

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

Before Shri Sanjay Arora, AM & Shri Aby T. Varkey, JM

ITA No.975/Coch/2022: Asst. Year 2017-2018

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| Chengamanad Panchayath Service Co-operative Bank Limited No.E176, Chengamanad P.O. Alwaye – 683 585. [PAN: AACAT0201D] | vs. | The Income Tax Officer Ward 3, Aluva. |
| (Appellant) | | (Respondent) |

Appellant by: Sri.Surendranath Rao, CA
Respondent by: Smt.J.M.Jamuna Devi, Sr.AR

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| Date of Hearing : 16.05.2023 | Date of Pronouncement: 16.06.2023 |
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ORDER

Per Sanjay Arora, AM:

This is an Appeal by the assessee, a society registered as a Primary Agricultural Credit Society (PACS) under the Kerala Co-operative Societies Act, 1969 (Kerala Act), agitating the appellate order under section 250(6) of the Income-tax Act, 1961 ('the Act' hereinafter) by the National Faceless Appeal Centre (NFAC), Delhi [CIT(A)] dated 16.11.2022, dismissing its appeal contesting its assessment u/s. 143(3) dated 31.12.2019 for assessment year (AY) 2017-2018.

2. We have heard the parties, and perused the material on record.

2.1 The sole issue in appeal is the denial of deduction u/s.80P(2)(a)(i) of the Act, claimed at Rs.60,52,023, vide the impugned assessment. The same stands denied by the Revenue for the reason that the assessee, though registered as a PACS, is not actually so; its loans and advances for the relevant year, on the basis of the outstanding loans and advances as on 31.03.2017, per its audited accounts, for agricultural and allied activities, being instead of predominant, at a fraction (0.58%) to the total advances of Rs.50.90 crores. The law, as amended by insertion of sub-

section (4) to sec.80P by Finance Act, 2006, w.e.f. 01.04.2007, makes an exception to the denial of deduction u/s 80P(2) to co-operative Banks for PACS and primary co-operative agricultural and rural developments banks (PCARDB). The Revenue, in doing so, has followed the decision by the Hon'ble jurisdictional High Court in *Pr.CIT v. Poonjar Service Co-op. Bank Ltd.* [2019] 414 ITR 67 (Ker)(FB), which in turn follows *The Citizen Co-operative Society Ltd. v. Asst. CIT* [2017] 397 ITR 1 (SC), also relied upon by the Assessing Officer (AO).

2.2 The decision in *Poonjar SCB Ltd.* (supra), however, stands reversed by the Hon'ble Apex Court in *Mavilayi Service Co-operative Bank Ltd. v. CIT* [2021] 431 ITR 1 (SC), also explaining the ratio of its decision in *The Citizen Co-operative Society Ltd.* (supra). The question of the assessee-society being a PACS, or PCARDB for that matter, it explained, assumes relevance in the context of deduction u/s.80P only where the assessee-society is a co-operative bank, i.e., a co-operative society in the business of banking, as defined u/s.5(b) of the Banking Regulation Act, 1949 (BRA), dealing, under license from Reserve Bank of India (RBI), with the members of the public, accepting deposits from them. Any class of members, where in terms of the relevant Co-operative Societies Act, as the Kerala Act, would qualify to be such, and no distinction could there be drawn on the ground of he being not a real, but only a nominal, member. The assessee claims to be not a co-operative bank, which term, as also PACS, is defined in BRA, to which reference is made in sec.80P(4).

2.3 That being the case, the issue of the validity in law of the deduction u/s. 80P(2)(a)(i), including its extent, is therefore to be made with reference to the decision by the Hon'ble Apex Court in *Mavilayi Service Co-op. Bank Ltd.* (supra). A member of a co-operative society, being a PACS, where required to be a resident of a given, defined area, i.e., under the Kerala Act and/or BRA, would though require being met. The assessee, upon being required to in assessment, not furnished the

relevant details to the AO (refer para 20 of the assessment order). Also, the assessee's contention of the provisions of BRA being not applicable to a PACS may not be of any assistance where it is on facts, as indeed in law, not a PACS, though the same by itself may not be detrimental to its claim u/s.80P(2), where it is, as claimed, not a co-operative bank, as explained in *Mavilayi SCB Ltd.* (supra).

3. The matter, setting aside the impugned assessment, is restored back to the file of the AO for a decision afresh based on the facts of the case, duly determined, and in light of the decision in *Mavilayi SCB Ltd.* (supra). The assessee shall cooperate in the set aside proceedings. We decide accordingly.

4. In the result, the assessee's appeal is allowed for statistical purposes.

Order pronounced on June 16, 2023 under Rule 34 of The Income Tax (Appellate Tribunal) Rules, 1963

Sd/-
(AbyT.Varkey)
Judicial Member

Sd/-
(Sanjay Arora)
Accountant Member

Cochin; Dated: June 16, 2023
Devadas G*

Copy to:

1. The Appellant.
2. The Respondent.
3. The CIT(Appeals), NFAC, Delhi
4. The Pr. CIT concerned.
5. The Sr. DR, ITAT, Cochin.
6. Guard File.

Asst.Registrar
ITAT, Cochin