

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

**BEFORE SHRI GEORGE GEORGE K., JUDICIAL MEMBER
AND
MS. PADMAVATHY S, ACCOUNTANT MEMBER**

ITA No.849/Coch/2022
Assessment Year : 2018-19

M/s. Karimthottuva Service Co-operative Bank Ltd., No.2594, Kunnathur East, Sasthamkotta, Kollam – 690 540. PAN : AAAAK 9696 D	Vs.	The Assessing Officer, Ward – 2, Kollam.
APPELLANT		RESPONDENT

Assessee by	:	Shri. Anil D Nair, Advocate
Revenue by	:	Smt. J M Jamuna Devi, Sr DR

Date of hearing	:	27.02.2023
Date of Pronouncement	:	08.03.2023

ORDER

Per Padmavathy S, Accountant Member

This appeal is against the order of CIT(A), National Faceless Appeal Centre (NFAC), Delhi, dated 25.07.2022, for the Assessment Year 2018-19.

2. The assessee raised the following grounds –

“1. The order of the learned CIT [A] upholding the Order of the Assessing Officer is against law, facts and circumstances of the case.

2. The CIT [A] erred in upholding the view of the Assessing Officer that though the appellant is a co-operative society, it is not eligible for deduction under section 80P of the Income Tax Act, 1961 by wrongly interpreting Explanation (b) to sub-section(4) of section SOP of the Act.
3. The CIT [A] erred in upholding the view of the Assessing Officer that the interest earned by the appellant from investment in District Co-operative Bank is INCOME FROM OTHER SOURCES and not INCOME FROM BUSINESS OR PROFESSION, thereby denying exemption available to your appellant under section 80P of the Act.
4. The CIT[A] erred in holding that since the profits and gains from credit facilities given to non-members cannot be said to be attributable to the activity of providing credit facilities to its members, such amount cannot be deducted and accordingly interest earned from deposits with co op banks cannot be deducted by wrongly referring to para 33 and 45 of the judgement of the hon SC in the case of Mavilayil Service Cop Bank.
5. Where investments were made by cooperative societies with co-operative banks in the course of its banking business/providing credit facilities to its members, such income shall form part of banking activities of the assessee and the same was entitled to deduction under section 80P(2)(a)(i).
6. The assessment order passed by the AO on 09-04-2021,ie:after 1st April,2021 cannot be under section 143(3A)/(3B) and proceedings under section 144B should have been initiated, failing which the order becomes invalid.
7. It is further contended that the order under section 144B is challenged on the ground that the procedure laid down under the said provision has not been followed while framing the assessment and thus, there is violation of provision of law and the same has been empathetically denied.
8. It is a statutory requirement, more particularly when any assessment order is to be made which is likely to be prejudicial to the interest of the assessee, the NFAC would have served upon the assessee the draft assessment order.

9. The assessment was completed without giving proper opportunity to your appellant. The appellant sought an adjournment on 21-07-2022 upto 06-08-2022, which was not considered by the CIT NFAC, and dismissed the appeal on 25-07-2022. In view of this, the order of the CIT NFAC is invalid.

10. Any other grounds that may be adduced at the time of hearing may also be considered.”

3. The assessee is a Co-operative Bank engaged in the business of banking activity and also providing credit facilities to its members. The assessee filed the return of income on 02.10.2018 declaring NIL income after claiming deduction u/s.80P of the Income Tax Act (the Act) for an amount of Rs.1,09,67,207. The AO held that the assessee cannot be treated as a primary agricultural cooperative society eligible for deduction u/s.80P(2)(a)(i) as per the amended provisions of section 80P(4) w.e.f.01.04.2008 and accordingly did not allow the deduction u/s.80P(2). During the assessment proceedings the AO noticed that the assessee has received interest income from Kollam District Cooperative Bank for an amount of Rs.86,63,808 and treated the same as “income from other sourced” without allowing any deduction against the same. The balance amount claimed u/s.80P to the tune of Rs.23,63,399 was also not allowed for the reason that the assessee is making transactions with non-members and functioning like a bank. Aggrieved the assessee filed the appeal before the CIT(A) who upheld the denial of deduction u/s.80P. The assessee is in appeal before the Tribunal against the order of the CIT(A).

4. The Id AR submitted that the issue is covered by the decision of coordinate bench in assessee's own case for AY 2016-17 & 2017-18 (ITA No.664 & 665/Coch/2022) where the Hon'ble Tribunal has remitted the issue back to the AO. The Id AR prayed for a similar direction for the year under consideration also.

5. The Id DR relied on the orders of lower authorities.

6. We heard the parties and perused the material on record. We notice that the coordinate bench in assessee's own case has considered the similar issue and held that –

5. Further, it is noted that in the case of Ms. The Kizhathadiyoor Service Co-operative Bank Ltd. in ITA No.140/Coch/2018 dated 23.7.2018, the Tribunal held as under:-

“7. The only other ground in ITA No.140/Coch/2018 is with regard to the issue whether interest earned on investment with sub-treasuries and Banks was eligible for deduction u/s 80P(2)(a)(i) of the I.T. Act.

7.1 We have heard the rival submissions and perused the material on record. The Tribunal had decided the issue in favour of the assessee in assessee's own case in in ITA No.525/Coch/2014 (order dated 20.7.2016) concerning the assessment year 2009-10. In view of the above order of the Tribunal in assessee's own case, we hold that the CIT(A) is justified in directing the Assessing Officer to grant deduction in respect of interest income earned on investment in sub-treasuries and bank deposits u/s 80P(2)(a)(i) of the Act.”

6. Further, Hon'ble Supreme Court in the case of Mavilayi Service Co-operative Bank Ltd. & Others Vs. CIT (431 ITR 1) wherein held as under:-

“It is important to note that though the main object of the primary agricultural society in question is to provide financial assistance in the form of loans to its members for agricultural and related purposes, yet, some of the objects go well beyond, and include performing of banking operations "as per rules prevailing from time to time", opening of medical stores, running of showrooms and providing loans to members for purposes other than agriculture.

(para 15)

Court in Citizen Cooperative Society Ltd. [397 ITR 1] held as follows:

"13. If the income of a society is falling within any one head of exemption, it has to be exempted from tax notwithstanding that the condition of other heads of exemption are not satisfied. A reading of the provisions of Section 80-P of the Act would indicate the manner in which the exemption under the said provisions is sought to be extended. Whenever the legislature wanted to restrict the exemption to a primary cooperative society, it was so made clear as is evident from clause (f) with reference to a milk cooperative society that a primary society engaged in supplying milk is entitled to such exemption while denying the same to a federal milk cooperative society."

22. With the insertion of sub-section (4) by the Finance Act, 2006, which is in the nature of a proviso to the aforesaid provision, it is made clear that such a deduction shall not be admissible to a cooperative bank. However, if it is a primary agricultural credit society or a primary cooperative agricultural and rural development bank, the deduction would still be provided. Thus, cooperative banks are now specifically excluded from the ambit of Section 80-P.

23. 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.

Following propositions may be culled out from the judgment:

(I) That section 80P is a benevolent provision, which was enacted by Parliament in order to encourage and promote the growth of the co-operative sector generally in the economic life of the country and must, therefore, be read liberally and in favour of the assessee;

(II) That once the assessee is entitled to avail of deduction, the entire amount of profits and gains of business that are attributable to any one or more activities mentioned in sub-section (2) of section 80P must be given by way of deduction;

(III) That this Court in Kerala State Cooperative Marketing Federation Ltd. and Ors. (*supra*) has construed section 80P widely and liberally, holding that if a society were to avail of several heads of deduction, and if it fell within any one head of deduction, it would be free from tax notwithstanding that the conditions of another head of deduction are not satisfied;

(IV) This is for the reason that when the legislature wanted to restrict the deduction to a particular type of co-operative society, such as is evident from section 80P(2)(b) qua milk co-operative societies, the legislature expressly says so - which is not the case with section 80P(2)(a)(i);

(V) That section 80P(4) is in the nature of a proviso to the main provision contained in section 80P(1) and (2). This proviso specifically excludes only co-operative banks, which are co-operative societies who must possess a licence from the RBI to do banking business. Given the fact that the assessee in that case was not so licenced, the assessee would not fall within the mischief of section 80P(4).

(para 21)

Ratio decidendi of Citizen Cooperative Society Ltd. (supra), must be given effect to. Section 80P, 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.

(para 45)

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.

(para 46)

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).

Unlike the facts in Citizen Cooperative Society Ltd. (supra), the Kerala Act expressly permits loans to non-members under section 59(2) and (3). Giving of loans by a primary-agricultural credit society to non-members is not illegal, unlike the facts in Citizen Cooperative Society Ltd. (supra). Impugned Full Bench judgment is set aside.

(para 47)”

7. The lower authorities have no benefit of judgement of Hon’ble Apex Court in the case of The Mavilayi Service Co-operative Bank Ltd. & Ors. vs. CIT (supra), we are of the view that in the interest of justice and equity the issue of deduction u/s 80P(2)(a)(i) of the Act needs to be examined de novo in the light of the judgement of the Hon’ble Apex Court, referred supra. Therefore, the issue raised on merits is restored to the files of the AO. The AO shall take a decision in accordance with law after affording a reasonable opportunity of hearing to the assessee. It is ordered

accordingly.

7. Respectfully following the above decision we remit the issue back to the AO with similar directions. It is ordered accordingly.
8. In the result, the appeal filed by the assessee is allowed.

Pronounced in the open court on this 8th day of March, 2023.

Sd/-

Sd/-

(GEORGE GEORGE K.)
JUDICIAL MEMBER

(PADMAVATHY S.)
ACCOUNTANT MEMBER

Bangalore,
Dated: 8th March, 2023.

/Desai S Murthy/

Copy to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT, Bangalore.

By order

Assistant Registrar
ITAT, Bangalore.