

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

**Before Shri Satbeer Singh Godara, Judicial Member &
Shri Amarjit Singh, Accountant Member**

ITA No.37/Coch/2024 : Asst.Year 2020-2021

The Trivandrum Govt. Employees Co-op. Society Ltd.No.43 TC-12/1651, Near Bank Employees Hall Thiruvananthapuram, – 695001. PAN : AAAAT3713A.	v.	The Assistant Commissioner of Income-tax, Trivandrum.
(Appellant)		(Respondent)

Appellant by : Sri.R.Krishnan, 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 ITA No.37/Coch/2024 for assessment year 2020-2021 arises out of the order of the Commissioner of Income-tax (Appeals) / NFAC vide DIN & Order No.ITBA/NFAC/S/250/2023-24/1058056404(1) dated 20.11.2023 in proceedings u/s.250 of the Income-tax Act, 1961; in short "the Act" hereinafter.

Heard both the parties. Case file perused.

2. The assessee pleads the following substantive grounds :

“1. The learned CIT(A) erred in confirming the deduction claimed by the appellant of Rs.38,35,586/- and Rs.50,000/- respectively u/s.80P(2)(1)(i) and 80P(2)(c) of the Income Tax Act.

2. The learned CIT(A) completely failed to appreciate the facts of the case. The assessing officer had denied deduction u/s 80P for the reason that necessary documentary evidences were not submitted in support of the claim. However, the learned CIT(A) in his order went on to confirm the addition by stating that the interest earned from surplus funds deposited with a Co-operative bank are not eligible for deduction u/s 80P(2)(i)(a) which was not even the case of the appellant.

3. The learned CIT(A) ought to have appreciated the fact that the appellant had rightly bifurcated the interest received from members and non-members, and had claimed deduction u/s 80P(2)(a)(i) on the interest received from members only in the computation of income. There was no case of any interest received from surplus funds deposited with any Co-operative bank as explained in detail in the order passed by the learned CIT(A) as a reason for confirming the addition.

4. The learned CIT(A) confirmed the order of assessment mechanically without going through the facts of the case in detail.

5. The learned CIT(A) erred in confirming the action of the assessing officer in treating the income of the appellant as chargeable under the head "Income from other sources" when in fact the appellant is a Co-operative society engaged in the business of providing credit facilities to its members.

6. The learned CIT(A) failed to appreciate that the bye laws submitted by the appellant which clearly shows that the appellant is a Co-operative society engaged in the business of providing credit facilities to its members. Denial of deduction u/s 80P was not warranted.

7. The learned CIT(A) erred in confirming the denial of deduction u/s 80P(2)(c) when the appellant had clearly explained that they run medical store and the taxes are paid on the profits earned by them after claiming deduction. No effort was made to verify whether the claim of the appellant was correct.

8. Be as it may be, even if the interest income received from surplus funds deposited is to be treated under the head "Income from Other Sources", the learned CIT(A) ought to have allowed deduction u/s 80P(2)(d) following the rationale in the decision of the Hon. Supreme Court in the case of Mavilayail Service Co-operative Bank 431 ITR 1.

3. Learned counsel submits very fairly that the assessee's section 80P(2)(c) ground of Rs.50,000/- is not pressed keeping in mind smallness of the amount herein. Rejected in very terms.

4. Next comes the assessee's claim of section 80P(2)(a)(i) deduction claim of Rs.38,35,586/- wherein the Revenue vehemently contends that it is infact a cooperative bank than a cooperative society and therefore, the same deserves to be upheld. We find that the relevant issue has recently been decided in assessee's favour and against the department in the in the case of Kerala State Cooperative Cooperative Agricultural and Rural Development Bank [2023] 458 ITR 384 (SC) that whilst taking such a stand, the onus lies with the Revenue to prove that the taxpayer concerned carries a banking license under the Banking Regulation Act and it has been dealing with general public at the same time.

5. We further note that the impugned interest income of Rs.38,35,586/- has been derived from assessee's deposits made in cooperative banks. The Revenue's vehement contention before us quotes Totagars Co-operative Sales Society Ltd. Vs. ITO (2010) 322 ITR 283 (SC) and PCIT & Anr. v. Totagars Co-operative Sales Society reported in (2017) 395 ITR 611 (Kar.) that such an income could not be held as regular business income. We find that hon'ble jurisdictional high court in recent decision PCIT v. Peroorkada Service Co-op. Bank Ltd. [2022] 442 ITR 141 (Ker) has rejected the Revenue's identical stand as under: -

"12.2 Section 80P deals with Co-operative Societies' computation of income. As already noted, it has four sections and several sub-sections and clauses. The Parliament has considered the various situations in which the exigible income and the deductible income of the assessee is considered while computing the income of the assessee. For getting deduction, in our considered view, the assessee must also establish that the interest income earned by the assessee is from a Co-operative Society. As a matter of fact, in the case on hand, there is no dispute that it is not from a Co-operative Society registered under Kerala Co-operative Societies Act. The interest income earned from District Co-operative Bank/State Co-operative Bank, in the facts and circumstances of the case, do come within Section 80P(2)(d). Therefore, the income constitutes income from other sources and the only eligible deduction is covered by Section 80P(2)(d) viz. Interest or dividend derived by the assessee from its investments with any other Co-operative Society. The source of interest income is from Bank and Treasury, interest income received from Treasury be included in the computation of total income of the assessee. In other words, interest earned from Treasury is inadmissible for deduction and interest income from Co-operative Societies registered under the Kerala Co-operative Societies Act are eligible for deduction. The contra consideration of

Commissioner of Income Tax (Appeals) and the Tribunal is incorrect and liable to be modified as stated above. Hence, it is held that the interest income earned by the assessee does not come within the ambit of Section 80P(2)(a)(i) and permissible deduction of interest income is limited to Co-operative Societies/Banks registered under Kerala Co-operative Societies Act under clause (d) of the Act and effect order on the above lines is made by the Assessing Officer. The questions are accordingly answered.”

6. We adopt the above detailed discussion *mutatis mutandis* in the case of assessee's identical submission on section 80P deduction. Necessary computation shall follow as per law in very terms.

7. This assessee's appeal is partly allowed 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 : 7th November, 2024.
Satish

Copy to :

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

Asst.Registrar/ITAT, Cochin