

IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN

BEFORE SHRI SANJAY ARORA, AM AND SHRI ABY T. VARKEY, JM

आयकर अपील सं/ I.T.A. No. 997/Coch/2022
(निर्धारण वर्ष / Assessment Year: 2012-13)

Kodanad Service Co-operative Bank Ltd. No. 1565 Kunnathunad Taluk, Ernakulam-683544.	बनाम/ Vs.	ITO, Ward-2, Aluva Kerala-683101.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AABAK3507E		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
Assessee by:	None	
Revenue by:	Smt J. M Jamuna Devi, (Sr. AR)	

सुनवाई की तारीख / Date of Hearing: 16/05/2023
घोषणा की तारीख /Date of Pronouncement: 06/06/2023

आदेश / ORDER

PER ABY T. VARKEY, JM:

This is an appeal preferred by the Assessee Co-operative Bank Ltd against the order of the Ld. CIT(A)/NFAC dated 12.08.2021 for AY. 2012-13.

2. Delay in filing appeal is condoned after going through the contents of the affidavit filed by the assessee society. So, we proceed to deal with the grounds of appeal raised by assessee. The main grievance of the assessee is against the action of the Ld. CIT(A) confirming the action of the AO denying deduction claimed u/s 80P(2)(a)(i) of the Income Tax Act, 1961 (hereinafter “the Act”). Brief facts are that the assessee is a Primary Agricultural Credit Society (hereinafter “PACS”) as classified by Registrar of Co-operative Society. According to the assessee society, it is doing the business of providing credit facility to its members and is earning income from the



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said activity. And therefore it claimed deduction u/s 80P(2)(a)(i) of the Act in respect of the profits from the said business. The AO noted that the gross total income of assessee was to the tune of Rs.65,45,697/- and it claimed deduction u/s 80P of the Act being a PACS and claimed deduction of the entire income by filing return of income (ROI) declaring 'Nil' income. However, the AO was of the opinion that the assessee was not eligible for deduction u/s 80P of the Act. Since according to him, its activity of providing agricultural credit was *negligible*, when considered with the income from the activity of banking by giving loan, housing loans etc. According to him, agriculture related loan disbursed by assessee was only 2.10% of the total loans given by it during the year. And according to AO, even though, the certificate has been issued by the Co-operative Department, Government of Kerala terming the assessee as a PACS, it cannot be accepted because the primary object of assessee was not providing financial assistance/credit to members for agriculture purposes. According to the AO, the society by its activities has lost the characteristics of PACS. And moreover, the assessee is functioning like a bank. And therefore according to AO, it is not eligible for deduction u/s 80P of the Act as per section 80P(4) of the Act. Therefore, he denied deduction of section 80P(2)(a)(i) of the Act and added Rs.30,29,259/- as total income from business. On appeal, the Ld. CIT(A) reiterated the opinion of AO to deny the claim. According to him, the burden is on the assessee to show that it is actually engaged in primarily giving loans to agricultural purposes. And therefore, he was of the opinion that assessee has lost the characteristics of PACS.



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Further, according to the Ld. CIT(A), the assessee principal business is banking business. Therefore, assessee need to be treated as a Co-operative Bank and consequently as per section 80P(4) of the Act which excludes Co-operative Banks for claiming any deduction u/s 80P of the Act, he held that assessee is not eligible for any deduction u/s 80P of the Act. And therefore he confirmed the gross total income from business amounting of Rs.30,29,259/- as taxable income. Aggrieved, the assessee is before us and has mainly assailed the action of the Ld. CIT(A) for mis-interpreting the Hon'ble Supreme Court decision in the case of Malvilayi Services Co-operative Bank Ltd. & Ors Vs. CIT (431 ITR 1) to hold that the assessee is not a PACS without making any effort to find out the correct facts or at least call from the AO any remand report. Therefore, according to the assessee, the decision of the Ld. CIT(A) is erroneous and cannot be sustained.

3. Per contra, the Ld. DR does not want us to interfere with the order of the Ld. CIT(A) and she supported the action of both the authorities below.

4. We have heard the Ld. DR and after perusal of the records, we note that the assessee is a Co-operative Bank registered under the Kerala Co-operative Societies Act, 1969 and filed its return of income for AY. 2012-13 on 31.01.2014 declaring total income of Rs. Nil. The assessee had shown gross total income of Rs.65,45,697/- which was claimed as deduction u/s 80P of the Act being PACS. The AO did not agree because according to him the assessee cannot claim to be a Primary Agricultural Credit Society (PACS) because the assessee has disbursed loan of only 2.10% to the agriculture related purposes which



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is negligible when compared with other loans advanced by it. Therefore, according to him, the principal business activity of the assessee society cannot be held it to be PACS. And therefore, the certificate issued by the Registrar of Co-operative Department, Government of Kerala is not binding on him. Further, according to the AO, the assessee is into business of banking; and so it has to be treated as a Co-operative Bank. And therefore, by virtue of section 80P(4) of the Act, it cannot be granted deduction under section 80P of the Act. On appeal, the Ld. CIT(A) on the very same reasoning confirmed the action of the AO. And by selectively reproducing the certain portions of the Hon'ble Supreme Court judgment in the case of Malvilayi Services Co-operative Bank Ltd. (supra) he upheld the action of AO, which action we do not countenance. After going through the impugned order, we are of the considered opinion that Ld. CIT(A) has not appreciated the law laid by the Hon'ble Supreme Court in the case of Malvilayi Services Co-operative Bank Ltd.(supra). The Ld. CIT(A) has merely reproduced few portions of the judgment without taking into consideration the ratio decidendi of the order passed by the Hon'ble Supreme Court in Malvilayi Services Co-operative Bank Ltd. (supra). Since the main reason given by the Ld. CIT(A) to deny the claim of assessee u/s 80P of the Act is that the assessee cannot be termed as a PACS and is a Co-operative Bank, and by operation of exclusion clause i.e, sub-section (4) of section 80P of the Act, need to be appreciated properly in the facts of the case and in the light of ratio laid by the Hon'ble Apex Court in the case of Malvilayi Services Co-operative Bank Ltd. (supra). The main contention of the AO/Ld.



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CIT(A) is that assessee society can be termed as a Primary Agricultural Credit Society only if it provide credit to its members and only for agriculture purposes, and purposes connecting with a agricultural activity. We note that such a contention has not been accepted by Hon'ble Apex Court in the case of Malvilayi Services Co-operative Bank Ltd. (supra), while reversing the full bench decision of the Hon'ble Kerala High Court held as under: -

“45. To sum up, therefore, the ratio decidendi of *Citizen Co-operative 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-



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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. v. CIT* [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).



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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 non-members 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."

5. Since we note that the Ld. CIT(A) has not appreciated the ratio decidendi of the Hon'ble Supreme Court properly and the AO had not benefit of the order of the decision rendered by the Hon'ble Supreme Court in the case *Malvilayi Services Co-operative Bank Ltd. (supra)*, and facts relevant for claiming deduction u/s 80P(2)(a)(i) of the Act needs examination afresh because there may be both income from



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lending to members as well as non-members. Even though the income from credits given to members are eligible for deduction, income from loans given to non-members, cannot claim deduction. Therefore, facts need to be ascertained and therefore, in the interest of justice and fair-play, the issue of deduction u/s 80P(2)(a)(i) of the Act is restored back to the file of the AO, who need to examine afresh the claim of the assessee in the light of the Hon'ble Apex Court in the case Malvilayi Services Co-operative Bank Ltd. (supra). Therefore, the impugned order of the Ld. CIT(A) is set aside and the issue is restored back to the file of the AO; and the AO to decide the claim of assessee for deduction u/s 80P of the Act as per the ratio laid by the Hon'ble Supreme Court after hearing the assessee and the assessee is given liberty to file all the relevant facts/documents to support its claim and AO to frame assessment in accordance to law un-influenced by the observation if any made by this Tribunal/CIT(A)/predecessor AO.

6. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on this 06/06/2023.

Sd/-
(SANJAY ARORA)
ACCOUNTANT MEMBER

Sd/-
(ABY T. VARKEY)
JUDICIAL MEMBER

Cochin; Dated : 06/06/2023.
Vijay Pal Singh, (Sr. PS)



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Copy to :

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

Asst. Registrar/ITAT, Cochin