

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

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

ITA No.976/Coch/2022 & SP No.84/Coch/22
Assessment Year : 2017-18

The Kundayam Service Co-operative Bank Limited, Bank Building, Kundayam Post, Pathanapuram, Kollam – 689 685. PAN : AADAT 2149P	Vs.	The Income Tax Officer, Ward 4, Kollam.
APPELLANT		RESPONDENT

Assessee by	:	Shri Santosh P. Abraham, Advocate
Revenue by	:	Smt. J M Jamuna Devi, Sr. AR

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 the CIT(A), National Faceless Assessment Centre (NFAC), Delhi dated 19.09.2022 for the assessment year 2017-18.

2. The assessee raised the following grounds of appeal –

“A. The orders of the authorities below to the extent it is objected to hereunder is opposed to facts and circumstances of the case and is against law.

B. The sole claim before the assessing officer was the deduction u/s 80P; for the entire income appellant claimed deduction u/s 80P; which was denied by the assessing authority. The Commissioner of Income (Appeals) did not considered the claim u/s 80P on the income from business.

C. Appellant, being registered under the category of Primary Credit Co-operative Society under the Kerala Co-operative Societies Act, is eligible for deduction u/s 80P. As such the assessment made on the appellant disallowing the claim of deduction u/s 80P on the income from business is incorrect and unsustainable.

D. The case of the appellant is covered by the decision of the Hon'ble Apex Court in the case of Mavilayi Service Co-operative Bank Ltd. & Others vs. CIT in Civil Appeal Nos. 7343- 7350 of 2019.

For the reasons stated in the above and also the grounds urged at the time of final hearing, it is just and necessary to set aside the Annexure A1 Assessment Order as well as Annexure All Order in Appeal to the extent of objections made herein above.”

3. Brief facts of the case are that assessee is a Co-operative Society registered under the Kerala Co-operative Societies Act 1969. It is registered as a Primary Agricultural Credit Co-operative Society under section 15(1)(A)(3) of the Kerala Co-operative Societies Act, 1969. The assessee submitted the return of income for the AY 2017-18 declaring gross total income of Rs.12,85,410/- and claimed deduction for the entire income u/s 80P. The case was selected for scrutiny under CASS. Notice u/s 143(2) issued and served through mail. Subsequently notice u/s 143(1) was issued calling for specific information/details and the appellant submitted the details.

4. The AO completed the assessment u/s 143(3) disallowing the claim under section 80P and made an addition of Rs.15,62,130/- u/s 40(a)(ia) on the ground that assessee accepted deposits from non-members also. In the absence of details, the AO treated interest paid to the non-members at 10% of the total interest paid. The AO also subjected the interest received from the District Co-operative bank to tax as income from other sources.

5. Aggrieved, the assessee filed appeal before the Commissioner of Income Tax (Appeals). The CIT(Appeals) partly allowed the appeal holding that assessee is entitled to claim deduction u/s 80P(2)(d) in respect of interest received from Cooperative Bank. Even though all along the assessee's claim was deduction u/s 80P, the Commissioner of Income Tax (Appeals) did not considered the same. Aggrieved by the non consideration of the claim u/s 80P, the assessee is in appeal before the Tribunal.

6. The ld AR submitted that the AO during the assessment proceedings has added Rs.2,28,17,912 being the amount received as interest from District cooperative Bank and Treasury under the head "Income From Other Sources" and treated the amount of Rs.47,94,875 as Business income and denied the deduction u/s. 80P for both these amounts. The ld AR further submitted that the CIT(A) while adjudicating the appeal has given directions to the AO only with respect to the interest income considered under the head Income from Other Sources, but did not adjudicate the income treated as Business

Income against which the deduction u/s. 80P is denied. The Id AR further submitted that the coordinate bench in the case of M/s. Karimthottuva Service Co-operative Bank Ltd., vs ITO (ITA No.664 & 665/Coch/2022 dated 26.10.2022) has considered a similar issue and remitted issue back to the AO. The Ld AR prayed for a similar direction in assessee's case also.

7. The Id DR drew our attention to order of CIT(A) where it is stated that in spite of repeated follow up the assessee did not file precise grounds of appeal and he accordingly supported the order of CIT(A).

8. We heard the parties and perused the material on record. We notice that the AO while denying the entire amount claimed as deduction u/s.80P, has done so in two parts, Rs.2,28,17,912 claimed against the interest income earned by treating the same as Income from Other Sources and an amount of Rs.47,94,875 as business income by stating that the income is earned from the transactions with non-members. We further notice that the CIT(A) has adjudicated only the issue with respect to interest income earned and not what is treated as business income. We, in this regard, also notice that the coordinate bench in the case of Karimthottuva Service (supra) has considered the issue of income earned from transactions with non-members and held that –

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 assesseees 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)''

6. 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, appeal filed by the assessee is allowed. The Stay Petition vide SP 84/Coch/2022 is dismissed as infructuous.

Pronounced in the open court on this 08th day of March, 2023.

Sd/-

(GEORGE GEORGE K)
JUDICIAL MEMBER

Sd/-

(PADMAVATHY S)
ACCOUNTANT MEMBER

Bangalore,
Dated, the 08th 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/Cochin.