduct tax at source on time deposits of its members paid or credited on or before 1.6.2015. The relevant portion of the circular reads as under:

"42.5 In view of this, the provisions of the section 194A(3)(v) of the Income-tax Act have been amended so as to expressly provide 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 Income-tax Act shall not apply to the payment of interest on time deposits by the co-operative banks to its members. As this amendment is effective from the prospective date of 1st June, 2015, the co-operative bank shall be required to deduct tax from the payment of interest on time deposits of its members, on or after the 1st June, 2015. Hence, a cooperative bank was not required to deduct tax from the payment of interest on time deposits of its members paid or credited before 1st June, 2015."

7.1 From the above clarification issued by the CBDT, it is very clear that cooperative banks are required to deduct tax on interest on time deposits paid or credited to its members only on or after 1st June, 2015. A plain reading of the provisions of Section 194A(3)(i)(b) clearly indicates that exemption for interest paid by co-operative society engaged in banking business is exempt from deduction of tax at source up to an amount of Rs.10,000/-. Therefore, exemption for interest is up to Rs 10,000/-. Thus, we can see a threshold limit of Rs 10,000/- has been prescribed by the said provision, meaning any interest disbursal above Rs 10,000/- attracts TDS. The ld. AR's contention that since section 194A(3)(v) exempt any interest paid by co-operative society to its members irrespective of nature of deposit or amount, the action of the assessee society engaged in banking, not to deduct Tax at source is valid, is according to us not correct and it may be noted that section 194A(3)(v) is a general provision which encompasses with it co-operative society as a whole.”

(emphasis supplied)

30. We are, thus, not in agreement with the aforesaid observations of the Tribunal, for the reason that, in the second part (supra) of clause (v) of Section 194A(3), the legislature has neither circumscribed nor restricted the exemption

intended to be granted to co-operative societies in general, including to the co-operative banks. As noted hereinabove, the legislature has consciously refrained from using the words “co-operative bank” in the second part of sub-clause (v) of Section 194A(3). Accordingly, it cannot be contended that the legislature in the same breath, was unaware of its intention, when, in the first part of clause (v), it specifically excluded co-operative banks, while, at the same time, extending the exemption in respect of income credited by a co-operative society to a member by a co-operative society under the second part of clause (v). A similar intention of the legislature can also be discerned from the reading of clause (viia) of Section 194A(3), which pertains to income credited or paid in respect of deposits with a primary agricultural credit society, a primary credit society, a co-operative land mortgage bank, or a co-operative land development bank.

31. The aforesaid discussion, in our opinion, would reflect on the intention of the legislature, which is also clear in the CBDT Circular (particularly paragraph 42.7) and clearly brings about the position that, in respect of interest credited by a co-operative bank to its non-member co-operative societies, the provisions relating to deduction of tax at source are not applicable. However, at the same time, under the first part of clause (v) of Section 194A(3), there is an obligation on a co-operative bank to deduct and deposit tax at source in accordance with the provisions of sub-section (1) of Section 194A(3). Thus, the Tribunal is not correct in holding that the second part of clause (v) of Section 194A(3) operates on the same footing as the first part of clause (v). This constitutes the legal fallacy in the Tribunal’s reasoning, as the observations made therein are also without due

consideration of the relevant provisions of the CBDT Circular, namely paragraph 42.7 (supra) thereof.

32. In such context, Mr. Mistri, learned Senior Counsel for the assessee, has drawn our attention to a decision of the Kerala High Court in the case "**Kaipuzha Service Co-operative Bank Ltd. & Ors. vs. The Commissioner of Income Tax (TDS) & Ors.**, wherein a similar view was taken by the Kerala High Court and has conceded on behalf of the Revenue. The relevant extract of the said judgment reads thus:

> " The petitioners are Primary Agricultural Credit Society registered under the provisions of the Kerala Co-operative Societies Act. In the writ petition, the petitioners are aggrieved by Exts. P1 and P3 communications received from the General, Kottayam District Co-operative Bank, intimating them, based on the advice received from the Income Tax Department, that the interest payable to them on the Fixed Deposits maintained with the Bank is not exempt from the procedure for tax deduction at source (TDS) and that tax would be deducted at source and remitted to the Government on such interest payments. It is the case of the petitioners that the interest income accruing to it is from the deposits made by the petitioners with the Kottayam District Co-operative Bank and hence, as per the provisions of Section 194A(3)(v), the provisions of sub section (1) thereof, which contemplate a deduction of tax at source would not apply in cases where the income is paid by a Co-operative Society to any other Co-operative Society. It is the case of the petitioner that the payment of interest from the Kottayam District Co-operative Bank to the petitioners have to be viewed as a payment of income by a Co-operative Society to another Co-operative Society and hence, the provisions of Section 194A(3)(v) would apply to exclude the receipts of interest income by the petitioners from the requirement of tax deduction at source.
>
> Through a statement filed by the learned Standing Counsel appearing on behalf of the 1st respondent, it is conceded that the petitioners would get the benefit of the exemption provided under Section 194A(3)(v) of the Income Tax Act. Taking note of the statement, I allow the writ petition by declaring that there will be no requirement of deducting tax at source in the case of payment of interest from the District Co-operative Bank Kottayam to the petitioners."

33. As to whether there is any distinction between a co-operative society

engaged in the co-operative banking business and a co-operative bank, was the issue for consideration of the Division Bench of the Madras High Court in **Coimbatore District Central Co-operative Bank Ltd. Vs. Income-tax Officer, TDS Ward I(5), Coimbatore**[2]. In such context the Court considering the provisions of the Banking Regulation Act, 1949 as also the Act and also the provisions of other ancillary laws, held that none of the State or Central enactments such as Tamil Nadu Co-operative Societies Act 1983, Banking Regulation Act 1949, Reserve Bank of India Act, 1934, National Bank for Agriculture and Rural Development Act, 1981, make any distinction in co-operative society engaged in carrying on banking business and a co-operative bank. The relevant observations in that regard are required to be noted, which read thus:

> "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 (viia) 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

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> Co-operative Societies Act, 1912, which in any case has no application to the societies registered in terms of the State enactments."

34. The aforesaid observations of the Madras High Court would support the view which we have taken in regard to the intention of the legislation as reflected in the plain language of Clause (v) of Section 194A(3) of the Act.

35. In concluding the aforesaid discussion, we need to also delve on another issue namely of the Assessing Officer's reference to the provisions of Section 80P(2)(d) of the Act. In our opinion, such reference in the context of the applicability of Section 194A(1) read with sub-section (3)(v) was not an acceptable course of action, inasmuch as Section 80P is a provision which stipulates a deduction in respect of income of co-operative societies. Hence, Section 80P operates at the stage of assessment, so as to determine the final tax liability of a payee society receiving interest amount. On the other hand, Section 194A(1) operates at the transactional stage and governs the discharge of the obligation to deduct tax at source. Thus, the applicability of Section 194A(1) is certainly not controlled by the operation of Section 194A(3)(v) which creates a self operating mechanism when the provisions of sub-section (1) would not be made applicable in specific cases as specified under sub-section (3). Thus, Section 80P and Section 194A operate distinctly. They have a different effect. Thus, to read the effect of Section 80P(2)(d) which is in respect of any income by way of interest or dividends derived by a co-operative society from its investment in any other co-operative society has a different application and legal character, than an obligation of a co-operative society in terms of what has been provided

under Section 194A(1) read with sub-section (3)(v) as in the present context. Thus, the Assessing Officer's approach of intermixing the effect of these two provisions, in our opinion, was not well-founded.

36. In the light of the above discussion, the appeals deserve to be allowed in terms of the following order:-

> "(I) The impugned judgment and order passed by the Tribunal is quashed and set aside.
>
> (II) The substantial questions of law are answered in the following terms:
>
> > (a)The Assessee is held entitled to an exemption from deduction of tax at source under the provisions of sub-section (3)(v) of Section 194A qua the interest amounts paid to its depositors / non-member co-operative societies.
> >
> > (b) Consequent to the aforesaid, the assessee cannot be held to be an assessee-in-default under Section 201(1) read with Section 201(1A) of the Income Tax Act, 1961.
>
> (III) The Appeals stand allowed in the aforesaid terms. No costs.

(AARTI SATHE, J.) **(G. S. KULKARNI, J.)**

P. V. Rane