

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

**BEFORE SHRI. CHANDRA POOJARI, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER**

ITA No. 557/Coch/2022 & S.A. No. 39/Coch/2022 (in ITA No. 557/Coch/2022) Assessment Year : 2016-17

<p>M/s. Kerala State Cooperative Agricultural and Rural Development Bank Ltd., KASCARD Building, Post Box No. 56, Stature Jn., Thiruvananthapuram, Kerala – 695 001. PAN: AAAAK4391F</p> <p style="text-align: center;">APPELLANT</p>	Vs.	<p>The Assistant Commissioner of Income Tax, Circle – 2(1), Trivandrum.</p> <p style="text-align: center;">RESPONDENT</p>
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Assessee by	:	Shri Jose Jacob, Adv
Revenue by	:	Smt J M Jamuna Devi, Sr. AR

Date of Hearing	:	14-09-2022
Date of Pronouncement	:	14-09-2022

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER

Present appeal is filed by assessee against order dated 16/12/2019 passed by Ld.CIT(A), Trivandrum for A.Y. 2016-17 on following grounds of appeal:

"1. Denial of deduction claimed under section 80P(2)(a)(i) of the Income tax Act, 1961 ("the Act") amounting to Rs. 136,95,37,265

a. On the facts and in the circumstances of the case, the Commissioner of Income-tax (Appeals), Thiruvananthapuram ("CIT(A)") has erred in confirming the disallowance of deduction claimed by the Appellant under section 80P(2)(a)(i) amounting to Rs. 136,95,37,265 and restricting the deduction under section 80P only to the extent of profits earned by the Appellant from the "Land Development Bank" without considering the fact that the Appellant is a Co-operative Society registered under the Kerala Co-operative Societies Act, 1969 and is in the business of providing credit facilities to its members not as a co-operative bank, but as a credit institution and a co-operative society by virtue of its nature of business of providing credit facilities to its members. The CIT(A) has erred in not considering the fact that to be denied the benefit of Section 80P, the Appellant would have to first fall within the ambit of the term "cooperative bank" as defined under the Banking Regulations Act, 1949. The CIT(A) has erred in not considering the fact that the Appellant is "Co-operative Credit Society" or "State Land Development Bank" which is distinct from the "Co-operative Bank" as the above terms have been defined separately under the Banking Regulation Act, 1949 and NBARD Act respectively and accordingly eligible to claim deduction under Section 80P(2)(a)(i) of the Act.

b. The Appellant has obtained Information under Right to Information Act, 2005 ("RTI") from Reserve Bank of India ("RBI"), Registrar of Co-operative Societies and National Bank for Agricultural and Rural Development ("NBARD"). The RBI, Registrar of Co-operative Societies and NBARD have clarified that the Appellant is not a "co-operative bank". It has been clarified that the Appellant is a 'state land development bank' in accordance with Section 2(v) of NBARD Act, 1981. Reserve Bank of India has informed that, the Appellant has not been given license to do banking business under the Banking Regulation Act, 1949 and hence does not come under the regulatory purview of Reserve Bank of India. The Registrar of Co-operative societies have also clarified that the Appellant is a "Co-operative credit society" in accordance with Section 5(ccii) of Part V of Banking Regulations Act, 1949 and not a "co-operative bank".

c. The Appellant would like to place reliance on the findings of the Hon'ble Supreme Court Ruling in the case of Mavilayi Service Co-operative Bank Ltd v. CIT (2021) 123 taxmann.com 161, wherein it was held as follows -

"23. Undoubtedly, if one has to go by the aforesaid definition of "cooperative bank", the appellant does not get covered thereby. It is also a matter of common knowledge that in order to do the business of a cooperative bank, it is imperative to have a licence from Reserve Bank of India, which the appellant does not possess. Not only this, as noticed above, Reserve Bank of India has itself clarified that the business of the appellant does not amount to that of a cooperative bank. The appellant, therefore, would not come within the mischief of sub-Section (4) of Section 80-P.-

[Emphasis Supplied]

The Hon'ble Supreme Court in the said Ruling had held that Section 80P(4) of the Act is to be read as a proviso, which 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 license in this behalf from the RBI. In the present case the Appellant is admittedly not engaged in banking business and does not have a license from the RBI and therefore entitled to the benefit of the deduction contained in Section 80P(2)(a)(i) of the Act.

d. The Appellant would like to place reliance on the decision passed by the Hon'ble Kerala High Court in the judgment passed on 24 September 2021, in the Appellant's own case in Kerala State Co-op. Agricultural & Rural Development Bank Ltd vs. CIT (ITA Nos. 2,6,30 & 3112017) pertaining to AY 2010-11 and AY 2011-12, wherein the Appellant had filed appeal against the tribunal order denying benefit of deduction under Section 80P(2)(a)(i) of the Act, the Hon'ble Kerala High Court independent of the judgement in the Appellant's own case in ITA No.103/2011, has applied the principle laid down in Supreme Court Ruling in Mavilayi Service Co-operative Bank (123 taxmann.com 161) as binding precedent, and has also examined and considered the information received under RTI from Reserve Bank of India, NBARD, Registrar of Co-operative Societies in framing the judgment. The Hon'ble Kerala High Court has answered the questions in favour of the Appellant and against the

Revenue and remanded the case to the Tribunal for decision and consideration.

2. Disallowance of contribution made to Staff Retirement Benefit Fund amounting to Rs.7,85,29,564

On the facts and in the circumstances of the case, the CIT(A) has erred in disallowing the contribution made to Staff Retirement Benefit Fund amounting to Rs. 7,85,29,564 without considering the fact that the said contribution was made as a staff welfare measure, for the purpose of benefit of the employees and accordingly eligible as deduction as business expenditure under section 37 of the Act.

3. Disallowance of Education exposure expenses amounting to Rs.17,00,000

On the facts and in the circumstances of the case, the CIT(A) has erred in disallowing the education exposure expense amounting to Rs. 17,00,000 without considering the fact that the said business expenditure was incurred in the normal course of business.

The Appellant craves leave to add, alter, amend, or withdraw all or any of the Grounds of Appeal herein and to submit such statements, documents and papers as may be considered necessary either at or before the appeal hearing.”

2. The Ld.AR submitted that there is a delay of 65 days in filing the present appeal and the same is attributable to covid period.

3. It is submitted that the impugned order was passed during the period of covid when *Hon’ble Supreme Court* had suspended the applicability of limitation act and therefore though the present appeal is filed with a delay, the same may not be considered to be filed belatedly pursuant to the orders passed by the *Hon’ble Supreme Court dated 23/03/2020*.

3.1 It is submitted that, the last date of filing the appeal falls during the period covered by the provision of section 3(1)(b) of the Taxation and Other Laws (Relaxation and Amendment to certain

provisions) Act, 2020, read with the order of *Hon'ble Supreme Court dated 23/03/2020* was effective.

The Ld.SR.DR, could not controvert the submissions and prayer by the Ld.AR.

3.2 We note that the last date of filing the present appeal falls during the Covid -19 Pandemic. During the relevant period, the limitation stood automatically extended by virtue of order passed by *Hon'ble Supreme Court (supra)*. Therefore, the delay in filing the present appeal stands condoned.

Accordingly the present appeal is admitted to be adjudicated on the issues raised by assessee there.

3.3 Considering the above submissions, the appeal is not held to be time barred respectfully following the orders passed by *Hon'ble Supreme Court (supra)*.

Accordingly the delay is condoned.

4. Brief facts of the case are as under:

4.1 The assessee had filed Original Return of Income declaring total income of Rs.25,72,620/- on 15.10.2016. Subsequently the return was revised on 29.10.2017 at a total income of Rs.21,37,600/-. The assessment in this case was completed u/s 143(3) dated 28.12.2018, determining the total income at Rs.145,21,72,390/-.

4.2 The Ld.CIT(A), Trivandrum in order dated 16.12.2019 in ITA No.342/EF/TVM/CIT(A)/TVM/2018-19 has confirmed the additions of Rs.7,85,29,564/- (disallowance u/s 40A(9)-contribution to fund), disallowance of Education Exposure expenses to the tune of Rs.17,00,000/-, the addition u/s 80P of

the Act amounting to Rs.136,95,37,265/- and directed the Assessing Officer to verify "Reserve for General Body Reserve", whether the same is already debited to P&L.

4.3 Aggrieved by the order, the assessee is in appeal before this *Tribunal*.

5. The Ld.AR submitted that assessee is a primary co-operative agricultural body under the State of Kerala. It also functions as a rural development bank within the meaning assigned in para V of the Banking Regulations Act. The Ld.AR submitted that during the relevant year, assessee had claimed deduction of Rs.1,36,95,37,265/- u/s. 80P(2)(a)(i). The Ld.AR submitted that the Ld.AO rejected the contention of the assessee and disallowed the claim u/s 80P of the Act, holding that since the assessee fulfills the condition laid down u/s 56 (c) (ccv) of part-V of the Banking Regulation Act, 1949 and being cooperative bank, not entitle for deduction u/s 80P (2)(a)(i) of the Act and also by taking support of the decision rendered by *Hon'ble Supreme Court* in the case of *M/s Citizens co-operative bank Vs. ACIT* reported in [2017] 84 *taxmann.com* 114 (SC) dated 8/8/2017 held that the above said income is not allowable as deduction u/s 80P(2)(d) of the Act.

The ld.DR supported the order of the lowers authorities.

We have heard both the parties and perused the materials record.

6. We find merit in the prayer of the assessee since the issue of deduction u/s 80P(2)(a)(i) of the Act requires fresh examination in the light of decision rendered by *Hon'ble Supreme Court* in the

case of *Mavilayi Service Co-operative Bank Ltd. (supra)*, we set aside the order passed by Ld. CIT(A) on this issue and restore the same to the file of the A.O for examining it afresh as discussed above.

Accordingly, the grounds raised by the assessee stands allowed for statistical purposes.

In the result, the appeal filed by the assessee stands allowed for statistical purposes.

As we have remanded the issue to the Ld.AO, the stay petition filed by the assessee becomes infructuous.

Order pronounced in open court on 14th September, 2022.

Sd/-
(CHANDRA POOJARI)
Accountant Member

Sd/-
(BEENA PILLAI)
Judicial Member

Cochin,
Dated, the 14th September, 2022.
/MS /

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| 1. Appellant | 4. CIT(A) |
| 2. Respondent | 5. DR, ITAT, Cochin |
| 3. CIT | 6. Guard file |

By order

Assistant Registrar,
ITAT, Cochin