

4. Brief facts of the case are that the appellant is a co-operative society registered under the Kerala State Co-operative Societies Act, 1969, classified as primary agricultural credit society. It is engaged in the business of lending money to its members and accepting deposits from the members. The appellant had not filed regular return of income for AY 2010-11. The AO formed opinion that the appellant society had received interest income of Rs. 4,16,484/- during the previous year relevant to AY 2010-11 from Kollam District Co-operative Bank and such income does not qualify for deduction u/s. 80P of the Income Tax Act, 1961 (the Act). Accordingly, issued a notice u/s. 148 on 31.03.2017. The appellant filed the return of income belatedly on 20.12.2017 declaring Nil income after claiming deduction u/s. 80P(2)(a)(i) of the Act of Rs. 6,31,328/-. Against the said return of income, the assessment was completed by the Income Tax Officer, Ward-2, Kollam (hereinafter called "the AO") vide order dated 28.12.2017 passed u/s. 143(3) r.w.s. 147 of the Act at a total income of Rs. 6,31,330/-. While doing so, the AO treated the interest income earned from Kollam District Co-operative Bank as income from other sources.

5. Being aggrieved, an appeal was filed before the CIT(A), who vide order dated 05.03.2019 allowed the appeal. Subsequently, the learned CIT(A), noticing the Full Bench judgement of the Hon'ble High Court of Kerala in the case of Mavilayi Service Co-operative Bank Ltd. v. CIT [2019] 414 ITR 67 (Ker) (FB) issued a notice u/s.

154 of the Act proposing to rectify the order passed by him in view of the above decision in the absence of any objection filed by the appellant. The learned CIT(A) rectified the order by withdrawing the deduction claimed u/s. 80P(2)(a)(i) of the Act.

6. Being aggrieved, the appellant is in appeal before us in the present appeal.

7. The Tribunal vide order dated 21.01.2020 set aside the issue to the file of the AO to conduct an enquiry into the factual situation as to the activities of the assessee and determine the eligibility for deduction u/s. 80P of the Act.

8. Pursuant to the order passed by this Tribunal the AO, while allowing the deduction u/s. 80P(2)(a)(i) of the Act in respect of business income, in view of the decision of the Hon'ble High Court in the case of Mavilayi Service Co-op. Bank Ltd. (supra) held that the appellant is not entitled for deduction in respect of interest income earned from co-operative bank of Rs. 4,16,484/- vide order dated 26.09.2021 passed u/s. 143(3) r.w.s. 144B of the Act.

9. Being aggrieved, an appeal was filed before the CIT(A), who vide the impugned order confirmed the action of the AO.

10. Being aggrieved, the appellant is in appeal before us in the present appeal.

11. At the outset I find that there is a delay of 196 days in filing the present appeal. The appellant filed a petition along with an affidavit by the Tax Practitioner, Shri Santosh Maheswar, seeking condonation of delay in filing the appeal, wherein it is stated that due to honest oversight he had omitted to file the appeal in time and also that he had met with bike accident on 1109.2024 and was hospitalised and bed-ridden for a long time. Hence, the delay is not wilful or deliberate. Therefore it is prayed that the delay in filing the appeal may be condoned and the appeal may be admitted for adjudication. On a perusal of the averments made in the condonation petition, it is evident that the appellant is prevented by reasonable cause from filing the appeal. Therefore, I condone the delay and admit the appeal for adjudication

12. I heard the rival contentions of both the parties and perused the material available on record. The issue in the present appeal is with regard to the allowability of interest income earned by the appellant society from co-operative bank. The issue is no longer res integra as it stands settled by the decision of the Hon'ble Jurisdictional High Court in the case of PCIT v. Peroorkada Service Co-op. Bank Ltd. [2022] 442 ITR 141 (Ker) wherein their Lordships have rejected the Revenue's identical stand as under: -

“12.2 Section 80P deals with Co-operative Societies' computation of income. As already noted, it has four sections and several sub-sections and clauses. The Parliament has considered the various situations in which the exigible income and the deductible income of the assessee is considered while computing the income of the assessee. For getting deduction, in our

considered view, the assessee must also establish that the interest income earned by the assessee is from a Co-operative Society. As a matter of fact, in the case on hand, there is no dispute that it is not from a Co-operative Society registered under Kerala Co-operative Societies Act. The interest income earned from District Co-operative Bank/State Co-operative Bank, in the facts and circumstances of the case, do come within Section 80P(2)(d). Therefore, the income constitutes income from other sources and the only eligible deduction is covered by Section 80P(2)(d) viz. Interest or dividend derived by the assessee from its investments with any other Co-operative Society. The source of interest income is from Bank and Treasury, interest income received from Treasury be included in the computation of total income of the assessee. In other words, interest earned from Treasury is inadmissible for deduction and interest income from Co-operative Societies registered under the Kerala Co-operative Societies Act are eligible for deduction. The contra consideration of Commissioner of Income Tax (Appeals) and the Tribunal is incorrect and liable to be modified as stated above. Hence, it is held that the interest income earned by the assessee does not come within the ambit of Section 80P(2)(a)(i) and permissible deduction of interest income is limited to Co-operative Societies/Banks registered under Kerala Co-operative Societies Act under clause (d) of the Act and effect order on the above lines is made by the Assessing Officer. The questions are accordingly answered.”

Respectfully following the above decision of the Hon'ble Jurisdictional High Court, I hold that the assessee is entitled for deduction under section 80P(2)(d) of the Act on account of interest received from District Co-operative Bank.

13. In the result, the appeals filed by the assessee stand allowed.
14. Order pronounced in the open court on 24th February, 2025.

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

Cochin, Dated: 24th February, 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