

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

**Before Shri George George K., Judicial Member and  
Shri Laxmi Prasad Sahu, Accountant Member**

**ITA Nos. 69 & 70/Coch/2022**  
(Assessment Years: 2016-17 & 2017-18)

Kozhikode Jilla Electricity Board Employees Sahakana Sangam Gandhi Road Calicut	Vs.	The Income Tax Officer Ward - 1(2) Kozhikode
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PAN – AACAK8357K

**Appellant**

**Respondent**

Appellant by: None  
Respondent by: Smt. J.M. Jamuna Devi, Sr. D.R.

Date of Hearing: 27.06.2022  
Date of Pronouncement: 30.06.2022

**ORDER**

**Per: L.P. Sahu, A.M.**

These are appeals filed by the assessee against the orders of the learned CIT(A), NFAC, Delhi dated 15.12.2021 and 07.12.2021 for AY 2016-17 and 2017-18 respectively on the following identical grounds of appeal: –

*“A: The order of the learned Assessing Authority as well as the first appellate authority are both wrong, contrary to law, facts and circumstances of the case.*

*B: The appellate order is liable to be set aside for the reason that the same has been passed without a personal hearing and hence violates all principles of natural justice. It is submitted that the Faceless Appeal Scheme itself is under challenge before the various High Courts and therefore the Centre should not have taken up and disposed off the impugned appeal.*

*C: That there has been no application of mind in the matter of disposing the appeal is clear from the fact that even grounds "not raised" in the appeal memorandum - aspects which have been already considered and allowed by the Assessing Authority has*

been "considered and finding entered" by the appellate authority.

D.1: The Assessing Authority erred in holding that the appellants were not entitled to deduction - under Sec. 80P of the Act - on the interest received on deposits of reserve funds for meeting statutory obligations made with other Co:Operative Banks in compliance with the terms of the Kerala Co:Operative Societies Act. The appellate authority erred in upholding the disallowance.

D.2: The authorities below erred in placing reliance on the judgment of the Hon'ble Supreme Court in TOTGAR'S COOPERATIVE SALE SOCIETY LTO Vs. ITO where the facts are entirely different. In fact the Court was dealing with a situation where the "sale proceeds of members whose produce was marketed by the Society were invested in interest-earning investments" whereas in the case of the Appellant, the entity was a "credit society" and what was deposited was funds required to be so deposited by virtue of the provisions of the Act under which the Society itself was created. The authorities below ought to have, in this regard, considered the various judgments of Karnataka High Court as well as other High Courts which were specifically brought to their attention.

D.3: The authorities below ought to have considered the claim of deduction in respect of interest received in the light of Sec. 80P[2][d] of the Act which covers interest income received on investments held with other cooperative society and that Sec. 80P[4] would not alter the situation and e claim u/s 80P[2][d]- bearing in mind the definition of the term "co-opera! e society" u/s 2[19 of the Act.

O.4: The authorities ought to have noted the following observations of the Hon'ble Supreme Court in THE MAVILAYI SERVICE CO:OPERATIVE BANK LTD. & Ors Vs. CIT [Ca 7343-7350 OF 2019 OT. 12.01.2021] and held that when read liberally and reasonably the Appellants were entitled to deduction u/s 80P[2][d] of the Act on the interest received:

**"Sec. 80P of the IT Act, being a benevolent provision enacted by the 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."**

E: Alternatively, when the Assessing authority had chosen to levy tax on the interest received under the head "Income from Other Sources" covered by Sec. 56 of the Act, he should have granted deduction for the expenditure incurred in "mobilizing the deposits" viz. interest paid to depositors. The appellate authority erred in rejecting this contention.

*It is therefore prayed that the impugned assessment order may be set aside."*

2. At the time of hearing it was found that the assessee learned A.R. has filed an application dated Nil for adjournment stating that due to personal inconvenience he is unable to appear on 27.06.2017. The adjournment application is rejected and the appeal is heard ex-parte qua the assessee.

3. From the grounds of appeal it has been observed that the CIT(A) has violated the principles of natural justice. We further observed that the assessee is co-operative society registered under the Kerala Societies Registration Act, 1969 on 25.08.2007 with the primary objective of the society to give credit facilities to its members. During the impugned assessment year the assessee received interest from deposits made in Kozhikoe Co-operative Bank Ltd. which are also included in the gross total income of the assessee and claimed deduction under Section 80P of the Income Tax Act, 1961 (hereinafter "the Act"). The Assessing Officer observed that the assessee is not liable to claim deduction under Section 80P of the Act on interest received from Kozhikode District Co-operative Bank Ltd. Accordingly the assessee is not eligible to claim deduction under Section 80P(2)(a)(i) and 80P(2)(d) of the Act. Against this order of the Assessing Officer the assessee preferred appeal before the learned CIT(A). The learned CIT(A) has confirmed the order of the AO.

4. We observe that in many cases the ITAT Cochin Bench has decided the issue in favour of the assessee. Therefore we think it fit to remit the issue back to the file of the CIT(A) for reconsideration of the deduction claimed by the assessee on the interest received. The assessee is directed produce necessary documentary evidences to substantiate his case. Needless to say that assessee should be provided reasonable opportunity of being heard before deciding the issue.

5. In the result, the appeals filed by the assessee are allowed for statistical purposes.

Dictated and pronounced in the open Court on 30<sup>th</sup> June, 2022.

Sd/-  
**(George George K.)**  
Judicial Member

Sd/-  
**(Laxmi Prasad Sahu)**  
Accountant Member

Cochin, Dated: 30<sup>th</sup> June, 2022

Copy to:

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

*By Order*

//True Copy//

*Assistant Registrar*  
*ITAT, Cochin*

n.p.