

IN THE INCOME TAX APPELLATE TRIBUNAL, COCHIN BENCH, COCHIN
BEFORE SHRI SANJAY ARORA, AM AND MS. KAVITHA RAJAGOPAL, JM

ITA Nos.65 & 66/Coch/2023
(Assessment Years: 2016-17 & 2017-18)

Pooyappally Service Co-operative Bank Limited No. 3964, Meeyannoor, Pooyappally-PO, Kollam-691 537	Vs.	The Income Tax Officer Ward-2(1), Kollam
PAN/GIR No. AAFAP 8166 L		
(Assessee)	:	(Respondent)
Assessee by	:	None
Respondent by	:	Smt J M Jamuna Devi
Date of Hearing	:	04.03.2024
Date of Pronouncement	:	03.06.2024

ORDER

Per Kavitha Rajagopal, J M:

These appeals have been filed by the assessee, challenging the order of the learned Commissioner of Income Tax (Appeals) ('Id.CIT(A) for short), National Faceless Appeal Centre ('NFAC' for short) passed u/s.250 of the Income Tax Act, 1961 ('the Act'), pertaining to the Assessment Years ('A.Y.' for short) 2016-17 and 2017-18.

2. As there was no representation on behalf of the assessee, we hereby proceed to dispose of this appeal by hearing the learned Departmental Representative (Id. DR for short) and on perusal of the materials available on record.

3. The issues in both these appeals are identical and therefore, we pass a consolidated order in both these appeals by taking ITA No. 65/Coch/2023 as a lead case.

ITA No.65/Coch/2023

4. The grounds of appeal raised by the assessee is reproduced hereunder for ease of reference:

1. *The learned officers below erred in denying deduction u/s. 80P(2)(a), 80P(2) (c), 80P(2)(d) of the Income Tax Act.*
2. *The learned officers ought to have noted that the appellant was registered as a co-operative society and therefore the provisions of section 80P(2)(a)(i) applied in the case of the appellant.*
3. *The learned officers below ought to have appreciated that the income of the appellant from investments in banks and other co-operative societies were assessable under the head 'business'.*
4. *The learned Commissioner of Income Tax (Appeals) ought to have noticed that the Assessing Officer has not examined the case of the appellant in detail and had merely refused deduction u/s. 80P(2) and the alternative argument of the appellant that expenses to generate interest income on deposits from banks etc. should also have been granted as a deduction which is bad in law.*

5. The brief facts are that the assessee is a co-operative society and is a Primary Agricultural Credit Co-operative Society registered under Registrar of Co-operative Societies as per Kerala Co-operative Societies Registration Act on 30.04.1956. The assessee had filed its return of income dated 31.03.2018 declaring total income at Rs.Nil. The assessee's case was selected for limited scrutiny under CASS and notice u/s. 143(2) and 142(1) of the Act were duly issued and served upon the assessee.

6. The learned Assessing Officer (Id. A.O. for short) observed that the assessee had provided loans in the nature of agricultural, ordinary, gold loans, commercial, emergency loans and had also accepted deposits from its members and non members. The assessee has provided agricultural loan aggregating to Rs.63,57,500/- and non agricultural loans aggregating to Rs.27,50,69,966/- in the nature of commercial, emergency loan and gold loans. The assessee has earned interest income of Rs.35,85,515/- out of the surplus funds deposited in District Co-operative Bank. The assessee had claimed deduction

u/s.80P(2)(a), 80P(2)(d) and 80P(2)(c) of the Act. The Id. A.O. had rejected the claim of the assessee for the reason that major part of the loan given by the assessee was for non agricultural purpose and that the assessee for that reason was not qualified to be a Primary Agricultural Society. The Id. A.O. further held that the assessee was more into banking business as it was carrying out transaction with non members also. The Id. A.O. assessed the interest income under the head 'income from other sources' and not under the head 'profit and gains from business or profession', as the assessee was not entitled to claim deduction u/s. 80P(2)(a)(i) of the Act for the deposits which are parked in nationalized or cooperative banks. The Id. A.O. relied on the order of the Hon'ble Apex Court in the case of *M/s. Totgars Co-operative Sales Society vs. Asst. CIT* (in ITA Nos. 376 to 379/Bang/2023 vide order dated 18.07.2023) along with various other decisions and had stated that the decision of Hon'ble Jurisdictional High Court in the case of *M/s. Chiracal Service Co-operative Bank Ltd.* which was in favour of the assessee on this issue, has been challenged by the Revenue before the Hon'ble Apex Court. The Id. A.O. determined the total income of the assessee at Rs.82,22,770/- by making addition/disallowance u/s. 80P of the Act.

7. The Id. CIT(A) had partly allowed the appeal of the assessee challenging the order of the Id. A.O.

8. The assessee is in appeal before us challenging the impugned order of the Id. CIT(A).

9. We have heard the Id. DR and perused the materials available on record. It is observed that the lower authorities have denied deduction u/s. 80P of the Act to the assessee for the reason that the assessee has provided loans for both agricultural and non agricultural activities, the majority being only for non agricultural purpose, which according to the Id. A.O. constitutes 98% of the total loan disbursed. For this reason, the assessee society is said to have not qualified to be a primary agricultural credit society as per the provision of Kerala Societies Act, 1968 which was amended in 2010. Further, as the assessee has received deposits from even non members, as per the decision of the Hon'ble Apex Court in the case of *Citizens Co-operative Society* (Civil Appeal No. 10246 of 2017), the assessee was ineligible for deduction u/s. 80P of the Act. The assessee, on the other hand, has placed reliance on the decision of the Hon'ble Apex Court in the case of *Mavilayi Service Co-operative Bank Ltd. and others vs. CIT* (in Civil Appeal Nos. 7343-7350 of 2019) wherein it has been held that in case of Co-operative Societies a liberal view in favour of the assessee should be considered and that in case of loans given to members and non members, the interest earned out of loans given to non members are only to be disallowed. It also held that the interest income received from a co-operative society for investments made are eligible for deduction u/s.80P(2)(d) of the Act. The Hon'ble Apex Court further reiterated that section 80P(4) is applicable only to cooperative banks which are regulated by RBI and not to cooperative societies. The relevant extract of the said decision is cited hereunder for ease of reference:

45. *To sum up, therefore, the ratio decidendi of Citizen Cooperative Society Ltd. (supra), must be given effect to. Section 80P of the IT Act, being a benevolent provision enacted by Parliament to encourage and promote the credit of the co-operative sector in general must be read liberally and reasonably, and if there is ambiguity, in favour of the assessee. A deduction that is given without any reference to any restriction or limitation cannot be restricted or limited by implication, as is sought to be done by the Revenue in the present case by adding the word*

“agriculture” into Section 80P(2)(a)(i) when it is not there. Further, section 80P(4) is to be read as a proviso, which proviso now specifically excludes co-operative banks which are co-operative societies engaged in banking business i.e. engaged in lending money to members of the public, which have a licence in this behalf from the RBI. Judged by this touchstone, it is clear that the impugned Full Bench judgment is wholly incorrect in its reading of Citizen Cooperative Society Ltd. (supra). Clearly, therefore, once section 80P(4) is out of harm’s way, all the assesseees in the present case are entitled to the benefit of the deduction contained in section 80P(2)(a)(i), notwithstanding that they may also be giving loans to their members which are not related to agriculture. Also, in case it is found that there are instances of loans being given to non-members, profits attributable to such loans obviously cannot be deducted.

46. It must also be mentioned here that unlike the Andhra Act that Citizen Cooperative Society Ltd. (supra) considered, ‘nominal members’ are ‘members’ as defined under the Kerala Act. This Court in U.P. Cooperative Cane Unions’ Federation Ltd., Lucknow v. Commissioner of Income Tax, Lucknow-I (1997) 11 SCC 287 referred to section 80P of the IT Act and then held:

“8. The expression “members” is not defined in the Act. Since a cooperative society has to be established under the provisions of the law made by the State Legislature in that regard, the expression “members” in Section 80-P(2)(a)(i) must, therefore, be construed in the context of the provisions of the law enacted by the State Legislature under which the cooperative society claiming exemption has been formed. It is, therefore, necessary to construe the expression “members” in Section 80-P(2)(a)(i) of the Act in the light of the definition of that expression as contained in Section 2(n) of the Cooperative Societies Act. The said provision reads as under:

“2. (n) ‘Member’ means a person who joined in the application for registration of a society or a person admitted to membership after such registration in accordance with the provisions of this Act, the rules and the bye-laws for the time being in force but a reference to ‘members’ anywhere in this Act in connection with the possession or exercise of any right or power or the existence or discharge of any liability or duty shall not include reference to any class of members who by reason of the provisions of this Act do not possess such right or power or have no such liability or duty;” Considering the definition of ‘member’ under the Kerala Act, loans given to such nominal members would qualify for the purpose of deduction under section 80P(2)(a)(i).

47. Further, unlike the facts in Citizen Cooperative Society Ltd. (supra), the Kerala Act expressly permits loans to non-members under section 59(2) and (3), which reads as follows:

“59. Restrictions on loans.- (1) A society shall not make a loan to any person or a society other than a member:

Provided that the above restriction shall not be applicable to the Kerala State Co-operative Bank.

Provided further that, with the general or special sanction of the Registrar, a society may make loans to another society.

(2) Notwithstanding anything contained in sub-section (1), a society may make a loan to a depositor on the security of his deposit.

(3) Granting of loans to members or to non-members under sub-section (2) and recovery thereof shall be in the manner as may be specified by the Registrar.”

Thus, the giving of loans by a primary agricultural credit society to non-members is not illegal, unlike the facts in Citizen Cooperative Society Ltd. (supra).

10. As the issues raised by the assessee are squarely covered by the said decision and the findings of the co-ordinate bench in the case of *Thalore SCB Ltd.* (in ITA No.226/Coch/2023 vide order dated 31.05.2024, we hereby direct the Id. A.O. to allow the deduction claimed by the assessee in accordance with the proposition laid down in the above mentioned decision.

11. In the result, the appeal filed by the assessee in ITA No. 65/Coch/2023 is allowed.

ITA No. 66/Coch/2023

12. The finding in ITA No. 65/Coch/2023 applies mutatis mutandis to this appeal also.

13. In the result, both the appeals filed by the assessee are allowed.

Order pronounced on 03.06.2024 under rule 24 of the Income Tax (Appellate Tribunal) Rules, 1963.

Sd/-

(Sanjay Arora)
Accountant Member

Mumbai; Dated : 03.06.2024
Roshani, Sr. PS

Sd/-

(Kavitha Rajagopal)
Judicial Member

Copy of the Order forwarded to :

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

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Cochin