

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

**BEFORE SHRI INTURI RAMA RAO, AM
AND SHRI SOUNDARARAJAN K., JM**

**ITA Nos. 675, 682 & 656/Coch/2023
Assessment Years: 2010-11, 2012-13 & 2016-17**

Vilavattam Service Co-op. Bank Ltd.
Vilavattam, Thrissur 680028
[PAN: AAV9819K]

..... Appellant

Vs.

The Income Tax Officer
Ward - 2(3), Thrissur

..... Respondent

Appellant by: ----- None -----
Respondent by: Smt. Leena Lal, Sr. D.R.

Date of Hearing: 28.11.2024
Date of Pronouncement: 27.01.2025

ORDER

Per: Inturi Rama Rao, AM

These appeals filed by the assessee are directed against separate orders of the National Faceless Appeal Centre, Delhi [CIT(A)] dated 01.08.2023, 11.08.2023 & 01.08.2023 for Assessment Years (AYs) 2010-11, 2012-13 & 2016-17, respectively

2. Since identical issues are involved, these appeals are heard together and disposed of vide this common order.

3. Brief facts of the case are that the assessee is a primary agricultural credit society registered under the Kerala Co-Operative Societies Act, 1969. The assessee had not filed the return of income under the provisions of section 139 of Income Tax Act, 1961 (hereinafter "the Act") for AY 2010-11. Notice u/s. 148 of the Act was issued to the assessee on 28.03.2017. In response to the notice u/s. 148 the assessee filed return of income disclosing Nil income after claiming deduction u/s. 80P of the Act. Against the said return of income assessment was completed by the AO vide order dated 27.11.2017 passed u/s. 143(3) r.w.s. 147 of the Act at a total income of Rs. 39.03,419/- by holding that the assessee is a co-operative bank placing reliance of the Full Bench judgement of the Hon'ble Kerala High Court in the case of Pr.CIT v. Mavilayi Service Co-operative Bank Ltd. [2019] 414 ITR 67 (Ker) (FB).

4. Being aggrieved, an appeal was filed before the CIT(A), who wide the impugned order held that the assessee is co-operative bank and accordingly denied exemption by placing reliance on the provisions of sub-section (4) of section 80P of the Act.

5. Being aggrieved, assessee is in appeal before us in the present appeal.

6. When the application was called none appeared on behalf of the assessee nor is there any application for adjournment. Therefore, we proceed to dispose the stay application after hearing the Id. Sr. DR.

7. Undoubtedly the assessee is a primary agricultural co-operative society registered under the provisions of Kerala Co-Operative Societies Act, 1969 and engaged in the business of providing credit facilities to its members. The AO

was of the opinion that the assessee is not a co-operative society but a co-operative bank, as it is engaged in the business of banking. Accordingly he denied the claim for deduction u/s. 80P(2)(a)(i) of the Act placing reliance on the provisions of sub-section (4) of section 80P of the Act and also placing reliance on the Full Bench judgement of the Hon'ble Kerala High Court in the case of Mavilayi Service Co-op. Bank Ltd. (supra). We find that the Full Bench decision of the Hon'ble Kerala High Court was overruled by the Hon'ble Supreme Court in the case of Mavilayi Service Co-operative Bank Ltd. v. CIT reported in [2021] 431 ITR 1 (SC) wherein it was held that once a co-operative society is registered as a primary co-operative society so long as it does not enjoy any licence from the Reserve Bank of India to carry out business of banking' the co-operative society cannot be treated as a co-operative bank, the AO cannot possibly go into the question whether the society continues to be a primary co-operative society. The relevant part of the judgement is extracted as below: -

“To sum up, therefore, the ratio decidendi of Citizen Co-operative Society Ltd. (supra), must be given effect to. Section 80P of the Income-tax Act, being a benevolent provision enacted by Parliament to encourage and pro- mote the credit of the co-operative sector in general must be read liberally and reasonably, and if there is ambiguity, in favour of the assessee. A deduction that is given without any reference to any restriction or limitation cannot be restricted or limited by implication, as is sought to be done by the Revenue in the present case by adding the word "agriculture" into section 80P(2)(a) (i) when it is not there. Further, section 80P(4) is to be read as a proviso, which proviso now 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 the RBI. Judged by this touchstone, it is clear that the impugned Full Bench judgment is wholly incorrect in its reading of Citizen Co-operative Society Ltd. (supra). Clearly, therefore, once section 80P(4) is out of harm's way, all the assesseees 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.”

8. In the light of the decision of the Hon'ble Supreme Court, we reverse the orders of the lower authorities and direct the AO to allow the deduction u/s. 80P(2)(a)(i) of the Act. Thus, the appeal of the assessee stands allowed.

9. Since the issue is identical, the other two appeals ITA No. 682/Coch/2023 and ITA No. 656/Coch/2023 are also stand allowed in above terms.

Order pronounced in the open court on 27th January, 2025.

Sd/-
(SOUNDARARAJAN K.)
JUDICIAL MEMBER

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

Cochin, Dated: 27th January, 2025

n.p.

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