

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

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

**ITA No. 226/Coch/2023&
SA No. 40/Coch/2023**
(Assessment Year: 2012-13)

Thalore Service Co-op. Bank Ltd. Thalore, Thrissur 680306 [PAN: AACAT4739N]	vs.	Income Tax Officer Ward - 2(1), Thrissur
(Appellant)		(Respondent)

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

Date of Hearing:	13.03.2024
Date of Pronouncement:	31.05.2024

ORDER

Per: Sanjay Arora, AM

This is an Appeal by the Assessee directed against the Order dated 31.01.2023 by the Commissioner of Income Tax (Appeals), Income Tax Department [CIT(A)], dismissing the assessee's appeal contesting its assessment under section 147 read with s.143(3) of the Income Tax Act, 1961 (the Act) dated 12.12.2019 for Assessment Year (AY) 2012-13. The assessee has also filed Stay Application *qua* its appeal.

2. The only issue arising in appeal is the maintainability in law, and in the facts and circumstances of the case, of the assessee's claim for deduction u/s. 80P(1) of the Act, claimed on the entirety of its profit for the year u/s. 80P(2)(a)(i) of the Act. The said denial, save to the extent of Rs. 42,549, i.e., corresponding to the income on agricultural loans, being at a negligible 0.22% of the total loans, by the Assessing Officer (AO), was upon placing reliance on the decision by the Hon'ble jurisdictional

High Court in *Pr. CIT v. Mavilayi Service Co-operative Bank Ltd.* [2019] 414 ITR 67 (Ker)(FB). He also refers to claim u/s. 80P(2)(d) being not eligible.

3. The assessee's – registered as a Primary Agricultural Credit Society (PACS) under the Kerala Co-operative Societies Act, 1969 (the Kerala Act), claim before us was that the matter, even as was done by the Bench on an earlier occasion, i.e., for AYs. 2009-10 & 2014-15, vide its order dated 19.5.2023 (ITA Nos. 32 & 33/Coch/2023/copy on record), be restored back to the file of the AO for a consideration afresh in light of the decision in *Mavilayi Service Co-operative Bank Ltd. v. CIT* [2021] 431 ITR 1 (SC); the same having reversed the decision by the Hon'ble High Court. No objection thereto was raised by Smt. Devi, the ld. Sr. DR.

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

4.1 We find the assessee's plea as valid inasmuch as the first appellate authority, whose order is after the decision by the Hon'ble Apex Court in *Mavilayi Service Co-op. Bank Ltd.* (supra), has yet confirmed the assessment relying on the decision by the Hon'ble High Court, since reversed, and which is unfortunate. Though the words 'engaged in' in s. 80P(2)(a), as explained, would necessarily entail examination of facts by the AO, it is only the satisfaction of the conditions of s. 80P(2)(a)(i) that shall entitle a deduction there-under where the assessee is not a co-operative Bank.

4.2 This Tribunal has per a series of orders, some of which we list herein, deliberated upon the said issue in detail, adjudicating it considering the binding decisions:

Sivapuram Service Co-operative Bank Ltd. & 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);

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

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).

As clarified therein, the denial of deduction u/s. 80P, otherwise eligible, in view of s. 80P(4), could only be where the assessee is a 'co-operative bank', as defined under the Banking Regulation Act, 1949 (BRA), which stands adopted in s. 80P, i.e., irrespective of it being a PACS, or not so. Reference to ss. 57 to 60 of the Kerala Act is also relevant for the purpose. The assessee, though registered as a PACS, may have not applied for, or even on application, been denied a licence under BRA by the regulatory body inasmuch as the provisions of BRA are not applicable to a PACS, i.e., as defined u/s. 80P of the Act. Further, the term 'public' under s. 5(b) of BRA is to be construed as explained by the higher courts of law, notably the Hon'ble Apex Court, per its several decisions wherein the same came to be considered and explained by it, viz. *Ahmedabad Rana Caste Association v. CIT* [1971] 82 ITR 704 (SC). The matter in each case, in the absence of the bye-laws on record, or of the same having not been before the AO, was remanded thereto, with directions.

4.3 We, further, observe no adjudication by the Id. CIT(A) *qua* s. 80P(2)(d), which appears to have referred to by the AO by way of abundant caution. Even assuming such a claim, inasmuch as the matter is being restored back to the file of the AO, we consider it proper that the same shall be *qua* this deduction as well, to be decided in accordance with law, including *Pr. CIT vs. Peroorkada Service Co-op. Bank Ltd.* [2022] 442 ITR 141 (Ker). The same, as indeed *Mavilayi SCB Ltd.* (supra), shall apply in ratio. It is notable that though the Hon'ble High Court in the former states that interest on a deposit with a co-operative bank shall entitle a co-operative society for deduction u/s. 80P(2)(d), it, while explaining the law in the matter clearly states that both, the nature of income, and the identity of the payer and the payee, i.e., to whom, and from whom, it arises, is relevant. That exemption provisions are to be strictly read is trite law, clarified, once again, in *Mavilayi SCB Ltd.* (supra).

5. In view of the foregoing, we restore the matter back to the file of the AO to decide the same in the light of the afore-said decisions, applying them in ratio, also having regard to the orders by the Tribunal listed hereinabove. The AO shall, needless to add, take a consistent view in the matter, and which has in fact guided our decision for restoration, even as the matter arising being legal, with the material facts not in dispute, we could have decided at our end, applying the principles laid down. All contentions are open to both the sides. The AO is also entitled to retain and adopt the factual findings per his earlier order, i.e., to the extent not challenged or disputed. We decide accordingly. As we have decided the appeal, the stay petition becomes infructuous and, accordingly, is dismissed as not maintainable.

6. In the result, the assessee's appeal is allowed for statistical purposes, and its stay petition, dismissed.

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

Sd/-
(Kavitha Rajagopal)
Judicial Member

Sd/-
(Sanjay Arora)
Accountant Member

Cochin, Dated: May 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