

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

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

ITA No. 705/Coch/2024

Assessment Year : 2020-21

M/s. Mannam Service Co-operative Bank Ltd. E 277, Mannam PO, North Paravur, Ernakulam, Kerala – 683 520. PAN: AAAAM8814B	Vs.	Assessment Unit, Income Tax Department, Aluva.
APPELLANT		RESPONDENT

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

Date of Hearing	:	03-02-2025
Date of Pronouncement	:	23-04-2025

ORDER

PER SOUNDARARAJAN K., JUDICIAL MEMBER

This is an appeal filed by the assessee challenging the order of the NFAC, Delhi dated 01/06/2024 in respect of the A.Y. 2020-21 and raised the following grounds:

	Grounds of Appeal	Tax effect relating to each ground of appeal (see note below)
1.	<p>Ground 1. The orders of both the Assessing Authority and the 1st Appellate Authority are against the facts and circumstances of the case and are also against the relevant provisions under the Income Tax Act 1961 and Rules made there under.</p> <p>2. The orders of the Assessing Authority and the 1st Appellate Authority by disallowing claim for deduction of bank interest which was included in total income, under section 80P and order of the first AA upholding the same are not sustainable for the following reasons.</p>	2097453
2.	<p>i) Both the authorities below have not considered the submission made by the appellant about the nature and circumstances of the case. ii) Both the authorities below ought to have considered the submission made by the appellant in its proper perspective and both the authorities below ought to have arrived at a proper finding of the case. iii) The Assessing Authority has approached the case based on the order of the Supreme Court in Totgars Cooperative Sales Society Ltd. VS Income Tax Officer, Karnataka, which is not applicable to the case of the appellant as the facts and circumstances of both the cases are entirely different and the 1st Appellate</p>	0

	Authority upheld the assessment orders in this respect without considering the facts of the two cases properly.	
3	3. The facts that the findings of the Hon'ble Supreme Court in Totgars Co-operative Sales Society Ltd. is that the society is not legible to claim exemption u/s.80P as its deposit and investment are out of surplus fund and at the same Otime deposit in bank in the case of appellant is not out of surplus fund were not considered by the Assessing Authority and 1st Appellate Authority, while passing the respective orders.	0
4	4. The facts that the main object of the appellant Society is to inculcate the savings habit on its members and this can be materialized only by inducing the members to deposit their small savings with the Society and offering interest at the rate higher than that prevailing in the commercial bank and with the facility to withdraw the fund at any time they require and as the members are allowed to withdraw deposit at any time to meet unexpected withdrawal, 25% of the deposit from members are not used for the distribution as loan among the members and on account of security aspect, the appellant has to deposit such reserve amount with the commercial bank and deposit with the bank is a part of business of the	0

	<p>appellant were explained to both the authorities below, but both the authorities have not considered these vital aspect, while stating that deposit amount with bank is out of surplus fund.</p>	
5	<p>5. The fact that the rate of interest that the society is getting from the bank is lesser than the appellant is paying to its members, were explained to both the authorities below and there is no profit by depositing with the bank and no prudent person will make a deposit at an interest rate below the rate at which it is paying on deposit and both the authorities did not considered these explanation while passing the orders. 6. The fact that as per section 56 of the I.T. Act 1961, only the interest income which are not to be charged under the head income from the business need to be assessed under the head income from other sources are not considered by both the authorities below.</p>	0
6	<p>7. From the facts and circumstances it is clear that the deposit with the bank is not out of the surplus fund and the deposit with the bank is out of deposit from the members which the appellant cannot refuse to accept as per the main object of the Society. 25% of the deposits has to be kept under reserve to meet any unexpected withdrawal by members for which they are entitled to an account of security aspect the appellant</p>	0

	<p>has to keep the reserve amount with the bank, were explained to the Assessing Authority and to the first Appellate Authority through submissions. But the Assessing Authority has not considered the facts stated in the submissions while assessing interest income from bank u/s 56 of the IT Act and the first Appellate Authority erred in upholding the Assessment.</p>	
7	<p>8. The fact that the rate of interest at which members are paid is higher than the rate of interest that the appellant is getting from the bank. The commercial bank were explained to the Assessing Authority and to the 1st Appellate Authority. But both the authorities below have not considered these aspects, while passing the respective orders.</p>	0
8	<p>9. Without being prejudiced to the above contentions that while assessing the interest income under the head income from other sources the learned assessing authority has not considered the fact that the deposit in Co-operative Society is out of deposit from members and interest is paid on the deposit to members and interest paid is an expense to be deducted from interest income on deposit u/s.57 of the I.T. Act with the bank were not considered by the Assessing Authority and first Appellate Authority.</p> <p>10. For these and other ground that may be submitted at the time of</p>	0

	hearing, it is prayed that the unjust assessment may please be set aside and justice rendered.	
	Total Tax Effect	Rs. 20,97,453

2. The brief facts of the case are that the assessee is a co-operative society registered under the provisions of the Kerala Co-operative Societies Act and declared a Nil income and claimed the entire amount as eligible for deduction u/s. 80P of the Act. Thereafter the case was selected for scrutiny and based on the submissions filed by the assessee, the assessment has been completed by treating the interest income earned from the commercial as well as the co-operative banks as income from other sources. Similarly, the AO had also disallowed the claim of deduction on account of any other amount allowable as deduction. As against the said order, the assessee filed an appeal before the Ld.CIT(A). The Ld.CIT(A) had not accepted the interest income received from the commercial banks as well as the co-operative banks as eligible for deduction u/s. 80P of the Act but remitted the other addition to the AO for fresh consideration. The Ld.CIT(A) had relied on the judgment of the Hon'ble Jurisdictional High Court reported in 442 ITR 141 (Kerala) in the case of Peroorkada Service Cooperative Bank to disallow the claim of deduction on the interest income received from the commercial as well as the co-operative banks. The assessee is in appeal before this Tribunal challenging the said order.

3. At the time of hearing, the Ld.AR submitted that the Ld.CIT(A) had failed to consider the judgment of the Hon'ble Jurisdictional High Court in the case of Peroorkada Service Cooperative Bank supra in its right perspective and submitted that the judgment is, in fact, in favour of the assessee.

4. On the other hand, the Ld.DR submitted that the order of the CIT(A) is based on the judgment of the Hon'ble Jurisdictional High Court and requires no interference.

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

6. We have perused the finding given by the Ld.CIT(A) while dealing with the interest income received from the commercial as well as co-operative banks which reads as follows:

“4.3.3 The issue raising in this appeal for consideration has been the subject matter of the recent decision of the Hon'ble Kerala High Court in the case of Peroorkada Service Cooperative Bank (2022) 442 ITR 141 (Kerala). The Hon'ble jurisdictional High Court held therein that the interest income earned from investments made in a cooperative bank out of surplus funds of a cooperative society engaged in the business of providing credit facilities to its members does not fall under the scope of profits and gains of business and the same is therefore not eligible for deduction u/s. 80P(2)(a)(i) of the Act. In view of the above mentioned binding decision of the Hon'ble Kerala High Court (jurisdictional High Court) which is squarely applicable to the facts of the assessee's case, it is held that the assessee is not eligible for deduction under sec. 80P(2)(a)(i) in respect of interest on deposits held with a Cooperative Bank. Therefore the addition made by the AO is upheld. All the grounds raised on this issue are dismissed.”

7. We have also perused the judgment of the Hon'ble Jurisdictional High Court in the case of PCIT vs. Peroorkada Service Cooperative Bank Ltd. reported in 442 ITR 141 (Kerala) wherein the Hon'ble Jurisdictional High Court had held that

“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.”

8. The Hon'ble Kerala High Court had treated the interest income received from treasury as the inadmissible deduction and not the interest

income received from the co-operative societies / banks registered under Kerala Co-operative Societies Act. Admittedly in this case, the AO had observed that the assessee had received an interest income of Rs. 51,81,233/- from the commercial bank as well as the co-operative banks and the AO had disallowed the claim made u/s. 80P(2)(a)(i) of the Act. The AO had treated the said income as income from other sources and subjected to tax u/s. 56 of the Act. The Ld.CIT(A) had also observed that the assessee had received an interest income of Rs. 27,73,044/- from the commercial banks and Rs. 24,08,189/- from co-operative bank but disallowed both the interest incomes by relying on the Hon'ble Jurisdictional High Court judgment reported in 442 ITR 141.

9. As observed earlier, the Hon'ble Jurisdictional High Court had held that interest income received from the co-operative societies / banks which are all registered under the Kerala Co-operative Societies Act are entitled to claim deduction u/s. 80P of the Act. The Hon'ble Jurisdictional High Court had denied the deduction in respect of the interest income earned from treasuries since the treasury is neither a co-operative organisation or society and therefore the Hon'ble Jurisdictional High Court had disallowed the deduction claimed u/s. 80P(2)(a)(i) of the Act. The Ld.CIT(A) without properly appreciating the principles laid down by the Hon'ble Jurisdictional High Court, had rejected the claim of the assessee as if the said judgment is against the interest income earned from the co-operative banks registered under the provisions of the Kerala Co-operative Societies Act. In such circumstances, we are of the view that if the co-operative society / bank is registered under the provisions of the Kerala Co-operative Societies Act, the judgment of Hon'ble Jurisdictional High court would apply and in that circumstances, the assessee is entitled for deduction u/s. 80P(2) of the Act. We have also noticed that the assessee had received interest both from the commercial banks and co-operative banks and claimed the interest income as deduction which in our opinion is not correct. At the best, the assessee can claim the interest income received from the co-operative banks, if they are registered under the provisions of the Kerala Co-operative Societies Act,

otherwise the said income is also not entitled for any deduction. Insofar as the interest income received from the commercial banks, we are of the opinion that the said interest income is not entitled for any deduction u/s. 80P of the Act but the same can be treated as income from other sources liable to be taxed u/s. 56 of the Act. Even in that case, the assessee is entitled for the expenses etc. incurred in earning the said interest income and the net income is liable to be taxed u/s. 56 of the Act.

10. We therefore make it clear that the interest income received from the co-operative banks, if they are registered under the Kerala Co-operative Societies Act, the assessee is entitled for deduction u/s. 80P(2) of the Act. Insofar as the interest income received from the commercial banks, they are liable to be assessed as income from other sources u/s. 56 of the Act. In order to do the exercise, we are remitting this issue to the file of the AO for making proper verification of the documents and decide the issue as per the findings given by us in the above paragraphs. We also make it clear that the assessee is entitled to produce the relevant documents before the AO in support of his claim. The AO is also further directed to pass the order in accordance with the law after hearing the assessee.

11. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 23rd April, 2025.

Sd/-
(INTURI RAMA RAO)
Accountant Member

Sd/-
(SOUNDARARAJAN K.)
Judicial Member

Cochin,
Dated, the 23rd April, 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