IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH : COCHIN

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

ITA No. 463/Coch/2024
Assessment Year : 2016-17

M/s. Elanthoor Service Co-operative Bank Ltd., Elanthoor SCB Building, Elanthoor PO, Kerala – 689 643. **PAN: AAAAE1867C**	**Vs.**	The Income Tax Officer, Ward – 2, Thiruvalla.
APPELLANT		**RESPONDENT**

Assessee by	:	Shri T.T. Biju, Advocate
Revenue by	:	Smt. Leena Lal, Snr. AR

Date of Hearing	:	02-01-2025
Date of Pronouncement	:	19-02-2025

ORDER

PER SOUNDARARAJAN K., JUDICIAL MEMBER

This is an appeal filed by the assessee challenging the order of the NFAC, Delhi dated 24/04/2024 in respect of the A.Y. 2016-17 and raised the following grounds.

> *"A. The Order of the Assessing Officer as well as that of the appellate authority to the extent of objections made hereinafter are against the facts and circumstances of the case under consideration and are opposed to the provisions of law.*
>
> *B. The learned assessing authority as well as the appellate authority ought to have considered the claim of*

the appellant under Section 80P(2)(a)(i)or under Section 80(P)(d) in as much as the interest is earned by the appellant during the course of banking business and that too from District Cooperative bank and the reasoning given by them in this connection is opposed to the facts and law.

C. The assessing authority as well as the appellate authority had given a narrow interpretation to the provisions in Section 80P (2)(a)(i). Once it. is found that the appellant is a PACS and doing banking activities, which is permissible under Section 80P(2)(a)(i), there is no justification to deny the deduction with respect to the income received during the carrying on of such banking activity.

D. The appellant is bound to maintain liquidity and the Kerala Government insists for the deposits in the District Co-operative Bank and the appellant had deposited amounts only accordingly. Apart from this, the surplus fund available in the banking activities cannot be kept idle and hence it is usual that such surplus amounts are deposited in other banks nearby.

E. The learned Assessing Authority is not justified in making addition to the total income by taking theRs 33,93,289/-, as taxable separately. It reflects the interest received from Pathanamthitta District Co-operative Bank. Treating this income as income from other sources and deeming it as not forming part of gross total income,is against the statutory prescriptions.

F. Though the Assessing Officer had admitted the appellant's eligibility to get the deduction under Section BOP, the gross total income ought to have been considered for the purpose of 80P and the interest aggregating to Rs.33,93,156/-received cannot be segregated and hence the appellant's taxable income is NIL, legally.

G. The Authorities below have utterly failed to compute the correct total income of the appellant, in the manner prescribed and the appellate Commissioner ought to have negated the erroneous computation of total income taken by the Assessing Officer.

H. It is the settled law that eligibility for deduction/exemption cannot be overlooked on technical grounds, if the assessee otherwise proves entitlement for deduction/exemption. In the facts of the case under consideration, the appellant is entitled for deduction under

Section 80P (2)(a)(i) on the entire income but only on technical grounds, the deduction is denied, which is unreasonable and highly discriminatory.

I. Section 80(P) clearly enables the co-operative society to claim deduction from its gross total income, when their gross total income included any income referred to in sub-section (2) of section 80P. As per clause (i) (a) of sub-section (2) above, a cooperative society engaged in carrying on the business of banking or providing credit facilities to its members is eligible for deduction. Thus the claim of the appellant is fully justified by going by the provisions of law and the law settled by the llon'ble Supreme Court in the case of Mavilayil Service Cooperative Bank Ltd. And Others Vs. The Commissioner of Income Tax, Calicut and Another.

For the reasons stated in the above and also the grounds urged at the time of final hearing, it is just and necessary to set aside the Assessment Order as well as the Order in Appeal to the extent of objections made herein above."

2. The assessee is a co-operative society registered under the provisions of the Kerala Co-operative Societies Act and filed their return of income on 25/01/2018 declaring a Nil income after claiming deduction u/s. 80P of the Act. Thereafter, the case was selected for scrutiny and the assessment has been made by disallowing a part of the income on the ground that the interest income has been received from the surplus funds invested in Pathanamthitta District Co-operative Bank. While making the assessment, the AO had wrongly taken the total income as Rs. 1,32,39,450/- as against the actual income of Rs. 33,93,289/- and therefore the AO had made a rectification order on 26/12/2018 by rectifying the said mistake. The AO in his 143(3) order dated 11/12/2018 had considered the issue in detail and disallowed the interest income earned from the said district co-operative bank which was not challenged by the assessee before any of the authorities but challenged the rectification order passed by the AO on 26/12/2018 before the Ld.CIT(A). The Ld.CIT(A) had also considered the facts of the case and came to the conclusion that the assessee had not challenged the order passed u/s. 143(3) in which the issue was discussed in detail but only challenged the rectification order in which a small correction was made

under section 154 and therefore dismissed the appeal filed by the assessee. As against the said order, the assessee has filed the present appeal before this Tribunal.

3. At the time of hearing, the Ld.AR submitted that the order passed u/s. 154 is a continuation of the order passed u/s. 143(3) and therefore the appeal ought to have been decided on merits instead of dismissing the same on technicalities.

4. The Ld.DR relied on the order of the Ld.CIT(A) and prayed to dismiss the same.

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

6. We have perused the order passed u/s. 143(3) dated 11/12/2018 in which the AO had denied the deduction claimed u/s. 80P(2)(a) of the Act in respect of the interest income earned from the Pathanamthitta District Co-operative Bank on the surplus monies deposited by the assessee. The assessee had also filed their objections but the AO had made the assessment by rejecting the said contentions and subjected the income received from the said co-operative bank as income from other sources. But while arriving the demand, the AO mistakenly taken the total income as Rs. 1,32,39,450/- instead of the actual income of Rs. 33,93,289/-. In order to set right the mistake which is apparent on the face of the record, the AO had passed a rectification order. Except the said correction of the mistake, nothing has been discussed in the rectification order and therefore the AO had not disturbed the other findings. In such circumstances, the filing of the appeal before the Ld.CIT(A) against the rectification order dated 26/12/2018 and canvassed the issue on merits is not permissible and therefore the Ld.CIT(A) had rightly dismissed the appeal.

7. In the result, the appeal filed by the assessee is dismissed.

Order pronounced in the open court on 19th February, 2025.

Sd/-	Sd/-
(INTURI RAMA RAO)	(SOUNDARARAJAN K.)
Accountant Member	Judicial Member

Bangalore,
Dated, the 19th February, 2025.
/MS /

Copy to:

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

By order

Assistant Registrar,
ITAT, Cochin