

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

**Before Shri Waseem Ahmed, Accountant Member &
Shri Soundararajan K, Judicial Member**

ITA No.495/Coch/2024 : Asst.Year 2018-2019

The Ezhumattoor Service Co-operative Bank Limited No.1546 Ezumattoor,Mallappally Pathanamthitta – 689 586. PAN : AAFAT6575K.	v.	The Income Tax Officer Ward 2 Thiruvalla.
(Appellant)		(Respondent)

Appellant by :Ms.Anoopa M.J., Advocate

Respondent by :Smt.Girly Albert, Sr.DR

Date of Hearing : 01.10.2024	Date of Pronouncement : 21.10.2024
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ORDER

Per Bench :

This is an appeal filed by the assessee against the order of the CIT(A)/NFAC, Delhi, dated 03.04.2024 in respect of assessment year 2018-2019, in the proceedings u/s143(3) of the Income-tax Act, 1961; in short “the Act” hereinafter.

2. The first issue raised by the assessee is that the ld.CIT(A) erred in denying the benefit of deduction u/s 80P(2)(a)(i) of the Act on the reasoning that the same is not arising from the activities of financing with the members.

3. In the present case, the Assessing Officer found that the assessee has claimed deduction for the interest of

Rs.60,67,675 from the fixed deposits made with the co-operative banks. As per the AO such interest was not available for deduction u/s 80P(2)(a)(i) of the Act, and therefore, disallowed the same.

3.1 The AO further found that the assessee has shown the net profit of the society of Rs.34,47,899 which is inclusive of the interest from the co-operative banks. Accordingly, the AO worked out the amount of profit attributable to such interest from the co-operative banks amounting to Rs.7,83,944 and added the same to the total income of the assessee. On appeal, the Id.CIT(A) partly allowed the grounds of appeal by observing as under:

“6.5. In view of above mentioned facts, legal provisions and following decisions in above mentioned cases I, hereby, direct the AO that appellant should be granted deduction u/s 80P(2)(a)(i) for the income earned from activity of providing credit facilities to its members. However, the same will not include income earned from activity of providing credit to Associate/nominal members. Further, appellant will get deduction u/s 80P(2)(d) on the interest received from deposits/savings account kept with other cooperative societies/ banks which are not governed by RBI Banking Regulation Act. However, such deduction will not be available to interest received from scheduled commercial banks. While giving appeal effect, AO will allow these deductions looking into respective amounts/figures from appellant's books of accounts. Accordingly, the grounds related to this issue are Partly Allowed.”

4. Being aggrieved by the order of the Id.CIT(A), the assessee is in appeal before us. The learned AR before us submitted that the amount of interest received from the co-operative bank was eligible for deduction u/s 80P(2)(a)(i) of the Act by virtue of the judgment of the Hon'ble Kerala High

Court in the case of Pr.CIT v. Peroorkada SCB Ltd. [2022] 442 ITR 141 (Ker).

5. On the other hand, the learned DR could not controvert the arguments advanced by the learned AR of the assessee.

6. We have heard the contentions of both the parties and perused the materials available on record. At the outset, we note that the Hon'ble Kerala High Court in the case of Pr.CIT v. Peroorkada SCB Ltd. (supra) has already decided the instant issue in assessee's favour and against the Revenue. The relevant portion of the judgment of the Hon'ble Kerala High Court reads as under:

“12.2 Section 80P deals with Co-operative Societies' computation of income. As already noted, it has four sections and several sub-sections and clauses. The Parliament has considered the various situations in which the exigible income and the deductible income of the assessee is considered while computing the income of the assessee. For getting deduction, in our considered view, the assessee must also establish that the interest income earned by the assessee is from a Co-operative Society. As a matter of fact, in the case on hand, there is no dispute that it is not from a Co-operative Society registered under Kerala Co-operative Societies Act. The interest income earned from District Co-operative Bank/State Co-operative Bank, in the facts and circumstances of the case, do come within Section 80P(2)(d). Therefore, the income constitutes income from other sources and the only eligible deduction is covered by Section 80P(2)(d) viz. Interest or dividend derived by the assessee from its investments with any other Co-operative Society. The source of interest income is from Bank and Treasury, interest income received from Treasury be included in the computation of total income of the assessee. In other words, interest earned from Treasury is inadmissible for deduction and interest income from Co-operative Societies registered under the Kerala Co-operative Societies Act are eligible for deduction. The contra consideration of Commissioner of Income Tax (Appeals) and the Tribunal is incorrect and liable to be modified as stated above. Hence, it is held that the interest income earned by the assessee does not come within the ambit of Section 80P(2)(a)(i) and permissible deduction of interest income is limited to Co-operative Societies/Banks registered under Kerala Co-operative Societies Act under clause (d) of the Act and effect order on the above lines is made by the Assessing Officer. The questions are accordingly answered.”

7. We adopt the foregoing detailed discussion *mutatis mutandis* to accept the assessee's instant substantive ground of sec.80P(2)(a)(i) deduction. Accordingly, this ground of appeal of the assessee is allowed.

8. The second issue raised by the assessee is that the ld.CIT(A) erred in denying the provision made for Rs.1,02,32,637 under the guidelines of Kerala Registrar of Co-operative Societies.

9. The assessee in the year under consideration has claimed deduction of Rs.1,02,32,637 under the head "any amount allowable as deduction". As per the assessee, such provision was made under the guidelines of Kerala Registrar of Co-operative Act and therefore, it was mandatory in nature, and therefore, the same is eligible for deduction. However, the AO denied the deduction to the assessee as it was representing the provision and not the actual liability. Thus, the AO added the sum of Rs.1,02,32,637 to the total income of the assessee. Aggrieved, the assessee preferred an appeal before the ld.CIT(A), who confirmed the order of the AO by observing as under:

"7.3 The expenses claimed under this issue are various provisions created and then carried forward in the A.Y. under consideration by the appellant. Basically by its very nature provisions are not allowable business expenses under income tax act unless there is some degree of certainty to them and are calculated based on some scientific way. Further appellant has not proved with supporting documents that such provisions are actually debited in the ledgers of clients so that the same can be shown as inside in the future in the event of recovery. In view of this the claim of the appellant can not be

*accepted and hence action of AO on this addition is upheld.
Ground of appellant thus fails on this issue.”*

10. Being aggrieved by the order of the ld.CIT(A), the assessee is in appeal before us. The learned AR before us contended that the ld.CIT(A) has disallowed the claim of the assessee as no supporting documents was furnished in support of the claimed made during the assessment proceedings. Accordingly, the ld.AR requested to restore the issue to the file of the ld.CIT(A) for fresh adjudication as per the provisions of law and further assured to make necessary compliances.

11. On the other hand, the ld.DR did not arise any objection if the issue is set aside to the file of the AO for fresh adjudication as per the provisions of law.

12. We have heard the contentions of both the parties and perused the materials on record. From the preceding discussion, we note that the deduction claimed by the assessee was denied on account of non-availability of supporting documents. However, the ld.AR before us has assured to furnish all the supporting documents if the issue is set aside to the file of the ld.CIT(A) for fresh adjudication as per law. Considering the facts in totality and in the interest of justice, we are inclined to restore the issue to the file of the ld.CIT(A) for fresh adjudication as per the provisions of law. Hence, ground of appeal of the assessee is hereby allowed for statistical purposes.

13. In the result, the appeal filed by the assessee is partly allowed for statistical purposes.

Order pronounced on this 21st day of October, 2024.

Sd/-
(Soundararajan K)
JUDICIAL MEMBER

Sd/-
(Waseem Ahmed)
ACCOUNTANT MEMBER

Cochin ; Dated : 21st October, 2024.
Devadas G*

Copy to :

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

Asst.Registrar/ITAT, Cochin