

**IN THE INCOME TAX APPELLATE TRIBUNAL
"DB" BENCH, COCHIN**

**SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No.556 & 569/COCH/2025
(Assessment Year:2016-2017)**

Avinissery Service Co-operative Bank Ltd

Anakallu, P.O. Avinissery Thrissur
680306, Thrissur, Kerala - 680306

[PAN: AACAA0093Q]

..... **Appellant**

**Income Tax Department Office of
The Income Tax Officer ward 2(1),
Thrissur,**

Aayakar Bhavan, Municipal Office Rd,
Sakthan Thampuran Nagar, Thrissur,
Kerala- 680001, Thrissur,

Vs

..... **Respondent**

Appearance

For the Appellant/Assessee : Shri Alan P Dev,
For the Respondent/Department : Smt. Leena Lal, Sr. AR

Date

Conclusion of hearing : 21.08.2025
Pronouncement of order : 10.09.2025

ORDER

Per Rahul Chaudhary, Judicial Member:

1. These are two appeals preferred by the Assessee pertaining to the Assessment Year 2016-2017, both challenging the order, dated 27/09/2024, passed by National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as 'the **NFAC**'] under Section 250 of the Income Tax Act, 1961 [hereinafter referred to as 'the **Act**'] whereby the NFAC had dismissed the appeal preferred by the Assessee against the Assessment Order, dated 21/12/2018, passed under Section 143(3) of the Act for the Assessment Year 2016-2017.

ITA No.569/COCH/2025

2. We would first take up ITA No.569/COCH/2025 which is accompanied by application seeking condonation of delay and

affidavit supporting the same.

3. We note that the impugned Order was passed by NFAC on 27/09/2024. The specified period for filing appeal expired on 26/11/2024. The present appeal was filed after a delay of around 8 months. We have heard both the sides of application seeking condonation of delay and after considering the same, we are inclined the condonation of delay in filing the appeal. On perusal of the impugned Order we find that at Page No. 1 of the said order bears the expression "Draft order". The Assessee has explained that delay in filing the present appeal occurred as the Assessee was under the apprehension that the Final Order shall be received. Since, final order was not received after passing the reasonable time the Assessee preferred the present appeal. Given the facts and circumstances of the present appeal, we have no reasons to doubt the bonafides of the explanation offered by the Assessee which is also supported by an affidavit sworn by Secretary of the Assessee/Co-operative Society. Accordingly, we condone the delay in filing the present appeal and proceeded to adjudicated the following grounds of appeal raised by the Assessee:

- "1. This is an Appeal by the assessee against the assessment order passed u/s 143(3) by the Ld. AO on 21/12/2018 and disallowed the deduction u/s 80 P. The appellant Avinissery Service Co-operative Bank Limited R No 400 is a Primary Agricultural Credit Society registered under the Kerala Co-operative Societies Act 1969.*
- 2. The Appellant is not agreeing with the disallowance of the deduction u/s 80 P of the Act and the classification of us as a Co-operative Bank instead of a Primary Agricultural Credit Society made by the learned assessing officer. The order of the Assessing Officer is erroneous, arbitrary and against settled principles of law.*
- 3. The Appellant is a primary agricultural credit society in terms of clause (cciv) of section 5 of the BR Act, having regard to our primary object and principal business. The State*

Government and the RBI do not consider the activities of the Appellant as a co-operative bank. In such circumstances, the learned officer is not having any authority in categorizing us as a co-operative bank. Based on above, Assessing Officer erred in holding that the appellant is not a Primary Agricultural Credit Society and not eligible for deduction under section 80P without appreciating the facts and the circumstances of the case and the decision of the Kerala High Court.

4. *That, on the facts and in the circumstances of the case and in law, the impugned order dated 2710912024 passed by the Learned CIT (A) u/s 250 of the Income Tax Act, 1961 is only a 'draft order' and not a valid, or conclusive order. Section 250 of the Act confers the powers on the Commissioner (Appeals) to hear and decide appeals as the final adjudicating authority of the first appellate level against orders of the Assessing Officer. Such an order u/s 250 is expected to represent a conclusive adjudication on merits or at least the appellate authority's decision resolving the issues raised in the appeal. However, in the present case, the order in question being only a draft lacks finality and conclusiveness, thereby suffering from a fundamental procedural defect and is, therefore, void ab initio. Consequently, the impugned order deserves to be quashed and set aside, and the appeal be disposed of accordingly.*
5. *The Appellant is a Primary Agricultural Co-operative Society is operating different activities connected to agricultural and is not limiting our activities to just extending credit facilities alone. In fact, we are instrumental in procuring fertilizers, manures, pesticides, seeds and other agricultural instruments at economic prices and distributing the same to our members for a very nominal rate. We are also distributing plants, sourcing the agricultural produces by our members and enabling a trade platform also. The same can be verified from our trading account and sales tax registration certificates and returns. Also, Panchayath licenses for the same is available.*
6. *The order passed by the CIT(A) is erroneous, arbitrary, and contrary to established legal principles. The CIT(A) dismissed the appeal disallowing the deduction under Section 80P.*
7. *That the Ld. AO has primarily disallowed deduction by taking in to the proportion of agri-loans loans out of the total loans*

disbursed, which constitute to less than 1% of the total loans. Hence, it may be reasonably inferred that the Ld. AO had admitted that the loans advanced were only to the members of the Appellant. In this regard the Appellant wishes to rely on the Judgment by the Hon'ble Supreme Court of India (Hon'ble SC) in the Civil Appeal Nos. 7343-7350 of 2019 between the Mavilayi Service Cooperative Bank Ltd. and Ors vs Commissioner of Income Tax, Calicut and Anr. that the Co-operative Societies providing credit facilities to its members including for purposes other than agriculture are entitled to deductions under Section 80P(2)(a)(i) of the Income-Tax Act, 1961. The Hon'ble SC held that the impugned Full Bench judgment was wholly incorrect in its reading the judgment of the Hon'ble SC. Clearly, therefore, once Section 80P(4) was out of harms way, all the appellants in the present case were 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.

8. *The Appellant prays that the deduction under section 80P be allowed and the income tax demanded Rs.81,20,796 - be deleted."*

4. The relevant facts in brief are that for the relevant assessment year, the Assessee, a primary agricultural credit society registered under Kerala Cooperative Society Act, 1969, claimed deduction under Section 80P(2)(a)(i) of the Act. The Assessing Officer rejected the aforesaid claim for deduction and made addition of INR.1,63,05,247/- by restricting the deduction of INR. 1,64,15,229/- claimed by the Assessee to INR. 1,09,982/-. In appeal, the CIT(A) concurred with Assessing Officer and declined to grant any relief. Hence, the present appeal has been preferred by the Assessee challenging the denial of the aforesaid deduction on the grounds reproduced in paragraph 3 above.
5. We have heard both the sides, have perused the material on record and analysed the position in law after taking into consideration the submission made by both the sides.

6. On perusal of the orders passed by the Assessing Officer and the CIT(A), we find that while disallowing deduction claimed by the Assessee under 80P(2)(a)(i) of the Act reliance was placed upon the provisions contained in Section 80P(4) of the Act and the fact that the Assessee was giving loans to its members/nominal members which were not related to agriculture. Therefore, the issue that arises for consideration is whether in the aforesaid facts and circumstances, the Assessee (*a primary agricultural credit society registered under Kerala Cooperative Society Act, 1969*) is entitled to claim deduction under Section 80P(2)(a)(i) of the Act. In our view, the aforesaid issue is no longer res integra and stands decided in favour of the Assessee by the judgment of the Hon'ble Supreme Court in the case of **Mavilayi Services Co-operative Bank Limited Vs. CIT, Calicut: [2021] 431 ITR 1 (SC) [12/01/2021]**. In that case, the Hon'ble Supreme Court had rejected identical stand/contentions of the Revenue and held, inter alia, as under:

(a) Section 80P(4) of the Act is to be read as a proviso to Section 80P(2)(a)(i) of the Act which specifically excludes co-operative banks which are co-operative societies engaged in banking business i.e. engaged in lending money to members of the public and have a licence in this behalf issued by Reserve Bank of India. In absence of such license, the provisions of Section 80P(4) of the Act would not be attracted in case of co-operative society classified by the Registrar of Co-operative Societies as being a primary agricultural credit society.

(b) The expression "providing credit facilities to its members" does not necessarily mean agricultural credit alone. Once Section 80P(4) of the Act is out of harm's way, assessee would be entitled to the benefit of the deduction contained

in Section 80P(2)(a)(i) of the Act, notwithstanding that such assessee may also be giving loans to their members which are not related to agriculture.

(c) 'nominal members' are 'members' as defined under the Kerala Co-operative Societies Act, 1969. Considering the definition of 'member' under the Kerala Co-operative Societies Act, 1969, loans given to such nominal members would qualify for the purpose of deduction under section 80P(2)(a)(i).

7. The relevant extract of the above judgment of the Hon'ble Supreme Court in the case of **Mavilayi Services Co-operative Bank Limited (supra)** reads as under:

"2. These appeals have been filed by co-operative societies who have been registered as 'primary agricultural credit societies', together with one 'multi-State co-operative society', and raise important questions as to deductions that can be claimed under section 80P(2)(a) (i) of the Income-tax Act, 1961 ("Income-tax Act"); and in particular, whether these assesseees are entitled to such deductions after the introduction of section 80P(4) of the IT Act by section 19 of the Finance Act, 2006 (21 of 2006) with effect from 1-4-2007. It may be stated at the outset that all these assesseees, who are stated to be providing credit facilities to their members for agricultural and allied purposes, have been classified as primary agricultural credit societies by the Registrar of Cooperative Societies under the Kerala Co-operative Societies Act, 1969 ("Kerala Act"), and were claiming a deduction under section 80P(2)(a) (i) of the Income-tax Act, which had been granted to them up to Assessment Year 2007-08.

3. However, with the introduction of section 80P(4) of the Income-tax Act, the scenario changed. In respect of the assesseees before us, the assessing officer denied their claims for deduction, relying upon section 80P(4) of the Income-tax Act, holding that as per the Audited Receipt & Disbursal Statement furnished by the assesseees in these cases, agricultural credits that were given by the assesseee-societies to its members were found to be negligible - the credits given to such members being for purposes other than agricultural credit. The decisions of the assessing officers were challenged up to the Kerala High Court. Before the High Court, the assesseees relied upon a decision of a Division

Bench of the Kerala High Court in Chirakkal Service Co-operative Bank Ltd. v. CIT [2016] 68 taxmann.com 298/239 Taxman 417/384 ITR 490, where in a batch of appeals challenging assessments completed under section 147 read with 143(3)/144 of the Income-tax Act, the High Court, after considering section 80P(4) of the Income-tax Act, various provisions of the Kerala Act, the Banking Regulation Act, 1949, the bye-laws of the Societies, etc., held that once a co-operative society is classified by the Registrar of Co-operative Societies under the Kerala Act as being a primary agricultural credit society, the authorities under the Income-tax Act cannot probe into whether agricultural credits were in fact being given by such societies to its members, thereby going behind the certificate so granted. This being the case, the High Court in Chirakkal Service co-operative Bank Ltd. (supra) held that since all the assesseees were registered as primary agricultural credit societies, they would be entitled to the deductions under section 80P(2)(a)(i) read with section 80P(4) of the Income-tax Act.

4. However, the Department contended that the judgment in Chirakkal Service Co-operative Bank Ltd. (supra) was rendered per incuriam by not having noticed the earlier decision of another Division Bench of the Kerala High Court in Perinthalmanna Service Co-operative Bank Ltd. v. ITO [2014] 49 taxmann.com 438/363 ITR 268, where, in an appeal challenging orders under section 263 of the Income-tax Act, it was held that the revisional authority was justified in saying that an inquiry has to be conducted into the factual situation as to whether a co-operative bank is in fact conducting business as a co-operative bank and not as a primary agricultural credit society, and depending upon whether this was so for the relevant assessment year, the assessing officer would then allow or disallow deductions claimed under section 80P of the Income-tax Act, notwithstanding that mere nomenclature or registration certificates issued under the Kerala Act would show that the assesseees are primary agricultural credit societies. These divergent decisions led to a reference order dated 9-7-2018 to a Full Bench of the Kerala High Court.

5. The Full Bench of the Kerala High Court, by the impugned judgment dated 19-3-2019, referred to section 80P of the Income-tax Act, various provisions of the Banking Regulation Act and the Kerala Act and held that the main object of a primary agricultural credit society which exists at the time of its registration, must continue at all times including for the assessment year in question. Notwithstanding the fact that the primary agricultural credit society is registered as such under the Kerala Act, yet, the assessing officer must be satisfied that in the particular assessment year its main object is, in fact, being carried out. If it is found that as a matter of fact agricultural credits amount to a negligible amount, then it would be open for the assessing officer, applying the

provisions of section 80P(4) of the Income-tax Act, to state that as the co-operative society in question - though registered as a primary agricultural credit society - is not, in fact, functioning as such, the deduction claimed under section 80P(2)(a)(i) of the Income-tax Act must be refused. This conclusion was reached after referring to several judgments, but relying heavily upon the judgment of this Court in Citizen Cooperative Society Ltd. v. Asstt. CIT [2017] 84 taxmann.com 114/250 Taxman 78/397 ITR 1. Thus, the conclusion of the Full Bench was as follows:

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6. Being aggrieved by the Full Bench judgment, the Appellant assesseees are now before us.

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15. It is important to note that though the main object of the primary agricultural society in question is to provide financial assistance in the form of loans to its members for agricultural and related purposes, yet, some of the objects go well beyond, and include performing of banking operations "as per rules prevailing from time to time", opening of medical stores, running of showrooms and providing loans to members for purposes other than agriculture.

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20. We now come to the judgment of this Court in **Citizen Cooperative Society Ltd.** (supra). This judgment was concerned with an assessee who was established initially as a mutually aided cooperative credit society, having been registered under section 5 of the Andhra Pradesh Mutually Aided Cooperative Societies Act, 1995. As operations of the assessee began to spread over States outside the State of Andhra Pradesh, the assessee got registered under the Multi-State Cooperative Societies Act, 2002 as well. The question that the Court posed to itself was as to whether the appellant was barred from claiming deduction in view of Section 80P(4) of the Income-tax Act - see paragraph 5. After setting out the findings of fact in that case, and the income tax authorities concurrent holding that the society is carrying on banking business and for all practical purposes acts like a co-operative bank, this Court then held as follows:

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21. An analysis of this judgment would show that the question of law that was reflected in paragraph 5 of the judgment was answered in favour of the assessee. The following propositions may be culled out from the judgment:

(I) That section 80P of the IT Act is a benevolent provision, which was enacted by Parliament in order to encourage and promote the growth of the co-operative sector generally in the economic life of the country and must, therefore, be read liberally and in favour of the assessee;

(II) That once the assessee is entitled to avail of deduction, the entire amount of profits and gains of business that are attributable to any one or more activities mentioned in sub-section (2) of section 80P must be given by way of deduction;

(III) That this Court in Kerala State Cooperative Marketing Federation Ltd. (supra) has construed section 80P widely and liberally, holding that if a society were to avail of several heads of deduction, and if it fell within any one head of deduction, it would be free from tax notwithstanding that the conditions of another head of deduction are not satisfied;

(IV) This is for the reason that when the legislature wanted to restrict the deduction to a particular type of co-operative society, such as is evident from section 80P(2)(b) qua milk co-operative societies, the legislature expressly says so - which is not the case with section 80P(2)(a)(i);

(V) That section 80P(4) is in the nature of a proviso to the main provision contained in section 80P(1) and (2). This proviso specifically excludes only co-operative banks, which are cooperative societies who must possess a licence from the RBI to do banking business. Given the fact that the assessee in that case was not so licenced, the assessee would not fall within the mischief of section 80P(4)

22. However, considering that the learned Senior Advocate appearing for the Revenue argued that the concurrent findings of fact in that case

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26. Applying the aforesaid decisions, it is clear that the ratio decidendi in Citizen Cooperative Society Ltd. (supra) would not depend upon the conclusion arrived at on facts in that case, the case being an authority for what it actually decides in law and not for what may seem to logically follow from it. Thus, the statement of the principles of law applicable to the legal problems disclosed by the facts alone is the binding ratio of the case, which as has been stated hereinabove, is contained in paragraphs 18 to 23 of the judgment. Paragraphs 24 to 26, being the judgment based on the combined effect of the statements of the principle of law applicable to the material facts of the case cannot be described as the ratio decidendi of the judgment. Nor can it be said that it would logically follow from the finding on facts that the assessing

officer can go behind the registration of a society and arrive at a conclusion that the society in question is carrying on illegal activities. On this score alone, the Full Bench's understanding of this judgment has to be faulted and is set aside.

27. However, this does not conclude the issue in the present case. We now turn to the proper interpretation of section 80P of the Income-tax Act. Firstly, the marginal note to section 80P which reads "Deduction in respect of income of co-operative societies" is important, in that it indicates the general "drift" of the provision. This was so held by this Court in K.P. Varghese v. ITO [1981] 7 Taxman 13/131 ITR 597 as follows:

"9. This interpretation of sub-section (2) is strongly supported by the marginal note to Section 52 which reads "Consideration for transfer in cases of understatement". It is undoubtedly true that the marginal note to a section cannot be referred to for the purpose of construing the section but it can certainly be relied upon as indicating the drift of the section or, to use the words of Collins, M.R. in *Bushel v. Hammond* [1904] 2 KB 563 to show what the section is dealing with. It cannot control the interpretation of the words of a section particularly when the language of the section is clear and unambiguous but, being part of the statute, it prima facie furnishes some clue as to the meaning and purpose of the section (vide *Bengal Immunity Company Limited v. State of Bihar* [1955] 2 SCR 603)."

28. Secondly, for purposes of eligibility for deduction, the assessee must be a "co-operative society". A co-operative society is defined in Section 2(19) of the IT Act, as being a co-operative society registered either under the Co-operative Societies Act, 1912 or under any other law for the time being in force in any State for the registration of co-operative societies. This, therefore, refers only to the factum of a co-operative society being registered under the 1912 Act or under the State law. For purposes of eligibility, it is unnecessary to probe any further as to whether the co-operative society is classified as X or Y.

29. Thirdly, the gross total income must include income that is referred to in sub-section (2).

30. Fourthly, sub-clause (2)(a)(i) with which we are directly concerned, then speaks of a co-operative society being "engaged in" carrying on the business of banking or providing credit facilities to its members. What is important qua sub-clause (2)(a)(i) is the fact that the co-operative society must be "engaged in" the providing credit facilities to its members.

32. Fifthly, as has been held in Udaipur Sahkari Upbhokta Thok Bhandar Ltd. v. CIT [2009] 8 SCC 393 at paragraph 23, the burden is on

the assessee to show, by adducing facts, that it is entitled to claim the deduction under section 80P. Therefore, the assessing officer under the Income-tax Act cannot be said to be going behind any registration certificate when he engages in a fact-finding enquiry as to whether the co-operative society concerned is in fact providing credit facilities to its members. Such fact finding enquiry (see section 133(6) of the Income-tax Act) would entail examining all relevant facts of the co-operative society in question to find out whether it is, as a matter of fact, providing credit facilities to its members, whatever be its nomenclature. Once this task is fulfilled by the assessee, by placing reliance on such facts as would show that it is engaged in providing credit facilities to its members, the assessing officer must then scrutinize the same, and arrive at a conclusion as to whether this is, in fact, so

33. Sixthly, what is important to note is that, as has been held in Kerala State Cooperative Marketing Federation Ltd. (supra) the expression "providing credit facilities to its members" does not necessarily mean agricultural credit alone. Section 80P being a beneficial provision must be construed with the object of furthering the co-operative movement generally, and section 80P(2)(a)(i) must be contrasted with section 80P(2)(a)(iii) to (v), which expressly speaks of agriculture. It must also further be contrasted with sub-clause (b), which speaks only of a "primary" society engaged in supplying milk etc. thereby defining which kind of society is entitled to deduction, unlike the provisions contained in section 80P(2)(a)(i). Also, the proviso to section 80P(2), when it speaks of sub-clauses (vi) and (vii), further restricts the type of society which can avail of the deductions contained in those two sub-clauses, unlike any such restrictive language in section 80P(2)(a)(i). **Once it is clear that the co-operative society in question is providing credit facilities to its members, the fact that it is providing credit facilities to non-members does not disentitle the society in question from availing of the deduction.** The distinction between eligibility for deduction and attributability of amount of profits and gains to an activity is a real one. Since profits and gains from credit facilities given to non-members cannot be said to be attributable to the activity of providing credit facilities to its members, such amount cannot be deducted.

34. Seventhly, section 80P(1)(c) also makes it clear that section 80P is concerned with the co-operative movement generally and, therefore, the moment a co-operative society is registered under the 1912 Act, or a State Act, and is engaged in activities which may be termed as residuary activities i.e. activities not covered by sub-clauses (a) and (b), either independently of or in addition to those activities, then profits and gains attributable to such activity are also liable to be deducted, but subject to the cap specified in sub-clause (c). The reach of sub-clause (c) is extremely wide, and would include co-operative societies engaged in any activity, completely independent of the activities mentioned in sub-clauses (a) and (b), subject to the cap of INR 50,000/- to be found in sub-clause (c)(ii). This puts paid to any argument that in order to avail of a benefit under section 80P, a cooperative society once classified as a particular type of society, must continue to fulfil those objects alone. If such objects are only partially carried out, and the society conducts any

other legitimate type of activity, such co-operative society would only be entitled to a maximum deduction of Rs. 50,000/- under sub-clause (c).

35. Eighthly, sub-clause (d) also points in the same direction, in that interest or dividend income derived by a co-operative society from investments with other co-operative societies, are also entitled to deduct the whole of such income, the object of the provision being furtherance of the co-operative movement as a whole.

36. Coming to the provisions of section 80P(4), it is important to advert to speech of the Finance Minister dated 28-2-2006, which reflects the need for introducing section 80P(4). Shri P. Chidambaram specifically stated:

"166. Cooperative Banks, like any other bank, are lending institutions and should pay tax on their profits. Primary Agricultural Credit Societies (PACS) and Primary Cooperative Agricultural and Rural Development Banks (PCARDB) stand on a special footing and will continue to be exempt from tax under section 80P of the Income-tax Act. However, I propose to exclude all other cooperative banks from the scope of that section."

37. Likewise, a Circular dated 28-12-2006, containing explanatory notes on provisions contained in the Finance Act, 2006, is also important, and reads as follows:

"Withdrawal of tax benefits available to certain cooperative banks

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22.2 The cooperative banks are functioning at par with other commercial banks, which do not enjoy any tax benefit. Therefore section 80P has been amended and a new sub-section (4) has been inserted to provide that the provisions of the said section shall not apply in relation to any cooperative bank other than a primary agricultural credit society or a primary co-operative agricultural and rural development bank. The expressions 'co-operative bank', 'primary agricultural credit society' and 'primary co-operative agricultural and rural development bank' have also been defined to lend clarity to them."

38. A clarification by the CBDT, in a letter dated 9-5-2008, is also important, and states as follows:

"Subject: Clarification regarding admissibility of deduction under section 80P of the Income-tax Act, 1961.

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2. In this regard, I have been directed to state that sub-section (4) of section 80P provides that deduction under the said section **shall not be allowable to any co-operative bank** other than a primary agricultural credit society or a primary co-

operative agricultural and rural development bank. For the purpose of the said sub-section, co-operative bank shall have the meaning assigned to it in part V of the Banking Regulation Act, 1949.

3. In 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.

4. Thus, if the Delhi Co-op Urban T & C Society Ltd. does not fall within the meaning of "Co-operative Bank" as defined in part V of the Banking Regulation Act, 1949, sub-section(4) of section 80P will not apply in this case.

5. Issued with the approval of Chairman, Central Board of Direct Taxes."

5. Issued with the approval of Chairman, Central Board of Direct Taxes."

39. The above material would clearly indicate that the limited object of section 80P(4) is to exclude co-operative banks that function at par with other commercial banks i.e. which lend money to members of the public. Thus, if the Banking Regulation Act, 1949 is now to be seen, what is clear from section 3 read with section 56 is that a primary co-operative bank cannot be a primary agricultural credit society, as such co-operative bank must be engaged in the business of banking as defined by section 5(b) of the Banking Regulation Act, 1949, which means the accepting, for the purpose of lending or investment, of deposits of money from the public. Likewise, under section 22(1)(b) of the Banking Regulation Act, 1949 as applicable to co-operative societies, no co-operative society shall carry on banking business in India, unless it is a co-operative bank and holds a licence issued in that behalf by the RBI. As opposed to this, a primary agricultural credit society is a co-operative society, the primary object of which is to provide financial accommodation to its members for agricultural purposes or for purposes connected with agricultural activities.

40. As a matter of fact, some primary agricultural credit societies applied for a banking licence to the RBI, as their bye-laws also contain as one of the objects of the Society the carrying on of the business of banking. This was turned down by the RBI in a letter dated 25-10-2013 as follows:

"Application for license

Please refer to your application dated April 10, 2013 requesting for a banking license. On a scrutiny of the application, we observe that you are registered as a Primary Agricultural Credit Society (PACS).

In this connection, we have advised RCS vide letter dated UBD (T) No. 401/10.00/16A/2013-14 dated October 18, 2013 that in terms of Section 3 of the Banking Regulation Act, 1949 (AACS), PACS are not entitled for obtaining a banking license. Hence, your society does not come under the purview of Reserve Bank of India. RCS will issue the necessary guidelines in this regard

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45. To sum up, therefore, the ratio decidendi of Citizen Co-operative Society Ltd. (supra), must be given effect to. Section 80P of the IT Act, being a benevolent provision enacted by Parliament to encourage and promote the credit of the co-operative sector in general must be read liberally and reasonably, and if there is ambiguity, in favour of the assessee. **A deduction that is given without any reference to any restriction or limitation cannot be restricted or limited by implication, as is sought to be done by the Revenue in the present case by adding the word "agriculture" into section 80P(2)(a)(i) when it is not there. Further, section 80P(4) is to be read as a proviso, which proviso now specifically excludes co-operative banks which are co-operative societies engaged in banking business i.e. engaged in lending money to members of the public, which have a licence in this behalf from the RBI. Judged by this touchstone, it is clear that the impugned Full Bench judgment is wholly incorrect in its reading of Citizen Cooperative Society Ltd. (supra). Clearly, therefore, once section 80P(4) is out of harm's way, all the assesseees in the present case 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. Also, in case it is found that there are instances of loans being given to non-members, profits attributable to such loans obviously cannot be deducted.**

46. It must also be mentioned here that unlike the Andhra Act that Citizen Cooperative Society Ltd. (supra) considered, **'nominal members' are 'members' as defined under the Kerala Act.** This Court in U.P. Cooperative Cane Unions' Federation Ltd. v. CIT [1997] 11 SCC 287 referred to section 80P of the IT Act and then held:

"8. The expression "members" is not defined in the Act. Since a cooperative society has to be established under the provisions of the law made by the State Legislature in that regard, the expression "members" in Section 80-P(2)(a)(i) must, therefore, be construed in the context of the provisions of the law enacted by the State Legislature under which the cooperative society claiming exemption has been formed. It is, therefore, necessary to construe the expression "members" in Section 80-P(2)(a)(i) of the Act in the light

of the definition of that expression as contained in Section 2(n) of the Cooperative Societies Act. The said provision reads as under:

"2. (n) 'Member' means a person who joined in the application for registration of a society or a person admitted to membership after such registration in accordance with the provisions of this Act, the rules and the bye-laws for the time being in force but a reference to 'members' anywhere in this Act in connection with the possession or exercise of any right or power or the existence or discharge of any liability or duty shall not include reference to any class of members who by reason of the provisions of this Act do not possess such right or power or have no such liability or duty; ""

Considering the definition of 'member' under the Kerala Act, loans given to such nominal members would qualify for the purpose of deduction under section 80P(2)(a)(i).

47. Further, unlike the facts in *Citizen Cooperative Society Ltd.* (supra), the Kerala Act expressly permits loans to non-members under section 59(2) and (3), which reads as follows:

"59. Restrictions on loans.— (1) A society shall not make a loan to any person or a society other than a member:

Provided that the above restriction shall not be applicable to the Kerala State Co-operative Bank.

Provided further that, with the general or special sanction of the Registrar, a society may make loans to another society.

(2) Notwithstanding anything contained in sub-section (1), a society may make a loan to a depositor on the security of his deposit.

(3) Granting of loans to members or to non-members under sub-section (2) and recovery thereof shall be in the manner as may be specified by the Registrar."

Thus, the giving of loans by a primary agricultural credit society to non-members is not illegal, unlike the facts in Citizen Cooperative Society Ltd. (supra).

48. Resultantly, the impugned Full Bench judgment is set aside. The appeals and all pending applications are disposed of accordingly. These appeals are directed to be placed before appropriate benches of the Kerala High Court for disposal on merits in the light of this judgment. "
(Emphasis Supplied)

8. In our view, given the facts and circumstances, the above judgment is applicable to the present case. The Revenue has failed to bring on record any material to distinguish the above judgment either on

facts or in law. Accordingly, respectfully following the above judgment of the Hon'ble Supreme Court in the case of Mavilayi Services Co-operative Bank Limited (supra), we hold that the deduction claimed by the Assessee under Section 80P(2)(a)(i) of the Act in respect of income earned by the Assessee from its members/nominal members in the present case cannot be denied and therefore, the Assessing Officer is directed to grant deduction as claimed by the Assessee under Section 80P(2)(a)(i) of the Act. In terms of the aforesaid, Ground No. 1,2,3,5,7 & 8 are allowed while Ground No. 4 & 6 are dismissed as infructuous.

9. In result, in terms of paragraph 8 above, the present appeal preferred by the Assessee is partly allowed.

ITA No.556/COCH/2025

10. We would now take up ITA No.556/COCH/2025. In view of the statement given by the Learned Authorised Representative for the Assessee that this is a duplicate appeal, ITA No.556/COCH/2025 is dismissed.

In conclusion, ITA No.569/COCH/2025 preferred by the Assessee is partly allowed while ITA No.556/COCH/2025 preferred by the Assessee is dismissed.

Order pronounced on 10.09.2025.

Sd/-
(Inturi Rama Rao)
Accountant Member

Sd/-
(Rahul Chaudhary)
Judicial Member

मुंबई Mumbai; दिनांक Dated : 10.09.2025

Disha,LDC

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त/ The CIT
4. प्रधान आयकर आयुक्त / Pr.CIT
5. विभागीय प्रतिनिधि ,आयकर अपीलीय अधिकरण ,मुंबई / DR,
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार / (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai