

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

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER
AND
SHRI SOUNDARARAJAN K., JUDICIAL MEMBER**

| |
|---|
| S.P. No. 12/Coch/2024 (Arising out of ITA No. 149/Coch/2024) & ITA No. 149/Coch/2024 |
| Assessment Year : 2017-18 |

| | | |
|---|------------|---|
| M/s. Peringottukara Service Co-op. Bank Ltd. No. 110, XVI/508 Thanniyam, Peringottukara P O, Kizhakenada, Thrissur – 680 565. PAN: AACAP4955G | Vs. | The Income Tax Officer, Ward – 2(1), Thrissur. |
| APPELLANT | | RESPONDENT |

| | | |
|-------------|---|---------------------------|
| Assessee by | : | Shri Ramdas, CA |
| Revenue by | : | Smt. Girly Albert, Snr.DR |

| | | |
|-----------------------|---|------------|
| Date of Hearing | : | 18-09-2024 |
| Date of Pronouncement | : | 19-11-2024 |

ORDER

PER SOUNDARARAJAN K., JUDICIAL MEMBER

This is an appeal filed by the assessee challenging the order of the NFAC, Delhi dated 28/11/2023 in respect of the A.Y. 2017-18.

2. The brief facts of the case are that the assessee is a primary agricultural credit society registered under the provisions of the Kerala Co-operative Societies Act. During the year, the assessee filed their return of income declaring a Nil income after claiming deduction u/s. 80P(2)(a)(i) of

the Act. Thereafter, the case was selected for scrutiny under CASS and assessment has been made by disallowing the deduction u/s. 80P(2)(a)(i) of the Act for the reason that the assessee had lent loans to non-agricultural purposes also and also dealt with nominal or associate members and also the assessee is acting like a co-operative bank. The said order was challenged by the assessee before the Ld.CIT(A) and contended that the assessee is a primary agricultural co-operative society registered under the provisions of the Kerala Co-operative Societies Act and contended that the loans given to non-agricultural purpose would not be a reason for disallowing the deduction claimed u/s. 80P(2)(a)(i) of the Act. The Ld.CIT(A) also without considering the issue in detail, had confirmed the orders of the AO and dismissed the appeal. As against the said order, the assessee is in appeal before this Tribunal with the following grounds:

“1. The order of the Commissioner of Income Tax (Appeals), NFAC u/s 250 of the IT Act, 1961 is opposed to law and contrary to the facts of the case and against equity and principles of natural justice.

2. a. The observation of the CIT (Appeals), NFAC that in order to get deduction under section 80P(2)(a)(i), the credit facilities must be given for agricultural purpose is incorrect. Nowhere in the Act, it is provided that the loan should be given for agricultural purpose for getting 80P deduction. The moment a Co-operative Society is registered under the Kerala Co-operative Societies Act, 1969, whatever be its classification so long as it provides credit facilities to its members, which need not be credit facilities related to agriculture, it is entitled to a deduction contained in section 80P(2)(a)(i) of the Income Tax Act, 1961. In this context we invite your kind attention of the Hon'ble Supreme Court Order dated 12.01.2021 in the case of Mavilayi Service Co-operative Bank Ltd & ORS Vs CIT Calicut & ANR (Civil appeal Nos 7343-7350 of 2019) which states that purpose of loan given is not a criteria for allowing deduction under section 80P(2)(a)(i) of the Act.

b. The Hon'ble ITAT Cochin Bench, Cochin allowed relief in a number of cases on the basis of the decision of the Hon'ble Supreme Court in the case of The Mavilayi Service Co-operative Bank Ltd. & ORS. Vs CIT Calicut (Civil Appeal Nos.7343-7350 of 2019). One of the decisions is in the

case of The Tattamangalam Service Co-operative Bank Ltd. Vs. ITO Palakkad (ITA No.331 to 333/Coch/2020) decided on 08.02.2021. Also, the Commissioner of Income Tax (Appeal) Faceless Appeal Centre, Delhi allowed deduction u/s 80P in the case of The Vellarakkad Service Co-operative Bank Ltd, Vellarakkad, Thrissur, Kerala Vs ITO, Guruvayoor (CIT (A) Thrissur/10726/2017-18) decided on 17.11.2021(DIN & Order No. ITBA/NFAC/S/250/2021-22/1036996345(1)) and Varandarappilly Service Co-operative Bank Ltd., Varandarappilly Thrissur Kerala Vs ITO Thrissur (CIT (A), Thrissur/10730/2019-20) decided on 08.07.2022 (DIN & Order No: ITBA/NFAC/S/250/2022-23/1043775971(1)).

a. The order of the CIT(Appeals), NFAC u/s 250 of the Act is therefore to be cancelled and deduction u/s 80 P(2)(a)(i) of the Act to be allowed and

b. To pass such other consequential order as the Hon. Income Tax Appellate Tribunal may deem fit to render justice.”

3. At the time of hearing, the Ld.AR contended that the issue is already covered by the judgment of the Hon'ble Supreme Court reported in 431 ITR 1 in the case of Mavilayi Service Co-operative Bank Ltd. vs. CIT and also relied on the Tribunal order as well as the assessment orders in respect of the two other societies.

The Ld.DR relied on the orders of the lower authorities and prayed to dismiss the appeal.

4. We have heard the arguments of both sides and perused the materials available on record.

5. We have perused the assessment order in which the AO had elaborately discussed the issue by relying on various judgments as well as orders and came to the conclusion that the assessee had offered loans for non-agricultural activities and also loans are given on deposits received from 'C' class members and the assessee is also acting as non-banking financial organisation in the garb of PACS. We find that the main reason for denying

the deduction is that the assessee is giving various loans to its members and only a meagre agricultural loan was offered to its members and therefore denied the deduction u/s. 80P(2)(a)(i) of the Act.

6. As rightly argued by the Ld.AR, this issue was already dealt with by the Hon'ble Supreme Court in the above cited judgment and the Hon'ble Supreme Court had held that the purpose of loan given is not a criteria for allowing deduction u/s. 80P(2)(a)(i) of the Act. Admittedly, in this case, all the loans were given to the members only and not to any other public and therefore the loans were offered only for the benefit of the members. Further, the Hon'ble Supreme Court also held that the member whether a nominal or associate member would not be a reason for disallowing the deduction u/s. 80P(2)(a)(i) of the Act. Further, it is a fact that the assessee is a registered society under the Kerala Co-operative Societies Act and they are under the control of the Registrar of Co-operative Societies and their accounts were audited every year and necessary reports were also forwarded to the authorities. In such circumstances the AO has no other evidence to show that the assessee is a bank except the word bank has been mentioned in its name. The mere mentioning of the bank in its name would not be a reason to treat the assessee as a co-operative bank and also a non-financial banking organisation. In order to treat an assessee as a bank or NBFC, it is necessary that they are in possession of the license issued by the Reserve Bank of India under the Banking Regulation Act and in this case, no such license is available with the assessee and it is also not the case of the AO that the assessee has got such license from the Reserve Bank of India in order to treat the assessee as a Co-operative Bank or a Non Banking Financial Corporation. In such circumstances, we have no other option except to follow the principles laid down by the Hon'ble Supreme Court in the above cited judgment and on that basis, we are allowing the appeal filed by the assessee. Since the main appeal is allowed, the stay petition becomes infructuous.

7. In the result, the appeal filed by the assessee is allowed and the stay petition is dismissed as infructuous.

Order pronounced in the open court on 19th November, 2024.

Sd/-
(WASEEM AHMED)
Accountant Member

Sd/-
(SOUNDARARAJAN K.)
Judicial Member

Bangalore,
Dated, the 19th November, 2024.
/MS /

Copy to:

- | | |
|---------------|---------------------|
| 1. Appellant | 2. Respondent |
| 3. CIT | 4. DR, ITAT, Cochin |
| 5. Guard file | 6. CIT(A) |

By order

Assistant Registrar,
ITAT, Cochin