

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

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

ITA Nos. 73 to 76/Coch/2021

(Assessment Years: 2008-09, 2009-10, 2014-15 & 2017-18)

M/s Panayal Service Co-
Operative Bank Ltd.
Panayal, Kasaragod 671318

Income Tax Officer
Ward - 2
Vs. Panayal, Kasaragod 671318

PAN – AAAAP6315Q

Appellant

Respondent

Appellant by: Shri Arun Raj, Advocate
Respondent by: Smt. J.M. Jamuna Devi, Sr. D.R.

Date of Hearing: 08.11.2021
Date of Pronouncement: 08.11.2021

ORDER

Per: Bench

These appeals are filed by the assessee against the orders of the learned CIT(A), Kozhikode in appeal No. ITA Nos. 10267/2016-17, 11247/2016-17, 11241/2016-17 & 11331/2019-20 dated 17.09.2020 for AYs 2008-09, 2009-10, 2014-15 & 2017-18.

2. The assessee is a Primary Agricultural Credit Co-operative Society registered under Kerala Cooperative Act. The assessee has filed its return of income claiming deduction under Section 80P. The same came to be denied on the ground that the assessee had not fulfilled the primary object of a Credit Society in so far as it was not providing financial accommodation to its members for agricultural purposes or for purposes connected with agricultural activities.

3. On appeal the learned CIT(A), following the decision of the Full Bench of the Hon'ble Kerala High Court in the case of The Mavilayi Service Co-operative Bank Ltd. reported in 414 ITR 67, upheld the denial of deduction under Section 80P.

4. Shri Arun Raj, Advocate appeared on behalf of the assessee and Smt. J.M. Jamuna Devi, Sr. D.R. appeared on behalf of Revenue.

5. On further appeal before the Tribunal it was submitted by the learned A.R. that the decision of the Full Bench of the Hon'ble Kerala High Court in the case of The Mavilayi Service Co-operative Bank Ltd. (supra) had been set aside by the Hon'ble Supreme Court in Civil Appeal Nos. 7343 to 7350 of 2019 dated 12th January, 2021 wherein the Hon'ble Supreme Court in paras 45 to 48 had held as under: -

*"45. To sum up, therefore, the ratio decidendi of **Citizen Cooperative Society Ltd.** (supra), must be given effect to. Section 80P of the IT Act, being a benevolent provision enacted by Parliament to encourage and promote the credit of the co-operative sector in general must be read liberally and reasonably, and if there is ambiguity, in favour of the assessee. A deduction that is given without any reference to any restriction or limitation cannot be restricted or limited by implication, as is sought to be done by the Revenue in the present case by adding the word "agriculture" into Section 80P(2)(a)(i) when it is not there. Further, section 80P(4) is to be read as a proviso, which proviso now specifically excludes co-operative banks which are co-operative societies engaged in banking business i.e. engaged in lending money to members of the public, which have a licence in this behalf from the RBI. Judged by this touchstone, it is clear that the impugned Full Bench judgment is wholly incorrect in its reading of **Citizen Cooperative Society Ltd.** (supra). Clearly, therefore, once section 80P(4) is out of harm's way, all the assessees in the present case are entitled to the benefit of the deduction contained in section 80P(2)(a)(i), notwithstanding that they may also be giving loans to their members which are not related to agriculture. Also, in case it is found that there are instances of loans being given to non-members, profits attributable to such loans obviously cannot be deducted. 46. It must also be mentioned here that unlike the Andhra Act that **Citizen Cooperative Society Ltd.** (supra) considered, 'nominal members' are 'members' as defined under the Kerala Act. This Court in **U.P. Cooperative Cane Unions' Federation Ltd., Lucknow v. Commissioner of Income Tax, Lucknow-I** (1997) 11 SCC 287 referred to section 80P of the IT Act and then held:*

"8. The expression "members" is not defined in the Act. Since a cooperative society has to be established under the provisions of the law made by the State Legislature in that regard, the expression "members" in Section 80-P(2)(a)(i) must, therefore, be construed in the context of the provisions of the law enacted by the State Legislature under which the cooperative society claiming exemption has been formed. It is, therefore, necessary to construe the expression "members" in Section 80-P(2)(a)(i) of the Act in the

light of the definition of that expression as contained in Section 2(n) of the Cooperative Societies Act. The said provision reads as under:

"2. (n) 'Member' means a person who joined in the application for registration of a society or a person admitted to membership after such registration in accordance with the provisions of this Act, the rules and the bye-laws for the time being in force but a reference to 'members' anywhere in this Act in connection with the possession or exercise of any right or power or the existence or discharge of any liability or duty shall not include reference to any class of members who by reason of the provisions of this Act do not possess such right or power or have no such liability or duty;"

Considering the definition of 'member' under the Kerala Act, loans given to such nominal members would qualify for the purpose of deduction under section 80P(2)(a)(i). 47. Further, unlike the facts in **Citizen Cooperative Society Ltd.** (supra), the Kerala Act expressly permits loans to non-members under section 59(2) and (3), which reads as follows:

"59. Restrictions on loans.- (1) A society shall not make a loan to any person or a society other than a member:

Provided that the above restriction shall not be applicable to the Kerala State Co-operative Bank.

Provided further that, with the general or special sanction of the Registrar, a society may make loans to another society.

(2) Notwithstanding anything contained in sub-section (1), a society may make a loan to a depositor on the security of his deposit.

(3) Granting of loans to members or to non-members under sub-section (2) and recovery thereof shall be in the manner as may be specified by the Registrar."

*Thus, the giving of loans by a primary agricultural credit society to nonmembers is not illegal, unlike the facts in **Citizen Cooperative Society Ltd.** (supra).*

48. Resultantly, the impugned Full Bench judgment is set aside. The appeals and all pending applications are disposed of accordingly. These appeals are directed to be placed before appropriate benches of the Kerala High Court for disposal on merits in the light of this judgment."

It was the submission that in view of the decision of the Hon'ble Supreme Court in the case of The Mavilayi Service Co-operative Bank Ltd. (supra) the assessee is now entitled to deduction under Section 80P of the Act.

6. In reply the learned D.R. vehemently supported the orders of the Assessing Officer and the learned CIT(A). It was the submission that the assessee has also violated the principles laid down by the Hon'ble Supreme

Court in the case of Citizen Co-operative Society Ltd. and does not pass the litmus test for mutuality.

7. We have considered the rival submissions. A perusal of the decision of the Hon'ble Supreme Court in the case of The Mavilayi Service Co-operative Bank Ltd. (supra) clearly shows that the Hon'ble Supreme Court has set aside the decision of the Full Bench of the Hon'ble Kerala High Court in the case of The Mavilayi Service Co-operative Bank Ltd. (supra). The Hon'ble Supreme Court has also further explained the decision in the case of Citizen Co-operative Society Ltd. in so far as the deduction that is given without any reference to any restriction or limitation cannot be restricted or limited by implication. In the circumstances in respectful obedience to the principles laid down by the Hon'ble Supreme Court in the case of The Mavilayi Service Co-operative Bank Ltd. (supra) the AO is directed to grant the assessee the benefit of deduction under Section 80P as claimed.

8. In the result, the appeals filed by the assessee are allowed.

Dictated and pronounced in the open Court on 8th November, 2021.

Sd/-
Chandra Poojari
Accountant Member

Sd/-
(George Mathan)
Judicial Member

Cochin, Dated: 8th November, 2021

Copy to:

1. The Appellant
2. The Respondent
3. The CIT(A) -Kozhikode
4. The Pr.CIT - Kozhikode
5. The DR, ITAT, Cochin
6. Guard File

By Order

//True Copy//

Assistant Registrar
ITAT, Cochin

n.p.