

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

Before Shri Inturi Rama Rao, Accountant Member

ITA No. 596/Coch/2024
(Assessment Year: 2017-18)

Velliamattom Service Co-op. Bank Ltd. Pannimattom, Thodupuzha Idukki 686588 [PAN: AAAAT3271D]	vs.	The Income Tax Officer-2 Mahima Towers Temple Road Thodupuzha 685584
(Appellant)		(Respondent)

Appellant by:	Shri Mathew Joseph, CA
Respondent by:	Smt. Leena Lal, Sr. D.R.

Date of Hearing:	30.10.2024
Date of Pronouncement:	18.11.2024

ORDER

This appeal filed by the assessee is directed against the order of the Commissioner of Income Tax (Appeals)-5, Kolkata [CIT(A)] dated 31.05.2024 for Assessment Year (AY) 2017-18.

2. The assessee is a primary agricultural credit co-operative society registered under the Kerala Co-operative Societies Act. The return of income for AY 2017-18 was filed on 18.01.2018. Against the said return of income assessment was completed by the Assessing Officer (AO) vide order dated 19.12.2019 passed u/s. 143(3) of the Income Tax Act, 1961 (the Act) at a total income of Rs. 23,21,729/- denying exemption u/s. 80P(2)(a)(i) of the Act by holding that the assessee is not a primary agricultural co-operative society, but a service co-operative bank.

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

4. Being aggrieved, by the order of the CIT(A), the assessee is in appeal before the Tribunal.

5. I have heard the rival contentions of both the parties, also perused the material available on record. The assessee is a primary agricultural society formed with the object of providing credit facilities to its members. The assessee claimed deduction of income under 80P(2)(a)(i) of the Act. The AO classified the assessee as a co-operative bank and therefore denied the deduction. The AO under the provisions of the Income Tax Act cannot go behind any registration certificate granted by the Registrar of Cooperative Societies, engages in a fact-finding enquiry as to whether it is a primary agricultural co-operative society as held by the Hon'ble Supreme Court in the case of Mavilayi Service Co-operative Bank Ltd. v. CIT [2021] 431 ITR 1 (SC) wherein it was held as under: -

“32. Fifthly, as has been held in Udaipur Sahkari Upbhokta Thok Bhandar Ltd. v. CIT MANU/SC/1209/2009: (2009) 8 SCC 393 at paragraph 23, the burden is on the Assessee to show, by adducing facts, that it is entitled to claim the deduction Under Section 80P. Therefore, the assessing officer under the IT Act cannot be said to be going behind any registration certificate when he engages in a fact-finding enquiry as to whether the co-operative society concerned is in fact providing credit facilities to its members. Such fact finding enquiry (see Section 133(6) of the IT Act) would entail examining all relevant facts of the co-operative society in question to find out whether it is, as a matter of fact, providing credit facilities to its members, whatever be its nomenclature. Once this task is fulfilled by the Assessee, by placing reliance on such facts as would show that it is engaged in providing credit facilities to its members, the assessing officer must then scrutinize the same, and arrive at a conclusion as to whether this is, in fact, so.”

6. Therefore in the absence of any banking licence granted to the assessee society, AO cannot consider the assessee as co-operative bank and deny the exemption. Further the addition, if any, made to the returned income also qualifies as

business income eligible for deduction u/s. 80P of the Act. Therefore, the AO is directed to allow the deduction u/s. 80P(2)(i)(a) of the Act.

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

Order pronounced in the open court on 18th November, 2024

Sd/-
(Inturi Rama Rao)
Accountant Member

Cochin, Dated: 18th November, 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

Assistant Registrar
ITAT, Cochin