

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

**BEFORE SMT. BEENA PILLAI, JUDICIAL MEMBER
AND
SHRI WASEEM AHMED, ACCOUNTANT MEMBER**

ITA No. 108/Coch/2023
Assessment Years : 2017-18

M/s. Health Amenities Multipurpose District Co- operative Society, 1 M P Complex, Kandankulam Cross Road, Chalapuram P O, Calicut, Kerala – 673 002. PAN: AAAAH9178D	Vs.	The Income Tax Officer, Ward – 1(1), Kozhikode.
APPELLANT		RESPONDENT

Assessee by	:	Ms. Megha Amm George, Advocate
Revenue by	:	Shri Ilayaraja K.S, Sr. DR

Date of Hearing	:	19-06-2024
Date of Pronouncement	:	12-07-2024

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER

Present appeal arises out of order dated 07.11.2022 passed by NFAC, Delhi for A.Y. 2017-18.

2. At the outset, the Ld.AR also submitted that, there was a delay of 64 days before the Ld.CIT(A) that was not condoned. It is submitted that the assessee did not receive the notices said to have been sent to the email and therefore could not represent the case before the Ld.CIT(A). The Ld.AR also submitted that the Ld.CIT(A) dismissed the appeal for non-prosecution by following the decision of *Hon'ble Delhi Tribunal* in case of *CIT vs. Multiplan India Pvt. Ltd.* reported in *38 ITD 320 (Delhi)*. He prayed for the delay to be condoned before the Ld.CIT(A) and the appeal may be decided on merits.

3. The Ld.AR submitted that, the only issue raised in the present appeal is regarding disallowance of deduction claimed u/s. 80P(2) of the act. He submitted that, the Ld.AO disallowed the claim of assessee by observing that assessee do not satisfy the test of principle of mutuality, for the reason that, the assessee provided credit facility to its members that include associate as well as nominal members. The Ld.AR submitted that, the Ld.AO placed reliance on the decision of *Citizen Co-operative Society Ltd. vs. ACIT* reported in *(2017) 84 taxmann.com 114* to disallow the claim of assessee, without considering the decision of Hon'ble Supreme Court in case of *Mavilayi Service Co- operative Bank Ltd. v. CIT* reported in *431 ITR 1*, that has approved the decision of *Full Bench Kerala High Court*.

4. On the contrary, the Ld.DR relied on the orders passed by authorities below.

5. We have perused the submissions advanced by both sides in the light of records placed before us.

6. Admittedly, the Ld.AO did not consider the issue of *Hon'ble Supreme Court* in case of *Mavilayi Service Co- operative Bank Ltd. v. CIT (supra)*.

7. I also note that the Ld.CIT(A) followed the decision in case of *CIT vs. Multiplan India Pvt. Ltd. (supra)* to dismiss the appeal for non-prosecution that is held to be no more a good law by *Hon'ble Delhi High Court*. I find reasonable cause on behalf of the assessee in not filing the appeal before the Ld.CIT(A) and the same is condoned. However, no purpose will be served to remit this issue to the Ld.CIT(A) and necessary verification is to be carried out in the light of the decision by *Hon'ble Supreme Court* in case of *Mavilayi Service Co- operative Bank Ltd. v. CIT (supra)* and also various such decisions of *Hon'ble Kerala High Court* on similar issue.

8. In the interest of justice, we remit this issue back to the Ld.AO to consider the claim of assessee in the light of ratio laid down by *Hon'ble Supreme Court* in case of *Mavilayi Service Co- operative Bank Ltd. v. CIT (supra)*.

Accordingly, the grounds raised by assessee stands allowed for statistical purposes.

In the result, the appeal filed by the assessee stands allowed for statistical purposes.

Order pronounced in the open court on 12th July, 2024.

Sd/-
(WASEEM AHMED)
Accountant Member

Sd/-
(BEENA PILLAI)
Judicial Member

Bangalore,
Dated, the 12th July, 2024.
/MS /

Copy to:

- | | |
|---------------|------------------------|
| 1. Appellant | 2. Respondent |
| 3. CIT | 4. DR, ITAT, Bangalore |
| 5. Guard file | 6. CIT(A) |

By order

Assistant Registrar,
ITAT, Bangalore