

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

Before Shri Sanjay Arora, Accountant Member and  
Ms. Kavitha Rajagopal, Judicial Member

**ITA No. 113/Coch/2023**  
(Assessment Year: 2014-15)

Panthalur Service Co-op. Bank Ltd. Kadambode - Post, Manjeri Malappuram 676521 [PAN: AAAAP2546H]	vs.	Asst. CIT, Circle - 1 Tirur
(Appellant)		(Respondent)

Appellant by:	Shri R. Rishal, Advocate
Respondent by:	Smt. J.M. Jamuna Devi, Sr. D.R.

Date of Hearing:	11.03.2024
Date of Pronouncement:	03.04.2024

**ORDER**

Per: Sanjay Arora, AM

This is an Appeal by the Assessee, directed against the Order dated 13.12.2022 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 the Income Tax Act, 1961 (the Act) dated 26.12.2016 for Assessment Year (AY) 2014-15. The assessee has also filed a Stay Application (SA) *qua* its appeal.

2. At the outset, opening the arguments for and on behalf of the assessee, it was submitted by Shri Rishal, the learned counsel for the assessee, that the assessee, registered as a Primary Agricultural Credit Society (PACS) under the Kerala Cooperative Societies Act, 1969 (Kerala Act), is admittedly in the business of banking. Though, however, it is not a 'co-operative bank', i.e., within the meaning of the term u/s. 80P(4) of the Act, only which would operate to exclude it from the purview of s. 80P of the Act. The Revenue authorities have, however, denied

deduction u/s. 80P(1) r/w s. 80P(2)(a)(i), claimed on the entirety of its profit, on the ground of the assessee being, in substance, not a PACS inasmuch as the bulk of its lending is not for agriculture and allied purposes, the defining attribute of a PACS, which though is irrelevant for the purpose of eligibility for deduction u/s. 80P(1) r/w s. 80P(2)(a)(i), even as explained in *Mavilayi Service Co-operative Bank Ltd. v. CIT* [2021] 431 ITR 1 (SC). Smt. Devi, the Sr. DR, would, on the other hand, rely on the orders by the Revenue authorities.

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

3.1 As regards the assessee's contentions, as advanced by Shri Rishal, we could not agree more. The same distills the decision by the Hon'ble Apex Court in *Mavilayi SCB Ltd.* (supra) and, in fact, is in substance what stands reiterated per its several orders by this Bench of the Tribunal, viz., *Sivapuram Service Co-operative Bank Ltd. and Ors v. ITO* (ITA Nos. 61 & 62/Coch/2023, dated 13.12.2023); *Mundakkayam Service Co-operative Bank Ltd. v. ITO* (ITA No. 73/Coch/2023, dated 28.12.2023); *Koyyode SCB Ltd. vs. ITO* (ITA No. 682/Coch/2022, dated 31.01.2024; and *Vallapuzha SCB Ltd. v. ITO* (ITA No. 327 & 328/Coch/2023, dated 26/3/2024). As explained therein, where and to the extent the assessee-society accepts deposits from non-members; rather, is entitled to, being permitted by its bye-laws, it is in the business of banking notwithstanding the area restrictions for its operations inasmuch as the same are applicable only *qua* its members. Rather, in such a case, being in the business of banking, even income on provision of credit to non-members would stand to be deductible u/s. 80P(2)(a)(i). The bye-laws of the assessee-society are not on record, neither stand referred to in their orders by the Revenue authorities. It is only with reference thereto would it stand to be determined as to if:

- (a) the assessee is a co-operative bank; and
- (b) the assessee is in the business of banking.

3.2 The matter, accordingly, is restored to the file of the Assessing Officer (AO) for, on a perusal of it's bye-laws, and after affording due opportunity of hearing to the assessee, issue specific finding/s on the two aspects afore-stated, and decide accordingly, allowing or, as the case may be, disallowing – wholly or partly, the assessee's claim for deduction u/s. 80P(1) r/w s. 80P(2)(a)(i) of the Act. We make it clear that the assessee shall be allowed deduction u/s. 80P only if it is not a co-operative bank, i.e., as per the definition provided in *Explanation* below s. 80P(4). Two, where it's bye-laws permit it to accept deposit from non-members, it is by definition in the business of banking and, accordingly, entitled to deduction on it's profit in full, as opposed to that attributable to the provision of credit to it's members.

3.3 We decide accordingly.

4. In the result, the assessee's appeal is allowed on the above terms.

*Order pronounced on April 03, 2024 under Rule 34 of The Income Tax (Appellate Tribunal) Rules, 1963*

Sd/-  
(Kavitha Rajagopal)  
Judicial Member

Sd/-  
(Sanjay Arora)  
Accountant Member

Cochin, Dated: April 03, 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