

IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN

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

ITA No.711/Coch/2023
Assessment Year: 2017-18

Vorkady Service Co-op. Bank Ltd. Vorkady P.O. Kasaragod – 671 123 PAN: AABAT5057C	vs.	The Income Tax Officer Ward-1 & TPS, Kasaragod
(Appellant)		(Respondent)

Appellant by:	Shri Arun Raj S., Advocate
Respondent by:	Smt. V. Swarnalatha, Sr. D.R.

Date of Hearing:	22.08.2024
Date of Pronouncement:	07.11.2024

ORDER

Per Bench

This assessee's appeal for A.Y. 2017-18 arises against the National Faceless Appeal Centre, Delhi [CIT(A)]'s DIN & Order No. ITBA/NFAC/S/250/2023-24/1055485923(1) dated 28.08.2023 in proceedings u/s. 250 of the Income Tax Act, 1961 (the Act).

Heard both the parties. Case file perused.

2. Coming to the assessee's sole substantive grievance challenging both the learned lower authorities action disallowing sec.80P detailed discussion claim of Rs.33,93,482/- in the course of assessment herein dated 15.12.2019; we note that the CIT(A)-NFAC's lower appellate discussion upholding the same reads as under :

"6. FINDINGS & DECISION

6.1. *I have gone through the assessment order and grounds of appeal. The learned AO has carried out addition by disallowing deduction of Rs.33,93,482/- under section 80P of the IT Act. Aggrieved by the order of assessment, the appellant has filed multiple grounds of appeal which we disposed off as under.*

6.2. *The learned AO during assessment proceedings, observed that the appellant is engaged into business of*

- Accepting various kinds of deposits from members as well as non-members.*
- Maintaining saving bank accounts/current accounts and daily deposits account.*
- Providing locker facility, cheque facility, etc.*

- *Providing various kinds of loans such as agricultural loans, loans of security deposits, loan for purchase and construction of house, vehicle loan, etc.*

The learned AO also observed that loan for agricultural activities was only 8.5%. The learned AO held that the appellant is engaged in banking business and its not a primary agriculture society. Thus as per provisions of sub section 4 of section 80P, the appellant is not eligible for 80P deduction.

6.3. During the appellate proceedings, the appellant contested that it is a registered cooperative society and not a bank. It is not granted any banking license from RBI. It relied on recent judicial pronouncement of Hon'ble Supreme Court in the case of THE MAVILAYI SERVICE COOPERATIVE BANK LTD. & ORS VS CIT. The appellant did not even filed copy of registration certificate granted by registrar of co- operative societies.

6.4. The contention of appellant are considered in light of judicial pronouncement to of Hon'ble SC. As per said judgment, the taxpayer is eligible 80P deduction unless it holds banking

license granted by RBI and it is also available in respect of loans granted for all loans. However, deduction shall be allowed in respect of profits derived from transacting with members only. The relevant extract of said judgment is reproduced hereunder.

*THE MAVILAYI SERVICE COOPERATIVE BANK LTD. & ORS VS
CIT [SC - CIVIL APPEAL NOS. 7343-7350 OF 2019]*

"Clearly, therefore, once section 80P(4) is out of harm's way, all the assessees in the present case are entitled to the benefit of the deduction contained in section 80P(2)(a)(i), notwithstanding that they may also be giving loans to their members which are not related to agriculture. Also, in case it is found that there are instances of loans being given to non-members, profits attributable to such loans obviously cannot be deducted"

6.5. *In respect of the above, the appellant was asked to provide details of profit earned from non-members along with documentary evidences thereto.*

6.6. *The appellant was provided multiple opportunities in this regard but the appellant merely filed submission stating that it is eligible for deduction as per MAVILAYI (Supra) judgment. The appellant filed copy of byelaws and quoted relevant clause which states that the appellant is eligible to grant loan only to members and the secretary filed an affidavit in this regard. In absence of quantification of deduction and documentary evidences thereto, the claim of appellant is not found to be acceptable. Further, the appellant also failed to demonstrate that principle of mutuality is also being satisfied in its case.*

6.7. *It is primary onus of the appellant to file requisite details against its claim and failing to which, the claim of appellant cannot be upheld.*

6.8. *In view of the above, I am of the considerate view that since the appellant has failed to discharge its primary onus of filing details and demonstrating satisfaction of principle of mutuality. Therefore, the claim of appellant is liable to be rejected and*

deduction of Rs 33,93,482/- as claimed by the appellant is not being granted.

6.9. *Accordingly, the appeal of appellant is dismissed.”*

3. The Revenue's first and foremost contention seeks to treat this assessee as engaged in banking business than merely a cooperative credit society. We note that the very issue arises in Kerala State Cooperative Cooperative Agricultural and Rural Development Bank [2023] 458 ITR 384 (SC) wherein their lordships' have already rejected the Revenue's very contentions as under :

“14. We shall now analyse the aforesaid judgments in a common conspectus.

14.1. In Apex Co-operative Bank of Urban Bank of Maharashtra and Goa Ltd., it was categorically held that under Section 56 of the BR Act, 1949 only three co-operative banks have been defined, namely, state co-operative bank, central co-operative bank and primary co- 51 operative bank which are covered under Section 56 (cci) read with (ccvii) read with the provisions of the NABARD Act, 1981. Thus, it is only these three banks which are

co-operative banks which require a licence under the BR Act, 1949 to engage in banking business. If any bank does not fall within the nomenclature of the aforesaid three banks as defined under the NABARD Act, 1981, it would not be a co-operative bank within the meaning of Section 56 of BR Act, 1949 irrespective of whatever nomenclature it may have or structure it may possess or incorporated under any Act. It was further stated that if a bank has to be a state cooperative bank, there has to be a declaration made by the State Government in terms of Section 2(u) of NABARD Act, 1981. Hence, it is necessary to go into the question as to, whether, the appellant herein has been so declared as a state co-operative bank. This question would need not detain us for long as the Kerala High Court in A.P. Varghese had categorically stated that the “Kerala State Co-operative Bank” is a “state co-operative bank” as defined under the NABARD Act, 1981. Therefore, the appellant bank has not been declared as a state cooperative bank under the provisions of NABARD Act, 1981. Further, in the case of Mavilayi Service Co-operative Bank, this Court observed that a co-operative bank would engage in

banking business on obtaining a licence under Section 22(1b) of the BR Act, 1949. In the instant case, the appellant herein is not a co-operative bank having regard to the aforesaid conspectus of the provisions so as to require a licence under the aforesaid provision for carrying on banking business. In the 52 circumstances, the question could still arise as to whether the appellant herein is entitled to benefit of deduction under Section 80P of the Act.

14.2. *In Mavilayi Service Co-operative Bank, it has been observed that Section 80P of the Act is a beneficial provision which was enacted in order to encourage and promote the growth of the co-operative sector generally in the economic life of the country and therefore, has to be read liberally in favour of the assessee. That once the assessee is entitled to avail of deduction, the entire amount of profits and gains of business that are attributable to any one or more activities mentioned in subsection (2) of Section 80P must be given by way of deduction vide Citizen Co-operative Society. This is because sub-section (4) of Section 80P is in the nature of a proviso to the main provision contained*

in subsections (1) and (2) of Section 80P. The proviso excludes co-operative banks, which are co-operative societies which must possess a licence from the Reserve Bank of India to do banking business. In other words, if an entity does not require a licence to do banking business within the definition of banking under Section 5(b) of the BR Act, 1949, then it would not fall within the scope of sub-section (4) of Section 80P.

14.3. *While analysing Section 80P of the Act in depth, the following points were noted by this Court:*

- i) Firstly, the marginal note to Section 80P which reads “Deduction in respect of income of co-operative societies” is significant as it indicates the general “drift” of the provision.*
- ii) Secondly, for purposes of eligibility for deduction, the assessee must be a “co-operative society”.*
- iii) Thirdly, the gross total income must include income that is referred to in sub-section (2).*

iv) Fourthly, sub-clause (2)(a)(i) speaks of a co-operative society being “engaged in”, inter alia, carrying on the business of banking or providing credit facilities to its members.

v) Fifthly, the burden is on the assessee to show, by adducing facts, that it is entitled to claim the deduction under Section 80P.

vi) Sixthly, the expression “providing credit facilities to its members” does not necessarily mean agricultural credit alone. It was highlighted that the distinction between eligibility for deduction and attributability of amount of profits and gains to an activity is a real one. Since profits and gains from credit facilities given to non-members cannot be said to be attributable to the activity of providing credit facilities to its members, such amount cannot be deducted.

vii) Seventhly, under Section 80P(1)(c), the co-operative societies must be registered either under Co-operative Societies Act, 1912, or a State Act and may be engaged in activities which may be termed as residuary activities i.e. activities not covered by sub-clauses (a) and (b), either independently of or in addition to those activities, then profits and gains attributable to such activity are

also liable to be deducted, but subject to the cap specified in sub-clause (c).

viii) Eighthly, sub-clause (d) states that where interest or dividend income is derived by a co-operative society from investments with other co-operative societies, the whole of such income is eligible for deduction, the object of the provision being furtherance of the co-operative movement as a whole.

14.4. *In paragraph 42 of Mavilayi Service Co-operative Bank, this Court observed that the object and purpose of sub-section (4) of Section 80P is to exclude only co-operative banks that function on par with other commercial banks i.e. which lend money to members of the public. That on a reading of Section 3 read with Section 56 of the BR Act, 1949, the primary co-operative bank cannot be a primary agricultural credit society. As such co-operative bank must be engaged in the business of banking as defined by Section 5(b) of the BR Act, 1949, which means accepting, for the purpose of lending or investment, of deposits of money from the public. Also under Section 22(1)(b) of the BR Act, 1949, no cooperative society can carry on banking business in*

India, unless it is a co-operative bank and holds a licence issued in that behalf by Reserve Bank of India. It was pointed out that as opposed to the above, a primary agricultural credit society is a co-operative society, the primary object of which is to provide financial accommodation to its members for agricultural purposes or for purposes connected with agricultural activities.

14.5. *It was further observed in the said case that some primary agricultural credit societies had sought for banking licence from Reserve Bank of India but the same was turned down by observing that such a society was not carrying on the business of banking and that it did not come under the purview of Reserve Bank of India requiring a licence for its business.*

14.6. *Thereafter in paragraph 48 of the judgment, it was observed that a deduction that is given without any reference to any restriction or limitation cannot be restricted or limited by implication. That subsection (4) of Section 80P which is in the nature of a proviso specifically excludes co-operative banks which are co-operative societies engaged in banking business i.e.*

engaged in lending money to members of the public, which have a licence in this behalf from Reserve Bank of India.

15. *It is on the aforesaid touchstone that these appeals must now be further considered from the point of view of the applicable provisions of law.*

15.1. *Section 80P speaks about deduction in respect of income of cooperative societies from the gross total income referred to in sub-section (2) of the said Section. From the said income, there shall be deducted, in accordance with the provisions of Section 80P, sums specified in subsection (2), in computing the total income of the assessee for the purpose of payment of income tax. Sub-section (2) of Section 80P enumerates 56 various kinds of co-operative societies. Sub-section (2)(a)(i) states that if a co-operative society is engaged in carrying on the business of banking or providing credit facilities to its members, the whole of the amount of profits and gains of business attributable to any one or more of such activities shall be deducted. The sub-section makes a clear distinction between business of banking on the one hand and providing credit*

facilities to its members by co-operative society on the other. Thus, the definition of banking under Section 5(b) of the BR Act must be borne in mind as opposed to providing credit facilities to its members.

15.2. Section 80P was inserted to the Act with effect from 01.04.1968, however, sub-section (4) was reinserted with effect from 01.04.2007, in the present form. Earlier sub-section (4) was omitted with effect from 01.04.1970. Sub-section (4) of Section 80P in the present form is in the nature of an exception which states that the provisions of Section 80P shall apply in relation to any co-operative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank. The expressions co-operative bank and primary agricultural credit society as well as primary co-operative agricultural and rural development bank are defined in the Explanation as co-operative bank and primary agricultural credit society having the meanings respectively assigned to them in Part V of the BR Act, 1949.

15.3. *The controversy in this case is, whether, the appellant entity is a co-operative bank and if so, it would be covered within the scope and 57 meaning of sub-section (4) of Section 80P and therefore, would not be eligible to the benefit of deduction as provided therein.*

15.4. *Having regard to the Explanation to sub-section (4) of Section 80P, it is necessary to consider Chapter V of the BR Act, 1949 which states that the said Act shall apply to co-operative societies subject to modifications made thereunder. Section 56 begins with a non-obstante clause and states that notwithstanding anything contained in any other law for the time being in force, the provisions of the said Act shall apply to, or in relation to, co-operative societies as they apply to, or in relation to banking companies subject to the following modifications, namely,*

- *in clause (a) throughout the said Act, unless the context otherwise requires,- (i) references to a “banking company” or “the company” or “such company” shall be construed as references to a cooperative bank.*

- *in clause (c), it is stated that in Section 5 as per clause (cci), “cooperative bank” means a state co-operative bank, a central cooperative bank and a primary co-operative bank.*
- *clause (ccv) defines “primary co-operative bank” while clause (ccvii) defines “central co-operative bank” and “state co-operative bank” to have the meanings assigned to them in the NABARD Act, 1981.*

Since the expression ‘banking company’ is defined under the BR Act, 1949, it would be useful to consider the definition of banking company in Section 5(c) thereof which means any company which transacts the business of banking in India. “Banking” is defined in Section 5(b) of the said Act to mean the accepting, for the purpose of lending or investment, of deposits of money from the public, repayable on demand or otherwise, and withdrawal by cheque, draft, order or otherwise. Therefore, a banking company must transact banking business vis-à-vis the public. Thus, in the first place a co-operative society must be engaged in banking business as defined in Section 5(b) of the said Act. For that, Section 22 of the BR Act, 1949, speaks about licence to be

obtained by a bank to do banking business which is modified as per clause (o) of Section 56 thereof which states that no cooperative society shall carry on banking business in India unless it is a co-operative bank and holds a licence issued in that behalf by the Reserve Bank, subject to such conditions, if any, as the Reserve Bank may deem fit to impose. Secondly, a co-operative society must obtain a licence under Section 22 of the BR Act, 1949, only if it functions as a co-operative bank and not otherwise. Thus, a co-operative society including a co-operative credit society which is not a co-operative bank does not require a licence to function as such.

15.5. *Further, Section 2(d) of NABARD Act, 1981 defines central cooperative bank while Section 2(u) defines a state co-operative bank to mean the principal co-operative society in a State, the primary object of which is financing of other co-operative societies in the State which 59 means, it is in the nature of an apex co-operative bank having regard to the definition under Section 56 of the BR Act, 1949, in relation to cooperative bank. The proviso states that in addition to such principal society*

in a State, or where there is no such principal society in a State, the State Government may declare any one or more co-operative societies carrying on business of banking in that State to be also or to be a state co-operative bank or state co-operative banks within the meaning of the definition. Section 2(v) of NABARD Act, 1981 defines state land development bank to mean the co-operative society which is the principal land development bank (by whatever name called) in a State and which has as its primary object the providing of long-term finance for agricultural development.

15.6. *Section 2(w) states that words and expressions used in the NABARD Act, 1981 which are not defined therein but defined in the RBI Act, shall have the meanings respectively assigned to them in that Act. Section 2(x) of the said Act states that words and expressions used in the NABARD Act, 1981 and not defined either in the said Act or in the RBI Act, but defined in the BR Act, 1949, shall have the meanings respectively assigned to them in the BR Act, 1949. Therefore, we revert back to BR Act, 1949.*

15.7. *What is central to the controversy in this batch of cases is, whether, the appellant bank is a co-operative bank. What is of significance to know is, a state co-operative bank or central co-operative 60 bank under the NABARD Act, 1981 is essentially a principal cooperative society either in a district or in a State, respectively, the primary object of which is the financing of other co-operative societies in the district or the State respectively. Further, NABARD Act, 1981 does not define banking business. Hence, reliance is to be placed, on the definition of banking business in terms of clause (w) of Section 2 of NABARD Act, 1981 which means the RBI Act has to be seen. When the RBI Act is perused, it is noted that clause (i) of Section 2 defines “cooperative bank”, “co-operative credit society”, “director”, “primary agricultural credit society”, “primary co-operative bank” and “primary credit society” to have the meanings respectively assigned to them in Part V of the BR Act, 1949. Therefore, we have to again fall back on Part V of the BR Act, 1949 which has defined a co-operative bank in Section 56 (c)(i)(cci) to be a state co-operative bank, a central co-operative bank and a primary co-*

operative bank and central co-operative bank and state co-operative bank to have the same meanings as NABARD Act, 1981.

15.8. *Since the words 'bank' and 'banking company' are not defined in the NABARD Act, 1981, the definition in sub-clause (i) of clause (a) of Section 56 of the BR Act, 1949 has to be relied upon. It states that a cooperative society in the context of a co-operative bank is in relation to or as a banking company. Thus, co-operative bank shall be construed as references to a banking company and when the definition of banking 61 company in clause (c) of Section 5 of the BR Act, 1949 is seen, it means any company which transacts the business of banking in India and as already noted banking business is defined in clause (b) of Section 5 to mean the accepting, for the purpose of lending or investment, of deposits of money from the public, repayable on demand or otherwise, and withdrawal by cheque, draft, order or otherwise. Thus, it is only when a co-operative society is conducting banking business in terms of the definition referred to above that it becomes a co-operative bank and in such a case,*

Section 22 of the BR Act, 1949 would apply wherein it would require a licence to run a co-operative bank. In other words, if a co-operative society is not conducting the business of banking as defined in clause (b) of Section 5 of the BR Act, 1949, it would not be a co-operative bank and not so within the meanings of a state co-operative bank, a central co-operative bank or a primary co-operative bank in terms of Section 56(c)(i)(cci). Whereas a co-operative bank is in the nature of a banking company which transacts the business of banking as defined in clause (b) of Section 5 of the BR Act, 1949. But if a cooperative society does not transact the business of banking as defined in clause (b) of Section 5 of the BR Act, 1949, it would not be a cooperative bank. Then the definitions under the NABARD Act, 1981 would not apply. If a co-operative society is not a co-operative bank, then such an entity would be entitled to deduction but on the other hand, if it is a co-operative bank within the meaning of Section 56 of BR Act, 1949 read with the provisions of NABARD Act, 1981 then it would not be entitled to the benefit of deduction under sub-section (4) of Section 80P of the Act.

15.9. Section 56 of the BR Act, 1949 begins with a non-obstante clause which states that notwithstanding anything contained in any other law for the time being in force, the provisions of the said Act, shall apply to, or in relation to, co-operative societies as they apply to, or in relation to, banking companies subject to certain modifications. The object of Section 56 is to provide a deeming fiction by equating a co-operative society to a banking company if it is a co-operative bank within the meaning of the said provision. This is because Chapter V of the BR Act, 1949, deals with application of the Chapter to co-operative societies which are co-operative banks within the meaning of the said chapter. For the purpose of these cases, what is relevant is that throughout the BR Act, 1949, unless the context otherwise requires, - references to a “banking company” or “the company” or “such company” shall be construed as references to a co-operative bank. Therefore, while considering the meaning of a co-operative bank inherently, such a cooperative society must be a banking company then only it would be construed as a co-

operative bank requiring a licence under Section 22 of BR Act, 1949 in order to function as such a bank.

15.10. *Further, while considering the definition of a co-operative bank under Section 56(cci) of the BR Act, 1949, to mean a state cooperative bank, a central co-operative bank and a primary co-operative 63 bank which is defined in (ccviii) thereof, to have meanings respectively assigned to them in the NABARD Act, 1981 would imply that if a state co-operative bank is within the meaning of NABARD Act, 1981 then it would be excluded from the benefit under Section 80P of the Act. Conversely, if a co-operative society is not a co-operative bank within the meaning of Section 56 of the BR Act, 1949, it would be entitled to the benefit of deduction under Section 80P of the Act.*

15.11. *Looked at from another angle, a co-operative society which is not a state co-operative bank within the meaning of NABARD Act, 1981 would not be a co-operative bank within the meaning of Section 56 of the BR Act, 1949. In the instant case, as already noted in A.P. Varghese case, the Kerala State Co-operative Bank being declared as a state co-operative bank by*

the Kerala State Government in terms of NABARD Act, 1981 and the appellant society not being so declared, would imply that the appellant society is not a state co-operative bank.

15.12. *In fact, in Citizen Co-operative Society Ltd., this Court held that the appellant therein was having both members as well as nominal members who were depositing and availing loan facilities from the appellant therein and therefore, appellant therein was not entitled to the benefit of Section 80P of the Act as it was functioning as a cooperative bank. But, the appellant herein is not a co-operative bank and neither has it been so declared under the provisions of NABARD Act, 1981 or the State Act. On the other hand, under the provisions of State 64 Act, 1969, the Kerala State Co-operative Bank has been so declared by the Government of Kerala as a co-operative bank.*

15.13. *Further, under the provisions of the State Act, 1984, 'agricultural and rural development bank' means the Kerala Cooperative Central Land Mortgage Bank Limited, registered under Section 10 of the Travancore-Cochin Co-operative Societies Act, 1951, which shall be known as Kerala State Co-operative*

Agricultural and Rural Development Bank Limited i.e. the appellant herein. Thus, from a conjoint reading of all the relevant statutory as alluded to hereinabove, it is quite clear that the appellant is not a co-operative bank within the meaning of sub-section (4) of Section 80P of the Act. The appellant is a co-operative credit society under Section 80P(2)(a)(i) of the Act whose primary object is to provide financial accommodation to its members who are all other co-operative societies and not members of the public.

15.14. *Therefore, when the definition of “co-operative bank” in Section 56 of BR Act, 1949 is viewed in terms of Sections 2(u) of the NABARD Act, 1981, it is clear that only a state co-operative bank would be within the scope and meaning of a banking company under Section 2(c) of the BR Act, 1949 on obtaining licence under Section 22 of the said Act.*

Conclusion:

In the instant case, although the appellant society is an apex cooperative society within the meaning of the State Act, 1984, it is

not a co-operative bank within the meaning of Section 5(b) read with Section 56 of the BR Act, 1949.

In the result, the appeals filed by the appellant are allowed and the order(s) of the Kerala High Court and other authorities to the contrary are set aside. Consequently, we hold that the appellant is entitled to the benefit of deduction under Section 80P of the Act. The questions for consideration are answered accordingly.

Parties to bear their respective costs.”

4. Learned DR could hardly dispute the factual position in this regard that the assessee neither carries any banking activity(ies) with the public at large nor has it got any banking licence under the provisions of the Banking Regulation Act, 1949.

5. So far as the assessee's claim *qua* its impugned income derived from a co-operative bank is concerned, we indeed have the benefit of the benefit of the hon'ble jurisdictional high court's detailed judgement in Pr. CIT vs. Peroorkada Service Co-op. Bank Ltd. (2022) 442 ITR 141 (Ker) having rejected the Revenue's identical arguments. That being the case, we accept the assessee's impugned section 80P

deduction claim in principle and leave it open for the learned Assessing Officer to verify all necessary facts in the foregoing terms as per law.

6. Learned DR's next vehement contention is that the assessee's credit percentage in agricultural activity(ies) is only 8.55 and therefore, it could not be held as a cooperative credit society. Learned DR could hardly dispute that hon'ble apex court's landmark decision in *Mavilayi Service Cooperative Bank Ltd., vs. CIT [2021] 431 ITR 1 (SC)* has already accepted the very stand to this clinching effect.

7. Learned DR's last contention is that the assessee had also derived interest income from non-members. We find that such a list of non-member is neither here nor there in the case file. Rejected accordingly.

8. This assessee's appeal is allowed in above terms.

Order pronounced in the open court on 7th November, 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 Pr. CIT concerned
4. The Sr. DR, ITAT, Cochin
5. Guard File

By Order

Assistant Registrar
ITAT, Cochin