

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

**BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER
AND
SHRI SOUNDARARAJAN K., JUDICIAL MEMBER**

ITA Nos. 687 & 688/Coch/2023
Assessment Years : 2015-16 & 2017-18

M/s. The West Eleri Service Co-operative Bank Ltd. No. 62, FF, Kottamala P.P., Nileshwar, Kasargod, Kerala – 671 314. PAN: AADAT1846K	Vs.	The Income Tax Officer, Ward – 2, Kasaragod.
APPELLANT		RESPONDENT

Assessee by	:	Shri George Thomas, CA
Revenue by	:	Smt. Leena Lal, Snr. AR

Date of Hearing	:	28-11-2024
Date of Pronouncement	:	27-01-2025

ORDER

PER SOUNDARARAJAN K., JUDICIAL MEMBER

These are the appeals filed by the assessee challenging the orders of the NFAC, Delhi both dated 22/08/2023 in respect of the A.Ys. 2015-16 and 2017-18 and raised the following grounds:

Assessment Year 2015-16:

“1. The order of the Commissioner of Income-tax (Appeal) is against the facts and circumstances of the case and hence opposed to the provisions of Income-tax Act.

2. The contention of the CIT (A) that the documentary evidences have not been filed for interest earned on loan to the non-members is irrelevant. The CIT(A) ought to have realised that there will not be any documentary evidence

for an amount (income) which the appellant has not received or else he could have specified the type of document required. The CIT (A) should have realised that in the absence of lending to non-members and as there are no figures related in the books of accounts, copy of the related clause in the byelaw and affidavit by Secretary are reasonable documents/evidences that the appellant can file in this regard.

3. The contention of the CIT(A) that the appellant failed to demonstrate the principle of mutuality is being satisfied is also not valid as Hon. Supreme Court has held in the case of Mavilayi Service Co-operative Bank & others V. CIT(A) ((2021)431ITR0001) that satisfaction of mutuality is not a pre-condition for deduction u/s. 80P(2)(a) of the Income tax for deduction of income earned from providing credit facility to members. Certificate issued by the Cooperative department that the Appellant is a Primary Agricultural Society, copy of the byelaw to prove that lending is permitted only to members and affidavit from Secretary in this regard have been filed. The CIT (A) should have realised that mutuality is a concept which cannot be proved by any other documentary evidences.

PRAYER

For these grounds and such other grounds that may be urged at the time of hearing it is prayed that the addition confirmed by the Commissioner (Appeals) may kindly be deleted.”

Assessment Year 2017-18:

“1. The order of the Commissioner of Income-tax (Appeal) is against the facts and circumstances of the case and hence opposed to the provisions of Income-tax Act.

2. The contention of the CIT (A) that the documentary evidences have not been filed for interest earned on loan to the non-members is irrelevant. The CIT(A) ought to have realised that there will not be any documentary evidence for an amount (income) which the appellant has not received or else he could have specified the type of document required. The CIT (A) should have realised that in the absence of lending to non-members and as there are no figures related in the books of accounts, copy of the related clause in the byelaw and affidavit by Secretary are reasonable documents/evidences that the appellant can file in this regard.

3. The contention of the CIT(A) that the appellant failed to demonstrate the principle of mutuality is being satisfied is

also not valid as Hon. Supreme Court has held in the case of Mavilayi Service Co-operative Bank & others V. CIT(A) ((2021)4311TR0001) that satisfaction of mutuality is not a pre-condition for deduction u/s. 80P(2)(a) of the Income tax for deduction of income earned from providing credit facility to members. Certificate issued by the Cooperative department that the Appellant is a Primary Agricultural Society, copy of the byelaw to prove that lending is permitted only to members and affidavit from Secretary in this regard have been filed. The CIT (A) should have realised that mutuality is a concept which cannot be proved by any other documentary evidences.

PRAYER

For these grounds and such other grounds that may be urged at the time of hearing it is prayed that the addition confirmed by the Commissioner (Appeals) may kindly be deleted.”

2. Both the appeals are related to the same assessee and the issue involved in both the appeals are similar. We decided to take up both the appeals together and pass a common order for the sake of convenience.

3. 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. The assessee filed their return of income declaring a total income of Rs. 1,79,130/- and claimed deduction of Rs. 54,53,464/- u/s. 80P(2)(a) of the Act. The AO disallowed the deduction on the ground that the assessee is a co-operative bank lending money to the non-members and also to the non-agricultural activities. Challenging the said order, the assessee filed an appeal before the Ld.CIT(A) and relied on the judgement of the Hon'ble Supreme Court in the case of Mavilayi Service Co-operative Bank Ltd. v. CIT reported in 431 ITR 1. The Ld.CIT(A) had dismissed the appeal for the reason that the assessee had not submitted details of the interest received on the loans given to non-members. As against the said order, the assessee is in appeal before this Tribunal.

4. At the time of hearing, the Ld.AR submitted that the Ld.CIT(A) had not considered the submissions made before it in which the assessee had submitted that they have dealt with only members and no loan was given to the non-members. The Ld.AR further submitted that the loans given to

nominal members could not be treated as given to non-members and relied on the above judgment of Hon'ble Supreme Court cited (supra). The ld AR also filed two paper books and also enclosed the orders of the coordinated bench in the assessee's own case in ITA No. 685 & 686/Coch/2023 dated 25.09.24 in respect of the assessment years 2013-14 and 2014-15 in which this Tribunal had decided the similar issue in favour of the assessee and prayed to allow these appeals also.

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

6. We have heard the arguments of both sides and perused the materials available on record. We will take up the appeal in ITA No.687/Coch/2023 as the lead case and the result arrived in the said appeal will apply mutatis mutandis to the appeal in ITA No. 688/Coch/2023.

7. We have perused the order of the AO in which the AO had denied the deduction claimed by the assessee on the following grounds

- a) The assessee is doing activities of the bank and therefore they are not a society eligible for deduction
- b) The assessee has offered non-agricultural loans
- c) The assessee is also granting loans to nominal members who are all non-members since there is no mutuality.

8. We have gone through the judgment relied on by the assessee and we are of the opinion that the judgement will answer to all the questions raised by the AO as well as by the Ld.CIT(A). The Hon'ble Supreme Court in the case of Mavilayi Service Co-operative Bank Ltd. v. CIT (supra) had held that nominal members are also members and loans given to non-agricultural purpose to the members would not disentitle the assessee from claiming the deduction when admittedly the assessee is a co-operative society registered under the provisions of the said act. Insofar as the absence of mutuality is concerned, the Hon'ble Supreme Court also gave a clear finding that simply

because the assessee had dealt with nominal members, the allegation of non-mutuality would not exist.

9. We have also perused the orders of the coordinated bench of this Tribunal made in ITA Nos 685 & 686/Coch/2023 dated 25.09.2024 in which this Tribunal had allowed the deduction claimed by the assessee u/s 80P of the Act in similar facts and circumstances.

10. Respectfully following the above said judgment of the Hon'ble Supreme Court and the orders passed by the coordinated Bench of this Tribunal we are inclined to set aside the orders of the Ld.CIT(A) and the AO and allow the appeals filed by the assessee.

11. In the result, both the appeals filed by the assessee are allowed.

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

Sd/-
(INTURI RAMA RAO)
Accountant Member

Sd/-
(SOUNDARARAJAN K.)
Judicial Member

Bangalore,
Dated, the 27th January, 2025.
/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