

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

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

ITA No. 639/Coch/2023 : Asst. Year 2010-2011
SA No.151/Coch/2023

The Kadavallur Service Co-operative Bank Limited, No.3821 1/337, Kadavallur, Thrissur – 680 543. [PAN:AACAT5134F]	vs.	The Income Tax Officer Ward 1 Guruvayur.
(Appellant)		(Respondent)

Appellant by:	Sri.Dileep Balachandran, CA
Respondent by:	Smt.J.M.Jamuna Devi, Sr.DR

Date of Hearing:	15.02.2024
Date of Pronouncement:	03.04.2024

ORDER

Per: Sanjay Arora, AM

This is an Appeal by the assessee agitating the Order dated 15/6/2023 giving appeal effect to the order under section 250(6) of the Income Tax Act, 1961 (the Act) dated 31/5/2023 by the Commissioner of Income-tax (Appeals), Income Tax Department [CIT(A)], allowing the assessee's appeal contesting its assessment u/s.147 read with section 143(3) of the Act dated 19/11/2018 for assessment year (AY) 2010-2011. The assessee has also applied for stay of its demand, and which, accordingly, was posted for hearing along with.

2.1 The appeal is filed with a delay of 25 days, which stands explained as on account of the change in the incumbent Principal Officer (PO). We find the same as reasonable, to which no serious objection was raised by Smt. Devi, the ld Sr. DR. The delay was accordingly condoned, and the appeal admitted for being heard on merits.

2.2 The brief facts of the case are that the assessee, registered as a primary agricultural co-operative society (PACS) under the Kerala State Co-operative Societies Act, 1969 (Kerala Act), returned nil income on 02.09.2017 in response to notice u/s.148(1) dated 30.03.2017, claiming deduction u/s.80P(1) r/w s. 80P(2)(a)(i) of the Act on the entirety of its profit of Rs.30,08,820. The same was disallowed by the Assessing Officer (AO) inasmuch as, in his view, the assessee had, in fact incurred a loss of Rs.3,02,815; the assessee's profit and loss account bearing interest on investment at Rs.33,11,635, which was liable to the assessee as income from other sources u/s.56. Setting-off the said loss, income was assessed at the gross total income (GTI) of Rs.30.09 lakh. In appeal, the Id. CIT(A) held that in view of the decision in *Pr. CIT v. Peroorkada SCB Ltd.* [2020] 442 ITR 144 (Ker), the said interest was liable for deduction u/s.80P(2)(d). Subject, therefore, to the assessee having filed a valid return, as explained by the Hon'ble jurisdictional High Court in *Nileshwar Range Kalluchethu Vyavasaya Thozhilali Sahakarana Sangham v. CIT* (in ITA No.120 of 2019, dated 14.03.2023), the assessee shall be allowed deduction u/s.80P(2)(d) on the entire net income of Rs.30,08,820, representing its GTI.

2.3 The A.O., while giving appeal effect to the said order, regarded the assessee's return dated 02.09.2017, being filed beyond the 30-day period, which is the maximum time specified in the notice u/s.148(1), as not valid, and denied the assessee deduction u/s.80P. Aggrieved, the assessee is in second appeal.

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

3.1 The first issue before us is if the assessee's return dated 02.09.2017, which is admittedly the only return filed by it, is a valid return. We see no reason for it being not so. Sure, it stands filed after 30 days of the service of notice on 01.04.2017, i.e., the maximum time admissible for compliance of notice u/s.148(1). So, however, the same can be extended at the discretion of the AO, who in the instant case has regularized it by issue of notice u/s 143(2) on 24.11.2017. The same also explains the

impugned assessment being u/s.147 r/w s. 143(3). There is thus no merit in the Revenue's claim of the deduction u/s. 80P(1) being not admissible in view of section 80A(5), which proscribes the claim of deduction under Chapter VI-A where not made per a return of income, implying, without doubt, a valid return.

3.2 Continuing further, we are however unable to see as to how the entire interest income of Rs.33.12 lakh, representing gross interest on investment with Thrissur District Co-operative Bank, could be regarded as net income, which only would qualify for deduction u/s.80P(2)(d). Why, the assessee, both before us and the Id. CIT(A), contends of the said investment being a part of the statutory deposit it is required to maintain under the Kerala Act, referring to rule 63 there-under, so that the interest arises to it in the course of its business, assessable as business income u/s.28. That apart, as afore-stated, the gross interest may not quantify to be regarded as income. There is no finding of the entire interest being on investment of own funds and, further, of no expenditure having been incurred in its respect, which would stand to be deducted u/s.57(iii). That is, the entire of it being out of surplus funds and, further, not partaking any expenditure. Under the circumstances, the whole or part of the assessee's GTI of Rs.30.08 lacs may be assessable as business income u/s.28, on which deduction may be exigible u/s.80P(2)(a)(i). There has been no examination of the assessee's claim there-under at any stage.

3.3 The matter, accordingly, is restored to the file of the AO for determining the extent to which the assessee's income is liable to be assessed u/s. 28(i) and, equally importantly, the exigibility to deduction u/s.80P(2)(a)(i) thereon. Reference in this context may be made to a series of orders by this Bench, i.e., as to the parameters and aspects deemed relevant for the purpose, 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). As regards

the balance income, being the net interest income assessable u/s. 56, the same would, in view of the decision in *Peroorkada SCB Ltd.* (supra), stand to be exempt u/s. 80P(2)(d). We decide accordingly.

3.4 Since we have disposed the appeal, the stay application becomes infructuous, and is accordingly dismissed as such.

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

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