

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

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

<b>ITA No. 476/Coch/2025</b>
<b>Assessment Year : 2017-18</b>

M/s. Malappuram Service Co-operative Bank Ltd., Up Hill Post, Malappuram, Malappuram Dist., Kerala – 676 505. <b>PAN: AABAT8505H</b>	<b>Vs.</b>	The Income Tax Officer, Ward – 2, Tirur.
<b>APPELLANT</b>		<b>RESPONDENT</b>

Assessee by	:	Shri Hussain K, Advocate
Revenue by	:	Smt. Leena Lal, Snr. AR

Date of Hearing	:	04-08-2025
Date of Pronouncement	:	26-08-2025

**ORDER**

**PER SOUNDARARAJAN K., JUDICIAL MEMBER**

This is an appeal filed by the assessee challenging the order of the NFAC, Delhi dated 30/12/2024 in respect of the A.Y. 2017-18.

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. The assessee filed their return of income on 15/12/2017 and the said return was processed u/s. 143(1) of the Act and the said return was accepted as such. Thereafter the case was selected for scrutiny for verifying the cash deposits made during the demonetisation period and also the claim

of deduction under Chapter VIA of the Act. Notices were issued for which the assessee filed their reply as well as appeared in person. The AO discussed the claim of deduction u/s. 80P of the Act and by following the full bench judgment of the Hon'ble Kerala High Court in the case of Mavilayi Service Co-operative Bank Ltd. v. CIT and also the fact that the assessee had disbursed agricultural loans of about 16.52% and considering the fact that the assessee was having nominal / associate members who have no voting rights, had disallowed the deduction claimed by the assessee. As against the said order, the assessee filed an appeal before the Ld.CIT(A) and contended that the assessee is a primary co-operative society catering to the needs of the members and therefore they are entitled for deduction u/s. 80P(2)(a)(i) of the Act. The Ld.CIT(A) had issued several notices during the course of appeal proceedings but the assessee had not responded to the said notices and therefore decided the appeal as against the assessee and confirmed the levy of tax on the income earned by the assessee society. The assessee has challenged the said order before this Tribunal.

**3.** The assessee filed this appeal with a delay of 115 days and enclosed an application to condone the said delay. In the said application, the assessee had submitted that the various hearing notices sent by the Ld.CIT(A) has gone to the email ID of the earlier tax consultant who had deceased during the year 2000 and therefore the assessee has no knowledge about the various hearing dates. The assessee further submitted that they came to know about the order only when the notice for initiation of penalty proceedings u/s. 270A was received by him. Thereafter the assessee made arrangements for filing the appeal and thus there is a delay of 115 days and prayed to condone the said delay.

**4.** We have heard the arguments of assessee as well as the application filed in support of the said delay condonation and we are satisfied that the assessee was prevented from filing the appeal in time. Therefore we are condoning the said delay of 115 days in filing the present appeal before this Tribunal and proceeded to decide the appeal on merits.

5. At the time of hearing, the Ld.AR submitted that the assessee is a co-operative society and disbursing loans to its members and therefore they are entitled for deduction u/s. 80P(2)(a)(i) of the Act. The Ld.AR further submitted that the findings given by the AO could not be a reason for denying deduction under Income Tax Act. The Ld.AR also relied on the order of the Coordinate Bench of this Tribunal in assessee's own case for the A.Ys. 2009-10, 2014-15 to 2016-17 in ITA Nos. 06 to 09/Coch/2021 vide order dated 07/04/2021.

6. The Ld.DR relied on the order of the lower authorities and prayed to dismiss the appeal filed by the assessee.

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

8. We have considered the entire facts in detail and also the order passed by the Coordinate Bench of this Tribunal. In the assessment order, the AO had relied on the provisions of the Banking Regulations Act and also the full bench judgment of the Hon'ble Kerala High Court in the case of Mavilayi Service Co-operative Bank Ltd. v. CIT and also the fact that the assessee had nominal / associate members and also the fact that the assessee had distributed agricultural loans of about 16.52%, had arrived a conclusion that the assessee is not entitled for deduction u/s. 80P(2)(a)(i) of the Act. The assessee also produced a certificate from the Joint Registrar of Co-operative Societies, (Gen), Malappuram dated 31/08/2019 in which it was clearly stated that the assessee has been classified as a primary agricultural credit society vide Rule 15 of the Kerala Co-operative Societies Rules, 1969. Even though the assessee's name is having a Bank Ltd., it does not act as a bank by getting the proper license from the Reserve Bank of India. Further, the admission of nominal / associate members are not a bar to deny the deduction claimed u/s. 80P(2)(a)(i) of the Act. The full bench judgment relied on by the AO was already overruled by the Hon'ble Supreme Court in the judgement reported in 431 ITR 1 in the case of Mavilayi Service Co-operative Bank Ltd. v. CIT wherein the Hon'ble Supreme Court had clarified

that the presence of nominal / associate members is not a bar to claim the deduction. Further, it is a fact that the assessee is dealing with its members by providing various types of loans including agricultural loan and therefore it will not be a reason for denying the deduction u/s. 80P(2)(a)(i) of the Act. Moreover, the Coordinate Bench of this Tribunal had decided the eligibility of deduction u/s. 80P(2)(a)(i) in the assessee's own case in ITA Nos. 06 to 09/Coch/2021 dated 07/04/2021 by allowing the appeals filed by the assessee.

**9.** Even though the Ld.CIT(A)'s order is an ex-parte order, since the issue is covered in the assessee's own case for the earlier A.Ys. which has been passed by following the judgment of the Hon'ble Supreme Court in the case of Mavilayi Service Co-operative Bank Ltd. v. CIT reported in 431 ITR 1, to give a quietus to the issue, we are deciding the appeal on merits instead of remitting this issue to the Ld.CIT(A) for fresh hearing otherwise it would be a harassment meted out to the assessee. Further there is no dispute about the facts and the Ld DR also not controverted the facts.

**10.** Considering the facts and circumstances and also by following the order of the Coordinate Bench of this Tribunal and also by following the judgment of the Hon'ble Supreme Court, we concluded that the order of the AO as well as the Ld.CIT(A) is not sustainable and therefore we are setting aside the said orders by allowing the appeal filed by the assessee.

**11.** In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 26<sup>th</sup> August, 2025.

Sd/-  
(INTURI RAMA RAO)  
Accountant Member

Sd/-  
(SOUNDARARAJAN K.)  
Judicial Member

Cochin,  
Dated, the 26<sup>th</sup> August, 2025.  
/MS /

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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