

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

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

**ITA Nos. 67 to 69/Coch/2023 & SA Nos. 14 to 16/Coch/2023**  
(Assessment Years: 2010-11, 2012-13 & 2013-14)

**ITA No. 34 /Coch/2023 & SA No. 10/Coch/2023**  
(Assessment Year: 2015-16)

**ITA Nos. 85 to 87/Coch/2023 & SA Nos. 17 to 19/Coch/2023**  
(Assessment Years: 2016-17 to 2018-19)

Ambalapara Service Co-op. Bank Ltd. Ambalapara, Ottapalam Palakkad 679512 [PAN: AABAA1873D]	vs.	Income Tax Officer Ward -3, Palakkad
(Appellant)		(Respondent)

Appellant by:	Ms. Divya Ravindran, Advocate
Respondent by:	Smt. J.M. Jamuna Devi, Sr. D.R.

Date of Hearing:	07.03.2024
Date of Pronouncement:	30.04.2024

**ORDER**

Per Bench

This is a set of seven Appeals by Assessee agitating the denial of deduction under section 80P(1) of the Income Tax Act, 1961 (the Act), claimed on the entirety of its profits and gains of business, in assessments under section 143(3) of the Act for the captioned Assessment Years (AYs.), since confirmed in first appeal by the Commissioner of Income Tax (Appeals), Income Tax Department [CIT(A)], vide his separate orders dated 14/11/2022, 24/11/2022 and 25/11/2022.

2.1 At the outset, it was claimed by Ms. Ravindran, the learned counsel for the assessee, that the assessee's claim is fully covered by the decision by the Hon'ble Apex Court in *Mavilayi Service Co-operative Bank Ltd. v. CIT* [2021] 431 ITR 1

(SC). She was, however, on a query by the Bench during hearing, unable to take us through the bye-laws; it's copy being not on record, though would emphasize that the assessee-society is confined in it's operations to a particular area, only residents of which could become it's members, even if nominal, duly permitted by it's governing Act, i.e., the Kerala Co-operative Societies Act, 1969 (the Kerala Act), under which the assessee is registered as a Primary Agricultural Credit Society (PACS). This assumes relevance as this restriction by way of an amendment to s. 2(oa) of the Kerala Act by the Amendment Act of 1999, is applicable only to societies registered on or after the date of the commencement of the said Act, i.e., 01/01/2000.

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

3.1 This Tribunal has per a series of decisions, beginning *Sivapuram Service Co-operative Bank Ltd. & Ors v. ITO* (ITA Nos. 61 & 62/Coch/2023, dated 13.12.2023), wherein the matter stands discussed at length, viz.

*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);

*Vallapuzha SCB Ltd. v. ITO* (ITA No. 327 & 328/Coch/2023, dated 26/3/2024); and

*Panthalur Service Co-op. Bank Ltd. v. Asst. CIT* (in ITA 113/Coch/2023, dtd. 03/4/2024)

*Pattathanam Service Co-op. Bank Ltd. v. ITO* (in ITA nos. 344-351/Coch/2022, dated 29/4/2024),

clarified that inasmuch as the Kerala Act permits a co-operative society to, through it's byelaws, accept deposits from, as well as to lend to, non-members (ss. 58 to 60), the assessee-society, even though registered as a PACS, may yet be in the business of banking, satisfying the conditions of banking as specified in section 5(b) of the Banking Regulation Act, 1949 (BRA). Two, given it's lending profile, whereby admittedly the advances are predominantly for non-agricultural purposes, violating the defining terms of PACS, i.e., under the BRA, adopted for the purpose of s. 80P (which is further in complete agreement with that under the Kerala Act), the appellant is not a PACS. So, however, as explained in *Mavilayi SCB Ltd.* (supra), that would

have no bearing on its claim for deduction u/s. 80P(2)(a)(i), i.e., as long as it is not a 'co-operative bank', a term again defined in BRA, precluding thus section 80P(4). As further explained by the Tribunal per its orders afore-referred, banking being an eligible activity u/s. 80P(2)(a)(i), the assessee being in the said business would again matter little; rather, entitle it for the deduction on the entirety of its profit, i.e., including that referable to business with non-members. Further still, the assessee/s, satisfying the primary condition of s. 2(19) of the Act defining a society, is, thus, a cooperative society, a pre-requisite for deduction u/s. 80P(1). The resolution of the dispute as to whether the assessee is therefore eligible for deduction u/s. 80P(1) r/w s. 80P(2)(a)(i) and, where so, its extent, thus rests solely on the assessee being, or not being, a co-operative bank, a term again defined under BRA, which stands adopted for the purpose of s. 80P, determining the issue.

3.2 Copy of the bye-laws, only a certified translated copy of which, in full, can be taken cognizance of and regarded as a part of the record, is not on record. As also noted by the Tribunal in its orders afore-referred, what value the restriction on the area for its members, if the assessee-society is otherwise eligible to accept deposits from non-members as well! Under the circumstances, we, for the reasons afore-noted, as also the cases referred to, set aside the orders by the Revenue authorities, and restore the matter back to the file of the Assessing Officer (AO) to determine the assessee's eligibility for deduction u/s. 80P(1) r/w s. 80P(2)(a)(i) on the basis of it being or, as the case may be, not being, a co-operative bank, i.e., on the basis of its bye-laws read with the Kerala Act and the BRA, as well as the quantum of the deduction there-under, which we clarify would be in full where the assessee is a co-operative bank, with its entire income arising from the business of banking.

3.3 The appeals having been decided thus, the stay petitions become unfruitful.

3.4 We decide accordingly.

4. In the result, the assessee's appeals are allowed for statistical purposes, and its stay petitions dismissed.

*Order pronounced on April 30, 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 30, 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