

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. Nos. 1015 to 1017/Coch/2022
(निर्धारण वर्ष / Assessment Years: 2013-14 to 2015-16)

M/s. Edavanakkad Service Co-operative Bank Limited No. 1 Edavanakkad, Ernakulam, Cochin-682502, Kerala, India.	<u>बनाम/</u> Vs.	ITO, Ward-2(5) Kochi.
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

SP. Nos. 90 to 92/Coch/2022
Arising out of ITA. Nos. 1015 to 1017/Coch/2022
(निर्धारण वर्ष / Assessment Years: 2013-14 to 2015-16)

M/s. Edavanakkad Service Co-operative Bank Limited No. 1 Edavanakkad, Ernakulam, Cochin-682502, Kerala, India.	<u>बनाम/</u> Vs.	ITO, Ward-2(5) Kochi.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AABTT2159E		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	Ms. Anjana A, (Adv)
Revenue by:	Smt J. M Jamuna Devi, (Sr. AR)

सुनवाई की तारीख / Date of Hearing: 19/05/2023
घोषणा की तारीख /Date of Pronouncement: 14/06/2023

आदेश / O R D E R

PER BENCH:

These are appeal preferred by the assessee society against the order of the Ld. CIT(A)/NFAC dated 18.11.2022 for AY. 2013-14 to AY. 2015-16. The assessee has also filed Stay Petitions. However, since both parties agree to hearing of the appeals on merit, we proceed to hear and dispose of the appeals; and therefore, the stay petitions



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stands dismissed by infructuous. Since the issues involved in these appeals are common, they were heard together and are being disposed of by this common order.

2. Brief facts are that the assessee Service Co-operative Bank has claimed to be a Primary Agricultural Credit Society (PACS) as per Section 80P of the Income Tax Act, 1961 (hereinafter "the Act") and claims to be earning income by giving credit facilities to its members. The assessee declared total income of Rs.58,860/- after claiming deduction of Rs.15,09,190/- u/s 80P(2)(a)(i) of the Act. After scrutiny of the assessment, the AO has disallowed the claim of deduction u/s 80P(2)(a)(i) of the Act on the ground that assessee is not a Primary Agricultural Credit Society but a Co-operative Bank; and took note that it grants only negligible loans for agriculture purposes and grants mainly loans for commercial/business purpose. And that since the assessee society is providing various loans to members as well as non-members and is conducting mainly banking business instead of providing credit to its members for agricultural purposes, assessee cannot be termed as a Primary Agricultural Credit Society; and since it is mainly into the business of banking, the AO treated the assessee as a Co-operative Bank instead of Primary Agricultural Credit Society. According to the AO, assessee's claim of deduction cannot be granted because, the assessee being a Co-operative Bank is excluded deduction by virtue of sub-section (4) of section 80P of the Act w.e.f. 01.04.2007.



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Hence, the assessee is not eligible for deduction u/s 80P of the Act. Aggrieved, the assessee preferred an appeal before the Ld. CIT(A) who took note of the decision of the Hon'ble Supreme Court in the case of Malvilayi Service Co-operative Bank Ltd. & Ors Vs. CIT (431 ITR 1) and found that the AO was incorrect in denying deduction u/s 80P of the Act to the assessee which was registered under Kerala Co-operative Society Act, 1969; and that assessee society was providing loans to the members who are admitted as member as per provisions of Kerala Cooperative Societies Act 1969. However, the Ld CIT(A) noted that income pertaining to loans given to *non-members* is not entitled to deduction as per the decision of the Hon'le Apex Court in the case of Malvilayi Service Co-operative Bank Ltd. (supra) and so he partly allowed the claim of deduction claimed by assessee u/s 80P of the Act by directing the AO to allow the deduction u/s 80P of the Act limited to income pertaining to the loans given to the member's including nominal members or associated members proportionately and disallowed only to the extent for non-members and thus partly allowed the appeal of the assessee. Still not satisfied, the assessee society is before us.

3. We have heard both the parties 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. 2013-14 on 30.10.2013 declaring total income



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of Rs.58,860/- after claiming deduction of Rs.15,09,160/- u/s 80P(2)(a)(i) of the Act. And the Assessing Officer had completed the assessment u/s 143(3) of the Act by order dated 07.01.2016 by finalizing the total income at Rs.23,75,950/- which has been made by disallowing a part of the claim made u/s 80P(2)(a)(i) of the Act and also by disallowing of section 40(a)(ia) deduction. The disallowance of Section 40(a)(ia) of the Act was done on the ground that the assessee had not collected TDS for the amount paid to the collection agents and for the maintenance charges which amounts to Rs.8,07,914/-.

4. The deduction u/s 80P of the Act was disallowed by AO mainly on the ground that the assessee is mainly in to banking business and not providing advances/credit for agriculture and Rural Development Activities. According to the AO, the assessee cannot be classified as a Primary Agricultural Credit Society; and since the assessee Co-operative Society is doing banking business, he treated it as a Co-operative Bank instead of Primary Agricultural Credit Society and denied the claim of u/s 80P of the Act by citing section 80P(4) of the Act which excludes Co-operative Banks from claiming any deduction u/s 80P of the Act. On appeal, the Ld. CIT(A) partly allowed the appeal of the assessee by citing the Hon'ble Supreme Court decision in the case of Malvilayi Service Co-operative Bank Ltd. (supra). Before us, the Ld. AR submitted that the Ld. CIT(A) has only considered selective portions of the Hon'ble Supreme Court decision/order; and



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has given certain directions which action is not entirely correct; and since it is trite that the entire judgment of the Hon'ble Supreme Court , should be read as a whole, and the ratio decidendi need to be clearly understood in the legal/factual back-drop, the Ld CIT(A) before giving direction to give effect to the decision of Apex Court ought to have examined the facts relevant to the lis in issue; and since he didn't undertake such an exercise, the issue/claim of deduction u/s 80P of the Act be remanded back to AO for de-novo assessment in the light of the order of the Hon'ble Supreme Court in the case of Malvilayi Service Co-operative Bank Ltd. (supra). Therefore, he prays that the assessment need to be de-novo carried out in the light of the Hon'ble Supreme Court decision in the case of Malvilayi Service Co-operative Bank Ltd. (supra).

5. Per contra, the Ld. DR does not want us to interfere with the order of the Ld. CIT(A) and want us to dismiss the appeal of the assessee. Be that as it may, the facts that is discernable in these appeals are that the assessee is a Co-operative Society registered under the Kerala Co-operative Societies Act, 1969 and has registered itself as a Primary Agricultural Credit Society. The assessee society asserts that it provides credit facilities for its members only and also it runs consumer store and medical shops and that the income arising from consumer store and medical shops of Rs.58,860/- has been offered in the return of income. Thus according to the assessee it has claimed



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deduction u/s 80P of the Act only in respect of income relating to credit facilities extended to its members to the tune of Rs.15,09,160/-. 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 way, all the assesseees in the present case are entitled to the benefit of the deduction contained in section 80P(2)(a)(i), notwithstanding



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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 time being in force but a reference to 'members' anywhere in this Act in connection with the possession or exercise of any



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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)*.

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



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appropriate benches of the Kerala High Court for disposal on merits in the light of this judgment."

6. We note that the AO had no 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; So, 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/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).

7. Coming to the ground against disallowance made by the AO u/s 40(a)(ia) of the Act of Rs.8,07,914/-, it has been brought to our notice that before making such a disallowance AO did not give the assessee an opportunity to explain the disallowance of expenses/amount paid to collection agents and for maintenance charges. According to her, the assessee should be given at least an opportunity to show that disallowance u/s 40(a)(ia) of the Act is not warranted because assessee cannot be termed as an *assessee in default*; and that assessee may be deemed to have deducted TDS and paid tax on such income, on the date of furnishing of return of income by the payee, [and if the payee furnished his return of income, and has taken into account such sum for computing income in such return of income and has paid tax on the income declared by him in such return of income] in accordance to



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second proviso to section 40(a)(ia) r.w. sub-section (1) of section 201 of the Act (i.e. payee has furnished his return of income u/s 139 taking into account such sum for computing income in his return of income and has paid the tax due to the income declared by him in such return of income and furnished certificate to this effect referred to under Rule 31 ACB and Form No. 26A); and we note that the Ld. CIT(A) has also not adjudicated this issue. In such a scenario, since there is *per-se* violation of natural of justice by both AO as well as Ld. CIT(A), we set aside this disallowance of Rs.8,07,914/- and direct the AO to de-novo examine this issue afresh, in the light of discussion (supra) and the appeal of the assessee for AY. 2013-14 is allowed for statistical purposes.

8. Coming to Appeals relating to AY. 2014-15 and AY. 2015-16, it is noted that since the issues are common in both the assessment years; and both sides agree that the appeals may be disposed off together, we take up the appeal for AY. 2014-15 as the lead case and result of which will be followed for appeal of AY 2015-16.

9. The main grievance of the assessee is against the action of the Ld. CIT(A) upholding the action of the AO that the interest earned from deposits with Ernakulum District Co-operative Bank is ineligible for deduction u/s 80P(2)(a)(i) and also u/s 80P(2)(d) of the Act.



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10. Brief facts of the case are that the assessee/Co-operative Bank is registered as a Primary Agricultural Credit Co-operative Society u/s 7 of the Kerala Co-operative Societies, 1969. The assessee filed its return of income for AY. 2014-15 on 04.10.2014 declaring total income of Rs.82,460/- after claiming deduction u/s 80P of the Act to the tune of Rs.66,22,455/-. The AO noted that the assessee had received an amount of Rs.2,72,94,744/- as interest on fixed deposit from Ernakulum District Co-operative Bank by investing surplus funds which assessee has included under the head "*income from business*" which according to AO is incorrect. And therefore, he treated the same as income from "*other sources*". And thereafter, he proportionately made some computation and arrived at a figure of Rs.37,15,422/- which he treated as income from "*other sources*" (Rs.66,22,455/- minus Rs.37,15,422 = 29,07,033/-) and allowed deduction u/s 80P of the Act to the tune of Rs.29,07,033/-; and assessed total the income at Rs.37,97,880/-. Aggrieved, the assessee preferred an appeal before the Ld. CIT(A) who was pleased to dismiss the appeal of the assessee. Aggrieved, the assessee is before us.

11. We have heard both the parties and perused the records. The facts noted (supra) are not disputed. The only issue is regarding the action of the Ld. CIT(A) in upholding the action of the AO wherein he disallowed the interest earned from deposit with Ernakulum District Co-operative Bank and held it to be ineligible for deduction u/s



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80P(2)(d) of the Act. At the outset, we note that this issue is no longer res-integra as held by the Hon'ble Kerala High Court in the case of PCIT Vs. Peroorkada Service Co-operative Bank Ltd. (2022) 442 ITR 141 (kerala) wherein it was held that the *interest income* earned by the assessee society from Co-operative Societies registered under the Kerala Co-operative Societies Act are eligible for deduction under clause (d) of sub-section (2) of section 80P of the Act. The Hon'ble High Court observed as under: -

“**12.2** Section 80P deals with Co-operative Societies' computation of income. As already noted, it has four sections and several sub-sections and clauses. The Parliament has considered the various situations in which the exigible income and the deductible income of the assessee is considered while computing the income of the assessee. For getting deduction, in our considered view, the assessee must also establish that the interest income earned by the assessee is from a Co-operative Society. As a matter of fact, in the case on hand, there is no dispute that it is not from a Co-operative Society registered under Kerala Co-operative Societies Act. The interest income earned from District Co-operative Bank/State Co-operative Bank, in the facts and circumstances of the case, do come within Section 80P(2)(d). Therefore, the income constitutes income from other sources and the only eligible deduction is covered by Section 80P(2)(d) viz. Interest or dividend derived by the assessee from its investments with any other Co-operative Society. The source of interest income is from Bank and Treasury, interest income received from Treasury be included in the computation of total income of the assessee. In other words, interest



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earned from Treasury is inadmissible for deduction and interest income from Co-operative Societies registered under the Kerala Co-operative Societies Act are eligible for deduction. The contra consideration of Commissioner of Income-tax (Appeals) and the Tribunal is incorrect and liable to be modified as stated above. Hence, it is held that the interest income earned by the assessee does not come within the ambit of Section 80P(2)(a)(i) and permissible deduction of interest income is limited to Co-operative Societies/Banks registered under Kerala Co-operative Societies Act under clause (d) of the Act and effect order on the above lines is made by the Assessing Officer.

The questions are accordingly answered.”

12. Since the order of the Hon’ble High Court is dated 01.11.2021 and the AO/Ld. CIT(A) did not had an opportunity to go through the same, in the interest of justice and fair play, we set aside the order of the Ld. CIT(A) and restore the issue back to the file of the AO to decide the issue in the light of the Hon’ble Kerala High Court decision in the case of PCIT Vs. Peroorkada Service Co-operative Bank Ltd. (supra) and needless to say that the assessee be given proper opportunity by AO before passing the order on this issue. Since facts and issues involved in AY. 2015-16 are same, following the decision for AY. 2014-15, the impugned order of the Ld. CIT(A) is set aside and this issue is restored back to the AO for fresh adjudication as directed (supra).



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13. In the result, the appeals of the assessee are allowed for statistical purposes and Stay Petitions are dismissed.

Order pronounced in the open court on this 14/06/2023.

Sd/-
(SANJAY ARORA)
ACCOUNTANT MEMBER

Sd/-
(ABY T. VARKEY)
JUDICIAL MEMBER

Cochin; Dated : 14/06/2023.
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