

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

Before Shri Inturi Rama Rao, Accountant Member

ITA Nos. 680 & 681/Coch/2022
(Assessment Years: 2016-17 & 2017-18)

Kalanad Service Co-op. Bank Ltd. Kalanad P.O. Melparamba Kasargod 671317 [PAN: AABAK7716K]	vs.	The Income Tax Officer Ward -1 & TPS, Kasargod
(Appellant)		(Respondent)

Appellant by:	Shri Arun Raj S., Advocate
Respondent by:	Smt. Leena Lal, Sr. D.R.

Date of Hearing:	21.10.2024
Date of Pronouncement:	30.10.2024

ORDER

These appeals filed by the assessee are directed against separate orders of the National Faceless Appeal Centre, Delhi [CIT(A)] both dated 17.03.2022 for Assessment Years (AY) 2016-17 and 2017-18.

2. At the outset, I find the appeals are time barred by limitation by 28 days before the Tribunal. The assessee filed petitions praying for condonation of delay on the ground that his counsel, who was dealing with the matter went abroad on 08.04.2022 and returned only on 03.06.2022. On his return the matter was entrusted to the present counsel at Ernakulam on 06.06.2022 for filing appeal before the Tribunal. Therefore, there is no willful negligence or deliberate laches on the part of the

assessee in not filing the appeals within the stipulated time limit. The assessee prayed to condone the delay of 20 days.

3. Having gone through the averments made in the condonation petition filed by the assessee and in the absence of any contrary material to disbelieve the contention put forth by the assessee, I am of the considered opinion that it is a fit case to condone the delay of 28 days in filing the appeals and proceed for adjudication of the appeals on merits.

4. Brief facts of the case are that the assessee is a primary agricultural credit co-operative society registered under the Kerala Co-operative Societies Act. The return of income for AY 2016-17 was filed on 02.06.2016 and for AY 2017-18 on 19.03.2018 declaring Nil income after claiming deduction u/s. 80P of the Income Tax Act, 1961 (the Act) . Against the said return of income, assessments were completed by the Assessing Officer (AO) vide order dated 26.12.2018 & 15.12.2019. While doing so the AO had denied exemption u/s. 80P(2)(a)(i) of the Act by holding that the assessee is not a primary agricultural co-operative society, as it also provides credit facilities to nominal members who are classified as class C and class D members and placing reliance on the decision of the Hon'ble Supreme Court in the case of *The Citizen Co-operative Society Ltd. v. Asst. CIT* [2017] 397 ITR 1 (SC).

5. Being aggrieved, an appeal was filed before the CIT(A) who vide the impugned order confirmed the action of the AO.

6. Being aggrieved, the assessee is in appeal before the Tribunal. The solitary issue that arises in both the appeals is where the lower authorities were justified in denying deduction u/s. 80P(2)(a)(i) of the Act solely on the ground that the assessee co-operative society also provided credit facilities to nominal members. The issue in

the appeal is no more res integra as it is settled by the Hon'ble Supreme Court in the case of Mavilayi Service Co-operative Bank Ltd. v. CIT [2021] 431 ITR 1 (SC) after making a reference to its earlier judgement in the case of UP Cooperative Cane Unions' Federation Ltd. 11 SCC 287 wherein it is held that the expression "member" includes nominal members under the Kerala Cooperative Societies Act and therefore it was held that denial of exemption u/s. 80P(2)(a)(i) of the Act is unjustified solely on the ground that the assessee society also provides loans to the nominal members. In the light of the decision by the Hon'ble Apex Court, the AO is directed to allow the deduction u/s. 80P(2)(a)(i) of the Act as claimed by the assessee.

7. In the result, the appeals filed by the assessee are allowed for statistical purposes.

Order pronounced in the open court on 30th October, 2024

Sd/-
(Inturi Rama Rao)
Accountant Member

Cochin, Dated: 30th October, 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