

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

Before Shri Inturi Rama Rao, Accountant Member

ITA No. 403/Coch/2024
(Assessment Year: 2008-09)

Pulloom Service Co-op. Bank Ltd. Pulloom P.O., Thrissur 680731 [PAN: AACAT5298C]	vs.	The Income Tax Officer Ward - 2(5) Thrissur
(Appellant)		(Respondent)

Appellant by:	----- None -----
Respondent by:	Smt. Leena Lal, Sr. D.R.

Date of Hearing:	29.10.2024
Date of Pronouncement:	18.11.2024

ORDER

This appeal filed by the assessee is directed against the order of the National Faceless Appeal Centre, Delhi [CIT(A)] dated 08.03.2024 for Assessment Year (AY) 2008-09.

2. Brief facts of the case are that the assessee is a co-operative society registered under the Kerala State Co-operative Societies Act. The assessee had not filed regular return of income for AY 2008-09. Subsequently the Assessing Officer (AO) had issued a notice u/s. 148 of the Income Tax Act, 1961 (the Act) on 37.03.2015. In response to the notice u/s. 148 of the Act return of income was filed claiming deduction of Rs. 8,20,557/- u/s. 80P of the Act. Against the said return of income assessment was completed by the AO vide order dated 04.03.2016 passed u/s. 143(3) r.w.s. 147 of the Act at a total income of Rs. 43,76,197/- by disallowing the claim for

deduction u/s. 80P of the Act by holding that the assessee is not a co-operative society but a co-operative bank hit by the provisions of sub-section (4) of section 80P of the Act.

3. Being aggrieved, an appeal was filed before the CIT(A) who vide the impugned order confirmed the action of the AO placing reliance on section 80A(5) of the Act holding that the assessee has not made a claim in the return of income. Therefore, deduction u/s. 80P cannot be allowed placing reliance on the decision of the hon'ble jurisdictional high court in the case of Neleshwar Rangekallu Chethy Vyavasaya Thozhilai Sahakarana Sangham vs. CIT [2023] 152 taxmann.com 347 (Ker.)

4. Being aggrieved, the assessee is in appeal before this Tribunal. When the appeal was called on nobody attended despite due service of notice of hearing. Therefore after hearing the learned Sr. DR, I proceeded to dispose of the appeal as under.

5. The learned Sr. DR placed reliance on the decision of the coordinate bench in the case of Kadavalur Service Co-op. Bank Ltd., ITA No. 637/Coch/2023.

6. The only issue that arises for my consideration is whether or not the assessee co-operative society is eligible for deduction u/s. 80P of the Act. Admittedly the assessee society is formed with the objective of accepting deposits from its members and lending money to its members. There is no dispute that the assessee did not file return of income. However, the assessee had filed return of income in response to the notice u/s. 148 making claim in the return of income for deduction u/s. 80P of the Act. The AO had denied the claim for deduction u/s. 80P solely on the ground that the assessee is not a primary agricultural co-operative society but a co-operative bank

hit by the provisions of sub-section (4) of section 80P of the Act. It is undisputed fact that the assessee is registered as a primary agricultural co-operative society as per the certificate issued by the Registrar of Kerala State Co-operative Societies Act and it does not hold any banking licence to carry out banking business. Therefore, it is not open to the AO to engage into a fact finding enquiry that it is a primary co-operative society or not as held by the hon'ble apex court in the case of Mavilayi Service Co-operative Bank Ltd. v. CIT [2021] 431 ITR 1 (SC). Therefore, the reasoning of the AO cannot be upheld in the eye's of law in view of the authoritative pronouncement of the Hon'ble Supreme Court overriding the decision of the hon'ble jurisdictional high court in the case of Chirakkal Service Co-operative Bank Ltd. v. CIT[2016] 384 ITR 490 (Ker). The ratio of the decision of the hon'ble jurisdictional high court in the case of Neleshwar Rangekallu Chethy Vyavasaya Thozhilai Sahakarana Sangham vs. CIT [2023] 459 ITR 730 or the provisions of section 80A(5) have no application to the facts of the present case, in as much as, in the present case the assessee made claim in the return of income filed in response to the notice u/s. 148 of the Act. Therefore, the reasoning of the CIT(A) cannot be upheld in the eyes of law. Therefore, the orders of the lower authorities are hereby reversed and the AO is directed to allow the deduction u/s. 80P(2)(a)(i) of the Act.

7. In the result, the appeal filed by the assessee stands allowed.

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

By Order

Assistant Registrar
ITAT, Cochin