

IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN
BEFORE S/SHRI CHANDRA POOJARI, AM & GEORGE GEORGE K., JM

ITA Nos. 107 & 108/Coch/2020 & S.P. Nos. 102&103/Coch/2020
Assessment Years: 2010-11 & 2011-12

M/s. Valuvally Service Co-operative Bank Ltd., Valuvally, North Paravur, Koonammavu P.O., Aluva-683 518. [PAN:AAAAY 9909J]	Vs.	The ITO Ward-3, Aluva
(Assessee -Appellant)		(Revenue-Respondent)

Assessee by	Shri Sherin, CA
Revenue by	Shri Mritunjaya Sharma, Sr. DR

Date of hearing	08/07/2020
Date of pronouncement	08 th /07/2020

ORDER

Per GEORGE GEORGE K.,JM

These two appeals at the instance of the assessee are directed against the different orders of the CIT(A), Kochi-2, dated 19/12/2019 and 20/12/2019. The relevant assessment years are 2010-11 and 2011-12. The assessee has also filed Stay Petitions seeking stay of recovery of outstanding tax arrears for both the assessment years.

2. The assessee has raised common grounds in both the appeals with regard to reopening of assessments u/s. 147 of the I.T. Act as well as on merits that the

CIT(A) has erred in confirming the disallowance of claim of deduction u/s. 80P of the I.T. Act. The Ld. AR submitted that notice u/s. 148 of the I.T. Act was issued beyond four years and satisfaction of Joint CIT is not seen recorded for re-opening of the assessments, thereby violating the requirement u/s. 151(2) of the I.T. Act. The Ld. AR relied on the judgment of the Hon'ble Apex Court in the case of Aquatic Remedies P. Ltd 113 taxmann.com 451. As regards the issue on merits, the Ld. AR submitted that the assessee is a primary agricultural credit society and not a co-operative bank, therefore, it was entitled to deduction u/s.80P(2) of the I.T. Act. Further, it was submitted that the assessee being a co-operative society, operating for the betterment and benefit of its members through mutual aid, it is governed by the principles of mutuality and hence not taxable.

3. The Ld. DR on the other hand submitted that the issue of validity of re-opening of assessments was not the subject matter of adjudication before the income tax authorities, hence, ITAT cannot consider the plea of the assessee. As regards the issue on merits, the Ld. DR submitted that the assessee is essentially doing business of banking and is not a co-operative society but a co-operative bank. Further, the Ld. DR, as regards principles of mutuality submitted that the issue was not raised before the Assessing Officer nor before the CIT(A).

4. We have heard the rival contentions and perused the material on record. With regard to the validity of re-opening of the assessments, we notice that the assessee has not raised the issue before the Assessing Officer nor before the CIT(A) .

However, the issue is purely a legal issue which does not require an examination of fresh facts and goes to the root of the matter. Therefore in the interest of justice and equity, we are of the view that the matter needs to be examined by the CIT(A). As regards the issue on merits, the claim of deduction u/s. 80P and the principles of mutuality, we notice that the CIT(A) has only considered the issue that the assessee is a primary agricultural co-operative society or a co-operative bank. The contention that the assessee is governed by the principles of mutuality, goes to the root of the matter. Hence we direct the CIT(A) to consider this issue as well. For the above purpose, the grounds raised before the Tribunal in ITA Nos. 107/Coch/2020 and 108/Coch/2020 are restored to the files of the CIT(A). The CIT(A) shall afford reasonable opportunity of hearing to the assessee and shall dispose of the matter as expeditiously as possible. The assessee shall co-operate with the CIT(A) in furnishing the necessary documents and shall not seek unnecessary adjournment. It is ordered accordingly.

5. Since we have remitted the appeals in ITA Nos.107&108/Coch/2020 to the file of the CIT(A) for fresh consideration, Stay Petitions filed by the assessee in S.P. Nos. 102 &103/Coch/2020 have become infructuous and are dismissed as such.

I.T.A. Nos. 107&108/Coch/2020
& S.P. Nos. 102&103/Coch/2020

6. In the result, the appeals filed by the assessee are allowed for statistical purposes and the Stay Petitions filed by the assessee are dismissed as infructuous.

Order pronounced in the open court on 8th July,2020.

sd/-
(CHANDRA POOJARI)
ACCOUNTANT MEMBER

sd/-
(GEORGE GEORGE K.)
JUDICIAL MEMBER

Place: Kochi

Dated: 8th July, 2020

GJ

Copy to:

1. M/s. Valuvally Service Co-operative Bank Ltd., Valuvally, North Paravur, Koonammavu P.O., Aluva-683 518.
2. The ITO, Ward-3, Aluva
3. The Commissioner of Income-tax(Appeals), Kochi-2.
4. The Pr. Commissioner of Income-tax, Kochi.
5. D.R., I.T.A.T., Cochin Bench, Cochin.
5. Guard File.

By Order

(ASSISTANT REGISTRAR)
I.T.A.T., Cochin