

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

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

ITA No. 301/Coch/2023
Assessment Year : 2014-15

M/s. Koodali Service Co-operative Bank Ltd. No. C9, Koodali P.O, Kannur – 670 592. PAN: AAALK0494N	Vs.	The Income Tax Officer, Ward – 1, Kannur.
APPELLANT		RESPONDENT

Assessee by	:	Shri George Thomas, CA
Revenue by	:	Shri Ilayaraja K.S, Sr. DR

Date of Hearing	:	20-06-2024
Date of Pronouncement	:	12-07-2024

ORDER

PER BEENA PILLAI, JUDICIAL MEMBER

Present appeal arises out of order passed by NFAC, Delhi dated 16.03.2023 for A.Y. 2014-15 on following grounds of appeal:

“1. The order of the learned Commissioner of Income Tax(Appeals) is against the facts and circumstances of the appellant's case and hence opposed to the provision of Income Tax Act.

2. The learned Commissioner of Income Tax(Appeals) has erred in upholding the disallowance of the claim of the appellant for deduction U/S 80(P)(2)(a)(i) for income earned on providing credit facility to members. The appeal has been dismissed upholding the contention of the Assessing

officer that the appellant is not a PACS. The Commissioner of Income Tax(Appeals) ignored the certificate issued by Registrar of Cooperatives stating that the Appellant is a PACS. The ratio of the decision of Honorable Supreme Court in the case of Mavilayi Service Co-Operative Bank and others Vs. CIT, Calicut 431 ITR 0001(SC) is squarely applicable to the appellant's case. Though the learned Commissioner of Income Tax(Appeals) was bound to follow the same, he has not done it. The Hon. Kerala High Court has held in the case of Chirakkal Service Co-Operative Bank and others [(2016) 384 ITR 0490] that the authorities under the IT Act cannot probe into the issue of status of the appellant classified as Primary Agricultural Credit Society by the Competent Authority under the Kerala C-Operative Societies Act. The Hon supreme Court has held in the Mavilayi Service Co-Operative Bank case 431 ITR 0001(SC) that,

“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” and also that Primary Agricultural Credit Societies “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” (Para 45 of the case law).

3. The learned Commissioner of Income Tax(Appeals) has not considered the detailed submissions filed by the appellant on 29.01.2021 and 30.11.2022.

4. The learned Commissioner of Income Tax(Appeals) has dismissed the appeal without considering the grounds and facts of the appellant which is not justice.

PRAYER

For these grounds and such other grounds that may be urged at the time of hearing, it is prayed that the addition confirmed by the Commissioner (Appeals) may kindly be deleted.”

2. Brief facts of the case are as under:

2.1 The assessee is a Primary Agricultural Credit Society providing credit facilities to its members. They also supply manure and other allied items to its members. The assessee filed

return of income for the assessment year 2014-15 on 20/09/2014. The case was selected for scrutiny. The Ld.AO considered assessee to be a primary agricultural credit society as per section 80P(4) of the act and held that assessee is not eligible for claiming deduction u/s. 80P(2)(a)(i) of the act. The Ld.AO did not consider the decision of *Hon'ble Kerala High Court* in case of *Chirakkal Services Co-operative Bank Ltd. vs. CIT* reported in (2016) 68 taxmann.com 298.

2.2 Aggrieved by the order of the Ld.AO, the assessee preferred appeal before the Ld.CIT(A) who dismissed the assessee's appeal without considering the judicial precedence as well as the evidences filed by the assessee.

2.3 Aggrieved by the order of the Ld.AO, assessee is in appeal before this *Tribunal*.

3. The Ld.AR at the outset submitted that in case of *Chirakkal Service Co-operative Bank Ltd. (supra)*, the *Hon'ble Kerala High Court* held that, the authority to determine the status of a co-operative is the authority under the Kerala co-operative Societies Act. The Ld.AR submitted that *Hon'ble Kerala High Court* also held that the authorities under the Income Tax Act cannot probe into any issue or such matter relating to a co-operative society. The relevant para 15 of the case law is reproduced below.

“15. Appellants in these different appeals are indisputably societies registered under the Kerala Co-operative Societies Act, 1969, for short, KCS Act and the bye-laws of each of them, as made available to this Court as part of the paper books, clearly show that they have

been classified as primary agricultural credit societies by the competent authority under the provisions of that Act. The Parliament, having defined the term 'co-operative society' for the purposes of the BR Act with reference to, among other things, the registration of a society under any State law relating to co-operative societies for the time being; it cannot but be taken that the purpose of the societies so registered under the State Law and its objects have to be understood as those which have been approved by the competent authority under such State law. This, we visualise as due reciprocative legislative exercise by the Parliament recognising the predominance of decisions rendered under the relevant State Law. In this view of the matter, all the appellants having been classified as primary agricultural credit societies by the competent authority under the KCS Act, it has necessarily to be held that the principal object of such societies is to undertake agricultural credit activities and to provide loans and advances for agricultural purposes, the rate of interest on such loans and advances to be at the rate fixed by the Registrar of Co-operative Societies under the KCS Act and having its area of operation confined to a village, panchayat or a municipality. This is the consequence of the definition clause in section 2 (oaa) of the KCS Act. The authorities under the IT Act cannot probe into any issue or such matter relating to such applicants.”

4. The Ld.AR further placed reliance on the decision of Hon'ble Supreme Court in case of *Mavilayi Service Co-operative Bank Ltd. v. CIT* reported in 431 ITR 1 to support the claim of the assessee for deduction u/s. 80P(2)(a).

5. On the contrary, the Ld.DR could not controvert the above arguments of the Ld.AR and placed reliance on the orders passed by authorities below.

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

7. It is noted that the authorities have summarily rejected the claim of assessee without even considering the decision of *Hon'ble Jurisdictional High Court* that was available at the relevant period of time. *Hon'ble Supreme Court* in case of *Mavilayi Service Co-operative Bank Ltd. v. CIT (supra)* has considered similar issues, wherein the deduction was examined as per the definition of "member" as per Kerala Co-operative Societies Act. We also make a reference to the decision of *Hon'ble Supreme Court* in case of *Kerala State Co-operative Agricultural and Rural Development Bank Ltd. vs. AO* reported in (2023) 154 taxmann.com 305 which has considered the applicability of section 80P(4) under circumstances referred to therein.

8. This *Tribunal* has also considered the applicability of section 80P(2)(d) under certain circumstances wherein interest earned by the assessee being a co-operative society was a co-operative bank that satisfies the necessary criteria as laid down by *Hon'ble Supreme Court* in case of *Kerala State Co-operative Agricultural and Rural Development Bank Ltd. vs. AO (supra)* wherein the income so earned is not attributable directly to the business of the assessee has to be considered u/s. 80P(2)(d). The relevant decisions of this *Tribunal* may also be referred to by the Ld.AO in completeness of the issue.

9. In the interest of justice, we remand this issue back to the Ld.AO to consider all the above precedence in the decisions of *Hon'ble Jurisdictional High Court* as well as the decisions

of *Hon'ble Supreme Court* referred to hereinabove on the issue of allowability of claim u/s. 80P(2)(a)(i).

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

In the result, the appeal filed by the assessee stands partly 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 /

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

By order

Assistant Registrar,
ITAT, Bangalore