

IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN

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

ITA.No.27/Coch/2024
Assessment Year - 2018-2019

Mavoor Service Co-operative Bank Limited, Mavoor, Kozhikode – 673 661. PAN AAEAM3116A	v.	The Income Tax Officer Ward 2(3) Kozhikode.
(Appellant)		(Respondent)

Appellant by : Sri.C.B.M.Warrier, CA
Respondent by : Smt.V.Swarnalatha, Sr.DR

Date of Hearing : 23.08.2024	Date of Pronouncement : 07.11.2024
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ORDER

PER BENCH :

This assessee's appeal, for assessment year 2018-2019 arises out of the order of the Commissioner of Income-tax (Appeals)/National Faceless Appellate Centre, [in short "NFAC"] Delhi, Delhi's DIN & Order No.ITBA/NFAC/S/250/2023-24/1058624057(1) dated 11.12.2023, in proceedings u/s.143(3) of the Income-tax Act, 1961; in short ["the Act"].

Heard both the parties. Case file perused.

2. It emerges at the outset that both the learned lower authorities have rejected the assessee's sec.80P deduction claim for the sole reason that the same had not been raised in a return or by filing a return, as the case may be, within the "due" date prescribed u/sec.139(1) of the Act. The assessee raises the following substantive grounds in the instant appeal:

1. *"The appellant is MAVOOR SERVICE CO-OPERATIVE BANK LTD No.F-1247, Mavoor, Kozhikode-673 661 and in regard to Assessment Year 2018-19 the Assessing Officer, National e-Assessment Centre, Delhi, has completed the assessment by order dt.26.03.2021, after disallowing the deduction claimed u/s.80P to the extent of Rs.4,29,44,954/-, and assessed with an income of Rs.4,29,44,954/- u/s. 143(3) vs 143(3) &143(3B) of the Act.*
2. *The appellant filed the return of income with a gross income of Rs.4,29,44,9541-, which includes interest and dividend received from other co-operative societies and the return is filed after claiming deduction u/s.80P of the Act to the extent of Rs.4,29,44,954/-, to the extent of income from*

- business calculated. The Assessing Officer has decided that the return of income is filed u/s. 139(4) and not u/s. 139(1) of the Act and hence not eligible for deduction u/s.80P.*
- 3. The appellant society went on appeal before the Commissioner of Income Tax (Appeals). NFAC, but dismissed the appeal.*
 - 4. The Assessing Officer or the Commissioner of Income Tax (Appeals) has not considered the order of the CBDT in F.No. F.No.22S/1S/2019/ITA.11 dt.27.02.2019, extending the time limit for filing of the return of income for the AY 2018-19 and hence the filing of the return of income of the appellant on 07.11.2018 should be considered as within the time allowed u/s. 139(1) of the Act and the benefit of section 80P should have been granted.*
 - 5. The assessment is completed without considering the fact that the appellant society is registered under the Kerala State Co-operative Societies Act and Rules 1969 as a PRIMARY AGRICULTURAL CREDIT SOCIETY and the appellant society is not a bank*

with License from Reserve Bank for banking. This is evident as per the certificate dt.22.11.2016 issued by the Joint Registrar of Co-op Societies (General), Kozhikode.

6. *Further, the following decisions may also be considered: The Hon'ble High Court of Kerala, in the case of Principal Commissioner of Income Tax vs. 1. Peroorkada Service Co-operative Bank Ltd. (ITA Nos.323 of 2019 and 5 of 2020) and 2. Vilappil Service Co-operative Bank Ltd (ITA No.142 of 2019) [2022] 442 ITR 141 (Ker), has held that the interest income earned by the assessee comes with the category of 'income from other sources' and is eligible for deduction u/s.80P(2)(d) of the Act, since the interest income earned from co-operative banks, societies, etc registered under the Co-operative Societies Act are eligible for the same.*
7. *The investment by the society is made out of the surplus fund, which is forming part of the business income and hence the income from the investment should be considered as part of the business income*

and hence exempted u/s.80P of the Act, as per the decision of the Hon'ble Supreme Court of India in the case of Mavilayi Service Co-op Bank Ltd & Others in Civil Appeal No.8315 of 2019. [2021] 431 ITR 1 (SC) may also be referred.

8. It is held that the interest income earned by the society comes with the category of income from business or income from other sources and the assessee is eligible for deduction u/s.80P(2)(a)(i) or section 80P(2)(d) of the Act. It has been held in the connected cases that the assessee is entitled to deduction of interest income earned from co-op banks/societies/federation registered under the Co-operative Societies Act.

9. For the above reasons and other arguments that may be put forward, the appellant may request that the assessment made, disallowing the deduction claimed by the appellant, may be cancelled.”

3. We invited the Revenue's attention to Chirakkal Service Cooperative Bank Ltd., vs. CIT [2016] 68 taxmann.com 298 (Ker.). Learned DR quotes sec.80AC(ii) of

the Act that the assessee's default in filing its return within "due" date u/sec.139(1) is indeed fatal herein as per stricter interpretation. The assessee had admittedly filed its return on 06.11.2018 and quotes the CBDT's instructions dated 27.02.2019 excluding the said "due" date up-to 07.11.2018 which has gone un-rebutted from the Revenue side. That being the clinching case, we accept the assessee's grounds raised herein and direct the learned CIT(A)-NFAC to decide its lower appeal afresh, as per sec.250(6) of the Act, 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.

4. This assessee's appeal is partly allowed for statistical purposes in above terms.

Order pronounced in the open court on this 7th day of November, 2024.

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

Sd/-
(SATBEER SINGH GODARA)
JUDICIAL MEMBER

Cochin ; Dated : 07.11.2024.
VBP/-

Copy to :

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

Asst.Registrar/ITAT, Cochin