

IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN

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

ITA.No.326/Coch/2024
Assessment Year 2016-2017

Mallappally Service Co-operative Bank Limited No.A-155, Keezhuvaipur P.O. Pathanamthitta PIN – 689 587. PAN AAAAT5956D.	vs.	The Income Tax Officer Ward 1 & TPS Thiruvalla, Pathanamthitta.
(Appellant)		(Respondent)

Assessee by :	Shri K.P. Pradeep, Advocate
Revenue by :	Smt. V. Swarnalatha, Sr DR

Date of Hearing :	23.08.2024
Date of Pronouncement :	07.11.2024

ORDER

PER BENCH :

This assessee's appeal ITA No.326/Coch/2024 for assessment year 2016-2017 arises out of the order of the Commissioner of Income-tax (Appeals) / NFAC vide DIN & Order No.ITBA/NFAC/S/250/2023-24/1061036790(1) dated 16.02.2024 in proceedings u/s.143(3) of the Income-tax Act, 1961; in short "the Act" hereinafter.

Heard both the parties. Case file perused.

2. We note at the outset that so far as assessee's sole substantive grievance claiming sec.80P deduction herein is concerned, the CIT(A)-NFAC's impugned lower appellate discussion has already accepted the same as follows :

"4. Decision:-

I have perused the grounds of appeal, statement of facts, written submission made by the appellant and the assessment order. The AO, in the assessment made u/s 143(3) has disallowed the claim of deduction u/s 80P for the year by following, the provision of section 80P(4) considering the appellant Co-operative, as a bank. The claim of deduction u/s 80P made by the appellant was denied in arriving at total income for the year. The interest income earned by the appellant by investing it's surplus funds with other co-operative banks and treasury was considered as income from other sources and not as income from it's operations of banking & providing credit facilities by following decision of the Hon'ble Supreme Court of India in the case of Tolgars Co-operative Sale Society Ltd vs ITO (2010) 322 ITR 283 (SC). Accordingly,

the AO charged the Interest income remaining after set-off, by disallowing the claim of deduction u/s 80P.

4.1. In the context of the facts aforementioned it would be imperative to make reference to the High Court (Kerala) decision on similar set of facts in the case of PCIT vs Peroorkada Service Co-operative Bank Ltd. vide 442 ITR 141. The jurisdictional High Court, of Kerala passed this order, dt: 01.11.2021, taking into consideration the law laid down by the Hon'ble Supreme Court, in Totgars' Co-operative Sale Society Ltd vs ITO. For the sake of clarity the decision part of the order is reproduced, as under.

14.2. This interest income is liable to be taxed under the head "Income from other sources" and during the course of assessment proceedings, it was proposed to treat Rs.14,18,62,743/- as income under the head 'Income from Other Sources'. The dispute relates to the extent to which the deduction claimed by the assessee is legal. The substantial question raised reads as follows :

1. Whether on the facts and in the circumstances of the case, is the order of the ITAT correct, in not duly considering that the assessee had invested surplus funds like an ordinary investor and the interest on such deposits has to be taxed as "Income from Other Sources" ?

15. In ITA NO.142/2019 it has been held that the interest income earned by the Society comes with the category of income from other sources and section 80P(2)(d) deals with the eligible deduction in this behalf. It has been held in the connected cases that the assessee is entitled to deduction of interest Income earned from Co-operative Banks/Societies/Federation registered under the Co-operative Societies Act and the income earned from Treasury is not included in section 80P(2)(d) and is not entitled for deduction from computation of income. The Assessing Officer passes Effect Order on the lines indicated above.

Appeals are allowed as indicated above. No order as to costs.

4.2. *It has not been disputed by the AO that the appellant is registered under Kerala Co- operative society Act and Rules, as "Primary Agricultural Credit Co- operative Society". In this regard, the Certificate from Joint Registrar of Co-operative Societies (General), Pathanamthitta, has been verified by the AO. Having regard to the facts of the case and the decision of the Jurisdictional High Court, in the case of PCIT vs Peroorkada Service Co- operative Bank Ltd. vide 442 ITR 141 (Kerala), I am inclined to hold that the action of the AO is not sustainable, It has been hold by the High Court of Kerala that, the interest income earned by the Society comes within the category of Income from other sources. It has been further held in the said order that, the assetsop is entitled to deduction of interest income earned from Co- operative Banks/Societies/ Federation registered under the Co-operative Societies Act, is eligible for deduction u/s 80P(2)(d) and the income eamed from Treasury not being included In section 80P(2)(d) is not entitled for deduction*

from computation of income. Respectfully, following the said order of the Kerala High Court, the AO is directed to pass an effect order accordingly. The appeal is allowed in terms of my observation made above.

5. *In the result, the appeal is partly allowed.*

3. That being the clinching case, we find no merit in the assessee's instant appeal since it has already succeeded in the above extracted lower appellate discussion. Rejected accordingly.

4. This assessee's appeal is dismissed in above terms.

Order pronounced in the open court on 7th day of 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 CIT Concerned.
4. The DR, ITAT, Cochin.
5. Guard File.

Asst.Registrar/ITAT, Cochin