

**IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN**

Before Shri Chandra Poojari, AM & Shri George George K, JM

ITA No.117/Coch/2019 : Asst.Year 2014-2015

The Income Tax Officer Ward - 2(1) Trivandrum.	Vs.	M/s.Kerala Gazetted Officers Co-operative Society Limited Vazhuthacaud, Thycaud Trivandrum - 695 014. PAN : AACAK6865C.
(Appellant)		(Respondent)

Appellant by : Smt.A.S.Bindhu, Sr.DR

Respondent by : Sri. Anil D.Nair

Date of Hearing : 09.05.2019	Date of Pronouncement : 16.05.2019
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ORDER

Per George George K, JM

This appeal at the instance of the Revenue is directed against the CIT(A)'s order dated 10.12.2018. The relevant assessment year is 2014-2015.

2. The solitary issue raised is whether the interest income earned by the assessee from banks and sub-treasuries is eligible for deduction u/s 80P(2)(a(i) of the I.T.Act?

3. Brief facts of the case are as follows:

The assessee is a co-operative Society engaged in the business of banking. For the assessment year 2014-2015, the return of income was filed on 15.06.2015. The gross total income for the assessment was declared as `Nil', after

claiming deduction u/s 80P of the I.T.Act. The assessment u/s 143(3) of the I.T.Act was completed vide order dated 28.12.2016. In the said assessment order, interest income received by the assessee-society from banks and treasuries were held to be income from other sources, thereby denying the benefit of deduction u/s 80P(2)(a)(i) of the I.T.Act.

4. Aggrieved by the assessment denying the benefit of deduction in respect of interest income received, the assessee preferred an appeal to the first appellate authority. The CIT(A) decided the issue in favour of the assessee by holding that the interest income received by the assessee should be assessed as 'income from business' and not 'income from other sources'. The CIT(A) relied on the co-ordinate Bench order of the Tribunal in the case of *Kizhathadiyoor Service Co-operative Bank Limited in ITA No.525/Coch/2014* (Order dated 20.07.2016).

5. Revenue being aggrieved by the order of the CIT(A), has filed the present appeal before the Tribunal raising the following grounds:-

"1. The Learned Commissioner of Income tax (Appeals), Trivandrum erred in concluding that "the interest income earned by the appellant from other Banks and Treasury is eligible for deduction u/s 80P(2)(a)(i) the Act.

2. The present appeal involves substantial question of law and whether on the facts and in the circumstances of the case, the order of CIT(A) is correct in not duly considering:

(i) that Trivandrum District Cooperative Bank Ltd, Kerala State Co-operative Bank Ltd and State Bank of Travancore are apex banks and not co-operative Society and cannot be equated with PACs or PCARDB ix] s 80P(4) r w s 80P?

(ii) that the interest income received from deposits made with banks cannot be attributable as profit and gains from out of providing credit facilities to its members u/s 80P(2)(a)(i)?

(iii) that the assessee has invested surplus funds like an ordinary investor and it has to be taxed as income from other sources?

(iv) the decision of the Apex Court in the case of M/s Totgars Co-operative Sales Society in 322 ITR 283.

3. For these and other grounds that may be advanced at the time of hearing the order of the learned Commissioner of Income-tax (Appeals), Trivandrum on the above points may be set aside and that of the Assessing Officer restored."

6. The learned Departmental Representative relied on the grounds. On the other hand, the learned AR submitted that the issue in question is squarely covered in favour of the assessee by the co-ordinate Bench order of the Tribunal in the case of *Kizhathadiyoor Service Co-operative Bank Limited (supra)*.

7. We have heard the rival submissions and perused the material on record. The assessee had made investments in the course of banking activities and such interest income was received on investments made with co-operative banks and

other scheduled banks. The co-ordinate Bench order of the Tribunal in the case of *Kizhathadiyoor Service Co-operative Bank Limited (supra)* had held that such interest income received should be assessed as 'income from business' instead of 'income from other sources'. In view of the co-ordinate Bench order of the Tribunal, we hold that the CIT(A) is justified in holding that interest income received should be assessed as 'income from business'. However, as regards the grant of deduction u/s 80P of the I.T.Act on such interest income, the Assessing Officer shall follow the law laid down by the Larger Bench of the Hon'ble jurisdictional High Court in the case of *The Mavilayi Service Co-operative Bank Ltd. V. CIT [ITA No.97/2016 order dated 19th March, 2019]* and examine the activities of the assessee-society before grant of deduction u/s 80P of the I.T.Act. It is ordered accordingly.

8. In the result, the appeal filed by the Revenue is allowed for statistical purposes.

Order pronounced on this 16th day of May, 2019.

Sd/-
(Chandra Poojari)
ACCOUNTANT MEMBER

Sd/-
(George George K.)
JUDICIAL MEMBER

Cochin ; Dated : 16th May, 2019.
Devdas*

Copy of the Order forwarded to :

1. The Appellants
2. The Respondent.
3. The CIT (Appeals) Thiruvananthapuram.
4. The Pr.CIT Thiruvananthapuram.
5. DR, ITAT, Cochin
6. Guard file.

BY ORDER,

(Asstt. Registrar)
ITAT, Cochin