

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

Before Shri Sanjay Arora, Accountant Member and
Shri Manomohan Das, Judicial Member

ITA No. 682/Coch/2022
(Assessment Year: 2013-14)

Koyyode Service Co-op. Bank Ltd. Koyyode, Kannur 670621 [PAN:CHNKO1067D]	vs.	Income Tax Officer - (1) Aayakar Bhavan Kannothumchal, Kannur 670006
(Appellant)		(Respondent)

Appellant by:	Shri George Thomas, CA
Respondent by:	Smt. J.M. Jamuna Devi, Sr. D.R.

Date of Hearing:	23.01.2024
Date of Pronouncement:	31.01.2024

ORDER

Per: Sanjay Arora, AM

This is an Appeal by the Assessee agitating the Order dated 22.04.2022 by the Commissioner of Income Tax (Appeals), Income Tax Department [CIT(A)], dismissing the assessee's appeal contesting its assessment under section 143(3) of Income Tax Act, 1961 (the Act) dated 21.12.2015 for Assessment Year (AY) 2013-14.

2. The sole issue raised in the instant appeal is the maintainability or otherwise of the assessee's, a society registered as a primary agricultural credit society (PACS) (under the Kerala Co-operative Societies Act, 1969 – Kerala Act) claim for deduction, made for the entirety of its business profit at Rs.48.19 lakhs, u/s. 80P(1) r/w s. 80P(2)(a)(i) of the Act, denied in view of section 80P(4), i.e., as it stands after its amendment by Finance Act, 2006, w.e.f. 01.04.2007.

3. The basis for the said denial by the Revenue, as a perusal of their orders by the assessing and first appellate authority, shows, is as under:

- (a) the lending to the agricultural sector being at a negligible 0.38% of its total lending, so that it cannot be regarded as a PACS, i.e., by definition;
- (b) acceptance of deposits by the assessee-society from, besides its members, non-members.

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

4.1 We agree with the Assessing Officer (AO) that the assessee is not a PACS for the purposes of section 80P inasmuch as what is relevant is its definition under the Banking Regulation Act, 1949 (BRA), which stands co-opted u/s. 80P of the Act. The same, together with s. 80-P in its relevant part, reads as under:

“Deduction in respect of income of co-operative societies.

80P. (1) Where, in the case of an assessee being a co-operative society, the gross total income includes any income referred to in sub-section (2), there shall be deducted, in accordance with and subject to the provisions of this section, the sums specified in sub-section (2), in computing the total income of the assessee.

(2) The sums referred to in sub-section (1) shall be the following, namely :—

(a) in the case of a co-operative society engaged in—

(i) carrying on the business of banking or providing credit facilities to its members,
or

(ii) ... (vii),

the whole of the amount of profits and gains of business attributable to any one or more of such activities :

Provided that...;

(b) ...;

(c) in the case of a co-operative society engaged in activities other than those specified in clause (a) or clause (b) (either independently of, or in addition to, all or any of the activities so specified), so much of its profits and gains attributable to such activities as does not exceed,—

(i) where such co-operative society is a consumers' co-operative society, one hundred thousand rupees; and

(ii) in any other case, fifty thousand rupees.

Explanation.—In this clause, "consumers' co-operative society" means a society for the benefit of the consumers;

(d) (f).

Explanation.—For the purposes of this section, an "urban consumers' co-operative society" means a society for the benefit of the consumers within the limits of a municipal

corporation, municipality, municipal committee, notified area committee, town area or cantonment.

(3) In a case where the assessee is entitled also to the deduction under

(4) The provisions of this section shall not apply in relation to any co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank.

Explanation.—For the purposes of this sub-section,—

- (a) "co-operative bank" and "primary agricultural credit society" shall have the meanings respectively assigned to them in Part V of the Banking Regulation Act, 1949 (10 of 1949);
- (b) "primary co-operative agricultural and rural development bank" means a society having its area of operation confined to a taluk and the principal object of which is to provide for long-term credit for agricultural and rural development activities."

BRA is not applicable to a 'primary agricultural credit society', defined therein, as under:

“56. Act to apply to co-operative societies subject to modifications.—The provisions of this Act, as in force for the time being, shall apply to, or in relation to, co-operative societies as they apply to, or in relation to, banking companies subject to the following modifications, namely :—

(a) throughout this Act, unless the context otherwise requires,—

- (i) references to a 'banking company' or 'the company' or 'such company' shall be construed as references to a co-operative bank,
- (ii) references to 'commencement of this Act' shall be construed as references to commencement of the Banking Laws (Application to Co-operative Societies) Act, 1965 (23 of 1965);

(b) in section 2, the words and figures 'the Companies Act, 1956 (1 of 1956), and' shall be omitted;

(c) in section 5,—

(i) after clause (cc), the following clauses shall be inserted namely:—

(cci)...(cciii)

(cciv) 'primary agricultural credit society' means a co-operative society,—

- (1) the primary object or principal business of which is to provide financial accommodation to its members for agricultural purposes or for purposes connected with agricultural activities (including the marketing of crops) ; and
- (2) the bye-laws of which do not permit admission of any other co-operative society as a member:

Provided that this sub-clause shall not apply to the admission of a co-operative bank as a member by reason of such co-operative bank subscribing to the share capital of

such co-operative society out of funds provided by the State Government for the purpose;”

4.2 The assessee, in view of its lending profile, does not, sure, qualify to be PACS in terms of section 80P of the Act. So, however, nothing turns thereon as, even as explained in *Mavilayi Service Co-operative Bank Ltd. v. CIT* [2021] 431 ITR 1 (SC) – reliance on which by the assessee was repelled by the Revenue authorities, the nature of credit, i.e., agricultural or non-agricultural, is not a condition of section 80P(2)(a)(i) of the Act. As long as, therefore, income flows from the provision of credit to its members, the same would be liable for deduction u/s. 80P(1) of the Act. The question that nevertheless would be relevant in this context is if the assessee is indeed a cooperative society u/s. 2(19) of the Act, an aspect we advert to later.

4.3 As regards the second objection by the Revenue, again, without doubt, the assessee is in the business of banking, for which reference was made to section 5(b) of the BRA, reading as under:

‘5. Interpretation.

In this Act, unless there is anything repugnant in the subject or context,—

- (a) “approved securities” means ...
- (b) “banking” means the accepting, for the purpose of lending or investment, of deposits of money from the public, repayable on demand or otherwise, and withdrawable by cheque, draft, order or otherwise;’

The AO has given a clear finding at para 4 of his order, not rebutted at any stage, that the assessee is providing the following facilities:

- 1) providing various kinds of loans (Gold loan, mortgage loan, etc.);
- 2) accepting deposits from members as well as non-members;
- 3) maintaining saving bank account, current accounts, day deposit, etc.; and
- 4) providing cheque facility (which would include arrangements for withdrawal/ transfer of funds from his account, on demand, by an accountholder).

Any member of the public can, as explained therein, become a 'member' on paying a nominal sum, which in fact is insisted upon as a practice, making co-operative societies, as the assessee, essentially public institutions. The legal basis for the same is found in sections 58 to 60 of the Kerala Act. Further, by providing membership to all on payment of a nominal fee, without extending them the rights and privileges of a member, there is thus, clearly, acceptance of deposits from and, equally, lending to, the members of the public, i.e., for all practical purposes, even as explained in *The Karannur Service Co-op. Bank Ltd. v. ITO* (in ITA Nos. 248-249/Coch/2020, dated 16/11/2023). Reference, with profit, may also be made to the decision in *Mohammed Usman v. Registrar of Co-operative Societies*, AIR 2003 (Ker) 299/[2003] 116 Company Cases 505 (Ker) /2003 (1) KLT (69). So, however, again, nothing turns thereon inasmuch as the same is not an inhibiting factor; the income there-from being equally eligible, i.e., as on provision of credit to its members, for deduction u/s. 80P(1) inasmuch as s. 80P(2)(a)(i) treats the two activities at par, being, rather, more beneficial to the assessee as it extends deduction to income from non-members also.

4.3 The question that, however, needs to be considered is if the assessee, ostensibly a co-operative society u/s. 2(19) of the Act inasmuch as it is a society registered under the Kerala Act, is a 'co-operative bank', a term which again stands defined u/s. 80-P with reference to BRA, as under:

"5(cci) "Co-operative Bank" means a state co-operative bank, a central co-operative bank and a primary co-operative bank.

(ccv) "primary co-operative bank" means a co-operative society, other than a primary agricultural credit society,-

- (1) the primary object or principal business of which is the transaction of banking business;
- (2) the paid-up share capital and reserves of which are not less than one lakh of rupees; and
- (3) the bye-laws of which do not permit admission of any other co-operative society as a member:

We refer only to the definition of a ‘primary cooperative bank’, and not of ‘state co-operative bank’ and ‘central co-operative bank’ inasmuch as the same, defined u/s. 5(ccvii) with reference to NABARD Act, are defined in the latter as principal societies for financing other co-operative societies in the respective state and district respectively, *qua* which there is no claim, so that the assessee could be a cooperative bank only by virtue of being a primary cooperative bank, i.e., by definition.

4.4 The assessee’s bye-laws, which are, therefore, relevant for ascertaining its status as a primary cooperative bank, are not on record. The same – in their relevant part, have neither been reproduced by the AO – claiming the assessee to be a primary co-operative bank and, thus, a co-operative bank (refer para 5.2 of his order) in his order, nor by the Id. CIT(A) per the impugned order confirming his order, nor indeed placed on record by the assessee, disputing their findings. The matter, therefore, would require travelling back to the file of the AO for the purpose. If the assessee is a primary co-operative bank, it is a co-operative bank by definition, excluded u/s. 80P(4) w.e.f. AY 2007-08. Reference toward this may be made to the orders by the Tribunal in *Sivapuram Service Co-operative Bank Ltd. and Ors v. ITO* (ITA Nos. 61 & 62/Coch/2023, dated 13.12.2023) and *Mundakkayam Service Co-operative Bank Ltd. v. ITO* (ITA No. 73/Coch/2023, dated 28.12.2023).

We are conscious of the assessee being not licenced by RBI, as required under BRA, as aspect considered in *Mohammed Usman* (supra). As explained in *Sivapuram SCB Ltd. & Ors* (supra), what is therefore relevant is that an assessee is entitled to be licenced under BRA. And that, being unlicenced would only imply it operating outside RBI’s regulatory control, but not alter the nature of income arising. The assessee, sure, has not applied therefor, but that is on the notion of it being a PACS, which claim it does not satisfy on facts. One cannot, after all, take advantage of his wrong to the prejudice of the other side. Why, in *Mavilayi SCB Ltd.* (supra), as the Tribunal notes, the fact of cooperative societies undertaking banking business

without obtaining licence from RBI, i.e., unlicensed, was emphasized by the Revenue, and with reference to a communication by the RBI itself.

Further, in the facts of *Sivapuram SCB Ltd.* (supra), it's bye-laws bore no restriction for the admission of another cooperative society as a member. The same was thus a cooperative-society in terms of s. 2(19) of the Act read with s. 2(oaa) of the Kerala Act, satisfying the basic condition of s. 80P(1) for deduction thereunder. This aspect needs to be verified. Further still, the restriction as to area of operation, relevant in view of s. 2(oaa) of the Kerala Act, inasmuch as, where so, it is inconsistent with the Revenue's claim of the assessee being a public institution, undertaking banking business, implying that any member of the public, irrespective of his place of residence or, as the case may be, business, is entitled to transact business therewith, i.e., deposit monies and/or take loans. The bye-laws are also relevant from the stand-point of ss. 58-60 of the Kerala Act.

5. The matter, accordingly, for proper determination of the issue arising, in terms of this order, is restored to the file of the AO, who shall decide the issue/s arising in accordance with law per a speaking order upon hearing the assessee, duly considering each of it's arguments/contentions. Save and to extent expressed in the decisions by the coordinate bench cited herein, and reliance on *Mohammed Usman* (supra), we may not be construed as having opined or otherwise issued any finding in the matter.

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

Order pronounced on January 31, 2024 under Rule 34 of The Income Tax (Appellate Tribunal) Rules, 1963

Sd/-
(Manomohan Das)
Judicial Member

Sd/-
(Sanjay Arora)
Accountant Member

Cochin, Dated: January 31, 2024
n.p.

Copy to:

1. The Appellant
2. The Respondent
3. The Pr. CIT concerned
4. The Sr. DR, ITAT, Cochin
5. Guard File

By Order

Assistant Registrar
ITAT, Cochin