

**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. 91/Coch/2023  
(निर्धारण वर्ष / Assessment Year: 2012-13)

Ochanthuruth Service Co-operative Bank Ltd Aji V. Dev and Alan Priyadarshi Dev, Advocates, Room No. 16, 4 <sup>th</sup> Floor, Empire Building, Near High Court, Kombara, Kochi- 682508.	<b>बनाम/</b> Vs.	ITO, Non Corp Ward-2(5) Kochi.
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

SP. No. 21/Coch/2023  
Arising out of ITA. No.91/Coch/2023  
(निर्धारण वर्ष / Assessment Year: 2012-13)

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<b>स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAAAT6405B</b>		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	None
Revenue by:	Smt J. M Jamuna Devi, (Sr. AR)

सुनवाई की तारीख / Date of Hearing: 18/05/2023  
घोषणा की तारीख /Date of Pronouncement: 06/06/2023

**आदेश / ORDER**

**PER BENCH**

This is an appeal preferred by the assessee Service Co-operative Bank Limited against the order of the Ld. CIT(A)/NFAC dated 26.12.2022 for AY. 2012-13 against denial of claim u/s 80P(2)(a)(i) of



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the Income Tax Act, 1961 (hereinafter “the Act”). Since both sides agree for disposal of appeal, Stay Petition filed would become infructuous.

2. Brief facts are that the assessee is registered as a Primary Agricultural Credit Co-operative Society under the Kerala Co-operative Societies Act, 1969. The assessee filed its return of income for AY. 2012-13 declaring a total income of Rs.2,07,080/- after claiming deduction u/s 80P(2)(a)(i) of the Act amounting to Rs.1,17,46,978/- which was disallowed by the AO. Aggrieved, the assessee preferred an appeal before the Ld. CIT(A) wherein assessee challenged the action of the AO disallowing the deduction u/s 80P of the Act. The Ld. CIT(A) also agreed with AO by holding that the assessee cannot be considered as a Primary Credit Society or as a Primary Co-operative Agricultural & Rural Development Bank. According to him, the assessee society is doing banking business, therefore, he treated it as a Co-operative Bank and citing section 80P(4) of the Act which was inserted with effect from 01.04.2007 which excludes Co-operative Bank from claiming deduction u/s 80P of the Act, denied the assessee’s claim for deduction u/s 80P of the Act. Even though the Ld. CIT(A) referred to the Hon’ble Supreme Court decision in the case of *Malvilayi Service Co-operative Bank Ltd. & Ors Vs. CIT (431 ITR 1)* to uphold the action of AO denying deduction u/s 80P of the Act to the assessee, according to the assessee’s contention, the Ld. CIT(A) has decided the grounds of appeal raised by it without properly appreciating the facts pertaining to



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the assessee vis-à-vis the ratio laid by the Hon'ble Supreme Court in the case of Malvilayi Service Co-operative Bank Ltd. (supra). According to assessee, the relevant facts as well as the ratio of Hon'ble Apex Court in Malvilayi (supra) have not been correctly considered by Ld. CIT(A) and so erred in dismissing the grounds raised by it.

3. We have heard the Ld. DR and perused the records. The assessee is a Primary Agricultural Credit Society registered under Kerala Co-operative Societies Act, 1969. The assessee filed its return of income for the AY. 2012-13 declaring total income of Rs.2,07,080/- after claiming a deduction of Rs.1,17,46,978/- u/s 80P(2)(a)(i) of the Act. And the Assessing Officer disallowed the claim of assessee made u/s 80P of the Act by framing the assessment u/s 143(3) of the Act by order dated 12.03.2015 computing the total income at Rs.1,24,09,392/- According to the AO, the deduction u/s 80P of the Act was made by the AO mainly on the ground that the assessee's main activity is banking business in view of section 7 (Part V) of the Banking Regulation Act, 1949; and further according to AO assessee is not providing advances/credit for Agriculture & Rural Development activities. According to the AO, the assessee cannot be classified as a Primary Agricultural Credit Society, since its primary activity is not providing credit to agricultural purposes. According to the AO, since the assessee is mainly into banking business it need to be treated it as a Co-operative Bank instead of Primary Agricultural Credit Society or as a primary co-operative agricultural & rural development bank; and



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the therefore AO held that the claim of deduction u/s 80P of the Act cannot be granted because section 80P(4) of the Act excludes Co-operative Banks from claiming any deduction u/s 80P of the Act and added the same in the total income of assessee. On appeal, the Ld. CIT(A) upheld the action of AO. We note the Ld. CIT(A) while considering the appeal of the assessee, though has cited the decision of the Hon'ble Supreme Court in the case of Malvilayi Service Co-operative Bank Ltd. (supra), has not appreciated the ratio of the decision vis-à-vis the facts pertaining to the case in hand. It is trite that the entire judgment should be read as a whole and the ratio decidendi has to be clearly understood to give effect to the law laid by the Hon'ble Supreme Court. According to the assessee, the issue raised by the AO (deduction u/s 80P of the Act) stands clearly covered by the order of the Hon'ble Supreme Court in the case of Malvilayi Service Co-operative Bank Ltd. (supra), and since the facts pertaining to this relevant issue had not been appreciated by both the authorities in the light of the Hon'ble Supreme Court decision in the case of Malvilayi Service Co-operative Bank Ltd. (supra), this issue need to be decided aforesaid by the AO. Though the Ld. DR does not want us to interfere with the order of the Ld. CIT(A) and wants us to dismiss the appeal of the assessee, we find force in the grounds raised by the assessee. We note that assessee is a Co-operative Society registered under the Kerala Co-operative Societies Act, 1969 and claims to be as a Primary



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Agricultural Credit Co-operative Society. The assessee society asserts that it provides credit facilities to its members; and its income earned while carrying on the business of providing credit facility to its members are eligible for deduction u/s 80P(2)(a)(i) of the Act. We note that the issue involved in this appeal has been settled by the Hon'ble Supreme 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, the Hon'ble Supreme Court held inter-alia 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



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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.

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



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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).

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)*.



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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."

4. We note that the AO didn't had the benefit of the decision rendered by the Hon'ble Apex Court in the case of Malvilayi Service Co-operative Bank Ltd (supra). Therefore, in the interest of justice and equity, the issue of claim for deduction u/s 80P(2)(a)(i) of the Act is restored back to file of AO with a direction to examine afresh the claim of assessee in the light of the Hon'ble Apex Court decision in Malvilayi Service Co-operative Bank Ltd (supra). Therefore, the impugned order of Ld. CIT(A) is set aside, and issue is restored back to the file of the AO; and the AO is directed to decide the claim of the assessee in respect of deduction claimed u/s 80P(2)(a)(i) of the Act as per the ratio laid by the Hon'ble Apex Court Malvilayi Service Co-operative Bank Ltd (supra) un-influenced by the observation made by the Ld. CIT(A) or his earlier predecessor AO and pass a speaking order. Needless to say, the assessee is given liberty to furnish the relevant documents/submission to support its claim of deduction and the AO to decide the issue in accordance to law.

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5. Since we have disposed of the appeal, the Stay Petition has been become infructuous and this is dismissed as infructuous.



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**6.** In the result, the appeal of the assessee is allowed for statistical purposes and Stay Petition is dismissed.

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)*

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