

IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH : COCHIN

BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER
AND
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER

ITA.Nos.192 & 193/COCH./2024
Assessment Year 2015-2016

Kaniyambetta Service Co.Op Bank Ltd., Kaniyambetta P.O. Wayanad District. PIN – 673 122. KERALA. PAN AADAT0778L	vs.	The Joint Commissioner of Income Tax, Range-2, KOZHIKODE – 673 001. KERALA.
(Appellant)		(Respondent)

Date of Hearing : 20.08.2024

ITA.No.172/Coch./2024
Assessment Year 2015-2016

The Joint Commissioner of Income Tax, Range-2, KOZHIKODE – 673 001. KERALA.	vs.	Kaniyambetta Service Co.Op Bank Ltd., Kaniyambetta P.O. Wayanad District. PIN – 673 122. KERALA. PAN AADAT0778L
(Appellant)		(Respondent)

Date of Hearing : 22.08.2024

For Assessee :	Shri Anil D. Nair, Advocate
For Revenue :	Dr. S. Pandian, CIT-DR

Date of Pronouncement : 07.11. 2024

ORDER**PER SATBEER SINGH GODARA, J.M.**

The instant batch of three cases pertains to a single assessee herein viz., Kaniyambetta Service Co.Op Bank Ltd., We note that Revenue's appeal ITA.No.172/COCH./2024 and assessee's cross-appeal ITA.No.192/COCH./2023 followed by the latter's yet another appeal ITA.No.193/COCH./2023, for assessment year 2015-2016, arise against the learned CIT(A)-National Faceless Appeal Centre [in short the "NFAC"] Delhi's Din and Order No. ITBA/NFAC/S/250/2023-24/1059521414(1) and 1058646432(1) dated 09.01.2024 and 11.12.2023, in proceedings u/s.271D and 271E of the Income Tax Act, 1961 (in short "the Act"); case-wise; respectively. It is made clear that although we had not heard the instant three appeals together, the same are being disposed of by this common order for the sake of convenience and brevity.

Heard both the parties. Case files perused.

2. Both the learned representatives are very much *ad idem* during the course of hearing that the assessee before us is a cooperative bank/cooperative society which has been held to

have violated the relevant provisions in Sec.269SS and 269T of the Act in availing cash deposits/loans from it's members as well as also in repayment thereof in very mode; giving rise to the Assessing Officer's action levying sec.271D and 271E penalty(ies) to the tune of Rs.8,46,16,709/- and Rs.33,02,43,427/-, respectively.

3. It is in this factual backdrop that both the parties first of all take-us to the CIT(A)-NFAC's lower appellate discussion bifurcating the corresponding relief to the assessee to the extent of Rs.10% only reading as under :

5.1. There is violation of provisions of section 271D in having taken or accepted deposits in cash Penalty under section 269SS is levied by the assessing officer for gross violation of the provisions of section 271E. There are only three reasons cited by the assessee ile both taxpayer and the members/non members who have taken deposits are agriculturists that they are covered under the exemption clause, two taxpayer is not a Primary Agricultural Credit Society hence will not be covered under the exemption clause, the third reason cited is all details of PAN, email, addresses of the depositors can be provided to cover up this issue.

Reply: none of the reason cited are fully addressed there are no details regarding the name, PAN and address of the depositors, the argument that both taxpayer and depositors are agriculturists having agricultural income and they do not have taxable income and hence fall under the exempted category is wrong. There is substantial number of transactions but in order to claim exemption it has to prove that these entities are in agricultural activities for which Primary Agricultural Credit Societies are meant for. Here in the case of the taxpayer it has claimed deduction under section 80P(2)(a)(i) where in members are indulging in "banking and providing credit facilities. This means that benefit of forming a cooperative society following the concept of 'mutuality has also taken into account extending credit facilities as well as banking. Banking is a wide term which includes providing credits by giving loans, facility for cheques, pass book, accepting deposits, providing OD facility, savings bank facility where liquidity is there thereby circulating its capital. Banking encompasses in itself a wide variety of functions which earns profit. So the question of whether taxpayer is an agriculturist or not and whether the depositors are

agriculturists is too farfetched. Taxpayer is a Primary Agricultural Credit Society and under the Kerala Co operative Societies Act Service Cooperative Banks (the name of the taxpayer is KANIMABETTA SERVICE COOPERATIVE BANK) fall under the category of Primary Agricultural Credit Societies. Primary Agricultural Credit Societies and Cooperative Societies do not get the benefit of section 269SS the exempted categories are government, banking companies, persons dealing in agricultural activities, any Corporation established by Central, State or provincial Act, a Government Company, other institutions notified by the Central govt

5.2. One of the arguments raised by the taxpayer is that it is a Corporation established by State Act. It is true that the entity ie the taxpayer was formed under a State Act ie., the Kerala Cooperative Societies Act, but it is not a Corporation. Examples of State Corporations are KSIDC, KSRTC, KTDC etc. According to the KCS Act, Service Cooperative Banks falls under the definition of Primary Agricultural Credit Societies. As per the decision in the case of Mavilayi Cooperative Society 80P deduction is available even if non members are also. provided loan. So the question of claim under 80P is not

the deciding factor. The deposits accepted has to be through account payee cheque or draft or (the electronic media) as per the provisions of the Act. During the appeal proceedings also the case was posted for hearing on 21/8/2020, 4/5/2022, 25/7/2023, 7/12/2023. None of the reason cited are fully addressed there are no details regarding the name, PAN and address of the depositors The data will be voluminous, in fact sending back to the assessing officer may not serve the purpose. Despite posting the case several times during scrutiny and appeal proceedings no data is forth coming. Considering the facts of the case a relief of 10% of the total claim is allowed. The relief given to the taxpayer is Rs.1,29,82,066/- rounded to Rs.1,29,82,000/-.

5.3. In the result the appeal is partly allowed.”

4. As against this, the assessee appears to have filed it's latter appeal ITA.No.193/Coch./2024 raising the sole substantive ground in sec.271E penalty proceedings which is found to be entirely misconceived once the learned CIT(A)-NFAC's lower appellate discussion has accepted it's contentions as under :

“5.2 Findings and decision:

I have carefully considered the facts of the case as well as submissions filed by the appellant. I find force in the arguments of the Appellant. The fundamental issue in this case is that the Assessee is a Primary agricultural co-operative society' duly registered under the Kerala Co-operative Societies Act. The deduction under section 80P has been duly allowed to the Assessee after following the decision of the Hon'ble Supreme Court in the case of Mavilayi Service Co-operative Bank Ltd. v. Commissioner of Income Tax, Calicut, [2021] 123 taxmann.com 161 (SC), which has settled the law on this issue. There is no doubt that these co-operative societies operate in rural environments and provide credit facilities to small farmers and agricultural laborers. Most of the activities are carried out in cash only and adequate banking facilities are not available in this area. Most of the transactees do not have any other bank account except the one with Assessee co-operative society. In similar circumstances Hon'ble SUPREME COURT OF INDIA in the recent case of Commissioner of Income-tax v. Sahara India

Financial Corp. Ltd., [2023] 153 taxmann.com 225 (SC), held as under :-

Section 269SS, read with section 271D, of the Income-tax Act, 1961 Deposits Mode of taking/accepting (Penalty) Assessment year 2009-10- Assessing Officer imposed penalty upon assessee, a non-banking finance company, which had accepted cash deposit in violation of section 269SS High Court by impugned order deleted penalty on ground that depositors belonged to rural areas where adequate banking facilities were not available - Whether there was no reason to interfere with impugned judgment and, thus, instant appeal was to be dismissed Held, yes [Paras 2 and 3] [In favour of assessee)

Similar view was also taken by the SUPREME COURT OF INDIA in the case of Commissioner of Income-taxv. Sahara India Mutual Benefit Co. Ltd. [2023] 153 taxmann.com 405 (SC), wherein it was held as under :-

Section 271D, read with sections 271E and 273B, of the Income-tax Act, 1961 - Penalty - For failure to comply

with provisions of section 269SS (Reasonable cause) Assessee was a mutual benefit company doing business of mobilization of deposits from members/shareholders - Tribunal deleted penalty imposed on assessee under sections 271D and 271E after considering assessee's business realities, difficulties in mobilizing deposits from people of small incomes, agriculturists and rural dwellers High Court by impugned order held that revenue could not bring on record any material to show that finding of fact recorded by Tribunal as to existence of reasonable cause was perverse and thus, order of Tribunal could not be disturbed Whether there was no reason to interfere with impugned judgment and, thus, appeal was to be dismissed-Held, yes [Paras 1 and 2] [In favour of assessee]]

When such a leverage can be given to a private finance corporation, why should the Primary agricultural co-operative society be excluded ? Accordingly, it is held that since the Assessee is operating in a rural environment dealing with mostly agriculturists and landless labourers, there exists a

reasonable cause for the Assessee to repay the deposits accepted from the members in cash. Accordingly, the penalty of Rs.33,02,43,427/- imposed u/s. 271E of the Act by the JCIT is deleted and the grounds of appeal no. 1 to 8 are hereby allowed.

06. In the result, the appeal is allowed.”

5. We thus conclude in these peculiar facts that the assessee could hardly be held as an aggrieved party once the entire sec.271E penalty of Rs.33,02,43,427/- stands deleted, it has attained finality given the fact that the Revenue has not opted to file its separate appeal raising the said issue. This assessee's appeal ITA.No.193/Coch./2024 is dismissed in very terms.

6. We now proceed to deal with the Revenue's and assessee's cross-appeals ITA.No.172 and 192/Coch./2024 wherein it has already come on record that the CIT(A)-NFAC's lower appellate discussion has simply estimated the relief @ 10% without considering the fact that there is no such scope of estimation in such a penal action. Faced with this situation, both the learned representatives are indeed *ad idem* during the course

of hearing that we need to restore the instant twin cross-appeals ITA.Nos.172 & 192/Coch./2024 back to the CIT(A)-NFAC for it's afresh appropriate adjudication in tune with sec.250(6) of the Act requiring it to frame points of determination followed by a detailed adjudication thereof, preferably within three effective opportunities of hearing, subject to the rider that it shall be the taxpayer's onus and responsibility only to plead and prove all the relevant facts in consequential proceedings. Ordered accordingly.

7. To sum-up, these Revenue's appeal ITA.No.172/Coch./2024 is allowed for statistical purposes and assessee's cross-appeal ITA.No.192/Coch./2024 is allowed for statistical purposes and assessee's latter appeal ITA.No.193/Coch./2024 is dismissed in above terms. A copy of this common order be placed in the respective case files.

Order pronounced in the open Court on 07.11. 2024.

Sd/-

[AMARJIT SINGH]
ACCOUNTANT MEMBER

Sd/-

[SATBEER SINGH GODARA]
JUDICIAL MEMBER

Cochin, Dated 7th November, 2024

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	The CIT(A) concerned.
4.	The CIT concerned
5.	The D.R. ITAT, Cochin Bench, Cochin.
6.	Guard File.

//By Order//

//True copy//

Sr. Private Secretary, ITAT, Cochin Bench,
Cochin