

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

**BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER
AND
SHRI KESHAV DUBEY, JUDICIAL MEMBER**

ITA Nos.408 & 409/Coch/2024
AssessmentYears:2014-15 & 2016-17

Thrissur District Police Cooperative Society Ltd. ACP Office Thrissur PO Thrissur 680 001 Kerala PAN NO : AADAT5043N	Vs.	ITO Thrissur
APPELLANT		RESPONDENT

Appellant by	:	Shri M.Ramdas, CA
Respondent by	:	Smt. Leena Lal, Sr. A.R.

Date of Hearing	:	19.02.2025
Date of Pronouncement	:	19.05.2025

O R D E R

PERKESHAV DUBEY, JUDICIAL MEMBER:


These appeals at the instance of the assessee are directed against the orders of Id. CIT(A)/NFAC both dated 05.12.2023 vide DIN & Order Nos. ITBA/NFAC/S/250/2023-24/1058457420(1) and ITBA/NFAC/S/250/2023-24/1058457386(1) for the assessment years 2014-15 & 2016-17 respectively passed u/s 250 of the Income Tax Act, 1961 (in short "The Act"). Since the issue in both the appeals is common, these are clubbed together, heard together and disposed of by this common order for the sake of convenience.

2. First, we take ITA No.408/Coch/2024 for the AY 2014-15 as the lead case. The grounds of appeal as raised by the assessee in this appeal are as follows:

- 1) The order of the Commissioner of Income Tax (Appeals), NFAC u/s 250 of the IT Act, 1961 is opposed to law and contrary to the facts of the case and against equity and principles of natural justice.
- 2) The Appellant is a Co-operative Society registered under Kerala Co-operative Societies Act, 1969 providing credit facilities to its members. The loans are provided to members only and not to non-members/public.
- 3) Being a co-operative society carrying on the activity of providing credit facilities to its members, the appellant is eligible for deduction of its business income under section 80P(2)(a)(i) of the Act.
- 4) The amount of Rs. 99,73,924/- is the profit as per P&L account. From this profit we have arrived at the gross total income of Rs. 1,53,59,677/- by adding back the various reserves which related to the loans provided to members as bad debts , overdue interest etc. created by the society Rs. 2,20,55,207/-, provision for gratuity Rs.79,413/- , donation disallowed Rs. 20500/- and also the depreciation charged in the P&L Rs.1,09,286/-, total comes to Rs.2,22,64,406/- which are claimed as an expenditure in the P&L and also by deducting the corresponding opening reserves reversed during the year Rs. 1,64,96,757/- and also the depreciation as per IT rules Rs.3,81,897/- total comes to Rs.1,68,78,654/-. The detailed working of statement of total income is attached as Exhibit I. The net difference of the adjustment for reserves, gratuity provision, donation and depreciation which comes to Rs. 53,85,753/- has been disallowed. The amount of Rs. 53,85,753/- which was disallowed is also part of the income of the society which was derived from providing credit facilities to the members of the society. The gross total income Rs. 1,53,59,677/- arrived at after adjusting the above amount is entirely in the nature of income from providing credit facilities to the members, because this amount is arrived only on account of certain disallowable items which was adjusted while computing the total income of the society. Hence the resultant income after the adjustment made are still in the nature of income from business of providing credit facilities to the members which is eligible for deduction u/s 80P(2)(a)(i).
- 5) Even otherwise your appellant also rely upon the circular number 37/2016 dated 02.11.2016 of Central Board of Direct Taxes (CBDT).The circular states that "the Board has accepted the settled position that the disallowances made under sections 32, 40(a) (ia), 40 A (3), 43B, etc. of the Act and other specific disallowances, related to the business activity against which the Chapter VI-A deduction has been claimed, result in enhancement of profits of the eligible business, and that deduction under Chapter VI-A is admissible on the profits so enhanced by the disallowance". In this situation also even the enhanced total income after adjusting the certain provisions and reserves is still in the same nature and thus also be eligible for deduction u/s 80P(2)(a)(i).
- 6) In the rectification order u/s 154 r.w.s 250 while passing the order, the Hon'ble CIT(A) has wrongly mentioned the addition figure as Rs.1,61,41,520/- as against the actual figure of Rs.53,85,753/-. This figure of Rs.1,61,41,520/- is that of addition for the Assessment Year 2016-17. Hence prayed before Hon'ble Tribunal to correct the addition figure mentioned in the rectification order u/s 154 as Rs.53,85,753/- instead of Rs.1,61,41,520/-.
 - a. Your appellant pray that the amount of Rs.53,85,753/- which represents net adjustment of certain reserves, provisions, depreciation and disallowable expenses which is also part of total income which may be treated as part of income from providing credit facility to members, may be allowed as deduction u/s 80P(2) (a) (i).

3. At the outset, there is a delay of 96 days in filing both these appeals before this Tribunal. The assessee for both these years have filed the separate application for condonation of delay & grounds of

petition along with an affidavit in original. Since the grounds of petition for condoning the delay as well as the contents of the affidavit submitted before us are same, we are reproducing the application, grounds of petition and affidavit for the Assessment year 2015-16 below for ease of reference & convenience-



Phone : 0487 2440542
417960

Thrissur District Police Co-operative Society Ltd. No. R 491
Thrissur - 680 001
E-mail : tdpcthissur@gmail.com

Ref: TDPCS / / 20 Date : 10.05.2024

To,
The Income Tax Appellate Tribunal,
Kendriya Bhavan,
Kakkanad,
Ernakulam,
Cochin-682037.

Sir,


Sub: Filing of delay condonation petition – Condonation of delay in filing Income tax Appeal of Thrissur District Police Cooperative Society LTD, AY 2016-17 - reg.
Ref: PAN- AADAT5043N


We are filing herewith the request for condonation of delay in filing Income tax Appeal for the AY 2016-17 of Thrissur District Police Cooperative Society LTD. The following documents have been attached hereby:

1. Petition
2. Affidavit verifying the petition.

Kindly consider the same and accept our delay condonation petition.

Thanking You
Yours faithfully


Secretary
Thrissur Dist. Police
Co-op. Society Ltd. No : 491



PETITION FOR DELAY CONDONATION
BEFORE THE INCOME TAX APPELLATE TRIBUNAL, COCHIN.

Name & Address of Appellant - The Secretary,
Thrissur District Police Cooperative
Society Ltd, ACP Office, Thrissur P O ,
680001 ,Kerala

P.A. No. - AADAT5043N

GROUNDS OF PETITION

The appellant Thrissur District Police Cooperative Society Ltd, ACP Office, Thrissur P O , 680001 ,Kerala is registered as a Primary Co-operative Society.

The order of the Commissioner of Income Tax (Appeals), NFAC was received by the society on 05/12/2023. As against the appeal the appellant e-filed rectification petition u/s 154 of the Income Tax Act,1961 before the Commissioner of Income Tax (Appeals), NFAC on 13.12.2023 . The appellant waited for the rectification order to be passed by the Commissioner of Income Tax (Appeals), NFAC and the order u/s 154 r.w.s 250 of the Income Tax Act,1961 received to the appellant only on 01/05/2024. Only on receipt of the rectification order of the Commissioner of Income Tax (Appeals), NFAC , it was came to know the rectification was also dismissed. By the time the 60 days has already been expired. Immediately on receipt of the rectification order u/s 154 from CIT(A), we have filed the appeal. Due to the reason that there is a delay of 96 days for filing the appeal based on the original order u/s 250 of the Act.

In this context, we request your good self to kindly condone the delay of 96 days in filing the appeal taking a lenient view in the matter.

I, Sheena M S, W/o Ajayakumar T.S., Secretary of the Appellant Society, do hereby certify that whatever is stated above is true to the best of my information and belief.

Place : Thrissur
Date : 10-05-2024

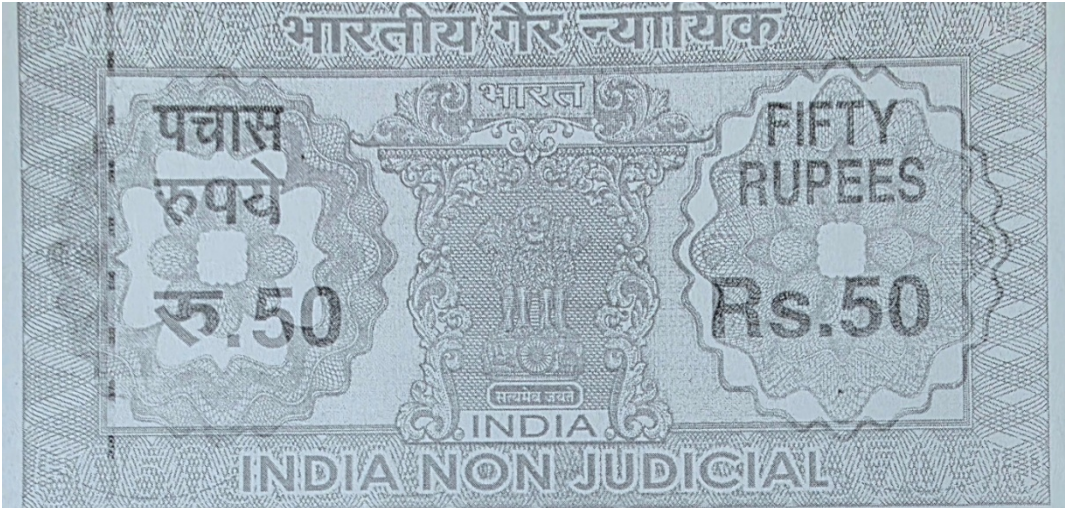


Signature:.....
Secretary
Thrissur Dist. Police
Co-op: Society Ltd. No : 491

APPELLANT

Secretary

Status of the Appellant: CO-OPERATIVE SOCIETY



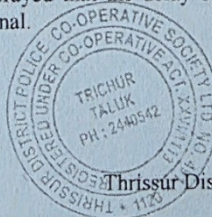
കേരളം കേരള KERALA

AFFIDAVIT

CY 340738

I, Sheena M S, W/o Ajayakumar T.S., working in the capacity of Secretary of Thrissur District Police Cooperative Society Ltd, ACP Office, Thrissur P O , 680001 ,Kerala, do hereby solemnly affirm and state as follows:

1. I am the appellant in the above Income Tax Appeal and the petitioner in the accompanying application for proceedings for delay condonation in filing the appeal and I am competent to swear to this affidavit.
2. The above appeal has been filed against the order of the Commissioner of Income Tax (Appeals), NFAC dated 05/12/2023 in Document No. ITBA/NFAC/S/250/2023-24/1058457386(1), which relates to the Assessment Year 2016-17 in the case of M/s Thrissur District Police Cooperative Society Ltd, ACP Office, Thrissur P O , 680001 Kerala (PAN : AADAT5043N). The order of the Commissioner of Income Tax (Appeals), NFAC was received by the society on 05/12/2023.
3. Your petitioner filed rectification against the order of the Commissioner of Income Tax Appeals (NFAC) and the order u/s 154 r.w.s 250 has been received only on 01/05/2024. Since the rectification order u/s 154 r.w.s 250 of the Act was also dismissed the petition and thus the delay in filing the appeal before the Income Tax Appellate Tribunal was caused.
4. In this circumstance, it is prayed that the delay of 96 days in filing the appeal may be condoned by the Hon. Tribunal.



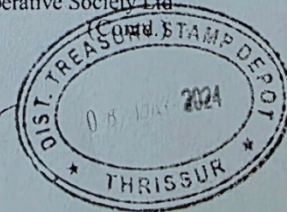
Sheena M S
(SECRETARY)

Thrissur District Police Cooperative Society Ltd

No. 7547 Rs. 5/-
Thrissur District Police Co-operative Society Ltd - ACP Office Thrissur

C.L. JOSE
VENDOR NO. 39
THRISSUR

09 MAY 2024



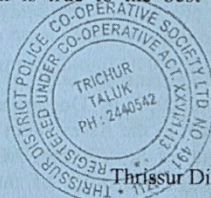


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CY 340739

VERIFICATION

I, Sheena M S, W/o Ajayakumar T.S, the above named deponent do hereby verify that the contents of this affidavit form is true to the best of my knowledge and belief. No materials have been concealed.



Sheena M S
(SECRETARY)

Thrissur District Police Cooperative Society Ltd

Verified and signed on the 09th day of May, 2024.



(Signature of Notary with seal)

JOSE. P.A.
Advocate, Notary & Commissioner of Oath
Notary Reg. No. 4306 & Roll No. K/29293
Expiry on: 15-07-2027
Ayyanthole, Thrissur, Kerala, India-680 003
e-mail: pajose879@gmail.com
Ph: +91- 98952 74480

No. 408 Rs. 50
Thrissur District Police Co-operative
Society Ltd. Dep Office Thrissur
C.L. JOSE
VENDOR NO. 39
THRISSUR
09 MAY 2024



3.1 Before us, the ld. A.R. of the assessee submitted that if the delay is not condoned, the assessee would be put to a great hardship and irreparable injury and on the other hand, no hardship or injury would be caused to the revenue if condonation of delay is allowed.

3.2 The ld. D.R. on the other hand submitted that appeal may be dismissed in limine without adjudicating the same as the assessee could have filed the appeal within 60 days from the date of the receipt of the order of the ld.CIT(A)/NFAC. Further the ld. DR submitted that the filing of Appeal and filing of the rectification application are two separate & distinct process & filing of appeal has nothing to do with the filing of rectification application u/s 154 of the Act.

3.3 We have heard the rival submissions and perused the materials available on record. It is worthwhile to mention that u/s 253(5) of the Act, the Tribunal may admit the appeal filed beyond the period of limitation where it is established that there exists a sufficient cause on the part of the assessee for not presenting the appeals within the prescribed time. The explanation therefore, becomes relevant to determine whether the same reflects sufficient and reasonable cause on the part of the assessee in not filing this appeal within the prescribed time. On going through the grounds of petition as well as affidavit as above, we find that the main contention of the assessee for delay in filing the appeal is due to the fact that the assessee after service of the order of the ld. CIT(A)/NFAC filed rectification petition u/s 154 of the Act before him and waited for the rectification order to be passed. After receipt of the order u/s 154 r.w.s. 250 of the Act on 01/05/2024 which was also dismissed by the ld. CIT(A)/NFAC, thereafter the assessee filed the present appeal before this Tribunal with a delay of 96 days

in both these appeals & accordingly requested to condone the delay of 96 days in filing both the appeals before this Tribunal by taking a lenient view in the matter.

3.4 We are of the considered opinion that the delay was neither intentional nor deliberate and the assessee cannot be said to be callous in its approach in filing the appeal before us. Therefore, in our opinion there exists a sufficient cause on the part of the assessee for not presenting the appeal within the prescribed time. At this juncture, while considering a similar issue, the apex court in the case of Collector, Land Acquisition v. Mst. Katiji and Ors. (167 ITR 471) laid down six principles. For the purpose of convenience, the principles laid down by the Apex Court are reproduced hereunder:

(1) Ordinarily, a litigant does not stand to benefit by lodging an appeal late

(2) Refusing to condone delay can result in a meritorious matter being thrown at the very threshold and cause of justice being defeated. As against this, when delay is condoned, the highest that can happen is that a cause would be decided on merits after hearing the parties.

(3) 'Every day's delay must be explained' does not mean that a pedantic approach should be made. Why not every hour's delay, every second's delay? The doctrine must be applied in a rational, commonsense and pragmatic manner.

(4) When substantial justice and technical consideration are pitted against each other, the cause of substantial justice deserves to be preferred, for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

(5) There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides. A litigant does not stand to benefit by resorting to delay. In fact, he runs a serious risk.

(6) *It must be grasped that the judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so.*

3.5 When substantial justice and technical consideration are pitted against each other, the cause of substantial justice deserves to be preferred, for the other side cannot claim to have vested right for injustice being done because of non-deliberate delay. Moreover, no counter-affidavit was filed by the Revenue denying the allegation made by the assessee. It is not the case of the Revenue that the appeal was not filed deliberately. Therefore, we have to prefer substantial justice rather than technicality in deciding the issue. Therefore, in our opinion, by preferring the substantial justice, the delay of 96 days has to be condoned.

3.6 Further, in the case of People Education & Economic Development Society Vs/ ITO reported in 100 ITD 87 (TM) (Chen), wherein held that “when substantial justice and technical consultation are pitted against each other, the cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of non-deliberate delay”.

3.7 The next question may arise whether delay was excessive or inordinate. There is no question of any excessive or inordinate when the reason stated by the assessee was a reasonable cause for not filing the appeal. When there was a reasonable cause, the period of delay may not be relevant factor. In fact, the Madras High Court in the case of CIT vs. K.S.P. Shanmugavel Nadai and Ors. (153 ITR 596) considered the condonation of delay and held that there was sufficient and reasonable cause on the part of the assessee for not filing the appeal within the period of limitation. Furthermore, the

Chennai Tribunal by majority opinion in the case of People Education and Economic Development Society (PEEDS) v. ITO (100 ITD 87) (Chennai) (TM) condoned more than six hundred days delay.

3.8 In view of the above, we are condoning the delay of 96 days in filing both these appeals before this Tribunal and accordingly we admit the same for adjudication.

4. The brief fact of the case are that the Assessee being an employees' co-operative society formed for the welfare of employees of Kerala Police department of Thrissur District and is registered under Kerala Co-operative Societies Act, 1969. The Assessee is providing credit facilities only to its members. Further the assessee co-operative society is also running a departmental store and Gas agency for its members only. The assessee had not filed any return of income despite having huge financial transactions as per the information received through Multiyear NMS cases in AIMS module of ITBA as below-

Info Code	Information Description	Value
AIR-001	Deposited cash of Rs.10,00,000 or more in a saving Bank Account	2,70,23,297
CIB-410	Deposit in cash aggregating Rs.2,00,000/- or more, with a Banking company	2,41,50,000

4.1 Subsequent to reason recorded, a notice u/s 148 of the Act was issued on 31.03.2021 and in response, the assessee could file its return of income only on 21.02.2022 due to glitches in the income tax portal on account of switch over to the new portal by declaring total income at Rs. NIL claiming deduction u/s 80 P(2)(a)(i) of the Act of Rs. 1,53,59,677/-. However on the one hand the AO treated the return filed against notice u/s 148 as non-est and on the other hand issued notice u/s 143(2) of the Act on 21.03.2022. The AO also issued 3 nos. of notices u/s 142(1) of the Act as well as a show cause notice dated 19/02/2022. The AO after considering the reply of the assessee during the course of assessment proceedings held that the assessee had failed to prove the source of credits in its bank account. Further the AO was of the view that the assessee has not submitted any concrete evidence to prove and in response to show cause notice also the assessee did not furnish any satisfactory reply and therefore it is established that unexplained cash deposits amounting to Rs. 5,15,83,314/- (2,70,23,297 + **2,45,60,027**) is undisclosed income u/s 69A r.w.s. 115BBE of the Act and the same is added to the income of the assessee.

4.2 Further, the AO on perusal of Return and computation of Income, found that the assessee had claimed deduction of Rs. 1,53,59,677/- u/s 80P of the Act. The whole amount had been claimed with respect to the income earned from the business of banking/providing credit facilities to members. However as per profit and loss account, the assessee has earned income from miscellaneous income of Rs. 36,19,407/-, Reserve for due to the item of Rs. 1,30,04,655/- and arrear on interest of Rs. 26,48,290/- during the year.

4.3 The AO while passing the assessment order observed as follows-

i) The interest earned on balance in savings accounts, interest on term deposits, interest on IT Refund as well as house property income are not covered under the provision of section 80P(2)(a)(i) of Act as these incomes are not earned by providing credit facilities to its members.

ii) The assessee society regularly invested funds not immediately required for business purposes. Interest on such investments, therefore could not fall within the meaning of the expression 'profits and gains of business'. Further such interest income could not be said to be attributable to the activities of the society.

iii) Further with regard to interest income derived from the statutory deposits as per the RBI guidelines/Co-operative Societies Act, the AO held that such interest income does not constitute the operational income but simply accrues to the assessee. The source of interest income is the deposits in banks, and it cannot be held to be earned in the normal business operations and accordingly is in the nature of 'other income' taxable u/s 56 of the Act.

iv) Further deduction u/s 80P(2)(a) of the Act is available only to the income which is attributable to the business operation of the assessee. Depositing/investing funds in a co-operative bank / commercial bank is not a part of the business of providing credit facilities to its members. Consequently, the interest income has to be treated as 'income from other sources' not eligible for deduction u/s 80P of the Act.

4.4 Considering the above, it is held that the assessee has earned miscellaneous income of Rs. 36,19,407/-, Reserve for due to the item of Rs. 1,30,04,655/- and arrear on interest of Rs. 26,48,290/- during the year and therefore did not qualify for deduction u/s 80P(2)(a)(i) of the Act as it is not earned from the business of providing credit facility to its members and accordingly disallowed

and brought to tax. Thus, The AO completed the assessment u/s 143(3) r.w.s 147 r.w.s 144B of the Act on 26.03.2022 on a total assessed income of Rs. 6,69,43,001/-.

5. Aggrieved by the order of the AO passed u/s 143(3) r.w.s 147 r.w.s 144B of the Act on 26.03.2022, the assessee preferred an appeal before the Id. CIT (Appeals)/NFAC.

6. The Id. CIT(A)/NFAC partly allowed the appeal of the assessee after calling for the remand report from the LJO. Regarding the addition made u/s 69A of the Act, the Id. CIT(A)/NFAC observed that the burden of proof had been discharged by the assessee in the remand report proceedings. Further, the Id. CIT(A)/NFAC held that on the basis of cogent explanation and supporting evidence during preparation of remand report, after due verification, it has been accepted by the revenue that members are owners of the deposited cash and not the assessee. As the burden of proof stands discharged by the assessee, on the substantial grounds on merits, the Id. CIT(A)/NFAC allowed this ground of Appeal.

6.1 With regard to disallowance of the claim of deduction u/s 80P(2)(a)(i) of the Act, the Id. CIT(A)/NFAC observed that the officer has very strangely rejected the contention on the premises that the interest income under the question was not the interest received from the members of the society for providing credit facilities to them. The said finding of the assessing authority has since been found not correct in the remand report. The Id. CIT(A)/NFAC observed that this fact is fortified from the finding of Id. JAO in the para 3 of the remand report that 'on the basis of documents, it is to state that cash deposits in both the accounts are from the receipts of cash from members pertains to loan repayments and payments or gas cylinder.' Thus to the extent of ₹ 99,73,924/- which comprises of providing credit facilities to its members is allowed under section 80P(2)(a)(i) of the Act. However for the rest of the

amount of ₹ 53,85,753/- (Rs.1,53,59,677 – Rs. 99,73,924), there is no submission on how these funds are qualified as income from a cooperative Society. The ld. CIT(A)/NFAC held that as nothing has been brought on record in assessment proceedings, remand report/appellate proceedings, to establish allowability of such excess amount under section 80P(2)(a)(i) of the act and hence the addition of ₹ 53,85,753/- is sustained and accordingly this ground of appeal was partly allowed by the ld. CIT(A)/NFAC.

7. Aggrieved by the order of the ld. CIT (A)/NFAC vide order dated 5.12.2023, the assessee has filed the present appeal before this Tribunal.

8. Before us, the ld. AR of the assessee vehemently submitted that the entire gross total income of ₹1, 53,59,677/- are related to the loans provided to members. The amount of ₹ 99,73, 924 is the profit as per profit and loss account. The net profit as declared in the profit and loss account had been adjusted to arrive at the net profit to be declared as profit under the head profits and gains of business and profession as per the provisions of the income tax act. Further, the ld. AR of the assessee submitted that the assessee also relied upon the circular number 37/2016 dated 2.11.2016 of the CBDT in this regard. Lastly, the AR submitted that while passing the order under section 154 read with section 250 of the act, the ld. CIT(A)/NFAC has wrongly mentioned the addition figure as ₹ 1, 61,41,520/- as against the actual figure of ₹ 53,85,753/-

9. The ld. DR on the other hand relied upon the order of the ld. CIT (A)/NFAC.

10. On going through the orders of the AO as well as the ld. CIT (A)/NFAC, we find that the issue involved in the present case is whether the Net profit of ₹ 99,73,924/- as declared in the profit and loss account will be treated as the amount eligible for deduction or

the adjusted Net Profit amounting to Rs. 1,53,59,677/- declared as gross total income? Further, whether the entire net profit as claimed to be from providing the credit facilities to its members & treated as profits and gains of business or profession or whether interest & Income from House property is to be excluded & treated under respective heads?

11. We have heard the rival submissions and perused the materials available on record. It is an undisputed fact that the assessee is a cooperative Society registered under the Kerala Co-operative societies act & providing credit facilities to its members only. Further, the assessee society also runs cooperative department stores and a gas agency (trading activity) which are also exclusively for the members of the co-operative society only. The members of the co-operative society are personnel of the police department. The accounts of the cooperative Society have been audited by the joint director of the cooperative Audit department. As per the profit and loss account, the net result of trading activity was a loss of Rs.4,79,544/- and the net result from providing credit facility to the members was Rs.1,04,53,468.49/-. Hence the net profit as per profit and loss account after adjusting the loss from the trading activity is only Rs. 99,73,924.49. The assessee before the Id. CIT (A)/NFAC submitted that at the time of audit, the departmental auditor used to create reserves and provisions for the future expenses and future unforeseen losses as a part of compliance with the cooperative societies act. Such reserves and provisions are debited to the profit and loss account for the year. Similarly, the corresponding opening provisions and reserves which were created during the previous year are reversed and credited to the profit and loss account by the cooperative department auditor. Such reserves and provisions which are debited to profit and loss account are not the expenses for the year and similarly the reserves and provisions which are credited are not the income of the cooperative Society.

Further while computing the total income of the society, the current year reserves and provisions debited to the profit and loss account which are not expenses for the year, added back to the net profit for the year and the previous year reserves and provisions credited to profit and loss account which are not the income of the year are deducted from the net profit for the year in order to arrive at the net profit as per the provision of the income tax act which is declared as gross total income. Hence the gross total income arrived at ₹ 1,53,59,677.04 after eliminating the adjustment for reserves and entirely consist of income from providing credit facility to the members. The learned CIT(A)/NFAC also extracted the statement of total income in his order. After going through the above submissions as made by the assessee as well as the statement of total income submitted before the learned CIT(A)/NFAC, we find force in the contention of the assessee. It is undisputed fact that the net profit as per profit and loss account after adjusting the loss from the trading activity is Rs. 99,73,924.49. The assessee has added back the reserves and provisions created during the year amounting to Rs. 2,22,64,406.60 and deducted reserves and provisions released during the year as well as depreciation allowable as per IT rules amounting to Rs. 1,68,78,654.05 in order to arrive at the net profit of Rs. 1,53,59,677.04 as per the provisions of the income tax act and also declared as gross total income. The learned CIT(A)/NFAC by observing that nothing has been brought on record in assessment proceedings, remand report/appellate proceedings, to establish allowability of such excess amount under section 80P(2)(a)(i) of the act and hence the addition of ₹ 53,85,753/- was sustained. However, ongoing through the statement of total income submitted by the assessee before the learned CIT(A)/NFAC, we find the same as self-explanatory. Therefore, we have no hesitation in holding that the net profit declared as a gross total income amounting to Rs.

Rs.1,53,59,677.04 is the actual net profit of the cooperative Society as per the provisions of the income tax act since it is in compliance with the co-operative societies act.

11.2 Now the next issue that arises here is whether the entire gross total income as declared by the assessee amounting to Rs.1,53,59,677.04 is profits and gains from business or profession and deductible under section 80P(2)(a)(i) of the act. Before us, the assessee furnished neither the audited statement of accounts nor the details of Interest & House property income. In view of the above as well as in the interest of justice & fair play, we are remitting this limited issue back to the file of AO for determining the actual Income from House Property & Income from other Sources to be taxed separately under the respective head in accordance with Law **with the following Observations-**

Income from House Property

i) Net Income House Property to be calculated as per the provisions of section 22 -27 of the Act.

Income from Other Sources

- i) The Interest received exclusively from the credit facilities provided to its members will be treated as operating Profit of the Co-operative society & eligible for deduction u/s 80P(2)(a)(i) of the Act.
- ii) The Interest income earned out of the Statutory deposits (Required as per RBI guidelines or Co-operative Societies Act) are attributable to the business activity of the co-operative society & hence eligible for deduction u/s 80P(2)(a)(i) of the Act.

- iii) Deduction under section 80P(2)(d) is available to co-operativesocieties on income earned as interest on investment made with cooperative bankwhich in turn, is a cooperative society itself. [Pr. CIT v. Peroorkada Service Co-Operative Bank Ltd.(2022) 442 ITR 141]
- iv) The Interest received **out of surplus fund** invested in the commercial Banks as well as Interest on I. Tax Refund will be treated as 'Income from Other Sources'. However the cost of fund and related administrative expenses in respect of earning such interest income should also be allowedas deduction u/s 57 of the I.T.Act, 1961.

Needless to say a reasonable opportunity of being heard may be granted to the assessee. The assessee is also directed to submit all the relevant details as well as breakups as per our observation above.

12. In the result appeal filed by the assessee is partly allowed for statistical purposes.

ITA No. 409/Coch/2024

13. Since the issues raised in this appeal are common to the appeal as decided in ITA No. 408/Coch/2024 above, the same decision/principles shall apply to this appeal also except change in figures.

14. In the result appeal filed by the assessee in ITA No. 409/Coch/2024 is also partly allowed for statistical purposes.

Order pronounced in the open court on 19th May, 2025

Sd/-
(Inturi Rama Rao)
Accountant Member

Sd/-
(Keshav Dubey)
Judicial Member

Bangalore,
Dated 19th May, 2025.
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The DR, ITAT, Bangalore.
5. Guard file

By order

**Asst. Registrar,
ITAT, Cochin.**