

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

**BEFORE SHRI INTURI RAMA RAO, AM
AND SHRI ANIKESH BANERJEE, JM**

**ITA No. 600/Coch/2025
Assessment Year: 2013-14**

The Income Tax Officer, Ward 1 & TPS Appellant
Aayakar Bhavban, Chovva P.O., Kannur 670006

vs.

Kannur Building Materials Co-op. Society Ltd Respondent
No. C 1741, Pappinissery P.O., Kannur 670561
[PAN: AAAAK7151K]

**CO No. 5/Coch/2025
Assessment Year: 2013-14**

Kannur Building Materials Co-op. Society Ltd. Appellant
No. C 1741, Pappinissery P.O., Kannur 670561
[PAN: AAAAK7151K]

vs.

The Income Tax Officer, Ward 1 & TPS Respondent
Aayakar Bhavban, Chovva P.O., Kannur 670006

Assessee by: Shri Amaljith P.J., CA
Revenue by: Smt. Leena Lal, Sr. D.R.

Date of Hearing: 27.10.2025
Date of Pronouncement: 29.10.2025

ORDER

Per: Anikesh Banerjee, JM

2. The instant appeal of the revenue and cross appeal by the assessee were filed against the order of the Learned National

Faceless Appeal Centre, Delhi [for brevity, 'Ld.CIT(A)'] passed under section 250 of the Income-tax Act, 1961 (in short, the Act') for Assessment Year 2013-14, date of order 03/07/2025. The impugned order emanated from the order of the Ld. Assistant Commissioner of Income Tax, Circle-1, Kannur (in short, 'Ld.AO') passed under section 143(3) of the Act, date of order 30/03/2016.

3. The brief fact the case is that the assessee is a cooperative society and filled the return under section 139(1) of the Act. The assessee's case was selected for scrutiny. The assessee during the impugned assessment year engaged in sand mining and selling. The object of the society to control the spending, to encouragement investment, self-sufficiency, co-operative attitude among members of the society and also to take measures to improve the financial, educational and overall development of members. The assessee also engaged in the processing of materials for building obstruction and also to develop operation among employees. During the assessment the Ld. AO rejected the additional claim towards Collective disposal of labour U/s 80P(2)(a)(vi) of the Act amount to Rs. 11,75,354/- and additions were made U/s 40(a)(ia) of the Act for non-deduction of TDS U/s 194C of the Act aggregating amount to Rs. 2,47,67,931/-. The aggrieved assessee filed an appeal before the Ld. CIT(A). The Ld CIT(A) allowed relief related addition U/s 40(a)(ia) of the Act but related to claim of deduction U/s. 80P(2)(a)(vi) of the Act the

finding of the Ld. AO is upheld. Being aggrieved, the assessee & revenue filed appeal & cross appeal before us.

2. The Ld. DR argued & filed a paper book containing pages 1 to 41 which is kept on record. The Ld. DR relied on the order of the Ld. AO. The Ld. DR respectfully relied on the order of the Hon'ble **High Court of Kerala** in **Nileshwar Rangekallu Chethu Vyavasaya Thozhilali Sahakarana Sangham v. Commissioner of Income-tax [2023] 152 taxmann.com 347 (Kerala)** held where assessee-society had collected toddy from its members as well as non-members and sold same through its shop on profit basis, it could not be considered as a co-operative society, engaged in collective disposal of labour of its members as contemplated under section 80P(2)(a)(vi) and thus would not be eligible for deduction under section 80P.

3. The Ld. AR in argument stated that the Ld. CIT(A) observed correctly related the deletion of addition U/s 40(a)(ia) of the Act. But related to deduction U/s 80P the Ld. AR unable to bring any substantial material before the bench in support of his argument.

4. The observation of the appellate authority is reproduced as under:-

“5.0 Decision:

5.1 The sum and substance of ground no. 1, 2 and 3 raised by the appellant is that the assessing officer erred in not allowing the deduction u/s 80(P)(2)(a)(vi) Of the Income Tax Act, 1961 without appreciating that income from collective disposal of labour of members of the appellant was eligible for deduction under the said section.

5.2 In this regard, I have gone through the submissions made, grounds of appeal, statement of facts made by the appellant. It is relevant to mention here that income from the activity of collective disposal of the labour of its members is deductible under Section 80P(2)(a)(vi). This section has been introduced mainly for the labour cooperative societies. These societies consist of the persons who are offering their services as labour through it. The labour can be manual or some technical or other similar services.

This deduction is available only when the earning of the society is through the utilization of the actual labour of its members and when actual work in field is done by paid employees, the society will not be entitled to claim the benefit of the above deduction.

5.3 In this case, from the submission made by the appellant before me and from the narration in the assessment order it is evident that the appellant's submission that " all the activities are being carried out by the members" is contrary to the material on record as the Assessing officer has clearly brought out in the assessment order dated 30.03.2016 that out

of 270 members, only 11% of the members were working for the society and in the case of the society more than members, a large number of non-members were contributing to collective disposal of labour, In view of the above, as condition laid down in Section 80P(2)(a)(vi) was not fulfilled, the assessee-society would not be entitled to deduction of its income as all the members were not engaged in the activities of the society i.e., removal of sand manually.

5.4. Also, the case law relied upon by the appellant in the case of the Hon'ble High Court of Kerala in the CIT vs Uralunkal labour contract society are distinguishable from the facts of the case, as in the Uralunkal case, all the member-workers were engaged in the activities of the society i.e., execution of Civil construction work i.e., collective disposal of labour of the members of the society was there, but in the case of the appellant, only 11% of the members were engaged in the activity referred to in section 80(P)(2)(a)(vi) i.e., collective disposal of labour of the members of the society.

5.5 In this regard, based on the facts narrated above, I hold that the appellant is not eligible to claim 80(P)(2)(a)(vi) of the Act.

5.6 In Ground no. 4 of the appeal, appellant has taken the plea that the Assessing officer failed to take into account that disallowance of expenditure against wages, coolies paid to casual labourers for transportation, loading and unloading, filtering and cleaning etc. does

not attract TDS provisions u/s 194C of the Income tax Act 1961 in as much as there was no contract between the payees and the appellant and therefore addition made u/s 40(a)(ia) is unwarranted.

5.7 I have gone through the assessment order, material on record and submission of the appellant in this regard. The expenses debited in the P&L account on which the Assessing Officer has made disallowance u/s.40(a)(ia) is as follows:

5.8. In this regard, I have observed that dredging coolie paid at Kappakadavu and Pappinissaery is part of the Wages' incurred by the

S.No.	Expenditure	Total Amount (Rs.)
1	Dredging Coolie paid at Kappakadavu	81,47,313
2	Dredging Coolie paid at Pappinissery	98,52,907
3	Transportation charges paid at Kappakadavu	52,80,061
4	Loading charges paid at Pappinisseri	16,75,453
5	Cleaning & Filtering charges paid at Pappinisseri	4,92,799
	Total	2,54,48,533

society and AO has not brought on record any material evidence to prove that any contractor or sub-contractor is involved in providing these services to the Society. The same is the case with transportation, loading

charges, cleaning and filtering charges as it is seen that they are direct payments incurred by the Society and these services are not availed through any contract agreement or through a contractor. Therefore, the disallowance made by the Assessing officer in appellant's case holding that the above amounts are paid towards works contract is without any basis.

As the reasoning given by the AO for substantiating his stand that the above payments attract TDS u/s 194C is not backed by any supporting evidence/finding, the disallowance made by the Assessing Officer amounting to Rs.2,47,67,931/- u/s.40(a)(ia) is deleted.

5.9 As regards, Ground No.5 of the appellant that the Assessing Officer wrongly disallowed expenditure against legal charges for not effecting TDS u/s.194C, I find no reason to interfere with the disallowance made by the Assessing Officer as the Assessing Officer has correctly made disallowance u/s.40(a)(ia) for an amount of Rs. 1,58,390/- for which TDS provisions were applicable.

5.10 In ground no. 6, the appellant has raised the plea that the assessment order is barred by limitation of time u/s 153 in as much as the order and demand notice u/s 156 was served on the assessee only on 02-04-2016.

5.11 On perusal of the records, it is seen that both the assessment order and demand notice were generated in the system on 30.03.2016 itself and the case is not barred by limitation of time U/s 153.

5.12 Also, as ground No.7, 8, 9 are only summarization of the grounds raised by the appellant from Ground 1 to 6 which were already dealt with, no separate adjudication is done on these grounds.

6.0 In the result, the appeal of the appellant is partly allowed.”

5. After considering the rival submissions, material placed on record, and the findings of the authorities below, we observe that the assessee, a cooperative society, engaged in sand mining and related activities, claimed deduction under section 80P(2)(a)(vi) of the Act on the ground that it was engaged in the collective disposal of the labour of its members. However, from the record, it is evident that only about 11% of the members of the society were actually involved in the activities of sand removal and related operations, while the remaining work was carried out with the help of non-members. The essence of deduction under section 80P(2)(a)(vi) lies in the utilization of the actual labour of members; when the majority of work is executed through non-members or hired labourers, the condition stipulated under the provision is not fulfilled. The finding of the Ld. CIT(A) that the assessee-society failed to meet this condition. The decision of the Hon'ble Kerala High Court in **Nileshwar Range kallu Chethu Vyavasaya Thozhilali Sahakarana Sangham** (supra) squarely applies to the present case. Considering the order of Hon'ble High Court of Kerala in paragraph no-15 the assessee is eligible of benefit of deduction in proportionate

basis. So, we restore the matter to the file of the Ld. AO to allow the assessee to ascertain the utilisation of member & non-member and the deduction will be allowed on basis of utilisation member.

With respect to the disallowance made under section 40(a)(ia) of the Act for non-deduction of TDS under section 194C, we find that the Ld. CIT(A) has given a well-reasoned finding that the impugned payments towards wages, loading/unloading, and transportation were directly made to individual workers without any element of a contract or sub-contract. The Ld. AO has not brought on record any evidence to show that these expenses involved a contractor or sub-contractor arrangement. Therefore, the deletion of the addition made under section 40(a)(ia) of the Act by the Ld. CIT(A) is found to be justified and calls for no interference. Accordingly, the appeal filed by the assessee in respect of the disallowance of deduction under section 80P(2)(a)(vi) of the Act is dismissed, and the appeal filed by the revenue challenging the deletion of addition under section 40(a)(ia) is also dismissed.

6. In the result, the appeal filed by the revenue **ITA No. 600/COCH/2025** is dismissed & assessee's **CO No. 5/COCH/2025** is allowed for statistical purposes.

Order pronounced in the open court on 29th October, 2025.

Sd/
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

Sd/-
ANIKESH BANERJEE
JUDICIAL MEMBER

Cochin, Dated: 29th October, 2025

n.p.

Copy to:

1. The Appellant
2. The Respondent
3. The Pr. CIT concerned
4. The Sr. DR, ITAT, Cochin
5. Guard File

By Order

Assistant Registrar
ITAT, Cochin