

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

**Before Shri Inturi Rama Rao, Accountant Member
&
Shri Prakash Chand Yadav, Judicial Member**

ITA No.566/Coch/2024 : Asst.Year 2013-2014
(SA No.72/Coch/2024)

ITA No.567/Coch/2024 : Asst.Year 2014-2015
(SA No.73/Coch/2024)

ITA No.568/Coch/2024 : Asst.Year 2015-2016
(SA No.74/Coch/2024)

ITA No.569/Coch/2024 : Asst.Year 2016-2017
(SA No.75/Coch/2024)

M/s.Karkurissi Service Co-operative Bank Limited 229, Karakurissi Palakkad - 678 595. PAN : AADAT7362G.	v.	The Income-tax Officer Ward 2 Palakkad.
(Appellant)		(Respondent)

Appellant by : Sri.Shivadas Chettoor, CA
Respondent by :Smt.Leela Lal, Senior AR

Date of Hearing : 19.11.2024	Date of Pronouncement : .11.2024
-------------------------------------	---

ORDER

Per Prakash Chand Yadav, JM :

The present appeals of the assessee along with as many as stay applications are arising from the order of the learned Commissioner of Income-tax (Appeals) dated 15th April, 2024 and relates to the assessment years 2013-2014 to 2016-2017. Since the facts and issues involved are the same, we are deciding these appeals and stay applications by way of this consolidated order.

2. Facts giving rise to the filing of the present appeals are like this that the assessee is a co-operative society engaged in the business of banking and providing credit facilities to its members and earning interest income and income from other sources. For the impugned assessment year, i.e., for A.Y. 2013-2014, it has filed its return of income declaring 'Nil' income after claiming deduction u/s.80P of the Act. The deduction claimed by the assessee was denied by the Assessing Officer and affirmed by the learned CIT(A). The order of the CIT(A) was then challenged before the Hon'ble ITAT and the ITAT vide order dated 15thSeptember, 2020 , in ITA No.184/Coch/2020 & Ors., restored the issue involved in these appeals, i.e. the claim of deduction u/s.80P, back to the file of the A.O. The ITAT directed the AO to examine the issue afresh in the light of the judgment of the Full Bench of the Kerala High Court in the case of *CIT v. Mavilayi Service Co-operative Bank Ltd.*[2019] 414 ITR 67 (FB) (Ker.). Accordingly, the A.O. commenced the impugned proceedings vide notice dated 23rd November, 2021 and asked the assessee to produce the details vis-a-vis its claim of sec.80P. However, the assessee could not submit any detail before the A.O. regarding its business activities of the loan alleged to have been given to the members only. Thereafter, the A.O. framed the impugned assessment and once again denied the deduction u/s.80P to the assessee.

3. Aggrieved with the order of the A.O., the assessee filed an appeal before the learned CIT(A) and contended that the A.O. failed to follow the directions of the Hon'ble ITAT given in the

first round of litigation. The learned CIT(A) could not find any force in the arguments of the assessee observing that the assessee has not responded to the queries of the A.O. in the remand proceedings for justifying its claim of deduction u/s.80P of the Act. And hence the AO has correctly denied the deduction of section 80P of the Act to the assessee.

4. Feeling aggrieved with the order of the ld.CIT(A), the assessee has come up in appeal before us. The learned Counsel appearing on behalf of the assessee contended that the observation made by the Hon'ble Kerala High Court Full Bench in *Mavilayi Service Co-operative Bank Ltd.(supra)* has now been overruled by the Hon'ble Apex Court in its judgment rendered in *(2021) 431 ITR 1 (SC)*. The learned Counsel for the assessee craved for one more opportunity before the A.O, for justifying its claim of the deduction u/s.80P, may kindly be granted to the assessee.

5. The learned Departmental Representative relied upon the orders of the authorities below.

6. We have heard the rival submissions and perused the material available on record. We observe that in this matters the co-ordinate bench has restored the issue to the file of the A.O. observing as under:

"In these cases, such a detailed examination has not been conducted by the A.O. At the time of assessment, the judgment of the Hon'ble jurisdictional High Court in the case of Chirakkal Service Cooperative Bank Ltd. (supra) was ruling the roost and the certificate issued by the Registrar of Co-

operative Society terming the assesseees as a primary agricultural credit society would be sufficient for grant of deduction u/s 80P of the I.T. Act. In the light of the dictum laid down by the Full Bench of the Hon'ble Kerala High Court in the case of The Mavilayi Service Cooperative Bank Ltd. v. CIT (supra), we are of the view that there should be fresh examination by the Assessing Officer as regards the nature of each loan disbursement and purpose for which it has been disbursed, i.e., whether it for agricultural purpose or not. The A.O. shall list out the instances where loans have disbursed for non-agricultural purposes etc. and accordingly conclude that the assesseees' activities are not in compliance with the activities of primary agricultural credit society functioning under the Kerala Co-operative Societies Act, 1969, before denying the claim of deduction u/s 80P(2) of the I.T. Act. For the above said purpose, the issue raised in these appeals is restored to the files of the Assessing Officer. The Assessing Officer shall examine the activities of the assesseees society by following the dictum laid down by the Full Bench of the Hon'ble jurisdictional High Court in the case of The Mavilayi Service Co-operative Bank Ltd. v. CIT (supra) and shall take a decision in accordance with law. It is ordered accordingly."

7. Perusal of the above directions of the co-ordinate bench in the first round of litigation would prove beyond doubt that the ITAT has restored the issue of deduction of sec.80P to the file of the A.O. and has directed the A.O. to examine the activities of the assessee in the light of the judgment of the Hon'ble Kerala High Court Full Bench in the case of *Mavilayi Service Co-operative Bank Ltd.(supra)*. Thereafter, the A.O. issued notices to the assessee for the impugned proceedings. However, no one appeared from the side of the assessee and the A.O. concluded the assessment. Later on, the decision of the Kerala High Court rendered by the Full Bench has been modified by the Hon'ble Supreme Court in the case of *Mavilayi Service Co-operative Bank Ltd.(supra)*. Before the CIT(A) in the present proceedings the assessee made exhaustive submission

on the legal point and strongly relied upon the judgment in case of *Mavilayi Service Co-operative Bank Ltd.(supra)*. However, the CIT(A) has failed to appreciate that in the case of *Mavilayi Service Co-operative Bank Ltd.(supra)*, ultimately the Hon'ble Supreme Court had restored the matters to the file of the A.O. for verifying as to whether the co-operative banks have dealt with the members or the outsiders. The Hon'ble Apex Court has held that the deductions to the petitioners would be allowed after verification by the Assessing Officer. Be that as it may, we deem it fit to restore the issue of deduction u/s.80P once again to the file of the A.O. for examining afresh and also direct the assessee to produce all the relevant material in order to establish its claim of deduction u/s.80P of the Income-tax Act. The assessee has to provide all the details vis-à-vis income earned from its members and other income also.

8 Since we have decided the appeals and restored to the file of the Assessing Officer, the stay petitions filed by the assessee become infructuous and the same are dismissed as such.

9. In the result, the appeals filed by the assessee are allowed for statistical purposes and the stay petitions are dismissed as rendered infructuous.

Order pronounced on this 29th day of November, 2024.

Sd/-
(Inturi Rama Rao)
ACCOUNTANT MEMBER

Sd/-
(Prakash Chand Yadav)
JUDICIAL MEMBER

Cochin; Dated : 29th November, 2024.
Devadas G*

Copy to :

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

Asst.Registrar/ITAT, Cochin