

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

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

<b>S.A. Nos. 4 &amp; 5/Coch/2024 (Arising out of ITA Nos. 30 &amp; 31/Coch/2024) &amp; ITA Nos. 30 &amp; 31/Coch/2024 Assessment Years : 2020-21 &amp; 2021-22</b>
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M/s. Palakkad Service Co-operative Bank Ltd., No F 1200, G.B Road, Palakkad – 678 001. Kerala. <b>PAN: AAAAP5210A</b>	<b>Vs.</b>	The Income Tax Officer, Palakkad.
<b>APPELLANT</b>		<b>RESPONDENT</b>

Assessee by	:	Shri Sivadas Chettoor, CA
Revenue by	:	Smt. Leena Lal, Snr. AR

Date of Hearing	:	03-10-2024
Date of Pronouncement	:	20-12-2024

**ORDER**

**PER BENCH**

These are the two appeals filed by the assessee challenging the order of the NFAC, Delhi dated 14/11/2023 in respect of the A.Ys. 2020-21 and 2021-22.

**2.** The assessee is a co-operative society providing credit facilities to its members and during the assessment years, the assessee reported a Nil income and claimed deduction u/s. 80P of the Act on interest as well as other amounts received by the assessee. The AO had completed the assessment wherein he had denied the deduction u/s. 80P on a sum of Rs. 1,33,41,539/- and Rs. 58,72,172/- respectively.

**3.** As against the said order, the assessee filed appeals before the Ld.CIT(A) and contended that the incomes received by the society is in the course of its business and also the incomes received by the assessee are attributed to the business carried on by the assessee and therefore prayed to allow the appeal.

**4.** The Ld.CIT(A) in the order for the A/Y 2020-21, had discussed all the issues raised before it and insofar as the ground that the interest received on the income tax refund, he has confirmed the order of the AO. Insofar as the other ground that the interest income earned from ICICI Bank, interest earned from treasury and accrued interest on FD with District Treasury, the Ld.CIT(A) had not accepted the case of the assessee and dismissed the said ground. In respect of the basic deduction, the Ld.CIT(A) had denied the deduction claimed u/s. 80P(2)(c) of the Act.

**5.** Insofar as the Assessment Year 2021-22 is concerned, the Ld.CIT(A) had confirmed the denial of deduction on the interest income earned from the ICICI Bank. Similarly, the interest on income tax refund, the Ld.CIT(A) had confirmed the order of the AO. Insofar as the miscellaneous income, such as insurance income, locker rent, advertisement receipt and other miscellaneous incomes, the Ld.CIT(A) had partly allowed the said ground. Insofar as the deduction claimed u/s. 80P(2)(c) of the Act, the Ld.CIT(A) had dismissed the appeal. As against the orders of the Ld.CIT(A), the assessee has filed these appeals with these following concise grounds:

### **Assessment Year 2020-21**

#### **CONCISE GROUNDS OF APPEAL (AY 2020-21)**

1. The order of the learned Commissioner of Income Tax (Appeals), National Faceless Assessment Centre, Delhi is so far it is prejudicial to the interest of the appellant is opposed to law, facts, and circumstances of the case.
2. It is submitted that the appellant is clearly eligible for deduction u/s 80P (2) (a) (i) of the Income Tax act 1961 for the interest on income tax refund amounts to Rs.97,15,267/-.
3. It is submitted that the appellant is clearly eligible for deduction u/s 80P (2) (a) (i) of the Income Tax Act 1961 for the interest income earned from ICICI Bank amounting to Rs.2,75,016, interest income earned from treasury Rs.21,39,345 and accrued interest on FD with DT: Treasury Rs.1,41,294/- totalling to amount of Rs. 25,55,655/-.
4. The appellant is clearly eligible for deduction of Rs. 50,000/- u/s 80 P (2) (C) of the act which may be granted.

### **Assessment Year 2021-22**

#### **CONCISE GROUNDS OF APPEAL (FOR THE AY-2021-22)**

1. The order of the learned Commissioner of Income Tax (Appeals), National Faceless Assessment Centre, Delhi is so far it is prejudicial to the interest of the appellant is opposed to law, facts, and circumstances of the case.
2. It is submitted that the appellant is clearly eligible for deduction u/s 80P (2) (a) (i) of the Income Tax Act, 1961 for the interest income earned from ICICI Bank amounting to Rs. 3,34,730/-.
3. It is submitted that Rs 24,790 representing interest on income tax refund is eligible since the Income tax itself was paid out business income and hence closely linked to the business activity of providing credit facilities to the members.
4. It is submitted that the appellant is clearly eligible for deduction u/s 80P (2) (A) (i) of the Income Tax Act 1961 for the Locker Rent, Advertisement and Miscellaneous income credited under miscellaneous receipts of Rs. 49,51,633/-.
5. The appellant is clearly eligible for deduction of Rs. 50,000/- u/s 80 P (2) (C) of the act which may be granted.

**6.** At the time of argument, the Ld.AR submitted that the income received from the surplus i.e. the profits available with the assessee were deposited in the ICICI Bank as well as the treasuries as per the Kerala Co-operative Societies Act and therefore this issue was covered by the judgment of the Hon'ble Jurisdictional High Court in ITA No. 68/2017 dated 04/09/2024 in the case of PCIT, Kottayam vs. M/s. Sahyadri Co-operative Credit Society Ltd. and prayed to allow the appeal.

**7.** Insofar as the interest income received on the refund of income tax, the Ld.AR submitted that this issue was also considered by the Hon'ble Punjab & Haryana High Court in the judgment reported in 322 ITR 404 in the case of CIT vs. Haryana State Co-operative Apex Bank Ltd. Insofar as the deduction claimed under the miscellaneous income, the Ld.AR also relied on the Hon'ble Supreme Court judgment reported in (2001) 119 Taxman 785 (SC) in the case of Mehsana District Co-operative Bank Ltd. V. ITO and the judgment of Hon'ble Madhya Pradesh High Court reported in 149 ITR 438 in the case of CIT vs. Dhar Central Co-operative Bank and prayed to allow the appeal.

**8.** On the other hand, the Ld.DR relied on the orders of the lower authorities and also relied on the order of the Coordinate Bench of this Tribunal reported in (2013) 36 taxmann.com 91 (Cochin-Trib.) in the case of Kollam District Co-operative Bank Ltd. vs. DCIT and prayed to dismiss the appeal.

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

**10.** The first dispute arises in both the appeals are about the disallowance of deduction claimed on the interest on the income tax refunds. We have considered the argument that the assessee had paid the extra income tax on

the business carried on by them and thereafter the revenue had refunded the amount while making the assessment for which the assessee has received the interest. Admittedly, the income tax refund would not form part of the total income of the assessee and similarly, the interest paid on the said refund is also eligible for deduction. In support of the contention, we also rely on the judgment of the Hon'ble Punjab & Haryana High Court cited (supra) in which the Hon'ble High Court had granted the relief in respect of the interest earned on income tax refund. The Ld.DR had not cited any contra judgements in order to take a different view. In such circumstances, we are of the view that the deduction claimed u/s. 80P(2)(a)(i) of the Act on the interest income received on the income tax refunds are eligible for deduction.

**11.** Insofar as the deduction claimed on the interest received from the treasury and also from the ICICI Bank, it is the case of the assessee that the funds lying idle were invested in the treasury as well as the ICICI Bank in order to get more interest for the benefit of the assessee society. Further, we also consider the provisions of section 56 and 57 of the Kerala Co-operative Societies Act which reads as follows:

*“Section 56. Disposal of net profit.-*

*(1) A society shall, out of its net profits in any year,-*

*(a) transfer an amount not being less than fifteen per cent of the net profits to the reserve fund; and*

*(b) credit such portion of the net profits, not exceeding five per cent, as may be prescribed, to the Co-operative Education Fund referred to in clause (xix) of sub-section (2) of section 109.*

*(c) Ten percent of the net profit to the Co-operative Member Relief Fund as may be prescribed]*

*(2) The balance of the net profits may be utilized for all or any of the following purposes, namely:-*

*(a) payment of dividends to members on their paid up share capital at such rate not exceeding [[twenty five]] per cent as may be prescribed;*

*(b) payment of bonus to members on the amount or volume of business done by them with the society, to the extent and in the manner specified in the bye-laws;*

*[(c) seven percent of the net profit to Agricultural Credit Stabilization Fund;*

*(cc) five percentage of net profit to the Professional Education Fund maintained by the Registrar.]*

*(d) donations of amounts not exceeding ten percent of the net profits for any charitable purpose as defined in section (2) of the Charitable Endowments Act, 1890 (Central Act 6 of 1890); and*

*(e) balance of net profit may be utilized for any or all of the purposes specified in the bye-laws of the societies except for payment of bonus to employees].*

*[(3) Notwithstanding anything contained in section 18 of the Act, in the case of 46a [Kerala State Co-operative Bank] the term 'member' shall include nominal and associate members, for the purpose of clause (a) of sub - section (2)].*

*Section 57. Investment of Funds.-*

*A society may invest or deposit its funds—*

*(a) in Government Savings Bank; or*

*(b) in any of the securities specified in section 20 of the Indian Trusts Act, 1882 (Central Act 2 of 1882); or*

*(c) in the shares or securities of any other society approved for the purpose by the Registrar by general or special order; or*

*(d) in any bank approved for the purpose by the Registrar; or*

*(e) in any other prescribed manner.”*

**12.** As seen from the above said provisions, the Societies Act permitted the assessee to invest or deposit its fund with any of the banks. Therefore in

order to get more income to the assessee society, the excess funds were invested in the said institutions. We also consider the fact that these amounts are not the monies payable to the members but it is only the excess / surplus amount available with the assessee and therefore the judgment of the Hon'ble Supreme Court reported in 322 ITR 283 in the case of Totgars Co-operative Sales Society Ltd. vs. ITO will not apply to the facts of the case, for the reason that the said judgment deals with the deposits of the amounts due to its members and therefore the said interest could not be granted deduction u/s. 80P(2) of the Act. But in this case, it is not the case of the department that the amounts were belonged to the members. On the other hand, the assessee established that the amounts invested are nothing but the surplus funds available with them. Therefore the above said judgment relied on by the revenue could not be of any help to them. On the other hand, the Hon'ble Jurisdictional High Court in its judgment dated 04/09/2024 in ITA No. 68/2017 in the case of PCIT, Kottayam vs. M/s. Sahyadri Co-operative Credit Society Ltd. given the following finding.

*“7. On a consideration of the rival submissions, we are of the view that for the reasons stated hereinafter, the question of law that arises for consideration before us must be answered against the Revenue and in favour of the assessee. The permissible deduction that is envisaged under Section 80P(2) of the I.T. Act for a Co-operative Society that is assessed to tax under the head of 'Profits and Gains of Business or Profession' is of the whole of the amount of profits and gains of business attributable to any one or more of its activities. Thus, all amounts as can be attributable to the conduct of the specified businesses by a Co-operative Society will be eligible for the deduction envisaged under the statutory provision. The question that arises therefore is whether, merely because the assessee chooses to deposit its surplus profit in a permitted bank or financial institution, and earns interest on such deposits, such interest would cease to form part of its profits and gains attributable to its business of providing credit facilities to its members? In our view that question must be answered in the negative, since we cannot accept the contention of the Revenue that the interest earned on those deposits loses its character as profits/gains attributable to the main business of the assessee. It is not as though the*

*assessee in the instant case had used the surplus amount [the profit earned by it] for an investment or activity that was unrelated to its main business, and earned additional income by way of interest or gain through such activity. The assessee had only deposited the profit earned by it in the manner mandated under Section 63 of the Multi-State Co-operative Societies Act, or permitted by Section 64 of the said Act. In other words, it dealt with the surplus profit in a manner envisaged under the regulatory Statute that regulated, and thereby legitimized, its business of providing credit facilities to its members. Under those circumstances, if the assessee managed to earn some additional income by way of interest on the deposits made, it could only be seen as an enhancement of the profits and gains that it made from its principal activity of providing credit facilities to its members. The nature and character of the principal income [profits earned by the assessee from its lending activity] does not change merely because the assessee acted in a prudent manner by depositing that income in a bank, instead of keeping it in hand. The provisions of the I.T. Act cannot be seen as intended to discourage prudent financial conduct on the part of an assessee.”*

**13.** In view of the categorical finding given by the Hon'ble Jurisdictional High Court, we are also in agreement with the arguments advanced by the assessee and we therefore deleted the addition made on the interest incomes received from the deposits made with the treasuries, ICICI Bank and other institutions.

**14.** The other issue involved in Assessment Year 2021-22, relates to the miscellaneous income such as income from locker rent, commission, insurance, application fee etc. which was denied by the AO as well as the Ld.CIT(A). We considered the arguments of the assessee that the locker rent received by the assessee and the insurance amount received for safeguarding the gold ornaments pledged by the members and the application fee received from the members are all closely connected to the business activity carried on by the assessee. Lockers has been let out to the members in the ordinary course of the business for which a marginal

amount was received by the assessee from the members. Similarly, the insurance amount received by the assessee for safeguarding the jewels pledged by the members are also connected and attributable to the business activities of the assessee. Similarly, the application fee received from the members are also connected to the business activities carried on by the assessee and therefore the said income is also attributable to the business activities carried on by the assessee.

**15.** We have also perused the judgment of the Hon'ble Supreme Court reported in (2001) 119 Taxman 785 (SC) in the case of Mehsana District Co-operative Bank Ltd. V. ITO (supra) wherein the Hon'ble Supreme Court had held that the locker rent derived by the assessee is income from business of banking and therefore deductible u/s. 80P(2)(a) of the Act. We have also perused the judgment of the Hon'ble Madhya Pradesh High Court reported in 149 ITR 438 in the case of CIT vs. Dhar Central Co-operative Bank (supra) in which the commission, brokerage, admission fee from members and other incidental charges are held as all attributable to the business of banking or providing credit facilities to its members and therefore it was held that the said incomes are deductible u/s. 80P(2)(a) of the Act.

**16.** Respectfully following the above judgments of the Hon'ble Supreme Court as well as the Hon'ble Madhya Pradesh High Court, we are also of the view that the miscellaneous incomes are also incomes attributable to the banking business carried on by the assessee and therefore they are entitled for deduction u/s. 80P(2)(a)(i) of the Act.

In so far as the deduction claimed u/s 80P(2)(c) of the Act, we are not inclined to grant the deduction since the assessee is a coop society claiming deduction u/s 80P(2)(a) of the Act.

**17.** In view of the disposal of the main appeals, the stay petitions becomes infructuous and the same are dismissed.

**18.** In the result, both the appeals are allowed in part and both the stay petitions are dismissed.

Order pronounced in the open court on 20<sup>th</sup> December, 2024.

Sd/-  
(WASEEM AHMED)  
Accountant Member

Sd/-  
(SOUNDARARAJAN K.)  
Judicial Member

Bangalore,  
Dated, the 20<sup>th</sup> December, 2024.  
/MS /

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

By order

Assistant Registrar,  
ITAT, Cochin