

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

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

ITA Nos. 405 & 406/Coch/2024
Assessment Years : 2017-18 & 2020-21

M/s. Edavilangu Service Co-operative Bank Ltd. 3468, Edavilangu P.O., Kodungallur, Thrissur – 680 671. PAN: AAAAE7972Q	Vs.	The Income Tax Officer, Ward – 2(1), Thrissur.
APPELLANT		RESPONDENT

Assessee by	:	None
Revenue by	:	Smt. Leena Lal, Snr. AR

Date of Hearing	:	01-01-2025
Date of Pronouncement	:	21-02-2025

ORDER

PER SOUNDARARAJAN K., JUDICIAL MEMBER

These are the appeals filed by the assessee challenging the orders of the NFAC, Delhi both dated 19/10/2023 in respect of the A.Ys. 2017-18 and 2020-21 and raised the following grounds:

Assessment Year: 2017-18

“A. The assessing authority declined the deduction under Section 80P of the Act on the reasoning that the society had not furnished the registration certificate inspite of the letter issued to produce the documents. The said view is absolutely incorrect, as the appellant had produced the

said certificate, which was not taken note of by the assessing authority as well as appellate authority. There is no justification for the present reasoning of the assessing authority.

B. The appellant society is registered under Kerala Co-operative Societies Act. As per Section 2(1) of the Kerala Co-operative Societies Act, member of a society includes nominal member as well as associates member. The society is accepting deposits from the members and provides credit facilities to the members only and thereby the appellant society is entitled to get the benefit of Sec. 80P(2)(a)(i) of the Act. This aspect was not considered by the assessing authority as well as the appellate authority in the proper perspective.

C. As per the dictum laid down by the Hon'ble Supreme Court in Commissioner of Income Tax Vs. Nawanshahar Central Cooperative Bank Ltd. (2007) 289 ITR 6 (SC) held that investments made by a banking concern are part of the business of banking. The income arising from such investments would, therefore, be attributable to the business of bank falling under the head "Profits and gains of business" and thus deductible under Section. 80P(2)(a)(i) of the Income Tax Act. It was also held that the said principle would cover a situation where a co-operative bank carrying on the business of banking is statutorily required to place a part of its funds in approved securities. So, the interest on deposit is a part of business of banking and the same is deductible Sec. 80P(2)(a)(i) of the Act. So, the interest on deposit is a part of business of banking and the same is deductible Sec. 80P(2)(a)(i) of the Act. So, the benefit available Sec. 80P(2) of the Act has been denied without any justifiable reason.

D. The Hon'ble High Court of Kerala as per judgment in ITA NO. 323 of 2019 dated 1.11.2021 and connected cases, (Principal Commissioner of Income Tax Vs. Peroorkada Service Co-operative Bank [2022] 442 ITR 141 (Ker), held that held that the interest earned from district Co-operative banks and the state co-operative bank did come within the section 80P (2)(d). Admittedly, from the assessment order, the appellant had received substantial income by way of interest of deposit and hence, there is no justification for denying the benefit of deduction under Section 80P of the Income Tax Act. Hence, the orders issued by the assessing authority as well as appellate authority are not tenebel.

E. Section 80P(2)(d) of the Income Tax Act provides for deduction in respect of any income by way of interest or dividend derived by a cooperative society from its investment in another cooperative society. In the instant case, the interest is derived for deposits maintained with District Cooperative Bank and the interest income received from the above bank are eligible for deduction under section 80P (2)(d) of the Income Tax Act and cannot be assessed as income from other source. Hence, the reasoning made by the authorities below to deny the claim for deduction under 80P of the Act is not legal and justifiable.

F. The assessing authority had failed to consider the various judgments produced by the appellant and come to a conclusion ignoring the dictum laid down various judgments of the Hon'ble Supreme Court as well as High Courts. In appeal, the claim for deduction under Section 80P of the Act was denied by the appellate authority by incorrect interpretation to the judgments of the Hon'ble Supreme Court and held that the appellant is not eligible to get deduction under Section 80P of the Act. Thus, both authorities failed to apply the correct law applicable herein. Hence, the impugned orders are faulty.

G. The dictum in Chirakkal Service Co-op Bank Ltd vs CIT [(2016) 384 ITR 490 (Ker.) held that the benefit of Section 80(P)(4) is available to the societies similar to the appellant herein. Though, the correctness was doubted by the Full Bench of the Hon'ble High Court in Mavilayi Service Co-operative Bank Ltd. Vs. The Commissioner of Income Tax, Calicut [2021] 431 ITR 1 (SC) and connected cases, the same was set aside by the Apex Court was pleased to set aside the Order of the Hon'ble High Court by holding that once section 80P(4) is out of harm's way, all the assesseees in 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. So, the reasoning of the impugned orders is not tenable in law.

H. The appellant society is not liable to pay any amount as Income Tax and the appellant is entitled to obtain statutory deduction under Section 80(P)(2) of the Income Tax Act, since, the same is society is Primary Agricultural Credit Society. Hence, the reasoning made by the assessing authority as well as the appellate authority to reject the claim for deduction under 80P of the Act is not legal and justifiable.

I. By relying the dictum in *Citizens Co-operative Society Limited Vs. ACIT* reported in 397 ITR 1), the appellate authority declined the claim under Section 80P of the Act. The reasoning in the said judgment is that principle of mutuality which is the basis criterion for the society to claim deduction under 80(P) of the Act and if there is no identity between contributors and participators, mutuality failed and if there is no mutuality among the members of the appellant society the benefit of Section 80(P) was denied to the appellant. Actually the above judgment is not applicable and further, the said society was not registered as Primary Agriculture Credit Society and the said society was functioning contrary to the approved bye-law as well as the Act and Rules. Hence, the reasoning made by the appellate authority to reject the claim for deduction under 80P of the Act based on the above judgment is not legal and justifiable in view of *Mavilayi's case*. Hence, the finding rendered by the authority below is liable to be interfered.

J. The finding of the authorities that the appellate has not responded to the notices is not correct. Further, such contentions are only a ruse to deny the statutory benefits as per law, especially when the issue involved is covered by the dictum in *Mavilayi's Case*.

K. The computation of total income and claim for deductions are entirely different. From Section 80P of the Act, it is evident that the gross total income of a Co-operative Society includes any income specified in Section 80P (2) of the Act. Thus, the total income shall be the difference between Gross total income and the sums specified in sub section (2) of Section 80 P. It is pertinent to note that the Act is not referring to 'taxable income' but 'total income'. So the petitioner, being the a Co-operative Society is bound to file return of income tax only if such 'total income' computed as per the provisions of Section 80P exceeds the exemption limit. Otherwise the 2nd limb of Sec. 80P would have no meaning. Hence, the appellant is required to file return of Income under Section 139(1) of the Act or in response to the notice under Section 142(1) of the Act. This aspect was not considered by the authority below and hence, the reasoning in the impugned orders are not legal.

L. As per Section 80P (4) of the Act, the provisions of Section 80P are not applicable in the case of a Co-operative Bank other than a primary agricultural credit society or a

primary co-operative agricultural and Rural development Bank. Co-operative Bank and primary agricultural credit society shall have the meaning respectively assigned to them in Part V of the Banking Regulation Act. As per S.5(cci) of Part V of the Banking Regulation Act "Co-operative Bank means a State Co-operative Bank, a Central Co-operative Bank and a Primary Co-operative Bank". So the appellant is not co-operative banks as defined in S.5(cci) of Part V of the Banking Regulation Act 1949 but a Co-operative credit society as defined in S.5(ccii) of Banking Regulation Act. Therefore the petitioner's total income should be computed in accordance to the provisions of Section 80P of the Act. The CBDT by its clarification No.133/6 of 2007 has also specifies that a Co-operative Society which is not a Co-operative Bank is eligible for deduction under Section 80P of the Act. So, without appreciating this crucial aspect, the assessing authority as well as the appellate authority issued by the impugned order and hence, the order is liable to be interfered.

M. In paragraph 5.13 of page 18 the Guidance Note issued by Institute of Chartered Accountants of India on Tax Audit under Set 44AB of the Income Tax Act prescribes items not part of gross receipts in business to include Income by the way of interest unless assessable as business income. Therefore in interest which is being offered and assessed under the head "income from Other Sources" ought not have considered for calculate "gross receipts". Hence, there is illegality made in the assessment order, by adding income from investments to "gross receipts", which is not permissible. So, the present assessment order and commutation of income is not as per law. This aspect was not considered by the learned appellate authority.

N. The Hon'ble Supreme court interpreted the Guidance Note issued by Institute of Chartered Accountants of India on Tax Audit under Section 44AB of the Income Tax Act in CIT Vs Virtual Soft Systems Ltd (2018) 404 ITR 409 and held that the Guidance Note issued by the ICAI carries great significance and the method of accounting prescribed in such a Guidance Note, in order to compute "real income" and offering the same for taxation, cannot be disregarded by the assessing officer. So, the computation of income in the assessment order itself is illegal and against law.

O. The appellant society is not liable to pay any amount as Income Tax and the appellant is entitled to obtain deduction under section 80(P)(2) of the Income Tax Act,

since, the same is society is Primary Agricultural Credit Society. There is no dispute with respect to the entitlement of the Primary Agricultural Credit Societies get deduction under 80(P)(4) of the Act. In Mavilayi case, the Hon'ble High Court has not considered the merit of the each case and thereby there is no justification for denying the benefit under Section 80(P)(4) of the Act and hence, there orders passed by the assessing authority and the appellate authority are liable to be setaside.

P. The decisions of various High courts and ITATs across the country on the disallowance of claim for deduction under section 80(P), adopted on the basis of CBDT clarification No.133/06/2006-07 dated 19-05-2007 has to be considered by the authorities in the proper perspective. But, the authorities below under the statute proceeded the matter with pre-determined view and declined the benefit of Section 80P of the Act. Hence, assessment order is liable to be interfered and setaside in the interest of justice.

So, the impugned orders issued by the assessing authority as well as the appellate authority may be interfered and the said orders may be setaside in the interest of justice.”

Assessment Year: 2020-21

“A. The assessing authority declined the deduction under Section 80P of the Act on the reasoning that the society had not furnished the registration certificate inspite of the letter issued to produce the documents. The said view is absolutely incorrect, as the appellant had produced the said certificate, which was not taken note of by the assessing authority as well as appellate authority. There is no justification for the present reasoning of the assessing authority.

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C. As per the dictum laid down by the Hon'ble Supreme Court in Commissioner of Income Tax Vs. Nawanshahar

Central Cooperative Bank Ltd. (2007) 289 ITR 6 (SC) held that investments made by a banking concern are part of the business of banking. The income arising from such investments would, therefore, be attributable to the business of bank falling under the head "Profits and gains of business" and thus deductible under Section. 80P(2)(a)(i) of the Income Tax Act. It was also held that the said principle would cover a situation where a co-operative bank carrying on the business of banking is statutorily required to place a part of its funds in approved securities. So, the interest on deposit is a part of business of banking and the same is deductible Sec. 80P(2)(a)(i) of the Act. So, the interest on deposit is a part of business of banking and the same is deductible Sec. 80P(2)(a)(i) of the Act. So, the benefit available Sec. 80P(2) of the Act has been denied without any justifiable reason.

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incorrect interpretation to the judgments of the Hon'ble Supreme Court and held that the appellant is not eligible to get deduction under Section 80P of the Act. Thus, both authorities failed to apply the correct law applicable herein. Hence, the impugned orders are faulty.

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finding rendered by the authority below is liable to be interfered.

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O. The appellant society is not liable to pay any amount as Income Tax and the appellant is entitled to obtain deduction under section 80(P)(2) of the Income Tax Act, since, the same is society is Primary Agricultural Credit Society. There is no dispute with respect to the entitlement of the Primary Agricultural Credit Societies get deduction under 80(P)(4) of the Act. In Mavilayi case, the Hon'ble High Court has not considered the merit of the each case and thereby there is no justification for denying the benefit under Section 80(P)(4) of the Act and hence, there orders passed by the assessing authority and the appellate authority are liable to be setaside.

P. The decisions of various High courts and ITATs across the country on the disallowance of claim for deduction under section 80(P), adopted on the basis of CBDT clarification No.133/06/2006-07 dated 19-05-2007 has to be considered by the authorities in the proper perspective. But, the authorities below under the statute proceeded the matter with pre-determined view and declined the benefit

of Section 80P of the Act. Hence, assessment order is liable to be interfered and setaside in the interest of justice.

So, the impugned orders issued by the assessing authority as well as the appellate authority may be interfered and the said orders may be setaside in the interest of justice.”

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. These appeals were filed with a delay of 139 days and the assessee also filed an application to condone the said delay. The assessee also submitted that no copy of the order was received by the assessee by physical mode as well as through e mail and therefore the appeal could not be filed in time. The assessee further submitted that the issue is covered and also the assessee is a coop society and prayed to take a lenient view. We have gone through the application and we are satisfied with the reasons stated in the application and condone the delay in filing the appeals.

4. The brief facts of the case are that the assessee is a credit society providing credit facilities to its members. The assessee filed their return of income on 07/12/2018 declaring a Nil income and claimed the deduction u/s. 80P(2) of the Act. Thereafter the case was selected for complete scrutiny and the assessment was completed in which the AO had denied the deduction claimed u/s. 80P(2)(a) of the Act for the reason that the assessee is a co-operative bank and also disbursed loans to non-agricultural purposes and also for the reason that the loans were disbursed to nominal members who are all not to be treated as regular members. The AO had also not accepted the case of the assessee since the required details were not furnished by the assessee. As against the said order, the assessee filed an appeal before the Ld.CIT(A) and contended that the assessee society is registered under the provisions of the Kerala Co-operative Societies Act and got no license from the Reserve Bank of India in order to treat the assessee as a co-operative bank. The assessee further submitted that the availability

of nominal members will not be a reason to deny the deduction and further submitted that the disbursal of loans to other non-agricultural purpose will not disentitle the assessee from claiming the said deduction. The Ld.CIT(A) had accepted the case of the assessee that they are not a co-operative bank and therefore they are entitled for deduction u/s. 80P(2)(a) of the Act in view of the judgment of the Hon'ble Supreme Court reported in 431 ITR 1 in case of Mavilayi Service Co-operative Bank Ltd. vs. CIT. But the Ld.CIT(A) in para 4.1.7 of its order had observed that the details of the persons from whom interest income has been earned was not provided and therefore the Ld.CIT(A) had allowed the ground nos. 1 to 7, 9 & 10 subject to the findings given in para 4.1.7. As against the said order, the assessee is in appeal before this Tribunal and submitted that the assessee is eligible for deduction u/s. 80P(2)(a) of the Act. The assessee also relied on the judgment of the Hon'ble Jurisdictional High Court reported in 442 ITR 141 (Ker) in the case of PCIT vs. Peroorkada Service Co-operative Bank .

5. At the time of hearing, the Ld.AR not appeared and therefore we have decided the appeals based on the materials available including the grounds of appeal. The assessee raised various grounds and claimed that they are not a bank and therefore the assessee is entitled for deduction u/s. 80P(2)(a) of the Act for the interest income received from its members. The assessee also relied on the judgments of the Hon'ble Jurisdictional High Court as well as the Hon'ble Supreme Court.

6. . We will take up the appeal in ITA No.405/Coch/2024 as the lead case and the result arrived in the said appeal will apply mutatis mutandis to the appeal in ITA No. 406/Coch/2024.

7. The Ld.DR relied on the orders of the lower authorities and submitted that the assessee is not entitled for deduction u/s. 80P(2)(a) of the Act since the assessee had not submitted the details of the members from whom they had received the interest and the other details as sought for by the AO in his order in para 4.9.19.

8. We have heard the arguments of the Ld DR and perused the materials available on record.

9. We have perused the order of the AO in which the AO had mainly relied on section 80P(4) of the Act for denying the deduction u/s. 80P(2)(a) of the Act and not for the reason that the assessee had not furnished the details called for by him. The AO had observed in para 4.9.19 that the assessee has not discharged its onus by proving that it has functioned as a primary agricultural credit society during the F.Y. 2016-17 relevant to A.Y. 2017-18. As seen from the above said finding, it is clear that the AO had disallowed the deduction and made the assessment for the reason that the assessee is a co-operative bank and therefore they are not entitled for deduction u/s. 80P(2)(a) of the Act. The mention of section 80P(4) in the order shows that the AO had not treated the assessee as a co-operative society but treated the assessee as a co-operative bank for the reason that the name of the assessee is Edavilangu Service Co-operative Bank. Even though the assessee had submitted all the details about its registration under the Kerala Co-operative Societies Act and their byelaws to show that they are not co-operative banks coming under the purview of the Reserve Bank of India regulations, the AO made the assessment as if the assessee is a co-operative bank. Section 80P(4) of the Act excludes the co-operative banks only and not a primary agricultural credit society or primary co-operative agricultural and rural development bank. Therefore if the assessee is a co-operative bank, definitely they will be excluded for deriving the benefit u/s. 80P(2)(a) of the Act but fortunately the assessee is a co-operative society and not a co-operative bank and therefore the application of section 80P(4) by the AO is not correct.

10. Even though the Ld.CIT(A) had accepted the case of the assessee, but gave a finding that the result is subject to the discussion made in para 4.1.7 which deals with the fact that the assessee had not provided the details of the persons from whom interest income has been earned and gave a finding

that the interest income earned from the loan given to non-members are not entitled for deduction u/s. 80P(2)(a) of the Act. Therefore the Ld.CIT(A) had accepted the proposition that the interest income earned from the members are eligible for deduction u/s. 80P(2)(a)(i) of the Act but not entitled for deduction on the interest income earned from non-members. We are also in full agreement with the view expressed by the Ld.CIT(A). If the assessee had received any interest income from non-members, the said income is not eligible for deduction u/s. 80P(2)(a) of the Act. We also make it clear that interest income received from the nominal members are also eligible for deduction u/s. 80P(2)(a) of the Act in view of the judgment given by the Hon'ble Supreme Court in case of Mavilayi Service Co-operative Bank Ltd. v. CIT reported in 431 ITR 1. In order to verify the details of the interest income received from members and non members, we are remitting the issue to the file of the AO. We also direct the AO to grant the deduction if the interest income was earned only from members including the nominal members. On verification if the AO is found that the assessee has earned interest income from non-members, compute the said income and deny the deduction claimed u/s. 80P(2)(a) of the Act and assess the same as income from other sources u/s. 56 of the Act.

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

Order pronounced in the open court on 21st February, 2025.

Sd/-
(INTURI RAMA RAO)
Accountant Member

Sd/-
(SOUNDARARAJAN K.)
Judicial Member

Bangalore,
Dated, the 21st February, 2025.
/MS /

Copy to:

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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